

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

No: 500-06-001203-229

KARINE PEILLON

Applicant

v.

AMEX BANK OF CANADA & AL.

Defendants

APPLICATION BY DEFENDANT AMEX BANK OF CANADA
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Article 574 C.C.P.)

TO THE HONOURABLE JUSTICE CHRISTIAN IMMER OF THE SUPERIOR COURT
OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, DEFENDANT
AMEX BANK OF CANADA RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Defendant Amex Bank of Canada (“**Amex**”) seeks leave to adduce relevant evidence in order to establish facts that are necessary to enable this Court to undertake an informed analysis, in light of the criteria set out in article 575 of the *Code of Civil Procedure* (the “**CCP**”) regarding the authorization to institute class action proceedings.
2. On or around, October 25, 2022, the Applicant filed an Application to authorize the bringing of a class action and to appoint the status of representative Plaintiff, as appears from the record of this Honourable Court.
3. On or around July 4, 2023, the Applicant filed an Amended Application to authorize the bringing of a class action and to appoint the status of representative Plaintiff (the “**Amended Application**”), as appears from the record of this Honourable Court.
4. The Application seeks compensatory and punitive damages against the defendants for having allegedly sold prepaid cards (“**Prepaid Cards**”) at a price higher than advertising, and an injunctive relief to order the defendants “to

prominently advertise the real price that they charge consumers for the purchase of the Prepaid Cards”¹.

5. As appears from paragraph 1 of the Amended Application, the Applicant seeks to represent a class comprised of the following persons:

“All consumers pursuant to the Québec *Consumer Protection Act* who purchased a prepaid card from any of the Defendants and who paid a price higher than the price advertised on the card (excluding sales tax) [...]”

6. The Applicant seeks leave to institute a class action pursuant to certain provisions of the Québec’s *Consumer Protection Act*, CQLR c P-40.1 (“**CPA**”), notably section 223 and paragraph c of section 224 CPA and section 1(1)(b) of the *Order in Council respecting the Policy on accurate pricing for merchants who use optical scanner technology*, CQLR c P-40.1, r 2 (“**Accurate Pricing Policy**”).
7. Amex hereby requests leave to adduce evidence at the authorization hearing in support of its submissions that the Amended Application fails to meet the threshold authorization conditions set forth at Article 575 CCP.

II. THE EVIDENCE THAT AMEX SEEKS TO ADDUCE

8. The evidence which Amex seeks leave to adduce is eminently relevant and appropriate to the authorization inquiry proposed by the Applicant as it pertains to Amex.
9. In the Amended Application, the Applicant notably alleges that:
 - (a) American Express Limited (“**AEL**”) and Amex² issued Prepaid Cards that were ultimately sold to the proposed class members.
 - (b) The Amex Prepaid Cards agreement (Exhibit P-1.3) does not specify which American Express subsidiary contracted with defendant Peoples Trust Company (“**Peoples**”), “thereby making it impossible for the average consumer to know whether the license agreement is entered between Peoples and [AEL]”.
10. These allegations contained in the Amended Application are vague, unsubstantiated and inaccurate with respect to the essential components of the supposed juridical syllogism required to establish a cause of action against Amex.

¹ See paragraph 200 of the Amended Application.

² It should be noted that Applicant used the term “Amex” in its Amended Application to designate collectively defendants American Express Limited and Amex Bank of Canada.

11. To ensure this Court has all of the relevant and accurate evidence necessary to address these issues, Amex hereby requests leave to file the following evidence in order to dispel these false or vague assumptions:
 - (a) A sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated April 23, 2023 (the “**1st Sworn Statement**”), filed herewith as **Exhibit RA-1**.
 - (b) A sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated September 29, 2023 (the “**2nd Sworn Statement**”), filed herewith as **Exhibit RA-2**.
12. The evidence that Amex wishes to present to this honourable Court is limited to remedy the vague, incomplete and inaccurate allegations of the Amended Application by demonstrating the following:
 - (a) The 1st Sworn Statement is necessary 1) to contradict the false allegations contained in the Amended Application and affirm that Amex never marketed, sold or issued Prepaid Cards bearing an activation or purchase fee during the class period; and 2) to demonstrate that Prepaid Cards bearing an American Express logo sold during the class period were issued by Peoples pursuant to a license agreement entered into between Peoples and AEL, not Amex.
 - (b) The 2nd Sworn Statement is necessary as it provides valuable details and information on the operations of the American Express network as it relates to Prepaid Cards. It is relevant and useful for the Court to understand the particularities of the American Express network to fully appreciate whether the juridical syllogism put forward by Amended Application is *prima facie* founded against Amex.
13. For these reasons, Amex respectfully submits that such evidence is relevant at the authorization stage to fully appreciate if the Applicant has met his burden with regards to Amex.

III. GROUNDS IN SUPPORT OF THE PRESENT APPLICATION

14. It appears from Applicant’s Amended Application that it contains many general, incomplete, vague or inaccurate allegations which are prejudicial to Amex, such that Amex should be afforded the opportunity to adduce evidence which will correct and complete and bring more precision to the allegations made by the Applicant.
15. The evidence that Amex is hereby seeking to adduce is both useful and necessary to demonstrate that the facts alleged by the Applicant are inaccurate and do not justify the conclusions sought, such that the proposed class action is untenable and destined to fail as it pertains to Amex.

16. The evidence presented in support herein is very limited in scope and is thus consistent with the nature of the authorization process and the principle of proportionality.
17. The present application for leave to adduce relevant evidence is well-founded in fact and in law.

WHEREFORE MAY IT PLEASE THIS COURT TO:

GRANT the present *Application for leave to adduce relevant evidence*.

AUTHORIZE Defendant Amex Bank of Canada to file the sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated April 23, 2023, filed herewith as Exhibit RA-1;

AUTHORIZE Defendant Amex Bank of Canada to file the sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated September 29, 2023, filed herewith as Exhibit RA-2.

THE WHOLE without costs, save in case of contestation.

MONTREAL, September 29, 2023

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Our file: 1238390

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Lawyers for Visa International Service Association

TAKE NOTICE that the present *Application by Defendant Amex Bank of Canada for Leave to Adduce Relevant Evidence* will be presented for hearing and allowance at a date and time to be determined by the Honourable Christian Immer of the Superior Court of Québec, 1 Notre-Dame Street East, Montreal, Québec.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, September 29, 2023

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Osler, Hoskin & Harcourt LLP

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Our file: 1238390

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
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KARINE PEILLON

Applicant

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Defendants

LIST OF EXHIBITS OF DEFENDANT AMEX BANK OF CANADA

Exhibit RA-1:	Sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated April 23, 2023
Exhibit RA-2:	Sworn statement of Mr. Christopher R. Gibson, Vice President Marketing of Amex Bank of Canada, dated September 29, 2023

MONTRÉAL, September 29, 2023

Osler, Hoskin & Harcourt LLP

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CANADA
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DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

No: 500-06-001203-229

KARINE PEILLON

Applicant

v.

COUCHE TARD INC.

and

ALIMENTATION COUCHE-TARD INC.

and

LE GROUPE JEAN COUTU (PJC) INC.

and

WAL-MART CANADA CORP.

and

CANADIAN TIRE CORPORATION LIMITED

and

BEST BUY CANADA LTD.

and

SHOPPERS DRUG MART INC.

and

SUNCOR ENERGY INC.

and

SHELL CANADA LTD.

and

PARKLAND CORPORATION

and

GIANT TIRE STORES LIMITED

and

MÉTRO INC.

and

SOBEYS CAPITAL INCORPORATED

and

LOBLAWS INC.

and

LA CORPORATION MCKESSON CANADA

and

DOLLARAMA S.E.C.

and

STAPLES CANADA ULC

and

HOME DEPOT OF CANADA INC.

and

CANADA POST CORPORATION

and

PEOPLES TRUST COMPANY

and

**PEOPLES CARD SERVICES LIMITED
PARTNERSHIP**

and

MASTERCARD INTERNATIONAL INC.

and

**VISA INTERNATIONAL SERVICE
ASSOCIATION**

and

AMEX BANK OF CANADA

Defendants

SWORN STATEMENT OF CHRISTOPHER R. GIBSON

I, the undersigned, Christopher R. Gibson, Vice President, Marketing for Amex Bank of Canada, exercising my profession at 2225 Sheppard Avenue East, Toronto, Ontario, do hereby solemnly declare as follows:

1. I am the Vice President of Marketing, for Amex Bank of Canada ("**Amex**").

2. I have reviewed the Application to authorize the bringing of a class action and to appoint the status of representative plaintiff (the "**Application**") filed by Applicant against Amex and other defendants.
3. I understand that the Application seeks, *inter alia*, compensatory and punitive damages allegedly resulting from an illegal business practice, namely having sold prepaid cards at a price higher than the price advertised.
4. I further understand that the Application seeks to institute a class action on behalf of the following class: "All consumers in Canada who purchased a prepaid card from any of the Defendants and who paid a price higher than the price advertised on the card (excluding sales tax) since May 8, 2019".
5. During the class period, prepaid cards such as the one displayed in Exhibit P-5 in support of the Application were issued by defendant Peoples Trust Company ("**Peoples**") pursuant to a license agreement between Peoples and American Express Limited, a corporate entity distinct from Amex.
6. During the class period, Amex did not market, sell or issue, in Québec, any prepaid card bearing a purchase fee or activation fee.
7. Amex does not have any place of business or establishment in Québec.
8. To my knowledge, all the facts alleged herein are true.

AND I HAVE SIGNED:



CHRISTOPHER R. GIBSON

SOLEMNLY DECLARED before me by
technological means, in LaSalle, Québec,
on this 21st day of April 2023



France Boulais
Commissioner of Oaths for the Province
of Québec

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

No: 500-06-001203-229

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Applicant

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AMEX BANK OF CANADA & AL.

Defendants

SUPPLEMENTAL SWORN STATEMENT OF CHRISTOPHER R. GIBSON

I, the undersigned, Christopher R. Gibson, Vice President, Marketing for Amex Bank of Canada (“**Amex**”), exercising my profession at 2225 Sheppard Avenue East, Toronto, Ontario, do hereby solemnly declare as follows:

1. I have reviewed the *Amended application to authorize the bringing of a class action and to appoint the status of representative plaintiff* (the “**Amended Application**”) filed by Applicant against Amex and other defendants.
2. I reiterate and stand by the information contained in the sworn statement that I signed on April 21, 2023.
3. As part of my work at Amex, I am familiar with how Amex operates and also how it interacts with other American Express entities and the roles of these entities, including American Express Limited (“**AEL**”).
4. The purpose of the present sworn statement is to provide the Court with background information concerning the operations and specificities of the American Express network as it relates to prepaid cards that are issued in the Province of Québec.
5. Amex is a Schedule II bank incorporated pursuant to the *Bank Act*, SC 1991, c 46, with its head office in Toronto, Ontario. Amex carries on business as issuer of American Express credit and charge cards to Canadian cardmembers and acquires Canadian merchant businesses to accept Amex credit and charge cards.
6. AEL is a company incorporated pursuant to the laws of the State of Delaware in the United States with its head office in New York, New York. AEL provides licenses to non-U.S. American Express entities and network partners which enables them to use the American

Express brand and issue cards with the American Express logo. AEL has no place of business or establishment in the Province of Québec.

7. Amex is part of the American Express global payments network that enables cardmembers to make electronic payments to merchant businesses around the world that accept American Express payments.
8. The American Express network facilitates the authorization, clearing and settlement of transactions and payments. The network supports the routing of a cardmember's transaction through a merchant's business to American Express authorization (approval or decline). Once the transaction is approved, the American Express network provides authorization to the merchant which allows the cardmember's transaction to be processed. The network facilitates the exchange of information in order to settle the transaction between cardmembers and merchants.
9. As stated in my previous sworn statement, during the class period, Amex did not market, sell or issue, in the Province of Québec, any prepaid card bearing a purchase or activation fee. The prepaid cards such as the one displayed in Exhibit P-5 are issued by defendant Peoples Trust Company ("**Peoples**") pursuant to a license agreement with AEL. Amex is not involved in the issuance process, or in the distribution by retailers.
10. The prepaid cards bearing the American Express logo used under licence by Peoples are issued by Peoples and may be used on the American Express network. However, Amex and AEL do not initiate payments or hold end user funds for prepaid cardholders or merchants.
11. As such, Amex and AEL are not responsible for (i) creating product offerings which could be of interest to prospective prepaid cardholders; (ii) issuing the prepaid cards to cardholders; (iii) establishing the terms on which the cardholders will use the prepaid cards; and (iv) setting fees and charges, as applicable.
12. The fees charged regarding the prepaid cards bearing the American Express logo, including the activation fees, and the way such fees are advertised and displayed, are not determined by Amex nor AEL.

13. To my knowledge, all the facts alleged herein are true.

AND I HAVE SIGNED:

Chris Gibson

CHRISTOPHER R. GIBSON

SOLEMNLY DECLARED before me by
technological means, in Laval, Québec, on
this 29th day of September 2023

Shirley Clawdy #59822

Commissioner of Oaths for the Province
of Québec

No: 500-06-001203-229

**SUPERIOR COURT
(Class Actions Division)
DISTRICT OF MONTRÉAL**

KARINE PEILLON

Applicant

v.

AMEX BANK OF CANADA ET ALS.

Defendants

**APPLICATION BY DEFENDANT AMEX BANK
OF CANADA FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE
(Article 574 C.C.P.)**

ORIGINAL

Code : BO 0323

O/f: **1238390**

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Objet: NOTIFICATION PAR COURRIEL : KARINE PEILLON C. AMEX BANK OF CANADA & ALS. - 500-06-001203-229 (Application for leave to adduce relevant evidence)
Pièces jointes: Application for leave to adduce relevant evidence - September 29, 2023.PDF

BORDEREAU DE NOTIFICATION PAR UN MOYEN TECHNOLOGIQUE

(art. 134 C.p.c.)

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No. du dossier de cour: **KARINE PEILLON C. AMEX BANK OF CANADA & ALS.
500-06-001203-229**



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