

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:



SHAKYA ABEYWICKRAMA

Plaintiff

- and -

THE BANK OF NOVA SCOTIA and SCOTIA MORTGAGE CORPORATION

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: July 10, 2024

Issued by

  
Local registrar

Address of court office 330 University Avenue, 8<sup>th</sup> Floor  
Toronto ON M5G 1R7

TO: **THE BANK OF NOVA SCOTIA**

Scotia Plaza  
44 King Street West  
Toronto ON M5H 1H1

**SCOTIA MORTGAGE CORPORATION**

Scotia Plaza  
44 King Street West  
Toronto ON M5H 1H1

### CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) "**CJA**" means the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
- (b) "**Class**" or "**Class Members**" means all persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by the Defendants were automatically and/or involuntarily renewed for another term at a higher interest rate than that applicable to their previous term;
- (c) "**CPA**" means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (d) "**Defendants**" means The Bank of Nova Scotia and Scotia Mortgage Corporation;
- (e) "**Interest Act**" means the *Interest Act*, R.S.C. 1985, c. I-15, as amended
- (f) "**Scotiabank**" means The Bank of Nova Scotia and Scotia Mortgage Corporation.

### RELIEF SOUGHT

2. The Plaintiff, Shakya Abeywickrama, claims on behalf of herself and others similarly situated in Canada, for:

- (a) An order certifying this action as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) a declaration that the Automatic Renewal Interest and Other Charges (as defined below) imposed by the Defendants are in violation of section 8 of the *Interest Act*;
- (c) A declaration that the Automatic Renewal Provisions in the Defendants' Mortgage Terms are unenforceable and of no effect by operation of law, or else are unenforceable for unconscionability;

- (d) a declaration that any Automatic Renewal Agreement imposed by the Defendants on the Plaintiff and Class Members is void for uncertainty, unconscionability, or else is unenforceable at common law or equity;
- (e) a declaration that any Automatic Renewal Agreement imposed by the Defendants on the Plaintiff and Class Members is in violation of section 4 of the *Statute of Frauds*, R.S.O. 1990, c. S.19, in so far as such Automatic Renewal Agreements were not signed by the borrower/mortgagor thereto, and acceptance of such was not in writing;
- (f) a declaration that the Defendants are liable to the Plaintiff and Class Members for breach of contract;
- (g) a declaration that the Defendants have been unjustly enriched by the acts and/or omissions pleaded herein;
- (h) a declaration that the Automatic Renewal Interest and Other Charges imposed by the Defendants are in violation of the Defendants' statutory obligations under sections 436(1) and 438(1)(a) of the *Trust and Loan Companies Act*, S.C.1991, c. 45, as amended, to disclose in plain language that is clear, simple and concise, the manner in which the Automatic Renewal Interest and Other Charges are to be calculated and imposed;
- (i) a declaration that the Defendants are liable to the Plaintiff and Class Members for breach of contract;
- (j) a declaration that the Defendants have been unjustly enriched by the acts and/or omissions pleaded herein;
- (k) damages or set off pursuant to section 9 of the *Interest Act* of all sums paid by the Plaintiff and Class Members to the Defendants in violation of section 8 of the *Interest Act*;

- (l) damages for breach of contract and/or unjust enrichment equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendants resulting from the imposition of Automatic Renewal Interest and Other Charges;
- (m) an order for disgorgement of the value of all monies unlawfully charged by the Defendants;
- (n) punitive damages in an amount that this Court finds appropriate;
- (o) an equitable rate of interest on all sums found due and owing to the Plaintiff and Class Members;
- (p) pre- and post-judgment interest pursuant to the *CJA*;
- (q) the costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (r) pursuant to section 26(9) of the *CPA*, the costs of notice and of administration;
- (s) the costs of the plan of distribution of the recovery in this action plus applicable taxes; and
- (t) such further and other relief as this Honourable Court may deem just.

## OVERVIEW

3. Under the guise of its "automatic" renewal provisions in its standard form contract, Scotiabank unilaterally imposes predatory mortgage rates on unsuspecting borrowers. Under these provisions, if the mortgagor has not paid all the money owing under the mortgage or expressly agreed to renew the mortgage by the maturity date, Scotiabank automatically locks the mortgagor into a new six-month mortgage at its highest posted fixed interest rate without obtaining the mortgagor's signature or agreement.

4. The automatic renewal rate is always Scotiabank's highest posted fixed rate, which is often drastically higher than the rate under the just-expired mortgage. The mortgagor is left with two

expensive options: either incur six monthly payments at the automatic renewal rate or incur steep fees and penalties to break the automatically renewed mortgage early.

5. This practice violates section 8 of the *Interest Act* by stipulating a rate of interest on arrears of principal (the automatic renewal rate) that has the effect of increasing the charge on the arrears beyond the rate of interest payable on the principal money not in arrears. The Plaintiff and Class are entitled to recover all excess interest and consequential charges paid pursuant to these unlawful provisions under section 9 of the *Interest Act*.

6. The automatic renewal provisions themselves cannot serve to justify Scotiabank's enrichment at the Class Members' expense because they are void and unenforceable for unconscionability and illegality.

7. As one of the largest mortgage lenders in Canada, Scotiabank has profited enormously by engaging in a practice that contravenes the *Interest Act*, and therefore constitutes an illegal interest rate. Canada's largest and most profitable financial institutions should not charge illegal interest rates. In addition to restitution, an award of punitive damages is warranted in this case to denounce and deter this practice.

## THE PARTIES

8. The Plaintiff, Shakya Abeywickrama ("**Shakya**"), is an individual who resides in the City of Saskatoon, in the Province of Saskatchewan.

9. The Plaintiff and the Class are persons who had or have mortgages as borrowers/mortgagors, with the Defendants as lender/mortgagee.

10. The Plaintiff is the proposed representative of a class defined as (collectively the "Class" or "Class Members"):

All persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by the Defendants were automatically and/or involuntarily renewed for another term at a higher interest rate than that applicable to their previous term.



11. The Bank of Nova Scotia is a Schedule I Bank, federally regulated as a private financial institution in Canada. Scotiabank is federally incorporated pursuant to the laws of Canada and operates across all Canadian provinces under reciprocal provincial authority and registrations. Scotiabank's headquarters and principal place of business are located in Toronto, Ontario.

12. Scotia Mortgage Corporation is a wholly-owned subsidiary of The Bank of Nova Scotia. It is extra-provincially registered in every Canadian province and territory except for New Brunswick. Its registered office is located in Toronto, Ontario.

13. At all material times, the Defendants have been in the business of lending money to and taking mortgages from Canadian homeowners and other property owners, including the Plaintiff and Class Members. The Defendants provide residential mortgages, mortgage products and lending services.

#### **THE MORTGAGE CONTRACTS**

14. The Defendants entered into mortgages with the Plaintiff and Class Members. Each of the mortgages that are the subject of this proceeding name the Defendants as the lender/mortgagee, and the Plaintiff or Class Members as the borrowers/mortgagors.

15. Each of the mortgages incorporate by reference the Defendants' standard form "Standard Charge Terms No. 201407" (the "**Standard Charge Terms**") and "Personal Credit Agreement Companion Booklet", (the "**Booklet**") which collectively form the contract between the Defendants and the Plaintiff and Class Members (each a "**Mortgage Terms**").

16. Each mortgage specified the time period the mortgage would last for (the "**Initial Term**") and the maturity date, typically not longer than five years.

17. Each mortgage provided for payment of interest on the loan calculated at either a specified fixed rate, or a variable rate subject to change over the Initial Mortgage Term (the "**Initial Rate**").

18. The Mortgage Terms contain various terms and conditions in relation to the rights and remedies available to the parties, including with respect to the renewal and amendment of mortgages.

19. Section 21 of the Defendants' current Standard Charge Terms, dated May 2014 and in force during the Plaintiff's mortgage with Scotiabank, states the following:

**21. RENEWING OR OTHERWISE AMENDING THE MORTGAGE**

We may from time to time enter into one or more written agreements with you (or with any one to whom your property is transferred) to amend the mortgage by extending the time for payment, renewing it or its term for further periods of time, changing the interest rate payable under the mortgage or otherwise altering the provisions of the mortgage.

You agree to pay all money owing under the mortgage on the maturity date or, if we have offered to renew your mortgage, to enter into a renewal agreement with us on or before the maturity date. **If you do not, provided that we have not advised you that we will not renew your mortgage, you agree that the mortgage will be automatically renewed on the renewal terms we indicate in the renewal agreement, including all the other terms and conditions stated in the renewal agreement.**

Whether or not there are any encumbrances on your property in addition to the mortgage at the time the agreement is entered into, it will not be necessary to register the agreement on title in order to retain priority for the mortgage, as amended, over any instrument registered after the mortgage. Any reference in this set of standard charge terms to the mortgage means the mortgage as amended by any such agreement or agreements. [emphasis added]

20. Part 2 of the Defendants' current Booklet, dated May 2020, contains the "General Terms and Conditions for all Credit Products". Part 2 explicitly applies to the mortgages entered into between the Defendants and the Plaintiff and Class.

21. Section 2.02(f) of the Booklet (together with section 21 of the Standard Charge Terms, the "Automatic Renewal Provisions") states the following:

**(f) Amendments, Extensions or Renewals**

[...]

You agree to pay all money owing under any Personal Loan at the end of the term (referred to as the "maturity date") or, if we have offered to renew your Personal Loan, to enter into a renewal agreement with us on or before the maturity date. **If you do not, provided that we have not advised you that we will not renew your Personal Loan, you agree that (i) any Personal Loan that is a mortgage loan will be automatically renewed into a fixed rate six month closed term at our posted rate with a Scotiabank Flexible Mortgage option (as described in this Booklet) unless we have indicated otherwise in the renewal agreement (a copy of which we will provide to you)...** [emphasis added]

22. The Booklet defines the term "Personal Loan" as "a mortgage loan (immovable hypothec in Quebec) described in Part 3 and any other term loan described in Part 4 of this Booklet."



## **AUTOMATIC RENEWALS AFTER INITIAL MORTGAGE TERM**

23. When any of the Defendants' mortgages nears its maturity date, it is the Defendants' practice to send the mortgagor a standard form offer to voluntarily renew the mortgage for an additional term following the Initial Term (the "**Renewal Agreement**").

24. The Renewal Agreement sets out various renewal options, including interest rates and term lengths, that the mortgagor may choose to accept by initialing their chosen renewal option and returning the signed Renewal Agreement to their Scotiabank branch.

25. Where the mortgagor does not enter into a Renewal Agreement with Scotiabank or arrange to pay the outstanding balance of their mortgage by the end of their Initial Mortgage Term, the Defendants unilaterally exercise the Automatic Renewal Provisions to automatically renew their mortgage into a fixed rate six-month flexible mortgage at its posted rate ("**Automatic Renewal Agreement**"). The six-month flexible mortgage carries Scotiabank's highest posted fixed rate.

26. The Automatic Renewal Agreement is imposed on the mortgagor without their consent or their execution of a new mortgage agreement.

27. Because the Automatic Renewal Provisions only permit Scotiabank to automatically impose its highest posted fixed rate **after** the mortgagor does not fully repay the principal at the maturity date, Scotiabank is charging such interest on principal that has become in arrears when it unilaterally exercises these provisions.

28. Accordingly, any Automatic Renewal Agreement that imposes a higher rate of interest than applicable to the just-expired term has the effect of increasing the charge on arrears beyond the rate of interest payable on the principal money not in arrears. The stipulation of such interest is expressly prohibited by section 8 of the *Interest Act*, and any sum paid by the Plaintiff and Class in violation of section 8 of the *Interest Act* is recoverable as damages under section 9 of the *Interest Act*.

## THE PLAINTIFF'S EXPERIENCE

29. On August 22, 2018, the Plaintiff and her husband, Udara Heendeniya ("**Udara**") entered into a mortgage with Scotiabank for the purpose of purchasing a home located at 4110 Brighton Circle, Saskatoon, Saskatchewan (the "**Home**").

30. The details of the Plaintiff's mortgage (the "**2018 Scotia Mortgage**") were as follows:

- (a) Maturity date: August 22, 2023
- (b) Initial Term: 5-year closed
- (c) Initial Rate: 3.34%
- (d) Monthly payment: \$1,643.58

31. On or about June 3, 2023, Scotiabank called the Plaintiff to advise that the 2018 Scotia Mortgage would be maturing soon and was up for renewal. Scotiabank provided the Plaintiff with several renewal options during this call.

32. The Plaintiff told Scotiabank that she did not want to renew the 2018 Scotia Mortgage with Scotiabank because she had obtained a more favourable interest rate quote from Connexus Credit Union ("**Connexus**"). The Plaintiff also told Scotiabank that she would arrange with Connexus to pay the outstanding balance of the 2018 Scotia Mortgage by the maturity date.

33. On July 18, 2023, the Plaintiff received a written Renewal Agreement by mail from Scotiabank. The Renewal Agreement offered to renew the 2018 Scotia Mortgage for a 3-year term at a fixed annual interest rate of 6.89%, or alternatively for a 5-year term at a fixed annual interest rate of 6.54%. The Renewal Agreement advised that Scotiabank's posted rate for a fixed rate six month closed term mortgage was 7.75% – Scotiabank's highest posted fixed interest rate.

34. After considering the options presented in the Renewal Agreement, the Plaintiff decided to enter a 3-year closed mortgage with Connexus at a fixed annual interest rate of 4.34%.

35. On or about July 21, 2023, the Plaintiff and Udara both signed a Request for Statement and Authorization ("**Payout Request**"), authorizing Connexus to obtain from Scotiabank a mortgage

statement with the amount required to obtain discharge of the 2018 Scotia Mortgage and to discharge same.

36. On August 21, 2023, one day before the maturity date of the 2018 Scotia Mortgage, Scotiabank contacted the Plaintiff to advise that the Payout Request had been denied due to discrepancies in her and Udara's signatures and requested that the Plaintiff attend in person to verify the signatures.

37. The very next day, without the Plaintiff's consent or signature and contrary to her explicit communications and instructions with the Defendants, Scotiabank unilaterally exercised the Automatic Renewal Provisions to automatically impose a new mortgage on the Plaintiff (the "**2023 Automatic Renewal Mortgage**") with the following terms:

- (a) Principal amount: \$287,339.21
- (b) Maturity date: February 22, 2024
- (c) Term: 6-months
- (d) Rate: 7.50% (the "**Autorenewal Rate**")
- (e) Monthly payment: \$2,337.29

38. On or about August 25, 2023, unaware that Scotiabank had imposed the 2023 Automatic Renewal Mortgage, the Plaintiff attended the Scotiabank branch located at 523 Nelson Rd., Saskatoon, Saskatchewan, S7S 1P4 to verify the purported signature discrepancies in the Payout Request.

39. The Plaintiff met with a mortgage advisor, who informed her that Scotiabank had verified the authenticity of her and Udara's signatures and the Payout Request could now be processed. The Plaintiff again explicitly informed the mortgage advisor she had no intention of renewing the 2018 Scotia Mortgage with the Defendants.

40. At all material times, the Plaintiff was unaware of the Automatic Renewal Provisions in the Defendants' Mortgage Terms that purported to allow Scotiabank to automatically renew the 2018 Scotia Mortgage with a 4.16% increase over the Initial Rate.

41. Scotiabank did not bring these provisions to her attention on June 3, when it called to advise of her renewal options. Nor did Scotiabank bring these provisions to her attention on August 21, when it called to advise her that the Payout Request had been denied a day before the 2018 Scotia Mortgage was set to mature, or on August 25, when she attended the Scotiabank branch in Nelson.

42. The Plaintiff first found out about the 2023 Automatic Renewal Mortgage on August 27, 2023, when she received a letter from Scotiabank setting out its terms and conditions. The letter advised that her first monthly payment of \$2,337.29 was due on September 2, 2023.

43. The letter also advised that the Automatic Renewal Mortgage imposed prepayment charges calculated as follows:

**3 months interest or interest rate differential, whichever is higher**

You will pay a prepayment charge if you pay more of your mortgage than the prepayment privilege allows or if you pay your mortgage in full. We use the following process to calculate the prepayment charge:

Step 1: We calculate the amounts that equal A) and B):

- A) 3 months interest costs at the mortgage rate on the amount you want to prepay.
- B) The interest rate differential, which is the difference between the amounts calculated in (1) and (2):

(1) The present value of all interest you would have paid from the date of prepayment until the maturity date on the amount you want to prepay at the mortgage rate.

(2) The present value of all interest that would be paid from the date of prepayment until the maturity date on the amount you want to prepay at the Current Interest Rate, less any rate discount you received on your existing mortgage.

Step 2: We determine which amount is higher. The prepayment charge to pay out some, or the entire principal amount of your mortgage early, is the higher of the amounts calculated for A) and B).

44. Upon learning about the 2023 Automatic Renewal Mortgage, the Plaintiff instructed Connexus to discharge it as soon as possible. Prior to discharging the 2023 Automatic Renewal Mortgage, the Plaintiff paid Scotiabank the first payment of \$2,337.29 on September 2, 2023.

45. Scotiabank provided a mortgage discharge statement for the 2023 Automatic Renewal Agreement on or about September 25, 2023 stating a total amount of \$293,440.20 owing to

Scotiabank. The discharge statement stated the following amounts were required to discharge the 2023 Automatic Renewal Agreement:

- (a) Mortgage balance (as at September 2, 2023): \$286,162.44
- (b) Interest accrued (to September 27, 2023): \$1,515.82
- (c) Prepayment charge: \$5,456.94
- (d) Discharge administration fee: \$250
- (e) Registry office discharge registration fee: \$55

46. As stated above, the Plaintiff's interest rate on the 2018 Scotia Mortgage was 3.34%. The interest payable on the principal balance from August 22, 2023 (maturity date of 2018 Scotia Mortgage) until the discharge date of September 27, 2023 at the Initial Rate instead of the Autorenewal Rate would have been as follows:  $\$287,339.21 * 3.34\% * (36/365 \text{ days}) = \$946.56$ .

47. The difference between this quantum and the \$1,515.92 interest accrued per the discharge statement is **\$569.35** (the "**Automatic Renewal Interest**").

48. The Plaintiff was also charged additional fees to discharge the 2023 Automatic Renewal Mortgage, including a \$5,456.94 prepayment charge (calculated as three months interest at the Autorenewal Rate), a \$250 discharge administration fee, and a \$50 registry office discharge registration fee (collectively, the "**Other Charges**").

49. The proposed Class is not limited to those who, like the Plaintiff, have already paid a set amount of Automatic Renewal Interest and Other Charges to discharge their automatically renewed mortgage with Scotiabank. It also includes individuals who are currently paying unlawful interest as a result of the Automatic Renewal Interest. The damages of the Class Members are thus increasing on an ongoing basis.

## **CAUSES OF ACTION**

### ***Breach of Interest Act***

50. The Automatic Renewal Provisions in the Defendants' Mortgage Terms violate section 8 of the *Interest Act* by stipulating a rate of interest on arrears of principal that has the effect of



increasing the charge on the arrears beyond the rate of interest payable on the principal money not in arrears:

**No fine, etc., allowed on payments in arrears**

**8 (1)** No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

51. When the Plaintiff failed to pay all principal and interest under the 2018 Scotia Mortgage or enter into a renewal agreement with Scotiabank by the maturity date (August 22, 2023), the principal and interest became "in arrears". On August 22, 2023, the Defendants relied upon the Automatic Renewal Provisions to unilaterally impose the Autorenewal Rate (being 4.16% higher than the Initial Rate) on such principal and interest in arrears. The Autorenewal Rate is Scotiabank's highest posted fixed rate and is therefore in most cases higher than the Initial Rate.

52. In other words, the trigger that gives rise to the Defendants' purported right to automatically renew the Class Members' mortgages is the existence of arrears of principal. Since the Defendants' purported right to automatically renew does not vest unless the mortgage is not repaid by the maturity date and the Class Members have the right the repay until the last instant payment is due, the Defendants' automatic renewal right does not come into being until payment has not been made in the requisite time and the mortgage is effectively in arrears.

53. Accordingly, the Plaintiff and Class are entitled to recover or set off any sum paid in violation of section 8 of the *Interest Act*, including the Automatic Renewal Interest and Other Charges, pursuant to section 9 of the *Interest Act*:

**Overcharge may be recovered back**

**9** If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under section 6, 7 or 8, the sum may be recovered back or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal.

54. The Automatic Renewal Interest is the difference between the interest paid by the Plaintiff and Class under the Autorenewal Rate and what the Plaintiff and Class would have paid under the Initial Rate.



55. The Other Charges incurred by the Plaintiff and Class also constitute a fine and/or penalty exacted on arrears of principal and interest under s. 8(1) of the *Interest Act*. The Other Charges were incurred when the Plaintiff and Class discharged their automatically renewed mortgages in order to avoid incurring additional interest payments at the unlawful Autorenewal Rate.

56. The imposition of the Automatic Renewal Interest and Other Charges are also in violation of the Defendants' statutory obligations under the *Trust and Loan Companies Act*, S.C. 1991, c. 45, as amended.

57. As described above, Shakya was wholly unaware of the specific provisions that purported to allow Scotiabank to unilaterally renew the 2018 Scotia Mortgage with a 4.16% increase to the Initial Rate without her express consent or signature. By failing to bring the onerous consequences of the Automatic Renewal Provisions to Shakya's attention, the Defendants breached their obligation to disclose in plain language that is clear, simple and concise, the manner in which such interest and charges would be calculated and imposed.

58. Scotiabank's high-handed and callous conduct in violating strict statutory obligations warrants an award of punitive damages to condemn the Defendants and deter other institutions involved in mortgage lending from committing similar breaches going forward.

### ***Breach of Contract***

59. The Automatic Renewal Interest and Other Charges constitute breaches of the Mortgage Terms, as well as breaches of Scotiabank's duties and obligations of good faith and honest contractual performance owed to the Plaintiff and Class Members.

60. Additionally, and in the alternative, if the Automatic Renewal Interest and Other Charges are permitted under the Mortgage Terms (which is not admitted and specifically denied), then the Automatic Renewal Provisions are void for unconscionability and/or unenforceable based on violation of various statutes pled herein, including the *Interest Act* and section 4 of the *Statute of Frauds*, which requires that all agreements relating to land be in writing and executed by the parties.

61. Additionally, and in the alternative, each Automatic Renewal Agreement is also void based on the longstanding maxim that silence is not a valid form of acceptance.

62. At all material times, there existed a self-evident inequality of bargaining power between Scotiabank (a multinational banking institution) and Shakya (a marketing services specialist). The Plaintiff and Class were powerless to negotiate the Mortgage Terms, which are part of a standard form contract of adhesion with an institution operating within a state-sanctioned oligopoly over necessary financial services.

63. No reasonable person who had understood and appreciated the effect of the Automatic Renewal Provisions would have agreed to them, and it would be unconscionable to allow Scotiabank to collect excess interest in direct violation of section 8 of the *Interest Act*.

64. Scotiabank also breached its contractual duty of good faith, including their duty to honestly perform the contract. Scotiabank was in breach of the duty of good faith by acting dishonestly in unilaterally increasing interest rates and imposing additional fees upon maturity of the 2018 Scotia Mortgage. The Plaintiff and Class were not provided with sufficient notice of Scotiabank's imposition of higher interest rates and additional fees. As a sophisticated party dealing with individual mortgagors, Scotiabank has a duty to ensure that these individuals are aware of the key terms of their mortgage contract and to describe the practical consequences of these terms.

65. Moreover, Scotiabank either knew or ought to have known that their imposition of Scotiabank's Automatic Renewal Mortgage is contrary to the law. Scotiabank acted in bad faith by continuing to engage in its automatic mortgage renewal practice despite its understanding that such a practice is unlawful.

### ***Unjust Enrichment***

66. Scotiabank received and continues to receive enormous revenues by imposing the Automatic Renewal Agreement on mortgagors without their consent. These increased revenues include the Automatic Renewal Interest and Other Charges which the Plaintiff and Class paid, and continue to pay, to Scotiabank.

67. The Plaintiff and Class Members suffered and continue to suffer a deprivation that corresponds to the Defendants' benefit.

68. There is no juristic reason for Scotiabank's benefit and Class Members' corresponding deprivation. Scotiabank has violated the *Interest Act* and breached its contract with Class Members by virtue of its imposition of the Automatic Mortgage Agreement without the consent of Class Members. The Class Members are entitled to restitution in order to remedy the Defendants' unjust enrichment.

#### **PLACE OF TRIAL**

69. The Plaintiff proposes that this action be tried in Toronto.

July 10, 2024

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Court File No.: *CV-24-00723561-0000*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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