

CIBC UNPAID OVERTIME CLASS ACTION – NOTICE OF SETTLEMENT APPROVAL HEARING IN *FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE*

If you were a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009, you could receive compensation in this class action settlement.

PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES THE SETTLEMENT AND HOW IT MAY AFFECT YOUR LEGAL RIGHTS.

If you received notice, it is because a review of the records of the Defendant indicates that you are a Class Member (as described below) in this unpaid overtime class action lawsuit. You were previously notified of the certification of this action by the Court-approved Notice of Certification dated December 20, 2013.

What is the class action about?

In June 2007, a class action lawsuit was brought against CIBC on behalf of certain CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action alleges that CIBC's overtime policies and record-keeping systems contravened the Canada Labour Code, resulting in front-line bank employees not being compensated for overtime.

The lawsuit was "certified" as a class proceeding in 2012, meaning that it was permitted to proceed to trial and the outcome would bind the class defined below. The Ontario Superior Court of Justice heard a motion for summary judgement, which was decided in 2020, in which it found that CIBC's overtime policies and record-keeping practices, in place between 1993 and 2009, contravened the Canada Labour Code and were institutional impediments to employees being properly compensated for all hours worked. The Court left the calculation of compensation to a further hearing. The decision of the Ontario Superior Court of Justice was upheld by the Court of Appeal for Ontario in 2022. The common issues to be decided by the Court were:

1. Did the Defendant have a duty (in contract or otherwise) to prevent Class Members from working, or a duty not to permit or not to encourage Class Members to work, overtime hours for which they were not properly compensated or for which the Defendant would not pay? If "yes", did the Defendant breach that duty?
2. Did the Defendant have a duty (in contract or otherwise) to accurately record and maintain a record of all hours worked by Class Members to ensure that Class Members were appropriately compensated for same? If "yes", did the Defendant breach that duty?
3. If the answer to common issues 1 or 2 is "yes", and to the extent found necessary by the common issues trial judge, did the Defendant thereby require or permit all uncompensated hours of the Class Members?
4. What are the relevant terms (express or implied or otherwise) of the Class Members' contracts of employment with the Defendant respecting:
 - a. Regular and overtime hours of work?
 - b. Recording of the hours worked by Class Members?
 - c. Paid breaks?
 - d. Payment of hours worked by Class Members?
5. Did the Defendant breach any of the foregoing contractual terms?
6. Was the Defendant enriched by failing to pay Class Members appropriately for all their hours worked? If "yes",
 - a. Did the class suffer a corresponding deprivation?
 - b. Was there no juristic reason for the enrichment?
7. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", what remedies are Class Members entitled to?
8. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", is the Class entitled to an award of aggravated, exemplary or punitive damages based upon the Defendant's conduct? If "yes" (i) Can these damages be determined on an aggregate basis; and (ii) What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?
9. Can the Defendant's monetary liability be determined on an aggregate basis? If so, in what amount?

The plaintiff Dara Fresco sought compensatory and punitive damages pursuant to each of these questions.

What settlement has been reached?

After months of negotiation, including a multi-day mediation before an independent mediator, the parties reached an agreement to settle the class action, subject to approval of the Court. Under the proposed settlement, CIBC will pay a total \$153 million to settle the case.

If the settlement is approved by the Court, the \$153 million will cover all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 (the effective date of the certification order) as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy (as discussed further below). In exchange for its \$153 million payment, CIBC will receive a full release of all claims.

The proposed settlement will result in payment of compensation to every eligible Class Member who completes a claim form and certifies that they worked uncompensated overtime during the class period. Class Members will not have to do anything further to prove their claims and the claims, will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which Class Members make claims.**¹

The settlement is subject to the approval of the Court, which will decide whether the settlement is fair, reasonable, and in the best interests of Class Members. The Court will hold a hearing to decide whether to approve the settlement in the Ontario Superior Court of Justice, via video conference on March 3, 2023 at 11:00 a.m. (Eastern). The Court will also decide whether to approve the proposed protocol for the distribution of settlement funds and the request of Class Counsel for fees.

Whom Does The Settlement Apply To?

The settlement impacts front-line CIBC employees who worked in branches between February 1, 1993 and June 18, 2009, also called the “class”. A more detailed definition of the class is below:

Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC’s retail branches, High Value Cluster offices or Imperial Service offices at any between from February 1, 1993 a June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);*
- (b) Assistant Branch Managers (Level 4);*
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);*
- (d) Financial Service Associates;*
- (e) Branch Ambassadors; and*
- (f) Other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.*

If you are unsure whether you are a Class Member, please contact *Fresco v. Canadian Imperial Bank of Commerce* Claims Administrator: 1-866-726-4057.

If the settlement is approved, it will apply to all Class Members, except those who previously took steps in 2013 to opt out of (i.e., ask to be removed from and not be bound by any outcome in) the case. In exchange for the settlement amount, the Court will order that all Class Members cannot sue CIBC in the future for unpaid overtime that occurred during the class period, as described in the proposed Settlement Agreement.

What will happen if the settlement is rejected by the Court?

The Court will decide whether to approve or reject the settlement. It does not have the authority to unilaterally change the material terms of the settlement. If the Court does not approve the settlement, the lawsuit will continue.

If the settlement is not approved, the case will return to court for a further hearing or hearings to determine compensation for Class Members and the process for Class Members to prove their individual claims. If the settlement is not approved, there is no guarantee that any individual Class Member will receive compensation. Those that do receive compensation will likely not receive it for several more years.

¹ In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

What steps should I take now?

Class Members and members of the public may attend the settlement approval hearing on March 3, 2023, but are not required to do so. Class Members are entitled, but not obligated, to express their opinions about the settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send the submissions in writing (by mail or email) to Class Counsel, at the address below, and ensure they are received no later than February 20, 2023. Class Counsel will provide all submissions to the Court and the Defendant in advance of the hearing.

The written submissions should include:

- a. your name, address and telephone number;
- b. a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- c. whether you plan to attend at the settlement approval hearing.

If you would like to virtually attend the settlement approval hearing, a link will be posted at www.cibcunpaidovertime.ca. Please note that there will not be an opportunity to address the Court at the hearing, unless the request has been made in advance, as described above.

What happens to the money paid under the settlement?

The compensation paid to Class Members will be paid from the amount of money remaining after deducting the Court-approved legal fees and disbursements (including taxes) as well as the costs of administering and distributing the money to Class Members, from the \$153 million.

Class Members' share of the settlement fund will be based on a Distribution Protocol that will take into account the length of time, during the class period, that Class Members worked in one of the affected positions, as well as the specific position or positions worked. The amount that each Class Member receives will also depend on how many Class Members make claims.

It is anticipated that Class Members will not receive their share until the latter half of, or late, 2023.

All amounts paid to Class Members will be subject to any relevant deductions (including deduction and remittance to the Canada Revenue Agency), and a statutory levy to be paid to the Class Proceedings Fund.² Class Members will need to complete a Claim Form in order to receive compensation.

You can read the full Distribution Protocol at www.cibcunpaidovertime.ca. If the settlement is approved, further notice will be given with the details and deadline for filing a Claim Form, if required.

When and where will the hearing be?

The hearing will be held via video conference before the Ontario Superior Court of Justice on March 3, 2023 at 11:00 a.m. (Eastern). A link will be posted at www.cibcunpaidovertime.ca.

Who are the lawyers working on this class action and how are they paid?

The law firms of Sotos LLP, Roy O'Connor LLP, and Goldblatt Partners LLP are Class Counsel and represent members of this class action in Canada.

Goldblatt Partners LLP can be reached at:

Telephone: 416-979-4233

Email: tatherfold@goldblattpartners.com

Mail: 20 Dundas Street West, Suite 1039, Toronto ON M5G 2C2

Roy O'Connor can be reached at:

Telephone: 416-362-1989

Email: info@royoconnor.ca

Mail: 1920 Yonge Street, Suite 300, Toronto ON M4S 3E2

² The Class Proceedings Fund, a body established by statute to provide support for class actions brought in Ontario. Further information about the Class Proceedings Fund can be found at <https://lawfoundation.on.ca/for-lawyers-and-paralegals/class-proceedings-fund/>. In exchange for its support, the Class Proceedings Fund is entitled to repayment of monies advanced plus 10% of net settlement funds payable to Class Members (i.e., after legal fees, taxes, disbursements and administration expenses). In this case, the Class Proceedings Fund's levy will amount to approximately 6.2% of the total settlement, assuming Class Counsel's fee request is allowed in full.

Sotos LLP can be reached at:

Telephone (toll free): 1-888-977-9806

Email: info@sotosclassactions.com

Mail: 180 Dundas Street West, Suite 1200, Toronto ON M5G 1Z8

Class Members will not have to personally pay Class Counsel for the work that they have done or for the disbursements that they have carried over the past 15 years since this case began. Legal fees in class actions are typically deducted from any compensation that the class ultimately receives as a result of a successful judgment. Class Counsel's legal fees are subject to Court approval. In this case, Class Counsel's retainer agreement with the Representative Plaintiff provides for a contingency fee of 30% of the settlement fund, plus taxes and disbursements.

Counsel for CIBC is Torys LLP:

Telephone: 416-865-0040

Email: info@torys.com

Mail: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower
Toronto, ON M5K 1N2

Where can I ask more questions?

For more information, please visit www.cibcunpaidovertime.ca. If you have questions that are not answered online or by email, please contact Class Counsel at the numbers listed above. To receive future notices and updates regarding the class action, register online at www.cibcunpaidovertime.ca.

Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

**PLEASE DO NOT CALL CIBC, THE COURTHOUSE,
OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION.**

This notice was approved by the Ontario Superior Court of Justice.