C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-06-000625-125

S U P E R I O R C O U R T
(Class Actions)

MARILENA MASELLA

Plaintiff

v.

THE TORONTO-DOMINION BANK

Defendant

-and-

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Impleaded Party

-and-

TRUDEL JOHNSTON & LESPÉRANCE

Applicant Attorneys

APPLICATION FOR APPROVAL OF A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL'S LEGAL FEES
(Arts. 590 and 591 *C.c.p* and *Act respecting the Fonds d'aide aux actions collectives,* C-F-3.2.0.1.1, art. 32)

TO THE HONOURABLE DAVID R. COLLIER OF THE SUPERIOR COURT OF QUEBEC, SITTING IN THE DISTRICT OF MONTREAL, THE PLAINTIFF AND THE APPLICANT ATTORNEYS SUBMIT THE FOLLOWING:

1. On January 15th, 2016, the Court of Appeal authorized the Plaintiff to undertake this class action on behalf of the following class:

> **French Original:**
>
> Toutes les personnes ayant signé une entente de marge de crédit sur valeur résidentielle (« Home Equity Line of Credit - HELOC ») avec la Banque TD ou une de ses filiales qui, au cours de l'automne 2009, ont reçu un avis de modification de l'entente donnant lieu à une variation défavorable du pourcentage d'intérêt qui est ajouté ou retranché au taux préférentiel de TD pour calculer le taux d'intérêt annuel variable.

English Translation:

All persons who signed an agreement for a home equity line of credit ("**HELOC**") with TD Bank or one of its subsidiaries, and who, over the course of fall 2009, received a notice of modification of the agreement that gave rise to an adverse change in the percentage of interest that is added to or subtracted from the TD prime rate in order to calculate the variable annual interest rate.

as appears from a copy of the judgment of the Court of Appeal, **Exhibit P-1**;

2. The Court of Appeal identified the main issues to be dealt with collectively as follows:

French Original:

a) La clause 12 du contrat est-elle illégale, abusive ou inopposable au cocontractant en vertu du Code civil du Québec ou de la Loi sur la protection du consommateur?

b) La banque TD a-t-elle enfreint la nature ou les termes du contrat signé avec la requérante en modifiant le taux d'écart (c.-à-d. la composante qui s'ajoute au taux préférentiel pour constituer le taux d'intérêt variable) de sa marge de crédit sur valeur résidentielle?

c) Le cas échéant, la banque TD devrait-elle être tenue responsable de la variation défavorable du pourcentage d'intérêt qui est ajouté ou retranché au taux préférentiel de TD pour calculer le taux d'intérêt annuel variable applicable aux marges de crédit sur valeur résidentielle de ses clients?

d) Le cas échéant, les membres du groupe ont-ils subi un préjudice de par la variation défavorable du pourcentage d'intérêt qui est ajouté ou retranché au taux préférentiel de TD pour calculer le taux d'intérêt annuel variable applicable à leurs marges de crédit sur valeur résidentielle et, si oui, quelle est la nature et l'étendue de ce préjudice?

e) L'intimée doit-elle être condamnée à payer à la requérante et aux autres membres du groupe les dommages suivants :

i. Le remboursement de toute somme payée en intérêts au-delà des intérêts dus en fonction du taux d'intérêt annuel variable calculé selon le taux d'écart convenu dans leurs contrats avec la Banque TD;

ii. Un montant additionnel de 100 $ pour tous les troubles et inconvénients subis par les membres ayant été assujettis à la variation défavorable du pourcentage d'intérêt qui est ajouté ou retranché au taux préférentiel de TD pour calculer le taux d'intérêt annuel variable?

iii. Un montant additionnel de 250 $ pour dommages punitifs en raison de la violation de la Loi sur la protection du consommateur?

English Translation:

a) Is clause 12 of the contract illegal, abusive, or unenforceable on the Plaintiff by virtue of the Civil Code of Quebec or the *Consumer Protection Act*?

b) Did TD Bank violate the nature or terms of the contract that it signed with the Plaintiff by modifying the percentage modifier (i.e. the component that is added to the TD prime rate to obtain the variable interest rate) of her home-equity line of credit?

c) If so, is TD liable for the increase of the percentage modifier that is added or subtracted to the TD prime rate in order to calculate the variable annual interest rate applicable to its clients' home-equity lines of credit?

d) If so, did class members suffer an injury as a result of the increase of the percentage modifier that is added or subtracted to the TD prime rate in order to calculate the variable annual interest rate applicable to its clients' home-equity lines of credit, and what is the nature of that injury if any?

e) Should the Defendant be ordered to pay the Plaintiff and class members the following damages:

i. The reimbursement of all sums paid in interest above the interest owed by virtue of the variable annual interest rate calculated according to the percentage modifier agreed to in their contracts with TD Bank?

ii. An additional amount of $ 100 for all the troubles and inconveniences suffered by members who were subject to the adverse change in the percentage of interest that is added or subtracted to the TD prime rate to calculate the variable annual interest rate?

iii. An additional amount of $ 250 in punitive damages for the Defendant's violation of the *Consumer Protection Act*?

3. The Plaintiff and the Defendant (collectively "the Parties") have reached a proposed Settlement Agreement, **Exhibit P-2**, after taking part in a private mediation before Me Max Mendelsohn on June 11th and 12th, 2019. The Parties have also concluded a Compensation Protocol, **Exhibit P-3**, governing distribution of compensation to class members;

4. For the reasons that follow, the Plaintiff respectfully requests that the Court approve the Settlement Agreement and Compensation Protocol;

5. The Applicant Attorneys, for their part, request that the Court approve payment of legal fees and disbursements to them, to be deducted from the compensation provided for by the Settlement Agreement;

OVERVIEW OF THE SETTLEMENT AGREEMENT

i. Compensation under the Settlement Agreement

6. The Settlement Agreement provides for payment of $ 15 000 000 by the Defendant (the "Settlement Amount"), to be distributed among class members who claim compensation on a *pro rata* basis. Class members' individual compensation will be calculated based upon their level of indebtedness on their home equity line of credit ("HELOC") based on their monthly statement for August 2009. Notices to class members informing them interest rates on their HELOCs would increase were sent as of September 10th, 2009;

7. Distribution to class members of the Settlement Amount would take place, under the proposed Settlement Agreement, after deduction of class counsel's legal fees and disbursements, notice costs and the Claims Administrator's fees;

8. Class members' levels of indebtedness on their HELOC per their August 2009 statement will be provided confidentially to the Claims Administrator by the Defendant;

9. According to the information provided to the Plaintiff's expert by the Defendant, approximately 30 150 HELOC accounts are covered by this class action;

ii. Claims Process

10. The Plaintiff requests that Raymond Chabot Grant Thornton ("the Claims Administrator") be appointed as Claims Administrator. A summary of the Claims Administrator's experience in administering claims processes in the context of class actions is attached as **Exhibit P-4**;

11. The Compensation Protocol prepared by the Parties provides for the creation of a website by the Claims Administrator containing an Electronic Claim Form. Class members are required to complete this claim form in order to receive compensation under the Settlement Agreement;

12. In order to inform class members of the Settlement Agreement, and of their obligation to complete the Electronic Claim Form in order to receive compensation, the Claims Administrator will send a notice (the "Compensation Notice") to the last known address of each class member in the Defendant's records;

13. On July 5th, 2016, this Court ordered the Defendant to mail a notice of authorization of the class action to all class members – in this context, the Court also ordered the Defendant to verify the addresses of class members who were no longer clients of the Defendant through a service provided by the credit reporting agency Equifax;

14. For this reason, the list of last known addresses provided by the Defendant to the Claims Administrator should present a reasonable degree of reliability;

15. For class members who are not identified through the list of addresses provided by the Defendant, or through class counsel's distribution list, the Claims Administrator shall attempt to locate them by contacting the last known phone numbers and email addresses to be provided by the Defendant, also on a confidential basis. If this is unsuccessful, the Claims Administrator may also, after consulting with class counsel, hire a service similar to that provided by Equifax. However, for the reasons exposed below, these additional searches will only be undertaken for class members whose level of indebtedness on their HELOCs exceeded $ 75 000 per their August 2009 statement;

16. Finally, the notices of authorization of this class action sent by the Defendant to class members invited class members to register to class counsel's mailing list for this class action in order to be informed of developments in the case. Over 1500 persons registered on this mailing list. If the Settlement Agreement is approved, class counsel will inform these persons of the approval and will instruct them to contact the Claims Administrator if they do not receive a letter from it;

THE SETTLEMENT AGREEMENT IS FAIR AND REASONABLE

17. The criteria which this Court's case-law have established for approval of a class action settlement are the following:

    i. The Plaintiff's chances at success;

    ii. The nature and breadth of evidence which would be tendered;

    iii. The expected length and cost of the litigation;

    iv. Good faith of the parties;

    v. Attorneys' recommendation and their experience;

    vi. The recommendation of a neutral third party, where applicable;

    vii. The nature and number of objections to the settlement; and

    viii. The terms of the settlement;

18. The Plaintiff submits that analysis of these criteria should lead this Court to conclude that the Settlement Agreement is fair and reasonable and in the best interests of class members;

i. The Plaintiff's chances at success

19. The Plaintiff is of the opinion that her chances at success if this matter were to proceed to trial are mixed;

20. On the one hand, the Plaintiff believes that she would have had a good chance of demonstrating at trial that the "modifier" component of class members' Variable Annual Interest Rate on their HELOCs was understood by the contracting parties to be based upon the individual characteristics of each borrower, and could thus be negotiated by them with the Defendant – such evidence would have cast into doubt the legality of the Defendant's decision to unilaterally set virtually every class member's "modifier" at 1% in November of 2009;

21. Furthermore, the Plaintiff believes that the case-law and doctrine support her position that clause 12 of class members' contracts, **Exhibit P-5**, (copied below) is illegal and unenforceable:

> **12. Changing this Agreement**
>
> Except as indicated below, we may from time to time change the provisions of this Agreement by prior written notice to you, including changes to the amount of any fee or charge, the Credit Limit or the rate of interest that we charge over the TD Prime Rate to arrive at the Variable Annual Interest Rate. We will send you written notice of any change to this Agreement to your address as shown in our records. Such written notice may be provided to you in your monthly statement.
>
> We may from time to time change the provisions of this Agreement as they relate to TD Prime Rate, the Credit Limit, or the discharge fee, without prior notice to you.

22. Finally, the Plaintiff conducted examinations on discovery of two representatives of the Defendant, and requested that documents be produced by the witnesses as undertakings. Many of these documents were received and analyzed by the Plaintiff's attorneys, in some cases following several decisions rendered by this Court on May 17th, 2017 dismissing objections raised by the Defendant;

23. The evidence thus obtained, in the Plaintiff's view, gives her a good chance of proving at trial that the Defendant's decision to increase class members' interest rates on their HELOC accounts was a contractual fault;

24. On the other hand, the decision of the Court of Appeal in *Vidéotron c. Union des consommateurs*[1] casts doubt on the Plaintiff's argument that clause 12 of the P-5 contract is illegal – in this decision, Justice Parent wrote that unilateral and discretionary modification clauses accompanied by a right to resiliate the contract

[1] *Vidéotron c. Union des consommateurs*, 2017 QCCA 738 (« *Vidéotron* »).

may be legal in indefinite term contracts; the P-5 contract is indeed stipulated for a indefinite term;

25. Justice Parent explains that, in such circumstances, a contractual party's refusal of the proposed modifications is akin to resiliation of the contract, which is a clear right of parties to contracts stipulated for an indefinite term;

26. As such, in the Plaintiff's view, a possible outcome of the present matter at trial would be a finding by the Court to the effect that the Defendant had a legal right to change class members' interest rates as long as reasonable notice of this change was given – the Defendant, indeed, strenuously argues this point and claims that the two-month notice given to class members was reasonable and in compliance with applicable laws and regulations;

27. In such a scenario, the Plaintiff's claim to reimbursement of all interest paid by class members at a higher rate (which, according to the Plaintiff's expert's calculations, totals 68.9 M$ as of September 2016: see Expert Report of Prof. Martin Boyer, **Exhibit P-6**), plus damages for trouble and inconveniences, punitive damages, and reimbursement of expenses incurred by class members who obtained a new line of credit with a different financial institution, could obviously not stand;

28. On another note, in this case, although class members have the right to close their HELOC account at any time, doing so following the increase announced by the Defendant involved significant costs associated with registering a new surety on their property for a different financial institution– the Plaintiff, for example, incurred $ 900 in notary fees after taking out a new line of credit with Desjardins, as appears from a copy of the contract between the Plaintiff and her notary and the notary's fee statement dated October 7, 2010, filed as **Exhibit P-7,** *en liasse;*

29. In the Plaintiff's view, another possible outcome at trial would be an award to class members of an amount equivalent to the approximate cost of obtaining a new HELOC with a different financial institution. Assuming an average cost between $ 750 and $ 1000, this would have led to an award between approximately $ 22 612 500 and $ 30 150 000 (given the 30 150 accounts identified in the data provided by the Defendant to Prof. Boyer: see above). This amount would have been less than half of the award currently claimed by the Plaintiff;

30. Finally, a Court may decide at trial that class members who continued to borrow money on their HELOC after the increase of their interest rate imposed by the Defendant tacitly agreed to a new interest rate, and thus that only interest paid on sums borrowed by class members *before* this increase must be reimbursed to them by the Defendant. Such a finding would reduce the damages payable to class members;

ii. The nature and breadth of evidence which would be tendered

31. The joint declaration requesting this case to be set down for trial signed by the parties, **Exhibit P-8**, provided for a 20-day trial;

32. A total of 17 class members, including the Plaintiff and her husband, would have been called to testify regarding, among of things, their understanding of the Defendant's right to change the Variable Annual Interest Rate under the P-5 contract;

33. The Plaintiff announced Prof. Martin Boyer as an expert in finance and damage valuation – the Defendants announced Lynda A.-M. Boisvert as an expert in forensic accounting, as well as Morten Friis as an expert in finance;

34. The Plaintiffs announced as witnesses several former and current executives/employees of the Defendant, to testify among other matters on:

    - the justifications for the November 2009 interest rate increase on the Defendant's HELOC loans;
    - the costs of funds increase alleged by the Defendant in order to justify this interest rate increase;
    - the evolution of the Defendant's cost of funds and interest rates on HELOC products in the years following the increase;
    - the Defendant's policies with respect to granting of credit and setting of interest rates for HELOC products;
    - the Defendant's decision to exempt certain customers from the interest rate increase;

35. Finally, the Defendant also announced several former and current employees of the Defendant, to testify among other matters on:

    - The Defendant's processes relative to the granting of HELOCs, and to the HELOC product in general;
    - The decision process leading to the HELOC interest rate increase;
    - The Defendant's cost of funds at the time of this increase;

36. In view of the above, the Plaintiff submits that the evidence tendered at trial would have been relatively complex;

iii. The expected length and cost of the litigation

37. The trial of this matter is currently set for twenty days, and would take place in over a year;

38. Either party may choose to appeal a judgment on the merits, and seek leave to appeal to the Supreme Court of Canada following a decision of the Court of Appeal;

39. In light of this, this litigation may be bound to last several more years and entail significant additional costs for the parties were it not to be settled at this stage;

iv. Good faith of the parties

40. The Settlement Agreement was arrived upon in good faith after a day and a half of mediation, with the assistance of an experienced mediator, Me Max Mendelsohn;

41. The good faith of the parties in settling this matter is beyond any doubt;

v. Attorneys' recommendation and their experience

42. Class and Defence counsel have significant experience in class actions;

43. As concerns Class Counsel, this has been the focus of their practice for over twenty (20) years;

vi. The recommendation of a neutral third party

44. As mentioned, the Settlement Agreement was achieved with the assistance of a neutral mediator;

vii. The nature and number of objections to the settlement

45. The Plaintiff will advise the Court of any objections received at the hearing of this application. None have been received at the time of filing this Application;

viii. The terms of the settlement

46. The Settlement Agreement provides for a fair and reasonable level of compensation for class members;

47. Before entering mediation, the Plaintiff's attorneys asked Prof. Boyer to assist them in calculating the total amount of interest paid at higher rates ("excess interest") following the November 2009 increase, during several time periods after this date;

48. According to Prof. Boyer's calculations, the Settlement Amount of $ 15M represents the amount of excess interest paid by class members for an approximately 12-month period following the November 2009 interest rate increase on their HELOC;

49. These calculations comforted the Plaintiff in concluding that the Settlement Amount is fair and reasonable. Indeed, a Settlement Amount representing a year's worth of excess interest paid by class members is a reasonable compromise between the Plaintiff's theory of damages, as detailed above, and the Defendant's position that the two-month notice of the increase given to class members rendered the increase legal, which position the Defendant would argue finds support in the *Vidéotron* decision cited above. The Settlement Amount also accounts for the fact that reimbursement of interest paid on sums borrowed after the increase had been announced by the Defendant may be less likely to be awarded at trial;

50. The Settlement Amount is also reasonable in light of the other potential scenario at trial, discussed above, whereby this Court could conceivably find that class members are entitled to damages equivalent to the approximate cost of closing their HELOC account and opening a new account with a different financial institution. As was explained above, the class' total damages in such a scenario would be between approximately $ 22 612 500 and $ 30 150 000;

51. The Compensation Protocol ensures that class members will be adequately informed of their right to claim compensation;

52. As mentioned above, the Defendant will provide the last known address in its records for all class members to the Claims Administrator;

53. Given that the Defendant updated contact information for all class members who were no longer its clients following this Court's July 2016 judgment approving the authorization notice plan, the Defendant's records should be quite reliable in this respect;

54. The Claims Administrator will send a letter to each of these addresses advising class members of their right to claim compensation and of the manner in which they must do so (completing an electronic claim form located on a website managed by the Claims Administrator);

55. The Claims Administrator will keep track of all the letters returned to it because of an incorrect address - for class members whose outstanding balance on their HELOC account exceeded $ 75 000 as per their August 2009 statement, the Claims Administrator will endeavour to contact these class members by using the other contact information provided by the Defendant or, if deemed relevant after consultation with class counsel, giving another mandate to a credit reporting agency such as Equifax;

56. The $ 75 000 threshold was set in an attempt to balance the goal of informing as many class members as possible of the Settlement Agreement with the need to

control the Claims Administrators' costs. Telephoning and emailing class members will be time-consuming for the Claims Administrator's personnel, and the mandate to a firm such as Equifax, if it is needed, could cost approximately $ 35 per class member. Given the efforts undertaken by the Defendant in 2016 to reach class members who were no longer its clients, and given the fact that the proposed threshold, when expressed as the value of a class member's claim under the Settlement Agreement, works out to approximately $ 550, the Plaintiff submits that this threshold is reasonable;

THE APPLICANT ATTORNEYS' FEES ARE FAIR AND REASONABLE

57. The following criteria have been developed by the jurisprudence in order to determine whether class counsel's fees are fair and reasonable:

    a. Time and effort expended by the attorneys on the litigation;

    b. The importance of the class action;

    c. The degree of difficulty of the class action;

    d. Class counsel's experience;

    e. Whether class counsel's services required expertise in a specific field;

    f. The responsibilities assumed by class counsel;

    g. The result obtained;

58. The Applicant Attorneys' "Professional Mandate and Extrajudicial Fees Agreement" with the Plaintiff, **Exhibit P-9,** provides at section 3 that the Applicant Attorneys are entitled, as legal fees, to 25% of the amounts obtained for class members by way of a settlement concluded after the filing of a statement of defence. The P-9 mandate provided for a sliding scale percentage fee based upon the stage reached in the case. Thus, the percentage fee payable to class counsel pursuant to the mandate if the action had settled prior to authorization would have been 15 %, and would have been 20 % had the case settled after authorization but prior to the filing of a statement of defence;

59. The Applicant Attorneys thus request that this Court approve payment to them of legal fees in the amount of $ 3 750 000, plus applicable taxes, to be deducted from the Settlement Amount;

60. The Applicant Attorneys submit that these fees are fair and reasonable in light of the abovementioned criteria;

a. Time and effort expended by the attorneys on the litigation

61. The Plaintiff's motion for authorization to institute a class action was filed on October 10th, 2012;

62. The Honorable Justice Casgrain dismissed the Plaintiff's motion for authorization in his decision dated November 5th, 2014;

63. The Plaintiff's appeal of Justice Casgrain's decision was allowed by the Court of Appeal's decision dated January 15th, 2016;

64. Following this, the Plaintiff's attorneys proceeded to entirely prepare the case for trial. This preparation included:

    64.1. The examination on discovery of the Plaintiff and her husband in October 2016;

    64.2. The examination on discovery of a first representative of the Defendant in February 2017;

    64.3. The filing of the Plaintiff's Expert Report in March 2017;

    64.4. The hearing in May 2017 of objections raised by the Defendant in respect of, among other things, several requests for undertakings made by the Plaintiff's attorneys during the examination of the Defendant's representative;

    64.5. The examination on discovery of a second representative of the Defendant in November 2017;

    64.6. Study of the expert reports filed by the Defendant in April and May 2018;

    64.7. Participation in a private mediation before Me Max Mendelsohn in June 2019;

65. The matter was set down for trial from November 2nd to 27th, 2020;

66. From October 2012 until June 2015, the law firms of Lauzon Bélanger Lespérance Inc. and Trudel & Johnston were counsel *ad litem* to the Plaintiff. These two firms merged to form Trudel Johnston & Lespérance in June 2015, whereupon the Applicant Attorneys became counsel *ad litem*;

67. The Applicant Attorneys' timesheets contain almost 1750 hours of docketed time, worth approximately $ 940 000 at the applicable hourly rates for the Applicant Attorneys' attorneys and paralegals, as appears from a copy of these timesheets, **Exhibit P-10**;

68. The P-10 timesheets contain the hours docketed by attorneys at Trudel & Johnston and Trudel Johnston & Lespérance, but not those docketed by attorneys at Lauzon

Bélanger Lespérance Inc. - the latter's timesheets are impossible to locate following the winding-down of the firm;

69. The Applicant Attorneys estimate that the two attorneys responsible for this matter at the Lauzon Bélanger Lespérance Inc. firm, Me André Lespérance (called to the Quebec Bar in 1983) and Me Careen Hannouche (called to the Quebec Bar in 2005) worked respectively approximately 230 hours and 455 hours on this matter between October 2012 and June 2015, representing an average of 85 hours per year for Me Lespérance and of 155 hours per year for Me Hannouche;

70. At their respective hourly rates of $ 800/hour and $ 400/hour, the hours worked by Me Lespérance and Me Hannouche are worth approximately $ 360 000;

71. The total value of the services rendered by the Applicant Attorneys in this matter, as expressed as a function of their applicable hourly rates, is thus approximately $ 1 300 000;

b. The importance of the class action

72. This case raised important questions of law relating to the legality of clauses permitting a party to modify a contract unilaterally under the *Civil code of Québec* and the *Consumer Protection Act*;

73. These questions became all the more challenging following the Court of Appeal's decision in the *Vidéotron* matter, discussed above. The debate in this case following the *Vidéotron* decision would have hinged upon defining the circumstances in which a unilateral modification clause in a contract set for an indefinite term is legal, which the Court of Appeal did not do in *Vidéotron*;

74. As was discussed above, the class action includes at least 30 150 class members;

75. As many class members used their HELOC as financing in order to purchase a residential property, these class members' losses following the Defendant's decision to increase their interest rates were substantial;

76. Over 1500 class members registered to the Applicant Attorneys' mailing list for this class action, illustrating the level of interest in the class action among class members;

c. The degree of difficulty of the class action

77. The Applicant Attorneys refer the Court to the discussion above with respect to the difficulties of the class action justifying the proposed Settlement Agreement;

78. As this discussion demonstrates, a significant risk was taken on by the Applicant Attorneys in accepting this mandate;

d. Class counsel's experience

e. Whether class counsel's services required expertise in a specific field;

79. M[es] Philippe Trudel and Bruce Johnston have specialized in class actions and public interest litigation since founding the law firm Trudel & Johnston in 1998;

80. In May of 2015, M[es] Trudel and Johnston welcomed André Lespérance as a new partner, and their firm was renamed Trudel Johnston & Lespérance. M[e] Lespérance has over 20 years' experience in class actions, notably with the Department of Justice of Canada and with the law firm Lauzon Bélanger Lespérance Inc.;

81. M[e] Yves Lauzon Ad.E, who is widely regarded as a pioneer in class action litigation in Québec, also joined the Applicant Attorneys in the 2015;

82. M[e] François Lebeau, also one of the most experienced class action litigators in Québec, joined the Applicant Attorneys' in 2017;

83. M[es] Lauzon, Lebeau, Trudel, Johnston and Lespérance's experience in class actions adds up to well over 100 years;

84. The Applicant Attorneys have won the trials of all eleven (11) of their class actions that have reached a decision on the merits, and many of these judgments set important precedents;

85. The Applicant Attorneys' experience in a wide variety of class actions was beneficial to class members in this litigation;

f. The responsibilities assumed by class counsel

86. The Applicant Attorneys agreed to be paid only if compensation was recovered for class members;

87. The Applicant Attorneys guaranteed that neither the Plaintiff nor class members would be charged any fee whatsoever unless and until a favorable result was obtained;

g. The result obtained

88. For the reasons outlined above, the Applicant Attorneys believe that the Settlement Agreement is a favourable result for class members;

REIMBURSEMENT OF SUMS OWED TO THE FONDS D'AIDE AUX ACTIONS COLLECTIVES

89. The Plaintiff received a total of $ 76 078.30 in financial assistance from the *Fonds d'aide aux actions collectives*, as appears from correspondence received from Me Frédéric Houle, attorney for the *Fonds,* **Exhibit P-11;**

90. The Applicant Attorneys hereby undertake to fully reimburse these sums to the *Fonds*;

APPLICATION OF ART. 42 OF THE *ACT RESPECTING THE FONDS D'AIDE AUX ACTIONS COLLECTIVES*

91. The Settlement Agreement provides for collective recovery of class members' claims for the purposes of art. 42 of the *Act respecting the Fonds d'aide aux actions collectives,* ch. F-3.2.0.1.1.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

APPROVE the Settlement Agreement, and **ORDER** the Parties to respect its terms;

APPROVE the Compensation Protocol, and **ORDER** the Parties to respect its terms;

APPROVE the "Professional Mandate and Extrajudicial Fees Agreement" concluded by the Plaintiff and the Applicant Attorneys;

DECLARE that the Applicant Attorneys are entitled to extrajudicial fees in the amount of 25% of the Settlement Amount (as defined by the Settlement Agreement), plus applicable taxes, before deduction of disbursements;

DECLARE that the Applicant Attorneys are entitled to reimbursement of disbursements in the amount of $ 61 622.73, plus applicable taxes, said disbursements to be deducted from the Settlement Amount (as defined by the Settlement Agreement);

ORDER the Applicant Attorneys to withhold from any balance the percentage provided for in the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* (ch.F-3.2.0.1.1, r. 2) for the benefit of the Fonds d'aide aux actions collectives;

TAKE NOTE of the Applicant Attorneys' undertaking to reimburse the sum of $ 76 078.30 to the *Fonds d'aide aux actions collectives*;

APPOINT Raymond Chabot Grant Thornton as Claims Administrator;

ORDER Raymond Chabot Grant Thornton to preserve the confidentiality of the Class Member Information (as defined by the Compensation Protocol);

ORDER Raymond Chabot Grant Thornton not to use the Class Member Information (as defined by the Compensation Protocol) for any purposes other than those provided for in the Compensation Protocol;

ORDER Raymond Chabot Grant Thornton not to disclose the Class Member Information (as defined by the Compensation Protocol) except in a case provided for by law or pursuant to a Court order;

THE WHOLE, without legal costs.

Montreal, October 8, 2019

Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Counsel for the Plaintiff

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-06-000625-125

S U P E R I O R C O U R T
(Class Actions)

MARILENA MASELLA

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TRUDEL JOHNSTON & LESPÉRANCE

Applicant Attorneys

LIST OF EXHIBITS

Exhibit P-1 : Copy of the judgment of the Court of Appeal dated January 15, 2016;

Exhibit P-2 : Settlement Agreement;

Exhibit P-3 : Compensation Protocol;

Exhibit P-4 : Summary of the Raymond Chabot Grant Thornton's experience;

Exhibit P-5 : Plaintiff Line of Credit Agreement;

Exhibit P-6 : Expert Report of Prof. Martin Boyer;

Exhibit P-7 : Copy of the contract between the Plaintiff and her notary and the notary's fee statement dated October 7, 2010, *en liasse*;

Exhibit P-8 : Copy of the joint declaration requesting this case to be set down for trial;

Exhibit P-9 : Copy of the Applicant Attorneys' "Professional Mandate and Extrajudicial Fees Agreement" with the Plaintiff;

Exhibit P-10 : Copy of the Applicant Attorneys' timesheets;

Exhibit P-11 : Copy of the correspondence received from Me Frédéric Houle, attorney for the *Fonds*;

Montreal, October 8, 2019

Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Counsel for the Plaintiff

NOTICE OF PRESENTATION

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Me Frikia Belogbi
FONDS D'AIDE AUX ACTIONS COLLECTIVES
Palais de justice
1, rue Notre-Dame Est, bureau 10.30
Montreal, QC, H2Y 1B6

TAKE NOTICE that the present *Application to approve a class action settlement and for approval of class counsel's fees* will be presented before the Honourable David R. Collier of the Superior Court of Quebec, in the city and district of Montreal, at the Montreal Courthouse on October 15th, 2019, at a time and in a room to be determined.

PLEASE ACT ACCORDINGLY

Montreal, October 8, 2019

Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Counsel for the Applicant

No.: 500-06-000625-125

(Class Actions)
SUPERIOR COURT
DISTRICT OF MONTREAL

MARILENA MASELLA

Plaintiff

v.

TORONTO-DOMINION BANK

Defendant

and

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Impleaded Party

and

TRUDEL JOHNSTON & LESPÉRANCE

Applicant Attorneys

Notre dossier : 1305-1 BT-1415

APPLICATION FOR APPROVAL OF A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL'S LEGAL FEES

ORIGINAL

Noms des avocats : Me André Lespérance
Me Jean-Marc Lacourcière

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