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

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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.

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