



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BRITTANY CHRISTOPHER**

Plaintiff

- and -

**ROYAL BANK OF CANADA**

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: **ROYAL BANK OF CANADA**  
Royal Bank Plaza  
200 Bay Street  
Toronto ON M5J 2W7

## 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 Royal Bank of Canada and whose personal deposit account has been charged multiple NSF fees by Royal Bank of Canada 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) "**RBC**" means Royal Bank of Canada.

## 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;
- (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. RBC 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 RBC's contract with Class Members. As a result of its unlawful practice, RBC 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 RBC rejects the payment, charging an NSF fee (currently \$45) to the depositor's account. However, when subsequent attempts are made by the payee to process the same already rejected payment or cheque, RBC 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.

6. The Plaintiff does not dispute RBC'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 RBC unilaterally reprocesses an already rejected payment or cheque it becomes a new, unique transaction that is subject to a fresh NSF Fee. However, RBC'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. RBC's practice also violates consumer protection legislation in Ontario, where the Plaintiff resides and where RBC 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, Brittany Christopher ("**Brittany**"), is an individual who resides in the City of Thunder Bay, in the Province of Ontario.

10. Brittany maintains a Day to Day Savings Account (the "**Account**") with RBC. At all material times, Brittany patronized RBC branches located in Thunder Bay, Ontario and conducted her banking online from his home in North Bay, Ontario.

11. On April 20, 2022, a payday lender Cash 4 You attempted to draw a \$95.83 pre-authorized debit from Brittany's Account. At that time, the balance in her Account was negative.

12. On April 20, 2022, RBC rejected the payment due to insufficient funds and charged Brittany a \$45 NSF Fee.

13. On May 4, 2022, Cash 4 You re-presented the same \$95.83 transaction to RBC for payment, unbeknownst to Brittany. Again, RBC rejected the payment and charged Brittany a second \$45 NSF Fee.

14. In sum, RBC charged Brittany \$90 in fees to process a single payment because she tried to make a transaction while her Account had a negative balance.

15. Brittany took no affirmative action to re-initiate the reprocessing of this transaction. Brittany received no notice from RBC of this reprocessing.

16. Brittany understood that she had made a single pre-authorized payment, as is laid out in RBC's contract, capable of attracting at most a single NSF Fee.

17. 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 Royal Bank of Canada and whose personal deposit account has been charged

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

## **THE DEFENDANT**

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

19. The Defendant's annual report indicates RBC earned \$1,858,000,000 (one billion, eight-hundred and fifty-eight million) in service charges, including NSF Fees, from Canadian customers in 2021.

20. 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***

21. The Defendant's "Personal Deposit Accounts: Disclosures and Agreements" (the "**Terms**") forms the standard form contract between the Defendant and Class Members.

22. 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 RBC regularly charges multiple NSF Fees per transaction.

23. Specifically, the Terms state that RBC will charge depositors a \$45 NSF Fee on a "per item" basis for any "cheque, pre-authorized payment or other Instruments returned due to insufficient funds in the Account (NSF)":

Cheque, pre-authorized payment or other Instruments returned due to insufficient funds in the Account (NSF)	\$45.00
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24. The Terms define "Instrument" as "a cheque or other promissory note, draft, money order, order for payment, bill payment remittance, bankers' acceptance, coupon, electronic debit or credit, or other payment tool, including an *Interac* e-Transfer Transaction, that is negotiable in Canadian or other foreign currency funds."

25. The Terms clearly state that an NSF Fee will be charged when a **singular** "cheque" or "pre-authorized payment" is returned due to insufficient funds in the depositor's account.

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

27. The Class Members are everyday Canadians. They do not possess specialized knowledge of contract law or the system for processing payments between payees and banks. The Terms convey to Class Members that a single \$45 NSF Fee will be charged when their account balance is insufficient to cover a cheque or a pre-authorized payment.

28. The Plaintiff and Class deny that the Terms are ambiguous about RBC'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.

29. The Terms are standard form documents drafted by RBC without any input or ability to negotiate the terms by the Class Members. It is and has always been in RBC'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.

30. In sum, RBC represents that one \$45 NSF Fee will be charged a depositor's account has insufficient funds to cover a cheque or pre-authorized payment. RBC breached, and

continues to breach, its contract with Class Members when it charges customers multiple NSF Fees on the same already rejected cheque or pre-authorized payment.

***Consumer Protection Act***

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

32. 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*, or provisions in the Equivalent Consumer Protection Statutes.

33. 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.

34. 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.

35. 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.

36. The Defendant's headquarters are located in Toronto, and RBC 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***

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

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

39. There is no juristic reason for RBC's benefit and Class Members' corresponding deprivation. RBC 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***

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

41. By choosing to charge duplicate NSF Fees, in violation of its contract with Class Members, RBC 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. RBC's illegitimate duplicate NSF fees increased significantly during the COVID-19 crisis.

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

**PLACE OF TRIAL**

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

August 30, 2022

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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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