



Online payment company seeks resumption of banking services

*B-Filer Inc. v. The Bank of Nova Scotia*¹

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In October 2005, the Tribunal dismissed Scotiabank's motion for summary disposition of B-Filer's application for leave to commence a private application. The Tribunal disagreed with Scotiabank's contention that an Alberta court's refusal to grant an injunction made the application *res judicata*.

B-Filer provides an internet payment service that allows bank customers to pay internet merchants using their bank accounts. B-Filer had accounts with each of Canada's major banks, but preferred Scotiabank because its fees were lower.

In May 2005, Scotiabank closed B-Filer's accounts because it discovered about 20 cases of frauds on B-Filer's accounts, accounting for about 10% of frauds experienced by Scotiabank.

B-Filer sued in Alberta and moved for an injunction to force Scotiabank to keep its accounts open. It also applied to the Tribunal for leave to commence a private application.

In late September, the Alberta Court of Queen's Bench refused to grant an injunction.² Lefsrud J. held that:

- B-Filer did not raise a strong *prima facie* case because (among other things) its account agreement allowed Scotiabank to terminate its banking services to B-Filer. Nor did B-Filer establish a legal entitlement to access to Scotiabank's banking infrastructure.
- B-Filer did not establish irreparable harm. It had alternatives, including other banks. Moreover, while in its injunction materials B-Filer claimed it

would be difficult to quantify its loss, B-Filer did just that in materials filed with the Tribunal.

- The balance of convenience favoured Scotiabank. B-Filer's business raised justifiable concerns for Scotiabank.

In its leave application in the Tribunal, B-Filer claims that Scotiabank terminated its banking relationship because it competes with Scotiabank's own Interac online payment system. Scotiabank says it closed B-Filer's accounts because it violates bank policy by requiring its customers to disclose their online banking passwords to it and by routing the majority of funds to unlawful offshore online gambling sites. Scotiabank claims that B-Filer's operations raise serious money laundering issues.

Scotiabank moved for summary disposition in the Tribunal after Lefsrud J.'s decision denying B-Filer an injunction. Scotiabank argued that Lefsrud J. had determined the issues in B-Filer's application for leave.

The Tribunal dismissed the motion. The issues before Lefsrud J. were different from those raised in the application for leave. The lack of a contractual obligation to supply banking services, which was fatal to B-Filer's injunction motion, is not a barrier to its application under the *Competition Act*.

Update - November 18, 2005

On November 4, 2005, the Tribunal granted leave to B-Filer to commence an application under s. 75 of the *Competition Act*, with reasons to follow. The

Tribunal issued reasons on November 14, 2005. The Tribunal held that B-Filer had led sufficient evidence to raise a bona fide belief that the elements of s. 75 could be satisfied, but not that exclusive dealing (s. 77) could be established. The Tribunal declined to give effect to Scotiabank's argument that it should exercise its discretion to refuse leave notwithstanding that the test for granting leave was met.



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¹ 2005 Comp. Trib. 31

² *B-FILER Inc. v. Bank of Nova Scotia*, [2005] A.J. No. 1240 (Q.B.)