COURT OF APPEAL FOR ONTARIO

CITATION: Murray v. Toronto-Dominion Bank, 2026 ONCA 81
DATE: 20260204
DOCKET: M56636 (COA-25-CV-1200)

Lauwers J.A. (Motion Judge)

BETWEEN

Stuart Cameron Murray

Plaintiff
(Moving Party)

and

The Toronto-Dominion Bank

Defendant
(Responding Party)

Stuart Cameron Murray, acting in person

Hannah Young, for the responding party

Heard: January 30, 2026

REASONS FOR DECISION

[1] Mr. Murray seeks leave to file a reply factum about 6,000 words in length. He has attached his draft reply factum as an exhibit. His request is opposed by the Toronto-Dominion Bank.

The Governing Principles

[2] There is no automatic right to file a reply factum in civil appeals. Several cases have addressed when leave to file a reply factum may be given. In *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 4, and in *Boyer v. Callidus Capital Corporation*, 2024 ONCA 761, 174 O.R. (3d) 285, Brown J.A. favoured reply factums generally. In *Sternberg v. Cresford Capital Corporation*, 2024 ONCA 283, Benotto J.A. permitted a reply factum to be filed.

[3] These few cases suggest when a reply factum might be useful to a panel. One situation might be where the respondent's factum raised a new issue, which could include an argument made in the court below but not advanced by the appellant. Other situations will evolve.

[4] However, I would be cautious in permitting a reply factum for the reasons Nordheimer J.A. expressed for refusing leave in *Goberdhan v. Knights of Columbus*, 2023 ONCA 269. I agree with two of his observations.

[5] The first is this, at para. 4:

> My colleague [Brown J.A. in *Prism*] says that the filing of a reply factum "would assist the panel to understand, before the oral hearing, precisely how the parties join issue on the key matters on appeal." In my view, that understanding ought to arise from the main facta. If the main facta leave any doubt on how the parties join issue, that is the principal reason we provide for oral argument.

[6] Justice Nordheimer's second observation is this, at para. 8:

> The arguments that are marshalled in favour of permitting a reply factum can easily be adjusted to favour filing a sur-reply factum. At some point the back and forth must end. We have traditionally fixed that end point at one factum for each party.

[7] Justice Nordheimer said that he did not "see any compelling reason to depart from that traditional point on a regular basis": at para. 8. He did not suggest that there will never be a case where a reply factum would be justified, but considered that such cases "will be exceptional": at para. 9. I agree.

[8] I would be especially cautious about admitting a reply factum for the third reason Brown J.A. gives in *Prism*, at para. 7, that "having read and reflected on the respondent's factum, an appellant might think it had failed to express a key argument in its appeal factum with sufficient clarity and would like to present the panel with a more precise articulation of its argument for their consideration prior to the oral hearing." With respect, there are few cases where this rationale would not apply. Experience suggests that the more precise articulation would add to the panel's reading burden but would not materially or commensurately advance the panel's understanding of the case.

[9] In my view, there is no need to introduce, into a well-functioning system that permits the occasional exception, a new automatic reply practice that would add material, permit lawyers to repeat their arguments (which they often do), or even encourage lawyers to strategize about ways to subtly split their cases.

[10] That said, a motion judge's discretion to permit a reply factum exists and can be applied in the exceptional case.

The Principles Applied

[11] On a motion for leave to file a reply factum, it is good practice to provide the motion judge with the draft factum, as Mr. Murray has done.

[12] This is a factually complex appeal. Mr. Murray's proposed reply factum would cover six issues:

(1) Did the motion judge make an error in law or palpable and overriding error of fact by not considering TD's negligence and breach of contract?

(2) Did the motion judge make an error by not finding TD made 17 double withdrawals?

(3) Did the motion judge make an error in law or palpable and overriding error of fact by not finding TD owes Murray compensation for TD's errors?

(4) Did the motion judge make an error in law or palpable and overriding error of fact by misinterpreting the law of tort of conversion and/or the tort of detinue?

(5) Did the motion judge make an error by not addressing the limitation period?

(6) Did the motion judge err in according the sentencing judge's finding?

[13] Mr. Murray's proposed reply factum essentially reargues his case with more precision. In my view, only proposed issues 1 and 2 add more precise factual details that would materially advance the panel's understanding of the evidence and the factual context. The rest of the proposed factum does not do much more than repeat the arguments in Mr. Murray's original factum.

[14] I therefore permit Mr. Murray to serve and file a reply factum strictly limited to para. 1 of the proposed reply factum, and issues 1 and 2 only, as presently drafted, without any additional text.

[15] In view of the mixed success on this motion, I do not award costs.

"P. Lauwers J.A."