

CANADA

**SUPERIOR COURT**  
**(Class Actions)**

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**MARILENA MASELLA**

No.: 500-06-000625-125

**Plaintiff**

v.

**THE TORONTO-DOMINION BANK**

**Defendant**

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**SETTLEMENT AGREEMENT**

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**RECITALS:**

**WHEREAS** the Plaintiff instituted the present proceedings, by way of a class action against the Defendant, claiming that the increase to the Variable Annual Interest Rate applicable to the Defendant's Home Equity Line of Credit ("**HELOC**") accounts which occurred on November 16<sup>th</sup>, 2009, was illegal;

**WHEREAS** the Plaintiff was authorized to institute a class action against the Defendant by the Court of Appeal in a judgment dated January 15<sup>th</sup>, 2016;

**WHEREAS** the Defendant denies the allegations made against it by the Plaintiff in the Originating Application. The Defendant further denies any liability towards the Plaintiff and class members, and denies any causation with the claimed damages in this class action matter;

**WHEREAS** the Plaintiff and the Defendant (collectively "**the Parties**"), through their counsel, participated in a private mediation before Mtre Max Mendelsohn on June 11<sup>th</sup> and 12<sup>th</sup>, 2019;

**WHEREAS** at the conclusion of this mediation, the Parties reached an out-of-court agreement settling this matter amicably and in its entirety;

**WHEREAS** the Parties expressly recognize that the present settlement is made without any recognition or admission of liability whatsoever, and for the purpose of avoiding the inconveniences of a trial;

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The above recitals form part of this agreement;

2. This agreement is conditional upon its approval by the Superior Court, pursuant to article 590 of the *Code of civil procedure*;
3. The Defendant will pay, in full and final settlement of the Plaintiff and Class members' claims to capital, interest and fees, the amount of **\$ 15 000 000 (fifteen million dollars) in Canadian currency**, hereafter the "**Settlement Amount**";
4. The Settlement Amount will be recovered collectively by class members – the method for calculating class members' individual compensation and for distribution of this compensation is set out in the "**Compensation Protocol**" agreed upon by the Parties;
5. Within 20 business days of the date upon which the judgment of the Superior Court approving this agreement becomes final, the Defendant will pay the Settlement Amount *in trust*, to the "**Claims Administrator**" appointed pursuant to the Compensation Protocol, failing which interest of 4 % (on an annual basis) shall be added to the Settlement Amount;
6. In no case shall the Defendant be obliged to pay any amount other than the Settlement Amount described above or any interest due pursuant to section 5 above;
7. The Settlement Amount will be distributed in the following order:
  - i. Class counsel's legal fees and disbursements, at the amount to be approved by the Court, plus applicable taxes;
  - ii. Notice costs and costs of implementation of the Compensation Protocol, including the Claims Administrator's fees and disbursements as approved by the Court, plus applicable taxes;
  - iii. The indemnity awarded to the Plaintiff pursuant to art. 593 of the *Code of civil procedure*, if applicable;
  - iv. The compensation to be individually paid to class members pursuant to the Compensation Protocol;
8. In consideration of the above payment by the Defendant settling in its entirety this class action and any and all associated costs, the Defendant is fully released and discharged of any claim, demand and/or action whatsoever which the Plaintiff and all potential class members ever had, now have or hereinafter can, shall or may have in relation to all the facts recorded in this court file

9. The Parties recognize that the present agreement constitutes a transaction for the purposes of articles 2631 and following of the *Civil Code of Québec*;
10. This agreement may be signed in counterparts, each signed version constituting an original of this agreement;
11. This agreement and the Compensation Protocol shall be translated into French by Class counsel – the Parties agree, however, that the English versions of this agreement and of the Protocol shall prevail in case of inconsistency with the French translations;
12. The judge of the Superior Court responsible for the management of this proceeding shall retain jurisdiction to resolve any issues relative to the implementation of this agreement.

**SIGNED :**

In \_\_\_\_\_, on \_\_\_\_\_, 2019

In \_\_\_\_\_, on \_\_\_\_\_, 2019

\_\_\_\_\_  
**MARILENA MASELLA**  
Plaintiff

  
\_\_\_\_\_  
**THE TORONTO-DOMINION BANK**

Per:

Duly authorized representative of The  
Toronto-Dominion Bank