

**NOTICE OF HEARING & CERTIFICATION (LONG FORM)**  
**For Amendment of Class Definition, Settlement Approval, and Counsel Fee Approval**

**Are you a current or former customer of TD Bank who has been charged multiple NSF fees since February 2, 2019?**

**If YES, A Class Action May Affect Your Rights. Read This Notice Carefully.**

*A court authorized this notice. You are not being sued.*

Have you been charged a non-sufficient funds (NSF) fee on a pre-authorized debit transaction from February 2, 2019 to November 27, 2023?

- You could be affected by a class action lawsuit. This notice is directed to 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 between February 2, 2019 and November 27, 2023 (the “**Class**” or “**Class Members**”).
- If you received a short form notice, then TD Bank’s records indicate that you are a member of the Class who can expect to receive compensation following approval of the settlement.
- A proposed \$15,900,000 settlement has been reached in a class action related to TD Bank’s allegedly improper charging of NSF fees. TD has not admitted liability and denies liability. Class counsel fees and certain expenses associated with the class action will be deducted from the total settlement. The Court will hold a settlement approval hearing on February 13, 2024.

The Court has also ordered that the certification order is amended to specify that the class period runs from February 2, 2019 to November 27, 2023 which is the date this Notice of Hearing was approved.

- Read this notice carefully. It provides important information about the class action, the prospective settlement, distribution of settlement funds, and Class Members’ rights in respect of the settlement and proposed distribution.
- You may want more information or legal advice about whether to stay in this class action or sue on your own. This notice explains where you can get more information or legal advice.
- Your options are explained in this notice. If you do not want to participate in the settlement, and receive your share of the settlement proceeds, if you are eligible you must ask to be removed by January 26, 2024.

QUESTIONS? CALL 1-833-786-0010, Email [tdbankclassaction@kmlaw.ca](mailto:tdbankclassaction@kmlaw.ca) or visit

<https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

## YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

### Do Nothing

**Stay in this class action and share in benefits from the outcome if eligible but give up certain individual rights.**

By doing nothing, you will remain part of the class. The settlement fund will be distributed on a *pro rata* basis to Class members who are members of the “**Active Group**”, which includes all Class members who: (1) are Canadian residents; (2) are TD personal deposit accountholders; (3) whose TD accounts are still open and able to accept deposits as of the distribution date; (4) who between February 2, 2019 and November 27, 2023 were charged a \$48 NSF Fee as a result of a PAD and then within 30 days were charged a second \$48 NSF Fee as a result of a PAD from the same merchant and dollar amount as the first PAD. If you are part of the Active Group and do not opt out, you will receive a deposit estimated to be in the range of approximately \$88 CAD to your TD personal deposit account. You give up any rights to sue TD Bank on your own about the same legal claims in this lawsuit.

### Remove Yourself (Opt Out)

**Get out of this lawsuit and get no benefits from it. Keep your right to sue TD individually.**

If you ask to be removed (opt out) and money or benefits are later awarded, you won’t share in those. But, you keep any rights to sue TD Bank on your own about the same legal claims in this lawsuit.

### Object

**Voice your concern about the proposed settlement.**

If you want to object to the proposed settlement, you may do so by setting out your objection in writing to Class Counsel by January 26, 2024. You can access the objection form at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>.

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## **BASIC INFORMATION**

### **1. Why was this notice issued?**

This notice was issued to advise Class Members that this Class Action was certified and that a hearing has been scheduled on February 13, 2024 to approve a settlement reached between the representative plaintiff and TD Bank. This notice explains the hearing and your rights in respect of the settlement.

The case is known as *Dufault v. The Toronto-Dominion Bank et al.*, Court File No. CV-21-00656203-00CP. The person who sued, Tyler Dufault, is called the Plaintiff. TD Bank is the Defendant.

### **2. What is this lawsuit about?**

The lawsuit says TD Bank improperly charges multiple NSF fees on a single cheque issued or payment made in violation of its contract with class members, and includes class members who were charged an NSF fee on a re-presented pre-authorized debit transaction.

TD Bank does not admit any wrongdoing or liability and disagrees with the allegations in the lawsuit, but has agreed to a settlement that will repay money to Class Members.

The proposed settlement will resolve the litigation entirely.

### **3. Why is this a class action?**

In a class action, one person called the “representative plaintiff” (in this case, Tyler Dufault) sues on behalf of a group of people (in this case, TD Bank customers) who have similar claims. All of these people are a “class” or “class members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

### **4. Who is a member of the Class?**

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 from February 2, 2019 to November 27, 2023.

Not all members of the class will receive compensation. Only class members who were charged an NSF fee on a represented pre-authorized debit transaction from February 2, 2019 to November 27, 2023 and whose account with TD remains open at distribution will receive compensation.

Additional information about your eligibility for compensation can be found in the Settlement Agreement and by contacting Class Counsel.

## 5. What is the status of the lawsuit?

The representative plaintiff and TD Bank have reached a proposed settlement in this matter under which TD will pay \$15,900,000 to settle this lawsuit.

The parties will seek for the settlement to be approved by the Ontario Superior Court of Justice on February 13, 2024. The settlement is a compromise of disputed claims and settles, extinguishes, and bars all claims relating in any way to or arising out of the class action against TD Bank.

The Court has not decided whether TD Bank did anything wrong. If the case had not settled (or if the proposed settlement is not approved), the Plaintiff would have to prove his claims and the claims of the other class members against TD Bank. There is no guarantee that the Plaintiff would win any money or benefits for the class at trial.

## WHAT HAPPENS TO THE SETTLEMENT MONEY?

The parties will seek approval from the Ontario Superior Court of Justice for a method of distributing the settlement funds achieved in this litigation.

## 6. Amount available for distribution

Under the proposed settlement, TD Bank will pay \$15,900,000 (“**Gross Settlement Funds**”). The Gross Settlement Funds, plus any interest, and less court-approved legal fees, litigation funding fees, disbursements, honorarium, administration expenses and applicable taxes are available for compensation to eligible Class Members (“**Net Settlement Funds**”).

An honorarium is a sum of money payable to the Representative Plaintiff in recognition of the meaningful contribution they made to advancing the lawsuit. In this case, Class Counsel will ask the Court to approve an honorarium of \$10,000. If approved, this amount will also be deducted from the Gross Settlement Funds.

More information about court-approved legal fees can be found at section 10 below.

The Net Settlement Funds will be distributed on a *pro rata* basis to the “**Active Group**” of Class Members. The Active Group are the class members except for class members who have closed their TD account before distribution of the settlement funds.

If you are part of the Active Group and do not opt out, you will receive a deposit directly in your TD account. It is estimated to be [AMOUNT]. If you do not opt out you give up any rights to sue TD Bank on your own for the claim being settled in this lawsuit.

## YOUR RIGHTS AND OPTIONS

You have the right to object to the settlement. If you want to object to the proposed settlement, you may do so by setting out your objection in writing to Class Counsel by January 26, 2024. You can find an objection form at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>. If you object to the settlement, you are asking the Court to not approve it. If the Court does not

approve the settlement, there will be no settlement proceeds at this time, and may never be money to distribute to Class Members in the future.

**7. What happens if I do nothing?**

If you do nothing, you will be deemed not to have objected to the proposed settlement. You will be bound by all Court orders. If you are part of the Active Group, you will receive compensation at a later date.

**8. What if I don't want to be in the lawsuit?**

If you do not want to be in the lawsuit, you must remove yourself. This is sometimes called “opting out.” If you remove yourself, you will not receive any benefit that may be obtained if the proposed settlement is approved. You will not be bound by any Court orders and you keep your right to sue TD Bank as an individual regarding the issues in this case. To remove yourself, send an Opt Out Form available at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/> or send legible written request to opt out of the class action *Dufault v. The Toronto-Dominion Bank et al.* to Class Counsel via E-mail, mail or facsimile. Include your name, address, telephone number, and signature. The opt-out notice must be sent by January 26, 2024.

Call 1-833-786-0010 or email [tdbankclassaction@kmlaw.ca](mailto:tdbankclassaction@kmlaw.ca) if you have any questions about how to get out of the Class.

**THE LAWYERS REPRESENTING YOU**

**9. Do I have a lawyer in the case?**

The Court has appointed Koskie Minsky LLP from Toronto to represent Class Members as “Class Counsel.”

You can contact Class Counsel if you have any questions about the Class Action or the Settlement and you can have your questions answered without charge.

You may also wish to obtain independent legal advice regarding the proposed settlement and how it impacts your rights. If you want to be represented by or receive advice from a lawyer other than Class Counsel, you may hire one at your own expense.

**10. How will Class Counsel be paid?**

You will not have to pay any of Class Counsel's fees or expenses. Class Counsel's fees and expenses will be deducted from the Gross Settlement Funds. The Court will be asked to approve the lawyers' fees pursuant to a contingency fee retainer agreement that they entered into with the Plaintiff.

The contingency fee retainer agreement provides that Class Counsel can seek up to 30% of any settlement as payment for the work they performed for the class. Class Counsel will ask the Court to approve a reduced fee of 27.5% of the settlement.

Class counsel will ask the court to approve a fee of \$ 4,252,500 plus HST, disbursements of approximately \$ 375,000 and an honorarium of \$ 10,000 for the representative plaintiff. The court has already approved a litigation funding agreement which entitles the litigation funder to a fee of approximately \$ 950,000. These amounts will be deducted from the Gross Settlement Funds.

Additional information can be found in the Settlement Agreement and by contacting Class Counsel.

## **GETTING MORE INFORMATION**

### **11. How do I get more information?**

You can get more information about this case by contacting Class Counsel.