

**ONTARIO
SUPERIOR COURT OF JUSTICE**



JULIUS DI FILIPPO and DAVID CARON

Plaintiffs

and

THE BANK OF NOVA SCOTIA, SCOTIAMOCATTA, SCOTIA CAPITAL (USA) INC.,
BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL CANADA INC.,
BARCLAYS CAPITAL INC., BARCLAYS CAPITAL PLC, DEUTSCHE BANK AG,
DEUTSCHE BANK SECURITIES LIMITED, DEUTSCHE BANK SECURITIES, INC., HSBC
BANK PLC., HSBC HOLDINGS PLC, HSBC BANK CANADA, HSBC SECURITIES
(CANADA) INC., HSBC USA INC., HSBC SECURITIES (USA) INC., LONDON GOLD
MARKET FIXING LTD., SOCIÉTÉ GÉNÉRALE, SOCIÉTÉ GÉNÉRALE (CANADA),
SOCIÉTÉ GÉNÉRALE SA, SG AMERICAS SECURITIES, LLC,
UBS AG, UBS BANK (CANADA) and UBS SECURITIES LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the Statement of Claim served with this Notice of Action.


IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Dec 18th, 2015 Issued by  **Beverley Pinto**
Local Registrar
Address of court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: THE BANK OF NOVA SCOTIA
44 King Street West
Toronto, ON M5H 1H1

AND TO: SCOTIAMOCATTA
40 King Street West
Toronto, ON M5W 2X6

AND TO: SCOTIA CAPITAL (USA) INC.
One Liberty Plaza
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AND TO: BARCLAYS PLC
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London, England E14 5HP

AND TO: BARCLAYS BANK PLC
745 Seventh Avenue
New York, NY, 10019, USA

AND TO: BARCLAYS CAPITAL CANADA INC.
333 Bay Street, Suite 4910
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- AND TO: BARCLAYS CAPITAL INC.**
111 Eighth Ave
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- AND TO: BARCLAYS CAPITAL PLC**
200 Park Avenue
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- AND TO: DEUTSCHE BANK AG**
Taunusanlage 12
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- AND TO: DEUTSCHE BANK SECURITIES LIMITED**
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- AND TO: HSBC BANK PLC**
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AND TO: LONDON GOLD MARKET FIXING LTD.
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AND TO: SOCIÉTÉ GÉNÉRALE SA
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AND TO: SOCIÉTÉ GÉNÉRALE (CANADA)
1501 McGill College Avenue, Suite 1800
Montreal, QC H3A 3M8

AND TO: SOCIÉTÉ GÉNÉRALE
1221 Avenue of the Americas
New York, NY, 10020

AND TO: SG AMERICAS SECURITIES, LLC
245 Park Avenue
New York, NY, 10167, USA

AND TO: UBS AG
Aeschenvorstadt 1
4051 Basel

and

Bahnhofstrasse 45
8001 Zurich

AND TO: UBS BANK (CANADA)
800-154 University Avenue
Toronto, ON M5H 3Z4

AND TO: UBS SECURITIES LLC
677 Washington Blvd.
Stamford, Connecticut 06901

CLAIM

1. **THE PLAINTIFFS CLAIM** on behalf of themselves and other members of the proposed Class (as defined in paragraph 10 below):

- (a) A declaration that the Fixing Bank Defendants, as defined below, conspired, agreed and/or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the price of gold during the Class Period (as defined in paragraph 10 below);
- (b) A declaration that some or all of the defendants conspired, agreed and/or arranged with each other to fix, maintain, increase, decrease, control, or unreasonably enhance the quoted bid-ask spreads used by participants in the gold market during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$ 1,000,000,000.00 for:
 - (i) Loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“*Competition Act*”);
 - (ii) Civil conspiracy;
 - (iii) Unjust enrichment;
 - (iv) Waiver of tort; and
 - (v) Breach of contract;
- (d) Punitive, exemplary and aggravated damages in the amount of \$250,000,000.00;

- (e) An equitable rate of interest on all sums found due and owing to the plaintiffs and other class members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*Courts of Justice Act*”);
- (f) Investigative costs pursuant to section 36 of the *Competition Act* and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act* and the *Courts of Justice Act*; and
- (g) Such further and other relief as this Honourable Court deems just.

The Nature of the Action

2. This action arises from conspiracies among the defendants to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably the price of gold and gold-related investment instruments, which include, without limitation: gold bullion and gold bullion coins, gold futures, shares of gold-focused ETFs, units of gold-focused mutual funds, gold certificates, gold leases, over-the-counter gold spot or forward transactions, and options on any of the foregoing (“**Gold Market Instruments**”) and to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably supra-competitive bid-ask spreads used by market participants in the gold market.

The Fixing

3. The Bank of Nova Scotia, Barclays, Deutsche Bank, HSBC, and Société Générale (the “**Fixing Bank Defendants**”) met privately twice each London business day in London England or via teleconference for what is known as the London Gold Market Fixing (hereafter the “**London**

Gold Fixing” or “**Fixing**”).¹ The Fixing produces a benchmark rate for gold, a price often agreed to be used in advance by buyers and sellers of gold (the “**Fix price**”). The Fix price affected the spot market for gold which, in turn, affected the broader market of Gold Investments.

4. The acts alleged in the following paragraphs are collectively referred to as the “**Conspiratorial Acts.**”

5. The Fixing was supposed to start and end with open competition. The process was supposed to begin with the current, supposedly competitive, “spot” price for gold. From that starting point, a competitive auction was to take place, the equilibrium of which would be published as the Fix price. The Fix price is the benchmark price for gold adopted at the Fixing. The Fix price is used directly in contracts for the purchase and sale of gold that had adopted the Fix price as the price term for any given day.

6. Beginning at least as early as 2004 and continuing through to March 19, 2014, under the guise of the arcane fixing process, which provided a veneer of legitimacy for collusion and conspiratorial communications, the defendants conspired with each other to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably prices in the gold market. This was done to enhance the profits of some or all of the defendants at the expense of the Class Members, as defined below.

Manipulation of Bid-Ask Spreads and Gold Market Instruments

7. Further, in addition to manipulating the Fixing, some or all of the defendants conspired with each other to fix, raise, decrease, maintain, stabilize, control, or enhance unreasonably

¹ The morning process is known as the “AM Fixing” and the afternoon process is known as the “PM Fixing”.

bid-ask spreads of Gold Market Instruments in the gold market throughout the trading day. This was also done to enhance the profits of some or all of the defendants at the expense of the Class Members, as defined below.

The Plaintiffs and the Class

8. The plaintiff, Julius Di Filippo (“**Di Filippo**”), is an individual residing in Toronto, Ontario. During the Class Period, as defined below, Di Filippo transacted in several Gold Market Instruments, as defined below, whose price was based on the Fix price and were negatively impacted by the manipulation of the Fix price and bid-ask spreads by the defendants. These Gold Market Instruments included, but are not limited to: the Sprott Gold and Precious Minerals Fund, the Sprott Gold Bullion Fund and the Sprott Physical Gold Trust.

9. The plaintiff, David Caron (“**Caron**”), is an individual residing in Kelowna, British Columbia. During the Class Period, as defined below, Caron transacted in several Gold Market Instruments whose price was based on the Fix price and were negatively impacted by the manipulation of the Fix price and bid-ask spreads by the defendants. These Gold Market Instruments included, but are not limited to: the SPDR Gold Trust, the Horizons Beta Pro Comex Gold Bull Plus ETF and the Sprott Physical Gold Trust.

10. The plaintiffs seek to represent the following proposed class (the “**Class**” or the “**Class members**”):

*All persons or entities in Canada who, between January 1, 2004 and March 19, 2014 (the “**Class Period**”) transacted in a Gold Market Instrument¹ either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that transacted in a Gold Market Instrument. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.*

¹ “Gold Market Instrument” includes but is not limited to: gold bullion or gold bullion coins, gold futures contracts traded on an exchange operated in Canada, shares in Gold ETFs, gold call options traded on an exchange operated in Canada, gold put options traded on an exchange operated in Canada, over-the-counter gold spot or forward transactions or gold call options, over-the-counter gold put options, leases for gold.

Breach of the Competition Act

11. The Conspiratorial Acts constitute offences under Part VI of the *Competition Act*, in particular, sections 45(1) and 46(1) of the *Competition Act*. The plaintiffs claim on behalf of themselves and other Class Members loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

12. The defendants and their unnamed co-conspirators’ conduct took place in, among other places, the United States, the United Kingdom, various countries in Asia and various countries in Europe where it was illegal and contrary to the competition laws of those jurisdictions.

Civil Conspiracy

13. The defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage to Class Members. The unlawful means included the following:

- (a) entering into the Conspiratorial Acts in contravention of section 45(1) of the *Competition Act*;
- (b) the Canadian-based defendants giving effect to a foreign directive in contravention of section 46(1) of the *Competition Act*; and

- (c) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

14. In furtherance of the conspiracy, the defendants, their employees, agents and co-conspirators carried out the Conspiratorial Acts described above.

15. The defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the Class.

16. The defendants and their co-conspirators intended to cause economic loss to the Class. In the alternative, the defendants and their co-conspirators knew in the circumstances that their unlawful acts would likely cause injury to the Class.

Unjust Enrichment

17. The defendants have been unjustly enriched as a result of the conduct alleged above. The Class Members have suffered a corresponding deprivation in the amount of the difference between the prices actually paid by or on behalf of Class Members for physical gold or Gold Market Instruments and the prices which would have been paid in the absence of the Conspiratorial Acts.

18. Since the difference in price received by the defendants from the Class Members resulted from the defendants' wrongful and unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it.

Waiver of Tort

19. In the alternative to damages, the plaintiffs plead an entitlement to waive the tort of civil conspiracy and claim an accounting, or other such restitutionary remedy, for disgorgement of the revenues generated by the defendants from their unlawful conspiracy.

20. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the Conspiratorial Acts.

Breach of Contract

21. When certain of the defendants acted as market makers throughout the trading day, certain Class Members contracted with them directly when entering into contracts for the purchase or sale of Gold Market Instruments. These contracts included, without limitation, spot, futures and options contracts related to Gold.

22. It was the reasonable expectation of the Class Members that when the defendants were acting as market makers, they would not manipulate the bid-ask spreads of Gold Market Instruments or other aspects of the gold market for their own benefit and at the Class Members' expense. To the extent that they manipulated the bid-ask spreads when acting as market makers and other aspects of the gold market, the defendants breached their contracts with the Class Members and the Class Members have suffered damages as a result.

23. The defendant, Bank of Nova Scotia, operates an online trading platform called Scotia I-trade ("**I-trade**"). Caron used I-trade to transact in Gold Market Instruments during the Class Period. It was the reasonable expectation of Caron that when using a trading service operated by BNS, such as I-trade, that BNS would not engage in illicit activity in the gold market which would negatively affect the transactions Caron engaged in. During the Class Period BNS engaged in illicit activity in the gold market and breached its contract with Caron and other Class members who contracted with BNS or one of its affiliated entities.

Punitive, Aggravated and Exemplary Damages

24. The defendants used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from their positions of influence in the gold market. They were, at all times, aware that their actions would have a significant adverse impact on Class Members. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the Class members' rights.

25. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages.

December , 2015

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Plaintiff

-and-

THE BANK OF NOVA SCOTIA et al.
Defendants

Court File No. *CV-15-543005*

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SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF ACTION

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