

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000203-030

"Class Action"

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

OPTION CONSOMMATEURS

Plaintiff

-and-

BENOIT FORTIN

Designated Person

v.

AMEX BANK OF CANADA ET ALS

Defendants

AMEX BANK OF CANADA'S
AMENDED NOTICE TO THE ATTORNEY GENERAL OF QUEBEC
(Article 95 C.C.P.)

To: Attorney General of Quebec
Bureau du directeur général du contentieux
Montreal Courthouse
Me Jean-François Jobin
Bernard, Roy (Justice-Québec)
1 Notre-Dame Street East, Suite 8.00
Montreal, Quebec H2Y 1B6

PLEASE BE ADVISED that Amex Bank of Canada ("Amex") intends to raise the constitutional inapplicability and inoperability of provisions of the *Consumer Protection Act*, R.S.Q., c. P-40.1 (the "CPA") in defence to the above-captioned class action proceeding ["Class Action"].

The claims of Amex are as follows:

1. Amex is a federally chartered bank under the *Bank Act*, S.C. 1991 that offers charge card, credit card, and foreign exchange services to its customers.
2. The Class Action relies upon sections 126 of the CPA and section 61 of the Regulations respecting the application of the CPA ["Regulations"].

3. Amex respectfully submits that the above provisions of the CPA are constitutionally inapplicable to Amex for the following reasons:
- a. Amex is a federally chartered bank regulated by the *Bank Act*, S.C. 1991, c. 46;
 - b. "Banking" and "interest" fall within the exclusive jurisdiction of the federal Parliament pursuant to ss. 91 (15) and 91(19) of the *Constitution Act, 1867*;
 - c. Amex credit and charge card services are a core part of the business of banking and therefore fall under exclusive federal jurisdiction; and
 - d. The application of the impugned provisions of the CPA to Amex would impair (both factually and legally) a vital or integral part of Amex's banking activities and the exclusive federal power over interest and are therefore constitutionally inapplicable.
4. In the alternative, the impugned provisions of the CPA conflict in operation with and frustrate Parliament's purposes in the *Bank Act* and regulations and in the *Interest Act*, R.S.C. 1985, c. I-15, and are therefore constitutionally inoperative.

Copies of the Class Action and the Defence are attached.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, February 15, 2010

(SGD) Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Amex Bank of Canada

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