

Ontario Court of Appeal File No. COA-25-CV-1005
Ontario Superior Court of Justice File No. CV-25-00740567-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE TORONTO DOMINION BANK

Applicant (Respondent) / Moving Party

- and -

DOSANJH CARE INC.

Respondent (Appellant) / Responding Party

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 190, c. C.43, AS AMENDED**

**FACTUM OF THE TORONTO DOMINION BANK
(Motion for Directions)**

September 11, 2025

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PART I - NATURE OF THE MOTION

1. The Respondent, The Toronto Dominion Bank (the “**Respondent**” or the “**Lender**”), brings this motion to seek direction as to:
 - (a) the appeal of the June 2, 2025 Order of the Honourable Madam Justice Steele (the “**Receivership Order**”), by Dosanjh Care Inc.’s (the “**Appellant**” or the “**Borrower**”) Notice of Appeal, Court File No. COA-25-CV-1005, served June 13, 2025.

2. The Lender submits that this Court should declare that:
 - (a) the purported appeal was out of time pursuant to the Bankruptcy and Insolvency Act¹ (“BIA”);

 - (b) the Appellant did properly seek or obtain leave to appeal pursuant to section 31(2) of the Bankruptcy and Insolvency General Rules² (the “BIA Rules”), as the appeal falls under section 193(e) of the BIA;

3. In the alternative, in the event that this Honourable Court permits the appeal to proceed, the Lender requests an Order requiring the Appellants to post security for costs of the appeal on terms, failing which the appeals shall be dismissed with costs.

¹ Bankruptcy and Insolvency Act, RSC, 1985, c B-3 [BIA].

² Bankruptcy and Insolvency General Rules, CRC, c 368 [BIA Rules].

PART II - SUMMARY OF THE FACTS

4. The Receivership Order appealed from was made by the Honourable Madam Justice Steele on June 2, 2025 pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (BIA) and s. 101 of the *Courts of Justice Act* (CJA). The Appellant required leave to appeal the Receivership Order pursuant to the BIA. It did not seek or obtain leave.
5. The Appellant previously operated as a care home facility. The facility was closed in October 2023 due to an order of North Bay Parry Sound District Health Unit.
6. The Appellant defaulted under the terms of its loan agreement with the Lender in or about June 2024. Demand Letters and Notice of Intention to Enforce Security were served July 12, 2024.
7. The Appellant and the Lender agreed to enter into a Forbearance Agreement on or about August 14, 2024.
8. The Forbearance Agreement expired in January 2025, and was extended to February 2025. It expired again.
9. The parties have already waited through an adjournment period of one month from May to June 2025 of the original application.
10. As a term of the Forbearance Agreement, the Borrower consented to an order for the appointment of a receiver in the event of default.

11. As such, the Appellant required leave to appeal the Receivership Order pursuant to s. 133(a) of the *Courts of Justice Act*. It did not seek or obtain leave.
12. The Receiver has taken minimal steps since its appointment, such as insuring the property, but has refrained from commencing sale procedures pending the outcome of this motion.
13. The Lender is concerned that any further delays would result in a continued deterioration of the property and the security.

PART III AND IV ISSUES AND LEGAL POSITION

(i) The Appeals are Out of Time

14. The Receivership Order was issued pursuant to section 243 of the BIA and section 101 of the CJA.
15. Pursuant to the principles of paramountcy, the *BIA* appeal provisions govern the appeal, not the timelines in *Rules of Civil Procedure* or the *CJA*. This point has been confirmed in numerous decisions of this Honourable Court.³
16. The BIA General Rules require that appeals be filed within 10 days of the making of the order appealed from. In this case, the Receivership Order was signed on June 2, 2025. The Appellant did not serve its Notice of Appeal until June 13, 2025, 11 days after the order was made. The Appellant missed the deadline to appeal.

³See e.g., *KingSett Mortgage Corporation v 30 Roe Investments Corp*, [2022 ONCA 479](#), at [para. 16](#); *North House Foods Ltd (Re)*, [2025 ONCA 563](#), at [para. 19](#) [*North House*]; *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc*, [2019 ONCA 508](#), at [paras. 127-131](#).

17. In all of the circumstances, the justice of this case does not require that an extension of time be granted.⁴ There is no evidence that the Appellant formed any intention to appeal prior to the expiry of the appeal period— the Appellant did not communicate any intention to appeal to the Lender or to the Receiver. There has been no explanation as to the delay in filing; the appeal has no merit.⁵

(ii) Leave to Appeal is Required

18. 35. Section 193 of the BIA provides that outside of the circumstances described in subsection (a)–(d), leave to appeal is required:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) *if the point at issue involves future rights;*
- (b) *if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;*
- (c) *if the property involved in the appeal exceeds in value ten thousand dollars;*
- (d) *from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and*
- (e) *in any other case by leave of a judge of the Court of Appeal*⁶

19. The only order made on June 2, 2025 by Justice Steele was the appointment of a receiver. There were no other substantive orders or determinations made in the Order.

⁴ See Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd., 2014 ONCA 500 (CanLII), at paras 26-34 [Ontario Wealth].

⁵ See *Ontario Wealth*, at [para. 26](#).

⁶ *BIA*, [s 193](#).

20. Past cases have confirmed that the automatic right of appeal under s.193(c) of the *BIA* must be narrowly construed.⁷ This is because nearly every case brought before the court involves property with a value over \$10,000.⁸ Therefore, were this provision to be read literally, an automatic right to appeal would be granted in nearly every instance.
21. Given this narrow lens upon which 193(c) is construed, the jurisprudence has confirmed that a receivership order does not, in itself, bring into play the value of property. Rather, it is an order through which the court appoints an officer to preserve and monetize those assets, subject to court approval.⁹
22. The points at issue in this appeal do not involve future rights because the future rights of those with an economic interest in the Debtor (e.g., its creditors) are not engaged.¹⁰ The decision under appeal also does not concern “real disputes” that are likely to affect other cases of a similar nature in this proceeding.¹¹
23. Thus, the Appellants have no automatic right of appeal pursuant to sections 193(a)–(d) of the *BIA* and require leave to appeal.
24. Pursuant to section 31(2) of the *BIA Rules*, if an appeal is brought under section 193(e) of the *BIA*, the notice of appeal must include an application for leave to appeal.¹² The

⁷ *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, [2013 ONCA 282](#), [*Pine Tree*], at para 16; *Enroute Imports Inc. (Re)*, 2016 ONCA 247, at para 5; *Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd.*, 2014 ONCA 500, [*Sica Masonry*], at para 41.

⁸ *Pine Tree*, *supra* note 4, at para 17.

⁹ *Ibid* at para 17.

¹⁰ *2403177 Ontario Inc v Bending Lake Iron Group Ltd*, [2016 ONCA 225](#), at [para. 25](#) [240 Ontario].

¹¹ *240 Ontario*, at [para. 32](#).

¹² *BIA Rules*, [r. 31\(2\)](#); *BIA*, [s. 193](#); see also *North House*, at [para. 34](#).

Appellant must bring a motion to a single judge (or in unusual instances to a panel) of this Court seeking leave to appeal.

25. The Appellant's Notices of Appeal do not include any application for leave to appeal, rather stating that leave was not required pursuant to section 193(c) of the BIA. No motion seeking leave to appeal has been filed by the Appellant despite various differing versions of materials having been served including multiple other Notices of Appeal aside the herein one.
26. This matter is similar to *North House Foods Ltd (Re)*: (i) neither appellant brought a motion for leave before a single judge (or panel); (ii) neither notices of appeal included any such application; (iii) no cross-motions seeking leave were brought; and (iv) the appellant in *North House* only sought leave "at the hearing in response to questions from the panel about whether there was an appeal as of right or whether leave was required", which is similar to the expected position of the Debtor in its factum. As found by this Court in *North House*: "[t]his is not the appropriate procedure. Rule 31(2) of the *BIA Rules* is mandatory. In general, in these circumstances, leave should be refused."⁶⁷
27. Moreover, the purported appeal would not meet the requirements for the exercise of the Court's discretion for obtaining leave to appeal under section 193(e) of the *BIA*, as outlined by this Court in *Business Development Bank of Canada v Pine Tree Resorts Inc*: (a) raises an issue that is of general importance to the practice of bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this court should therefore

consider and address; (b) is *prima facie* meritorious, and (c) would not unduly hinder the progress of the bankruptcy/insolvency proceedings.

28. This well-established test for leave to appeal cannot be met and, therefore, any belated attempted request for leave to appeal is doomed to fail.

29. A similar set of circumstances was considered by this Court in a recently released decision in Sun et al. v. Duca Financial Services Credit Union - COURT FILE NO.:M56171 (COA-25-CV-0391 & COA-25-CV-0398) wherein an appeal was declared a nullity given a failure to seek and be granted leave.

Jurisdiction of a Single Judge to Hear the Motion

30. Section 7 of the CJA, subject to certain exceptions, provides that a motion in the Court of Appeal shall be heard and determined by one judge;

(iii) Security for costs

31. In the event that this Court determines that the appeal is not out of time and grants leave to appeal or declares that leave to appeal is not required, the Lender is seeking an Order requiring the Appellant to post security for costs of the appeal.

32. With respect to all of the circumstances of this case, such an Order is just:

- The proceeding has a history of delay;
- there is not a good chance of success based on the merits of the purported appeals.¹³

¹³ 70 *Rules of Civil Procedure*, [RRO 1990, Reg 194, rr. 56, 61.06](#); see *Yaiguaje v Chevron Corporation*, [2017 ONCA 827](#), at [paras 18, 25](#); see also *OK v MH*, [2025 ONCA 352](#), at [paras 8-](#)

PART V - ORDER REQUESTED

33. The Respondent seeks an order declaring this appeal a nullity and there is no stay pending appeal the Receivership Order.
34. If the appeal is declared a nullity, costs of this motion should be awarded to the Lender against the Appellant.
35. In the alternative, if the appeal is not declared a nullity, the Respondent seeks an order:
 - (a) ordering the Appellant to post security on terms into court within 15 days to be held as security for the Respondent's costs of the appeal, failing which the appeal shall be automatically dismissed without further order of the Court; and
 - (b) that the appeal shall be heard on an expedited basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of September, 2025.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *KingSett Mortgage Corporation v 30 Roe Investments Corp*, [2022 ONCA 479](#),
2. *North House Foods Ltd (Re)*, [2025 ONCA 563](#);
3. *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc*, [2019 ONCA 508](#),
4. Ontario Wealth Management Corporation v. Sica Masonry and General Contracting Ltd., [2014 ONCA 500](#)
5. *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, [2013 ONCA 282](#), [*Pine Tree*],
6. *Enroute Imports Inc. (Re)*, [2016 ONCA 247](#)
7. 2403177 Ontario Inc v Bending Lake Iron Group Ltd, [2016 ONCA 225](#)
8. *Yaiguaje v Chevron Corporation*, [2017 ONCA 827](#),
9. *OK v MH*, [2025 ONCA 352](#),

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, RSC 1985, B-3

Court of Appeal

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

Bankruptcy and Insolvency General Rules, CRC, c 368

Appeal to Court of Appeal

31 (1) An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.

(2) If an appeal is brought under paragraph 193(e) of the Act, the notice of appeal must include the application for leave to appeal.

32 The registrar of the court appealed from shall transmit to the court of appeal the notice of appeal and the file.

Courts of Justice Act, RSO 1990, c C43

Leave to appeal required

133 No appeal lies without leave of the court to which the appeal is to be taken,

- (a) from an order made with the consent of the parties

Rules of Civil Procedure, RRO 1990, Reg 194

SECURITY FOR COSTS

WHERE AVAILABLE

56.01 (1) The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

...

- (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent;

- (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent; or

AMOUNT AND FORM OF SECURITY AND TIME FOR FURNISHING

56.04 The amount and form of security and the time for paying into court or otherwise giving the required security shall be determined by the court. R.R.O. 1990, Reg. 194, r. 56.04.

FORM AND EFFECT OF ORDER

56.05 A plaintiff or applicant against whom an order for security for costs (Form 56A) has been made may not, until the security has been given, take any step in the proceeding except an appeal from the order, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 56.05.

AMOUNT MAY BE VARIED

56.07 The amount of security required by an order for security for costs may be increased or decreased at any time. R.R.O. 1990, Reg. 194, r. 56.07.

NOTICE OF COMPLIANCE

56.08 On giving the security required by an order, the plaintiff or applicant shall forthwith give notice of compliance to the defendant or respondent who obtained the order, and to every other party. R.R.O. 1990, Reg. 194, r. 56.08

SECURITY FOR COSTS OF APPEAL

61.06 (1) In an appeal where it appears that,

(a) there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Ontario to pay the costs of the appeal;

(b) an order for security for costs could be made against the appellant under rule 56.01; or

(c) for other good reason, security for costs should be ordered,

a judge of the appellate court, on motion by the respondent, may make such order for security for costs of the proceeding and of the appeal as is just.

(1.1) If an order is made under subrule (1), rules 56.04, 56.05, 56.07 and 56.08 apply, with necessary modifications.

(2) If an appellant fails to comply with an order under subrule (1), a judge of the appellate court on motion may dismiss the appeal.

THE TORONTO DOMINION BANK
Applicant
(Respondent/Moving Party)

and

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