

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

S U P E R I O R C O U R T

N° 500-06-000197-034

MARCOTTE ET ALS.

Plaintiffs

v.

BANK OF MONTREAL ET AL.

Defendants

---

**AMEX BANK OF CANADA'S MOTION FOR APPROVAL OF THE CLAIMS PROCESS**  
(Art. 1030, 1037 and ff. *CCP*)

---

TO THE HONOURABLE CLAUDINE ROY, J.S.C., DEFENDANT RESPECTFULLY SUBMITS THE FOLLOWING:

I. **INTRODUCTION**

1. On April 17, 2003, the Plaintiffs filed a Motion for Authorization to Institute a Class Action ("**Motion for Authorization**") against the Defendants, including, Amex Bank of Canada ("**Amex**").
2. The Motion for Authorization was granted by the Honourable Clément Gascon, J.S.C. (as he then was).
3. On June 11, 2009, Gascon J. rendered judgment maintaining the class action, and condemning the Defendant to pay compensatory and punitive damages.
4. The trial judgment was overturned by the Court of Appeal.
5. On September 19, 2014, the Supreme Court of Canada overturned the Court of Appeal decision, in part, and awarded compensatory and punitive damages to the Plaintiffs (the "**Judgment**"). Pursuant to the Judgment, Amex must pay the amount of \$87,078.33 plus interest and the additional indemnity provided by law on a collective recovery basis for the month of January 2003, plus costs.
6. The Judgment also provides for the individual recovery of the class members of the foreign exchange conversion fees paid by class members between April 17, 2000 and December 31, 2002, plus punitive damages in the amount of \$25 per class member with interest and the additional indemnity provided for by law since April 17, 2003.
7. The evidence at trial established that Amex has microfiche data for the class period for all of its cardholders in Canada but that this data is not in searchable format and

thus Amex must manually retrieve the Class Member account statements for the period of April 17, 2000 to December 31, 2002.

## II. THE NOTICES

8. A notice to the members of the Groups (the “**Class Members**”), to be approved by the court, will be published in the *Montreal Gazette*, *Le Soleil* and *La Presse*, *Le Nouvelliste*, *le Droit* and *L’Outaouais* twice during the claims period (the “**Notice**”), the first Notice will be published as soon as possible after approval of this Motion and the second, approximately sixty days prior to the end of the Claims Deadline.
9. The Notice will also be published on class counsel web site and the Claims Administrator’s website.
10. In addition, Amex will insert a one page bilingual claims form with the May account statements of its active Personal Credit Cardholders with a Quebec postal code, who opened an account on or before February 1, 2003, ensuring that all active Class Members receive the claims form.
11. This bilingual insert will also contain a summary Notice, be drafted jointly by the Parties and will give Class Members the option of mailing the form, completing the form online or calling the Claims Administrator.
12. Amex will also send, on or about the month of September 2015, a statement message to active Personal Credit Cardholders with a Quebec postal code, who opened an account on or before February 1, 2003, reminding Class Members of the possibility of filing a claim in the Marcotte matter.
13. Plaintiff consents to this Motion and Distribution Protocol attached but will ask the Court to approve a Facebook publicity campaign at Amex’s costs to be implemented by the Claims Administrator. Amex does not consent with Plaintiff’s request and the dispute will be submitted to the Court for adjudication.

## III. THE CLAIMS PROCESS

14. The Plaintiff and the Defendant hereby jointly request that the Court approve the distribution and liquidation process, the whole in accordance with the Distribution Protocol produced herewith as **Exhibit R-1**.
15. The proposed distribution and liquidation process consists of the following key points:
  - a) Class Members will have to submit a claim within a period of twelve (12) months of the publication of the final notice (“**Claims Period**”), or such other Class Period determined by this court;
  - b) Class Members will file their claims online or by filling out and mailing in a form or calling the Claims Administrator’s help desk;
  - c) To submit a claim, Class Members will only have to provide basic information, such as name, address, former address and card number, if available;

- d) Amex will provide the Claims Administrator with the account statements of Class Members so that the Claims Administrator can calculate the foreign exchange conversion fees payable to the Class Member, if any;
  - e) The Claims Administrator will provide Amex and the counsel for the Parties with quarterly interim accounting reports of the Fees and Punitive Damages as defined in the Distribution Protocol to be paid to the Class Members;
  - f) Amex will deposit in trust the Fees and Punitive Damages with Claims Administrator, within a delay of 30 days of the receipt of the quarterly accounting report, or a reasonable delay thereafter;
  - g) The Collective Amount will be distributed *pro-rata* amongst the Class Members along with the Fees and Punitive Damages, within a reasonable delay, at the end of the Claims Period, either by cheque or by way of a credit on the active cardholder account statements.
16. The parties believe that the proposed Distribution Protocol is in the interests of justice and of the Class Members as the proposed claims process is simple, efficient and does not require the filing of documentary evidence.
17. Amex will be incurring the expense of retrieving and printing the statements of account for the eligible Class Members.
18. The parties respectfully submit that the Distribution Protocol set forth in Exhibit R-1 represents the best option under the circumstances and that it is fair and equitable to the Class Members.

#### The Claims Administrator

19. The Defendant requests that the Court appoint the Bruneau Group (the “Claims Administrator”) to facilitate, collect and administer the individual claims as part of the process detailed in the Distribution Protocol.
20. The Claims Administrator will be principally responsible for implementing and administering the individual claims process.
21. As part of its duties, the Claims Administrator will create and maintain a database recording all claims submitted, which will be made available to counsel for the parties, as well as to the Court.
22. The proposed claims administrator, the Bruneau Group, has the required expertise in administering claims, offers bilingual services to claimants, and can help design a process that is both simple and effective, as appears from the brochure produced herewith as Exhibit R-2.

#### IV. CONCLUSION

23. The proposed distribution and liquidation process is reasonable and appropriate under the circumstances. It is fair and equitable to the Plaintiffs and the Defendant, as well as to all Class Members.
24. Amex will be responsible for all costs associated with the publication of the Notice and the remuneration of the Claims Administrator. The Class Members will therefore not be responsible for any fees or disbursements.
25. For the foregoing reasons, the parties respectfully submit that the Distribution Protocol set forth in Exhibit R-1 ought to be approved.

#### WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

**GRANT** the Petitioners' *Joint Motion for Approval of the Distribution and Liquidation Process*;

**APPROVE** the Distribution Protocol detailed in Exhibit R-1;

**DECLARE** that Class members will have to file a claim as described in the Distribution Protocol in order to receive a portion of the Collective Amount and reimbursement of the foreign exchange conversion fees and punitive damages awarded on an individual basis, net of Class Counsel fees;

**DECLARE** that all claims submitted by Class members will have to be filed within a period of twelve months from the date of the publication of the Notice (Exhibit R-2);

**DECLARE** that the interest and the additional indemnity on the Collective Amount ceased running on the date the Collective Amount was deposited in a trust account established and managed by the Bruneau Group;

**APPOINT** the Bruneau Group as the Claims Administrator to manage the individual claims process in accordance with the Distribution Protocol;

**AUTHORIZE** Amex to deposit the collective amount in a trust account to be established and managed by the Bruneau Group;

**ORDER** Amex to publish the Notice within a delay of thirty (30) days from a judgment to intervene herein in the following newspapers: in English in The Gazette and in French in La Presse, Le Soleil, Le Droit, Le Nouvelliste et L'Outaouais.

**ORDER** Amex to publish the Notice within a delay of seven (7) months from a judgment to intervene herein in the following newspapers: in English in The Gazette and in French in La Presse, Le Soleil, Le Droit, Le Nouvelliste et L'Outaouais.

**ORDER** Amex to insert a bilingual claims form in all active accounts statements of its Personal Credit Cardholders with a Quebec postal code, who opened an account on or before February 1, 2003.

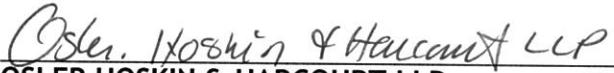
**ORDER** Amex to send a message statement with the Adams payment on or about September 2015 in all active accounts statements of its Personal Credit Cardholders with a Quebec postal code, who opened an account on or before February 1, 2003.

**RENDER** such other order as the Court deems advisable with regard to the claims process.

**DECLARE** that the Court will remain seized of this matter until the final accounting has been filed with the Court;

**THE WHOLE** without costs.

**MONTREAL**, this 25th day of February 2015

---

**OSLER HOSKIN & HARCOURT LLP**  
Attorneys for Amex Bank of Canada

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° 500-06-000197-034

S U P E R I O R C O U R T

---

MARCOTTE ET ALS.

Plaintiffs

v.

BANK OF MONTREAL ET AL.

Defendants

---

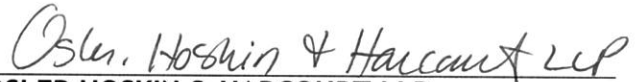
LIST OF EXHIBITS

---

EXHIBIT R-1: Distribution Protocol;

EXHIBIT R-2: Brochure from the Bruneau Group.

MONTREAL, this 25<sup>th</sup> day of February 2015



OSLER HOSKIN & HARCOURT LLP

Attorneys for the Amex Bank of Canada

**AFFIDAVIT**

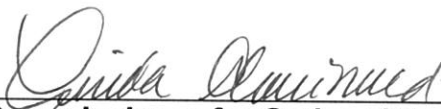
I, the undersigned, Silvana Conte, attorney, exercising my profession at 1000 de La Gauchetière Street West, 21<sup>st</sup> Floor, in the City and District of Montréal, Province of Québec, H3B 4W5, do hereby solemnly affirm as follows:

1. I am one of the attorneys for the Defendant Amex Bank of Canada;
2. All the facts alleged in the present motion are true.

**AND I HAVE SIGNED:**

  
\_\_\_\_\_  
Silvana Conte

Solemnly affirmed before me at Montréal,  
this 25<sup>th</sup> day of February 2015

  
\_\_\_\_\_  
**Commissioner for Oaths of the Province  
of Québec**



<b>NOTICE OF PRESENTATION</b>
-------------------------------

Me Philippe Trudel  
 Me André Lespérance  
**Trudel & Johnston**  
 750 Côte de la Place d'Armes  
 Suite 90  
 Montréal, Québec, H2Y 2X8

Attorneys for the Plaintiffs

Me Robert J. Torralbo  
**Blakes**  
 Place de la Cathédrale, suite 2000  
 600 de Maisonneuve West Blvd.  
 Montréal, Québec, H3A 3J2

Attorneys for Citibanque

Me Sylvain Deslauriers  
**Deslauriers et Cie**  
 1100 De La Gauchetière Street West  
 7<sup>th</sup> Floor  
 Montréal, Québec, H3B 2S2

Attorneys for Banque Toronto-Dominion

Me Jean-François Jobin  
**Bernard, Roy (Justice-Québec)**  
 1 Notre-Dame Street East  
 Suite 8.00  
 Montréal, Québec, H2Y 1B6

Me Guy Pratte  
 Me Marie Audren  
**Borden Ladner Gervais**  
 1000 De La Gauchetière Street West  
 Suite 900  
 Montréal, Québec, H3B 5H4

Attorneys for Banque de Montréal

Me Chantal Chatelain  
**Langlois Kronström Desjardins**  
 1002 Sherbrooke West, 28<sup>th</sup> Floor  
 Montréal, Québec, H3A 3L6

Attorneys for Fédération des Caisses  
 populaires Desjardins

Me Michel Deschamps  
**MCCARTHY TÉTRAULT**  
 1000 De La Gauchetière Street West  
 Suite 2500  
 Montréal, Québec H3B 0A2

Attorneys for Banque Scotia and Banque  
 Nationale du Canada

Me Marc Migneault  
**Allard Renaud & Associés**  
 2750 chemin Sainte-Foy  
 Suite 244  
 Québec, Québec, G1V 1V6

**TAKE NOTICE** that the present Motion for Approval of the Claims Process will be presented before Justice Claudine Roy, J.S.C., sitting in and for the Superior Court of the District of Montreal at 1 Notre-Dame Street East, on April 1<sup>st</sup>, 2015, at 9:30 A.M., in a room to be determined.

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, this 25<sup>th</sup> day of February 2015

  
**OSLER HOSKIN & HARCOURT LLP**  
 Attorneys for the Amex Bank of Canada



No: 500-06-000197-034

---

**SUPERIOR COURT**  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

---

**MARCOTTE ET ALS.**

Plaintiffs

v.

**BANK OF MONTREAL ET AL.**

Defendants

---

**AMEX BANK OF CANADA'S MOTION FOR  
APPROVAL OF THE CLAIMS PROCESS**  
(Art. 1030, 1037 and ff. CCP)

---

**ORIGINAL**

---

**M<sup>e</sup> Silvana Conte**  
**OSLER, HOSKIN & HARCOURT LLP**  
1000 de La Gauchetière West, Suite 2100  
Montréal (Qc) H3B 4W5  
Tel: 514.904.8100 Fax: 514.904.8101

Code : BO 0323

**o/f: 1037809**