

Disbarred lawyer's claim against bank dismissed (Murray v. The Toronto-Dominion Bank)

Claim | Dismissed | Litigation | Litigation & Dispute Resolution

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Claims for negligence or breach of contract against a bank generally require that a plaintiff establish a clear unbroken link between the bank's alleged error and any loss or damage suffered by the plaintiff as a result. Depending on the events that occur after the error, this aspect of the claim may be difficult to establish.

In *Murray v. The Toronto-Dominion Bank*, 2025 ONSC 4916 (CanLII), the plaintiff was a former lawyer who was called to the bar in 2011 and operated his own firm, mainly working in real estate. By 2016, he had offices in ten cities and had processed almost \$1 billion in legal transactions through his firm's accounts at the defendant bank.

In November 2016, the Law Society of Ontario commenced an investigation into the plaintiff's practice, which resulted in his trust account being frozen. The Law Society suspended the plaintiff's license to practice shortly thereafter.

In November 2020, the plaintiff pleaded guilty to and was convicted of one count of fraud over \$5,000.00 pursuant to section 380(1)(a) of the *Criminal Code*. He was sentenced to a conditional sentence of imprisonment for 18 months, among other conditions. The plaintiff's licence to practice law was revoked in January 2021.

The plaintiff sued his former bank for negligence and breach of contract in the administration of his trust account. The plaintiff argued that the Law Society investigation began from a client complaint that would never have occurred had the bank not double debited the plaintiff's account, since there ought to have been sufficient funds in the account to close the client's transaction.

In its defence, the bank admitted that between 2015 and 2016 it had debited 15 cheques twice instead of once as a result of its process for certifying and clearing cheques. Specifically, a sticker on the certified cheques that covered the magnetic ink character code had become detached, thereby resulting in the funds being debited a second time from the account.

The bank brought a summary judgment motion to dismiss the claim. While the bank acknowledged that the sticker issue resulted in the double debits, its evidence was that when a customer notified the bank of a double debit, it would usually correct the issue within a day. The bank's position was that there was no evidence that the sticker issue had caused the plaintiff any losses.

In response, the plaintiff argued that summary judgment was not appropriate since there were genuine issues for trial regarding what prompted the Law Society complaint and whether the bank acted negligently in double debiting his accounts.

The motion judge noted, however, that the evidence did not support the plaintiff's version of events about the reasons for the Law Society's investigation. Rather than the impetus being a client complaint, the Law Society's reasons for revoking the plaintiff's licence indicated that it was a former law clerk of the plaintiff who filed a complaint with the Law Society which started the investigation.

The Law Society's reasons for revoking the plaintiffs' licence also specified that the Law Society had concluded that between April 2015 and October 2016, the plaintiff misappropriated \$735,854 by transferring the funds out of his trust account, mostly into a general account over which the plaintiff had sole signing authority. Immediately following the transfers out of trust, the plaintiff made payments toward his own real estate purchases, Canada Revenue Agency debts,

payroll, his credit card, and to himself. The Law Society concluded that without those withdrawals from trust, the plaintiff would not have been able to cover these expenses.

In 2018, the Law Society's forensic auditor gave the plaintiff a list of transfers totaling approximately \$735,000 that required an explanation. The plaintiff never explained those transfers. The Law Society also determined that the plaintiff had not reconciled his trust account since December 31, 2015, and that he signed blank trust cheques and allowed others to insert the dates, amounts, and payees in his absence, which were further violations of the *Rules of Professional Conduct*.

In the motion judge's view, the transaction identified by the plaintiff could have been completed had he not misappropriated trust funds or had he reconciled his trust account on a regular basis. The Law Society found that the plaintiff had misappropriated \$735,854.86 from the trust account into accounts that he controlled and the plaintiff never provided an explanation for those transactions. The motion judge received no explanation of those transactions, let alone one that demonstrated a genuine issue for trial.

The motion judge also noted that although the plaintiff had appealed his license revocation and criminal conviction, he had not advanced those appeals in the four and a half years since the revocation and conviction.

A breach of contract claim requires an unbroken causative link without an intervening event: *Eastwalsh Homes Ltd. v. Anatal Developments Ltd.*, 1993 CanLII 3431 (ONCA). A negligence claim required the plaintiff to prove either that his injury would not have occurred "but for" the bank's negligence, or that some breach by the bank materially contributed to his injury: *Clements v. Clements*, 2012 SCC 32 at paragraph 46. The plaintiff failed to meet either of these tests to establish the necessary causal link between the bank's double debits of the certified cheques and the damages sought.

In that regard, the alleged link that the plaintiff relied on between the client's failed transaction and the Law Society investigation was factually wrong based on the Law Society's own reasons. The license revocation and the criminal convictions would have occurred in the absence of double debiting because they were both the product of the complaint by the plaintiff's former law clerk. Simply put, the plaintiff's license was not revoked because the bank double debited his account.

The criminal conviction arose because the plaintiff pleaded guilty to the charges. The plaintiff argued on the motion that he was not psychologically competent to plead guilty, which he supported with a psychiatrist report, but the motion judge noted that he was not basing judgment upon the guilty plea or the simple fact of the revocation of his license to practice. Rather, the motion judge was basing it on detailed Law Society findings of misappropriation. While the motion judge did not take the Law Society's findings in this regard as conclusive, the plaintiff failed to explain the \$735,854.86 in transfers from trust despite being provided with the opportunity to do so. In the absence of any explanation for those transfers, the motion judge concluded that the transfers amounted to misappropriations.

The decision illustrates the difficulties that a plaintiff may face when seeking to impose liability on a bank even when there has been an admitted error such as double debiting of a cheque. A PDF version is available for download [here](#).

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Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com