

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action Division)

Nº: 500-06-001345-244

S. MORAN,
Applicant

v.

AEROPLAN INC.,
- and -
CANADIAN IMPERIAL BANK OF
COMMERCE,
- and -
TORONTO-DOMINION BANK,
Defendants

APPLICATION BY DEFENDANT THE TORONTO-DOMINION BANK FOR LEAVE TO ADDUCE RELEVANT EVIDENCE (Article 574 CCP)

TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER OF THE SUPERIOR COURT
OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, DEFENDANT
THE TORONTO-DOMINION BANK RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Defendant The Toronto-Dominion Bank (“**TD**”) seeks leave to adduce relevant evidence in order to establish facts that are necessary to enable this Court to undertake an informed analysis, in light of the criteria set out in article 575 of the Code of Civil Procedure (the “**CCP**”) regarding the authorization to institute class action proceedings.
2. On or around November 20, 2024, the Applicant filed an *Application to Authorize the Bringing of a Class Action & to Appoint the Applicant as Representative Plaintiff* (the “**Application for Authorization**”), as appears from the Court record.
3. The Applicant alleges that TD, the Canadian Imperial Bank of Commerce (“**CIBC**”) and Aeroplan Inc. (“**Aeroplan**”) “entice” individuals to sign up for Aeroplan Visa

credit cards by, among other things, offering Welcome Bonus Points automatically given to persons who qualify for the relevant credit card.¹

4. The Applicant further alleges that, in October 2024, Aeroplan notified the Applicant and at least 17,000 other class members that Welcome Bonus Points given to them upon signing up for a second Aeroplan credit card with TD or CIBC were being rescinded or clawed back.²
5. The Applicant alleges that TD “signed up” class members for Aeroplan credit cards “without ever notifying them that they may not be eligible for Welcome Bonus Points despite collecting their Aeroplan account numbers as part of the application process”.³
6. The Applicant alleges that class members paid fees for the use of their Aeroplan credit cards and seeks damages in connection with these fees.⁴
7. The Applicant seeks injunctive relief as well as compensatory and punitive damages against TD and the other Defendants on behalf of the following class:⁵

“All persons resident in Quebec who are holders of a CIBC or TD Aeroplan credit card and who had Welcome Bonus Points clawed back based on having been issued a second Aeroplan credit card;”
8. TD requests leave to adduce relevant evidence at the authorization hearing in support of its submissions that the Application for Authorization fails to meet the threshold conditions set out in Article 575 CCP.

II. EVIDENCE PROPOSED BY TD

9. The evidence TD seeks leave to adduce is eminently relevant and appropriate to the authorization inquiry proposed by the Applicant.
10. In the Application for Authorization, the Applicant inaccurately suggests that customers were never informed that they may not be eligible for Welcome Bonus Points upon signing up for a second Aeroplan Visa credit card.⁶
11. The Applicant also inaccurately alleges that TD collected fees including annual fees from her and from other class members, while claiming that they would not

¹ Application for Authorization, para. 3.

² Application for Authorization, para. 4.

³ Application for Authorization, para. 5.

⁴ Application for Authorization, paras. 6, 7, 60-61.

⁵ Application for Authorization, paras. 1 and 10.

⁶ Application for Authorization, para. 23.

have paid such fees had they been informed that they were not eligible for Welcome Bonus Points upon signing up for a second Aeroplan Visa credit card.⁷

12. Those allegations contained in the Application for Authorization are unsubstantiated and inaccurate with respect to the essential components of the supposed legal syllogism required to establish a cause of action against TD.
13. In support of her allegations, the Applicant has filed incomplete documentation regarding TD's Aeroplan Visa credit card application process.⁸ As well, the Applicant has not filed any of TD's applicable cardholder agreements or terms and conditions, which are clearly necessary for the Court's consideration of the issues raised in the Application for Authorization.
14. To ensure this Court has all of the relevant, complete and accurate evidence necessary to consider the Applicant's proposed class action, TD seeks leave to file a sworn statement by Tim Elgar, Vice President, Credit Cards Partnerships and Business Development at TD, and its proposed exhibits, in order to provide information on:
 - (a) the Applicant's application for a TD Aeroplan Visa credit card and the alleged payment of fees for such card; and
 - (b) the process to apply for a TD Aeroplan Visa credit card and the various documents and agreements entered into by customers as part of this process, during the proposed class period.
15. The evidence TD seeks to adduce is limited and serves to remedy the vague, incomplete, and inaccurate allegations of the Application for Authorization. In particular, TD seeks to demonstrate that, as part of the process of applying for a TD Aeroplan Visa credit card, the Applicant and class members were informed of and agreed to the Aeroplan Program Terms and Conditions, including the specific "Section 10" clause described by the Applicant at paragraph 42 of her Application for Authorization.
16. TD respectfully submits that its proposed evidence is relevant and necessary at the authorization stage, in order for the Court to appreciate properly whether the Applicant has met her burden.
17. The evidence that TD seeks to adduce is both useful and necessary to demonstrate that the facts alleged by the Applicant are inaccurate and do not justify the conclusions sought, such that the proposed class action is untenable and doomed to fail.

⁷ Application for Authorization, paras. 6, 7, 26, 140 and 141.

⁸ Exhibits R-2 and R-4 to the Application for Authorization are incomplete.

18. The evidence proposed is limited in scope and is thus consistent with the authorization process and the principle of proportionality.
19. This *Application by Defendant The Toronto-Dominion Bank for Leave to Adduce Relevant Evidence* is well-founded in fact and in law.

WHEREFORE MAY IT PLEASE THIS COURT TO:

GRANT the present *Application by Defendant The Toronto-Dominion Bank for Leave to Adduce Relevant Evidence*;

AUTHORIZE the Defendant TD to file the Sworn Statement of Tim Elgar, of which a draft is communicated herewith as Exhibit TD-1 – Draft Sworn Statement of Tim Elgar and exhibits in support thereof;

ALL OF WHICH IS REQUESTED without costs, except in the event of contestation.

MONTREAL, July 18, 2025



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Our file: 1264946

NOTICE OF PRESENTATION

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TAKE NOTICE that the *Application by Defendant The Toronto-Dominion Bank for Leave to Adduce Relevant Evidence* will be presented for hearing and allowance at a date and time to be determined by the Honourable Justice Sylvain Lussier of the Superior Court of Québec, 1 Notre-Dame Street East, Montreal, Quebec.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, July 18, 2025



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Our file: 1264946

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LIST OF EXHIBITS OF DEFENDANT THE TORONTO-DOMINION BANK
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Exhibit TD-1:	Draft Sworn Statement of Tim Elgar and exhibits in support thereof.
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MONTREAL, July 18, 2025



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SWORN STATEMENT OF TIM ELGAR

I, the undersigned, Tim Elgar, Vice President, Credit Cards Partnerships and Business Development at The Toronto-Dominion Bank (“TD”), occupying my profession at TD Terrace - 160 Front Street West, Toronto (Ontario) M5J 0G4, do hereby solemnly affirm that:

1. I started my employment at TD on July 4, 2016, as Associate Vice President, Credit Card Loyalty and Partnerships. I currently hold the position of Vice President, Credit Cards Partnerships and Business Development. I have held this position since June 18, 2022.
2. As part of my role, I oversee the Aeroplan partnership for the offering of TD Aeroplan co-brand credit cards.
3. I have read the Applicant Stéphanie Morand’s *Application to Authorize the Bringing of a Class Action & to Appoint the Applicant as Representative Plaintiff* (the “**Application**”) and reviewed accompanying exhibits.

Applicant’s TD Aeroplan Credit Card

4. On May 23, 2023, the Applicant applied for a TD Aeroplan Visa Infinite Card (the “**TD Aeroplan Credit Card**”) on TD’s website.

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5. The TD website page through which the Applicant applied contained the following statements (among others) under the “Legal” heading, which appears in Applicant’s Exhibit R-4:

Aeroplan points have no cash value but are redeemable under the Aeroplan program for flights and other rewards. The retail value of rewards obtained using Aeroplan points will vary depending on a range of factors including the type of reward issued, details of which may be found at

<https://www.aircanada.com/ca/en/aco/home/aeroplan.html>.

Aeroplan points may be redeemed only in accordance with the General Terms & Conditions of the Aeroplan program. Full terms and conditions of the Aeroplan Program are available online at <https://www.aircanada.com/ca/en/aco/home/aeroplan/legal/terms-and-conditions.html>. All offers are contingent on satisfying the criteria outlined in the offer terms and conditions.

6. In order for the Applicant to apply to obtain the TD Aeroplan Credit Card, she had to complete the application process. During this application process, the Applicant would have had to check a box confirming that she had read and consented to the Aeroplan Privacy Policy, and indicating that she also agreed to the Aeroplan Program Terms and Conditions, as appears from the example screenshot images attached as **Exhibit TE-1**. Links to these documents were provided on this page.
7. Applicant necessarily had agree to the Aeroplan Program Terms and Conditions in order to continue with her application process. This is true of any customer applying for a TD Aeroplan Visa card online.
8. As part of what TD calls a “Welcome Offer” available on its website for both the TD Aeroplan Visa Infinite Card and the TD Aeroplan Visa Platinum Credit Card, the annual fees for the first year are rebated and not charged to the client.
9. In accordance with this “Welcome Offer” extended to the Applicant, her annual fees for the TD Aeroplan Credit Card in the amount of \$139 were rebated the same day as they were charged, as appears from a redacted copy of her TD Aeroplan Credit Card statement dated June 20, 2023, attached as **Exhibit TE-2**.
10. On April 17, 2024, the Applicant closed the account associated with the TD Aeroplan Credit Card.
11. Accordingly, Applicant never paid any fees whatsoever, including any annual fee, for the TD Aeroplan Credit Card. Applicant also never paid any interest on charges or transactions on her TD Aeroplan Credit Card.

TD Cardholder Agreements and Terms and Conditions

12. From November 2020 until March 2022, the Cardholder Agreements in force were card-specific and included the applicable Aeroplan Terms and Conditions for TD Aeroplan credit cards (“**TD Card Aeroplan Terms and Conditions**”). English and

French copies of these card-specific Cardholder Agreements applicable in Québec for the TD Aeroplan Visa credit cards (Platinum, Infinite, Infinite Privilege and Business) are attached *en liasse* as **Exhibit TE-3**.

13. From March 2022 until August 2024, the Cardholder Agreement and the TD Card Aeroplan Terms and Conditions in force in all of Canada were non-card-specific. English and French copies of these non-card-specific Cardholder Agreements and TD Card Aeroplan Terms and Conditions are attached *en liasse* as **Exhibit TE-4**.
14. In August 2024, new versions of the Cardholder Agreement and of the TD Card Aeroplan Terms and Conditions came into force. English and French copies of these are attached *en liasse* as **Exhibit TE-5**.
15. While the August 2024 version of the Cardholder Agreement remains currently in force, a new version of the TD Card Aeroplan Terms and Conditions came into force in April 2025. English and French copies of this newest and current version of the TD Card Aeroplan Terms and Conditions are attached *en liasse* as **Exhibit TE-6**.
16. Whenever changes were made to the substance of the Cardholder Agreement or TD Card Aeroplan Terms and Conditions, any current cardholders received a notice of such changes.
17. All the facts alleged herein are true to the best of my personal knowledge, information and belief.

AND I HAVE SIGNED:

Tim Elgar

Solemnly declared before me,
by technological means, in
●, ●, on ●

Commissioner for Oaths for Québec

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LIST OF EXHIBITS IN SUPPORT OF THE SWORN STATEMENT OF TIM ELGAR

- Exhibit TE-1:** Example Screenshot Images of the Application Process for a TD Aeroplan Visa Credit Card;
- Exhibit TE-2:** Redacted Credit Card Statement dated June 20, 2023;
- Exhibit TE-3:** Cardholder Agreements Effective from November 2020 until March 2022, *en liasse*;
- Exhibit TE-4:** Cardholder Agreement and TD Card Aeroplan Terms and Conditions Effective from March 2022 until August 2024, *en liasse*;
- Exhibit TE-5:** Cardholder Agreement and TD Card Aeroplan Terms and Conditions Effective from August 2024, *en liasse*;
- Exhibit TE-6:** TD Card Aeroplan Terms and Conditions Effective since April 2025.

MONTREAL, ●

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Objet: NOTIFICATION - 500-06-001345-244 - S. Moran v. Aeroplan Inc. et al. - Application by Defendant The Toronto-Dominion Bank for leave to adduce relevant evidence and Exhibit TD-1
Pièces jointes: 2025-07-18 - Application for leave to adduce relevant exhibit.pdf

NOTIFICATION BY EMAIL – S. MORAND vs AEROPLAN INC. ET AL – 500-06-001345-244 – APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE

NOTIFICATION BY EMAIL
(Art. 134 CCP)

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Date of transmission: July 18, 2025
Time of transmission: (See above)

Type of document: APPLICATION BY DEFENDANT THE TORONTO-DOMINION BANK FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
Court file number: 500-06-001345-244

Our file: 1264946
Number of pages transmitted: 8 pages attached
Please click on the link below for the Sworn Statement of Tim Elgar
[Exhibit TD-1 \(TE-1 to TE-6\)](#)



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**APPLICATION BY DEFENDANT THE TORONTO-
DOMINION BANK FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBIT TD-1
(Article 574 CCP)**

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