CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-001309-240

SUPERIOR COURT
(Class Actions)

BRIAN GLASBERG

Plaintiff

v.

THE TORONTO-DOMINION BANK
-et al.-

Defendants

DEFENDANTS' APPLICATION TO STAY THE HYBRID APPLICATION FOR AUTHORIZATION
(Art. 49 CCP and Art. 3137 CCQ)

TO THE HONOURABLE CATHERINE PICHÉ, J.S.C., SITTING AS DESIGNATED CASE MANAGEMENT JUDGE, THE DEFENDANTS RESPECTULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The Defendants seek to stay the Plaintiff's *Motion for Authorization to Bring an Action Pursuant to Section 224.5 of the Québec Securities Act and Application to Institute a Class Action* (the "**Glasberg Proceeding**") filed on May 27, 2024, and amended on October 15, 2024.

2. Three (3) parallel proceedings were initially pending in Ontario. On February 21, 2025, Leiper J. granted carriage to the proceedings initiated on May 24, 2024 by plaintiff Angela Parkin and others in the Ontario Superior Court of Justice file no. CV-24-00720906-00CP (the "**Parkin Proceedings**").[1]

3. The Parkin Proceedings will now proceed with motions seeking (i) to certify the action as a class action under the Ontario *Class Proceedings Act,*[2] (the "**OCPA**"), and (ii) leave under the harmonized Canadian provincial and territorial securities

[1] This decision is reported as 2025 ONSC 1201. It is discussed further below and communicated as Exhibit R-12.

[2] 1992, SO 1992, c. 6.

legislation (the "**Securities Legislation**") to commence secondary market misrepresentation claims.

4. Leiper J. is keen to have the Parkin Proceedings progress quickly and has already ordered counsel to communicate with her office within 15 days of the carriage decision (that is, before March 10, 2025) to schedule a case conference for setting a timetable for the leave and certification motions.

5. For the reasons set out below, the Defendants hereby seek a stay of the Glasberg Proceeding until a final decision on the certification and leave motions is rendered in the Parkin Proceedings. All criteria for a stay of proceedings grounded in *lis pendens* are met (art. 3137 CCQ) and, in any case, the interests of justice favour a suspension under the court's inherent power (art. 49 CCP).

6. The Glasberg and Parkin Proceedings meet the triple identity test of *lis pendens* under art. 3137 CCQ, as interpreted in class proceedings, in that they are between (i) the same parties, (ii) based on the same facts and (iii) have the same subject matter.

7. The Glasberg and Parkin Proceedings both seek compensation, on behalf of all TD Bank securities-holders, for losses in the value of those securities allegedly caused by misrepresentations relating to TD Bank's compliance with anti-money laundering ("**AML**") laws, regulations, and policies (the "**Alleged Misrepresentations**").

8. It is the same dispute brought before two courts on behalf of the same plaintiff class.

9. The Parkin Proceedings were filed before the Glasberg Proceeding and can result in a decision that may be recognized in Québec under applicable law.

10. The rights and interests of Québec residents are fully protected in the Parkin Proceedings, the whole in accordance with art. 577 CCP, as more fully explained below.

11. Allowing virtually identical and overlapping class proceedings to proceed concurrently in Ontario and Québec would be contrary to the interests of the administration of justice, proportionality, efficiency, and interprovincial comity.

12. Given the extensive evidence required in these types of proceedings, it is not in the best interests of the administration of justice for the Glasberg Proceeding to proceed with a narrower class of only Québec residents.

13. Lastly, the Defendants have a right to a full and fair defence and should not be required to defend the same claims brought on behalf of the same class in multiple jurisdictions at the same time.

14. A stay favours the interests of justice while protecting the rights and interests of the Québec residents of the putative classes.

II. THE PARKIN PROCEEDINGS

15. The parties, facts, and subject matter of the Parkin Proceedings are essentially the same as those alleged in the Glasberg Proceeding, such that the Parkin Proceedings meet the international *lis pendens* criteria of art. 3137 CCQ.

A. COMMENCEMENT PRIOR TO THE GLASBERG PROCEEDING

16. In Ontario, class proceedings are usually initiated by a *Notice of Action*, followed by a *Statement of Claim*, a *Certification Motion* under the OCPA, and a *Leave Test Motion* under the Ontario *Securities Act*[3] (the "**OSA**").

17. The Parkin Proceedings were commenced by *Notice of Action* on **May 24, 2024**, and amended on June 18, 2024, communicated herewith as **Exhibits R-1** and **R-2**.

18. The *Statement of Claim* was issued on or about June 24, 2024, and amended on November 4, 2024, communicated herewith as **Exhibits R-3** and **R-4**.

19. Plaintiffs' counsel in the Parkin Proceedings sought leave under s. 138.8 of the OSA (the equivalent to s. 225.4 of the *Québec Securities Act*[4] (the "**QSA**")) and, if necessary, under the concordant provisions of other Securities Legislation (the preliminary *Leave Test Motion*) to commence a class action for secondary market misrepresentations, *nunc pro tunc* to May 24, 2024, as appears from the *Motion Record* dated September 6, 2024, communicated herewith as **Exhibit R-5**.

i. Parties

20. The Parkin Proceedings seek compensation for the alleged loss of value of TD Bank's securities resulting from the Alleged Misrepresentations suffered by the following proposed global class including Québec residents:

> *All persons or entities, wherever they are resident, who acquired TD Bank securities during the period from May 27, 2021 to October 9, 2024 ("Class Period") and held some or all of those securities through one or more of the public correction dates: May 8, 2023, August 24, 2023, January 8, 2024, April 30, 2024, May 2, 2024, May 3, 2024, August 22, 2024, or October 9-10, 2024.*
>
> *The Class excludes the Defendants' subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors, assignees, and the immediate family members of the Individual Defendants.*

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[3] LRO, 1990, c. S-5.

[4] RLRQ, c. V-1.1.

(the “**Parkin Class**”)

21. The Parkin Proceedings name the same defendants as the Glasberg Proceeding, plus the following additional individual defendants: Leovigildo Salom, Greg Braca, Alan N. MacGibbon, Mary A. Winston, Brian M. Levitt, Michael Bowman, Mia Levine, Kevin Doherty, and Allen Love. These individuals are or were officers or directors who allegedly authorized the release of documents containing Alleged Misrepresentations or allegedly made public oral statements to the same effect.

22. The proposed class period is from May 27, 2021, to October 9, 2024 (from the date of the first Alleged Misrepresentation to the day before the last alleged partial corrective disclosure):

a) **As an opening date**: the release of the 2021 Q2 Results Report to Shareholders on May 27, 2021; and

b) **As a closing date**: the disclosure by *The Wall Street Journal* that i) a U.S. regulator had limited TD Bank’s expansion in the U.S. and that ii) U.S. subsidiaries of TD Bank were expected to pay about US$3 billion in penalties as part of a settlement with regulators and prosecutors over AML charges. The Parkin Proceedings identify “October 9-10, 2024” as their last alleged partial corrective disclosure.

ii. Facts

23. The Parkin Proceedings assert primary and secondary market claims under the Securities Legislation, including the QSA, arising from the Alleged Misrepresentations. They also assert causes of action for alleged negligent misrepresentations, equivalent to the cause of action under art. 1457 CCQ asserted in the Glasberg Proceeding, as well as vicarious liability.

iii. Subject Matter

24. As noted above, the Parkin Proceedings seek certification of a class action under the OCPA and leave to bring a secondary market action under s. 138.8 of the OSA.

B. THE PARKIN PROCEEDINGS ARE PROGRESSING SWIFTLY

i. Developments Prior to the Decision on Carriage

25. On June 13, 2024, the Parkin Proceedings were assigned for case management to Akbarali J. of the Ontario Superior Court of Justice in Toronto. The other two Ontario proceedings were also assigned to Akbarali J. promptly after they were commenced.

26. Because three proposed class actions based on the same facts were commenced in Ontario, plaintiffs’ counsel was required under s. 13.1 of the OCPA to bring a motion for “carriage” of the case and to request a stay of the other proceedings.

27. On September 4, 2024, a joint case management conference was held before Akbarali J. to establish a date for the hearing of the Carriage Motions and a timetable for briefing same. Akbarali J. scheduled the hearing of the Ontario Carriage Motions for January 6, 2025, as appears from the endorsement of Akbarali J. dated September 4, 2024, communicated herewith as **Exhibit R-6**.

28. These developments in Ontario took place before a case management judge was assigned to the Glasberg Proceeding on September 16, 2024.

29. Following the joint case management conference, Akbarali J. was re-assigned to the criminal judicial list and the Ontario Superior Court of Justice assigned Madame Leiper J. as the new case management judge, as appears from a copy of the email from Akbarali J.'s assistant dated October 24, 2024, communicated herewith as **Exhibit R-7**.

30. The hearing of the Ontario Carriage Motions was promptly rescheduled to January 27, 2025 in order to accommodate her schedule. The motions were heard on that day.

31. Plaintiff in the Parkin Proceedings prepared a considerable record to show that her case will advance diligently, as appears from the *Motion Record for a Motion for Carriage* of July 24, 2024, the *Supplemental Motion Record* of November 1, 2024, the *Responding Motion Record* of November 22, 2024, and the *Reply Motion Record* of December 6, 2024, communicated herewith respectively as **Exhibits R-8, R-9, R-10 and R-11** (the "**Carriage Materials**").

32. As appears from the Carriage Materials, seven (7) proposed experts have already been retained by plaintiffs' counsel in the Parkin Proceedings and, except for experts Freis, Cox, Brown, and Joyce, they have all provided preliminary opinions, subject to finalization now that the Parkin Proceedings have been granted carriage:

    a) **US banking regulatory & AML controls/violations experts**:

        i) James H. Freis;

        ii) Dennis W. Cox;

        iii) David Brown;

    b) **Canadian banking expert**:

        i) Sara Joyce;

    c) **Corporate governance expert**:

        i) Garfield Emerson;

    d) **Accounting expert**:

        i) Prof. Gordon Richardson;

e) **Forensic economics expert**:

i) Sunita Surana (Forensic Economics, Inc.).

33. As also appears from the Carriage Materials, plaintiffs' counsel in the Parkin Proceedings engaged in discussions with counsel in the Glasberg Proceeding regarding (i) the status of each proceeding, (ii) the investigation of the cases, (iii) the relative size of the holdings of TD Bank shares by Québec residents, and (iv) a potential consortium. These discussions are apparently ongoing. Plaintiffs' counsel in the Parkin Proceedings also state that they have worked with counsel in the Glasberg Proceeding as co-counsel on previous securities class actions, including in *Catucci c. Valeant Pharmaceuticals International Inc.*

ii. Carriage Granted to the Parkin Proceedings

34. On February 21, 2025, less than a month after the hearing on the Ontario Carriage Motions, Leiper J. granted carriage to the Parkin Proceedings, as appears from said decision communicated herewith as **Exhibit R-12** (the "**Carriage Decision**").

35. In the Carriage Decision, Leiper J. concluded that the Parkin Proceedings were "best suited to advance class members' claims in an efficient and cost-effective manner". In particular, Leiper J. noted:

a) The Parkin Proceedings began their "preparation and research in January 2024 [and have] advanced the furthest since that date. . ."

b) The Parkin Proceedings have "added an experienced representative class plaintiff, The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund."

c) Class counsel "have acted as lead or co-lead counsel in over 16 securities class actions . . . They are the only firm in Canada to have prosecuted the only two common issues securities trials in Ontario."

d) Leiper J. thus ruled in favour of the Parkin Proceedings considering that they have "been either in first place or tied for first place in its proposal for the theory of its case, work done to date, choice of defendants, experience in securities "mega-fund" class actions. . ."

36. As mentioned earlier, and as appears from the Carriage Decision, Leiper J. is keen to have the proceedings progress quickly and a case conference will be scheduled shortly for setting a timetable for the leave and certification motions.

III. THE GLASBERG PROCEEDING

A. The Class Action Proposed By Mr. Glasberg

i. Parties

37. The Glasberg Proceeding was filed on **May 27, 2024**, while the Parkin Proceedings were already pending, and was extensively amended on October 15, 2024.[5] Like the Parkin Proceedings, it seeks to represent a *global* class of security-holders, including residents of Québec:

> *(i) Primary Market Sub-Class: All persons and entities who acquired The Toronto-Dominion Bank securities in an Offering on or after March 2, 2021 […], and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024; and*
>
> *(ii) Secondary Market Sub-Class: All persons and entities who acquired The Toronto-Dominion Bank securities on the secondary market on or […] after March 2, 2021, and held some or all of those securities until after the close of trading on (1) May 8, 2023, (2) August 24, 2023, (3) January 8, 2024, (4) April 30, 2024, […] (5) May 2, 2024, (6) May 3, 2024, or (7) October 10, 2024;*

38. The Glasberg Proceeding is directed against TD Bank and the following individual defendants whom it alleges were involved in the Alleged Misrepresentations:

a) Bharat B. Masrani, TD Bank's Group President and Chief Executive Officer since November 1, 2014, and a member of TD Bank's Group Board of directors since April 2024, both until he retired from the Bank on February 1, 2025;

b) Kelvin Vi Luan Tran and Riaz Ahmed, each of whom were the Chief Financial Officer of TD Bank during part of the proposed Glasberg Class Period.

39. The Glasberg Proceeding proposes a class period from March 2, 2021 to October 10, 2024 (the "**Glasberg Class Period**"), being the date of the first Alleged Misrepresentation to the date of the last alleged partial corrective disclosure:

a) **As an opening date**: the release of a TD Bank management proxy circular indicating that its audit committee "oversaw the execution and ongoing effectiveness of the [AML program]"; and

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[5] Leave to make further amendments, including further changes to the proposed Glasberg Class Period, was requested by application notified on February 19, 2025. As leave has not been granted, we do not address those.

b) **As a closing date**: the publication by U.S. subsidiaries of the TD Bank of guilty pleas to AML charges in the U.S. and the release of i) the U.S. Department of Justice's statement and ii) two newspaper articles on the matter.

ii. Facts

40. The Glasberg Proceeding asserts primary and secondary market claims under the Securities Legislation, including the QSA, arising from the Alleged Misrepresentations and a general civil liability claim under art. 1457 CCQ.

iii. Subject Matter

41. The Glasberg Proceeding seeks authorization to institute a class action under art. 575 CCP and leave to bring a secondary market action under s. 224.5 of the QSA.

IV. THERE IS *LIS PENDENS* BETWEEN THE GLASBERG PROCEEDING AND THE PARKIN PROCEEDINGS

42. The Parkin Proceedings were commenced on May 24, 2024, before the Glasberg Proceeding was filed, and there is *lis pendens* between them. They are between the same parties, are based on the same facts, and have the same subject matter.

43. Both the Glasberg Proceeding and the Parkin Proceedings are directed at TD Bank and some of its current and/or former senior executives.[6] The Parkin Proceedings include additional defendants to those named in the Glasberg Proceeding. Small differences in the commencement date of the proposed class period are irrelevant.

44. Both proceedings seek to represent the same *global* class (no geographic limitations), comprised of all persons, including residents of Québec, among many others, who acquired TD Bank's securities after the Alleged Misrepresentations and continued to hold them until after corrective disclosure was made.

45. Both proceedings are premised on Alleged Misrepresentations about the same AML compliance issues that were allegedly made in documents issued by the TD Bank or in statements made or whose release is alleged to have been authorized by the individual defendants.

46. Both proceedings assert primary and secondary market claims under the Securities Legislation, including the Québec *Securities Act* and the Ontario *Securities Act,* and raise similar additional causes of action under the general law of civil liability.

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[6] In the Glasberg Proceeding, Bharat B. Masrani, Kelvin Vi Luan Tran, and Riaz Ahmed (collectively, the "**Individual Defendants**", and collectively with TD Bank, the "**Defendants**"),

47. Both proceedings seek leave to bring a class action under the Securities Legislation (s. 225.4 of the QSA or its equivalent at s. 138.8 of the OSA) for primary and secondary market claims.

48. The Parkin Proceedings assert civil liability causes of action for (i) negligent misrepresentations and omissions analogous to the civil liability cause of action under art. 1457 CCQ asserted in the Glasberg Proceeding, and (ii) vicarious liability, analogous to the principal's liability.

49. Both proceedings seek the same remedy: compensatory damages for the alleged loss of value of TD Bank's securities resulting from the Alleged Misrepresentations suffered by a global class.

V. THE RIGHTS AND INTERESTS OF QUÉBEC RESIDENTS ARE PROTECTED IN THE PARKIN PROCEEDINGS

50. The rights and interests of Québec residents are protected in the Parkin Proceedings. A stay of proceedings until a final judgment on certification and leave in Ontario would favour their interests, the sound administration of justice, proportionality, judicial efficiency, comity, and judicial collaboration in a multi-jurisdictional Canadian context.

51. The Parkin Proceedings are progressing swiftly, as illustrated in the Carriage Materials (Exhibits R-8 to R-11) detailing the steps taken to move their case forward, and the Carriage Decision rendered on February 21, 2025 (Exhibit R-12).

52. In that decision, Leiper J. found that the Parkin Proceedings were best suited among the Ontario proceedings to advance the claims of the proposed classes, all of which include Québec residents, in an efficient and cost-effective manner.

53. Leiper J. has directed that a case management conference be held by March 10, 2025 to schedule a timetable for leave/certifications motions.

54. The Parkin Proceedings put forward much more extensive expert evidence than the Glasberg Proceeding. While Mr. Glasberg has only retained two experts, one for governance and one for materiality, Angela Parkin action has retained and/or already filed preliminary expert evidence on:

    i) US banking regulatory & AML controls/violations (3 experts)

    ii) Canadian banking (1 expert)

    iii) Corporate governance (1 expert)

    iv) Accounting (1 expert)

    v) Forensic economics (1 expert)

55. All of the evidence proposed in the Parkin Proceedings may be of benefit to the Québec residents in the class proposed there.

56. Class counsel in the Parkin Proceedings and in the Glasberg Proceeding were or have been in communication with each other, and the expertise of class counsel in the Parkin Proceedings in the areas of securities class actions and common issues trials is extensive and will benefit class members, as emphasized in the Carriage Decision.

57. The Parkin Proceedings, like the Glasberg Proceeding, rely on the same Securities Legislation, including the QSA, and similar civil liability claims. Québec residents will enjoy all the protections and rights offered under the QSA because the Securities Legislation is harmonized across Canada.

58. The Parkin Proceedings seek the same *remedy* as in the Glasberg Proceeding for putative class members: compensation for alleged loss of value of TD Bank's securities resulting from the Alleged Misrepresentations. As noted, the proposed class in the Parkin Proceedings includes the claims of security-holders who reside in Québec.

VI. IT IS IN THE INTERESTS OF JUSTICE TO STAY THE GLASBERG PROCEEDING

59. Allowing virtually identical and overlapping class proceedings to advance concurrently in Ontario and Québec would be contrary to the interests of the administration of justice, proportionality, efficiency, and interprovincial comity.

60. The Parkin Proceedings will proceed to a hearing to propose a class action including residents of Québec, whether or not the Glasberg Proceeding is stayed.

61. Ontario is the natural forum in which to pursue a proposed class action against TD Bank on behalf of all security-holders wherever they are resident, including residents of Québec, for a number of reasons, including that:

    a) TD Bank's domicile and headquarters are in Ontario, which is where the majority of individual defendants were employed and where many of the facts alleged in both proceedings took place.

    b) TD Bank's shares are publicly traded and listed in Canada on the Toronto Stock Exchange (TSX) in Ontario (they are also traded and listed on the NYSE), as noted the Carriage Decision (Exhibit R-12).

    c) TD Bank's principal jurisdiction as a reporting issuer in Canada is Ontario, as appears from an excerpt from SEDAR+ communicated herewith as **Exhibit R-13**.

62. Conversely, there are no facts alleged in the Glasberg Proceeding to establish that the proposed national and global class would be within the jurisdiction of the Québec courts.

63. The Defendants intend to contest the jurisdiction of the Québec courts to authorize or grant leave for a class action including non-residents of Québec (and reserve their right in this regard), such that the Glasberg Proceeding may not proceed on a national or global basis.

64. While the Parkin Proceedings propose a putative class of all security-holders wherever they are resident, it is important to note that U.S. residents are also included in two other putative class actions filed against TD Bank, Bharat B. Masrani, Kelvin Vi Luan Tran, Riaz E. Ahmed, and Leovigildo Salom in the United States District Court, Southern District of New York in *Tiessen v. The Toronto-Dominion Bank, et al.* (No. 24-cv-08032 (S.D.N.Y.) on October 22, 2024, and in *Gonzalez c. The Toronto-Dominion Bank, et al.* (No. 24-cv-09445 (S.D.N.Y.), on December 11, 2024, as appears from copies of the complaints and the Stipulation and Scheduling Order rendered on February 4, 2025, by Subramanian J. communicated herewith as **Exhibits R-14, R-15,** and **R-16**.

65. Whether under art. 3137 CCQ or art. 49 CCP, the interests of justice are not served by permitting an additional, parallel lawsuit to proceed in Québec, when the Parkin Proceedings were filed first in Ontario and are advancing.

66. Allowing the Glasberg Proceeding to proceed in parallel with the Parkin Proceedings would not only place the parties and putative class members at risk of contradictory judgments but would be disproportionate and inefficient.

67. The Defendants would be prejudiced by having to defend the same proceedings before two courts. This is even more true in the context of the proposed claims under the Securities Legislation, which are harmonized across Canada. Québec residents make the same statutory claims whether as members of the Glasberg Proceeding or as members of the Parkin Proceedings.

68. The leave test for secondary market claims under the QSA and the OSA is the same and will proceed in the same manner in both jurisdictions, rendering the Glasberg Proceeding redundant.

69. Given the evidentiary burden that exists under this leave test, which is different than the burden of demonstration for authorization under art. 575 CCP, significant evidence will need to be adduced in both jurisdictions by the Defendants before a hearing on leave and authorization can be held. Such evidence usually includes expert reports, affidavits, cross examinations, and documentary evidence. Duplicating this evidence is wasteful and prejudicial to both the Defendants and the plaintiff class.

70. It is a misuse of already limited judicial resources to duplicate the proceedings in the Ontario courts before the Québec courts, considering that they relate to the

same claims (under the Securities Legislation and civil liability causes of action) and are based upon the same material facts alleged against the same defendants. It is already certain that these issues will be decided by the Ontario court in an efficient manner that respects the rights and interests of all members of the proposed classes wherever they are resident.

71. The absence of the usual agreement between class counsel in both provinces to coordinate their proceedings against the Defendants, despite discussions undertaken to this end, should not result in the duplication of proceedings that is currently being contemplated.

VII. CONCLUSION

72. For these reasons, the Defendants ask this Court to stay the Glasberg Proceeding until a final judgment on certification and leave is rendered in the Parkin Proceedings.

73. Should the stay be granted, the Defendants would continue to advise the Court of significant developments in the Parkin Proceedings, such that the Court would always remain the guardian of the rights of Québec class members.

FOR THESE REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

GRANT the *Defendants' Application to Stay the Hybrid Application for Authorization*;

STAY the present proceedings until a final decision on certification and leave motions is rendered in *Parkin v. The Toronto-Dominion Bank et al.*, Ontario Superior Court of Justice no. CV-24-00720906-00CP;

RENDER any other order that the Court deems appropriate in the circumstances;

THE WHOLE, without costs, unless the present Application is contested.

MONTRÉAL, February 27, 2025

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