

Court File No.: CV-21-00657656-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

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 1990 C. C.43, AS AMENDED

FACTUM OF NEW COUNSEL, GOSAI LAW PROFESSIONAL CORPORATION

**GOSAI LAW
PROFESSIONAL CORPORATION**

8770 The Gore Road Unit 2
Brampton ON L6P OB1

Nancy Sarmiento Barkhordari

Tel: 416-909-0996

Fax: 905-595-2226

New counsel

TO: THIS HONOURABLE COURT

AND TO: McLEISH ORLANDO LLP
151 Yonge Street, Suite 1800
Toronto, Ontario M5C 2W7

Attention: Lindsay Charles
E-mail: lcharles@mollp.com
Tel.: 416-366-3311
Fax: 416-366-3330

New Counsel

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

Attention: Timothy C. Hogan & Robert Danter
Email: thogan@harrisonpensa.com & rdanter@harrisonpensa.com
Tel: 519-679-9660
Fax: 519-667-3362

Lawyers for the Receiver, MNP Ltd.

AND TO: AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Kyle Plunkett & Nathan Gates
Tel: (416) 863-1500
Email: kplunkett@airdberlis.com and ngates@airdberlis.com

Lawyers for the Applicant, Toronto-Dominion Bank

AND TO: MNP LTD.
111 Richmond Street West, Suite 300
Toronto, ON M5H 2G4

Attention: Matthew Lem
Tel: (416) 515-388
Email: matthew.lem@mnp.ca

Receiver

AND TO: JAFFE PERITZ LLP
100 Richmond Street West, Suite 424
Toronto, ON M5H 3K6

Attention: Brandon Jaffe & Elaine Peritz
Tel: (416) 368-2809 ext. 101
Email: bjaffe@jaffeperitz.com and eperitz@jaffeperitz.com

Lawyers for Bridgepoint Financial Services

AND TO: LAW SOCIETY OF ONTARIO
393 University Avenue, Suite 1100
Toronto, ON M5G 1E6

Attention: Adam Di Federico
Tel: (437) 9297285
Email: AFederic@lso.ca

Lawyers for the Law Society of Ontario

AND TO: SOMOGYI LAW GROUP
758 Sheppard Avenue West
North York, ON M3H 2S8

Attention: Adam A. Somogyi
Tel: (416) 941-2502
Email: adam@slcilegal.ca

New Counsel

AND TO: PRESZLER INJURY LAWYERS
151 Eglinton Avenue West
Toronto, ON M4R 1A6

Attention: Jeffrey A. Preszler
Tel: (416) 364-2000 ext. 221
Email: jpreszler@preszlerlaw.com

New Counsel

AND TO: AARON WAXMAN AND ASSOCIATES
1120 Finch Avenue West, #500
Toronto, ON M3J 3H7

Attention: Michael Hazan & Aaron Waxman
Tel: (416) 661-4878
Email: mhazan@awaxmanlaw.ca and awaxman@awaxmanlaw.ca

New Counsel

AND TO: NAIMARK LAW FIRM
141 Adelaide Street West, Suite #330
Toronto, ON M5H 3L5

Attention: Ryan Naimark & Nergiz Sinjari
Tel: (416) 366-7246
Email: ryan@naimarklaw.com and nsinjari@naimarklaw.com

New Counsel

AND TO: LEE & ASSOCIATES PROFESSIONAL CORPORATION
4950 Yonge Street, #2000
North York, ON M2N 6K1

Attention: Raffi Akelian
Tel: (416) 782-8168
Email: rakelian@leeassociates.ca

New Counsel

AND TO: D'ALESSIO ROMERO LAW FIRM
204-3100 Rutherford Road
Vaughan, ON L4K 0G6

Attention: Elio D'Alessio
Tel: (905) 417-1777
Email: edalessio@dalessioromero.com

New Counsel

AND TO: HOWIE, SACKS & HENRY LLP
20 Queen Street West, Suite 3500
Toronto, ON M5H 3R3

Attention: James Howie & Brad Moscato
Tel: (416) 361-5990
Email: jrhowie@hshlawyers.com and bmoscato@hshlawyers.com

New Counsel

AND TO: MK LEGAL SERVICES PROFESSION CORPORATION
1110 Finch Ave. W., Suite 205
Toronto, ON M3J 2T2

Attention: Shahen A. Alexanian
Tel: (416) 650-0060
Email: shahen@mklegal.ca

New Counsel

AND TO: BERGMANIS PREYRA LLP
2926 Dundas Street West
Toronto, ON M6P 1Y8

Attention: Joel McCoy, Kurt Bergmanis and Frank Piazza
Tel: (416) 256-1700
Email: JMcCoy@bplawyers.ca, FPiazza@bplawyers.ca and
KBergmanis@bplawyers.ca

New Counsel

AND TO: GREAT OAK VFA INC.
1280 Finch Avenue West, Suite #408
Toronto, ON M3J 3K6

Attention: Christine Connell
Tel: (416) 455-5600 ext. 107
Email: cconnell@greatoakvfa.ca

Creditor

AND TO: Q MEDICAL
1500 Don Mills Road, Unit 403
North York, ON M3B 3K4

Tel: (416) 901-0054
Email: info@q-medical.ca

Creditor

AND TO: CHORNEY SIDHU INJURY LAWYERS

2 Automatic Road, Unit 105
Brampton, ON L6S 6K8

Attention: Melissa Sidhu & Savannah Chorney

Tel: (844) 487-8482

Email: melissachornevlawyers.com and savannahchorneylawyers.com

New Counsel

AND TO: HIMELFARB PROSZNANSKI BARRISTERS & SOLICITORS

480 University Avenue, #1401
Toronto, ON M5G 1V2

Attention: Katherine Lee and David Himelfarb

Tel: (416) 599-8080 Ext. 292

Email: klee@himprolaw.com and dhimelfarb@himprolaw.com

Lawyers for ARCG Inc.

AND TO: DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre Toronto, ON M5K 0A1

Attention: Meredith Bacal

Tel: (416) 863 4395

Email: Meredith.bacal@dentons.com

Lawyers for Easy Legal Finance Inc.

AND TO: ALLAN ROUBEN BARRISTER & SOLICITOR

70 Bond Street, #200
Toronto, ON M5B 1X3

Attention: Allan Rouben

Tel: (416) 360-5444

Email: arouben@bellnet.ca

Lawyers for Lifeline Litigation Loans Inc.

AND TO: MINISTRY OF FINANCE (ONTARIO)
Insolvency Unit 33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Email: insolvency.unitontario.ca

AND TO: DEPARTMENT OF JUSTICE (CANADA)
The Exchange Tower 3400-130 King Street West
P.O. Box 36 Toronto, ON M5X 1K6

Attention: Diane Winters
Tel: (416) 973-3172
Email: diane.winters@justice.gc.ca

Ontario Regional Office
Email: torbankruptcy@justice.gc.ca

AND TO: ALAMGIR LAW PROFESSIONAL CORPORATION
2401 Eglinton Ave. East, Suite 209
Scarborough, ON M1K 2N8

Attention: Alangir Hussain
Tel: (416) 755-4000
Email: law@alamgirlaw.com

New Counsel

AND TO: ALLAN B. SHUSTERMAN
Solicitor and Barrister
3320 Midland Ave., Suite 207
Toronto, ON M1V 5E6

Attention: Allan B. Shusterman
Tel: (416) 291-6176
Email: alshus@hotmail.com

New Counsel

AND TO: ANUSHIKA ANTHONY PROFESSIONAL CORPORATION
268 Queen Street West
Brampton, ON L6X 1B1

Attention: Anushika Anthony
Tel: (905) 874-7011
Email: info@aapclawyers.com

New Counsel

AND TO: BERGEL, MAGENCE LLP
1018 Finch Avenue West, 5th Floor
Toronto, ON M3J 3L5

Attention: Ilan Bergel & Nashmil Mamresuli
Tel: (416) 665-2000 ext. 214
Email: iberigel@bergellaw.com and nmamresuli@bergellaw.com

New Counsel

AND TO: CAMPISI LLP
7050 Weston Rd., Suite 101
Vaughan, ON L4L 8G7

Attention: Joseph Campisi
Tel: (416) 203-1115
Email: info@campisilaw.ca

New Counsel

AND TO: DAVID HOLLINGSWORTH PERSONAL INJURY LAWYERS
176 Bronson Avenue
Ottawa, ON K1R 6H4

Attention: David Hollingsworth
Tel: (613) 237-4922
Email: david@ottawainjury.ca

New Counsel

AND TO: DAVID S. WILSON PROFESSIONAL CORPORATION
2000-393 University Ave.
Toronto, ON M5G 1E6

Attention: David Wilson
Tel: (416) 943-1223
Email: dswilson@davidswilsonlaw.com

New Counsel

AND TO: DESAI MARUSZKI LLP
4789 Yonge St., Suite 520
Toronto, ON M2N 0G3

Attention: Ian Miller
Tel: (416) 848-4570
Email: ian@desaimaruszki.com

New Counsel

AND TO: DIAMOND & DIAMOND LAWYERS
255 Consumers Rd. Suite 5
Toronto, ON M2J 1R4

Attention: Jill Carrington
Tel: (416) 256-1600
Email: jcarrington@diamonddlaw.ca

New Counsel

AND TO: GERALD STERNBERG
469 Lawrence Ave. West
North York, ON M5M 106

Attention: Gerald Sternberg
Tel: (416) 967-0077
Email: derald.sternberca@bellnet.ca

New Counsel

AND TO: HIMELFARB PROSZANSKI LLP
480 University Avenue, Suite 1401
Toronto, ON M5G 1V2

Attention: David Himelfarb
Tel: (877) 820-1210
Email: dhimelfarb@himprolaw.com

New Counsel

AND TO: JEFFREY SHINEHOFT PROFESSIONAL CORPORATION
80 Bloor St. West
Toronto, ON M5S 2V1

Attention: Jeffrey Shinehoft
Tel: (416) 551-9060
Email: jeffrey@jslawfirm.ca

New Counsel

AND TO: JOSHUA GOLDBERG LAW
500 King Street West, Suite 300
Toronto, ON M5V 1L9

Attention: Joshua Goldberg
Tel: (416) 943-6502
Email: joshua@jgoldberglaw.ca

New Counsel

AND TO: JUZKIW LAW PROFESSIONAL CORPORATION
4750 Yonge Street, Suite 346
North York, ON M2N 0J6

Attention: Stefan Roman Juzkiw
Tel: (416) 290-5055
Email: stefan@juzkiw.com

New Counsel

AND TO: KRYLOV LAM & COMPANY LLP
25 Sheppard Ave. West, Suite 15
North York, ON M2N 6S6

Attention: Joseph Lam

Tel: (416) 649-0000
Email: jlam@krylaw.ca

New Counsel

AND TO: LAW OFFICES OF BARRY A. EDSON
10018 Finch Ave. West, Unit 100
North York, ON M3J 3L5

Attention: Barry A. Edson

Tel: (855) 702-3119
Email: bedson@edsonlegal.com

New Counsel

AND TO: LEONE MURRAY LLP
130 Queens Quay East
Toronto, ON M5A 0P6

Attention: James Leone

Tel: (416) 363-5151
Email: james@leonemurray.com

New Counsel

AND TO: LUBMAN & ASSOCIATES PROFESSIONAL CORPORATION
920 Sheppard Ave. West
Toronto, ON M3H 0A2

Attention: Tina Lubman

Tel: (416) 633-5868
Email: tina@lubmanlaw.ca

New Counsel

AND TO: MACISAAC GOW LLP
1100 Central Parkway West, Suite 37-1
Mississauga, ON L5C 4E5

Attention: Fraser Gow
Tel: (365) 777-4878
Email: fgow@mglawyers.ca

New Counsel

AND TO: MAZO CHOWBAY LLP
4711 Yonge Street, Suite 902
Toronto, ON M2N 6K8

Attention: Alisa Mazo
Tel: (647) 430-0347
Email: alisa.mazo@mazochowbay.com

New Counsel

AND TO: NEINSTEIN LLP
700-1200 Bay St.
Toronto, ON M5R 2A5

Attention: Erik Joffe
Tel: (416) 920-4242
Email: erik@neinstein.com

New Counsel

AND TO: OPALINSKI LAW
500 King Street West, Suite 3
Toronto, ON M5V 1L9

Attention: Barbara Opalinski
Tel: (416) 825-9901
Email: barbara@opalinskilaw.ca

New Counsel

AND TO: PA LAW FIRM PROFESSIONAL CORPORATION
4022 Sheppard Ave. East
Scarborough, ON MIS 1S6

Tel: (416) 321-3338

AND TO: PACE LAW FIRM
191 The West Mall, Suite 1100
Toronto, ON M9C 5K8

Attention: Allan Chapnik
Tel: (877) 236-3060
Email: achapnik@pacelawfirm.com

New Counsel

AND TO: PILIECI LEGAL SERVICES
2450 Finch Ave. West
North York, ON M9M 2E9

Attention: Michael Piliéci
Tel: (416) 878-2838
Email: piliecilegalservices@outlook.com

New Counsel

AND TO: POLLACK TSIMERMAN LLP
2450 Victoria Park Ave., Suite 401
North York, ON M2J 4A2

Attention: Ziv Tsimerman
Tel: (416) 491-0111
Email: ztsimerman@ptlawyers.ca

New Counsel

AND TO: RAYMOND LEE HATHAWAY, PARALEGAL
42-656 Yonge St.
Toronto, ON M4Y 2A6

Attention: Raymond Lee Hathaway
Tel: (647) 620-4420
Fax: (416) 741-2806

New Counsel

AND TO: SHARMA LAW
205 Main Street South
Newmarket, ON L3Y 3Y9

Attention: Vishal Sharma
Tel: (647) 849-4818
Email: sharma@vsharmalaw.ca

New Counsel

AND TO: SIGANPORIA LAW FIRM
1370 Don Mills Rd.
Toronto, ON M3B 3N7

Attention: Faranaz Siganporia
Tel: (416) 900-3841
Email: faranaz@siglaw.ca

New Counsel

AND TO: SOKOLOFF LAWYERS
120 Scollard Street
Toronto, ON M5R 1G2

Attention: Wendy Sokoloff
Tel: (416) 966-4878
Email: wendy@sokoloff.ca

New Counsel

AND TO: TSD LAW
93 Skyway Ave., Suite 111
Etobicoke, ON M9W 6N6

Attention: Tanveer S. Dhillon
Tel: (647) 346-3340
Email: info@tsdlaw.ca

New Counsel

AND TO: VATURI & CHO LLP
1110 Finch Ave. W., Unit 310
Toronto, ON M3J 2T2

Attention: Jae Hyon Cho
Tel: (416) 661-4529
Email: jcho@vclawyers.ca

New Counsel

AND TO: WAKELIN & ASSOCIATES LLP
1-605 Brock Street South
Whitby, ON L1 N 4L1

Attention: John Wakelin
Tel: (416) 227-3444
Email: lindsays@wakelinlaw.com

New Counsel

AND TO: AMURJUEV LAW PC
Barrister and Solicitor
1 Yonge Street, Suite 1801
Toronto, ON M5E 1W7

Attention: Michael Amurjuev
Tel: (416) 357-0864
Email: amurjuevlaw@gmail.com

New Counsel, Counsel for Kerwin Deschamps

AND TO: ZAFAR LAW FIRM PROFESSIONAL CORPORATION
33 City Centre Drive, Suite 606
Mississauga, ON L5B 2N5

Attention: Muhammad Zafar
Tel: (905) 232-4545
Email: info@zafarlawfirm.com

New Counsel

AND TO: ZWIEBEL & ASSOCIATES

29 Bangor Road
North York, ON M2N 2J8

Attention: Thomas W. Zwiebel

Tel: (416) 221-9777

Email: dwilson@zwiebelandassociates.ca

New Counsel

AND TO: VERKHOVETS LAW PROFESSIONAL CORPORATION

3300 Hwy 7, Unit 403
Vaughan, ON L4K 4M3

Attention: Mariya Verkhovets

Tel: (905) 910-1440

Email: infoverkhovetslaw.com

New Counsel

1. Gosai Law opposes the receiver's proposed sliding fee structure on two grounds:
 - a. Mr. Duby's file received from the LSO did not include and the respondent has not provided any dockets verifying the amount of work performed by Mr. Duby in relation to Mr. Vimalathas and Ms. Mariamayagam's matter. In the absence of the dockets, the file received from LSO contains few documents in demonstration of the work performed on Mr. Vimalathas' and Ms. Mariamayagam's claims which have yet to proceed to discovery. The inference is that Mr. Duby performed a limited amount of work on the matter and a payment under the proposed fee structure would result in a windfall.
 - b. Second, the file received from LSO includes within an executed settlement release that was submitted to Mr. Vimalathas' insurer which Mr. Vimalathas had no knowledge of, he did not sign and by which he was not enriched.
2. Considering the release and the limited file, it would be grossly unfair for Mr. Vimalathas or Ms. Mariamayagam to pay fees in accordance with the receiver's proposed sliding fee structure.
3. In addition to the facts affirmed by Nital Gosai in her October 6, 2022 affidavit, Gosai Law relies on the law and arguments file by co-New Counsel in opposition of the sliding fee structure.

PART II --THE FACTS

4. On August 15, 2015, Mr. Vimalathas and Ms. Mariamayagam retained the offices of Brad Duby to represent them in connection with the injuries they sustained in a motor vehicle accident that occurred on August 15, 2015.

Affidavit of Nital S. Gosai ("Gosai Affidavit") at para 2-3.

5. On October 9, 2015 and September 23, 2015, Mr. Duby submitted an OCF 1 on behalf of Mr. Vimalathas' and Ms. Mariamayagam to their insurers.

Gosai Affidavit at para 4.

6. July 24, 2017, Mr. Duby issued a Statement of Claim on Mr. Vimalathas; and Ms. Mariamayagam's behalf.

Gosai Affidavit at para 5.

7. On March 9, 2015, Mr. Vimalathas and Ms. Mariamayagam retained the services of Gosai Law to represent them in connection with the August 15, 2015 accident.

Gosai Affidavit at para 6.

8. On May 9, 2022, Gosai Law received from LSO a copy of Mr. Duby's client-solicitor file relating to his carriage of Mr. Vimalathas and Ms. Mariamayagam's claims. The file received from LSO did not include within it any docket verifying the work performed by Mr. Duby in connection with Mr. Vimalathas' and Ms. Mariamayagam's claims, nor did it include any indication that Mr. Vimalathas' and Ms. Mariamayagam's claims had proceeded to discovery. However, the file did include an executed settlement release effecting a settlement of Mr. Vimalathas' claim for accident benefits arising out of the August 15, 2015 accident.

Gosai Affidavit at para 7 – 10.

9. Mr. Vimalathas has no knowledge of, did not sign and was not enriched by any the settlement release submitted by Mr. Duby to Mr. Vimalathas' Accident benefits insurer.

Gosai Affidavit at para 11.

10. To date, the respondent has not provided any information regarding the amount of time that Mr. Duby has spent on Mr. Vimalathas' or Ms. Mariamayagam's claims.

Gosai Affidavit at para 12.

PART III -- ISSUE

11. Should the proposed "sliding fee structure" be imposed?

PART IV– LAW AND ARGUMENT

12. This Court should not impose the sliding fee structure proposed by the receiver. Gosai Law relies on the case law and argument filed by and presented by the co-New Counsel in their opposition of the proposed sliding fee structure.
13. The LSO file does not include any dockets that demonstrate the time expended by Mr. Duby in connection with his carriage of Mr. Vimalathas' and Ms. Mariamayagam's claims. Nor has the receiver furnished any information demonstrating the amount of time that Mr. Duby has worked on these matters. Considering that the questionable release included in Mr. Vimalathas' file, and that the litigation arising out of the August 15, 2015 accident remains at its infancy stages, payment under the proposed fee schedule would result in a windfall to the respondent.
14. The respondent's interest in Mr. Vimalathas' and Ms. Mariamayagam's claims should be determined via an assessment under the *Solicitors Act*.

PART IV – ORDER SOUGHT

15. Gosai Law asks that the receiver's motion be dismissed and the respondent's interest in Mr. Vimalathas' and Ms. Mariamayagam's claims to be determined via Assessment under *Solicitors Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of October, 2022



Nancy Sarmiento Barkhordari
GOSAI LAW PROFESSIONAL CORPORATION

Court File No.: CV-21-00657656-00CL

THE TORONTO DOMINION BANK et al
Applicant

-and-

BRAD DUBY PROFESSIONAL CORPORATION et al
Respondent

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF NEW COUNSEL, GOSAI LAW
PROFESSIONAL CORPORATION**

**GOSAI LAW
PROFESSIONAL CORPORATION**
8770 The Gore Road, Suite 2
Brampton, ON L6P 0B1

Nancy Sarmiento Barkhordari, 77903B
Email: nsarmiento@gosailaw.com
Tel: (905) 595-2225
Fax: (905) 595-2226

New Counsel