

CANADA
PROVINCE OF QUÉBEC
District of Montréal

SUPERIOR COURT
Class Action

File No: 500-06-001166-210

KATY HAROCH
-and-
CLAUDE VAILLANCOURT

Applicants

v.

THE TORONTO-DOMINION BANK ET AL

Defendants

**APPLICATION OF THE DEFENDANT THE BANK OF NOVA SCOTIA
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Articles 574, 575, 18 and 19 of the *Code of Civil Procedure*)**

TO JUSTICE STÉPHANE LACOSTE, J.S.C. ACTING AS THE DESIGNATED JUDGE
IN THE PRESENT CASE, THE DEFENDANT, THE BANK OF NOVA SCOTIA
("SCOTIA") RESPECTFULLY SUBMITS THE FOLLOWING:

I. Introduction

1. In their Amended Application to Authorize the Bringing of a Class Action & to Appoint the Status of Representative Plaintiffs dated January 31, 2022 (the "**Application**"), the Applicants seek the authorization to bring a class action against the Respondents on behalf of the following class:

"Class:

All natural and legal persons who, since May 31st, 2015 paid to any of the Defendants (or to any of their affiliates) a mortgage prepayment charge in an amount that exceeds three months of interest when either entirely or partially paying off a hypothecary loan or a collateral hypothec on a property in the province of Quebec;"

2. The Applicants are seeking reimbursement, on behalf of the putative class members, of the amounts paid on account of allegedly abusive mortgage prepayment charges imposed by Respondents in credit agreements (the "**Credit Agreements**"), as a result of the Applicants paying off their mortgage loan before the end of the term;

3. The Applicants allege that the Defendants calculate the prepayment indemnity by using an interest rate differential (the “IRD”) formula that does not comply with the one provided for in Directive CG-4 due to the fact that the Defendants add the concept of a “constant discount” to the formula which would allegedly generate a “hidden profit”;
4. The Applicants assert the following legal basis and provisions in support of their Application:
 - (i) Articles 6, 7, 1436, 1437, 1458 and 2805 of the Civil Code of Quebec (“CCQ”);
 - (ii) Section 8(1) of the *Cost of Borrowing (Banks) Regulations*, (SOR/2001-101 and the corresponding federal instruction CG-4 “Information box examples for the Cost of Borrowing Regulations”;
 - (iii) Section 6(4) of the *Cost of Borrowing (Banks) Regulations*, (SOR/2001-101).

II. The Evidence Scotia Seeks Leave to Adduce

5. The facts alleged in the Application and the exhibits submitted are incomplete, misleading and require clarification from Scotia, which will assist the authorization judge in determining whether the criteria of Article 575 CCP are met;
6. The Application contains very few allegations in which Scotia is specifically mentioned, more specifically at paragraphs 114 to 118;
7. In support of the Application, the Applicants have only communicated two exhibits with respect to Scotia, which is Exhibit P-33 entitled “*En liasse*, copy of Scotia mortgage prepayment calculation and the corresponding mortgage agreement” and Exhibit P-34 entitled “Copy of Montreal Gazette page dated April 4, 2017, showing the posted mortgage rates”;
8. Exhibit P-33 specifically refers on its first page to the mortgage agreement and to the costs of borrowing disclosure statement, for explanations and examples regarding repayment terms. It further indicates that general information regarding mortgage prepayment charges are available on the website BanqueScotia.com. The last page of exhibit P-33 also refers to the costs of borrowing disclosure statement and to the personal credit agreement;
9. Scotia submits that the Court will benefit from a more complete portrait of the information accessible to the class members with respect to prepayment charges, in order to complete the exhibits filed by the Applicants;
10. As a result of the foregoing, Scotia seeks leave to adduce the following evidence:

- a) an extract of The Bank of Nova Scotia's website entitled "Understanding Mortgage Prepayments and Charges", attached as **Exhibit BNS-1**;
 - b) an extract of The Bank of Nova Scotia's website entitled "What you need to know about Mortgages & Mortgage Prepayment Charges", attached as **Exhibit BNS-2**;
 - c) the "Mortgage Prepayment Charge Calculator" , attached as **Exhibit BNS-3**
 - d) an example of the standard Personal credit agreement together with the Cost of borrowing disclosure statement, attached as **Exhibit BNS-4**;
 - e) the Personal Credit Agreement Companion Booklet, attached as **Exhibit BNS-5**;
11. All of these documents were filed as evidence in the *Haroch v. Toronto-Dominion Bank* Court file, Superior Court no:500-06-000930-186;
 12. Scotia submits that these facts are essential to a proper determination as to whether the criteria of 575 CCP are respected, and more particularly whether the Applicant has shown an arguable case (Art. 575 (2) CCP);
 13. The present Application for Leave to Adduce Relevant Evidence is well founded in fact and law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

- A. GRANT** the present Application for Leave to Adduce Relevant Evidence;
- B. ALLOW** Respondent The Bank of Nova Scotia to file the following documents into the court record prior to the hearing on the application to authorize the bringing of a class action:
 - (i) The extract of The Bank of Nova Scotia's website entitled "Understanding Mortgage Prepayments and Charges", **Exhibit BNS-1**;
 - (ii) An extract of The Bank of Nova Scotia's website entitled "What you need to know about Mortgages & Mortgage Prepayment Charges", **Exhibit BNS-2**;
 - (iii) the "Mortgage Prepayment Charge Calculator", **Exhibit BNS-3**
 - (iv) an example of the standard Personal credit agreement together with the Cost of borrowing disclosure statement, **Exhibit BNS-4**;
 - (v) the Personal Credit Agreement Companion Booklet, **Exhibit BNS-5**;

C. THE WHOLE, with costs to follow suit.

Montréal, March 31, 2022

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TAKE NOTICE that the foregoing *Application of the Respondents for leave to adduce additional evidence* will be presented for hearing and adjudication before the Honourable justice Stéphane Lacoste J.S.C. of the Superior Court, sitting in and for the District of Montréal, at the Montréal Courthouse, in a room to be determined by the Court.

KINDLY GOVERN YOURSELF ACCORDINGLY.

Montréal, March 31, 2022



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Objet: NOTIFICATION / 500-06-001166-210 / Katy Haroch v. The Toronto-Dominion Bank et al. // Application by the Defendant Bank of Nova Scotia for Leave to Adduce Relevant Evidence and BNS-1 to BNS-5
Pièces jointes: 2022-03-31 Application of the Defendant Bank of Nova Scotia for Leave to Adduce Relevant Evidence.pdf; Exhibits BNS-1 to BNS-5.zip

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COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

File number: 500-06-001166-210
Parties: Katy Haroch v. The Toronto Dominion Bank et al.
Nature: **Application of The Defendant The Bank of Nova Scotia for Leave to
Adduce Relevant Evidence And Exhibits BNS-1 To BNS-5**

Number of pages: -7- (exhibits excluded)
(attachments only)



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ADDUCE RELEVANT EVIDENCE and
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(Articles 574, 575, 18 and 19 of the Code of Civil

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