

“Interest”ing Overdraft Charge Decision – Criminal Rates of Interest Class Action Successful at Summary Trial

May 18, 2018

The BC Court of Appeal recently dismissed the appeal in [Bodnar v. Community Savings Credit Union](#), where the appellants attempted to overturn a declaration made after a summary trial application that fees they charged customers in excess of \$5, in respect of overdraft charges, constituted "interest" for the purposes of s. 347 of the Criminal Code, either in whole or in part.

The Court of Appeal held that the trial judge was correct in how she analyzed the relationship between the borrower and lender, and correct in her focus on the effect of the fee on the borrower (rather than intent of the lender), consisting with binding authority.

The decision reviews the meanings of "interest" and "overdraft charge", within the context of s. 347 the Criminal Code.

Bodnar is a class action, and the declaration was made in respect of one of the issues certified as common back in 2014 (and upheld on appeal in 2015).

The decision serves as an important reminder for lenders to be mindful of the broad definition of "interest" and strict borrower focused approach courts have taken to interpretation of criminal rate of interest provisions and to carefully review fees and total cost of credit for compliance purposes for loan products and related fees.

By

[Robert Dawkins](#), [Michelle T. Maniago](#)

Expertise

[Banking & Financial Services](#), [White Collar Criminal Defence and Corporate Investigations](#), [Securities Disputes](#), [Financial Services](#), [Financial Services Regulatory](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.