

## **OVERTIME CLASS ACTION**

**FULAWKA v. THE BANK OF NOVA SCOTIA**

**NOTICE OF HEARING FOR APPROVAL OF PROPOSED SETTLEMENT**

**Please read this notice carefully as it may affect your legal rights**

**This notice is being directed to class members (or individuals who are believed to be class members) in the overtime class action against The Bank of Nova Scotia**

**A proposed settlement has been reached in this proceeding which may give you the opportunity to claim for unpaid overtime. The settlement will not become final unless and until it is approved by the court. The settlement approval hearing will proceed in Toronto on August 12, 2014**

**The purpose of this notice is to summarize some of the key terms of the proposed settlement and to advise how you may comment on the settlement in advance of the approval hearing**

In December 2007, a class action lawsuit was commenced against The Bank of Nova Scotia (“BNS”) on behalf of certain full-time retail branch bank employees in Canada. The lawsuit claimed that BNS failed to pay all the overtime compensation to which these persons were entitled.

The lawsuit was “certified” as a class proceeding by the Ontario Superior Court of Justice in February 2010, meaning that it was permitted to proceed to trial. This decision was subsequently upheld by the Ontario Divisional Court and the Court of Appeal for Ontario, with leave to the Supreme Court of Canada being denied in 2013.

**The parties have reached an agreement to settle the class action. The proposed settlement is subject to court approval.** The law firms of Roy O’Connor LLP, Sack Goldblatt Mitchell LLP and Sotos LLP (collectively “Class Counsel”) act for the Class.

### **1. WHO DOES THE PROPOSED SETTLEMENT APPLY TO?**

The settlement applies to all persons who are members of the Class (as described in the court order certifying this case as a class action) except those who “opted out” of the action (for clarity, persons who opted out means those individuals who delivered written notice by March 31, 2014 that they did not wish to participate in the lawsuit). Class Members are:

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 between January 1, 2000 and December 1, 2013 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).

Class Members (except, to repeat, those persons who opted out) will be entitled to make a claim under the proposed settlement.

## **2. WHAT IS THE CLASS ACTION ABOUT?**

This class action lawsuit alleges that BNS failed to properly compensate Class Members for overtime, in breach of its obligations. As a result of this alleged failure, Class Members are alleged to have suffered financial damages in the form of lost overtime wages.

## **3. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?**

If you are a Class Member who has not “opted-out” of the class action, you may make a claim for any overtime that you worked which was required or permitted by the Bank (whether it was approved by a supervisor or not) provided that you were not previously compensated for the work. BNS encourages and invites eligible Class Members to make claims for such unpaid overtime.

BNS acknowledges that many class members will not have documentation to support their claim. The absence of documentation does not prevent you from making a claim or preclude you from being paid for your overtime work.

The terms and conditions of the proposed settlement include:

- If you are a Class Member and the settlement is approved, you may submit claims for any unpaid overtime by October 15, 2014;
- You may claim for unpaid overtime from August 12, 2014 back as far as the applicable provincial limitation period for the province in which you performed the work;
- BNS will review your claims and pay you for overtime that you were required or permitted to work regardless of whether the overtime was approved by a manager or supervisor;
- No branch manager or supervisor at the branch at which the unpaid overtime work was performed will contact class members or otherwise discuss any claim with the class members;
- If BNS rejects or reduces a claim, it will disclose the evidence it relied upon to do so;
- Any Class Member dissatisfied with BNS’s decision on a claim may appeal to an independent Arbitrator as part of a streamlined arbitration process.
- BNS will ensure that no one who does so will be subject to any reprisal.

A complete copy of the full settlement documentation is available at [unpaidovertime.ca](http://unpaidovertime.ca).

## **4. THE COSTS OF THE PROPOSED SETTLEMENT**

**There is no cost to you to make a claim.**

The lawyers for the plaintiff will be paid directly by BNS. Class Members are not required to pay any fees. The amount of Class Counsel’s fees, disbursements and taxes will be arbitrated by a recently retired former justice of the Ontario Court of Appeal. The amount determined by the arbitrator will be posted on [unpaidovertime.ca](http://unpaidovertime.ca) and is subject to approval by the Court. That amount/compensation will

be jointly presented to the Case Management Judge at or immediately following the hearing of the motion to approve the terms of the proposed settlement.

The plaintiff has been granted funding and indemnification from an adverse costs award and funding from the Class Proceedings Fund ("CPF"). The CPF is entitled by law to receive 10% of any money that you are paid as part of this settlement.

## **5. THE SETTLEMENT APPROVAL HEARING**

A settlement hearing will take place on August 12, 2014, at 10:00 a.m. at Osgoode Hall, 130 Queen Street West, Courtroom #5 Toronto, Ontario. At that time, the Court will determine whether the settlement is fair and reasonable and in the best interests of the class, and if the Court so finds, the Court will address the approval of Class Counsel compensation.

The Plaintiff and Class Counsel believe that the proposed settlement is fair, reasonable and in the best interests of the Class. If the Court is satisfied with the fairness of the settlement, it will be approved. If the Court does not approve the settlement agreement, the lawsuit will continue.

Class Members and members of the public may attend the hearing but are not required to do so. Class Members are entitled, but not obligated, to express their opinions about the settlement and whether or not it should be approved. If you wish to make a submission to the Court, you must deliver the submissions in writing to Class Counsel, at the address below, no later than August 5, 2014, so that it can be brought to the attention of the Court and the Defendant in advance. The written submissions should include:

- Your name, address and telephone number;
- A brief statement of the reasons that you support or oppose the proposed settlement terms; and
- Whether you plan to attend at the settlement approval hearing.

### **More Information?**

Please address any requests for further information about this action, or any written submissions about the proposed settlement, to:

#### **Roy O'Connor LLP**

Attention: Amanda Grainger  
2300-200 Front St. W.  
Toronto, ON M5V 3K2  
Tel: (416) 362-1989  
Fax: (416) 362-6204  
Email: ag@royoconnor.ca

**PLEASE DO NOT CALL OR CONTACT THE COURT OR THE BANK OF NOVA SCOTIA ABOUT THIS CLASS ACTION.**

**THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE**