CITATION: Fresco v. Canadian Imperial Bank of Commerce, 2020 ONSC 6098
COURT FILE NO.: 07-CV-334113 PD2
DATE: 20201021

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

DARA FRESCO

Plaintiff

- and –

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

BEFORE: Justice Edward P. Belobaba

COUNSEL: *David O'Connor, Steven Barrett, Louis Sokolov, Jean-Marc Leclerc, Adam Dewar, Peter Englemann and Louis Century* for the Plaintiff

Linda Plumpton, John C. Field, Sarah Whitmore, Ryan Lax, Lara Guest, Lauri Reesor and Elisha Jamieson-Davies for the Defendant

HEARD: October 9, 2020

Cross-motions for Summary Judgment: Limitations

[1] This is my third sequential decision in this national class action for unpaid overtime. The two previous decisions dealt with the certified common issues relating to liability and damages. In the Liability Decision, I concluded that the defendant CIBC had breached federal labour law requirements and was liable for unpaid overtime.[1] In the Damages Decision, I addressed the remedy questions and I also decided that aggregate damages should be certified as a common issue.[2] I then adjourned the damages hearing to await the plaintiff's aggregate damages report and the defendant bank's response. Once I have these in hand, I will answer the aggregate damages question.

[2] This decision deals with the defendant bank's request for a class-wide limitations order.

Background

[3] Before hearing the damages segment, I issued a Direction that divided the damages hearing into two parts: first the three certified common issues and then the defendant bank's limitations defence. As a general rule, the viability of a limitations defence is best determined on an individual basis with individual assessments – hence its usual relegation to the individual hearings phase.

[4] The defendant bank, however, pointed to the decision of the Court of Appeal when it certified this class action. The Court declined to certify limitations as a common issue but noted that limitation periods "may be relied on by CIBC in its defence."[3]

[5] The defendant bank made much of this point. It acknowledged that the usual protocol was to defer limitations to the individual hearings stage. But here, said the bank, the evidence was clear that its limitations defence could be decided on a class-wide rather than individualized basis. It therefore made sense for the bank to advance this class-wide limitations defence as part of the summary judgment/damages hearing.

[6] The bank also advised that its class-wide limitations defence would include a constitutional challenge to the extra-provincial effect of s. 28(1) of the *Class Proceedings Act*[4] and that the requisite Notice of Constitutional Question had been filed.

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[1] *Fresco v. Canadian Imperial Bank of Commerce,* 2020 ONSC 75 (Liability Decision).

[2] *Fresco v. Canadian Imperial Bank of Commerce,* 2020 ONSC 4288 (Damages Decision).

[3] *Fresco v. Canadian Imperial Bank of Commerce,* 2012 ONCA 444, at para. 108.

[7] The defendant bank requests the following order:

> CIBC requests an order that class members' claims for overtime compensation falling outside the provincial and territorial limitation periods set out in Appendix 1, are barred.

[8] The referenced Appendix is a chart prepared by counsel for the defendant bank that sets out the applicable limitation periods by province and territory and the respective cut-off dates. If class member limitation periods can be decided on a class-wide basis and the bank is right about the intra-provincial (Ontario only) reach of the s. 28(1) tolling provision, the overall result will be a significant reduction in the number of class member claims.

[9] The gist of the bank's limitations submission is that class member claims can go back two to six years - that is, from June 18, 2009 back to June 18, 2007, in Ontario back to June 4, 2007, and in some cases back to certain dates in 2003. But they cannot go back any further and certainly not 16 years to 1993. The bank's submission, if correct, reduces the reach of potential class member claims by ten years or more.

[10] The bank's desire for a class-wide limitation order is understandable. This is a national class action with some 31,000 class members and a relatively long 16-year class period. The Court of Appeal certified a class period that begins February 1, 1993 when the 1993 Overtime Policy took effect, and ends on June 18, 2009, the certification date as approved by the Court of Appeal.[5] If the requested class-wide order is granted, then the extensive computer records search that is required for the aggregate damages report would be made more manageable and the bank's overall financial exposure to class member claims would be substantially reduced.

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[4] *Class Proceedings Act,* 1992, S.O. 1992, c. 6. Section 28(1) provides that the limitation period is "suspended in favour of a class member on the commencement of the class proceeding." The class action was commenced on June 4, 2007. The defendant bank submits that s. 28(1) only suspends the limitation period as of this date for Ontario class members - that s. 28(1) of the CPA, although valid provincial legislation, cannot have extra-provincial reach and cannot suspend or affect the limitation periods as enacted in the other provinces and territories. In the other provinces and territories, says the bank, the class action was effectively commenced on June 18, 2009, the date of certification.

[5] The certification motion was initially dismissed by the late Madam Justice Lax in reasons released on June 18, 2009: *Fresco v. Canadian Imperial Bank of Commerce,* [2009] O.J. No. 2531. On appeal, the Divisional Court majority affirmed: *Fresco v. Canadian Imperial Bank of Commerce,* 2010 ONSC 4724. The Court of Appeal reversed and certified the proceeding as a class action: *supra,* note 3.

[11] Before I proceed any further, I should point out the following. When I say "class-wide limitations order" in the discussion that follows, I mean an order that would time-bar all claims other than those that remain alive under the applicable legislation.

The applicable law

[12] As already noted, most class action judges prefer to leave limitation defences to the individual hearings phase, after the common issues have been decided. The reason for this is simple enough: deciding whether a claimant is time-barred by a statutory limitation period typically requires an individualized assessment.

[13] Under the *Limitations Act*[6] in Ontario (and in most of the other provinces) a claim is time-barred two years after the date that a reasonable person with the abilities and in the circumstances of the claimant should have known that a loss had occurred, that the loss was caused by the defendant, and having regard to the nature of the loss, that a legal proceeding would be appropriate.[7] As the Court of Appeal noted in *407 ETR Concession Company v. Day*, this last factor - whether taking legal action is appropriate - is also "an element of discoverability."[8]

[14] The Court of Appeal has also noted that it is "reasonable discoverability" and not "the mere possibility of discovery" that triggers a limitation period.[9] Reasonable discoverability requires the court to consider the personal abilities, interests and circumstances of each and every individual claimant.

[15] As a general proposition, the plaintiff's personal abilities, interests and circumstances drive the discoverability analysis; and reasonable discoverability triggers the running of the limitations period. Where a plaintiff knows that a loss has been sustained and that the loss was caused by the defendant but taking legal action is not reasonably appropriate in the plaintiff's circumstances, the limitation period will not begin to run.[10]

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[6] *Limitations Act, 2002,* S.O. 2002, c. 24, Sch. B.

[7] *Ibid.,* ss. 4 and 5.

[8] *407 ETR Concession Company v. Day*, 2016 ONCA 709, at para. 48.

[9] *Zapfe v Barnes*, 2003 CanLII 52159 (CA) at para. 32; *Van Allen v Vos*, 2014 ONCA 522, at paras. 33-34; *Crombie Property Holdings Limited v McColl-Frontenac Inc. (Texaco Canada Limited)*, 2017 ONCA 16, at para. 42.

[10] *Supra,* note 8.

[16] What the claimant should reasonably have known and when they should have known it - the fact of loss, that the defendant caused the loss and that legal action was appropriate - have rarely been decided on a class-wide basis. Individual assessments are needed because, as the case law makes clear, the individual claimant's personal circumstances and knowledge will always be relevant to the reasonable discoverability inquiry. As the Court of Appeal explained in *Cloud*:

> [B]ecause an inquiry into discoverability will undoubtedly be a part of the limitations debate and because that inquiry must be done individual by individual, these [limitation] defences can only be addressed as a part of the individual trials following the common trial.[11]

[17] The "individual by individual" focus applies not only to the reasonable discovery of the loss and who caused it but also to the question of whether taking legal action is appropriate in all the circumstances. In other words, the appropriateness of taking legal action also requires an examination of the claimant's "individual circumstances and interests." As the Supreme Court of Canada noted in *Novak v. Bond*:

> Litigation is never a process to be embarked upon casually and sometimes a plaintiff's individual circumstances and interests may mean that he or she cannot reasonably bring an action at the time it first materializes. This approach makes good policy sense. To force a plaintiff to sue without having regard to his or her own circumstances may be unfair to the plaintiff and may also disserve the defendant by forcing him or her to meet an action pressed into court prematurely.[12]

[18] I pause here to add an obvious caveat to these widely accepted propositions. It is certainly 'possible' in cases where there is clear evidence of class-wide commonality (in class members' personal circumstances) that a class-wide limitations order can be made. But such cases will be few and far between because class-wide commonality in limitation period determinants will rarely be established.

Issue

[19] The issue is whether there is a sufficient evidentiary basis for the requested class-wide limitations order. That is, whether it is clear on the material before the court that the

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[11] *Cloud v Canada (Attorney General),* [2004] O.J. No. 4924 (CA) at para. 61.

[12] *Novak v. Bond*, [1999] 1 S.C.R. 808, at para. 85, cited by the Court of Appeal in *407 ETR Concession*, *supra*, note 8, at para. 45.

relevant limitation determinants (that typically consider the claimant's particular abilities and circumstances) can be decided in common on a class-wide basis, and that individual discoverability is not needed.

Decision

[20] For the reasons set out below, the defendant bank's request for a class-wide limitations order is dismissed. The need for individual discoverability is easily established on the evidence that is before the court.

[21] Given this decision, there is no need to examine the validity of the proposed "cut-off dates" – whether the backward-looking cut-off date is two years, six years or somewhere in between. The essence of the dispute before me is whether, speaking broadly, the claims that fall within the first ten years of the class period should be time-barred on a class wide basis. If there is evidence that a reasonable discoverability inquiry is needed to determine the limitations issue for one or more of the class members in at least one of the provinces (say Ontario) at any point in this ten-year period, then class-wide commonality has not been established and the requested class-wide order must be dismissed.

[22] Nor is there any need to decide the constitutionality of the purported extra-provincial reach of s. 28(1) of the CPA.

[23] The defendant bank has asked that I rule on the s. 28(1) extra-provincial question even if I dismiss its request for a class-wide limitations order because this constitutional question may arise again at the individual hearings stage. I decline to do so. This litigation may never reach an individual hearings stage. The constitutional question is premature.[13]

Analysis

(1) The bank's evidence of class-wide commonality

[13] As I have already noted, there is still a way to go in this litigation: the aggregate damages issue is not yet decided; and the outcome of the defendant bank's intended appeals of my first two decisions cannot be predicted. If this court's finding of liability is reversed on further appeals, this will end the matter. If liability and aggregate damages are affirmed on appeal, the class action will almost certainly be settled without an individual hearings stage and a ruling on s. 28(1). I am not inclined to make a constitutional ruling that is premature and unnecessary. My discretion to defer or adjourn the constitutional question is inherent and is also amply supported by s. 12 of the CPA.

[24] As noted above, limitation periods begin to run as soon as the claimant reasonably discovers that she has sustained a loss, that the loss was caused by the defendant *and* that taking legal action was appropriate.

[25] Here, the defendant bank submits (correctly) that the first two requirements are satisfied. Every time a class member received their bi-weekly pay, they would have known if they had been paid for overtime, and if not, that this loss was caused by their defendant employer.

[26] As for the appropriateness of taking legal action, the bank submits that because copies of the Canada Labour Code's overtime provisions were posted in every branch, the class members should have known the law and thus the limitation periods began to run the first time the class member looked at their pay cheque. The fact that the Canada Labour Code's overtime provisions were posted in every branch plays an important role in the bank's request for a class-wide limitations order.

[27] The bank's submission also depends on the full force and application of the statutory presumption set out in s. 5(2) of the Ontario Act (and in parallel provisions in the other applicable statutes). Section 5(2) provides that a claimant is presumed to have known about the fact of loss, its causation by the defendant and that taking legal action was an appropriate thing to do, on the day that the loss occurred "unless the contrary is proved".[14]

[28] When the evidence about the information in the pay cheque and the posting of the Code's overtime provisions is combined with the force of the statutory presumption, nothing more is needed, says the defendant bank. The requested class-wide limitations order should issue.

[29] I do not agree.

[30] The bank's submission ignores the Court of Appeal's holding that the threshold to displace or rebut the statutory presumption is "relatively low."[15] It also ignores the evidence that is already before the court and the previous findings of this court. In my view, the record not only rebuts the statutory presumption but also the broader submission that every class members' personal abilities, interests and circumstances can be decided in common on a class-wide basis without the need for individual inquiry.

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[14] See, for example, s. 5(2) of the Ontario Act, *supra,* note 6.

[15] *Presley v. Van Dusen*, 2019 ONCA 66, at para. 24

(2) The appropriate focus

[31] I agree with the bank that class members would have known when they received their pay cheque if they had sustained a loss and, if so, that the loss was caused by the defendant. The focus is properly on the "appropriate means" requirement. The limitations period will not begin to run if taking legal action was not reasonably appropriate given the plaintiff's circumstances. Recall again the point made by the Supreme Court in *Novak v. Bond*:

> Litigation is never a process to be embarked upon casually and sometimes a plaintiff's individual circumstances and interests may mean that he or she cannot reasonably bring an action at the time it first materializes.[16]

[32] When was it first reasonable for class members to conclude that taking legal action was appropriate? On the evidence before the court, this question cannot be answered on a class-wide basis. The evidence suggests at least two reasons why some (and perhaps many) class members delayed taking legal action – or to track the language used by the Supreme Court, could not "reasonably bring an action at the time it first materialize[d]."

[33] The two reasons are (i) that some (and perhaps many) of the class members feared reprisal and were afraid they might lose their job if they sued the bank for unpaid overtime; and (ii) that some (and perhaps many) of the class members reasonably relied on the bank's repeated misrepresentations throughout the 16-year class period that the bank's overtime policies complied with federal labour law.

[34] I will consider the evidence for each of these points in turn.

(3) Evidence of power imbalance and fear of being fired

[35] On the certification motion, Lax J. specifically acknowledged both the "reality" of the power imbalance in the employment relationship and its implications as follows:

> Although CIBC offers multiple methods for employees to raise concerns about their employment situation, *the reality is that there is a power imbalance in the employment relationship* and employees may perceive that their employment status and advancement will be affected if they assert the rights to which they are entitled. This can be a disincentive to

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[16] *Supra,* note 12.

> come forward and inhibits access to justice. This may explain why after the commencement of this action, only 31 employees came forward through the escalation process to raise concerns about unpaid overtime …[17] (Emphasis added).

[36] The same 'reality' was highlighted by the Court of Appeal in its summary of the affidavit evidence filed by the plaintiff at certification. The Court noted that "employees are afraid to claim overtime for fear that this will adversely impact on their employment and/or advancement at CIBC."[18]

[37] The employee survey evidence that I reviewed in the Liability Decision made the same points. As, one particular class member put it somewhat succinctly: "OT not paid for additional hours; afraid of losing job."

[38] In sum, the statutory presumption about the appropriateness of taking legal action upon first learning that one was not being compensated for overtime is rebutted by this evidence about the power imbalance in the workplace and the fear of losing one's job. And more than just rebutting the statutory presumption, this evidence strongly suggests that a class-wide determination cannot be made. Some class members may well have feared reprisal and the loss of their job if they commenced a legal proceeding. Others not as much or maybe not at all. This determination cannot be made on a class-wide basis. Individual assessments are needed.

(4) Evidence of reasonable reliance on the bank's repeated misrepresentations

[39] The evidence about the power imbalance in the workplace and the employee's fear of reprisal if they took legal action reinforces the second reason: that in these circumstances it was reasonable for at least some (and perhaps many) of the class members to rely on the bank's representations about the legality of the its overtime policy. The law is clear that resort to legal action may be inappropriate in cases where the plaintiff is reasonably relying on the superior knowledge of the defendant.[19]

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[17] *Fresco v. Canadian Imperial Bank of Commerce,* [2009] O.J. No. 2531, at para. 97. The same point about the power imbalance and "fear of reprisal" was made by Strathy J., as he then was, in the context of the unpaid overtime claim in *Fulawka v. Bank of Nova Scotia,* 2010 ONSC 1148, at para. 161, citing Lax J.'s comments in this case.

[18] Liability Decision, *supra,* note 1, at para. 64.

[19] *Presley, supra,* note 15, at para. 20.

[40] This court concluded in the Liability Decision that the bank's overtime policies were "unlawful" and in violation of federal labour law.[20] Specifically, I found as follows:

> The plaintiff has established that both the 1993 and 2006 overtime policies contravened the requirements set out in s. 174 of the Code.[21]
>
> Section 174 requires that overtime work be compensated if required or permitted even where pre-approval is stated as the company norm. The imposition of a pre-approval requirement as a precondition for overtime compensation is more restrictive than the "required or permitted" language in s. 174 of the Code.[22]
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> Section 174 of the Code clearly provides that overtime hours must be compensated whenever they were required or permitted. The fact that pre-approval was not obtained or that extenuating circumstances justifying post-approval were not present is of no import. By prescribing otherwise, the [1993] and 2006 Policy was more restrictive than what was statutorily required under s. 174 of the Code.[23]
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> There is nothing wrong with an overtime policy that proposes pre-authorization as the preferred corporate norm *provided* that the policy is also makes clear that neither pre-approval nor "post-approval in extenuating circumstances" are preconditions for payment – that overtime must and will be paid whenever overtime hours were required or permitted, full stop.[24]

[41] I further found that over the 16-year class period, even though the overtime policy violated federal labour law, the defendant bank repeatedly represented to class members that its overtime policy complied with federal labour law. The language used in the 1993 Policy and the 1995 Personnel Manual implied that the "pre-approval" requirement was lawful; the language used in the 2006 Policy, in HR and Hours of Work documents, and

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[20] Liability Decision, *supra,* note 1, at para. 92.

[21] *Ibid*., at para. 39.

[22] *Ibid*., at para 43.

[23] *Ibid.,* at para. 50.

[24] *Ibid.,* at para. 51.

in the bank's own emails to class members, explicitly stated that the overtime policy complied with federal employment law and even "exceeded" these requirements.

[42] In the Liability Decision, I found that the defendant bank was negligent in its interpretation of the requirements of federal labour law and "should have known better" because:

> It is a multi-billion-dollar financial institution with an able legal staff that can easily advise on the requirements of federal labour law. For some reason this didn't happen. The bank dropped the ball, to be sure …[25]

[43] Counsel for the defendant bank now suggest that even though a multi-billion-dollar financial institution with an able legal staff may have misinterpreted the requirements of federal labour law, that class members should have known better – because hard copies of the Canada Labour Code's overtime provisions had been posted in every branch.

[44] This cannot be a serious submission. But if it is, I can do no better that to repeat the gist of what Laskin J.A. said in response to a similar submission in *Ferrara v. Lorenzetti, Wolfe Barristers and Solicitors*[26]- that it lay ill in the mouth of the defendant lawyer to say that although he had maintained throughout that he made no error, the client should have known that he did.[27]

[45] The interpretation of the Canada Labour Code's overtime provisions is not, as they say, rocket science, but it does have its challenges. The correct interpretation is not self-evident and requires some thought and perhaps some knowledge of federal employment law. Mistakes can be made. Recall that the respected judge who dismissed the certification motion in 2009 concluded that the CIBC overtime policies "were not illegal."[28] And, as this court has found, the defendant bank itself and in particular its trained legal staff "dropped the ball" in fashioning its own interpretation. Even so, says the bank, the employee class members should have known better and should have known better *on a class-wide basis*. Again, this cannot be a serious submission.

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[25] *Ibid.,* at para. 90.

[26] *Ferrara v. Lorenzetti, Wolfe Barristers and Solicitors,* 2012 ONCA 851.

[27] *Ibid.,* at para. 73.

[28] *Fresco, supra,* note 5, at para. 5.

[46] It is true that, over the years, dozens of class member employees complained in employee surveys about the fact that overtime was not being paid. But it is important to pause and ask the following. Do these employee complaints show that these class members fully understood federal labour law and knew that taking legal action was appropriate at a much earlier time but unreasonably delayed in doing so? Or, do the complaints show that the writer may have reasonably accepted the bank's representations that the overtime system was legal and was simply asking that the system be reformed. The latter is suggested by some of the class members' comments that I reviewed in the Liability Decision. One such example:

> (2005) As a whole, I actually do like my job … [but] **...** time to wake up and smell the coffee .... I put in on average 50 hours a week, do not get compensated for my overtime, nor am I able to take time off in lieu; and the work just keeps piling on. If I hear "it will only take about 2 minutes" one more time I am sure I will scream. If I speak to my Manager about this, his response is neither helpful or caring, and "this organization expects you to put in overtime on your own time." *That is the way they have structured the system. Please re-structure the system ...*[29] (Emphasis added).

[47] In short, the evidence in the record cannot support a finding on a class-wide basis as to who knew or did what when, and for what reason. No court can fairly decide the applicability of a limitations period, and in particular, whether taking legal action was indeed appropriate at some earlier point in time without some understanding of the particular class member's personal knowledge, abilities and circumstances. Individual inquiries are needed.

(5) The court's finding about systemic impediments

[48] There is one more finding that was made in the Liability Decision that complicates the bank's submission that the first date that legal action was reasonably appropriate can be determined in common and across the class. I found that the defendant bank's overtime policies were not only "unlawful" but that they "impeded" or obstructed class member overtime claims:

> The bank's unlawful overtime policies and hours-of-work recording practices were systemic or institutional impediments. That is, they were

[29] Liability Decision, *supra,* note 1, at para. 66.

> system-wide in nature and they impeded class member overtime claims that were otherwise compensable under the Code.[30]

[49] I asked the bank's counsel during oral argument how they could advance their class-wide limitations claim in the face of this finding. That is, if this court was right to find that the bank's policies impeded class member overtime claims, how could the actual impact of these systemic impediments on class members be determined other than by individual inquiry? Counsel did not provide a satisfactory answer.

[50] At the very least, whether individual class members were actually impeded by the defendant bank's systemic policies and practices can only be decided with individual inquiries. A class-wide limitation order cannot issue in the face of these findings

(6) Conclusion

[51] The issue, again, is whether there is a sufficient evidentiary basis for the requested class-wide limitations order.

[52] The defendant bank has not established on the evidence that the limitation period that applies to *every* class member's claim (outside the limitation periods noted in its Schedule) can be determined in common on a class-wide basis and that individual discoverability is not needed. In my view, the evidence strongly suggests that individual discovery will be needed in at least some cases to fairly determine whether the class member delayed in taking legal action because they were in reasonable fear of losing their job; because they reasonably relied on the bank's misrepresentations about the legality of its overtime policy; or because they were otherwise impeded by the bank's systemic policies and practices.

[53] The evidence on any of these points, *and certainly in combination,* is enough to rebut the statutory presumption about when taking legal action was first appropriate. It is also enough to satisfy this court that the bank's limitations defence cannot fairly be determined on a class-wide basis but, as per the usual practice, should be deferred to the individual hearings stage.

[54] I recognize that when the limitations defence is properly addressed, whether at the individual hearings stage or as part of a settlement discussion, the defendant bank may well argue the applicability of the federal regulation that imposes a maximum three-year

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[30] *Ibid.,* at para. 92.

record retention requirement.[31] The bank will, of course, have every right to do so. However, the application of this particular record-keeping regulation is not before me today.

The plaintiff's "cross-request" is dismissed

[55] The plaintiff says that if the bank's request for a class-wide limitations order is dismissed, the court should go on and declare that the bank's limitation defence is rebutted in its entirety on a class-wide basis. I decline to do so for two reasons.

[56] First, the plaintiff's reply pleading on this point based her "cross-request" on the allegation that "CIBC breached its obligation of good faith and fair dealing to class members and thereby acted unconscionably, engaging the equitable principle of fraudulent concealment." In the Liability Decision, I rejected the 'breach of good faith' allegation. I found that the defendant bank's behaviour in misleading its employees about the legality of its overtime policy was at most careless and negligent.[32] I cannot now conclude that the bank's behaviour in this regard was unconscionable and that the doctrine of fraudulent concealment is therefore engaged.

[57] Secondly, unlike the defendant's request for a class-wide limitations order which rests on plausible procedural foundations (that is, the limitations defence is being advanced as part of the summary judgment motion), the plaintiff's "cross-request" hangs in the air and relies solely on s. 12 of the CPA. But s. 12 only gives the court the power to make any order it considers appropriate with respect to "the *conduct* of a class proceeding in order to ensure its fair and expeditious determination". The scope of the s. 12 power is procedural in nature. Denying the defendant bank the right to advance a limitations defence at the individual hearings stage would be a denial of the defendant's substantive right and, in any event, given my reasons and overall approach herein, would be fundamentally fair.

[58] The plaintiff is not precluded from re-asserting her "cross-request" (ideally via a proper motion) at the individual hearings stage should this stage ever materialize.

Disposition

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[31] *Canada Labour Standards Regulations,* C.R.C., c. 986, s. 24(2). Discussed in the Liability Decision, *supra,* note 1, at paras. 13-14.

[32] Liability Decision, *supra,* note 1, at para. 90.

[59] The defendant bank's request for a class-wide limitations order is dismissed.

[60] The plaintiff's cross-request for a declaration rebutting the defendant's limitation defence on a class-wide basis is also dismissed.

[61] As I noted in the Liability and Damages Decisions, costs incurred by either side in this continuing summary judgment litigation are being deferred to the completion of the matter in its entirety.

Signed: *Justice Edward P. Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

Date: October 21, 2020