CITATION: The IBEW Local 353 Pension Plan v. TD Bank, 2026 ONSC 2625
COURT FILE NO.: CV-25-749268-00CL
DATE: 20260504

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
THE TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 PENSION PLAN and RONALD W. TAYLOR	)	*David Rosenfeld & Apollonia Mastrogiacomo*, for the Applicants
Applicants	)	
	)	*Linda Plumpton, Gillian Dingle, J. Tosh Weyman & Alec Angle*, for the Respondents
– and –	)	
THE TORONTO-DOMINION BANK and TD BANK US HOLDING COMPANY	)	
Respondents	)	
	)	
	)	**HEARD:** April 21, 2026

JUSTICE JANA STEELE

REASONS FOR DECISION

[1] The applicants, shareholders of The Toronto-Dominion Bank, seek leave of this court to bring a derivative action in Delaware on behalf of both TD Bank U.S. Holding Company ("TDBUSH"), a subsidiary of TD Bank, and The TD Bank Group.

[2] The proposed derivative action relates to the failure of TDBUSH to implement an anti-money laundering program, which led to criminal proceedings in the U.S. As part of the settlement, the respondents made admissions in the plea agreement that resulted in a $3 billion fine. The proposed derivative action would seek redress and accountability against the directors and officers.

[3] Leave is being sought in this court because of certain requirements under Delaware law. Essentially, because the shareholders own shares of TD Bank (the publicly traded parent company), and the proposed action is a derivative action in Delaware on behalf of TDBUSH (a

subsidiary of TD Bank) and The TD Bank Group, Delaware law requires that standing for the derivative claim must be established at the parent level (i.e., TD Bank, in Ontario). Delaware jurisprudence has held that the governing leave requirements for the parent company are those set out in the applicable laws of the parent company's domicile.

[4] For the reasons set out below, the application is dismissed.

Background

[5] The applicants, the Trustees of the International Brotherhood of Electrical Workers, Local 353 Pension Plan (the "Trustees"), are trustees of a pension plan.

[6] The respondent, The Toronto-Dominion Bank ("TD Bank") is a Schedule I bank under the *Bank Act*, S.C. 1991, c. 46 (the "*Bank Act*") with its headquarters in Toronto. TD Bank, together with its subsidiaries, is referred to as "TD Bank Group."

[7] The applicants, the Trustees and Ronald Taylor, own shares of TD Bank.

[8] TD Bank U.S. Holding Company ("TDBUSH") is a corporation incorporated in Delaware, headquartered in Cherry Hill, New Jersey. It is a wholly owned subsidiary of TD Bank and is the entity responsible for the U.S. anti-money laundering program ("AML Program").

[9] TD Bank N.A. ("TDBNA"), a subsidiary of TDBUSH, is a federally chartered bank in the United States.

[10] As a U.S. regulated financial institution, U.S. law requires TDBUSH and its subsidiaries to comply with the U.S. Bank Secrecy Act and AML requirements.

[11] On or about October 9 and 10, 2024, TDBUSH and TDBNA entered into a global resolution with U.S. prudential regulators and the U.S. Department of Justice ("DOJ") resulting from systemic failings in the bank's Bank Secrecy Act/AML Program (the "Global Resolution"). As part of the Global Resolution, TDBUSH and TDBNA agreed to monetary and non-monetary penalties and pled guilty to certain criminal charges.

[12] No individual directors or officers of TDBUSH or TDBNA were personally charged by the DOJ in connection with the Global Resolution.

[13] On June 27, 2025, the applicants gave notice of their intention to pursue a derivative action.

[14] The proposed claim would be against certain current and former directors and officers of TDBUSH who had oversight of and responsibility for implementing and monitoring the AML Program (the "Proposed Defendants").

[15] Under Delaware law, the proposed action is known as a double derivative action[1]. Expert evidence was filed by both the applicants and the respondents.[2]

Issues

[16] Can leave be granted pursuant to the *Bank Act*?

[17] Should leave be granted to the applicants to commence the derivative action?

Analysis

Can leave be granted pursuant to the Bank Act?

[18] The applicants seek leave under s. 334 of the *Bank Act* to commence a derivative action on behalf of both TDBUSH and the TD Bank Group, against the Proposed Defendants, in the Court of Chancery of the State of Delaware. The applicants allege that the Proposed Defendants breached certain duties they owed to TDBUSH imposed under Delaware law.

[19] I am of the view that leave to commence a derivative action in Delaware cannot be granted by this court. While I am aware that there are nuances of Delaware law that may make it difficult, if not impossible, for the TD Bank shareholders to seek leave to bring their derivative action in Delaware, that is a matter for Delaware law.

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[1] A double derivative action is a claim brought by a shareholder of a parent company to enforce a claim of a wholly owned subsidiary company where the parent company and the subsidiary company have refused to bring the claim directly. Delaware law dictates that standing to proceed with the derivative action must be established at the parent level, and that the governing leave requirements are those that are set out in the applicable statute of the domicile of the parent company. The Supreme Court of Delaware in *Sagarra Inversiones, S.L. v. Cementos Portland Vladerrivas*, S.A., 34 A. 3d 1074 (Del. 2011) explained as follows:

> [...] Under Delaware law, a shareholder that holds shares only in a parent corporation must establish its standing to proceed derivatively at the parent level, in order to claim standing to enforce, on the parent's behalf, a claim belonging to that parent's Delaware subsidiary.

In *Goyal on behalf of FSD BioSciences, Inc. v. Durkacz*, 2022 WL 1447382 (Del. Ch. May 5, 2022) the Delaware Court of Chancery dismissed a claim where a shareholder of an Ontario public company tried to bring a double derivative action on behalf of the wholly owned subsidiary of the Ontario company, which subsidiary was located in Delaware. The claim was dismissed because of a lack of compliance with the requirements of the *Business Corporations Act* (Ontario), the governing legislation of the Ontario parent company. However, the Delaware Court of Chancery indicated, at *6, that "if Goyal seeks and obtains leave of the Ontario court to pursue his double derivative claims, he may refile this action."

[2] The applicants filed a Report of Professor Edward B. Rock. The respondents filed a Report of Professor Guhan Subramanian.

[20] I am also not satisfied that the *Bank Act* may be interpreted to permit this court to grant the leave sought.

[21] Section 334 of the *Bank Act* provides:

> **334 (1)** Subject to subsection (2), a complainant[3] or the Superintendent may apply to a court for leave to bring an action under this Act in the name and on behalf of a bank or any of its subsidiaries, or to intervene in an action under this Act to which the bank or a subsidiary of the bank is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the bank or the subsidiary.
>
> **(2)** No action may be brought and no intervention in an action may be made under subsection (1) by a complainant unless the court is satisfied that
>
> > **(a)** the complainant has, not less than 14 days before bringing the application or as otherwise ordered by the court, given notice to the directors of the bank or the bank's subsidiary of the complainant's intention to apply to the court under subsection (1) if the directors of the bank or the bank's subsidiary do not bring, diligently prosecute or defend or discontinue the action;
> >
> > **(b)** the complainant is acting in good faith; and
> >
> > **(c)** it appears to be in the interests of the bank or the subsidiary that the action be brought, prosecuted, defended or discontinued.
>
> **(3)** A complainant under subsection (1) shall give the Superintendent notice of the application and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

[22] The principles of statutory interpretation require that statutes, such as the *Bank Act*, be "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament:" *Rizzo & Rizzo Shoes Ltd. (Re)*, [1988] 1 S.C.R. 27, at para. 21; *Canadian (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 117-118. The parties agree on the principles of statutory interpretation but disagree on how they apply to the *Bank Act*.

[23] The applicants submit that on a plain reading of s. 334 of the *Bank Act* the applicants are shareholders of TD Bank (complainants) and they may apply to a court (being a superior court in one of the provinces or territories) "for leave to bring an action under this Act in the name of and on behalf of a bank or any of its subsidiaries." TD Bank Group is a "bank" under the *Bank Act*. TDBUSH is a subsidiary of TD Bank Group. The applicants submit that s. 334 contemplates

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[3] S. 2 of the *Bank Act* defines a "complainant" in relation to a bank matter to include "(a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a bank or any of its affiliates."

derivative actions on behalf of subsidiaries that are not "banks" (if they were incorporated under the *Bank Act*, they would be a bank). Accordingly, subsidiaries incorporated under other statutes, such as the *Canada Business Corporations Act* would be covered by s. 334. The applicants' position is that "subsidiaries" covered under s. 334 could be those incorporated in foreign jurisdictions.

[24] The applicants submit that there is nothing in the *Bank Act* that would restrict the court from authorizing the commencement of litigation in a foreign jurisdiction. They submit that neither the definition of "subsidiary"[4] nor the leave mechanism in s. 334 of the *Bank Act* include any language limiting their scope to either Canadian subsidiaries or to litigation within Canada.

[25] The applicants also point to section 15(4) of the *Bank Act*, which provides:

> Subject to this Act, a bank has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Canada to the extent and in the manner that the laws of that jurisdiction permit.

[26] The applicants submit that because banks subject to the *Bank Act* can operate outside Canada, it would not make sense to limit derivative actions to Canada. The applicants argue that limiting the application of section 334 to actions in Canada would require reading in words to the statute. The applicants note that section 334 of the *Bank Act* is a remedial provision, which should be given a broad and liberal interpretation. They argue that it would be contrary to s. 334 to shield disloyal fiduciaries of foreign subsidiaries of a Canadian bank from litigation in the jurisdiction in which they operate.

[27] The *Bank Act* has been described as a complete code governing the regulation of banks: *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121.

[28] The respondents submit that in drafting the *Bank Act*, Parliament did not intend for the derivative action leave provisions to be used to commence an action anywhere in the world. The respondents submit that the words "under this Act" following the phrase that a complainant "may apply to a court for leave to bring an action" ought to be interpreted to mean an action known to Canadian law.

[29] There is limited guidance in the jurisprudence regarding the phrase "under this Act." The case law supports a broad interpretation of the phrase "under this Act:" See, *Churchill Pulpmill Ltd. v. Manitoba Government*, 1977 CanLII 2157 (MB C.A.), and *148066 Canada Inc. v. Ottawa Civic Hospital*, 2003 CanLII 24854.

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[4] S. 2 defines "subsidiary" to mean "an entity that is a subsidiary of another entity as defined in section 5. Section 5 of the *Bank Act* provides that "an entity is a subsidiary of another entity if it is controlled by the other entity."

[30] In *Churchill Pulpmill*, the Manitoba Court of Appeal, first noted that the legislation at issue (The Corporations Act, 1976 (Man)) was a "very broad and comprehensive piece of legislation," which "should be broadly construed." In that case, the plaintiff, Churchill Pulpmill Ltd. (a corporation incorporated in the State of Nevada) ("Churchill") was the beneficial owner of all of the shares of Churchill Forest Industries (Manitoba) Limited ("CFI"). Churchill sought to bring a derivative action on behalf of CFI. The defendants argued that Churchill did not have standing under the Corporations Act, because they did not seek leave of the court to bring the derivative action. The Manitoba Court of Appeal rejected the narrow interpretation propounded by the defendants and stated: "The phrase "under this Act" warrants a broader construction, one that is co-extensive with the subject matter of the Act in its totality." The court found that the action fell within the broad purposes of the Corporations Act and that s. 232 (the provision under which a complainant may apply for leave to bring a derivative action) applied.

[31] In *Ottawa Civic Hospital*, a former director/officer of Curwood & Sons Ltd. sought leave to intervene pursuant to s. 239(1) of the *Canada Business Corporations Act*, to control the conduct of the action on behalf of Curwood. The plaintiff argued that the former director/officer did not have standing to intervene pursuant to the *CBCA* in part, because the action was not an action "under this Act," as it did not involve corporate or shareholder issues, but was a construction lien action. The court, at para. 33, rejected this narrow interpretation and held that "under this Act" would not exclude construction liens against the corporation. The court went on to quote from the 2001 annotated *Canada Business Corporations Act*, at para. 428, which states that "the term 'action' extends to the application of the provisions of Part XX to any legal actions to which the corporation is a part."

[32] The applicants and respondents in the instant case diverge as to whether a broad interpretation of "under this Act" in the context of s. 334 of the *Bank Act* encompasses an action prosecuted in another country's court, pursuant to the laws of that other country. The applicants submit that "under this Act" does not require the derivative action to be prosecuted in a Canadian court. The respondents submit that "under this Act" means an action known to Canadian law, which would not include a Delaware action.

[33] I am not persuaded by the applicants' submission that *Churchill Pulpmill* or *Ottawa Civic Hospital* support their proposed interpretation. Neither *Churchill Pulpmill*, nor *Ottawa Civic Hospital* considers or even contemplates whether "under this Act" includes foreign causes of action prosecuted in foreign courts. Both cases involved a Canadian claim prosecuted in a court in a Canadian jurisdiction.

[34] I agree with the respondents that *Churchill Pulpmill* and *Ottawa Civic Hospital* are more aligned with the respondents' interpretation of "under this Act." In particular, the action must be a cause of action known to Canadian law.

[35] The respondents further submit that the interpretation of s. 334 of the *Bank Act* propounded by them is consistent with the surrounding provisions. I agree.

[36] Section 335 of the *Bank Act* sets out the powers of the court "in connection with an action brought or intervened in under subsection 334(1)." As noted by the respondents, these are powers given to a superior court in a province or territory in Canada, not to the Delaware Court of Chancery. Section 336(2) of the *Bank Act* prevents an action brought under section 334 from being "stayed, discontinued, settled or dismissed for want of prosecution without the approval of [a superior court of one of the provinces or territories of Canada]." The framework set out in the *Bank Act* is consistent with the action having to proceed in Canada, with the oversight jurisdiction granted to the superior courts in the provinces and territories of Canada.

[37] I further note that where Parliament contemplated the impact of a foreign jurisdiction's laws, the *Bank Act* uses clear language. For example, section 329 of the *Bank Act* pertains to auditors of subsidiaries, requiring generally that subsidiaries of a bank be audited by the same auditor as the parent bank. However, section 329(2) contemplates that there may be jurisdictions where this is not permissible, providing:

> (2) Subsection (1) applies in the case of a subsidiary that carries on its operations in a country other than Canada unless the laws of that country do not permit the appointment of an auditor of the bank as the auditor of that subsidiary.

[38] The specific language used in section 329(2) of the *Bank Act* can be contrasted with section 334, which says nothing regarding how the laws of a foreign jurisdiction may apply to a derivative action in respect of a subsidiary.

[39] The parties were unable to find any case where a Canadian court has granted leave to Canadian shareholders to proceed with a derivative action in a foreign country.

[40] Both parties retained experts on Delaware law. Neither Delaware law expert was able to find a case where a foreign court has granted leave to proceed with an action that is allowed to proceed in Delaware.

[41] While there are no Canadian cases where leave has been sought to proceed with a derivative action in a foreign jurisdiction, the respondents noted that there are cases in Canada dealing with different Canadian jurisdictions that are instructive. In my view, these cases support the respondents' position that this court cannot grant leave to proceed with an action in Delaware.

[42] In *LaRoche v. HARS Systems Inc.*, 2001 BCSC 140, 86 B.C.L.R. (3d) 166, a complainant sought leave in British Columbia to prosecute two existing actions on behalf of a B.C. corporation against certain persons in Alberta. The British Columbia Supreme Court denied leave because it would give the B.C. *Companies Act* extra-territorial application. The BCSC looked at the definitions of "company" and "extra-Provincial company." The BCSC concluded that the legislature did not intend for the B.C. *Companies Act* to have extra-territorial application, stating, at paras. 87 and 88:

> [87] The provisions of the Act do not suggest that it was the intention of the British Columbia Legislature that the statutory derivative action provisions of the

> Companies Act should empower this Court to give leave to a member of a company incorporated under the Act to commence, diligently prosecute or defend, an action brought in the Province of Alberta. The provisions suggest the contrary, that only this Court can grant such leave, and the action must be one commenced in this Court.
>
> [88] [...] The derivative action provisions of the British Columbia Company Act then are confined to the Province of British Columbia, and can have no extra territorial effect.

[43] In *Nova Ban-Corp Limited v. Tottrup*, [1990] 1 F.C. 288, Nova Ban obtained leave from the Alberta Court of Queen's Bench to commence a derivative action in the Federal Court. The Federal Court, in considering a similar derivative action leave provision from the *Canada Business Corporations Act*,[5] determined that the action should be brought in the same court as the leave application. The court stated, on page 293:

> In subsection 2(1) of the Act the word "court" is defined to mean the superior courts of the various provinces as specifically named therein. In respect of Alberta the relevant "court" at the time this order was made would have been the Court of Queen's Bench. On its face subsection 232(1) might suggest that if that "court" once authorized an action whether in that court or some other court, then Parliament must be taken to have so authorized the action. However it is clear from subsections 232(2) and 234(2) that the action or application when brought must also be brought in the "court" as defined; namely, in Alberta, in the Court of Queen's Bench. In subsection 232(2) it is provided that "No action may be brought ... under subsection (1) unless *the court* is satisfied that …". This clearly implies that the action is to be brought in the same "court" as gives leave for the action to be brought. Similarly in subsection 234(2) it is the "court" which has authority to give the various forms of relief specified there, some of which relief might be involved in the statement of claim filed in the Federal Court in this Action. Thus the *Canada Business Corporations Act* does not provide a basis for a creditor to commence proceedings in the Federal Court in the name of its debtor in respect of the tax assessment of that debtor.

[44] I agree with the above analysis and am of the view that it applies to the interpretation of the *Bank Act*. The language in s. 334(1) of the *Bank Act* similarly provides that a complainant "may apply to a court for leave to bring an action [...] in the name of and on behalf of" a bank.

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[5] The provision was 232(1) of the CBCA: Subject to subsection (2), a complainant may apply to a court for leave to bring an action in the name and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.

The language in s. 334(2) similarly provides that no action may be brought under s. 334(1) "unless the court is satisfied" that certain conditions have been met. I agree with the court in *Nova Ban* that "[t]his clearly implies that the action is to be brought in the same 'court' as gives leave for the action to be brought."

[45] The applicants argue that there is a procedural void if this court cannot grant leave under s. 334 of the *Bank Act*, because Delaware's double derivative requirement means there is no other avenue for leave to be granted. However, as noted above, if there is a procedural void, it arises because of Delaware law and, if appropriate, ought to be addressed there.

[46] This court cannot grant the leave requested.

Should the Court grant leave?

[47] In any event, the instant case is not one where leave ought to be granted under s. 334 of the *Bank Act*.

[48] As set out above, section 334(2) of the *Bank Act* establishes three requirements for granting leave. There is no dispute that the first two requirements have been satisfied (i.e., s. 334(2)(a) and 334(2)(b)). However, the parties dispute whether the proposed derivative action "appears to be in the interests of the bank or the subsidiary" that it be "brought, prosecuted, defended or discontinued:" s. 334(2)(c), *Bank Act*.

[49] There has been little consideration of s. 334 of the *Bank Act*, and no court has specifically considered s. 334(2)(c) of the *Bank Act*. However, there are similar provisions in other business corporation statutes that have been considered by the court. In determining whether a proposed derivative action appears to be in the interests of the corporation, courts have noted that applicants must show that there is an "arguable" case: *Bellman v. Western Approaches Limited*, (1981) 130 D.L.R. (3d) 193 (BC C.A.), at para. 19, *Clark v. Cen-Ta Real Estate Ltd et al*, 2025 ONSC 5759, 179 O.R. (3d) 379, at paras. 103-104.

[50] The applicants submit that the proposed derivative action appears to be in the best interests of TDBUSH. Among other things, if the action is successful, it would result in direct recovery to TDBUSH and confer benefits on the TD Bank Group. The applicants state that there will be minimal costs to TDBUSH and TD Bank Group in the prosecution of the Proposed Derivative Action because they will not be required to pay applicants' counsel to prosecute the action. Applicants' counsel fees would be paid only if the action is successful and subject to court approval. The applicants submit that the Proposed Derivative Action would require minimal further resources from TDBUSH or TD Bank Group because TDBUSH has already gathered substantial evidence in its efforts to cooperate with the U.S. investigations.

[51] Among other things, the applicants have not provided a draft pleading. The applicants provided a Notice of Intent to Apply for Leave to Commence a Derivative Action pursuant to s. 334 of the *Bank Act* (the "Notice of Intent") to the directors, which they submit, combined with

the admissions in the U.S. plea agreement, should be sufficient detail to understand what the proposed action is about and to assess the merits of the proposed action.

[52] The issue, as noted by the respondents, is that there are 28 proposed defendants and allegations that span over a decade. The respondents argue that the Notice of Intent is a long effort to copy and paste from the record of the plea bargains, without placing the details in a legal framework, or attaching it to the Potential Defendants individually. The Notice of Intent says that the Proposed Defendants have collectively done certain wrongs, but it does not particularize which Proposed Defendant is alleged to have done what, when, and how. The respondents note that the agreed statement of facts that was filed in respect of the U.S. plea agreement does not specify which of the officers in the 11-year period were involved in the conduct at issue, at which time, and which aspects. Further, neither expert on Delaware law commented on whether there is a limitation period in Delaware, and if so, the particulars of the limitation period.

[53] The respondents note that TD Bank's and TDBUSH's boards of directors (without the participation of any of the Potential Defendants) considered the Notice of Intent at a joint informal meeting. The boards decided unanimously "to decline at this time from considering the proposed claim due to procedural irregularities and the potential impact on pending litigation."

[54] As noted by the applicants, a bank's decision not to pursue a proposed action is not determinative of whether the action is in the interests of the bank, otherwise s.334(2)(c) of the *Bank Act* would not be necessary.

[55] In *Sandpiper Real Estate Fund 4 Limited Partnership v. First Capital Real Estate Investment Trust*, 2023 ONSC 794, 39 B.L.R. (6th) 77, at paras. 16-19, Kimmel J. summarized the legal framework applicable when the business judgment of the board is at issue:

> [16] Where the business judgment of the Board is at issue, the role of the court is to determine "whether the board applied the appropriate degree of prudence and diligence in coming to its decision on the timing of the special meeting": [*Marks v. Intrinsyc Software International Inc.*, 2013 ONSC 727, 10 B.L.R. (5th) 133] at paras. 7, 25.
>
> [17] In determining whether the Board has properly exercised its business judgment, the court can consider the process of the Board's decision making as well as the grounds upon which the decision was made and the factors taken into consideration: see *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc.* (2002), 2002 CanLII 49507 (ON SC), 214 D.L.R. (4th) 496 (Ont. S.C.), at para. 156.
>
> [18] Courts must defer to the business judgment of the Board provided that its decision falls "within a range of reasonableness" and will not interfere with the Board's decision unless the Board is shown to have acted for an improper purpose or unreasonably: see *Paulson & Co. v. Algoma Steel Inc.* (2006), 2006 CanLII 116 (ON SC), 79 O.R. (3d) 191 (Ont. S.C.), at para. 43; *Marks*, at para. 7.

> [19] As described by the Supreme Court of Canada in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 84, "[e]verything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way."

[56] The applicants submit that there is insufficient evidence before the court to assess the decision of TD Bank's and TDBUSH's directors. Among other things, the applicants submit that the redacted minutes of the joint meeting that were filed do not provide a basis for the court to assess the reasonableness of the decision made. The applicants further submit that the one short joint meeting that was held to consider the Notice of Intent was insufficient.

[57] In *Sandpiper*, Kimmel J. determined, at para. 60, that the board had not shown that they had engaged in "scrupulous deliberations" or demonstrated diligence in their decision making. The board had held one meeting for about two hours, where other agenda items were also discussed. In *Sandpiper*, unlike the instant case, the directors that had a potential conflict were present and voted on the resolution at issue. Kimmel J. noted that "their views lack independence and objectivity."

[58] The boards of TD Bank and TDBUSH have been intricately involved with the AML matters. The boards have sophisticated counsel who attended the joint informal board meeting. The boards obtained legal advice, which is subject to privilege. The boards are aware of the other proceedings that have already been launched against the bank and indicated that one of the reasons for not pursuing the proposed action is the potential impact on pending litigation.[6]

[59] As noted by the respondents, currently the TD Bank Group and certain of the Proposed Defendants are aligned in their defence of the other actions. That would likely change if the TD Bank Group were to bring an action against the Proposed Defendants. Further, as noted by the respondents, there is a significant risk that evidence from the proposed derivative action could be used against the TD Bank Group in the other pending litigation. Any evidence obtained in the proposed derivative action would be relevant and likely prejudicial to the bank's defence in the other (some of which are much larger), actions.

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[6] The following actions related to the TD Bank Group's U.S. AML issues that resulted in the Global Resolution have already been commenced: *Parkin et al. v. TD Bank* (a securities class proceeding in Ontario pursuant to which the plaintiffs claim damages against TD and certain current and former directors and officers in the sum of approximately $20 billion); *Tiessen v. TD Bank* (a securities class proceeding in the Southern District of New York alleging, among other things, violations of federal securities laws, and seeking damages); *Gonzalez v. The Toronto-Dominion Bank et al.* (a securities class proceeding in the Southern District of New York, which was consolidated with the *Tiessen* action); *Rubin v. Masrani* (a shareholder derivative complaint against current/former directors, officers and employees of TD and its affiliates, commenced in the Supreme Court of the State of New York); and *Glasberg v. TD et al.* (a securities class proceeding in Quebec. This action has been stayed pending the leave and certification decision in *Parkin*.)

[60] The boards' decision in the instant case falls "within a range of reasonableness" given, among other things, the other ongoing litigation.

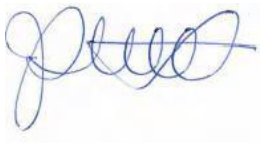
[61] I am not persuaded that it appears to be in the interests of the bank or the subsidiary that the derivative action be brought.

[62] Leave should not be granted to the applicants to commence the derivative action under s. 334 of the *Bank Act*.

Disposition and Costs

[63] The application is dismissed.

[64] The applicants shall pay the respondents' costs fixed in the amount of $85,000 (inclusive of taxes and disbursements).



Justice Jana Steele

Released: May 4, 2026

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