

COURT OF APPEAL FOR ONTARIO

CITATION: Canadian Imperial Bank of Commerce v. Travel Industry Council of  
Ontario, 2012 ONCA 789  
DATE: 20121119  
DOCKET: C55572

Doherty, MacPherson and Simmons JJ.A.

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE BOARD OF  
DIRECTORS OF THE TRAVEL INDUSTRY COUNCIL OF ONTARIO TO  
DISALLOW THE CLAIM OF CANADIAN IMPERIAL BANK OF COMMERCE

BETWEEN

Canadian Imperial Bank of Commerce

Applicant (Appellant)

and

Travel Industry Council of Ontario

Respondent (Respondent in Appeal)

Laurie A. MacFarlane, for the applicant (appellant)

Soussanna S. Karas, for the respondent (respondent in appeal)

Heard and released orally: November 9, 2012

On appeal pursuant to leave to appeal granted on May 31, 2012 from the order  
of the Divisional Court, dated February 21, 2012.

ENDORSEMENT

[1] A summary of the relevant facts can be found in the reasons of the Divisional Court: 2012 ONSC 131.

[2] The parties agree that reasonableness is the appropriate standard of review. The question, therefore, becomes whether the Divisional Court erred in law in holding that the decision of the Tribunal was unreasonable within the meaning of the jurisprudence.

[3] The Tribunal concluded that the payments made by Canadian Imperial Bank of Commerce (“CIBC”) to the travel agency were payments made for travel services provided to customers of CIBC. The Tribunal made that finding on the basis of para. 8 of the Agreed Statement of Facts put before the Tribunal and the testimony of a witness from the travel agency.

[4] In its review, the Divisional Court found, correctly in our view, that the Tribunal made certain errors in its approach to the interpretation of the word “customer” in the relevant regulation. However, the Divisional Court ultimately determined that the decision of the Tribunal was unreasonable in large measure based on its interpretation of the relationship between CIBC and the travel agency to whom the bank made the payments. The Divisional Court concluded, at para. 52:

The CIBC was not a customer within s. 57(1), but rather a medium to a payment scheme whereby reward points were converted to cash.

[5] In our view, the description of the nature of the relationship between the CIBC and the travel agent provided by the Divisional Court was a reasonable one. However, in our view, the description of that relationship provided by the Tribunal was, on the evidence before the Tribunal, also a reasonable description of the relationship. According to the controlling jurisprudence, the Divisional Court should have deferred to the Tribunal's interpretation of the nature of the relationship.

[6] In our view, on that interpretation of the relationship, the Tribunal's determination that the CIBC was a customer and, therefore, entitled to compensation under the scheme cannot be characterized as unreasonable.

[7] In the result, the appeal must be allowed, the decision of the Divisional Court set aside, and the decision of the Tribunal reinstated.

[8] The CIBC does not seek costs and there will be no award as to costs.

“Doherty J.A.”  
“J.C. MacPherson J.A.”  
“Janet Simmons J.A.”