File No.: CT 2005-006
Registry Document No.:

COMPETITION TRIBUNAL

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

IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and NPAY Inc. for an order pursuant to section 103.1 granting leave to make application under sections 75 and 77 of the *Competition Act*;

AND IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and NPAY Inc. for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

B-FILER INC., B-FILER INC. doing business as GPAY GUARANTEEDPAYMENT and NPAY INC.

Applicants

- and -

THE BANK OF NOVA SCOTIA

Respondent

THIRD AFFIDAVIT OF RAYMOND F. GRACE
Sworn December 5TH, 2005

I, RAYMOND F. GRACE, of the Hamlet of Sherwood Park in the Province of Alberta AFFIRM AND SAY AS FOLLOWS:

1. I ("**Grace**") am the President of all the Applicants, B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment, and NPAY Inc. (collectively, "**GPAY**"), and as such have knowledge of the matters hereinafter deposed to, except where such matters are stated to be based on information and belief, and where so stated, I verily believe those matters to be true.

2. I make this Affidavit (the "**Grace Affidavit**") in support of: (i) an application to the Competition Tribunal (the "**Tribunal**") for an interim order pursuant to section 104 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "**Act**") and (ii) an application pursuant to sections 75 and 77 of the Act all versus the Respondent, The Bank of Nova Scotia ("**Scotiabank**" or "**Respondent**"); and (iii) in response to the following affidavits filed with the Tribunal and served on the Applicants between Sunday, November 27, 2005 and Monday, November 28, 2005 (collectively, the "**Respondent Affidavits**"):

a. Affidavit of Christopher Mathers ("**Mathers**"), sworn November 23, 2005 (the "**Mathers Affidavit**");

b. Affidavit of Stanley Sadinsky ("**Sadinsky**"), sworn November 22, 2005 (the "**Sadinsky Affidavit**");

c. Affidavit of Douglas Monteath ("**Monteath**"), sworn November 25, 2005 (the "**Monteath Affidavit**");

d. Affidavit of Robert Rosatelli ("**Rosatelli**"), sworn November 25, 2005 (the "**Rosatelli Affidavit**");

e. Affidavit of David Stafford ("**Stafford**"), sworn November 24, 2005 (the "**Stafford Affidavit**");

f. Affidavit of Alex Todd ("**Todd**"), sworn November 25, 2005 (the "**Todd Affidavit**");

g. Affidavit of Colin Cook ("**Cook**"), sworn November 23, 2005 (the "**Cook Affidavit**"); and

h. Affidavit of Ryan Woodrow ("**Woodrow**"), sworn November 24, 2005 (the "**Woodrow Affidavit**").

I. INTRODUCTION

3. Since June 20, 2005, the Applicants have been urgently seeking an interim order from the Tribunal ordering the Respondent to reinstate their banking services as defined in paragraphs 66-71 herein below in exactly the way they were served by the Respondent prior to the filing of these proceeding on June 20, 2005. Absent an interim order to that effect, the Applicants will incur irreparable damages to their business. Granting of an order to that effect will not be of any inconvenience or harm to the Respondent, rather, the Respondent will earn fee revenue from it.

4. Every day by which the interim order sought is delayed causes irreparable and material damage to the Applicants, that is described in greater detail herein and other submissions to the Tribunal by the Applicants. In order for the Act to serve the intent ascribed to it by Parliament, I believe an interim order is both fitting and necessary.

5. If the Applicants are not eligible for an interim order in this case, I believe the *Act* will not be put to its good intended use, and these proceedings will have been in vain and any subsequent favourable ruling at the s.75 hearing will be rendered moot because we will likely no longer be carrying on business.

6. I agree with the finding of the Tribunal that the product market at issue is online debit payment (see para 20 of the Reasons for Previous Order Dated November 4, 2005 Granting Leave to Apply Under Sections 75 of the *Competition Act*. (the "**Tribunal Reasons**").

7. Before June of 2005, there was one participant in the online debit payment market, namely the Applicants. After June of 2005, there are at least two (2), the Applicants and the Respondent through its iDebit service, now known as Interac Online.

8. I believe the Respondent seeks to illegally remove us from participating in the online debit payment market through simultaneously: (a) denying us the services we require to be suppliers in that market and (b) entering the market through iDebit or its successor Interac Online. Acxsys Corporation operates Interac Online and Certapay, operates the Email Money Transfers (EMTs).

9. The following is an excerpt that I captured from the Acxsys website on December 2, 2005:

> "Founded in 1996, Acxsys Corporation comprises the following eight financial institutions as shareholders: BMO Bank of Montreal, CIBC, RBC Royal Bank, Scotiabank, TD Canada Trust, National Bank of Canada, Desjardins Group and Credit Union Central of Canada. The shareholders of Acxsys Corporation are the architects of the *Interac* shared services. Acxsys Corporation specializes in the following:
>
> - development and operation of new payment service opportunities; and
> - management services in the field of electronic payments.
>
> Acxsys Corporation's businesses also include the operation of the *Interac* Email Money Transfer service and the *Interac* Online service, which will be Canada's online payment service.
>
> Acxsys Corporation is owned by eight shareholders:
>
> - RBC Royal Bank (www.royalbank.com)
> - CIBC (www.cibc.com)
> - Scotiabank (www.scotiabank.com)
> - TD Canada Trust (www.tdcanadatrust.com)
> - Bank of Montreal (www.bmo.com)
> - Desjardins Group (www.desjardins.com)
> - National Bank of Canada (www.nbc.ca)
> - Credit Union Central of Canada (www.cucentral.ca)"

10. The purpose of these proceedings is to rapidly put an end to the monopolistic and illegal action by Scotiabank of terminating our banking services and thereby save our business.

11. By saving our business, the Tribunal will permit the Canadian consumer to have a choice in effecting online debit payments other than through a Schedule 1 Canadian Financial Institution. On the other hand, if we are unsuccessful at the s.75 hearing or if we are not still carrying on business at the time of the s.75 hearing, there will be no other option for the Canadian consumer who wants to pay for internet goods and services by internet online banking. The only internet payment options left to the Canadian consumer will be to use iDebit or a credit card both of which rely exclusively on Schedule 1 Canadian Bank. Beyond saving our own business, it is this kind of illegal and unnecessary market concentration that we are trying to avoid.

II. WRONGFUL TERMINATION OF SERVICE BY RESPONDENT

12. Since the filing of the last affidavit of the Applicants, on or about September 1, 2005, there has been a fundamental change in circumstances of relevance to the Tribunal in its deliberations on the application for an interim order.

13. The fundamental change in circumstances is that the Respondent wrongfully terminated all of the bank accounts and other banking services of the Applicants on or about September 18, 2005 (the "**Termination**"), well knowing that the application for leave by the Applicants under section 103.1 of the Act was set for determination in or about November 10, 2005 and, if leave was granted, that our section 104 application for an interim order would be heard shortly thereafter.

14. Initially, the Tribunal was going to render its ruling on the s. 103.1 leave application shortly after the filing of my affidavit due September 6th 2005 but I believe the Respondent intentionally caused a delay by filing a largely irrelevant further responding affidavit and a then motion to dismiss. We believe those affidavits and that motion were intended to simply delay our access to a remedy for which we have been waiting since June 20, 2005.

Direct Consequences of Wrongful Termination by Scotiabank

15. As a result of the termination of the Applicants' Scotiabank banking services, the Applicants have already incurred, without limitation, the following losses:

a. closing of all of Scotiabank bank accounts of the Applicants; and

b. deletion of the Applicants as a bill payee choice ("**Bill Payee Services**") for Scotiabank customers.

16. The Applicants had approximately 4,000 Scotiabank individual customers who were capable of selecting GPAY or NPAY Inc by way of Bill Payee Services of the Respondent. Without the Bill Payee Service, this is not possible. What is more, for all Scotiabank clients, payments made to the Applicants via the Bill Payee Services were made **at no cost to the Scotiabank customer**. (as advertised on TV)

17. Given the small number of Schedule 1 banks in Canada and the significance of Scotiabank amongst them, having this particular choice available to Scotiabank clients represented an advantage to a large number of actual and potential customers of the Applicants.

18. By deleting GPAY and NPAY Inc. as a Bill Payee, it forces the Scotiabank customer to use a method of payment (EMT) to the Applicants that they are now charged $1.50 per EMT for by Scotiabank. This is a total self-servicing action by Scotiabank to coldly increase its revenues by eliminating the free options for internet payment available to its customers.

19. In or about December 2003, the TD Bank, the Alberta Treasury Branch and the CIBC each terminated the Applicants as a bill payee for their respective customers.

20. A complaint to the Commissioner of Competition Bureau at that time was dismissed on the grounds that there were other banks available to the Applicants so the terminations by TD Bank and CIBC were not anti-competitive. The lawyer for the Competition Bureau (whose name I do not recall) with whom we met told us that he believed we had a case. However, the bureaucrat running the meeting, Richard Robichaud, refused to allow the Competition Bureau to assist us and said it was a civil matter.

21. We are prudent and ambitious entrepreneurs with an untarnished reputation in the online debit market in Canada.

22. I believe the Schedule 1 banks other than Scotiabank are watching to see if the Scotiabank will get away with shutting us down and closing our biller accounts. This is irreparably damaging to our reputation, good will and ability to transact business with other Canadian banks and banks outside of Canada or to seek new, more mainstream merchant clients.

Loss of Market share and of good business reputation

23. The Scotiabank admits to being one of the largest banks in Canada. It is a Schedule 1 bank and is commonly known as one of the big five (5) Canadian banks.

24. Scotia bank makes about nine (9) million dollars a day (biased on the approximately three (3) billion dollars that they made last year).

25. Last week Scotia bank posted quarterly profits in excess of Wall Street estimates. This in spite of having to deal with GPAY and pay several thousands of dollars in legal fees to try to terminate GPAY as a customer.

26. The management of any publicly traded company would be fiscally irresponsible if they dealt with a company that the Scotiabank used to deal with and then closed their accounts for no reason. GPAY is in this position. Potential future clients asking the Scotiabank for a reference would at best get the response that:

    (a) The Applicants used to deal with us but we closed their accounts. Why? No reason.

    (b) The negative reference is clear. One of the big five (5) banks refuses to deal with this company. The potential customer likely concludes that there is no way can we deal with GPAY because there must be something wrong with them, regardless of the truth of the matter.

    (c) In a second, and greater misrepresentation, Scotiabank may even go so far as to say they are in a litigation with GPAY and cannot make any comment on why we closed their accounts. Perhaps they gently refer them to the Competition Tribunal website or the Alberta action number.

    (d) The negative reference is clear. One of the big five (5) banks refuses to real with this company. The company sued the bank. GPAY wrongly appears as litigious and uncooperative because it sued Scotiabank. A

potential client naturally concludes, no way can we deal with GPAY there must be something wrong with them.

(e) A third and most negative misrepresentation by Scotiabank could be the bank closed the GPAY accounts, GPAY filed a Competition Tribunal complaint against the Scotiabank and Scotiabank cannot comment on the case. A quick read of the Tribunal website informs the reader that the Scotiabank is claiming that we are money launders, financing terrorism, and commit criminal acts. The Scotiabank has still not withdrawn these false libelous claims and continues to repeat the same unsubstantiated claims in new affidavits in spite of the Alberta Court failing to seen any evidence of wrong doing and the Tribunal failing to see any evidence of wrong doing.

27. This is irreparable harm because the harm being done is incalculable.

28. There are two (2) ways for Scotiabank to mitigate the irreparable harm that the Applicant has suffered and continues to suffer from the Scotiabank's decision to terminate all banking services for each profile on May 15, 2005:

a. If the Scotiabank withdraws these false allegations, issues a letter of apology, posts it on its website for potential customers to see, reopens out accounts, reinstates our services, appoints an account manager to assist us in expanding our business and endorses our service; or

b. Tribunal fines the Scotiabank the maximum fine under the *Competition Act* of $10,000,000.00 for each profile for each day since May 15, 2005. This works out to about 7 billion dollars for the Canadian public. Eventually the Scotiabank would go out of business as they continue to pay 30 million dollars a day to the Government until they start to abide by the *Competition Act*.

Risk and Reputation

29. The Scotiabank's contention that dealing with the Applicants may harm their reputation is ludicrous.

30. Scotiabank still deals with the CIBC, a company that was fined 2.3 billion dollars for being a known participant in the Enron scandal, made a deal with the Canadian government to spend 10 million dollars to educate its senior executive in ethics, and is capital short according to Wall Street analysis.

31. Scotiabank has never suffered a loss from any client that dealt with us, in fact we have caught frauds perpetrated against Scotiabank customers, advised the customer that his account was compromised when the Scotiabank had not detected that the account had been compromised. The Scotiabank customer card holder agreement protects the Scotiabank from any loss due to a compromised bank card.

32. The Applicants maintained low six (6) figure balances in the Scotiabank account. The Scotiabank can provide details of all of the frauds that we were victims in 2005 and we will maintain balances in excess of double the amount in our reopened Scotiabank account.

33. We have offered to indemnify the Scotiabank from any fraud connected to our service but they declined our offer.

34. The Scotiabank contention that the cost of reviewing these frauds is prohibitive is another attempt to deceive the Tribunal. None of the alleged frauds were perpetrated by the Applicants. The frauds had still taken place and needed to be addressed. Unfortunately for the customer the banks often do not detect the fraud for weeks. Our fraud detection process often detects the fraud much sooner that the customer. We save the bank and the customer from larger losses and detect the fraud sooner than later.

35. Scotiabank does not explain why it processes fraudulent transactions.

Termination Leaves Applicants with only one business bank account able to accept EMTs

36. Another direct consequence of the Termination is that the Applicants have lost three quarters (3/4) of the business bank accounts they had which allowed them to process Email Money Transfers (EMTs).

37. The only remaining bank account available to the Applicants to process EMTs is their Royal Bank account. Consequently, as concerns their vital supply of the necessary input of EMTs, the Applicants are now down to a single supplier.

38. The Royal Bank, the only remaining EMT supplier to the Applicants business account, permits the Applicants to have only one (1) profile and limits them to collectively process $10,000.00 per day, $300,000.00 per month or $3,600,000.00 per year of EMT payments.

39. Thus, the Applicants' approximately 14,000 customers from CIBC, TD Canada Trust and now the Scotiabank can only make debit payment by EMTs (@ $1.50 per EMT charged by their host bank) to the Applicants' bank accounts.

40. The Applicants, despite all their entrepreneurial work, now have a severely reduced payment processing ceiling with no possibility of further growth unless their application under section 75 is successful. That ceiling persists because of the wrongful Termination by Scotiabank that goes only to serve its own anti-competitive launch of Interac Online.

41. Apart from the permanent loss of market share and revenue flowing from the Termination, the business of the Applicants, having only one supplier for all of their key inputs, is now unstable and less attractive to actual and potential customers and merchant clients because of the instability of supply of its vital inputs.

42. Having only one supplier is not sufficient to supply the quantity and quality of banking services necessary for the Applicants to maintain the volume of business that existed in June 2005, let alone permit the Applicants to expand as they have been doing in the last few years.

43. EMT's restrict customers to paying $1,000.00 day (and their bank charges them $1.50 per EMT) and we can now only deposit $10,000.00 a day through the Royal Bank account.

SCOTIABANK'S VIOLATION OF PIPEDA by publishing private banking information of Raymond Grace - Personal Attack by Scotiabank

44. When the Respondent's solicitors filed its Submissions with respect to Scheduling Matters Involving the Interim Motion pursuant to section 104 of the *Competition Act* on November 9, 2005, it violated my right to privacy by publishing in an open Tribunal document the fact that on October 19, 2005 it terminated my personal Scotiabank Basic Banking account and on November 3, 2005, it terminated my personal Scotiabank MoneyMaster account.

45. In addition, in Exhibit U or V of the Rosatelli July affidavit, the Respondent and its solicitors filed my credit file, my SIN, my birthrate, my personal address and a photocopy of my drivers' license.

46. Clearly the Respondent had turned over my confidential personal credit report to their lawyers who included it in Rosatelli's affidavit. This is a blatant violation of the Scotiabank's agreement with Equifax and a blatant attempt by the Scotiabank and its solicitors to expose me to Identity Theft by publishing *inter alia*, my name, address, date of birth and sin number. I wonder if this is a *PIPEDA* or *Bank Act* Violation, not that it matters, as a Schedule 1 Bank the Scotiabank has demonstrated time and time again that it does not need to follow theses acts if they are not convenient.

47. Firstly, I strongly object to this publication of my personal banking information by the solicitors for the Respondent which I believe damages my

reputation in the business community and my result in identity threat ad I ask that all references to my personal information be subject to a protective order of confidentiality.

48. In early October 2005, the Scotiabank sent me a letter advising it was terminating my personal Scotiabank bank accounts in 30 days without cause.

49. Then, Scotiabank closed my personal account 2 weeks early without **any** notice when I tried to take $155,010.14 out of the account on the 14th of October 2005. When I went to the branch to get the remainder of the funds from my account, the branch manager told me that the transaction had been cancelled because I exceeded my transaction limit. It was news to me that I had a transaction limit on my personal account.

50. Scotiabank then gave me a money order for over $190,000.00 with no cover letter or explanation. The $155,010.14 sat in my account at the Bank of Montreal until they somehow recovered it 12 days later. This is a *Bank Act* violation and it also violates the clearing rules guidelines.

51. Attached hereto and marked **Exhibit A** is a copy of Section 448.1(1) of the *Bank Act* and the corresponding *Access to Basic Banking Services Regulations* which, together, require Schedule 1 Canadian banks who are bound by the *Bank Act* to open and maintain personal bank accounts for an individual unless the Bank can refuse the individual on the grounds set out in section 3(1) of the latter.

52. According to the Scotiabank, the personal MoneyMaster account was opened in February of 2005 but I never had any access to the account electronically or in person at the branch. All of the transactions through the account were done without my authorization or my knowledge.

53. Scotiabank then closed the account without providing a reason. It seemed to me that this is a violation of the *Bank Act* but Scotiabank again demonstrated that that law is for other banks and not for it.

54. I, personally, am not a party to these proceedings and my personal banking affairs should not be a matter for disclosure by the Scotiabank or its solicitors.

55. It seems to be that when it serves the Scotiabank's interest, legislation such as PIPEDA (in the case of openly revealing by personal banking information), *The Bank Act,* and the *Criminal Code* (as described hereinafter) are disregarded.

II. RESPONSES TO EIGHT (8) RESPONDENT AFFIDAVITS ON APPLICATION FOR INTERIM ORDER

Introduction

56. Once again, for the record, none of the Applicants, their principals or officers or directors or shareholders or their affiliates are or have been or have any intention of being or becoming money launders, fraudsters, terrorists or criminals, nor do they seek to assist any of the foregoing. The Applicants have never been investigated, charged or convicted of any criminal offence, nor do they have any reason to believe that they will be.

57. The eight new affidavits filed on behalf of the Respondent continue to harp on spurious, inflammatory and libelous allegations of money laundering, fraud, terrorism and criminality, again, without offering any proof of same or even any third party or regulatory expression of similar concern.

58. I believe that the relentless and irrelevant allegations of criminality as purported bases of their case are simply a diversionary tactic to draw the attention of the Tribunal away from the real and substantive issues of competition law actually at issue in this case.

59. Owing to (i) the proven past tactics of the Respondent in filing voluminous and often irrelevant material; (i) our urgent need for a reversing of the Termination; and (iii) the short period of time between our late receipt of the

eight new Respondent affidavits and my swearing of this Affidavit, I can provide only a brief response.

Response to the Cook Affidavit in which he generally alleges the Applicants' profiles do not fit Respondent policies

60. The Respondent Affidavits, in particular the Cook Affidavit, allege that the Applicants do not conform to either the Scotiabank definitions of a "Small Business Customer" or a Scotiabank "Commercial Customer".

61. I would like to remind the Tribunal that the accounts of the Applicants were terminated by the Respondent 'without cause'.

62. In the event that the Tribunal should take interest in the *post faco* justifications for the Termination based on alleged Scotiabank internal (and self-serving and possibly anti-competitive) policies (which were never disclosed to the Applicants prior to the Termination), we submit that the Applicants have never violated any of such policies.

63. Alternatively, even if we have violated the policies in question (which I deny), it is irrelevant to the fact that Scotiabank is illegally trying to terminate our business and start their own identical substitute, Interac Online.

64. I submit the Cook Affidavit is really only relevant to determining the banking services the Tribunal may order the Respondent to provide to the Applicants on a permanent basis if the Applicants are successful at the s.75 hearing.

65. On the section 104 application for an interim order, we submit it is not relevant to discuss Scotiabank definitions and the Tribunal should only determine what Scotiabank actually provided to the Applicants as banking services prior to June 2005.

Definition of banking services as supplied to Applicants by Scotiabank prior to June 2005- return to the status quo prior to the Termination, pending the s.75 hearing

66. Whether the Respondent internally erred by failing to follow some internal Scotiabank policy (which was never shown to the Applicants) by supplying each of the Applicants with a separate profile as a Small Business Customer, is irrelevant to this section104 application.

67. The reality is that the Respondent treated the Applicants as three (3) Small Business Customers, with each Applicant allowed to process $10,000.00 per day, $300,000.00 per month and $3.6 million per annum of EMT deposits, and $5 million per annum of other deposits.

68. Collectively, at the date of Termination, the Respondent allowed the Applicants to process $30,000.00 per day, $900,000.00 per month or $10.8 million per year of EMT payments through their three (3) commercial accounts and some one hundred and two (102) Money Master for Business Accounts. THIS IS BANKING SERVICE NUMBER ONE.

69. What Cook and the other affiants of the Respondent failed to disclose to the Tribunal is that those ceilings do not apply to payments received from Scotiabank clients via the Bill Payee Services. The reinstatement of each of NPAY Inc and GPAY as a Bill Payee is also sought as part of the overall Applicants' Scotiabank banking services. THIS IS BANKING SERVICE NUMBER TWO.

70. The Respondent also provided to the Applicants an Account Manager with whom I could liaise on day to day banking issues as they periodically arose. Appointment of such a Manager is once again sought as part of the reinstatement of the Applicants Scotiabank banking services. THIS IS BANKING SERVICE NUMBER THREE.

71. In addition, the Applicants were supposed to be able to view their various accounts electronically over the internet and receive a paper statement each month (except for the Money Master accounts). We need the monthly statements for the Money Master Accounts for the year 2005. The Money

Master accounts do not provide paper statements and the online electronic statements were not available to us. We also need the bank to produce a statement for all of the accounts for September 2004. To this date the bank has been unable to provide this statement, despite my having asked for one on a number of occasions. I believe this is another *Bank Act* violation. THIS IS BANKING SERVICE NUMBER FOUR.

72. Finally, and only because the Applicants experienced the hair splitting the Respondent followed in the Alberta action in contract and tort law, the Applicants seek an order from the Tribunal that, provided the Applicants cover the cost of any alleged fraudulent EMT they may receive, pending the section 75 hearing, Scotiabank must work with Certapay to ensure that the Applicants continue to be able to process EMTs pending the section 75 hearing in all three of their profiles. THIS IS BANKING SERVICE NUMBER FIVE.

73. The Applicants undertake to pay all of the usual charges made by Scotiabank for such services at the rate that was charged in June 2005.

Fraud not at issue

74. The Respondent Affidavits are replete with allegations of fraud. Interestingly, the Respondent never actually clearly quantify them. In particular they have never been quantified against our overall processing volume. For the record, fraud in our accounts is minimal to the point of being insignificant.

75. We vigorously investigate and work to eliminate all occurrences of fraud in cooperation with all banks, as the following example will illustrate.

76. On July 20, 2005 the Applicants received notification that an EMT (we had already flagged it as well) that had been flagged as suspicious was a fraud. We contacted the security department of the sending bank and refunded the payment. The sending bank sent a routine notification to Certapay that they had been the victim of a fraud and included the sending and receiving email

address in the notification. Based on this notification the Respondent cancelled the Applicants ability to deposit EMTs in any of their accounts.

77. The Respondent then said to us that getting our EMT accounts open again was a Certapay problem. Certapay is, of course, owned (partly) by the Respondent. Certapay said it was the Respondent's problem. I called Certapay and spoke to the VP of Security, Gerry Fedor, and he said to me that a trainee had inadvertently put a negative code on the GPAY email address. This code was removed when the regular security person came back from break.

78. Mr. Fedor further advised me that GPAY has passed Certapay's security requirements and process hundreds of legal EMT's. The code was only in place for one (1) hour. The VP of Security at Certapay offered to call someone at the Scotiabank security. The Applicants were then able to process EMTs into only one of their profiles. When we filed a motion in the Alberta Court of Queen's Bench, the justice in the Alberta case said that he would not order the bank to reinstate the service but asked the Respondent's lawyer to speak to his client about resolving the situation. The lawyer agreed. Notwithstanding this, the Respondent refused to reinstate our ability to accept EMTs in the other accounts that resulted in an approximate loss of $965.00 for the Applicants.

79. As illustrated in the above example, we endeavor to resolve fraud issues promptly. What is more, we have never shirked from taking full responsibility for any fraudulent transactions for which the Respondent may actually incur liability. If losses from fraud are what concerns the Respondent, (i) there is so little fraud that it is not significant; and (ii) we agree (and we have repeatedly said this) to indemnify the Respondent and or the sending bank for those losses.

Mathers Affidavit – contents read like a good crime novel but contents are irrelevant to this application

80. Firstly, please note that the Respondent provided this "expert" for his review copies of all of the affidavits filed in these proceedings, the Applicants' Notices of Application number section 103.1 (for leave) and section 75 but apparently **not** the 17 page Notice of Application filed by the Applicants in support of this application for an interim order under section 104 **and not** a copy of the approximate 15 pages of Justice Simpson's written Reasons for Granting of Leave under section 103.1.

81. We take no issue with the quotations cited by Mathers of the various pieces of Canadian legislation in his affidavit.

82. Mathers partly focuses in on the question of whether the Applicants are a Money Services Business.

83. For the record, a Money Services Business in Canada is not illegal and, for the record, it is a regulated business.

84. The Applicants deny they are a Money Services Business.

85. The Applicants are not in the business of solely remitting funds, which is all a Money Services Business does. For the record, the Fintrac website cites Canada Post to be like a Money Services Business because it issues money orders.

86. Mathers contends that the Applicants use the services of the Respondent to conduct business on behalf of third parties (see paras 17-19 of the Mathers Affidavit) which we deny.

87. The issues surrounding the Money Laundering Question have been considered in the section 103.1 Application for Leave and are not up to be re-argued at a section 104 application for an interim order. For the record I repeat, I absolutely deny that I answered incorrectly when I was asked that question.

88. The Applicants submit the portion of the Mathers' Affidavit that attempts to retry this issue is irrelevant and should be struck for the purposes of this application.

89. Introducing perhaps the purest fiction on record, Mathers goes on (at paras 20-34) to speculate as to how the business of the Applicants could be used for illegal purposes. The uncontested fact remains that the Applicants have not committed any crime nor have they been accused of committing any crime. The Applicants maintain the highest industry standard of verification of its customers.

90. Mathers makes reference to a payment to the Respondent from a bank in Lebanon. We cannot identify this alleged customer form the information provided.

91. Through Mathers, the Respondent appears to label the Applicants as suspicious because they assisted their known customer who received a single payment from Lebanon because Lebanon "[...] is known to be a narcotics source country and also a potential source of terrorist financing" (see para 39 of the Mathers Affidavit).

92. There is no substantiation offered for this statement profiling Lebanon. If Lebanon is a Narcotic Country why is the Scotiabank accepting wires from that country? It must be the money they make on receiving these wires.

93. Mathers has opened the door to the brazen hypocrisy of the Respondent. The Respondent boasts the following on its web site: "*With over 200 branches throughout the Caribbean, Scotiabank is a leading bank in the region, offering a full range of retail banking services and selected commercial finance services.*" (see captured extract of Scotiabank web site attached hereto as **Exhibit B**).

94. The United Nations Office on Drugs and Crime reported in 2003 that the export of illicit drugs from the Caribbean region accounts for 3.4% of the

Gross Domestic Product ("**GDP**") of that region, or approximately USD$3.684 billion. In addition, compared with other drug source, transit and consumer countries in the Western Hemisphere and beyond, the weight of the illicit drug GDP is greater in the Caribbean. (See **Exhibit C** attached hereto for the source of the figures in this paragraph).

95. To summarize, the Respondent is a leading bank with 200 branches in that region of the world that, according to the United Nations, has a higher weight of illicit drug GDP when compared with the rest of the world. I do not wish to make the kinds of unfounded allegations that fill the Respondent Affidavits but I would be very surprised if there were anything less than a material share of the USD$3.684 billion Caribbean illicit drug trade monies in the coffers and profits of The Bank of Nova Scotia. Are the profits of The Bank of Nova Scotia in the Caribbean from bake sales only?

96. I make this point not to show that two wrongs make a right. I make this point to show only that if we are to play with allegations, The Bank of Nova Scotia will be seen quickly descending into the depths of the illicit drug trade of the Caribbean and perhaps other murky matters on which Mathers would be better equipped to advise than I.

97. In contrast, the Applicants take on as customers only those individuals and merchants that they believe are *bona fide* businesses operating entirely within the law of the jurisdiction where they carry on business or reside, wherever they may be and whatever they may do.

98. The Applicants also rely on the Canadian banking system which mandates the Canadian Financial Institutions with the obligation to "know their customer". When a Canadian banking customer with a Canadian bank account wants to access the monies in that account to send them to us, those monies are presumed to be legal funds. They have already been "laundered" at the moment the Canadian Financial Institution accepts the monies to be deposited

with it. Customers can wire money to anywhere in the world from their Canadian accounts.

99. Later in his affidavit (paras 41-50), Mathers goes on to allege that there is exposure to potential liability for the Respondent in potentially violating some of the know-your-customer requirements of the applicable legislation.

100. Again, Mathers omits the fact that in every transaction effected by the customers of the Applicant, the transaction occurs on the specific instructions of an individual with whom the Respondent has already decided to do business, namely a customer.

101. As for the destination of funds for which the Applicants transmit instructions, all transfers are done electronically and are therefore recorded and in plain view of all regulatory authorities having interest and jurisdiction. Indeed, the business of the Applicants is much more transparent than the cash-based brick and mortar casinos of the Respondent (referred to in my previous affidavit of September 1, 2005) and the cash deposits made at their 200 Caribbean branches.

102. Mathers goes on to describe a test merchant account that he opened with the Applicants under the name "Au Porteur" (paras 51-68). The Applicants were well aware of this account being opened. Unfortunately, Mather did not reach the point in the operation of the account where a security check on the payee is carried out, namely the moment of payment. The Au Porteur account was never designated to receive any monies directed to him by one of our Customers and was, therefore, not subject to the standard and rigorous security screening to which all merchants of the Applicants are subject.

103. Mather is concerned about the fact that the web site of the Applicants appears to permit merchants to receive payment by cheque. Despite this offering on the web site, the Applicants have never issued **even one cheque** to any of its merchants. While the Applicants **appear** to accept everybody as either a

customer or a merchant client, they have a rigorous security screening that is conducted at the time of receiving or remitting funds. Mathers did not reach that screening process.

104. We are prepared to work with Scotiabank to establish reasonable criteria similar to the PCI standard accepted by the payment card industry. The Respondent has continuously refused this offer to know its customer and instead persists in trying to eliminate us.

105. Mathers also seems to take issue with the fact that I have never disclosed to the Respondent that all of the individual customer payments are moved from the Applicants' Scotiabank accounts and Royal Bank account to their main account at the Bank of Montreal which is the account that such payments are then remitted to the merchant clients. This "complicated series of transfers" is for the purpose of business management only and have no ulterior motive.

106. As for the further allegations of regulatory compliance issues made by Mather, the Applicants repeat that they have never been investigated, charged or convicted of any regulatory infraction. These proceedings having been public for no less than five (5) months, the Respondent cannot allege that anything in the operations of the Applicants is a secret. The only allegations of wrongdoing by the Applicants come, conveniently, from the Respondent who on many occasions in this matter confuses its role as a large monopolistic bank, which it is, with that of Parliament, the Courts and the Police and is endeavoring to act as prosecutor, judge and executioner - none of which it is – and all, at the ultimate expense of the Canadian consumer.

107. Finally, I would like to point out that the Respondent has previously criticized me for putting a manual together based on my experiences as a collection officer with a major Canadian Collection Agency listing various frauds I had encountered. The purposes of putting that Manual together was to give knowledge to employees of the Applicants of various methods that fraudsters have used. I find it hypocritical that the Respondent chooses to retain an

expert who has published similar Manuals. If the allegation is that I was negligently teaching potential bad guys how to do "bad", then surely the same allegation can be made against Mathers for publishing the various manuals referred to in his c.v.

108. On the specific question of the interim order sought, Mathers is silent and therefore, I presume, acquiescent.

Sadinsky Affidavit

109. Firstly, please note again that the Respondent provided this "expert" for his review copies of all of the affidavits filed in these proceedings, the Applicants' Notices of Application under section 103.1 (for leave) and section 75 but apparently **not** the 17 page Notice of Application filed by the Applicants in support of this application for an interim order under section 104 **and not** a copy of the approximate 15 pages of Justice Simpson's written Reasons for Granting of Leave under section 103.1 **and not** the affidavit of the Visa expert who admits to Scotiabank's involvement in profiting from payments to off-shore casinos.

110. Much like Mathers, Sadinsky appears to have been hired by the Respondent to fill the Tribunal docket with speculation.

111. Section 11(d) of the *Canadian Charter of Rights and Freedoms*[1] (the "**Charter**") provides:

> "11. Any person charged with an offence has the right
>
> [...]
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; [...]"

[1] Enacted as Schedule B to the *Canada Act 1982*, (U.K.) 1982, c. 11, which came into force on April 17, 1982.

112. I believe that the only way to put an end to the baseless and libelous allegations of the Respondent and now Sadinsky and Mathers, is to remind them of (a) the fact that the Applicants have never been investigated, charged or convicted of any criminal offence and (b) the Charter that sets out the presumption of innocence.

113. Contrary to what the Respondent might desire, baseless, libelous allegations of criminality by a large monopolistic bank do not turn the Applicants into criminals.

114. In support of the application for an interim order, it is my belief that the countless and unfounded allegations of criminality that the Respondent has put into the public record in these proceedings are another head of irreparable damage to the Applicants and myself personally. Unfortunately, when a Canadian bank labels a business as a criminal enterprise, as the Respondent Affidavits do on countless occasions, the label tends to stick, regardless of its veracity. There is no way to repair the damage being done to the good will and market share of the Applicants because of these allegations of criminality.

115. The best recourse for the Applicants in the face of these allegations is an interim order that will, we hope, put right, in the public record our good names.

116. Turning to the specific substance of the Sadinsky Affidavit, he provides two legal opinions: (a) off-shore internet gambling by a Canadian is illegal in Canada; and because of this (b) the Applicants are guilty of "aiding and abetting." by their purported assistance to those who gamble off-shore from within Canada (see para 31 of the Sadinsky Affidavit).

117. Sadinsky, firstly, assumes that the only service offered by the off shore casinos is that of gambling. This assumption is false.

118. Gambling services are but one of at least four activities that off shore casinos typically offer to customers. Distinct from gambling services, casinos also

offer, without limitation, (i) lessons in how to play various types of games, (ii) the service of hosting tournaments wherein a customer pays an entry fee in order to play in the (for example) World Poker Championship and, if that customers wins the tournament, he may very well go on to play in the North American wide televised World Poker Championship, and (iii) many of the casinos have gift shops from which their customers can purchase a variety of game related accessories (cards, chips, table covers, t-shirts etc).

119. We serve businesses that we believe to be 100% legal and legitimate in the jurisdictions in which they operate.

120. I am informed by legal counsel, if a customer were ever charged under section 202 of the *Criminal Code*, the law in Canada presumes the customer to be innocent unless proven guilty beyond a reasonable doubt in a court of law. The Scotiabank boardroom is not a court of law.

121. I am also informed by legal counsel that if there are conflicting choices as to whether an accused is doing the legal (e.g. playing in a Poker Tournament where, if you win, the prize is to be granted a spot to play at the World Wide Poker Tournament) or the illegal act (gambling on line from Canada with an off-shore casino), without other evidence, the presumption is he is doing the legal act.

122. Finally, the Respondent very carefully never asks Sadinsky to offer his 'expert' opinion on whether there is a strong, legal argument to be made that Scotiabank is violating the *Criminal Code* by aiding and abetting when the Scotiabank knowingly remits funds on behalf of a Visa customer to an off shore casino.

123. Despite his long list of qualifications, apparently being an expert in gambling law and having been a lawyer since 1965, Sadinsky leaves out one of the most important issues in the debate over the legality of off-shore internet gambling in Canada: conflicts of laws. In paragraph 34 of the Reasons, the Tribunal

makes this point but the Reasons were conveniently not provided to Sadinsky as part of the documents he reviewed.

124. I am informed by legal counsel that you do not need to be a law professor to know that you cannot give opinions on documents you have never seen. Sadinsky does not refer to any terms of any off-shore internet casino agreement between it and its customers, nor does he state that he has ever read any such terms, much less deliberated on any clauses therein, such as a clause providing for the place in which the casino and its customers are transacting, *de jure*.

125. Flying blind, willfully or not, in ignorance of all of the key underlying legal documents and ignoring important questions such as where, *de jure*, actions occur concerning off-shore online internet casinos, the Sadinsky Affidavit is merely an academic exercise and does nothing to advance the case of the Respondent, except to dramatize the "sky is falling" panic of Chicken Little if it is forced to do business with us.

126. On the specific and most relevant question of the interim order sought, Sadinsky is silent and therefore, I presume, acquiescent.

Monteath Affidavit- speaks only to the Respondent's alleged reasons for terminating the Applicants banking services

127. The Applicants submit this affidavit is irrelevant for the purposes of the section 104 application and is attempting to add more "evidence" that was relevant to the section 103.1 application for leave and may be remotely relevant at the section 75 hearing.

128. The Applicants therefore respectfully submit that this affidavit not be considered at the section 104 hearing.

129. If the Tribunal accepts this affidavit as part of the evidence to be considered at the section 104 hearing, the Applicants respond as follows: The bulk of the

Monteath Affidavit simply repeats the policies and procedures that are stated at numerous occasions throughout the previous filings of the Respondent. The Applicants have not breached any of these policies nor were they ever advised of such limitations that the policies apparently express until shortly before to Termination by the Scotiabank

130. I find it hard to believe that the Respondent had all the reasons for the Termination listed in the Monteath Affidavit in mind at the moment of the Termination and did not manage to file them in an affidavit in response to the section 103.1 Application for Leave. The reality is that the Termination was 'without cause'. I believe the purportedly serious concerns over the number of accounts of the Applicants and the monies transferred through them were fabricated after the Termination in order to bolster the real motive of the Respondent for the Termination.

131. On the subject of the investigation surrounding the Termination, Monteath runs in two directions at once. On the one hand, he deposes it was his decision to effect the Termination following complaints at the branch level. On the other hand, he deposes there was a larger investigation going on of the Applicants "by not only my department, but numerous other departments within Scotiabank."

132. I believe the latter part of this statement to be true. So true that the Interac Online and iDebit business development team within the Respondent contributed their vital opinion to the sending of the Termination letters. The opinion of that element within the Respondent is obvious. The Termination would eliminate the one (1) and only competitor in Canada to the new online debit service offering of the Respondent. From a mercantile, though legally wanting, perspective, this was a great business decision for the Respondent.

133. The Canadian Payments Association (of which the Scotiabank is a principal member) took great interest in our business when its members were conceiving the rules and regulations in developing their Interac Online - to the

point of sending a representative to interview Joseph Iuso (President UMB) and Brian Crozier (VP Business Development) on or about December 7, 2004. Note that Mr. Iuso was pleased to co-operate with them and shared his information in good faith.

134. NOTE THAT IT WAS THE CANADIAN PAYMENTS ASSOCIATION THAT ENACTED RULE E2 IN FEBRUARY 2005 WHICH SEEMS TO HAVE BEEN AIMED AT THE APPLICANTS.

135. Another interesting point is that the Respondent bank selected Robert Rosatelli, its VP of Self Service Banking (which includes Interac Direct Debit, ScotiaCard, Telephone Banking, Wireless Banking and Consumer Payment Programmes) to take responsibility in marshalling the Respondent's defense to the Applicants' claim in Alberta for breach of contract and economic torts and at the Competition Bureau for anti-competitive actions.

136. Why would the Respondent initially select Rosatelli and not Monteath who alleges he was responsible for the decision to terminate the Applicants' banking services after being in full charge of the bank's internal investigation to defend our allegations?

137. Why was the Monteath affidavit with its legions of reasons for terminating the banking services of the Applicants not filed in the Alberta action?

138. On the specific and most immediately relevant question of the interim order sought, Monteath is silent and therefore, I presume, acquiescent.

In the USA, Free Enterprise Trumps Bank Monopolies

139. Interestingly, the e-mail from Sally Walton to Irena Stropnik of April 4, 2005 (para 4 of the Monteath Affidavit), describes the business of the Applicants as being similar to that of PayPal. There are, indeed some similarities in our respective businesses, including the notable fact that the Applicants represent a threat to the market share of the Respondent bank in the internet debit

payment market, just as PayPal does for banks in the US and elsewhere in the internet credit card payment market.

140. Placing the Walton / Stropnik e-mail into evidence goes only to expose the anti-competitive intent of Scotiabank in place from the branch level all the way up the Vice President level.

141. I verily believe that it is the intention of the Respondent and other banks to drive all non-bank payment companies out of business. The business reason for this is quite simple; there are only five banks actively involved in significant payments businesses in Canada.

142. Where there are about five major banks in Canada, I verily believe there are approximately 6,000 banks in the United States. The difference in population size does not explain the difference in number of banks. In Canada, it takes a few billion dollars in assets and an order in council or an act of parliament to become a Schedule 1 Bank. No one American bank has the power that one Canadian bank does. Losing a Canadian bank's support – especially when it actively and vindictively pursues the same market as you - can break a business in Canada – which is what we are facing. No one American bank has the power to eliminate the only competitor in the debit payment market whereas that power potentially rests with the Respondent herein, as the other major Canadian Schedule 1 Banks, who are all partners in the Acxsys Corporation and Internet Online, watch from the sidelines.

143. The Canadian consumer is already forced to use the Canadian Bank's credit cards and accept their monopolistic charges. It is not in the Canadian consumers best interest to be forced to do all their internet debit payments only through their respective Banks.

144. My research of the US market in data aggregation and payment services, such as ours (as detailed in the article by Ledig at Exhibit H to my affidavit of September 1, 2005), leads me to say that in my opinion the Canadian public

only stands to gain by allowing businesses such as ours to compete in this market – to compete as to the pricing of the services, the quality of the services, the manner of the services. However, if the Respondent is allowed to pick-off its competitors, such as the Applicants, just because they have the ingenuity and the audacity to compete with the five big Canadian banks, then the Canadian consumer loses in a big way.

145. My view of the electronic payments industry is that we are at but the beginning of a new and flourishing market for non-bank payment services. We are calling on the *Act* to let this flourishing take its natural course and not be extinguished by the ever-concentrating bank hegemony.

146. The big 5 Schedule 1, Canadian banks are not businesses like any other businesses in Canada. Indeed, I believe they are akin to infrastructure, like water works, electricity and telephone companies. I believe it is time for our competition watchdog to break the last great Canadian monopoly: that of the Canadian banks. Our case has a lot to do with that challenge.

147. This case is about, amongst other things, the Respondent closing the doors to competitors in Canada in the myriad of novel data aggregation and payment businesses, such as e-wallets, e-cash, gift cards, loyalty cards, credit cards, debit cards etc... I believe that we stand for not only ourselves, but for the countless new e-commence and payment processing businesses that have sprung up in Canada in very recent years and months. These are mostly smaller businesses than ours that cannot afford the time or money to mount or intervene in a case of this magnitude.

148. The American example informs us that disputes this case have been settled to allow growth and self-regulation, as is normal in any new marketplace. It is noteworthy that personal computers, on which all these products depend, only became available within the last 20 years. Time is of the essence in our marketplace.

149. I believe that, in this case, the Respondent is acting not only for itself, but also for its fellow Interac members who are obviously heavily invested in the outcome of this case. Other Interac members cannot, of course, openly voice their opinion or intervene, because that would reveal them to be the silent, monopolistic conspirators that we believe they are.

150. Examples of the growth in this sector of the economy are set out, as an example only, in the pages of the industry's own Canadian trade journal, *The Frontier Times Canada's Electronic Transactions Journal*, with its web site at www.frontiertimes.ca. The Respondent event cited the Frontier Times as an authority in its pleadings (see Exhibit H to the Response of the Respondent under the 103.1 application). The Frontier Times boasts some 2,000 subscribers active in electronic payments businesses in Canada.

151. The decision, both at the interim stage and at the final stage of these proceedings, must take into consideration the wider public policy issues at stake for free enterprise in Canada.

Rosatelli Affidavit – more of the same

152. In addition to other affidavits I have filed to respond to Rosatelli, except as otherwise expressly admitted herein, I specifically deny the allegations contained in this third affidavit he has had filed.

153. Rosatelli alleges that the Applicants "did not give any examples in which alternate service at another financial institution was sought and not obtained." (See para 44 of the Rosatelli Affidavit). This assertion is wrong. We refer the Tribunal to paragraph 208 to 212 of my affidavit dated September 1, 2005 wherein some of those alternatives were sought but not obtained which facts appear to be un-contradicted in the evidence and indeed appear in the Reasons at paragraph 19 thereof. Further details on these failed attempts are found in the affidavit of Joseph Iuso, dated August 29, 2005.

154. Rosatelli goes on to argue that higher fees that the Applicants might pay at Certapay would not constitute irreparable harm (see para 44 of the Rosatelli Affidavit). What Rosatelli omits in making this point is that Certapay is not at all interchangeable with the services of the Respondent.

155. Certapay provides the EMT's service. Customers are limited to making payments of $1,000.00 per day and must pay $1.50 for each transaction. This eliminates small payments as well as payments to clients with high end products for sale such as laptops or airline tickets. Those customers are naturally shunted over into using credit cards where banks take all the profits.

156. Certapay could be a ¼ substitute only in so far as I wished to reduce my business to one half of the volume it enjoyed prior to the Termination (assuming the Royal Bank continues to supply ¼ of the banking services). That is not a compromise I am willing to accept as it will cripple my existing business and ultimately kill it. It also precludes any ability to grow and obtain more mainstream Merchant clients.

157. In addition, procurement of Certapay services is conditional upon Certapay accepting to provide those services. Certapay is a division of Acxsys Corporation, as discussed above. Should we expect the Respondent to serve us indirectly through Certapay when they allege a mountain of reasons why they would not serve us directly? We are too grounded in reality to believe that.

158. I believe that the Certapay, Axcsys Corporation, Interac Online which appear to be one and the same are deliberately confusing so as to throw the reader off the trail to the ever-present same group of banks that run payment systems in Canada to the exclusion of innovative and successful entrepreneurs such as the Applicants.

159. If the Tribunal allows the Termination to persist (as repeated from the application for an interim order at para. 52 thereof), the Applicants repeat their various claims as to the irreparable harm that will follow:

a. the monthly losses to the Applicants would be impossible to calculate given the approximate 300% per annum growth to date,

b. it would make the Applicants totally reliant on The Royal Bank of Canada, as the only bank that allows EMTs into a business bank account but the restrictions of that other bank make it impossible for the Applicants to increase their volume of business, leaving the Applicants with no substitute in the market for the services of the Respondent;

c. if the Applicants were forced to rely solely on the Royal Bank, their business would be much more at risk for its investors, as well as consumers and merchants who rely on the GPAY Services;

d. not being able to bank with the Respondents would lessen the Applicants' chances to establish a critical mass of customers, necessary for the "network effects", "first mover advantage" and increasing returns to scale required for a successful business;

e. having one less bank supplier makes the business of the Applicants appear less legitimate;

f. it removes the opportunity for the Applicants to leverage their business into a greater number of customers;

g. it may allow a "second mover" to take the opportunity which the Applicants now have; and

h. as buyers in the oligopolistic EMT Deposit Market, the Applicants need not prove that there are no alternative service providers, before demonstrating irreparable harm."

160. Despite spending two of their 300 pages of Respondent Affidavits on irreparable harm, neither of them contradicts the facts asserted above.

161. In their second, and last, page of testimony on irreparable harm, Rosatelli turns to the question of irreparable harm to the Respondent for continuing to serve the Applicants (see para. 48 of the Rosatelli affidavit).

162. Presumably the purpose of this paragraph is to address the balance of conveniences argument that arises at the hearing for an interim order on section 104 of the Act.

163. We note that in this solitary paragraph Rosatelli speaks only of "risk" by continuing to serve the Applicants and not of any actual harm done or actual harm that is certain to be done to them. HE IS MERELY SPECULATING.

164. The Bank of Nova Scotia had a net income in 2004 of CDN$2.931 billion, as reported in their Annual Report of 2004. The "risk" of harm to The Bank of Nova Scotia by various spuriously-based allegations of possible indirect harm weighs lightly when measured against the very real and substantial harm already suffered by the Applicants on account of the Termination. Such harm threatens to only increase and persist, in an irreparable fashion, if the Tribunal does not order an immediate resumption of all of our banking services.

165. In addition, the Bank of Nova Scotia would greatly reduce its alleged costs of investigating the few fraudulent EMTs we do receive (and, realistically, must expect to continue to receive) if they would permit (or if the Tribunal orders them to permit) me to contact their security department as I have in the past when a fraudulent EMT was received by the Applicants. I can instantly pass on our information as to the IP address of the sending computer and other information that will greatly assist in their investigation. Note that I already keep in regular contact with the security departments of all of the other major Canadian banks in assisting them in their investigations of fraudulent EMTs that are sent to us from their compromised customers' accounts. This is just part of doing business over the internet as the Scotiabank is well aware.

166. In paragraphs 8-16 of his Affidavit, Rosatelli describes a new Bill Payee Services agreement. Here the Respondent does not even bother to hide the fact that it is organizing a post Termination re-jigging of its terms of service to specifically exclude the Applicants as customers and therefore eliminate all possible competitors in the internet debit payment market, except for the Canadian Financial Institutions who are the only businesses who can physically receive instructions directly from a Canadian customer to debit their account for a bill payment wherein the Customer does not share his confidential banking information.

167. Needless to say, the post-Termination revised Respondent user terms are completely irrelevant to the present case. If anything, they go to show the strangely persistent penchant for the Respondent to ardently drive the Applicants and entities like them out of business. What is more, the Respondent has no shame in doing so.

168. Paragraph 12 of the Rosatelli Affidavit may as well read 'we have recently learned of other competitors that we would like to terminate through self-serving internal policies.' Following in the omissions of Mathers and Sadinsky, Rosatelli fails to discuss the application of the law of agency on the new or the old customer terms.

169. In any case, I respectfully submit the specific prohibitions in a new and inapplicable set of terms of the Respondent are irrelevant to this case.

170. Paragraphs 17-31 of the Rosatelli Affidavit say little more than there were some twenty (20) or so incidents of fraud involving customers of the Applicants. I think any Canadian business would be proud of such a low volume of un-recovered fraud, at our loss, (the total value of them, by the way, was approximately $2,600.00) when measured against the Applicants' overall annual processing volume of approximately $10 million in 2004.

171. So far in 2005 to the end of October 2005 we have processed approximately $34,667,078.27 and we have incurred approximately $25,000.00 in un-recovered fraud, most of which occurred due to unannounced changes in the Certapay payment processing system. We assume all liabilities associated with such fraud.

172. Rosatelli also fails to admit that the fraud was **never** on the part of the Applicants or any of their affiliates, but rather it was a fraudulent EMT sent to the Applicants by a criminal who had compromised the customers' confidential banking information.

173. Rosatelli also fails to admit that, in each and every case of fraud through our services, the Applicants returned the money to the customer's bank often before the Respondent was even aware of the fraudulent EMT.

174. The Respondent is trying to tarnish the good name of the Applicants with the fact that a small minority of their customers had their accounts compromised. Fraud is a fact of life that all Canadian banks have prevention and reporting departments to deal with it. The Applicants have a fraud detection system that flags suspicious payments as they are processed. All payments are reviewed. In the case of fraud the real customer is told to call their bank from the number on the back of their bank card. We contact the bank's fraud department independently and provide as much information as we have. We do not pretend to be able to stop all fraud but we can detect it and protect the Canadian public from losses in increased bank fess because the banks self insure against fraud.

175. In Paragraph 29 of the Rosatelli Affidavit he states that:

> "The Applicants are essentially running a parallel 'clearing and settlement' system to that which is used by the Schedule I Banks through the Bank of Canada."

176. However, the Applicants do not run a clearing and settlement system. The Applicants rely on the superb Canadian banking system to clear and settle accounts.

177. The manner in which this statement by Rosatelli (at para 29 of the Rosatelli Affidavit) is most helpful by giving us a window into the mind of The Bank of Nova Scotia. Through the eyes of its Vice-President of Self-Service Banking, we learn that the Respondent sees the Applicants as direct competitors (in the clearing settlement market) which is wrong. We are their actual competitors in the internet debit payment market. I don't think the Respondent really understands us.

178. ***Stafford Affidavit – an "inside (but slanted) view" of Visa***

179. Stafford provides a useful, though incomplete, explanation of the Visa card issuing business of the Respondent. He also makes a number of admissions relating to participation of The Bank of Nova Scotia in off-shore internet casino gambling profits.

180. As Vice President Credit Cards and Retail Lending Services, Stafford is well placed to inform the Tribunal on matters relating to revenue The Bank of Nova Scotia from off-shore internet casino gambling.

181. The essence of our previously filed argument (set out in my September 1, 2005 affidavit) on Scotiabank Visa cards was that The Bank of Nova Scotia earns transaction fees[2] every time one of its Visa cardholders uses their Scotiabank Visa card to pay for gambling at an off-shore internet casino. Given the large number of Visa cards issued by Scotiabank and the reportedly

[2] In the industry there are various names by which these fees are called, some may call them dues and assessments and interchange, or the discount rate. In any case, these are the difference between what the card holder pays ($100 for example) and what the merchant receives ($98 for example). The transaction fees would be $2 in our example. Merchants pay these fees in consideration for the 'privilege' of accepting the payment by credit card. The credit card industry is rife with competition law issues, but they are not relevant to this case.

large number of Canadians who apparently gamble at off-shore internet casinos, we can safely assume that these two groups have substantial overlap.

182. In other words, many Scotiabank Visa cardholders use their Scotiabank Visa cards to pay for off-shore internet gambling.

183. It is against this background that a Scotiabank Visa card was used to make a payment of USD$400 directly to an off-shore internet casino on August 25, 2005 (see para 164 of my affidavit of September 1, 2005). Note that this fact is un-refuted.

184. The significant purpose of making this payment was to prove to the Tribunal that any number of the tens of thousands of Scotiabank Visa cardholders are doing exactly the same thing, and Scotiabank is earning 80% from all the fees on those transactions. I estimate that the fee on that charge to the casino would be about 4%. I believe Scotiabank earns approximately 80% of 4% of the total value of payments made by its Visa cardholders to off-shore internet casinos which means that Scotiabank earned approximately USD$12.80 USD of the approximate USD$16.00 of fees charged by Visa to their merchant offshore casino. That is a lot of money.

185. Stafford says that the fee to the merchants ranges between 1.5-3% (see para 13 of his affidavit), however, Stafford omits to mention that in the high risk world of online payments, the rates are more like 4-6%, with transaction fees that range from $0.25 to $1.50 with hold backs of 8% to 10% and charge backs for up to 180 days, thereby making it even more enticing for The Bank of Nova Scotia to encourage its Visa cardholders to use their Visa cards to pay for off-shore internet gambling.

186. That direct revenue to Scotiabank from off-shore internet gambling is not, as Stafford would have us believe, somehow lost in the '8,000 transactions per second' environment (see para 26 of the Stafford Affidavit).

187. Instead, that particular piece of Scotiabank revenue is exactly and precisely calculable. I would even go so far as to say that it is monitored on a daily basis, as are all transactions on Scotiabank Visa cards.

188. Stafford even confirms (as I alleged in my September 1, 2005 affidavit) that gaming merchants are assigned the code 7995 (see para 39 of his affidavit). As to the location of the merchant, that information is made known to the Issuing Bank prior to the settling of the transaction. In other words, Scotiabank always knows when it is paying money for a Kingston, Ontario resident to an online casino in Nauru, to use a hypothetical example. Scotiabank also knows, prior to the transaction being processed, the precise amount of money that it will earn from the transaction.

189. If the Scotiabank were truly and honestly concerned that paying an off-shore casino money on behalf of a customer is possibly an illegal act, Scotiabank (and every other Canadian bank, we submit) would have applied to Visa International to have Canadian Visa customers precluded from making any charges to code 7995 where such casino is located away from Canada.

190. Note that the Respondent never asked Sadinsky to come to an opinion on the Visa payments to an off-shore casino.

191. I respectfully submit that every single argument of the Respondent in all of the Respondent Affidavits and elsewhere that is at all based on their concerns over casinos is stopped cold by these un-refuted facts. The Bank of Nova Scotia should have exactly the same concerns about itself over (a) money laundering, (b) funding of terrorism, and (c) the purported illegality of off-shore internet gambling in Canada if it truly believed what it accuses the Applicants of doing. **That is why the Respondent's position is totally illogical and hypocritical.**

192. Based on Sadinsky's listed assumptions and reasoning, if Sadinsky were aware of these facts, I believe he would conclude there is a strong legal

argument that The Bank of Nova Scotia is guilty of a crime under section 202 of the *Criminal Code*. Of course, he was not paid to deliver that opinion.

193. Stafford really does the Respondent a disservice when he implies (at paras 25-35 of his affidavit) that owing to the vast quantity of transactions processed (8,000 per second), The Bank of Nova Scotia could not possibly catch all those that were payments to off-shore internet casinos.

194. If we follow this logic, it implies that if you are big enough to not know about all your own business, like Scotiabank, you can get away with serving clients who wish to pay off-shore internet casinos but, if you are quite a bit smaller, for example, as small as the Applicants, you are judged by a higher standard requiring you to know much more about the transactions you process.

195. The Stafford Affidavit is deliberately confusing as regards Scotiabank service to (a) casino merchants, that is highly regulated and limited to Canadian provincial government establishments, and (b) service to Scotiabank Visa cardholders where apparently a payment to an off-shore internet casino is perfectly acceptable. We pray that the Tribunal will keep this distinction in mind.

196. Stafford himself admits to payments by Scotiabank to off-shore casinos in Spain (see para 31 of his affidavit). He implies that these transactions are because of imperfections. This is wrong. Scotiabank intentionally permits its Visa cardholders to spend their money at off-shore internet casinos because it earns a lot of direct and indirect revenue for Scotiabank.[3] The ostensibly tea

[3] The Tribunal might be wondering why The Bank of Nova Scotia, knowing that it is facilitating payments to off-shore internet casinos for its Visa cardholders, does not simply put an end to this particular service offered to its cardholders (as it can instantly with the flick of a switch). After all, the whole system is run by computers, that, with the flick of a switch could put an end to this piece of casino payments by Scotiabank. To understand why Scotiabank has not done this, one need look no further than the title of Stafford "Vice President of Credit Cards and Retail Lending Services." The good people who use Scotiabank Visa cards to gamble at off-shore internet casinos are not only earning money for Scotiabank through the fees that the casinos pay to acquire the payment transactions, but much more significantly, those payments contribute to the retail lending and consumer credit issued to those very same Scotiabank Visa cardholders. As a matter of fact, the direct revenue of Scotiabank from the off-shore internet casinos that most concerns us because it exposes the hypocrisy of Scotiabank in this case is but a small fraction of the money Scotiabank actually

totaling officers of The Bank of Nova Scotia that appear in this case are not so prudish when it comes to the brass tacks of the bottom line.

197. I respectfully submit that the Respondent is making a wrongful attempt to deny services to the Applicants on grounds that are actually more true of the Respondent itself than the Applicants.

198. When put together, the Stafford and Sadinsky Affidavits expose this colossal (and illegal) hypocrisy.

199. The Stafford Affidavit is also silent on the most relevant issue of the claim for an interim order and, I presume, acquiescent,

Todd Affidavit

200. The Todd Affidavit appears to be a snobby critique on the sophistication and marketability of the web site of the Applicants and includes some discussion of the interplay of the user terms and privacy policies of the Applicants.

201. We have found nothing of substance in the Todd Affidavit. We refute all if its content in so far as it is critical of the policies and procedures of the Applicants that we submit exceed the industry norm, as previously discussed in our earlier submissions. (See paragraphs 189-196 and 231of my affidavit of September 1, 2005 that remain unrefuted).

202. On the specific and immediately relevant question of the interim order sought, Todd is silent and therefore, I presume, acquiescent.

Cook Affidavit

---

earns from its cardholders who gamble. Scotiabank earns a much larger amount from those good customers by collecting impressive amounts of interest revenue on the money they borrow to gamble. In contrast to this piece of business that is questionable from an ethical perspective, the Applicants permit their customers to effect transfers of funds they already have. The Bank of Nova Scotia invites its customers to go into debt in order to gamble. This, coupled with the Caribbean banking business of the Respondent makes The Bank of Nova Scotia out to be something quite different than what their tea totaling affiants would have the Tribunal believe. Anything less than the full picture on this point might permit Scotiabank to get away with hypocrisy that the Act was specifically made to quash.

203. Cook produces into evidence a stack of policies of the Respondent that, only after the Termination, ostensibly justify the Termination.

204. I refute the relevance of the Cook Affidavit and I believe that a rebuttal to the points made therein is found at paragraphs 50-68 of my affidavit of September 1, 2005.

205. On the specific and immediately relevant question of the interim order sought, Cook is silent and therefore, I presume, acquiescent.

Woodrow Affidavit

206. The Woodrow Affidavit is a tardy denial of the good and open banking relationship that existed between myself and Woodrow.

207. Attached hereto and marked **Exhibit D** is a copy of a letter written by Nelly Dunn, Commercial Banking Officer of the Bank of Montreal describing me, as President of B-Filer Inc and GPAY as an "outstanding client". The letter speaks for itself.

208. Woodrow admits that I explained our business to him as something akin to a debit card business (see para. 10 of the Woodrow Affidavit).

209. I deny all portions of the Woodrow Affidavit that contradict my full description of my relationship with him in my affidavit of September 1, 2005.

210. On the specific and immediately relevant question of the interim order sought, Woodrow is silent and therefore, I presume, acquiescent.

Summary

211. The Applicants respectfully submit there is no impediment to the discretion of the Tribunal to grant a mandatory interim order to direct the banking services of the Applicants be reinstated in accordance with the description set out in

paragraphs 66-71 inclusive in the present matter and accept the Application on the merits.

SWORN BEFORE ME
at the City of Toronto
in the Province of Ontario
on this 5th day of December 2005

Commissioner for Taking Affidavits
Name Karen Zuniony

RAYMOND F. GRACE

Exhibit A

Section 448.1(1) of the Bank Act and *Access to Basic Banking Services Regulations*

Retail deposit accounts

448.1 (1) Subject to regulations made under subsection (3), a member bank shall, at any prescribed point of service in Canada or any branch in Canada at which it opens retail deposit accounts through a natural person, open a retail deposit account for an individual who meets the prescribed conditions at his or her request made there in person.

No minimum deposit or balance requirements

(2) A member bank shall not require that, in the case of an account opened under subsection (1), the individual make an initial minimum deposit or maintain a minimum balance.

Regulations

(3) The Governor in Council may make regulations

(*a*) for the purposes of subsection (1), defining "point of service" and prescribing points of service;

(*b*) respecting circumstances in which subsection (1) does not apply; and

(*c*) prescribing conditions to be met by an individual for the purposes of subsection (1).

2001, c. 9, s. 117.

This is Exhibit "A" to the third Affidavit of Raymond F. Gracie sworn before me on this 5th day of December 2005

Karen Zuliani
A Commissioner for Taking Affidavits
for the Province of Ontario

Access to Basic Banking Services Regulations

SOR/2003-184

Registration 29 May, 2003

BANK ACT

Access to Basic Banking Services Regulations

P.C. 2003-765 29 May, 2003

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsections 448.1(3)[a] and 458.1(2)[b] and section 459.4[c] of the *Bank Act*[d], hereby makes the annexed *Access to Basic Banking Services Regulations*.

[a] S.C. 2001, c. 9, s. 117 [b] S.C. 2001, c. 9, s. 123 [c] S.C. 2001, c. 9, s. 125 [d] S.C. 1991, c. 46

ACCESS TO BASIC BANKING SERVICES REGULATIONS

INTERPRETATION

Definition of "Act"

1. In these Regulations, "Act" means the *Bank Act*.

OPENING OF RETAIL DEPOSIT ACCOUNTS

Definition of "point of service"

2. (1) For the purpose of subsection 448.1(1) of the Act, "point of service" means a physical location to which the public has access and at which a member bank carries on business with the public and opens or initiates the opening of retail deposit accounts through natural persons.

Prescribed "points of service"

(2) Every point of service is a prescribed point of service for the purpose of subsection 448.1(1) of the Act.

Refusal to open account

3. (1) Subject to subsection (2), subsection 448.1(1) of the Act does not apply in the following circumstances:

(*a*) if the member bank has reasonable grounds to believe that the retail deposit account will be used for illegal or fraudulent purposes;

(*b*) if the individual has a history of illegal or fraudulent activity in relation to providers of financial services and if the most recent instance of such activity occurred less than seven years before the day on which the request to open a retail deposit account is made;

(*c*) if the member bank has reasonable grounds to believe that the individual, for the purpose of opening the retail deposit account, knowingly made a material misrepresentation in the information provided to the member bank;

(*d*) if the member bank has reasonable grounds to believe that it is necessary to refuse to open the retail deposit account in order to protect the customers or employees of the member bank from physical harm, harassment or other abuse; or

(*e*) if the request is made at a branch or point of service of a member bank at which the only retail deposit accounts offered are those that are linked to an account at another financial institution.

Bankruptcy

(2) For greater certainty and for the purpose of paragraph (1)(*a*), the fact that the individual is or has been a bankrupt does not, by itself without any evidence of fraud or any other illegal activity in relation to the bankruptcy, constitute reasonable grounds for a member bank to believe that an account for the individual will be used for illegal or fraudulent purposes.

Location

(3) If an individual requests the opening of a retail deposit account at a point of service at which the opening of such an account can only be initiated, the member bank is not required to

open the account at that physical location; however, the bank shall, subject to these Regulations, open the account at another physical location.

Conditions to be met

4. (1) Subject to subsection (2) and for the purpose of subsection 448.1(1) of the Act, the conditions to be met by an individual who is requesting that a member bank open a retail deposit account for the individual are as follows:

(*a*) the individual shall present to the member bank

(i) two pieces of identification from among those set out in Part A or B of the schedule at least one of which is from among those set out in Part A of the schedule, or

(ii) one piece of identification from among those set out in Part A of the schedule, if the identity of the individual is also confirmed by a client in good standing with the member bank or by an individual of good standing in the community where the member bank is situated;

(*b*) the individual shall disclose, orally or in writing, the information listed in Part C of the schedule if the information is not available on the pieces of identification presented by the individual; and

(*c*) if the member bank requests, the individual shall consent to the member bank's verifying whether any of the circumstances set out in paragraphs 3(1)(*a*) to (*d*) apply to the individual, and to the member bank's verifying the pieces of identification presented by the individual.

Where bank suspects misrepresentation

(2) If the member bank, based on its verification of the circumstances set out in paragraphs 3(1)(*a*) to (*d*) or the pieces of identification, or based on information, if any, provided by the individual that is related to the request, has reasonable grounds to suspect that the individual is misrepresenting their identity, the individual shall present to the member bank one piece of identification from among those set out in Part A of the schedule that bears the individual's photograph and signature.

Written notice

5. If the member bank refuses to open a retail deposit account owing to the existence of any of the circumstances set out in paragraphs 3(1)(*a*) to (*e*) or owing to the individual's not meeting the conditions prescribed under these Regulations, the member bank shall provide to the individual, in writing,

(*a*) notice of its refusal to open the account; and

(*b*) a statement indicating that the individual may contact the Agency if they have a complaint and how the individual can contact the Agency.

CASHING OF CERTAIN GOVERNMENT OF CANADA CHEQUES AND OTHER INSTRUMENTS

Refusal to cash cheque or instrument

6. Subsection 458.1(1) of the Act does not apply in the following circumstances:

(*a*) if there is evidence that the cheque or other instrument has been altered in any way or is counterfeit;

(*b*) if the cheque or other instrument is not an item to be accepted under Rule G8 of the Canadian Payments Association, as amended from time to time; or

(*c*) if the member bank has reasonable grounds to believe that there has been illegal or fraudulent activity in relation to the cheque or other instrument.

Prescribed maximum amount

7. The maximum amount of a cheque or other instrument referred to in subsection 458.1(1) of the Act that a member bank is required by that subsection to cash is $1,500.

Conditions to be met

8. For the purpose of subsection 458.1(1) of the Act, an individual who requests that a member bank cash a cheque or other instrument shall present to the member bank

(*a*) two pieces of identification from among those set out in Part A or B of the schedule; or

(*b*) one piece of identification from among those set out in Part A or B of the schedule if

(i) that piece bears the signature and photograph of the individual, or

(ii) the identity of the individual is also confirmed by a client in good standing with the member bank or by an individual of good standing in the community where the member bank is situated.

Individual considered not to be a customer

9. For the purpose of subsection 458.1(1) of the Act, an individual is considered not to be a customer of a member bank if the individual does not have a personal deposit account with any branch of the member bank and does not hold a credit card issued by the member bank.

Written notice

10. If the member bank refuses to cash a cheque or other instrument owing to the existence of any of the circumstances set out in section 6 or owing to the individual's not meeting the conditions prescribed under these Regulations, the member bank shall provide to the individual, in writing,

(*a*) notice of the refusal to cash the cheque or other instrument; and

(*b*) a statement indicating that the individual may contact the Agency if they have a complaint and how the individual can contact the Agency.

GENERAL

Pieces of Identification

Identification requirements

11. For greater certainty, the pieces of identification required to be presented by an individual under these Regulations shall be original, valid and not substantially defaced.

Different names on identifications

12. If the name shown on one of the pieces of identification presented by an individual differs from the name shown on any other identification presented by the individual, the individual shall provide a certificate evidencing the change of name that has occurred or a certified copy of that certificate.

Disclosure of Information

Public disclosure relating to opening of accounts

13. A member bank shall display and make available to the public at all of its branches and points of service copies of a written statement disclosing

(*a*) the conditions to be met under these Regulations by an individual who requests the opening of a retail deposit account; and

(*b*) the fact that the individual may contact the Agency if they have a complaint and how the individual can contact the Agency.

Public disclosure relating to cashing of cheques and other instruments

14. A member bank shall display and make available to the public at all of its branches copies of a written statement disclosing

(*a*) the personal identification requirements to be met under these Regulations by an individual, for the purpose of cashing certain Government of Canada cheques and other instruments under subsection 458.1(1) of the Act, who is considered not to be a customer of the member bank; and

(*b*) the fact that the individual may contact the Agency if they have a complaint and how the individual can contact the Agency.

COMING INTO FORCE

Coming into force

15. These Regulations come into force four months after the day on which they are registered.

SCHEDULE
(Sections 4 and 8)
IDENTIFICATION

PART A

1. A drivers' licence issued in Canada, as permitted to be used for identification purposes under provincial law

2. A Canadian passport

3. A Certificate of Canadian Citizenship or a Certification of Naturalization, in the form of a paper document or card but not a commemorative issue

4. A Permanent Resident card or Citizenship and Immigration Canada Form IMM 1000 or IMM 1442

5. A birth certificate issued in Canada

6. A Social Insurance Number card issued by the Government of Canada

7. An Old Age Security card issued by the Government of Canada

8. A Certificate of Indian Status issued by the Government of Canada

9. A provincial health insurance card, as permitted to be used for identification purposes under provincial law

10. A document or card, bearing the individual's photograph and signature, issued by any of the following authorities or their successors:

(*a*) Insurance Corporation of British Columbia

(*b*) Alberta Registries

(*c*) Saskatchewan Government Insurance

(*d*) Department of Service Nova Scotia and Municipal Relations

(*e*) Department of Transportation and Public Works of the Province of Prince Edward Island

(*f*) Service New Brunswick

(*g*) Department of Government Services and Lands of the Province of Newfoundland and Labrador

(*h*) Department of Transportation of the Northwest Territories

(*i*) Department of Community Government and Transportation of the Territory of Nunavut

PART B

1. An employee identity card, issued by an employer that is well known in the community, bearing the individual's photograph

2. A bank or automated banking machine or client card, issued by a member of the Canadian Payments Association in the name of, or bearing the name of, the individual and bearing the individual's signature

3. A credit card, issued by a member of the Canadian Payments Association in the name of, or bearing the name of, the individual and bearing the individual's signature

4. A Canadian National Institute for the Blind (CNIB) client card bearing the individual's photograph and signature

5. A foreign passport

PART C

1. The individual's name

2. The individual's date of birth

3. The individual's address, if any

4. The individual's occupation, if any

Exhibit B

Extract from Scotiabank Web Site:
http://www.scotiabank.com/cda/eventdetail/0,1005,LIDen_SID14,00.html
Captured, November 29, 2005

"Caribbean

With over 200 branches throughout the Caribbean, Scotiabank is a leading bank in the region, offering a full range of retail banking services and selected commercial finance services.

Find out more about Scotiabank in the following countries:

Anguilla
Antigua & Barbuda
Aruba
The Bahamas
Barbados
British Virgin Islands
Cayman Islands
Dominica
Dominican Republic
Grenada
Haiti
Jamaica
Netherlands Antilles
Puerto Rico
St. Lucia
St. Kitts and Nevis
St. Maarten
St. Vincent & the Grenadines
Trinidad & Tobago
Turks & Caicos Islands
U.S. Virgin Islands"

This is Exhibit "B" to the third Affidavit of Raymond Grace sworn before me on this 5th day of December 2005.

Karen Zuniga

A Commissioner of Oaths in and for the Province of Ontario

Exhibit C

Extract from
CARIBBEAN DRUG TRENDS 2001-2002
United Nations Office on Drugs and Crime
Caribbean Regional Office
Bridgetown, Barbados, W I
February 2003

Captured on November 29, 2005 at:
http://www.unodc.org/pdf/barbados/caribbean_drug-trends_2001-2002.pdf, pages 6 and 7:

"The total trade balance (exports – imports) in the Caribbean for illegal drugs as calculated using 2001 figures gives a total of US$3.447b. **By adding the estimated total internal demand for drugs in the region we obtain a total drugs GDP for the Caribbean of US$3.684b . The weight of the total drugs industry GDP in the region when compared to the overall Caribbean region GDP (US$108.681b) is 3.4%. Compared with other drug source, transit and consumer countries in the Western Hemisphere and beyond, the weight of the illicit drug GDP is greater in the Caribbean.**[4] The total illicit drugs GDP figure mentioned above, when compared with the national GDP figures from CARICOM countries, is surpassed only by Jamaica and Trinidad and Tobago."

This is Exhibit "C" to the Third Affidavit of Raymond F. Glace Sworn before me on this 5th day of Dec 2005

A Commissioner for taking Affidavits in and for the Province of Ontario

[4] Emphasis added by Affiant.

Exhibit D

Letter of Reference for GPAY from The Bank of Montreal, dated December 1, 2005

BMO Bank of Montreal

Nelly Dunn
Phone 780-408-0536
Fax 780- 408-0533
Email-nelly.dunn@bmo.com
December 1 , 2005

To Whom It May Concern:

I am writing to advise that Ray Grace President of B-Filer Inc. , G-Pay has been an outstanding client of Bank of Montreal since October 1998. They hold high balances in their accounts (low to mid 6 figures) and never have any nsf`s. If you require additional information, please call at the above phone number.

Thank you
Nelly Dunn

Commercial Banking Officer
Edmonton,Main Office- tr. 0014

This is Exhibit "D" to the Third Affidavit of Raymond F. Grace sworn before me on this 5th day of Dec. 2006

Karen Zuidam

A Commissioner of Oaths in and for the Prov of Ontario.