

07-CV-341987PD2  
(Court file no.)

(Court seal)

*Courts of Justice Act*  
STATEMENT OF CLAIM (GENERAL)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**CIVIL**  
**393 University Ave – 10<sup>th</sup> Fl**  
**Toronto ON M5G 1E6**

BETWEEN:

Plaintiff

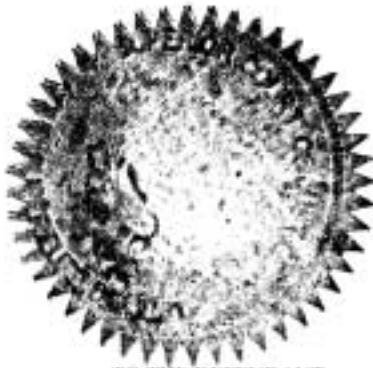
**GANA KIRITHARAN**

and

Defendant

**TD CANADA TRUST**

STATEMENT OF CLAIM



TO THE DEFENDANT

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.

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.

Date Oct 18/02

Issued by

S. Sadeghi  
Local registrar

Address of  
court office: SUPERIOR COURT OF JUSTICE  
393 UNIVERSITY AVE  
10<sup>TH</sup> FLOOR  
TORONTO, ONTARIO  
M5G 1E6

**TO:**

TD Canada Trust,  
P. O. Box 1,  
Toronto-Dominion Center,  
Toronto ON M5K 1A2.

**CLAIM**

1. The plaintiff (Gana Kiritharan) claims from Defendant (TD Canada Trust) following details for each account managed under his name in the bank, for which he is entitled in Canadian Bill of Rights and Law of Canada.

Details he claims for each account as follows:

1. Name or Type of the Account.
2. Number of the Account.
3. When Account was opened?
4. When Account was closed?
5. Why account was closed?
6. How account was balanced (made 0.00) at closure?

Duration of Details being claimed:

From: Earliest date possible according to TD Canada Trust record management policy respecting appropriate section of Canadian Banking Act and Canadian Regulations.

Till: To the latest date accounts were managed under Gana Kiritharan's name.

According to the detail being provided Gana Kiritharan may claim for more detail of each account for specific period of time

**Reasons for the Claim:**

2. During November 2004 – March 2005 period, when plaintiff visited TD Canada Trust branches in Scarborough area for regular banking transactions tellers tried to print some additional information in a separate sheet and attach it to the sheet plaintiff supposed to sign for his regular banking. Some times this additional information got printed on the back of the transaction sheet plaintiff supposed to sign. Though plaintiff tried to have a look into this additional information, banking staff prevented him from doing so. This leads to a question whether bank has some financial information of Gana Kiritharan's financial life which was not disclosed to him. (Document 1 Civil.)

3. Also, due to some unexpected financial situation, plaintiff stopped monthly payment for his line credit with TD Canada Trust around March 2005. But when plaintiff took a credit report in August 2006 his line of credit is reported as follows (Balance 0.00, Closed Consumer's Request.):

Reported	Opened	Last Activity	High Credit	Balance	Past Due Terms Amount	Account Type/Current Payment	Payment History
							30 60 90 #m
TORONTO DOMINION BANK							
Oct 01, 2005	May 2002	Oct 2005	11,000	0	0	346/Month R5 REVOLVING AT LEAST 120 DAYS OVERDUE	1 1 5 42
Comments: CLOSED CONSUMER'S REQUEST, LINE OF CREDIT							

It is being reported without any change as above on repeated TransUnion Credit Reports until now. When Gana Kiritharan inquired TransUnion for the accuracy of the way being reported they did not make any change the way it is being reported.

Also, according to information collected from TD Canada Trust, there were transactions in Gana Kiritharan's Line of Credit is September - October 2005 as follows.

Date	Trans Description	Trans Amount	Balance
09/30/2005	Interest	82.01 DR	11,561.83-
10/19/2005	Interest	49.89 DR	
10/19/2005	Collection Item	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00

According to some experienced people above recording represent TD Bank made a appropriation from funds belong to Gana Kiritharan and closed his account. But according to Gana Kiritharan's personal financial information he did not have 11,611.72 Dollars in Canada on October 19<sup>th</sup> 2005. This leads to a question, whether TD Canada Trust has some concealed money belong to Gana Kiritharan or at least has some information regarding concealed money belong to him. (Document 2 Civil.)

4. Plaintiff has sent 3 inquiry letters to TD Canada Trust regarding his concern between 12 March 2007 and 12 July 2007. Bank not only failed to address his concerns fairly, but gave him a confusing reply, by saying he is still has to pay for his line of credit for full amount. This reply contradicts the way his line of credit being reported in his credit report. Again, plaintiff hired services of CB Associate & Consultancy to correspond regarding his line of credit with TD Canada Trust between 7<sup>th</sup> September 2007 and 16<sup>th</sup> of October 2007. They also failed to give any clear explanation for Gana Kiritharan. (Document 3 Civil.)

(Date of issue)

18<sup>th</sup> October 2007

(Name, address and telephone number of solicitor or plaintiff)

Gana Kiritharan  
307 – 10 StoneHill Court  
Scarborough ON M1W 2X8  
Tel: 416 – 820 - 8581

RCP-E 14A (November 1, 2005)

(Short Title of Proceedings)

Court File No

07-CV-341987P02

**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

(Name, Address & Telephone No.  
of Solicitor or Party)

Gana Kiritharan  
307 – 10 StoneHill Court  
Scarborough ON M1W 2X8  
TEL: 416 – 820 8581

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**GANA KIRITHARAN**

Plaintiff

-and-

**TD CANADA TRUST**

Defendant

**STATEMENT OF DEFENCE AND COUNTERCLAIM  
OF THE DEFENDANT, TD CANADA TRUST**

1. The Defendant, TD CANADA TRUST, denies all the allegations contained in paragraphs 1, 2, 3 and 4 and the relief claimed in paragraph 1 of the Statement of Claim.
2. The Defendant pleads that the action commenced herein by the Plaintiff is frivolous and vexatious and has not advanced a cause of action known to law.
3. The Defendant pleads that the action herein ought to be dismissed as against the Defendant, with costs to the Defendant on a substantial indemnity scale.

## COUNTERCLAIM

4. The Defendant claims from the Plaintiff:
  - a. The sum of \$12,639.07;
  - b. Interest on the total sum of \$12,639.07 at the rate of 4.25% per annum from November 19, 2007 to the date of payment or judgment.
  - c. Pre-judgment and post-judgment interest at the rate of 4.25% per year.
  - d. Costs of this action on a Solicitor and Client basis.
  - e. Such further and other relief as this Honourable Court may deem just.
  
5. The Defendant claims from the Plaintiff:
  - a. The sum of \$3,333.29;
  - b. Interest on the total sum of \$3,333.29 at the rate of 21.00% per annum from November 19, 2007 to the date of payment or judgment.
  - c. Pre-judgment and post-judgment interest at the rate of 21.00% per year.
  - d. Costs of this action on a Solicitor and Client basis.
  - e. Such further and other relief as this Honourable Court may deem just.

***Line of Credit No. 4457424***

6. By agreement in writing dated on or before May 22, 2002, the Plaintiff agreed with the Defendant to establish a credit facility by way of the provision of a line of credit solely for the benefit of the Plaintiff.
7. Pursuant to the aforesaid agreement, the Defendant advanced monies at the request of the Plaintiff. All such advances were made solely for the benefit of the Plaintiff and at an interest rate agreed upon as between the parties.
8. Full particulars of the said advances and interest thereon were provided to the Plaintiff.
9. Despite repeated requests no payments were made towards the outstanding line of credit account subsequent to March 3, 2005.
10. Default in payment pursuant to the terms of the agreement occurred on or before April 3, 2005.
11. On October 15, 2005 the total amount of \$11,611.72 that was due and owing was written off for accounting purposes.
12. The overdue account was closed and sent to a collection agency for recovery and despite several attempts no payments have been made towards the account.

13. As of October 15, 2005, the interest rate agreed upon between the parties was 4.25% per annum.
14. As of November 19, 2007, the total due and owing to the Defendant with respect to Line of Credit No. 4457424 is as follows:

Principal as of October 19, 2005	\$11,611.72
Interest to November 19, 2007	\$ 1,027.35
Total Due as of November 19, 2007	<u>\$12,639.07</u>

***TD Visa Emerald Card No. 4520-0500-0241-3878***

15. By agreement in writing dated September 5, 2000, the Plaintiff agreed with the Defendant to establish a credit facility by way of the provision of a TD Visa solely for the benefit of the Plaintiff.
16. Pursuant to the aforesaid agreement, the Defendant advanced monies at the request of the Plaintiff. All such advances were made solely for the benefit of the Plaintiff and at an interest rate agreed upon as between the parties.
17. Monthly statements with full particulars of the said advances and interest thereon were provided to the Plaintiff.



18. Default in payment pursuant to the terms of the agreement occurred on or before May 26, 2005 and still continues.
19. As of October 31, 2005, the interest rate agreed upon between the parties was 21.00% per annum.
20. The total amount outstanding on the visa account was \$2,329.63 and this amount was written off on October 31, 2005 for accounting purposes.
21. As of November 19, 2007, the total due and owing to the Defendant with respect to TD Visa Card No. 4520-0500-0241-3878 is as follows:

Principal as of October 31, 2005	\$2,329.63
Interest to November 19, 2007	<u>\$1,003.66</u>
Total Due as of November 19, 2007	\$3,333.29

Date: November 19, 2007

**FLUXGOLD IZSAK JAEGER LLP**

Barristers & Solicitors  
100 York Boulevard, Suite 220  
Richmond Hill, Ontario  
L4B 1J8

Phone: (905) 763-3770

Fax: (905) 763-3772

Susan Rai  
Solicitor for the Defendant,  
TD Canada Trust

**TO: GANA KIRITHARAN**  
307 – 10 Stonehill Court  
Scarborough, Ontario  
M1W 2X8  
Tel: 416-820-8581

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

GANA KIRITHARAN

**Plaintiff(s)**

**-and-**

TD CANADA TRUST

**Defendant(s)**

**REPLY AND DEFENCE TO COUNTERCLAIM**

1. The Plaintiff, Gana Kiritharan, denies the allegations contained in paragraphs 2 and 3 of the statement of defence.
2. The Plaintiff pleads that his claim and allegations are based on incidents experienced when he went for banking with the Defendant, account details provided by the Defendant and TransUnion Canada credit reports. Calling them "frivolous and vexation" is refusal to accept the truth and just an attempt to conceal some important information regarding Plaintiff financial life and his intellectual contribution and successes.

3. The Plaintiff pleads that his claim for account details from the Defendant well guaranteed by Canadian Bill of Rights and Law of Canada. Calling it “has not advanced a cause of action known to law” shall be considered an attempt to deny fundamental rights and legal rights to him. Following may be appropriate excerpts for necessary legal documents.

**A. From of Canadian Bill of Rights.**

**Part 1**

*1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,*  
*(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law*

**B. From Bank Act**

***Bank records***

**238.**

***Additional records***

*(2) In addition to the records described in subsection (1), a bank shall prepare and maintain adequate*

*(c) records showing, for each customer of the bank, on a daily basis, particulars of the transactions between the bank and that customer and the balance owing to or by the bank in respect of that customer.*

***Protection of records***

**244.** *A bank and its agents shall take reasonable precautions to*

- (a) prevent loss or destruction of,*
- (b) prevent falsification of entries in,*
- (c) facilitate detection and correction of inaccuracies in, and*
- (d) ensure that unauthorized persons do not have access to or use of information in the registers and records required or authorized by this Act to be prepared and maintained.*

***Complaints***

***Procedures for dealing with complaints***

**455.** *(1) A bank shall*

- (a) establish procedures for dealing with complaints made by persons having requested or received products or services in Canada from a bank;*

***Information on contacting Agency***

**456.** *(1) A bank shall, in the prescribed manner, provide a person requesting or receiving a product or service from it with prescribed information on how to contact the Agency if the person has a complaint about a deposit account, an arrangement referred to in subsection 452(3), a payment, credit or charge card, the disclosure of or manner of calculating the cost of borrowing in respect of a loan or about any other obligation of the bank under a consumer provision.*

4. Though Defendant refuse to respect the claim for account detail, through Counterclaim Defendant has provided some account information. Plaintiff summarizes the information already provided. He also explains with which information he agrees and with which information he did not agrees. Also for easy understanding of the Court Plaintiff provides the details of claim of account details, he still expecting from the Defendant.

5. **Following Account Details are being provided through Counterclaim.**

<b>A.</b> a) Account Name or Type:	<b>Line of Credit</b>
b) Account Number:	1625 - 4457424
c) Opened On:	May 22, 2002
d) Closed On:	October 15 or 19, 2005.
e) Reason For Closure:	Default in Payments
f) How Account was Balanced:	By Writing off.

For the purpose of Reply Plaintiff agree with the information provided on section “a”, “b”, “c”, “e”. Plaintiff brings to the attention of the Court there is confusion on section “d” according to Defendant’s Counterclaim. Plaintiff dispute the section “f”. As explained in Paragraph 3 of Statement of Claim this account was closed by crediting for full amount by money which was debited from concealed fund belong to Plaintiff. Defence for the Counterclaim explained in Defence for Counterclaim section of this Document.

<b>B.</b> a) Account Name or Type:	<b>TD Visa Emerald Card</b>
b) Account Number:	4520 0500 0241 3878
c) Opened On:	September 5, 2000
d) Closed On:	October 31, 2005.
e) Reason For Closure:	Default in Payments
f) How Account was Balanced:	By Writing off.

For the purpose of Reply Plaintiff agree with the information provided on section “a”, “b”, “c”, “d”, “e”, “f”. Defence for the Counterclaim explained in Defence for Counterclaim section of this Document.

### **Plaintiff Still Claiming Following Account Information from Defendant**

- C.** a) Account Name or Type: **Value Account. (Checking Account)**  
b) Account Number: 5926 – 0278 – 318810  
c) Opened On: February or March, 1999

Plaintiff opened above account when he first came to Canada. When stop banking with TD Canada Trust around March 2005 Plaintiff did not close the account and left 2 Dollars as balance. But due to some account charges an Over Draft started to build up. According to Latest Monthly Statement (May 2005) Plaintiff has, there was a 101.77 Dollars Over Draft. Plaintiff claims the information from Defendant why and when this account was closed, when this account was closed and how the over draft amount was balanced.

- D.** a) Account Name or Type: **Saving Account**  
b) Account Number: Not Available  
c) Opened On: Around June - August, 1999  
d) Closed On: Around September – October , 2000.  
e) Reason For Closure: Request By Plaintiff.  
f) How Account was Balanced: By Retuning the Balance as Cash to Plaintiff.

Plaintiff opened above account in Canada Trust bank when TD and Canada Trust banks were separate. Plaintiff opened above account for the saving purposes. Plaintiff used the name “Kiritharan Kanagalingam” (Name Used by Plaintiff before Legal Name Change on February 2002) for above account. Plaintiff claims from Defendant complete information of above account.

- E.** a) Account Name or Type: **Investment Account.**  
b) Account Number: 436031A and ? 436031B  
c) Opened On: Around May – June, 2002

Plaintiff never made investments using above account. When stop banking with TD Canada Trust Plaintiff did not left any money in above accounts. Plaintiff claims from Defendant complete information of above account.

6. Plaintiff pleads that from available evidences which were mentioned in paragraphs 2 and 3 of Statement of Claim, there is enough reason to believe that there are additional financial information regarding Plaintiff financial life is available in TD Canada Trust. This additional information may be an account other than explained in Paragraph 5 of this reply.
7. The Plaintiff pleads that for better understanding of the Court and other Judicial Departments of What may have happened and, Why Plaintiff claiming account details from Defendant, Plaintiff has prepared a Demonstrative Worst Case Scenario of what may have happened from his experiences during past few years and available evidences (Document 5 Civil).
8. The Plaintiff pleads that the Demonstrative Worst Case Scenario includes information provided my Toronto Police Department when Plaintiff visited 42 Division of Toronto Police Department with the Idea that the TransUnion Credit report may be an incident of Forgery.
9. The Plaintiff pleads that if the actual incident happened was some thing similar to the prepared Demonstrative Worst Case Scenario, it is not only violation of several sections of Bank Act, but also violation several sections of Criminal Code.
10. The Plaintiff pleads that the Defence for the Statement of Claim herein ought to be dismissed as against the Plaintiff, with cost to the Plaintiff on a substantial indemnity scale and request the court to order the Defendant to provide the account details claimed in Paragraph 1 of the Statement of Claim or Paragraphs 5 and 6 of this reply with out any further delay.

## **DEFENCE TO COUNTERCLAIM**

11. The Defendant to the Counterclaim denies the allegations contained in paragraphs 4, 5, 11, 12, 13 and 14 and the relief claimed in paragraphs 4 and 5 of the Counterclaim.
12. Defendant to the Counterclaim pleads that Plaintiff to the Counterclaim in Paragraph 18 admitted they have discovered default of payment for the TD Visa Emerald Card No. 4520 0500 0241 3878 on or before May 26, 2005.
13. Defendant to the Counterclaim pleads that as the second Anniversary of Discovery of default of payment date has passed, according to Limitation Act, Plaintiff to the Counterclaim has lost the right to bring a claim mentioned in Paragraph 5 against Defendant to Counterclaim.
14. Defendant to the Counterclaim pleads that Paragraphs 4, 11, 12, 13 and 14 of Counterclaim are attempt to Fraudulently Mislead this court by Plaintiff to Counterclaim.
15. Defendant to the Counterclaim pleads that as explained in Paragraph 3 of Statement of Claim according to available evidences his Line of Credit with TD Canada Trust (Account No. 1625 – 4457424) was closed by making appropriation from concealed funds belong to Defendant to Counterclaim.
16. Defendant to the Counterclaim pleads that when he approached TD Canada Trust regarding his Line of Credit on 3<sup>rd</sup> of April 2007, he got informed his balance on that day was 12,673.70 and the interest is being charged on daily basis. Again on 10<sup>th</sup> May 2007 TD Canada Trust informed him his balance on that day was 12,770.41 and the interest rate being charged is 7.5%.
17. Defendant to the Counterclaim pleads that the said interest rate may explain how

12,673.70 on 3<sup>rd</sup> of April 2007 becomes 12,770.41 on 10<sup>th</sup> of May 2007 but it will not explain how 11,611.72 on 15<sup>th</sup> or 19<sup>th</sup> October 2005 become 12,673.70 on 3<sup>rd</sup> of April 2007.

18. Defendant to the Counterclaim pleads that he has brought this issue to the attention of the TD Canada Trust on a subsequent letter.
19. Defendant to the Counterclaim pleads that now TD Canada Trust bringing a new interest rate, that is 4.25% on Paragraph 13 of the Counterclaim.
20. Defendant to the Counterclaim pleads that this new interest rate is an attempt conceal their previous mistake in interest calculation.
21. Defendant to the Counterclaim pleads that due to the reasons explained in the paragraphs 11 to 20 of this Defence to Counterclaim, this Counterclaim herein ought to be dismissed as against the Defendant to Counterclaim, with cost to the Defendant to the Counterclaim on a substantial indemnity scale.

Date: December 5, 2007

**Gana Kiritharan**  
307 – 10 Stonehill Court  
Scarborough, Ontario  
M1W 2X8  
Tel: 416 – 820 – 8581

**TO: Susan Rai,**  
**Solicitor for the Defendant, TD Canada Trust,**  
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RCP-E 27C (November 1, 2005)