

CANADA

SUPERIOR COURT
(Class Actions Chamber)

PROVINCE OF QUÉBEC
DISTRICT OF JOLIETTE

RICHER DESROSIERS

N°: 705-06-000010-216

Applicant

- v. -

THE TDL GROUP CORP.

Respondent

**MOTION OF THE RESPONDENT TO BE RELIEVED FROM ITS DEFAULT
TO ANSWER THE SUMMONS**
(*Art. 84 and 145 Code of Civil Procedure*)

**TO THE HONORABLE JUSTICE THOMAS M. DAVIS OF THE SUPERIOR COURT, SITTING
IN THE CLASS ACTIONS CHAMBER FOR THE DISTRICT OF JOLIETTE, THE
RESPONDENT RESPECTFULLY SUBMITS THE FOLLOWING:**

1. On July 15, 2021, Applicant Richer Desrosiers (the “**Applicant**”) filed an Application for authorization to institute a class action and to obtain the status of representative plaintiff (the “**Application**”) against The TDL Group Corp. (“**TDL**”), as appears from the Court record.
2. The Application was served onto TDL at its Toronto offices on July 23, 2021, as appears from the Court record. The process server left the Application in the hands of Keith Penny, of the Facilities department at TDL who’s responsibilities include the mail room and office maintenance.
3. Upon receipt of the Application, and while most of TDL’s employees, including the entire legal department, were working remotely as requested by various public health authorities due to the COVID-19 pandemic, Mr. Penny scanned the Application and forwarded it to TDL’s insurance claims inbox, rather than to one of TDL’s in-house counsels.
4. On September 15, 2021, the Applicant’s inscription by default to respond to the summons was served at the offices of Borden Ladner Gervais LLP, which is registered as TDL’s *fondé de pouvoir* on the Québec corporate registry, as appears from an extract of the corporate registry communicated as **Exhibit R-1**.
5. The Application was then forwarded to the attention of the Respondent’s Vice-President of Legal, Mr. Jon Domanko.

6. Mr. Domanko immediately advised the undersigned attorney of the situation, and an *Answer to the Summons* was notified and filed on September 16, 2021, as appears from the Court record.
7. Since TDL's in-house counsels have been made aware of the service of the Application, TDL has been diligent and had collaborated to make the file progress.
8. On November 23, 2021, counsels for the Applicant and for TDL participated to a case management hearing before the Honourable Thomas M. Davis, S.C.J, and agreed to a timetable that will lead to a hearing of the Application on June 22, 2022.
9. The Applicant will not suffer any prejudice if the present motion is granted. TDL, on the other hand, will suffer great prejudice if the present motion is not granted as it will be deprived from its fundamental right to be heard. The balance of inconveniences greatly favours TDL.
10. Furthermore, TDL intends to contest the Application, *inter alia*, on the basis that the legal provisions invoked by the Applicant do not apply to its reward program. This raises serious questions of law that must be debated in light of the arguments presented by both parties in the context where the class action has not yet been authorized and a decision is required to determine if the action can be instituted.
11. In light of the foregoing, it is in the interest of justice that TDL be relieved from its default to answer to the summons.

FOR THE FOREGOING REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present motion;

RELIEVE the Respondent The TDL Group Corp. from its default to answer to the summons served upon it on July 23, 2021;

DECLARE that the Answer to the Summons dated September 16, 2021, filed by the undersigned attorneys, is good and valuable;

STRIKE the inscription for judgment by default filed in the Court record on September 3, 2021;

THE WHOLE without costs, except in case of contestation.

Montreal, December 2, 2021

Stikeman Elliott

STIKEMAN ELLIOTT LLP

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**Lawyers for the Respondent
THE TDL GROUP CORP.**

Our file: 147352-1003

AFFIDAVIT

I, JON DOMANKO, Vice President, Legal, Canada at The TDL Group Corp. (“**TDL**”), having a place of business at 130 King Street West, Suite 300, Toronto, Ontario, being duly sworn, do solemnly swear and affirm the following:


1. On September 15, 2021, I received a copy of an inscription by default dated September 3, 2021, that had been served onto our *fondé de pouvoir* in Québec, Borden Ladner Gervais LLP.
2. Attached to said inscription by default was a process server report which indicated that the Application for authorization to institute a class action and to obtain the status of representative plaintiff dated July 15, 2021 (the “**Application**”) in the present matter had been served onto TDL on July 23, 2021, when it was left at TDL’s Toronto offices, to the attention of Mr. Keith Penny.
3. Most of TDL’s employees were working remotely at the time, including the entire legal department, given *inter alia* the situation with the COVID-19 pandemic.
4. I reached out to Mr. Penny, who explained that he had scanned and forwarded the Application to the insurance claims inbox, rather than to the legal department.
5. In addition, I forwarded the inscription by default to my attorneys at Stikeman Elliott LLP so that they may take all necessary actions to answer to the summons and contest the Application.
6. I was advised by Stikeman Elliott LLP on September 16, 2021 that the answer to the summons had been notified and filed in the Court record.

AND I HAVE SIGNED:



JON DOMANKO

SOLEMNLY AFFIRMED before me by
videoconference, this 2nd day of December, 2021



Commissioner of Oaths for Québec



NOTICE OF PRESENTATION

TO : RATELLE, RATELLE & ASSOCIÉS S.E.N.C.R.L.

Attorneys for the Applicant

Me Jean-François Lambert

Me Simon-Pierre Daviaut

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TAKE NOTICE that the **Motion of the Respondent to be Relieved from its Default to Answer the Summons** shall be presented for adjudication before the Honourable Thomas M. Davis of the Superior Court of Québec, in a manner to be confirmed by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, December 2, 2021

Stikeman Elliott

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Mtre Rémi Leprévost

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**Lawyers for the Respondent
THE TDL GROUP CORP.**

Our file: 147352-1003

De : [Rémi Leprévost](#)
A : JeanFrancois.Lambert@avocatsratelle.com; SimonPierre.Daviault@avocatsratelle.com
Cc : [Frédéric Paré](#); [Pierre-Paul Daunais](#)
Objet : RE: NOTIFICATION - 705-06-000010-216 - Richer Desrosiers c. Groupe TDL Corporation
Date : Thursday, December 2, 2021 10:23:03 AM
Pièces jointes : [R-1.pdf](#)

Veillez trouver ci-joint la Pièce R-1 à laquelle il est fait référence.

Salutations,

Rémi Leprévost

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Mobile : +1 514 713 0711
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De : Michelle Anne Delaraga <MDelaraga@stikeman.com> **De la part de** Pierre-Paul Daunais
Envoyé : Thursday, December 2, 2021 10:21 AM
À : JeanFrancois.Lambert@avocatsratelle.com; SimonPierre.Daviault@avocatsratelle.com
Cc : Pierre-Paul Daunais <ppdaunais@stikeman.com>; Frédéric Paré <FPare@stikeman.com>; Rémi Leprévost <RLeprevost@stikeman.com>
Objet : NOTIFICATION - 705-06-000010-216 - Richer Desrosiers c. Groupe TDL Corporation

CETTE NOTIFICATION VOUS EST TRANSMISE DE LA PART DE ME PIERRE-PAUL DAUNAIS

NOTIFICATION PAR COURRIEL
(Art. 134 C.P.C.)

EXPÉDITEURS

-
Nom : Me Pierre-Paul Daunais
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Lieu, date et heure de transmission : Montréal, le 2 décembre 2021
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**SUPERIOR COURT
(Class Actions Chamber)**

No : 705-06-000010-216

**PROVINCE OF QUÉBEC
DISTRICT OF JOLIETTE**

RICHER DESROSIERS

Applicant

-v.-

THE TDL GROUP CORP.

Respondent

BS0350

n/dos : 142383-1017

**MOTION OF THE RESPONDENT TO BE RELIEVED
FROM ITS DEFAULT TO ANSWER THE SUMMONS
(Art. 84 and 145 C.C.P.) and
NOTICE OF PRESENTATION**

ORIGINAL

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