

1001
MODIFIÉ ON
RUL RÈGLE 26.02 ()
THE ORDER OF Brockenshire, J
DONNANCE DU
DATE / FAIT LE June 29 / 09
REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

PURSUANT TO
CONFORMEMENT A

File No. 97-CV-128599

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY THE 23RD DAY
JUSTICE JOHN BROCKENSHIRE) OF JANUARY, 2009

BETWEEN

RICHARD MERETSKY

Plaintiff

and

THE BANK OF NOVA SCOTIA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the plaintiff for certification of the action as a class proceeding and for judgment pursuant to s. 29(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 in accordance with the Minutes of Settlement and for the fixing of Class Counsel Fees, was heard this day at Windsor, Ontario.

ON READING the following:

- (a) the notice of motion and record returnable January 23, 2009
- (b) the Minutes of Settlement, filed;
- (c) the order dated January 14, 2009 in *Buckley v. Bank of Nova Scotia*;

- (d) the affidavits of:
- (i) Richard Meretsky sworn June 6, 2003 and January 5, 2009;
 - (ii) David Stafford sworn November 14, 2003;
 - (iii) Jennifer Trant sworn January 7, 2009;
 - (iv) Heather Rumble Peterson sworn January 7, 2009;
 - (v) Patricia Speight sworn January 14, 2009;
 - (vi) Richard Colin Leece sworn January 15, 2009;
 - (vii) Sarkis Isaac sworn January 20, 2009; and
 - (viii) Margaret Woltz sworn January 21, 2009.

AND ON HEARING the submissions of counsel for the plaintiff and counsel for the defendant,

AND ON BEING ADVISED that:

- (a) the plaintiff consents to this judgment;
- (b) the defendant consents to this judgment;
- (c) Sarkis Isaac consents to being appointed to receive any opt-out notices, to report to the court on opt-outs and to receive any complaints from Complainants;
- (d) Reva Devins consents to act as Referee; and
- (e) there have been no objections to the proposed settlement.

AND without any admission of liability on the part of the defendant, the defendant having denied liability,

1. THIS COURT ORDERS AND DECLARES that, for the purposes of this judgment, the following definitions apply:

- (a) **“BNS”** means The Bank of Nova Scotia; and
- (b) **“Class Counsel”** means Paul J. Pape and Harvey T. Strosberg and their law firms;
- (c) **“Class”** or **“Class Members”** means all persons, anywhere in Canada, including corporations, who were issued one or more BNS VISA cards on or before October 31, 1997;
- (d) **“Complainant”** means any person who asserts that he, she or it is a Class Member and should have been listed by BNS as a member of the Distribution Group;
- (e) **“Distribution Group”** means those members of the Class whose BNS Visa Card(s) were first issued by BNS on or before October 31, 1997 and are in good standing for the billing cycle in the month of December 2008;
- (f) **“Fee Agreement”** means the agreement respecting fees, disbursements and GST between Paul J. Pape and the plaintiff made as at July 1, 1997;
- (g) **“Net Settlement Funds”** means the amount remaining from the Settlement Funds plus accrued interest after payment of Class Counsel’s fees, disbursements and taxes, the costs of translation, distribution and publication of the notices to the Class, payment to the Class Proceedings Fund, the fees of Sarkis Isaac, the fees of the Referee, any other expenses that the Court directs to be paid and the payments to the Distribution Group;
- (h) **“Notice”** means the notification generally in accordance with the form attached as Appendix 2 to this judgment;
- (i) **“Plan”** means the plan attached as Appendix 1 to this judgment;
- (j) **“Referee”** means Reva Devins or such other person as appointed by the Court;
- (k) **“Settlement Funds”** means the sum of \$24,200,000 (\$24.2 million).

2. THIS COURT ORDERS that the action be and is hereby certified as a class proceeding and that the plaintiff be and is hereby appointed as the representative plaintiff.

3. THIS COURT ORDERS that the Class is defined as: all persons, anywhere in Canada, including corporations, who were issued one or more BNS VISA cards on or before October 31, 1997.

4. THIS COURT ORDERS that the common issue is: At any time on or before October 31, 1997, did BNS charge, collect or receive from any members of the Class undisclosed, inadequately disclosed or unauthorized fees or charges in respect of debits or credits incurred on their BNS VISA accounts in a foreign currency?

5. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action as particularized in this judgment is fair, reasonable and in the best interests of the members of the Class and is hereby approved.

6. THIS COURT ORDERS that BNS shall pay the Settlement Funds, in full and final settlement of the claims of the members of the Class, to be allocated and distributed as set out herein and in the Plan.

7. THIS COURT ORDERS that, on or before April 30, 2009, BNS shall pay from the Settlement Funds the sum of \$15 to each BNS VISA account in the Distribution Group which is in good standing on the date of distribution.

8. THIS COURT ORDERS that the Plan be and is hereby approved and that the Plan be implemented in accordance with its terms and this judgment.

9. THIS COURT ORDERS that, by June 30, 2009, BNS shall distribute the Net Settlement Funds on behalf of the Class Members in accordance with the terms of this judgment and the Plan.

10. THIS COURT ORDERS that Reva Devins be and is hereby appointed as a Referee to determine any issues required to be determined by the Plan.

11. THIS COURT ORDERS that the costs of the Referee shall not exceed \$10,000.

12. THIS COURT DECLARES that each member of the Class who does not opt out in accordance with the terms of this judgment, and his or her heirs, legal representatives and assigns or its past and present parent, subsidiary and affiliated corporations, predecessors, successors and assigns has fully, finally and forever released BNS, VISA Canada Association, VISA International Service Association, VISA U.S.A. Inc. and their respective past and present parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, partners, attorneys, insurers, representatives,

executors, administrators, predecessors, successors and assigns (the "Releasees") from any and all actions, causes of action, common law and statutory liabilities, claims and demands of every nature or kind, available, asserted, or which could have been asserted, whether known or unknown, including for damages, contribution, indemnity, costs, expenses and interest, which he, she or it ever had, now has or may hereafter have, relating to or arising, directly or indirectly, from amounts charged to members of the Class in respect of credits or debits incurred in a foreign currency on BNS VISA accounts on or before October 31, 1997 and/or any claims asserted, or which could have been asserted in this action against the Releasees or any one of them or against any other person, partnership, corporation or other entity who might claim contribution or indemnity from, or otherwise claim over against, the Releasees or any one of them, in respect of credits or debits incurred in a foreign currency on BNS VISA accounts prior to October 31, 1997, whether known or unknown. Notwithstanding the above, nothing in this paragraph shall release BNS from any claim which has been asserted against it as at the date of this judgment in an action commenced at Montreal in the Superior Court of Quebec with court file no. 500-06-000197-034 and styled *Marcotte v. Bank of Montreal et al.*

13. THIS COURT ORDERS that on or before February 2, 2009, the members of the Class shall be given notice of this judgment by:

- (a) BNS placing a notice, generally in accordance with the form of the Notice, once in English the following newspapers: St. John's Telegram, Charlottetown Guardian, Halifax Chronicle Herald, Moncton Times & Transcripts, The Globe & Mail (National), Winnipeg Free Press, Regina

Leader Post, Calgary Herald, Vancouver Sun, Montreal Gazette, and, once in French, in La Presse; and

- (b) by Class Counsel placing a copy of the Notice in French and in English on the website maintained by Class Counsel, www.visaclassaction.com.

14. THIS COURT ORDERS AND DECLARES that the Notice and its distribution as provided for in paragraph 13 in this judgment satisfies the requirements of s. 17(6) of the *Class Proceedings Act, 1992*.

15. THIS COURT ORDERS that on or before February 16, 2009, BNS and Class Counsel shall report to the Court by affidavit, on notice to opposing counsel, that they have complied with the provisions of paragraph 13.

16. THIS COURT ORDERS that Sarkis Isaac be and is hereby appointed to receive the opt-out notices, to report to the Court on opt-outs and to receive complaints from Complainants.

17. THIS COURT ORDERS that the costs of Sarkis Isaac to receive the opt-out notices, report to the Court, on notice to counsel and to the parties, and to receive complaints from Complainants shall not exceed \$10,000.

18. THIS COURT ORDERS that each member of the Class who elects to opt out of the action must send a written opt-out notice, by prepaid mail, courier or fax to:

Sarkis Isaac
Howie & Partners
Chartered Accountants
3063 Walker Road
Windsor, ON N8W 3R4

Tel: 519.250.8663
Fax: 519.250.1929
Email: sisaac@howieandpartners.com

19. THIS COURT ORDERS that the written opt-out notice must be signed by the Class Member or his, her or its designee, include the Class Member's name, as it appears on his, her or its BNS VISA account statement, mailing address and the last four digits of each qualifying VISA card held by the Class Member and state that the Class Member is opting out of the BNS VISA Card Foreign Exchange Class Action.

20. THIS COURT ORDERS that the written opt-out notice described in paragraph 19 of this judgment will only be effective if it is received by Sarkis Isaac on or before March 20, 2009 at 5:00 p.m. ET.

21. THIS COURT ORDERS that Sarkis Isaac shall, on or before March 27, 2009, report to the Court by motion, on notice to the plaintiff and BNS, and advise of the names of those persons, if any, who have opted out of this class action.

22. THIS COURT ORDERS AND DECLARES that this judgment is binding upon each member of the Class who does not opt out of the action in accordance with the

terms of this judgment, including those persons who are minors or are mentally incapable and the requirements of rule 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect to this action.

23. THIS COURT ORDERS AND DECLARES that each member of the Class who does not opt out in accordance with the terms of this judgment who has commenced any action or taken any proceeding relating in any way to undisclosed, inadequately disclosed or unauthorized fees or charges incurred in respect of a foreign currency transaction on a BNS VISA account on or before October 31, 1997, shall consent and shall be deemed to have consented to the dismissal of such action or proceeding against BNS, without costs and with prejudice.

24. THIS COURT ORDERS AND DECLARES that each action or proceeding commenced in Ontario by a member of the Class who does not opt out in accordance with the terms of this judgment relating in any way to undisclosed, inadequately disclosed or unauthorized fees or charges incurred in respect of a foreign currency transaction on a BNS VISA account on or before October 31, 1997, shall be and are hereby dismissed against BNS, without costs and with prejudice.

25. THIS COURT ORDERS that the Fee Agreement is fair and reasonable and is hereby approved and that BNS shall forthwith pay directly to Sutts, Strosberg LLP, in trust, the sum of \$5,082,000, being fees of \$4,840,000 plus GST thereon of \$242,000, in full and final settlement of Class Counsel's claims pursuant to the Fee Agreement.

26. THIS COURT ORDERS AND DECLARES that either the representative plaintiff, BNS, the Referee, Sarkis Isaac or Class Counsel may apply to the Court for directions in respect of the implementation of this judgment or the administration of the settlement provided however that before July 15, 2009 BNS shall report to the Court and to Class Counsel particularizing the distribution of the Settlement Funds and accrued interest thereon.

27. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against Sarkis Isaac, BNS or the Referee for any matter in any way relating to the implementation of this judgment or the administration of the settlement except with leave of the Court.

28. THIS COURT ORDERS that BNS shall pay \$1,897,400 to the Class Proceedings Fund, on account, from the Settlement Funds, subject to any adjustment ordered by the Court when BNS reports to the Court as required by paragraph 26.

29. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, this action be and is hereby dismissed without costs and with prejudice.

5. 11. 2009 10:10 AM TORONTO

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F.

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"J Brockenshire"

~~JUSTICE~~

PLAN IN *MERETSKY V. THE BANK OF NOVA SCOTIA*

1. For the purposes of this Plan, the following definitions apply:
 - (a) **“BNS”** means The Bank of Nova Scotia;
 - (b) **“Cancer Hospital”** means a teaching hospital which:
 - (i) provides an on-site multidisciplinary cancer program including surgical oncologists, medical oncologists, and/or radiation oncologists;
 - (ii) holds multidisciplinary cancer conferences;
 - (iii) has cancer related research programs;
 - (iv) receives peer-reviewed funding for cancer-related research;
 - (v) has cancer as a priority program within the institution; and
 - (vi) has programs for training in surgical oncology, radiation oncology and/or medical oncology.
 - (c) **“Class”** and **“Class Members”** means all persons anywhere in Canada, including corporations, who were issued one or more BNS VISA Cards on or before October 31, 1997;
 - (d) **“Complainant”** means any person who asserts that he, she or it is a Class Member and should have been listed by BNS as a member of the Distribution Group;



- (e) **“Distribution Group”** means those Class Members whose BNS VISA Card(s) were first issued by BNS on or before October 31, 1997 and are in good standing for the billing cycle in the month of December, 2008;
- (f) **“Net Settlement Funds”** means the amount remaining from the Settlement Funds plus accrued interest after payment of Class Counsel’s fees, disbursements and taxes, the costs of translation, distribution and publication of the notices to the Class, payment to the Class Proceedings Fund, the fees of Sarkis Isaac, the fees of the Referee, any other expenses that the Court directs to be paid and the payments to the Distribution Group;
- (g) **“Referee”** means Reva Devins; and
- (h) **“Settlement Funds”** means the sum of \$24.2 million.

THE DISTRIBUTION GROUP PAYMENTS

- 2. Without any administrative charge, BNS shall pay the sum of \$15 to the credit of each BNS Visa account held by the members of the Distribution Group from the Settlement Funds. In the event that an account held by a member of the Distribution Group is no longer in good standing as at the date on which the payment contemplated by this paragraph is to be made, the sum of \$15 which would otherwise have been paid to that account shall instead be included in the Cy près Payment provided for in paragraphs 10 and 11, below.



EXPLANATION TO ACCOMPANY THE \$15 PAYMENT

3. BNS shall, at its expense, give the following explanation, or such other explanation as Class Counsel and BNS agree, to those Class Members who receive the \$15 payment:

A class action alleged that, on or before October 31, 1997, BNS charged undisclosed, inadequately disclosed or unauthorized fees in respect of debits and credits incurred on BNS VISA accounts in foreign currency. BNS denies any wrongdoing. The Ontario Superior Court of Justice approved a settlement of this class action that requires BNS to pay \$24.2 million to some of the Class Members and for the benefit of the Class Members.

You are a member of the Class. As part of the settlement, you have received a \$15 credit as shown on this statement.

Information about the settlement is available in English or French by telephone toll-free in Canada and the U.S. at 1.888.254.8083 (English) or 1.888.254.8180 (French) or, for the hearing impaired, toll-free at 1.800.645.0288 (TTY).
Monday – Friday from 8:00 a.m. – 11:00 p.m. E.T.
Saturday – Sunday from 8:00 a.m. – 7:00 p.m. E.T.

OR

At the website www.visaclassaction.com

OR

By communicating with the lawyers for the Class:
Tel: 866.405.3991
Fax: 866.316.5308
Email: visaclassaction@strosbergco.com

THE REFEREE AND THE RECEIPT OF COMPLAINTS

4. The Complainant must, in writing, particularize the basis for asserting that he, she or it should receive the \$15 payment and must transmit it, on or before May 29, 2009, to

Sarkis Isaac at:

A handwritten signature in black ink, appearing to be 'Sarkis Isaac', is located in the bottom right corner of the page.

Howie & Partners
Chartered Accountants
3063 Walker Road
Windsor, ON N8W 3R4
Tel: 519.250.8663 ext. 240
Fax: 519.250.1929
Email: sisaac@howieandpartners.com

5. Sarkis Isaac will deliver the documents received from every Complainant to the Referee, BNS and Class Counsel.
6. In the least expensive manner possible, the Referee shall decide whether or not the Complainant is entitled to receive the \$15 payment. The procedure to follow to make this determination shall be set by the Referee in her discretion.
7. The Referee shall deliver a written decision to the Complainant, BNS and Class Counsel.
8. The Referee's decision is final.
9. The Referee shall provide a copy of her decision(s) to the Court.

THE *CY PRÈS* PAYMENTS

10. On behalf of the Class Members, out of the Net Settlement Funds, BNS shall pay:
 - (a) the sum of \$1,000,000 to the Law Society Foundation with a notation on the face of the cheque or accompanying it that the monies are to be used only for the Lawyers' Feed the Hungry Program at Osgoode Hall operated by the Law Society of Upper Canada;



- (b) the sum of \$300,000 to Windsor & Essex County Cancer Centre Foundation ;
- (c) the sum of \$60,000 to The Toronto General Hospital Foundation in trust for the Thrombosis Treatment Program Fund to give individual grants to impecunious patients for the purchase of INR self-testing machines and paraphernalia and staff education relating thereto; and

11. After payment of the amount directed by paragraph 10, BNS shall also pay:

- (a) 90% of the balance of the Net Settlement Funds to the following Cancer Hospitals, in the following percentages, for cancer research:

Province	Hospital	Percentage
British Columbia	Vancouver General Hospital/UBC Hospital	16%
Alberta	Alberta Cancer Foundation for the Cross Cancer Institute in Edmonton	4%
	Alberta Cancer Foundation for the Tom Baker Cancer Centre in Calgary	4%
	Alberta Reach (Joint Venture University of Calgary & Calgary Health Region)	3%
Manitoba	Health Sciences Centre in Winnipeg	3%
Ontario	London Health Sciences Centre	7%
	Juravinski Cancer Centre/Hamilton Health Sciences	7%
	Mount Sinai Hospital and Princess Margaret Hospital for a study of semen proteomics for biomarkers of prostate cancer	7%
	Mount Sinai Hospital for the Digestive Diseases Clinical Research Centre for Colorectal Cancer	7%
	Sunnybrook Health Sciences Centre	7%
	Cancer Centre of Southeastern Ontario/Kingston General Hospital	7%
	The University of Ottawa Cancer Prevention Project	7%
Quebec	Montreal General Hospital/ McGill University Health Centre	3%
	Montreal Children's Hospital	3%
Nova Scotia	Queen Elizabeth II Health Sciences Centre in Halifax	5%
Total		90.00%

- (b) 10% of the balance of the Net Settlement Funds to the United Way, in each of the following provinces, in the following percentages:

Newfoundland and Labrador	2%
Prince Edward Island	1%
Saskatchewan	3%
New Brunswick	4%
Total	10%

TIMING OF *CY PRÈS* PAYMENTS

12. Forthwith after approval of the settlement, BNS shall pay to:
 - (a) Sutts, Strosberg LLP, in trust, for their fees and taxes, an amount directed by paragraph 25 of the judgment;
 - (b) the Class Proceedings Fund, the amount directed by paragraph 28 of the judgment; and
 - (c) the *cy près* recipients listed in paragraph 10 of this Plan, the amounts designated in paragraph 10.

13. Before receiving a *cy près* payment, each of the recipients listed in paragraph 11(a) of this Plan shall deliver a letter addressed to BNS and Class Counsel:
 - (a) agreeing and undertaking to use the monies received for peer reviewed cancer-related research;
 - (b) identifying (a) particular research program(s) or project(s) and the amount allocated to each unless the program or project is already identified in paragraph 11(a); and
 - (c) describing the internal controls in place to ensure the monies are expended as designated.

14. BNS and Class Counsel shall tender the letters from the recipients to the Court before BNS makes the *cy près* payments to the paragraph 11(a) recipients. If the Court is not satisfied with a recipient's response or that the designation is accurate, the Court may vary the judgment to redirect the *cy près* payment, in whole or in part.



15. Before payment to the *cy près* recipients listed in paragraph 11 and the adjustment with the Class Proceedings Fund, BNS shall account to the Court, Class Counsel and the Class Proceedings Fund for all expenses paid and all monies distributed from the Settlement Funds and seek approval of the amount to be paid to each of the recipients listed in paragraph 11 and to the adjustment with the Class Proceedings Fund.

660353

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NOTICE OF THE CERTIFICATION AND SETTLEMENT OF THE BNS VISA CARD FOREIGN EXCHANGE CLASS ACTION

This notice may affect your rights. Please read carefully.

CERTIFICATION AND SETTLEMENT APPROVAL ORDER

This Notice is directed to all persons in Canada, including corporations, who were issued a Bank of Nova Scotia ("BNS") Visa card on or before October 31, 1997 (the "Class Members").

The plaintiff commenced a class action against BNS in the Ontario Superior Court of Justice alleging that, on or before October 31, 1997, BNS charged the Class Members undisclosed, inadequately disclosed, or unauthorized fees or charges, in respect of debits and credits incurred on their BNS Visa accounts in foreign currency.

The parties reached a settlement and the court approved the settlement and certified the action as a class proceeding. This Notice provides a summary of the settlement. BNS does not admit any wrongdoing. The settlement was a compromise of disputed claims.

THE SETTLEMENT

BNS will pay \$24,200,000 in full and final settlement of all claims by the Class Members against BNS.

The settlement monies will be distributed in accordance with the judgment and a court-approved and supervised plan. Details of the judgment and settlement, including information as to whether you are eligible to participate in the settlement, may be obtained at www.visaclassaction.com. In summary, the \$24,200,000 will be paid as follows:

- (a) approximately \$7,200,000 directly to some of the Class Members;
- (b) approximately \$9,862,000 to designated charitable and public purposes;
- (c) \$5,082,000 to the plaintiffs' lawyers for their services including GST of \$242,000;
- (d) approximately \$160,000 for costs of notice, administration and distribution; and
- (e) approximately \$1,896,000 to the Class Proceedings Fund.

There is no practical way to identify the historical foreign currency transactions of individual BNS Visa cardholders or to locate all past BNS Visa cardholders. Therefore the proposed settlement does not contemplate a distribution that depends upon the circumstances of individual cardholders but rather a distribution to, or on behalf of Class Members, on the following basis:

- (a) BNS will prepare a list of the "Distribution Group" consisting of all BNS Visa cards which were first issued by BNS on or before October 31, 1997 and which are in good standing as of December 2008; and
- (b) BNS will credit \$15.00 to each BNS Visa account listed in the Distribution Group that is in good standing on the day of the distribution.

OPTING OUT

Any Class Member who does not wish to participate in the settlement must opt out on or before March 20, 2009. A Class Member who opts out will not be eligible for any of the benefits of the settlement. All Class Members who do not opt out will be bound by the terms of the settlement. **Do not opt out if you wish to share in the benefits of the settlement.**

To opt out, a Class Member must send a written notice, by prepaid mail, courier, fax or email, **which must be received on or before March 20, 2009 at 5:00 p.m. E.T. to:**

Sarkis Isaac, Howie & Partners, 3063 Walker Road, Windsor, ON N8W 3R4, telephone: 519.250.8663, fax: 519.250.1929, email: sisaac@howieandpartners.com, Attention: BNS Visa Card Class Action.

A written opt out notice must be signed by the Class Member, or an authorized designee, and must include the Class Member's name, mailing address, last four (4) digits of each BNS Visa card held by the Class Member opting out and a statement that the Class Member opts out of the BNS Visa Card Foreign Exchange Class Action.

RELEASE OF CLAIMS AND THE EFFECT ON OTHER PROCEEDINGS

A Class Member who does not opt out of this class action will not be able to bring or maintain a lawsuit or make any other claim against BNS relating to undisclosed, inadequately disclosed or unauthorized fees or charges in respect of debits and credits incurred in foreign currency charges made on a BNS Visa account on or before October 31, 1997. Any Class Member who does not opt out will be bound by the approved settlement.

This settlement will not release BNS from any claim which has been asserted against it in an action commenced at Montreal in the Superior Court of Quebec with court file no. 500-16-000197-034 and styled *Marcotte v. Bank of Montreal et al.*

INTERPRETATION

This Notice is a summary of some of the terms of the judgment approving the settlement. If there is a conflict between the provisions of this Notice and the judgment, the judgment shall prevail. You may review the judgment at www.visaclassaction.com.

This Notice has been approved by Justice John Brockenshire of the Superior Court of Justice for Ontario. Questions about matters in this Notice should NOT be directed to the court because its administrative structure is not designed to address this type of inquiry.

RICHARD MERETSKY

Plaintiff

vs. THE BANK OF NOVA SCOTIA

Defendant

Court File No. 97-CV-128599

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

JUDGMENT

PAPE BARRISTERS PC

1 Queen Street East
Suite 1910, Box 69
Toronto, ON M5C 2W5

PAUL J. PAPE

Tel: (416) 364-8755
Fax: (416) 364-8855

LAWYERS FOR THE PLAINTIFF

FILE: 13-904-000

REF: HTS/sp

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) MONDAY THE 29TH DAY
JUSTICE JOHN BROCKENSHIRE) OF JUNE, 2009

B E T W E E N

RICHARD MERETSKY

Plaintiff

and

THE BANK OF NOVA SCOTIA

Defendant

Proceeding under the Class Proceedings Act, 1992

ORDER

THIS MOTION, made by the plaintiff for an order amending paragraphs 9 and 26 of the judgment of the Honourable Justice John Brockenshire dated January 23, 2009 (the "Judgment") was heard this day in Windsor, Ontario.

ON READING the:

- (a) affidavit of Markus F. Kremer, sworn June 26, 2009; and
- (b) affidavit of Shannon Poole, sworn June 26, 2009.

AND BEING ADVISED of the consent of the defendant.

1. THIS COURT ORDERS that paragraph 9 of the Judgment be and is hereby amended to read as follows:

9. THIS COURT ORDERS that, by August 4, 2009, BNS shall distribute the Net Settlement Funds on behalf of the Class Members in accordance with the terms of this judgment and the Plan.

2. THIS COURT ORDERS that paragraph 26 of the Judgment be and is hereby amended to read as follows:

26. THIS COURT ORDERS AND DECLARES that either the representative plaintiff, BNS, the Referee, Sarkis Isaac or Class Counsel may apply to the Court for directions in respect of the implementation of this judgment or the administration of the settlement provided however that before August 15, 2009 BNS shall report to the Court and the Class Counsel particularizing the distribution of the Settlement Funds and accrued interest thereon.

3. THIS COURT ORDERS that the payments to the cy près recipients particularized in paragraph 11 of the Plan attached as Appendix 1 to the Judgment be and are hereby approved.

4. THIS COURT ORDERS that there will be no costs of this order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

#713463

JUN 30 2009

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

"J Brockenshire"

JUSTICE BROCKENSHIRE

RICHARD MERETSKY

Plaintiff

vs. THE BANK OF NOVA SCOTIA

Defendant

Court File No. 97-CV-128599

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

ORDER

PAUL J. PAPE
Barristers and Solicitors
1 Queen Street East
Suite 910, Box 69
Toronto, ON M5C 2W5

Tel: 416.364.8755

Fax: 416.364.8855

LAWYERS FOR THE PLAINTIFF

FILE: 13-904-000

REF: HTS/sp