

Notice of Appeal



Court File No.
FEDERAL COURT OF APPEAL

BETWEEN:
Marie Pia Fazio
Appellant

and

Toronto-Dominion Bank
Respondent

(Court Seal)

Notice of Appeal

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at *(place where Federal Court of Appeal (or Federal Court) ordinarily sits)*. Ottawa, ~~Toronto~~ Ontario

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) January 16, 2026

Issued by:

NICOLE HRADSKY
SENIOR REGISTRY OFFICER
AGENTE PRINCIPAL DU GREFFE
(Registry Officer)

Address of local office: 180 Queen Street West 180, rue Queen Ouest
Suite 200 Bureau 200
Toronto, Ontario Toronto, Ontario
M5V 3L6 M5V 3L6

TO: (Name and address of each respondent)

(Name and address of every other person required to be served)

The Toronto-Dominion Bank, TD Bank Tower, 66 Wellington Street West,
12th Floor, Toronto, Ontario, M5K 1A2

(Separate page)

Appeal

THE APPELLANT APPEALS to the Federal Court of Appeal (*or Federal Court*) from the order of (*name of judge, officer or tribunal*) dated (*date*) by which (*details of order under appeal*).

TAKE NOTICE that the Appellant, Marie Pia Fazio, appeals to the Federal Court of Appeal from the Judgment and Reasons of the Federal Court dated December 16, 2025 (2025 FC 1977), in Federal Court file T-3726-25, granting the Respondent's motion to strike the Statement of Claim for want of jurisdiction.

THE APPELLANT ASKS that (*the relief sought*).

The Appellant seeks:

- 1. An Order allowing the appeal and setting aside** the Judgment dated December 16, 2025 (2025 FC 1977);
- 2. An Order dismissing the Respondent's motion to strike; or alternatively,** an Order granting the Appellant leave to amend the Statement of Claim within a time fixed by this Court to clarify the statutory basis relied on, including the PIPEDA/Privacy Commissioner pathway;
- 3. An Order restoring and directing consideration of the Appellant's pending motion materials filed November 13, 2025** on an appropriate timetable.
- 4. Such further and other relief** as this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows: (*Set out the grounds of appeal, including a reference to any statutory provision or rule to be relied on.*)

The Appellant relies on the following grounds:

5. **This Appeal is brought pursuant to s. 27(1) of the Federal Courts Act** and Rule 337 of the Federal Courts Rules.
6. **The Appellant has also brought a motion under Rule 397 in the Federal Court** seeking reconsideration and variation of the Order under appeal; this Notice of Appeal is filed to preserve the Appellant's statutory right of appeal and to prevent prejudice arising from limitation or filing deadlines.
7. **AI Declaration:** Portions of this document were prepared with AI assistance and were reviewed, edited, and approved by the Appellant, who remains responsible for the content.

Error of law: jurisdiction analysis applied too narrowly / failed to preserve federal statutory pathway

8. **The Federal Court erred in law by striking the Appellant's Statement of Claim as a whole on jurisdictional grounds** without properly addressing and preserving the pleaded and available Federal statutory pathway relied upon by the Appellant, including statutory duties under PIPEDA and the supervisory jurisdiction of the Federal Court where the statutory preconditions are met.
9. **The Federal Court adopted an overly restrictive approach to jurisdiction that effectively foreclosed access** to the Federal statutory accountability process without permitting amendment or severance.
10. **The Federal Court erred in principle and breached procedural fairness by failing to give effect to the December 9, 2025 Directions of Associate Judge Milczynski**, which expressly granted the Appellant 20 days to serve and file her responding motion record to the Respondent's motion to strike, thereby

depriving the Appellant of the procedural time expressly granted and materially prejudicing her right to be heard.

Material misapprehension of fact: Privacy Commissioner/PIPEDA steps

- 11. The Federal Court erred by accepting the Respondent's submission that the Appellant "*had not previously filed a complaint with the Privacy Commissioner*" as required under PIPEDA, when in fact she did, and relied on that premise to exclude PIPEDA as a basis for jurisdiction, as urged by the Respondent.**
- 12. The Court's reliance on this premise constituted a material misapprehension of fact and law, because the Appellant had invoked the federal PIPEDA access/complaint framework and engaged the Privacy Commissioner process.**

Error in principle: striking without leave to amend (disproportionate remedy)

- 13. The Federal Court erred in principle by striking the Statement of Claim without leave to amend, notwithstanding that any deficiency relating to jurisdictional pleading (including the PIPEDA statutory pathway) was potentially curable, and striking was a disproportionate remedy, particularly for a self-represented litigant.**

Failure to consider alternatives less drastic than striking

- 14. The Federal Court erred by failing to consider or grant relief short of striking, including:
 - (a)** leave to amend;
 - (b)** severance;
 - (c)** directions regularizing pleading and process.**

Procedural fairness: misconstruction of the December 9, 2025 Directions and denial of time to respond

- 15. The Federal Court erred by misapprehending and misconstruing the procedural record, including the effect of the December 9, 2025 Directions issued in the proceeding, and thereby prejudicially curtailed the Appellant's ability to advance responsive motion steps and submissions.**
- 16. The Appellant submits that the Order under appeal proceeded on an incorrect interpretation of the December 9, 2025 Directions and resulting procedural timelines, thereby undermining procedural fairness and the Appellant's right to be heard.**

Error in principle: failure to consider the Appellant's prior motion brought November 13, 2025

- 17. The Federal Court erred in principle by striking the claim without addressing or considering the Appellant's November 13, 2025 *ex parte* motion for default judgment and urgent relief, which was filed before the Respondent's motion to strike and arose from urgent and exceptional circumstances.**
- 18. The Appellant submits that the Court's approach resulted in unfair prejudice, as the Respondent's motion to strike was permitted to proceed first while the Appellant's motion was held in abeyance, without adjudication or meaningful consideration.**

Error in law: permitting relief while Respondent in procedural default

- 19. The Federal Court erred by granting dispositive relief to the Respondent notwithstanding the Respondent's procedural default, including missing mandatory procedural deadlines and failing to regularize its steps in a timely manner.**
- 20. While the Court noted the Respondent had not filed a Statement of Defence or extension request, it nonetheless proceeded to grant the Respondent's motion as a matter of efficiency. The Appellant submits this constituted an error in principle and contributed to unfairness in the procedure adopted.**

**Procedural fairness / indulgence to TD and failure to address
Appellant's prior motion**

- 21. The Federal Court failed to give effect to fairness and access-to-justice principles** by foreclosing the claim at an early stage, without permitting amendment and without ensuring adjudication on a complete and accurate record.
- 22. The Federal Court erred in principle and breached procedural fairness by granting dispositive relief to the Respondent in circumstances where the Respondent was permitted indulgences despite missed procedural deadlines**, including acceptance of a late Notice of Intention to Respond, while the Appellant's earlier *ex parte* motion for default judgment and urgent relief filed November 13, 2025 was not addressed on its merits before the Respondent's motion to strike proceeded. The Appellant submits this sequencing and unequal procedural treatment caused material prejudice and undermined the Appellant's right to be heard.
- 23. The Respondent was in default of pleading obligations and missed deadlines.** The Respondent was in default of pleading obligations, including filing its Notice of Intention to Respond out of time (though accepted), and failing to file a Statement of Defence or obtain a valid extension prior to bringing the motion to strike.
- 24. The Court Docket confirms that personal service of the Statement of Claim occurred on October 3, 2025** and was affirmed by affidavit filed October 27, 2025, yet the Respondent did not regularize its pleading obligations before pursuing the motion to strike. Details provided below in Table 1.

Table 1: Federal Court Case T-3726-25 Procedural Timeline

Date / Party	Docket ID	Description	Relevance
2025-10-27 Plaintiff	ID 2	Plaintiff Affidavit of Service filed confirming personal service on 03-OCT-2025	Proof of service on record

Date / Party	Docket ID	Description	Relevance
2025-11-05 Defendant	ID 5	TD Notice of Intention to Respond filed	Filed late ; required court direction
2025-11-05 Defendant	ID 4	Associate Judge Milczynski direction: late Notice of Intention to Respond may be accepted for filing	Court granted indulgence to TD despite lateness , without notice to the Plaintiff
2025-11-13 Plaintiff	IDs 7–11	Plaintiff <i>ex parte</i> Notice of Motion + affidavit + memo + draft order filed (default judgment & urgent relief)	Plaintiff's motion filed BEFORE TD's strike motion
2025-11-20 Defendant	IDs 14–17	TD Motion Record filed: motion to strike	TD seeks dismissal while no Defence filed
2025-12-16 Judge Order	ID 35	Justice Ahmed Order/Reasons: TD motion granted; claim struck	Dispositive order under appeal
2026-01-14 Plaintiff	IDs 39–43	Plaintiff Rule 397 reconsideration motion filed + affidavit of service	Confirms ongoing procedural steps

Standard of Review

25. The Appellant relies on the applicable standards of review, including:
- (a) **correctness** for questions of jurisdiction and legal interpretation;
 - and
 - (b) **palpable and overriding error** for findings of fact, including material misapprehension.

Materials to be Relied On

26. The Appellant will rely on:
- (a) the Judgment and Reasons of the Federal Court dated December 16, 2025 (2025 FC 1977);
 - (b) the Statement of Claim in Federal Court file T-3726-25;
 - (c) the Appellant's motion record filed November 13, 2025 (*ex parte* motion for default judgment and urgent relief);
 - (d) the Respondent's motion record filed November 20, 2025 (motion to strike);
 - (e) the Appellant's Rule 397 motion record and related materials, as

applicable; and

(f) such further materials as this Honourable Court may permit.

(If the appellant wishes a tribunal to forward material to the Registry, add the following paragraph:)

27. The Appellant requests the Federal Court Registry in file T-3726-25 to transmit to the Registry of the Federal Court of Appeal, and to provide to the Appellant, certified copies of the following materials in the possession of the Registry that are not presently in the Appellant's possession:

(a) the Judgment and Reasons dated December 16, 2025 (2025 FC 1977);

(b) the Order/Directions of Associate Judge Milczynski dated December 9, 2025;

(c) the complete docket printout for file T-3726-25, including all orders, directions, endorsements, Registry memoranda, and docket entries;

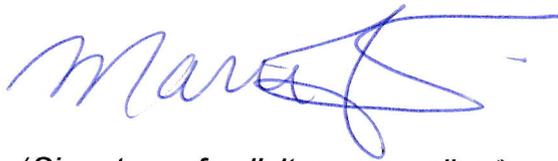
(d) the Respondent's Notice of Intention to Respond, including the signature page and address for service;

(e) the Respondent's Motion Record dated November 20, 2025, including all affidavits, exhibits, and signature pages;

(f) all Affidavits of Service filed by the Respondent; and such further materials as this Honourable Court may direct.

28. These certified materials are requested in order to ensure the **integrity of service** and to confirm **counsel of record** for the purposes of this appeal.

(Date) January 15, 2026



(Signature of solicitor or appellant)

Marie Pia Fazio, 815 Shaw Street, Toronto, Ontario, M6G 3L9, 647-203-8890, marie@mapiiconsulting.com

SOR/2021-151, s. 24

[Handwritten signature]

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