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Class Actions : The Conversion Rate Tale Reaches it's Final Chapter

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On September 19, 2014, the Supreme Court of Canada issued its ruling in the so called “banks’ cases”[1], in the context of which consumers instituted class actions to recover the conversion fees charged on credit card transactions in foreign currencies by many institutions issuing such cards. The plaintiffs were maintaining that these charges were contravening the *Consumer Protection Act* (Quebec) (the “CPA”).

In these decisions, the Supreme Court had to rule, among other things, on the following issues:

> 1) The necessity for class representatives in class actions to have a direct cause of action against each defendant in order to have the required standing to sue all of them;
>
> 2) Whether the CPA applies to banks in view of *The Constitution Act*, 1867;
>
> 3) The right of the class members to obtain the reimbursement of the conversion fees they had paid and, in the case of some of the banks, the payment of punitive damages.

As to the first question, the Court decided that the class representatives had the standing to sue all the banks, noting that the *Code of Civil Procedure* (Quebec) (the “CCP”) allows the exercise of a class action even where the representative does not have a direct cause of action against or a legal relationship with each defendant where the remedy allows for getting a similar result in the case of each defendant.

As to the second question, the Court examined whether sections 12 and 272 of the CPA, which apply to the disclosure of the charges in question and set out the possible remedies in the event these obligations are not complied with, impair the federal jurisdiction over banks. The Court was of the view that a disclosure requirement for certain charges ancillary to one type of consumer credit neither impairs nor significantly trammels the manner in which Parliament’s legislative jurisdiction over bank lending can be exercised.

Accordingly, since the Court concluded that the banks had in fact contravened the provisions of the

CPA and that such law applied to them in this respect, it decided that the class members should be granted a reduction of their obligations equal to the conversion fees charged during the period when they were not disclosed in accordance with the CPA.

Lastly, the Court ordered some of the defendant banks to pay punitive damages to class members since, in its view, they contravened the CPA for many years without explanation, likening this behavior to a lax, passive or ignorant attitude in respect of consumer rights and their own obligations, or to a behavior tantamount to ignorance, carelessness or serious negligence.

Lavery will shortly publish a more detailed analysis of these three decisions, which will certainly have a significant impact on consumer law and the application of some principles which apply to class actions as a procedural vehicle.

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[1] *Bank of Montreal v. Marcotte*, 2014 SCC 55, *Amex Bank of Canada v. Adams*, 2014 SCC 56, and *Marcotte v. Fédération des caisses Desjardins du Québec*, 2014 SCC 57