

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000870-176

(Class Action)
SUPERIOR COURT

PHILIPPE COHEN,

Applicant

-vs-

AMEX BANK OF CANADA, legal person having its principal establishment at 800 René-Lévesque boulevard West, Montreal, district of Montreal, Province of Quebec, H3B 1X9

and

BANQUE DE MONTRÉAL, legal person having its principal establishment at 119 Saint-Jacques Street, Montreal, district of Montreal, Province of Quebec, H2Y 1L6

and

THE TORONTO-DOMINION BANK, legal person having its principal establishment at 1350 René-Levesque boulevard West, 6th Floor, Montreal, district of Montreal, Province of Quebec, H3G 1T4

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, legal person having its principal establishment at 1501 McGill College avenue, Montreal, district of Montreal, Province of Quebec, H3A 3M8

and

ROYAL BANK OF CANADA, legal person having its head office at 1 Place Ville Marie, Montreal, district of Montreal, Province of Quebec, H3B 3A9

and

CANADIAN IMPERIAL BANK OF COMMERCE, legal person having its principal establishment at 1155 René-Lévesque boulevard West, Montreal, district of Montreal, Province of Quebec, H3C 3B2

and

THE BANK OF NOVA SCOTIA, legal person having a principal establishment at 1002 Sherbrooke Street West, district of Montreal, Province of Quebec, H3A 3L6

and

LAURENTIAN BANK OF CANADA, legal person having a principal establishment at 1981 McGill College avenue, district of Montreal, Province of Quebec, H3A 3K3

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE
STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR
THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:**

I. GENERAL PRESENTATION

A) THE ACTION

1. Bill 60, *An Act to amend the Consumer Protection Act and other legislative provisions*, First Session, Thirty-ninth Legislature, Quebec, S.Q. 2009, chapter 51, came into force on June 30th, 2010, after being assented to on December 4th, 2009 (hereinafter “**Bill 60**”);
2. One of the amendments provided for in Bill 60 was the addition of paragraph c to article 230 of the *Consumer Protection Act* (hereinafter “**CPA**”), which now stipulates the following:

230. No merchant, manufacturer or advertiser may, by any means whatever, [...]

(c) require that a consumer to whom he has provided services or goods free of charge or at a reduced price for a fixed period send a notice at the end of that period indicating that the consumer does not wish to obtain the services or goods at the regular price.
3. On November 10, 2009, Kathleen Weil, Quebec’s Minister of Justice at the time, said the following prior to adopting paragraph c of section 230 CPA:

La modification proposée a pour objet d'interdire la pratique visant à obliger un consommateur à faire une démarche pour éviter d'être lié par contrat avec un commerçant relativement à un bien ou un service que ce dernier lui a fourni gratuitement ou à prix réduit pendant une période de promotion.

[our emphasis underlined in bold].
4. In his book, *Droit de la protection du consommateur - Théorie et pratique*, Professor Pierre-Claude Lafond writes the following concerning paragraph c of section 230 CPA:

Désormais, le commerçant ne peut plus exiger du consommateur, à qui il a fourni un bien ou un service gratuitement ou à prix réduit (ex. : boîte vocale gratuite pendant les 3 premiers mois), un avis indiquant qu’il ne souhaite pas continuer à le recevoir au prix courant. Il ne peut plus présumer que le consommateur est d’accord pour continuer à bénéficier du bien ou du service et pour payer.
5. Applicant alleges that during the Class Period, all of the Defendants carry on their business in violation of paragraph c of section 230 of the CPA;
6. Consequently, Applicant wishes to institute a class action on behalf of the following class of which he is a member, namely:

Class:

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("**CPA**"), who since July 4th, 2013 (the "**Class Period**"), was provided services or goods free of charge, for a fixed period (the "**Fixed Period**"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "**Regular Price**");

(hereinafter referred to as "**Class**")

or any other Class to be determined by the Court;

II. THE DEFENDANTS AND THEIR VIOLATIONS OF SECTION 230 (c) CPA;

7. Defendants Amex Bank of Canada ("**Amex**"), Banque de Montréal ("**BMO**"), The Toronto-Dominion Bank ("**TD**"), JPMorgan Chase Bank National Association ("**Chase**"), Royal Bank of Canada ("**RBC**"), Canadian Imperial Bank of Commerce ("**CIBC**"), Bank of Nova Scotia ("**Scotia**") and the Laurentian Bank of Canada ("**Laurentian**") are merchants carrying on in the financial services industry as credit card issuers, among the other services they provide. All have a principal establishment in the judicial district of Montreal, as it appears from extracts of the CIDREQ, disclosed *en liasse* as Applicant's **Exhibit P-1**;
8. The Defendants are "merchants" within the meaning of the *CPA* and their activities are governed by this legislation, among others;
9. Defendants' online presence enables them to enter into distance contracts with Class members and thus carry on business in the province of Quebec;
10. Class members can also contract with the Defendants by other means, such as by telephone, in their banks or at their kiosks;
11. During the Class Period, Amex, BMO, TD, Chase, RBC, CIBC, Scotia and Laurentian have advertised and issued credit cards to Class members with an introductory offer whereby they offer their respective credit cards free of charge for the first year (that is, they waive the annual fee), but then unlawfully automatically charged Class members annual fees (i.e. the Regular Price) ranging from \$39 and up for each subsequent year (unless the Class member called in to cancel);
12. For **Amex**, Applicant has identified the following credit cards, as it appears *en liasse* from **Exhibit P-2**:

- a) *Amex Express Gold Rewards Card* (\$150 per year);
 - b) *American Express AeroPlus Gold* (\$150 per year);
 - c) *American Express AIR MILES Platinum Credit Card* (\$65 per year),
13. For the **BMO**, Applicant has identified the following credit card, as it appears from **Exhibit P-3**:
- a) *BMO World Elite MasterCard* (\$150 per year);
14. For the **TD**, Applicant has identified the following credit cards, as it appears *en liasse* from **Exhibit P-4**:
- a) *TD Aeroplan Visa Infinite Card* (\$120 per year);
 - b) *MBNA Rewards World Elite MasterCard* at \$89 per year (MBNA is a division of the TD and the MBNA trademark is property of the TD);
15. For the **RBC**, Applicant has identified the following credit card, as it appears from **Exhibit P-5**:
- a) *RBC Visa Infinite Avion Card* (\$120 per year);
16. For the **CIBC**, Applicant has identified the following credit cards, as it appears from the CIBC document titled "*20,000 Bonus Aventura Points/Aeroplan Miles and Annual Fee Rebate Offer* (January 1st to March 31st, 2014)" and screen captures from the CIBC website, disclosed *en liasse* as **Exhibit P-6**:
- a) *CIBC Aerogold Visa Infinite* (\$120 per year);
 - b) *CIBC Aerogold Visa Card* (\$120 per year);
 - c) *CIBC Aventura Visa Infinite Card* (\$120 per year);
 - d) *CIBC Aventura Gold Visa Card* (\$120 per year);
 - e) *CIBC Dividend Visa Infinite Card* (\$99 per year);
 - f) *CIBC Dividend Platinum Visa Card* (\$99 per year);
17. For **Scotia**, Applicant has identified the following credit cards, as it appears *en liasse* from **Exhibit P-7**:
- a) *Scotia Momentum Visa Infinite Card* (\$99 per year);

- b) *Scotiabank Gold American Express Card* (\$99 per year);
 - c) *Scotiabank American Express Card* (\$39 per year);
 - d) *Scotiabank GM Visa Infinite Card* (\$79 per year);
18. For **Laurentian**, Applicant has identified the following credit cards, as it appears *en liasse* from **Exhibit P-8**:
- a) *Laurentian Bank Visa Infinite* (\$130 per year);
 - b) *Visa EXPLORE* (\$110 per year);
 - c) *Visa DOLLARS* (\$65 per year);
19. For **Chase**, Applicant has identified the following credit card, as it appears from **Exhibit P-9**:
- a) *Marriott Rewards Premier Visa* (\$120 per year)
20. Shockingly, in its publicity for the *Marriott Rewards Premier Visa*, Exhibit P-9, Chase expressly advertises that the credit card will be charged annually thereafter, whether Class members activated it or not;
21. All of the Defendants entice Class members to contract with them by providing their credit cards free of charge for a Fixed Period (generally for the first year), but then automatically start charging Class members the Regular Price if the Class members didn't take steps to either renegotiate or cancel their contracts;
22. Defendants unlawfully derogate from paragraph c of section 230 CPA by private agreement;
23. Quebec consumer law is a matter of protective public order;
24. As a result of the foregoing, the Applicant and Class members are justified in claiming compensatory damages, as well as punitive damages based on repeated violations of paragraph c of section 230 CPA pursuant to section 272 CPA;

III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

Applicant's Claim against the Royal Bank of Canada

25. The circumstances leading up to Applicant contracting with the RBC for the *RBC Visa Infinite Avion* credit card are detailed in the following paragraphs;
26. Around the month of October 2014, Applicant was shopping for a credit card and saw advertising online by the RBC concerning its *RBC Visa Infinite Avion* credit card;
27. Although Applicant does not have a copy of the exact RBC advertising he saw back in October 2014, he does recall seeing the offer online and that the RBC's offer was very similar to the one the RBC has advertised in the past, Exhibit P-5:

Annual Fee Waived for First Year

In addition to 20,000 bonus RBC Rewards points, **your annual fee will be waived for the first year** when you apply now. That's a savings of \$120!

28. On or around **October 7th, 2014**, Applicant decided to apply for the *RBC Visa Infinite Avion* credit card because: (i) he saw the RBC advertisement; (ii) he needed a credit card; and (iii) he was enticed by the RBC's annual fee waiver offer and the extra bonus points;
29. The RBC approved the Applicant's credit application in October 2014 and issued him the *RBC Visa Infinite Avion* credit card ending in 5802 in his name, Applicant disclosing his first *RBC Visa Infinite Avion* credit card statement dated October 15th to November 12th, 2014, as **Exhibit P-10**;
30. Applicant began using his *RBC Visa Infinite Avion* on or around October 20th, 2014, Exhibit P-10;
31. Indeed, as it promised, the RBC did not charge Applicant the annual fee of \$120.00 (hereinafter the "**RBC's Regular Price**") for the first year (hereinafter the "**Fixed Period**"), as it appears from the "Annual fee adjustment" in the amount of \$120.00 on his first credit card statement, Exhibit P-10;
32. At end of the Fixed Period (on or around October 20th, 2015), Applicant did not send a notice to the RBC indicating that he does not wish to obtain the *RBC Visa Infinite Avion* at the RBC's Regular Price;
33. Consequently, just after the Fixed Period, on November 2nd, 2015, the RBC posted a charge to Applicant's account, which it describes as "**Annual Fee**", in the amount of **\$120.00**, Applicant disclosing his *RBC Visa Infinite Avion* credit card statement dated October 14th to November 12th, 2015, as **Exhibit P-11**;

34. By this time, the balance on Applicant's *RBC Visa Infinite Avion* credit card was \$1,070.35, while Applicant owed the RBC \$12.73 on account of interest for that month and \$120.00 on account of the Annual Fee, as it appears from the "Calculating Your Balance" box on the right-hand side of Exhibit P-11;
35. It appears that the RBC unlawfully presumed that the Applicant agreed to pay the Annual Fee after the Fixed Period;
36. One year later, on November 1st, 2016, the RBC again posted a charge to Applicant's account, which it describes as "**Annual Fee**", in the amount of **\$120.00**, Applicant disclosing his *RBC Visa Infinite Avion* credit card statement from October 12th to November 14th, 2016, as **Exhibit P-12**;
37. This time, the balance on Applicant's *RBC Visa Infinite Avion* credit card was \$10,787.36, while Applicant owed the RBC \$178.29 on account of interest for that month and \$120.00 on account of the Annual Fee, as it appears from the "Calculating Your Balance" box on the right-hand side of Exhibit P-12;
38. After providing Applicant with an *RBC Visa Infinite Avion* credit card free of charge for the Fixed Period, the RBC continues to charge Applicant the RBC's Regular Price every year;
39. The RBC's requirement that the Applicant take steps on his own after the 1-year Fixed Period, to avoid being charged the RBC's Regular Price thereafter, is illegal and in violation of paragraph c of section 230 CPA;
40. The Applicant never cancelled his *RBC Visa Infinite Avion* credit card because: (i) he needs a credit card; (ii) overall, he is satisfied with the product, save for paying the Annual Fee; (iii) he was under the impression that banks comply with the law; and (iv) it would be difficult for him to apply for a new credit card with a similar limit (or to build up a similar limit just as he had done with his *RBC Visa Infinite Avion*);

(i) Applicant's claim for compensatory damages (ss. 230 c) and 272 c) CPA)

41. Applicant has suffered ascertainable loss as a result of RBC'S misconduct and failure to comply with paragraph c of section 230 CPA, including, but not limited to: (i) overpayment in the amount of \$240.00 (\$120.00 times two years); and (ii) the interest accrued thereon on his *RBC Visa Infinite Avion* credit card balance;
42. Applicant benefits from an absolute presumption of prejudice because:
 - a) Applicant is a consumer within the meaning of the CPA;
 - b) The RBC is a merchant within the meaning of the CPA;

- c) The RBC required Applicant to advise them after the Fixed Period that he did not wish to receive their services at the RBC's Regular Price, otherwise they would automatically charge him the Annual Fee of \$120.00;
 - d) Applicant saw the RBC's representations concerning the *RBC Visa Infinite Avion* credit card online;
 - e) After seeing the RBC's representations, Applicant applied for the *RBC Visa Infinite Avion* credit and entered into a consumer contract with the RBC;
 - f) There existed a sufficient nexus between the content of the RBC's representation and the services covered by the contract (RBC's practice influenced the Applicant's behavior with respect to the formation of the contract);
43. Notwithstanding the paragraph above, it is respectfully submitted that the issue of whether there was a violation of paragraph c of section 230 CPA must be addressed objectively, and there is no reason to assess whether the Applicant and the Class members understood the various elements of the annual fee waiver or whether they were misled. It is thus irrelevant to consider whether a consumer, even a credulous and inexperienced one, would have understood that the annual fee for the second year would be charged in the amount \$120.00 if they did not proactively notify the RBC that they did not wish to be charged the Regular Price after the Fixed Period;
44. Applicant's damages are a direct and proximate result of the RBC's misconduct;

(ii) Applicant's claim for punitive damages (ss. 230 c) and 272 CPA)

45. The RBC attracts its customers by offering to provide its service free for the 1-year Fixed Period;
46. The caveat is that when the Fixed Period comes to end, Class members who forget or omit to take affirmative steps to cancel their credit card will automatically be charged the RBC's Regular Price (i.e. the annual fee of \$120.00);
47. Although Class members can cancel anytime, the reality is that Class members end up depending on their credit cards – and the Defendants are very well aware of this fact;
48. Most Class members carry balances over each month enabling the RBC and the other Defendants to generate substantial aggregate revenues on account of interest and the annual fees;

49. The RBC's overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;
50. In this case, the RBC - and all the other Defendants - breach and continue to breach the CPA, without any explanation, for a significant period;
51. This complete disregard for consumers' rights and to their own obligations under the CPA on the part of the RBC (as well as the other Defendants) is in and of itself an important reason for this Court to enforce measures that will punish the Defendants, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
52. The reality is that the RBC's and the other Defendants' revenues – which are likely in the billions of dollars during the Class Period – would be substantially and adversely affected if they would not charge the Regular Price to Class members who never advised them that they do not wish to obtain the services at the Regular Price after the Fixed Period;
53. In its 2016 Annual Report, the RBC boasts that *"We achieved solid volume growth across most products with particular strengths in... Credit cards through strong account and balance growth in our industry leading Avion® card"*;
54. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
55. The RBC's violations were intentional, calculated, malicious and vexatious;
56. The RBC demonstrated through its behavior (before, during and after the violation) that it was more concerned about its bottom line than about consumers' rights and their own obligations under the CPA;
57. In these circumstances, Applicant's claim for both compensatory and punitive damages against the RBC is justified;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

58. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the commission of a prohibited businesses practice (the violation of paragraph c of section 230 CPA in the present case) by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
59. The nature of the interest necessary to establish the standing of the Applicant must

be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the representative plaintiff;

60. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants who automatically charged the Regular Price after the Fixed Period violate paragraph c of section 230 CPA;
61. The claims of every member of the Class are founded on very similar facts to the Applicant's claim against the RBC;
62. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;
63. Every member of the Class applied for and received a credit card free of charge (i.e. the annual fee waived) for a Fixed Period from one of the Defendants and was required to advise one of the Defendants at the end of the Fixed Period that they did not wish to pay the Regular Price (they were automatically charged the Regular Price each year by the Defendants if they failed to advise them);
64. The same legal issues are present in the action of each Class member against each Defendant (each Defendant faces more or less the same issues regarding the interpretation and application of paragraph c of section 230 CPA);
65. By reason of Defendants' unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against the Defendants;
66. Although the Applicant himself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
67. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
68. Every member of the Class has suffered damages equivalent to the Regular Price charged by Defendants after the Fixed Period during which Defendants initially offered their services free of charge (as well as the interest on these amounts), because it is unlawful for Defendants to automatically charge Class members after the Fixed Period, and this pursuant to paragraph c of section 230 CPA;
69. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class;
70. In taking the foregoing into account, all members of the Class are justified in claiming

the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 CPA;

71. Each Class member is justified in claiming at least one or more of the following as damages:
 - Overpayment of the fees which were automatically charged by Defendants at the Regular Price after the Fixed Period;
 - Trouble and inconvenience (because Defendants imposed a burden on Class members, to take steps to avoid being charged the Regular Price, which is strictly prohibited according to the CPA); and
 - Punitive damages;
72. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
73. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
74. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' requirement that Class members advise them that they do not wish to pay the Regular Price (instead of the inverse), and if Class members do not advise, Defendants automatically and unlawfully charge them at the Regular Price after the Fixed Period;
75. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Do Defendants provide Class members services or goods free of charge for a Fixed Period?
 - b) Do Defendants violate paragraph c of section 230 CPA?
 - c) In the affirmative, what is the appropriate remedy for a violation of paragraph c of section 230 CPA?
 - d) Are Defendants liable to Class members for reimbursement of the fees paid after the Fixed Period as a result of their misconduct pursuant to section 272 CPA?
 - e) Are Defendants responsible for all related damages, including, but not limited to the trouble and inconvenience to Class members as a result of forcing them to take steps to cancel their services (or be forced to pay the Regular Price), and in what amount?

- f) Are the Class members entitled to a declaratory judgment stating that the Defendants are liable for the damages suffered by the Applicant and by each of the members of the Class?
- g) Should an injunctive remedy be ordered to prohibit Defendants from continuing to perpetrate the practice of requiring Class members to advise them after the Fixed Period that they do not wish to pay the Regular Price, failing which they will automatically be charged the Regular Price?
- h) Are Defendants responsible to pay punitive damages to Class members and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

- 76. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 77. Combined, the Defendants undoubtedly have issued hundreds of thousands of credit cards and other financial products to Class members across the province of Quebec using the contested practice;
- 78. The number of persons included in the Class is likely in the hundreds of thousands in the province of Quebec (many members may have claims against multiple Defendants and for multiple services);
- 79. The names and addresses of all persons included in the Class are not known to the Applicant, however, are in the possession of the Defendants;
- 80. Moreover, the information concerning the other types of credit cards and services offered by Defendants by means of the contested practice during the Class Period (which would help identify other Class members) are not all known to Applicant, however, is in the possession of the Defendants;
- 81. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 82. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
- 83. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

84. Applicant requests that he be appointed the status of representative plaintiff;
85. Applicant is a member of the Class;
86. Applicant is your average *père de famille* and works full-time as a product coordinator in a production company in Montreal;
87. Since June 2016, Applicant has been assisting with the investigative stage of the proceedings, notably by helping Class counsel identify banks that engage in the prohibited practice;
88. Prior to initiating the present class action, Applicant spoke to friends, colleagues and relatives and realized that others encountered similar experiences with banks (that is that they too were automatically charged the Regular Price after the Fixed Period);
89. Applicant was initially under the impression that this is how things were done in the banking industry and that this is how banks compete against each other in order to promote their credit cards and other financial services in order to gain market share;
90. It was only in June 2016 that Applicant learnt that the Defendants' way of inciting consumers may be illegal and that he could be entitled to compensation if the class action filed on July 4th, 2016 (C.S.M. no. 500-06-000798-161), was successful;
91. Applicant learnt about class action C.S.M. no. 500-06-000798-161 during a conversation with his attorney concerning an unrelated matter;
92. For one year, Applicant has kept himself up-to-date with class counsel on the developments in class action C.S.M. no. 500-06-000798-161 and was always ready to act as representative plaintiff of Class members who were victims of the bank Defendants' practice;
93. When Applicant was informed by his counsel of the prospect of acting as representative plaintiff against the bank Defendants, he immediately stepped up to the plate and mandated his attorney, who has experience in class actions and who works on several consumer protection related files, to take the present action on his behalf and in the interest of the Class members with causes of action against the bank Defendants;
94. As for identifying other Class members, Applicant draws certain inferences from the situation, and this based on the number of previous and current *Annual fee waived for the first year* promotions he has seen being marketed by the Defendants.

- Applicant realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for him to attempt to identify them given their sheer number;
95. Applicant feels that Defendants should be held accountable for their misconduct and is taking this action so that he and the Class members can recover sums overpaid after the Fixed Period;
 96. Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as to dedicate the time necessary for the present action and to collaborate with his attorneys;
 97. Applicant has given the mandate to his attorney to obtain all relevant information with respect to the present action and intends to continue to keep informed of all developments;
 98. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the Class members;
 99. Applicant, with the assistance of his attorney, is ready and available to dedicate the time necessary for this action and to collaborate with other Class members and to keep them informed;
 100. Applicant is available on social media to inform and to respond to Class members on platforms such as Facebook;
 101. Applicant is in good faith and has instituted this action for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' misconduct;
 102. Applicant has read this Application prior to its court filing and reviewed the exhibits in support thereof;
 103. Applicant understands the nature of the action;
 104. Applicant's interests are not antagonistic to those of other members of the Class;
 105. Applicant's interest and competence are such that the present class action could proceed fairly;

IV. DAMAGES

106. During the Class Period, it appears that the Defendants have generated aggregate amounts in the billions of dollars while intentionally choosing to ignore the law in Quebec;
107. All of the Defendants' misconduct is reprehensible and to the detriment of vulnerable Quebec consumers;
108. All of the Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec, including:
 - a) Quebec's *Consumer Protection Act*, notably section 215, paragraph c of section 230 and sections 261, 262 and 272 *CPA*;
109. In light of the foregoing, the following damages may be claimed against the Defendants:
 - a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Defendants pursuant to section 272 *CPA*;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

110. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief and declaratory judgment;
111. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT Plaintiff's action against Defendants on behalf of all the Class members;

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class members;

ORDER the Defendants to cease automatically charging Class members the Regular Price after the Fixed Period;

CONDEMN the Defendants to pay to each of the Class members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the Class members punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

112. The interests of justice favour that this Application be granted in accordance with its conclusions;

VI. JURISDICTION

113. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:

- a) There exists a real and substantial connection between the province of Quebec and the damages suffered by Applicant and Class members;
- b) Most of the Defendants have a principal establishment in the judicial district of Montreal;
- c) A great number of the Class members, including the Applicant, reside in the district of Montreal;
- d) The Applicant's attorneys practice their profession in the district of Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an originating application in

damages;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act ("**CPA**"), who since July 4th, 2013 (the "**Class Period**"), was provided services or goods free of charge, for a fixed period (the "**Fixed Period**"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "**Regular Price**");

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Do Defendants provide Class members services or goods free of charge for a Fixed Period?
- b) Do Defendants violate paragraph c of section 230 CPA?
- c) In the affirmative, what is the appropriate remedy for a violation of paragraph c of section 230 CPA?
- d) Are Defendants liable to Class members for reimbursement of the fees paid after the Fixed Period as a result of their misconduct pursuant to section 272 CPA?
- e) Are Defendants responsible for all related damages, including, but not limited to the trouble and inconvenience to Class members as a result of forcing them to take steps to cancel their services (or be forced to pay the Regular Price), and in what amount?
- f) Are the Class members entitled to a declaratory judgment stating that the Defendants are liable for the damages suffered by the Applicant and by each of the members of the Class?
- g) Should an injunctive remedy be ordered to prohibit Defendants from continuing to perpetrate the practice of requiring Class members to

advise them after the Fixed Period that they do not wish to pay the Regular Price, failing which they will automatically be charged the Regular Price?

- h) Are Defendants responsible to pay punitive damages to Class members and, if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants on behalf of all the Class members;

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class members;

ORDER the Defendants to cease automatically charging Class members the Regular Price after the Fixed Period;

CONDEMN the Defendants to pay to each of the Class members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the Class members punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

DECLARE that all members of the Class that have not requested their exclusion, be

bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Quebec Consumers";

ORDER the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, a list in their possession or under their control permitting to identify all of their different credit cards during the Class Period that were offered free of charge (annual fee waiver) for the first year;

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, a list in their possession or under their control permitting to identify all of their financial products offered during the Class Period that included services or products offered free of charge for a Fixed Period and for which the Defendants subsequently automatically charged Class members the Regular Price;

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montréal, July 3rd, 2017

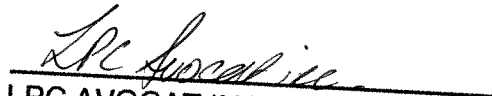


LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicant

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LPC AVOCAT INC.

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** *En liasse* extract of the CIDREQ for Amex Bank of Canada, Banque de Montréal, The Toronto-Dominion Bank, JPMorgan Chase Bank National Association, Royal Bank of Canada, Canadian Imperial Bank of Commerce and the Bank of Nova Scotia;
- Exhibit P-2:** Copy of the publicity for the Amex credit cards showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-3:** Copy of the publicity for the BMO MasterCard credit card showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-4:** Copy of the publicity for the TD Visa credit card showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-5:** Copy of the publicity for *the RBC Visa Infinite Avion* credit card showing that the Regular Price is automatically charged after the Fixed Period;

- Exhibit P-6:** *En liasse*, copies of the CIBC document titled “20,000 Bonus Aventura Points/Aeroplan Miles and Annual Fee Rebate Offer (January 1st to March 31st, 2014)” and screen captures of the different CIBC credit cards showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-7:** *En liasse*, copies of the publicity for the different Scotiabank card credits showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-8:** *En liasse*, copies of the publicity for the Laurentian Bank credit cards showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-9:** Copy of the publicity for the Chase *Marriott Rewards Premier Visa* credit card showing that the Regular Price is automatically charged after the Fixed Period;
- Exhibit P-10:** Copy of Applicant’s first *RBC Visa Infinite Avion* credit card statement dated October 15th to November 12th, 2014;
- Exhibit P-11:** Copy of Applicant’s *RBC Visa Infinite Avion* credit card statement dated October 14th to November 12th, 2015;
- Exhibit P-12:** Copy of Applicant’s *RBC Visa Infinite Avion* credit card statement from October 12th to November 14th, 2016;

These exhibits are available on request.

Notice of presentation of an application


If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, July 3rd, 2017

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LPC AVOCAT INC.



LPC AVOCAT INC.
Per: Me Joey Zukran
Attorney for Applicant

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO: AMEX BANK OF CANADA,
800 René-Lévesque blvd. West
Montreal, Quebec, H3B 1X9

Defendant

BANQUE DE MONTRÉAL,
119 Saint-Jacques Street,
Montreal, Quebec, H2Y 1L6

Defendant

THE TORONTO-DOMINION BANK
1350 René-Levesque. West, 6th
Montreal, Quebec, H3G 1T4

Defendant

LAURENTIAN BANK OF CANADA
1981 McGill College
Montreal, Quebec, H3A 3K3

Defendant

JPMorgan Chase Bank, NA
1501 McGill College Avenue
Montreal, Quebec, H3A 3M8

Defendant

ROYAL BANK OF CANADA
1 Place Ville Marie,
Montreal, Quebec, H3B 3A9

Defendant

CIBC
1155 René-Lévesque blvd. West
Montreal, Quebec, H3C 3B2

Defendant

THE BANK OF NOVA SCOTIA
1002 Sherbrooke Street West
Montreal, Quebec, H3A 3L6

Defendant

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, July 3rd, 2017



LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

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LPC AVOCAT INC.

N^o: 500-06-000

**(Class Action)
SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
PHILIPPE COHEN**

500-06-000870-176

Applicant

**-vs-
AMEX BANK OF CANADA,
and
BANQUE DE MONTRÉAL
and
THE TORONTO-DOMINION BANK
and
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION
and
ROYAL BANK OF CANADA
and
CANADIAN IMPERIAL BANK OF
COMMERCE
and
THE BANK OF NOVA SCOTIA
and
LAURENTIAN BANK OF CANADA**
Defendants

**APPLICATION TO AUTHORIZE THE
BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF
REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P)**

COURT COPY



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**ME JOEY ZUKRAN
CODE: BL 6059**

N/D: JZ-148