

CITATION: Bancroft-Snell v. Visa Canada Corp., 2021 ONSC 8126
COURT FILE NO.: CV-11-426591
DATE: 20211210

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
JONATHON BANCROFT-SNELL and)
1739793 ONTARIO INC.) *Luciana P. Brasil and Ruby Egit for the*
) *Plaintiffs*
)
Plaintiffs)
)
- and -)
)
)
VISA CANADA CORPORATION,) *Katherine L. Kay and Geoffrey Cowper, Q.C*
MASTERCARD INTERNATIONAL) *for the Defendants BMO Financial Group,*
INCORPORATED, BANK OF) *Bank of Nova Scotia, Royal Bank of*
AMERICA CORPORATION, BANK OF) *Canada, and Toronto-Dominion Bank*
MONTREAL, BANK OF NOVA) *Cynthia Spry for Class Member Wal-mart*
SCOTIA, CANADIAN IMPERIAL) *Canada Corp.*
BANK OF COMMERCE, CAPITAL)
ONE FINANCIAL CORPORATION,)
CITIGROUP INC., FEDERATION DES)
CASSES DESJARDINS DU QUEBEC,)
NATIONAL BANK OF CANADA INC.,)
ROYAL BANK OF CANADA, and)
TORONTO DOMINION BANK)
)
)
Defendants)
)
Proceeding under the *Class Proceedings*) **HEARD:** December 6, 2021
Act, 1992)

PERELL, J.

REASONS FOR DECISION

[1] On May 16, 2011, in Ontario, pursuant to the *Class Proceedings Act, 1992*,¹ the Plaintiffs Jonathon Bancroft-Snell and 1739793 Ontario Inc., commenced a proposed class action against Visa Canada Corporation (“Visa”), Mastercard International Incorporated (“Mastercard”), Bank of America Corporation (“Bank of America”), Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Capital One Financial Corporation (“Capital One”), Citigroup Inc. (“Citigroup”), Federation des caisses Desjardins du Québec (“Desjardins”), National Bank of Canada Inc. (“National Bank”), Royal Bank of Canada, and Toronto-Dominion Bank.

[2] The Plaintiffs allege that the Defendants have conspired in Canada since March 2001 to fix, maintain, increase or control Merchant Discount Fees, including Interchange Fees, paid by merchants who accepted payment by Visa or Mastercard credit cards. They advance a statutory cause of action pursuant to ss. 36(1) and 45(1) of the *Competition Act*² and also advance claims of tortious conspiracy, unjust enrichment, waiver of tort, and constructive trust.

[3] Similar class actions were commenced in British Columbia, Alberta, Saskatchewan, and Québec, by parties represented by the same lawyers acting for the Plaintiffs in the Ontario action; namely: (1) Branch MacMaster, LLP; (2) Camp Fiorante Matthews Mogerma LLP; and (3) Consumer Law Group.

[4] The other four actions are:

- a. *Coburn and Watson’s Metropolitan Home, dba “Metropolitan Home” (previously, Watson) v. Bank of America Corporation*, SCBC No. VLC-S-S-112003 (British Columbia);
- b. *Macaronies Hair Club and Laser Center Inc., Operating as Fuze Salon v. BofA Canada Bank*, Action No. 1203-18531 (Alberta);
- c. *Hello Baby Equipment Inc. v. BofA Canada Bank*, QB No 133 of 2013 (Saskatchewan); and
- d. *9085-4886 Québec Inc. v. Visa Canada Corporation*, Superior Court of Québec No. 500-06-000549-101 (Québec).

[5] In this motion, the Plaintiffs seek approval of a settlement agreement with: (1) Bank of Montreal; (2) Bank of Nova Scotia; (3) Canadian Imperial Bank of Commerce; (4) Royal Bank of Canada; and (5) Toronto-Dominion Bank. This settlement will complete the class action.

[6] Previously, settlements were approved with the Defendants: (1) Bank of America (\$7.75 million); (2) Citigroup (\$1.63 million); (3) Capital One (\$4.25 million); (4) Desjardins (\$9.9 million); (5) National Bank (\$6.0 million); (6) Visa (\$19.5 million) and (7) Mastercard (\$19.5 million). These settlements have generated \$68.5 million, the net proceeds of which are being held in trust by class counsel pending final resolution of all the Canadian proceedings.

[7] The background facts to those settlements and to the current motion for approval of the settlement are set out in my Reasons for Decision certifying the actions and approving the settlements with Bank of America, Citigroup, Capital One, Desjardins, National Bank, Visa, and

¹ S.O. 1992, c. 6.

² R.S.C., 1985, c. C-34.

Mastercard. I shall not repeat those facts, but I shall simply incorporate them by reference.³

[8] The class proceedings have been litigated primarily through the British Columbia action. That action has an extensive litigation history, including a contested and appealed certification application, multiple rounds of settlements with several issuing banks, Visa, and Mastercard, and a number of procedural motions, many of which were appealed. The BC action was moving toward a trial with the remaining defendants and a 120-day trial was scheduled to begin in October 2020. On October 28, 2020 the parties entered into a settlement agreement.

[9] On May 11, 2021, I certified the action for settlement purposes,⁴ and Class Counsel duly circulated notice of the settlement approval and fee approval hearing.

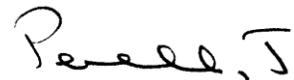
[10] On December 6, 2021, settlement and fee approval was simultaneously sought in the courts of British Columbia, Alberta, Saskatchewan, Ontario, and Québec. Approval of a distribution plan and related relief was also sought.

[11] There was a joint virtual hearing chaired by Justice Weatherill. Class Counsel were questioned by the judges of all the courts, namely Justice Weatherill of the Supreme Court of British Columbia, Associate Chief Justice Rooke of the Court of Queen's Bench of Alberta, Chief Justice Popescul of the Court of Queen's Bench of Saskatchewan, Justice Corriveau of the Superior Court of Justice of Quebec and by me. The judges respectively reserved judgment.

[12] I have now had the opportunity to review the reported reasons for judgment of Justice Weatherill.⁵ I agree with those reasons in their entirety. The reasons accord with the law that governs class actions in Ontario.

[13] Accordingly, I adopt those reasons as my own in relation to the Ontario action, with necessary modification as the context requires.

[14] Orders accordingly.



Perell, J.

Released: December 10, 2021

³ See: *Bancroft-Snell v. Visa Canada Corporation*, 2014 ONSC 5772, 2015 ONSC 7275, 2015 ONSC 7411, 2016 ONSC 3635; 2018 ONSC 706; 2018 ONSC 5166.

⁴ *Bancroft-Snell v. Visa Canada Corp.* 2021 ONSC 3458

⁵ *Coburn and Watson's Metropolitan Home v. Bank of Montreal*, 2021 BCSC 2398.

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ONTARIO INC.**

Plaintiffs

- and -

**VISA CANADA CORPORATION, MASTERCARD
INTERNATIONAL INCORPORATED, BANK OF
AMERICA CORPORATION, BANK OF
MONTREAL, BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
CAPITAL ONE FINANCIAL CORPORATION,
CITIGROUP INC., FEDERATION DES CASSES
DESJARDINS DU QUEBEC, NATIONAL BANK
OF CANADA INC., ROYAL BANK OF CANADA,
and TORONTO DOMINION BANK**

Defendants

REASONS FOR DECISION

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