CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
CT-2010-010
April 25, 2012
REGISTRAR / REGISTRAIRE

OTTAWA, ONT. by / par Document # 206
Jos LaRose

THE COMMISSIONER OF COMPETITION

Applicant

\- and -

VISA CANADA CORPORATION and
MASTERCARD INTERNATIONAL INCORPORATED

Respondents

\- and -

THE TORONTO-DOMINION BANK and
CANADIAN BANKERS ASSOCIATION

Intervenors

WITNESS STATEMENT OF ROBERT LIVINGSTON

File No.: CT-2010-10

IN THE MATTER of the *Competition Act,* R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER of certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated;

B E T W E E N:

The Commissioner of Competition

Applicant

\- and -

Visa Canada Corporation
MasterCard International Incorporated

Respondents

\- and -

The Toronto-Dominion Bank
The Canadian Bankers Association

Intervenors

WITNESS STATEMENT OF ROBERT LIVINGSTON

I, Robert Livingston of Toronto, Ontario, state the following on behalf of the Canadian Bankers Association ("CBA"):

1. I am the President of Capital One Bank (Canada Branch) ("Capital One Canada"), a position I have held since 2010. I am responsible for the strategic direction, marketing, operations, and financial performance of Capital One Canada's credit card business.

2. I joined Capital One in the United States in 1995, where I was responsible for developing and executing marketing and credit strategies for Capital One's U.S. credit card business. In 1998, I moved to London, England to join Capital One's international business development group, where I evaluated new country entry opportunities and worked on joint ventures in Europe and the Asia-Pacific region.

3. I joined Capital One Canada in 2000. Before becoming President, I held several senior roles in the business, including Head of Customer Acquisition, Chief Financial Officer (CFO), Divisional CFO for several Capital One business lines in Canada, the United States, and the United Kingdom, and Chief Marketing Officer. In 2009, I became Capital One Canada's Chief Operating Officer responsible for all customer-facing activities in Canada, including customer operations, call centres, collections, recoveries, and portfolio management.

4. I currently serve on several industry councils, including the Canadian Bankers Association's Foreign Banks Executive Committee and the Advisory Boards for Equifax Canada and MasterCard Canada.

I. Overview

5. In its Order dated April 5, 2011, the Competition Tribunal granted the CBA leave to intervene in this proceeding to address "[t]he Issuer's perspective on the role of Card Acceptance Fees" and "[t]he impact of the Proposed Order on Issuers and Acquirers."[1] My evidence focuses on the impact of the Commissioner of Competition's proposed elimination of the honour-all-cards rule of MasterCard and Visa (the "HAC rule"), from the perspective of Capital One

[1] *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated,* 2011 Comp. Trib. 2, at para. 51, Simpson J. (**Exhibit A**).

Canada as a smaller bank-issuer of credit cards and a relative newcomer to the Canadian marketplace.

6. The HAC rule provides that a merchant who advertises acceptance of a particular brand of credit card (*e.g.,* MasterCard) must accept all credit cards bearing that brand that are properly presented for payment, regardless of the particular issuer of the card. In my view and based on my experience in the credit card business, the HAC rule ensures the universal acceptance of a network's credit cards, which is the foundation of what is known in the industry as a credit card network's "ubiquity." From Capital One Canada's perspective as a bank-issuer and as a participant in the MasterCard credit card network, the HAC rule is critical to the efficient operation of a credit card payments system. The HAC rule especially benefits smaller issuers and issuers with little or no brand recognition, such as Capital One when it entered Canada.

7. By way of overview, Section II describes Capital One Canada's credit card business and our success since entering Canada (except the Province of Québec) in 1996 and, more recently, the Province of Québec in 2011. Sections III and IV explain how, in my view, the HAC rule promotes competition among credit card issuers and in particular benefits Capital One Canada and our customers. Section V provides a brief conclusion.

II. Capital One Canada's Credit Card Business

Corporate background information

8. Capital One Canada is a division of Capital One Financial Corporation, a leading diversified bank offering many financial products and services to consumers, small businesses, and commercial clients. Capital One Financial Corporation, a Fortune 500 company, trades on the New York Stock Exchange under the symbol "COF" and is included in the S&P 100 Index.

9. Capital One entered Canada in 1996 and became an authorized foreign bank under the *Bank Act* in 1998. Our head office is in Toronto and we also maintain call centres in Scarborough and Montréal. We directly employ over 700 associates and a further 1,000 people indirectly through supplier relationships in Canada. In 2011, Capital One Canada was named one of the best workplaces in Canada by the Great Place to Work Institute (Canada).[2]

Credit card business

10. Competition among credit card issuers in Canada is intense. There are presently 15 issuers of MasterCard credit cards and 14 issuers of Visa credit cards in Canada.[3] Issuers compete for cardholders by offering them attractive benefits, rewards, and fee structures. Further, since the Competition Bureau eliminated its anti-duality rule preference in 2008, issuers can now issue both MasterCard and Visa-branded credit cards to consumers. This has significantly increased competition among issuers for cardholders and between MasterCard and Visa for the business of issuers such as Capital One Canada.

11. Capital One Canada is a "monoline" issuer of customized credit card products. This means that we do not take bank deposits or have other retail relationships with consumers – we

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2 See http://www.greatplacetowork.ca/best-workplaces/best-workplaces-in-canada **(Exhibit B)**.

3 **Visa:** CIBC (dual), RBC (dual), TD Bank (dual), Scotiabank, Laurentian Bank, Caisses Populaires Desjardins, Vancouver City Savings Credit Union, Citizens Bank, Home Trust, Bank of America, US Bank, Chase Cards Canada, Canadian Tire Bank Ltd. (dual).

MasterCard: Bank of Montreal, National Bank, Capital One Canada, Credit Union Electronic Transaction Services, Alberta Treasury Branches, Canadian Tire Bank Ltd. (dual), Wells Fargo, President's Choice Financial, Chase Cards Canada, HSBC Bank Canada, Walmart Canada Bank, CIBC (dual), RBC (dual), and TD Bank (dual).

As the CBA monthly credit card statistics indicate, there are more than 500 firms authorized to distribute Visa and MasterCard credit cards. Aside from the 29 issuers above, these companies simply resell card products under their own brand provided on a white-label basis by one of the issuers listed above. For example, Coast Capital Savings (the second largest credit union in Canada) contracts with Desjardins to provide a Coast Capital Savings Visa-branded credit card to its clients. Coast Capital Savings markets the product and take applications, but the credit decisions and the account management are handled by Desjardins, and on the back of the card it states that the card is issued by Desjardins.

only issue credit cards. In January 2011, Capital One Canada acquired the Hudson's Bay Company credit card portfolio and related assets from GE Capital Retail Finance. With outstanding receivables of approximately $1.3 billion, this transaction nearly tripled the number of our cardholders, making us the seventh largest credit card issuer in Canada.[4]

12. Capital One Canada offers a range of credit cards for consumers across the credit spectrum. We have credit cards for consumers with a high monthly spend who want to earn competitive rewards (particularly travel awards), such as our Aspire Travel World MasterCard, Aspire Cash World MasterCard, Priority Club World MasterCard, and Delta SkyMiles World MasterCard. We also have low interest rate credit cards for consumers with good credit who want a borrowing vehicle akin to a line of credit but with the convenience of a credit card, such as our SmartLine Platinum MasterCard and Fusion Platinum MasterCard. And we have credit cards for consumers with either past credit issues or with no credit history in Canada (such as new Canadians), allowing them to build or strengthen their credit history, such as our Low Rate Guaranteed MasterCard and our Low Rate Guaranteed Secured MasterCard.

13. In July 2011, Capital One Canada entered the Province of Québec. Before doing so, we carefully researched Québec consumers' preferences, learning that Québecers are more likely than people in the rest of Canada to choose cash back as their preferred type of credit card rewards (58.2% vs. 49.6%, respectively). Based on this finding, we launched our Carte RemisesPlus Platine MasterCard, which provides 1% cash-back on all net purchases and a 25% anniversary bonus, with no annual fee.

14. Capital One Canada currently issues credit card products in all ten provinces and three territories of Canada. As of December 31, 2011, we had $4.7 billion in total loans outstanding.

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4 Press Release available online at http://www.capitalone.ca/about-us/news/20101109/index.php **(Exhibit C)**.

15. Several of our credit cards have received national recognition. In 2011, *MoneySense* magazine ranked our credit cards as being among Canada's best: our Aspire Travel MasterCard was ranked the best travel rewards card and the best retail awards card. We also had three credit cards ranked among the top four for cash back, including our Aspire Travel World MasterCard (ranked 2nd); Aspire Cash Platinum MasterCard (ranked 3rd); and Aspire Cash World MasterCard (ranked 4th). Our SmartLine Platinum MasterCard was ranked among the top three low rate cards (ranked 3rd).[5]

III. The Honour All Cards Rule (HAC) Promotes Competition

A. Definition of the HAC Rule

16. The HAC rule provides that merchants who advertise acceptance of MasterCard or Visa credit cards as a means of payment must accept all valid cards properly presented for payment that are branded with the MasterCard or Visa network, respectively. The rule applies irrespective of the issuer, the nature of the transaction, the type of card being presented, or the personal characteristics of the cardholder.

17. Visa and MasterCard independently include the HAC rule in their agreements with acquirers of credit card transactions. Merchants who accept MasterCard and/or Visa credit cards agree to the networks' respective HAC rules in their contracts with acquirers.

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[5] MoneySense Magazine, June 2011, available online at http://www.moneysense.ca/2011/05/10/best-cards-if-you-carry-a-balance/; see also http://www.moneysense.ca/2010/11/30/which-cash-back-card-is-tops/ **(Exhibit D)**.

B. The HAC Rule Promotes the Universal Acceptance of Credit Cards, Which From An Issuer's Perspective is Critical to An Efficient Credit Card Network

18. From Capital One Canada's perspective as an issuer and a participant in the MasterCard network, the HAC rule ensures universal acceptance of a network's cards. The HAC rule ensures that all MasterCard and Visa credit cards are (in terms of their acceptance) interchangeable. From our perspective as an issuer of credit cards, a credit card network such as the MasterCard network could not function efficiently or effectively if a merchant or an acquirer were able to refuse certain MasterCard credit cards. The networks depend on both issuers and cardholders being sure that their MasterCard/Visa cards will be accepted by merchants accepting any such cards.

19. In my view, if the HAC rule were to be eliminated, as proposed by the Commissioner of Competition, the utility of a credit card network – the "ubiquity" of acceptance and the interchangeable nature of the network's credit cards – would be lost. This would harm Capital One Canada's customers and our ability to compete with other credit card issuers in Canada.

C. The HAC Rule's Guarantee of Universal Acceptance Benefits Capital One Canada's Customers

20. The HAC rule and its guarantee of universal acceptance particularly benefits our customers. Capital One Canada's cardholders would be reluctant to use their credit cards if they could not be sure that a merchant who advertises acceptance of MasterCards would accept their particular Capital One credit card. This is also important for international credit cards, because travellers rely on credit cards when abroad. For example, an Austrian on business in Canada seeking to pay his restaurant bill with his Volksbank Gold Visa card should not be told by the restaurant, "while we say we accept Visa, we do not accept Visa cards issued by Volksbank." The HAC rule ensures that this Austrian businessperson can pay his bill in Canada. Eliminating

the HAC rule may cause some visitors to Canada to revert to travellers cheques or cash (or hold them as alternatives) because they would not know whether merchants would accept their MasterCard or Visa cards.

21. For credit cardholders – who are of course our customers – eliminating the HAC rule would undermine a fundamental value proposition of the credit card – that is, knowing that a cardholder can use their card anywhere a merchant advertises acceptance of the MasterCard or Visa brand. If our customers do not know in advance which merchants will accept their credit cards, they will be confused and embarrassed at the point-of-sale. Consistent with my view of our customers' reactions, a recent survey suggested that more than 80% of Canadians oppose allowing merchants the ability to reject certain forms of payment.[6]

D. The HAC Rule Lowers Barriers to Entry For Credit Card Issuers Such as Capital One Canada and Promotes Competition Among Issuers

22. In addition to providing consumers with point-of-sale predictability and confidence in merchants' acceptance of their credit cards, the HAC rule facilitates the entry of new issuers, especially for smaller issuers (for example, Home Trust or Bridgewater Bank) or foreign financial institutions with little brand recognition in Canada (such as Capital One and MBNA when they entered). In my view, this promotes competition among issuers. Competition among issuers brings advantages to consumers like more choices for credit cards, including more diverse travel rewards options and low interest rate cards. The HAC rule means that a new or smaller issuer such as Capital One Canada need not have brand recognition with an acquirer or merchant to guarantee acceptance of its cards. Instead, we can rely on the network's brand. Similarly, while we must compete for cardholders by offering attractive cardholder benefits, we

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6 Angus Reid and Consumer Association of Canada, "Surcharge Survey" (September 2011), at p. 10 (**Exhibit E**).

do not need to prove to cardholders that merchants will accept our cards. The MasterCard or Visa brand provides that assurance.

23. In my view, without the HAC rule, merchants would not be relying on the Visa or MasterCard brand, but rather on the issuer's brand. Therefore, merchants would be more likely to accept cards issued by larger, well-established financial institutions with whom they are familiar than those issued by smaller institutions or those with little or no brand recognition, such as Capital One when it entered Canada. Because consumers would have less confidence that merchants would accept cards issued by smaller issuers, they would tend to carry cards issued by the larger issuers. Larger merchants with market power would also be able either to refuse outright the cards issued by new and smaller issuers or to accept only certain of their cards. This would negatively impact smaller issuers such as Capital One Canada or other issuers with little or no brand recognition. Ultimately, in my view, eliminating the HAC rule would reduce customer choice by significantly reducing competition among issuers, resulting in fewer credit card products being available for consumers.

IV. Capital One's Entry Into Canada Illustrates the Importance of the HAC Rule

24. Capital One's entrance into both Canada (except the Province of Québec) in 1996 and the Province of Québec in 2011 illustrates how the HAC rule promotes competition among credit card issuers. Capital One would not have been able to enter either Canada or the Province of Québec as quickly and successfully as we did without the HAC rule.

A. The HAC Rule Facilitated Capital One's Entry into Canada in 1996

25. While Capital One is a large credit card issuer of MasterCard branded cards in the United States, Capital One was not advertised or marketed in Canada before 1996 and had relatively

little brand recognition. By contrast, in 1996, Canada's "big five" banks had very significant if not universal brand recognition amongst Canadians. Given this large disparity, we could not have entered Canada as successfully in 1996 without the HAC rule. We were only able to enter Canada and compete as a monoline issuer, without a physical presence in the form of retail banking branches, by leveraging the brand recognition, universal acceptance, and interchangeable nature of ***all*** MasterCard credit cards.

26. Despite being a relatively small bank in terms of total assets in Canada, we have grown quickly as a monoline issuer by offering customized MasterCard credit card products through direct mail, the Internet, and telemarketing. Since entering Canada in 1996, our credit card issuing business has grown by 413% (as measured by the compound annual growth rate in outstanding loans), compared to only 10% overall growth for the credit card issuing business in Canada. Our rapid growth in the credit card space – and the critical contribution played by the HAC rule in facilitating this – is shown by our position among issuing banks in Table 1 below:

Table 1. Largest Credit Card Issuers in Canada (as of December 31, 2011).[7]

Issuer	Card Brand	Year of Entry
1. The Toronto-Dominion Bank	Visa & MasterCard*	pre-1996*
2. Canadian Imperial Bank of Commerce	Visa & MasterCard	pre-1996
3. Royal Bank of Canada	Visa & MasterCard	pre-1996
4. The Bank of Nova Scotia	Visa	pre-1996
5. Bank of Montreal	MasterCard	pre-1996
6. Caisse Desjardins	Visa	pre-1996
7. Capital One Canada**	**MasterCard**	**1996**
8. Canadian Tire Financial Services	MasterCard	2003
9. American Express Canada	Amex	pre-1996
10. President's Choice Financial	MasterCard	2000

7 This is based on my understanding of OSFI outstanding balances as reported in Nilson's proprietary reports (Issue 991, March 2012). *Toronto-Dominion Bank acquired the credit card business of MBNA (Bank of America) in December 2011. **Based on Capital One Canada's acquisition of Hudson's Bay Company's credit card portfolio in January 2011.

27. As Table 1 above shows, four of the top ten issuers in Canada have entered since 1996, with two of those entering in 2000 or later. In my view, this high level of competition among credit card issuers in Canada would not exist without the HAC rule.

28. The importance of the HAC rule to our rapid growth in Canada is further illustrated by our relative ranking among Canadian banks in terms of total asset size, shown below in Table 2:

Table 2. Leading Banks (Total Assets) in Canada (as of November 30, 2011).[8]

Bank	Assets (in $000s)
1. Royal Bank of Canada	815,880,680
2. The Toronto-Dominion Bank	766,387,238
3. The Bank of Nova Scotia	640,257,460
4. Bank of Montreal	542,853,588
5. Canadian Imperial Bank of Commerce	397,097,303
6. National Bank of Canada	184,026,581
7. HSBC Bank Canada	78,563,640
8. ING Bank of Canada	39,092,055
9. Laurentian Bank of Canada	30,307,079
10. Manulife Bank of Canada	20,337,717
20. Capital One Canada	**4,825,623**

29. As Table 2 illustrates, we are a relatively small bank in terms of total assets, ranking 20th in Canada. However, by leveraging the HAC rule and its guarantee of merchant acceptance of MasterCard branded credit cards, we have been able to punch well above our weight as a monoline issuer in Canada. In sum, it is my view that the HAC rule was critical to our entry into Canada in 1996, and has been significant in driving our subsequent growth. As I will explain below, the HAC rule also facilitated our recent entry into the Province of Québec.

8 The ranking presented in Table 1 is based on data compiled by the Canadian Bankers Association.

B. The HAC Rule Facilitated Capital One Canada's Entry into the Province of Québec in 2011

30. Capital One Canada entered the Province of Québec in July, 2011. Before then, we had little or no brand recognition in that province. Since then our brand recognition has grown by 25%. Our credit card business in the Province of Québec has grown and our credit card loans outstanding are $21,841,159 (as of the end of March, 2012).

31. The HAC rule has been critical in facilitating our entry into the Province of Québec and in enabling us to compete against established local issuers such as Desjardins and National Bank of Canada, both of whom enjoy near 100% brand recognition among Québec consumers as both credit card issuers and as retail banks with branches throughout the Province. Without the HAC rule's guarantee of merchant acceptance of MasterCards, we simply would not have been able to enter the Province of Québec or to compete there effectively.

V. Conclusion

32. Based on my experience in several roles with Capital One, in my view, the HAC rule is a critical feature of the MasterCard and Visa credit card system and promotes competition among credit card issuers. The HAC rule facilitates the entry of new issuers, particularly smaller issuers and those lacking established brand recognition. The HAC rule also significantly helps new and smaller issuers such as Capital One Canada compete against larger issuers, who are able to leverage their retail banking operations and their strong brand recognition with consumers and merchants to support and grow their credit card businesses. Without the HAC rule, we would not have been able to enter Canada in 1996 and the Province of Québec in 2011 as successfully. Eliminating the HAC rule would seriously undermine our ability to compete effectively with larger, more established credit card issuers in Canada, such as Canada's largest banks, credit

unions, and other financial institutions. The HAC rule promotes competition among issuers and competition is good for consumers, resulting in advantages like greater choices for credit cards, including more diverse travel rewards options and low interest rate cards.

Dated April 10, 2012

Robert Livingston
President,
Capital One Bank (Canada Branch)

File No. CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *COMPETITION ACT*, R.S.C. 1985, c. C-34, as amended;

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B E T W E E N:

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- and -

VISA CANADA CORPORATION and MASTERCARD INTERNATIONAL INCORPORATED

Respondents

-and-

THE TORONTO-DOMINION BANK and THE CANADIAN BANKERS ASSOCIATION

Intervenors

WITNESS STATEMENT OF ROBERT LIVINGSTON
(April 10, 2012)

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The Canadian Bankers Association

This is **Exhibit A** referred to in the Witness Statement of Robert Livingston dated April 10, 2012

Competition Tribunal | **Tribunal de la Concurrence**

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2011 Comp. Trib. 2
File No.: CT-2010-10
Registry Document No.: 50

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Visa Canada Corporation and
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(applicants for leave to intervene)

Date of hearing: 20110307
Before Judicial Member: Simpson J. (Chairperson)
Date of Reasons for Order and Order : April 5, 2011
Reasons for Order and Order signed by: Madam Justice Sandra J. Simpson

REASONS AND ORDER REGARDING MOTIONS FOR LEAVE TO INTERVENE BY THE TORONTO-DOMINION BANK AND THE CANADIAN BANKERS ASSOCIATION

Introduction

[1] The Toronto-Dominion Bank and the Canadian Bankers Association (the "Proposed Intervenors") are moving for leave to intervene in proceedings commenced by the Commissioner of Competition (the "Commissioner") against Visa Canada Corporation ("Visa") and MasterCard International Incorporated ("MasterCard") pursuant to section 76 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act). This provision deals with price maintenance.

Background

[2] Visa and MasterCard do not issue credit cards. Rather, they operate the credit card networks which are used to process credit card transactions. Visa and MasterCard credit cards are issued to shoppers by financial institutions such as banks. They are described as "Issuers" when they perform this function. Some banks also operate as "Acquirers". In this role, they provide services to merchants which allow them to process payments made with Visa and MasterCard credit cards. Acquirers are required by Visa and MasterCard to include certain terms in the agreements they make with merchants. Those terms include provisions which require merchants to accept all Visa and MasterCard credit cards and which prohibit merchants from imposing a surcharge on a shopper who uses a premium credit card. Terms of this kind have been described by the Commissioner as the "Merchant Restraints".

[3] In broad terms, the Commissioner's application concerns the fees paid by merchants (the "Card Acceptance Fees") for the ability to accept Visa and MasterCard credit cards when shoppers make retail purchases.

[4] The application also deals with the portion of Card Acceptance Fees known as "Interchange Fees". Interchange Fees are retained by Issuers and represent a significant portion of Card Acceptance Fees. The Commissioner asks the Tribunal to order the abolition of the Merchant Restraints (the "Proposed Order") saying that such an order will promote competition in the setting of Card Acceptance Fees. The suggestion is that, if competition is introduced, Card Acceptance Fees will decline.

[5] The Commissioner's application raises a number of issues and, based on the pleadings, Visa and MasterCard dispute all the fundamentals of her case. In particular they:

(a) do not agree with her definition of "credit card network services" as the product market;
(b) do not agree that section 76 of the Act applies on the facts of this case;
(c) characterize the Merchant Restraints as pro-competitive; and
(d) forecast negative consequences for their credit card networks and for their cardholders if the Merchant Restraints are abolished.

The Proposed Intervenors

[6] Against this background, the Toronto-Dominion Bank ("TD Bank") and the Canadian Bankers Association (the "Association") seek leave to intervene under subsection 9(3) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd supp.) (the "Tribunal Act").

[7] TD Bank is a Schedule I bank incorporated under the *Bank Act*, S.C. 1991, c. 46. It is one of the largest banks in Canada and it is the only Canadian chartered bank which carries on business as both an Issuer and an Acquirer. If granted leave, TD Bank will support the positions taken by Visa and MasterCard.

[8] The Association is a national organization which represents the Canadian banking industry. Its members include 51 domestic chartered banks, subsidiaries of foreign banks, and foreign bank branches operating in Canada. The Association deals with matters of concern to the banking industry as a whole and its main activities are in the fields of legislation, education, publication, public relations, and information. The Association, if granted leave, will also support Visa and MasterCard.

[9] Visa and MasterCard are in favour of the interventions but did not make oral submissions on the motions for leave. The Commissioner, on the other hand, argued that both Proposed Intervenors should be denied leave to intervene.

The Development of the Test

[10] Subsection 9(3) of the Tribunal Act reads as follows:

9(3). Any person may, with leave of the Tribunal, intervene in any proceedings before the Tribunal, other than proceedings under Part VII.1 of the *Competition Act*, to make representations relevant to those proceedings in respect of any matter that affects that person	**9(3).** Toute personne peut, avec l'autorisation du Tribunal, intervenir dans les procédures se déroulant devant celui-ci, sauf celles intentées en vertu de la partie VII.1 de la *Loi sur la concurrence*, afin de présenter toutes observations la concernant à l'égard de ces procédures.

[11] The first guidance provided by the courts regarding the test for leave to intervene is found in the Federal Court of Appeal decision in *American Airlines, Inc. v. Canada (Competition Tribunal)* (1988), 54 D.L.R. (4th) 741, aff'd [1989] 1 S.C.R. 236. The Tribunal had concluded that the word "representations" in subsection 9(3) of the Tribunal Act meant that intervenors were only entitled to make submissions. Mr. Justice Iacobucci, as he then was, disagreed. He concluded that, in appropriate cases, the Tribunal could allow intervenors broader rights of participation including a right of discovery, the right to call evidence and the right to cross-examine witnesses.

[12] In *Director of Investigation and Research v. Air Canada et al.* (1992), 46 C.P.R. (3d) 184, the Tribunal held that the term "affects" in subsection 9(3) of the Tribunal Act means

"directly affects". Accordingly, leave to intervene would be denied to a person who might have strong views about the outcome of a case, but would not be affected differently from members of the general public. The Tribunal also concluded that the representations to be made by a proposed intervenor would have to be germane to the mandate of the Tribunal.

[13] In *AC Nielsen Company of Canada Ltd. v. Canada (Director of Investigation and Research)*, [1994] C.C.T.D. No. 9 (QL), the Tribunal refused to grant leave to lawyers who had a particular interest in competition law but who had failed to allege or demonstrate how the proceeding affected them. The Tribunal found that a particular interest in the area of competition law, without more, did not justify leave to intervene.

[14] In *Director of Investigation and Research v. Tele-Direct (Publications) Inc. et al.*(1995), 61 C.P.R. (3d) 528, the Tribunal granted leave to intervene to a publisher of a classified telephone directory and two advertising agencies, but refused to grant leave on all their proposed issues because the Director of Investigation and Research had not raised them in his application.

[15] In *Canada (Director of Investigation and Research) v. Canadian Pacific Ltd. et al.*(1997), 74 C.P.R. (3d) 37, the Tribunal held that a proposed intervenor must identify the capacity in which it is directly affected. The Tribunal further held that the representations to be made by a proposed intervenor must be relevant and of assistance to the Tribunal.

[16] In *Southam Inc. et al. v. Director of Investigation and Research* (1997), 78 C.P.R. (3d) 315, the Tribunal referred to the requirement that an applicant for intervenor status must bring to the Tribunal a distinct perspective. In that instance, Noël J., as he then was, held that intervenors are intended to "supplement the case of a party by bringing to the Tribunal their own and distinct perspective of the subject matter in dispute" (at p. 319).

[17] In *Washington v. Canada (Director of Investigation and Research)*(1998), 78 C.P.R. (3d) 479, the merging parties sought a variation of a consent order to remove the requirement for a divestiture of certain assets. The variation was on consent and was sought because a new entrant had appeared in the relevant market. The proposed intervenor advised the Tribunal that it would undertake an investigation about the effect of the entry and would put before the Tribunal evidence which might differ from that presented by the parties. The Tribunal denied leave to intervene and held that a proposed intervenor should have a unique and distinct perspective and should be able to satisfy the Tribunal that it had facts to present without conducting a "fishing expedition".

[18] Lastly, the Tribunal also has provided guidance about requests for leave to intervene made by associations. In *Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd.*, [1994] C.C.T.D. No. 19 (QL), McKeown J. held that the Canadian Council of Grocery Distributors was directly affected because it was sufficient that there were matters in issue that would directly affect the persons it represented. In the Tribunal's view, having the association as the sole intervenor would be more efficient than requiring each individual retailer to appear independently. Similarly, in *Canada (Director of Investigation and Research) v. Bank of Montreal* (1996), 66 C.P.R. (3d) 409, the Tribunal granted intervenor status to two associations, the Retail Council of Canada and the Canadian Life and Health Insurance

Association Inc., noting (at para. 7) that the "association provides a convenient and efficient means of representing the many affected persons in a coherent way before the Tribunal".

The Test

[19] In *The Commissioner of Competition v. Canadian Waste Services Holdings*, 2000 Comp. Trib. 9, Mr. Justice McKeown reviewed the above case law and listed the requirements to be met by a proposed intervenor. They are:

> (a) The matter alleged to affect that person seeking leave to intervene must be legitimately within the scope of the Tribunal's consideration or must be a matter sufficiently relevant to the Tribunal's mandate (see *Director of Investigation and Research v. Air Canada* (1992), 46 C.P.R. (3d) 184 at 187, [1992] C.C.T.D. No. 24 (QL)).
> (b) The person seeking leave to intervene must be directly affected. The word "affects" has been interpreted in *Air Canada, ibid.*, to mean "directly affects".
> (c) All representations made by a person seeking leave to intervene must be relevant to an issue specifically raised by the Commissioner (see *Tele-Direct*).
> (d) Finally, the person seeking leave to intervene must bring to the Tribunal a unique or distinct perspective that will assist the Tribunal in deciding the issues before it (see *Washington v. Director of Investigation and Research*, [1998] C.C.T.D. No. 4 (QL) (Comp. Trib.)).

The Proposed Intervenors' Evidence

[20] TD Bank's motion for leave to intervene is supported by a joint affidavit sworn on February 9, 2011, by Jim Sallas, Senior Vice-President, Personal Lending and Credit Cards, and by Jeff van Duynhoven, President of Merchant Services (the "Bank's Affidavit"). None of the parties challenged the joint format or cross-examined the deponents.

[21] The deponents say that TD Bank is directly affected by the proceedings in its dual roles as Issuer and Acquirer and also in its overall banking business. They say that if the Merchant Restraints are removed, there will be significant migration away from credit cards to other forms of payment. This change would directly impact TD Bank as an Issuer and as an Acquirer and, if its customers' credit cards were refused, those refusals might negatively affect its overall banking business.

[22] The deponents also say that TD Bank brings a distinct and unique perspective to the proceedings because of its dual roles. They note that Visa and MasterCard generally do not have any direct interaction with cardholders and say that they can neither explain the costs associated with the creation of features and benefits associated with TD Bank's credit cards nor detail the role played by Card Acceptance Fees in the viability of TD Bank's issuing business.

[23] Mr. Sallas and Mr. van Duynhoven also believe that the Commissioner's application will affect Canada's entire payments system and that the credit card networks cannot and should not be examined by the Tribunal in isolation from their place in Canada's overall payments system.

[24] The Association has filed the affidavit of Darren Hannah, Director of Banking Operations for the Association, sworn on February 10, 2011. Mr. Hannah was not cross-examined.

[25] He says that the Association's 51 member banks are key participants in the Canadian credit card system as the principal customers of the Respondents' credit card networks and as credit card issuers both large and small. He adds that the Association's member banks also have significant commercial relationships with their personal and commercial retail banking customers, including cardholders. He notes that some member banks have an interest in the business of acquiring credit card transactions and some operate their own acquiring businesses.

[26] He also says that the member banks issue approximately 90% of the credit cards in use in Canada and that from the banks' perspective as issuers of credit cards to consumers and businesses, the Merchant Restraints are critical to the efficiency, integrity, and reliability of Canada's credit card networks.

The Issues

[27] On the facts presented on these motions, the questions for determination are:

1. Are the TD Bank and the Association's members directly affected by the Commissioner's application? And, if so,

2. Are the topics they wish to address relevant to issues raised in the Commissioner's application? And, if so,

3. Are the TD Bank and the Association in a unique or distinct position to address those topics and will their participation assist the Tribunal?

4. Finally, if leave is granted what should be the extent of the intervenors' participation before and during the hearing?

Question 1 – Are the Proposed Intervenors Directly Affected?

The TD Bank

[28] TD Bank says that the Merchant Restraints are found in all its contracts with merchants and that it is directly affected because the abolition of the Merchant Restraints will effectively rewrite the contracts it holds as an Acquirer. TD Bank also functions as an Issuer and says that, if the Merchant Restraints are eliminated and its customers' credit cards are refused by merchants, it will be directly affected because customers will make less use of their cards, fewer Card Acceptance Fees will be paid by merchants and customers may blame the bank for their inability to use their credit cards.

[29] The Commissioner submits that the impacts foreseen by TD Bank are merely speculative predictions and, as such, do not meet the requirement to show a definite impact. She says that

that requirement is found in *Burns Lake Native Development Corporation et al. v. The Commissioner of Competition and West Fraser Timber Co. Ltd. et al.*, 2006 Comp. Trib. 16, ("Burns Lake"). Burns Lake dealt with whether a party had standing to challenge a registered consent agreement under section 106 of the Act. In my view, the reasoning in Burns Lake does not apply to requests for intervenor status under subsection 9(3) of the Tribunal Act because the context for the applications is entirely different. In section 106 challenges, the registered consent agreement has ended a dispute and has imposed remedies for alleged anti-competitive conduct. It is therefore reasonable to require a party challenging the agreement to be certain about its impact.

[30] The situation for those seeking leave to intervene under subsection 9(3) of the Tribunal Act is very different. Proposed intervenors are required to apply for leave to intervene ten days after a response is filed to a Commissioner's application. At that point, since the Commissioner has a right of reply, the pleadings are not closed and the hearing of the application is at a future date. In these circumstances, it is not reasonable to require a proposed intervenor to be completely certain about the ways in which it might be affected by the relief sought by the Commissioner. Some speculation is acceptable.

[31] The Commissioner also says that the Proposed Order will have an impact on the 670,000 merchants who accept credit cards and on the 20 million Canadians who hold such cards. For this reason she says that the fact that TD Bank is a party to contracts with merchants and cardholders should not justify an intervention because it is not affected in a manner which is different from a vast number of Canadians and Canadian businesses.

[32] However, the fact that many Canadians hold credit cards from Issuers and numerous merchants deal with Acquirers does not mean that the banks which offer contracts to those cardholders and merchants are not directly affected in their businesses of issuing and acquiring if those contracts are to change as a result of the Proposed Order.

[33] TD Bank also says it is directly affected by what it describes as the allegations of anti-competitive behaviour found in paragraph 12 of the Commissioner's application. There she states that Acquirers are required by Visa and MasterCard to include the Merchant Restraints in their contracts with merchants. Then, in paragraphs 14, 47, 48 and 58, the Commissioner asserts that the Merchant Restraints are anti-competitive. TD Bank says that, because it is an Acquirer, these paragraphs, taken together, allege anti-competitive behaviour on its part.

[34] In my view, this submission is not sound. No remedy is sought against TD Bank or any other Acquirer. TD Bank is not named as a party and no impropriety is suggested. Rather, the pleadings, as a whole, make it clear that, in the Commissioner's view, Acquirers and merchants, who make agreements which include the Merchants Restraints, have no alternative but to agree to their inclusion because they have no bargaining power. Further, the Commissioner's counsel confirmed in the hearing that no allegations were made against TD Bank. Accordingly, there are no allegations of anti-competitive conduct to underpin this submission that TD Bank is directly affected.

[35] TD Bank has a third reason for alleging that it is directly affected. It says that it provides full banking services to many of the cardholders it deals with as an Issuer. It submits that if the Merchant Restraints are removed, TD Bank's customers who hold credit cards issued by the bank might re-evaluate their overall banking relationship with the bank when merchants refuse those cards.

[36] I have not accepted this submission as evidence of a direct effect which justifies an intervention. In my view, if cardholders are apprehensive about the Proposed Order and its impact on their overall banking relationships, that information must come from them.

Conclusion – TD Bank

[37] Although I have rejected two of TD Bank's reasons for saying that it is directly affected, I am persuaded by its initial submission that it is directly affected by reason of its businesses as Issuer and Acquirer.

The Canadian Bankers Association

[38] The Commissioner again says that the Association only speculates about the impact of the Proposed Order on the Association's members and that speculation cannot support an application for leave to intervene.

[39] For the reasons given above some speculation is permissible. However, in my view, the Association's evidence is not speculative. Mr. Hannah's affidavit shows that the Association is certain that cardholders will complain to Issuers and cancel their credit cards if these cards are refused by merchants.

[40] As well, two of the Association's members have a 50% interest in Acquirer businesses and, as discussed earlier, their contracts with merchants will change if the Proposed Order is made.

Conclusion – The Association

[41] I accept the Association's evidence and am satisfied that many of its members are directly affected.

Question 2 – Are the Proposed Intervenors' Proposed Topics Relevant?

[42] During the hearing, counsel for each of the Proposed Intervenors was asked to list the topics their clients wished to address if given leave to intervene.

[43] The TD Bank's proposed topics are:

1. Interactions the bank has with merchants in its role as an Acquirer;
2. Interactions the bank has with cardholders in its role as an Issuer;

3. The bank's interactions with Visa and MasterCard in its dual roles as Issuer and Acquirer;
4. The impact of the Proposed Order on the payments system;
5. The impact of the Proposed Order on TD Bank's business as an Issuer and as an Acquirer;
6. TD Bank's perceptions of the impact of the Proposed Order on its merchant and cardholder customers;
7. TD Bank's view of the reasons for the Merchant Restraints.

[44] The Association wishes to address the following topics from the multiple perspectives of its members:

1. The competitiveness of the payments system and the benefits it provides to all its participants;
2. How the Merchant Restraints are pro-competitive and critical to the efficiency, integrity and reliability of the Visa and MasterCard credit card networks;
3. The role of Card Acceptance Fees from the perspective of the Issuer;
4. The impact of the Proposed Order on benefits and services Issuers provide to cardholders;
5. The reasons why section 76 of the Act does not apply on the facts of this case.
6. The impact of the Proposed Order on Issuers, Acquirers, merchants and cardholders.

General Observations – The Relevance of the Business of Issuers and of the Canadian Payments System

[45] The Commissioner's case does not center on the business of issuing credit cards. However, the Bank's Affidavit shows that it seeks to expand the hearing to have the Tribunal consider all aspects of the business including its costs and the services it provides to cardholders. As well, the Association says that the Tribunal must consider the competitiveness of the payments system because the Proposed Order will affect the system as a whole.

[46] I have concluded that it is not appropriate to permit the Proposed Intervenors to expand the hearing to deal extensively with matters which are not the subject of allegations by the Commissioner. Accordingly, the Proposed Intervenors will not be given leave to adduce general broad-based evidence about the business of issuing credit cards or about the operation of the Canadian payments system. However, there is room for limited evidence on these topics for the reasons given below.

[47] The Commissioner deals with the impact of the Proposed Order on Issuers in her Application at paragraphs 48, 58, 71 and 73 and in her Reply at paragraphs 57-59, 61 and 83. She alleges that, with the Proposed Order, there will be an incentive for Issuers to compete with one another by issuing credit cards with reduced Interchange Fees so that merchants will accept their cards without surcharges. In view of this allegation, it would be relevant for the Proposed Intervenors to adduce evidence about the likely impact of the Proposed Order on Interchange Fees.

[48] Turning to the payments system, the Commissioner asks for a discretionary order and both Visa and MasterCard have said that, even if price maintenance is established, the Tribunal should not exercise its discretion in favour of the order. For this reason, the impact of the Proposed Order on the payments system is relevant.

Question 2 (cont'd) and 3 – Relevance, Uniqueness and Assistance

[49] I now turn to the specific topics suggested by the Proposed Intervenors.

TD Bank

Proposed Topic 1 The interactions between TD Bank acting as an Acquirer and merchants is a relevant topic and, in my view, the bank is in a position to provide a unique firsthand perspective which will assist the Tribunal. Accordingly, its intervention on this topic will be allowed.

Proposed Topic 2 However, as discussed above, a broad intervention dealing with TD Bank's business as an Issuer and its interactions with cardholders is not relevant.

Proposed Topic 3 TD Bank's interactions with Visa and MasterCard in its role as an Acquirer is also relevant and its firsthand evidence on this topic is likely to assist the Tribunal. Accordingly, leave will be given to intervene on this aspect of topic 3. However, as discussed above, a broad intervention dealing with TD Bank's interactions with Visa and MasterCard in its role as an Issuer is not relevant. However, a narrower intervention focussed on the setting of Interchange Fees would assist the Tribunal.

Proposed Topic 4 The impact of the Proposed Order on the payments system is relevant. The Association has not listed this as a topic and it appears that Visa and MasterCard will focus on the impact of the order on their credit card networks. Accordingly, an intervention on this topic will assist the Tribunal.

Proposed Topic 5 Firsthand evidence about the impact of the Proposed Order on TD Bank's business as an Issuer and Acquirer is relevant and, in my view, will assist the Tribunal as long as it does not duplicate the Association's evidence on this topic.

Proposed Topic 6 The impact of the Proposed Order on merchants and cardholders is relevant. However, TD Bank has no direct evidence to offer on this issue. It only proposes to give the Tribunal the benefit of its "perceptions". In my view, evidence of this nature will not assist the Tribunal and this intervention will not be permitted.

Proposed Topic 7 TD Bank is not the author of the Merchant Restraints and is not responsible for their imposition. Accordingly, it is not uniquely placed to address the reasons for their use. Evidence on this topic will presumably come from Visa and MasterCard. Further, to the extent that TD Bank raised this topic to respond to perceived allegations of anti-competitive conduct, such a response, as noted above, is not required since no such allegations were made.

The Association

Proposed Topic 1 For the reasons given above, I have concluded that general evidence about the competitiveness and benefits of the Canadian payment services market is not relevant.

Proposed Topic 2 Whether or not the Merchant Restraints are pro-competitive and what role they play in the provision of credit card networks are relevant topics. However, Visa and MasterCard will address these issues and are in the best position to do so since they impose the restraints and operate the networks. The Association does not offer a unique perspective on these topics. Accordingly, an intervention on this topic will not be permitted.

Proposed Topic 3 The Issuers' perspective on the role of Card Acceptance Fees and, in particular, Interchange Fees is relevant. It cannot be addressed by Visa and MasterCard and it is not on TD Bank's list of topics. Accordingly, intervention on this issue is appropriate.

Proposed Topic 4 As mentioned earlier, the impact of the Proposed Order on Interchange Fees is relevant. As well, the impact of the Proposed Order on benefits and services available to cardholders is also relevant. These topics are included in Topic 6 below.

Proposed Topic 5 The application of section 76 of the Act to the facts of this case is, of course, relevant. However, it will be addressed by Visa and MasterCard. Accordingly, an intervention on this issue is not warranted.

Proposed Topic 6 The impact of the Proposed Order on Issuers, Acquirers, merchants and cardholders is relevant. However, the Association does not have merchants and cardholders among its members so any evidence about their views of the impact would be entirely speculative and will therefore not assist the Tribunal.

However, views of the Association's members about the impact of the Proposed Order on Issuers and Acquirers may well assist the Tribunal. An intervention will be permitted on this topic but only to the extent that the evidence and the submissions do not duplicate those made by the TD Bank.

ORDER

[50] For the reasons given above, TD Bank is given leave to intervene to address the following topics:

A. Its interactions with merchants as an Acquirer.
B. Its interactions with Visa and MasterCard as an Acquirer.
C. Its interactions with Visa and MasterCard as an Issuer as those interactions relate to Interchange Fees.
D. The impact of the Proposed Order on the payments system.
E. The impact of the Proposed Order on its business as an Issuer and an Acquirer to the extent that there is no duplication with the Association's evidence and submissions.

[51] For the reasons given above, the Association is given leave to intervene on the following topics:

A. The Issuer's perspective on the role of Card Acceptance Fees.
B. The impact of the Proposed Order on Issuers and Acquirers to the extent that there is no duplication with the TD Bank's evidence and submissions.

Question 4 – The Scope of the Interventions

[52] Having determined that the Proposed Intervenors have relevant evidence to offer, the question is how to structure their interventions so that they effectively assist the Tribunal without unduly lengthening the proceeding or unduly interfering with the *lis* between the Commissioner and Visa and MasterCard.

[53] To achieve these objectives, the Tribunal orders that:

(i) The intervenors must proceed according to the schedule for the case agreed to by the parties in a letter to the Tribunal from Blakes dated March 29, 2011 as it relates to the Respondents.
(ii) Subject to any orders dealing with confidentiality, the intervenors are to be served with the parties' productions and affidavits of documents as they become available.
(iii) The intervenors are to produce the documents relevant to the topics of their respective interventions and deliver affidavits of documents on or before August 15, 2011.
(iv) The intervenors have not asked for oral discovery of a representative of the Commissioner. They may not attend such discoveries but may, as requested, review those transcripts.
(v) If the Commissioner wishes to discover a representative of each of the intervenors, she may do so. However, her right to discovery is limited to the topics on which each has been given leave to intervene and is also limited in time to three (3) hours for the representative of the TD Bank and two (2) hours for the Association's representative.
(vi) TD Bank may call a maximum of three witnesses and the Association may call a maximum of two witnesses at the hearing. Those limits include any experts the intervenors may wish to call.
(vii) At the hearing, the intervenors' counsel may cross-examine the Commissioner's witnesses only on the topics of their respective interventions. When cross-examining, counsel may not repeat questions already asked by any other counsel.
(viii) Intervenors may make written and oral argument which is not repetitive.
(ix) When the Chess Clock timing is established, the intervenors will be given distinct time allotments. In other words, the Commissioner's suggestion that their time be deducted from the time allotted to Visa and MasterCard is not accepted.

[54] There is no order as to costs.

DATED at Ottawa, this 5^{th} day of April, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Kent Thomson
Adam Fanaki
William Miller
David D. Akman

For the respondents:

MasterCard International Incorporated

Jeffrey B. Simpson
James Musgrove

Visa Canada Corporation

Robert Kwinter
Randall Hofley

For the applicants for leave to intervene:

The Canadian Bankers Association

Mahmud Jamal
Michelle Lally
Jason MacLean

The Toronto-Dominion Bank

Paul Morrison
Christine Lonsdale

This is **Exhibit B** referred to in the Witness Statement of Robert Livingston dated April 10, 2012

2011 Best Workplaces in Canada (50 - 999 employees)

Great Place to Work® Institute Canada is pleased to present the 2011 list of "Best Workplaces in Canada" as published in a Special National Report in The Globe and Mail on April 12, 2011.

This year's list recognizes 84 Best Workplaces in Canada (50 - 999 employees).

1. **Google Canada**

   150 employees
   www.google.ca
   Industry: Media - Online Internet Services
   Ownership: Publicly quoted/held

2. **NetApp Ltd.**

   140 employees
   www.netapp.com
   Industry: Information Technology - Storage/Data Management
   Ownership: Publicly quoted/held

3. **SAS Institute (Canada) Inc.**

   258 employees
   www.sas.com/canada
   Industry: Information Technology - Software
   Ownership: Private

4. **Habañero Consulting Group**

   144 employees
   www.habaneros.com
   Industry: Information Technology - IT Consulting
   Ownership: Private

5. **Gap Adventures**

   121 employees
   www.gapadventures.com
   Industry: Professional Services - Travel Management
   Ownership: Private

6. **Protegra**

   58 employees
   www.protegra.com
   Industry: Professional Services - Consulting - Management
   Ownership: Private

7. **Nycomed Canada Inc.**

   135 employees
   www.nycomed.com
   Industry: Biotechnology & Pharmaceuticals - Pharmaceuticals
   Ownership: Private

8. **T4G Limited**

   235 employees
   www.t4g.com
   Industry: Information Technology - IT Consulting
   Ownership: Private

9. **Intuit Canada**

   313 employees
   www.intuit.ca
   Industry: Information Technology - Software
   Ownership: Publicly quoted/held

10. **Enermodal Engineering**

    90 employees
    www.enermodal.com
    Industry: Professional Services - Consulting Engineering
    Ownership: Private

11. **Admiral Insurance**

226 employees
www.joinadmiral.ca
Industry: Financial Services & Insurance - Auto Insurance
Ownership: Private

12. Possibility Holdings

81 employees
www.omnicorp.ca
Industry: Financial Services & Insurance - General Insurance
Ownership: Private

13. Lutherwood

237 employees
www.lutherwood.ca
Industry: Social Services and Government Agencies
Ownership: Non-profit

14. Royal LePage Performance Realty

454 employees
www.performancerealty.ca
Industry: Construction & Real Estate - Real Estate
Ownership: Private

15. Vermilion Energy

160 employees
www.vermilionenergy.com
Industry: Manufacturing & Production
Ownership: Publicly quoted/held

16. Ariad Custom Communications

80 employees
www.ariad.ca
Industry: Media - Publishing and printing
Ownership: Private

17. Keller Williams Ottawa Realty

307 employees
www.kwottawa.ca
Industry: Construction & Real Estate - Real Estate
Ownership: Private

18. Medtronic of Canada Ltd

434 employees
www.medtronic.com
Industry: Manufacturing & Production - Medical devices
Ownership: Private

19. Disney Online Studios Canada

350 employees
www.clubpenguin.com
Industry: Media - Online Internet Services
Ownership: Private

20. Ontario Hospital Association

106 employees
www.oha.com
Industry: Health Care
Ownership: Non-profit

21. The Calgary Food Bank

50 employees
www.calgaryfoodbank.com
Industry: Social Services and Government Agencies
Ownership: Non-profit

22. Lakeside Process Controls Ltd.

145 employees
www.lakesidecontrols.com
Industry: Industrial Services - Engineering
Ownership: Private

23. Summerhill
56 employees
www.summerhillgroup.ca
Industry: Professional Services - Consulting Environmental
Ownership: Private

24. Sequel Naturals

53 employees
www.sequelnaturals.com
Industry: Manufacturing & Production - Food products
Ownership: Private

25. Randstad Canada

567 employees
www.randstad.ca
Industry: Professional Services - Staffing & Recruitment
Ownership: Private

26. Mercedes-Benz Financial Services Canada Corporation

129 employees
www.daimlerfinancialservices.com/na
Industry: Financial Services & Insurance - Banking/Credit Services
Ownership: Publicly quoted/held

27. Immigrant Services Society of British Columbia

277 employees
www.issbc.org
Industry: Social Services and Government Agencies
Ownership: Non-profit

28. Halsall Associates Limited

329 employees
www.halsall.com
Industry: Professional Services - Consulting Engineering
Ownership: Private

29. Urban Systems Ltd.

325 employees
www.urban-systems.com
Industry: Professional Services - Consulting Engineering
Ownership: Private

30. Ames Tile & Stone Ltd.

104 employees
www.amestile.com
Industry: Construction & Real Estate - Housing
Ownership: Private

31. SaskCentral (Credit Union Central of Saskatchewan)

95 employees
www.saskcu.com/saskcentral
Industry: Financial Services & Insurance - Investments
Ownership: Cooperative

32. OnX Enterprise Solutions

415 employees
www.onx.com
Industry: Information Technology - IT Consulting
Ownership: Private

33. Lannick Group of Companies

77 employees
www.lannick.com
Industry: Professional Services - Staffing & Recruitment
Ownership: Private

34. L.V. Lomas Ltd.

200 employees
www.lvlomas.com
Industry: Transportation - Transport & Storage
Ownership: Private

35. **Construction Control Inc.**

82 employees
www.constructioncontrol.com
Industry: Professional Services - Consulting Engineering
Ownership: Private

36. **CDW Canada Inc.**

262 employees
www.cdw.ca
Industry: Information Technology - Hardware
Ownership: Private

37. **Capital One Canada**

189 employees
www.capitalone.ca
Industry: Financial Services & Insurance - Banking/Credit Services
Ownership: Publicly quoted/held

38. **Sandvine**

320 employees
www.sandvine.com
Industry: Information Technology - Hardware
Ownership: Private

39. **Stryker Canada**

215 employees
www.stryker.com
Industry: Health Care - Medical sales/distribution
Ownership: Private

40. **Hill & Knowlton Canada**

215 employees
www.hillandknowlton.ca
Industry: Professional Services
Ownership: Private

41. **Sapient Canada**

153 employees
www.sapient.com
Industry: Advertising & Marketing - Advertising
Ownership: Publicly quoted/held

42. **Qualcomm**

173 employees
www.qualcomm.com
Industry: Telecommunications
Ownership: Publicly quoted/held

43. **Online Business Systems**

189 employees
www.obsglobal.com
Industry: Information Technology - IT Consulting
Ownership: Private

44. **Tri Fit Inc.**

52 employees
www.trifit.com
Industry: Health Care - Services
Ownership: Private

45. **Fuller Landau LLP**

56 employees
www.fullerlandau.com
Industry: Financial Services & Insurance - Accounting
Ownership: Private

46. **Real Food for Real Kids**

52 employees
www.rfrk.com

Industry: Hospitality - Food and Beverage Service
Ownership: Private

47. FinancialCAD Coporation

93 employees
www.fincad.com
Industry: Information Technology - Software
Ownership: Private

48. The Marketing Store

120 employees
www.themarketingstore.com
Industry: Advertising & Marketing
Ownership: Private

49. Connect Hearing

338 employees
www.connecthearing.ca
Industry: Retail - Specialty
Ownership: Private

50. Nintendo of Canada Ltd

71 employees
www.nintendo.ca
Industry: Electronics
Ownership: Private

51. Cobalt Engineering

139 employees
www.cobaltengineering.com
Industry: Professional Services - Consulting Engineering
Ownership: Private

52. Edmonton Oilers Hockey Club

151 employees
www.edmontonoilers.com
Industry: Hospitality - Management
Ownership: Private

53. Pinchin Environmental Ltd.

238 employees
www.pinchin.com
Industry: Professional Services - Consulting Engineering
Ownership: Private

54. FIRMA Foreign Exchange Corporation

140 employees
www.globexfx.com
Industry: Financial Services & Insurance - Banking/Credit Services
Ownership: Private

55. Autodesk

625 employees
www.autodesk.com
Industry: Information Technology - Software
Ownership: Private

56. Softchoice Corporation

500 employees
www.softchoice.com
Industry: Information Technology - IT Consulting
Ownership: Publicly quoted/held

57. HRdownloads

57 employees
www.hrdownloads.com
Industry: Professional Services - Consulting - Management
Ownership: Private

58. Scott Builders Inc.

127 employees
www.scottbuilders.com
Industry: Construction & Real Estate - Contracting
Ownership: Private

59. S. C. Johnson and Son, Limited

409 employees
www.scjohnson.com/en/home.aspx
Industry: Manufacturing & Production - Personal and Household goods
Ownership: Private

60. Federated Insurance Company of Canada

369 employees
www.federated.ca
Industry: Financial Services & Insurance - General Insurance
Ownership: Private

61. Vivonet

80 employees
www.vivonet.com
Industry: Information Technology - Software
Ownership: Private

62. 1-800-GOT-JUNK?

126 employees
www.1800gotjunk.com
Industry: Industrial Services - Waste/Refuse/Recycling Management
Ownership: Private

63. Wood's Homes

378 employees
www.woodshomes.ca
Industry: Health Care
Ownership: Non-profit

64. Windsor Family Credit Union

129 employees
www.wfcu.ca
Industry: Financial Services & Insurance - Banking/Credit Services
Ownership: Cooperative

65. Benefits by Design

75 employees
www.bbd.ca
Industry: Financial Services & Insurance - Health Insurance
Ownership: Private

66. AML Communications

204 employees
www.amlcares.com
Industry: Retail - Specialty
Ownership: Private

67. Kenlin Design Group

65 employees
www.kenlindesign.com
Industry: Industrial Services - Industrial Design
Ownership: Private

68. Capri Insurance Services Ltd

252 employees
www.capri.ca
Industry: Financial Services & Insurance - General Insurance
Ownership: Private

69. Ideaca

177 employees
www.ideaca.com
Industry: Information Technology - IT Consulting
Ownership: Private

70. Coastal Pacific Xpress Inc.
221 employees
www.cpx.ca
Industry: Transportation - Transport & Storage
Ownership: Private

71. Trico Homes

87 employees
www.tricohomes.com
Industry: Construction & Real Estate - Housing
Ownership: Private

72. Hilti (Canada) Inc

344 employees
www.hilti.ca
Industry: Manufacturing & Production - Building Materials
Ownership: Private

73. IT/Net Ottawa Inc

68 employees
www.itnet.ca
Industry: Professional Services - Consulting - Management
Ownership: Private

74. Wish Group Inc

56 employees
www.wishgroup.ca
Industry: Telecommunications
Ownership: Private

75. CIM

305 employees
www.cimweb.com
Industry: Advertising & Marketing
Ownership: Private

76. Broadridge Financial Solutions, (Canada) Inc.

381 employees
www.broadridge.com
Industry: Financial Services & Insurance - Investments
Ownership: Publicly quoted/held

77. Carswell, a Thomson Reuters business

770 employees
www.carswell.com
Industry: Media - Publishing and printing
Ownership: Publicly quoted/held

78. Quintiles Canada Inc.

220 employees
www.Quintiles.com
Industry: Biotechnology & Pharmaceuticals
Ownership: Private

79. Gardiner Roberts LLP

144 employees
www.gardiner-roberts.com
Industry: Professional Services - Legal
Ownership: Private

80. Agriculture Financial Services Corporation

688 employees
www.afsc.ca
Industry: Financial Services & Insurance
Ownership: Government

81. Infrastructure Ontario

191 employees
www.infrastructureontario.ca
Industry: Social Services and Government Agencies
Ownership: Government

82. EPIC Information Solutions

78 employees
www.epic.ca
Industry: Information Technology
Ownership: Private

83. Zedi

247 employees
www.zedi.ca
Industry: Information Technology - Software
Ownership: Publicly quoted/held

84. Community Savings Credit Union

90 employees
www.comsavings.com
Industry: Financial Services & Insurance - Banking/Credit Services
Ownership: Cooperative

This is **Exhibit C** referred to in the Witness Statement of Robert Livingston dated April 10, 2012

CAPITAL ONE ACQUIRES GE CAPITAL'S HUDSON'S BAY COMPANY CARD BUSINESS

Purchase to significantly increase Capital One's presence in credit and loyalty market.

Toronto, ON (November 9, 2010) –Capital One Canada and GE Capital Retail Finance, the North American consumer lending unit of General Electric Company (NYSE:GE), today announced a definitive agreement under which Capital One Canada will acquire and service GE Capital's Hudson's Bay Company credit card portfolio and related assets, with outstanding receivables of approximately $1.3 billion USD.

"Hudson's Bay Company's storied and trusted brand makes it an attractive partner for Capital One as we seek to expand our suite of credit card products in Canada," said Rob Livingston, Capital One Canada's President. "This is a compelling opportunity for Capital One to increase our presence in the Canadian market. We will leverage our unparalleled underwriting and analytics to help enhance and drive growth within the Hudson's Bay Company credit card portfolio. We also look forward to providing exceptional value and service to loyal Hudson's Bay Company cardholders."

Capital One Canada is an industry leader in analytical expertise and credit risk management, and will apply both capabilities towards strengthening and growing the Hudson's Bay Company credit and loyalty portfolio. Capital One and Hudson's Bay Company will partner to provide compelling offers and innovative services to the millions of passionate collectors of Hudson's Bay Company rewards.

The acquisition will include the transfer of approximately 400 GE employees directly involved in the Hudson's Bay Company's financial services business to Capital One. These employees will continue to work on the Hudson's Bay Company credit card portfolio at locations in Toronto and Montreal.

"This transaction, which involves GE's only solely Canadian retail card portfolio, allows us to exit a non-strategic market for Retail Finance. Our business is performing extremely well and will continue to focus its efforts on growing in the US market, where we have relationships with over two-dozen leading US-based retailers, many of which have been extended recently with new, long-term agreements," said Margaret Keane, president and CEO of GE Capital, Retail Consumer Finance.

The transaction, which was approved by the board of directors of Capital One and GE Capital is subject to customary regulatory approvals and notifications and is expected to close in the first quarter of 2011.

Part of GE Capital and headquartered in Stamford, Connecticut, GE Capital Retail Consumer Finance offers customized private label credit card programs to more than two dozen partners and has nearly $30 billion in assets and over 40 million account holders. Canada remains an important market for GE Capital. It is one of the largest financiers in Canada after the 5 banks and helps finance over 60,000 small to large sized businesses across the country. GE Canada is the 3rd largest market for GE outside the US and continues to grow in Canada.

Forward looking statements
The company cautions that its current expectations in this release dated November 9, 2010, and the company's plans, objectives, expectations, and intentions, are forward-looking statements. Actual results could differ materially from current expectations due to a number of factors, including: general economic conditions in the U.S., Canada or the company's local markets, including conditions affecting consumer income, confidence, spending, and savings which may affect consumer bankruptcies, defaults, charge-offs, deposit activity, and interest rates; changes in the labour and employment market; changes in the credit environment; the company's ability to execute on its strategic and operational plans; competition from providers of products and services that compete with the company's businesses; increases or decreases in the company's aggregate accounts and balances, or the growth rate and/or composition thereof; changes in the reputation of or expectations regarding the financial services industry or the company with respect to practices, products, or financial condition; financial, legal, regulatory (including the impact of the Dodd-Frank Act and the regulations to be promulgated thereunder), tax or accounting changes or actions, including with respect to any litigation matter involving the company; and the success of the company's marketing efforts in attracting or retaining customers. A discussion of these and other factors can be found in the company's annual report and other reports filed with the Securities and Exchange Commission, including, but not limited to, the company's report on Form 10-K for the fiscal year ended December 31, 2009 as well as its most recent Quarterly Report on Form 10-Q.

About Capital One
Located in Toronto, Ontario, Capital One has offered Canadian consumers a range of competitive MasterCard credit cards since 1996, when the company first introduced the Platinum MasterCard in Canada. Capital One Canada is a division of Capital One Bank, a subsidiary of Capital One Financial Corporation of McLean, Virginia (NYSE: COF).

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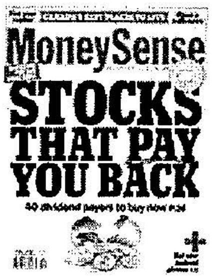
This is **Exhibit D** referred to in the Witness Statement of Robert Livingston dated April 10, 2012

MoneySense Magazine, June 2011

Best cards if you carry a balance

Canada's lowest interest rate cards explained.

By MoneySense staff | From MoneySense Magazine, June 2011



MoneySense crunched the numbers for 20 of the lowest interest rate credit cards in Canada to find out which ones are best if you carry a balance of $1,000, $5,000 and $15,000 throughout the year. We also factored in annual fees.

Some cards require that you have an excellent credit rating, and one—our top card, the ScotiaLine secured Visa—requires you to use your home or other assets to secure the card.

The cards are listed below, from best to worst.

Best cards if you carry a $1,000 balance

Scotialine Visa (secured)
Interest Rate (%): 4.00
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $40.00
Secured line of credit, usually by creating a second mortgage on residential property or securing existing investments. This has one-time set up costs usually ranging from $200-$600.

Capital One SmartLine Platinum MasterCard
Interest Rate (%): 5.99
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $59.90
Rate good till June 2014 then changes to prime + 4.99%. Need a high credit rating to qualify.

TD Emerald Visa
Interest Rate (%): 4.75 (Prime + 1.75%)
Fee: $25
Total cost in interest and fees over one year with a balance of $1,000: $72.50
Need an excellent credit rating for this.

Scotialine Visa (unsecured)
Interest Rate (%): 7.99 (Prime + 4.99%)
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $79.90
Rate varies with Prime.

MBNA Gold MasterCard® credit card
Interest Rate (%): 9.99
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $99.90

Alterna Platinum Plus MasterCard
Interest Rate (%): 9.99
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $99.99

National Bank Synchro card
Interest Rate (%): 8.9

Fee: $35
Total cost in interest and fees over one year with a balance of $1,000: $124.00
Prime +4%, minimum rate of 8.9%. Add $35 to each year for annual fee.

HSBC Premier MasterCard®
Interest Rate (%): 12.9
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $129.00

VanCity EnviroClassic low rate Visa
Interest Rate (%): 11.25
Fee: $25
Total cost in interest and fees over one year with a balance of $1,000: $137.50

Capital One Gold MasterCard with 11.9% rate
Interest Rate (%): 11.9
Fee: $19
Total cost in interest and fees over one year with a balance of $1,000: $138.00
Rate good till June 2014 then changes to prime + 9.9%. Add $19 to each year for fee.

BMO preferred rate MasterCard
Interest Rate (%): 11.9
Fee: $20
Total cost in interest and fees over one year with a balance of $1,000: $139.00

RBC Visa Classic Low Rate Option
Interest Rate (%): 11.99
Fee: $20
Total cost in interest and fees over one year with a balance of $1,000: $139.90

Capital One Gold MasterCard with 9.9% rate
Interest Rate (%): 9.9
Fee: $49
Total cost in interest and fees over one year with a balance of $1,000: $148.00
Rate good till June 2014 then changes to prime +7.9%. Add $49 to each year for annual fee.

Scotiabank Value® Visa* card
Interest Rate (%): 11.99
Fee: $29
Total cost in interest and fees over one year with a balance of $1,000: $148.90

CIBC select Visa
Interest Rate (%): 11.99
Fee: $29
Total cost in interest and fees over one year with a balance of $1,000: $148.90

Capital One Gold MasterCard with 14.9% rate
Interest Rate (%): 14.9
Fee: $0
Total cost in interest and fees over one year with a balance of $1,000: $149.00
Rate good till June 2014 then changes to prime +12.9%

Desjardins Modulo Gold
Interest Rate (%): 9.9
Fee: $50
Total cost in interest and fees over one year with a balance of $1,000: $149.00

HSBC MasterCard low rate option
Interest Rate (%): 12.9
Fee: $25
Total cost in interest and fees over one year with a balance of $1,000: $154.00

Citi low rate MasterCard
Interest Rate (%): 12.9
Fee: $25
Total cost in interest and fees over one year with a balance of $1,000: $154.00

Laurentian Bank Visa Black Reduced Rate
Interest Rate (%): 12.49
Fee: $30
Total cost in interest and fees over one year with a balance of $1,000: $154.90

Alterna World Points MasterCard (Low Fee)
Interest Rate (%): 12.99
Fee: $29
Total cost in interest and fees over one year with a balance of $1,000: $158.90

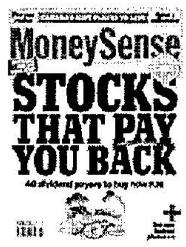
CB ONLINE THE ONLINE HOME OF: MoneySense CANADIAN BUSINESS PROFIT

moneysense.ca, 30/11/10

Which cash-back card is tops?

How does your credit card stack up to the competition?

By MoneySense staff | Online only, 30/11/10



Which one of Canada's most popular cash-back credit cards gives you the best rewards? To find out, MoneySense calculated how many dollars you get back each year based on three spending scenarios. In the first, we assumed that you spent $5,000 a month on your cash-back card. In the second, we assumed you spent $3,000 a month, and in the third, we assumed spending of $1,000 per month.

When doing the calculations, we subtracted each card's annual fees (if any), and added in any sign-up bonuses. In cases where you get extra rewards for spending on groceries or gas, we assumed you spend the average amount for Canadians on both (see the Methodology below for details).

As presented in the December/January 2011 issue of MoneySense, among those cards marketed primarily as cash-back cards, we found that the Capital One Cash Back Plus Platinum MasterCard came out on top for those spending $3,000 a month.

Since that magazine was published, however, an eagle-eyed reader has alerted us to the fact that even though it's primarily a travel rewards card, not a cash-back card, Capital One's new Aspire World MasterCard comes with a cash-back option that–thanks in part to a generous sign up bonus—-provides more cash back in the first year than any other card we looked at, regardless of whether you spent $1,000, $3,000 or $5,000 a month.

Note: Figures that appeared in the December/January 2011 MoneySense magazine for the BMO Premium Cash Back and MBNA Smart Cash Platinum Plus MasterCard were incorrect, and have been revised here. MoneySense apologizes for the errors.

We've ranked the cards below based on how much they pay back if you spend $3000 a month.

Card	Annual cash back if you spend $1,000 a month	Annual cash back if you spend $3,000 a month	Annual cash back if you spend $5,000 a month
Capital One Aspire World MasterCard*	$300	$675	$1025
MBNA Smart Cash Platinum Plus MasterCard*	$350	$600	$800
Capital One Cash Back Plus Platinum MasterCard	$21	$471	$951
Scotiabank Momentum Visa	$176	$417	$656
BMO Premium CashBack MasterCard**	$177	$416	$657
Canadian Tire Financial Services Cash Advantage MasterCard***	$101	$401	$761
MBNA PremierRewards Platinum Plus MasterCard	$120	$360	$600
Capital One Cash Back Gold MasterCard	$105	$345	$585
TD Gold Elite Visa****	$100	$340	$580
CIBC Dividend Visa	$101	$341	$581
HSBC Cash Back MasterCard	$85	$325	$565
RBC Cash Back Visa	$218	$250	$250
CitiBank Enrich MasterCard	$120	$250	$250
TD Rebate Rewards Visa	$105	$235	$235
BMO CashBack MasterCard*****	$72	$192	$312

METHOD

Annual fees, if any, were subtracted from the annual cash-back amount. Sign up bonuses were included when offered-this means that in subsequent years, the amount of cash back will be less.

*For the Capital One Aspire World MasterCard and MBNA Smart Cash Platinum Plus MasterCard, only the redeemable amount of the cash back that was available to the card holder that year was included. More cash back credit accrued in that year can be redeemed in the following year.

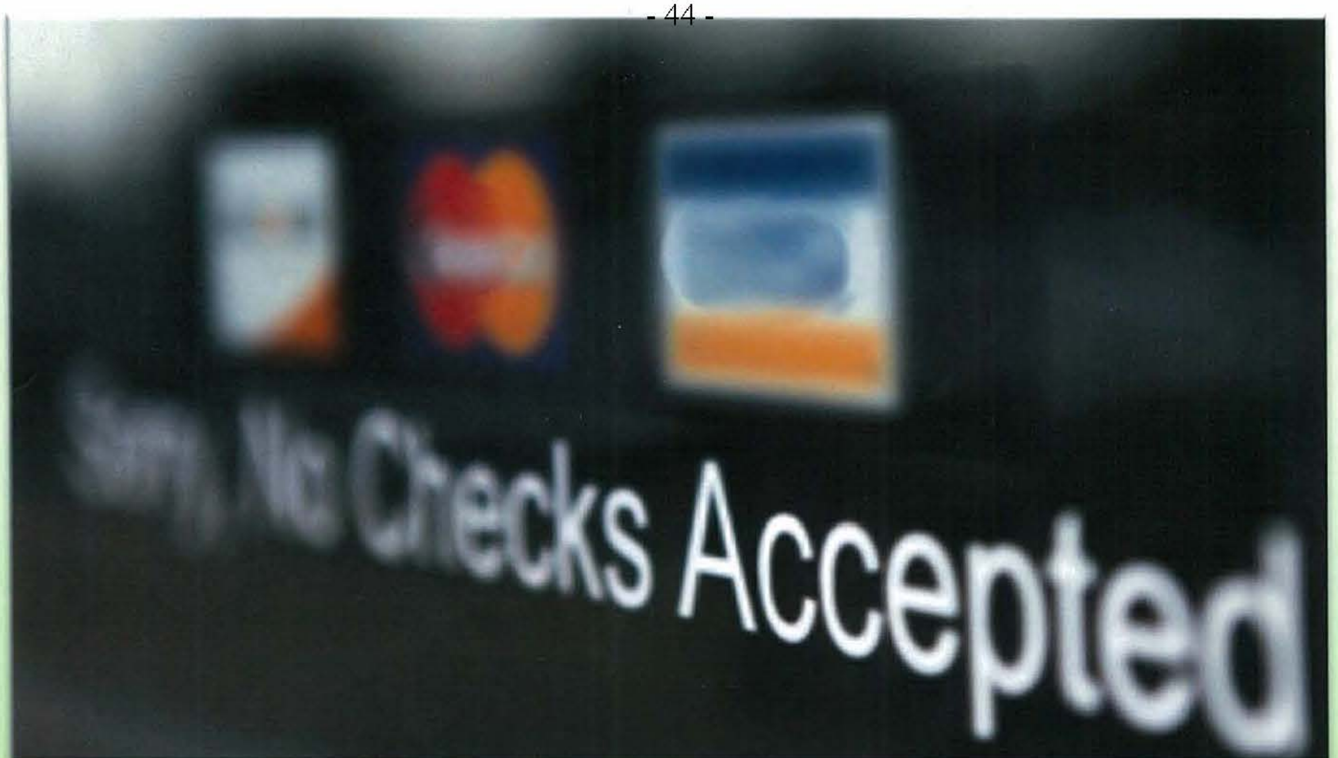
**For BMO Premium CashBack MasterCard, extra cash back was included for gas purchases at Shell, calculated based on spending $185 on gas a month; a roadside assistance bonus of $69 a year was also included.

***For the Canadian Tire card, we did not include extra cash back from purchases at Canadian Tire gas bars and Mark's Work Warehouse in our calculations.

**** For the TD Gold Elite Visa, roadside assistance was included, valued at $79 a year.

***** For the BMO CashBack MasterCard, extra cash back for gas purchases at Shell was calculated based on spending $185 in gas a month.

This is **Exhibit E** referred to in the Witness Statement of Robert Livingston dated April 10, 2012



Consumers' Association of Canada
Association des consommateurs du Canada

AngusReidPublicOpinion
A VISIONCRITICAL Practice

Consumers Association of Canada Surcharge Survey

September, 2011

www.visioncritical.com/arpo

Methodology and Sampling

- From September 12th – 13th, Angus Reid Public Opinion leveraged the daily national Omnibus survey to conduct online research on behalf of the Consumers' Association of Canada.

- A total of 1000 randomly selected Canadians aged 18 years and older were surveyed as part of this daily omnibus vehicle. Participants were recruited using the Angus Reid Forum.

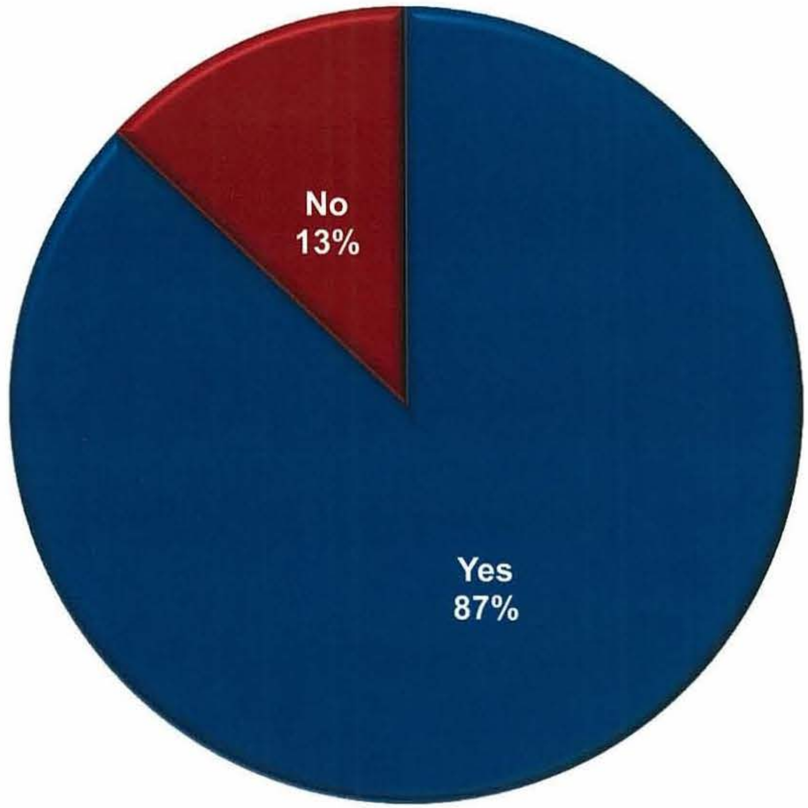
- The margin of error for a sample of this size is +/- 3.1%, 19 times out of 20. Results have been statistically weighted according to Statistics Canada's most current education, age, gender and region Census data. This weighting ensures a representative sample of the entire adult population of Canada. Within the report, any discrepancies in or between totals are due to rounding.

- Angus Reid Public Opinion polls are conducted using the Angus Reid Forum online panel (www.angusreidforum.com), which is recruited via an industry-leading process that incorporates a randomized, widespread invitation approach and a triple opt-in screening procedure. The panel is maintained through state-of-the-art sampling techniques and frequent verifications of personal identity, contact information, and demographic characteristics.

- Angus Reid Public Opinion is a North American full-service polling and market research firm which is a leader in the use of the Internet and rich media technology to collect high-quality, in-depth insights for a wide array of clients. Dr. Angus Reid and the Angus Reid Public Opinion team are pioneers in online research methodologies, and have been conducting online surveys since 1995. Located in Vancouver, Calgary, Toronto and Ottawa, San Francisco, Chicago, New York, London, Paris and Sydney our team of specialists provides solutions across every type and sector of research.

The vast majority of Canadians own and use credit cards

Those in BC (93%) and Ontario (88%) are slightly more likely than residents in the Atlantic Provinces (75%) to use credit cards .



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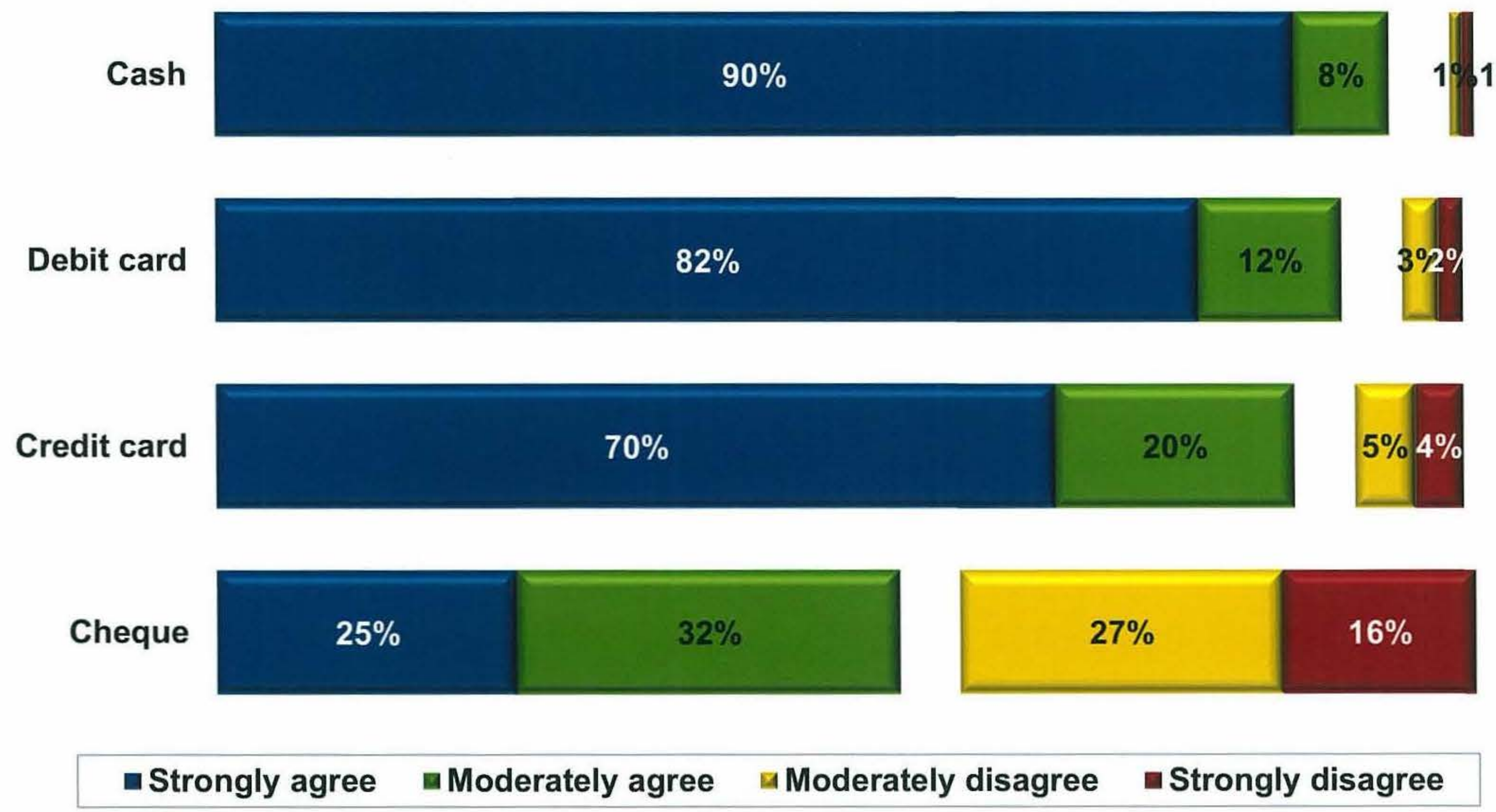
Base: All Respondents (n=1000)
Q.1 Do vou currentlv own and use anv credit cards?

Most Canadians feel they have the right to choose their payment method when paying by cash, debit or credit

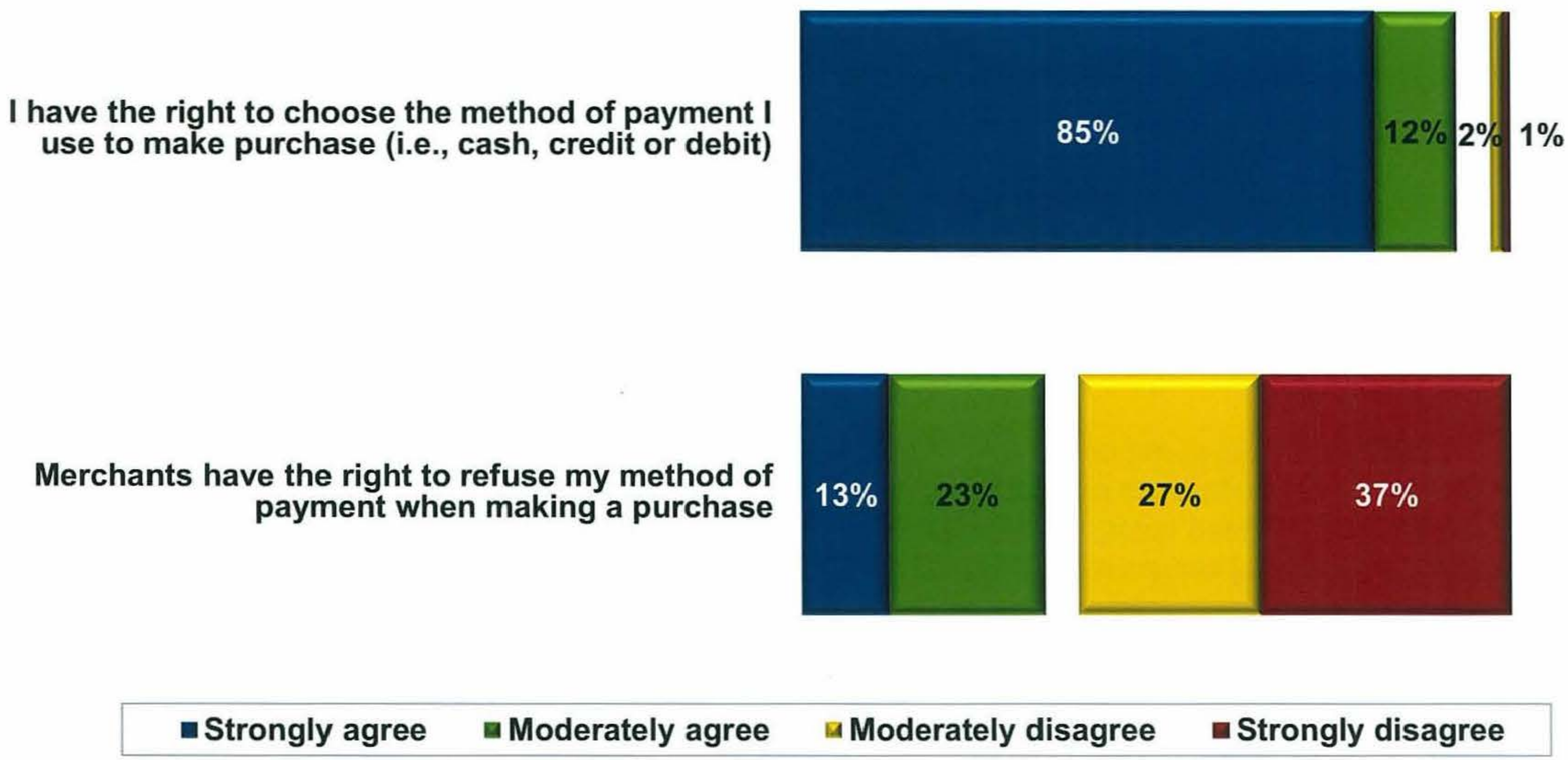
Fewer Canadians believe they have the right to choose to use cheques, especially those in Alberta and Ontario, where 51% and 47% moderately/strongly disagree that they should be able to choose to use cheques to make purchases.



Base: All Respondents (n=1000)
Q.2 To what extent do you agree or disagree that you have the right to choose the following forms of payment when making purchases?

Nearly two in three Canadians disagree that merchants have the right to refuse their method of payment when making a purchase

Residents in BC (41%), Alberta (41%) and Ontario (40%) are more likely to agree that merchants have the right to refuse method of payment, compared with residents in Manitoba or Saskatchewan (21%) and Quebec (28%)



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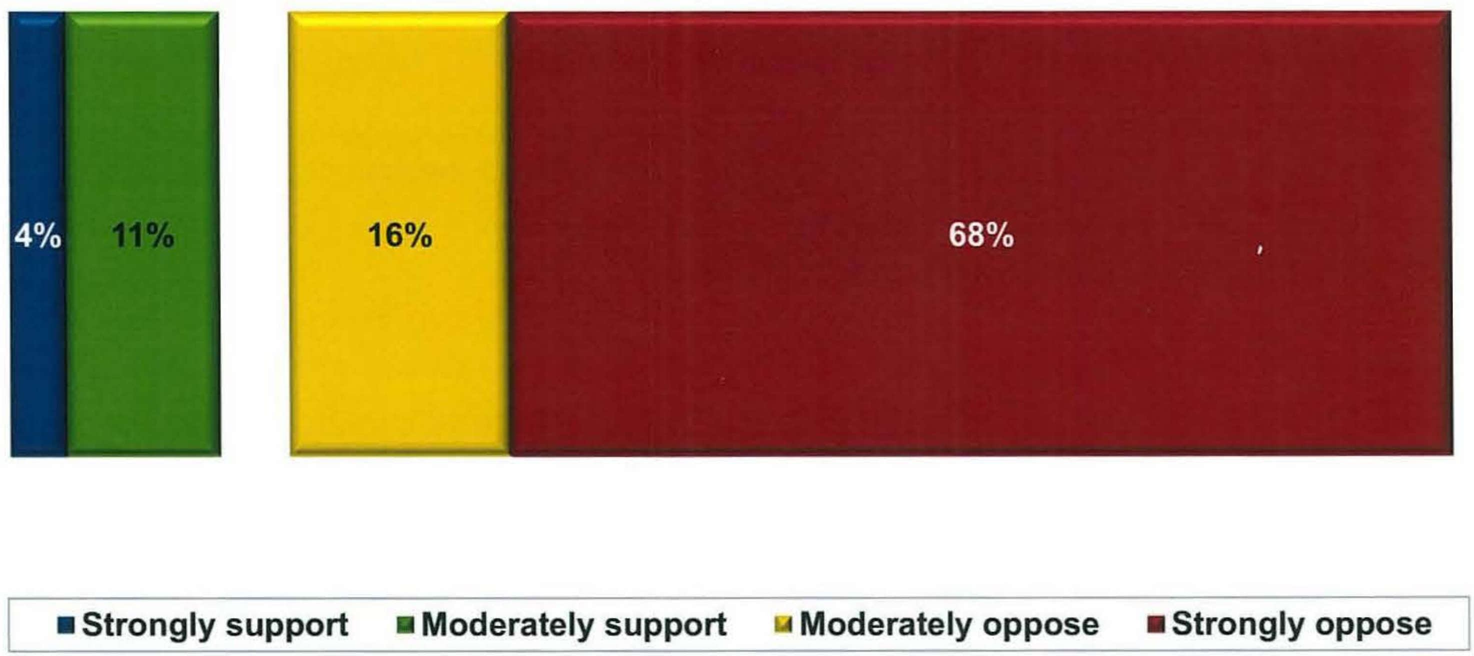
Base: All Respondents (n=1000)
Q.3 To what extent do you agree or disagree with the following statements?

More than four-in-five Canadians oppose the initiative of surcharging consumers for using credit cards

BC credit cards users (79%) are more likely than credit cards users in Alberta (64%), Ontario (67%) and the Atlantic Provinces (62%) to *Strongly Oppose* the surcharge initiative.

Currently, merchants in Canada pay a fee of 1-3% to credit card companies for each transaction they process when customers make purchases using credit cards. Some people have suggested that merchants should no longer absorb this fee, but should instead pass it on to customers who choose to pay with a credit card in the form of a surcharge on top of their purchase

Do you support or oppose charging customers a surcharge on top of the purchase price when choosing to pay by credit card?



Base: All Respondents (n=1000)

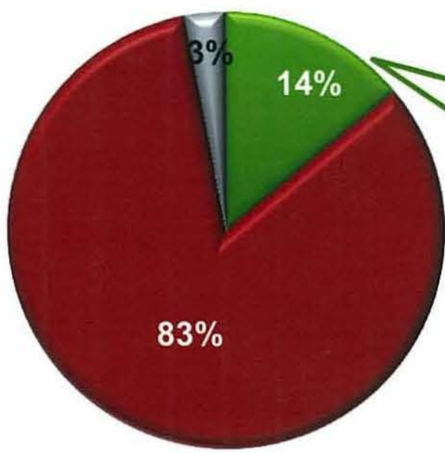
Q.4 Do you support or oppose charging customers a surcharge on top of the purchase price when choosing to pay by credit card?

Few Canadians are aware of the surcharge initiative, regardless of whether they use a credit card currently

Canadian merchants currently pay approximately $5 billion per year as part of their overhead for services provided by credit card companies. If successful, an initiative from the Competition Bureau would transfer the responsibility of paying this $5 billion from merchants to consumers in the form of surcharges on purchases made with a credit card.

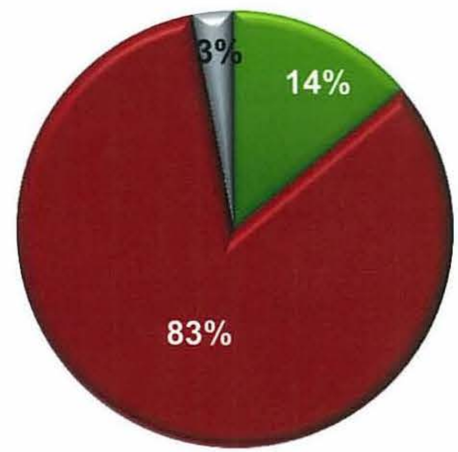
Prior to reading this information, were you aware of this initiative?

Total



Older respondents (55+) are more likely be aware, than younger respondents (18-34) 18% vs. 10%

Credit Card Owners



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Yes No Don't know

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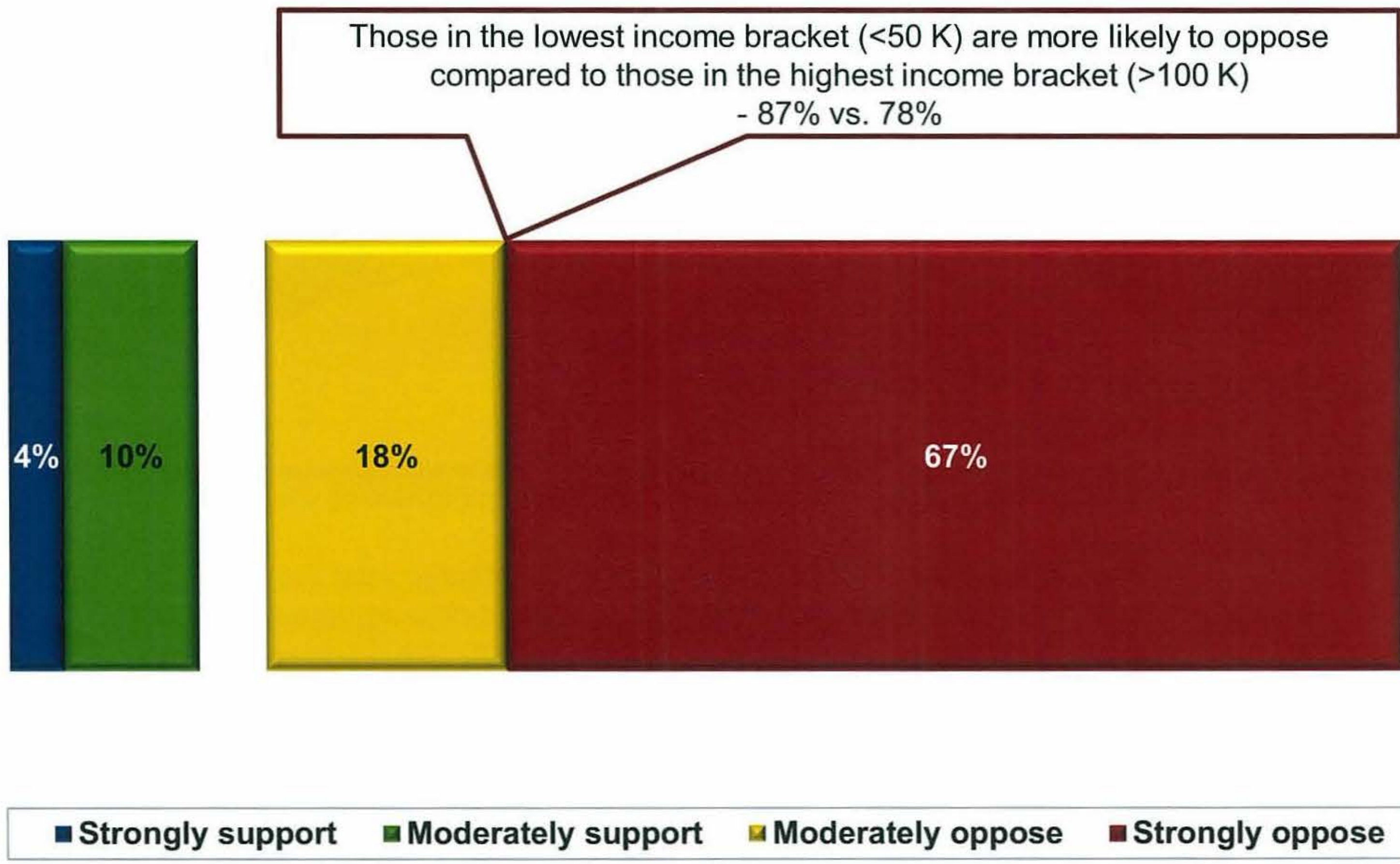
Base: All Respondents: Total (n=1000), Credit Card Owners (n=874)
Q.5 Prior to reading this information, were you aware of this initiative?

Opposition to the surcharge applied to purchases made with a credit card is very high, with more than four-in-five Canadians opposing it

And do you support or oppose an initiative whereby Canadian merchants will be permitted to add a surcharge to purchases made with a credit card?



Base: All Respondents (n=1000)
Q.6 And do you support or oppose an initiative whereby Canadian merchants will be permitted to add a surcharge to purchases made with a credit card?

Awareness of an initiative whereby merchants would have the ability to reject certain forms of payment is even lower than the awareness of the surcharge

This same initiative from the Competition Bureau will grant Canadian merchants the ability to reject certain forms of payment from customers, including cash, credit or debit cards.

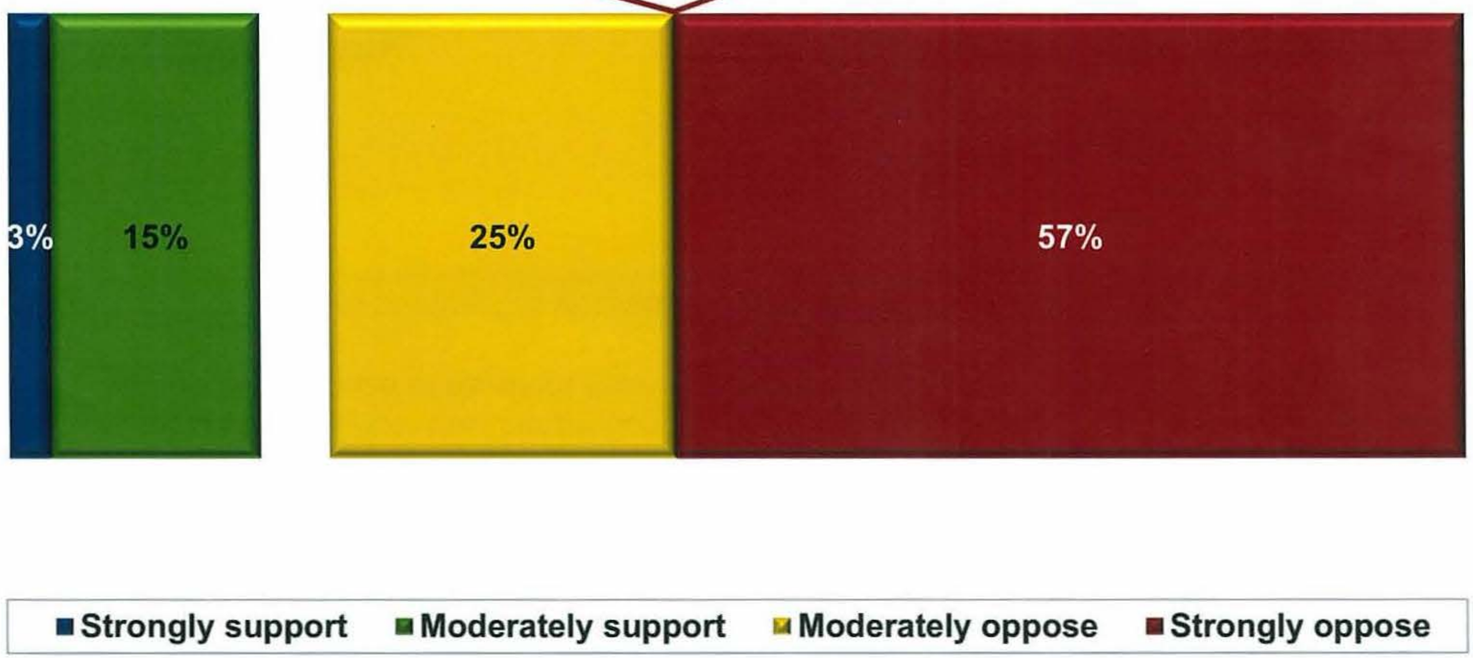
Prior to reading this information, were you aware of this initiative?

Base: All Respondents: Total (n=1000), Aware of surcharges (n=137), Credit Card Owners (n=874)
Q.7 Prior to reading this information, were you aware of this initiative?

More than four-in-five Canadians also oppose an initiative whereby merchants would be permitted to reject certain forms of payment.

And do you support or oppose an initiative whereby Canadian merchants will be permitted to reject certain forms of payment from customers?

Residents of Manitoba and Saskatchewan are more likely to oppose the rejection of payment initiative, more so than those in BC, Alberta and Ontario; (93% Vs. 78%, 75% and 81%)



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Base: All Respondents (n=1000)
Q.8 And do you support or oppose an initiative whereby Canadian merchants will be permitted to reject certain forms of payment from customers?