

Payments in Canada

Fraud Loss and Dispute Resolution

Outline

- **Payment Systems**
 - Large Value Transfer System (LVTS)
 - Automated Clearing and Settlement System (ACSS)
- **Types of Payments and Fraud**
 - Wire Transfers, Cheques, Debit Cards, Pre-Authorized Debits
- **Dispute Resolution**
 - Customers vs. Financial Institutions
 - Ombudsman for Banking Services and Investments
 - Financial Consumer Agency of Canada
 - Payment System Participants
 - CPA Rule A6, CPA Rule A9, Compliance By-law
- **Courts**
- **Conclusions and Questions**

Payment Systems

- **In Canada, “payments” are governed by the Canadian Payments Association (CPA)**
- **CPA owns and operates 2 payment systems:**
 - Large Value Transfer System (LVTS)
 - Wholesale
 - Low Volume and High Value
 - Automated Clearing and Settlement System (ACSS)
 - Retail
 - High Volume and Low Value

Types of Payments and Fraud

- **Wire Transfers**
- **Fraud is Rare**
 - Schemes to Initiate Fraudulent Transfers
- **Prevention**
 - Verification and Internal Controls
 - Engage Accounts Payable

Types of Payments and Fraud

- **Cheques**
- **CPA Rule A4 (Return Time Frames)**
- **Fraud is More Common**
 - Material Alteration
 - Counterfeit
 - Forgery
 - Forged Endorsement
 - Forged Signature - *Advance Bank v. TD Bank* (2003, Ont. S.C.J.)

Types of Payments and Fraud

- **Cheques (continued)**
- **Consumer Rights**
 - *Bills of Exchange Act* (section 48)
 - *Canadian Pacific Hotels Ltd. v. Bank of Montreal* (1987, S.C.C.)
 - Rights May be Restricted Using Verification Agreement
- **Prevention**
 - Hold Periods, Positive Pay, Customer Awareness, Employee Education
 - Systemic: Prohibition on Tele-Cheques

Types of Payments and Fraud

- **Debit Card Fraud**
 - Debit Card Skimming
 - Shoulder Surfing
- **Transactions Cannot be Returned**
 - No Return Under CPA Rule A4
- **Consumer Rights**
 - Canadian Code of Practice for Debit Card Services
- **Prevention**
 - EMV Chip Technology
 - Monitoring and Education
 - Increase Fraud Prevention Measures

Types of Payments and Fraud

- **Pre-Authorized Debits (PADs) Fraud**
- **CPA Rule H1**
 - Underlying Payor's PAD Agreement Required
 - 90 Days Recourse for Personal PAD
- **Consumer Rights**
 - Automatic Reimbursement
- **Fraud**
 - Reasons for Return
- **Prevention**
 - “Know the Payee”

Dispute Resolution – Customers vs. FIs

- **Customers vs. Financial Institutions**
 - **Ombudsman for Banking Services and Investments (OBSI)**
 - Consumer Complaints in Payments (see: www.obsi.ca for case studies)
 - **Financial Consumer Agency of Canada (FCAC)**
 - Ensure Compliance with Complaint Procedures
 - Monitor Implementation of Voluntary Codes of Conduct

Dispute Resolution – System Participants

- **CPA Rule A6 - Items in Dispute**
 - Consensual
 - Escalation Process
 - Dispute Resolution Panel
 - Members of National Clearings Committee
- **CPA Rule A9 – Arbitration**
 - Consensual
 - More Formal
 - 3 or More Knowledgeable Persons
- **Compliance By-law**
 - Non-Consensual
 - Complaint Filed By Member
 - Investigation Initiated By CPA General Manager and CEO

Courts

- **Consumers vs. Financial Institutions**
 - Consumers Cannot Rely on CPA Rules
- **Payment System Participants – Judicial Review**
 - *National Bank of Greece v. Bank of Montreal* (1999, F.C., 2001, F.C.A).

Conclusions

- Fraud Mitigation Mainly up to Participants and their Clients
- Payment System may Assist
- Electronic Payments – Delivering Direct Clearer Liable
- Paper Payments – Liability Depends on Reason for Return and Applicable Time Frame
- Risks may be Passed on to Clients via Contract

Questions ?

- Charles Docherty
 - Legal Counsel – MBNA Canada Bank
 - charles.docherty@mbna.com