

TD Institutional Report and Narrative

1. The Toronto Dominion Bank (“TD”) is a chartered bank headquartered in Toronto, Ontario.
2. TD delivered an affidavit sworn on February 15, 2022, in support of TD’s application for an interpleader order (“**Interpleader Application**”) in respect of certain funds on deposit at TD (the “**Deposited Funds**”). Attached at Tab A is a copy of the body of the affidavit dated February 15, 2022, which was filed in support of the Interpleader Application. Reference will be made to specific parts of the Interpleader Application within this narrative and the same defined terms will be used.

Concern about the Deposited Funds

3. TD monitors public source media for potential impacts on its business. In and around late January 2022, as part of its routine monitoring of public source media, TD became aware of funding activities relating to the “Freedom Convoy”. TD also monitors its bank accounts for unusual activity. During this time period, TD’s review of public source media about the “Freedom Convoy” caused it to inquire into certain transactions within a personal bank account at TD held by Account Holder 1.
4. Upon review, it appeared that Account Holder 1 was soliciting and receiving donations and holding funds in a personal account which were not beneficially owned by Account Holder 1. It appeared that the funds being advanced to Account Holder 1’s account were related to the “Freedom Convoy”. The beneficiaries were not identified or identifiable to TD. This contravened the terms of TD’s personal deposit account agreements with Account Holder 1. Section 2.2 of TD’s Financial Service Terms

provides that personal accounts cannot be used to manage a business or other enterprise.

5. TD sought to contact Account Holder 1 to discuss options for the funds. As set out in the attached affidavit at paragraph 46 and following, on January 28, 2022, a Branch Manager sought to contact Account Holder 1 by phone. Several calls were placed to Account Holder 1 on January 28, 2022 and were not answered.
6. On January 28, 2022, the Branch Manager followed up with an email to Account Holder 1 asking Account Holder 1 to contact the Branch Manager. A copy of that email was included in the Interpleader Application at Exhibit "W" to the February 15, 2022 affidavit.
7. On January 31, 2022, the Branch Manager made further unsuccessful attempts to contact Account Holder 1 by phone. The Branch Manager left on pre-arranged leave at the end of the day on January 31, 2022. Another Branch Manager was identified to continue attempts to make contact with Account Holder 1.
8. As set out in the attached affidavit at paragraph 17, on February 1, 2022, Account Holder 1 did not respond to the branch managers' communications, but took steps to convert their account to a joint account held with Account Holder 2. A copy of the Financial Services Agreement, Privacy Agreement signed by the First Account Holder and the Second Account Holder on February 1, 2022 was included in the Interpleader Application at Exhibits "B1", "B2" of the February 15, 2022 affidavit. A copy of the Financial Services Terms was included in the Interpleader Application at Exhibits "B3" of the February 15, 2022 affidavit.

9. As is set out on in paragraph 51 of the attached affidavit, on February 3, 2022 and February 4, 2022, the TD Customer Problem Resolution Department emailed Account Holder 1 and Account Holder 2 separately to request a discussion. A copy of the emails sent to Account Holder 1 on February 3, 2022 and February 4, 2022 were attached to the Interpleader Application at Exhibit "X" and Exhibit "Y" to the February 15, 2022 affidavit.
10. On February 6, 2022, the TD Customer Problem Resolution Department was able to speak to Account Holder 1. As is set out in paragraphs 52 to 54 of the attached affidavit, TD had exchanges with Account Holder 1 between February 6 and February 10th. TD was not made aware of any satisfactory plan for the dissemination of the Deposited Funds during these exchanges.

Outcome of the Deposited Funds

11. TD retained external counsel to assist it with the Interpleader Application. On February 14, 2022, TD issued a notice of application in the Ontario Superior Court of Justice seeking permission to pay the Deposited Funds into court. On February 17, 2022, TD delivered its Interpleader Application.
12. Before the return date for the Interpleader Application, TD's external counsel became aware of other proceedings involving the "Freedom Convoy" which was a motion related to a class action where class counsel had obtained a *Mareva* injunction over certain assets, including the Deposited Funds. On February 17, 2022 and February 28, 2022, the court granted the *Mareva* orders. In connection with that relief, the court appointed an Escrow Agent for the purpose of taking possession of certain assets.

13. On consent of the Escrow Agent, class plaintiffs' counsel, and counsel for Account Holders 1 and 2, TD brought a motion for an order directing the Deposited Funds to the appointed Escrow Agent, instead of seeking the original interpleader relief. The funds belonged to the same class of assets that the Escrow Agent had jurisdiction over through the *Mareva* orders.
14. On March 9, 2022, the court granted the consent order directing payment of the Deposited Funds by TD to the Escrow Agent, under the supervision and direction of the court. Attached at Tab B is a copy of the order.
15. TD has had no further involvement with the Deposited Funds.

Origin of Deposited Funds

16. We understand the Commission is interested in the geographical origins of the depositors who sent the Deposited Funds shown on Exhibit "T" to the February 15, 2022 affidavit. The funds shown on Exhibit "T", with the exception of the GoFundMe deposit and one transfer between TD branches, were deposited via Interac Email Money Transfers ("**E-transfers**"). E-transfers are only available between accounts with domiciled Canadian financial institutions. From the period of January 18, 2022 to February 10, 2022, there were approximately 3,000 E-transfers shown on Exhibit "T" and one transfer between TD branches totaling approximately \$422,416.64 and a GoFundMe deposit that totaled \$1,000,000. TD has no further information it can provide regarding the geographical location of the persons making the transactions shown on Exhibit "T".

Tab A

Court File No. CV-22-00676865-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

In the matter of an application by The Toronto-Dominion Bank for an interpleader order in respect of certain funds on deposit that are not beneficially owned by the account holders and have been advanced to the account holders for a specific purpose, but the notional beneficiaries are not identified or identifiable

THE TORONTO-DOMINION BANK

Applicant

APPLICATION UNDER Rule 43.02(1) of the *Rules of Civil Procedure*,
R.R.O. 1990, Reg 194

**AFFIDAVIT OF TD Representative
(sworn February 15, 2022)**

I, **TD Representative**, of the City of Toronto, MAKE OATH AND SAY:

Introduction

1. I am Vice President Canadian Personal Banking Business Management and Governance at The Toronto-Dominion Bank (“TD”), and have held that position since March 2020. My team’s responsibilities include overseeing the regulatory and governance requirements for TD. I previously held managerial roles that related to customers’ daily banking needs. I have been employed by TD for approximately 25 years.
2. TD is a chartered bank headquartered in Toronto, Ontario.

3. I have reviewed the relevant materials in this matter, and as such I have knowledge of the matters hereinafter set out, except where such matters are based on information and belief, in which case I have stated the source of that information, and believe it to be true.

Overview

4. This application is necessary because TD finds itself in the position that it is holding certain funds on deposit in two personal bank accounts that are not beneficially owned by the account holders and have apparently been advanced to the account holders for various specific purposes, but the notional beneficiaries are not identified or identifiable and the specific purposes of the funds are not known to TD. Accordingly, TD requires the assistance of the Court to ensure that the funds are made available to the notional beneficiaries and for the intended purposes, or that the funds be returned to those who are seeking or may seek and are entitled to returns.

The Deposited Funds

5. TD is currently holding approximately CAD \$1,393,406.98 (the “**Deposited Funds**”) in funds on deposit in two personal bank accounts (the “**Accounts**”) in the name of two account holders (the “**Account Holders**”).

6. Beginning on January 18, 2022 and on an ongoing basis, individuals have deposited funds into one of the personal bank accounts (the “**Account**”) via direct email transfer (the “**Depositors**”). As of February 10, 2022 at 11:03 am, approximately 3,000 Depositors had contributed a total of \$419,406.98 to the Account.

7. In addition to the funds provided by the Depositors, on February 2, 2022, the organization GoFundMe made a lump sum deposit of \$1,000,000 into the Account (the “**GoFundMe Deposit**”). The GoFundMe Deposit was made up of contributions from an unknown number of donors.

8. On January 31, February 1, and February 3, 2022, portions of the funds held in the Account, made up entirely from deposits made by the Depositors and the GoFundMe Deposit, were transferred from the Account to a second personal bank account (the “**Second Account**”). On February 1, 2022, \$20,000 was withdrawn from the Second Account. Additional withdrawals totalling \$6,000 were made on January 31 and February 1, 2020.

9. It appears from various statements online (through social media and fundraising campaign statements) that the deposits made into the Account were intended to be donations by the Depositors and contributors to GoFundMe (collectively, the “**Donors**”) in support of a campaign titled “Freedom Convoy 2022”, amongst other names.

10. The intended purpose of these donations appears to be to reimburse certain expenses in relation to a cause, including: to purchase fuel from a bulk fuel supplier, to provide food and lodging to cause participants, and to support veteran organizations.

11. The Accounts are *personal* bank accounts. Pursuant to applicable terms and conditions, personal bank accounts are intended to hold funds belonging (both legally and beneficially) to an individual (specifically, the particular account holder). Personal bank accounts are not intended to hold funds that are being beneficially held for another, or funds that are being held for a specified purpose relating to managing an enterprise.

12. On February 4, 2022, the Account was placed on a “hold”, as were the funds that were transferred from the Account to the Second Account. A “hold” prevents funds from flowing out of an account, but still permits funds to be deposited into an account. Accordingly with the hold, Depositors were not prevented from making their intended donations into the Account. GoFundMe was not prevented from making further deposits (though they did not do so).

13. In order to allow this Court to determine the issues in this application, a “freeze” was placed on the Accounts on February 10, 2022 at 11:03 am. A “freeze” prevents funds from being deposited into or flowing out of an account.

14. Through statements made on various media sources, TD has some knowledge that the Donors have specific intentions for the use of the Deposited Funds (as described above). However, TD is not in a position to determine the appropriate recipients of the Deposited Funds, or to what extent the Deposited Funds should be distributed to the appropriate recipients, in keeping with the particular intentions of the Donors.

15. TD has no beneficial interest in the Deposited Funds. Accordingly, TD is seeking to pay the Deposited Funds into Court so that the Deposited Funds may be managed and distributed in accordance with the particular intentions of the Donors, or be returned to those who are seeking and entitled to returns.

The Account

16. On March 4, 2020, the First Account Holder applied electronically to open a personal banking account with TD (the Account). The First Account Holder consented to

opening the Account, and to having reviewed the applicable documents, by electronic signatures. A screenshot of the E-Signature Consent for Account page, and copies of the applicable Notice of Account and Financial Services Terms and Conditions documents, are attached as **Exhibits “A1”**,¹ **“A2”**, **“A3”** and **“A4”**. The number of the Account and the name of the First Account Holder are set out in these Exhibits.

17. On February 1, 2022, the Account was made to be joint with another individual (the **“Second Account Holder”**). Copies of the Financial Services Agreement and Privacy Agreements signed by the First Account Holder and the Second Account Holder on February 1, 2022, and a copy of the Financial Services Terms applicable to the Account in February 2022, are attached as **Exhibits “B1”**,² **“B2”**³ and **“B3”**. The name of the Second Account Holder is set out in these Exhibits.

18. The Recipient Email address associated with the Account is attached as **Exhibit “C”**.⁴ The Recipient Email is the address that the client, in this case the First Account Holder, has provided as part of their personal user profile with the Bank.

19. On January 14 and 18, 2022, two Contact Identifier email addresses, which are attached as **Exhibit “D1”**⁵ and **“D2”**⁶ were added to the Account. To send an electronic

¹ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

² This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

³ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

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money transfer (“**EMT**”), the sender must direct the funds to a Contact Identifier email address, which the recipient provides to the sender. The sender can also create a Creditor Name of their choice to accompany the EMT.

20. In this case, some of the Creditor Names used to transfer funds to the Account have included “Trucker Convoy”, “Convoy”, and many others. **Exhibit “E”**⁷ contains two examples of EMTs sent to the Account, which include unique Creditor Names.

The GoFundMe Deposit

21. On January 15, 2022, a fundraising campaign titled “Freedom Convoy 2022” was created through the GoFundMe website (the “**GoFundMe Campaign**”). The GoFundMe Campaign homepage was accessible through the Facebook page for an organization called “Freedom Convoy 2022.” A copy of a Facebook post dated January 17, 2022 directing individuals to the GoFundMe link is attached as **Exhibit “F”**.

22. The stated purpose of the GoFundMe Campaign was to collect donations from individuals to “help with the costs of fuel, food and lodgings” for participants in a particular cause. As of January 28, 2022, the GoFundMe Campaign held approximately \$7,000,000 in donated funds from more than 60,000 donors (the “**GoFundMe Donations**”). Copies of the

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archived Webpages for the GoFundMe Campaign for January 22, 27, and 28, 2022, showing the total funds for each dated, are attached as **Exhibits “G1”, “G2”, and “G3”**.

23. On January 25, 2022, GoFundMe indicated that it was holding back the GoFundMe Donations until it received more details about the plan for financial management of the funds. Rachel Hollis, a spokeswoman for GoFundMe stated in an email: “We require that fundraisers be transparent about the flow of funds and have a clear plan for how those funds will be spent. In this case, we are in touch with the organizer to verify that information.” A newspaper article from the Star dated January 25, 2022 summarizing these events, including Ms. Hollis’ email, is attached as **Exhibit “H”**.

24. On January 27, 2022, having received a distribution plan with respect to reimbursing individuals for fuel costs, GoFundMe agreed to release \$1,000,000 from the total GoFundMe Donations. A newspaper article from CTV News dated January 27, 2022 summarizing these events, including a statement made by a GoFundMe representative to CTV News, is attached as **Exhibit “I”**.

25. On February 2, 2022, GoFundMe made a Direct Deposit from an External Source in the amount of \$1,000,000 to the Account (the “**GoFundMe Deposit**”, described above). A screenshot of the Direct Deposit made on February 2, 2022 is contained at **Exhibit “J”**⁸.

26. By February 2, 2022, the GoFundMe Donations reached approximately \$10,000,000. GoFundMe released a further statement indicating that it was considering the plan of

⁸ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

dissemination for the GoFundMe Donations. A copy of the GoFundMe statement dated February 2, 2022 is attached as **Exhibit “K”**.

27. On February 3, 2022, several organizers and participants in the cause, including Calgary lawyer Keith Wilson, engaged in a press conference to answer questions about the GoFundMe Donations. Among other things, Mr. Wilson explained that:

- (a) a group of lawyers and accountants were working to secure the intended recipients with access to the GoFundMe Donations;
- (b) the group had taken steps to incorporate on behalf of the Freedom Convoy organization, with the intention to have the GoFundMe Donations transferred to a bank account for the corporation, which would be overseen by lawyers and accountants and would have audit procedures in place; and
- (c) the GoFundMe Donations were currently being held in trust for the benefit of the cause.

A link to the CPAC interview from February 3, 2022 can be found here: [link](#). A copy of the video is also enclosed as **Exhibit “L”**.

28. On February 4 and 5, 2022, GoFundMe released statements on its website indicating that donors to the GoFundMe Campaign would be refunded their contributions. Copies of the GoFundMe statements from February 4 and 5, 2022 are attached as **Exhibit “M”**.

GiveSendGo Campaign is Launched

29. On February 4, 2022, a new fundraising campaign titled “Freedom Convoy 2022” was created through a fundraising platform called GiveSendGo (the “**GiveSendGo Campaign**”). A screenshot of the GiveSendGo Campaign homepage taken February 8, 2022 is attached as **Exhibit “N”**. A video address on the GiveSendGo Campaign homepage can be found here: [link](#). A copy of the video is also enclosed as **Exhibit “O”**.

30. The stated purpose of the GiveSendGo Campaign is to collect donations to “help with the costs of fuel first, and hopefully food and lodgings” for participants of the cause.

31. The dissemination process for donations is described as follows:

“[T]he good people at Give Send Go will be sending donations directly to our bulk fuel supplier and are working out the details now which means your hard earned money is going straight to who it was meant for and need not flow through anyone else. Any leftover donations will be donated to a credible Veterans organization which will be chosen by the donors.”

Direct Deposits into the Account

32. On or around January 18, 2022, individuals were invited to make donations to the cause via direct email transfer to the Account.

33. This invitation was made through various media forums, including Facebook and Twitter, and included the relevant banking information for the Account and Creditor Name (for example, the “Truck Convoy”).

34. For example, a number of videos posted on the publicly accessible Facebook page for a group called “Freedom Convoy 2022” discussed making donations via e-transfer:

- (a) In a video from end of January, 2022: An organizer of the group stated that the GoFundMe Campaign had raised almost \$1,000,000 in less than a week. While the group had only been prepared to handle a few thousand dollars, they were working hard to make sure that the funds were managed properly and going where they needed to go. The organizer also indicated that an avenue for e-transfers had been set up as per the listeners' requests. A copy of this video is enclosed in the USB, as **Exhibit "P"**.
- (b) In a video from January 23, 2022: An organizer of the group stated that the GoFundMe funds were on hold. As a backup plan, an e-transfer was set up "that's going into our account." The organizer advised that e-transfers could be made to "tbofconvoy2022@protonmail.com", which would go "straight into the account." A copy of this video is enclosed in the USB, as **Exhibit "Q"**.
- (c) In a video from end of January, 2022: An organizer of the group stated that individuals were still able to donate to GoFundMe or provide e-transfers to the email "tbofconvoy2022@protonmail.com." A copy of this video is enclosed in the USB, as **Exhibit "R"**.

35. Also for example, on January 24, 2022, an individual named Glen McGregor made a Twitter post indicating: "Tamara Lich say [*sic*] GFM is *not* frozen, but also invites direct email donations to this account". Mr. McGregor included a screenshot of an EMT page directing funds to the Account, through the Creditor "tbofconvoy2022@protonmail.com." The screenshot indicates that "Tamara Lee Lich uses Autodeposit" to accept funds. A copy of Mr. McGregor's tweet dated January 24, 2022 is attached as **Exhibit "S"**.

36. Before January 18, 2022, the Account had a nominal balance.

37. Commencing on January 18, 2022, numerous direct email transfers began to be made daily to the Account by the Depositors.

38. A copy of the Statement of Account for the Account between January 18, 2022 and February 10, 2022 (with the name and address of the First Account Holder and the Account number redacted) is attached as **Exhibit “T”**. Some key features are:

- (a) Approximately 3,000 Depositors made donations to the Account during that time;
- (b) On February 4, 2022 alone, approximately 927 different Depositors made donations to the Account;
- (c) Donations generally ranged in the amount of \$100-300, but some were up to \$2,000; and
- (d) Donations continued to be made into the Account even following the creation of the GiveSaveGo Campaign on February 4, 2022.

39. As of February 10, 2022 at 11:03, \$1,261,072.60 was held in the Account (the **“Deposited Funds”**, as defined above). The Deposited Funds are made up entirely by direct email transfers from the Depositors and the GoFundMe Deposit.

40. In addition to the funds held in the Account, funds have been transferred from the Account to a *second personal* bank account held jointly by the First Account Holder and the Second Account Holder (the **“Second Account”**, as defined above). Copies of the Financial Services Agreement and the Privacy Agreement for the Second Account, as signed by the First Account Holder and the Second Account Holder on February 1, 2022, are attached as **Exhibits “U1”⁹** and **“U2”¹⁰**. The same Financial Services Terms and Conditions effective January 1, 2022 contained at **Exhibit “B3”** applied to the Second Account.

⁹ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

41. Funds were transferred from the Account to the Second Account on four occasions: on January 31, 2022 a transfer of \$3,000; on February 1, 2022 two transfers of \$10,000; and on February 3, 2022 a transfer of \$129,342.03. The transferred funds were made up entirely from the Deposited Funds as held in the Account.

42. Two withdrawals of \$10,000 each (a total of \$20,000) were made from the Second Account on January 31, 2022. The first was a cash withdrawal and the second was a wire transfer to “Fillerup.ca”.¹¹ A copy of the account balance for the Second Account dated February 10, 2022 that shows the transfers and withdrawals is attached as **Exhibit “V1”**.¹² Copies of the receipts for the two withdrawals made on February 1, 2022 (with the First Account Holder’s name redacted) are attached as **Exhibit “V2”**.

43. Two additional transfers were made from the Account (without going through the Second Account). On January 31, 2022, a direct e-transfer of \$3,000 was made from the Account to an individual who appears to be a security guard in Ottawa. On February 1, 2022, \$3,000 was transferred from the Account to a *third personal* bank account held by the First Account Holder, and was immediately withdrawn as cash at a TD Branch in Ottawa. On February 3, 2022, an attempt to direct e-transfer \$3,000 out of the Account was unsuccessful. The Statement of Account contained at **Exhibit “T”** shows the transfers made from the Account on January 31, February 1, and February 3, 2022 (pp. 24, 25, 28 and 29).

¹⁰ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

¹¹ The wire transfer receipt at Exhibit “V2” shows the recipient as “Fillerup.ca”. It seems likely the intended recipient was “Fillerrup.ca”, which is a Mobile Energy Service in Ottawa, Ontario.

¹² This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

44. TD does not have any information about the Donors' intended use for the funds they have donated, other than what is generally available through statements made by the cause organizers on social media (as described herein).

45. TD has no information about the individual GoFundMe Contributors, as the GoFundMe Deposit was one lump sum. With respect to funds from both the Depositors and the GoFundMe Contributors, TD does not have the ability to determine who are the appropriate recipients of the Deposited Funds, or the extent to which the Deposited Funds should be distributed to the various recipients.

The Account and the Second Account Put on Hold

46. On January 28, 2022, a Branch Manager for TD reached out to the First Account Holder via telephone to discuss the status of the Account. The First Account Holder did not answer this call. The Branch Manager followed up with an email requesting that the First Account Holder contact TD, stating:

“I am following up by email as I have not been able to reach you by phone. I am reaching out in regard to your personal banking account, as I understand that you are receiving charitable donations via email money transfers.”

47. A copy of the email from the Branch Manager to the First Account Holder dated January 28, 2022, with the name and email of the First Account Holder redacted, is attached as **Exhibit “W”**.

48. On February 3, 2022, the TD Customer Problem Resolution department reached out to the First Account Holder and the Second Account Holder separately with identical emails requesting to discuss the status of the Account. The TD representative explained:

“We noticed that the funds you have received via Go Fund Me were recently deposited into your personal account. We need to speak with you to discuss specific account requirements for funds that have been collected in trust for beneficiaries.”

49. The email further noted that a temporary hold would be placed on the GoFundMe Deposit until such time that TD had an opportunity to speak to the Account Holders about those requirements. A copy of the email from the TD Customer Problem Resolution department dated February 3, 2022, with the name and email of the Account Holder redacted, is attached as **Exhibit “X”**.

50. On February 3, 2022, TD became aware that a large transfer of funds had been initiated between the Account and the Second Account. Accordingly, on February 4, 2022, a hold was also placed on the funds that had been transferred to the Second Account.

51. On February 4, 2022, the TD Customer Problem Resolution department reached out again to the First Account Holder and the Second Account Holder separately with identical emails. The TD representative explained that they had been “trying to reach you regarding activity in your personal bank account.” A copy of the email from the TD Customer Problem Resolution department dated February 4, 2022, with the name of the Account Holder redacted, is attached as **Exhibit “Y”**.

52. On February 5, 2022, the First Account Holder called the TD Customer Problem Resolution department and left a voicemail which stated, among other things, that the First Account Holder was looking to enquire about the hold placed on the Account, and that another individual was assisting with the finances relating to the Account (the “**Financer**”).

53. Also on February 5, 2022, the First Account Holder attended a TD Branch in Ottawa, Ontario. The First Account Holder requested to make a wire transaction out of the Account. This request was denied. A copy of the wire transfer request, including the intended beneficiary of the funds, is attached as **Exhibit “Z”**.

54. On February 6, 2022, the TD Customer Problem Resolution Department reached the First Account Holder and the Financer by phone. The First Account Holder advised that they were working with a lawyer and an accountant with respect to management of the Deposited Funds, and requested an application to open an account for a business.

55. On February 7, 2022, the Financer called the TD Customer Problem Resolution department and left a voicemail requesting a call back. TD returned this call on February 8, 2022, but did not reach the Financer.

56. On February 10, 2022, a TD representative spoke to the First Account Holder and the Financer by telephone. During this call, TD was not made aware of any satisfactory plan for the dissemination of the Deposited Funds.

57. Accordingly, on February 10, 2022 at 11:03, TD implemented a freeze on both the Account and the Second Account. Screenshots of the account history for the Account and the Second Account, showing the freeze implemented on February 10, 2022, are attached as **Exhibit “AA”**.¹³ A screen shot of the final balances in the Account and the Second Account

¹³ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

at the time of the freeze is attached as **Exhibit “BB”** (with non-relevant information relating to two additional personal accounts held by the First Account Holder redacted).¹⁴

TD Receives Requests for Customer Refunds

58. Beginning on February 4, 2022, numerous TD customers began contacting the TD North American Customer Operations department (also known as the Canadian Banking Contact Centre) via email and telephone to request refunds for the donations they made to GoFundMe using their TD credit cards. To date, TD has received approximately 200 of these requests, which continue to be made on a daily basis.

59. I have been advised by the Disputes department that TD is not able to automatically refund credit card charges. Contested transactions are resolved through the Payment Network Systems. Both issuing and acquiring Banks have payment network defined rules that must be followed as part of the dispute resolution process. Once a dispute is initiated, the merchant has 30 days for Visa and 45 days for Mastercard to respond to a dispute. If the merchant accepts or fails to respond to a dispute the payment network will assign financial liability onto the acquiring Bank. Before a dispute case can be initiated, the cardholder must request a refund with GoFundme directly. If the merchant does not agree to issue a refund, TD must allow 15 days before it can initiate a dispute.

60. Examples of refund requests from TD customers are appended to this affidavit. Screenshots of three emails from TD customers requesting refunds for their GoFundMe

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donations are attached as **Exhibit “CC”**.¹⁵ A summary of five voicemails from TD customers similarly requesting refunds, prepared by the TD Business Operations & Specialized Support department, is attached as **Exhibit “DD1”**, and the underlying audio files are attached as **Exhibits “DD2”, “DD3”, “DD4”, “DD5”, and “DD6”**.¹⁶

61. At a high level, the TD customers stated the following on the enclosed calls:

Exhibit	Date	Request
“DD2” (020422_901)	February 4, 2022	Request to be refunded a \$25.26 transaction for a donation to GoFundMe via TD credit card.
“DD3” (020422_1058)	February 4, 2022	<p>Request to be refunded \$100 and two \$25 transactions for donations made to GoFundMe via TD credit card.</p> <p>The TD customer was concerned about the 15 day wait period to receive a refund. The TD customer understood GoFundMe was going to transfer funds out of the GoFundMe account by February 19, 2022, and the TD customer did not want their donation to be transferred elsewhere. The TD customer stated that they did not receive support through GoFundMe.</p> <p>The TD customer stated: “If I give someone something in good faith under contract, and the contract is not fulfilled, you have to legally give me my money back. Somewhere someone must be able to rectify the situation. If they [GoFundMe] can’t do it on their end, I trust that you [TD] as my service provider would advocate for me to get me my money back.”</p> <p>And further: “They [GoFundMe] are saying the money is not going to be there in 15 days, but if they’re not giving it back to me, it’s going somewhere else, and</p>

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¹⁶ All of these exhibits contain personal and confidential information. Accordingly, they will be filed separately with the Court, and TD will be seeking a sealing order in respect of them.

		that's not what I donated my money for."
"DD4" (020522_756)	February 5, 2022	Request to be refunded a \$100 transaction for a donation to GoFundMe via TD credit card. Two TD representatives privately discussed whether a charitable donation could be refunded through TD. They noted that it may be difficult to file a dispute or seek a cancelation for a donation. The dispute process requires the TD customer to reach out to the merchant (GoFundMe) first before going through TD disputes. These instructions were relayed to the TD customer.
"DD5" (020522_918)	February 5, 2022	Request to be refunded a \$112.50 transaction for a donation to GoFundMe via TD credit card.
"DD6" (020522_921)	February 5, 2022	Request to be refunded a \$57.50 transaction for a donation to GoFundMe via TD credit card. The TD customer requested a refund because she was concerned that GoFundMe was not using her donation as intended. The TD customer found GoFundMe's refund process to be slow and unreliable and asked TD to issue the refund before GoFundMe transferred the funds out of their account on February 19, 2022.

62. Critically however, GoFundMe deposited a portion of the funds raised into the First Account (\$1,000,000). TD is unable to determine whether the funds that TD customers seek to have returned to their credit cards make up a portion of these transferred funds.

63. On February 12, 2022, a TD customer contacted the TD North American Customer Relations department via email requesting a reimbursement of funds that were sent via direct e-transfer to the First Account Holder. Screenshots of the email dated February 12, 2022 and response are attached as **Exhibit "EE"**.¹⁷

¹⁷ This exhibit contains personal and confidential information. Accordingly, it will be filed separately with the Court, and TD will be seeking a sealing order in respect of it.

Requirements of Rule 43.03(1)(4) of the Rules of Civil Procedure

64. Pursuant to the requirements of Rule 43.03(1)(4) of the *Rules of Civil Procedure*, I confirm the following:

- (a) TD has no beneficial interest in the Deposited Funds. However, TD cannot divest itself of the Deposited Funds because it has received no guidance as to where or how the Deposited Funds should be distributed. TD is not in a position to make that determination. Further, even if there was a plan for dissemination, TD is not able to implement or monitor the plan to ensure it was carried out in accordance with the Donors' intentions.
- (b) TD has not colluded with any of the potential claimants to the Deposited Funds.
- (c) TD is willing to deposit the Deposited Funds from within the Account with the Court or to dispose of the Deposited Funds as the Court directs.

SWORN BEFORE ME:

in person

by video conference

by **TD Representative** at the City of Toronto, before me on February 15, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits

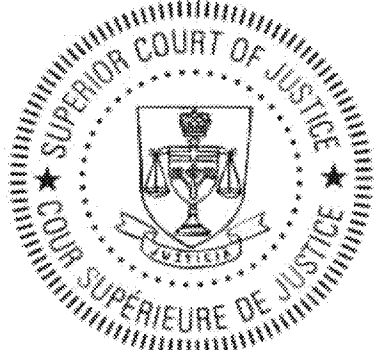


Signature of Commissioner (or as may be)
Leah Ostler

TD Representative

Signature of Deponent, **TD Representative**

Tab B



Court File No.: CV-22-00088514-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued:
Délivré par voie électronique
Ottawa

HONOURABLE REGIONAL)

WEDNESDAY, THE 9TH

SENIOR JUSTICE C. MACLEOD)

DAY OF MARCH, 2022

B E T W E E N :

ZEXI LI, HAPPY GOAT COFFEE COMPANY INC., 7983794 ONTARIO INC.,
(c.o.b.) as UNION: LOCAL 613 and GEOFFREY DEVANEY

Plaintiffs

- and -

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING, JAMES BAUDER, BRIGITTE BELTON, DANIEL BULFORD, DALE ENNS, CHAD EROS, CHRIS GARRAH, MIRANDA GASIOR, JOE JANSEN, JASON LAFACE, TOM MARAZZO, RYAN MIHILEWICZ, SEAN TIESSEN, NICHOLAS ST. LOUIS (a.k.a. @NOBODY CARIBOU), FREEDOM 2022 HUMAN RIGHTS AND FREEDOMS, JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, JOHN DOE 10, JOHN DOE 11, JOHN DOE 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15, JOHN DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20, JOHN DOE 21, JOHN DOE 22, JOHN DOE 23, JOHN DOE 24, JOHN DOE 25, JOHN DOE 26, JOHN DOE 27, JOHN DOE 28, JOHN DOE 29, JOHN DOE 30, JOHN DOE 31, JOHN DOE 32, JOHN DOE 33, JOHN DOE 34, JOHN DOE 35, JOHN DOE 36, JOHN DOE 37, JOHN DOE 38, JOHN DOE 39, JOHN DOE 40, JOHN DOE 41, JOHN DOE 42, JOHN DOE 43, JOHN DOE 44, JOHN DOE 45, JOHN DOE 46, JOHN DOE 47, JOHN DOE 48, JOHN DOE 49, JOHN DOE 50, JOHN DOE 51, JOHN DOE 52, JOHN DOE 53, JOHN DOE 54, JOHN DOE 55, JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59, JOHN DOE 60, JANE DOE 1 and JANE DOE 2

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(directing payment to the Escrow Agent of funds held by The Toronto-Dominion Bank)

THIS MOTION, made by TD Bank for an order directing the Deposited Funds to be paid to the Escrow Agent, was heard this day by Zoom videoconference at Ottawa, Ontario.

ON READING the Fletcher Affidavit, upon being advised of the consent of the Plaintiffs, the Mareva Respondents, the Attorney General of Ontario, the Escrow Agent and TD Bank, and on hearing the submissions of counsel for TD Bank and such other counsel as appeared:

Definitions

1. **THIS COURT ORDERS** that in this order:

- (a) **“Deposited Funds”** means the sum of \$1,393,406.98, which consists of direct email transfers by individuals and a lump sum transfer from GoFundMe, Inc. and which is currently on deposit with TD Bank in two personal bank accounts, as described in the Fletcher Affidavit.
- (b) **“Escrow Agent”** has the meaning ascribed to it in the Order Varying and Extending the Mareva Injunction.
- (c) **“Escrow Assets”** has the meaning ascribed to it in the Order Varying and Extending the Mareva Injunction.
- (d) **“Fletcher Affidavit”** means the affidavit of Virginia Fletcher sworn March 8, 2022.

- (e) **“Mareva Respondents”** has the meaning ascribed to it in the Order Varying and Extending the Mareva Injunction.
- (f) **“Order Varying and Extending the Mareva Injunction”** means the order of this Court in this action dated February 28, 2022.
- (g) **“Plaintiffs”** means the plaintiffs in this action.
- (h) **“TD Bank”** means The Toronto-Dominion Bank.
- (i) **“TD Bank Interpleader Application”** means the application brought by TD Bank in the Ontario Superior Court of Justice (Commercial List) under Court File. No. CV-22-00676865-00CL.

Payment of the Deposited Funds to the Escrow Agent

- 2. **THIS COURT ORDERS** that TD Bank shall pay the Deposited Funds to the Escrow Agent.
- 3. **THIS COURT ORDERS** that after payment of the Deposited Funds to the Escrow Agent:
 - (a) The Deposited Funds will be added to the Escrow Assets and thereafter dealt with by the Escrow Agent in the same manner as the Escrow Assets, as directed by the Order Varying and Extending the Mareva Injunction and by any further order of this Court.
 - (b) The liability of TD Bank in respect of the Deposited Funds is extinguished.

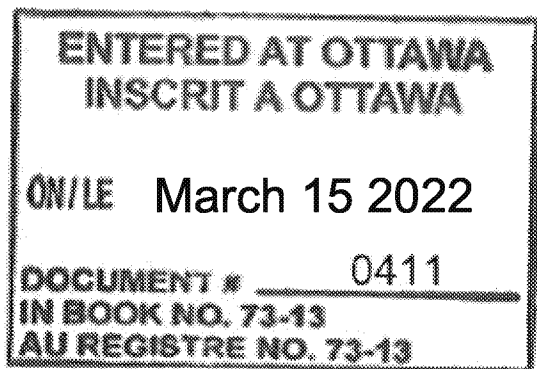
(c) The Application on the Commercial List No. CV-22-00676865-00CL is hereby stayed.

Notice to Attorney General

4. **THIS COURT ORDERS** that no order shall be made permitting the release of the funds covered by this order from the control of the Escrow Agent except on Twenty-One (21) days notice to the Attorney General of Ontario.

Costs

5. **THIS COURT ORDERS** that there is no order as to costs in respect of this order.



C. MacLeod RSQ

ZEXI LI, et al. CHRIS BARBER, et al.
Plaintiffs and Defendants

Court File No. CV-22-00088514-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

ORDER

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