

CITATION: TD Waterhouse Canada Inc. v. Electronic Imaging Systems Corp., 2026 ONSC 2842

COURT FILE NO.: CV-25-738686-00CL

DATE: 20260514

SUPERIOR COURT OF JUSTICE – ONTARIO [Commercial List]

RE: TD WATERHOUSE CANADA INC.

Applicant

AND:

ELECTRONIC IMAGING SYSTEMS CORPORATION

Respondent

BEFORE: Justice Jana Steele

COUNSEL: *Geoff R. Hall & Holly Kallmeyer*, for the Applicant

Kris Borg-Olivier, for the Respondent

Natalie Levine, for KMPG Inc. as Proposed Implementation Monitor

Katherine Forbes, Proposed Implementation Monitor

HEARD: May 5, 2026

ENDORSEMENT

Overview

[1] On August 15, 2025, I released a decision granting a mandatory injunction requiring Electronic Imaging Systems Corporation (“EIS”) to return to TD Waterhouse Canada Inc. (“TD Waterhouse”) its data: *TD Waterhouse Canada Inc. v. Electronic Imaging Systems Corp.*, 2025 ONSC 4718 (the “Injunction Decision” and the “Injunction”).

[2] For various reasons, as discussed below, EIS is still in possession of the TD Data (as defined in the Injunction Decision). TD Waterhouse now seeks: (i) an order appointing KPMG Inc. as an “implementation monitor” to oversee the implementation of the Injunction Decision; and (ii) an order declaring that EIS has breached the agreement between the parties and certain amendments to the terms of the Injunction as a result of the alleged breach.

[3] For the reasons set out below, TD Waterhouse's request for an "implementation monitor" is dismissed. I find that there was a technical breach of the Agreement because of the back up CDs that EIS unilaterally held in case of disaster. The data on these CDs was comingled with data of other EIS clients, contrary to the terms of the Agreement. I have determined that the terms of the Injunction shall be amended to require EIS to continue to provide certain transition services until the date that is 12 months after the date on which EIS has completed the return of the images and associated metadata to TD Waterhouse in accordance with the Injunction subject to the right of TD Waterhouse to terminate all or part of the Transition Services on 30 days written notice to EIS. However, I have declined to grant the other amendment to the Injunction sought by TD Waterhouse (that the cost to be borne by TD Waterhouse in respect of the repatriation of the TD Data be adjusted).

Background

[4] TD Waterhouse provides wealth management services. It is a wholly owned subsidiary of The Toronto-Dominion Bank.

[5] EIS designs, develops, maintains, and hosts customized workflow software and systems services for clients, including banks, insurance companies, and investment firms. Rose Kramer founded EIS in 1977. Ms. Kramer is the President of EIS.

[6] TD Waterhouse and EIS have had a commercial relationship since 1999, when EIS first provided TD Waterhouse with certain services, including microfilming and cheque fraud detection services.

[7] From 2007 onward, the relationship between TD Waterhouse and EIS has been governed by the agreement that was executed on June 19, 2007, which has been amended ten times (the "Agreement").

[8] EIS would receive documents from TD Waterhouse that EIS would image and index. These indexed images and data were uploaded to a centralized portal managed by EIS, where TD Waterhouse users could view and analyze them.

[9] TD Waterhouse advised EIS in the fall of 2024 that it would not be renewing the Agreement. TD Waterhouse asked EIS to repatriate the TD Data. TD Waterhouse asked for the return of data to be done as a "bulk" return, with no collating between images and their associated metadata.

[10] The Agreement expired on May 15, 2025. However, the Agreement contemplated a one-year transition period during which time EIS would continue to fulfil business as usual access requests. The one-year period expires on May 15, 2026.

[11] In the Injunction Decision, I determined that TD Waterhouse was entitled to a mandatory injunction requiring EIS to return the TD Data. I also imposed a term requiring TD Waterhouse

to pay EIS for its services on a *quantum meruit* basis based on commercially reasonable daily rates for the services rendered.

[12] Other than approximately 5 million Images (as defined in the Injunction Decision), EIS continues to hold the TD Data (which is comprised of approximately 180 million unique Images).

[13] The TD Data includes images and data for customers whose accounts were both active and closed throughout the life of the Agreement. Ms. Kramer's evidence is that from the outset of the relationship between the parties, EIS did not want to house all TD Waterhouse's data. EIS had wanted to hold it for a period of time, then return it to TD Waterhouse. Ms. Kramer's proposal was rejected by TD Waterhouse at the time. On numerous occasions, Ms. Kramer addressed (with various persons at TD Waterhouse) the issue of the massive build-up of images, including those of former clients and clients with closed accounts.

[14] Following the release of the Injunction Decision, on or about September 4, 2025, TD Waterhouse provided EIS with Direction #1 containing certain directions regarding the manner in which TD Waterhouse required the TD Data to be returned.

[15] On or about December 1, 2025, the parties attended a case conference before Conway J., who directed that EIS provide TD Waterhouse with a mark up of Direction #1 setting out what was or was not acceptable to EIS. EIS provided TD Waterhouse with the mark up, which was not acceptable to TD Waterhouse.

[16] On or about March 6, 2026, TD Waterhouse brought a motion to, among other things, incorporate Direction #1 as a Court order, and appoint KPMG as an Implementation Monitor to monitor the implementation of the Injunction.

[17] After reading the affidavits and factums filed by the parties, it was clear to me that the incorporation of Direction #1 as a Court order was not possible based on the record because there was competing affidavit evidence regarding, among other things, the complexity of the repatriation process and the amount of time needed to complete the transfer of the TD Data. Among other things, EIS was insisting that a time-consuming manual process was required to transfer the TD Data. Direction #1 contemplated that all the work must be completed by May 1, 2026. Ms. Kramer's evidence was that this timeline was impossible. TD Waterhouse was of the view that the process should be straightforward, assuming that the TD Data had been kept separate. The difference in the estimated amount of time (and associated cost) required to transfer the TD Data was significant. I directed the parties to meet at EIS's offices with their respective experts to discuss the data repatriation.

[18] The meeting at EIS's offices was held on March 25, 2026 (the "Joint Meeting").

[19] Following the Joint Meeting, TD Waterhouse scheduled another case conference before me, at which time this motion was booked. Among other things, at the Joint Meeting, TD

Waterhouse appreciated that its backup data was stored on disks, with data from other EIS clients. There are about 67,000 back up disks, containing the TD Data and data of other EIS clients.

Analysis

Did EIS breach the Agreement by maintaining TD Waterhouse's back up data on disks commingled with data from other EIS clients?

[20] TD Waterhouse submits that EIS breached the Agreement by commingling the TD Data with data of other EIS clients on the CDs.

[21] I agree with TD Waterhouse that there was a technical breach of the Agreement by EIS in the way EIS, on its own initiative, stored back up data.

[22] TD Waterhouse states that it only found out about the commingling of the data on the CDs at the Joint Meeting; however, Ms. Kramer, EIS's president, had sworn affidavit evidence on April 25, 2025 and February 13, 2026, both times including statements that EIS maintained back up CDs, which contained data pertaining to multiple clients (not just TD Waterhouse). In her April 25, 2025 affidavit, Ms. Kramer explained (at para. 48(e)): "The CDs that EIS maintains for backup are not editable and are maintained as backup in case of a disaster. Individual CDs include images and data pertaining to multiple clients, not just TD."

[23] Accordingly, TD Waterhouse's position that they only found out about the comingled backup CDs at the Joint Meeting is inaccurate.

[24] There is a covenant in the Agreement regarding the segregation of the TD Data. Section 16 of the Agreement provides:

16. Segregation of TD data

EIS will ensure that no TD data is used for any purpose whatsoever other than to provide the Services hereunder and, for greater certainty, ***will keep all TD data physically and logically secured and segregated from data used in EIS' own business.*** [Emphasis added.]¹

[25] The Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, 2 S.C.R. 633, at para. 47 stated that a contract must be read "as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract". The Supreme Court of Canada further stated

¹ This provision was contained in the first Agreement (June 19, 2007), and all amendments thereafter.

that “the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine ‘the intent of the parties and the scope of their understanding’” (*Sattva*, at para. 47, citing *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] S.C.R. 744, at para. 27).

[26] A contract must also be interpreted in accordance with sound commercial principles and good business sense: *Scanlon v. Castlepoint Development Corp.*, (1992) 11 O.R. (3d) 744 (C.A.).

[27] EIS created and maintained tamper-proof CDs for back up purposes. EIS submits that it complied with the Agreement because the TD Data was segregated by EIS at the system and application level. Ms. Kramer’s evidence is that EIS maintained the back up CDs on their own initiative “as an added level of protection in the event that anything should happen to the segregated client data maintained on [EIS’s] servers.”

[28] However, the Agreement requires that all TD Data be segregated from the data used in EIS’s business. There is no exception to permit back up data to be held commingled with other clients’ data.

[29] I agree with TD Waterhouse that by having a backup of the TD Data on the comingled CDs, EIS breached the Agreement. However, Ms. Kramer’s evidence is that:

- a) There was an attempted data breach by hackers on September 17, 2025, which was effectively repelled by EIS’s systems. However, as a result of the attempted data breach, a number of EIS’s servers suffered damage that resulted in the corruption of some of the data (including some of the TD Data) housed on those servers. As a result many of the TD images housed on EIS’s servers remain inaccessible.
- b) The fact that EIS now needs to repatriate some of the TD Data from the backup CDs rather than the servers does not impact the complexity of the repatriation process or the time needed for completion. Every individual piece of TD Data must be manually identified and retrieved by the unique EIS number (along with a secondary identifier).²

² In her affidavit, Ms. Kramer explained: “Data was segregated at the system and application level within the EIS environment through the use of unique record identifiers (EIS IDs) and access controls governing how records were created, stored, and retrieved. Client data was accessed and managed on a per-record basis within the application layer (EISVIEW), where system logic enforced separation between client datasets during normal operations.” “EIS has taken its segregation obligations so seriously that it even maintained physical segregation within its premises, such that any work done on TD matters was restricted to its own controlled environment.” “[T]he CDs were created as part of EIS’s internal backup and archival processes to preserve data in the event of system disruption. They were not designed, structured, or maintained as client-deliverable datasets, nor were they intended to

[30] The back up CDs, which EIS held on its own initiative, preserved the TD Data.

[31] TD Waterhouse now argues that had the TD Data not been comingled with other data, EIS could just hand over the CDs, which would be easy and inexpensive. It was not a contractual requirement for EIS to back the data up on CDs – although TD Waterhouse is fortunate that they did.

[32] There was a technical breach of the Agreement. However, the technical breach of the Agreement did not make the repatriation process any more difficult. Further, as opposed to damages having arisen from the breach, the backup system EIS voluntarily put in place means that the TD Data can still be recovered despite the damage suffered to EIS's servers. I further note that TD Waterhouse conducted audits of EIS's contractual compliance and did not at any time raise an issue regarding the manner in which EIS stored the TD Data.³ Ms. Kramer's evidence is that "TD has performed annual audits of EIS, including at least one recent comprehensive onsite review."

Did EIS breach the Agreement by not notifying TD Waterhouse of the attempted data breach?

[33] TD Waterhouse submits that EIS also breached the Agreement because EIS did not notify TD Waterhouse of the attempted data breach.

[34] Section 14 of Schedule D to the Agreement provides:

If there is any unauthorized access to, copying, modification, use, disclosure or loss of, or inability to account for, any TD Personal Information, EIS shall promptly, but in any event no later than 5 business days after becoming aware thereof: (i) notify TD in accordance with the notice provisions of the Agreement; (ii) take such actions as may be necessary or reasonably requested by TD to minimize the disclosure or loss; and (iii) cooperate in all reasonable respects with TD to minimize the impact of the disclosure or loss and any damage resulting therefrom.

serve as a mechanism for direct extraction or reconstruction of complete client records. The data stored on the CDs is organized in volume-based formats and contains data from multiple clients, consistent with their function as backup archives rather than structured delivery outputs."

"It is critical to understand that EIS was not required under the Agreement to maintain a physical backup of TD's images. We did so on our own initiative, as we do for all our clients, as an added level of protection in the event that anything should happen to the segregated client data maintained on our servers."

³ Section 19 of the Agreement set out TD Waterhouse's audit rights. Section 19(a) provides that TD Waterhouse has the right to audit and inspect: "(i) any facility or part of a facility at which EIS is providing the services; and (ii) data, records, documents and other information of either EIS relating to the services located anywhere in order to verify: (A) the performance by EIS of its obligations under this Agreement; (B) the security and integrity of confidential information and TD data (including customer, employee and third party information); and (C) amounts paid by TD under the Agreement."

[35] The attempted data breach was disclosed by EIS to TD Waterhouse at a meeting on or about October 14, 2025.

[36] I agree with EIS's submission that the disclosure clause above was not technically triggered by the attempted data breach. Because EIS's system effectively thwarted the attempted breach, none of the TD Data was accessed or removed by the hackers. Accordingly, there was no unauthorized access to the TD Data that would trigger the notice requirement.

Should the Court adjust the cost to be borne by TD Waterhouse in respect of the repatriation of the TD Data?

[37] TD Waterhouse submits that because there was a breach of the Agreement by EIS, the cost to be borne by TD Waterhouse in respect of the repatriation of the TD Data should be adjusted. TD Waterhouse asks the court to amend the Order made last summer. As discussed above, I have found that there was a breach of the Agreement because the backup CDs did not segregate the TD Data from the data of EIS's other clients.

[38] TD Waterhouse points to the terms of the Injunction, which allows the parties to return to court to seek further directions "as to the rights and obligations of TD Waterhouse and EIS."

[39] TD Waterhouse submits that because EIS breached the Agreement, this fundamentally changes the context in which the Injunction was issued by the Court. TD Waterhouse submits that the court has authority to make such an amendment in equity and under the *Rules of Civil Procedure*.

[40] As noted by TD Waterhouse, in equity, a court may craft any remedy that it considers appropriate and just in the circumstances. The court's ability to supervise an injunction flows from this power: *Doucet-Boudreau v. Nova Scotia*, 2003 SCC 62, [2003] 3 S.C.R. 3, at para. 71.

[41] The test set out in *Labourers' International Union of North America, Local 183 v. Castellano*, 2020 ONCA 71, 444 D.L.R. (4th) 183, at para. 25, applies to the further terms that TD Waterhouse seeks to add to the Injunction:

- a) Whether TD Waterhouse has established a legal right and proven the wrong;
- b) Whether the wrong is sufficiently likely to continue or recur such that injunctive relief is appropriate;
- c) Whether any adequate alternative remedy exists;
- d) Whether any equitable discretionary considerations justify denying relief; and
- e) Whether the terms sought are no broader than reasonably necessary to remedy the wrong and prevent further harm.

[42] I found in the Injunction Decision that TD Waterhouse was required to pay EIS for its services on a *quantum meruit* basis based on commercially reasonable daily rates. TD Waterhouse should have to compensate EIS for its services to repatriate the TD Data. TD Waterhouse's position is that it should be paying less because of the existence of the comingled backup CDs. TD Waterhouse submits that EIS will profit from its own breach of contract if the order is not amended. The facts here do not support TD Waterhouse's position.

[43] The fact that EIS was prudent and maintained back-up CDs of all the data it housed does not change the obligation of TD Waterhouse to compensate EIS for the repatriation services. As noted above, Ms. Kramer's evidence is that the repatriation process required would not be altered if the repatriation was being done from EIS's servers, as opposed to the CDs. While KPMG LLP provided TD Waterhouse with a report that stated a repatriation of this size should cost less than \$500,000, KPMG LLP's report was not based on EIS's specific system. KPMG LLP noted in its report that its analysis was based primarily on "TD's understanding of the various steps that would need to be considered to repatriate the TD Data."

[44] I am not persuaded that the Order should be amended to adjust the cost TD Waterhouse is required to pay.

Should the Court amend the terms of the Injunction to compel EIS to provide Transition Services until the date that is 12 months after the date on which the repatriation is complete?

[45] TD Waterhouse asks the court to amend the terms of the Injunction to require to provide transition services until the date that is 12 months after the date on which EIS has completed the return of the images and associated metadata to TD Waterhouse in accordance with the Injunction Decision, subject to the right of TD Waterhouse to terminate all or part of the transition services on thirty (30) days written notice to EIS.

[46] EIS has indicated that it is prepared to continue providing the required services; it just wants to renegotiate the terms. EIS argues that it is not appropriate for the Court to force EIS to enter into a new agreement on terms that are commercially unacceptable to EIS.

[47] As noted by the Court in *Best Lifestyle v. County of Simcoe*, 2019 ONSC 6619, at para. 115, "[t]he Court should generally be very reluctant to force people into negotiations, and even more reluctant to force people into agreements and contracts that they do not freely choose." In *Vale Canada Ltd. v. Priestly Demolition Inc.*, 2020 ONSC 6763, at para. 20, Davies J. noted that "[e]ven if the parties to a contract have a longstanding relationship, the duty of good faith does not require parties to negotiate new contracts when the contract between them does not contain an automatic renewal provision."

[48] As acknowledged by EIS, the instant case is not the same as the above cases. In this case we have a circumstance where TD Waterhouse terminated the Agreement, as it was entitled to do. EIS, which has been storing the TD Data for several years, is obliged to repatriate that data to TD

Waterhouse. The data repatriation process is expected to be lengthy and costly. In the meantime, TD Waterhouse continues to require business as usual services from EIS.

[49] As noted at para. 71 of *Doucet* (citing K. Roach, *Constitutional Remedies in Canada* (loose-leaf), at para. 13.60):

Superior courts, which under the Judicature Acts possess the powers of common law courts and courts of equity, have “assumed active and even managerial roles in the exercise of their traditional equitable powers.”

[50] The Agreement contains a transition provision for a year duration. The transition provision addresses the day-to-day services that EIS continues to provide to TD Waterhouse unrelated to the data repatriation. Section 20(b) of the Agreement provides:

For such period as TD may reasonably require, up to a maximum of twelve (12) months after the date of termination or expiry of this Agreement (the “Assistance Period”) EIS will provide the following transition assistance services (the “Transition Services”): (i) continue to perform the Services in accordance with this Agreement at the rates set out in the applicable Statement of Work [...]. During the Assistance Period, TD may terminate all or part of the Transition Services on thirty (30) days written notice to EIS.

[51] Pursuant to the terms of the Agreement, the Assistance Period ends on May 15, 2026. EIS has stated that it is prepared to continue to provide the business-as-usual services to TD Waterhouse. However, EIS now wants to amend the terms. EIS states that because the relationship between the parties is coming to an end, the prior terms are no longer fair for EIS. EIS says that it has provided some services at very low or no cost to TD Waterhouse over the years because of their continuing relationship. The other side of the coin is that EIS holds most if not all the cards in the negotiation, because EIS continues to hold the TD Data and, accordingly, TD Waterhouse needs EIS’s services for a period of time. Although EIS states that its revenues will be reduced for the business-as-usual requests, EIS will likely have an increase in revenue during the transition period as a result of the extensive repatriation services.

[52] In my view this is an exceptional case. As noted by EIS, the data repatriation exercise means that the parties’ relationship persists despite the Agreement itself coming to an end. The Transition Services section of the contract was freely negotiated between two sophisticated parties. It was contemplated that these terms would apply if the Agreement was terminated or expired; however, it had a twelve-month sunset clause. As set out above, the data repatriation process will be longer. EIS is being compensated for the data repatriation on a *quantum meruit* basis. EIS has agreed that it will continue to provide the Transition Services TD Waterhouse requires to continue its business-as-usual operations. In the circumstances, the Agreement ought to be extended on the same terms until the repatriation process is complete. Extending the Transition Services term in this way accomplishes two things: (i) it avoids a situation where one negotiating party has virtually

no leverage; and (ii) it creates an environment where hopefully EIS will seek to expeditiously complete the repatriation services.

Should KPMG be appointed as Implementation Monitor?

[53] TD Waterhouse asks the court to appoint KPMG Inc. as an “Implementation Monitor” to assist with the implementation process, at TD Waterhouse’s cost. TD Waterhouse submits that an independent officer with technical expertise is needed to determine how best to repatriate the data.

[54] TD Waterhouse notes that the relationship between the parties is fractured and states that TD Waterhouse has lost confidence in EIS’s ability to manage the repatriation in an efficient manner in accordance with the Injunction “given EIS’s handling of the TD Data.” As set out above, EIS took steps above and beyond what was required in order to ensure that the massive volume of documents EIS was housing were secure and backed-up.

[55] TD Waterhouse submits that an implementation monitor is needed, in part, because of the lack of progress in repatriating the TD Data following the issuance of the Injunction last summer. As noted by EIS, the lack of progress is not due to lack of effort by EIS. EIS immediately started working on repatriating the data, but TD Waterhouse directed EIS to stop its work because of the cost. TD Waterhouse did not want EIS to push forward with the data repatriation process that EIS has consistently said is required for the data to be transferred.

[56] I also note that although TD Waterhouse now claims that an implementation monitor is necessary because of the time-consuming and costly nature of the data repatriation process, TD Waterhouse ought to have been aware of the time and associated cost to repatriate its data. In and around 2013, National Bank of Canada acquired TD Waterhouse’s Institutional Services business. Some years later, TD Waterhouse was required to transfer to National Bank customer data and images in EIS’s possession. EIS transferred approximately 860,000 images from March to June 2021 and a further approximately 22,000 images from February to March 2022. The total images transferred over the time frame spanning approximately 5 months was less than 1 million. EIS is now faced with repatriating over 180 million images.

[57] TD Waterhouse submits that the appointment of an implementation monitor would be an appropriate exercise of the Court’s power to impose terms on an injunction. TD Waterhouse asks that KPMG Inc. be a court appointed officer to assist the court.

[58] Under s. 101 of the *Courts of Justice Act* a receiver may be appointed where it appears to the court to be just or convenient to do so.

[59] In *Anderson v. Hunking*, 2010 ONSC 4008, the Court set out, at para. 15, the principles governing motions to appoint a receiver, including that “the appointment of a receiver is very intrusive and should only be used sparingly, with due consideration for the effect on the parties as well as consideration of the conduct of the parties.”

[60] TD Waterhouse points to the court's ability to appoint an investigative receiver "in appropriate circumstances and with appropriate restraints." As noted in *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368, 125 O.R. (3d) 401, at para. 66, the appointment of an investigative receiver in such circumstances is "a proper exercise of the court's 'just and convenient' authority under s. 101 of the *Courts of Justice Act*." The Court of Appeal, at para. 90, in *Akagi* set out the following principles regarding the appointment of an investigative receiver:

- a) The appointment of the investigative receiver is necessary to alleviate a risk posed to the plaintiff's right to recovery.
- b) The primary objective of investigative receivers is to gather information and "ascertain the true state of affairs" concerning the financial dealings and assets of a debtor, or of a debtor and a related network of individuals or corporations. One authority characterized the investigative receiver as a tool to equalize the "information imbalance" between debtors and creditors with respect to the debtor's financial dealings.
- c) Generally, the investigative receiver does not control the debtor's assets or operate its business, leaving the debtor to continue to carry on its business in a manner consistent with the preservation of its business and property.
- d) Finally, in all cases the investigative receivership must be carefully tailored to what is required to assist in the recovery of the claimant's judgment while at the same time protecting the defendant's interests, and go no further than necessary to achieve these ends.

[citations omitted.]

[61] In *Akagi*, at para. 67, the Court of Appeal noted that the authority of the court under s. 101 of the *CJA* to appoint a receiver is "undoubtedly broad and must be shaped by the circumstances of individual cases," then went on to caution as follows:

[T]he appointment of a receiver is an extraordinary and intrusive remedy and one that should be granted only after a careful balancing of the effect of such an order on all of the parties and others who may be affected by the order. [...]

[62] There is little to no risk of TD Waterhouse not recovering the TD Data. There is an injunction in place and EIS has indicated a willingness to take the necessary steps to repatriate the TD Data. I agree with EIS that courts have been clear that an investigative receiver is intrusive, and due consideration must be given to the impact on the business. EIS is concerned about the risk of disclosure of its confidential, proprietary information, among other things.

[63] From the beginning, EIS did not want to maintain all of TD Waterhouse's data. EIS reluctantly agreed to store the TD Data. EIS raised with TD Waterhouse its concern regarding the

massive buildup of Images of both open and closed accounts on more than one occasion in the past. EIS has consistently told TD Waterhouse that the data repatriation process would be time-consuming and expensive. It appears TD Waterhouse has finally recognized this but now wants the court to step in and interfere. As noted by Ms. Kramer “[i]t is only now, when the TD Data must be repatriated and TD is unhappy with the time and the cost associated with the repatriation, that TD is criticizing its longtime partner.”

[64] I am not satisfied that the “extraordinary and intrusive remedy” of an implementation monitor is appropriate in the circumstances.

Disposition and Costs

[65] Order to go as follows:

- a) TD Waterhouse’s request for the appointment of an Implementation Monitor is dismissed.
- b) TD Waterhouse’s request for the terms of the Injunction to be amended to adjust the cost to be borne by TD Waterhouse in respect of the repatriation of the TD Data is dismissed.
- c) The terms of the Injunction shall be amended to require EIS to provide Transition Services until the date that is 12 months after the date on which EIS has completed the return of the images and associated metadata to TD Waterhouse in accordance with the Injunction, subject to the right of TD Waterhouse to terminate all or part of the Transition Services on thirty (30) days written notice to EIS.

[66] The parties filed costs outlines. Because neither party was wholly successful on the motion, each party shall bear its own costs.

Justice Jana Steele

Date: May 14, 2026