

**ONTARIO
SUPERIOR COURT OF JUSTICE**

MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.

Applicants

- and -

ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.

Respondents

BOOK OF AUTHORITIES OF THE RECEIVER
(Motion returnable July 4, 2024)

June 25, 2025

HARRISON PENZA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON, N6A 5R2

Timothy C. Hogan (LSO #36553S)
Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpenza.com

Solicitors for the Receiver,
msi Spergel inc

TO: Service List

INDEX

INDEX**LIST OF AUTHORITIES**

<i>Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC)</i>	Tab 1
<i>Canadian Western Bank v. Canadian Motor Freight Ltd. et al (December 2, 2024), Toronto CV-24-00728550-00CL (ONSC CL)</i>	Tab 2

Tab 1

1993 CarswellOnt 216
Ontario Court of Justice (General Division)

Bank of America Canada v. Willann Investments Ltd.

1993 CarswellOnt 216, [1993] O.J. No. 1647, 17 C.P.C. (3d) 296, 20 C.B.R. (3d) 223, 41 A.C.W.S. (3d) 662

**BANK OF AMERICA CANADA v. WILLANN INVESTMENTS
LIMITED and CRANBERRY VILLAGE, COLLINGWOOD INC.**

Farley J.

Judgment: June 28, 1993

Docket: Doc. B22/91

Counsel: *Harry Underwood*, for receiver, Coopers & Lybrand Ltd.

Stephen Schwartz, for Prenor Trust Co. of Canada.

Frank Bennett and John Spencer, for Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Headnote

Receivers --- Conduct and liability of receiver — General conduct of receiver

Receivers — Jurisdiction of court to approve activities and fees — Jurisdiction not requiring specific authorization in order establishing receivership — Court having inherent jurisdiction to review activities and fees of receiver.

Costs — Award of costs — Costs awarded against Crown for wasting court time with repeated adjournment requests and for failing to give advance notice of proposed jurisdiction challenge.

A receiver brought a motion for approval of its activities and fees as set out in two reports. The Crown raised an objection to the court's jurisdiction to hear the motion, arguing that there was nothing in the original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. The Crown argued that the court had jurisdiction only to pass the accounts and approve the fees of the receiver.

Held:

The receiver's activities and fees were approved.

The approval of the activities of a receiver, a court appointee and officer of the court, does not require specific words of authorization in the original order. The court has inherent jurisdiction to review and either approve or disapprove of the activities of a court-appointed receiver.

Creditors who take a reasonable position should not be punished by costs in the event they do not succeed. However, given the Crown's repeated requests for adjournments and resulting time wasted, the failure to give advance notice of the jurisdiction challenge and the late filings, an award of costs against the Crown was appropriate in this case.

Table of Authorities

Cases considered:

80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd., [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (C.A.) — referred to

Motion for order approving receiver's activities and fees.

Farley J.:

1 This was a motion for an order approving the receiver's activities and fees (including the fees of its counsel) as set out in the receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid-morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J.'s original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993: see pp. 16-18). I again note that Mr. Bennett in his own text: F. Bennett, *Receiverships* (Carswell: Toronto, 1985), said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however, such approval (if given) would be to the extent that the reports accurately summarized the material activities of the receiver. As to inherent jurisdiction, see *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.* (1972), 25 D.L.R. (3d) 386 (Ont. C.A.), at pp. 389-390.

4 I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust, which will ultimately bear the cost, was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a cost award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in

other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However, I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project.) Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions' request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the receiver in the amount of \$1500 and Prenor Trust \$500.

Order accordingly.

Tab 2



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00728550-00CL

DATE: DECEMBER 2, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. CANADIAN MOTOR FREIGHT LTD. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton	Counsel for the Canadian Western Bank	harvey@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Melinda Vine	Counsel for Royal Bank of Canada	mvine@harrisonpensa.com


For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Natasha MacParland	Counsel for Ernst & Young, Interim Receiver/ Proposed Receiver	nmacparland@dwvpv.com
Chenyang Li		cli@dwvpv.com
Sharon Hamilton		sharon.s.hamilton@parthenon.ey.com
Kristine Holder	Counsel for Canadian Motor Freight Ltd.	k.holder@nanda.ca
Fred Tayer	Counsel for REV Canada Inc.	fred@fredtayar.com
Surinder Bedga	IS Trucking	singh@is-trucking.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] The Receiver (EY, as set out in my previous endorsement in this matter), obtained this appointment on an expedited basis for the purpose of seeking two orders: (1) an Examination and Document Production Order; and (2) an Asset Recovery Order (together, the "Orders").

- [2] The relief requested in the Examination and Document Production Order is to compel certain individuals, including members of management of the Debtors, to attend an examination under oath and to produce information and documentation, sought by the Receiver, pertaining to the Debtors' enterprise and financial affairs.
- [3] There is no substantive opposition to this relief. While no responding materials were filed, I was advised that some of the information was provided over the weekend before this hearing on Monday morning, and that the respondents are prepared to provide the balance of the outstanding information.
- [4] Ms. Holder, who represents some of the respondents, did ask that the examinations contemplated by the order be delayed until early January. I am not prepared to delay those examinations. Frankly I am concerned that the respondents have been actively and intentionally stonewalling the Receiver's request for information and cooperation, and I see no reasonable basis to delay mandating full cooperation any further.
- [5] To be clear, I expect that full cooperation, and this court will take a dim view of any further attempts to delay or obfuscate on the part of any respondent.
- [6] The Asset Recovery Order relates to the need for the Receiver to be permitted to access a truck yard to take stock and possession of various vehicle and trailer assets belonging to the Debtors.
- [7] Unfortunately, various individuals and entities that are subject to the Orders have refused to comply with the terms of this court's Receivership Orders and, instead of recognizing and cooperating with the right of the Receiver to take possession and control over all of the Debtors' property, assets, and undertakings (the "Property"), have instead engaged in behaviour that has obstructed the Receiver from carrying out its duties.
- [8] I will not repeat here the details of the lack of cooperation and outright obstruction that has occurred, but I accept the uncontradicted evidence in the Receiver's record, and agree that there is an ample basis, and urgency, for the two orders to issue.
- [9] Accordingly, I have signed both of the Orders, and they are attached to this endorsement.



W.D. BLACK J.

DATE: DECEMBER 2, 2024

MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.

v.

ORBIT EXPRESS INC., et al.

Applicants

Respondents

Court File No. CV-24-00003220-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON, ONTARIO

BOOK OF AUTHORITIES

HARRISON PENZA ^{LLP}
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel : (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Lawyers for the Receiver,
msi Spergel inc.