SUPREME COURT OF CANADA

CITATION: Marcotte *v.* Fédération des caisses Desjardins du Québec, 2014 SCC 57

DATE: 20140919
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BETWEEN:

Réal Marcotte
Appellant
and
Fédération des caisses Desjardins du Québec
Respondent
- and -
Attorney General of Ontario, Attorney General of Quebec and Président de l'Office de la protection du consommateur
Interveners

CORAM: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 34): Rothstein and Wagner JJ. (McLachlin C.J. and LeBel, Abella, Cromwell and Moldaver JJ. concurring)

MARCOTTE *v.* FÉDÉRATION DES CAISSES DESJARDINS

Réal Marcotte *Appellant*

v.

Fédération des caisses Desjardins du Québec *Respondent*

and

Attorney General of Ontario, Attorney General of Quebec and Président de l'Office de la protection du consommateur *Interveners*

Indexed as: Marcotte *v.* Fédération des caisses Desjardins du Québec

2014 SCC 57

File No.: 35018.

2014: February 13; 2014: September 19.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Consumer Protection — Contracts of credit — Contracts extending variable credit — Credit cards — Obligation to disclose costs in contract — Appropriate remedy for failing to disclose — Prescription — Punitive damages — Conversion charges imposed by financial institutions on cardholders for transactions in foreign currencies — Class actions — Whether conversion charges are "net capital" or "credit charges" as defined by legislation — Whether Desjardins adequately disclosed conversion charges to cardholders — Whether reimbursement of conversion charges collected from consumer class members should be ordered — Whether class members are entitled to punitive damages — Consumer Protection Act, CQLR, c. P-40.1, ss. 12, 272.

Constitutional law — Division of powers — Bills of exchange — Interjurisdictional immunity — Federal paramountcy — Quebec's consumer protection legislation regulating credit card contracts — Whether legal characterization of transaction consisting of payment for good or service in foreign currency by means of credit card of same nature as that of payment by means of bill of exchange over which Parliament has exclusive jurisdiction, such that the doctrines of interjurisdictional immunity and paramountcy are potentially applicable — Constitution Act, 1867, s. 91(18); Consumer Protection Act, CQLR, c. P-40.1.

Desjardins's credit cards offer the ability to make purchases in foreign currencies. Such purchases are subject to a conversion charge, whereby a percentage of the converted amount is charged as a fee for the conversion service. Quebec's

Consumer Protection Act ("*CPA*") imposes various rules on the content and disclosure of charges and fees in contracts extending variable credit. For the relevant period, Desjardins included the conversion charge on the back of the monthly credit card statements sent to cardholders. M, the representative plaintiff, filed a class action against Desjardins to seek repayment of the conversion charges imposed by Desjardins on credit card purchases made in foreign currencies on the basis that the conversion charges violated the *CPA* provisions. Desjardins argued that the *CPA* does not apply to it due to the *Constitution Act, 1867* and that no repayment of the conversion charges is owed. The Superior Court maintained the class action and condemned Desjardins to reimburse the conversion charges imposed during the class period for the non-prescribed claims. The Court of Appeal allowed the appeal and set aside the order against Desjardins.

Held: The appeal should be allowed in part.

Payment by credit card does not fall under the exclusive federal jurisdiction over bills of exchange. As such, the application of the *CPA* to credit cards issued by Desjardins is consistent with the division of powers, and neither the interjurisdictional immunity nor the paramountcy doctrines apply. "Bills of exchange" is a well-established technical term around which an extensive structure of legislation has developed. While some of the effects of payment by credit card are the same as payment by bills of exchange, the natural limits of the text of s. 91(18) of the *Constitution Act, 1867* prevent it from being reinterpreted to include credit cards.

For the reasons given in the companion case of *Bank of Montreal v. Marcotte*, 2014 SCC 55, the conversion charges are net capital under the *CPA*. Desjardins breached s. 12 of the *CPA* by imposing a charge that was not disclosed in the cardholder agreement. The inclusion of the conversion charges on the back of the monthly credit card statements amounted to an external clause to the cardholder agreement under the *Civil Code of Québec*. This clause was not expressly brought to the attention of the consumer at the time of contract formation, as required by art. 1435 of the *CCQ*. Therefore, it is not possible for the consumers to have known about the external clause providing the rate of the conversion charge at the time they entered into the cardholder agreement, given that the clause was only available in the first monthly credit card statement, i.e. after the first use of the credit card.

The appropriate remedy for Desjardins's failure to disclose the conversion charges in the cardholder agreement is reimbursement of the conversion charges. However, since the conversion charges were included on the monthly statements, the prescription period for the class members was only suspended from the time each member formed their contract with Desjardins to the time they received their first monthly statement. That prescription was not affected by the renewal of the credit cards because no new contract is formed at that time. There is one main framework agreement that is effective from the first usage of the credit card. As a result, the claims of some class members are entirely prescribed. There is insufficient evidence in the record to determine the total amount owed by Desjardins to those

class members whose claims are not prescribed. The details of the procedure for effecting recovery are left to be determined by the Superior Court.

Finally, the conduct of Desjardins does not support awarding punitive damages. Desjardins did disclose the conversion charges through the monthly credit card statements. Even though Desjardins's disclosure does not satisfy the requirements of s. 12 of the *CPA*, it does not amount to negligent or careless behaviour.

Cases Cited

Applied: *Bank of Montreal v. Marcotte*, 2014 SCC 55; **referred to:** *Amex Bank of Canada v. Adams*, 2014 SCC 56; *Canada (Attorney General) v. Hislop*, 2007 SCC 10, [2007] 1 S.C.R. 429.

Statutes and Regulations Cited

Bills of Exchange Act, R.S.C. 1985, c. B-4.

Civil Code of Québec, arts. 1435, 2904.

Constitution Act, 1867, s. 91(18).

Consumer Protection Act, CQLR, c. P-40.1, ss. 12, 29, 30, 72, 83, 91, 92, 219, 271, 272.

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L'Heureux, Nicole, Édith Fortin et Marc Lacoursière. *Droit bancaire*, 4e éd. Cowansville, Qué.: Yvon Blais, 2004.

Lluelles, Didier, et Benoît Moore. *Droit des obligations*, 2e éd. Montréal: Thémis, 2012.

Ogilvie, M. H. *Bank and Customer Law in Canada*, 2nd ed. Toronto: Irwin Law, 2013.

APPEAL from a judgment of the Quebec Court of Appeal (Forget, Dalphond and Bich JJ.A.), 2012 QCCA 1395, [2012] R.J.Q. 1526, [2012] AZ-50881448, [2012] Q.J. No. 7427 (QL), 2012 CarswellQue 13752, setting aside a decision of Gascon J., 2009 QCCS 2743 (CanLII), [2009] AZ-50561028, [2009] J.Q. no 5770 (QL), 2009 CarswellQue 14191. Appeal allowed in part.

Bruce W. Johnston, *Philippe H. Trudel*, *André Lespérance* and *Andrew E. Cleland*, for the appellant.

Raynold Langlois, Q.C., *Vincent de l'Étoile* and *Chantal Chatelain*, for the respondent.

Janet E. Minor and *Robert A. Donato*, for the intervener the Attorney General of Ontario.

Jean-François Jobin, *Francis Demers* and *Samuel Chayer*, for the intervener the Attorney General of Quebec.

Marc Migneault and *Joël Simard*, for the intervener Président de l'Office de la protection du consommateur.

The judgment of the Court was delivered by

ROTHSTEIN AND WAGNER JJ. —

I. Introduction

[1] The Fédération des caisses Desjardins du Québec is a Quebec financial services cooperative that issues credit cards. One service offered through its credit cards is the ability to make purchases in foreign currencies. Such purchases are subject to a conversion charge, whereby a percentage of the converted amount is charged as a fee for the conversion service. Quebec's *Consumer Protection Act*, CQLR, c. P-40.1 ("*CPA*"), imposes various rules on the content and disclosure of charges and fees in contracts extending variable credit, such as credit card contracts. Similar to the companion cases of *Bank of Montreal v. Marcotte*, 2014 SCC 55 (the "BMO Decision"), and *Amex Bank of Canada v. Adams*, 2014 SCC 56 (the "Amex

Decision"), this appeal raises the issue of whether the manner in which the conversion charge was disclosed and imposed by Desjardins complied with the *CPA*.

[2] Many of the issues raised in this appeal are addressed in the BMO Decision. Two additional issues will be addressed in these reasons. First, we will address whether credit card payments are of the same nature as payments by means of a bill of exchange, over which Parliament has exclusive jurisdiction under the *Constitution Act, 1867*, such that the doctrines of interjurisdictional immunity and paramountcy are potentially applicable. Second, we will address whether Desjardins adequately disclosed the conversion charges as required by the *CPA*.

II. Facts

Desjardins Cardholder Agreements

[3] An overview of credit cards and conversion charges, and the procedural history of the class actions against the nine banks, Desjardins, and Amex Bank of Canada (respectively, the "BMO Action", the "Desjardins Action" and the "Amex Action"), are provided in the BMO Decision.

[4] Until April 1, 2006, cardholder agreements for credit cards issued by Desjardins included the following clauses:

[TRANSLATION]

18. Foreign currency

All VISA Desjardins purchases or cash advances made in a foreign currency are payable in Canadian currency converted at the exchange rate in effect as determined by DesjardinsGroup on the date the purchase or cash advance is processed.

The cardholder may write cheques in Canadian currency only. Any cheque written in foreign currency will automatically be returned to the cardholder.

20. Administrative charges

Subject to the *Consumer Protection Act*, cardholders acknowledge that there are administrative charges related to requests for copies of invoices or statements and accept that these charges will be added directly to their Visa Desjardins account.

Administrative charges are also due for every transaction, according to the rates indicated on the reverse (or the back) of statements. Cardholders consent to these administrative charges being added directly to their Visa Desjardins accounts.

(Court of Appeal reasons, 2012 QCCA 1395 (CanLII), at para. 14)

[5] On April 1, 2006, cl. 18 was changed to the following:

[TRANSLATION]

18. CURRENCY CONVERSION SERVICE

All VISA Desjardins purchases or cash advances made in a foreign currency are payable in Canadian currency converted at the exchange rate in effect as determined by DesjardinsGroup or its supplier on the date the purchase or cash advance is processed. The cardholder may write cheques in Canadian currency only. Any cheque written in foreign currency will automatically be returned to the cardholder.

The cardholder shall pay a currency conversion charge of 1.8% (one dollar and eighty cents ($1.80) per one hundred dollars ($100) spent) on any amounts recorded in the cardholder's account in foreign currencies and converted into Canadian dollars. The amount payable in exchange

> rate charges and the currency conversion charge is deemed to be a regular purchase within the meaning of Section 9 of this Agreement and will be charged to the cardholder's account on the date the currency is converted. [*ibid.*, at para. 15]

[6] Monthly credit card statements sent to cardholders of credit cards issued by Desjardins include the following information (prior to and after April 1, 2006, though the percentage charged as the currency conversion rate was 1.7% prior to January 2001):

> [TRANSLATION]
>
> ***Administrative charges***
>
> Subject to the provisions of the *Consumer Protection Act*, the following charges will be charged, as the case may be, to your VISA Desjardins account:
>
> - Copy of invoice or statement: $5.
>
> - NSF cheques: $20.
>
> - Stop payment on a cheque: $10.
>
> - Currency conversion: 1.8 % (one dollar and eighty cents ($1.80) per one hundred dollars ($100) spent) on any amounts recorded in the cardholder's account in foreign currencies and converted into Canadian dollars.
>
> - Cash advances: Desjardins network: $1.00 United States: $2.50
> Interac network: $1.25 Other countries: $3.50
>
> [*ibid.*, at para. 16]

[7] Mr. Marcotte, the sole representative plaintiff in the Desjardins Action, knew about the conversion charge when he used his card to make purchases in

foreign currencies, and continued to use the conversion service after authorizations for the BMO and Desjardins Actions were filed.

III. Judicial History

[8] As explained in the BMO Decision, although separate trial and appeal judgments were rendered for the BMO, Desjardins and Amex Actions, the judgments overlap and therefore refer to each other as necessary. The summaries below will focus on the portions of the lower court judgments in the Desjardins Action that were not summarized in the BMO Decision.

A. *Quebec Superior Court, 2009 QCCS 2743 (CanLII)*

[9] Gascon J., as he then was, concluded that conversion charges were credit charges under the *CPA*. Because the conversion charges were not included in the credit rate in breach of ss. 72, 83, 91 and 92 of the *CPA*, he ordered repayment of all conversion charges imposed during the class period under s. 272 of the *CPA*. Collective recovery in the amount of $28,392,240 was ordered for conversion charges collected between 2004 and 2007, while individual recovery was ordered for charges collected from 2000 and 2003 due to the varying prescription periods of each class member (as explained below).

[10] For the same reasons as in the BMO Action, Gascon J. rejected Desjardins's argument that payment of the conversion charges by cardholders

constituted a waiver of their right to reclaim the charges. However, he partially accepted Desjardins's argument concerning prescription. He agreed with Desjardins that only conversion charges imposed pursuant to contracts that were formed after April 17, 2000 were not subject to prescription. However, Gascon J. held that renewing a credit card, which occurs every three years for Desjardins cardholders, results in a new contract being formed and thus restarted the prescription period.

[11] Gascon J. found that Desjardins adequately disclosed the conversion charges both before and after April 1, 2006, and thus was not in breach of ss. 12 or 219 of the *CPA*. Although, prior to April 1, 2006, the conversion charge was disclosed by means of an external clause that was not available to cardholders at the moment the contract was formed, the evidence demonstrates that Mr. Marcotte knew about the clause at the time his contract was formed, and there is no evidence that the other class members did not know about it. Renewing a credit card, which Desjardins does every three years, results in the formation of a new contract. As cardholders will have received monthly statements disclosing the conversion charge before the contract is renewed, they would enter into this new contract knowing about the external clause disclosing the conversion charge. There was evidence that this conclusion held true for Mr. Marcotte; if it did not hold true for any other class members, the burden was on them to establish that they did not know about the external clause. No such evidence was produced.

[12] Gascon J. rejected Desjardins's constitutional argument that the *CPA* does not apply to it due to the doctrine of interjurisdictional immunity. He concluded that payment by credit card does not fall under the s. 91(18) head of power over bills of exchange in the *Constitution Act, 1867*. He also rejected the argument based on the doctrine of paramountcy, concluding that Desjardins failed to provide any provisions of a federal law such as the *Bills of Exchange Act*, R.S.C. 1985, c. B-4, that were in conflict with or frustrated by the relevant provisions of the *CPA*.

[13] Finally, Gascon J. refused to award punitive damages given the extent of the reparation for which Desjardins is already liable, the fact that its conduct was not reprehensible, the usefulness of the conversion service, and the exceptional nature of punitive damages.

B. *Quebec Court of Appeal, 2012 QCCA 1395, [2012] R.J.Q. 1526*

[14] Dalphond J.A. allowed the appeal and set aside the order against Desjardins. As explained in the BMO Decision, Dalphond J.A. concluded that the conversion charge constitutes net capital and is not a credit charge under the *CPA*.

[15] In *obiter*, Dalphond J.A. noted that even if the conversion charges were credit charges, the appropriate remedy would be found under s. 271 of the *CPA*, which permits the court to refuse to order repayment if the consumer has suffered no prejudice, and not s. 272 which does not apply to this case. He agreed with Gascon

J.'s conclusion that the doctrines of interjurisdictional immunity and paramountcy do not apply.

IV. Issues

[16] This appeal raises the following issues:

(a) Are the conversion charges net capital or credit charges under the *CPA*?

(b) Is the legal characterization of a transaction consisting of payment for a good or service in foreign currency by means of a credit card of the same nature as that of a payment by means of a bill of exchange over which Parliament has exclusive jurisdiction under s. 91(18) of the *Constitution Act, 1867*, such that the doctrines of interjurisdictional immunity and paramountcy are potentially applicable?

(c) Did Desjardins disclose the conversion charges to its cardholders?

(d) What is the appropriate remedy?

V. Analysis

A. *The Conversion Charges Are Net Capital Under the CPA*

[17] For the reasons given in the BMO Decision, the conversion charges are net capital under the *CPA*.

B. *Payment for a Good or Service in Foreign Currency by Means of a Credit Card Is Not of the Same Nature as That of a Payment by Means of a Bill of Exchange*

[18] Desjardins argues that payment by credit card is analogous to payment by bill of exchange and, as such, Parliament has exclusive regulatory jurisdiction pursuant to s. 91(18) of the *Constitution Act, 1867*. We agree with the Court of Appeal that [TRANSLATION] "we need not consider [this argument] in any depth" (para. 68). Desjardins essentially argues that the signed credit card slip is analogous to a bill of exchange because the merchant can later present it to the credit card company to receive hard currency. On Desjardins's interpretation, payment methods such as gift cards and coupons would also seem to be classified as bills of exchange.

[19] However, Desjardins provides no authority for the proposition that credit cards fall under the federal power over bills of exchange. Indeed, commentators have consistently rejected such a theory (see e.g. M. H. Ogilvie, *Bank and Customer Law in Canada* (2nd ed. 2013), at pp. 404-5: "The bills of exchange analogy also fails not only because there is no negotiable instrument, but also because credit card transactions involve three parties, whereas an instrument can only be negotiated between two parties."; B. Crawford, *The Law of Banking and Payment in Canada*,

vol. 2 (loose-leaf), at p. 13-9: "The analogy [that credit cards are bills of exchange] is quite close. . . . But there are two problems with it as an explanation of the legal foundation of the modern credit card systems.").

[20] This is not a case, as Desjardins argues, where the changed social circumstances in Canada, namely the increased popularity of payment by credit card as opposed to payment by cheque, would justify reinterpreting s. 91(18) of the *Constitution Act, 1867* so as to include credit cards. "Bills of exchange" is a well-established technical term around which an extensive structure of legislation, notably the *Bills of Exchange Act*, has developed. Although this Court has recognized that the Canadian Constitution must be "capable of adapting with the times by way of a process of evolutionary interpretation", that evolution must remain "within the natural limits of the text" (*Canada (Attorney General) v. Hislop*, 2007 SCC 10, [2007] 1 S.C.R. 429, at para. 94). There has been no shift in how the term "bills of exchange" is defined in Canada. While some of the effects of payment by credit card are the same as payment by bills of exchange, the natural limits of the text of s. 91(18) of the *Constitution Act, 1867* prevent it from being reinterpreted to include credit cards.

[21] We conclude that payment by credit card does not fall under the exclusive federal jurisdiction over bills of exchange. As such, the application of the *CPA* to credit cards issued by Desjardins is consistent with the division of powers, and neither the interjurisdictional immunity nor the paramountcy doctrines apply.

C. *Desjardins Failed to Disclose the Conversion Charge*

[22] Under s. 12 of the *CPA* "[n]o costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract." We have agreed with the Court of Appeal that the conversion charges are net capital, however a question remains: Were the conversion charges disclosed to consumers in their contract in accordance with s. 12 of the *CPA*? At issue is whether Desjardins disclosed the conversion charges to its clients by including them on the back of their monthly credit card statements. More precisely, does the inclusion of the conversion charges on the back of the monthly statements amount to an external clause to the credit card contract under the *Civil Code of Québec* ("*CCQ*")?

[23] Mr. Marcotte argues that the fee schedule on the back of Desjardins's monthly statement is not a binding external clause because the consumer was not aware of it at the time of the formation of the contract. He also argues that if the fee schedule is found to be an external clause to the contract, it will allow businesses to enforce clauses of which the consumer is unaware at the time of contract. In the alternative, Mr. Marcotte argues that should the Court decide that the fee schedule is an external clause, this clause cannot be enforceable on consumers in the absence of proof of their knowledge thereof. He argues that it is Desjardins's burden to show that Mr. Marcotte had knowledge of this clause.

[24] Desjardins argues that Mr. Marcotte admitted at trial that he was aware of the external clause containing the conversion charges and this knowledge should be imputed to the other members of the class. In the alternative, Desjardins argues that

class proceedings are inappropriate if the other class members do not share this knowledge.

[25] The crux of Mr. Marcotte's argument is that the reference to [TRANSLATION] "administrative charges" in the cardholder agreement sends users to an external clause to determine the rate of those charges. This external clause must therefore respect the conditions of art. 1435 of the *CCQ* in order to be valid. Article 1435 states:

> **1435.** An external clause referred to in a contract is binding on the parties.
>
> In a consumer contract or a contract of adhesion, however, an external clause is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer or adhering party, unless the other party proves that the consumer or adhering party otherwise knew of it.

[26] From the evidence at trial it is clear that this clause was not expressly brought to the attention of the consumer at the time of contract formation:

> [TRANSLATION] It is common ground that before April 1, 2006, the conversion fees were not disclosed in Desjardins's variable credit contracts. They were disclosed only on the back of the monthly statements sent to cardholders. [Trial reasons, at para. 333]

[27] The question then is whether it is determinable that the consumers in this case had knowledge of the clause regardless. The language of the article as well as

commentary suggest that the relevant time period for determining whether the consumers had knowledge of the clause is the moment of contract formation (D. Lluelles and B. Moore, *Droit des obligations* (2nd ed. 2012), at pp. 795-96).

[28] The trial judge erred in finding that a new contract is formed with every subsequent renewal of a credit card. There is one main framework agreement that is effective from the first usage of the credit card (N. L'Heureux, É. Fortin and M. Lacoursière, *Droit bancaire* (4th ed. 2004), at pp. 610 and 634; ss. 29 and 30 of the *CPA*). The replacement of a credit card does not create a new contractual relationship. Therefore, it is not possible for the consumers to have known about the external clause providing the rate of the conversion charge at the time they entered into the cardholder agreement, given that the clause was only available in the first monthly credit card statement, i.e. after the first use of the credit card. As a result, Desjardins breached s. 12 of the *CPA* by imposing a charge that was not disclosed in its contract with consumers, namely the cardholder agreement.

D. *Desjardins Must Reimburse the Conversion Charges*

[29] For the same reasons as those given in the BMO Decision, the appropriate remedy for Desjardins's failure to disclose the conversion charges in the cardholder agreement in breach of s. 12 of the *CPA* is reimbursement of the conversion charges.

[30] However, although Desjardins breached s. 12 of the *CPA*, it did disclose the conversion charge rate on the monthly credit card statements. Therefore, unlike the cardholders of the non-disclosing banks in the BMO Decision, the prescription period for the class members in the Desjardins Action was only suspended from the time each member formed their contract with Desjardins to the time they received their first monthly statement. That prescription was not affected in any way by the renewal of the credit cards because, as explained above, no new contract is formed at that time.

[31] As a result, the claims of some class members are entirely prescribed. For example, Gascon J. noted that Mr. Marcotte had knowledge of the conversion charges long before April 17, 2000 (trial reasons, at para. 352). Even if he did not have personal knowledge of the conversion charges at that time, it was not impossible for him to have obtained knowledge of these charges through the disclosure on the back of his monthly credit card statements, which he had received for over 15 years prior to April 17, 2000. As a result, art. 2904 of the *CCQ* had long since ceased to suspend his prescription. Mr. Marcotte's personal right of action was therefore prescribed by the time the BMO and Desjardins Actions were filed. Similarly, the claims of all other consumer cardholders who received their first monthly credit card statement prior to April 17, 2000 are entirely prescribed. Only the claims of consumer cardholders who formed their contract with Desjardins prior to April 1, 2006 (when Desjardins started disclosing the conversion charge in the contract) and who received

their first monthly statement disclosing the conversion charge on or after April 17, 2000, are not prescribed.

[32] There is insufficient evidence in the record to determine the total amount owed by Desjardins to those class members whose claims are not prescribed. At the same time, there is no evidence that it is not possible to determine this amount with sufficient accuracy. As Gascon J. noted at trial, the burden of proving that collective recovery is possible lies on the shoulders of the representative plaintiff. However, Desjardins is obliged to provide the information that would allow the plaintiff to fulfil his burden. Individual recovery will only be warranted if Desjardins is unable with reasonable diligence to provide the information needed to determine the total amount of the non-prescribed claims with sufficient accuracy. As at trial, all other details of the procedure for effecting recovery are left to be determined at a later date by the Superior Court.

[33] The conduct of Desjardins does not support awarding punitive damages, particularly compared to the non-disclosing banks. Desjardins did disclose the conversion charges through the monthly credit card statements. Consumer cardholders would have received their first statement shortly after they entered into their contracts and before they were billed any significant conversion charges — or any at all. Even though Desjardins's disclosure does not satisfy the requirements of s. 12 of the *CPA*, it does not amount to negligent or careless behaviour. There is no reason to think that awarding punitive damages against Desjardins is needed to

prevent the repetition of undesirable conduct or achieve the objectives of the *CPA*, and it would have an insufficient general deterrent effect to justify such an award.

VI. Conclusion

[34] All relevant provisions of the *CPA* are constitutionally applicable and operative. The appeal is allowed in part and recovery of the conversion charges is ordered. In light of the divided success of the appeal, no costs are awarded.

Appeal allowed in part.

Solicitors for the appellant: Trudel & Johnston, Montréal; Lauzon Bélanger Lespérance inc., Montréal.

Solicitors for the respondent: Langlois Kronström Desjardins, Montréal.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitors for the intervener the Attorney General of Quebec: Bernard, Roy & Associés, Montréal.

Solicitors for the intervener Président de l'Office de la protection du consommateur: Allard, Renaud et Associés, Trois-Rivières; Office de la protection du consommateur, Trois-Rivières.