

Financial Services Flash

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Quebec's *Consumer Protection Act* is Constitutionally Applicable to Banks

By Daniel Everall*

On September 9, 2014, the Supreme Court of Canada (the “**Court**”) issued a trilogy of decisions involving the application of Quebec’s *Consumer Protection Act* (“**CPA**”) fee disclosure rules to credit card agreements. In *Bank of Montreal v Marcotte*, *Amex Bank of Canada v Adams* and *Fédération des caisses Desjardins du Québec*, the Court held that (1) despite not having a direct cause of action against each defendant, the representative plaintiffs had standing, (2) conversion charges associated with foreign currency credit card transactions had to be disclosed pursuant to s. 12 of the *CPA*, and (3) Banks who violated these *CPA* fee disclosure rules could be liable for reimbursement of such fees and for punitive damages pursuant to s. 272 of the *CPA*.

In these cases, the representative plaintiffs were seeking relief against conversion charges incurred through foreign currency transactions completed with their credit cards. As the charges were not disclosed in the original credit card agreements, it was alleged that the conversion charges did not comply with the fee disclosure requirements under s. 12 of the *CPA*. The plaintiffs sought reimbursement of the charges and an award of punitive damages pursuant to s. 272 of the *CPA*.

The Court held that the plaintiffs had standing per Quebec’s *Code of Civil Procedure*, as they had a “sufficient interest.” The Court then stated that the constitutional doctrines of interjurisdictional immunity and paramountcy did not apply so as to prevent the application of Quebec’s *CPA* as the provisions considered did not impair or conflict with federal

laws. Rather, both the disclosure rules and remedial provisions of the *CPA* were found to be analogous to the substantive rules of contract and therefore were considered supportive of the federal banking scheme. Banks found in violation of the fee disclosure rules were found liable for reimbursement and, in certain cases, punitive damages pursuant to s. 272 of the *CPA*.

The Court demonstrated a broad interpretation of the provinces’ possible jurisdiction over banks and other federally regulated businesses. Going forward, banks should consider whether provincial laws of general application, particularly consumer protection laws, have created further compliance obligations. For example, Ontario’s *Consumer Protection Act* has provisions on disclosure rules governing credit cards and credit agreements. Banks must reassess the sufficiency of their disclosure in such agreements, as the Court has opened the possibility that banks may be subject to requirements and remedies based in provincial consumer protection legislation.

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*Daniel is an articling student at Aird & Berlis LLP