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**Investor sues bank over currency conversion fees;
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James Richard MacDonald is fighting mad at his bank-owned brokerage house. He is suing for the return of thousands of dollars he says have been whisked out of his registered retirement accounts in unauthorized fee-heavy foreign exchange charges by BMO Nesbitt Burns.

MacDonald was a former financial adviser at BMO Nesbitt Burns, and his job gave him knowledge of how brokerage fees are levied. He is leading a legal action that he hopes to have certified as a \$100 million class-action lawsuit on behalf of the brokerage's RRSP and other registered-account clients against his former employer.

The action challenges foreign-exchange conversion practices he says should have ended five years ago.

In his statement of claim, MacDonald alleges that BMO Nesbitt Burns, BMO Trust Co. and BMO Bank of Montreal have "breached their fiduciary and/or contractual obligations" to the class by "effecting unauthorized foreign exchange transactions and/or by charging undisclosed fees on all foreign-exchange transactions."

The foreign-exchange practices in question take place at many brokerage firms, not just at BMO.

Here's what's at issue. Investors who trade U.S. and other foreign stocks and bonds within their registered accounts are routinely subjected to associated currency-conversion costs.

Financial institutions buy currencies at one rate and sell them to retail investors at another; the difference is called the spread and creates profits for brokerages. Embedded within the spread, MacDonald's suit alleges BMO charges an administrative fee. Because BMO Nesbitt Burns rolls the exchange rate and its administrative fee into a single "currency conversion rate," clients can't easily calculate the exact amount of the administrative fee, MacDonald said.

He calculates the total conversion cost to the investor can be as high as 1.5 per cent to 2 per cent.

Currency-conversion costs are hard to avoid for investors with foreign stock holdings in their registered retirement savings plans. The proceeds of any sale of U.S. or foreign stocks are automatically converted into Canadian funds and subjected to conversion costs, as are any dividends such securities pay.

This automatic currency conversion means that the next time the client wants to buy a U.S.-listed stock or bond, they pay their brokerage conversion costs once again to change the funds back into U.S. dollars.

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Both conversion fees could have been avoided if the cash had simply remained in the form of U.S. currency within the account. Some brokerages, however, may allow investors to avoid currency conversion if they are selling one U.S. stock and immediately buying another, if investors inquire ahead of time.

The currency conversion practice stems from an outdated government requirement that foreign currency not be held in RRSPs, registered retirement income funds or registered education savings plans, said MacDonald, who has researched the issue with the help of a forensic accountant.

"As of June 14, 2001, the (relevant) act was changed to finally allow Canadians to hold any currency in the world in their registered accounts," said MacDonald, who was also a senior federal civil servant. MacDonald said he's not aware of any firms that allow foreign-currency holdings in an RRSP.

JoAnne Hayes, a spokesperson for BMO Financial Group, said "because a related matter is before the courts, it would be inappropriate for us to comment at this time." MacDonald's statement of claim also seeks punitive damages of \$10 million for "the high-handed, arrogant and oppressive manner with which the defendants have administered the trust accounts, in knowing breach of trust, breach of contract and breach of their fiduciary duties to the plaintiff and the class."

The statement of claim, originally filed with the Ontario Superior Court in August 2006, was amended on March 6, 2007, to add Lynn and John Zoppas and Tamas Varga as lead plaintiffs in the class, and to add BMO's Investorline to the list of defendants.

Plaintiffs' lawyer Margaret Waddell of the Toronto law firm Paliare Roland Rosenberg Rothstein said it will take about a year for the case to reach the certification stage in Ontario courts. She said a statement of defence had not yet been filed.

The financial industry, to whom the issue is worth "millions" of dollars, is not expected to settle the case, Waddell said.

"They're going to fight this proceeding," she said, noting that MacDonald is an ideal plaintiff to fight the issue. "Mr. MacDonald was (a financial adviser) at BMO Nesbitt Burns so he's very knowledgeable about the system."

In December, a class-action lawsuit was certified in B.C. Supreme Court against Merrill Lynch, alleging the brokerage house charges its clients with both registered and non-registered trading accounts hidden and unauthorized "currency conversion" fees to buy and sell securities in denominations other than the Canadian dollar, said Vancouver lawyer Bruce Lemer, co-counsel for the plaintiffs. Merrill Lynch is appealing the certification ruling, said a spokesperson, who declined further comment on the case.

At TD Waterhouse, Lisa Hodgins, manager of public affairs for TD Bank Financial Group, said the mandatory currency conversion practice is disclosed to clients in their account agreements.

"Rates vary, but we can confirm that (costs) are currently lower than 1.5 to 2 per cent each way," Hodgins said.

"TD Waterhouse does not currently offer foreign currency (including U.S. dollar) registered accounts because of system limitations," she said.

"The system for registered plans reports only in Canadian dollars in accordance with CRA reporting requirements," she wrote.

"U.S. securities are valued in Canadian dollars for this purpose. Accommodating reporting in U.S. dollars would require both a change to the structure of our registered plans and a significant system change."

This is the fifth and last story in the Fee Fight series on service fees banks charge their customers.

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GRAPHIC: Getty Images Several cases are before Canadian courts seeking refund of alleged unauthorized currency conversion fees charged by banks when clients buy and sell financial instruments in registered accounts. James Richard MacDonald is suing BMO Nesbitt Burns over currency fees on investments.

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