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HOW DOES A BANK TERMINATE ITS RELATIONSHIP WITH A CUSTOMER?

The relationship of a bank and its customers is one which is rooted in contract and, along with relevant legislation and regulations, it is this contract which governs not only the operation of the account but its termination. A customer terminating its contract with a bank and 'switching' bankers is an everyday occurrence, but what of a situation in which a bank no longer wants to have a relationship with a particular customer.

The classic description of the banking contract can be found in the case of *Joachimson v Swiss Bank Corporation*-

...“a bank undertakes to receive money and to collect bills for its customer’s account.....the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such

written orders may be outstanding in the ordinary course of business for two or three days, **it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice.**" (*emphasis added*)

Generally, the relationship of banker and customer is commenced by the customer signing the banker's standard form of contract as it relates to the operating of the client's account. This agreement should set out the provisions which govern the operation as well as the termination of the contract and which when signed by the customer, becomes a contractually binding agreement.

There are three (3) basic ways in which a banking contract can be terminated and both parties should be able to look to the banking contract for this. They are-

- (1) by agreement between the parties or;
- (2) by an unilateral act, that is, where the customer or the banker gives notice to terminate; and
- (3) by death of the customer.

Even if there is no express term in relation to termination in the contract, it is accepted that there is an implied term in every banking contract that the contract can be terminated in these ways.

Of the three circumstances mentioned above, it is the second which requires some discussion, that is, the termination by notice. Where it is the banker who gives notice to terminate an account in credit, such notice must be adequate to enable the customer to make other banking arrangements. Neither common law

nor statute provide any specific time period for what constitutes a reasonable time. However there are a number of criteria which should be considered when determining what is reasonable in any given situation. Examples of these criteria are:

- The kind of customer (ie whether personal or commercial);
- The nature and frequency of the transactions associated with the particular account; and
- The ease (or difficulty as the case may be) by which the customer can reasonably be expected to make alternative banking arrangements.

In other jurisdictions regulations specifically provide that unless there are exceptional circumstances such as fraud, a bank should not close a customer's account without giving at least 30 days notice, there is no such requirement here, however, but at least 30 days notice seems to be an acceptable standard.

When it comes to the procedure that should be followed upon giving notice, at the most basic level the notice should be in writing and sent by means that would satisfy a discerning person that the notice would have reached the customer. The actual date of the closure of the account should be made clear in this notice.

The question of how a bank should proceed when closing its customer's account is one which is still not yet properly addressed by our local Courts. However, there is presently a case before the Court, which may soon be the subject of an appeal to the Privy Council that could help us arrive at an answer. However, that

appeal will be relegated to the issue of whether a customer is entitled to an injunction preventing a bank from closing its account(s)).

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