

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

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PART I – OVERVIEW

1. McLeish Orlando LLP opposes the proposed sliding fee structure as it would result in a windfall to the Receiver. This is because Mr. Duby did a very limited amount of work on Ms. Al-Borno's file.
2. In addition to the facts set forth in Mr. Vining's Affidavit, McLeish Orlando LLP relies upon the law and arguments filed by co-New Counsel as it relates to the opposition of the implementation of the sliding fee schedule.

PART II – FACTS

3. Ms. Al-Borno was involved in a motor vehicle collision on June 19, 2020.¹
4. On July 24, 2020, Ms. Al-Borno signed an accident benefits retainer agreement with Brad Duby,² as well as a tort retainer agreement.³
5. On January 28, 2021, Brad Duby passed away⁴ without issuing a Statement of Claim with respect to Ms. Al-Borno's tort claim.⁵ McLeish Orlando LLP issued a Statement of Claim on behalf of Ms. Al-Borno on June 18, 2021.⁶
6. To date, the Respondent has not provided any information regarding the amount of time and effort Brad Duby expended working on Ms. Al-Borno's file.
7. To date, the Receiver refuses to have the Respondent's interest in Ms. Al-Borno's file be determined by Assessment in accordance with the *Solicitors Act*.

¹ Affidavit of Aidan Vining affirmed October 4, 2022 [*Vining Affidavit*], para 3 and Exhibit "A".

² *Vining Affidavit*, para 6 and Exhibit "B".

³ *Vining Affidavit*, para 7 and Exhibit "".

⁴ Affidavit of Savannah V. Chorney, sworn September 15, 2022, para 2.

⁵ *Vining Affidavit*, para 9 and Exhibit "D".

⁶ *Vining Affidavit*, para 9 and Exhibit "D".

PART III – ISSUES

8. Whether the Court should impose the proposed “sliding fee structure” rather than impose Assessment in accordance with the *Solicitors Act*.

PART IV – LAW AND ARGUMENT

A. The Court Should Not Impose the Proposed “Sliding Fee Structure”

9. McLeish Orlando LLP relies upon the case law and argument filed by and presented by the co-New Counsel as it relates to the opposition of the implementation of the sliding fee schedule.

10. The Respondent has not provided any information regarding the amount of time and effort expended by Brad Duby on working on Ms. Al-Borno’s file. Given the limited amount of work completed by Brad Duby on behalf of Ms. Al-Borno, the adoption of the proposed sliding fee structure will result in a windfall to the Respondent.

11. The Respondent’s interest in Ms. Al-Borno’s file should be determined by Assessment in accordance with the *Solicitors Act*.

PART V – ORDER SOUGHT

12. McLeish Orlando LLP asks that the Receiver’s motion be dismissed, and that the Respondent’s interest in Anne Marie Al-Borno’s file be determined by Assessment in accordance with the *Solicitors Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of October, 2022.

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