

2. **THIS COURT ORDERS** that the Class is defined as:

Every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction since February 2, 2019.

3. **THIS COURT ORDERS** that Tyler Dufault be and hereby is appointed as the representative plaintiff for the Class.

4. **THIS COURT ORDERS** that Koskie Minsky LLP be and hereby is appointed as counsel to the Class.

5. **THIS COURT ORDERS** that the claims and rights of action asserted on behalf of the Class Members are in breach of contract and breach of consumer protection legislation.

6. **THIS COURT ORDERS** that the common issues be and hereby are certified as:

Breach of Contract

1. Does TD's standard form contract with its individual banking customers permit the Defendants to charge an NSF fee on a re-presented debit?

Breach of Consumer Protection Legislation

2. Did TD engage in unfair practices contrary to section 14 of the *Consumer Protection Act* and/or similar practices as they are defined in the Equivalent Consumer Protection Statutes (as defined in the Statement of Claim)?
3. If the answer to question 2 is yes, what remedy should be ordered under section 18 of the *Consumer Protection Act* and/or the Equivalent Consumer Protection Statutes?
4. Is the Class, or any portion thereof, required to give notice under the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes

for recovery or rescission, and if so, is it entitled to a declaration waiving the notice provisions of section 18 of the *Consumer Protection Act* and/or the Equivalent Consumer Protection Statutes?

Aggregate Damages

5. If the Defendants are liable to Class Members, can an award of aggregate damages be made to Class Members?
6. If the answer to question 5 is yes, what is the quantum of aggregate damages?

Verification Clause Defence

7. Does section 2.7 of TD's Financial Services Terms and its equivalent throughout the Class Period (the "**Verification Clause**") bar the claims of all Class Members save and except for those who provided TD with notice pursuant to the requirements set out in the Verification Clause and/or who were not refunded by TD prior to the issuance of the Statement of Claim?
8. From the date of issuance of the Statement of Claim to the date of certification, does the Verification Clause, properly interpreted, bar the claims of all Class Members save and except for those who provided TD with notice as required by the Verification Clause and/or who were not refunded by TD?
9. If the answer to 7 is yes, is the Verification Clause unenforceable by virtue of the common law doctrine of unconscionability?

Interest

10. Should the Defendants pay pre-judgment and post-judgment interest? If so, at what annual interest rate? Should the interest be simple or compound?

7. **THIS COURT ORDERS** that no other proceeding may be commenced in Ontario in respect of the subject matter of this action without leave of this Court.

8. **THIS COURT ORDERS** that the plan for notice of certification and opt out process shall be determined by further order of this Court.

Signed: *Justice Edward Belobaba*