

OVERTIME CLASS ACTION
FULAWKA v. THE BANK OF NOVA SCOTIA
NOTICE OF CERTIFICATION

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

You are receiving this notice because a court-supervised review of the records of the Defendant, The Bank of Nova Scotia (“BNS”), indicates that you are a current or former non-management retail employee of BNS and are a Class Member (as described below) in this class action lawsuit. You do not have to do anything to participate in this class action.

For more information about this class action please see: www.bnsunpaidovertime.ca or contact one of the law firms listed on the last page of this notice.

Summary

The lawsuit of *Cindy Fulawka v. The Bank of Nova Scotia* alleges that BNS failed to properly compensate Class Members for overtime, in breach of its legal obligations. As a result of this failure, Class Members are alleged to have suffered financial damages in the form of lost overtime compensation. If the Plaintiff is successful in her lawsuit, you may be eligible to receive compensation from BNS for any overtime work for which you have not been compensated already.

On June 26, 2012, the Court of Appeal for Ontario upheld the certification of the lawsuit as a class action.

The Court has not yet determined whether the lawsuit will be successful and it will now proceed to a common issues trial. A trial date has not yet been set by the Court.

The law firms **Roy O’Connor LLP**, **Sack Goldblatt Mitchell LLP** and **Sotos LLP** have been appointed by the Court to represent the Class Members.

For more information about how this class action may affect your legal rights please visit www.bnsunpaidovertime.ca or please contact Amanda Grainger at Roy O’Connor LLP by telephone at 1 (888) 687-2431, by email at ag@royoconnor.ca or by regular mail at 2300-200 Front Street West, Toronto ON, M5V 3K2.

This Notice explains:

1. The Lawsuit;
2. Who is included in the Lawsuit;
3. Your right to choose whether or not to be part of the Lawsuit;
4. Financial consequences for you;

5. Class Counsel & Other Matters; and
6. More Information

1. The Lawsuit

The Representative Plaintiff, Ms. Cindy Fulawka, has sued BNS alleging that BNS failed to compensate Class Members for overtime. Ms. Fulawka alleges that in failing to compensate Class Members for overtime work, BNS:

1. breached the minimum standards of overtime compensation provided for by the *Canada Labour Code*;
2. breached its contracts of employment with the Class Members; and
3. was unjustly enriched by keeping money for itself that should have been paid to the Class as wages.

Ms. Fulawka also alleges that class members classified as "level 06" by BNS were inappropriately denied eligibility for overtime pay.

The lawsuit asks the Court to award monetary damages to Class Members and to make orders requiring BNS to change its policies and practices relating to overtime compensation.

A copy of the Statement of Claim and other legal documents associated with this case can be viewed at <http://www.bnsunpaidovertime.ca>.

2. Who is included in the Lawsuit?

You do not have to do anything to participate in this class action.

Class Members are automatically included in a class action once certified, unless they choose to opt-out of the proceeding as further described in section 3 below. This includes Class Members who reside anywhere in Canada, not just Ontario.

By order of the Ontario Superior Court of Justice the Class Members are composed of the following persons:

All current and former full-time personal banking and small business banking employees at BNS retail branches who held one or more of the following positions since 2000 and worked overtime for which they were not compensated:

- a. Personal Banking Officer;
- b. Senior Personal Banking Officer;
- c. Financial Advisor; or,
- d. Account Manager Small Business (including its predecessor positions of Account Managers and Account Officers).

3. Your right to choose whether or not to be part of the lawsuit

(a) How to be included in the Class:

You do not need to do anything if you wish to remain a Class Member in this action.

If you fall within the Class definition described above, you are a Class Member and are automatically included in the action.

If you wish to be excluded from this action please see section 3(b) below.

(b) If you wish to be excluded from the action take the following steps:

To be excluded from this class action you must send a signed and dated Opt-Out Form to Class Counsel at the address specified below confirming that you **do not** want to be a part of the lawsuit. A copy of the Opt-Out Form is enclosed with this letter. Further details on how to opt-out of the lawsuit can be found at www.bnsunpaidovertime.ca or by contacting Class Counsel.

The deadline for opting out is March 31, 2014. If your written request to opt-out is not received by that date you will remain a Class Member.

By opting out of this Class, you are confirming that you do not wish to participate in this class action and you will be excluded from any settlement or any damages that may be awarded by the Court.

Once you opt-out of this class action, you will receive no further communications regarding this action from Class Counsel, but for a confirmation that you intended to exclude yourself from this class action.

4. Financial consequences for you

There is no cost to you to participate in the lawsuit.

If the lawsuit is successful at the common issues trial, or any subsequent appeal, the Court may award compensation to the Class as a whole (of which you may receive a portion). Alternatively, the Court may establish a process, including individual hearings, in order to determine the amount of damages, if any, each individual Class Member may be entitled to receive.

If the class action is successful, legal fees and disbursements incurred by the lawyers for the Class will be deducted from the total amounts recovered on behalf of the Class. The amount of such legal fees and disbursements will be approved by the Court. In this case, the Plaintiff has received financial support from the Class Proceedings Fund (the "Fund"), which is a body created by statute and designed to allow access to the courts through class actions in Ontario. The Fund has agreed to reimburse the Plaintiff for some disbursements incurred in pursuing this action. The Fund will also be responsible for costs that may be awarded against the Plaintiff in this case. In exchange, the Fund will be entitled to recover from any court award or settlement in favour of the class the amount of its funded disbursements (except amounts repaid by the Plaintiff or ordered paid by the Defendant). The Fund is also entitled to 10% of any amounts that may be payable to class members.

If the class action is unsuccessful, Class Members will not be awarded damages and you will not receive any compensation from this lawsuit. If the class action is unsuccessful, Ms. Fulawka may be responsible for any costs or other legal expenses incurred in prosecuting the action, however, you and other Class Members will have no financial obligations in respect of the lawsuit.

Whether or not the class action lawsuit is successful, all Class Members who do not opt out of the class action will be bound by the final judgment of the Court. This means, for example, that if you remain a Class Member, you could not start your own lawsuit against BNS in respect of the same issues and claims after the completion of this lawsuit.

5. Class Counsel & Other Matters

The law firms of **Roy O'Connor LLP**, **Sack Goldblatt Mitchell LLP** and **Sotos LLP** have been appointed as Class Counsel by the Court.

Class Counsel will be paid legal fees only if the lawsuit is successful. These legal fees will have to be approved by the Court prior to being paid.

If you wish to participate personally in the lawsuit, please contact class counsel or you may apply directly to the Court for permission to do so.

The Court filings in this lawsuit are available for inspection at the office of the Superior Court of Justice, Courthouse, 393 University Ave., Toronto, Ontario, Court File No.: 07-CV-334113CP.

6. More Information

For further information about the class proceeding lawsuit please visit <http://www.bnsunpaidovertime.ca/> or contact Amanda Grainger at Roy O'Connor at:

Roy O'Connor LLP

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Website: www.royoconnor.ca

Overtime Hotline: 1(888) 687-2431

PLEASE DO NOT CALL THE BANK OF NOVA SCOTIA, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS ABOUT THE LAWSUIT.

This notice is published pursuant to the section 17 of the Ontario *Class Proceedings Act, 1992* and was approved by the Court.