

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

**MARCUS WIDE of Grant Thornton (British Virgin Islands) Limited, and HUGH
DICKSON, of Grant Thornton Specialist Services (Cayman) Ltd, acting together herein
in their capacities as Joint Liquidators of Stanford International Bank Limited**

Plaintiffs

- and -

THE TORONTO-DOMINION BANK

Defendant

**FACTUM OF THE TORONTO-DOMINION BANK
(motion for an order temporarily staying the action pending the outcome of the appeal
of the *Livent* decision to the Supreme Court of Canada, returnable October 6, 2016)**

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I. OVERVIEW

1. Despite having begun this action in August 2011, it was not until April 2016 that the Joint Liquidators (the “JLs”) of the Stanford International Bank (“SIB”) could articulate the legal basis on which they, as the court-appointed liquidators of an insolvent entity, sought to recover the alleged \$5.5 billion in losses sustained by the 21,000 creditors of that entity in the absence of a properly-constituted class action.¹

2. That legal basis was found in the Ontario Court of Appeal’s ruling in *Livent Inc. v. Deloitte & Touche*,² which had been released mere months prior, in January 2016. The *Livent* decision expresses a formula for calculating the damages sustained by an insolvent entity which conducted a fraudulent business, measured by the difference between its liquidation

¹ Responding Motion Record of the Plaintiffs (“JLs’ MR”), Exhibit B, p. 24.

² 2016 ONCA 11 (“*Livent*”), Book of Authorities of The Toronto-Dominion Bank (“TD Bank BOA”), Tab 6.

value at the time of its actual liquidation and its liquidation value on the date on which its auditor ought to have detected the fraud.³ Relying on *Livent*, the JLs elected not to proceed by seeking to certify a properly-constituted class of creditors with the standing to claim the damages sought in this action.⁴

3. By the time the JLs made this election, *Livent* was already subject to an application for leave to appeal to the Supreme Court of Canada.⁵

4. On June 9, 2016, leave to appeal to the Supreme Court of Canada was granted in *Livent*.⁶ Squarely at issue on appeal is the Court of Appeal's holding that the losses ultimately sustained by creditors of an insolvent entity can be recovered in an action brought in that entity's name alone.⁷ By extension, also at issue is the JLs' newfound legal basis for their entire claim of \$5.5 billion in damages.

5. The JLs waited nearly five years to find a legal theory on which to advance their claim for damages. That legal theory is novel and controversial, and subject to appeal – a reality of which they were aware when they married the fate of their claim to it. It is not for them to now say that they cannot wait some months for the Supreme Court of Canada to determine whether or not that legal theory is properly part of Canadian law.

6. It is in the interests of justice to temporarily stay this action pending that decision. To proceed with an action of this magnitude in the interim is a waste of the court's and parties' time and resources.

³ *Livent* at paras. 61-62, TD Bank BOA, Tab 6.

⁴ Motion Record of The Toronto-Dominion Bank ("TD Bank MR"), Exhibit B.

⁵ TD Bank MR, Exhibits E-G, p. 147.

⁶ *Deloitte & Touche v. Livent Inc., Through Its Special Receiver and Manager Roman Doroniuk* (S.C.C. Court File No. 36875) ("SCC Leave to Appeal Decision"), TD Bank BOA, Tab 3.

⁷ TD Bank MR, Exhibits E-G; *Livent* at para. 57, TD Bank BOA, Tab 6.

II. THE FACTS

The JLs' claim recently crystallized and is based exclusively on *Livent*

7. This proceeding was commenced on August 22, 2011 as a placeholder action which was stayed pending the outcome of a *forum non conveniens* motion with respect to a parallel action brought by the JLs in Quebec.⁸ In May 2014, it was determined that the action would proceed in Ontario and the stay was lifted.⁹

8. From its inception until April 2016, this action was framed as a claim to recover the losses of the creditors of the insolvent SIB.¹⁰

9. On March 11, 2016, The Toronto-Dominion Bank ("**TD Bank**") brought a motion for an Order directing the JLs to reconstitute this action as a class action on the basis that they could not recover the losses of the creditors of SIB in an action brought in the name of the insolvent entity (the "**March 11 Motion**").¹¹ TD Bank brought this motion because the JLs had never sought to properly constitute the action as a class action, choosing instead to continue improperly seeking the creditors' damages through the vehicle of a claim in SIB's name. TD Bank's view that the JLs did not have the standing to claim the creditors' damages and that their action was not properly constituted was flagged in its original Statement of Defence, delivered in September 2014.¹²

⁸ *Wide v. Toronto Dominion Bank*, 2012 ONSC 4039 ("*Wide v. TD Bank*"), TD Bank BOA, Tab 9; Reply Motion Record of The Toronto-Dominion Bank ("**TD Bank Reply MR**"), Exhibit B.

⁹ TD Bank Reply MR, Exhibit C.

¹⁰ JLs' MR, Exhibit B, pp. 51-53; Exhibit C, pp. 66, 151-152.

¹¹ TD Bank MR, Exhibit A.

¹² JLs' MR, Exhibit D, p. 162.

10. At the hearing of the March 11 Motion, counsel for the JLs conceded that the action was not properly brought on behalf of the creditors in the absence of a class action. However, they represented to the Court that they rely on the Court of Appeal's January 2016 decision in *Livent* for the proposition that the creditors' losses are recoverable in an action brought by SIB's estate.¹³

11. By this time, the future of the *Livent* decision was uncertain. The defendant, Deloitte & Touche, had filed its application for leave to appeal in February 2016.¹⁴ The possibility that leave to appeal may be granted in *Livent*, thereby calling into question the theory of damages on which the JLs were now relying, was also expressly addressed by counsel for TD Bank at the hearing of the March 11 Motion.¹⁵

12. Nonetheless, the JLs made an election to abandon all claims on behalf of the creditors and proceed on the *Livent* theory, accepting the risk that the basis for their \$5.5 billion claim could soon be the subject of an appeal before the Supreme Court of Canada. By way of consent Order of this Court, dated April 8, 2016, all of the JLs' claims on behalf of SIB's creditors were dismissed.¹⁶

13. The JLs then delivered an amended pleading to withdraw all claims on behalf of SIB's creditors and reformulate their claim on the basis of the *Livent* formula.¹⁷ In place of the creditors' claims, the amended claim seeks to recover the "core capital loss" sustained by SIB at the time of its collapse in February 2009, which is valued at \$5.5 billion. This "core capital

¹³ Affidavit of Katherine Stubits, sworn June 16, 2016 ("Stubits Affidavit"), para. 3, TD Bank MR, p. 9.

¹⁴ TD Bank MR, Exhibit E, p. 147.

¹⁵ Stubits Affidavit, para. 4, TD Bank MR, p. 9.

¹⁶ TD Bank MR, Exhibit B.

¹⁷ TD Bank MR, Exhibit C.

loss” is described as the deficit remaining after “taking into account amounts paid or repaid to SIB depositors in interest or CD [certificate of deposit] redemption payments.”¹⁸ It tracks the formula for damages expressed by the Court of Appeal in *Livent*, reflecting the JLs’ theoretical maximum recovery pursuant to that formula, which can be expressed as follows:

$$L = ALD - ELD$$

where

L = loss

ALD = actual liquidation deficit

ELD = estimated liquidation deficit if there had been no breach of duty by the auditor.

14. In other words, the JLs’ \$5.5 billion claim is now entirely based on the Court of Appeal’s holding in *Livent*.

The *Livent* appeal

15. On June 9, 2016, the Supreme Court of Canada granted leave to appeal in *Livent*.¹⁹ The appeal is scheduled to be heard on February 15, 2017.²⁰

16. The legal premise underlying the formula on which the JLs now rely is squarely at issue in the appeal before the Supreme Court of Canada. In the words of the Appellant, that premise is that “creditors...to whom no duty is directly owed [can] take over the enterprise through the office of a receiver and assert their claim in the corporation’s name.”²¹

¹⁸ TD Bank MR, Exhibit C, p. 26. Notably, this amount can also be expressed as the sum of each of the customers’ individual losses in terms of CDs which were not repaid to them.

¹⁹ SCC Leave to Appeal Decision, TD Bank BOA, Tab 3.

²⁰ Supplementary Motion Record of The Toronto-Dominion Bank (“TD Bank Supplementary MR”), Exhibit A.

²¹ TD Bank MR, Exhibit E, p. 131.

17. A related issue on appeal is whether the formula expressed in *Livent* is the correct method for determining the losses of the corporation itself, rather than those of its creditors. This formula is based on the controversial American damages theory of “deepening insolvency,” which has not been recognized in Canadian law.²²

18. If the Supreme Court of Canada determines that this controversial formula is ill-founded at law, the very basis for the JLs’ claim could evaporate entirely or see material changes to its scope.

The scope and magnitude of the documentary discovery exercise

19. In the absence of a stay, this action will imminently proceed to documentary discovery on its merits.

20. The scope of relevant documents, as defined by the pleadings, including the JLs’ 99-page, 332-paragraph-long Fresh as Amended Statement of Claim,²³ encompasses documents related to the following matters and allegations, among others:

- (a) The relationship between TD Bank and SIB, which lasted from the early 1990s until 2009. It allegedly involved some 11 separate bank accounts and at least 15 trips by TD personnel to SIB in Antigua and Houston, Texas;²⁴
- (b) Innumerable events beyond the ambit of the relationship between TD Bank and SIB, including ones which pre-dated it, covering a time period of a quarter of a century beginning in 1984 and extending beyond the collapse of SIB in 2009;

²² TD Bank MR, Exhibit E, pp. 131, 136.

²³ JLs’ MR, Exhibit R.

²⁴ Fresh As Amended Statement of Claim, paras. 84 and 156, JLs’ MR, Exhibit R.

- (c) Allegations that a number of institutions had relevant knowledge about SIB, including SocGen (a French bank), the SEC, Pershing LLC (an international clearing house), Ferrier Lullin & Cie (a Swiss bank), Synder Kearney LLC (a U.S. law firm), First Advantage Investigative Services (a U.S. investigation firm), Fidelity Investments, Chase Manhattan Bank, First Interstate Bank (a U.S. bank), Citizens & Southern Bank (a U.S. bank), Bank of America, the National Association of Securities Dealers, and U.S. Customs.²⁵ Proceeding with documentary discovery would therefore involve an examination of the actions of a large number of financial institutions operating in multiple jurisdictions across the globe; and
- (d) An array of allegedly applicable banking standards and laws, including:
- (i) five sets of AML guidelines issued by OSFI (in 1990, 1996, 2003, 2004, and 2008);²⁶
 - (ii) three sets of standards issued by the Basel Committee on Banking Supervision (in 2001, 2003 and 2004);²⁷
 - (iii) four sets of standards issued by FATF (in 1990, 1996, 2003 and 2007);²⁸ and
 - (iv) standards developed by the Wolfsberg Group in 2002.²⁹

²⁵ Fresh As Amended Statement of Claim, paras. 212-243, JLS' MR, Exhibit R.

²⁶ Fresh As Amended Statement of Claim, para. 246, JLS' MR, Exhibit R.

²⁷ Fresh As Amended Statement of Claim, para. 249, JLS' MR, Exhibit R.

²⁸ Fresh As Amended Statement of Claim, para. 251, JLS' MR, Exhibit R.

²⁹ Fresh As Amended Statement of Claim, para. 252, JLS' MR, Exhibit R.

The Dynasty Action

21. In May 2012, the JLs took an assignment of the proceeds of an action against TD Bank brought by five of SIB's creditors (the "**Dynasty Action**").³⁰ The Dynasty Action claims approximately \$17.5 million in damages.³¹

22. The Dynasty Action is being case managed in tandem with the JLs' action. In 2012, the Dynasty Action was stayed alongside the JLs' action pending the outcome of the *forum non conveniens* motion in Quebec.³² When ordering this stay, Justice Cumming of this Court determined that the two actions should be case managed in tandem if the JLs' action was to proceed in Ontario.³³ Accordingly, when the stay was lifted in May 2014, Justice Penny of this Court, then the case management judge for both actions, made an Order and timetable for their parallel case management.³⁴

23. From the start, and at the JLs' suggestion, the parties' discussions regarding documentary discovery have been premised on the idea that TD Bank's documentary production would be identical and simultaneous for the JLs' action and the Dynasty Action.³⁵ There is no discovery plan in place or under discussion which is appropriate for an action of the Dynasty Action's size.

³⁰ TD Bank Reply MR, Exhibit A.

³¹ JLs' MR, Exhibit X.

³² *Wide v. TD Bank* at para. 28, TD Bank BOA, Tab 9.

³³ *Ibid.*, TD Bank BOA, Tab 9.

³⁴ TD Bank Reply MR, Exhibit C.

³⁵ JLs' MR, Exhibit I, p. 219.

III. THE ISSUES

24. Should a temporary stay of both actions be granted pending the outcome of the appeal of *Livent* to the Supreme Court of Canada? Yes. Such a stay would be in the interests of justice.

IV. THE LAW AND ARGUMENT

A temporary stay is in the interests of justice

25. A temporary stay of this action and the Dynasty Action pending the outcome of the *Livent* appeal is in the interests of justice and should be ordered.

26. Pursuant to section 106 of the *Courts of Justice Act*,³⁶ this Court has the jurisdiction and discretion to order a temporary stay on such terms as are just. Moreover, this Court has the inherent jurisdiction to control its own process in the interests of justice and judicial economy.

27. The appropriate test to be applied is whether, in all the circumstances, the interests of justice support that the proceeding be stayed. This test was set out by the Federal Court of Appeal in *AstraZeneca Canada Inc. v. Mylan Pharmaceuticals ULC*,³⁷ and adopted by the Ontario Court of Appeal.³⁸ When a party asks the Court to adjourn the exercise of its own jurisdiction, rather than to enjoin another body from exercising its jurisdiction, the interests of

³⁶ R.S.O 1990, c. C.43.

³⁷ 2011 FCA 312 ("*AstraZeneca*"), TD Bank BOA, Tab 2.

³⁸ *Korea Data Systems (USA) Inc. v. Amazing Technologies Inc.*, 2012 ONCA 756 ("*Korea Data Systems*"), TD Bank BOA, Tab 5.

justice test set out in *AstraZeneca* is more appropriate than the more onerous test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*.³⁹

28. In applying the test, the Court may consider a broad range of factors in order to determine whether the balance of convenience lies in favour of granting a stay, including those related to the effective use of resources and any prejudice or irreparable harm occasioned by the proposed stay.⁴⁰

29. In particular, the pending determination by another body of an issue central to the proceeding will be relevant to the analysis.⁴¹

30. The temporary stay sought would be in the interests of justice for the following reasons:

- (a) The *Livent* appeal will affect whether the JLs' claim for \$5.5 billion is properly constituted at law;
- (b) Accordingly, proceeding with action in the interim would waste the parties' and the courts' resources, including those of SIB's estate;
- (c) The stay sought is relatively brief and would not cause a material delay or any prejudice; and
- (d) The interests of justice and the good management of the JLs' action and the Dynasty Action dictate that they both be stayed.

³⁹ [1994] 1 S.C.R. 311, TD Bank BOA, Tab 8. See *AstraZeneca* at paras. 3-14, TD Bank BOA, Tab 2; *Korea Data Systems* at paras. 16-17, TD Bank BOA, Tab 5.

⁴⁰ *Korea Data Systems* at para. 19, TD Bank BOA, Tab 5.

⁴¹ *Korea Data Systems* at paras. 24-26, TD Bank BOA, Tab 5.

The Livent appeal will affect whether the JLs' claim is properly constituted

31. As detailed above, the very basis of the JLs' claim for damages is subject to review by the Supreme Court of Canada in the *Livent* appeal.

32. If the Supreme Court of Canada finds that the *Livent* formula for determining the damages of an insolvent corporation is incorrect at law, the JLs' claim will be altered drastically. The \$5.5 billion they now claim as the losses of the insolvent SIB are the same losses they previously attributed to SIB's customers. The customers' claims have now been abandoned. If it turns out that SIB cannot claim these losses in its own name, the damages properly at issue in this action will either be greatly reduced or evaporate entirely.

33. A temporary stay is in the interests of justice where another proceeding may soon determine a key issue at stake. In *Ainsworth Lumber Co. v. Canada (Attorney General)*,⁴² the British Columbia Court of Appeal overturned a decision denying a temporary stay pending the outcome of a relevant proceeding, commenting that:

The proceedings before the Tax Court of Canada certainly have the capacity to have a material, if not conclusive, impact upon the issues outstanding in this case. If the plaintiff respondent succeeds on the substance of its claim in the Tax Court of Canada, ***it appears to me that the causes of action alleged in [these] proceedings...cease to have any substance or possibility of success. Success in the Tax Court of Canada by the respondent would render these proceedings superfluous and unnecessary.*** Of course, a lack of success would have the very opposite result because in that event this action would have a very real utility. As the Court observed to counsel during the course of the hearing, we would not propose in this case to grant a scope of relief any wider than that we would consider necessary and appropriate to do justice between the parties. I would consider it appropriate to order that these proceedings be stayed temporarily pending a decision by the Tax

⁴² 2001 BCCA 105, TD Bank BOA, Tab 1.

Court of Canada... I consider that the learned chambers judge failed to give due weight to the consideration that the stay being applied for in this case was not a stay of the proceedings generally but only a temporary one. Ordering a stay here in the terms I have indicated will prevent unnecessary and costly duplication of judicial and legal resources. I do not consider that a time limited stay in the terms granted here has any capacity to work an injustice on the respondent.⁴³

Proceeding with the JLS' action on the merits before Livent is decided would be a waste of resources

34. While their legal theory for claiming the staggering sum at issue is subject to imminent appellate review, the JLS propose to forge ahead with an expansive, costly documentary discovery process.

35. If the Supreme Court of Canada reverses *Livent* and the JLS' damages claim is either materially reduced or disappears, proceeding with this documentary discovery process in the interim will have been a waste. In the former scenario, it will have been grossly disproportionate and overbroad. In the latter, it will have been wholly unnecessary.

The temporary stay sought would not cause any material delay

36. On the other hand, the temporary stay sought will not be unduly long nor prejudicial to the JLS.

37. The courts have recognized that the interests of justice may require some delay in order to allow the orderly and expeditious disposition of litigation. In *Marché d'Alimentation*

⁴³ *Ibid* at paras. 14-15, TD Bank BOA, Tab 1.

Denis Thériault Ltée v. Giant Tiger Stores Ltd.,⁴⁴ the Court of Appeal commented that “expeditious justice is only one value to be weighed against others and that delay may be excused where necessary to ensure complete justice.”⁴⁵

38. A decision on the appeal is expected approximately six months after its hearing date, February 15, 2017,⁴⁶ based on the average period from the hearing of an appeal to the issuance of a decision at the Supreme Court of Canada in 2015.⁴⁷

39. The *Livent* decision is the foundation of the JLs’ claim for damages; they elected to constitute it as such after years of failure to identify any tenable basis on which to claim those damages in the absence of a class action. They will not be unduly prejudiced by having to wait a few additional months for the Supreme Court of Canada to determine whether they may rely on *Livent* in this manner.

40. A one-year stay was granted in similar circumstances in *Johnson & Johnson Inc. v. Boston Scientific Ltd.*⁴⁸ In that case, a party amended its position in the proceedings on the basis of a “novel and unprecedented” decision in an unrelated proceeding in which leave to appeal to the Supreme Court of Canada was being sought.⁴⁹ The disposition of the appeal would be directly relevant to the determination of issues raised in the proceeding at issue.⁵⁰ In upholding the stay, the Federal Court of Appeal commented that it was “clearly appropriate” for a stay to be granted pending the outcome of the *leave to appeal application*.⁵¹ There is no

⁴⁴ 2007 ONCA 695, TD Bank BOA, Tab 7.

⁴⁵ *Ibid* at para. 34, TD Bank BOA, Tab 7.

⁴⁶ Supplementary Affidavit of Katherine Stubits, sworn July 27, 2016, para. 2, TD Bank Supplementary MR, Tab 1.

⁴⁷ TD Bank MR, Exhibit H, p. 174.

⁴⁸ 2003 CarswellNat 5068 (F.C.), TD Bank BOA, Tab 4.

⁴⁹ *Ibid* at paras. 11-12, TD Bank BOA, Tab 4.

⁵⁰ *Ibid* at para. 19, TD Bank BOA, Tab 4.

⁵¹ *Johnson & Johnson Inc. v. Boston Scientific Ltd.*, 2004 FCA 354 at para. 3, TD Bank BOA, Tab 4.

difficulty in extrapolating that a stay pending a directly relevant appeal in which leave has been granted is also clearly appropriate.

41. Additionally, the JLs have not persuasively demonstrated that there would be any prejudice:

- (a) They allege prejudice due to loss of documents, fading of witness' memories, and loss of witness' ability to testify. A stay of some months cannot credibly be said to be the cause of any such prejudice in the context of a five-year-old action which, from its inception, pertained to allegations commencing over two decades prior; and
- (b) They point out that the length of time it will take for the Supreme Court of Canada to make a decision in *Livent* is unpredictable. It is not for the JLs to invoke the uncertainty surrounding the Supreme Court of Canada's treatment of the *Livent* decision as a ground of prejudice. They knew that it was being appealed when they made the election to rely on it.

The interests of justice and the good management of these proceedings dictate that the Dynasty Action be stayed

42. The Dynasty Action should be stayed alongside the JLs' action pending the outcome of the *Livent* appeal. This Court determined years ago that the two actions should be case managed together, and their good management requires that they continue to be. They have questions of law and fact in common and similar claims for relief arising out of the same

series of transactions. It makes no sense to allow the Dynasty Claim to forge ahead on the merits alone to avoid a stay that can be measured in months.⁵²

43. The plaintiffs in the Dynasty Action will suffer no prejudice as a result of the stay. They have assigned the proceeds of their claim to the JLS.

44. On the other hand, permitting the Dynasty Action to proceed alone will only work to confuse and complicate these proceedings. If the Dynasty Action is permitted to proceed to documentary discovery while the JLS' action is stayed, the parties will be required to negotiate a new discovery plan which is proportionate to an action of its size and produce documents accordingly. Then, if the JLS' action survives the *Livent* appeal, the parties would be required to make a further, additional set of productions. Such an inefficient, bifurcated discovery process would defeat the parties' intention to have identical and simultaneous documentary discovery for both actions.

45. In the absence of any demonstrable prejudice to the plaintiffs in the Dynasty Action, the interests of justice dictate that it be stayed alongside the JLS' action in order to maintain the orderly and efficient conduct of these proceedings.

Conclusion - The appropriate remedy

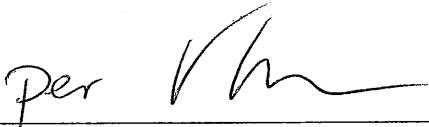
46. In light of all of the foregoing, the appropriate remedy is to stay this action, and its companion Dynasty Action, temporarily in order to allow the Supreme Court of Canada to determine whether the *Livent* theory of damages on which it is predicated is correct at law.

⁵² *Wide v. TD Bank* at para. 15, TD BOA, Tab 9.


V. ORDER REQUESTED

47. TD Bank requests an order temporarily staying the action pending the Supreme Court of Canada's decision in the *Livent* appeal. TD Bank also seeks its costs of this motion.

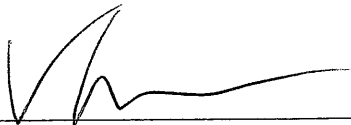
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of September, 2016.



Geoff R. Hall



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Vladimira M. Ivanov

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SCHEDULE A
LIST OF AUTHORITIES

1. *Ainsworth Lumber Co. v. Canada (Attorney General)*, 2001 BCCA 105
2. *AstraZeneca Canada Inc. v. Mylan Pharmaceuticals ULC*, 2011 FCA 312
3. *Deloitte & Touche v. Livent Inc., Through Its Special Receiver and Manager Roman Doroniuk* (S.C.C. Court File No. 36875)
4. *Johnson & Johnson Inc. v. Boston Scientific Ltd.*, 2003 CarswellNat 5068 (F.C.),
aff'd 2004 FCA 354
5. *Korea Data Systems (USA) Inc. v. Amazing Technologies Inc.*, 2012 ONCA 756
6. *Livent Inc. v. Deloitte & Touche*, 2016 ONCA 11
7. *Marché d'Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*, 2007
ONCA 695
8. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311
9. *Wide v. Toronto Dominion Bank*, 2012 ONSC 4039

SCHEDULE B
RELEVANT STATUTES

1. *Courts of Justice Act*, R.S.O 1990, c. C.43.

Stay of proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O. 1990, c. C.43, s. 106.

MARCUS WIDE OF GRANT THORNTON
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Plaintiffs

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Court File No. CV-12-9780-00CL

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COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF
THE TORONTO-DOMINION BANK
(motion returnable October 6, 2016)

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