

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE** ) **TUESDAY THE 31ST DAY**  
**MR. JUSTICE PERELL** ) **OF JANUARY, 2017**



**JOYCE BERNSTEIN**

Plaintiff/Moving Party

- and -

**PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP.**

Defendants/Respondents

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER  
(CERTIFICATION)**

**THIS MOTION**, made by the Representative Plaintiff, for an Order certifying this action as a class proceeding was heard on January 17 and 18, 2017 at Osgoode Hall, 130 Queen Street West, in Toronto, Ontario.

**ON READING** all materials filed and on hearing the submissions of counsel for all parties:

***Certification & Class Definition***

1. **THIS COURT ORDERS** that this proceeding is hereby certified as a Class Proceeding with respect to the causes of action as set out in the Statement of Claim.

2. **THIS COURT ORDERS** that the Class consists of:

All “consumers” within the meaning of the *Consumer Protection Act*, 2002, SO 2002, c. 30, Sch A (“CPA”) in Ontario, who were Cardholders, between November 29, 2011 and April 30, 2014, of Prepaid Cards sold and/or issued by Peoples Trust Company.

***Representative Plaintiff & Class Counsel***

3. **THIS COURT ORDERS** that Joyce Bernstein is appointed as the Representative Plaintiff on behalf of the Class and that Sotos LLP and Goldblatt Partners LLP, collectively referred to as “**Class Counsel**,” are hereby appointed as counsel for the Class.

***Common Issues***

4. **THIS COURT ORDERS** that the common issues shall be as appended as Schedule “A” attached hereto.

***Notice of Certification & Opting Out***

5. **THIS COURT ORDERS** that the form of notice of this certification order, the manner of giving notice and all other related matters shall be determined by further order of this Court.
6. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 45<sup>th</sup> day after the date the first notice of certification is published.

7. **THIS COURT ORDERS** that Class Counsel serve on the Defendants, within 30 days after the close of the opt-out period referred to in paragraph 6 above, an affidavit exhibiting the persons who have opted out of the class proceeding, if any.

*Costs*

8. **THIS COURT ORDERS** that the costs of this motion shall be determined by further order of this Court.

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## SCHEDULE "A"- COMMON ISSUES

### Breach of Contract

1. Are the Prepaid Cards at issue in this action "gift cards", "gift card agreements" and "future performance agreements" within the meaning of the *Consumer Protection Act, 2002* (the "CPA") and O. Reg. 17/05, (the "Gift Card Regulation") and otherwise subject to the Gift Card Regulation?
  - a. If so,
    - i. is the expiry and seizure of unused funds associated with the Prepaid Cards at issue in this action contrary to law pursuant to the CPA, and the Gift Card Regulation, and/or
    - ii. are any of the fees associated with the Prepaid Cards at issue in this action contrary to law pursuant to the CPA, and the Gift Card Regulation, and, if so, which ones?
  - b. If so, have the defendants breached their contracts with the class members?

### Consumer Protection Act, 2002

2. Did the defendants engage in unfair practices contrary to s. 17 of the CPA?
  - a. If the answer to 2 is yes, what remedy should be ordered under s. 18 of the CPA?
3. Is the class, or any portion thereof, required to give notice under the CPA for recovery or rescission, and if so, is it entitled to a declaration waiving the notice provisions of section 18 of the CPA?

### Unjust Enrichment

4. Have the defendants been enriched by the expiry and seizure of unused funds associated with the Prepaid Cards at issue in this action, and/or have the defendants been enriched by the collection of fees associated with the Prepaid Cards at issue in this action?
  - a. If the answer to 4 is yes, have the class members suffered a corresponding deprivation?
  - b. Is there a juristic reason for the enrichment/deprivation?

Remedies

5. What remedies, if any, are class members entitled to?
6. Are class members entitled to an award of aggregate damages? If so,
  - a. what is the quantum? And
  - b. what is the appropriate method or procedure for distributing the aggregate damages to class members?
7. Does the defendants' conduct justify an award of aggravated, exemplary or punitive damages?

**JOYCE BERNSTEIN**  
Plaintiff

-and-

**PEOPLES TRUST COMPANY ET. AL.**  
Defendants

Court File No.: CV-13-493837CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

*Proceeding under the Class Proceedings Act, 1992*

**CERTIFICATION ORDER**

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