

**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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**RESPONDING MOTION RECORD of CAMPISI LLP**

(Returnable October 13 2022)

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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 PENZA LLP**  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2  
Timothy C. Hogan / Robert Danter  
Tel: (519) 679-9660  
Email: [thogan#garrisonpensa.com](mailto:thogan#garrisonpensa.com) / [rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

**AND TO: SERVICE LIST:**

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](mailto:kplunkett@airdberlis.com) and [ngates@airdberlis.com](mailto:ngates@airdberlis.com)

AND TO: Lawyers for the Applicant, Toronto-Dominion Bank

**MNP LTD.**  
111 Richmond Street West, Suite 300  
Toronto, ON M5H 2G4

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

AND TO: Receiver

**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](mailto:bjaffe@jaffeperitz.com) and [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com)

AND TO: Lawyers for Bridgepoint Financial Services

**LAW SOCIETY OF ONTARIO**  
393 University Avenue, Suite 1100  
Toronto, ON M5G 1E6

**Attention: Adam Di Federico**  
Tel: (437) 9297285  
Email: [AFederic@lso.ca](mailto: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@slglegal.ca](mailto:adam@slglegal.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](mailto: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](mailto:mhazan@awaxmanlaw.ca) and [awaxman@awaxmanlaw.ca](mailto: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](mailto:ryan@naimarklaw.com) and [nsinjari@naimarklaw.com](mailto: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](mailto: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](mailto: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](mailto:jrhowie@hshlawyers.com) and [bmoscato@hshlawyers.com](mailto: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](mailto:shahen@mklegal.ca)

New Counsel

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](mailto:JMcCoy@bplawyers.ca), [FPiazza@bplawyers.ca](mailto:FPiazza@bplawyers.ca) and  
[KBergmanis@bplawyers.ca](mailto: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](mailto: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](mailto: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: [melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com) and [savannah@chorneylawyers.com](mailto:savannah@chorneylawyers.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](mailto:klee@himprolaw.com) and [dhimelfarb@himprolaw.com](mailto: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](mailto: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](mailto:arouben@bellnet.ca)

Lawyers for Lifeline Litigation Loans Inc.

AND TO: **MINISTRY OF FINANCE (ONTARIO)**

Insolvency Unit

33 King Street West, 6<sup>th</sup> Floor

Oshawa, ON L1H 8H5

Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.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](mailto:diane.winters@justice.gc.ca)

**Ontario Regional Office**

Email: [torbankruptcy@justice.gc.ca](mailto: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](mailto: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](mailto:alshus@hotmail.com)

New Counsel

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

**Attention: Anushika Anthony**  
Tel: (905) 874-7011  
Email: [info@AAPCLawyers.com](mailto:info@AAPCLawyers.com)

New Counsel

AND TO: **BERGEL, MAGENCE LLP**  
1018 Finch Avenue West, 5<sup>th</sup> Floor  
Toronto, ON M3J 3L5

**Attention: Ilan Bergel & Nashmil Mamresuli**  
Tel: (416) 665-2000 ext. 214  
Email: [ibergel@bergellaw.com](mailto:ibergel@bergellaw.com) and [nmamresuli@bergellaw.com](mailto:nmamresuli@bergellaw.com)

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](mailto: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](mailto: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](mailto: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](mailto:jcarrington@diamonddlaw.ca)

New Counsel

AND TO: **GERALD STERNBERG**  
469 Lawrence Ave. West  
North York, ON M5M 1C6

**Attention: Gerald Sternberg**  
Tel: (416) 967-0077  
Email: [gerald.sternberg@bellnet.ca](mailto:gerald.sternberg@bellnet.ca)

AND TO: **GIRONES LAWYERS**  
300-300 Terry Fox. Dr. Kanata, ON K2K 0E3

**Attention: Andrea Girones**  
Tel: (613) 599-3535  
Email: [agirones@girones.ca](mailto:agirones@girones.ca)

New Counsel

AND TO: **GOODMAN ELBASSIOUNI LLP**  
190 Attwell Drive, Suite 300 Toronto, ON M9W 6H8

**Attention: Corey Goodman**  
Tel: (905) 265-1005  
Email: [corey@goodmanlawgroup.ca](mailto:corey@goodmanlawgroup.ca)

New Counsel

AND TO: **GOSAI LAW PROFESSIONAL FIRM**  
8770 The Gore Road, Unit 2  
Brampton, ON L6P 0B1

**Attention: Nital S. Gosai**  
Tel: (905) 595-2225  
Email: [info@gosailaw.com](mailto:info@gosailaw.com)



New Counsel

AND TO: **GREG MONFORTON AND PARTNERS**  
1 Riverside Drive West, Suite 1  
Windsor, ON N9A 5K3

**Attention: Jennifer Bezaire**  
Tel: (866) 320-4770  
Email: [jbezaire@gregmonforton.com](mailto:jbezaire@gregmonforton.com)

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](mailto: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@jlawfirm.ca](mailto:jeffrey@jlawfirm.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](mailto:joshua@jgoldberglaw.ca)

New Counsel

AND TO: **JUZZKIW 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](mailto:stefan@juzkiw.com)

New Counsel

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

**Attention: Joseph Lam**  
Tel: (416) 649-0000  
Email: [jam@krylaw.ca](mailto:jam@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](mailto: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](mailto: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](mailto:tina@lubmanlaw.ca)

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](mailto: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](mailto:alisa.mazo@mazochowbay.com)

New Counsel

AND TO: **MCLEISH ORLANDO LLP**  
151 Yonge Street, Suite 1800  
Toronto, ON M5C 2W7

**Attention: Ekaterina Shmorgun**  
Tel: (855) 996-9654  
Email: [eshmorgun@mollp.com](mailto:eshmorgun@mollp.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](mailto: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](mailto:barbara@opalinskilaw.ca)

New Counsel

AND TO: **PA LAW FIRM PROFESSIONAL CORPORATION**  
4022 Sheppard Ave. East  
Scarborough, ON M1S 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](mailto:achapnik@pacelawfirm.com)

New Counsel

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

**Attention: Michael Pilieci**  
Tel: (416) 878-2838  
Email: [piliecilegalservices@outlook.com](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto:jcho@vclawyers.ca)

New Counsel

AND TO: **WAKELIN & ASSOCIATES LLP**  
1-605 Brock Street South  
Whitby, ON L1N 4L1

**Attention: John Wakelin**

Tel: (416) 227-3444

Email: [lindsays@wakelinlaw.com](mailto: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](mailto: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](mailto: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@zweibelandassociates.ca](mailto:dwilson@zweibelandassociates.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: [info@verkhovetslaw.com](mailto:info@verkhovetslaw.com)

New Counsel

INDEX

DOCUMENT	TAB
Affidavit of Jennifer Pinho affirmed October 5, 2022	1
<b>Exhibit A</b> MVA Report Sep 15 2019	A
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<b>Exhibit D</b> Counsel (Hogan) fee agreement undertaking Jul 28 2022	D
<b>Exhibit E</b> Counsel (Hogan) f/u fee agreement Sep 22 2022	E
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

**Applicant**

and

BRAD DUBY PROFESISONAL CORPORATION

**Respondent**

**AFFIDAVIT OF JENNIFER PINHO**

I, **JENNIFER PINHO**, of the Toronto, Ontario, **AFFIRM AS FOLLOWS :**

1. I am a law clerk with the CAMPISI LLP, lawyers for Candice Kechnie-Young (“Candice”) in this matter and as such I have knowledge of matters to which I hereafter depose. Where such knowledge is based upon information and belief, I identify the source and verily believe the information to be true.
2. On **September 15, 2019**, Candice was involved in a motor vehicle-bicycle accident. Attached at **Exhibit “A”** is a copy of the MVA report.
3. On **October 2, 2019**, Candice appears to have signed a tort contingency fee tort retainer with respondent in this matter. Attached at **Exhibit “B”** is a copy of an October 22, 2019 retainer.
4. The file was provided to us via the Law Society of Ontario (“LSO”). We have reviewed the file and do not see that any retainer was signed to pay the respondent fees for handling the accident benefits (“AB”) matter.
5. On **January 3, 2020**, two months after signing the retainer, a review of the file shows that the respondent submitted an application for accident benefits (OCF 1) to an insurance company, along with an authorization and direction.




6. A review of the file shows that Brady Duby hired a case manager to make referrals and apply for various accident benefits on behalf of Candice.
7. On **February 14, 2021**, on referral from the LSO, Candice signed a retainer with our firm, Campisi LLP to handle both her tort and accident benefit claims.
8. On **September 3 2021**, our firm issued the statement of claim. Attached at **Exhibit "C"** is a copy of the issued claim. The statement of claim sets out Candice's injuries, which include:
- ".. 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.." (see para 7)
9. On **July 28, 2022**, following receipt and review of the motion record in this matter, Ms. Ismail advised counsel for the receiver that collecting 20% of Candice's fee would grossly over-represent Mr. Duby's contribution to the file. Ms. Ismail undertook to advise the receiver when settlement was reached, at which time a fee could be either be agreed upon or assessed. Attached at **Exhibit "D"** is a copy of said correspondence.
10. On **September 22, 2022**, upon receipt of the receiver's factum, Ms. Ismail sent a follow-up email to hers of July 28, 2022, inquiring whether there would be a response to her request to deal with fees, post settlement, as agreed or assessed. Attached at **Exhibit "E"** is Ms. Ismail's follow-up correspondence to the receiver.
11. On **September 28, 2022**, Ms. Ismail received correspondence from the receiver claiming payment of \$4,126.40 in alleged legal expenses which we tally as follows:

Clinical Notes and Records	\$ 30.00	Advance on Settlement	\$ 600.00
Clinical Notes and Records	\$ 33.90	Hardship Loan	\$ 1,000.00
Outstanding prepayment	<u>\$ 12.50</u>	Hardship Loan	\$ 1,500.00
	<b>\$ 76.40</b>	Hardship Loans	\$ 250.00x3
		Hardship Loans	<u>\$ 100.00x2</u>
			<b>\$ 4,050.00</b>

Attached at **Exhibit "F"** is the receiver's email with a list of alleged disbursements attached.

- 12. Ms. Ismail has reviewed the file and advises there are no loan documents, emails, or correspondences, tending to show that Candice appreciated she was receiving money from Mr. Duby which he would later collect as a disbursement on her file.
- 13. Ms. Ismail advises that Candice’s brain injury, paranoia and volatility renders her quite vulnerable. Ms. Ismail believes that it would have been all the more important in this case to document “loans”, given the potential for a conflict with the client, and the spectre of creating a conflict between the lawyers fiduciary duty to a client, versus a lawyer’s self interest in having allegedly loaned funds, returned.
- 14. In addition, I am advised and do see on review of the file, that Mr. Duby arranged a high-interest loan for Candice, which Ms. Ismail believes was ill-advised.
- 15. I will be arranging for payment of disbursements in the amount of \$76.40, to the receiver shortly.
- 16. I make this affidavit on the receiver’s motion to, among other things, impose a sliding fee structure.

AFFIRMED BEFORE ME in the City of )  
 Vaughan, in the Province of Ontario )  
 this 5<sup>th</sup> day of October, 2022. )  
 )  
 )

  
 \_\_\_\_\_  
 A Commissioner for Taking Affidavits

  
 \_\_\_\_\_  
**JENNIFER PINHO**



Motor Vehicle Accident Report

1 04

Report Type  Original  Amended  Failed To Remain

Accident Number WA19209148 Page 1 Of 1  
Accident Date 2019 09 05 Day of the Week Thursday Time 17:46

05 41

02 42

2 12

Time Officer Arrived or Police Force Reported to: 18:06  
Emergency Equipment in Attendance Ambulance

Service Performed TRANSPORT TO HOSPIT  
Prod. Ident. No. (P.I.N.) Dangerous Goods Involvement

03 43

01 44

3 --

Name of Investigating Officer MOORE CHRISTOPHER

Badge No. 910 Div./Stat./Det. NORTH PATROL Plat/Squad NORTH

4 01

Name of Submitting Police Force Waterloo

MTO Use Only Highway Distance Unit Dir.

02 45

5 --

Location R1 Trafficway 851 FISCHER-HALLMAN RD ( TO 7 8 E O 1 ) Distance Check as applicable  M.  Km.  N.  S.  E.  W. District Keypoint/Geocode Offset Ramp No.

R2 Reference Point FISCHER HALLMAN RD Municipality KITCHENER County, District, Reg. Municipality WATERLOO

6 01

Driver (Last Name First) SHAMAL, FAISAL K Code

Driver (Last Name First) KECHNIE-YOUNG, CANDICE Code

10 46

01 47

7 10

Address 406-24 BRYBECK CR Telephone No. 519-616-7190

Address 469 WESTVALE DRIVE Telephone No. 226-581-0814

KITCHENER, ONTARIO Postal Code N2M2C7

WATERLOO, ONTARIO Postal Code N2T 1S9

Driver's Licence No. S31672580710118 Prov. ON Class G Cond. \*N

Driver's Licence No. Prov. Class Cond.

8 --

Sex M Y 71 M 01 D 18 Proper Licence to Drive Class of Vehicle  Y  N Suspended Driver  Y  N Breathalyzer, Blood Test, Admin.  Y  N

Sex F Y 88 M 07 D 08 Proper Licence to Drive Class of Vehicle  Y  N Suspended Driver  Y  N Breathalyzer, Blood Test, Admin.  Y  N

04 48

9 02

Make TOYT Year 2014 Model RV4 Colour BLK Body Style TY

Make BICYCLE Year Model Colour Body Style

01 49

10 01

Air Brake  Y  N Plate No. CAEB624 Prov. ON Number of Occupants in Vehicle 2

Air Brake  Y  N Plate No. Prov. Number of Occupants in Vehicle

01 50

11 01

Owner (Last Name First) As above

Owner (Last Name First) As above

01 51

12 --

Address Telephone No.

Address Telephone No.

01 52

13 01

Insurance Company and Policy No. None TRAVELERS INSURANCE CO

Insurance Company and Policy No. None

01 53

14 01

APP2191846

CVOR No. Lic. Class Required 9 Loaded  Unloaded  Approx. Speed Km/hr. 0

01 54

15 01

CVOR No. Lic. Class Required 9 Loaded  Unloaded  Approx. Speed Km/hr. 10

CVOR No. Lic. Class Required Loaded  Unloaded  Approx. Speed Km/hr.

01 55

16 --

Make --- Plate No. --- Prov. ---

Make --- Plate No. --- Prov. ---

01 56

17 01

Owner (Last Name First) As above

Owner (Last Name First) As above

01 57

18 01

Address Telephone No.

Address Telephone No.

01 58

19 01

Address Telephone No.

Address Telephone No.

01 59

20 01

Address Telephone No.

Address Telephone No.

01 60

21 01

Address Telephone No.

Address Telephone No.

01 61

Insurance Company and Policy No. As Vehicle Above

Insurance Company and Policy No. As Vehicle Above

21 01

Investigating Officer's Description of Accident & Diagram

12 62

-- 63

-- 64

-- 65

22 36

23 01

24 01

25 --

26 --

27 --

28 --

29 --

30 --

31 01

32 01

Lanes/Speed R1 Number of Lanes Posted Speed Max. Advisor

R2

01 66

01 67

01 68

33 01

34 99

35 08

36 01

37 01

38 --

Describe Damage to Other Property Person and/or Agency Advised Y M D Time

No. Involved Persons - Injured Taken To/By Independent Witnesses - Name Error Entry

Vehicle Taken To/By V1 Persons Charged - Section and Act & P.O.T. No.

V2

39 99

40 --

Name of Coroner If School Age Child Involved, Indicate School Name

Signature of Investigating Officer Report completed  on 2019 09 05 Signature of Supervisor Badge No. 584 Y M D 2019 09 06

Involved Persons 1 Veh. No. Ped. No. KECHNIE-YOUNG, CANDICE 469 WESTVALE DRIVE WATERLOO 31 F 9 1 3

2 SHAMAL, MARHWA 406-24 BRYBECK CR KITCHENER ON 4 F 4 0 3 5 2

3 SHAMAL, FAISAL 406-24 BRYBECK CR 1 0 3 1 2

4

5 69 70 71

72 73 74 75 76 77 78

This is Exhibit " A " referred to in the affidavit Jennifer Pinho affirmed this 5th day of October, 2022

Commissioner for taking affidavits



**ALL PAYMENTS TO BE MADE TO:**  
**WATERLOO ACCIDENT SUPPORT SERVICES LTD.-**  
**CAMBRIDGE BRANCH**  
AND DIRECTED TO:  
111 Toryork Drive  
Toronto, Ontario M9L 1X9  
TEL: (416) 745-3301  
FAX: (416) 745-5555

**Invoice To:**  
TRAVELERS INSURANCE CO  
1275 NORTH SERVICE ROAD WEST  
OAKVILLE, ONTARIO, CANADA  
L6M 3M3

**INVOICE**

<b>INVOICE #</b>	WC5569311
<b>DATE</b>	08-Sep-2019
<b>CUSTOMER #</b>	TRAV01
<b>TERMS</b>	Net 30 Days

Incident Information			
<b>Owner Name:</b>	FAISAL K SHAMAL	<b>Insurer:</b>	TRAVELERS INSURANCE CO
<b>Owner Address:</b>	406-24 BRYBECK CR	<b>Policy No.:</b>	APP2191846
<b>City, Prov, Postal:</b>	KITCHENER, ONTARIO, N2M2C7	<b>Binder No.:</b>	
<b>Accident Date:</b>	2019/09/05	<b>Agent/Broker:</b>	
<b>Incident No.:</b>	ACC-502740529	<b>Counsellor:</b>	TRANSFER
		<b>Prepared By:</b>	TRANSFER

Vehicle Information			
<b>VIN:</b>	2T3RFREV7EW223721	<b>Make:</b>	TOYT
<b>Plate:</b>	CAEB624	<b>Model:</b>	RV4
<b>Year:</b>	2014	<b>Colour:</b>	BLK
<b>Airbag Deployed:</b>	Unsure		

ITEM NUMBER	DESCRIPTION	UNIT PRICE	TOTAL COST
PR	Insurer Fee	\$67.50	\$67.50
HST NO: 718925316RT0001 © 2019 WATERLOO ACCIDENT SUPPORT SERVICES LTD.- CAMBRIDGE BRANCH www.accsupport.com		<b>HST:</b>	\$0.00
<b>If paid within 45 days, please take a \$2.50 discount for prompt payment.</b>		<b>TOTAL AMOUNT OF INVOICE:</b>	<b>\$67.50</b>
GENERAL INQUIRIES TO:  150 Maple Grove Rd KITCHNER, ONTARIO, N3H4R7 TEL: (519) 650-8554		<b>TOTAL PAYMENTS:</b>	0.00
License No.		<b>TOTAL DUE:</b>	<b>\$67.50</b>

## CONTINGENCY FEE RETAINER AGREEMENT

Between:

BRAD DUBY PROFESSIONAL CORPORATION, o/a DUBY & ASSOCIATES

2 Clinton Place, Toronto, ON M6G 1J9  
P: 416 588 9100 F: 416 588 9102

This is Exhibit "B" referred to in the affidavit Jennifer Pinho affirmed this 5th day of October, 2022

-and-



Hereafter referred to as the "Claimant" or

Commissioner for taking affidavits

This agreement explains the services that we will provide to you, how you will be charged for them, and our responsibilities to each other. Please read this agreement carefully. If you have questions, please ask us before signing.

### Contents

Legal Services .....	1
Expectations .....	2
Other Things You Need to Know .....	5
Ending the Relationship .....	5
Your Risks.....	6
Confidentiality and Privacy .....	7
Communications .....	7

### Legal Services

This agreement confirms that you, (the "Claimant[s]") have retained Duby & Associates on a contingency fee basis to advance a potential Claim (the "Claim") for damages you have sustained as a result of \_\_\_\_\_ that occurred on: \_\_\_\_\_, due to the wrong doing of \_\_\_\_\_ or any other person who may be liable (the "Defendant").

This agreement does not cover services for any other matter.

### Who We Represent

In certain circumstances, family members or other individuals may be entitled to compensation in relation to the Claim. We represent only the Claimants who have signed this agreement.

### Potential Conflicts

If you have asked us to act for more than one potential Claimant, this is will be a joint retainer. In that case, we will share information between everyone we represent. Any information received from any of you will be shared with the rest.



CY Initials

In the case of a joint retainer, you have advised that there is no conflict of interest between you and that you have no objection to our firm representing all individuals signing this agreement. If a conflict does arise in the future you agree now, that in the event of any conflict arising we will continue to represent \_\_\_\_\_. We would then refer any conflicted individuals to an independent lawyer.

## **Expectations**

### What You Can Expect from Us

We will report to you on significant developments throughout. We will take appropriate steps to protect your interests and advance your Claim, which may include any of the following:

- (a) obtain and review relevant documentation;
- (b) conduct other investigations and/or research;
- (c) retain and instruct expert witnesses;
- (d) advise you if the Claim is likely viable;
- (e) make reasonable efforts to settle the case;
- (f) commence a lawsuit;
- (g) conduct examinations of any individual you sue;
- (h) prepare for and attend any court appearances, mediations, or pre-trial settlement conferences; and/or
- (i) prepare for and attend trial.

This agreement does not cover the services for an appeal. If after a trial, either side appeals, you would need to enter into a new agreement to cover the legal services associated the appeal.

### What We Expect from You

We expect that you will reasonably cooperate and communicate with us. We can provide our best advice and guidance only when we have all relevant information. It is vital that you be candid and honest at all times. We must be able to reasonably make contact with you and receive a reply to our communications within 24 hours. In addition, we ensure you that any questions or concerns regarding your Claim will be answered within one business day.

### What Your Claim is Worth

How much money you receive from the Claim is determined by a number of factors that are difficult to determine from the outset. These usually include, the extent of the injury, the final prognosis, and the economic consequences of the harm caused. Once we have the necessary information, we will give you our opinion of the dollar value of the Claim. Our opinion may change as the Claim develops.

### How Long It Will Take

It can take up to several years for a claim to settle or go to trial. The amount of time the claim takes depends on factors such as: the age of the injured person; how soon they recover from their injuries; when we receive information about what the future holds for the injured person and court availability.



### Settlement or Trial

We will try to settle your lawsuit to obtain a favourable settlement for you. If your Claim is settled, it would not have to go to trial. If we cannot settle the case, we will discuss with you the risks and potential benefits of a trial.

### You Decide

We will give you our best advice and guidance; however, at all times you have the right to make the final choice regarding all major decisions, including settlement.

### **How Much Will It Cost**

Legal costs are made up of two components: (1) legal fees and (2) out-of-pocket expenses, known as disbursements.

### Legal Fees

You can choose to pay us for our work and expenses on an ongoing basis, based on time spent at fixed hourly rates. Alternatively, you can pay a percentage of the amount recovered, but only if you are successful in recovering compensation. This is known as a contingency fee. **You have chosen to retain us on a contingency fee basis.**

**If you do not receive money for the Claim, you do not pay us for legal fees.**

If you receive money for the Claim, you agree to **pay us a fee of 33% of the total amount recovered, plus disbursements and HST.**

\_\_\_\_\_ **Initials**

If we successfully settle a lawsuit or we are successful at trial, we will seek a sum of money called "costs" from the Defendant. Any money received from the Defendant for costs are **not** included in the calculation of our fee, and serve to partially offset our charges.

#### When the Percentage Fee May Be Different

You may want to proceed to trial even though we recommend that you settle. In this case, if the trial judgment turns out to be less than the settlement that we recommended, our percentage fee will be based on the amount of the settlement that we recommended to you, not the amount of the trial judgment. We will notify you in writing if this situation occurs to avoid any confusion.

Charges for legal services vary. You can speak with other lawyers to compare rates and payment arrangements. DUBY & ASSOCIATES shall **not** recover more in fees than you recover in damages or receive in a settlement.



\_\_\_\_\_ **Initials**

### Disbursements

Disbursements are the expenses we incur on your behalf, which may include: copying; postage; couriers; long distance; document binding; court and government filings; obtaining medical records; transcripts; court reporter services; investigators; expert consultants; demonstrative evidence; focus groups; witness attendance; travel; and research. You acknowledge that Hanson Duby Lawyers are entitled to be reimbursed for any of the disbursements expended on your behalf subject to s. 47 of the *Legal Aid Services Act, 1998* (applicable if you are in receipt of Legal Aid).

As part of this Contingency Fee Retainer Agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for the Claim, we will be reimbursed for all legal expenses plus applicable taxes from any recovery. However, if we are not successful, we will not be reimbursed for these expenses.

We are entitled to be reimbursed for any legal expenses as a first charge on any money received for the Claim. This means that we have the legal right to be paid first from any such money.

### Billing

We will provide you with an account in writing setting out the amounts recovered for your Claim, for legal costs, and expenses and showing the amounts charged to you under this agreement and the balance payable to you. You agree that any money from a settlement or judgment, including costs, will be paid directly to us to be held in trust by us subject to the terms of this Agreement. We will deduct our fee, legal expenses, and applicable taxes and provide you the balance.

Interest will accrue on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.

You have the right to ask the Superior Court of Justice to review and approve your lawyer's bill, within 30 days from the date you receive it. After that you must ask the Court for permission, providing an explanation for the delay.

### Example

The following example is offered to help explain how you will be charged. It is not a prediction of your legal fees and expenses or what the Claim is worth.

This example assumes a settlement made up of the following amounts paid by the Defendant:

Damages including interest	\$ 100,000.00
Costs	15,000.00
Disbursements	2,500.00
HST (on \$33,000)	4,290.00
Total Paid by the Defendant	\$ 121,790.00





We would charge thirty-three and one-third percent (33%) of the total damages. The account delivered to our client would be:

Fee (33% of \$100,000)	\$33,000.00
Disbursements paid by the Defendant	2,500.00
HST (on legal fees of \$33,000)	4,290.00
Total Fees and Disbursement Paid by You	\$ 39,790.00

In this example, the claimant would receive \$82,000.00 after deduction of our charges.

## **Other Things You Need to Know**

### Structured Settlement

A structured settlement allows you to receive tax-free payments over a period of time instead of a lump sum. There may be advantages to having all or part of a settlement structured or a legal requirement to accept payments over a period of time.

If periodic payments are part of any settlement or judgment, you will still be responsible for payment of our account at the time of settlement based on the total paid for the Claim including any amounts to fund periodic payments.

### Persons Under a Legal Disability

Legal disability includes being under the age of 18, or mentally incapable.

If any person covered by this agreement is under a legal disability, this agreement and any legal charges must be approved by a judge, either before the agreement is finalized or as part of the approval of any settlement. Any money payable to such persons will be paid into court unless a judge orders otherwise.

### Legal Cost and Disbursement Protection

You acknowledge that legal cost protection has been obtained on your behalf and for your benefit covering up to twenty-five thousand dollars (\$25,000) of legal cost protection and/or disbursements which may be owed by you following a trial of your claim(s). The cost of the protection is five hundred dollars (\$500) plus HST and will be paid out of your claim settlement proceeds or award. No fee shall be paid or owing in the event your claim is unsuccessful, abandoned, discontinued or transferred to new legal representation.

## **Ending the Relationship**

### You End the Relationship

You can end this agreement at any time. If you terminate this agreement before the Claim is concluded, you agree to pay the disbursements that were paid by our firm pertaining to your case as well as our reasonable charges for the work accomplished to that date as explained below.



If you do terminate this Agreement, you agree to sign a court form which tells the court that we no longer act for you.

### We End the Relationship

There are circumstances where we may choose to end this agreement. For example, if we at any time determine that the Claim is unlikely to succeed or is no longer economically viable. In these circumstances, we may then enter into a new, non-contingency based fee agreement on terms to be negotiated at that time.

In the event that we terminate this Agreement and you ultimately received nothing for your Claim, we will not charge you legal fees. If we terminate the Agreement, and you do recovery money for your Claim, you agree to protect or pay our reasonable charges as explained below.

### Reasonable Charges Explained

The factors that will determine our reasonable charges where this agreement ends prior to resolution of the Claim, include the time and effort required and spent by us; the usual hourly rates charged by us for non-contingency work; the complexity of the case and the responsibility and risk we assumed by representing you in the case; the difficulty and importance of your case; the expertise, experience, degree of skill and competency demonstrated by us in representing you; whether special skill or service was required and provided; the amount involved and/or value of the Claim; results obtained by us; and other relevant circumstances.

Our usual hourly rates, which generally increase annually, are:

Senior Lawyer	\$350.00
Junior Lawyer	\$240.00
Law Clerks	\$90.00
Articling Students	\$90.00
Summer Students	\$90.00

### Protecting Our Account Explained

If you terminate this agreement and continue with the Claim, but are unable to pay our account at the time of termination, and we make arrangements to permit our reasonable charges to be paid upon the conclusion of the Claim, you agree that our reasonable charges will be a first charge on any money paid for the Claim. You also agree to sign a document at that time confirming this.

### **Your Risks**

We will act in your best interests and give you our best legal advice. However, no lawyer can guarantee a successful outcome.

If a lawsuit is filed and the lawsuit or any significant pre-trial hearing is lost, the court may order you to pay a portion of the winning side's legal fees and disbursements/expenses. You are responsible for paying any such costs. Insurance may be available to protect you from some or



all of a costs award that you may have to pay. We have discussed the availability of this insurance.

Understanding these risks, by signing this Agreement, you are expressly authorizing us to file a lawsuit on your behalf, if appropriate.

**Confidentiality and Privacy**

You authorize the collection and use of personal information in order to fully and properly represent you. From time to time some of your personal information may be disclosed to third parties only we determine is reasonably required to advance the Claim on your behalf.

**Communications**

**We will contact you at:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**You can contact us at:**

Duby & Associates, 2 Clinton Place, Toronto, ON M6G 1J9

P: 416 588 9100 F: 416 588 9102 E: \_\_\_\_\_@dubyassociates.com

Email

By initialing this paragraph, you authorize the sending of confidential or private correspondence, documents and other information related to the Claim to you through the Internet (and, particularly, e-mail) in an unencrypted condition and without any guarantee of security or protection from interception by a third party.

cy  
Initials




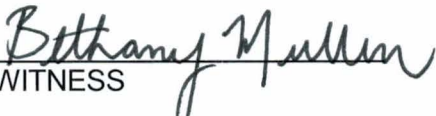
cy Initials

**CONFIRMATION**

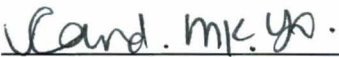
This Contingency Fee Retainer Agreement contains the complete agreement between us regarding your relationship with us, and our legal fees and expenses. It will not be changed unless we both agree and sign any changes. It will legally bind anyone, such as heirs or legal representatives, who replace either you or us but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

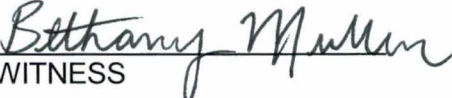
You confirm that you understand that all usual protections and controls on retainers between a lawyer and client, as defined by the Law Society of Ontario and the common law, apply to this agreement.

  
\_\_\_\_\_  
LAWYER

  
\_\_\_\_\_  
WITNESS

Date: Oct 22 2019.

  
\_\_\_\_\_  
CLIENT ONE

  
\_\_\_\_\_  
WITNESS

Date: October 22nd 2019

\_\_\_\_\_  
CLIENT TWO

\_\_\_\_\_  
WITNESS

Date: \_\_\_\_\_





Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 03-Sep-2021  
Délivré par voie électronique : 03-Sep-2021  
Kitchener

This is Exhibit " C " referred to in  
the affidavit **Jennifer Pinho**  
affirmed this 5th day of October,  
2022

**ELLE CANDICE KECHNIE-YOUNG**

PLAINTIFF

and

**FAISAL K. SHAMAL**

DEFENDANT

Commissioner for taking affidavits

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff(s).  
The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date:

Issued by

\_\_\_\_\_  
Local registrar

85 Frederick Street  
Kitchener ON N2H 0A7

TO: **FAISAL K. SHAMAL**  
406-24 Brybreck Crescent  
Kitchener ON N2M 2C7

## CLAIM

1. The plaintiff claims:
  - (a) general and special damages in the sum of \$2,000,000.00;
  - (b) aggravated and punitive damages in the amount of \$500,000.00;
  - (c) costs for having to pursue and/or dispute denied collateral benefits for which the defendant seeks a deduction;
  - (d) pre-judgement and post-judgement interest;
  - (e) substantial indemnity costs of this action plus applicable taxes; and
  - (f) such further and other relief as this Honourable Court may deem just.

## THE PARTIES

2. The plaintiff, Michelle Candice Kechnie-Young (“Candice”), is an individual who resided in the City of Kitchener, Ontario at the time of her accident, but is currently homeless. At all material times she was a bicyclist.
3. The defendant, Faisal K. Shamal, is an individual who resides in Kitchener, Ontario and, at all material times, was the owner and operator of a black 2014 Toyota Rav4, bearing licence plate number CAEB624 (the “Rav4”).

## THE ACCIDENT

4. On **September 5, 2019**, at approximately 5:45pm, while Candice operated her bicycle on the sidewalk across the parking lot entrance of a plaza located at 851 Fischer-Hallman Road in Kitchener, Ontario, she was knocked down by the defendant’s Rav4.
5. As a result of the accident, Candice suffered permanent and serious personal injuries and resulting damages as hereinafter described.

## THE NEGLIGENCE

6. The plaintiff claims the accident and resulting injuries, damages and losses were caused solely by the negligence of the defendant in that:

- (a) he failed to keep a proper lookout;
- (b) he attempted to exit a parking lot without first verifying that he could do so in safety;
- (c) he was driving at a speed that was too fast in the circumstances and as such, he could not control the vehicle within his range of vision;
- (d) he failed to yield to bicyclists, when he knew or ought to have known that there could be cyclist traffic at or near the parking lot entrance which would include Candice;
- (e) he failed to keep his motor vehicle under proper control;
- (f) he operated his vehicle in a careless manner;
- (g) he failed to observe the Rules of the Road as required by Parts IX and X of the *Highway Traffic Act*;
- (h) he failed to have his vehicle in a fit and proper condition, suitable for its safe operation upon a highway;
- (i) he failed to yield the right of way to Candice, which she was entitled under the circumstances;
- (j) he moved suddenly from a place of safety to a place of danger;
- (k) he operated his vehicle in an aggressive and reckless manner while proceeding to exit the parking without exercising due regard and care for the proximity of bicyclists within the intersection, including Candice
- (l) he failed to operate the defendant's motor vehicle in a reasonably straight course of travel;
- (m) he permitted himself to arrive at such a condition from drinking alcohol, absorbing drugs and/or suffering from fatigue such that his normal faculties, perception, will and judgment were so affected that he no longer had the capacity to operate a motor vehicle with the caution characteristic of a reasonably careful driver who has not drunk alcohol, absorbed drugs or is suffering from fatigue;
- (n) he voluntarily permitted himself to arrive at such a condition, resulting from the consumption of alcoholic beverages and/or the use of drugs, and/or from fatigue such that his normal faculties, perception, will and judgment were impaired to such an extent that when driving a motor vehicle, he was a menace to himself and to the public;



- (o) he failed to pay adequate attention to cyclist traffic around him and remain reasonably alert while operating his motor vehicle so as to avoid a collision with Candice;
- (p) he failed to give any warning to Candice of the approach of the defendant's motor vehicle although such warning was reasonably necessary under the circumstances;
- (q) he failed to apply the brakes;
- (r) he failed to slow down or stop or turn to the left or right sufficiently so as to avoid striking Candice;
- (s) he failed to take reasonable care to avoid an accident which he saw or should have seen was likely to occur;
- (t) on the occasion in question, he was an incompetent driver lacking in reasonable skill and self command and ought not to have to attempted to operate a motor vehicle;
- (u) he failed to utilize appropriate eyewear when it was reasonable to do so under the circumstances; and
- (v) he was talking on his cell phone, using some other electronic device and/or was otherwise distracted when the accident occurred.

## **THE INJURIES**

7. As a result of the accident, Candice suffered permanent and serious personal injuries, including but not limited to:
- a) head injury
  - b) fractured right scaphoid
  - c) abrasions, contusions to left elbow
  - d) damage of the nerves, tendons and ligaments throughout her entire body;
  - e) the following psycho-emotional impairments
    - i. exacerbation of pre-existing psychosis, significantly fluctuating mood, paranoid thoughts, disorganized thinking, mistrust of others, inability to remain goal-oriented

- ii. suicidal Ideation with variable intent
- iii. decreased mood
- iv. decreased motivation
- v. perseveration on paranoid thoughts
- vi. Feeling like others are purposely trying to hurt her
- vii. irritability/anger
- viii. loss of interest and pleasure
- ix. making poor life choices that place her safety at risk
- x. decreased frustration tolerance
- xi. panic attacks
- xii. emotional fatigue

## **THE DAMAGES**

8. The above-noted injuries have resulted in permanent and serious limitations to Candice including frequent fluctuations in her anger, paranoia, mood, emotional instability; headaches, dizziness, forgetfulness, cognitive impairments, a loss of independence, distractibility, and poor responsiveness to verbal instructions. Moreover, Candice has been required to wear a cast, undertake therapy and undergo medical imaging. She has also been required to undergo, and continues to require, extensive attendant care and rehabilitation treatment, including but not limited to psychiatry, psychotherapy, and physiotherapy.
9. Candice has also been required to ingest quantities of medication as a result of her injuries and resulting impairments. Additionally, Candice has and will continue to incur expenses related to her past and future medical and rehabilitation treatment, medication, healthcare, medical devices, together with significant attendant care expenses and other out-of-pocket expenses, and claims for same, the full particulars of which will be provided prior to the trial of this action.
10. As a further result of the accident, Candice has suffered and will continue to suffer a loss of enjoyment of life and a permanent impairment of her ability to

participate in her normal recreational, employment, social, athletic, familial and household activities and claims for the cost of same.

11. As a further result of the accident, Candice has suffered and will continue to suffer a loss of income, a loss of competitive advantage and a loss of income earning capacity. Candice claims for these past and future pecuniary losses, the full particulars of which will be provided prior to the trial of this action.
12. As a further result of the accident, Candice has been unable to complete her regular housekeeping and home maintenance tasks which she performed prior to the accident or would have performed for herself or others in the future and has incurred and will continue to incur expenses in this regard. Candice undertakes to provide the full particulars of these claims for housekeeping and home maintenance prior to the trial of this action.
13. Candice states that as a result of the within accident, she has sustained permanent and serious disfigurements and permanent and serious impairments of important physical, mental and/or psychological functions within the meanings of Section 267.1 and 267.5 of the *Insurance Act*, as well as *Ontario Regulation 403/96*, such that the defendant is liable for all injuries and losses sustained by Candice as a result of the accident.

## THE LEGISLATION

14. The plaintiff pleads and relies upon
  - (w) the *Courts of Justice Act*,
  - (x) the *Highway Traffic Act*, R.S.O. 1990, c. H.8;
  - (y) the *Insurance Act*, R.S.O. 1990,c. I.8 and its regulations;
  - (z) the *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c. M.41;
  - (aa) the *Negligence Act*, R.S.O. 1990, c N.1;all as amended.
15. The plaintiff proposes this action be tried at Kitchener, Ontario.

Dated: September 3, 2021

**Campisi LLP**

7050 Weston Road, Suite 101  
Vaughan ON L4L 8G7

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

[ashu@campisilaw.ca](mailto:ashu@campisilaw.ca)

Tel: (416) 203-1115

Lawyers for the plaintiff

KECHNIE-YOUNG.  
**plaintiff**

v.

SHAMAL  
**defendant**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at

Kitchener

**STATEMENT OF CLAIM**

**Campisi LLP**

7050 Weston Road, Suite 101  
Vaughan ON L4L 8G7

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

[ashu@campisilaw.ca](mailto:ashu@campisilaw.ca)

Tel: (416) 203-1115

Lawyers for the plaintiff

## Personal Injury Lawyer

**CAMPISI LLP Personal Injury Lawyers**  
7050 Weston Road, Suite 101 | Vaughan, ON | L4L 8G7  
Tel: 416-203-1115 | Fax: 416-203-7775 | [www.campisilaw.ca](http://www.campisilaw.ca)



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**Subject:** Your client MNP LTD, mine Kechnie-Young

This is Exhibit " D " referred to in the affidavit **Jennifer Pinho** affirmed this 5th day of October, 2022

Commissioner for taking affidavits

Good afternoon Gentlemen,

We represent Ms. Kechnie-Young, formerly a client of Brad Duby.

I have received your motion record returnable October 13, 2022.

If I read it correctly, you would like to receive 20% of the client's recovery. Unfortunately, we cannot agree. Such a fee would grossly over-represent Mr. Duby's contribution to the file on any settlement (should one be achieved).

We are willing to undertake to advise you when settlement occurs, and to either agree on a fee at that time, or submit the matter to an assessment. This is the standard agreement when personal injury files are transferred from one counsel's office to another.

Please let us know if you are agreeable.

Yours very truly,

**Ashu Ismail**  
**Personal Injury Lawyer**

**CAMPISI LLP Personal Injury Lawyers**  
7050 Weston Road, Suite 101 | Vaughan, ON | L4L 8G7  
Tel: 416-203-1115 | Fax: 416-203-7775 | [www.campisilaw.ca](http://www.campisilaw.ca)



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**Cc:** ["rdanter@harrisonpensa.com"](mailto:rdanter@harrisonpensa.com); [Tracy Romanowski](mailto:Tracy.Romanowski)  
**Subject:** RE: Your client MNP LTD, mine Kechnie-Young  
**Date:** Thursday, September 22, 2022 2:16:20 PM  
**Attachments:** [image007.png](#)

This is Exhibit " E " referred to in the affidavit **Jennifer Pinho** affirmed this 5th day of October, 2022



Commissioner for taking affidavits

Good Afternoon Gentlemen,

I believe we received your factum today. Our office is yet to put in a responding record.

Below is an email sent to you July 28, 2022, setting out Ms. Kechnie-Young's position.

Subject to a response from your office by the end of this week, we will presume that your client, TD, is not interested in handling the matter of Mr. Duby's fees in the usual course.

Kindest Regards,

**Ashu Ismail (she/her)**  
**Personal Injury Lawyer**

**CAMPISI LLP Personal Injury Lawyers**  
**7050 Weston Road, Suite 101 | Vaughan, ON | L4L 8G7**  
**Tel: 416-203-1115 | Fax: 416-203-7775 | [www.campisilaw.ca](http://www.campisilaw.ca)**

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**Cc:** [rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com); [Tracy Romanowski](mailto:Tracy.Romanowski) <[tracy@campisilaw.ca](mailto:tracy@campisilaw.ca)>  
**Subject:** Your client MNP LTD, mine Kechnie-Young

Good afternoon Gentlemen,

We represent Ms. Kechnie-Young, formerly a client of Brad Duby.

I have received your motion record returnable October 13, 2022.

If I read it correctly, you would like to receive 20% of the client's recovery. Unfortunately, we cannot agree. Such a fee would grossly over-represent Mr. Duby's contribution to the file on any settlement (should one be achieved).

We are willing to undertake to advise you when settlement occurs, and to either agree on a fee at that time, or submit the matter to an assessment. This is the standard agreement when personal injury files are transferred from one counsel's office to another.

Please let us know if you are agreeable.

Yours very truly,

**Ashu Ismail**  
**Personal Injury Lawyer**

**CAMPISI LLP Personal Injury Lawyers**  
**7050 Weston Road, Suite 101 | Vaughan, ON | L4L 8G7**  
**Tel: 416-203-1115 | Fax: 416-203-7775 | [www.campisilaw.ca](http://www.campisilaw.ca)**

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This is Exhibit " F " referred to in the affidavit Jennifer Pinho affirmed this 5th day of October, 2022



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**From:** [Matthew Lem](#)  
**To:** [Ashu Ismail](#)  
**Cc:** [Tim Hogan](#)  
**Subject:** RE: Your client MNP LTD, mine Kechnie-Young  
**Date:** Wednesday, September 28, 2022 5:13:28 PM  
**Attachments:** [image009.png](#)  
[KECHNIE-YOUNG, Candice - 19-159- Unbilled Disbursements Redac](#)

Ashu,

Further to earlier telephone conversation of today, please find attached details of the disbursements found in PC Law for Candice Kechnie-Young, which totals \$4,126.40 (excluding applicable taxes). We note that this listing may not be complete, and notwithstanding that there may be amounts that are not listed, all disbursements incurred by Brad Duby Professional Corporation or its predecessor firm are to be paid to the Receiver. In addition, it is the Receiver's position that any unpaid or deferred accounts for medical reports or other expert reports or fees owing for services rendered which may be owing by Brad Duby Professional Corporation cannot be paid to these parties and should be paid to the Receiver pending a determination of entitlement by the Court or an agreement between the parties. Payment of disbursements to the Receiver are due, in accordance with the Retainer Agreement and industry practice in the transfer of personal injury cases. Regards,

**Matthew Lem, CIRP, LIT**  
SENIOR VICE-PRESIDENT

**DIRECT 416.515.3882**  
**CELL 416.206.0345**  
FAX 416.323.5240  
111 Richmond Street West  
Suite 300  
Toronto, ON  
M5H 2G4  
[matthew.lem@mnp.ca](mailto:matthew.lem@mnp.ca)  
[mnpdebt.ca](http://mnpdebt.ca)

[http://cdn.mnp.ca/signature/Lotus\\_Sig\\_mnpltd.jpg](http://cdn.mnp.ca/signature/Lotus_Sig_mnpltd.jpg)  
style='position:absolute;margin-left:98.8pt;margin-top:0;width:150pt;height:119.25pt;z-index:251663360;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:0;mso-wrap-distance-top:0;mso-wrap-distance-right:0;mso-wrap-distance-bottom:0;mso-position-horizontal:right;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:line;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:allowoverlap="f">  
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Matter #	Client Name		Resp	Law Type		
	Description					
Date	Ref#	Explanation				Amount Billed

19-159

YOUNG, Candice

BD 1

1/4/2020	001165	Rerimburse Advance on Settlement*			600.00	N
17/4/2020	INTERAC	Hardship Loan*			1000.00	N
13/5/2020	INTERAC	Hardship Loan*			1500.00	N
2/7/2020	001282	Clinical Notes and Records /pk*			30.00	N
2/7/2020	001283	Clinical Notes and Records /pk*			33.90	N
18/6/2020	INTERAC	Hardship Loan*			250.00	N
8/6/2020	INTERAC	Hardship Loan*			250.00	N
7/5/2020	INTERAC	Hardship Loan*			250.00	N
22/12/2020	001528	outstanding pre payment for hospital records/ldc			12.50	N
7/1/2021	INTERAC	Hardship Loan*			100.00	N
17/8/2020	INTERAC	Hardship Loan*			100.00	N

**Total Other****4126.40****Total****4126.40**

**TORONTO-DOMINION BANK** v.  
Applicant

**BRAD DUBY PROFESSIONAL CORPORATION**  
Respondent

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at  
TORONTO

**AFFIDAVIT OF JENNIFER  
PINHO** (sworn October 5, 2022)

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

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

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

New Counsel (Candice Kechnie-Young)

**TORONTO-DOMINION BANK** v.  
Applicant

**BRAD DUBY PROFESSIONAL CORPORATION**  
Respondent

---

ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at  
TORONTO

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**MOTION RECORD**

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7050 Weston Road, Suite 101  
Vaughan, Ontario L4L 8G7

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

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

NEW COUNSEL