

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000808-168

LOU VAILLANCOURT-THIVIERGE

Plaintiff

c.

BANQUE DE MONTRÉAL ET ALS.

Defendants

DEFENCE OF LAURENTIAN BANK OF CANADA
(art. 170 C.C.P.)

IN SUPPORT OF ITS DEFENCE, THE DEFENDANT LAURENTIAN BANK OF CANADA RESPECTFULLY SUBMITS THE FOLLOWING:

1. With respect to the allegations contained in paragraphs 1 and 2 of the Plaintiff's *Demande introductive d'instance modifiée* dated February 22, 2021 (the "**Originating Application**"), the Defendant Laurentian Bank of Canada ("**LBC**") refers to the judgment rendered by the Court on January 21, 2019, authorizing the class action in the present matter (the "**Judgment**"), denying any liability and the validity of the conclusions sought by the Plaintiff.
2. LBC has no knowledge of the allegations contained in paragraph 3 of the Originating Application.
3. With respect to the allegations contained in paragraphs 4 and 5 of the Originating Application, LBC refers to the Judgment, denying any liability and the validity of the conclusions sought by the Plaintiff.
4. LBC admits the allegations contained in paragraphs 6 and 7 of the Originating Application.

5. LBC has no knowledge of the allegations contained in paragraph 8 of the Originating Application.
6. LBC denies as drafted the allegations contained in paragraphs 9 and 10 of the Originating Application.
7. With respect to the allegations contained in paragraph 11 of the Originating Application, LBC refers to Exhibits P-11 et P-18-H, denying anything inconsistent therewith.
8. LBC admits the allegations contained in paragraphs 12 to 17 of the Originating Application.
9. LBC denies as drafted the allegations contained in paragraphs 18 to 21 of the Originating Application.
10. LBC has no knowledge of the allegations contained in paragraphs 22 to 25 of the Originating Application.
11. With respect to the allegations contained in paragraphs 26 to 29 of the Originating Application, LBC refers to Exhibit P-6, denying anything inconsistent therewith.
12. LBC has no knowledge of the allegations contained in paragraphs 30 to 49 of the Originating Application.
13. LBC denies the allegations contained in paragraphs 49A to 53 of the Originating Application.
14. LBC denies as drafted the allegations contained in paragraphs 54 to 59 of the Originating Application.
15. LBC denies the allegations contained in paragraphs 60 to 81 of the Originating Application.
16. LBC has no knowledge of the allegations contained in paragraphs 82 to 89 of the Originating Application.
17. With respect to the allegations contained in paragraph 90 of the Originating Application, LBC refers to the Judgment, denying any liability and the validity of the conclusions sought by the Plaintiff.

AND IN FURTHER DEFENCE, THE DEFENDANT LAURENTIAN BANK OF CANADA RESPECTFULLY SUBMITS THE FOLLOWING:

I- LBC

18. The Montreal City and District Savings Bank was founded in Québec on May 26, 1846, and eventually became LBC.
19. LBC is a banking institution whose activities extend across Canada and employs approximately 2,900 individuals.
20. LBC's lines of business include the following:
 - a) Retail services;
 - b) Business services;
 - c) B2B Bank;
 - d) Laurentian Bank Securities and Capital Markets;
 - e) LBC Financial Services;
 - f) Dedicated advisory points of service.
21. LBC caters to the needs of retail clients via its branch network based in Québec and, with regards to its retail services, favours a human scale approach centred on personalized advice.
22. LBC operates in a highly competitive environment, including the other financial institutions in this matter with regards to its retail banking services.

II- LBC'S RETAIL SERVICES AND FEE STRUCTURE

23. Any person wishing to become a client of LBC must enter into a Financial Services Agreement with LBC by completing a Financial Services Application (the "**Agreement**"), as appears from the various versions of the Agreement in effect between 2014 and 2021, communicated herewith as **Exhibit LBC-1**.
24. Upon entering into an Agreement with LBC, the client may thereafter have access to an account with LBC, perform financial transactions and benefit from services offered by LBC.
25. The customer who signed the Agreement and has an account with LBC can register for the LBC Direct service (LBC's electronic banking services) and can access thousands of Automated Banking Machines (ABMs) across Canada. He/she can also perform the following banking transactions, subject to certain restrictions that may apply:
 - a) Account balance verification;

- b) Verification of card balances;
 - c) Verification of mortgage loan, personal loan and other investment product balances;
 - d) Inter-account transfers;
 - e) Transfer funds to and from an account at another financial institution;
 - f) Fund deposits and withdrawals;
 - g) Invoice consultation;
 - h) Invoice payment;
 - i) Setting up direct deposits;
 - j) Credit card cash advance;
 - k) Account transaction history;
 - l) Laurentian Bank Visa credit card account transaction history;
 - m) Order cheques.
26. For all LBC customers, the handling of NSF payment orders by LBC is just one of the many services included as part of the accounts, packages and/or banking programs offered by LBC.
27. The Agreement indicates that certain products offered by LBC, including overdraft protection, require the completion of an additional form and are subject to credit approval, although they are also available with certain banking packages.
28. The customer specifically acknowledges receiving a copy of the “My Money” Guide upon entering into the Agreement. The various versions of the “My Money” Guide in effect between 2014 and 2021 are communicated herewith as **Exhibit LBC-2**.
29. The “My Money” Guide is also publicly accessible on LBC’s website and the fees are also displayed in LBC’s branches.
30. LBC customers can choose from among a range of accounts, packages and banking programs, based on the number of transactions they make each month, their minimum account balance (required in some instances for LBC to waive some fees or for LBC customers to earn interest), whether or not they use US funds, their age and their savings capacity. Those accounts, packages and banking programs are explained in the « My Money » Guide.

31. The fees for the variety of retail banking services offered by LBC to its customers are also detailed in the « My Money » Guide. These fees will vary depending on the account, package or banking program chosen by the LBC customer.
32. LBC's pricing structure for the above offerings must be considered as a whole, and it is not appropriate to isolate individual components. LBC may incur costs for a particular service even though a customer may not be invoiced for that service. Indeed, many of the above-mentioned services will not involve a pay-per-use fee for LBC customers.
33. For example, subject to maintaining the required minimum monthly balance, the holder of a standard operations account with LBC will not incur any fees for withdrawals, transfers, cheques, direct debits or bill payments made at a LBC ABM or through the LBC Direct service.
34. Those interrelated services involve costs for LBC, but such costs are considered in the context of LBC's entire service offering and are integrated in its fee structure.
35. In light of all the valuable services and numerous benefits enjoyed by all LBC customers as part of their accounts, package and/or banking program, the fees charged for LBC services are reasonable; and there is no disproportion between LBC services provided under the Agreement, on the one hand, and LBC customers' obligations to pay the service charges, on the other hand.

III- THE PROCESSING OF NSF PAYMENT ORDERS

36. The processing of payment orders by cheque or direct debit without sufficient funds (NSF) are specifically listed in the list of services offered by LBC in the "My Money" Guide.
37. NSF transactions are not prohibited; LBC customers are under no obligation to maintain enough funds in their accounts to fulfill payment orders. Rather, NSF transactions involve a specific fee for the issuer of the cheque or direct debit, which is clearly disclosed to LBC customers.
38. Accordingly, NSF fees are not penalties; they are service fees charged by LBC for handling NSF payment orders.
39. LBC is not promoting or encouraging the customer to make payment orders without sufficient funds and takes steps to ensure that the customer can monitor his/her account balance as easily as possible.
40. A customer of LBC has a variety of options to monitor his/her account and know what the balance is:
 - a) Online, through LBC Direct;

- b) By phone;
 - c) At one of LBC's network of ABMs;
 - d) At an LBC branch;
 - e) By reviewing the monthly statement received from LBC.
41. LBC also offers different services to help the customer avoid NSF fees, including overdraft protection or a line of credit.
42. The overdraft protection guarantees funds for issued cheques, pre-approved debits and other type of transactions up to a maximum limit based on customer needs. The monthly charge for the overdraft protection is advantageous (and may be included in a banking plan) and is debited automatically from the customer's account, regardless of the number of overdrafts, plus the applicable interest charge on the overdraft. There is no fee for LBC customer when the service is not used during a given month.
43. An LBC customer who qualifies can also benefit from the use of a line of credit, which will enable him/her to avoid NSF fees.

IV- THE CONSEQUENCES OF NSF PAYMENT ORDERS FOR LBC

44. The payment by cheque or pre-authorized debit (PAD) without sufficient funds can have consequences for the customer, but also has direct consequences for LBC and will impede the clearing process.
45. Clearing and settlement are how financial institutions exchange payments amongst themselves, calculate how much is owed to each other as a result, and transfer funds to settle those balances.
46. Banks, such as LBC, are members of Payments Canada, the organization that underpins the Canadian financial system and economy by owning and operating Canada's payment clearing and settlement infrastructure, which legislative mandate is set out in the *Canadian Payments Act* (R.S.C., 1985, c. C-21).
47. Payments Canada has rules and standards which must be respected and which detail how the exchange, clearing and settlement of retail payments must occur through the Automated Clearing Settlement System (ACSS).
48. Rule A4 provides for specific procedures, timeframes and responsibilities when payment is refused and the drawee bank returns the item, which shall be read in conjunction with Rule A10, as appears from Rules A4 and A10, communicated herewith as **Exhibit LBC-3**.
49. Section 5 of Rule A4 provides that:

“Subject to section 6, each Item should be returned by the Drawee, to the Negotiating Institution, as set out in section 11, no later than the Business Day following receipt by the first organizational unit of the Drawee that is able to make or act upon a decision to dishonour the Item.”

50. If a drawee bank returns a cheque without sufficient funds without respecting the delays and deadlines provided for in Payments Canada’s Rules, it could be held liable to the negotiating institution for the value of said cheque.
51. In the course of a cheque clearing process, LBC may also in some instances release the funds to its customer before the cheque clears; by doing so, it in fact extends credit to its customer, with the risk that the funds are not readily available.
52. Specific rules and standards are also provided by Payments Canada regarding processing of PADs, as appears from Rules F1, F4, H1 and Standard 005, communicated herewith as **Exhibit LBC-4**.
53. Section 19 a) of Rule H1 provides that:

“where a PAD is dishonoured for any reason such as, but not limited to, “NSF”, “stop payment” or “account closed”, it shall be returned in accordance with the time limitation set out in Rule A4 and the procedures set out in Rule F1 or F4, as applicable”
54. Once again, strict time limitations and procedures must be followed by the drawee bank, failing which it could be held liable for the value of the NSF PAD.
55. As a result of the foregoing, NSF items pose a serious risk of loss for the banks, including LBC.
56. NSF items were also in some instances used in fraudulent schemes, including in cheque kiting, when a person deposits a NSF cheque into an account, and then writes another cheque against that amount for another account.
57. The clearing process, the formalities to be respected to return the item and the corrections to be made in the customer’s account require LBC to perform multiple actions.

V- CONCLUSION

58. LBC is entitled to invoice the NSF fees to its customers, who are made fully aware of those fees prior to making an NSF payment order.
59. A customer can avoid NSF fees by monitoring his/her account balance or by using other services provided by LBC, such as the overdraft protection or a line of credit.

60. The NSF fees are not a penal clause triggered by LBC customers' failure to perform a contractual obligation. They are a component of a reasonable and proportional fee structure corresponding to multiple related services offered by LBC under the Agreement.
61. The Originating Application is ill-founded in fact and in law.
62. The present Defence is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

DISMISS the Plaintiff's Originating Application;

THE WHOLE with costs.

Montreal, August 16, 2021

Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

Borden Ladner Gervais LLP

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Objet: NOTIFICATION : Defence of Laurentian Bank of Canada / Lou Vaillancourt-Thivierge c. Banque de Montréal et als. (500-06-000808-168)
Pièces jointes: Exhibits Laurentien Bank of Canada.zip; 2021-08-16 Defence of Laurentian Bank of Canada(123767012.2).pdf

BORDEREAU DE NOTIFICATION PAR COURRIER ÉLECTRONIQUE (ARTICLE 134 C.P.C.)

DATE :

Montréal, le 16 août 2021

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NUMÉRO DE DOSSIER DE COUR ET NATURE DU DOCUMENT NOTIFIÉ :

Numéro de dossier : 500-06-000808-168
Parties : Vincent Defrance et als. c. Banque de Montréal et als.
Nature du document : **Defence of Laurentian Bank of Canada and Exhibits LBC-1 to LBC-4**

Nombre de pages : -9- (excluding exhibits)
(pièces jointes seulement)



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SUPERIOR COURT
Class Action

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**DEFENCE OF LAURENTIAN BANK OF
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(art. 170 C.C.P.)**

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