

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**FACTUM OF THE RECEIVER,
MSI SPERGEL INC.**

(Returnable August 13, 2025)

August 6, 2025

GOWLING WLG (CANADA) LLP

1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Rachel Moses (LSO# 42081V)

rachel.moses@gowlingwlg.com

Tel: 416-862-3630

Lawyers for the Receiver, msi Spergel inc.

TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

FACTUM

PART I - OVERVIEW

1. This is a motion by msi Spergel inc. ("**Spergel**") in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of Toronto Artscape Inc. ("**Artscape**") for:

- (a) An Order approving the Fourth Report of the Receiver dated July 28, 2025 (the "**Fourth Report**") and the activities of the Receiver described therein;
- (b) An Order approving the Receiver's Interim Statement of Receipts and Disbursements as at July 27, 2025;
- (c) An Order approving the following sale transaction (the "**Transaction**"):
 - (i) The sale of Unit 7, Level 3, at the property located at 180 Shaw Street, Toronto, Ontario (the "**Property**") to Small Word Music Society (the "**Purchaser**");

- (d) An Order sealing certain Confidential Appendices to the Fourth Report;
 - (e) An Order authorizing and directing the Receiver to make a distribution to The City of Toronto for outstanding realty taxes;
 - (f) An Order approving the fees and disbursements of the Receiver; and
 - (g) An Order approving the fees and disbursements of Fogler, Rubinoff LLP and Gowling WLG (Canada) LLP, as legal counsel to the Receiver;
2. The Receiver's motion is supported by all stakeholders.

PART II - SUMMARY OF FACTS

Appointment and Background

3. Artscape is a Not-for-Profit corporation incorporated pursuant to the laws of the Province of Ontario, with its registered head office in Toronto, Ontario.¹
4. Artscape's operations consisted of, among other things:
- (a) providing various property management services to residential units for artists and artist led families and commercial tenants, through arrangement with the City of Toronto;
 - (b) providing mortgage program management for approximately 85 affordable home ownership units; and
 - (c) providing venue rental from owned or leased premises.²

¹ Fourth Report of the Receiver dated July 28, 2025 (the "**Fourth Report**"), para. 2

² Fourth Report, para. 3

5. Artscape was the registered owner of the following real properties that were subject to the Receivership:

- (a) 130 Queens Quay East, 4th Floor, Toronto, ON;
- (b) 38 Abell Street, Toronto, ON comprising 2 commercial condominium units (the Abell Commercial Units), 20 live/work condominium units (the Abell Live/Work Units) and 1 parking stall;
- (c) 180 Shaw, comprising 15 commercial condominium units; and
- (d) The 210 Simcoe Units.³ [collectively, the "**Real Properties**"].

6. By Order of Justice Steele dated January 11, 2024, Spergel was appointed as Receiver of certain property of Artscape, including the Real Properties, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* (the "**Appointment Order**").⁴

7. The Receiver retained Minden Gross LLP and, subsequently, Fogler, Rubinoff LLP as its independent legal counsel.⁵

8. On April 25, 2024, the Receiver brought a motion to seek the following relief from the court:

- (a) approving the First Report of the Receiver (the "**First Report**") and the activities of the Receiver described therein;

³ Fourth Report, para. 4

⁴ Fourth Report, para. 5; Appendix "1"

⁵ Fourth Report, para. 8

- (b) approving the Receiver's Interim Statement of Receipts and Disbursements as at April 11, 2024;
- (c) authorizing and directing the Receiver to execute a listing agreement between the Receiver and Avison Young Commercial Real Estate LP ("**Avison**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
- (d) authorizing and directing the Receiver, in conjunction with Avison as its real estate consultant, to carry out a sale process as described in the First Report (the "**Sale Process**");
- (e) increasing the Receiver's borrowing charge provided for in the Appointment Order; and
- (f) sealing certain Confidential Appendices to the First Report.⁶

9. By two separate Orders dated April 25, 2024, Justice Steele granted the relief sought by the Receiver.⁷

10. On January 7, 2025, the Receiver brought a motion to seek the following relief from the court:

- (a) approving the Second Report of the Receiver (the "**Second Report**") and the activities of the Receiver described therein;

⁶ Fourth Report, para. 9

⁷ Fourth Report, para. 10, Appendices "2", "3", "4" and "5"

- (b) approving the Receiver's Interim Statement of Receipts and Disbursements as at December 18, 2024;
- (c) approving sale transactions for certain properties at 210 Simcoe Street, 38 Abell Street and 180 Shaw Street;⁸
- (d) vesting title of said properties in the applicable purchasers, free and clear of all encumbrances except certain permitted encumbrances;
- (e) sealing certain Confidential Appendices to the Second Report;
- (f) authorizing the Receiver to repay amounts borrowed under the Receiver's Certificates;
- (g) authorizing and directing the Receiver to make a distribution to each of First Ontario Credit Union Limited, Community Forward Fund and The City of Toronto (for the outstanding realty taxes);
- (h) approving the fees and disbursements of the Receiver and the Receiver's Counsel.⁹

11. By separate Orders dated January 7, 2025, Justice Conway granted the relief sought by the Receiver.¹⁰

12. On April 17, 2025, the Receiver brought a motion to seek the following relief from the court:

⁸ Fourth Report, paras. 11(c) to 11(m)

⁹ Fourth Report, para. 11

¹⁰ Fourth Report, para. 12, Appendices "6", "7" and "8"

- (a) approving the Third Report of the Receiver (the "**Third Report**") and the activities of the Receiver described therein;
- (b) approving the Receiver's Interim Statement of Receipts and Disbursements as at April 7, 2025;
- (c) approving sale transactions for the purchase and sale of Unit 10, Level 1 at the property located at 180 Shaw Street, Toronto, Ontario and for the purchase and sale of Unit 4, Level A at the property located at 150 Sudbury Street, Toronto, Ontario;¹¹
- (d) vesting title of said properties in the applicable purchasers, free and clear of all encumbrances except certain permitted encumbrances;
- (e) sealing certain Confidential Appendices to the Third Report;
- (f) authorizing and directing the Receiver to make a distribution to The City of Toronto for the outstanding realty taxes;
- (g) approving the fees and disbursements of the Receiver and the Receiver's Counsel.¹²

13. By separate Orders dated April 17, 2025, Justice Osborne granted the relief sought by the Receiver.¹³

¹¹ Fourth Report, paras. 13(c) to 11(d)

¹² Fourth Report, para. 13

¹³ Fourth Report, para. 14, Appendices "9" and "10"

14. On June 9, 2025, the Receiver through counsel issued a Notice of Change of Lawyer, appointing Gowling WLG (Canada) LLP as its counsel of record.¹⁴

15. Following the approval of its activities in the Third Report, the Receiver has undertaken the activities set out in paragraph 20 of the Fourth Report.¹⁵

16. The Receiver has also undertaken the Sale Process, as approved by the Orders of Justice Steele. Pursuant to the Sale Process, the Receiver has entered into the Agreement of Purchase and Sale regarding Unit 10, Level 1 at the property located at 180 Shaw Street, Toronto, Ontario.¹⁶

17. The Real Property located at 130 Queens Quay remains unsold. The Receiver has not yet received any offers in respect of 130 Queens Quay and will continue to market the Real Property for sale, in conjunction with Avison.¹⁷

18. The Receiver's opinion is that the terms and conditions contained in the Small World Transaction regarding Unit 7, Level 3 at the property located at 180 Shaw Street, Toronto, Ontario is commercially reasonable in all respects and that the purchase price is within the market value for the Property, as evidenced by the appraisal values previously provided under a sealed order (with excerpts attached as Confidential Appendix "2" to the Fourth Report).¹⁸

¹⁴ Fourth Report, para. 15 and Appendix "11"

¹⁵ Fourth Report, para. 20

¹⁶ Fourth Report, para. 21

¹⁷ Fourth Report, para. 25

¹⁸ Fourth Report, para. 26; Confidential Appendix "2"

Funding of the Receivership

19. Pursuant to the Order of Justice Steele dated April 25, 2024, the court increased the borrowing power under the Appointment Order from \$300,000 to \$600,000.¹⁹

20. Pursuant to the Order of Justice Conway dated January 7, 2025, the court further increased the borrowing power under the Appointment Order from \$600,000 to \$670,000.²⁰

Request for a Sealing Order

21. The Receiver is seeking a sealing order in respect of the Confidential Appendices to the Fourth Report, as they each contain commercially sensitive information, the release of which prior to the completion of a transaction would be prejudicial to the stakeholders of Artscape's estate.²¹

Receiver's Interim Statement of Receipts and Disbursements

22. A copy of the Receiver's interim statement of receipts and disbursements as of July 27, 2025 is attached as Appendix "16" to the Fourth Report.²²

Fees and Disbursements of the Receiver and Counsel

23. The Receiver seeks approval of the fees and disbursements of the Receiver and its legal counsel.²³

¹⁹ Fourth Report, para. 9(e), Appendix "3"

²⁰ Fourth Report, para. 11(o), Appendix "8"

²¹ Fourth Report, para. 29

²² Fourth Report, para. 37; Appendix "16"

²³ Fourth Report, paras. 30 – 35, Appendices "13", "14" and "15"

Approval of Distributions

24. The Receiver seeks authorization to:

- (a) Distribute funds to The City of Toronto in the amount of \$7,150.61 with respect to property tax arrears that have accrued on the Real Properties, plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes.²⁴

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

Approval and Vesting Orders

25. The starting point for the analysis of whether or not to approve a transaction proposed by a Receiver is the decision of the Court of Appeal for Ontario in *Royal Bank v. Soundair*, [1991 CanLII 2727](#).

26. *Soundair* requires the court to canvass the following:

- (a) Whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) The interests of all parties;
- (c) The efficacy and integrity of the process by which offers are obtained; and
- (d) Whether there has been unfairness in the working out of the process.

²⁴ Fourth Report, para. 38 – 39, Appendix “17”

27. In this case, the Receiver obtained prior approval of the Sales Process. With the assistance of Avison, the Receiver ran a robust marketing and sale process that was designed to obtain the best price for the properties based on current market conditions.

28. As stated in *Soundair*, there are important policy considerations weighing in favour of according a Receiver's recommendation deference and respecting the Receiver's business judgment based on the information available to the Receiver at the time and in the circumstances:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in perception of receivers and in the perception of any others who might have occasion to deal with them...That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.

Approval of Activities and Fees

29. The Receiver has set out its activities and fees and those of its legal counsel, which are at or below the rates charged by other firms. The Receiver requests approval of its activities and fees.

Distributions

30. The Receiver proposed to make an interim distribution (after payment of the fees and disbursements of both the Receiver and the Receiver's counsel, as outlined in the Fourth Report) to the City of Toronto in the amount of \$7,150.61 plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes.²⁵

²⁵ Fourth Report, para. 39

The Sealing Order

31. The Receiver seeks an Order continuing the sealing of the Confidential Appendices to the First Report, which include appraisals of the Real Properties and information as to the appraised values, as well as the Confidential Appendices to the Fourth Report.

32. Disclosure of the Confidential Appendices to third parties would affect the integrity of the Sale Process.

33. This Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record. The test to determine if a sealing order should be granted is set out in *Sierra Club*, as recast in *Sherman Estate*:

- (a) Court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.²⁶

34. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information is an “important public interest” for purposes of this test. Limited sealing orders are routinely granted over sensitive commercial information in receivership proceedings to protect the interests of stakeholders in a sale process.

²⁶ [*Sierra Club of Canada v Canada \(Minister of Finance\)*](#), 2002 SCC 41, at para 53; [*Sherman Estate v. Donovan*](#), 2021 SCC 25, at paras 38 and 43

35. In this case, it is appropriate to seal the Confidential Appendices to the Fourth Report until all properties are sold.

PART IV - ORDER REQUESTED

36. It is submitted that the relief sought by the Receiver be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of August, 2025.



Carol Liu

GOWLING WLG (CANADA) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Rachel Moses (LSO# 42081V)
rachel.moses@gowlingwlg.com
Tel: 416-862-3630

Carol Liu (LSO# 84938G)
carol.liu@gowlingwlg.com
Tel: 416-862-4300

Lawyers for the Receiver, msi Spergel inc.

THE TORONTO-DOMINION BANK
Applicant

-and- **TORONTO ARTSCAPE INC.**
Respondent

Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RECEIVER

GOWLING WLG (CANADA) LLP

1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Rachel Moses (LSO# 42081V)

rachel.moses@gowlingwlq.com

Tel: 416-862-3630

Carol Liu (LSO# 84938G)

carol.liu@gowlingwlq.com

Tel: 416-862-4300

Lawyers for the Receiver, msi Spergel inc.