

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

THIS NOTICE MAY AFFECT YOUR RIGHTS – PLEASE READ IT CAREFULLY

On June 26, 2012 the Court of Appeal for Ontario upheld the certification of the lawsuit of *Cindy Fulawka v. The Bank of Nova Scotia* as a class action. The lawsuit will now proceed to a trial of the common issues on a date to be set by the Court.

For more information, see: www.bnsunpaidovertime.ca or contact the law firms listed below.

The Lawsuit - The Representative Plaintiff, Cindy Fulawka, has sued The Bank of Nova Scotia (“BNS”) for its alleged failure to properly compensate Class Members (as described below) for overtime. Ms. Fulawka alleges that, in failing to compensate Class Members for overtime, 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.

If the Plaintiff is successful, the Court may, among other things, award compensation to the Class as a whole or direct that compensation be determined individually in respect of the monetary damages.

The Court has not yet determined whether the lawsuit will be successful and a common issues trial date has not yet been set.

Who is included in the Lawsuit? Class Members are automatically included in a class action once certified, unless they choose to opt-out of the proceeding. 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).

If you fall within this Class definition, you will automatically be included in the class action. You may however choose to opt-out of the class action and pursue BNS on your own.

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. Further details on how to opt-out of the lawsuit, and a copy of the Opt-Out Form 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.

The Court's judgment in this matter, whether favourable or not, will bind all Class Members who do not opt-out of the proceeding.

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.

What are the Financial Consequences of the Lawsuit? There is no cost to you to participate in the lawsuit. If the lawsuit is successful at the common issues trial, the Court may award compensation to the Class as a whole or establish a process, including individual hearings, to decide the claims of individual Class Members. In that case, the Court will determine the amount of legal fees and disbursements for Class Counsel which will be deducted from the total amounts recovered by the Class. 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 receive any compensation from this lawsuit (and will not be able to start their own lawsuits against BNS in respect of the same issues and claims) but will have no financial obligations in respect of the lawsuit.

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

More Information – For further information about the class proceeding lawsuit please visit www.bnsunpaidovertime.ca or the class counsel:

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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.