

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**BRAD DUBY PROFESSIONAL CORPORATION**

Respondent

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**FACTUM OF NEW COUNSEL (CAMPISI LLP)**

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Dated: October 5, 2021

**CAMPISI LLP**

7050 Weston Road, Suite 101  
Vaughan ON L4L 8G7

**Ashu Ismail (LSO #54308R)**

T: (416) 203-1115

E: [ashu@campsilaw.ca](mailto:ashu@campsilaw.ca)

New Counsel

TO: **HARRISON PENSA LLP**  
130 Dufferin Avenue, Suite 1101  
London,

AND TO: **SERVICE LIST**

## **PART I – OVERVIEW**

1. Campisi LLP opposes the sliding fee structure proposed by the receiver on legal fees collected on behalf of Candice Kechnie-Young (“Candice”), as those fees would grossly outweigh Brady Duby’s contribution on her file.
2. Campisi LLP relies on the case law and legal arguments put forth by co-New Counsel as it relates to the absence of jurisdiction this court has to usurp Candice’s rights against the respondent under the *Solicitor’s Act*.

## **PART II - FACTS**

3. On **September 15, 2019**, Candice was involved in an accident<sup>1</sup>.
4. On **October 2, 2019**, Candice signed an incomplete Tort contingency fee agreement with the respondent law firm<sup>2</sup>.
5. There was no retainer or agreement between the respondent and Candice to handle her accident benefit claim. On review of the file, it appears that a case manager was hired to submit accident benefit claims on behalf of Candice<sup>3</sup>.
6. On **January 28, 2021**, Brad Duby, counsel with the respondent law firm passed away<sup>4</sup>, prior to issuing a statement of claim in this matter.
7. The respondent’s disbursements on this file were \$76.40. Additionally, Mr. Duby provided respondent \$4,050.00 in alleged and undocumented loans<sup>5</sup>.
8. On **February 14, 2021**, Candice signed a contingency fee retainer with Campisi LLP to handle her tort and accident benefits files<sup>6</sup>.

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<sup>1</sup> Affidavit of Jennifer Pinho affirmed Oct 5 2020, para 2 and Exhibit “A” [“Pinho Affidavit”].

<sup>2</sup> Pinho Affidavit, para 3, Exhibit “C”.

<sup>3</sup> Pinho Affidavit, para 4 and 6.

<sup>4</sup> Affidavit of Savannah V. Chorney, sworn Sep 15 2022, para 2.

<sup>5</sup> Pinho Affidavit, para 11, Exhibit

<sup>6</sup> Pinho Affidavit, para 7.

9. On **September 3, 2021**, Campisi LLP issued Candice's tort claim, listing her injuries to include<sup>7</sup>:

".. exacerbation of pre-existing psychosis, .. fluctuating moods, paranoid thoughts, disorganized thinking, mistrust of others, inability to remain goal orientated ...suicidal ideation ... perseveration of paranoid thoughts .. poor life choices that place her safety at risk.. panic attacks.."

10. On **July 28, 2022**, upon receipt of the motion record, Campisi LLP wrote to counsel advising that 20% of any recovery would grossly over-represent Mr. DUBY's contribution to Candice's file and undertook to advise when the matter settled at which time they could agree on a fee or have the account assessed<sup>8</sup>.
11. On **September 28, 2022**, Campisi LLP followed up<sup>9</sup>.
12. To date, the receiver refuses to leave the issue of Candice's fees to the end of her claim.

### **PART III – ISSUES on the MOTION**

13. The issues on the motion are the proposed sliding fee structure, disclosure of privileged documents and costs.

### **PART IV – CASE LAW AND ARGUMENT**

14. Campisi LLP relies upon the case law and argument presented by the co-New Counsel in this matter as it relates to the inability of this Court to usurp Candice's rights under the *Solicitor's Act*.
15. Candice is not able to disclose documents over which she claims privilege (litigation or solicitor-client), because it will compromise her litigation.
16. Candice is a vulnerable client who requires the protection of the Court.
17. Last, in Candice's case, the respondent's efforts amount to spending \$76 dollars in

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<sup>7</sup> Pinho Affidavit, para 8 and Exhibit "C", para 7.

<sup>8</sup> Pinho Affidavit, para 9 and Exhibit "D".

<sup>9</sup> Pinho Affidavit, para 10 and Exhibit "E".

collecting records and no claim was issued prior to January 28, 2021.

18. The contribution by the respondent to the tort claim was minimal.

**PART V – ORDER SOUGHT**

19. Campisi LLP asks that the receiver's motion be dismissed with costs, payable on a partial indemnity scale, in accordance with its bill of costs, to be filed prior to the hearing of the motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5<sup>th</sup> Day of October, 2022**

A handwritten signature in blue ink, appearing to read 'Ashu Ismail', written over a horizontal line.

**Ashu Ismail**

**TORONTO-DOMINION BANK** v.  
Applicant

**BRAD DUBY PROFESSIONAL CORPORATION**  
Respondent

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at  
TORONTO

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**FACTUM**

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**CAMPISI LLP**  
7050 Weston Road, Suite 101  
Vaughan, Ontario L4L 8G7

**Ashu Ismail (LSO # 54308R)**

T: (416) 203-1115  
E: ashu@campisilaw.ca

Lawyers for the plaintiffs