

CLASS ACTION NOTICE

Marilena Masella v.
Toronto-Dominion Bank
(S.C.M. N° 500-06-000625-125)

JUDGMENT AUTHORISING THE BRINGING OF A CLASS ACTION

On January 15, 2016, the Court of Appeal of Quebec authorised Marilena Masella to bring a class action in damages for breach of contract against The Toronto-Dominion Bank (“TD”).

The class action alleges that in the autumn of 2009, the bank unilaterally increased the interest rate payable by borrowers on their Home Equity Line of Credit accounts with a variable annual interest rate.

The class action seeks to obtain **compensatory damages** resulting from the allegedly illegal interest rate increase collected by TD, as well as **punitive damages**.

ARE YOU A MEMBER?

The class action was authorized on behalf of the following group of natural persons:

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.

If you meet these criteria, you are automatically included as a class member and do not need to do anything to benefit from any judgment rendered on the class action.

THE CONCLUSIONS SOUGHT

The authorization decision identified the following conclusions sought by class members:

- a) **GRANT** this Application;
- b) **ORDER** the Defendant to pay the Plaintiff the amount of \$4,900 plus interest at the legal rate as well as the additional indemnity provided for in article 1619 C.C.Q., as of November 16, 2009;
- c) **GRANT** the Plaintiff's motion to obtain the status of representative on behalf of class members;
- d) **ORDER** the collective recovery of the damages caused to members of the class for troubles and inconveniences in the amount of \$100 per class member;
- e) **ORDER** the collective recovery of punitive damages, in the amount of \$250 per class member;
- f) **ENJOIN** the Defendant to cease charging class members interest above the amount agreed upon in their respective agreements;
- g) **ORDER** the Defendant to pay each class member their respective claim plus interest at the legal rate as well as the additional indemnity provided for in article 1619 C.C.Q. as of November 16, 2009; and
- h) **THE WHOLE** with legal costs.

THE PRINCIPAL ISSUES

The authorization decision identified the following questions of fact and law to be treated collectively for the benefit of class members:

- a) Is clause 12 of the contract illegal, abusive, or unenforceable against the cocontracting party under the Civil Code of Quebec or the *Consumer Protection Act*?
- b) Did TD Bank violate the nature or terms of the contract 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 adverse change 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 the 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 interest annual rate?
 - iii. An additional amount of \$250 in punitive damages for the Defendant's violation of the *Consumer Protection Act*?
- f) Should damages be awarded on a collective basis?

YOUR RIGHT TO OPT OUT OF THE CLASS ACTION

A class member can exclude themselves from the class action by notifying the clerk of the Superior Court of Quebec for the district of Montreal by registered mail with the court number 500-06-000625-125, by the latest **October 4, 2016**.

In general, only people wishing to commence legal proceedings at their own expense have an interest in opting out of a class action.

A class member who does not discontinue a legal proceeding having the same subject matter as the class action before the time for opting out has expired, is deemed to have opted out of the class action.

If you do not opt out, you will be bound by any judgment rendered on the class action.

INTERVENTIONS AND LEGAL COSTS

The class action will be heard in the judicial district of Montreal.

A class member can make interventions in the class action before the Court if they are helpful to the other class members.

No class member other than the representative plaintiff or an intervenor may be required to pay legal costs arising from the class action

FOR MORE INFORMATION

If you are a class member and would like to receive updates on the progress of the class action, **you can sign up by completing the form on the website of the lawyers representing class members:**

Trudel Johnston & Lespérance

750 Côte de la Place d'Armes

Montreal, QC, H2Y 2X8

514 871-8385

info@tjl.quebec

<http://tjl.quebec/en/>