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	COUR FÉDÉRALE	É
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	November 30, 2021	S
	30 novembre 2021	É
Frank Fedorak		
VAN		1

Court File No. \_\_\_\_\_

## FEDERAL COURT SIMPLIFIED ACTION

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

PLAINTIFF

and

**THE TORONTO-DOMINION BANK (TD CANADA TRUST)**

DEFENDANT

## STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [\*Federal Courts Rules\*](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [\*Federal Courts Rules\*](#).

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 DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_

(Registry Officer)

Federal Court of Canada  
3<sup>rd</sup> Floor – 701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1K8

TO: The Toronto-Dominion Bank  
(TD Canada Trust)  
Legal Department, TD Bank Group  
66 Wellington St W  
Toronto, ON, M5K 1A2

### Nature of this Action

1. By this simplified action, the Plaintiff claims the sum of \$36,250.86 plus interest, based on the Defendants' failure to pay that amount to the Receiver General as it was obligated to do pursuant to relevant sections of the *Income Tax Act*.

### The Deemed Trust

2. H.N.J. Enterprises Ltd., sometimes carrying on business as "Take Sushi Japanese Restaurant" (the "**Debtor**") was a company incorporated pursuant to the law of British Columbia on June 2, 2000.
3. Between June of 2000 and October of 2015, the Debtor operated a Japanese restaurant (the "**Business**") and had employees to whom it paid wages.
4. At all material times, the Debtor had a legal obligation to deduct or withhold from the wages it paid to its employees prescribed amounts under the *Income Tax Act*, the *Canada Pension Plan Act*, the *Employment Insurance Act*, and their regulations (collectively, "**Payroll Source Deductions**").
5. At all material times, the Debtor also had a legal obligation to pay the Payroll Source Deductions to the Receiver General.
6. During the Debtor's 2013, 2014, and 2015 taxation years, the Debtor collectively deducted or withheld \$74,518.17 in Payroll Source Deductions from its employees, but failed to pay those Payroll Source Deductions to the Receiver General.
7. In October of 2015, the Debtor ceased operating and sold the Business to an unrelated third party for fair market value.
8. By operation of law, the Debtor had an obligation to pay the proceeds of sale from the Business, equal in value to \$74,518.17, to the Plaintiff.

### **The Defendant's Receipt of Proceeds from the Sale of the Business**

9. The Defendant is a chartered bank who provided banking services to the Debtor and to the Debtor's director, Ms. Sung Lim Lee (the "**Director**").
10. From at least January 2013 to January of 2016, the Debtor held a business bank account with the Defendant (the "**Corporate Account**").
11. The Corporate Account remained open and active after the Debtor sold the Business, and the Debtor incurred overdrafts on the Corporate Account.
12. On October 13, 2015, the following events occurred:
  - a. the Corporate Account had an existing overdraft of \$11,344.88;
  - b. \$89,500 of the proceeds from the sale of the Business (the "**Proceeds**") were deposited into the Corporate Account;
  - c. The Defendant received \$11,344.88 of the Proceeds in payment for the overdraft; and
  - d. The Director transferred the remaining \$69,500 of the Proceeds to her personal bank account.
13. There were no further deposits into the Director's personal bank account between October 13, 2015 and January 6, 2016.
14. On October 15, 2015, the following events occurred:
  - a. The Corporate Account had a further overdraft of \$6,450.19;
  - b. The Director transferred \$6,730.48 of the Proceeds from her personal bank account to the Corporate Account; and
  - c. The Defendant received a further \$6,450.19 of the Proceeds in payment for the overdraft.
15. Between October 15, 2015 and January 6, 2016, the Corporate Account continued to incur overdrafts, and the Director continued to transfer further Proceeds from

her personal account to the Corporate Account that the Defendant received in order to pay off the overdrafts.

16. In total, the Defendant received \$37,595.07 of the Proceeds that the Debtor transferred into the Corporate Account in satisfaction of the Debtors' overdrafts.

#### **The Defendant's Failure to pay**

17. By registered mail sent January 8, 2018, the Canada Revenue Agency notified the Defendant that it was obliged to pay to the Receiver General the amount of the Proceeds it received as payment for the overdrafts.
18. By email to Defendant's counsel dated October 24, 2019, counsel for the Plaintiff again demanded payment. To date, in the face of numerous requests, the Defendant has refused to pay the Plaintiff.

#### **Legal Basis**

19. The Plaintiff pleads and relies upon the following enactments:
  - a. *Income Tax Act*, (R.S.C., 1985, c. 1 (5<sup>th</sup> Supp.)), sections 222, 227;
  - b. *Canada Pension Plan*, (R.S.C., 1985, c. C-8), section 23;
  - c. *Employment Insurance Act*, (S.C. 1996, c. 23), section 86;
  - d. *Crown Liability and Proceedings Act*, (R.S.C., 1985, c. C-50), section 32;
  - e. *Time Limits and Other Periods Act*, SC 2020, c 11, s 11, section 6; and
  - f. Such further and other grounds that counsel may advise and this Honourable Court may permit.

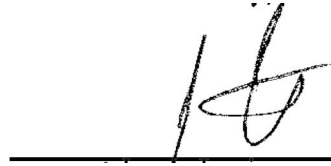
#### **Relief Sought**

20. The Plaintiff requests the following relief:
  - a. Payment of \$37,595.07;
  - b. Pre-judgment and post-judgment interest;

- c. Costs of this action; and
- d. Any other relief this Honourable Court may allow.

The Plaintiff proposes that this action be tried at the city of Vancouver, in the province of British Columbia

DATED: November 30, 2021



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**ATTORNEY GENERAL OF CANADA**

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V6Z 2S9

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Counsel for the Plaintiff