



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**ROBYN RAMANAUSKAS**

Plaintiff

- and -

**BANK OF MONTREAL**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**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.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 30, 2022

Issued by \_\_\_\_\_  
Local Registrar

Address of court office 393 University Avenue  
Toronto ON  
M5G 1E6

TO: **BANK OF MONTREAL**  
100 King Street West  
28<sup>th</sup> Floor  
Toronto ON M5X 1A1

## CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) "**CJA**" means the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
- (b) "**Class**" or "**Class Members**" means every person resident in Canada who is or was a personal deposit account holder the Bank of Montreal and whose personal deposit account has been charged multiple NSF fees by the Bank of Montreal on a single payment made or cheque issued since January 1, 2012;
- (c) "**Consumer Protection Act**" means the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A;
- (d) "**CPA**" means the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended;
- (e) "**Equivalent Consumer Protection Statutes**" means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2, the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Consumer Protection and Business Practices Act*, S.S. 2013, c. C-30.2, the *Business Practices Act*, C.C.S.M., c. B120, the *Consumer Protection Act*, C.Q.L.R., c. P-40.1 and the *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, as amended;
- (f) "**NSF Fee**" means non-sufficient funds fee; and
- (g) "**BMO**" means Bank of Montreal.

## RELIEF SOUGHT

2. The Plaintiff claims on her own behalf and on behalf of the other Class Members:

- (a) an order certifying this action as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) a declaration that the Defendant is liable to the Plaintiff and Class Members for breach of contract;
- (c) a declaration that the Defendant is liable to the Plaintiff and Class Members for unfair practices under the *Consumer Protection Act*;
- (d) a declaration that the Defendant was unjustly enriched by the acts and omissions pleaded herein;
- (e) damages for breach of contract equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendant resulting from the charging of multiple NSF Fees on a single cheque issued or payment made;
- (f) an order for disgorgement of the value of all monies illegally paid by the Class Members to the Defendant;
- (g) punitive damages in an amount that this Court finds appropriate;
- (h) an equitable rate of interest on all sums found due and owing to the Plaintiff and Class Members;
- (i) pre-judgment and post-judgment interest pursuant to the *CJA*;
- (j) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (k) pursuant to section 26(9) of the *CPA*, the costs of notice and of administration;
- (l) plan of distribution of the recovery in this action plus applicable taxes; and
- (m) such further and other relief as this Honourable Court may deem just.

## OVERVIEW

3. BMO has a practice of charging multiple NSF Fees on a single rejected payment or bounced cheque. This practice is a violation of the terms of BMO's contract with Class Members. As a result of its unlawful practice, BMO has profited enormously, accruing tens of millions of dollars per year by charging illegitimate fees to Class Members.

4. The unlawful charges occur when a depositor makes a payment or issues a cheque without sufficient funds in his or her bank account. The first and only lawful charge is applied when the payee attempts to collect and BMO rejects the payment, charging an NSF fee (currently \$48) to the depositor's account. However, when subsequent attempts are made by the payee to process the same already rejected payment or cheque, BMO charges a duplicative NSF fee each time.

5. The burden of these duplicative NSF Fees falls disproportionately on low-income Canadians, who are more likely to maintain low bank account balances and more likely to use online vendors in lieu of credit cards.

6. The Plaintiff does not dispute BMO's right to reject a transaction and charge a single NSF Fee, but the Defendant's practice of charging multiple NSF Fees on each subsequent attempt to reprocess the same already rejected transaction is a breach of its contract with Class Members.

7. In the Defendant's sole and undisclosed view, each time BMO unilaterally reprocesses an already rejected payment or cheque it becomes a new, unique transaction that is subject to a fresh NSF Fee. However, BMO's standard form contract does not give the Defendant any authority to engage in this practice, and never even contemplates that this counterintuitive result could be possible. The standard form contract drafted by the Defendant is identical for all Class Members.

8. BMO's practice also violates consumer protection legislation in Ontario, where the Plaintiff resides and where BMO is headquartered, and constitutes an unjust enrichment. The Defendant has been financially enriched, with a corresponding deprivation to the Class Members, for no juristic reason.

## THE PLAINTIFF AND CLASS

9. The Plaintiff, Robyn Ramanauskas ("**Robyn**"), is an individual who resides in the City of Cambridge, in the Province of Ontario.

10. Robyn maintained a Primary Chequing Account (the "**Account**") with BMO for several years. Robyn closed the Account in or about May 2021.

11. At all material times, Robyn patronized BMO branches located in Cambridge, Ontario and conducted his banking online from her home in Cambridge, Ontario.

12. On March 31, 2021, a vendor APMOD.net ("**APMOD**") attempted to draw a \$115.00 pre-authorized debit from Robyn's Account. At that time, the balance in her Account was negative.

13. On March 31, 2021, BMO rejected the transaction due to insufficient funds and charged Robyn a \$48 NSF Fee.

14. Less than a month later, on April 29, 2021, APMOD re-presented the same \$115.00 transaction to BMO for payment, unbeknownst to Robyn. Again, BMO rejected the transaction and charged Robyn a second \$48 NSF Fee.

15. In sum, BMO charged Robyn \$96 in fees to process a single payment because she tried to make a transaction while her Account had a negative balance.

16. Robyn took no affirmative action to re-initiate the reprocessing of this transaction. Robyn received no notice from BMO of this reprocessing.

17. Robyn understood that she had made a single "cheque or pre-authorized debit", as is laid out in BMO's contract, capable of attracting at most a single NSF Fee.

18. The Plaintiff is seeking certification of the following class (collectively referred to as the "Class" or "Class Members"):

Every person resident in Canada who is or was a personal deposit account holder Bank of Montreal and whose personal deposit account has been charged multiple

NSF fees by Bank of Montreal on a single payment made or cheque issued since January 1, 2012.

## **THE DEFENDANT**

19. Bank of Montreal is a Canadian corporation with its headquarters and principal place of business located in Toronto, Ontario. Among other things, Bank of Montreal is engaged in the business of providing retail banking services to consumers, including the Plaintiff and members of the Class. Bank of Montreal operates branches, and thus conducts business, throughout the province of Ontario.

20. The Defendant's annual report indicates BMO earned \$1,243,000,000 (one billion, two-hundred and forty-three million) in deposit and payment service charges, including NSF Fees, from Canadian customers in 2021.

21. The Defendant maintains customer transaction data containing the information necessary to ascertain the Class Members and calculate the value of monies paid by individual Class Members to the Defendant as a result of the Defendant's practice of charging of multiple NSF Fees on a single payment made or cheque issued.

## **CAUSES OF ACTION**

### ***Breach of Contract***

22. The Defendant's "Agreements, Bank Plans and Fees for Everyday Banking" (the "**Terms**") forms the standard form contract between the Defendant and Class Members.

23. The Terms contain material representations and omissions indicating that an NSF Fees will only be charged once when a depositor makes a payment or issues a cheque without sufficient monies in their account. However, in fact BMO regularly charges multiple NSF Fees per transaction.

24. Specifically, the Terms state that BMO will charge depositors a \$48 NSF Fee "per item" that is "returned non-sufficient funds (NSF)".

25. The Terms define "item" for the purposes of BMO's NSF Fee provision as "cheque or pre-authorized debit".

26. The Terms define "pre-authorized debit" as "automatic transfers for bill payments/debits from a Personal Account, authorized by you and arranged to take place at a specified time(s)."

27. The Terms clearly state that an NSF Fee will be charged when a **singular** "cheque" or "pre-authorized debit" is returned NSF.

28. Nowhere in the Terms is the counterintuitive result that multiple NSF Fees could be charged on a single pre-authorized debit or cheque returned NSF authorized or even contemplated.

29. The Class Members are everyday Canadians. They do not possess specialized knowledge of the system for processing payments between payees and banks. The Terms convey to Class Members that a single \$48 NSF Fee will be charged when **a** cheque or **a** pre-authorized debit is returned due to non-sufficient funds.

30. The Plaintiff and Class deny that the Terms are ambiguous about BMO's practice of charging multiple NSF Fees but, in the alternative, they plead and rely on the doctrine of *contra proferentem*, whereby any ambiguity must be interpreted in favour of the Plaintiff and Class.

31. The Terms are standard form documents drafted by BMO without any input or ability to negotiate the terms by the Class Members. It is and has always been in BMO's power to draft contract language that would authorize its current practice. Class Members cannot be said to have consented to a practice that is nowhere explained, contemplated or permitted by the Terms.

32. In sum, BMO represents that one \$48 NSF Fee will be charged when a cheque or pre-authorized debit is returned due to non-sufficient funds. BMO breached, and continues to breach, its contract with Class Members when it charges customers multiple NSF Fees on the same already rejected pre-authorized debit or cheque.

***Consumer Protection Act***

33. The Plaintiff and Class Members entered into their contracts with BMO for personal, family and/or household purposes and are consumers for the purposes of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

34. The Defendant's Terms contained false, misleading and/or deceptive representations because, among other things, (1) the Terms failed to state the material fact that the Defendant would charge multiple NSF Fees for a single transaction, and such failure deceived or tended to deceive customers, and (2) the Terms misled as to the material fact that the Defendant would charge multiple NSF Fees for a single transaction, and such use deceived or tended to deceive customers. This constitutes an "unfair practice" pursuant to s. 14 of the *Consumer Protection Act*, similar provisions in the Equivalent Consumer Protection Statutes.

35. While the Plaintiff and Class deny that the Terms are ambiguous regarding the Defendant's practice of charging multiple NSF Fees, any ambiguity that allows for more than one reasonable interpretation of a consumer agreement must be interpreted to the benefit of the consumer pursuant to s. 11 of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

36. The Plaintiff and Class Members entered into their contracts with the Defendant after or while the Defendant engaged in the unfair and deceptive practice described above. Accordingly, the Plaintiff and Class Members are entitled to rescind their contracts and seek any further remedy that is available in law, including damages equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendant resulting from the charging of multiple NSF Fees on a single already rejected transaction, pursuant to s. 18(1) of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

37. The notice requirement should be waived pursuant to s. 18(5) of the *Consumer Protection Act* in order to facilitate access to justice for Class Members.

38. The Defendant's headquarters are located in Toronto, and BMO carries on business throughout Ontario. As a result, all Class Members obtain the benefit of the *Consumer*

*Protection Act.* In the alternative, Class Members outside of Ontario obtain the benefit of the Equivalent Consumer Protection Statutes.

***Unjust Enrichment***

39. BMO received and continues to receive enormous revenues by charging multiple NSF Fees in the manner described above.

40. The Plaintiff and Class Members suffered and continue to suffer a deprivation that corresponds to the Defendant's benefit.

41. There is no juristic reason for BMO's benefit and Class Members' corresponding deprivation. BMO has breached its contract with Class Members and has engaged in "unfair practices" prohibited under consumer protection legislation by virtue of its false, misleading and deceptive representations. The Class Members are entitled to restitution in order to remedy the Defendant's unjust enrichment.

***Punitive Damages***

42. The conduct of the Defendant warrants the condemnation of this Honourable Court. BMO enjoys a prominent position in an oligopolistic industry. Millions of Canadians are dependent on BMO for their day-to-day banking needs. Even without charging duplicate NSF Fees, BMO reaps enormous revenues and profits.

43. By choosing to charge duplicate NSF Fees, in violation of its contract with Class Members, BMO chose to inflate its already colossal profits. It made this choice knowing that the burden imposed by these illegitimate charges would disproportionately fall on low-income, racialized and otherwise marginalized Canadians. Its decision to maximize illegitimate profits at the expense of Canadians least able to afford it was also made knowing that this vulnerable Class was unlikely to enforce their contractual rights. BMO's illegitimate duplicate NSF fees increased significantly during the COVID-19 crisis.

44. In these circumstances, the Plaintiff requests punitive damages to condemn and deter this high-handed conduct.

**PLACE OF TRIAL**

45. The Plaintiff proposes that this action be tried in Toronto

August 30, 2022

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Plaintiff      and      Defendant

Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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