

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000930-186

(Class Action)
SUPERIOR COURT

KATY HAROCH, [REDACTED]
[REDACTED]

and

AVRAHAM BROOK, [REDACTED]
[REDACTED]

Applicants

-vs-

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

and

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

and

CIBC MORTGAGES INC., legal person having a principal establishment at 1155 René-Lévesque boulevard West, suite 1020, district of Montreal, Province of Quebec, H3B 3Z4

and

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

and

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

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

SCOTIA MORTGAGE CORPORATION, legal person having its principal establishment at 44 King Street West, Toronto, Province of Ontario, M5H 1H1

and

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

and

FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC, legal person having its head office at 100, rue des Commandeurs, Lévis, district of Québec, Province of Québec, G6V 7N5

and

NATIONAL BANK OF CANADA legal person having its head office at 600, rue de la Gauchetière Ouest, 4th floor, district of Montreal, Province of Québec, H3B 4L2

and

HSBC BANK OF CANADA, legal person having a principal establishment at 160-2001 McGill College, district of Montreal, Province of Québec, H3A 1G1

and

TANGERINE BANK (formerly known as ING BANK OF CANADA), legal person having a principal establishment at 1141 boulevard de Maisonneuve Ouest, district of Montreal, Province of Québec, H3A 1N4

and

FIRST NATIONAL FINANCIAL LP, limited partnership having a principal establishment at 100 University avenue, #700 North Tower, Toronto, Province of Ontario, M5J 1V6

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFFS
(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 APPLICANTS STATE AS FOLLOWS:

I. INTRODUCTION

1. This class action seeks the reimbursement of the amounts overpaid by Quebec Class Members to Defendants on account of abusive mortgage prepayment charges, as well as punitive damages for the exploitation of Quebec consumers;
2. Defendants generate substantial profits – far exceeding their actual costs and lost revenue – by charging mortgage prepayment charges whenever Class Members payoff their mortgage before the end of the term (also known as “*paiement anticipé*”);
3. Defendants do so by including a clause (similar to the one reproduced below) in their respective hypothecary loan agreements that provide for prepayment charges as follows:

The charge or penalty is the **higher of the following**:

- 3 months' interest calculated on the prepayment amount
 - or
 - the interest rate differential (hereinafter "IRD")
4. For Class Members, the higher of the two options is always the IRD, which is virtually impossible for any reasonable person to calculate on their own;
 5. When mortgage prepayment charges exceed 3-months interest, Class Members paying the IRD suffer lesion within the meaning of article 2332 of the *Civil Code of Quebec* ("CCQ"). The penalty in the form of the IRD is also abusive pursuant to articles 1437 and 1623 CCQ and abusive under section 8 of Quebec's *Consumer Protection Act* ("CPA");
 6. Section 10(1) of the *Interest Act* R.S.C., 1985, c. I-15, provides as follows:

When no further interest payable

10 (1) Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is not, under the terms of the mortgage or hypothec, payable until a time more than five years after the date of the mortgage or hypothec, then, if at any time after the expiration of the five years, any person liable to pay, or entitled to pay in order to redeem the mortgage, or to extinguish the hypothec, tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under sections 6 to 9, **together with three months further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time after the payment on the principal money or interest due under the mortgage or hypothec.**

7. The Supreme Court has held that the purpose of section 10(1) of the *Interest Act* is to ensure that mortgagors are not "locked in" for more than five years and that a penalty of 3-months interest was the most that can be charged by any lender. If a mortgagor signed a 10-year mortgage and decided to pay off his mortgage after 6 years, the most the lender can charge in prepayment fees is 3-months of interest, even though there are 4 years remaining on the term;
8. Section 10(1) of the *Interest Act* was drafted in the 19th century, when the term of a mortgage and its amortization period generally coincided. The Supreme Court confirms that Courts can interpret s. 10(1) in light of today's commercial practices, where most residential mortgages are for five years or less, but amortized over twenty or thirty years;
9. The Defendants have created complex formulas and impose "posted rates" that result in

the IRD always being an amount greater than 3-months of interest charged to Class Members;

10. This enables Defendants to opt for the option in the clause that is far more advantageous to them and to charge Class Members disproportionate mortgage prepayment charges that exceed 3-months interest – that become objectively abusive and lesionary;
11. In a December 4th, 2013 Globe and Mail news article titled "*The hidden trap of mortgage penalties*", disclosed as **Exhibit P-1**, personal finance columnist Rob Carrick writes:

It's easy to get caught in the posted mortgage rate trap at the big banks.

No, you won't have to pay the posted rate on your next mortgage. Pretty much nobody does that any more, according to mortgage broker Robert McLister. **The real danger is that posted rates will be used to calculate the penalty if you ever have to break your mortgage, probably costing you thousands of extra dollars.**

A mortgage penalty compensates a lender for the interest payments it loses out on when you break a mortgage contract. "That's the intention," said Mr. McLister, who is also editor of CanadianMortgageTrends.com. **"But in many cases, it overcompensates. It's punitive in many cases."**

12. In an August 6th, 2010 Globe and Mail news article titled "*Mortgage breakage costs: let's stop the nonsense*", disclosed as **Exhibit P-2**, Marcel Mooij sheds some light on the banks' "posted" rates and explains how complicated it is, even for professionals, to calculate the IRD:

Have you ever wondered why the banks list posted mortgage rates that are ridiculously high?

One reason is that it could result in you paying \$10,000 or more in extra penalties should you ever break your mortgage with them [...]

While the three months interest is pretty easy to understand, **the IRD is a little mysterious**. For help on this, I went to TD Bank's mortgage website. RBC has a similar section.

13. Robert McLister refers to the IRD formula using the following terms, in a September 14th, 2012 Globe and Mail article (updated on March 26th, 2017) titled "*Ten questions to help you avoid mortgage-penalty shock*", disclosed as **Exhibit P-3**:

Figuring out the penalty on a fixed-rate mortgage **is like solving a calculus equation**. Homeowners who try often wind up hitting their head against hard objects in frustration.

It's been that way for years, and as many unwittingly discover, mortgage

penalties can be disturbingly expensive.

14. In a December 2010 Report titled *"Coping with Mortgage Penalties in Canada"*, disclosed herewith as **Exhibit P-4**, Richard Beaumier exposes the issue of mortgage prepayment penalties and finds that:

In theory, the rate differential amount should cover the economic or financial loss incurred in the lender's investment when the interest rate goes down.

However, in real-life cases, **this penalty is often higher than 200% of the actual loss incurred by the lender**. In the absence of more stringent guidelines, Canadian mortgage lenders have the ability to set, manage, and plan **abnormally high mortgage penalties**, as well as to add unjustified surcharges.

In Canada, mortgage penalties are asymmetrical: Mortgage lenders gain not only when the interest rates fall, but also when interest rates rise. Thus, rules have to be changed and calculations need to be made symmetrical.

In the U.S., most mortgage loans do not have built-in mortgage penalties. The absence of mortgage penalties has nothing to do with the issues recently faced by the U.S. mortgage industry [...]

During the quarter ending January 31, 2010, a total of 301 complaints were filed before the Ombudsman for Banking Services and Investments (OBSI), which is the double of complaints filed for the same quarter in 2009, and three times the amount in 2008. In essence, the complaints are about the amounts of the penalties on mortgage rate prepayments, which often amount to several thousands of dollars.

15. On October 8th, 2014, the CBC News published an article titled *"TD Bank client 'devastated' by \$17,000 mortgage penalty"*, disclosed as **Exhibit P-5**, in which a TD spokeswoman admits that TD will sometimes reduce the mortgage prepayment charge:

After Go Public contacted TD asking for comment, the bank made the Truszes an offer.

In an email, TD spokeswoman Lynzey MacRae said the Truszes are happy with the offer, but cited "privacy reasons" for not providing details of the settlement.

MacRae said the IRD is designed to ensure a bank won't suffer when a customer decides to end a mortgage before its maturity date.

She said **TD policy is to make exceptions for military personnel, or in some cases for compassionate reasons**, which it evaluates on a case by

case basis.

16. It is obvious that TD makes these “exceptions” when their abusive fees are exposed publicly and because the prepayment fee is in fact abusive and disproportionate. In its “*case by case*” evaluations, it appears that TD (and the other Defendants) ought to also consider the rights of Quebec Class Members, and notably the following legislative provisions:

Civil Code of Quebec

1436. *In a consumer contract or a contract of adhesion, a clause which is illegible or incomprehensible to a reasonable person is null if the consumer or the adhering party suffers injury therefrom, unless the other party proves that an adequate explanation of the nature and scope of the clause was given to the consumer or adhering party.*

1437. *An **abusive clause** in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.*

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to the requirements of good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.

1623. *A creditor who avails himself of a penal clause is entitled to the amount of the stipulated penalty without having to prove the injury he has suffered.*

*However, the amount of the stipulated penalty may be reduced if the creditor has benefited from partial performance of the obligation or **if the clause is abusive.***

2332. *In the case of a loan of a sum of money, the court may pronounce the nullity of the contract, order the reduction of the obligations arising from the contract or revise the terms and conditions of the performance of the obligations to the extent that it finds that, having regard to the risk and to all the circumstances, **one of the parties has suffered lesion.***

Consumer Protection Act

8. *The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.*

272. If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act,

[...]

(c) that his obligations be reduced;

[...]

without prejudice to his claim in damages, in all cases. He may also claim punitive damages.

17. Consequently, the Applicants wish to institute a class action on behalf of the following class of which they are members, namely:

Class:

All persons, entities, partnerships or organizations resident or domiciled in Quebec, who, since May 31st, 2015, had a hypothecary loan and/or a collateral hypothec with any of the Defendants and who paid a mortgage prepayment charge in an amount that exceeds three months of interest as a result of paying off their mortgage early;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

II. THE PARTIES

18. Applicants reside in the judicial district of Montreal and are consumers within the meaning of article 1384 CCQ as well as within the meaning of section 1(e) CPA;
19. The Defendants – all merchants – are financial institutions and/or lenders that enter into hypothecary loan agreements and/or collateral hypothec agreements with Class Members (either directly or through mandataries). These agreements (in French, respectively, “*prêt hypothécaire*” and “*contrat d’hypothèque collatérale*”) are also commonly referred to as a “**Mortgage**”;
20. Defendant the Toronto-Dominion Bank (hereinafter “**TD**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-6**;
21. Defendants Canadian Imperial Bank of Commerce and CIBC Mortgages Inc. (hereinafter

collectively referred to as “**CIBC**”), are merchants carrying on in the financial services industry as hypothecary lenders among the other services they provide, as it appears from extracts of the CIDREQ, disclosed *en liasse* as **Exhibit P-7**;

22. Defendant the Banque de Montréal (hereinafter “**BMO**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-8**;
23. Defendant the Royal Bank of Canada (hereinafter “**RBC**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-9**;
24. Defendants the Bank of Nova Scotia and Scotia Mortgage Corporation (hereinafter collectively “**Scotia**”), are merchants carrying on in the financial services industry as mortgage lenders, among the other services they provide, as it appears from extracts of the CIDREQ, disclosed *en liasse* as **Exhibit P-10**;
25. Defendant the Laurentian Bank of Canada (hereinafter “**Laurentian**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-11**;
26. Defendant the Fédération des Caisses Desjardins du Québec (hereinafter “**Desjardins**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender (either directly or via mandataries) among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-12**. Desjardins is an organization that supports the hundreds of “*Desjardins caisses*” in Québec that offer financial services, including mortgages. Its mandate, according to information on its website, “*is to provide the caisses with the services they require and to coordinate the efforts of all other Desjardins Group components*”;
27. Defendant the National Bank of Canada (hereinafter “**BNC**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-13**;
28. Defendant HSBC Bank of Canada (hereinafter “**HSBC**”) is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides, as it appears from an extract of the CIDREQ, **Exhibit P-14**;
29. Defendant Tangerine Bank is a merchant carrying on in the financial services industry, including as a hypothecary lender among the other services it provides. Tangerine Bank was formerly known as “**ING BANK OF CANADA**” (a name change was made on May 9th, 2014) and is a subsidiary of Defendant Scotia, the whole as it appears from an extract of the CIDREQ, disclosed as Applicant’s **Exhibit P-15**;
30. Defendant First National Financial LP (hereinafter “**First National**”) is a merchant and

limited partnership carrying on in the financial services industry as a hypothecary lender. Its general partner is First National Financial GP Corporation and its special partner is First National Financial GP Corporation, the whole as it appears from an extract of the CIDREQ, **Exhibit P-16**;

31. In the course of their respective businesses, the Defendants enter into contracts of adhesion with Class Members, all of whom are adherents. They also enter into consumer contracts with Class Members, many of whom are consumers within the meaning of article 1384 CCQ and section 1(e) CPA;
32. All of the Defendants' hypothecary loan agreements with Class Members include a clause that provides for prepayments and/or charges in amounts that are objectively excessive, disproportionate and abusive under articles 1437 and 1623 CCQ and section 8 CPA. Class Members also suffer objective lesion under article 2332 CCQ when said clause results in prepayment charges in excess of 3-months of interest;
33. The Applicants allege that all of the Defendants impose prepayment charges that are greater than 3-months of interest and are therefore objectively abusive, excessive and disproportionate. To meet their burden of demonstration at this stage of the proceedings, Applicants provide the following exhibits to support their allegations (contained in the present application) vis-à-vis each of the Defendants:

Defendant	Exhibit #
TD	Exhibit P-17;
CIBC	Exhibit P-18;
BMO	Exhibit P-19;
RBC	Exhibit P-20;
SCOTIA	Exhibit P-21;
LAURENTIAN	Exhibit P-22;
DESJARDINS	Exhibit P-23;
BNC	Exhibit P-24;
HSBC	Exhibit P-25;
TANGERINE	Exhibit P-26;
FIRST NATIONAL	Exhibit P-27;

34. Defendants generally charge prepayment fees mentioned in Exhibits P-17 to P-27 when a Class Member sells their property before the end of their Mortgage term, or for any other reason when a Class Member pays off their Mortgage prior to term;
35. The impact of this type of clause is to *always* favour the Defendants who, as a result of the resiliation/prepayment, no longer provide the services or loan to Class Members but pocket the profits. This situation is to the detriment of Class Members and is objectively abusive and unfair;

36. The formula used by Defendants to calculate the IRD is also incomprehensible to a reasonable person (including to Defendants' frontline staff who interact with Class Members), as it impossible in fact for any person to calculate the IRD based on the information included in their respective contracts with the various Defendants at the time the hypothecary loan agreement is entered into;
37. It is also virtually impossible for any reasonable person to calculate the IRD based on the information included in their respective contracts with the various Defendants when the time comes to compute the prepayment fee (often several years after the hypothecary loan agreement is signed). This was certainly the case for both Applicants Ms. Haroch and Mr. Brook;
38. Notwithstanding the forgoing, the prepayment fees and charges far exceed the injury or prejudice sustained by the Defendants as a result of the prepayment of the Mortgage because the Defendants are able to lend the amounts prepaid by Class Members at equivalent or higher interest rates (the three-month interest rate period thus represents a reasonable amount of time for Defendants to contract with a new borrower at the same or higher rate);

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

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

Applicant Katy Haroch's Claim against TD

39. On or around March 2nd, 2015, Ms. Haroch signed a document titled "*Convention de CréditFlex Valeur domiciliaire TD avec garantie immobilière*", in order to open a TD Home Equity Line of Credit (referred to by TD as the "**Flexline**" or "**CréditFlex**" in French) for the property she owned at the time situated at 340-342 Alexis-Nihon in Ville St-Laurent, Quebec, H4M 2A3, as it appears from her CréditFlex agreement disclosed as **Exhibit P-28**;
40. Ms. Haroch's CréditFlex home equity line of credit account number was [REDACTED] as it appears from Exhibit P-28;
41. On or around March 2nd, 2015, Ms. Haroch signed a second document (relating to the same CréditFlex account # [REDACTED]) titled "*Convention de modification de la convention CréditFlex Valeur domiciliaire TD avec garantie immobilière*", as it appears from the modification agreement to the CréditFlex agreement disclosed as **Exhibit P-29**;
42. It appears that the purpose of having Ms. Haroch sign the modification agreement (Exhibit P-29 at page 2) was to convert a portion of the capital of the CréditFlex line of credit into a fixed term loan at a fixed interest rate;

43. The TD secured its loan with a “*Contrat d’hypothèque collatérale*” notarized on March 11th, 2015, Applicant disclosing **Exhibit P-30**;
44. According to TD’s website, the TD Home Equity Flexline / CréditFlex “... lets you use the value of your home as collateral to give you a line of credit with a low interest rate” (<https://www.td.com/ca/en/personal-banking/products/mortgages/td-home-equity-flexline/>), Applicant disclosing **Exhibit P-31**;
45. TD CréditFlex/Flexline offers consumers a line of credit (secured by hypothec) with a revolving portion and an optional term portion. This case concerns the term portion of Ms. Haroch’s *CréditFlex*, where her hypothecary loan was fixed for a closed term of 5-years at a fixed interest rate of 2.79% (with a 25-year amortization period), as it appears from Exhibit P-29;
46. Ms. Haroch’s modified *CréditFlex* agreement, which came into effect on March 23rd, 2015 (the conversion date) contained the following impugned clause concerning prepayment charges (see pages 2 and 7-10 of Exhibit P-29):

Frais de remboursement anticipé	<p>Si vous payez un montant supérieur à ce que vous permet votre privilège de remboursement anticipé, vous devez nous payer des frais de remboursement anticipé d’un montant correspondant au plus élevé entre :</p> <p>a) trois (3) mois d’intérêt; et</p> <p>b) le montant différentiel du taux d’intérêt : soit le montant correspondant à la différence entre votre taux d’intérêt annuel et le taux d’intérêt affiché pour un prêt hypothécaire dont la durée se rapproche le plus du reste de la durée de votre prêt hypothécaire, déduction faite de tout escompte sur le taux que vous avez reçu, multiplié par le montant remboursé par anticipation et multiplié par la durée restante.</p>
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47. When signing her agreements and the deed (Exhibits P-28, P-29 and P-30), Ms. Haroch was never specifically explained that she would incur prepayment charges if she paid off her loan early (she was **not** asked to initial next to the impugned clause), nor was she given any explanation about the complex formula used to calculate the IRD (i.e. “*le montant différentiel du taux d’intérêt*”);
48. Ms. Haroch made her weekly payments for over 2 years and then eventually decided to sell her property secured by hypothec by the TD (340-342 Alexis-Nihon);
49. On or around October 26th, 2017, Ms. Haroch closed the sale of her property (340-342 Alexis-Nihon) at the notary and therefore had to pay off the existing balance of the fixed portion of her Mortgage to TD prior to the closing date;
50. On or around October 10th, 2017, the TD prepared its Discharge/Transfer/Payout Statement, confirming that it will charge Ms. Haroch \$12,648.47 on account of “Prepayment Charge IRD”, as it appears from said Statement disclosed as **Exhibit P-32**;

51. There were 29 months remaining on Ms. Haroch's fixed term (last payment was due on March 16th, 2020, as it appears at page 3 of Exhibit P-29);
52. According to TD – and as it appears from the discharge statement (Exhibit P-32) – the balance owing on Ms. Haroch's fixed term and fixed rate loan as of October 10th, 2017 was \$347,976.98;
53. Based on a prepayment penalty of three months of interest (which is the only portion of the prepayment clause that was comprehensible to Ms. Haroch), the total amount that the TD should have charged Ms. Haroch on account of prepayment charges would be approximately \$2,427.14 (based on her annual interest rate of 2.79%);
54. Using its complicated IRD formula (which was incomprehensible to Ms. Haroch at the time of signing her agreement and until this very day), the TD calculated a prepayment charge of \$12,648.47;
55. Ms. Haroch went to her branch and tried to negotiate in order to have the penalty waived or reduced, but the bank representative told her that the penalty is computer generated and that there was nothing they can do to reduce the amount;
56. The prepayment charge of \$12,648.47 was disbursed directly from the notary to TD on or around October 26th, 2017;
57. TD should have not charged Ms. Haroch more than \$2,427.17 (representing 3-months interest) and therefore overcharged Ms. Haroch by \$10,221.30;
58. In addition to being overcharged by \$10,221.30, this situation caused Ms. Haroch a great deal of stress, frustration, trouble and inconvenience, because she never expected to pay such a high amount as a penalty to the TD just for selling her home and for paying off her mortgage early;
59. The difference in the amount of \$10,221.30 is objectively abusive, excessive and disproportionate;
60. Ms. Haroch suffered objective lesion by paying \$12,648.47, when a prepayment penalty of 3-months interest in the amount of \$2,437.17 would have been more than enough to compensate TD for its costs;
61. Ms. Haroch was unhappy about paying the prepayment charge of \$12,648.47, but was in no position to negotiate with a giant bank such as TD, who impose this abusive clause in its consumer contracts and contracts of adhesion (Exhibit P-29);
62. To further illustrate the objectively abusive, excessive and disproportionate nature of the prepayment charge, Ms. Haroch discloses the prepayment charges she would have paid to MCAP, another hypothecary lender in Quebec, **Exhibit P-33**;

63. On its website, MCAP describes as *“one of Canada's largest independent mortgage financing companies, with over \$66 billion in assets under administration”*;
64. As it appears from Exhibit P-33, MCAP would have charged Ms. Haroch \$2,427.14 (equal to exactly 3-months interest) to payout her Mortgage early;
65. Given that Ms. Haroch is a consumer within the meaning of the CPA, she is entitled to claim punitive damages in the amount of \$1000.00 from TD pursuant to section 272 CPA;
66. Ms. Haroch reiterates that TD's clause concerning prepayment charges (*“Frais de remboursement anticipé”*) was incomprehensible to her, as she could never figure out or calculate the prepayment charge based on the information in the documents provided by TD until this day (Exhibits P-29 and P-32);
67. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the prepayment charge (\$12,648.47 in this case) and the “wholesale” cost to the merchant of providing this service (in this case, 3-months of interest appears to be appropriate since it is provided for by TD in the impugned clause and it is also the amount that many other hypothecary lenders in Quebec charge in the same circumstances);
68. There is thus an important disproportion between the \$12,648.47 charged to Ms. Haroch and the service provided by TD;
69. Moreover, the TD could have either: (i) secured Ms. Haroch's fixed rate mortgage back in March of 2015; or (ii) lent the amount Ms. Haroch prepaid (\$347,976.98) to another borrower at an equivalent or higher interest rate than Ms. Haroch's 2.79% (or could have easily done so within the 3-month penalty period), given that TD's fixed rate for a two-year closed mortgage as of October 10th, 2017 was 3.04% (thus 0.25% greater than Ms. Haroch's rate), as it appears from **Exhibit P-34**;
70. Ms. Haroch's damages are a direct and proximate result of TD's misconduct;

Applicant Avraham Brook's Claim against CIBC

71. On or around June 22nd, 2015, Mr. Brook entered into a hypothecary loan agreement with CIBC, as it appears from the Deed of Hypothecary Loan disclosed as **Exhibit P-35**;
72. Just prior to this date (sometime between June 16th and June 22nd, 2015), Mr. Brook and a representative of the CIBC signed a document titled “Revised Mortgage Approval” (for mortgage # [REDACTED]), disclosed as **Exhibit P-36**;
73. As it appears from Exhibit P-36, the term of the loan was fixed at an interest rate of 2.79% for 60 months, with an amortization period of 30 years;

74. Mr. Brook's mortgage agreement contained the following impugned clause concerning prepayment charges (see pages 6 to 8 of Exhibit P-36):

If you want to prepay the entire outstanding principal amount of your mortgage, a prepayment charge will apply to the total amount of the prepayment... The prepayment charge will be the higher of the following two amounts:

- three months' interest costs on the amount you are prepaying that is subject to a prepayment charge calculated at your existing annual interest rate; or
- the interest rate differential amount, which is explained below

75. When signing both the Deed and Approval documents (Exhibits P-35 and P-36), Mr. Brook was never explained that he would incur prepayment charges if he paid off his Mortgage early (he was **not** asked to initial next to the impugned clause), nor was he given any explanation about the complex formula used to calculate the IRD;
76. On April 19th, 2018, Mr. Brook sold his residence and therefore had to pay off the balance on his existing Mortgage to the CIBC;
77. On or around April 19th, 2018, the CIBC charged Mr. Brook **\$29,340.36** on account of prepayment charges, as it appears from his Payout/Discharge Statement dated April 18th, 2018, disclosed as **Exhibit P-37**;
78. The prepayment charge of \$29,340.36 was disbursed directly from the notary to CIBC;
79. Mr. Brook tried to negotiate this penalty with the CIBC, but was told that if the entire amount of the prepayment charge was not paid, CIBC would not disburse the proceeds of the sale of his home;
80. In hindsight, Mr. Brook now realizes that the CIBC was a far more sophisticated negotiator than he was and that the CIBC was in a dominant position by providing in Exhibit P-36 that it be paid prepayment charges that far exceed its costs in the event that Mr. Brook were to pay off his Mortgage early;
81. The clause concerning prepayment charges was incomprehensible to Mr. Brook, as neither he nor his two sons (both practicing Quebec attorneys) were ever able to figure out how to calculate the prepayment charge based on the information provided by CIBC and even after speaking to the CIBC representative at the bank;
82. In fact, both of Mr. Brook's sons also tried to negotiate with the CIBC, who refused to reduce the prepayment charge by any amount whatsoever;
83. CIBC should not have charged Mr. Brook more than 3-months interest (i.e. \$5,788.69);

84. The difference of \$23,551.67 is objectively abusive, excessive and disproportionate;
85. This situation caused Mr. Brook a great deal of stress, anxiety, frustration, trouble and inconvenience, because he never imagined having to foot such a huge bill just for selling his house and paying off his Mortgage early (Mr. Brook's wife had passed away in 2015, he had just closed his butcher shop and his financial situation was becoming more and more precarious);
86. To further illustrate the objectively abusive, excessive and disproportionate nature of the prepayment charge, Mr. Brook discloses the prepayment charges he would have paid to MCAP, another hypothecary lender in Quebec, **Exhibit P-38**;
87. As it appears from Exhibit P-38, MCAP would have charged Mr. Brook \$5,788.69 (equal to exactly 3-months interest) to payout his Mortgage early;
88. Mr. Brook suffered objective lesion by paying \$29,340.36 when the CIBC should have charged him \$5,788.69 (for a difference of \$23,551.67);
89. Mr. Brook was disgruntled about paying the prepayment charge, but was in no position to negotiate with a giant bank such as CIBC, who includes this abusive clause in their consumer contracts and contracts of adhesion, Exhibit P-36;
90. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the prepayment charge (in this case \$29,340.36) and the "wholesale" cost to the merchant of providing this service (in this case, 3-months of interest appears to be appropriate since it is provided for by CIBC in the impugned clause and it is also the amount that many other hypothecary lenders in Quebec charge in the same circumstances);
91. There is thus an important disproportion between the \$29,340.36 charged to Mr. Brook and the service provided by CIBC;
92. Moreover, the CIBC could have either: (i) secured Mr. Brook's fixed rate mortgage back in June of 2015; or (ii) lent the amount Mr. Brook prepaid (\$829,920.25) to another borrower at an equivalent or higher interest rate than Mr. Brook's 2.79% (or could have easily done so within the 3-month penalty period), given that its fixed rate for a two-year mortgage as of May 24th, 2018 is 3.34% (thus 0.55% greater than the Mr. Brook's rate), as it appears from **Exhibit P-39**;
93. Given that Mr. Brook is a consumer within the meaning of the CPA, he is entitled to claim punitive damages in the amount of \$1000.00 from CIBC pursuant to section 272 CPA;
94. Mr. Brooks damages are a direct and proximate result of CIBC's misconduct;

The Level at which the Disproportion becomes Exploitative

95. Interpreting Section 10(1) of the *Interest Act* in today's reality demonstrates that - in the case of the Applicants - both the CIBC and the TD (and the other Defendants in the case of the other Class Members) have charged and, as of the date of the filing of this Application, continue to charge Quebec Class Members prepayment charges that are objectively abusive, exploitative and disproportionate;
96. The Applicants believe that further evidentiary support for their allegations will come to light after a reasonable opportunity for discovery;
97. There is an important disproportion between the two options provided for in the hypothecary loan agreements used to calculate the prepayment charges in the case of all Class Members;
98. Moreover, the Defendants impose prepayment charges on Class Members that not only exceed their costs, but in fact generate profits both by imposing the charge on Class Member and then again by relending the funds at higher interest rates;
99. In order that there be no doubt whatsoever as to the abusive, exploitative and disproportionate nature of the prepayment charges that are the object of this class action, the Applicants suggest, based on the evidence available to date, that a prepayment charge of 3-months of interest would have been a just and reasonable fair market rate;
100. Consequently, an excessive disproportion exists in the case of any prepayment charge imposed by Defendants when the rate being charged by Defendants is greater than 3-months of interest;
101. In the cases of both Ms. Haroch and Ms. Brook, for instance, they paid the TD and CIBC, respectively, 500% more than what they would have paid to other hypothecary lenders such as MCAP, or that they would have paid using the only reasonable and comprehensible option in the impugned clause of their respective agreements (being the 3-months of interest formula);
102. As a result of the foregoing, both Applicants and Class Members are justified in claiming compensatory damages, as well as punitive damages based on repeated violations of section 8 CPA (pursuant to section 272 CPA), as well as compensatory damages and a declaratory judgment pursuant to article 1437 CCQ;
103. Given that Applicants hereby seek to have the abusive clauses reduced, they are accordingly entitled to claim and do hereby claim from TD, CIBC and the other Defendants the aggregate of the sums paid on account of prepayment charges in excess of three-months of interest;

Applicants' claims for punitive damages

104. This head of damages is claimed uniquely for the Applicants and Class Members who are consumers within the meaning of the CPA;
105. The overall conduct of TD and the CIBC (and of the other Defendants) before, during and after the violations, were lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;
106. In this case, TD, CIBC and all the other Defendants breach and continue to breach the CPA, without any explanation (other than to maximize profits for shareholders), for a significant period;
107. This complete disregard for consumers' rights and to their own obligations under the CPA on the part of TD and CIBC (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;
108. The reality is that the TD, CIBC and the others Defendants have likely generated billions of dollars in profits over the years by charging prepayment charges in excess of 3-months of interest;
109. It is reported that as of October 31st 2017, the Defendants hold hundreds of billions of dollars' worth of mortgages in Canada, **Exhibit P-40**;
110. It is safe to assume that the Defendants account for more than 95% of this amount;
111. It appears that these prepayment charges are nothing more than a cash-cow for the Defendants, who were charging Class Members fees that exceed their costs, even when they will lend the same funds out at a higher interest;
112. The Defendants have crafted hypothecary loan agreements that give them *carte blanche* to exploit Quebec consumers and to charge them abusive and disproportionate prepayment charges;
113. The severity of the Defendants' conduct is compounded by virtue of the fact that one of the options in the clause (i.e. the one that is substantially to the Banks' benefit and to the detriment of Class Members) is incomprehensible to Class Members, while the only other option in the clause that is comprehensible to Class Members (i.e. the one that is less profitable to the Banks but more advantageous to Class Members) is never used;
114. Moreover, the Defendants – equipped with actuarial data and resources – are far more sophisticated than the consumers they contract with and know very well that their “posted rates” (which they make up) will always generate a significant profit for them when a consumer incurs prepayment charges;

115. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
116. The Defendants' violations are intentional, calculated, malicious and vexatious;
117. The Defendants demonstrated through their behavior (before, during and after the violation) that they are more concerned about their bottom line than about consumers' rights and their own obligations under the *CPA*;
118. Applicants are accordingly entitled to claim and do hereby claim from TD, CIBC and the other Defendants the sum of \$100 million on account of punitive damages, subject to adjustment;
119. TD's, CIBC's and the other Defendants' patrimonial situations are so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

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

120. All Class Members, regardless of which of the Defendants they contracted with, have a common interest both in proving the violation of section 8 of the *CPA* by all of the Defendants and of the application of either 1432, 1436, 1437 and/or 2332 CCQ - and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
121. The nature of the interest necessary to establish the standing of the Applicants must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the Representative Plaintiffs;
122. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the prepayment charges imposed and collected by Defendants are abusive, disproportionate and constitute objective lesion under Quebec law;
123. The claims of every member of the Class are founded on very similar facts to the Applicants' claims against TD and the CIBC;
124. 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 and could result in conflicting judgments;
125. Every member of the Class was charged an abusive and disproportionate prepayment charge by one of the Defendants (i.e. more than 3-months of interests when paying their mortgage off before term);
126. 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 section 8 CPA and articles 1432, 1436, 1437 and 2332 CCQ);

127. By reason of Defendants' unlawful conduct, Applicants and every Class Member have suffered damages, which they may collectively claim against the Defendants;
128. Although the Applicants themselves 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;
129. 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;
130. 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 (in the case of consumers within the meaning of the CPA);
131. Each Class Member is justified in claiming at least one or more of the following as damages:
 - Reimbursement of all prepayment charges in excess of 3-months of interest; and
 - An amount to be determined on account of moral damages, troubles and inconvenience;
132. In addition to the sums claimed above, each Class Member who is a consumer within the meaning of the CPA is justified in claiming punitive, the aggregate of which is being claimed in the amount of \$100 million, subject to adjustment;
133. All of the damages to the Class Members are a direct and proximate result of the Defendants' misconduct;
134. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
135. **The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:**
 - a) Do the prepayment charges imposed and collected by the Defendants constitute exploitation and objective lesion under section 8 of the CPA?
 - b) Do the prepayment charges imposed and collected by the Defendants constitute lesion under article 2332 CCQ?
 - c) Are the prepayment charges imposed and collected by the Defendants

excessively and unreasonably detrimental to consumers and/or adherents such that the contractual clauses allowing Defendants to charge such fees are abusive under article 1437 of the CCQ?

- d) Is the clause in the Defendants' hypothecary loan agreements providing for the charge of the greater of 3-months interest or the IRD a clause that is incomprehensible to a reasonable person pursuant article 1436 CCQ?
- e) Is the clause in the Defendants' hypothecary loan agreements providing for the charge of the greater of 3-months interest or the IRD a penal clause and, if so, is the amount in excess of 3-months interest abusive pursuant to article 1623 CCQ?
- f) Should the clause (or a portion thereof) concerning prepayment charges in the Defendants' various hypothecary loan agreements be declared null, entitling Class Members to a full reimbursement of the amounts paid in excess of 3-months of interest?
- g) In the alternative, must the Class Members' obligations be reduced and if so, by how much?
- h) Can section 10(1) of the *Interest Act* be adapted to situations where the term of the Mortgage is 5 years or less?
- i) Are Class Members entitled to moral damages and/or damages for troubles and inconvenience and, if so, what amount must the Defendants pay?
- j) Are Class Members who are consumers within the meanings of the CPA entitled to punitive damages and if so, what amount must the Defendants pay?

C) THE COMPOSITION OF THE CLASS

- 136. 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;
- 137. According to Exhibit P-40, the Defendants hold and administer hundreds of billions of dollars' worth of mortgages in Canada;
- 138. The size of the Class is conservatively estimated to include tens of thousands of members in the province of Quebec;
- 139. The names and addresses of all persons included in the Class are not known to the Applicants, however, are in the possession of the Defendants;
- 140. Class members are very numerous and are dispersed across the province, across Canada

and elsewhere;

141. 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;
142. 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 MEMBERS REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFFS ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

143. Applicants requests that they be appointed the status of representative plaintiffs for the following main reasons:
 - a) they are both members of the Class and both have a personal interest in seeking the conclusions that they propose herein;
 - b) they are both competent, in that they each have the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) their interests are not antagonistic to those of other Class Members;
144. Additionally, Applicants respectfully add that:
 - a) Ms. Haroch and Mr. Brook have the time, energy, will and determination to assume all the responsibilities incumbent upon them in order to diligently carry out the action;
 - b) they mandated their attorney to file the present application for the sole purpose of having their 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' illegal and abusive behavior and so that they Defendants can be held accountable for their misconduct;
 - c) they cooperate and will continue to fully cooperate with their attorney, who has experience in consumer protection-related class actions;
 - d) they understand the nature of the action;
145. As for identifying other Class members, Applicants draw certain inferences from the situation and realize that by all accounts, there is a very important number of Class Members that find themselves in an identical situation, and that it would not be any more useful for them to attempt to identify them given their sheer number;
146. For the above reasons, Applicants respectfully submit that their interest and

competence are such that the present class action could proceed fairly and in the best interest of Quebec Class Members;

IV. DAMAGES

147. During the Class Period, the Defendants have likely generated aggregate amounts in the hundreds of millions of dollars (if not more) from Class Members in the province of Quebec on account of prepayment charges (in excess of 3-months interest);
148. All of the Defendants' misconduct is reprehensible and to the detriment of vulnerable Quebec consumers and adherents;
149. All of the Defendants must be held accountable for the breach of obligations imposed on them by legislation in Quebec, including:
 - a) Quebec's *Consumer Protection Act*, notably sections 8 and 272;
 - b) The *Civil Code of Quebec*, notably articles 6, 7, 1436, 1437, 1623 and 2332 CCQ;
150. 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;
 - b) moral damages, in an amount to be determined, as well as damages for trouble and inconvenience; and
 - c) punitive damages (for Class Members that are consumers within the meaning of the *CPA*) in the aggregate amount of \$100 million for the breach of obligations imposed on Defendants pursuant to section 272 CPA;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

151. The action that the Applicants wish to institute on behalf of the members of the Class is an action in damages and declaratory judgment;
152. The conclusions that the Applicants wish to introduce by way of an originating application are:

GRANT the Representative Plaintiffs' action against Defendants on behalf of all the Class Members;

DECLARE the Defendants liable for the damages suffered by the Applicants and each of the Class Members;

DECLARE that the prepayment charges imposed and collected by Defendants amount to

exploitation under section 8 CPA;

DECLARE that the prepayment charges imposed and collected by Defendants are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 CCQ;

DECLARE that the prepayment charges imposed and collected by Defendants constitute lesion under article 2332 CCQ;

DECLARE abusive and null the clauses in the Defendants' hypothecary loan agreements which provide for prepayment charges in excess of 3-months of interest;

CONDEMN the Defendants to pay the Representative Plaintiffs and Class Members compensatory damages for the aggregate of prepayment charges in excess of 3-months of interest;

ORDER the collective recovery of all damages owed to the Class Members for the amounts overcharged;

CONDEMN the Defendants to pay Class Members the sum of \$100 million on account of punitive damages, subject to adjustment, 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 at all levels, including the cost of all exhibits, 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;

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

VI. JURISDICTION

154. Applicants suggest that this class action be exercised before the Superior Court in the district of Montreal, since both are domiciled and reside in the district of Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicants the status of Representative Plaintiffs of the persons included in the Class herein described as:

Class:

All persons, entities, partnerships or organizations resident or domiciled in Quebec, who, since May 31st, 2015, had a hypothecary loan and/or a collateral hypothec with any of the Defendants and who paid a mortgage prepayment charge in an amount that exceeds three months of interest as a result of paying off their mortgage early;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Do the prepayment charges imposed and collected by the Defendants constitute exploitation and objective lesion under section 8 of the CPA?
 - b) Do the prepayment charges imposed and collected by the Defendants constitute lesion under article 2332 CCQ?
 - c) Are the prepayment charges imposed and collected by the Defendants excessively and unreasonably detrimental to consumers and/or adherents such that the contractual clauses allowing Defendants to charge such fees are abusive under article 1437 of the CCQ?
 - d) Is the clause in the Defendants’ hypothecary loan agreements providing for the charge of the greater of 3-months interest or the IRD a clause that is incomprehensible to a reasonable person pursuant article 1436 CCQ?
 - e) Is the clause in the Defendants’ hypothecary loan agreements providing for the charge of the greater of 3-months interest or the IRD a penal clause and, if so, is the amount in excess of 3-months interest abusive pursuant to article 1623 CCQ?

- f) Should the clause (or a portion thereof) concerning prepayment charges in the Defendants' various hypothecary loan agreements be declared null, entitling Class Members to a full reimbursement of the amounts paid in excess of 3-months of interest?
 - g) In the alternative, must the Class Members' obligations be reduced and if so, by how much?
 - h) Can section 10(1) of the *Interest Act* be adapted to situations where the term of the Mortgage is 5 years or less?
 - i) Are Class Members entitled to moral damages and/or damages for troubles and inconvenience and, if so, what amount must the Defendants pay?
 - j) Are Class Members who are consumers within the meanings of the CPA entitled to punitive damages and if so, what amount must the Defendants pay?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
- a) **GRANT** the Representative Plaintiffs' action against Defendants on behalf of all the Class Members;
 - b) **DECLARE** the Defendants liable for the damages suffered by the Applicants and each of the Class Members;
 - c) **DECLARE** that the prepayment charges imposed and collected by Defendants amount to exploitation under section 8 CPA;
 - d) **DECLARE** that the prepayment charges imposed and collected by Defendants are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 CCQ;
 - e) **DECLARE** that the prepayment charges imposed and collected by Defendants constitute lesion under article 2332 CCQ;
 - f) **DECLARE** abusive and null the clauses in the Defendants' hypothecary loan agreements which provide for prepayment charges in excess of 3-months of interest;
 - g) **CONDEMN** the Defendants to pay the Representative Plaintiffs and Class Members compensatory damages for the aggregate of prepayment charges in excess of 3-months of interest;

- h) **ORDER** the collective recovery of all damages owed to the Class Members for the amounts overcharged;
 - i) **CONDEMN** the Defendants to pay Class Members the sum of \$100 million on account of punitive damages, subject to adjustment, and **ORDER** collective recovery of these sums;
 - j) **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*;
 - k) **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;
 - l) **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 - m) **CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, 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;
 - n) **RENDER** any other order that this Honourable Court shall determine;
6. **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;
7. **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;
8. **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 Le Journal de Montréal and the MONTREAL GAZETTE;
9. **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 of a Class Action";
10. **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";

11. **ORDER** the Defendants to send a Notice by regular mail to each Class Member, to their last known physical address, with the subject line "Notice of a Class Action";
12. **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;
13. **RENDER** any other order that this Honourable Court shall determine;
14. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

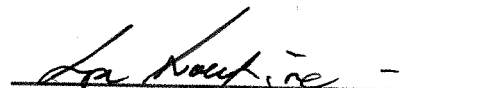
Montreal, May 31st, 2018



LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

COPIE CONFORMÉ / TRUE COPY


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:** Copy of December 4th, 2013 Globe and Mail news article titled "*The hidden trap of mortgage penalties*", by Rob Carrick;
- Exhibit P-2:** Copy of August 6th, 2010 Globe and Mail news article titled "*Mortgage breakage costs: let's stop the nonsense*", by Marcel Mooij;
- Exhibit P-3:** Copy of September 14th, 2012 Globe and Mail article titled "*Ten questions to help you avoid mortgage-penalty shock*", by Robert McLister;
- Exhibit P-4:** Copy of December 2010 Report titled "*Coping with Mortgage Penalties in Canada*", by Richard Beaumier;
- Exhibit P-5:** Copy of October 8th, 2014, the CBC News article titled "*TD Bank client 'devastated' by \$17,000 mortgage penalty*";
- Exhibit P-6:** Extract of the CIDREQ for the Toronto-Dominion Bank;
- Exhibit P-7:** *En liasse*, extracts of the CIDREQ for the Canadian Imperial Bank of Commerce

and CIBC Mortgages Inc.;

- Exhibit P-8:** Extract of the CIDREQ for Banque de Montréal;
- Exhibit P-9:** Extract of the CIDREQ for the Royal Bank of Canada;
- Exhibit P-10:** *En liasse*, extracts of the CIDREQ for Bank of Nova Scotia and Scotia Mortgage Corporation;
- Exhibit P-11:** Extract of the CIDREQ for the Laurentian Bank of Canada;
- Exhibit P-12:** Extract of the CIDREQ for Fédération des Caisses Desjardins du Québec;
- Exhibit P-13:** Extract of the CIDREQ for National Bank of Canada;
- Exhibit P-14:** Extract of the CIDREQ for HSBC Bank of Canada;
- Exhibit P-15:** Extract of the CIDREQ for Tangerine Bank;
- Exhibit P-16:** Extract of the CIDREQ for First National Financial LP;
- Exhibit P-17:** Excerpt from TD website titled *“What is the cost to prepay my mortgage early?”*;
- Exhibit P-18:** Excerpt from CIBC website titled *“Information on Mortgage Prepayment”*;
- Exhibit P-19:** Screen capture from BMO website titled *“Pay your mortgage faster”*;
- Exhibit P-20:** Copy of document from RBC website titled *“Understanding the mortgage prepayment charge”*;
- Exhibit P-21:** Copy of document from Scotia website titled *“What You Need To Know About Mortgages & Mortgage Prepayment Charges”*;
- Exhibit P-22:** Copy of document from Laurentian website titled *“Information about the Prepayment Indemnity when Reimbursing a Mortgage/Hypothecary Loan in Advance”*;
- Exhibit P-23:** Excerpt from Desjardins website titled *“Rembourser la totalité de votre prêt hypothécaire”*;
- Exhibit P-24:** Excerpt from BNC website titled *“Accelerated mortgage repayment”*;
- Exhibit P-25:** Excerpt from HSBC website titled *“Mortgage Prepayment Charge Calculator”*;

- Exhibit P-26:** Screen capture from Tangerine website titled “Rembourser la totalité de votre prêt hypothécaire”;
- Exhibit P-27:** Excerpt from First National website titled “Understanding prepayment charges”;
- Exhibit P-28:** Copy of *CréditFlex* agreement between Ms. Haroch and TD dated March 2nd, 2015;
- Exhibit P-29:** Copy of “Convention de modification de la convention *CréditFlex Valeur domiciliaire TD avec garantie immobilière*” dated March 2nd, 2015;
- Exhibit P-30:** Copy of *Contrat d’hypothèque collatérale* dated March 11th, 2015;
- Exhibit P-31:** Screen capture from the TD website titled “TD Home Equity Flexline” (online: <https://www.td.com/ca/en/personal-banking/products/mortgages/td-home-equity-flexline/>);
- Exhibit P-32:** Copy of Katy Haroch’s Discharge/Transfer/Payout Statement from TD, dated October 10th, 2017;
- Exhibit P-33:** Screen capture from MCAP’s website showing penalty of \$2,427.14;
- Exhibit P-34:** Screen capture, using a Wayback machine, of an excerpt of the TD website on October 10th, 2017 showing fixed-term closed mortgage rates (<https://web.archive.org/web/20171010081252/http://www.tdcanadatrust.com/products-services/banking/mortgages/mortgage-rates.jsp>);
- Exhibit P-35:** Copy of Deed of Hypothecary Loan dated June 22nd, 2015, between Avraham Brook and the CIBC;
- Exhibit P-36:** Copy of CIBC’s “Revised Mortgage Approval” signed sometime between June 16th-22nd, 2015 by Mr. Brook and a representative of the CIBC;
- Exhibit P-37:** Copy of Mr. Brook’s CIBC Payout/Discharge Statement dated April 18th, 2018;
- Exhibit P-38:** Screen capture from MCAP’s website showing penalty of \$5,788.69;
- Exhibit P-39:** Excerpt from CIBC website as of May 24th, 2018 showing mortgage rates (<https://www.cibc.com/en/interest-rates/mortgage-rates.html>);
- Exhibit P-40:** Copy of document titled “Top 10 Best Mortgage Lenders in Canada” (<https://www.relbanks.com/mortgage/canada>);

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, May 31st, 2018




LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicants

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LPC AVOCAT INC.

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

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

SCOTIA MORTGAGE CORPORATION
44 King Street West
Toronto, Ontario, M5H 1H1

CANADIAN IMPERIAL BANK OF COMMERCE
1155 René-Lévesque blvd. West
Montreal, Quebec, H3C 3B2

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

CIBC MORTGAGES INC.
1155 René-Lévesque blvd. West, #1020
Montreal, Quebec, H3B 3Z4

NATIONAL BANK OF CANADA
600, rue de la Gauchetière O., 4th Floor
Montreal, Québec, H3B 4L2

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

HSBC BANK OF CANADA
160-2001 McGill College
Montreal, Québec, H3A 1G1

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

TANGERINE BANK
1141 blvd. de Maisonneuve O.
Montreal, Quebec, H3A 1N4

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


FIRST NATIONAL FINANCIAL LP
100 University ave., #700 North Tower
Toronto, Ontario, M5J 1V6


FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC
100, rue des Commandeurs
Lévis, Québec, G6V 7N5

TAKE NOTICE that Applicants' *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiffs* 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.

Montréal, May 31st, 2018

COPIE CONFORME / TRUE COPY


LPC AVOCAT INC.


LPC AVOCAT INC.

Per: Me Joey Zukran .
Attorney for Applicants

500-06-000 930-186

88167

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

99

KATY HAROCH
AVRAHAM BROOK

Applicants

action collective

v.

THE TORONTO-DOMINION BANK ET ALS.

Defendants

Ardo 1714 \$

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

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Ardo
Me Joey Zukran

BL 6059

N/D : JZ-181

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