

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Actions)

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NO: 500-06-001343-249

[REDACTED] **TOLEDANO**, having  
[REDACTED]

and

**9466-4315 QUEBEC INC.**, legal person  
having [REDACTED]  
[REDACTED]

Applicants

v.

**THE BANK OF NOVA SCOTIA**, legal person  
having a principal establishment at 1002  
Sherbrooke Street West, City and District of  
Montreal, Province of Quebec, H3A 3L6

Defendant

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANTS STATE:**

1. The Applicants seek authorization to institute a class action on behalf of the following class of which they are members, namely:

All consumers and businesses in Canada with an account at Scotiabank (including credit card or line of credit) who could not use one or more of their Scotiabank services from November 8, 2024 and until the Scotiabank services were fully restored;	Tous les consommateurs et entreprises au Canada ayant un compte à la Banque Scotia (y compris une carte de crédit ou une marge de crédit) qui n'ont pas pu utiliser un ou plusieurs de leurs services de la Banque Scotia à partir du 8 novembre 2024 et jusqu'à ce que les services de la Banque Scotia soient
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(hereinafter referred to as the “ <b>Class</b> ”) or any other class to be determined by the Court;	entièrement rétablis ; (ci-après le « <b>Groupe</b> ») ou tout autre groupe à être déterminé par la Cour;
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**I. CONDITIONS REQUIRED TO AUTHORIZE A CLASS ACTION (S. 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

2. Defendant, The Bank of Nova Scotia (herein “**Scotiabank**”), describes itself as “one of Canada’s largest banks” and boasts that “Scotiabank’s vision is to be our clients’ **most trusted financial partner**” ([www.scotiabank.com/ca/en/about.html](http://www.scotiabank.com/ca/en/about.html)), as it appears from **Exhibit P-1**;
3. Applicants communicate Scotiabank’s business information statement from the Enterprise Register as **Exhibit P-2**;
4. The Co-Applicant, Ms. Toledano, has a personal bank account at Scotiabank, for which she pays monthly service fees of \$14.95 per month;
5. The Co-Applicant, 9466-4315 Quebec Inc., is Ms. Toledano’s company that offers bookkeeping services, as it appears from the business information statement from the Enterprise Register communicated as **Exhibit P-3**;
6. 9466-4315 Quebec Inc. has a business bank account at Scotiabank for which it pays monthly service fees of \$20.00, plus \$1.25 per transaction (the monthly fees charged by Scotiabank for this account range from approximately \$20.00 to \$100.00);
7. On November 12, 2024, Scotiabank failed in both its promise to be its “clients’ *most trusted financial partner*” and its commitment to “*making it easier for our clients to bank with us*” (Exhibit P-1);
8. In fact, on November 12, 2024, it was effectively impossible for the Applicants to bank with Scotiabank as its systems went entirely offline and were unavailable to its customers, a fact which Scotiabank publicly admitted on its social media accounts and apologized for;
9. Like millions of Canadian individuals and businesses, on November 12, 2024, Applicants could not access their Scotiabank accounts (for which they pay monthly service fees for) and could not perform basic everyday banking operations such as sending an Interac e-Transfer or paying a bill;
10. Applicants’ Scotiabank accounts were displayed as “Unavailable” and the outage had a disruptive and prejudicial effect on Ms. Toledano as well as on her

business, as they could not send money or pay bills, and did not receive the banking services that they have been paying Scotiabank hefty amounts for, and which Scotiabank was contractually and legally obligated to provide;

11. This is now Scotiabank's **third service outage** in 5 months, as it appears from a CTV interview on August 31, 2024 with tech analyst Carmi Levi (Applicant communicates the CTV report titled "**Two Scotiabank outages in two months**" as **Exhibit P-4**. Applicant communicates a prior CTV report dated July 26, 2024, titled "**Direct deposit outage at Scotiabank. Here's what we know**" as **Exhibit P-5**;
12. In light of the above, it is clear that Scotiabank does not have properly functioning IT systems, an important fact that is has concealed from its customers;
13. It also clear that Scotiabank failed in its legal obligations to provide the services that Applicants and all Class Members paid for, in violation of sections 16 and 40 CPA, and contrary to the Civil Code of Quebec (articles 1458, 1590 and 2100);
14. Despite posting on its "X" accounts (**Exhibit P-6**) and on its website (**Exhibit P-7**) that **some** of its services (credit card and line of credit) would be down from November 8 to 12, 2024, due to a supposed "scheduled maintenance", Scotiabank did not offer to compensate any of the Class Members and still continued to debit the full amount of their monthly service fees from their bank accounts, despite not fully rendering the services paid for;
15. Worse, the Scotiabank website (Exhibit P-7) states that "The following services are unavailable during this time in **all channels** (Scotia app, online banking, contact centre and branch)", so Class Members could not even call or visit a branch for assistance during the service outage that lasted at least 5 days (November 8 to 12, 2024);
16. Applicants note that on Scotiabank's webpage dedicated to the "scheduled maintenance" (Exhibit P-7), nowhere does it mention that Class Members' bank accounts would suddenly become unavailable and that Class Members would be unable to send Interac E-transfers, pay bills, or unable simply view/have access to their accounts, which is what happened all day on November 12, 2024;
17. It appears that, once again, something went wrong technically on Scotiabank's end, which once again caused financial harm, stress and inconvenience to Scotiabank's customers (some Class Members posted on "X" that they did not believe that the November 12 service outage was a result of a scheduled maintenance as stated by Scotiabank - which they considered "*highly unlikely*" -, and that Scotiabank "*were likely hacked*");
18. In 2024, a major bank such as Scotiabank must have systems and backups in place to prevent such outages or disruptions from occurring – and if they do occur, the victims must be financially compensated;

19. The troubles and inconvenience caused as a direct result of Scotiabank's fault and negligence as alleged above (failing to ensure that proper safeguards were in place to prevent a third outage in less than 5 months), exceed the normal inconveniences that a person in the twenty-first century encounters and should be required to accept. Indeed, a full day outage of a person or a company's bank account— which they pay monthly fees to have – is unacceptable;
20. Effectively, Scotiabank's "maintenance" stopped it from rendering services "*in all channels (Scotia app, online banking, contact centre and branch)*" (Exhibit P-7);
21. The Applicants are entitled to claim, and do hereby claim, on their behalf and on behalf of all Class Members, compensatory damages and a reduction in their obligations in aggregate amounts to be determined on the merits;
22. The Applicant, Ms. Toledano, claims punitive damages of **\$100** per consumer Class Member pursuant to section 272 CPA. This amount is appropriate in the circumstances given Scotiabank's patrimonial situation; given that Scotiabank failed to put adequate measures in place despite repeated outages in the past few months alone; and given that it must be held accountable and the need to ensure that this does not happen again;

## **B) THE COMMON QUESTIONS**

23. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
  - a) Did Scotiabank breach its contractual or legal obligations?
  - b) Are Class members entitled to a reduction of their obligations, damages and/or punitive damages, and in what amounts?

## **C) THE COMPOSITION OF THE CLASS**

24. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
25. The Applicants conservatively estimates the number of persons included in the Class to be in the millions;
26. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Scotiabank;
27. Class members are very numerous and are dispersed across the province and across Canada;
28. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;

29. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

#### **D) ADEQUATE REPRESENTATIVES**

30. The Applicants request that they be appointed the status of representative plaintiffs for the following main reasons:
- a) They are members of the Class and have a personal interest in seeking the conclusions that they propose herein;
  - b) They are competent, in that they have the potential to be the mandataries of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) Their interests are not antagonistic to those of other Class members;
31. Additionally, the Applicants respectfully adds that:
- a) They mandated their attorneys to file the present application for the sole purpose of having their rights, as well as the rights of the other members, recognized and protected so that they can receive an adequate compensation according to the law;
  - b) They want to hold Scotiabank accountable, especially since Scotiabank announced that their services would be down for 5 days (November 8 to 12, 2024) "in all channels (Scotia app, online banking, contact centre and branch)" (Exhibit P-7) without offering any form of compensation at all;
  - c) Ms. Toledano has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
  - d) She cooperates and will continue to fully cooperate with her attorneys;
  - e) She read this Application prior to its court filing and understand the nature of the action;

#### **II. DAMAGES**

32. Scotiabank has publicly acknowledged that Class Members have suffered damages (Exhibit P-6 and Exhibit P-7 are some examples), but failed to compensate them for same, or to voluntarily offer a reduction of their obligations while not providing the services paid for;
33. In light of the foregoing, Class Members can claim the following against Scotiabank: reduction of obligations, damages, troubles and inconvenience and punitive damages (pursuant to section 272 CPA for consumer Class members);

### **III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

34. The action that the Applicants wish to institute on behalf of the members of the Class is an action for a reduction of obligations and in damages;
35. The conclusions that the Applicants wish to introduce by way of an originating application are:
  1. **ALLOW** the class action of the Representative Plaintiffs and the members of the Class and against the Defendant;
  2. **CONDEMN** the Defendant to pay the Class members an amount to be determined on the merits in damages and **ORDER** that this condemnation be subject to collective recovery;
  3. **CONDEMN** the Defendant to pay the consumer Class members punitive damages of \$100.00 each and **ORDER** that this condemnation be subject to collective recovery;
  4. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
  5. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  6. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  7. **CONDEMN** the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

### **IV. JURISDICTION**

36. The Applicants requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal. Applicant Ms. Toledano is a consumer and resides in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application for a reduction of obligations and in damages;
2. **APPOINT** the Applicants the status of Representative Plaintiffs of the persons

included in the Class herein described as:

All consumers and businesses in Canada with an account at Scotiabank (including credit card or line of credit) who could not use one or more of their Scotiabank services from November 8, 2024 and until the Scotiabank services were fully restored;	Tous les consommateurs et entreprises au Canada ayant un compte à la Banque Scotia (y compris une carte de crédit ou une marge de crédit) qui n'ont pas pu utiliser un ou plusieurs de leurs services de la Banque Scotia à partir du 8 novembre 2024 et jusqu'à ce que les services de la Banque Scotia soient entièrement rétablis ;
(hereinafter referred to as the " <b>Class</b> ")	(ci-après le « <b>Groupe</b> »)
or any other class to be determined by the Court;	ou tout autre groupe à être déterminé par la Cour;

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:

- a) Did Scotiabank breach its contractual or legal obligations?
- b) Are Class members entitled to a reduction of their obligations, damages and/or punitive damages, and in what amounts?

4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

1. **ALLOW** the class action of the Representative Plaintiffs and the members of the Class and against the Defendant;
2. **CONDEMN** the Defendant to pay the Class members an amount to be determined on the merits in damages and **ORDER** that this condemnation be subject to collective recovery;
3. **CONDEMN** the Defendant to pay the consumer Class members punitive damages of \$100.00 each and **ORDER** that this condemnation be subject to collective recovery;
4. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
5. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

6. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
7. **CONDEMN** the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
5. **ORDER** the publication of a notice to the class members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendant to pay for said publication costs;
6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
7. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
8. **RENDER** any other order that this Honourable Court shall determine;
9. **THE WHOLE** with costs including publication fees.

Montreal, November 13, 2024

*(s) LPC Avocats*

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**LPC AVOCATS**

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**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Scotiabank's "about us" webpage ([www.scotiabank.com/ca/en/about.html](http://www.scotiabank.com/ca/en/about.html));
- Exhibit P-2:** Business information statement from the Enterprise Register for Scotiabank;
- Exhibit P-3:** Business information statement from the Enterprise Register for 9466-4315 Quebec Inc.;
- Exhibit P-4:** CTV report dated August 31, 2024 titled "*Two Scotiabank outages in two months*";
- Exhibit P-5:** CTV report dated July 26, 2024, titled "*Direct deposit outage at Scotiabank. Here's what we know*";
- Exhibit P-6:** *En liasse*, tweets on "X" from the official Scotiabank account (@ScotiabankHelps) from November 8 to 12, 2024;

**Exhibit P-7:** Scotiabank webpage titled “Credit card and line of credit scheduled maintenance, November 8 - 12, 2024” (in English and French): <https://www.scotiabank.com/ca/en/personal/notices/credit-cards/maintenance.html?cid=S1eMNT1024-001>;

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, November 13, 2024

*(s) LPC Avocats*

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**LPC AVOCATS**

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**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.P.C.)

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**TO: THE BANK OF NOVA SCOTIA**  
1002 Sherbrooke Street West  
Montreal, Quebec, H3A 3L6

**TAKE NOTICE** that Applicants' *Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, on a date and time to be set by the Court.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, November 13, 2024

*(s) LPC Avocats*

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**LPC AVOCATS**

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