

Court File No. 07-CV-334113-00CP

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*

**MOTION RECORD OF THE PLAINTIFF
(SETTLEMENT APPROVAL)**

February 23, 2023

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Court File No.: 07-CV-334113CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DARA FRESCO

Plaintiff/Moving Party

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant/Responding Party

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
- Settlement Approval -
(Motion Returnable March 3, 2023)**

The Plaintiffs will make a motion to the Honourable Justice Belobaba on March 3, 2023, at 11:00 a.m. or as soon after that time as the motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard orally, via videoconference.

THE MOTION IS FOR:

Settlement Approval

1. An Order approving the settlement agreement between the Defendant and Plaintiff dated December 28, 2022 (the “**Settlement Agreement**”) as fair, reasonable, and in the best interests of the Class pursuant to s. 29 of the *Class Proceedings Act, 1992*;
2. An Order that the Settlement Agreement is binding on the Defendant and each member of the Class that did not validly opt out of the Action, in accordance with its terms;

3. An Order that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees for the Released Claims;
4. An Order that, upon the Effective Date, this Action and any Other Actions are hereby dismissed without costs and without prejudice;
5. An Order that if the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class; and
6. Such further and other relief as counsel may request and as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Settlement Approval

1. This action was commenced on June 4, 2007;
2. This action was certified by Order of the Ontario Court of Appeal on June 12, 2012 on behalf of a national class, including a class of Quebec residents;
3. Class members were provided an opportunity to opt-out of this action, resulting in 1,041 opt-outs, including approximately 126 from class members located in Quebec;
4. The certified common issues were determined by the Ontario Superior Court of Justice and subsequently affirmed by the Court of Appeal for Ontario;

5. Counsel for the Defendant and Class Counsel engaged in arm's-length settlement discussions and negotiations;
6. As a result of these settlement discussions and negotiations, after more than 15 years of litigation, the Plaintiff and the Defendant entered into the Settlement Agreement to settle the action for \$153 million;
7. The proposed settlement is fair, reasonable and in the best interests of the Class;

Response by Settlement Class Members

8. The notice of hearing advised the Class of the proposed settlement, the proposed distribution protocol and the proposed fees and honorariums. The deadline for objections was February 20, 2023 and, to date, no objections have been received;

General

9. Section 29 of the *Class Proceedings Act, 1992*, SO 1992, c. 6;
10. Rules 37 and 39 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194; and
11. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Jody Brown, affirmed [*/], 2023;
2. The affidavit of Dara Fresco, affirmed [*/], 2023; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 23, 2023

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**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*

**AFFIDAVIT OF JODY BROWN
- Settlement Approval -**

(Affirmed February 23, 2023)

I, Jody Brown, of the City of Toronto, in the Province of Ontario, SOLEMNLY AFFIRM
AS FOLLOWS:

1. I am a partner with the law firm of Goldblatt Partners LLP, which together with Sotos LLP and Roy O'Connor LLP, are Class Counsel herein. I have worked at Goldblatt Partners LLP since January 2019 and have had first-hand knowledge of this file since that time, including as part of the Class Counsel team during the course of the settlement negotiations described below. In respect of the facts deposed to that are outside my first-hand experience, I have informed myself by reviewing file correspondence and by speaking with other members of the Class Counsel team who have been involved since the commencement of this case in 2007, including Steven Barrett

of Goldblatt Partners LLP, Louis Sokolov of Sotos LLP and Adam Dewar of Roy O'Connor LLP. All of the information I have deposed to, I verily believe to be true.

NATURE OF THE MOTION

2. This motion is for an order approving the settlement agreement between the Plaintiff Dara Fresco (“**Ms. Fresco**”) and the Defendant Canadian Imperial Bank of Commerce (“**CIBC**” or “**the Bank**”), dated December 28, 2022 (the “**Settlement Agreement**”). The settlement, if approved by the Court, will resolve over 16 years of unpaid overtime claims on behalf of more than 31,000 persons and more than 15 years of litigation. This settlement will avoid the risks and delays that would result if damages were to be contested further. Under the settlement, no Class Member will need to prove their unpaid overtime claim in a contested hearing. Most importantly, it will provide significant financial compensation to the Class.

3. There were a myriad of variables, scenarios and assumptions that could have influenced the quantum recoverable for the Class had the litigation continued, some of which would have increased the total compensation available, while others would have reduced it. As described in detail below, overall and based on factors that we focussed on, Class Counsel believe that the \$153 million represents as good a result as the compensation that could likely have been awarded to the Class as a total amount for both Period 1 and 2. This is particularly the case given that the total recovery after what could have been years of contested individual claims for the presumptively time-barred years (Period 2) would “in practical terms, ...probably be modest at best”. If the case had continued, Class Counsel would have presented various scenarios and assumptions to the Court seeking a total aggregate damages award greater than \$153 million, and would have sought a simplified procedure for claims for Period 2 in the event that we were not successful in securing

an aggregate award for that period (which we believed to be unlikely in light of the findings by the Courts to date). We recognized, however, that it is rare that one side rings the bell on every damage issue including the very uphill battle faced to secure any aggregate award at all for the presumptively time-barred years. Indeed, there were risks and uncertainties for both sides if this litigation continued. In all the circumstances, Class Counsel believe that the quantum and structure of this settlement represents an excellent resolution of the claims of unpaid overtime for the Class. Class Counsel have no hesitation submitting that this settlement is fair and reasonable and urge the Court to approve it.

4. Attached hereto and marked as **Exhibit “A”** is a true copy of the executed Settlement Agreement.

FACTUAL BACKGROUND

(a) Procedural History

5. This was the first major unpaid overtime class action in Canada. At the time that it was commenced, the state of class action jurisprudence in Canada was much different than it is today. Numerous key precedents that would ultimately clarify the path to certification were still before the Courts or had yet to be launched. As of the date the Claim was issued on June 4, 2007, there was no Canadian precedent for how to prosecute an unpaid overtime class action or how such a case could be prosecuted on a systemic basis. There was certainly no caselaw to suggest that such a case would be successful. As set out below, this case made new procedural and substantive law on several occasions relating to several different issues.

(b) Case Investigation and Commencement

6. Following her return to work after her maternity leave, Ms. Fresco contacted Sack Goldblatt Mitchell LLP (“SGM”), the predecessor firm to Goldblatt Partners LLP. Louis Sokolov, who was then a partner at SGM, has advised me that he met with Ms. Fresco and investigated allegations regarding uncompensated overtime at CIBC.

7. As part of the investigation, Mr. Sokolov and other lawyers at SGM reviewed CIBC’s overtime policy and related documents and spoke with other potential witnesses. They formed the opinion that the case had sufficient factual and legal merit to warrant proceeding further. SGM lawyers estimated that the case would be large, and that the class would consist of at least 10,000 persons and involve more than 1,000 branches in every province and territory in Canada. They expected that the case would be vigorously and ably defended by the Defendant, a large, well-resourced bank.

8. SGM lawyers were also aware that there was significant legal risk, insofar as there were no clear and binding precedents governing the legal issues in the case. They also were aware that in a previously certified employment class action, involving terminations from employment following the closure of a number of retail stores, *Webb v. K-Mart*, the Court had ordered individual hearings with respect to whether or not the class member was wrongfully dismissed and, if so, whether the class member had any damages. Class Counsel considered *Webb v. K-Mart* to be a cautionary tale, insofar as only a small number of claims had been pursued through individual hearings and many of those had not resulted in any damages being awarded to class members.

9. Given the anticipated scope, risk and procedural challenges of the case, SGM decided to partner with another firm that specialized in class actions. SGM approached Roy Elliott Kim O'Connor LLP ("REKO"), the predecessor firm to Roy O'Connor LLP.

10. I am advised by Adam Dewar that, while REKO and its lawyers had substantial class action experience at the time, they recognized that this action would raise unique issues not yet addressed by Courts in a class action context. REKO was of the view that the case could potentially be viable and meaningful for the class if an award of aggregate damages could be obtained, therefore, disposing of the individual hearings which had been ordered by the Court following certification in *Webb v. K-Mart*. Without aggregate damages, this case ran the real risk that, even if it were successful on liability, it could break down into individual hearings and result in only relatively modest payments by the Defendant.

11. In May 2007, the Court of Appeal released its decision in *Markson v. MBNA* ordering the certification of aggregate damages in the context of a bank fees case where the requisite financial data was available from the defendant. REKO and SGM considered this to be a development that at least opened the door to requesting aggregate damages in Ms. Fresco's case. However, success on this basis was by no means assured given that there was no precedent in Canada for certifying, let alone awarding, aggregate damages in the much different context of an employment class action seeking recovery of allegedly unrecorded hours of work.

12. Collectively, SGM and REKO agreed to act as proposed Class Counsel. Subsequently, in May of 2013, Mr. Sokolov joined Sotos LLP and since that time all three firms - Goldblatt Partners LLP, Roy O'Connor LLP and Sotos LLP - collectively have been Class Counsel.

13. I am advised by Mr. Sokolov that he met with Ms. Fresco before she retained Class Counsel. Following those discussions, Ms. Fresco agreed to act as Representative Plaintiff. A copy of Class Counsel's retainer agreement with Ms. Fresco is attached as **Exhibit "B"**.

14. From Class Counsel's perspective, Ms. Fresco was a unique person. She was the only current employee of CIBC that Class Counsel met with who was willing to sue her then current employer for unpaid overtime.

15. This action was commenced in Ontario on June 4, 2007. A companion action, *Sarah Gaudet v. Canadian Imperial Bank of Commerce*, was commenced in the Superior Court of Quebec (District of Montreal) on June 18, 2007. A copy of the originating process in that action is attached as **Exhibit "C"**. The Quebec action, did not progress past the initial stage and has been stayed, pending resolution of this action, since October 2, 2007. No material was served in support of authorization and no authorization motion has been heard in Quebec. Throughout the course of Ms. Fresco's national class action prosecuted out of Toronto, the Quebec Court has been regularly updated about its progress and has renewed the stay. If this Court grants the Plaintiff's motion to approve the settlement, the parties will seek an order from the Quebec Court recognizing the settlement in Quebec and discontinuing the Quebec action, or alternatively upon authorization and approval of the settlement by the Quebec Court, the companion Quebec action will be discontinued.

16. Shortly after this action was issued, Class Counsel engaged in a detailed negotiation regarding the preservation of the Defendant's paper and electronic records. As set out below, the Defendant's records were ultimately critical, in Class Counsel's opinion, and used in the

determination of liability by this Court and in the assessment of damages that formed the basis for the proposed settlement.

(c) Certification

17. The first major step in this action was the motion for certification. The Plaintiff served her certification motion in November 2007. As set out above, there was no direct precedent for an unpaid overtime class action in Canada. The certification record consisted of 12 affidavits from Class Members across the country, in addition to Ms. Fresco, deposing to their experiences of uncompensated overtime at their respective branches, and identifying the systemic and policy-based aspects of what Class Counsel had identified as supporting certification. The Plaintiff also tendered evidence from experts offering opinions regarding (a) uncompensated overtime generally in the financial services sector, (b) the deficiencies in the administrative system for adjudicating individual employment complaints under the *Canada Labour Code*, and (c) a methodology in support of the Plaintiff's request to certify aggregate damages as a common issue.

18. In May 2008, CIBC delivered a responding certification record containing 56 affidavits from factual witnesses contesting the allegations of each of the witnesses whose affidavits were tendered by the Plaintiff, as well as expert witnesses disputing the evidence of the Plaintiff's experts. Following delivery of reply materials, dozens of cross-examinations took place, including in every province in Canada, as well as in the United States. Three of the Plaintiff's lay affiants refused to attend to be cross-examined.

19. In total, the record on certification consisted of thousands of pages of evidence.

20. A five-day certification hearing took place in December 2008 before the Honourable Justice Lax. In June 2009, the Plaintiff's certification motion was dismissed.¹ Key grounds to the dismissal by Justice Lax were Her Honour's findings that: (a) it was plain and obvious that CIBC's overtime policy, and its pre-approval of overtime in particular, were lawful; and (b) there was no evidence of systemic issues and, in the same vein, the reasons for any unpaid overtime owed to any class member were hopelessly individualistic. This former finding had broad implications for employees across the country, particularly those who worked in federally-regulated workplaces.

21. In Justice Lax's subsequent decision awarding costs to CIBC, Justice Lax dismissed submissions that the matter was one of public interest. Her Honour found that because of the scope and breadth of the case, CIBC was required to investigate the facts and circumstances at a large number of branches across Canada. Her Honour also noted that the allegations against CIBC "attracted widespread media attention..., [and] raised significant reputational and financial issues for the bank that required a fulsome response." As a result, and in order to respond to the nature of the case the Plaintiff had proposed, CIBC had incurred fees on the certification motion set out in its bill of costs of more than \$3.9 million, exclusive of GST. As set out in the affidavit of Adam Dewar in support of the motion for Class Counsel fees, Class Counsel's fees for the same period were approximately \$3.4 million.²

22. The Plaintiff's appeal as of right to the Divisional Court was dismissed by a majority of that panel (Swinton and Ferrier JJ.) in September 2010.³ Justice Sachs dissented. The majority of

¹ *Fresco v. Canadian Imperial Bank of Commerce*, 2009 CanLII 31177.

² *Fresco v. Canadian Imperial Bank of Commerce*, 2010 ONSC 1036 (CanLII). Notably, these incurred fees related to only the first year and a half of a lawsuit that has continued for more than 14 years since. See the affidavit of Adam Dewar in support of Class Counsel's fees motion for fee approval. Class Counsel has incurred time valued at more than \$16.4 million to date.

³ *Fresco v. Canadian Imperial Bank of Commerce*, 2010 ONSC 4274 (CanLII).

the panel adopted Justice Lax's reasoning regarding the legality of CIBC's overtime policy, the Plaintiff's failure to establish any evidence indicating any systemic issues at CIBC and the conclusion that liability and damages would breakdown into an individual analyses. The majority reached these conclusions despite the decision of Justice Strathy (as he then was) earlier that year in *Fulawka v. Bank of Nova Scotia*, which was a similar case in which the Court certified a claim alleging unpaid overtime.⁴

23. The majority found that the decision in *Fulawka* did not conflict in principle with the decision of Justice Lax in this case, and that Justice Lax had correctly applied the relevant principles to the different evidence and pleadings in this case.

24. The plaintiff sought leave to appeal to the Court of Appeal for Ontario, which the Bank opposed. The leave application was granted in January 2011. The first hearing of the appeal was suspended due to the illness of a member of the panel. The appeal was ultimately heard together with the appeal in *Fulawka v. Bank of Nova Scotia* and in another proposed class action brought by employees regulated under the CLC relating to allegations of unpaid overtime and employee misclassification, *McCracken v. Canadian National Railway*, over three days at the end of November and beginning of December 2011. The *McCracken* appeal was decided against the plaintiff; the *Fresco* and *Fulawka* appeals were decided substantially in favour of the plaintiffs,⁵ but with one important exception.

25. The Court of Appeal certified eight common issues. As this Court subsequently observed, the liability issues (Common Issues 1-5) asked systemic or system-wide questions that required

⁴ *Fulawka v. Bank of Nova Scotia*, 2010 ONSC 1148 (CanLII)

⁵ *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444; *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443.

the Court to consider whether CIBC's overtime policies acted as an institutional impediment to Class Members being compensated. The remaining issues (Common Issues 6-8) focused on remedies. In the certification order subsequently made by the Court of Appeal, the class was certified as follows:

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 time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

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

26. A copy of the certification order is attached as **Exhibit "D"**.

27. Notably, the Court of Appeal rejected the plaintiffs' request to certify the remedy common issues (Common Issues 6-8) regarding aggregate damages, finding that the methodology then proposed for aggregate damages (which included obtaining evidence directly from class members to create a sample to be extrapolated across the class) did not meet the criteria under s. 24(1)(c) of the *CPA*, because the methodology depended on "proof by individual class members."

28. The Court of Appeal's refusal to certify an aggregate damages common issue was a very serious hurdle. That refusal meant that, even if the Plaintiff was successful on the certified issues relating to liability (Common Issues 1-5), the case could become ensnared in individual assessments, which many, if not most, Class Members would be reluctant to participate in. As noted above, the availability of aggregate damages as a common issue – and, if the case was

successful on liability, securing an aggregate damages award – were significant in making this class proceeding viable as a means of obtaining real compensation, and thereby access to justice, for class members.

29. The Court of Appeal also rejected the Plaintiff's request to certify a common issue that asked "what statutory limitations periods, if any" applied to the claims of the class, finding that the "question of how individual issues are best resolved is a procedural matter that would follow after the common issues." This aspect of the Court of Appeal's decision that was also problematic for the Plaintiff. This meant that, even if the Plaintiff were to be ultimately successful on the common issues, limitation issues might have to be individually resolved with the added delays, costs and with the distinct possibility that individual claims would be disallowed (or significantly reduced in scope) as being statute-barred.

30. Notwithstanding the challenges that the Court of Appeal's certification decision presented, the Plaintiff and Class Counsel were not deterred in their efforts and resolved to press forward vigorously with the case.

31. CIBC applied for leave to appeal to the Supreme Court of Canada. The Plaintiff brought a conditional application for leave to appeal the Court of Appeal's ruling on aggregate damages. The Supreme Court of Canada dismissed both applications in March 2013.

(d) Productions and Summary Judgment

32. On February 27, 2014, CIBC delivered its Statement of Defence.

33. CIBC delivered its productions on a rolling basis, starting in February 2014. The parties disagreed about the appropriate scope of production and whether CIBC had produced all documents that were relevant to the certified common issues.

34. In June 2015, the Plaintiff brought the first of several production motions. This motion sought a sworn affidavit of documents and a detailed Schedule “B”. A copy of the Plaintiff’s notice of motion is attached to this affidavit as **Exhibit “E”**. A copy of this Court’s endorsement, dated June 3, 2015, ordering production of a detailed Schedule “B”, is attached to this affidavit as **Exhibit “F”**.

35. By July 2015, CIBC’s position was that it had produced all non-privileged documents relevant to the certified common issues. CIBC disclosed in a June 17, 2014 memorandum, provided to Class Counsel, that it engaged in a three-tiered document collection, review and production process, including: (a) a nation-wide branch level review for potentially relevant hard-copy documents within the branches or electronic copies of documents stored on branch computers; (b) a search for potentially-relevant hard-copy and electronic documents located at CIBC’s head office; and (c) a search of various key custodians potentially-relevant email records based on search terms identified in the memorandum. CIBC’s productions included internal bank documents relating to uncompensated overtime.

36. Class Counsel reviewed the documents carefully and concluded that, given the systemic issues and basis for the claim, a summary judgment motion could be an effective and appropriate means to resolve the issues. The Plaintiff served a notice of motion for summary judgment on all the common issues in October 2015.

37. As part of the summary judgment motion, the Plaintiff also sought an order directing an assessment of aggregate damages on the basis of a newly proposed expert methodology, notwithstanding that the Court of Appeal had refused to certify this issue. That new expert methodology involved analyzing time-stamped electronic data generated by various computer applications used by CIBC employees. At that time, the proposed methodology had never been considered, let alone accepted, by any court in Canada.

38. The Parties disagreed about whether and how a summary judgment motion could properly be advanced at the juncture in the litigation in advance of oral discoveries taking place, and whether it ought to be heard by the case management judge. At a subsequent case management conference, the Court agreed to schedule the summary judgment motion.

39. The Plaintiff served her initial five-volume summary judgment motion record in July 2016. Consistent with the systemic focus of the claim, the Plaintiff's record focused on CIBC's own internal and systemic documents. The Plaintiff had also obtained an expert report from Dr. Cristina Banks, an industrial and organizational psychologist, who opined that CIBC's policies and practices were likely to have resulted in uncompensated overtime. The Plaintiff also tendered a report from Stefan Boedeker, an expert economist and statistician, setting out the proposed methodology for calculating aggregate damages based on the analysis of various sets of extrapolated time-stamped data from the Bank's electronic records, and paper records, which were alleged to correspond to the time when class members were working. The summary judgment motion was scheduled to be heard in September 2017. A copy of the Plaintiff's notice of motion is attached to this affidavit as **Exhibit "G"**.

40. In April 2017, a few days before it was due to deliver its responding motion record, CIBC produced additional documents relating to its employee engagement surveys. These documents included excerpts from the company-wide employee engagement surveys conducted in 2001, 2003, 2005, 2007, 2008 and 2009 that contained anonymous employee responses to an open ended prompt question at the end of the survey referring to “overtime” or the French equivalent. CIBC subsequently explained that, because these surveys were not directed to issues of hours of work or overtime and were held by a custodian who did not deal with those issues, the documents had not been initially identified for production.

41. CIBC’s responding record on summary judgment was eight volumes. It included dozens of fact witnesses disputing the Plaintiff’s allegations of systemic overtime issues at CIBC and providing what CIBC asserted was the surrounding context for the documents contained in the Plaintiff’s motion record, as well as expert evidence in response to Dr. Banks and expert evidence disputing the viability of the proposed new aggregate damages methodology. Also included in CIBC’s record was affidavit evidence disclosing that certain records containing time-stamped data had been inadvertently lost. As discussed below, the loss of this time-stamped data raised challenges for the newly-proposed aggregate damages methodology.

42. As a result of these developments, the Plaintiff sought to adjourn the summary judgment motion so that her experts could consider and incorporate the new material into their opinions.

43. In May 2017, the Plaintiff delivered a notice of motion for production of additional documents and related relief. A copy of the Plaintiff’s notice of motion is attached to this affidavit as **Exhibit “H”**.

44. The motion was not initially heard, because in August 2017, CIBC delivered hundreds of additional documents. These included all anonymous employee comments in response to the open-ended prompt question in the bank-wide employee engagement surveys. Prior to this time, CIBC had delivered comments that referred to overtime or the French equivalent of the term. Also included in this new production were documents that referred to “themes” from the employee engagement surveys conducted in 2001, 2002 and 2007.

45. Following this production, the Plaintiff revised her notice of motion from May 2017 and continued to seek certain of the relief she originally sought, including among other things, a further and better affidavit of documents and leave to cross-examine CIBC on its affidavit of documents, in October 2017. The motion was subsequently resolved following an attendance before Justice Glustein without any further document production being made by CIBC at that time. A copy of Justice Glustein’s endorsement is attached as **Exhibit “I”**. As part of the resolution of the motion, CIBC agreed to permit a cross-examination on its affidavit of documents. That cross-examination took place in January 2018, which in turn gave rise to undertakings and refusals.

46. In or about August 2018, CIBC advised that the 2007 theme documents were subject to a claim of privilege and brought a motion asking the Court to preclude the use of these documents in the litigation. That privilege claim was contested by the Plaintiff. CIBC’s motion was dismissed by this Court in May 2019.⁶ CIBC did not appeal this decision.

47. Class Counsel devoted substantial resources to analyzing CIBC’s additional productions in detail. Based on these productions, the Plaintiff filed additional evidence at summary judgment,

⁶ *Fresco v. CIBC*, 2019 ONSC 3319 (CanLII).

including the survey theme documents, other survey related documents and expert evidence from Dr. Banks analyzing the anonymous comments.

48. In August 2019, CIBC served its own notice of cross-motion for summary judgment seeking an order that the Common Issues relating to liability be resolved in its favour by way of summary judgment.

49. The record filed on the summary judgment motion consisted of more than 8,000 pages of evidence. All experts retained by each party were cross-examined. The record also contained the transcripts of 21 cross-examinations conducted by the parties at the certification motion stage of the litigation. The parties filed extensive factums. The Plaintiff's factums consisted of 122 pages, while the Defendant's factums consisted of 177 pages plus 167 pages of appendices.

50. CIBC's position was that the Plaintiff could not establish CIBC's liability for Common Issues (1-5) on a balance of probability. CIBC also took the position that the Plaintiff was not entitled to any of the remedies she sought and that her request that the Court reconsider the certification of aggregate damages should be denied. In particular, CIBC argued that:

- (a) the Plaintiff could not meet the two-part test for establishing systemic liability for her allegations of class-wide unpaid overtime;
- (b) CIBC's overtime policies and practices were lawful and did not prevent class members from receiving overtime compensation;
- (c) the evidence demonstrated an absence of the required causal link between the alleged unlawful elements of CIBC's overtime compensation systems and any uncompensated overtime – in particular:

- (i) the Plaintiff's reliance on the survey comments as evidence of uncompensated overtime ought to have been rejected as the comments were inadmissible hearsay, and in any event, did not establish any systemic impediment to overtime compensation;
- (ii) the survey theme documents relied on by the Plaintiff were similarly flawed and inadmissible and also did not establish the requisite evidence to find a systemic breach;
- (iii) the other internal CIBC documents relied on by the Plaintiff were not evidence of any systemic breach when properly contextualized and considered in light of the entire evidentiary record on the issues;
- (d) the time-stamped data relied upon by the Plaintiff as a basis for a methodology for an aggregate damages common issue was not a reasonable proxy for a record of when worked was performed.

51. At the first day of the hearing on the summary judgment motion in December 2019, this Court urged the parties (and the parties agreed) to bifurcate the motion into a liability phase, and a later phase to address remedies and limitation period issues.

52. The first phase of the summary judgment motion – the liability phase - was heard by this Court in December 2019. This Court released its decision on the liability issues (Common Issues

1-5) on March 30, 2020, finding in favour of the Plaintiff.⁷ This was a significant victory for the Plaintiff. This Court found that, among other things:

- (a) CIBC’s overtime policies contravened the *Code* and its approval requirement was unlawful;
- (b) CIBC breached its duty to record actual hours worked;
- (c) the *Canada Labour Code* imposed a duty on CIBC to “prevent” unpaid overtime and CIBC’s overtime policies breached this duty;
- (d) some class members had worked uncompensated overtime hours during the 16-year class period of February 1, 1993 to June 18, 2009; and
- (e) the Bank had breached its employment contracts with the Class, but had not breached its contractual duty of good faith and did not lie or knowingly mislead class members.

53. In the spring of 2020, the parties participated in multiple case conferences, with written submissions exchanged in advance of the conferences, to determine the sequencing and timing of the remaining steps of the summary judgment motion. The plaintiff objected to this Court hearing CIBC’s limitations defences as part of the summary judgment motion process. However, this Court issued a direction confirming that CIBC’s limitations defences would be heard as part of the summary judgment motion in a third phase of the hearing. A copy of this direction is attached as **Exhibit “J”**.

⁷ *Fresco v. Canadian Imperial Bank of Commerce*, 2020 ONSC 75 (CanLII) [“**Liability Decision**”].

54. Subsequently, after further briefing including the filing of 51 additional pages of factums and written submissions by the Plaintiff and 35 pages by CIBC, as well as oral argument, the Court released its decision on remedies (Common Issues 6-8) on August 10, 2020.⁸ The Court dismissed the Plaintiff's claims for punitive damages, restitution and unjust enrichment, finding that the remedies available to the Plaintiff included declarations that CIBC's policies were unlawful and that CIBC breached its employment contracts with class members, as well as damages for breach of contract.

55. The Court also certified the question of whether damages could be determined in the aggregate as an additional common issue (Common Issue 9). This was also a significant development. It meant that the Plaintiff was entitled to obtain production of relevant time-stamped data and that there was now a prospect of obtaining an aggregate damages award for at least part of the Class Period. There was, however, no guarantee that any request for aggregate damages award would be successful. As this Court stated in its decision:

[44] To repeat, the defendant bank will have ample opportunity to challenge the reliability of the "time-stamped data" approach, and if there are evidentiary gaps, to contest the statistical integrity of the suggested "extrapolation" techniques or the legality of random sampling. These arguments can be made at the so-called "second step" – when the aggregate damages question is answered on the merits, the proposed methodology is actually applied to the gathered evidence and overall reliability and fairness is fully considered.

56. In its Liability Decision at paragraph 11, this Court had also observed that, even if liability is established, the Plaintiff will still face "significant challenges" with respect to remedies and damages.

⁸ *Fresco v. Canadian Imperial Bank of Commerce*, 2020 ONSC 4288 (CanLII) [**"Remedies Decision"**].

57. CIBC’s defence to the Plaintiff’s action included limitations defences and a requested constitutional declaration with respect to the extra-territorial tolling of the applicable limitation periods under the Ontario *Class Proceedings Act*. Pursuant to the direction of the Court dated May 14, 2020, (Exhibit “J”), these defences (and the Plaintiff’s request for a class-wide order relating to limitations) were separately briefed, including the filing of 40 additional pages of factums by CIBC and 40 pages by the Plaintiff.

58. In reasons dated October 21, 2020,⁹ this Court refused to grant a class-wide order limiting damages for all Class members to the provincial presumptive limitation period. This Court held that, while the class members would have known if they had been paid for overtime when they received their bi-weekly pay, there was insufficient evidence on the record to establish class-wide discoverability. This Court also held that CIBC’s request for the constitutional declaration was premature and dismissed the Plaintiff’s request for a class-wide order that all applicable limitations period be suspended. In the result, this Court held that CIBC’s limitations defences had to be determined on an individual basis.

59. While the Plaintiff was largely successful on summary judgment, it was unclear what damages, if any, would ultimately be awarded. In particular, the judgments of the Court were clear that:

- (a) damages related to the presumptively statute-barred period would be subject to limitations defences that would have to be determined individually;

⁹ *Fresco v. Canadian Imperial Bank of Commerce*, 2020 ONSC 6098 (CanLII) [**“Limitations Decision”**]

- (b) the Plaintiff's claim for aggregate damages would have to be proven and determined on its merits at a subsequent hearing;
- (c) the Bank's defence to aggregate damages (including its position that the methodology was not reliable because the time-stamped data was not a reliable proxy for hours worked) would be considered at that time; and
- (d) the Bank's motion for a constitutional declaration could be brought again at the individual issues stage of the proceeding.

60. Notably, this Court stated in both its decision on the liability issues and remedies that the Class Period at issue was between February 1, 1993 to June 18, 2009. This finding was relevant to Class Counsel's position that, while the Class membership period was from February 1993 to June 2009, that membership boundary did not limit the period for which damages were payable to Class members. CIBC objected to this argument on several grounds, including that the productions and factual inquiry on the merits had not extended beyond June 2009, nor did the findings of the Court extend past 2009.

61. As a result, we recognized that this argument for damages post-2009 would be exceptionally difficult to advance. In support of our position on this issue, we intended to rely on the fact that there was no evidence of any change in the Bank's system after June 2009 with the exception of the subsequent revelation of a change in its overtime policy in May of 2019 (that the Plaintiff sought to introduce as fresh evidence on appeal, which was not decided). When our potential argument about seeking damages for the Class members post 2009 was raised before this Court at a subsequent case conference, this Court expressed the clear view that the period reviewed

by the Court and the scope of the Court's decision only related to the 1993 to June 2009 time period.

62. CIBC appealed all three decisions on the summary judgment motion to the Court of Appeal for Ontario. Class Counsel brought a motion to strike the appeal of the certification of Common Issue 9 and the appeal of the Court's limitations findings on the basis that neither was a final order and thus not properly before the Court of Appeal. On January 26, 2021, the Court of Appeal dismissed the motion.¹⁰

63. CIBC proposed that further documents, which the Plaintiff argued were producible as a result of the certification of Common Issue 9 (Aggregate Damages), should be delayed pending resolution of its appeals given the cost and time that would be involved in the collection, review and production effort. The Plaintiff did not accept the Bank's proposal and Class Counsel pressed for further productions so that the case would not be further delayed pending the outcome of the Appeal. The Court rejected CIBC's proposal and directed CIBC to make production regardless of the pending appeal.

(e) Production of Time-Stamped Data

64. The Plaintiff's proposed methodology for aggregate damages was premised on the use of time-stamped data derived from certain electronic applications used by some Class Members. The Plaintiff proposed that this data be analyzed and then used as a proxy for time sheets or other records that CIBC had not maintained. From the Plaintiff's perspective, production of this data was necessary because, as found by this Court, the Class Members' actual hours of work were not recorded by CIBC. This proposed methodology had not previously been accepted by a Canadian

¹⁰ *Fresco v. Canadian Imperial Bank of Commerce*, 2021 ONCA 46.

court on a hearing on the merits (as noted above), although in June 2019, a similar methodology had been used in the context of the settlement of an unrelated overtime class action: *Bozsik v Livingston International Ltd.*¹¹

65. CIBC provided electronic data in multiple tranches in the spring, summer and early fall in 2021. These productions, containing multiple terabytes of data, were provided to experts retained by the Plaintiff (Stefan Boedeker of Berkeley Research Group (“BRG”) and his team) to analyze and prepare damages expert reports in support of the Plaintiff’s motion for summary judgment on Common Issue 9 (Aggregate Damages). This motion was scheduled to be heard in September 2022.

66. Class Counsel chose to retain BRG for this task because the analysis was highly specialized and BRG had performed similar work in other cases, including in *Livingston* as well as other cases in the United States. Class Counsel were not aware of any Canadian experts with sufficient data analysis and statistical expertise in the context of labour and employment cases, to carry out this work. Indeed, Mr. Boedeker advised us that this case was among the most difficult and complicated that he and his team had worked on.

67. The available electronic time-stamped data only covered the period between 2003 and 2009. There were also gaps of data within some of those years due in part to the decommissioning of the systems that housed the data and the inadvertent loss of data for other reasons unrelated to the litigation. While some electronic systems contained more data than others, certain of the

¹¹ *Bozsik v. Livingston International Inc.* 2019 ONSC 5340 CanLII

systems contained data in relation to a smaller subset of Class Members and an even shorter or more limited time period than others.

68. Further, the Plaintiff faced CIBC's arguments time-stamp data was not a valid proxy for hours worked. These arguments included but were not limited to, the presence of time-stamped data during times when employees were not working (such as bank holidays or vacations); the argument that class members used their computers for non-working activities; evidence that some class members shared computer workstations; evidence of long gaps in time-stamp data; evidence that some class members' actual working hours did not perfectly correlate with branch opening and closing times or class members' computer log-on and log-off times; and evidence that certain computer programs would auto-generate timestamps or automatically log users off.

69. Mr. Boedeker prepared a report dated January 12, 2022, which is attached as **Exhibit "K"**, containing BRG's estimates of damages suffered by the Class. The approach to damages, and the estimates derived from the proposed methodology, are described below in the context of my discussion about the settlement negotiations.

70. Notably, the Class Proceedings Fund had agreed to provide funding of approximately \$1 million in support of the expert opinion. However, the expert fees quickly exceeded this amount. Class counsel instructed the expert to continue its work as the fees mounted, while not waiting for a supplementary application to the Class Proceedings Fund, because we did not want to delay the analysis and resulting expert report and thus potentially delay any damages hearing that was then scheduled for September 2022.

71. By the time the expert report was filed, the expert fees incurred in support of the aggregate assessment exceeded \$3 million. Significant fees were incurred due to extraordinary complexity

that arose in the data conversion, translation and analysis process. Data from multiple systems of varying applications and IT systems had to be stitched together to carry out the analysis. Further, the data was often in “raw” format, housed on hard drives containing seemingly random letters and numbers. The Plaintiff’s expert spent an enormous amount of time cleaning up the data to put it in a format that could be analyzed and from which conclusions could be drawn. There were additional challenges with the sheer size of the data. For example, one volume of data comprised more than 100 terabytes. This is equivalent to the amount of data consumed by streaming 4K high quality Netflix continuously for almost two years. There was no guarantee the Class Proceedings Fund would agree to refund any of the additional amount and, indeed, it was not required to. Class Counsel carried approximately \$2 million in excess expert fees, which were at that time not supported by any reimbursement commitment from the Class Proceedings Fund. After further application to the Class Proceedings Fund, it agreed to fund approximately \$1.5 million of the excess fees.

(f) The Appeal

72. CIBC’s appeal was heard by the Court of Appeal over two days on September 28-29, 2021. On February 9, 2022, the Court of Appeal released its decision dismissing the appeal.¹² Despite the Plaintiff’s success on the liability issues, as with the decisions of this Court, the judgment of the Court of Appeal left the Plaintiff with challenges in respect of her claim for damages.

73. In particular, like this Court, the Court of Appeal held that the Bank’s limitations defences needed to be determined in the context of individual assessments. Unlike this Court, which found that fear of reprisal, as well as misrepresentation, could potentially suspend the limitations period,

¹² *Fresco v. Canadian Imperial Bank of Commerce*, 2022 ONCA 115 (CanLII) [“CA Decision”]

the Court of Appeal rejected the argument that fear of reprisal could support a discoverability issue that would extend the running of a limitation period.

74. In respect of the argument that CIBC's representations about its overtime policies could extend the running of a limitation period, the Court of Appeal held that it was plausible that "some class members reasonably relied on the Bank's misrepresentations that its overtime policies complied with federal labour law." However, the Court of Appeal agreed with this Court that the issue would need to be resolved on an individual basis and there was no guarantee that individual Class Members would be successful in such an argument.

75. This aspect of the limitation period defence was of particular concern from the perspective of Class Counsel because the argument that CIBC misrepresented that its overtime policies were in compliance with federal labour law was less strong in the context of the Bank's 1993 overtime policy (which was the policy largely relevant to presumptively time-barred periods, what is described as Period 2 in our expert's damages reports, as discussed further below). The representations in the 1993 policy were less explicit on compliance with the law than those in the subsequent 2006 overtime policy.

76. With respect to the non-time barred portion of the Class Period (what is described as Period 1 in Mr. Boedeker's expert reports), the Court of Appeal, like this Court, held that aggregate damages should be certified as a common issue. However, the Plaintiff's ultimate success on this issue remained in doubt. In particular, the Court of Appeal held as follows:

[88] However, we add that *Pro-Sys* does not displace this court's earlier legal ruling on sampling as a methodology for determining aggregate damages. The motion judge alluded quite fairly to the implication of potential gaps in the evidence: "If the time-stamped data reveals gaps in the evidence, where complete data cannot be obtained, then statistical sampling or extrapolation (back-casting and forecasting) would be used to fill in the gaps." This raises the prospect that this court's legal finding

that random sampling of the class members is not an acceptable method for determining aggregate damages might need to be revisited.

[89] The motion judge has taken the strong position that Winkler C.J.O.’s analysis of the sampling methodology was “probably wrong”, but he explained that the question was premature in this case: “We won’t know until the plaintiff’s proposed damages report is completed and submitted whether there are any evidentiary gaps and whether statistical sampling will actually be used to fill in these gaps.”

[90] Time will tell if statistical sampling will be needed to fill evidentiary gaps. If it is used, then the Bank could challenge the result based on this court’s ruling on the sampling methodology. It will then be open to the respondent to argue, based on a full evidentiary record, that this court’s decision was wrong and should be set aside.

77. In other words, the Court of Appeal held open the ability of the Bank to challenge the Plaintiff’s proposed methodology on the basis that gaps in the time-stamped data would require statistical sampling and that the Court of Appeal in *Fulawka* held that random sampling of class members cannot be used to determine aggregate damages. Like this Court, the Court of Appeal kept open the Defendant’s ability to assert its constitutional argument at a later date.

78. The Court of Appeal also held, like this Court, that the Class Period at issue was between February 1, 1993 to June 18, 2009. The result of this was an additional barrier to the argument that damages ought to be payable to Class Members for time worked beyond June 18, 2009.

79. The Court of Appeal did not decide the Plaintiff’s motion for fresh evidence in respect of a 2019 CIBC Overtime Policy.

SETTLEMENT NEGOTIATIONS

(a) Agreement to Mediate

80. At the beginning of April, 2022, counsel for CIBC contacted Mr. O’Connor and advised that CIBC was prepared to attend a mediation. Over the following week or so, counsel discussed and agreed upon terms upon which the mediation would take place, including, CIBC’s agreement

not to seek leave to appeal the decision of the Court of Appeal, the appointment of William Kaplan, an experienced arbitrator and mediator with particular expertise in complicated and high-stakes Labour and Employment matters and an agreement to adjourn the motion for summary judgment in respect of Common Issue 9 from September, 2022 to February 2023 to permit the parties to focus on preparing for and attending the mediation.

81. In our view, there was a very distinct possibility that the case would not settle at mediation, and we therefore wanted to ensure that a schedule was in place to drive forward on the aggregate damages issues quickly if that turned out to be the case.

82. Finally, the parties also agreed that the mediation would take place over three days during the week of August 22, 2022.

(b) Expert Reports and Mediation Briefs

83. In response to the BRG report of January 12, 2022, CIBC retained Ankura Consulting, LLP (“Ankura”) to prepare a without prejudice report for the purposes of mediation.

84. Class Counsel was familiar with Ankura and, in particular, its lead expert on this file, Sonya Kwon, from Ankura’s work for the defendant in *Livingston* where Ms. Kwon led the preparation and construction of the methodology used for the settlement. Class Counsel understood that Ankura, like BRG, had specific and detailed expertise that was relevant to the assessment of damages in this case. Ankura’s report included detailed criticisms of both the assumptions underlying the BRG report and the models applied by BRG in their calculations of damages. Ankura also conducted an analysis that corrected the flaws it asserted were in BRG’s assumptions and models, which resulted in dramatically lower projected damages than those estimated by BRG. These are discussed below in a review of the positions of the parties.

85. On July 18, 2022, the Plaintiff provided a detailed reply, without prejudice, report from BRG, which responded to the critiques in the Ankura report and provided updated damages estimates.

86. The parties agreed to exchange mediation briefs on the same day, August 5, 2022. Both briefs were extremely detailed and based on comprehensive summaries of fact and law. The Plaintiff's brief consisted of a mediation memorandum and supporting documents amounting to more than 650 pages. The Defendant's memorandum and document brief was more than 2300 pages in length and included substantial evidence from the case record.

(c) The Mediation

87. During the more than 15 years between its commencement of this case and the mediation, this case was extremely hard fought and contentious at times. Nonetheless, despite these hurdles, we approached the mediation in good faith and were satisfied that CIBC and its counsel did so as well.

(d) The Plaintiff's Estimates and Assessment of Risk

88. The Plaintiff's instructions to BRG were to prepare damages estimates on the basis of three distinct periods on the understanding that different likelihoods of success, and concomitant risks, were applicable to each as described below:

- (a) Period 1. The first period was from the date of the presumed provincial/territorial limitation periods until the end of the Class Period, as defined by this Court and the Court of Appeal in the context of the summary judgment motion and appeal.¹³

¹³ Liability Decision, paras. 5, 26, 66; Remedies Decision, paras. 10, 33, 41; CA Decision, paras 92-97.

Class Counsel were of the view that there was a reasonable prospect of an aggregate award being granted by the Court for this period. We were aware, that there was still a substantial risk., as argued by the Defendant, that the Court would not be satisfied that the proposed methodology or the available time-stamped data was appropriate or sufficiently reliable to make an award for unpaid hours of work. However, an equal if not larger risk, from Class Counsel's perspective, was that the Court would accept one or more of the methodological criticisms levied by the Defendant's experts, and/or find that the assumptions made by BRG would need to be revised. In either or both cases, this could result in an aggregate award for this first period being lower, potentially significantly lower, than that estimated by BRG. These risks and their effect on the estimates are discussed further below.

- (b) Period 2. The second period was the presumptively statute-barred period, commencing on February 1, 1993 (the beginning of the Class Period) and running up to the commencement of Period 1 (the date of which varied by province). Class Counsel recognized that it would be extremely difficult to obtain an aggregate award at a contested hearing for this period, having regard to the fact that there were specific findings by this Court and the Court of Appeal (both at certification and on the appeal of summary judgment) that the limitations defences that the Bank was advancing needed to be adjudicated individually. As a result, while Class Counsel was prepared to argue again for what would effectively be class-wide relief from the applicable limitation periods, Class Counsel recognized that it was very likely that some sort of individual claims process – at best a more simplified and streamlined one and at worst cumbersome, resource and time intensive one – was

likely to be ultimately ordered (either by this Court or the Court of Appeal) for these presumptively time-barred periods if the case proceeded to a contested hearing. Class Counsel were familiar with the *Fulawka* claims process, in which individual class members were required to come forward. In that case, less than 20% of eligible class members (both current and former employees) came forward to make individual claims. As a result, Class Counsel were cognizant of the risk that a similar claims rate, or lower, for individual claims covering presumptively time-barred periods would likely be experienced in this case. Indeed, unlike in the terms of the negotiated individual claims process in *Fulawka*, Class Members in this case would potentially face adverse costs in individual hearings because the Class Proceedings Fund costs indemnity does not extend to individual issues hearings.¹⁴

- (c) Period 3 - The third period was the potential damages period commencing June 19, 2009 (the day after the stated Class Period) to the present. Class Counsel recognized that the Plaintiff likely faced an insurmountable battle in getting damages for this period at a contested hearing. In addition to the previous findings of this Court and the Court of Appeal defining the Class Period as ending on June 18, 2009, the Defendant had strong arguments to contest any claim for this period. Productions had not been made or requested for the period after June 2009. The parties had conducted themselves throughout the litigation on the basis that the relevant period ended in June 2009, and the merits decisions did not examine or make any findings of fact post June 2009. However, Class Counsel elected to advance this claim on the possibility (albeit very unlikely) that the Court could be

¹⁴ See *Brazeau v. Canada (Attorney General)*, 2021 ONSC 8158

persuaded to extend the period for which damages could be sought for the Class Members given that there was no evidence in the record of any changes to CIBC's system post-June 2009. In addition, Class Counsel decided to advance this claim initially at mediation in the event that the Defendant was interested in negotiating for that period and thus obtaining a release that covered this period. As described below, CIBC expressed no interest in this regard, and as a result no release has been granted for the period post-June 2009.

89. BRG provided three separate models for calculating aggregate damages for each of the three periods described above.

90. In brief, and as described in the expert report of Mr. Boedeker, the first model (Model 1) took the observations from the time-stamped data and used them to estimate average "book-ends" (the first timestamp for work at the beginning of the work day, and the final/last time stamps for the work day) for Class Member's days to estimate their hours of work and, when compared with hours that were actually paid, their uncompensated overtime. This model, like the others, was premised on numerous assumptions and extrapolation of data to account for missing data. We also faced CIBC's positions as follows in respect of Model 2 and 3.

91. The second model (Model 2) contained additional assumptions. Premised on the fact that the data was incomplete and significant gaps were apparent for specific Class Members, this model relied on trends that BRG had identified in the data to assume that Class Members whose first time stamp was within 27 minutes of the branch opening time must have in fact started work when the branch opened. It similarly assumed that Class Members, whose last time stamp was within 25 minutes of the branch closing time, had in fact worked until the Bank closed. Model 2 therefore

assumed that Class Members worked a longer day than the data demonstrated on its face. The third model (Model 3) similarly relied on trends in the data, however it assumed that any Class Member whose first time stamp was within 27 minutes of the branch opening time, in fact started 20 minutes before the branch opened (to allow time to prepare to be able to start work right when the branch opened). It further assumed Class Members, whose last time stamp was within 25 minutes of the branch closing time, in fact worked until 14 minutes after the branch closed. Model 3 therefore assumed that Class Members worked a longer day than the data demonstrated on its face or Model 2 assumed.

92. Class Counsel believed that there was a basis to argue that Model 2 or Model 3 should be adopted by the Court on a contested hearing. As set out above, these additional assumptions were based on trends in data that BRG observed and, in their view, were methodologically sound. In addition, BRG's various assumptions underlying Models 2 and 3 were based on the absence of daily time-sheets and the fact that CIBC had inadvertently lost data from the systems (including, as noted above, those systems that generally maintained the computer system login and logout times, which were assumed to be the first and last daily time stamps for most employees).

93. However, Class Counsel recognized that there were strong arguments in favour of rejecting Models 2 and 3. For example, CIBC argued that evidence that some branches were staffed with staggered shifts and that not all staff would attend or leave (or be scheduled to attend or leave) at the same time undermined the core assumption in Models 2 and 3, and thus unfairly overstated CIBC's aggregate liability to Class. Overall, Class Counsel concluded that, in the event the Court were to accept that damages could be calculated on an aggregate basis, it was likely that the Court would apply Model 1, or some variation of it, as the basis to award damages.

94. BRG was also instructed to estimate damages using both a simple interest, and a compound interest calculation. Class Counsel intended to argue for compound interest at a contested hearing, however, we were cognizant of the fact that there was little legal precedent or no particular evidentiary foundation for a compound interest award in this context. As such, we concluded that it was far more likely that simple interest would be awarded.

95. In the Plaintiff's mediation brief, and in her Notice of Motion for summary judgment on Common Issue 9, attached as **Exhibit "L"**, the Plaintiff posited Model 3 as being her proposed or favoured model as set out below in Figure 1.

Figure 1 – Model 3 Estimates

Period	Damages (With Simple Interest)
1. From Presumptive Limitation Period until June 18, 2009	\$120,000,000
2. From February 1, 1993 (Beginning of Class Period) until Presumptive Limitation Period	\$201,000,000
3. From June 19, 2009 (End of the Class Member Eligibility Period) until the Present	\$130,000,000

96. During the mediation, Class Counsel internally made reference to, and consistently considered, the damage estimates under Model 1, and simple interest, as conveyed to us by BRG. These estimates, which were more conservative, are set out in Figure 2, below.

Figure 2 – Model 1 Estimates

Period	Damages (With Simple Interest)
1. From Presumptive Limitation Period until June 18, 2009	\$102,000,000
2. From February 1, 1993 (Beginning of Class Period) until Presumptive Limitation Period	\$172,000,000
3. From June 19, 2009 (End of the Class Member Eligibility Period) until the Present	\$111,000,000

(e) The Defendant's Estimates

97. The Defendant's experts, Ankura, raised a preliminary objection to the use of the time-stamped data as a reliable proxy for hours of work. We knew that CIBC would argue, supported with their expert evidence, that the proposed methodology did not meet the thresholds for a reliable aggregate damages methodology set out in the *Ramdath v. George Brown* case.

98. Nevertheless, Ankura was asked by CIBC to assess BRG's reports, create their own time-stamp methodology and prepare its own estimates using the time-stamped data (on the assumption that the time-stamps could be used as reliable proxies for time worked for the purpose of mediation, which we understood would not be conceded in Court). In doing so, Ankura raised eight key assumptions made by BRG which it viewed as unfounded: (a) the "bookend" approach, assuming all time between first and last timestamps each day is time worked, does not account for significant gaps in time; (b) outliers in the computer data before or after branch open and close are not accounted for; (c) the extrapolation of data to periods in which data is not available is flawed and includes periods that employees could not have worked; (d) BRG did not account for all time compensated by CIBC as compared to time worked, including in the form of lieu time; (e) BRG

assumed a lunch break of 30 minutes, not supported by the data; (f) additional increases in time worked grounded in certain data sources with little data are inappropriate; (g) the assumptions underlying Model 2 and Model 3 are unfounded, including that employees with timestamps close to branch open would always start their shifts at or before branch opening time, and that employees with timestamps near to branch close would always end their shifts at or after branch close.

99. Ankura adjusted for the BRG assumptions and methodologies that Ankura viewed as unreasonable and in conflict with the record, and instead applied its own set of assumptions. These included removing longer gaps in the data (more than four hours without any time-stamped data), adjusting start and end times to remove what it viewed as outlier time-stamps, and assuming that longer lunch periods and breaks were taken by Class Members on the basis of testimonial evidence from some witnesses tendered by CIBC and its analysis of the data (as discussed further below).

100. On this basis, Ankura estimated that the damages for Period 1, with simple interest, ranged between \$12.5 million and \$33.1 million, depending upon which variables were applied. These figures assumed that CIBC's constitutional argument would not succeed and included simple interest (if the constitutional argument were successful, Ankura estimated that damages for Period 1 damages with simple interest would range from \$11.5 million to \$28.2 million).¹⁵ Ankura did not specifically break out Period 2 estimates. From this, Class Counsel concluded that it would be

¹⁵ Table 5 of the Ankura report, Exhibit J, p. 74. Table 5 set out three different damages scenarios dependent on whether the Defendant's constitutional argument would be successful, and whether the damages would include the presumptively statute-barred period. The estimate of \$12.5 million corresponds with Ankura's estimate of damages for Period 1, using a median, and assuming credit is given to employee base hours in the defendant's payroll system, as compared to system data time. The estimate of \$33.1 million corresponds with Ankura's estimate of damages for Period 1, using a median, and assuming no credit is given to employee base hours in the defendant's payroll system, as compared to system data time.

similarly reduced from BRG's estimates. Ankura did not present an estimate for Period 3 (after June 18, 2009).

(f) The Negotiations at Mediation

101. The mediation progressed slowly, with each side predictably advocating through the mediator for the strengths of its positions and the weaknesses of the positions of the other party. It was clear from the outset and throughout the negotiations that any settlement was going to be a compromise on the various positions staked by each side.

102. As set out further below in my discussion of why Class Counsel believes this is certainly a fair and reasonable settlement for the Class, we assessed different levels of risk or likelihood to each damages period. With respect to Period 1, we were reasonably confident that an aggregate assessment would be awarded by the Court at a contested hearing although, as set out below, we recognized that the amount awarded after a contested hearing could be substantially less than the Model 1 number in BRG's report. In particular, we were aware that relatively small changes to the assumptions, including the estimate of average lunch periods (or other breaks) could seriously erode the quantum of damages estimated by BRG.

103. With respect to Period 2, we had little confidence that an aggregate assessment would be awarded, and thus our risk analysis took into account the prospect that damages for this period would almost certainly have to come from an individual claims process, where we faced a likely low claims rate and strong limitations defences.

104. With respect to Period 3, we were not confident that any damages for this period would be awarded at a contested hearing, in light of the previous explicit findings of this Court and the Court of Appeal on the time of the Class Period.

105. By the end of the second day of the three days reserved for mediation, the parties agreed to end the mediation, without having reached a resolution.

106. For the next month following the conclusion of the mediation, there were no discussions between the parties, although we did have (and presumably CIBC and its counsel had) various internal discussions about the issues.

107. In September 2022, the parties' settlement discussions resumed, and the mediator facilitated those discussions. An agreement in principle was reached on October 3, 2022 to settle the action on the basis of a payment by CIBC of \$153 million (all-inclusive) for Periods 1 and 2. CIBC is not paying anything toward Period 3 and no release is being provided in respect of any claims that Class Members may have after the end of the Class Period.

108. The parties negotiated terms that were incorporated into Minutes of Settlement executed in mid-November, 2022. The comprehensive Settlement Agreement (attached as **Exhibit "A"**) was finalized and executed on December 28, 2022.

THE SETTLEMENT AGREEMENT

109. The key terms of the Settlement Agreement include:

- (a) An all-inclusive settlement fund of \$153,000,000 (the "**Settlement Amount**") to be paid within 30 days of the execution of the Settlement Agreement. That amount has now been paid over and has been invested in an interest-bearing escrow account.

- (b) CIBC will provide to Class Counsel a list of Class Members, and available contact information (which it has now done), and respond to any questions Class Counsel or the administrator might have regarding the list of Class Members.
- (c) The Settlement Amount, less approved fees, disbursements, administration expenses and CPF levy, and the Remittances, will be distributed to Class Members.
- (d) Upon approval by this Court, this action will be dismissed, and upon recognition of such Order by the Quebec Court, or alternatively upon approval by the Quebec Court, the companion Quebec action will be discontinued.
- (e) No portion of the Settlement Amount will revert to CIBC.
- (f) Separate motions for approval of the proposed distribution protocol and approval of Class Counsel fees will be brought.
- (g) The claims of Class Members (who have not opted out of this action) will be released insofar as they relate to the Class Period (that is, from February 1, 1993 to June 18, 2009).

(a) Benefits of the Settlement

110. Prior to the mediation and as the negotiations proceeded, we assessed the quantum of the total payment in light of the data available, the expert evidence, the underlying assumptions, the various positions advanced by the parties, the findings to date in this case as well as a realistic recognition of the very real risks going forward. We recognized that we would not likely succeed on every issue or argument that we had raised. Having said that, and as noted above and discussed further below, based on the factors on which we have focussed, we believe that the \$153 million

total quantum is as good as the recovery that the Class could likely have expected, both after a contested hearing on Common Issue 9 (which would likely only have resulted in an aggregate damages award for Period 1), and what could be the “modest at best” recovery resulting from the possible years of contested individual assessments for Period 2 claims.. In this way, in our view, the \$153 million settlement quantum is in and of itself a factor weighing heavily in favour of this settlement.

111. The proposed distribution will allocate settlement funds to every Class Member who fills out a simple form that confirms their contact information and confirms that they worked some unpaid work during the Class Period while at CIBC. That form will not require any proof to establish the claim, nor will there be any ability of CIBC to dispute any claim. As further discussed in my affidavit in support of the motion to approve the distribution protocol, Class Counsel propose that the entitlement to damages be weighted according to individual Class Members’ length of Tenure, Employment Position(s) held, and average wage. Class Counsel further propose that the settlement funds be allocated toward both Period 1 and Period 2. However, in light of the additional risk that Period 2 claims would likely need to be determined individually and that the Bank could advance limitations defences in respect of these claims, Class Counsel propose that a discount factor of 50% be applied to those damages allocated to Period 2. We believe that such a discount appropriately balances these risks and other factors applicable to an aggregate amount for the presumptively time-barred period.

112. Beyond the quantum of the Settlement Amount, a principal benefit of the settlement is its aggregate nature. This is particularly the case in respect of Period 2 damages which, in all likelihood, could only have been established on an individual basis had the matter continued to a contested hearing. As set out above, Class Counsel believe that less than 20% of Class Members

would have made claims for this period under an individual claims process and that those that did would face serious barriers to success.

113. This settlement is also significantly quicker than a contested outcome. Class Counsel estimate that, had this matter continued to a contested hearing, a decision from this Court would have likely not been rendered until late Spring or early summer of 2023, and the inevitable appeal to the Court of Appeal would not have been resolved until at least mid-2024. A further application for leave to appeal to the Supreme Court of Canada (and appeal if granted) could have delayed a decision into 2026 or beyond. Class Counsel further estimate that an individual issues process for Period 2 damages for thousands of Class Members could well have taken years longer to complete.

(b) The Quantum of the Settlement

114. As noted above, throughout the negotiation process, Class Counsel measured the settlement value of this case as against what we perceived to be reasonably likely outcomes at a contested aggregate damages hearing and subsequent individual claims process. Having been successful at the liability hearing before this Court, and on appeal, we applied no liability discount. We did, however, internally discount the damages estimates of our experts on the expectation that certain adjustments and reductions would likely follow in the context of a continued contested approach to damages. Our team knew full well that success at trial is rarely unmitigated.

115. In particular, Class Counsel were keenly aware that our experts' damages estimates were premised on a large number of contentious assumptions that, at times, arguably conflicted with certain testimonial evidence tendered by CIBC, as reflected in the expert reports of each party. While we were satisfied that the estimates and assumptions of our experts were based in the record and statistical theory, we knew from experience that it was unlikely that we would win debate on

every assumption and point we advanced and that the Court, on a contested hearing, would likely determine that a just result lay somewhere between the positions advanced by the parties.

116. Our internal view was that a settlement close to \$150 million (or more) for Periods 1 and 2 would easily warrant our unreserved endorsement. Our collective thinking in this regard included consideration and reliance upon the following factors:

- (a) Model 1 was much more likely to be adopted by the Court than Model 2 or Model 3. At a contested hearing, the Court would be faced with competing damages estimates. We believed that the BRG models were fundamentally sound, but concluded that, as noted above, there was a high likelihood that the Court would adopt Model 1, which was more closely based on the data and affidavit evidence tendered by CIBC record regarding employees' behaviours and branch practices, rather than assumptions about working before or after opening hours for a branch. Under this model, as described above, BRG estimated damages for the Class (using simple interest) at \$102 million for Period 1 (the non-statute barred period), and \$172 million for Period 2 (the presumptively statute-barred period).
- (b) An aggregate damages award, if made, would be made for Period 1 only. We operated under the assumption that the Court would make an aggregate award for Period 1 damages after a contested hearing. We assumed, as well, that we would more likely than not be successful in defeating CIBC's constitutional argument but acknowledged some real risk in this regard. We considered that an aggregate award would not be made for Period 2 damages at a contested hearing, given that this Court and the Court of Appeal had already explicitly found that the Bank's

limitations defences must be determined individually. At best, we hoped for a streamlined and simplified individual issues process for Period 2 damages. With respect to Period 3 damages, we operated on the assumption that the explicit language in rulings of this Court and the Court of Appeal defining the Class Period as ending on June 18, 2009 would present an almost insurmountable barrier at a contested hearing.

- (c) Simple Interest would likely be applied. While there was a basis in logic to argue for compound interest, we were aware that there was little precedent for the Court to award compound interest in this context. We were aware that this Court had denied a compound interest claim in *MacDonald et al. v. BMO Trust Company et al.*, 2020 ONSC 93. We viewed success on this point as possible but very unlikely and that, even if successful, such a determination would be vulnerable to reversal on appeal.
- (d) The risk of other adjustments to assumptions about hours worked. There were risks to both parties that other adjustments to assumptions made in their respective expert reports could have led to significant downward or upward shifts in the quantum of damages. By way of example, certainly from Class Counsel's perspective, one of the assumptions of greatest concern in the expert reports related to the length of the unpaid lunch break. Everyone agreed that the unpaid lunch break was to be deducted from the estimated hours of work per day. BRG presumed an average lunch break of 30 minutes per Class Member, arrived at by measuring the gaps in the time-stamped data between 11:00 a.m. to 2:00 p.m., which would be the period during which most Class Members would have been expected to take their lunch.

However, in its analysis of these lunch period gaps, BRG excluded gaps of longer than 60 minutes, based on evidence in the record stating that Class Members were entitled to lunch breaks of either 30 or 60 minutes. Ankura was critical of this assumption and CIBC led evidence to suggest that some Class Members took longer lunch breaks from time to time (i.e. longer than 60 minutes) or left work during their lunch break for personal appointments or childcare obligations, as permitted by CIBC's flexible work policy. Class Counsel internally tested the sensitivity of adjustments to the lunch break analysis by requesting, during the mediation process, that BRG provide us with an updated analysis which included its review of the lunch period gaps in the time-stamped data of up to 75 minutes, which as Class Counsel we thought was reasonably possible, if not likely. We were advised that the average lunch gap would increase to 38.3 minutes and would translate into an approximate 23.2% reduction in the estimated damages (which would have reduced Model 1 damages for Period 1 to \$68 million and for Period 2 to \$132.1 million). As Class Counsel we were particularly concerned about the 30 minute lunch break assumption being vulnerable at trial.

As noted above, there were other assumptions in both parties' expert reports that, if rejected, may have led to relatively significant upward adjustments to damages. For example, BRG's damages estimates for Periods 1 and 2 assumed an overtime threshold of 8 hours a day consistent with the daily overtime threshold in CIBC's overtime policies, which had been found to be incorporated into class members' contracts of employment. , However, BRG also estimated in a supplementary report that damages would be have been higher using an overtime threshold of 7.5 hours

a day (based on a possible plaintiff argument that overtime should have been paid after Class Members' standard hours of work being 7.5 hours per day.)

- (e) Moreover, Period 2 damages under an individual issues process would likely be substantially less than what would come from an aggregate assessment. The amount of Period 2 damages awarded under an individual issues process would depend on the number of Class Members that would individually come forward and make claims. In estimating the claims rate in this regard, Class Counsel drew on our experience in *Fulawka*, which we believed represented a reasonable proxy, given the analogies between the two cases and given that there was a simplified contested claims process in that case. In *Fulawka*, and as noted above, less than 20% of eligible Class Members made claims, notwithstanding a comprehensive notice program with repeated assurances that the making of claims would not have any adverse impact on Class Members. In respect of this case, Class Counsel were not confident that we would see a higher claims rate in an individual issues process. We were concerned that the claims rate could be lower for various reasons, including the fact that such a process would not be part of a consensual settlement like in *Fulawka* and potentially more involved and contentious. Furthermore, Class Members who took part in an individual issues process in this case could face potential adverse costs. As this Court observed in its ruling certifying aggregate damages:

If aggregate damages are not allowed and class members are required to individually advance and prove claims (stretching over many years), the bank's financial exposure, in practical terms, will probably be modest at best. If aggregate damages are permitted, the monetary liability of the defendant bank could well be in the tens of millions of dollars.

Class Counsel recognized what this Court expressly had noted above – that is, individually advancing and proving claims would most likely result in a modest award at best.

- (f) Class Counsel undertook a similar analysis in considering the value of Period 2 damages and measuring them against the proposed settlement. As stated above, the value of Period 2 damages under Model 1, with a further lunch gap adjustment to 38.3 minutes, amounted to 132.1 million. We were also aware that not all individuals who came forward as part of any individual issues analysis for Period 2 would be able to overcome the presumptive limitation period defence. This Court and the Court of Appeal had indicated that reliance on any misrepresentation by the Bank about the legality of its policy could potentially suspend the limitation period. However, as this Court stated, *“individual discovery will be needed in at least some cases to fairly determine whether the class member delayed in taking legal action...because they reasonably relied on the bank’s misrepresentations about the legality of its overtime policy.”* The outcome of that individual discovery process would be uncertain and Class Counsel considered that there was a reasonably significant risk associated with establishing reliance on a misrepresentation by the Bank in its 1993 policy.
- (g) A lieu time discount was likely. CIBC asserted that approximately \$3 million of lieu time was taken by Class Members for the period from January 2003 to June 2009, and that similar lieu time credit should be credited against damages for any other period. The Plaintiff took issue with the quality of proof that CIBC provided on this issue and, accordingly, instructed BRG to exclude any lieu time offset from

its analysis. However, Class Counsel recognized that at least some portion of the lieu time would likely be credited to the Bank and would reduce the damages for Period 1 and the extrapolated damages back to Period 2.

117. Class Counsel are of the opinion that, overall, this is an excellent settlement for the Class, particularly in light of the total quantum, the simple administration process, the fact that the aggregate settlement for both Periods 1 and 2 will be available now, and the timeliness and certainty of the settlement (including avoiding the risks of proceeding on a contested basis, relying on a novel and contested aggregate damages methodology, and the delays that would be caused by subsequent appeals)..

CLASS COUNSEL RECOMMEND THIS SETTLEMENT

118. Class Counsel are of the opinion that, overall, this is an excellent settlement for the Class, particularly in light of the total quantum, the simple administration process, the fact that aggregate settlement for both Periods 1 and 2 will be available now, and the timeliness and certainty of the settlement (including avoiding the risks of proceeding on a contested basis, relying on a novel and contested aggregate damages methodology, and the delays that would be caused by subsequent appeals).

119. We further believe that, under this settlement, the Class will receive more than they would have received after a common issues determination of Period 1 damages and, collectively, much more than would be awarded after individual issues of Period 2 damages. Class Counsel certainly believe that the Settlement Agreement is fair, reasonable and in the best interest of the Class and submit that it should be approved.

ADMINISTRATION OF THE SETTLEMENT

120. Class Counsel have developed a proposed distribution protocol of the Settlement Amount. The approval of the proposed distribution protocol is the subject of a separate motion, scheduled to be heard immediately following this motion.

NOTICE TO AND RESPONSE BY SETTLEMENT CLASS MEMBERS


121. This Court approved the notice of hearing and plan of dissemination. The notice of hearing was published in accordance with the plan of dissemination.

122. The notice of hearing advised settlement class members of their right to comment on or object to the Settlement Agreement. The deadline for commenting is February 20, 2023. At the time of swearing this affidavit, Class Counsel have received 148 communications from Class Members in support of the Settlement Agreement and no objections. Attached hereto and marked as **Exhibit “M”** are true copies of class members’ correspondence, with names and other identifying information redacted. If any additional comments or objections are received after this affidavit is sworn, I will provide an updated affidavit to the Court.

AFFIRMED by Jody Brown of the City of Toronto before me at the City of Toronto, in the Province of Ontario on February 23, 2023 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

JODY BROWN

Tanya Atherfold-Desilva, a
Commissioner, etc. Province of Ontario
for Goldblatt Partners LLP, Barristers and
Solicitors. Expires September 8, 2024

This is Exhibit "A" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Made as of December 28, 2022

Between

DARA FRESCO AND SARAH GAUDET

(the “**Plaintiffs**”)

and

CANADIAN IMPERIAL BANK OF COMMERCE (the “**Defendant**”)

CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT
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CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Subject to the approval of the Courts as provided herein, the Plaintiffs and the Defendant hereby agree that in consideration of the promises and covenants set forth in this Settlement Agreement and conditional upon the Approved Settlement Order (Fresco) and the Quebec Settlement Order (both as defined herein) becoming Final Orders, these Actions will be settled and the Settlement implemented, pursuant to the terms and conditions described below.

SECTION 1 - RECITALS

- A. **WHEREAS** on June 4, 2007, a proceeding was commenced by the Plaintiff, Dara Fresco, as Ontario Superior Court of Justice (Toronto) file 07-CV-334113CP (the “**Fresco Action**”);
- B. **WHEREAS** on June 18, 2007, a proceeding was commenced by the Petitioner, Sarah Gaudet, as Superior Court of Quebec (District of Montreal) file 500-06-000404-075 (the “**Gaudet Action**”);
- C. **WHEREAS** the Fresco Action was certified by Order of the Ontario Court of Appeal dated June 12, 2012 on behalf of a national class, including a class of Quebec residents that is duplicative of and overlaps with the proposed class in the Gaudet Action;
- D. **WHEREAS** the Gaudet Action was stayed on October 2, 2007, by the Superior Court of Quebec, pending resolution of the Fresco Action;
- E. **WHEREAS** Class Members were provided an opportunity to opt-out of the Fresco Action, the deadline for Class Members to opt-out of the Fresco Action has passed, and there were 1,041 opt-outs from the Fresco Action, including approximately 126 from class members located in Quebec;
- F. **WHEREAS** the certified common issues were determined at first instance by summary judgment granted by the Ontario Superior Court of Justice on March 30, 2020, August 10, 2020 and October 21, 2020;

G. **WHEREAS** an additional common issue concerning aggregate damages was ordered certified by the Ontario Superior Court of Justice on August 10, 2020;

H. **WHEREAS** an appeal of the common issues judgment and the Order to certify an additional common issue was dismissed by the Court of Appeal for Ontario on February 9, 2022;

I. **WHEREAS** counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, including a three-day mediation with William Kaplan in August 2022;

J. **WHEREAS** as a result of these settlement discussions and negotiations, the Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiffs, both individually and on behalf of the classes the Plaintiffs represent, or in the case of Gaudet propose to represent, subject to approval of the Courts;

K. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense involved in further prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Amount, the Plaintiffs and Class Counsel have each concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent;

L. **WHEREAS** the Parties therefore wish to and hereby do agree to finally resolve the Proceedings on a national basis in accordance with an Order from the Ontario Court approving this Settlement Agreement;

M. **WHEREAS** in the event that it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Parties to the Gaudet Action consent to the authorization of the Gaudet Action solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals being granted by the Courts as provided for in this Settlement Agreement, on the express understanding that such authorization

shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. **WHEREAS** if it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Petitioner in the Gaudet Action asserts that she is an adequate class representative for the class she seeks to represent and will seek to be appointed representative plaintiff in the Gaudet Action; and

O. **WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court, following which the Parties will seek the recognition of the Ontario Court's approval in Quebec, or alternatively, will seek approval of this Settlement Agreement in Quebec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Fresco Action be settled and dismissed with prejudice, and that the Gaudet Action be settled and discontinued or declared settled out of Court as against the Defendant, all without costs as to the Plaintiffs, the classes they seek to represent or the Defendant, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and the schedules hereto:

- (1) **Actions** means the Fresco Action and the Gaudet Action.
- (2) **Administration Expenses** means all fees, disbursements (including all disbursements to experts relating to this Settlement Agreement and the Distribution Protocol), expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and translation costs of the notices. Administration Expenses shall not include Class Counsel Fees, Class Counsel Disbursements or the Class Proceedings Fund Levy.

(3) *Administrator or Claims Administrator* means the third-party professional firm and any employees of such firm, selected at arm's length by Class Counsel pursuant to the Minutes of Settlement executed on November 16, 2022, and appointed by the Court to do any one or more of the following:

- (a) facilitate dissemination of the Notices of Settlement Approval Hearing;
- (b) facilitate dissemination of the Approved Settlement Notices;
- (c) receive and review claims and administer the Settlement Fund in accordance with the Distribution Protocol; and
- (d) report to the Parties and the Court on the administration of the Settlement;

(4) *Approval Motion or Approval Motions* means, as the context requires, the motion or motions to approve the Settlement, the Approved Settlement Notices, the Plan of Notice, the Distribution Protocol, Class Counsel Fees, Class Counsel Disbursements and any other approvals required to give effect to the Settlement and its administration;

(5) *Approved Settlement Notices* means the Approved Settlement Notices (Fresco) and, should separate notices of settlement be ordered in the Gaudet Action, the Approved Settlement Notices (Gaudet);

(6) *Approved Settlement Notices (Fresco)* means the Approved Settlement Notice (Fresco – Direct Notice), the Approved Settlement Notice (Fresco – Publication), and the Approved Settlement Notice (Fresco – Digital Banner);

(7) *Approved Settlement Notice (Fresco –Direct Notice)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “A”**;

(8) *Approved Settlement Notice (Fresco –Publication)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “B”**;

(9) *Approved Settlement Notice (Fresco – Digital Banner)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “C”**;

(10) ***Approved Settlement Notices (Gaudet)*** means notices in English and French that are substantially similar to the Approved Settlement Notices (Fresco), the form and content of which shall be agreed upon by the Parties;

(11) ***Approved Settlement Orders*** means the Approved Settlement Order (Fresco) and the Approved Settlement Order (Gaudet);

(12) ***Approved Settlement Order (Fresco)*** means the order made by the Ontario Court, substantially in the form attached as **Schedule “D”**:

- (a) approving the Settlement;
- (b) approving the forms of the Approved Settlement Notices (Fresco);
- (c) approving the Plan of Notice for the purpose of the publication and dissemination of the Approved Settlement Notices (Fresco);
- (d) dismissing the Action as against the Defendant without costs and with prejudice; and
- (e) ordering the release of the Released Claims.

(13) ***Approved Settlement Order (Gaudet)*** means the order made by the Quebec Court that is substantially similar to the Approved Settlement Order (Fresco), the form and content of which shall be agreed upon by the parties;

(14) ***CIBC*** means the Defendant the Canadian Imperial Bank of Commerce;

(15) ***Claim Form*** means the form to be approved by the Court or, if settlement approval is required in Quebec, the Courts, which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member’s claim for compensation pursuant to the Settlement;

(16) ***Claims Bar Deadline*** means the date by which each Class Member must file a Claim Form and all supporting documentation with the Administrator; which date shall be one hundred and eighty (180) days after distribution of the first Approved Settlement Notices or such other date as may be fixed by the Court;

(17) ***Class or Class Members*** means 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 time from February 1, 1993 to 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,

but excludes anyone who opted out of the Fresco Action.

(18) ***Class Counsel*** means Plaintiffs' Counsel in the Fresco Action and the Gaudet Action.

(19) ***Class Counsel Disbursements*** include the disbursements, interest, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings and not reimbursed by the Class Proceedings Fund;

(20) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or person;

(21) ***Class Period*** means the period between February 1, 1993 to June 18, 2009;

(22) ***Class Proceedings Fund*** means the Class Proceedings Fund of the Law Foundation of Ontario as provided for by section 59.1 of the *Law Society Act*;

- (23) ***Class Proceedings Fund Levy*** means the levy to be paid to the Class Proceedings Fund as prescribed by section 10 of the *Class Proceedings Regulation* under the *Law Society Act*;
- (24) ***CPA*** means the *Class Proceeding Act, 1992*, S.O. 1992, c. 6;
- (25) ***Courts*** means the Ontario Court and Quebec Court;
- (26) ***Date of Execution*** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement;
- (27) ***Defendant*** means Canadian Imperial Bank of Commerce;
- (28) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, to be proposed by Class Counsel substantially in the form attached as **Schedule “E”** as approved by the Courts, or as amended by and otherwise directed by the Courts;
- (29) ***Effective Date*** means the date when Final Orders have been received from all Courts;
- (30) ***Eligible Claimant*** means a member of the Class who makes a claim for his or her share and is entitled to a share of the Settlement Fund;
- (31) ***Escrow Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario initially under the control of Sotos LLP, until the Approved Settlement Order (Fresco) and the Quebec Settlement Order are entered, following which it shall be transferred to the Administrator appointed pursuant to the Approved Settlement Order (Fresco);
- (32) ***Escrow Settlement Funds*** means the Settlement Amount plus any accrued interest in the Escrow Account;
- (33) ***Fee Approval Order*** means the order made by the Court approving Class Counsel Fees and Disbursements;
- (34) ***Final Orders*** means any order contemplated by this Settlement Agreement from which no appeal lies or in respect of which: (1) any right of appeal, or right to seek leave to appeal, has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal or (2) any right of appeal has been exercised and the appeal has been dismissed with no further right of appeal nor any further right to seek leave to appeal;

(35) ***Fresco Settlement Approval Hearing*** means the hearing of the motion for approval of this Settlement in Ontario and related relief;

(36) ***Net Settlement Amount*** means the amount available in the Escrow Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Class Proceedings Fund Levy and other amounts contemplated by subparagraphs 5(1)(a)-(g) hereof;

(37) ***Notices of Settlement Approval Hearing*** means the Notices of Settlement Approval Hearing (Fresco) and, if necessary, the Notices of Settlement Approval Hearing (Gaudet);

(38) ***Notices of Settlement Approval Hearing (Fresco)*** means the Notice of Settlement Approval Hearing (Fresco – Direct Notice), the Notice of Settlement Approval Hearing (Fresco – Publication) and the Notice of Settlement Approval Hearing (Fresco – Digital Banner);

(39) ***Notice of Settlement Approval Hearing (Fresco – Direct Notice)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “F”**;

(40) ***Notice of Settlement Approval Hearing (Fresco – Publication)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “G”**;

(41) ***Notice of Settlement Approval Hearing (Fresco – Digital Banner)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “H”**;

(42) ***Notice of Settlement Approval Hearing Order (Fresco)*** means the Order of the Ontario Court substantially in the form as the attached **Schedule “I”**, which shall contain provisions:

- (a) appointing the Administrator;
- (b) approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing; and

- (c) fixing the date for the Settlement Approval Hearing Motion, as the context may require, in the Ontario Court;
- (43) ***Notices of Settlement Approval Hearing (Gaudet)*** means notices in French and English that are substantially similar to the Notices of Settlement Approval Hearing (Fresco), the form and content of which shall be agreed upon by the Parties;
- (44) ***Notice of Settlement Approval Order (Gaudet)***, means notice in French and English that is substantially similar to the Notice of Settlement Approval Order (Fresco) the form and content of which shall be agreed upon by the Parties;
- (45) ***Ontario Court*** means the Ontario Superior Court of Justice;
- (46) ***Ontario Plaintiff*** means Dara Fresco;
- (47) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Class Member either before or after the Effective Date.
- (48) ***Parties*** means the Defendant and the Plaintiffs;
- (49) ***Agreed Press Release*** means the press release set out at **Schedule “J”**;
- (50) ***Plaintiffs*** means Dara Fresco and Sarah Gaudet;
- (51) ***Plaintiff’s Counsel in Fresco*** means Goldblatt Partners LLP, Roy O’Connor LLP and Sotos LLP;
- (52) ***Plaintiff’s Counsel in Gaudet*** means Melançon Marceau Grenier Cohen s.e.n.c.;
- (53) ***Plan of Notice*** means the plan to provide notice of the settlement and the process for making claims, as approved by the Ontario Court, or if settlement approval is required in both Ontario and Quebec, as approved by the Ontario Court and the Quebec Court;
- (54) ***Proceedings*** means the Fresco Action and the Gaudet Action;
- (55) ***Quebec Common Issue*** means “Did Class Members, or some of them, work uncompensated overtime for the benefit of the Defendant?”;

- (56) **Quebec Court** means the Superior Court of Quebec;
- (57) **Quebec Petitioner** means Sarah Gaudet;
- (58) **Quebec Settlement Motion** shall have the meaning ascribed in paragraph 2.2(1) herein;
- (59) **Quebec Class** means members of the Class as defined in subparagraph (17) above who worked in Quebec;
- (60) **Quebec Class Member** means a member of the Class as defined in subparagraph (17) above who worked in Quebec;
- (61) **Quebec Settlement Order** means either (i) the judgment of the Superior Court of Quebec recognizing and enforcing the Approved Settlement Order (Fresco) in Quebec and approving the discontinuance of the Gaudet Action, or (ii) the judgment of the Superior Court of Quebec, substantially in the form as the Approved Settlement Order (Fresco), approving this Settlement Agreement;
- (62) **Released Claims** (or **Released Claim**) means all claims relating to the Class Period (including individual claims) by the Class, known and unknown, relating to all matters raised, or which could reasonably have been raised, in the Proceedings including: (i) all claims and causes of action pleaded relating to the Class Period; (ii) all matters addressed in the Ontario Plaintiff's expert Stefan Boedeker's reports, dated January 12, 2022, July 18, 2022, and September 16, 2022, but only insofar as such matters relate to the Class Period, inclusive of all claims for unpaid hours, overtime pay, vacation pay, and holiday pay; and (iii) claims, or claims over, relating to the Remittances;
- (63) **Released Party** or **Released Parties** means Releasees;
- (64) **Releasees** means, the Defendant and its predecessors, successors, assigns, parents, subsidiaries and affiliates, and together with all of their current and former officers, directors, employees, servants, trustees, representatives, lawyers, agents, insurers, and re-insurers along with shareholders of the Defendant and as applicable any of their respective heirs, executors, estates, successors, and assigns;
- (65) **Releasors** means the Class Members for themselves, their heirs, executors, estates, successors, and assigns;

- (66) **Remittances** means any employment withholdings, contributions, premiums, and remittances thereof, including in respect of Canada Pension Plan contributions and Employment Insurance premiums, taxes, penalties, and interest, that may be applicable, pursuant to provincial or federal legislation, in respect of the amounts distributed to the Class from the Settlement Amount;
- (67) **Settlement** means the settlement provided for in this Settlement Agreement;
- (68) **Settlement Agreement** means this Settlement Agreement, including the recitals and schedules;
- (69) **Settlement Amount** or **Settlement Fund** means one hundred and fifty-three million Canadian dollars (CAD \$153,000,000) to be paid by CIBC in settlement of the Actions, which amount is inclusive of (i) all claims that were made, or which could reasonably have been made, in the Fresco Action during the period from February 1, 1993 to June 18, 2009 (the “Class Period”), (ii) all claims that were made, or which could reasonably have been made, in the related class proceeding commenced in the Gaudet Action during the Class Period, (iii) all costs that may be incurred in relation to the approval and administration of this settlement, including costs of any notice program and related translation costs, (iv) all Class counsel fees and disbursements (including in respect of the notice and settlement approval hearings and any related appeals in respect of this settlement as well as the fees and disbursements related to the method of distribution of the Settlement Amount to the Class), (v) any applicable statutory amounts allegedly owing payable as wages, inclusive of unpaid hours, overtime pay, vacation pay, and holiday pay, during the Class Period, (vi) the Remittances, and (vii) Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, the Class Proceedings Fund Levy, any amount to which the Fonds d’Aide aux actions collectives may be entitled and any other costs (with the exception of costs paid by CIBC prior to the execution of the Settlement Agreement) or expenses otherwise related to the Actions.

SECTION 2 - APPROVAL AND NOTICE PROCESS

2.1 Best Efforts

- (1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Fresco Action and a prompt, complete resolution of the Gaudet Action pursuant to the recognition and enforcement of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action, or pursuant to the

authorization of the Gaudet Action for settlement purposes only and the subsequent approval of this Settlement Agreement by the Quebec Court.

(2) The parties will apply for the recognition of the Approved Settlement Order (Fresco) and the discontinuance of the Gaudet Action on consent and without costs, following the issuance of the Approved Settlement Order (Fresco). In the alternative, if required by the Quebec Court, the Parties will apply for the authorization of Gaudet as a class proceeding in Quebec solely for purposes of settlement, as well as the approval of this Settlement Agreement by the Quebec Court as set out in Sections 2.2 and 2.3 below.

(3) Until the Approved Settlement Order and the Quebec Settlement Order become Final Orders or the termination of this Settlement Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Actions, other than: (a) the motions and applications provided for in this Settlement Agreement; and (b) such other matters required to implement the terms of this Settlement Agreement.

2.2 Motions Seeking Approval of Notice of Settlement Approval Hearing Order (Fresco) and Notice of Settlement Approval Order (Gaudet)

(1) The Plaintiffs will, as soon as is reasonably practicable following the Execution Date, bring motions in relation to the Notice of Settlement Approval Hearing Order (Fresco) and in the Gaudet Action, following the issuance of the Final Approved Settlement Order (Fresco), an application seeking the recognition of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action on consent and without costs; or if required by the Quebec Court, seeking the authorization of the Gaudet Action solely for purposes of settlement and the subsequent approval of this Settlement Agreement by the Quebec Court (the “**Quebec Settlement Application**”).

(2) The Plaintiffs agree that, in the event that the Quebec Court requires an application for authorization of the Gaudet Action as a class proceeding for settlement purposes and for approval of this Settlement Agreement, the only common question that they will seek to define is the Quebec Common Issue and the only class that they will assert is the Quebec Class defined herein.

(3) The Defendant retains, subject to the final judgments, decisions, or orders previously rendered in both the Fresco Action and the Gaudet Action, all of its objections, arguments, and defences if the settlement set forth in this Settlement Agreement does not receive the Courts’ approval, if the Courts’

approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close.

(4) Similarly, if the settlement set forth in this Settlement Agreement does not receive the Court's approval (or if settlement approval must be sought in Quebec, the Courts' approval), if the Court or Courts' approval (as the case may be) is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, the Plaintiff and the Class retain, subject to the final decisions or orders previously rendered in the Actions, all of their rights to advance their claims and claims for damages or other relief relating to the issues in the Actions.

(5) Upon entry of the Notice of Settlement Approval Hearing Order (Fresco) and the Notice of Settlement Approval Hearing (Quebec) (should the latter be necessary to file as a distinct notice), the Administrator shall cause the Notice of Settlement Approval Hearing to be published in accordance with the Plan of Notice and the directions of the Court (or Courts, if settlement approval is required in Quebec). The costs of publishing the Notice of Settlement Approval Hearing shall be paid from the Escrow Account as and when incurred.

2.3 Approval Motion and Notice

(1) The Plaintiff will bring the Settlement Approval Motion (Fresco) in accordance with the Ontario Court's directions. The Defendant will consent to the issuance of the Approved Settlement Order (Fresco).

(2) Upon the granting of the Approved Settlement Order and the Quebec Settlement Application, Class Counsel may issue the Agreed Press Release and the Administrator shall cause the Approved Settlement Notices to be published and disseminated in accordance with the Plan of Notice as approved by the Courts. The costs of publishing the Approved Settlement Notices shall be paid from the Escrow Account as and when incurred.

2.4 Confidentiality

(1) Prior to the execution and filing with either of the Courts of this Settlement Agreement, the Parties shall keep the fact of this settlement, the contents of the Minutes of Settlement and this Settlement Agreement strictly confidential and shall not disclose them to anyone, issue any press releases or make any other public statements, including to the media, regarding this settlement, except as follows:

- (a) as required by law or regulation;
- (b) in the case of CIBC, as part of its disclosure in its quarterly or annual Management's Discussion & Analysis;
- (c) as the Parties agree otherwise;
- (d) by Class Counsel to the plaintiff national counsel team, their expert and the Class Proceedings Fund; or
- (e) by Class Counsel for purposes of soliciting an Administrator,

on condition that any disclosure to the individuals referred to in (d) or (e) above be made on condition that those individuals are advised that such information as disclosed is to remain strictly confidential prior to the execution and filing with either of the Courts of an executed copy of this Settlement Agreement.

(2) Following the execution and filing with either of the Courts of this Settlement Agreement, the Parties agree that, except as otherwise required to obtain approval of this Settlement and Class Counsel Fees and Class Counsel Disbursements, that:

- (a) They shall not issue any press releases or make any other public statements, including to the media, regarding this settlement, except those that are:
 - (i) the Agreed Press Release or otherwise agreed to by the Parties;
 - (ii) required by law or regulation;
 - (iii) in the case of Class Counsel (and while the Parties acknowledge that communications by Class Counsel to their clients (the Class) are privileged), statements or communications to their clients informing them about the settlement, the proposed distribution process and the reasonableness of the settlement and distribution by electronic, digital or virtual means that may reasonably be expected to be viewed, reviewed or received beyond members of the Class, including informing members of the Class or answering inquiries from Class members by way of virtual

town hall meetings or internet available recordings (or other similar more public means). Such statements or communications shall accord with subsection 2.4(2)(c) below, and Class Counsel shall share in advance with CIBC (through its counsel) for its review and approval a copy of any such communications, including any slides or slide deck to be presented at such town hall, to ensure that the content is fair, balanced, accurate and free from disparagement; or

- (iv) in response to media inquiries directed to either of the Parties (or their counsel), the Parties (and their counsel) shall act in good faith to agree in advance on responses that accord with subsection 2.4(2)(c) below. With respect to any unanticipated media inquiry, or any anticipated media inquiry in respect of which the parties did not agree to a response in advance, the Parties (or their counsel) may refer the inquirer to the public court file or the Agreed Press Release, or answer the inquiry in accordance with subsection 2.4(2)(c) below.
- (b) The Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the parties to comply with any order of the Courts, as may be required under any applicable law or regulation, or as may be agreed by counsel in seeking the approval of this settlement (or Class Counsel Fees/Disbursements) or the discontinuance of the Gaudet Action. This agreement applies notwithstanding anything to the contrary set out above.
- (c) The Parties shall act in good faith to ensure that any public statements, comments or communications regarding the Actions or this settlement are balanced, fair, accurate and free from disparagement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) CIBC shall pay the Settlement Amount for the benefit of the Class Members in full and final settlement of the Released Claims, within thirty (30) days of execution of the Settlement Agreement, to

Sotos LLP, in trust, to be deposited into the Escrow Account from which funds shall be paid toward Administration Expenses incurred in relation to the issuance of the Notice of Settlement Approval Hearing Orders and the Approved Settlement Orders.

(2) Upon the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall transfer control of the Escrow Account to the Administrator, in trust, for the benefit of the Class Members to be disbursed in accordance with this Settlement Agreement and the Approved Settlement Orders.

(3) The Settlement Amount and other valuable consideration set forth in the Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Defendant shall not have any obligation to pay any further amount to the Plaintiffs, the Class Members or Class Counsel with respect to this Settlement Agreement or the Actions for any reason, including any additional amounts for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Actions, the Released Claims, the Settlement, the Remittances, the Administration Expenses and any other expenses approved by the Court which shall be paid from the Settlement Funds.

(5) Sotos LLP shall account to the Administrator for all payments, if any, made from the Escrow Account prior to the transfer of the Escrow Account to the Administrator, which payments may include the payment from the Settlement Fund to cover costs in relation to the issuance of Notice of the Settlement Approval Hearing Order. The Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account, whether made by Sotos LLP or the Administrator. In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Parties no later than ten (10) days after the termination. Sotos LLP shall not pay out any of the monies in the Escrow Account except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(6) The Administrator shall pay the Fonds d'aide aux actions collectives (Class Action Assistance Fund) the amount owed pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* in respect of remittances to the Fonds d'aide aux actions collectives, and in case of any remaining balance to be allocated *cy près* (meaning pursuant to article 596, paragraph 3,

of the Quebec *Code of Civil Procedure*) to one or more recipients to be approved by the Ontario Court (or to be approved by the Quebec Court if settlement approval is required in Quebec), the *Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Class Members who are residents of Quebec.

3.2 Settlement Amount to be Held in Trust

(1) Prior to the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. After the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, the Administrator shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. No amount shall be paid out from the Escrow Account by either Sotos LLP or the Administrator, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

3.3 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of Class Members and shall become and remain part of the Settlement Fund.

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Escrow Account shall be paid from the Escrow Account. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from interest on the Settlement Amount in the Escrow Account, including any obligation to make tax payments. All taxes (including interest and penalties) due with respect to the interest earned by the Settlement Amount shall be paid from the Escrow Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to CIBC who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid.

SECTION 4 - NO REVERSION

(1) Unless this Settlement Agreement is terminated as provided herein, CIBC shall not be entitled to the repayment or reversion of any portion of the Settlement Amount or Escrow Settlement Funds. In the event this Settlement Agreement is terminated, CIBC shall be entitled to the repayment only to the extent of and in accordance with the terms provided herein.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT FUND

(1) On or after the Effective Date, the Administrator shall distribute the Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees, Class Counsel Disbursements, interest and taxes thereon to Class Counsel as awarded by the Ontario Court;
- (b) to pay all of the costs and expenses reasonably incurred in connection with the provision of the Approved Settlement Notices;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendant and the Class or Class Counsel are specifically excluded from being required to pay any costs and expenses under this subsection. All such costs and expenses shall be paid from the Settlement Amount;
- (d) to pay any taxes required by law to any governmental authority;
- (e) to pay the Class Proceedings Fund levy as prescribed by Section 10 of the Class Proceedings regulation under the *Law Society Act*;
- (f) to pay a share of the Net Settlement Amount to each Eligible Claimant in proportion to their claim as recognized in accordance with the Distribution Protocol, including payment of the Remittances; and
- (g) to pay any amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(2) Class Counsel shall propose for approval by the Court (or Courts, if settlement approval is required in Quebec) a Distribution Protocol in the form attached as **Schedule “E”** or such other form as may be directed by the Courts.

(3) The approval or denial by the Courts of the Distribution Protocol is not part of the settlement provided for herein, except as to the priorities of distribution expressly provided in section 5(1) and is to be considered by the Courts separately from its consideration of the fairness, reasonableness, and adequacy of the settlement provided for herein.

SECTION 6- EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement, anything contained in it, and any and all negotiations, discussions, and communications associated with this Settlement Agreement, shall not be deemed, construed or interpreted as a concession or admission of fault, wrongdoing, or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in the Actions.

6.2 Settlement Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in the Actions or in any other proceeding:

- (a) of the validity of any claim that has been or could reasonably have been asserted in the Actions by the Plaintiffs against the Defendant, or the deficiency of any defence that has been or could have been asserted in the Actions;
- (b) of wrongdoing, fault, neglect or liability by the Defendant; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Actions after trial.

(2) Notwithstanding Section 6.2(1), this Settlement Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Courts contemplated by this Settlement Agreement, in a proceeding to approve or enforce this Settlement Agreement, or as otherwise required by law.

6.3 Restriction on Further Litigation

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, application or demand against any Releasee or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee in respect of any Released Claim.

SECTION 7- TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 General

- (1) This Settlement Agreement shall automatically terminate if:
- (a) the Ontario Court refuses to approve this Settlement Agreement;
 - (b) the Quebec Court denies the Quebec Settlement Application in both forms referred to in section 2.2;
 - (c) following the return of the Settlement Approval Hearings, the Ontario Court or the Quebec Court issues an order or orders which is or are not substantially in the form of the Approved Settlement Orders, and such orders become Final Orders; or
 - (d) an Approved Settlement Order is reversed on appeal and the reversal becomes a Final Order.
- (2) In the event this Settlement Agreement is terminated in accordance with its terms:
- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement;
 - (b) any Approved Settlement Order which has been granted will be null and void and set aside on the consent of the Parties;

- (c) subject to subsection 7.1(2)(e), the Escrow Settlement Funds will be returned to CIBC;
 - (d) this Settlement Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
 - (e) any costs reasonably incurred and paid out of the Escrow Account for performing the services required to prepare to implement this Settlement, and amounts paid for the publication and dissemination of notices are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel; and
 - (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against any party to this Settlement Agreement except in respect of a dispute over the enforcement of any terms of this Settlement Agreement including any purported termination of this Settlement Agreement.
- (3) Notwithstanding the provisions of Section 7.1(2)(d), if this Settlement Agreement is terminated, the provisions of this Section and Sections 1, 2, 3.1(4), 3.3(2), 4(1), 6.1, 6.2 and 12 shall survive termination and shall continue in full force and effect.
- (4) If this Settlement Agreement is terminated, CIBC shall apply to the Court for orders:
- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions listed in subsection 7.1(3);
 - (b) giving directions as to whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice; and
 - (c) authorizing the repayment of all remaining funds in the Escrow Account, including accrued interest, to CIBC, less any amounts specified in subsection 7.1(2)(e), if any.

7.2 Accounting of Monies in the Escrow Account Following Termination

- (1) In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Plaintiffs and CIBC no later than ten (10) days after the termination.

7.3 Disputes Relating to Termination

(1) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion made by a Party on notice to the other Parties.

7.4 No Right to Terminate

(1) For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class, or any of them, about the proposed distribution of the Settlement Funds or the Distribution Protocol shall give rise to a right to terminate this Settlement Agreement.

SECTION 8- DETERMINATION THAT THE SETTLEMENT IS FINAL

(1) The Settlement shall be considered final on the Effective Date.

SECTION 9 - RELEASES AND JURISDICTION OF THE COURT

9.1 Release of Releasees

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, waive and discharge the Releasees from the Released Claims.

(2) The Releasors covenant, represent and warrant that, as of the Effective Date, they have no further claims against the Releasees for, or arising out of, the Released Claims. In the event that the Releasors have made or should make any claims or demands or commence or threaten to commence any actions, claims or proceedings or make any complaints against the Releasees arising out of the Released Claims, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(3) The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendant is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in connection with this Settlement and the administration of the Settlement.

(4) The Releasors further acknowledge that they may hereafter discover facts in addition to or different from those facts which they know or believe to be true with respect to the Released Claims, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such

intention, this release and, subject to the provisions of Section 7, this Settlement Agreement shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

9.2 No Further Claims

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand in respect of any Released Claim against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees.

(2) In the event that the Releasors make any claim or commence any proceeding in respect of the Released Claims against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claims, demand, action, proceeding or complaint.

9.3 Dismissal of the Proceedings

(1) Upon the Effective Date, the Fresco Action shall be dismissed with prejudice and without costs.

(2) Upon the Effective Date, the Gaudet Action shall be either (i) dismissed with prejudice and without costs pursuant to art. 168 of the Quebec *Code of Civil Procedure* or discontinued without costs pursuant to art. 213 and 585 of the Quebec *Code of Civil Procedure*, or (ii) declared settled out of Court and without costs, in accordance with Section 2 of this Settlement Agreement.

9.4 Dismissal of Other Actions

(1) Upon the Effective Date, the Releasors shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent (and only to the extent) such Other Actions relate to Released Claims.

(2) Upon the Effective Date, all Other Actions commenced in Ontario by the Releasors, to the extent (and only to the extent) such Other Actions relate to Released Claims, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

(3) Upon the Effective Date, each member of the Quebec Class, with the exception of those excluded under Article 580(2) of the *Code of Civil Procedure*, shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his or her Other Actions against the Releasees, to the extent such (and only to the extent) Other Actions relate to the Released Claims.

(4) For clarity, any claims or causes of action by the Releasors that are not part of the Released Claims shall not be dismissed or otherwise prejudiced by the provisions of this subsection 9.4 or any other provision in this Settlement Agreement.

SECTION 10 – ADMINISTRATION

10.1 Appointment of the Administrator

(1) The Plaintiff, through Class Counsel, will take reasonable steps to retain an Administrator that: (i) assumes full responsibility for the Remittances; (ii) agrees to carry out those responsibilities in a timely and proper manner; and (iii) has sufficient insurance for any actions or omissions that it takes in respect of the Remittances, which insurance will extend to any liability asserted against the Defendant in respect of the Remittances, and the consequences in respect thereof.

(2) The Defendant will have a right to review the Administrator's insurance policy referred to above in Section 10.1(1) in advance of the Plaintiff formally retaining the Administrator to confirm the existence, scope, and sufficiency of the insurance.

(3) The Administrator will be required to disclose to the Parties the process by which it intends to withhold or remit the Remittances (including the nature and timing of any such withholdings or remittances) in advance of taking these steps to permit the Parties to consider the proposed process and to provide any comments on changes that ought to be made to the process.

(4) The Administrator will report to the Parties upon the payment of amounts to Class Members at the completion of any tranche or stage of payments to Class Members, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

(5) Subject to Section 10.1(4), the Defendant shall be entitled to communicate reasonably with the Administrator (copied to Class Counsel) at periodic intervals for the purpose of inquiring into, or confirming, the status of the Remittances.

(6) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed to Eligible Claimants, to implement this Settlement Agreement and to ensure that the Settlement Amount is distributed in accordance with the Order(s) of the Court(s).

10.2 Information and Assistance from the Defendant

(1) The Defendant shall, forthwith and prior to the hearing of the Notice of Settlement Approval Hearing Motion, provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records), and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position.;

(2) The Defendant will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(1) from Class Counsel and/or the Administrator. The Defendant's obligation to make itself reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Defendant's obligation to cooperate pursuant to this Section shall cease when all settlement funds or court awards have been distributed.

(3) The Administrator or Class Counsel may use the information obtained under section 10.2(1) or 10.2(2) for the purpose of delivering the Notice of Settlement Approval Hearing and the Approved Settlement Notice and for the purposes of administering and implementing this Settlement Agreement,

the Plan of Notice and the distribution of the Net Settlement Amount to Eligible Claimants and the Distribution Protocol.

(4) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

10.3 Method of Distribution

(1) The process of distribution of the Settlement Amount to the Class will be as set out in the Distribution Protocol or as may be otherwise directed by the Court.

10.4 Conclusion of the Administration and Other Matters

(1) The Plaintiffs hereby acknowledge and agree, and the Class Members are hereby advised and are deemed to have acknowledged and agreed, that the Plaintiffs, Class Counsel, the Defendant and its counsel have no obligation to provide, and are in fact not providing, any advice about any potential taxes, tax consequences, tax obligations, deductions, withholdings, any other potential consequences, or any payment, remittance or reporting obligations (whether statutory, regulatory or otherwise) (including, but not limited to, acts, omissions, issues or facts relating in any way to the Remittances or the calculation, reporting or payment thereof), relating to the terms of this Settlement or any compensation available, payable or paid to Class Members under the Settlement (the “**Tax and Other Issues**”). The Class Members shall have no claims or remedies as against the Plaintiffs, Class Counsel, the Defendant or its counsel in respect of the Tax and Other Issues, the Administration, and/or the Remittances.

(2) If the Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount, any balance sufficient, in the opinion of Class Counsel and the Administrator acting reasonably, to warrant further distribution shall be allocated among Class Members, in accordance with the Distribution Protocol or such other distribution method as approved by the Court. In the event that the balance remaining in the Escrow Account is not sufficient to warrant a further distribution, the balance shall be distributed *cy près* (and consistently with article 596 CCP, paragraph 3, of the Quebec *Code of Civil Procedure*) to a recipient or recipients approved by the Courts and to pay any further Class

Proceedings Fund Levy and any further amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(3) Upon conclusion of the administration, the Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account. Upon request by either Party or their counsel or by the Court, the Administrator will provide a report on the status of administration and distribution, and any related accounting to the particular date in question.

SECTION 11 - THE AGREEMENT AND CLASS COUNSEL FEES

11.1 Motion for Approval of Class Counsel Fees

(1) Following the Settlement Approval Motion (Fresco), it is anticipated that Class Counsel will seek the approval of Class Counsel Fees and Class Counsel Disbursements to be paid from the Settlement Fund. The Defendant acknowledges that it has no interest in relation to the approval of Class Counsel Fees and Class Counsel Disbursements, and as such will have no involvement in the fee approval process to determine the amount of Class Counsel Fees and Class Counsel Disbursements and it will not take any position or make any submissions to the Court concerning Class Counsel Fees and Class Counsel Disbursements, except as specifically requested and required by the Court.

(2) The approval, or denial, by the Court of any requests for Class Counsel Fees and Class Counsel Disbursements to be paid out of the Settlement Fund are not part of the Settlement provided for herein, except for the priorities of distribution as expressly provided in section 5(1) and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(3) Any order or proceeding relating to Class Counsel Fees and Class Counsel Disbursements, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement or affect or delay the finality of the Approved Settlement Order and the Settlement of this Action provided herein.

11.2 Payment of Class Counsel Fees

(1) In accordance with section 5(1)(a) herein, on or after the Effective Date, the Administrator shall pay from the Escrow Account to Sotos LLP in trust the Class Counsel Fees and Class Counsel Disbursements approved by the Court.

SECTION 12 - MISCELLANEOUS

12.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Settlement Agreement, its administration or implementation, and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Defendants Have No Responsibility or Liability for Administration

(1) Except for the obligations in respect of the performance of the obligations under subsections 3.1(1), 10.2(1) and 10.2(2), the Defendant shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol, including, without limitation, the processing and payment of claims and Remittances by the Administrator.

12.3 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Ontario Court shall retain exclusive and continuing jurisdiction over the Fresco Action, the Parties and the members of the Class to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Approved Settlement Order.

12.4 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court(s).

12.5 Binding Effect

(1) If the Settlement is approved by the Court(s) and becomes final as contemplated in Section 8(1), this Settlement Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendant, Class Counsel, the Releasees and the Releasors, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

12.6 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.7 Negotiated Agreement

(1) This Settlement Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.8 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

12.9 Acknowledgments

(1) Each Party hereby affirms and acknowledges that:

- (a) he/she or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained by counsel;

- (c) he, she or its representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement of any other Party beyond the terms of the Settlement Agreement, with respect to the Party's decision to execute the Settlement Agreement.

12.10 Counterparts

- (1) This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by email or facsimile shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.11 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Steven Barrett
GOLDBLATT PARTNERS LLP
Barristers and Solicitors
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
Tel: 416.979.6422
Email: sbarrett@goldblattpartners.com

David O'Connor
ROY O'CONNOR LLP
1920 Yonge Street, Suite 330
Toronto, ON M4S 3E6
Tel: 416.362.1989
Email: dfo@royoconnor.ca

Louis Sokolov
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Email: lsokolov@sotosllp.com

Marie-Claude St-Amant
MELANÇON MARCEAU GRENIER
COHEN S.E.N.C.
1717, boul. René-Lévesque Est
Bureau 300
Montréal QC H2L 4T3
Tel: 514.525.3414
Email: mcstamant@mmgc.quebec

For the Defendant:

Linda Plumpton
 Torys LLP
 79 Wellington St. W.
 Box 270, TD South Tower
 Toronto, ON M5K 1N2
 Tel. 416.865.0040
 Email: lplumpton@torys.com

John Field
 Hicks Morley Hamilton Stewart Storie LLP
 77 King St W., 39 Floor,
 Box 371, TD Centre
 Toronto, ON M5K 1K8
 Tel. 416.864.7301
 Email : john-field@hicksmorley.com

12.12 Language of Agreement

- (1) The Parties have specifically requested that this Settlement Agreement be drafted in English. *Les parties ont spécifiquement demandé que la présente transaction soit rédigée en anglais.*

12.13 Date of Execution

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

DARA FRESCO on her own behalf and on behalf of the Ontario Class, by her counsel:

Name of Authorized Signatory:

Steven Barrett

Signature of Authorized Signatory:



Goldblatt Partners LLP
 Ontario Counsel

Name of Authorized Signatory:

David F. O'Connor

Signature of Authorized Signatory:



Roy O'Connor LLP
 Ontario Counsel

Name of Authorized Signatory:

Louis Sokolov

Signature of Authorized Signatory:



Sotos LLP
 Ontario Counsel

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory: Marie-Claude St-Amant

Signature of Authorized Signatory:



Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Torys LLP

Name of Authorized Signatory:

Signature of Authorized Signatory:

Hicks Morley Hamilton Stewart Storie LLP

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:

Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory:

Linda Plumpton

Signature of Authorized Signatory:



Torys LLP

Name of Authorized Signatory:

John Field

Signature of Authorized Signatory:



Hicks Morley Hamilton Stewart Storie LLP

SCHEDULE “A”

APPROVED SETTLEMENT NOTICE (FRESCO – DIRECT NOTICE)

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

TO: 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 time from February 1, 1993 to 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

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

This Notice is directed to all individuals who fall within the definition noted above, except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by any outcome in) the case.

You are receiving this notice because a review of the records of the Defendant indicates that you are a Class Member (as described and defined above) 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 ● and Notice of Settlement Approval Hearing dated ●.

A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST CIBC FOR UNPAID OVERTIME

**PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES WHAT YOU NEED TO
DO IN ORDER TO BE COMPENSATED**

For more information about this class action and the settlement, please visit the following website cibcunpaidovertime.ca. If you have further questions, you can also contact the Settlement Administrator by email at info@settlement.ca, or by phone at [1-877-333-3333](tel:1-877-333-3333).

What was the case, and what is the settlement?

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(a) or 2(a) 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.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers 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 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). The Superior Courts of Ontario and Quebec approved the settlement as being fair, reasonable and in the best interests of the Class in reasons for decision released on ● and ●.

The settlement will result in payment of compensation to every eligible class member. Class members will not have 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**

What should I do?

If you are an eligible Class member and want money from the Settlement, complete the enclosed Settlement Payment Form and mail it to ● or complete the form online at ●. You must send the completed form by no later than ● (the "Filing Deadline"). After you complete the form and after the Filing Deadline has passed, you will get a cheque and letter explaining how the cheque was calculated.

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.

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.

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.

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.

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

You can read the full Distribution Protocol at www.cibcunpaidovertime.ca.

Where can I ask more questions?

For more information, please visit cibcunpaidovertime.ca. If you have questions that are not answered online or by email, **please contact the Court-appointed administrator** ● by email at ●, or by phone at ●.

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 3E6

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

Counsel for CIBC can be reached at: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2 Canada, (416) 865-0040.

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.

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 ● of the total settlement.

SCHEDULE “B”

APPROVED SETTLEMENT NOTICE (FRESCO – PUBLICATION)

CIBC UNPAID OVERTIME CLASS ACTION - SETTLEMENT APPROVED 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.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action lawsuit 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 representative plaintiff, Dara Fresco, sought compensatory and punitive damages for herself and on behalf of the class.

A settlement for \$153 million has been reached with CIBC.

The settlement applies to the following group of people (except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by the outcome in) the case:

(1) 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 time from February 1, 1993 to 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

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers 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 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.

The settlement will result in payment of compensation to every eligible class member. Class members will not have 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.**³

What should I do?

If you are an eligible Class member and would like to make a claim, or obtain more information about the settlement, obtain the contact information of the claims administrator and legal counsel in the file, or obtain the method for distributing funds please visit: <https://cibcunpaidovertime.ca/>.

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

³ 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.

SCHEDULE “C”***APPROVED SETTLEMENT NOTICE (FRESCO – DIGITAL BANNER)***

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? You may be entitled to a share of a \$153 million settlement of an overtime class action. Click [here](#) for more information.

SCHEDULE “D”
APPROVED SETTLEMENT ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	TUESDAY, THE
)	
JUSTICE BELOBABA)	7th DAY OF FEBRUARY 2023
)	

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(SETTLEMENT APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendant and dismissing this action was heard this day by judicial videoconference at Toronto.

AND ON READING the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there were ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Action has passed on [ntd: insert date], and ● persons validly and timely exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Class that did not validly opt out of this Action, as well as all Releasors, including those Persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasors shall be and is hereby dismissed against the Releasees, without costs and with prejudice, subject to the terms of section 9.4 of the Settlement Agreement.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim.

10. **THIS COURT ORDERS** that the direct notice of settlement approval (the “**Notice of Settlement Approval (“Direct”)**”) is approved, substantially in the form attached hereto as Schedule “A”.

11. **THIS COURT ORDERS** that the publication notice of settlement approval (the “**Notice of Settlement Approval (“Publication”)**”) is approved, substantially in the form attached hereto as Schedule “B”.

12. **THIS COURT ORDERS** that the digital banner notice of settlement approval (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**”) is approved, substantially in the form attached hereto as Schedule “C”.

13. **THIS COURT ORDERS** that the Plan of Notice for the purpose of the dissemination of notices of settlement is approved, substantially in the form attached hereto as Schedule “D”.

14. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

15. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

16. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

17. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

18. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed without costs and with prejudice.

The Honourable Justice Belobaba

SCHEDULE “E”
DISTRIBUTION PROTOCOL

DARA FRESCO AND SARAH GAUDET

(the “**Plaintiffs**”)

and

CANADIAN IMPERIAL BANK OF COMMERCE (the “Defendant**”)**

**CIBC OVERTIME CLASS ACTION NATIONAL DISTRIBUTION PROTOCOL
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SECTION 1- DEFINITIONS

For the purposes of this Distribution Protocol all defined terms have the same meaning as in the Settlement Agreement, unless specified otherwise.

(1) ***Employment Position*** means:

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

(2) ***Relative Share*** means the proportion of the Net Settlement Amount that individual Class Members will be entitled to.

(3) ***Tenure*** means the total calendar days between a Class Member's start date with CIBC and the Class Member's termination date with CIBC, according to the records of CIBC or as otherwise determined by the Administrator in accordance with section 6 of this Protocol, inclusive of the start and termination dates but excluding any time before or after the Class Period and excluding anytime that a Class Member did not occupy an Employment Position. For greater clarity, Tenure shall not include anytime for which a Class Member was not employed in an Employment Position within CIBC or any employment outside of CIBC.

SECTION 2– GENERAL PRINCIPLES OF THE DISTRIBUTION AND ADMINISTRATION

- (1) This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Amount recovered in the Actions.
- (2) This protocol is intended to ensure the claims procedure is user friendly, expedient, efficient and accessible to Class Members.
- (3) To ensure Relative Shares in the Net Settlement Amount are tailored to each individual Class Member, as much as reasonably possible, the Relative Share shall be a product of the yearly average wage applicable to Employment Positions held by a Class Member and the Tenure worked in each Employment Position. Class Members who worked longer in higher paying Employment Positions will receive relatively more than those who worked shorter periods of time in lower paid Employment Positions.
- (4) Class Members will not be required to establish hours worked or overtime hours worked under any circumstances. Class Members for whom Tenure and Employment Position information is available will only need to verify their identity, Social Insurance Number, contact information, and submit a Claim Form to be entitled to payment. For Class Members whose Tenure and Employment Position information is not available or disputed, the Class Member will be required to provide that information with supporting documentation, where reasonably available, and make a solemn declaration when submitting a Claim Form.

SECTION 3– DUTIES AND RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR

- (1) The Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreement and the ongoing authority and supervision of the Courts.
- (2) In addition to all duties imposed on the Administrator pursuant to the Settlement Agreement and otherwise as are reasonably required, requested or directed, the Administrator's duties and responsibilities shall include the following:

- (a) providing notice(s) to the Class Members as may be required;
- (b) receiving information from the Defendant, including Class Members' identifying information, start and termination dates, Employment Position(s), Tenure and average wage if available;
- (c) developing a database for calculating Class Members' Relative Share of the Net Settlement Amount pursuant to this protocol and for pre-populating the Claim Form with available Employment Position and Tenure data organized by calendar year;
- (d) making timely determinations of Class Members' Employment Positions and Tenure as required by Claim Forms and in the absence of available records from CIBC;
- (e) developing, implementing and operating the administration process including a bilingual administration website;
- (f) making timely calculations of Class Members' Relative Share of the Net Settlement Amount and notifying Class Members of their Relative Share and the inputs for the calculation;
- (g) arranging payment to Class Members in a timely fashion;
- (h) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement;
- (i) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Courts;
- (j) maintaining the administration information so as to permit Class Counsel to review the administration at the discretion of Class Counsel or if ordered by the Courts;
- (k) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;

- (l) providing Class Counsel and the Defendant with the proposed process for addressing the Remittances prior to doing so in accordance with section 10.1(3) of the Settlement Agreement;
- (m) calculating the amounts of the Remittances and withholding and remitting same within the time limits required by law;
- (n) preparing and distributing T4A forms to Class Members;
- (o) remitting amounts payable to the Class Proceedings Fund;
- (p) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Courts;
- (q) reporting to Class Counsel respecting Claims received, determination made and administration expenses;
- (r) holding the Net Settlement Amount in the Escrow Account and making all payments from the Net Settlement Amount from the Escrow Account as authorized;
- (s) cash management and audit control; and
- (t) preparing and submitting reports and records, and responding to reasonable inquiries, as directed or requested by Class Counsel or the Courts.

SECTION 4– RELATIVE SHARE CALCULATION

- (1) For each Class Member (including, as applicable, their heirs, executors, estates, successors, and assigns who wish to make claims) who submits a valid Claim Form, the Administrator shall use the records of CIBC, or make a determination as described in Section 6 below, to assign the Class Member to an Employment Position(s) by year of the Class Period. Where a Class Member became employed, or left employment or changed their Employment Position during a calendar year, such assignment will be on a pro-rated basis.
- (2) The Administrator shall then allocate the Class Member's Tenure to specific Employment Positions by year, or portion thereof, based upon the records of CIBC or the Administrator shall make a determination as described in Section 6 below.

(3) At the end of steps (1) and (2) above, the Administrator shall have for each Class Member their Employment Position(s) by year, or portion thereof, of the Class Period and the total Tenure applicable to each of the Class Member's Employment Positions by year.

(4) The Administrator shall have or obtain information relating to the average hourly wage applicable to each Employment Position by year of the Class Period. A single estimated average hourly wage shall be used for all Employment Positions for all Tenure prior to January 1, 2003, depending on the available records of CIBC.

(5) The Administrator shall then calculate points applicable to the Class Member's Claim Form. The total points applicable to a Claim Form shall be calculated by multiplying a Class Member's Tenure by the average wage applicable to the Employment Position in a given year, represented by the following formula:

$$\text{Tenure in Employment Position} \times \text{Average wage for Employment Position} = \text{points}$$

(6) The monetary value of one (1) point shall be calculated by dividing the Net Settlement Amount by the total numbers of points calculated from all valid Claim Forms, represented by the following formula:

$$\text{Net Settlement Amount} / \text{total points for all valid claims} = \text{monetary value of one (1) point}$$

(7) The Class Member shall then be awarded the monetary value of their points by multiplying their total points for all Employment Positions in the Class Period by the monetary value of a point.

(8) For any points calculated for Tenure outside the applicable provincial limitation periods listed below, the monetary value of each point shall be reduced by 50%.

Province	Applicable Legislation	Provincial Limitation Periods
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act</i> , 2002, S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ- 1991,	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005

	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c.	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8,	June 4, 2001 – June 18, 2009
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

- (9) Some consideration may be given to whether every Class Member who submits a valid claim shall be entitled to a minimum payment, to be determined subsequently.

SECTION 5 - THE ADMINISTRATION PROCESS

- (1) Generally, the claims administration will be as follows:

(a) **Step 1: Submission of Online Claim Forms and Confirmation of Records**

The Claim Form shall be made available on a secure website that will require Class Members to enter their first and last names, date of birth, Social Insurance Number, Address, email and phone number.

When a Class Member enters their first and last name on the online Claim Form it shall display the Class Member's Employment Position(s) and Tenure in the respective Employment Position(s) by year, or portion thereof. The Class Member will be asked to agree or disagree with the records presented at the time of submitting the Claim Form.

If a Class Member disagrees with the available records, or no records are responsive to the Class Member's name, the Class Member will be required to submit a Claim Form with what they claim are the correct Employment Position(s) and Tenure by year, or portion thereof, along with any available supporting records, and make a solemn declaration upon submission. The Administrator shall then determine the

applicable Employment Position(s) and Tenure by year and notify the Class Member of their determination. The determination process shall be governed by the procedure described in Section 6.

(b) **Step 2: Correction of Deficiencies**

If the Administrator finds that deficiencies exist in a completed Claim Form, the Administrator shall forthwith notify the Class Member of the deficiencies. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of the Claims Bar Deadline or sixty (60) days from the date of the request from the Administrator to rectify the deficiency, although the Administrator may consider late corrections of deficiencies in their discretion.

(c) **Step 3: Identification and Prevention of Potentially Fraudulent Claims**

The administrator shall flag potentially fraudulent claims, including those with a P.O. box address, an address outside of Canada, claims using the same mailing address, phone number or email and duplicate claims by name. Such claims will be set aside for review and follow-up by the Administrator and provided to Class Counsel.

(d) **Step 4: Calculation of Relative Share**

After all Claims Forms are received with Class Members agreeing to the available records and all final determinations of Employment Position(s) and Tenure made in accordance with Section 6, the Administrator shall calculate the Relative Share of each Class Member.

(e) **Step 5: First Distribution**

Class Members shall be sent a cheque consisting of 70% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, and Class Proceedings Fund (“CPF”) Levy (“First Distribution”).

(f) **Step 6: Second Distribution**

Within a set time after the First Distribution, the Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 30% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, CPF Levy, and amount owing to the Fonds d'aide aux actions collectives. The Relative Shares of the Second Distribution may be adjusted and may not account for the remaining 30% of the First Distribution to account for, among other things, any errors identified following the First Distribution and potential acceptance of late claims ("Second Distribution").

(g) **Step 7: Remittance**

The Administrator will make the Remittances to the Canada Revenue Agency and any other applicable government entities, including Revenu Québec and provide T4A and related forms to Class Members, including RL-1 forms to Quebec Class Members. The Administrator will remit the CPF Levy to the CPF and, if required, any amounts owing to the Fonds d'aide aux actions collectives in Quebec.

(h) **Step 8: Report**

The Administrator will report to the Plaintiffs and Defendant upon the payment of Relative Shares to Class Members at the completion of the First and Second Distributions, or any other payment tranches, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

SECTION 6- DETERMINATIONS OF EMPLOYMENT POSITION(S), TENURE AND EMPLOYMENT YEARS

- (1) An absence of CIBC records showing Employment Position(s) or Tenure for a Class Member shall not prohibit entitlement to a Relative Share of the Net Settlement Amount.

(2) In the event a Class Member disputes the records of CIBC regarding Tenure, Employment Position(s) or years of employment, or no such records exist, the Class Member shall complete a Claim Form and shall advise the Administrator of the claimed Employment Position(s), Tenure and years of employment and provide documentation and/or written reasons in support of their claim, all to be solemnly affirmed.

(3) The Claims Administrator may ask the Class Member further questions in their discretion, but the Class Member shall not be subject to cross-examination or inquires from the Defendant under any circumstances.

(4) The Administrator shall review the information provided in paras (2) to (3) above and make a determination as to the applicable Employment Position(s), Tenure and employment years. The principles of access to justice, expediency and accessibility shall guide all determinations. The Administrator shall, within a reasonable time frame, advise the Class Member of its determination, by email or letter mail. The determination of the Administrator is final and not subject to appeal in any court or review in any manner by any court, tribunal, board or authority.

(5) Class Counsel shall review the first thirty (30) determinations prior to the determination being communicated to the Class Member. Class Counsel may review further determinations as reasonably requested or required, and may ask for reports regarding the total determinations made and statistics regarding the outcomes of the determinations, plus further information in their discretion.

(6) No appeals shall lie by any Class Member based on distributions made substantially in accordance with this Protocol, or with any other order or judgment of the Courts. No claims shall lie against Class Counsel or the Defendant based on this Protocol, or based on any distributions made substantially in accordance with this Protocol, or the reporting or withholding of Remittances, or with any other order or judgment of the Court on any terms of this Protocol.

SECTION 7- CLASS COUNSEL

(1) Class Counsel shall oversee the claims process and provide assistance and directions to the Administrator regarding this Distribution Protocol and the claims process.

- (2) Class Counsel shall have no role in the calculation of individual entitlements or the calculation and remittance of income taxes, CPP or EI.

SECTION 8- RESIDUAL DISCRETION

- (1) Notwithstanding the foregoing, if, during the administration, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Courts for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Net Settlement Amount.
- (2) In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Administrator.

SECTION 9- RESIDUAL DISTRIBUTION

- (1) If there remains any amount of the Net Settlement Amount after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Courts to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy-près* or article 596, paragraph 3 CCP distribution, if appropriate.
- (2) Under no circumstances will any residual amounts from the Net Settlement Amount revert to CIBC.

SECTION 10- CONFIDENTIALITY

- (1) All information received from the Defendant or the Class Members is collected, used, and retained by the Administrator pursuant to, inter alia, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any analogous provincial legislation as may be applicable, for the purposes of administering their Claims.
- (2) All reasonable steps shall be taken to ensure the identity of Class Members submitting Claims Forms is kept confidential from the Defendant. The Defendant shall be entitled to see aggregate

statistics on the number of claims made, average value of claims and total payment made. The Defendant will not be entitled to know the identity of Class Members who submit a Claim Form or how much individual Class Members are awarded, except as required by regulatory or tax reporting requirements.

SCHEDULE “F”

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIRECT NOTICE)

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.

You are receiving this notice 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 ●.

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(a) or 2(a) 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.**⁴

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 February 7, 2023 at 10:00 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.

Who 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:

(1) 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 time from February 1, 1993 to 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*

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

⁴ 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.

If you are unsure whether you are a class member, please contact [●](#).

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.

What steps should I take now?

Class Members and members of the public may attend the settlement approval hearing on February 7, 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 January 27, 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 hearing, a link will be posted at 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.⁵ 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 February 7, 2023 at 10:00 a.m. (Eastern). A link will be posted at 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 3E6

Sotos LLP can be reached at:

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

Email: info@sotosclassactions.com

⁵The 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.

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 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.

SCHEDULE “G”

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – PUBLICATION)

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.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action, known as *Fresco v. Canadian Imperial Bank of Commerce*, 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. Compensatory and punitive damages were sought on behalf of the class.

A settlement for \$153 million has been reached with CIBC, pending Court approval.

The settlement applies to the following group of people except those who previously took steps in 2013 to opt-out (i.e. ask to be removed) from the case:

(1) 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 time from February 1, 1993 to 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

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

A Court hearing in Toronto, Ontario has been scheduled for February 7, 2023 to consider whether to approve the settlement, the method for distributing funds to class members, and the requested legal fees.

If you would like to learn more information about the proposed settlement, the lawyers representing the parties, or the claims administrator or the proposed method for distributing funds and Class Counsel's fee request please visit: <https://cibcunpaidovertime.ca/>.

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

SCHEDULE “H”***NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIGITAL BANNER)***

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? A hearing to consider approval of a \$153 million settlement is scheduled for February 7, 2023. Click [here](#) for more information.

SCHEDULE “I”
NOTICE OF SETTLEMENT APPROVAL HEARING ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	●DAY, THE
)	
JUSTICE BELOBABA)	●th DAY OF DECEMBER 2022
)	

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(NOTICE APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the Notice of Hearing for the Motion for Settlement Approval, Distribution Protocol Approval and Fee Approval and the method of dissemination of said notice was heard this day by judicial videoconference / in writing at Toronto.

AND ON READING the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that the direct notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Direct”)**) is approved, substantially in the form attached hereto as Schedule “**A**”.
2. **THIS COURT ORDERS** that the publication notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Publication”)**) is approved, substantially in the form attached hereto as Schedule “**B**”.
3. **THIS COURT ORDERS** that the digital banner notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**) is approved, substantially in the form attached hereto as Schedule “**C**”.
4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (“Direct”) be disseminated by direct mailings via email and/or direct mail to Class Members;
5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (Publication) and the Notice of Settlement Approval Hearing (“Digital Banner”) will be disseminated in accordance with the Notice Plan, attached hereto as Schedule “**D**”.
6. **THIS COURT ORDERS** that ● be appointed as administrator to disseminate the Notice of Hearing.
7. **THIS COURT ORDERS** that within ■ days following this Order, the Defendant, through its Counsel, will provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records) and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position;

8. **THIS COURT ORDERS** that within ten days following the receipt of the list described in paragraph 7 above, ● will disseminate the direct notices and the Class Counsel will publish the notices.

The Honourable Justice Belobaba

SCHEDULE “J”
AGREED PRESS RELEASE

FOR IMMEDIATE RELEASE:

December ●, 2022

Settlement Reached in CIBC Unpaid Overtime Class Action Lawsuits

The parties have agreed to settle class actions, launched in 2007, by retail branch employees alleging systemic unpaid overtime.

The settlement provides that CIBC will pay a total of \$153 million, which will be used to compensate approximately 30,000 class members (current and former front-line retail staff) for unpaid overtime, and also used to pay for legal fees and for the cost of distributing the settlement funds. The settlement must be approved by the Ontario Superior Court before it will become binding. A motion will be brought in February 2023 for approval of the settlement, a plan to distribute the settlement funds and payment of legal fees.

The settlement was reached after 15 years of contested litigation, and months of negotiation, which followed decisions on liability by the Ontario Superior Court and Court of Appeal. The Court left the calculation of compensation and CIBC’s related defences to a further hearing, which will no longer be necessary because of the negotiated settlement.

Dara Fresco, the former CIBC Bank teller, who brought this case in 2007, stated that she is pleased with the settlement. “It is good news for the class to have this case finally resolved”, said Ms. Fresco. “I am very happy that the case is settling. This settlement is a fair compromise that will bring meaningful compensation to thousands of my fellow class members.”

Class Counsel stressed that the settlement will provide for a simple and easy method for class members to be paid. “A big advantage of this settlement is that class members will not have to prove their claims, a task that could be challenging in cases where some claims may go back nearly 30 years.” “We believe that this settlement will put more money into more class members’ hands, a lot sooner, than would happen if the case continued to be fought.”

This is Exhibit "B" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CONTINGENCY FEE RETAINER AGREEMENT

1. Dara Fresco (hereinafter the "claimant"), hereby retains and employs the firms of Sack Goldblatt Mitchell LLP and Roy Elliott Kim and O'Connor LLP (collectively "Class Counsel") as her counsel in a national class proceeding pursuant to the *Class Proceedings Act* (the "Class Proceeding") against the Canadian Imperial Bank of Commerce ("CIBC") for failure to compensate its non-management employees for the overtime they have worked in excess of their standard working hours. The Claimant agrees to be the representative Plaintiff in the Class Proceeding.
2. The claimant authorizes Class Counsel to retain and instruct other counsel outside Ontario ("Regional Counsel") to assist in representing the interests of class members who reside outside Ontario.
3. The claimant agrees that the representation will be pursued on a contingency basis, such that all fees and disbursements and taxes of Class Counsel and Regional Counsel (the "legal fees"), will be payable only in the event of success. The claimant has discussed with Class Counsel retainer options other than by way of a contingency fee agreement, including retainer by way of an hourly rate retainer. The claimant has chosen to retain Class Counsel by way of a contingency fee agreement.
4. The claimant agrees that upon the successful resolution of the class proceeding, as defined in paragraph 9 below, the legal fees will be calculated on one of the

- 2 -

following two bases, the selection of which is to be made at the sole discretion of Class Counsel, subject to approval of the Court as provided by paragraph 10 below,

Contingency Percentage

- (a) the contingency fee shall be 30% plus G.S.T. of the settlement or judgment proceeds on behalf of all class members, net of disbursements;
or

Contingency Multiplier

- (b) the contingency fee shall be 4 x the ordinary hourly rates of counsel.

5. Any disbursements (and applicable taxes thereon), incurred by Class Counsel or Regional Counsel, not paid directly by the defendant, will be payable as a first charge against any settlement on judgment proceeds;

Example of Fee Calculation Under Contingency Percentage

6. If the class proceeding results in a settlement or judgment equal to \$10,000,000.00, and if Class Counsel and Regional Counsel have incurred disbursements, and taxes on these disbursements, of \$200,000.00, then the sum of \$200,000.00 will be paid first to Class Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be \$2,940,000.00 (30% of \$9,800,000.00) plus \$176,400.00 (G.S.T.), leaving \$6,683,600.00 for distribution to class members.

Example of Fee Calculation Under Contingency Multiplier

7. If the class proceeding results in a settlement on judgment equal to \$10,000,000.00, and if Class Counsel and Regional Counsel have incurred disbursements, and taxes on these disbursements, of \$200,000.00, and docketed time at their ordinary hourly rates (set out in Schedule "A") totalling \$750,000.00, then the sum of \$200,000.00 will be paid first to Class Counsel and Regional Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be \$3,000,000.00 (4x docketed time of \$750,000) plus \$180,000.00 (G.S.T.), leaving \$6,620,000.00 for distribution to class members (\$10,000,000.00, less \$200,000.00 disbursements, less \$3,000,000.00 contingency multiplier, less \$180,000.00 GST on fees).
8. Any costs ordered by the Court to be paid, and paid by the defendants to the class members, shall be paid to Class Counsel and applied against the legal fees owing to Class Counsel. The balance of the legal fees owing to Class Counsel will be paid out of the payment by the defendant to the claimant or class members.
9. Successful resolution of the class proceeding means:
 - (a) a judgment on the common issues in favour of some or all class members;
or
 - (b) a settlement that benefits one or more class members.

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10. The legal fees are subject to approval by the Superior Court of Justice.
11. Class Counsel reserves the right to terminate this retainer agreement, at their sole discretion, prior to the certification of the class. After certification of the class and/or obtaining funding from the class proceeding fund, Class Counsel may terminate this retainer only with the agreement of the claimant, or if in the opinion of Class Counsel, additional evidence has been obtained or changes in the law have occurred which would, in the reasonable opinion of Class Counsel, make it unlikely that the class proceeding would succeed.
12. The claimant may terminate the retainer at any time. In the event that there is subsequently a successful resolution of the class proceeding, she shall be liable to pay the legal fees as provided for in paragraph 4, above.
13. The claimant has the right to decide whether or not to accept an offer to settle the claim. However, if, prior to trial, a settlement offer is made to the claimant which Class Counsel recommends be accepted, and which the claimant does not accept, Class Counsel may terminate this contingency fee retainer agreement. In such instance, the claimant will be responsible to forthwith pay Class Counsel's fees incurred to date, as calculated on the basis of the solicitors' regular hourly rates, plus G.S.T., in addition, to any disbursements incurred.
14. This retainer agreement automatically terminates upon receipt of judgment at trial in the event that the class proceeding is unsuccessful at trial. If the class

- 5 -

proceeding is successful at trial, this retainer agreement shall continue in respect of any appeals or references or other proceedings to complete or enforce a successful trial judgment.

15. If the class proceeding is unsuccessful at trial, and the claimant retains new counsel to represent her on appeal, and the appeal is successful, the legal fees as provided for in paragraph 4, shall be a first charge on any judgment or settlement subsequently obtained.
16. Class Counsel agree to make application to the Class Proceedings Fund to indemnify the claimant with respect to any costs award made against her as a result of the class proceeding.
17. The claimant acknowledges and agrees that, in retaining Class Counsel to provide the legal services described in this retainer, the collection, use, retention and disclosure of personal and other sensitive information may be required in order to fulfill those services and related obligations.

IN WITNESS WHEREOF the undersigned have executed this Retainer Agreement by their hands and seals.

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Signed this 5 day of June, 2007.

Edna Dominguez
Witness

Dara Fresco

Signed this 5 day of June, 2007.

SACK GOLDBLATT MITCHELL, LLP

Edna Dominguez
Witness

Per:

Louis Sokolov

Signed this 5 day of June, 2007.

ROY ELLIOTT KIM and O'CONNOR, LLP

Witness

Per:

R. Douglas Elliott

This is Exhibit "C" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CANADA

(CLASS ACTION)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000 404-075

SARAH GAUDET, domiciled and
residing in 991 L'Habitat street,
apt. 5, Sherbrooke, district of St-
François, province of Quebec,
J1H 6H9

Petitioner

vs.

**CANADIAN IMPERIAL BANK
OF COMMERCE**, having a place
of business at 1155 Boul. Rene-
Levesque West, district of
Montreal, province of Quebec,
H3C 3B2

Respondent

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO BE GRANTED THE STATUS OF REPRESENTATIVE**
(Section 1002 C.p.c.)

IN SUPPORT OF THE PRESENT MOTION, THE PETITIONER STATES THE
FOLLOWING:

1. **The Petitioner wishes to institute a class action on behalf of persons that are a part of the following group, of which the Petitioner is herself a member:**

All persons, currently and formerly employed as non-management, non-unionized employees of CIBC who are or were tellers or other front line customer service employees (limited to personal bankers, commercial bankers and account executives) working at CIBC retail branch offices across Quebec.

THE PARTIES

2. The Petitioner Sarah Gaudet is a former non-management, non-unionized, front line customer service employee who worked for the Respondent CIBC between 1999 and 2006;
3. The Respondent CIBC is a Canadian chartered bank with its head office in Toronto and with offices and branches across Quebec as well as a place of business in Montreal. It was formed through the merger of the Canadian Bank of Commerce and the Imperial Bank of Canada in 1961, and continued under the *Bank Act, 1991, R.S.C. c. 46*;
4. The Respondent CIBC is one of Canada's largest corporations. As at the end of the 2006 business year, it had assets in excess of 29 billion dollars and profit of over 2.6 billion dollars. Profits generated from retail banking operations are very important to the total profits of the CIBC.
5. CIBC has hundreds of retail branch offices and more than 38,000 current employees in Canada, most of whom are non-management. In addition, CIBC has tens of thousands of former non-management employees. Approximately one third of CIBC non-management employees provide retail banking services at CIBC retail branch offices in Canada.
6. Approximately 8,6% of these employees are in Quebec;
7. Almost none of the CIBC employees are unionized. There is little or no job security for the class members, and vast inequality of bargaining power between them and the CIBC.
8. **The facts that support an individual claim by the Petitioner against the Respondent are as follows:**
 - 8.1. The Petitioner began working for CIBC in December 1999;
 - 8.2. She was hired as an « on-call » employee for many retail branches in the region of Estrie and worked full-time in the summers;
 - 8.3. In 2001, she got a position in a retail branch in Lennoxville;
 - 8.4. In 2002, she got another position in a retail branch in Waterville;
 - 8.5. At the end of 2002 and the beginning of 2003, she worked for six months as a trainer for employees in different retail branches;
 - 8.6. In 2003, she went to work in a branch in Coaticook as a non-management, non-unionized, front line customer service employee;

- 8.7. In 2004, she moved to the Lennoxville branch and again worked as a non-management, non-unionized, front line customer service employee;
- 8.8. She left CIBC's employ in August 2006;
- 8.9. She worked as a full-time employee;
- 8.10. Her annual salary at the time was 31 200\$;
- 8.11. During her employment for the CIBC, the Petitioner has worked, on average, approximately two and a half hours to five hours per week beyond the standard hours of work that she was paid for;
- 8.12. The Petitioner was required to work the additional time in order to complete the basic duties of her position as known to, or directed by the CIBC. She has been directed by the CIBC not to report any of this additional time on her time sheets and not to make any claim for overtime;
- 8.13. The Petitioner was also required to attend work-related meetings that took place outside her standard work hours, for which she was never paid;
- 8.14. The approximate value of the additional time, for which she has not been paid, is as follows :

Year	Amount
2004	4,410.00 \$
2005	4,410.00 \$
2006	1,800.00 \$

- 8.15. The contents of paragraph 9 are applicable to the Petitioner individually as well as a member of the group;

9. The facts that support a claim by the members of the group including the Petitioner against the Respondent are as follows:

- 9.1. The Petitioner brings this action on her own behalf and on behalf of a class of persons consisting of current and former non-management, non-unionized employees of CIBC in Canada who are or were tellers or other front-line customer service employees

(limited to personal bankers, commercial bankers and account executives) working at CIBC retail branch offices across Quebec (the "class" or "class members") and who were not paid for hours worked beyond their standard work week;

- 9.2. The duties performed by class members or the duties associated with the various positions held by members of the class, as well as the policies and practices of CIBC which affect their conditions of employment, are relatively uniform and consistent throughout CIBC's branches. Tellers and the other positions within the class definition at every branch are required to perform substantially the same duties;
- 9.3. As CIBC knew or should have known, or as it directed or permitted, the class members are consistently required to work additional hours in order to complete the common duties of their positions. In addition, CIBC has expressly required or directed employees to perform additional functions from time to time for which class members have not been paid, or have not been paid at the contractually or statutorily mandated rates;
- 9.4. CIBC has required, encouraged or permitted class members to record only their standard hours of work and has discouraged employees from submitting claims for overtime. When class members have had the temerity to claim overtime, CIBC has often refused, as a matter of practice or policy, to pay for the hours worked and has done so without lawful excuse. In fact, as set out in the Current Overtime Policy, described below, in the absence of prior approval, CIBC will refuse to pay overtime to class members unless the class member establishes that extenuating circumstances are present;

SOURCES OF THE OBLIGATION TO PAY OVERTIME

CONTRACTUAL

- 9.5. The class members consist of both full-time and part-time employees of CIBC.
- 9.6. Full-time class members are under contract for 37.5 hours of work per week. They are entitled to be paid overtime at time and a half their regular hourly rates pursuant to their contracts of employment for hours worked in excess of eight hours per day and 37.5 hours per week.

- 9.7. Part-time employees are also entitled to be paid at time and a half their regular hourly rates pursuant to their contracts of employment for their work in excess of eight hours per day and 37.5 hours per week.
- 9.8. Further and in the alternative, it is an express or implied contractual term that both full and part-time class members are entitled to be paid for time worked in excess of their contractual maximum hours at their regular hourly rates up to 40 hours per week, after which they are entitled to be paid overtime at one and a half times their regular hourly rates pursuant to the *Canada Labour Code, L.R.C., (1985), ch. L-2* (hereafter "the Code");

STATUTORY

- 9.9. CIBC is a federally regulated corporation. It is required to comply with the minimum conditions set out in the Code in respect of such matters as wages, hours of employment, and severance entitlement. The minimum standards contained in the Code, including those relating to overtime, seek, among other things, to protect vulnerable employees from undue exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting unlawfully onerous terms and conditions of employment;
- 9.10. Pursuant to section 169 of the Code:
 - "(a) the standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week; and
 - (b) no employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week.";
- 9.11. Section 174 of the Code further provides that:
 - "When an employee is required or permitted to work in excess of the standard hours of work, the employee shall, subject to any regulations made pursuant to section 175, be paid for the overtime at a rate of wages not less than one and one-half times his regular rate of wages."
- 9.12. Regulations promulgated pursuant to the Code (namely, section 24 of the *Canada Labour Standards Regulations, C.R.C., c. 986*) oblige an employer, including CIBC, to accurately record and maintain records of its employees' hours of work. Accordingly,

CIBC should have accurate records of all hours of work for the class members;

- 9.13. The Code further provides, in section 168, that its minimum standards apply notwithstanding any other law or any custom, contract or arrangement;
- 9.14. The requirements of the Code and its regulations, and in particular the requirements to pay for additional time, including but not limited to time and one-half for hours in excess of 8 hours per day or 40 hours per week, and to keep accurate records of hours of work, are implied terms in the contracts of class members;

THE CURRENT OVERTIME POLICY

- 9.15. In April 2006, CIBC instituted the Current Overtime Policy, a copy of which is filed hereby as exhibit **P-1**. It applies “to all employees of CIBC and its controlled subsidiaries whose employment relationship is governed by Canadian law” and who are not exempt from the overtime entitlements set out in the Code;
- 9.16. The Current Overtime Policy provides for payment at one and a half times salary for the “greater of the daily or weekly totals worked in excess of regular hours (37.5 per week or 8 hours per day.)”;
- 9.17. However, the Current Overtime Policy restricts payment of overtime to those situations where employees have received advance prior approval or where there have been “extenuating circumstances” and approval is obtained as soon as possible thereafter. It thereby purports to excuse CIBC from any obligation to pay overtime if pre-authorization is not obtained from management. The Current Overtime Policy does not allow for payment of overtime to persons, like the class members, who are routinely required or permitted to work overtime to fulfil the basic duties of their employment;
- 9.18. The Current Overtime Policy therefore expressly places barriers to claims for overtime, and attempts to shift the burden from management to the class members. To this extent the Current Overtime Policy is in violation of the Code;
- 9.19. At the last branch where the Petitioner has worked and in other branches across Quebec, the class members, including the Petitioner, have regularly worked in excess of their agreed upon regular daily hours of work, to perform work or services for CIBC’s benefit and at its direction or with its permission and knowledge;

- 9.20. At the last branch where the Petitioner has worked and in other branches across Quebec, class members were directed to prepare time records that described their hours of work as no more than their regular daily hours of work, notwithstanding that they worked in excess of their standard hours.
- 9.21. The practices referred to in paragraphs 9.19 and 9.20, above, are the result of a uniform, consistent and systemic practice of CIBC to refrain from paying class members compensation for additional hours of work, notwithstanding its contractual and statutory obligations to do so.
- 9.22. All class members are similarly directed by CIBC not to report any of their additional time on their timesheets and not to make any claim for such additional hours, which CIBC knows are necessary in order to complete the standard job requirements such as balancing before leaving work.
- 9.23. CIBC's practice of not paying compensation for additional hours was accentuated over the previous decade, during which CIBC reduced its Canadian workforce by more than 20%;
- 9.24. During this period, CIBC instituted a "Performance Management and Measurement System" for employees demanding increasing financial performance and maintaining or improving the level of operational activities from a consistently decreasing pool of employees;
- 9.25. As a result, class members across Quebec continue to work additional hours, for which they are not paid, in order to satisfy the basic requirements of their jobs or at the specific direction of CIBC;
- 9.26. CIBC has breached the express or implied terms of its contracts of employment with the class members by failing to pay for additional hours;
- 9.27. In the alternative, CIBC has breached the implied terms of its contracts of employment with class members that it comply with the Code requirements to pay for additional hours;

THE RESPONDENT HAS BEEN UNJUSTLY ENRICHED

- 9.28. CIBC has been unjustly enriched as a result of receiving the benefit of the services of the Petitioner and the other members of the class. The precise value is not known to the Petitioner but is within, or should be within, the exclusive knowledge of CIBC as it is required

to accurately record the overtime worked by class members under the Code.

- 9.29. The Petitioner and the other members of the class have suffered a deprivation, in the form of wages corresponding to the unpaid overtime hours that they have worked.
- 9.30. There is no juristic reason for this unjust enrichment. The CIBC's former overtime policy, that allowed CIBC in its discretion to refuse to approve overtime after it was claimed, was unlawful and does not supply a juristic reason. CIBC's Current Overtime Policy is similarly unlawful and does not supply a juristic reason.

BREACH OF EMPLOYER'S DUTY OF GOOD FAITH

- 9.31. Being non-management employees, members of the class are in a position of vulnerability in relation to the Respondent. As a result, the Respondent owes a duty to act in good faith towards its employees, in particular towards the class, and to honour its statutory and contractual obligations towards the class.
- 9.32. CIBC has breached its duty of good faith by, inter alia:
 - (a) failing to pay for the additional hours of work of the class members despite permitting such work to be performed;
 - (b) failing to advise the class members of their right to recover for such additional hours and, in particular, the implied terms of their contracts under the Code and its regulations as referred to above;
 - (c) directing employees to not record additional hours or the actual hours worked;
 - (d) failing to maintain accurate records of all actual hours worked by the class members; and
 - (e) creating a working environment and circumstances in which vulnerable, non-management employees are compelled to:
 - (i) work additional hours in order to carry out the duties assigned to them;
 - (ii) not report such additional hours; and

(iii) not attempt to claim or obtain compensation for their additional hours.

10. **The composition of the group makes the application of sections 59 or 67 C.p.c. impractical and difficult, considering that there are thousands of members and that it is impossible for the Petitioner to obtain a mandate from each member of the group;**
11. **The questions of law and fact that are identical, similar or related for each member of the Group and that the Petitioner seeks to have answered are the following :**
 - 11.1. Did CIBC violate the law, its contractual obligations and its obligation to act in good faith and was enriched unjustly by refusing to pay for the hours worked by its non-management, non-unionized employees and former employees working for retail branches in Quebec?
 - 11.2. If so, then did the members incur damages as a result?
12. **The only question of law and fact that is particular to each employee is the following :**
 - 12.1. What is the amount owed by CIBC in damages to each member of the group?
13. **It is suitable to authorize the institution of a class action for the benefit the members of the group for the following reasons;**
 - 13.1. The class members as individuals risk losing their jobs if they pursue individual claims. The class members as individuals cannot match the resources of the CIBC. The individual claims of each class members would not be economical to pursue as individual claims in individual lawsuits. The class members will be denied access to justice in the absence of a class proceeding;
 - 13.2. It is unlikely that an individual could or would seek prospective relief to deter future overtime misconduct by CIBC. Moreover, CIBC is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its behaviour. This class proceeding is likely to produce a voluntary change in the behaviour of CIBC;
14. **The nature of the recourse instituted by the Petitioner is an action in damages;**

15. **There has already been a motion for authorization to institute a class action in front of the Superior Court of Ontario, record # 07-CV-334113CP for the same claim, a copy of which is filed hereby as exhibit P-2;**

16. **The Petitioner asks for the following conclusions:**

GRANT the action of the Petitioner;

GRANT the class action for all the members of the group;

CONDEMN the Respondent to pay all the members the amounts representing damages resulting from the Respondent's actions for an approximate amount of seventy-five (75) million dollars or any other amount that the Court deems just;

17. **The Petitioner asks that she be granted the status of Representative;**

18. **The Petitioner is able to ensure an adequate representation of the members for the following reasons :**

18.1. She is a member of the group and worked at CIBC for nearly seven years;

18.2. She is able to collaborate with her attorneys and carry out all the necessary procedures for them to accomplish their mandate;

18.3. She has ample knowledge of the facts that support the claim;

18.4. She has shown the will and has the availability to assist and collaborate adequately with her attorneys;

19. **The Petitioner proposes that the class action be instituted in front of the Superior Court, in the district of Montreal, for the following reason:**

19.1. The Superior Court in the district of Montreal has the jurisdiction to rule on this claim considering that the Respondent has an establishment in the district of Montreal and the cause of action for the Petitioner has taken place in the district of Montreal.

FOR THESE REASONS, may it please this honourable Court to:

AUTHORIZE the present motion;

GRANT the Petitioner Sarah Gaudet the status of representative on behalf of the following group:

All persons, currently and formerly employed as non-management, non-unionized employees of CIBC who are or were tellers or other front line customer service employees (limited to personal bankers, commercial bankers and account executives) working at CIBC retail branch offices across Quebec.

AUTHORIZE the institution of a class action against CIBC, for the following collective questions:

Did CIBC violate the law, its contractual obligations and its obligation to act in good faith and was enriched unjustly by refusing to pay for the hours worked by its non-management, non-unionized employees and former employees working for retail branches in Quebec?

If so, then did the members incur damages as a result?

IDENTIFY as follows the conclusions that are sought:

GRANT the action of the Petitioner;

GRANT the class action for all the members of the group;

CONDEMN the Respondent to pay all the members the amounts representing damages resulting from the Respondent's actions for an approximate amount of seventy-five (75) million dollars or any other amount that the Court deems just;

DECLARE that any member of the group who did not request to be excluded as a member be bound by all judgments relating to the class action;

DETERMINE the delay beyond which a a member can no longer request his exclusion from the group as being sixty (60) days after the date of the notice to the members;

DECLARE that after this date, all members that have not requested their exclusion from the group be bound by all judgments relating to the class action;

ORDER the publication of the notice to the members at the latest thirty (30) days after a judgment is rendered on the present motion;

REFER the record to the Chief Justice in order for him to fix the district in which the class action will be brought;

In the event that the class action will be brought in another district than the district of Montreal, **ORDER** the Court clerk to transfer the current record to the clerk for the designated district;

The whole, with costs, including the costs for the notice to the members and the experts and interest at the legal rate increased by the additional indemnity as provided by section 1619 of the Civil Code of Quebec.

THE WHOLE RESPECTFULLY SUBMITTED.

Montreal, June 18th, 2007

~~(S) Melançon, Marceau, Grenier et Sciortino~~

Melançon, Marceau, Grenier et
Sciortino
Attorneys for Petitioner

CERTIFIÉ CONFORME

Melançon, Marceau, Grenier et Sciortino
MELANÇON, MARCEAU,

GRENIER & SCIORTINO, AVOCATS

NOTICE OF PRESENTATION

TO :

Canadian Imperial Bank of Commerce
1155, boul. René-Lévesque West
Montreal (Quebec) H3C 3B2

TAKE NOTICE the Motion of Petitioner for Motion for Authorization to Institute a Class Action and to be Granted the Status of Representative will be presented for decision to one of the honourable judges of the Court Superior, of the district of Montreal, sitting in practice division, at the Montreal Courthouse, located at 1, Notre-Dame Street East, in room 2.16, on July 17th, 2007 at 9h00

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, June 18th, 2007

(S) Melançon, Marceau, Grenier et Sciortino

**Melançon, Marceau, Grenier
et Sciortino, s.e.n.c.
Attorneys for Petitioner**

CERTIFIÉ CONFORME

Melançon, Marceau, Grenier et Sciortino
MELANÇON, MARCEAU,
GRENIER & SCIORTINO, AVOCATS

This is Exhibit "D" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Court of Appeal File No.: C53230

COURT OF APPEAL FOR ONTARIOTHE HONOURABLE
CHIEF JUSTICE OF ONTARIOTHE HONOURABLE
JUSTICE LANGTHE HONOURABLE
JUSTICE WATTTUESDAY, THE 26TH

DAY OF JUNE, 2012

BETWEEN:

DARA FRESCO

Plaintiff /Appellant

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant /Respondent

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992**ORDER**

THIS APPEAL by the Plaintiff/Appellant Dara Fresco ("Plaintiff") from the September 10, 2010 Order of the Divisional Court herein (Justices L.K. Ferrier and K.E. Swinton, Justice H. Sachs dissenting), dismissing her appeal of the June 18, 2009 Order of Justice J. Lax of the Superior Court of Justice herein was heard on November 30 and December 1, 2011 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING all material filed, and on hearing the submissions of all counsel and reasons having been reserved until this day:

1. **THIS COURT ORDERS** that the Plaintiff's appeal is allowed in part and that this action be and is hereby certified as a class proceeding, and that the Divisional Court Order and the Superior Court Order in respect thereof be and are hereby set aside with the Superior Court Order of the Honourable Madame Justice Lax dated June 18, 2009 being varied by substituting the following:

- 1. THIS COURT ORDERS that this action is certified as a class proceeding on behalf of the following class of persons:*

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 time from February 1, 1993 to 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; and*
- e. Branch Ambassadors*

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title,

with respect to the Certified Common Issues (as set out in Schedule A hereto).

2. **THIS COURT ORDERS** that Dara Fresco is appointed as the Representative Plaintiff on behalf of the Class and that Roy Elliott O'Connor LLP ("REO") and Sack Goldblatt Mitchell LLP ("SGM") are hereby appointed as lawyers for the Class ("Class Counsel").
 3. **THIS COURT ORDERS** that the common issues shall be as appended as Schedule "A" attached hereto.
 4. **THIS COURT ORDERS** that, pursuant to section 17 of the Class Proceedings Act, the form of notice of this certification order, the manner of giving notice, the manner by which class members can opt out and all other related matters shall be determined by the Class Action Case Management Judge that is, or shall be, seized of this proceeding (as may be directed by the Regional Senior Justice of the Superior Court of Justice for the district of Toronto).
2. **THIS COURT ORDERS** that, on consent, the Order of the Divisional Court dated December 3, 2010 herein is set aside and that the order be varied by substituting the following for paragraph numbered 1 in that Order:
1. **THIS COURT ORDERS** that the costs of appeal are payable by the Defendant/Respondent to the Plaintiff and are hereby fixed in the amount of \$90,000 (inclusive of disbursements and taxes).
3. **THIS COURT ORDERS** that, on consent, the Order of the Honourable Madame Justice Lax dated February 12, 2010 herein regarding the costs of the certification motion be set aside, and that the foregoing Order be varied by substituting the following for paragraph numbered 1 of that Order:
1. **THIS COURT ORDERS** that the costs of the certification motion are payable by the Defendant/Respondent to the Plaintiff and are hereby fixed in the amount of \$620,000 (inclusive of disbursements and taxes).

4. **THIS COURT ORDERS** that, on consent, the costs of the motion for leave to appeal to the Court of Appeal and the costs of this appeal are payable by the Defendant/Respondent to the Plaintiff and are hereby fixed in the amount of \$90,000 (inclusive of disbursements and taxes).

THIS ORDER bears interest at the rate of 3% per annum commencing on June 26, 2012.


Registrar

ENTERED AT/INSCRIT A TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

OCT 17 2012

PER/PAR: 

Schedule "A" – Certified Common Issues**The Defendant's Overtime Policies and Recording of Hours Worked**

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?
 - a. 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?
 - a. If "yes", did the Defendant breach that duty?
3. If the answer to common issues 1(a) or 2(a) 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?

Breach of Contract

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?

Unjust Enrichment

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?

Remedy & Damages

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 award be determined on an aggregate basis?
 - ii. What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?

DARA FRESCO v. CANADIAN IMPERIAL BANK OF
Plaintiff/Appellant COMMERCE
Defendant/Respondent

Court File No. C53230

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

ORDER

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Fax: 416.865.7380

Lawyers for the Defendant/Respondent
Canadian Imperial Bank of Commerce

279

320

This is Exhibit "E" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Court File No. 07-CV-334112CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DARA FRESCO

Plaintiff/Moving Party

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant/Responding Party

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**NOTICE OF MOTION
(Directions & Disclosure of Facts from Schedule "B" Documents)**

The Representative Plaintiff will bring a motion to the Class Action Case Management Judge, the Honourable Justice Belobaba, on a date to be set by the Court, at the courthouse at 361 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order requiring the Defendant, Canadian Imperial Bank of Commerce ("CIBC"), to serve a sworn affidavit of documents forthwith;

2. An Order and direction that CIBC produce the documents listed in Schedule B to its affidavit of documents and produce a further and better affidavit of documents listing such documents in Schedule A to its affidavit of documents;
3. An Order and direction requiring CIBC to disclose to the Representative Plaintiff the relevant factual information in each of any documents listed in Schedule B to its affidavit of documents for which privilege is established and, to the extent possible, an order directing CIBC to produce any documents for which privilege is established but in which facts are contained in a redacted format (with the facts revealed and any legal advice redacted);
4. an Order requiring CIBC to produce the documents or random samples of categories of the documents in which it claims privilege by inspection of the motion judge or for such other means of inspection by the court as directed by the court;
5. An Order requiring and directing CIBC to disclose the information that was redacted from its own Schedule A productions;
6. The costs of the motion on a substantial indemnity basis; and
7. Such other further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. This action was issued in June 2007. The certification motion was heard in December 2008 and dismissed in June 2009. Following a series of appeals, this action was certified as a class proceeding by Order of the Court of Appeal dated June 26, 2012. CIBC's motion for leave to appeal the certification order to the Supreme Court was dismissed in March 2013. The Class has received notice of certification and the opt-out period closed on May 20th 2014;

2. On July 25th, 2013 the Honourable Mr. Justice Belobaba directed that this action be ready for trial by no later than July 2014;
3. The Representative Plaintiff served her affidavit of documents in January 2014. Despite repeated requests, CIBC has not served a sworn affidavit of documents but has instead provided documents in a series of tranches of Schedule A productions starting in late January 2014. The last tranche of production was received in March, 2015;
4. In early May 2014 CIBC, through its counsel, advised the Representative Plaintiff that it had completed the delivery of its Schedule A productions and provided a Schedule B, which failed to conform with the Rules or jurisprudence setting out the requirements for listing privileged documents in an affidavit of documents;
5. On May 26, 2014 the parties attended before Justice Belobaba to address a number of production and scheduling issues. On June 17, 2014 CIBC provided a more detailed, but still deficient, Schedule B. Among other things, CIBC failed to identify any grounds on which privilege was claimed;
6. On December 23, 2014, CIBC served a further revised Schedule B indicating that solicitor and client privilege was claimed over all of the documents listed in the schedule.
7. As of the date of this Notice of Motion, CIBC has still not yet served a sworn affidavit of documents. Furthermore, as set out below, CIBC has failed to comply with its disclosure obligations under *Rule 30* and improperly asserted privilege over a large number of documents in its Schedule B. There is no basis or justification on the basis of the information provided in CIBC's Schedule B for it to claim privilege over the documents listed therein.

8. Without limiting the generality of the foregoing, CIBC's Schedule B fails to conform to the *Rules*, is deficient in numerous respects, and fails to provide any reasonable basis for the claims of privilege it has asserted. Among other things:
 - a. It fails to provide any meaningful description of the documents (e.g. documents are described variously as "Chart(s)", "Fax Cover Page", "E-mail", "Summary [redacted for privilege]", "Presentation [redacted for privilege]" etc) and provides no indication as to the subject matter of the documents;
 - b. It fails identify the author and/or recipient of numerous documents. More than 250 documents merely list the author as "CIBC"; and
 - c. Various documents listed in schedule B do not even appear to have been addressed or distributed to legal counsel, and there is no apparent basis to establish that the pith and substance of the documents listed relates to a request for legal advice or to the provision of legal advice.
9. There is no question that the foregoing documents are relevant as they have been listed in CIBC's Schedule B. To the extent that the documents contain factual information, that information must be disclosed to the plaintiff. It would be inefficient and unnecessary to require the plaintiff's counsel to obtain this information on discovery. Timely disclosure of the facts in the documents will enable the discovery process to proceed in a much more efficient and effective manner;
10. CIBC has redacted information from many documents that it has listed in Schedule A to its affidavit of documents. Without conceding that any redactions are appropriate, those redactions do not indicate on what purported basis each redaction was made;
11. Section 12 of the *Class Proceedings Act*;

12. Rules 29.2, 30, 30.03(2)(b), 30.04(6) & 30.06 of the *Rules of Civil Procedure*; and,
13. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of George Pakozdi to be sworn and the exhibits attached thereto;
2. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

Dated: March 17, 2015

ROY O'CONNOR LLP

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J. Adam Dewar (LSUC No. 46591J)

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TO: **TORYS LLP**

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Lawyers for the Defendant/Responding Party

DARA FRESCO
Plaintiff/Moving Party

-and-

CANADIAN IMPERIAL BANK OF COMMERCE
Defendant/Respondent

Court File No. 07-CV-334112CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO
Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION
(Directions & Disclosure of Facts from Schedule "B" Documents)

SOTOS LLP
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Tel: (416) 362-1989
Fax: (416) 362-6204

Lawyers for the Plaintiff/Moving Party

164

7

400

This is Exhibit "F" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DARA FRESCO
Plaintiff/Moving Party

-and-

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant/Respondent
June 3, 2015

Court File No. 07-CV-334112CP

BELOBABA S

June 3, 2014

- Mr. O'Connor, Mr. Newer, Mr. Sokoloff, Mr. Day.
- Mrs. Jackson, Mr. Freed.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the Class Proceedings Act, 1992

MOTION RECORD

(Directions & Disclosure of Facts from Schedule "B" Documents)

SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8

Louis Sokolov (LSUC No. 34483L)
Jean-Marc Leclerc (LSUC No. 43974F)
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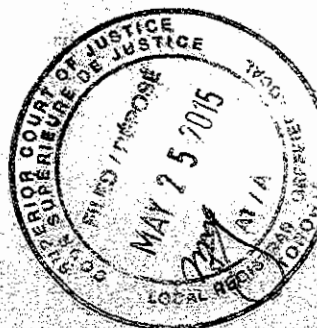
SACK GOLDBLATT MITCHELL LLP
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Toronto, ON M5V 3K2

David O'Connor (LSUC No. 33411E)
J. Adam Dewar (LSUC No. 46591J)
Tel: (416) 362-1989
Fax: (416) 362-6204

Lawyers for the Plaintiff/Moving Party



- ① CIBC shall produce a full & complete affidavit & documents re Sched B "privileged documents" by providing greater clarity re Document Type / Author / Receipt to that P and the court can more readily understand the nature / content / and basis for the claimed privilege. This will be the best & final Sched B list - allowing P to take any further steps as deemed appropriate upon receipt of his Sched B.
- ② Letter Sched B shall be produced within 30 days.
- ③ Amount in motion advised.

④ Costs to be paid by P to be fixed at \$15,000 payable forthwith.

Eden Belobaba

This is Exhibit "G" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DARA FRESCO

Plaintiff/Moving Party

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant/Responding Party

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**NOTICE OF MOTION
(SUMMARY JUDGMENT)**

The plaintiff will make a motion before the Honourable Mr. Justice Belobaba, or another designated Class Proceedings Judge of the Ontario Superior Court of Justice, on Tuesday, December 13, 2016 to Friday, December 16, 2016 at the courthouse at 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order granting the plaintiff summary judgment or, alternatively, partial summary judgment in favour of the Class Members as against the defendant Canadian Imperial Bank of Commerce ("CIBC" or the "Bank"), on the following certified common issues:

The Defendant's Overtime Policies and Recording of Hours Worked

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?*
 - a. *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?*
 - a. *If "yes", did the Defendant breach that duty?*
3. *If the answer to common issues 1(a) or 2(a) 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?*

Breach of Contract

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?*

Unjust Enrichment

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?*

Remedy & Damages

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 award be determined on an aggregate basis?*

- ii. *What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?*

2. an Order, if necessary, certifying the following additional common issue:

9. *Can damages be assessed on an aggregate basis for all or part of the Class? If "yes",*
- i. *What is the most efficient method to assess those aggregate damages? Without limiting the generality of the foregoing, can aggregate damages be assessed in whole or part on the basis of statistical evidence, including statistical evidence based on random sampling?*
 - ii. *What is the quantum of aggregate damages owed to Class Members or any part thereof?*
 - iii. *What is the appropriate method or procedure for distributing the aggregate damages award to Class Members?*

3. Declarations that:

- (a) CIBC had a duty in contract (or otherwise) to prevent Class Members from working overtime hours for which it did not intend to pay, and CIBC breached that duty;
- (b) CIBC had a duty in contract (or otherwise) to accurately record and maintain a record of all hours worked by Class Members to ensure they were appropriately compensated for same, and CIBC breached that duty;
- (c) CIBC implemented an approach to overtime and hours of work that breached its duties to the Class Members and CIBC otherwise failed to implement an overtime and hours of work system that satisfied its duties to the Class Members;
- (d) All uncompensated hours of work by Class Members were hours of work either that CIBC failed to prevent or that CIBC failed to pay for, such that the Class Members should be compensated for all such hours; and
- (e) All uncompensated hours are deemed to have been required or permitted by CIBC, and directing that compensation be paid to the Class Members for same.

4. Orders and directions providing for the efficient resolution of any issues remaining after the motion;
5. an Order awarding punitive, exemplary and/or aggravated damages as against CIBC;
6. an Order granting the plaintiff costs, on a full indemnity basis, of the action, (including in respect of the certification motion and appeals and leave to appeal but less partial indemnity costs already paid by the defendant);
7. Orders and directions awarding aggregate damages or otherwise determining whether aggregate damages could or shall be awarded (whether by way of summary judgment, mini-trial or some other summary or expedited procedure under sections 12, 23 and 24 of the *Class Proceedings Act*) and, if necessary, Orders and directions requiring CIBC to produce records within its possession or control to enable the analysis and calculation of aggregate damages;
8. An Order granting the plaintiff leave to file a Reply to the Statement of Defence; and,
9. such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. This class action, alleging *inter alia*, systemic breaches of duty is brought on behalf of approximately 31,000 tellers and front-line staff who work(ed) for CIBC in retail branches across Canada. The class is defined as:

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 time from

February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

Customer Service Representatives (also formerly known as Tellers);

Assistant Branch Managers (Level 4);

Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);

Financial Service Associates;

Branch Ambassador;

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

Motion for Summary Judgment on Common Issues 1-6

2. The certified common issues ask whether CIBC's bank-wide policies and practices prevented class members from receiving overtime compensation in accordance with the express or implied terms of their employment contracts, and whether the policies and practices of CIBC otherwise breached the duties that the Bank owed to the Class Members. Among other things, the common issues ask whether CIBC:

- (a) has adopted a systemic policy and practice of paying overtime for only management authorized, and principally pre-approved, overtime, which policy and practice is more restrictive than the minimum standards that are mandated by the *Canada Labour Code*;
- (b) knew or should have known that Class Members were working overtime in order to complete the ordinary duties of their employment, encouraged class members to work overtime, attempted to put the onus on employees to obtain prior authorization, adopted a policy that did not allow for approval after the fact for

most of the class period, and knew that, due to the nature of their work, it was impractical for Class Members to obtain pre-approval of overtime work;

- (c) has adopted an overall approach to overtime, and the recording and tracking of hours of work and lieu time, that failed to compensate Class Members for hours of work, failed to prevent Class Members from working hours that the Bank did not intend to compensate, and otherwise failed to satisfy its duties to the Class members;
- (d) has failed to institute a system to ensure that Class Members record and track all hours of work and lieu time and, indeed, fails to record the actual hours worked by Class Members; and,
- (e) has failed to institute a system or take reasonable steps to prevent class members from working overtime that CIBC did not intend to compensate.

Each of these questions can be answered in the affirmative on this motion.

3. CIBC, through its common employment contracts, policies, practices and omissions, has failed to compensate Class Members for all their hours worked, has placed Class Members at risk of such non-compensation and has otherwise breached its duties to the Class Members (including but not limited to its duty to perform its contractual obligations in good faith). In particular:

- (a) CIBC's overtime policies and practices have unlawfully restricted overtime compensation;
- (b) CIBC's policies and practices discourage and prevent class members from claiming overtime to which they are entitled;

- (c) CIBC fails to record the actual hours that class members work, and therefore cannot properly track and pay overtime; and
- (d) CIBC's policies and practices fail to ensure that class members are prevented from working overtime that CIBC does not intend to compensate.

4. The Bank knew or should have known that its approach, policies and practices relating to overtime and hours of work did not appropriately prevent, record or compensate for overtime hours, were woefully inadequate or inconsistent, did not allow proper monitoring or tracking, did not function appropriately given the nature of its business and the work in question, and breached its duties to the Class Members and exposed them all to the risk of uncompensated work.

5. The Bank itself has provided evidence and made admissions that support the granting of summary judgment.

6. CIBC has admitted that it is bound by the minimum standards of the *Canada Labour Code* ("Code") with respect to regular and overtime hours, the recording of hours worked, paid breaks and payment of hours worked, and that those standards are incorporated into its contracts of employment with the Class Members.¹ The *Code* provides, among other things:

- (a) **Maximum hours of Work - s.169(1):** The standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week, and no employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week.

¹¹ See CIBC's Statement of Defence paragraph 1 (admitting paragraph 20 of the Statement of Claim), paragraph 69 of CIBC's Court of Appeal factum, paragraphs 84 & 86 of CIBC's Divisional Court factum and paragraphs 312-313 of CIBC's Certification motion factum.

- (b) **Requirement to Pay Overtime - s. 174:** Employees who are required or permitted to work more than their standard hours must be paid at least 1½ times their regular wages for their additional hours.
- (c) **Requirement to Record Hours - s. 264(a); *Canada Labour Standards Regulations*:** An employer must accurately record, and maintain records of, its employees' hours of work. Such records must include, inter alia, "the hours worked each day" and details of "actual earnings, ... [and] amounts paid for overtime".

Moreover, the provisions of the *Code* apply notwithstanding any other law or any custom, contract or arrangement (s. 168).

7. In addition to the foregoing, Class Members were entitled to be paid for additional hours worked at straight time for all hours of work up to the daily or weekly thresholds for overtime pay.² Class Members were also entitled to be paid for breaks during the day, and to additional compensation should they have worked without taking such breaks.

8. CIBC has admitted that, as a term of its contracts of employment with the Class Members, it owed a duty "*to ensure appropriate compensation*" for all hours worked by its employees.³

9. CIBC has further admitted that the terms of its overtime policies were incorporated in the employment contracts of the Class Members. Class members were, among other things, entitled under those policies (and thus under their employment contracts) to overtime pay for all hours of work in excess of 8 hours per day or 37.5 hours per week.

² CIBC Statement of Defence paragraph 1 (admitting paragraph 20 of the Statement of Claim).

³ See CIBC Certification Factum, Court of Appeal, para. 62, CIBC Certification Factum, Divisional Court, para. 86 and CIBC Certification Factum, Motion, para. 312.

10. Furthermore, the overtime policies expressly acknowledged (or the Bank has otherwise admitted) that it had duties to:

- (a) “document any pre-approval of overtime in writing”⁴;
- (b) “not permit employees to work overtime hours” if the hours were not approved⁵;
- (c) ensure “that overtime hours are input into the payroll system so that overtime is paid within 30 calendar days”⁶, and;
- (d) ensure that, if lieu time was requested by the employee and approved by the manager, the lieu “time is taken within 90 calendar days of the overtime hours being worked”.

In short, the Bank assumed the duty to compensate for hours or, alternatively, prevent the hours of work if the Bank did not intend to compensate for the hours.

11. The Bank acknowledged throughout the certification process (motion and appeals) that “[t]here is no dispute over the terms of the employment contracts between CIBC and the members of the proposed class ([common] issue 4).”⁷

⁴ See also CIBC Statement of Defence paragraph 17(2).

⁵ See also CIBC Statement of Defence paragraphs 16(d) (“Managers must not permit employees to work overtime hours that have not been authorized”). See further: CIBC Certification Factum, Court of Appeal, para. 15: “The Policy and [Manager] Guidelines specifically require a manager to prevent employees from working overtime hours that have not been authorized, and require that all overtime hours that are required or permitted be compensated at the overtime rate” and that the Policy and Guidelines “expressly prohibit managers from permitting employees to work overtime hours that have not been authorized”; and CIBC Certification Factum, Divisional Court, para. 9 (4th bullet).

⁶ See also CIBC Statement of Defence para. 1 (admitting para 20 of the Statement of Claim); CIBC Certification Factum, Court of Appeal, para. 13: “Managers are also responsible for ensuring that employees’ overtime hours are correctly recorded and input into CIBC’s payroll system.”; CIBC Certification Factum, Divisional Court, para. 86 and CIBC Certification Factum, Motion, para 312 (“...a duty...to record all hours worked by its employees...”).

12. Other provisions of CIBC's overtime policies contravene several sections of the *Code* and accordingly are not lawful or enforceable terms of the employment contracts. For example,

- (a) CIBC's overtime policies between 1993 and 2006, entirely restricted overtime compensation to overtime that had been pre-approved. CIBC has acknowledged that the pre-approval requirement in its policy mirrored its existing practice of requiring that employees obtain management authorization in advance of working overtime hours; and
- (b) CIBC's overtime policy in effect since 2006 states that overtime is only to be compensated if pre-approved or worked in "*extenuating circumstances*" and approved after the fact. Moreover, it states that overtime may only be authorized, and by necessary implication paid, i) "*on an exceptional basis*"; ii) when management "*reviews and approves*" the work; iii) when the work is "*essential*"; and iv) when overtime is the "*most appropriate and cost effective way*" of doing the work.

These preconditions or restrictions violate the *Code* and cannot therefore form part of the contracts of employment.

13. This Honourable Court can determine which provisions of the overtime policies form part of the enforceable terms of the employment contracts of the Class Members and, accordingly,

⁷ See CIBC's Statement of Defence paragraph 1 (admitting paragraph 20 of the Statement of Claim), paragraph 69 of CIBC's Court of Appeal factum, paragraphs 84 & 86 of CIBC's Divisional Court factum and paragraphs 313 of CIBC's Certification motion factum.

which provisions of the policies implemented by the Bank actually constituted class-wide breaches of the duties owed to the Class Members.

14. CIBC has produced documents, as part of its Schedule “A” productions, that support and further confirm the plaintiff’s allegations. Among other things, the documents produced by the Bank indicate that lack of management approval would disentitle Class Members from receiving compensation for their overtime hours. Furthermore, CIBC has produced, *inter alia*, documents relating to numerous “compliance reviews” and “reviews and inquiries” which detail systemic and common deficiencies relating to overtime practices, procedures, expectations and compensation. Such documents, include, but are not limited to:

- (a) A document entitled “What Current State Looks Like” summarizing the “1999 Open Form Survey” of employees showing widespread failure to compensate for overtime, causing the Bank to conclude:

OBSERVATIONS:

- *Non compliance: It is recognized, both by employees and business units, that overtime is not always being paid for.*

Examples of employee’s overtime comments regarding overtime include:

- *“Overtime is never paid, and taking time off because of overtime is strongly discouraged.”*
- *“Respect for people is at an all time low. The amount of unpaid overtime is unacceptable...”*
- *“The subject of overtime is avoided in the Open Forum Questionnaire. It always has been. As a major concern among employees, it should be included.”*
- *Staff are expected to work overtime, but are told they will not be paid. Up to grade 5 should be paid overtime.”*

The above comments are from CIBC's 1999 Open Forum Survey

- *During our review, comments received from various business units regarding overtime include:*
 - *"...have never had any budget to pay overtime...since the branches are cut to a bare minimum of staff, it is becoming increasingly difficult to accommodate time off in lieu..."*
 - *"general practice is no overtime in payment, lieu days are granted but not necessarily equal compensation for the overtime hours worked."*
 - *"...the time in lieu actually given is a portion of the hours worked...(i.e. it is not at a 1:1 ratio)"*

...

- (b) Multiple power point presentations to various senior management committees at CIBC concerning the 2005-2006 revision of the overtime policy stating, *inter alia*:

- *CIBC's current overtime policies in Canada do not comply with various federal and provincial legislative requirements...*
- *Where there are existing policies they do not meet all legislated standards...*
- *No Retroactivity in Policy*
 - *CIBC standard is no retroactivity – does not remove entitlement and claims*
 - *Heightened exposure once policy posted, in addition to current media coverage of overtime...*
- *It was identified through the recent LCM review, that this policy was being applied inconsistently.*
- *In addition, CIBC has recently experienced an increase in disputes related to employees claiming retroactively that they have not been compensated for overtime worked. The absence of appropriate documentation has created challenges in our response to these claims*
- *To address these gaps and issues, a clear and consistent policy and process for managing overtime is required.*

- (c) A document entitled “Workforce Effectiveness Project – Presentation to Steering Committee” dated June 23, 2006, stating in part:

2. Summary of Key Findings

...

2. Compliance with HR policy and procedures is consistently identified as an issue in branches, regardless of branch rating

- *Key areas of non-compliance: Health and Safety, Scheduling, Overtime*

4. HR Policies and Procedures

...

- *Approximately 50% of branches are not adhering to HR policies and procedures around:*

1. Overtime

- *53% of branches had inadequate enforcement of overtime policy*

- (d) Numerous documents prepared in 2007, shortly before the commencement of this action regarding “Retail Distribution Scheduling Guidelines” stating, *inter alia*,

Key Findings – BM [Branch Manager] Survey

...

Set up & Balancing Time:

- *CSRs require set-up time prior to serving customers –BMs expect CSRs to arrive on average 10-15 Minutes prior to the start of their scheduled shift to prepare (time is unpaid)*

...

- *Workforce Effectiveness visits held across the country highlighted the inconsistencies as a “dissatisfier” for employees. Specific complaints include:*

- *employees are working beyond their scheduled hours are not being compensated*

...

- *Certain practices will no longer continue and managers will need to be more creative in their scheduling practices. (For example, expectation that CSRs come in prior to shift without pay is no longer permitted. CSRs must be provided with set-up time Managers will have to determine the best approach to incorporate this into their scheduling).*

...

- *Operating under the assumption that no-one is currently paying for set-up time our worst case scenario for costing amounts to approximately \$3 000 000 /yr*

$$1000 \text{ hrs / day} \times 12.30 = 12,300 = \$2\,829\,000 \text{ per yr.}$$

15. Common Issues 1-6 can be adjudicated in large part on admissions and evidence from the Bank, including the documents that it has produced as part of its Schedule A productions. There are no genuine issues with respect to these common issues that require a trial.

Motion for Summary Judgment on Common Issues 7-8 - Punitive, Exemplary and Aggravated Damages – and - Costs

16. The plaintiff asserts that the Class is entitled to punitive, exemplary and aggravated damages as well as full indemnity costs of the action, including all costs to the date of the conclusion of this motion.

17. In opposing certification, the Bank's main corporate witness and Senior Vice President of Human Resources for Retail Markets (John Silverthorn) gave sworn evidence, relied upon by the Court in initially denying certification, which now appears to be false, misleading or

contradicted by documents in CIBC's possession which were not produced or referred to it at certification. In particular, in May 2008, Mr. Silverthorn swore to the following:

CIBC periodically reviews various forms of documentation created and maintained at individual branches, including documentation related to hours of work and payment, and also periodically asks individual employees about a broad range of workplace issues, including whether there are issues with respect to overtime at their branch. These reviews and inquiries are conducted for the purpose of assuring compliance with the bank's policies and addressing any particular issues that may exist in a given branch. None of these reviews and inquiries have revealed any systemic issues with respect to overtime. [Emphasis added].⁸

18. CIBC repeated this categorical statement in its factum on the certification motion, asserting:

Compliance Reviews

43. CIBC periodically reviews various forms of documentation created and maintained at individual branches, including documentation related to hours of work and payment. It also periodically asks individual employees about a broad range of workplace issues, including whether there are issues with respect to overtime at their branch. These reviews and inquiries are conducted for the purpose of assuring compliance with CIBC's policies and addressing any particular issues that may exist in a given branch. None of these reviews and inquiries have revealed any systemic issues with respect to overtime.

19. Mr. Silverthorn also swore in his May 2008 affidavit that "...CIBC staffs its branches and structures its branch business so that employees generally do not have to work overtime" and that "... the branches are staffed in a manner, and at a level, that is intended to make overtime generally unnecessary under ordinary circumstances."⁹ Mr. Silverthorn similarly

⁸ Affidavit of John Silverthorn sworn May 14, 2008, para. 85

⁹ Affidavit of John Silverthorn sworn May 14, 2008, paras. 89 and 101

swore that “*These schedules are designed to allow employees to complete their assigned tasks (for example, in the case of CSRs, set-up and balancing) during regularly scheduled hours.*”¹⁰

20. In denying certification Lax J. relied upon and accepted CIBC’s assertions. She reasoned that while “[l]iability could arise if there is some common act or omission committed by CIBC that caused or contributed to the systemic failure to properly compensate overtime,” but found there was “no evidentiary foundation” for the plaintiff’s allegations of systemic wrongdoing.

21. In responding to the plaintiff’s appeal to the Divisional Court, CIBC reiterated the assertion it made to Lax J., stating:

15. Although CIBC is under no obligation to do so ... the uncontradicted evidence is that CIBC monitors and enforces compliance with the Policy through several internal mechanisms, including the following: ...

- *Compliance Reviews: CIBC periodically reviews branch documentation, including documentation related to hours of work and payment. It also makes inquiries of individual employees about a range of workplace issues, including with respect to overtime. None of these reviews and inquiries have revealed any systemic issues with respect to overtime.*

22. The majority of the Divisional Court upheld Lax J’s denial of certification, reasoning *inter alia* that she made no palpable and overriding factual errors.

23. CIBC’s assertions as part of its certification responding record, and submissions to the Court, to the effect that its reviews and inquiries did not reveal “any systemic issues with respect to overtime”, that its branch employees (including CSRs or tellers) do not generally have to work overtime and that the schedules of those employees were designed to allow employees to

¹⁰ Affidavit of John Silverthorn sworn May 14, 2008, para. 45

complete their assigned tasks (including, for example, set-up time for CSRs or tellers) appear to be contradicted by its internal documents, including those referred to above.

24. The Bank's assertions caused, or materially contributed to, the denial of certification by Lax J., and the Divisional Court, and frustrated the progress of this action.

25. The plaintiff further seeks all costs incurred, to be incurred or thrown away as a result of the foregoing assertions at certification by the Bank.

26. The Bank knew or should have known of the that overtime was being worked and not properly recorded or compensated. Alternatively, the Bank was callously indifferent to the fact that Class Members were working overtime, which the Bank had not appropriately prevented, recorded or compensated. The Bank knew that a lack of approval for overtime hours made Class Members ineligible for overtime compensation. The Bank knew that its records could be used to indicate, evidence or support hours worked by Class Members. Overall, the Bank knew or should have known that the approach, policies or practices that it adopted were not appropriate in the context of its operations and the work in question, were contrary to the *Code*, failed to satisfy the Bank's duties, and exposed Class members to the risk of working hours without appropriate compensation.

27. CIBC's conduct warrants an award of punitive, aggravated and/or exemplary damages.

Aggregate Damages and, if Necessary, the Motion for Certification of Additional Common Issue

28. The Court of Appeal found that the plaintiff had not satisfied the requirement of s. 24(1)(c) of the *Class Proceedings Act* and declined to certify a common issue concerning aggregate damages.

29. Following certification, the Bank provided documentation, as part of its Schedule “A” productions, showing that it, in fact, quantified uncompensated overtime owing to parts of the class, and that it had already resolved individual retroactive claims for overtime, by examining documents in its possession. In part, as noted above, these documents show that:

- (a) CIBC conducted internal surveys of branch managers to determine
 - (i) what proportion of customer service representatives (“CSR’s”) were required to work unpaid, prior to the start of their shifts to set-up,
 - (ii) How much time CSR’s were allotted to balance their tills at the end of their shift,
 - (iii) What proportion of CSR’s were not paid for time required to balance their tills, in excess of the allotted time, and
 - (iv) What proportion of CSR’s were not being provided with breaks;
- (b) CIBC quantified the aggregate amount of overtime worked by CSR’s, on a yearly basis, that had not been compensated for set-up prior to their shifts and balancing of their tills at the end of their shifts;
- (c) CIBC assessed individual retroactive claims for overtime from CSR’s in 2007 by determining that the end of CSR’s shifts was disclosed by time-stamped “blotters”, seemingly contradicting Mr. Silverthorn’s subsequent statement in his

sworn evidence on the certification motion that blotters provided no “*reasonably accessible or reliable information concerning hours worked...*”¹¹; and

- (d) CIBC assessed other individual retroactive claims by reviewing time-stamped swipe card records showing when employees entered or exited CIBC premises.

30. This evidence, which was not produced until after certification, and other records available establish the requisite basis that the quantum of damages can reasonably be calculated without proof by individual class members and that, accordingly, the conditions for an aggregate assessment set out in s. 24 of the *Class Proceedings Act* have been met.

31. Furthermore, and in any event, this Honourable Court has the jurisdiction and discretion to consider whether an aggregate damages assessment is appropriate regardless of whether aggregate damages was certified as a common issue. The ultimate jurisdiction and decision to grant aggregate damages rests with the judge deciding the common issues based on the evidence available. In these circumstances, an aggregate assessment (or at least partial aggregate assessment) is appropriate.

32. An aggregate assessment can be made by way of this summary judgment motion, mini-trial or some other summary or expedited procedure under sections 12, 23 and 24 of the *Class Proceedings Act*. If necessary, the assessment can be made following disclosure of additional documents in the Bank’s possession, care and control. In particular, the Bank has records indicating or evidencing the start and stop time of class members’ work, as well as payroll

¹¹ Affidavit of John Silverthorn sworn May 14, 2008, para. 108.

records. Such records are sufficient to provide a basis for a statistically valid sampling from which an aggregate amount of uncompensated overtime can be determined.

33. No prejudice will result from the filing of the Reply or, alternatively, such prejudice, if any, would be compensable with costs.

34. *Rules* 21.01(1), 21.01(2), 20.04 20.05 (if necessary), and 25.04 of the *Rules of Civil Procedure*.

35. Sections 5, 11, 12, 23 , 24 and 25 of the *Class Proceedings Act*.

36. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Cristina Banks sworn July 1, 2016;
- (b) the affifavit of Stefan Boedeker sworn July 14, 2016;
- (c) the affidavit of Jean- Marc Leclerc sworn July 14, 2016; and
- (d) such further and other evidence as counsel may advise and the Court may permit.

July 15, 2016

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-and-

CANADIAN IMPERIAL BANK OF COMMERCE
Defendant

Court File No. 07-CV-334113 PD2

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION
(SUMMARY JUDGMENT)

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Lawyers for the Plaintiff

This is Exhibit "H" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DARA FRESCO

Plaintiff/ Moving Party

and

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant/ Responding Party

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

The Plaintiff will make a motion to Justice Belobaba on a date to be determined at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The motion is to be heard

☐ in writing under subrule 37.12.1(1) because it is ;

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE MOTION IS FOR:

- (a) an order that the Defendant's witness, John Silverthorn, be cross-examined on his Affidavit of Documents, sworn May 15, 2015;
- (b) an order directing that the Defendant serve a further and better Affidavit of Documents within 30 days of the decision on this motion;
- (c) an order that the Plaintiff be permitted to conduct an examination for discovery, and requiring the Defendant to produce a witness or witnesses for examination for discovery, as designated by the Plaintiff, with leave under Rule 31.05.1 for such examination to exceed seven hours but without prejudice to the Plaintiff's right to continue that examination for discovery as appropriate and necessary following the summary judgment motion;
- (d) an order requiring the Defendant to preserve all documents within the Defendant's possession, power and control that are relevant, without prejudice to the Plaintiff's right to request relief in respect of the relevant documents and categories of documents that have already been destroyed by the Defendant, as disclosed in the Defendant's responding record delivered April 17, 2017 or otherwise;
- (e) an order allowing the Plaintiff to move for further directions and relief in the context of the completion of the steps contemplated in the orders sought above (or following the completion of such steps), including (but not limited to) moving for further production of documents, answers to questions refused, costs (including but not limited to costs thrown away), and such other relief as counsel for the Plaintiff may advise and this Honourable Court may permit;

- (f) an order setting out directions for the steps leading up to the hearing of the summary judgment motion in this action, incorporating the steps referred to above and the other steps necessary thereafter to complete preparations for the summary judgment motion;
- (g) an order, if necessary, varying the timetable for the hearing of the summary judgment motion in this action;
- (h) her costs of this motion on a full indemnity scale, or alternatively a substantial or partial indemnity scale;
- (i) an order awarding the Plaintiff any additional costs or costs thrown away as a result of the Defendant's failure to make timely disclosure or as a result of the Defendant's other conduct; and
- (j) such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

- (a) This motion is based on the following:
 - (i) the Defendant's failure to disclose fundamentally relevant documents in a timely manner and not until April 7, 2017, years after the Defendant had advised that it had produced all relevant records. These relevant documents not disclosed until April 7, 2017 include, among other documents, the results of internal bank surveys from 2001, 2003, 2005, 2007, 2008 and 2009, and each of

which contains dozens of individual complaints directly corroborating the Plaintiff's claims and allegations;

- (ii) the ongoing failure of the Defendant to disclose fundamentally relevant documents that are within its possession or control. The existence of such documents is clear on the face of the Defendant's responding record, delivered April 17, 2017, which refers to numerous undisclosed documents relating to, *inter alia*, the results of the above internal surveys, the design and implementation of said surveys, and any steps taken or other records created by CIBC upon the receipt of complaints regarding unpaid overtime in the surveys;
- (iii) the Defendant's late, incomplete and selective disclosure of documents related to individual occurrences or experiences of class members;
- (iv) the destruction or deletion of swaths of highly relevant documents and data, which was revealed to the Plaintiff in the Defendant's responding record on April 17, 2017;

Late Disclosure of Documents, Including Survey Evidence for 2001-2009

- (b) On Friday, April 7, 2017, shortly before the deadline for delivering its responding materials in respect of the summary judgment motion, CIBC delivered excerpts of survey evidence it had gathered during much of the class period (2001 to 2009), containing first-person accounts of more than 500 of the Defendant's employees that are corroborative of the Plaintiff's systemic allegations in this action. These include excerpts from survey results in 2001, 2003, 2005, 2007, 2008 and 2009. Although the

Plaintiff had specifically asked CIBC if it had any additional surveys (and had relied on the only survey results produced, those from 1999, in its motion record), CIBC did not disclose the existence of any other surveys until April 7, 2017;

- (c) The following are examples of comments from the 2007 survey, which were made shortly after the commencement of this action. Each of the comments below was in response to the question, “What is the one thing CIBC could do to enhance your working experience?”:

6202. Dispite the fact that we have an overtime policy these are the facts. 1)Overtime is expected to get the job done, no matter the circumstances. 2)I have never been thanked or offered time in lieu. It goes un-noticed. 3) If I did as for time in lieu it would not be looked upon lightly. I would not dare to ask as I would be the looser in the long run.

6143. I believe that the supervisor should be a team player and that is not the case in this branch. This branch should be reviewed for work load on individual jobs as there are many overloaded jobs in this branch and overtime is not easily given. Permission for over time is a nice concept but the supervisors know that there is overtime done and who has time to fill in a form to ask for it. Send an audit person who can review workload as well as ergonomic desks etc.

5896. i believe that we as tellers, are not getting paid enough and it is dissapointing especially since cibc is a well known insitution. [...] i hate the fact that sometimes we dont get paid overtime even though sometimes we have to stay an hour longer when we dont balance. its nto fair because i feel like i am simply wasting my time. i love working for cibc, but there are things that need to be changed to make it a better working environment

5603. I am concerned about unpaid overtime. We are told we can leave on our scheduled time but even if we are balanced and our personal duties are completed, we are still expected to stay until everything is completed even when other csrs are not balanced. If we want to leave on time, we are seen as not being team players. This is not fair. [...]

5396. Regarding the unpaid overtime issue, while I realize there are policies and procedures in place, there are many unpaid hours that have been worked in the past for many people and we were told to do whatever it takes to get the job done. This comment is for informaton purposes only as I think it is important for the corporation to realize this. It is not something I would persue.

5367. I BELIEVE WE SHOULD BE PAID OVERTIME /BUT AT TIMESAT 4.45 YOU ARE STILL SERVING CUSTOMERS THERFORE NT ABLEA TO LEAVE 5 .. 00 SO 10 MIN. EVEY DAY ACCUMULATES TO OVERTIME WHICH WE DO NOT GET COMPENSATED FOR [...]

5232. *I voluntarily incur a lot of unpaid overtime to keep up with demands of my job, and invariably am told "time management" needs improvement whereas it is the workload that dictates putting in the additional time - and client satisfaction.*

4357. *With the current cut backs and elimination of certain branch positions I feel that we as CSR's have had to take on an increased workload that sometimes makes it hard for us to focus on providing the best service to our clients. Also, we are finding ourselves having to stay after hours in order to get our work done and not being permitted to claim the extra time. How can overtime be preapproved when we don't know from day to day what we will have to deal with, increased volume, late clients, technical issues with CDU, ATM computers, etc? It's not like we can say "oh, it's 4:30 I have to leave now." when the cash isn't locked up and the end of day activities are incomplete. This policy, while porposeful, is not set up for all circumstances and could be revised.*

3974. *Overtime policy is unreasonable. When I need to stay late to get something done, there's no way I know two weeks in advance to get "permission" to stay late ... some tasks simply demand extra unexpected time and there's no way to predict that.*

3591. *in regards to the recent article on overtime pay, this is an ongoing issue for myself as well. On the average, I put in an hour at least of extra work that is not compensated for. I know that CIBC says they have a policy re: compensation but I have never been made aware of this. We are told to close the doors 5 minutes late each day which often leads to working later, yet our hours never change on our work sheets. I tend not to think of those hours as most companies seem to do the same to their employees and you take it as part of the job. It does affect peoples attitudes after a while and people become disgruntled. I also realize that we are paid our gaurenteed hours even when we are sick for a day, so I understand that things are balanced out that way. [...]*

3362. *Our best commodity as an organization is our front line CSR staff. Please give the branch managers the resources to staff appropriately to better service our clients, and more importantly compensate our CSR'S for the multi-tasked job they perform. .. they barely make minimum wage. We should be allowed to pay overtime, when justified due to shortages of staff etc. We have been TOLD not to pay overtime, rather offer time off in-lieu, which is difficult to manage & monitor with on-going staff changes. Hopefully this class action lawsuit will change CIBC'S mindset on paying overtime to their employee's who truly are the FACE OF CIBC. It is impossible to complete the duties of most jobs in CIBC within the time-frame of 7.5 hrs per day. PLEASE give us more staff to meet the needs of our clients. [...]*

3047. *The steady increase of workload and expectations over the past several years for the front-line staff with minimal compensation in salary and habitual discouragement from management for claiming overtime pay, even for "mandatory" after-hours meetings is creating an observable degradation in workplace morale and a general feeling of exploitation.*

2596. *i work in a branch that tellers only get an half hour lunch and no Breaks and no overtime. I feel that is not within the labour board guide lines and i am very proud of the teller that is suing cibc., because it is very true that we don't get paid overtime ever!!!!!!*

6162. *[...] As a CSR we are the lowest paid of the 5 major banks. [...] We are not allowed to fill our time sheets in for all the extra hours we work. We have been told our manager*

must get pre-approval for over time. This is impossible to predict how a given day will end. Often we do not get an afternoon break because it is busy. [...]

3915. I have found that CIBC have unreasonable expectation for tellers to balance within 30 minutes of closing. We are always short staff and if it is the middle or end of the month when the line up is even worst than regular through the door all day line, it is impossible to list cheques, utilities and foreign plus count and sell your cash within the time frame we have. We are discourage from claiming over time by being told if we do not balance in half hour then it is our fault and we are too slow I really think that the powers that be need to revisit that time line. [...]

1961. [...] The overtime policy is not reasonable. How can one know before hand that they will be waiting for a teller to balance, so that they may lock or count there cash for verification ? [...]

2630. [...] My biggest concern with CIBC as an employee is the expectations that are underlying, ie: I have spoken to many of my peers and the consensus on working overtime to fullfil I your job requirements and targets is almost a must; although none of my peers including myself believe we are able to be compensated for the overtime worked. I am in full understanding of the overtime policy and know that if I requested to work the overtime I felt was needed to do my job that it would not be approved. I have never been asked to work overtime or felt it was an expectation from my manager but to fullfil I the requirements of my non-negotiables like meeting per week, outbound calls, sales events revenue targets and also continue to service my clients needs, do the training required and the paperwork needed to completely do my job; I am unable to do that in 37.5 hours a week.

3876. I TOTALTY AGREE WITH PERSON WHO BROUGHT UP THE OVERTIME PAY ISSUE DUE TO I WAS ONE OF MANY EMPLOYEEES WHO HAVE BEEN AFFECTED BY THIS ISSUE AND US AS A WHOLE WILL DEFINATELY BE HAPPY IF THIS ISSUE GETS RESOLVED POSITIVELY

6682. CIBC must deal with reality. Yes, CIBC has a clearly defined overtime policy, but Management intimidate and/or discourage staff to ensure overtime is not requested or claimed. Employees often feel harrassed and/or abused by management and internal partners. Employees are burned out, are assigned heavy workloads that cannot be completed within standard working hours. [...]

- (d) The complete 32-page “CIBC Employee Survey 2007- Comments Report” from which the above comments are drawn is appended at Schedule “A” to this Notice of Motion. Copies of the comments reports from the other years (2001, 2003, 2005, 2008 and 2009) are appended as exhibits to the affidavit of Jean-Marc Leclerc, to be sworn;
- (e) CIBC has provided no credible explanation for why the additional survey evidence has not been produced until now, nor any assurance that it is not failing to disclose

additional documents that are relevant and helpful to the Plaintiff. To the contrary, it is apparent on the face of these documents, as well as from the copies of CIBC's responding evidence from certification, that CIBC has other documents in its possession and/or control that are highly material to this action and the summary judgment motion, but that it has inexplicably failed to produce;

- (f) In addition to the above survey results, the Defendant has also recently identified (on April 7, 2017) selected documents relating to individual or branch specific experiences with overtime which the Defendant now contends are relevant to the common issues but which are the types of documents that the Defendant had previously and steadfastly insisted were not relevant to the common issues;
- (g) The documents that CIBC has withheld, and continues to withhold, go directly to the heart of the case and ought to have been disclosed years ago. If CIBC had complied with the rules, the Plaintiff would have been able to seek further related disclosure, conduct discoveries or cross-examinations, and use this evidence to build its case for summary judgment or trial. Instead, the Plaintiff elected to bring its summary judgment motion having determined, on the basis of CIBC's undertaking and unequivocal representation that CIBC had made full disclosure. CIBC's breach of its obligations has resulted in serious prejudice to the Plaintiff and the class that can only be rectified by the relief requested on this motion;

Procedural Background

- (h) This action was commenced by Statement of Claim in June 2007;

- (i) The class proceeding is brought on behalf of approximately 31,000 tellers and front-line staff who work(ed) for CIBC in retail branches across Canada. As noted by the Court of Appeal in its reasons for judgment certifying this case as a class action:

The plaintiff alleges that there are four systemic deficiencies in CIBC's overtime compensation system:

(1) CIBC's overtime policy and practice unlawfully restricts overtime compensation; (2) CIBC discourages class members from claiming overtime to which they are entitled; (3) CIBC fails to record the overtime hours that class members work; and (4) CIBC fails to ensure that class members are prevented from working overtime that CIBC does not intend to compensate.

- (j) At the outset of the action (in 2007), the Plaintiff made clear in a detailed preservation letter, addressed to CIBC's General Counsel, that survey evidence was relevant to the issues in the action and would have to be preserved. The Plaintiff also made it clear in other detailed preservation letters in 2007 that relevant records (electronic or otherwise) revealing time that class members worked or may have worked were relevant and must be preserved;
- (k) CIBC resisted certification of this action, claiming that it possessed no evidence of systemic issues with respect to overtime. In particular, its lead witness on certification and Senior Vice President of Human Resources for Retail Markets, John Silverthorn, expressly deposed in 2008:

*CIBC periodically reviews various forms of documentation created and maintained at individual branches, including documentation related to hours of work and payment, and also periodically asks individual employees about a broad range of workplace issues, including whether there are issues with respect to overtime at their branch. These reviews and inquiries are conducted for the purpose of assuring compliance with the bank's policies and addressing any particular issues that may exist in a given branch. **None of these reviews and inquiries have revealed any systemic issues with respect to overtime.***

[Emphasis added]

- (l) Mr. Silverthorn's 2008 evidence was instrumental in persuading the Honourable Justice Lax that there was no factual basis for the plaintiff's claim of systemic overtime problems at CIBC. Justice Lax denied the motion for certification in June 2009, and a subsequent appeal to the Divisional Court affirmed her ruling. Only after the Court of Appeal granted leave to appeal the Divisional Court's order and granted the appeal in 2012 was the case certified. Moreover, it was only after the Defendant's leave to appeal motion to the Supreme Court of Canada was denied in 2013 that this action was able to move forward on the merits;

Production Prior to the Summary Judgment Motion

- (m) After numerous delays, the Defendant provided documentary disclosure, commencing in February 2014. On May 1, 2014, CIBC's counsel asserted that its productions were complete;
- (n) Included in the Defendant's productions were documents showing that the Defendant had in fact conducted numerous reviews and inquiries which were clearly relevant to systemic issues with respect to overtime. Among these documents was an example of a wide-ranging employee survey, entitled "1999 Open Survey," which detailed several dozen first-hand comments of employees that were relevant to and corroborative of the systemic allegations in the lawsuit. However, CIBC provided no evidence of similar wide-ranging surveys, nor any indication that such surveys were done on a regular basis;
- (o) Plaintiff's counsel was concerned that the productions were incomplete and sought a case conference on May 26, 2014. Among the concerns identified were:

- (i) CIBC had failed to serve a sworn Affidavit of Documents;
 - (ii) The Schedule B did not contain the purported basis for privilege or any meaningful description of the documents;
 - (iii) The productions included only approximately 2,600 documents (including hundreds of duplications); and
 - (iv) There were fewer than 150 documents predating 2005;
- (p) At the case conference, the Defendant asserted that it had disclosed all non-privileged documents in its power, possession or control that were relevant to the common issues;
- (q) Following the case conference, Plaintiff's counsel reiterated its request that the Defendant serve a sworn Affidavit of Documents, and continued to make this request for the next year. Plaintiff's counsel also remained concerned about the relatively few numbers of documents produced which amounted to a fraction of the productions from the defendant bank in a similar case against the Bank of Nova Scotia;
- (r) In September 2014, the Plaintiff made a detailed and particularized request for further documentation, that specifically noted that "documents produced by CIBC indicate[d] that the Bank conducted various surveys of its regional, district and branch offices" and requested "[d]ocuments relating to the design and conduct of the surveys and audits";
- (s) After repeated prompting, CIBC counsel responded on December 24, 2014, claiming that it had "already produced all documents relevant [to the plaintiff's request] that are not privileged";

- (t) CIBC counsel had also insisted throughout the production process that documents relating to any individual's experience with overtime and compensation for overtime were irrelevant to the common issues and would not be produced. For example, on March 9, 2015, counsel to CIBC wrote to counsel to the Plaintiff, "In our view, the systemic issues raised by the certified common issues do not involve a consideration of individual employee's circumstances or their claims for unpaid overtime compensation";
- (u) On May 15, 2015, after a year of requests by the Plaintiff, and after the Plaintiff had brought a motion seeking specific relief in this regard, CIBC finally delivered an Affidavit of Documents, sworn by John Silverthorn. The Affidavit of Documents listed two documents related to the 1999 Open Survey but no other documents which would have disclosed that similar surveys had in fact been conducted biannually since 1995, and annually since 2007;

Summary Judgment Motion

- (v) On the basis of CIBC counsel's repeated assertions that it had produced all non-privileged documents in its possession or control relevant to the certified common issue, and on the basis of Mr. Silverthorn's sworn affidavit that he had disclosed "all documents relevant to any matter at issue in this action that are, or have been in the possession of CIBC," the Plaintiff elected to move for summary judgment;
- (w) On or about October 19, 2015, the Plaintiff served her Notice of Motion for summary judgment. The importance of the survey evidence was specifically highlighted in the

Notice of Motion. Indeed, the 1999 Open Survey was specifically referenced, and quoted from, as part of the grounds in support of the motion;

- (x) On July 18, 2016, the Plaintiff served her Motion Record in support of her motion for summary judgment. The Motion Record included expert evidence that extensively relied upon the 1999 Open Survey in support of the opinion that CIBC compensation and record-keeping processes suffered from systemic deficiencies that likely cause uncompensated overtime;
- (y) This Honourable Court ordered that the summary judgment motion be heard beginning August 29, 2017 and ordered the Defendant to deliver responding materials to the summary judgment motion by April 17, 2017;

Defendant Delivers Previously Undisclosed Documents

- (z) On April 7, 2017, five business days before it was required to deliver its responding materials on the summary judgment motion, CIBC counsel delivered a drive containing several hundred documents not previously disclosed in its Affidavit of Documents. These included documents excerpted from CIBC-wide surveys conducted in 2001, 2003, 2005, 2007, 2008 and 2009, containing more than 500 first-person accounts of employees corroborating the systemic allegations of uncompensated overtime that are the focus of this action;
- (aa) The documents also included a selective sampling of records relating to individual experiences or occurrences of overtime, recording of hours (including, for example, certain timesheets for individuals), and compensation for hours worked. These selected

individual records were not disclosed in the Defendant's original Affidavit of Documents. Indeed, these records are the types of individual records that the Defendant previously steadfastly maintained were not relevant. This selection of a small subset of individual records is now used by the Defendant to support its position on the summary judgment motion;

- (bb) Each of the previously undisclosed survey reports referred to above is entitled "CIBC Employee Survey [year] – Comments Report RETAIL BANKING AB". The vast majority of these first-person accounts appear to have been authored by class members. The survey report for 2007 is particularly noteworthy insofar as it contains 32 pages of single-spaced first-person accounts, many of which specifically make reference to this action and explicitly corroborate the allegations therein;
- (cc) Mr. Silverthorn, in his April 13, 2017 affidavit, served as part of the CIBC responding record, has deposed for the first time that "one additional way in which CIBC addresses the challenge of managing a network of over 1,000 branches is to solicit feedback through employee surveys," and that "[e]mployee surveys were conducted by CIBC every two years from 1999 to 2007, and annually after 2007." Notably, the 2007 Survey appears to have been conducted in or about June or July of 2007, which was just after this class action was commenced, and while Mr. Silverthorn was employed as the Senior VP of Human Resources, Retail Markets;
- (dd) CIBC provided no credible explanation as to why these documents had been withheld for years after it represented that it had made full disclosure. To the contrary, in its short

cover letter enclosing the USB drive, CIBC did not mention the copious survey evidence, and stated simply:

In preparing our response to the Plaintiffs motion for summary judgment, brought in advance of examinations for discovery, we have conducted investigations that have uncovered certain additional relevant documents. The majority of these files relate to nine retroactive overtime claims.

- (ee) It is clear that CIBC had these documents for a considerable period of time before they were disclosed to counsel for the Plaintiff. They are extensively referenced and analyzed in CIBC's responding record, including, *inter alia*, in the affidavit of Stephanie Speal, sworn April 10, 2017, one business day after the disclosure;

Undisclosed Relevant Documents

- (ff) CIBC's responding materials served on April 17, 2017 contain numerous explicit and implicit references to relevant documents that are within CIBC's possession or control that have not been disclosed. For example, Ms. Speal's affidavit, which attaches the additional survey evidence, makes explicit and/or implicit reference to the following relevant documents and types of documents:
- (i) documents relating to the design of CIBC's internal surveys (e.g. "The survey is designed to take only a few minutes to complete..."; "The survey is designed to bring to the surface any more specific issues affecting employee satisfaction through an open-ended question or 'prompt' at the end of the survey...");

- (ii) documents relating to the management of CIBC's enterprise-wide surveys (e.g. "I have managed CIBC's enterprise-wide surveys since I joined in October 2000");
- (iii) documents relating to third-party vendors involved in administering the surveys (e.g. "CIBC outsources the conduct of the survey to a third-party vendor");
- (iv) documents relating to the aggregation and anonymization of data from the surveys and the preparation of reports based on the survey results (e.g. "The [third-party] vendor administers the survey electronically and aggregates and anonymizes the data into various reports based on business requirements");
- (v) documents relating to the communication of survey results to managers across CIBC, including survey reports at the unit, branch, district and regional levels (e.g. "Reports are developed for managers at different levels of the organization, aggregating data from their specific employees as well as data from across the bank. No manager received a unit-specific report if fewer than ten of their employees responded to the survey. Branch managers did not receive comments made in response to the open-ended prompt as those were aggregated at the district and regional levels");
- (vi) other documents relating to CIBC's response after becoming aware of complaints about unpaid overtime hours worked in the 2001, 2003, 2005, 2007, 2008 and 2009 surveys, including but not limited to internal emails, memos, presentations, trainings, directions, instructions or any other documents or

follow-up responding to the unpaid overtime complaints in the surveys that were previously undisclosed;

- (vii) generally, data that formed the basis of Ms. Speal's statistical analysis of the survey results in 2001, 2003, 2005, 2007, 2008 and 2009. Ms. Speal states that "[r]ecords from the 1999 survey and other prior surveys were destroyed". She does not state that the records from the subsequent surveys were destroyed. Instead, she purports to provide an analysis and summary of what the "data from 2001 onwards indicates", without disclosing any of the data or records that formed the basis for her analysis;
- (viii) copies of all answers given by employees in response to the survey questions, including but not limited to all comments made by employees in response to the "open-ended prompt" at the end of each survey, which clearly exist because they formed the basis of Ms. Speal's statistical calculations. These include comments that may be relevant to the common issues while not specifically using the words "overtime" or "over time" or "heures supplémentaires";
- (ix) documents relating to the nature of questions asked in each survey, including copies of the questions themselves, the manner of presentation of the questions, and any other information or documents that were communicated as part of the process of conducting the surveys, all of which are relevant and necessary in order to meaningfully test Ms. Speal's purported statistical analysis of the survey results;

- (x) documents with identifying information of the respondents to the surveys, including but not limited to the position and branch of each respondent. It is clear that such documents exist on the basis that CIBC organized the results for each survey and prepared individualized survey reports for managers at the branch, district and regional levels within the organization, as described in Ms. Speal's affidavit;
- (xi) to the extent that any of the above-listed documents have been destroyed or are no longer in CIBC's possession or control, any and all documents relating to said destruction;
- (gg) CIBC has provided no explanation of the derivation of the survey reports, who they were sent to, what portion of the survey they relate to or what, if anything, was done in response to them. There can be no question as to the relevance of the above documents and categories of documents, which go to the heart of the issues in dispute in that they constitute direct evidence of, *inter alia*, (i) the extent to which CIBC had actual or constructive knowledge of unpaid hours being worked, and (ii) faced with such knowledge, the steps taken by CIBC, if any, to prevent or otherwise not permit such work from being done;

Destruction and Deletion of Documents

- (hh) CIBC has also now revealed, in its responding record on summary judgment, that it has destroyed large quantities of relevant documents. In her affidavit, sworn April 17, 2017, Betty Reid disclosed that nine categories of documents had been destroyed, all of which occurred after this action was commenced and after the Plaintiff delivered its

detailed document preservation letter at the outset of the litigation. Instances of purportedly “inadvertent” data deletion include:

- (i) “Any Active Directory/MACS data that was retained subsequent to the start of this litigation was inadvertently deleted when the logging products were changed in 2010”;
- (ii) “Horizon data from 1999 until May 2007 was inadvertently deleted at some point after 2008. To date, we have been unable to determine the cause of this deletion”;
- (iii) “The remaining PESA data was inadvertently deleted sometime between 2008 and 2017. To date we have been unable to determine the cause of this deletion”;
- (iv) “Surf Control was introduced in 2006 and had technical challenges. As a result, log information was spotty and unreliable. It was replaced in 2010 with a product called Bluecoat, which made the previous logs unreadable. During this 2010 software upgrade, all historical Surf Control data was inadvertently deleted”;
- (v) “Intranet WebServer data exists from November 2007 until December 2008. Data from before November 2007 and after December 2008 was inadvertently deleted sometime after 2008”;
- (vi) “ISI Online data is available from December 2003 until the end of the Class Period. Data from January 2003 until December 2003 was inadvertently deleted sometime after 2008”;

- (vii) “In July 2016, CIBC revised its mainframe log storage policies. As a part of this initiative, all [CIF logs] data between April 2005 and November 2007 was inadvertently deleted”;
- (viii) “Between July and December 2016, CIBC revised its [COINS] mainframe log storage policies. As a part of this initiative, all data from before 2014 was inadvertently deleted”;
- (ix) “Between July and December 2016, CIBC revised its [COLT] mainframe log storage policies. As a part of this initiative, all data from before 2014 was inadvertently deleted”;
- (ii) Even though data samples from a number of these systems were extracted for the purpose of the Deloitte Report prepared for CIBC during the certification process, and therefore the relevance of the data was clear, CIBC has acknowledged that for most of the above systems, the only data that remains available is in respect of “five employees over a period of approximately one month in November 2007, collected as part of the Deloitte Report.” What is more, CIBC appears to have destroyed data from two systems (COINS and COLT) after receiving the Plaintiff’s motion record in July 2016, which included an expert report of Stefan Boedeker discussing the log records generated by those very data systems. CIBC has provided no satisfactory explanation for the deletions. At a minimum, any records relating to the destruction of relevant data are clearly also relevant. These include, but are not limited to, records relating to:

- (i) what steps, if any, were taken to preserve relevant documents, including but not limited to any internal communications or notifications informing managers and employees of the bank's obligation to preserve relevant documents;
 - (ii) how the documents were lost or destroyed;
 - (iii) when the documents were lost or destroyed;
 - (iv) why the documents were lost or destroyed;
 - (v) who authorized and/or was aware of the loss or destruction of documents;
 - (vi) what steps, if any, were taken by CIBC upon the discovery of the loss or destruction of the documents;
- (jj) CIBC has disclosed no documents whatsoever relating to the above issues. The deletion, loss or destruction of records needs to be pursued, and the Plaintiff needs to understand what information has been lost and why. The Plaintiff will need to seek appropriate remedies and relief for any such lost or destroyed data, and is unable to do so until all records relevant to the loss or destruction of data have been disclosed;

Costs Thrown Away

- (kk) A number of decisions and steps have been taken by the Plaintiff based on the documents disclosed by CIBC and based on CIBC's representations that its disclosure was complete. Such decisions and steps include, among others, the decision to delay examinations for discovery, the decision to move for summary judgment based on the documents produced by CIBC, and the preparation and filing of affidavits for the

- summary judgment motion, which included retaining experts to prepare reports based on the documents produced by CIBC;
- (ll) CIBC's late disclosure of relevant documents, and its ongoing failure to disclose relevant documents, has resulted in additional costs and costs thrown away irrespective of the outcome of the motion for summary judgment;
 - (mm) By way of example, the Plaintiff's experts will now need to prepare new expert reports in light of the substantially altered evidentiary landscape. The full extent of costs thrown away is not known today;
 - (nn) The Plaintiff requests compensation for such additional costs and costs thrown away that can be quantified at this time, and reserves the right to request further costs at a later date once all thrown away costs are capable of quantification;
 - (oo) CIBC has also now taken the position, in its most recent disclosure and in its responding record, that certain individual records relating to occurrences of overtime may be relevant to the common issues. If and to the extent that costs have been thrown away as a result of CIBC's positions in respect of the relevance of such individual records, the Plaintiff reserves the right to request costs thrown away and to move for any other necessary and appropriate relief;

Conclusion

- (pp) CIBC's failure to disclose the survey reports in a timely way, its failure to disclose other relevant documents, including documents relevant to its destruction of relevant documents, and its delivery on May 15, 2015 of an incomplete and misleading

Affidavit of Documents necessitate the ordering of the requested relief to ensure that the Plaintiff is provided the evidence that she is entitled to under the *Rules* and that the record before the Court on the summary judgment motion is fair, thorough and comprehensive;

- (qq) Rules 30.06, 30.07, 30.08 and 31.05.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (rr) Section 12 of the *Class Proceedings Act*, S.O. 1992, c. 6; and
- (ss) Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Jean-Marc Leclerc, to be sworn; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

April 28, 2017

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Plaintiff

-and-

CANADIAN IMPERIAL BANK OF COMMERCE
Defendant

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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This is Exhibit "I" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

November 30, 2017
Enclosed to go per
attached,
Bryan J.
Justice Glaston

ONTARIO
SUPERIOR COURT OF JUSTICE

218

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE PLAINTIFF
(PRODUCTION AND DIRECTIONS)
(RETURNABLE November 30, 2017)

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FILE/DIRECTION/ORDER

BEFORE JUDGE GlusterACTION # CU07-334113 CPForsw

Plaintiff(s)

-v-

Canadian Imperial Bank of Commerce

Defendant(s)

CASE MANAGEMENT: YES ☐ NO ☐COUNSEL: D. O'Connor
A. Dewar
L. Sukolov, P. Engelmann } phin hbl

PHONE NO. _____

L. Plumptre / J. Field } Defendant

PHONE NO. _____

PHONE NO. _____

☐ ORDER ☐ DIRECTION FOR REGISTRAR☐ REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____☐ NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

At the outset of this motion, plaintiff sought to introduce
17 additional cases and a long written summary of the cases
to the court. That material was not delivered to defendant's
counsel until late yesterday, and had not been reviewed
by the court.

While the court is asked to address substantive issues

November 30, 2007
 DATE

[Signature]
 JUDGE'S SIGNATURE

Superior Court of Justice

FILE/DIRECTION/ORDER

Judges Endorsement Continued

of law, it is appropriate for the factums, (even by way of a reply factum) to address that issue. In this particular case, the plaintiff ^{at the hearing} asserts a text under Rule 30.06 that is modified or amended from the defendant's position, without advancing it to the court by written submissions filed before the hearing, and by only delivering the cases to the defendant on the eve of the motion.

Under those circumstances, I declined to hear the motion today. Asking the court to opine on legal issues which will affect productive motions before masters and other courts without proper notice of those submissions does not advance the interests of justice.

Having decided as above, I undertook a case conference with counsel to address process issues on a going forward basis. In particular, plaintiff and defendant considered whether other steps in this proceeding would take place prior to the return of the motion, such as cross-examination

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on the defendant's affidavit of Laurent and/or
 examination for discovery of the defendant, Plaintiff
 advised that he sought to conduct the cross-
 examination ^{on} the defendant's affidavit of
 Laurent before this motion was reheard, and
 the defendant did not oppose and a process without
 prejudice to the defendant's position that production
 issues of the plaintiff should await ^{after} examination
 for discovery.

~~These~~ The parties have addressed process issues
 with regard to the present motion. The plaintiff
 requested that it be adjourned to be brought
 back with amended notice of motion and
 further motion material if required. The defendant
 requested that the motion be dismissed without
 prejudice to the plaintiff bringing it back, as
 the defendant raised concerns that on the
 return of the motion, other reasons could arise
 or existing issues might fall away.

Superior Court of Justice

FILE/DIRECTION/ORDER

Judges Endorsement Continued

I advised the parties that I would reserve ~~order~~
of ~~downward~~ ^{and discovery} ~~protection~~ ^{issues} arising out of this
action, unless otherwise ordered by the court. Consequently,
the appropriate is to ~~gain~~ ^{the motion to} ~~to~~ ^{to} ~~bring~~
back with ~~revised~~ ^{revised} ~~motion~~ ^{motion} and any
further motion ~~needs~~ ^{needs}, without prejudice to both
sides filing any additional material necessary
to address ~~and~~ ^{and} ~~protection~~ ^{protection} ~~and~~ ^{and} ~~discovery~~ ^{discovery} ~~issues~~
when they arise. Also, my order is without prejudice
to the parties' ~~protection~~ ^{protection} ~~or~~ ^{or} ~~costs~~ ^{costs}, which will remain
to be determined once ~~downward~~ ^{downward} ~~protection~~ ^{protection}
issues are resolved by the court, or by a hearing
on costs ~~does~~ ^{does} if the parties do not reach a
further ~~decision~~ ^{decision} on protection issues.

Finally, once the parties have determined an
appropriate return date of the motion which is to
be scheduled with my assistance, they are to
bring a ~~costs~~ ^{costs} ~~tractable~~ ^{tractable} or, if ~~costs~~ ^{costs} ~~cannot~~ ^{cannot} ~~be~~
reached, I will address ~~scheduling~~ ^{scheduling} ~~issues~~ ^{issues} at

Superior Court of Justice

FILE/DIRECTION/ORDER

Judges Endorsement Continued

a conference. I will be available for
a conference to address procedural issues
if requested.

This is Exhibit "J" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CITATION: Fresco v. Canadian Imperial Bank of Commerce
COURT FILE NO.: 07-CV-334113PD2

Cross-motions for summary judgment on the certified common issues. Counsel agreed that I would proceed in two steps: first, release my decision re the liability issues, and if liability was found, convene a further hearing and determine the damages issues. As I noted in the first part of my decision finding liability:

The appropriate remedies, including damages, will be addressed in the second part of this decision when I consider common issues 6 to 8 and the related question of aggregate damages. Common issues 6 and 7 may provide the plaintiff with some challenges, including limitation periods ...¹

The remaining “damages issues” hearing is scheduled for June 29, 2020. The defendant bank has recently filed a Notice of Constitutional Question re the limitation issues. The parties disagree about when the limitation/constitutional issues should be argued.

DIRECTION

I direct that the remaining common issues 6 to 8, the aggregate damages question and the limitation/constitutional issues shall be heard as follows:

- **On June 29, 2020: Remaining common issues 6 to 8 plus the aggregate damages question;**
- **On a date to be scheduled as soon as convenient thereafter: The limitation issues/constitutional question.** Given that the June 29 hearing already has a full agenda, and given D’s recent Notice of Constitutional Question and the need to provide sufficient time for interested governments and interveners to file material (and P to file responding material) it makes sense to schedule the “limitation/constitutional issues” hearing as soon as convenient *after* June 29, 2020 - ideally sometime this summer or early fall. Counsel to advise.

Signed: Justice Edward P. Belobaba

Date: May 14, 2020

¹ *Fresco v. Canadian Imperial Bank of Commerce*, 2020 ONSC 75 at para. 94.

This is Exhibit "K" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

ONTARIO SUPERIOR COURT OF JUSTICE

DARA FRESCO

Plaintiffs,

v.

CANADIAN IMPERIAL BANK OF COMMERCE

Defendants.

Court File No. 07-CU-334113PD2

EXPERT REPORT OF

STEFAN BOEDEKER

January 12, 2022

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1 Executive Summary

1.1 Wage and Hour Litigation Experience

1. My name is Stefan Boedeker. I am a Statistician and an Economist currently working as a Managing Director for the Berkeley Research Group (“BRG”), an international litigation consulting and expert firm.

2. To date, I have been retained in approximately 200 wage and hour class action cases. The scope of my retention in those cases included but was not limited to providing consulting services or expert services in the class certification stage, assessing questions of liability, calculating exposure or quantifying damages, and developing post-settlement or post-judgment distribution formulas of awarded amounts to the class members. It is my best estimate that I was retained by counsel for the defendants in over 75 percent of those cases.

3. I have issued expert declarations, expert reports, and rebuttal reports in numerous cases. I have been deposed and I have testified in employment wage and hour cases in state and federal courts throughout the United States and have provided reports and sworn affidavits in Canadian Courts.

4. My special expertise in wage and hour class actions to date has included but is not limited to:

- a. Combining and standardizing data from large employment related databases, payroll data, time keeping records, telephone records, e-mail records, point-of-sales systems, video recordings, and records from other electronically stored systems that are generated throughout an employee’s work life, all of which typically create electronic timestamps that can be used for data analysis purposes;
- b. Statistically analyzing such combined databases and using the results from those analyses to opine on potentially uncompensated time worked;
- c. Utilizing advanced statistical methods such as data imputation, Monte Carlo Simulation studies, time series and predictive modeling, and forecasting and backcasting to address missing data issues;

- d. Designing and conducting surveys, time and motion studies, observational studies;
 - e. Statistically analyzing the results of such surveys and studies (my own and other experts' studies);
 - f. Applying statistical sampling methodologies to extrapolate results from a random and representative sample to a universe of individuals; and
 - g. Applying economic theory, statistical models, and statistical tests to develop scenarios of economic loss to class members.
5. The approximately 200 wage and hour class actions I have been retained in fall within a broad class of industries including, but not limited to, retail, hospitals, hospitality, freight services, entertainment, banking, insurance, state workers, warehousing, call centers, software, professional services, law enforcement, newspapers, ferry crews, social workers, IT support staff, help desk employees, shipping, and administration.
6. Specifically, in the banking industry I have been retained in several cases in both an expert and a litigation consultant capacity, including, but not limited to:
- a. In a wage and hour class action of trainees for the broker position in the investment banking division of a large bank alleging unpaid time working off the clock and underpayment/non-payment of overtime, I was retained and designated as an expert, and I submitted a declaration. I analyzed payroll records, time records based on an electronic swipe card, computer log-on and log-off times, access records to online training courses, which had to be taken on the trainees' work computers, e-mail records, and phone records of incoming and outgoing calls, which all create timestamps or time recordings that are not necessarily log-on and log-off times, to assess when employees were at their workplace and engaged in work related activities.
 - b. In several class actions involving employees working as bank tellers alleging unpaid straight time work and underpayment/non-payment of overtime, I was retained as a consulting expert. In these cases, I analyzed work schedules, log-on and log-off times at computer terminals, and payroll records to quantify the extent of the damages.

- c. In a class action involving allegations of misclassification claims on behalf of Information Technology employees of a large bank for failure to pay overtime, I analyzed time sheets, call logs, work logs, project summaries, and system log-on and log-off information to quantify the extent of the damages.

7. In most of the approximately 200 wage and hour class actions that I have been retained in to-date, working off the clock and unpaid or underpaid overtime hours were at issue. In these instances, I have analyzed data produced from time keeping systems and other systems that record the time when events take place during the course of an employee's work week, as well as other data systems, including but not limited to, point-of-sales (POS) data, email data, scheduling data, alarm data, building access data, call center data, and driver log data to examine issues alleged in these matters, including the quantification of damages.

8. Besides actual physical time punch cards that are time-stamped by a clock mechanism and employees' self-reported time sheets, I have also analyzed data generated from numerous electronic systems including, but not limited to, Acumen, ADP, Ascentis, Ceridian, Citrix, Isgus, Kronos, Nortek, PeopleMatter, PeopleSoft, SaleHRMS, and TimeClick, WorkBrain, and Workday.

9. The timestamps of such systems are triggered by, for example, swiping a card key or entry, or typing a code into a system like at a secured gate or the entrance to a factory property, logging into a system, performing work-related activities at computer terminals, sending and receiving work-related emails, and accessing computer-based training materials. In many systems, these timestamps are precise to the second in capturing the time of the actual swipe or keystroke.

10. Counsel for Plaintiff ("Counsel") has retained Berkeley Research Group ("BRG") and me in the class action case *Dara Fresco et al. versus Canadian Imperial Bank of Commerce* ("CIBC") to provide expert services the areas of data extraction and analysis, database creation, statistical sampling, statistical modeling (including forecasting and backcasting), and damages calculations. My team and I have extensive expertise in these matters, particularly in the context of extraction and analysis of timestamp data and quantification of damages related to uncompensated payment of hours and overtime worked.

11. In performing my work on this case, I have been supported by a team of BRG personnel who worked under my supervision and directions. The following individuals functioned in leadership positions on this engagement and may have worked with other BRG personnel:¹

- a. Okem Nwogu has over 15 years of experience. He has undergraduate and graduate degrees in applied economics. He is currently a Director at BRG where he has worked with me for over 10 years on large-scale data projects (non-litigation and litigation related cases). Besides applying his database and data analytical modeling skills to the daily work; he also functioned as the overall case manager.
- b. Karl Schliep is a Senior Managing Consultant at BRG. He holds a PhD in Data Science. Karl's work at BRG in general and on this case in particular has primarily been concerned with big-data analysis, data extraction, and development of specialized software to transform raw data from electronic data systems into formats that make the data suitable for statistical analysis.
- c. Alexander Billy is a Managing Economist at BRG. He holds a PhD in Economics. Alexander's work at BRG in general and on this case in particular is primarily concerned with the development of economic models and the empirical econometric analysis of large-scale databases to estimate the model parameters.
- d. Adam Shapiro is a Consultant at BRG where his work in general and on this case in particular is primarily concerned with developing and applying computer code for statistical modeling in large-scale litigation cases.

1.2 Scope of Work

12. The class is composed of current and former CIBC employees – more specifically, non-management, non-unionized employees who worked in a front-line customer service role and who

¹ In the remainder of this report, I will refer to the BRG team working on this case under my supervision and direction as “We” or “My team and I”. Furthermore, I want to point out that all individuals who supported my work on this case either are current BRG employees or were BRG employees when they worked on this case.

were employed between February 1, 1993 and June 18, 2009. It is my understanding that there are over 30,000 class members.²

13. Over the course of the last year, a large amount of electronic system data has been produced. Counsel has asked me to review the produced documents and data to develop a method to compute aggregate damages to the class for hours that were not appropriately compensated. In doing this work, my team and I identified electronic data systems that contain time-stamped data, extracted and analyzed the timestamps, combined the time-stamped data on an individual employee and work-day level, and ultimately developed a model to reliably estimate class-wide damages utilizing complex and advanced statistical models that are well-documented, established in the statistical literature and which I have used in the past. These statistical models include application of:

- a. AR Regression: Described in report Section 10.1.
- b. Monte Carlo Simulation and Multiple Regression: Described in report Section 5.5
- c. Survival Analysis: Described in report Section 5.9.

1.3 General Damages Methodology

14. To calculate damages to the class due to unpaid overtime hours, we have utilized the following seven step process”

- a. Step 1: Receive and process raw data from CIBC electronic data systems.
- b. Step 2: Standardize data format and limit data to class employees.³
- c. Step 3: Extract timestamp data.

² The payroll data produced contains 26,375 employees after removing optouts and specified employees/employee-pay periods for removal by CIBC. The new class list received on 12/14/2021 contains an additional 4,759 unique EmployeeID’s related to 2001-2003. These two numbers add up to a total of 31,134 class members (26,375+4.759). As the class period starts well before 2001 on February 1,1993 it can safely be assumed that the class size is in excess of 31,134.

³ Where, below, I refer to “employees”, I am referring to members of the Class.

- d. Step 4: Utilize timestamp data by employee and by day to obtain overtime and non-overtime straight time hours estimates. This applies to the time within the class period for which such time-stamped data was available. The time-stamped data is used as a proxy for unpreserved time records. Overtime is calculated as hours captured by the time-stamped data over 8 hours in a single day or over 37.5 hours in a given week. Unpaid straight time is calculated as hours in excess of those recorded in payroll data for a given pay period.
- e. Step 5: Utilize statistical data imputation models to obtain overtime estimates for instances of partially missing timestamp data.
- f. Step 6: Apply statistical method of Monte Carlo Simulation to obtain overtime estimates for the time within the class period without data.
- g. Step 7: Calculate class-wide damages due to unpaid overtime hours for a variety of scenarios.

1.4 Availability of Electronic System Data

15. In its day-to-day business operations, CIBC records and maintains numerous electronic data systems that include timestamp information. The descriptions and use of CIBC specific data systems are provided in Betty Reid’s April 17, 2017 Affidavit (“Reid Affidavit”) and repeated for reference purposes in Section 4 of this report.

16. However, during the course of my initial work on this case, I was informed of deletions of electronic system data by CIBC, notwithstanding that records of such data were under litigation hold. In addition to the descriptions and use of CIBC specific data systems provided in Reid Affidavit, Ms. Reid also reports on data systems deleted.⁴ A summary table of the data systems affected by the deletion can also be found in Section 4 of this report.

⁴ Betty Reid Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CV-334113CP (Sworn April 17, 2017) (“Reid Affidavit”), Pages 6-12.

17. The input data that was preserved which I utilized in my analysis is described in detail in Section 8 of this report.

18. We received time-stamped data for the systems SM@RT, Horizon, CBFE, IIS, CIF, ISI, and PESA. See Section 4 of this report for an overview of each system and Section 8 for detailed descriptions of the databases we received, and also the ones that we did not receive.

1.5 Combining Disparate Electronic Data Systems by Creating a “Crosswalk”

19. Once time-stamped data were identified in the raw data and processed, we found out that the SM@RT, Horizon, CBFE, IIS, PESA and CIF data use a standardized UserID that is attached to each time-stamp. However, this UserID did not match the format of the EmployeeID in the payroll data. We were able to find information in the IIS data containing employee UserID, Employee Given Name, and Employee Surname. These names were then matched to the Payroll Data using an algorithm, discussed in Section 8.1.6 of this report, to match data between different electronic data systems. The result of this algorithm was a “crosswalk” between the UserID in the time-stamped data and the EmployeeID in the payroll data, which CIBC (through its Counsel) had asserted does not exist.

20. In general, a crosswalk is a data table that links IDs or other information between two or more sets of data such that the data from those separate data sets can be combined. For example, if we found a UserID linked to “John Doe” in the time-stamped data, we were then able to link this UserID to the EmployeeID in the payroll data associated with “John Doe”. After we had spent a significant amount of time to develop this crosswalk, and again after CIBC (through its counsel) had asserted that no such crosswalk existed, CIBC produced a set of CIF time-stamped data that contained the EmployeeID and UserID on each line of data, which in essence was the crosswalk. The CIF data confirmed the matches we had identified using the algorithm to generate a crosswalk.

1.6 Data Standardization

21. As mentioned above, in this case after the data deletion had been disclosed, we were facing the issue that time-stamped data were available for different time periods depending on the electronic data system. For example, the time period from September 2004 to June 2006 only contained data related to the IIS and SMART systems. These two datasets alone did not reliably

capture first and last timestamps for every workday. Figure 15 in this report shows that the period before July 2006 only captured an average of less than 5 hours worked per day per employee. The figure also shows that the incorporation of additional data, notably the CBFE data, provided a large amount of additional time-stamped data which increased the daily data captured to between 7.5 and 8 hours per day on average. Due to the quantity and quality of the CBFE data, we utilized the CBFE data period as the “backbone” of our further work.

22. Upon processing the different electronic data systems and extracting time-stamped data, we faced the issue that the data was recorded using inconsistent timestamp formats, different time zones, and different spellings of names (e.g., with and without middle initials, last name/first name or first name/last name to name a few). Section 9 describes in detail the many steps we undertook to ensure that the input data for the damages estimation model were standardized and suitable for reliable statistical analysis.

1.7 Overtime Calculations and Data Imputation in CBFE Data Period

23. For all employees in class positions who had complete data during the time period with CBFE data (i.e., time-stamped data existed for every day), unpaid overtime was calculated using the available time-stamped data in comparison to the hours paid documented in the payroll data.

24. However, there were certain time gaps where no time-stamped data were matched to class employees.⁵ We applied two methods to impute data for these gaps:

25. For individual employees who had incomplete timestamp data (i.e., employees who were only captured by time systems for some weeks worked), we estimated the missing data by using a statistical model known as an autoregressive model.⁶

26. For individual employees who had no data points, we first computed separate average weekly OT worked by year, month, week, and class position for the employees with electronic

⁵ See Figure 15 in this report.

⁶ For a detailed explanation of autoregressive models and literature references, see Section 10.1 in this report. I have utilized autoregressive models numerous times to predict unknown future data points and to impute missing data points in a series of data points.

timestamp data and then used those averages to impute overtime calculations for employees without timestamps across each position.

1.8 Adjustments to Overtime Calculations

27. At this point, we had calculated weekly overtime hours for each employee with payroll data in the CBFE data period. In this Section, I will describe adjustments to the overtime calculations based on an analysis of other electronic system data or hardcopy data (blotter sheets). These adjustments were as follows:

28. In short, we found that Horizon data was missing for 342 days in the period containing sufficient data. To assess the impact of the Horizon data on the weekly overtime calculations, we calculated the average overtime for all employees corresponding to dates that included Horizon data. We then removed the Horizon data and repeated this calculation on the same dates. We found that the inclusion of Horizon data resulted in an increase in overtime hours captured. We then increased overtime amounts captured on dates completely missing Horizon data by the estimated impact of Horizon Data. For a detailed discussion of this adjustment, see Section 5.3 in this report.

29. We performed a similar analysis for the CBFE data. CBFE data for class members was missing from CIBC's production for the dates January 31, 2007 to February 26, 2007. This corresponds to five weeks. Two of these weeks contain CBFE data on a subset of the days in the week. To account for missing CBFE data, we added the average daily overtime on dates in these weeks with CBFE data to the dates missing CBFE data. For a detailed discussion of this adjustment, see Section 8.1.3 in this report.

30. Blotters are used by employees in the CSR position as part of their cash balancing tasks and can contain handwritten "time notation" for the end of that balancing period. We analyzed a sample of Blotter files and found instances where the Blotter files added time to the workday of CSRs. That is, we found instances where the time on the Blotter post-dated the last electronic time-stamped entry available for that CSR on that particular day. The CSR's final time-stamped datapoint found in the non-Blotter data systems was then adjusted later by the average additional time captured by Blotter data. This amounted to 7 minutes per day for CSRs. For a detailed discussion of this adjustment, see Section 5.6 in this report.

31. The MACS Active Directory is a system that “captured records relating to the authentication and access of a given user to CIBC’s computer network and some applications on that network. As we understand it, the MACs Active Directory may capture the first (access) and last electronic (exit) time-stamp from CIBC’s electronic systems. Our analysis of limited data available from this system for five employees during a single month (as reflected in the Deloitte report) showed that the MACS Active Directory dataset captures earlier timestamps than the combination of CBFE, CIF, Horizon, SM@RT, and IIS data for two of the class positions, namely CSR and BA. Specifically, we calculated the average change in each employee’s first timestamp of the day when the MACS Active Directory data was included. We then adjusted CSR and BA employees’ first time-stamp earlier by the respective average. This amounted to 8 minutes for the CSR and 3 minutes for the BA analyzed in the Deloitte Report.⁷

32. The last adjustment impacts employees first and last timestamp of the day. It is common for businesses to require employees to arrive before and leave after the opening and closing time of a given location. Due to CIBC not maintaining a complete record of electronic system timestamps and not producing shift data for employees, we have analyzed employee activity in the available timestamps. Upon analyses of employees’ time-stamped data, we found that the majority of employees have timestamps before their respective branch opens and after their respective branch closes. We have run two sensitivities to damages calculations that shift employees first and last timestamp of the day. These sensitivities rely on my understanding that there were work activities that employees were required to perform outside the branch open and close hours. The sensitivities also rely on the assumption that employees would not start their shifts shortly after and before the branch opens and closes. The first sensitivity shifts employees first and/or last timestamp to the branch open and close time if we observed an initial time close to and between the branch open and close time. The second sensitivity shifts employees first and/or last timestamp to a determined time before and after the branch opens and closes. These analyses only shift employee timestamps that are reasonably close to the branch open and/or close time. These analyses were performed following the adjustment of timestamps for the impact of the MACS

⁷ For a detailed discussion of this adjustment, see Section 5.11 in this report.

Active Directory and Blotter data on employees' first and last timestamps of the day. For a detailed discussion of this adjustment, see Section 9.6 in this report.

1.9 Monte Carlo Simulation Study to Predict Overtime Hours in the Parts of the Class Period without Data

33. In Section 5.5 of this report, I introduce the statistical technique of a Monte Carlo Simulation study as the most appropriate method to obtain estimates for the unknown overtime hours in the time periods where no data is available. In this case, we have utilized a Monte Carlo Simulation study to utilize overtime estimates derived from actual time-stamped data to simulate overtime estimates adjusted for macro trends derived from official Canadian labour statistics for the time period without electronic time-stamped data. By repeating this process 1,000 times applying a random selection mechanism, the resulting overtime estimates are reliable and robust. Robustness in this context refers to the desirable characteristic of a statistical estimate that it does not vary too much in repeated applications of the model.

1.10 General Damages Methodology

34. The analytical steps discussed so far yielded statistically reliable estimates for unpaid overtime hours and straight time hours. To obtain class-wide damages from these estimates the following factors have to be taken into account:

- a. Prevailing wage rates;
- b. Number of class members; and
- c. as an offset, Overtime already paid.

35. The prevailing wage rates were estimated by using the wage rates by class position available from payroll data for various years (2003-2009). For the years for which wage rates were not available (1993 to 2002 and 2010 to 2021), wage rates were estimated by adjusting the payroll wage rates using the consumer price index.

36. The number of class members in the years prior to 2003 was not known because payroll data was not available for those earlier years. We estimated the number of class members in those earlier years by using the number of class members in the time period with payroll data (2003 to

2009) and correlating this number with the number of full time equivalents (“FTE”) which CIBC disclosed in its Annual Reports for those same years to produce a ratio. For the earlier years (before 2003), we used the FTE from the CIBC Annual Reports for those earlier years and used the ratio generated above (for the years 2003-2009) to estimate the number of class members in the earlier years (before 2003). These estimates rely on the assumption that the distribution of employees contributing to the determination of the FTE count does not change materially year over year. This is the best estimate available pending a production by CIBC that provides details of the count of employees in class positions paid per period.

37. Overtime already paid for the years without payroll data was calculated as an offset by using CPI adjusted actual amounts paid in the period with payroll data.

38. In Sections 5.8.1 to 5.8.3 in this report, I discuss in detail how my team and I calculated reliable estimates for the prevailing wage rates during the class period, the number of class members during the class period, and the overtime already paid to class members during the class period.

1.11 Damages Estimates

39. Upon Counsel's request, we computed damages with respect to four distinct interpretations of the relevant class periods and two interest scenarios:

- a. **February 1, 1993 to June 18, 2009:** Damages are calculated for unpaid hours for the class from February 1, 1993 through June 18, 2009. Compound and simple interest are calculated from February 1, 1993 through the present.⁸
- b. **February 1, 1993 to Present:** Damages are calculated for unpaid hours for the class from February 1, 1993 through the present. Compound and Simple interest are calculated from February 1, 1993 through the present.⁹

⁸ For the purposes of this report, “present” means December 31, 2021.

⁹ Calculations of damages to the present rely on a statistical Survival Analysis. This analysis calculates the percentage of employees that would resume working at CIBC following June, 2009. Thus, the damages calculated from June 18, 2009 to the Present are based on smaller counts of employees as time passes. See Section 5.9 for a detailed discussion of this analysis.

- c. **Provincial Limitation to June 18, 2009:** Damages are for unpaid hours for the class as calculated back in time based on the applicable presumptive provincial limitations (which are detailed in Table 11 below in this report) through June 18, 2009. Compound and simple interest are calculated from the time of the applicable provincial limitations through the present.
- d. **Provincial Limitations to Present:** Damages are for unpaid hours for the class as calculated back in time based on the applicable presumptive provincial limitations (which are detailed in Table 11 below in this report) to the present. Compound and simple interest are calculated from the time of the applicable provincial limitations through the present.¹⁰

40. The damages estimates were derived utilizing statistical methods which enable us to report the results with a statistical confidence level¹¹ and a margin of error (“MOE”).¹² The confidence level and the margin of error are two important statistical measures to evaluate the reliability of the results from statistical models. We report the results from our damages calculations at the 90% and 95% confidence levels which are the most widely used and accepted confidence levels.¹³

41. Utilizing the approach and estimation techniques presented and discussed in this report, we derived the following class-wide damages estimates with and without interest:

- a. **February 1, 1993 to June 18, 2009:** Damages without interest range from \$140M to \$164M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 8.7% to 9.2%.

¹⁰ See Footnote 9.

¹¹ Yadolah Dodge. (2008). *The Concise Encyclopedia of Statistics*, Springer-Verlag, Pages 108 to 109. The confidence level is the probability that the confidence interval constructed around an estimator contains the true value of the corresponding parameter of the population. In other words, the confidence level represents the percentage of times one would expect to replicate the same estimate if the population were resampled.

¹² Yadolah Dodge. (2008). *The Concise Encyclopedia of Statistics*, Springer-Verlag, Pages 114-115. A margin of error is typically expressed as a plus/minus range and refers to half the width of the confidence interval.

¹³ Center, Federal Judicial, and National Research Council. (2011). *Reference Manual on Scientific Evidence*, 3rd Edition, Page 245.

- b. **February 1, 1993 to Present:** Damages without interest range from \$218M to \$256M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 9.6% to 10.2%.
 - c. **Provincial Limitation to June 18, 2009:** Damages without interest range from \$58M to \$68M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 7.2% to 7.7%.
 - d. **Provincial Limitation to Present:** Damages without interest range from \$136M to \$160M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 9.6% to 10.2%.
42. The margin of error we calculated for the 90% confidence level ranges from approximately 7% to 11% for the different scenarios, which imply a high precision of the damages estimate. In summary, the damages estimates have a high level of confidence and a small margin of error which makes them reliable.
43. It is my opinion that the results presented in this report are reasonable and reliable and that they present the most reliable damages estimates given the data situation in this case because:
- a. First, while the availability of data was unnecessarily complicated by the Defendant's data deletion, the effect of this was counteracted by our approach of utilizing all data points available and only using available data points to estimate missing data by applying well-established and well-accepted statistical techniques.
 - b. Second, the approach of using time-stamped data for the employees with such data has yielded conservative estimates, because more time-stamped data from other applications for those already observed employees' days may reveal more (not less) unpaid overtime.
 - c. Third, in some instances, we utilized data that were very sporadic in nature but in cases where data was deleted, the use of sporadic data is justified and reasonable because this was the best data available, and the alternative would be having no data.

44. In many instances, we utilized statistical techniques that filtered out outliers or disregarded unreliable data to not skew the resulting damages calculations.

2 Introduction

45. I am a Statistician and an Economist. I received a Bachelor of Science degree in Statistics and a Bachelor of Arts degree in Business Administration from the University of Dortmund/Germany in 1988. I received a Master of Science degree in Statistics from the University of Dortmund/Germany in 1988, and I received a Master of Arts degree in Economics from the University of California, San Diego in 1992. I also finished Ph.D. requirements except dissertation in Economics at the University of California, San Diego.

46. My curriculum vitae, which includes matters in which I have testified as a statistical expert, is attached to this report as Exhibit A. I am currently employed as a Managing Director at Berkeley Research Group, LLC (“BRG”) in its Las Vegas office. Prior to joining BRG, I have held partner-level positions in the statistical consulting groups of multiple major consulting firms, as set out in my curriculum vitae. Before moving to the United States, I worked as a statistician for the German Government for three years, from 1986 to 1989.

47. My work focuses on the application of economic, statistical, and financial models to a variety of areas, such as providing solutions to business problems, supporting complex litigation, and drafting economic impact studies. I have extensive experience applying economic and statistical theories to employment related matters. Throughout my professional career, I have been responsible for teaching training classes in the application of statistical methodology to large complex databases, theory and application of statistical sampling, and statistical modeling techniques for all levels of practice personnel at the firms where I worked.

48. BRG is being compensated for its work on this matter based on an agreed-upon hourly billing rate schedule. My hourly billing rate for professional services related to this case is USD795 and the billing rates of BRG staff supporting me on this engagement range from USD150 to USD650. The 2021 BRG rate sheet is attached to this report as Exhibit B. BRG’s payment in this matter is not contingent upon my opinions or the outcome of this litigation. All opinions in this report are my own.

49. This report is based on the disclosure of documents and data provided by the defendant as outlined below. I reserve the right to supplement my opinions and amend this report if further documents or data are made available to us or if counsel asks us to perform additional analyses.

3 Assignment and Scope of Work

50. It is my understanding that Dara Fresco (“Fresco”) is the named plaintiff in a class action against Canadian Imperial Bank of Commerce (“CIBC”).¹⁴ The class is composed of current and former CIBC employees – more specifically, non-management, non-unionized employees who worked in a front-line customer service¹⁵ role and who were employed between February 1, 1993 and June 18, 2009. Prior to receiving data, it was my understanding that there were over 30,000 class members.¹⁶ It is evident that this number is larger. The payroll data produced that covers just the period September 2003 to June 2009 contains 26,375 employees once optouts have been removed. An additional 4,759 unique EmployeeIDs were identified in additional class list data covering the period 2001 to 2003. Thus, this number would be even larger than the 31,134 identified in these documents if the class period extends back to 1993.

51. Plaintiff’s counsel has asked me to review the produced documents and data to opine on and, if possible and appropriate, to develop and apply a method to compute aggregate damages for hours that were not appropriately compensated.

¹⁴ I understand that the legislation that is operative in this case is the *Canada Labour Code*.

¹⁵ Job titles included in this litigation are Customer Service Representatives (also known as Tellers), as well as four other kinds of customer service employees – Assistant Branch Managers, Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers, and Business Advisors), Financial Service Associates, and Branch Ambassadors.

¹⁶ The payroll data produced contains 26,375 employees after removing optouts and specified employees/employee-pay periods for removal by CIBC. The new class list received on 12/14/2021 contains an additional 4,759 unique EmployeeIDs related to 2001-2003.

52. I initially submitted a sworn affidavit in this proceeding on July 14, 2016¹⁷. I submitted further sworn affidavits in this proceeding on February 8, 2019¹⁸ and August 1, 2019¹⁹ proposing the approach of utilizing timestamp data to identify unpaid hours worked and to discuss the impact of deleted data on my proposed methodology. Those affidavits were submitted before CIBC had produced data and documents relevant to this process.

53. Starting in October 2020, after CIBC started to produce data and documents, I, and my team developed a methodology, described below, for the purpose of identifying time-stamped data in CIBC's productions, identifying and limiting this data to class employees, and then quantifying the number of hours worked that were not compensated. Once CIBC completed production, we applied the methodology and quantified the amount of unpaid wages owed for these uncompensated hours, plus interest. The methodology is described in detail below.

54. We have applied statistical modeling techniques to estimate a damages figure from February 1, 1993 through June 18, 2009, as well as the period June 19, 2009 to the present. We have also calculated damages for the periods that are solely within the presumptive limitation periods. These estimates are based on the production of data by the defendant as of November, 2021, the date by which it advised that its data productions would be complete.

55. Among other things, we ascertained employees first and last time-stamps of the day. We used these first and last time-stamps as a proxy for timesheets (or time records that the bank did not create or maintain). Our methodology seeks to identify overtime worked and unpaid straight time hours worked beyond that captured by the payroll data.

56. As I deposed in my February 8, 2019²⁰ affidavit and August 1, 2019 affidavit²¹, timestamps serve as a reasonable and effective proxy for capturing employees' start and stop times when other

¹⁷ Stefan Boedeker Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CU-334113PD2 (Sworn July 14, 2016) ("Boedeker Affidavit, July 2016").

¹⁸ Stefan Boedeker Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CV-334113CP (Sworn February 8, 2019) ("Boedeker Affidavit, February 2019").

¹⁹ Stefan Boedeker Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CU-334113PD2 (Sworn August 1, 2019) (Boedeker Affidavit, August 2019").

²⁰ Boedeker Affidavit, February 2019, Paragraphs 21-22.

²¹ Boedeker Affidavit, August 2019, Paragraphs 11, 12 and 17.

time keeping records are not accurately retained. Faced with a lack of accurate timesheets or time records showing actual hours worked, we are left to reconstruct hours worked as best as possible, based on available data. My methodology offers a reasonable, statistically reliable way to estimating uncompensated time, which I have applied in numerous other cases.

4 Overview of Availability of Electronic Data Systems

57. In this section, I summarize the input data utilized in my analysis for records which were preserved. I also summarize the missing data, its relevance and the process of imputation. A detailed overview of the methodology and how each data source was utilized is at the end of this report after my damages conclusion. The descriptions and use of CIBC specific data systems are provided in Reid Affidavit as follows:²²

Table 1: Summary of Available Data Systems

System	Description	Coverage²³
SM@RT	“Sales Management & Reporting Tool”, known as SM@RT, tracked customer relationships to advisors and provides sales management solutions. It captured sales activities, and product sales reports. FSRs and ABMs had access to Sm@rt. CSRs and BAs only had access to the referral functionality in Sm@rt.	September 2004 to June 18, 2009.
Horizon	Horizon was a set of applications that allowed employees to track sales leads, summarize clients and diarize upcoming tasks. It also contained planning records and customer care information. CSRs, FSRs, FSAs, BAs and ABMs all had access to Horizon.	March 2007 until June 18, 2009.
CBFE	CBFE is the “CIBC Banking Front End” application. It allowed CIBC employees to conduct customer transactions, including cheque cashing, issuing certified cheques, bank drafts, pay bills and account deposits and withdrawals. It was based on CIBC servers and is used during the balancing process. CSRs, FSRs, FSAs, BAs and ABMs all had access to CBFE, although we understand the usage could vary.	July 2006 until June 18, 2009.
CIF	CIF provided information [to employees] relating to customers and customer accounts. CSRs, FSRs, FSAs, BAs and ABMs has access to applications captured by CIF.	October 2006 until June 18, 2009.
IIS	The Intranet Webserver application recorded activity on CIBC’s intranet or internal website. It included items such as promotions, procedure changes, management communications and organization charts. CSRs, FSRs, FSAs, BAs and ABMs all had access.	March 2006 until June 18, 2009.
ISI	“Investor Services Inc. Online”, or ISI Online, was introduced at CIBC in January 2003. It gave employees access to investment-related applications and information including an application for opening investment accounts. FSAs had access to ISI.	December 2003 until June 18, 2009.

²² Reid Affidavit, Pages 7-10.

²³ The coverage period in this column reflects information disclosed across affidavits and letters received from CIBC’s counsel. These coverage periods are not exactly what we found in the data once received. For example,

58. In addition to the descriptions and use of CIBC specific data systems provided in Reid Affidavit, Ms. Reid also reported on data systems that were deleted:²⁴

Table 2: Summary of Deleted Data Systems

System	Description	Deletion
Active Directory/ MACS	Active Directory captured records relating to the authentication and access of a given user to CIBC's computer network and applications on that network\MACS is a related application that captures and maintains some of the Active Directory records in a more easily readable format. Active Directory and MACS are server-based applications. This data showed when all Class Members logged on and logged off the network. Most of the employee class positions would be caught by log off and log on records. CSRs, FSRs, FSAs, BAs and ABMs all engaged in activity that would be captured.	All records were deleted, except for the sample used in the Deloitte report (discussed below) namely five employees for approximately one month in November 2007. ²⁵
PESA	"Personal Electronic Signing Authorities", or PESA, was introduced in 2006 and allowed branch employees to view electronic signing authorities for personal accounts. CSRs, FSRs, FSAs, BAs and ABMs all had access to PESA.	CIBC deleted all records except for five employees for approximately November 2007. PESA "update logs", which contain updates to electronic signatures but no other data (approximately 10% of total transactions on PESA) are available from October 2006 until at least June 18, 2009.
Surf Control	Surf Control was an application that recorded websites accessed by employees, and the time of that access. It was not possible to determine the duration of a user's activity. Surf Control is a server-based application. All employees with internet had access to this.	CIBC deleted all records except for five employees from October to December 2007

the data destruction that we were initially informed about was more severe than the one we observed in the data systems we ultimately received.

²⁴ Reid Affidavit, Pages 6-12.

²⁵ Reid Affidavit, Pages 7.

System	Description	Deletion
PDAO (Mainframe)	PDAO stands for "Personal Deposit Account Open". It was a front-end user interface that allowed for the opening personal deposit accounts and creates log files in COLT. FSRs, FSAs and ABMs had access to PDAO.	CIBC deleted all records, except for five employees for approximately one month in November 2007.
COLT (Mainframe)	COLT is an application used to open and maintain transaction accounts and to process financial transactions. COLT is a mainframe-based application. CSRs, FSRs, FSAs, BAs and ABMs all had access to COLT.	CIBC deleted all records, except for five employees for approximately one month in November 2007.
Local System Event Logs	This data reflects events that occurred on the physical computer workstations. All class employees worked on physical computer workstations.	These records were not retained due to expense and duplication in other systems, such as Active Directory / MACS, which was deleted as described above.

59. The effect of the deletion of the data was that there were fewer timestamps to function as proxies for time records. The destruction of the MACS/Active Directory data was particularly unfortunate insofar as it likely would have contained comprehensive start and stop time data for members of the Class.²⁶ The data in Table 1 and Table 2 formed the basis for the 2007 Deloitte Study prepared for CIBC. The deletion of the data means that the types of records utilized by Deloitte are now no longer available for all class members. However, notwithstanding the destruction of this data, we have been able to impute time across the class from the limited records retained, as discussed in detail in Section 10. In particular, the damages estimates presented below contains an adjustment for the MACS/Active Directory as if the records had been retained.

²⁶ The Reid Affidavit states on Pages 6-7 that the MACS/Active Directory captured records "relating to the authentication and access of a given user to CIBC's computer network". The affidavit also states that "timers in the application were set to keep the desktop 'alive' to avoid the inconvenience of frequent log-ins. Further, the system would automatically reset at around midnight".

5 Damages Model

60. In this section, I discuss the methodology to calculate damages which is based on the following steps:

- a. Determine unpaid hours above the overtime threshold and unpaid straight time in the period with available data;
- b. Apply a Monte Carlo Simulation study to predict unpaid overtime and unpaid straight time hours outside the time period where electronic timestamp data are available;
- c. Estimate prevailing wage rates;
- d. Estimate the number of class members' overtime;
- e. Determine the monetary value of gross unpaid hours;
- f. Estimate overtime already paid;
- g. Apply interest;
- h. Run sensitivities with different assumptions as described below:
 - i. **Model 1: Base Model** This model computes damages based on timestamp data with adjustments for the missing or incomplete CBF, Horizon, Blotter, and MACS Active Directory Data.
 - ii. **Model 2: Base Model adjusted for branch opening / closing time:** This model adjusts the first timestamp on employee days with the first timestamp between branch opening time and 25 minutes after branch opening time to the branch opening time. This model also adjusts data points occurring up to 27 minutes before the branch closing time to the branch closing time. The rationale for this adjustment is set out in the executive summary and Section 9.6.
 - iii. **Model 3: Model 2 was further adjusted to allow the first timestamp before branch opening and last timestamp after branch closing time:** Model 3 adjusts the first timestamp on employee days with the first timestamp between 20 minutes

before and 25 minutes after the branch open time to 20 minutes before branch open time. This model also adjusts data points occurring between 27 minutes before the branch close time and 14 minutes after the branch close time to 14 minutes after the branch close time. Model three is necessary and reasonable due to the fact that the distribution of the data supports the assumption that employees largely arrive before the branch opens and leave after the branch closes. Further, not all data systems and employee-shift schedules have been produced. The rationale for this adjustment is set out in the executive summary and Section 9.6.

61. In my opinion, Model 3 is the most reasonable and appropriate model for the calculation of aggregate damages because it contains all adjustments supported by the data, including the proper adjustment for timestamps before branch opening and after branch closing. Model 3 is based on the empirical fact that the distribution of time-stamped data supports the hypothesis that the majority of employees arrive before the branch opens and leave after the branch closes. Further, not all data systems and no employee-shift schedules have been produced.

62. Results of Model 3 can be found below:²⁷

Table 3: Summary of Model 3 Results

Relevant Time Period	No Interest	Simple Interest	Compound Interest
2/1/1993 – 6/18/2009	\$164M	\$314M	\$417M
Provincial Limitation – 6/18/2009	\$68M	\$117M	\$140M
2/1/1993 – Present	\$256M	\$432M	\$542M
Provincial Limitation – Present	\$160M	\$236M	\$265M

5.1 General Methodology

63. To calculate damages, I use the following formula that first aggregates unpaid hours worked, which are then offset by payments already made to the employees:

²⁷ A detailed overview of all models can be found in Section 6 of this report.

Equation 1: Damages Calculation

Damages =

$$\sum_{week [w]=1}^N Emp_w \times 1.5 \times \overline{Wage_w} \times \overline{OT_w} + Emp_w \times \overline{Wage_w} \times \overline{OTC_w} - Emp_w \times \overline{OTPaid_w}$$

Where:

- a. \overline{Wage} = *Average Hourly Wage of Class Weighted by Class Position*
 - a. \overline{OT} = *Average Weekly Estimated Overtime per Employee (Hours)*
 - b. \overline{OTC} = *Average Weekly Estimated Off the Clock per Employee (Hours)*
 - c. \overline{OTPaid} =
Average Weekly Estimated OT Paid per Employee (Dollars) of Class Weighted by Class Position
 - d. Emp = *Estimated Class Employee Count of Week*
64. In order to estimate the variables in Equation 1, I applied the following seven-step process:
- a. Calculation of unpaid overtime hours where incomplete time-stamped data is available;²⁸
 - b. Calculation of straight-time unpaid hours;
 - c. Apply Monte Carlo Simulation Study to quantify unpaid overtime and straight time hours for time periods where no time-stamped data is available;
 - d. Estimation of wage rates;
 - e. Estimation of the number of class members; and
 - f. Estimation of overtime already paid.
65. In the following sections, I will describe in detail how I quantified the variables in Equation 1 to derive a reliable class wide damages amount.

²⁸ Incomplete time-stamped data refers to instances where employees have timestamps in the data for a subset of the weeks for which they have payroll data.

5.2 Calculation of Unpaid Overtime Hours When Incomplete Time-stamped Data is Available

66. Once system time zones and employee time zones had been standardized, the minimum and maximum time-stamp per day was identified for each electronic system and UserID, and stored in a separate table for each electronic system. Next, we combined these separate electronic system tables into a single table which was used as the input for calculation of employee bookend hours.

67. In effect, the elapsed time between the maximum and the minimum timestamps for each day for each UserID was used as a proxy for a timesheet or timecard system that, had it been properly maintained by CIBC, would have recorded the actual start and end times of the employee's day. While CIBC has criticized this methodology insofar as it does not record what employees were doing at various times during the day (i.e., whether they were being productive or not at any particular point in time) it is no different in this respect from traditional time-recording systems such as time sheets or timecards. We limited these minimum and maximum timestamps to the hours between 7:00 am and 10:00 pm. This adjustment is a conservative reduction in employees' first and last timestamps and prevents the analysis from an upward bias due to outliers, automated overnight system activity, or failed system logouts.

68. Following the aggregation process of system-specific timestamp data into a single range of a minimum and a maximum timestamp observation per "UserID" and day, the "EmplID" from the payroll data was joined or linked to the timestamp data. Because some employees have multiple UserIDs²⁹, a second aggregation was required to take the minimum of the earliest daily timestamp and the maximum of the latest daily timestamp associated with a particular payroll "EmplID". Table 4 shows how many matched employees have multiple UserIDs.

Table 4: UserID per Employee

UserID Per Employee	Number of Employees	% Total	Cumulative %
1	16,408	77%	77.40%
2	3,711	18%	94.91%
3	736	3%	98.38%
4	208	1%	99.36%
5	79	0%	99.74%

²⁹ Approximately 22.6% of Employees were matched to multiple UserID (100%-77.4%).

UserID Per Employee	Number of Employees	% Total	Cumulative %
6	33	0%	99.89%
7	17	0%	99.97%
8	3	0%	99.99%
9	1	0%	99.99%
10	1	0%	100.00%
12	1	0%	100.00%
Total	21,198	100%	

69. Lastly, the daily data was aggregated to weekly totals with the work week corresponding to the CIBC payroll week covering the days from Sunday through Saturday. Weekly overtime was then calculated as any hours in excess of 37.5 hours. A daily overtime amount was also calculated as all hours in excess of eight on a given day. To avoid double counting, the overtime amount took the maximum of weekly and aggregate daily overtime in the week. These calculations were also repeated with a 30-minute deduction of lunch time per day (the lunch deduction is discussed further below).

5.3 Effect of Availability of Horizon Data on Overtime Determination

70. The Horizon data is not available for all dates corresponding to the CBFE date range of July 2, 2006 to March 30, 2009. The absence of a large period of data for employees during a given time range, in which there was otherwise data for those employees, would lead to an underestimate of the hours worked by employees. This section provides evidence that the availability of Horizon data yields on average more timestamps leading to an increase of overtime captured. Thus, I calculated the adjustment described below in this section to account for the missing Horizon data.

71. To determine whether the absence of Horizon data during specific periods, would have an impact on the computed overtime totals for those periods, we examined the impact on the overtime calculations stemming from the Horizon data for the days in which Horizon data is present.

72. To determine this impact, we examined the percent difference between the mean weekly overtime worked, per position, with and without the Horizon data. Specifically, all weekly overtime amounts that corresponded to weeks missing horizon data were adjusted based on this

analysis. This methodology is conservative because an individual without overtime would still have no overtime following the adjustment.³⁰

73. All weekly employee overtime calculations corresponding to dates without Horizon data were then increased by the percentage difference that the availability of Horizon data adds to the overtime calculations.

74. Table 5 below shows the percent difference in overtime measured by class position when Horizon data is available.

Table 5: Example of Horizon Data Adjustment Weekly OT in Hours

Class Position	OT Without Horizon	OT With Horizon	Percent Difference
ABM	1.77	1.81	1.84%
ABM/FSR	1.31	1.34	2.10%
BA	0.44	0.45	4.05%
CSR	0.57	0.58	1.81%
FSA	0.87	0.97	11.32%
FSR	0.94	0.98	5.20%

75. For example, the overtime hours went up by 1.81% for the class position of CSR when Horizon data was available.

5.4 Calculation of Unpaid Straight Time

76. The data produced showed evidence of unpaid straight time hours. These are hours that are not categorized as exceeding the “overtime” thresholds but are above the hours paid as evidenced by amounts paid in the payroll data.

77. The first step in calculating unpaid straight time hours was determining the number of hours employees were paid for. To do this, we aggregated the data to the most frequent pay period of two weeks by summing up all hours related to “Overtime”, “Hours Override”, “Temporary

³⁰ 0 Overtime Hours x Horizon Factor = 0 Overtime Hours.

Salary” and “Basic Pay”.³¹ We note that “Basic Pay” is the predominant “Earn Code Description” in the payroll data. This would represent pay for normal hours worked.

78. The next step was to calculate the total number of hours captured by the timestamp data. To ensure that the unpaid straight time did not double count overtime hours, evident overtime captured by the timestamp data analysis was subtracted for the resulting hours.

79. Finally, the unpaid straight time hours were calculated as the number of non-overtime hours in the timestamp data minus the hours paid as evidenced in the payroll data. If the timestamp data did not capture all hours in the payroll data, a value of zero unpaid straight time was used in the model.

80. Because the data was aggregated to two week pay periods, this value of unpaid straight time hours was then divided by two and apportioned to the two relevant weeks in the pay period. We analyzed all pay period records associated with non-optouts that had positive paid amounts and hours for “Overtime”, “Hours Override”, “Temporary Salary” and “Basic Pay”. 99.3% of the pay periods analyzed corresponded to two week pay periods.

5.5 Monte Carlo Simulation Study of Unpaid Overtime Hours for Time Periods Where Time-Stamped Data is Not Available

81. In Sections 5.2 and 5.4, I describe how weekly employee unpaid overtime and unpaid straight time hours were estimated. My team and I utilized these estimated hours to estimate weekly average values of overtime and unpaid straight time for the class across the entire class period.

82. For this estimation, we applied a statistical methodology known as Monte Carlo Simulation.³² In a Monte Carlo simulation, a model is used to generate multiple data sets

³¹ These descriptions are found in the “Earn_Code_Description” field native to payroll data.

³² Kotz, S. and Norman Johnson. (1988). *Encyclopedia of Statistical Sciences*, Volume 5, John Wiley & Sons, Pages 612-617, give a broad overview of the methodology and its widespread use while Robert, Christian and George Casella. (2004). *Monte Carlo Statistical Methods*, Springer Verlag dedicate nearly 600 pages to the theoretical foundations of such methods.

(thousands or even millions depending on the specific needs). Those data sets are generated by a random process that draws from an existing pool of data.

83. The Monte Carlo Simulation is a commonly used statistical method to estimate population parameters through the use of sampling. I have applied Monte Carlo Simulations in numerous cases including but not limited to the following:

- a. Simulating the customer flow and the service time in bank branches to optimize the staffing of bank tellers relative to customer demand; based on my work, a national bank implemented staffing schedules in its branches;
- b. Simulating customer demand for bank branches in varying geographical areas to optimize branch locations and opening of new branches and closing/relocating underperforming branches; based on my work, a regional bank opened and closed branches to realize profitability gains; and
- c. Simulating customer demand for bundled products based on historical data and then introduced new or existing additional products to existing product bundles to optimize the profitability impact of cross-selling opportunities to existing customers and to attract new customers; based on my work, a regional bank implemented marketing campaigns to improve customer retention and new customer acquisition.

84. In this case, we simulated overtime and uncompensated straight-time distributions for time periods without electronic time-stamped data by randomly drawing from the pool of estimated weekly data derived from the electronic system data with timestamps.

85. More specifically, for each week in a year, my team and I generated 1,000 random samples of 5,000 employees' overtime and uncompensated straight-time estimates that had been calculated for the time period with data. These random samples were proportionally weighted by the count of employees in the different class positions. The sample selection process utilized sampling with replacement from the weekly estimates described in Sections 5.2 and 5.4. Further, the sampling frame from which the 1,000 random samples were drawn had been trimmed by excluding the lower and upper 1% of estimated overtime data. The combination of the trimming process as well as sampling with replacement ensured that estimates in the forecast and backcast were not skewed by

potential outliers. i.e., individual observations that are unusually large. These observations would be related to employees who had comparatively larger time durations captured during a given week.

86. The application of the Monte Carlo Simulation approach ensured that weekly variation in unpaid overtime estimates were based on the estimates from the period with time-stamped data. To estimate weekly overtime and uncompensated straight-time outside the period with sufficient data, we adjusted the estimated weekly overtime data from the simulated samples using StatCan data for NOC 65 which is described in section 8.3.1 of this report. The use of the StatCan data ensured that the estimates from the period with time-stamped data were properly adjusted using macro trends from official Canadian unpaid overtime statistics. This step was necessary because we do not have sufficient time-stamped data for all years in the damages period. For example, overtime worked in 2003 may be different from overtime worked in Canada in the years 2006-2009 for which sufficient data is available. As the StatCan data does not contain values for 1993 to 1996, we utilized the 1997 multipliers for the years from 1993-1996. The StatCan adjustment was made by running a set of regression models which compare overtime worked for NOC 65 employees during the in-sample period with complete data (2007 and 2008) to years 1997-2006 for the backcasting and 2009-2021 for the forecasting. Specifically, the regression models were run on the monthly level. They included an intercept (defined as the years 2007 and 2008), and indicator variables for each year are described by the following formulae:³³

Equation 2: StatCan Backcast Regression

Overtime_{month}

$$= \beta_0 + \beta_1 Y_{1997} + \beta_2 Y_{1998} + \beta_3 Y_{1999} + \beta_4 Y_{2000} + \beta_5 Y_{2001} + \beta_6 Y_{2002} \\ + \beta_7 Y_{2003} + \beta_8 Y_{2004} + \beta_9 Y_{2005} + \beta_{10} Y_{2006}$$

³³ Both regressions contain the years 2007 and 2008 in the intercept. Thus, the analysis estimates coefficients representing the relationship between the forecast periods and years with complete data.

Equation 3: StatCan Forecast Regression

$$\begin{aligned} \text{Overtime}_{\text{month}} &= \beta_0 + \beta_1 Y_{2009} + \beta_2 Y_{2010} + \beta_3 Y_{2011} + \beta_4 Y_{2012} + \beta_5 Y_{2013} + \beta_6 Y_{2014} \\ &+ \beta_7 Y_{2015} + \beta_8 Y_{2016} + \beta_9 Y_{2017} + \beta_{10} Y_{2018} + \beta_{11} Y_{2019} + \beta_{12} Y_{2020} \\ &+ \beta_{13} Y_{2021} \end{aligned}$$

87. Where β_0 represents the intercept, and $\beta_1 - \beta_{13}$ represent the coefficients associated with the indicator variables for each of the years.

88. The intercept of both regressions contains the years 2007 and 2008 which correspond to the in-sample years for which all months contain overtime data either based on the timestamp analysis or one of the data imputation methods. Therefore, the coefficient estimates β_i for each year represent the difference between the in-sample period with data and the out-of-sample period. A multiplier was then calculated for each year using Equation 4 below to predict the weekly overtime averages:

Equation 4: StatCan Multiplier

$$\text{Multiplier}_{\text{year}} = \frac{(\text{Coef}_{\text{year}} + \text{Coef}_{\text{intercept}})}{\text{Coef}_{\text{intercept}}}$$

89. I further utilized the upper and lower bound of the 90% confidence interval for the regression coefficients to capture the variation of the multiplier. In the next step, the estimate of the multiplier and the upper, and lower bounds of the 90% confidence intervals were then multiplied by the simulated estimates of unpaid weekly overtime to obtain estimates of average weekly unpaid overtime for the times within the class period with no data.

5.6 Estimated Impact of Blotter Data³⁴

90. It is my understanding that the handwritten Blotter files pertain to the CSR position's cash balancing tasks and can contain handwritten "time notation(s)".³⁵ CIBC has produced PDF scans of a limited set of Blotter files as well as Txt files containing text from the PDF. Unfortunately,

³⁴ For a detailed description of the Blotter Data see Section 8.2.5.

³⁵ John Silverthorn Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CV-334113PD2 (Sworn May 14, 2008) (Silverthorn Affidavit), Paragraph 109.

the Txt files do not capture the handwritten timestamp in the PDFs, so a sample of these Blotters had to be analyzed manually to extract useful information.

91. Due to the fact that not all files in the Blotter production contained Blotter sheets, we used the Txt files to identify files that contained an employee UserID and date that we had time-stamped data for. This amounted to 26,021 files. We then weighted these observations by province and randomly sampled and reviewed Blotters until we reached ~5% of the 26,021 total Blotters. In total, my team extracted timestamps from 1,316 Blotters. This sample was approximately weighted by province based on the distribution of total employees in the payroll data. The Blotter data did not contain a sufficient number of Blotters with recorded timestamps for Quebec and New Brunswick to achieve a representative sample with respect to the employee counts in payroll. When comparing the timestamp in the Blotter data to the last electronic timestamp, we found evidence that completing the Blotter files extends the time captured by the electronic system timestamps. In order to capture the extra time CSRs spent balancing as reflected on the times noted on the blotter sheets, we performed the following analysis:

- a. If the timestamp in the Blotter data was later than the last electronic timestamp then the difference in time was captured as additional time worked.
- b. If the timestamp in the Blotter data was before the last electronic timestamp then additional time worked was set to zero.
- c. Finally, all additional time worked values were averaged (including the zeros as described in b.) leading to an additional amount of uncompensated time worked of 7 minutes per week for the CSRs.

5.7 Calculate Observed Weekly Overtime and Hours

92. The observed weekly overtime hours were calculated using complete weeks of data where the CBFE system was available. This limitation was made due to the fact that the date ranges without CBFE data do not adequately capture reliable employee workdays.³⁶

93. Once the data were standardized and limited to class employees, we estimated the number of Weekly OT and Hours observed in the data per employee per week. Weekly OT was calculated as the maximum of hours over eight in a given day or 37.5 in a given week.

94. The hours observed from this analysis were also used to calculate unpaid straight time hours, that is, work not covered by hours paid in the payroll data. As noted above, this analysis deducted any overtime amount calculated in the given week to avoid double-counting hours across sources of damages.

5.8 Additional Input Variables for Damages Calculation Formula

95. Besides “Unpaid Overtime Hours per Week” and “Unpaid straight time hours per Week” which I discussed in the previous sections, the damages calculation formula in Equation 1 above contains the following variables:

- a. Class wages per week;
- b. Number of employees per week; and
- c. Overtime already paid per week.

96. In this section, I will discuss how estimates were calculated for the class-wide-average wage, number of employees, and overtime paid. These estimates were necessitated by the fact that we have not received complete payroll data. Upon further production of this data, we reserve the right to update the calculations discussed in the following sections.

³⁶ See Figure 15, which shows that the average duration captured without the CBFE data is less than 5 hours per day, compared to the average duration of work captured with the CBFE data which is over 7 hours per day. The CBFE data is available for complete weeks ranging from July 2, 2006 to March 30, 2009.

5.8.1 Wage Rates

97. The payroll data contains a field, “Earn_Code_Description”, that takes on 147 distinct values. The predominant pay period is 2 weeks long. These pay periods contain multiple pay types. The predominant earn code description is “Basic Pay”. This pay type can be used to calculate an hourly rate for the given pay period. Table 6 below shows descriptive metrics summarizing the payroll data. Notably, the top 8 earn code descriptions, listed below, account for over 96% of all amounts paid and over 98% of hours accounted for. Specifically, the fields are as follows:

- a. **Earn Code Description:** Field found in the payroll data describing the type of pay;
- b. **Payroll Records:** Number of Records in Payroll associated with earn code description;
- c. **Unique Employees:** Number of unique employees associated with earn code description;
- d. **Amount Paid:** Amount paid associated with earn code description;
- e. **% Amount Paid:** % of total amount paid associated with earn code description;
- f. **Total Hours:** Total hours associated with earn code description; and
- g. **% All Hours:** % of total hours associated with earn code description.

Table 6: Earn Codes³⁷

Earn Code Description	Payroll Records	Unique Employees	Amount Paid	% Amount Paid	Total Hours	% All Hours
<i>All Earn Codes</i>	4,249,719	27,026	\$1,558,817K		95,852,754	
Basic Pay	1,301,258	25,009	\$1,220,961K	78.30%	81,488,557	85.00%
Vacation Taken Canada	156,382	18,799	\$71,026K	4.60%	4,597,093	4.80%
Hours Override	83,361	10,419	\$66,983K	4.30%	4,373,281	4.60%
Year End Bonus	43,680	16,259	\$62,702K	4.00%	-	0.00%
Temporary Salary	64,104	4,166	\$26,912K	1.70%	2,161,437	2.30%
STD 100% (CIB)	24,607	4,108	\$21,046K	1.40%	1,295,781	1.40%
Vacation Carry over Canada	41,519	14,882	\$13,763K	0.90%	877,784	0.90%

³⁷ This table reflects all datapoints in the payroll data produced following the removal of employees and employee-pay-periods specified by CIBC. The payroll data contains a minimum pay period begin date of August 29, 2003 and maximum pay period end date of June 17, 2009.

Earn Code Description	Payroll Records	Unique Employees	Amount Paid	% Amount Paid	Total Hours	% All Hours
General Program Credit	1,086,000	18,203	\$8,921K	0.60%	-	0.00%
<i>Other Earn Codes-- 139 total</i>	<i>1,448,808</i>	<i>25,266</i>	<i>\$66,505K</i>	<i>4.30%</i>	<i>1,058,822</i>	<i>1.10%</i>

98. During the period with payroll data, the employee average wage can be estimated by taking the average (amount paid/hours) for all observed employees in the same class position in a given year.³⁸ This calculation utilizes payroll records where the “Earn_Code_Description” field takes on the value “Basic Pay”. Table 7 below shows the estimated yearly average wages by class position across all employees.

Table 7: Average Wage by Class Position

Year	Position				
	ABM	BA	CSR	FSA	FSR
2003	\$ 17.18	\$ 13.59	\$ 12.16	\$ 17.99	\$ 14.64
2004	\$ 17.98	\$ 14.13	\$ 12.51	\$ 18.22	\$ 15.00
2005	\$ 18.55	\$ 14.93	\$ 12.74	\$ 18.86	\$ 15.13
2006	\$ 18.83	\$ 15.07	\$ 12.97	\$ 19.03	\$ 15.05
2007	\$ 19.29	\$ 15.43	\$ 13.37	\$ 19.62	\$ 15.54
2008	\$ 19.69	\$ 15.94	\$ 13.67	\$ 20.14	\$ 16.15
2009	\$ 19.96	\$ 16.38	\$ 14.01	\$ 20.51	\$ 16.57

99. Since complete payroll data was not available, I estimated the prevailing hourly wage rates by using a CPI³⁹ based approach. Specifically, I utilized the Services CPI to adjust the average wage across all employees to calculate employee wages outside the period data was received for.⁴⁰

³⁸ Approximately .04% of employee-weeks had wages < \$8 or > \$30, these have been set to the closer of 8 or 30. These are limited to weeks where employees received “Basic Pay”

³⁹ CPI stands for “Consumer Price Index”. In general, a CPI is a measure of the average change overtime in the prices paid by consumers for a market basket of consumer goods. The CPI is often further subdivided based on industries (service sector, farming, non-farming, etc.), products (food, housing, vehicles, energy, etc.) or geographical factors (urban, suburban, rural, provinces, metropolitan areas, etc.).

⁴⁰ CPI Source: <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1810000413>, last accessed on January 11, 2022.

To estimate wages in the future (2009 and forward), I started with the 2008 actual wages.⁴¹ To estimate a value for 2009, I used the following formula:

Equation 5: Wage Forecast Equation 1

$$2009 \text{ Estimated Wage} = 2008 \text{ Actual Wage} \times \frac{2009 \text{ CPI}}{2008 \text{ CPI}}$$

100. Next, I calculated a 2010 Estimated Wage using the 2009 Estimated Wage:

Equation 6: Wage Forecast Equation 2

$$2010 \text{ Estimated Wage} = 2009 \text{ Estimated Wage} \times \frac{2010 \text{ CPI}}{2009 \text{ CPI}}$$

101. This process was repeated until all wages were calculated to the present.⁴²

102. To estimate wages in the past, I started with the 2004 actual wages.⁴³ To estimate the value for 2003, I applied the following formula:

Equation 7: Wage Backcast Equation 1

$$2003 \text{ Estimated Wage} = 2004 \text{ Actual Wage} \times \frac{2003 \text{ CPI}}{2004 \text{ CPI}}$$

103. Next, I calculated the 2002 Estimated Wages using the 2003 Estimated Wages as follows:

Equation 8: Wage Backcast Equation 2

$$2002 \text{ Estimated Wage} = 2003 \text{ Estimated Wage} \times \frac{2002 \text{ CPI}}{2003 \text{ CPI}}$$

104. This process was repeated until a wage was estimated for the year 1993. These estimated wages were used in the formula for damages if the entire year had missing data points. Thus, while the process above estimates years 2003 and 2009 to estimate the periods 1993-2002 and 2010-2021, the actual values for 2003 and 2009 were used in the damages calculation.

⁴¹ 2009 was omitted from the estimation process because it was an incomplete year.

⁴² The 2021 CPI is not yet available, therefore, the value of the 2020 CPI was used for 2021.

⁴³ 2003 was omitted from the estimation process because it was an incomplete year.

5.8.2 Number of Class Members Overtime

105. We estimated the number of class members overtime for weeks before August 31, 2003 and after June 7, 2009. This was necessary because CIBC did not produce payroll data for these periods. We estimated the number of class members' overtime by calculating the observed Class Employee percentage of Full Time Equivalent ("FTE") employees in a given week. The numbers of FTEs were obtained from CIBC Annual Reports.⁴⁴ We then multiplied this percentage by the FTE in each year outside the payroll period February 1st 1993 to August 24, 2003 and June 14, 2009 through the present to obtain the estimate for the number of class employees' over time. This assumes that class members represented the same proportion of FTE overtime during the periods before and after the period for which payroll data was produced. This also assumes that the distribution of employee count by class position remained the same.

106. To compute this percentage, we calculated the weekly number of employees in the payroll data. This was done by counting employees who have "Basic Pay" across a two week pay period. Next, these weekly counts were divided by yearly number of FTEs. The FTE, as stated in Section 1.10, is a measure of Full Time Equivalent Employees across all branches and employees working for CIBC. This metric "normalizes the number of full-time and part-time employees, base plus commissioned employees, and 100% commissioned employees into equivalent full time units based on actual hours of paid work during a given period".⁴⁵ It is apparent that this yielded a higher number than CIBC's "Regular Workforce Headcount" which "comprises regular full-time (counted as one) and regular part-time employees (counted as one-half), and commissioned employees".⁴⁶ We then took the average of this FTE percentage across the complete years that we received payroll data for. This average employee percentage of FTEs is 19%. Figure 1 below shows the FTE count (blue) and Estimated Weekly Employee count (orange). This estimate was used for weeks with no payroll data. The use of the FTE count rested on the assumption that the

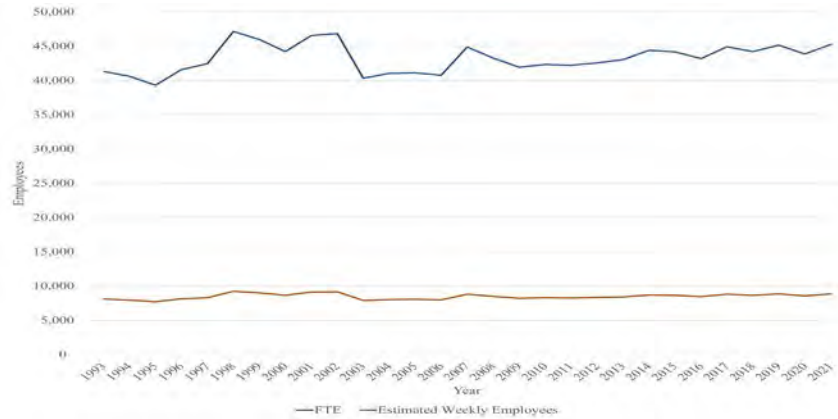
⁴⁴ The years 2001-2004 only report regular workforce count. The ratio of full time equivalent: regular workforce can be calculated using the years 2005-2008 for which both measures are available. This ratio is then applied to the regular workforce count to consistently use full time equivalent in the model.

⁴⁵ Source: https://www.cibc.com/content/dam/about_cibc/investor_relations/pdfs/annual_reports/1999-2009/aar09-en.pdf

⁴⁶ Source: https://www.cibc.com/content/dam/about_cibc/investor_relations/pdfs/annual_reports/1999-2009/aar05-en.pdf

distribution of employees making up the FTE count did not change drastically over time. This was the best estimate possible due to the lack of complete payroll production by CIBC.

Figure 1: Estimation of Count of Weekly Employees in Class Positions



5.8.3 Overtime Already Paid

107. To identify the amount of overtime already paid to class members, I utilized the records in payroll that explicitly designate a particular record as an overtime payment in the field “Earn Code Description” as follows:

- a. First, I summed up the overtime already paid for each month in the payroll data.
- b. Second, I divided the monthly total by the number of weeks in the month to obtain the average of weekly total amounts of overtime already paid.
- c. Third, I divided the weekly total amounts of overtime already paid by the number of class members in each week. This step was necessary because the payroll data contains predominantly bi-weekly pay periods.
- d. Fourth, this calculation resulted in an overtime already paid per week which then could easily be transformed into the amount of overtime already paid for a bi-weekly pay period.

108. To obtain estimates of overtime already paid in the periods prior to the availability of payroll data (before 2004 because our methodology required a full year of payroll data), we computed the average overtime paid per week across the years with complete payroll data in 2004

dollars, with all non-2004 values being CPI adjusted to their 2004 equivalents, using the methodology described in Section 5.8.1. For the period prior to 2004, the 52 weekly CPI adjusted averages were used as the estimate for overtime paid in the previous years.

109. Similarly, to obtain estimates of overtime already paid in the periods post the availability of payroll data (after 2008), we computed the average overtime paid per week across the years with complete payroll data in 2008 dollars, with all non-2008 values being CPI adjusted to their 2008 equivalents using the methodology described in Section 5.8.1. For the period post 2008, the 52 weekly CPI adjusted averages were then used as the estimate for overtime paid in the following years.

5.9 Damages Due to Unpaid Overtime Past June 18, 2009 for Employees Who Were Still Employed in a Class Position as of that Date

110. Counsel have advised me that, while there is no issue that the class is limited to those persons who were employed no later than June 18, 2009, the parties disagree about whether members of the class who remained employed after that date continued to be entitled to damages. Accordingly, counsel asked me to include a scenario where employees who were class members as of June 18, 2009 would be compensated for damages for the remainder of their work life at CIBC, up to and including the present. In order to estimate how much longer someone who is employed as of June 18, 2009 would stay at CIBC in a class position, I utilized a well-established statistical methodology known as survival analysis.⁴⁷ Survival analysis deals with statistical models and methods to estimate the time to the occurrence of some specified event.⁴⁸ In this instance, it is the elapsed time between the starting date of an individual employee who is still employed in a class position on June 18, 2009 until this employee leaves the class position.

⁴⁷ Finkelstein, Michael and Bruce Levin. (2001). *Statistics for Lawyers*, Second Edition, Springer Verlag, Chapter 11 discusses the widespread use of Survival Analysis as a well-established statistical methodology in litigation proceedings.

⁴⁸ See, e.g., Kotz, S. and Norman Johnson. (1988). *Encyclopedia of Statistical Sciences*, Volume 9, John Wiley & Sons, Pages 119-128.

111. More specifically, I applied a specific survival analysis approach called the Kaplan-Meier Estimator.⁴⁹ This approach utilizes the “stock” of employees who were still employed in a class position in the last payroll week up to June 7, 2009, and then estimates how many of these employees would remain employed in a class position until the present.⁵⁰ This model was specified using weekly counts of employees.

112. To apply this methodology, I relied on the data fields “hire date”, “termination date”, “rehire date”, and “class position” which are available for each employee in the payroll data. The survival model utilizes a non-parametric⁵¹ approach based on data available to estimate the likelihood that an employee is still with CIBC in a class position at a date, t , in the future after June 7, 2009 given the time they had spent uninterrupted in that class position leading up to June 7, 2009. The application of this survival model produces a probability that is specific to each employee’s starting class position.

113. Lastly, I utilized the employee-specific probability of survival for the time period past June 7, 2009 to estimate potential damages due to non-payment of overtime hours.

5.10 Lunch Gap Analysis

114. Counsel has advised that members of the class may be eligible for a lunch break. To estimate the length of lunch breaks actually taken, I analyzed the distribution of the length of gaps starting between timestamps for all employees between the hours 11:30AM and 2:00PM. Based on gaps between timestamps observed in the data, a 30-minute lunch break is a reasonable estimate. However, this gap analysis is limited by the fact that CIBC has not produced all time-stamped data. For example, while this analysis may observe a 30-minute gap for a number of employees, it is likely that many of these gaps could be split (made shorter) by activity in non-produced data including but not limited to CIF, E-Mail, Active Directory/MACS, Surf Control, PDAO, COINS, COLT, as well as non-used Investor Services Inc. Online Webserver (ISI) data.

⁴⁹ See, e.g., Kotz, S. and Norman Johnson. (1988). Encyclopedia of Statistical Sciences, Volume 4, John Wiley & Sons, Pages 346-352.

⁵⁰ The date June 7, 2009 represents the last week in the Payroll Data with “Basic Pay” records.

⁵¹ Non-parametric approaches use the empirical distribution of the data available and do not make any distribution assumptions about the data.

These gaps could also be split or fulfilled by productive work activity not captured by an electronic system. Productive work activity could include meetings, phone calls, paper based records, trainings, or other compensable functions that do not trigger an electronic timestamp.

115. The number of timestamps does not appear to reflect all activity for an employee on a given day. This is due to the fact that not all electronic systems containing time-stamped data were preserved. Further, durations of time without timestamps could be due to employees performing work-functions that are not captured by any electronic system. For examples, ABMs, on average, only have 24 timestamps per day. If these were uniformly split across a 7.5 hour day, this would amount to only three to four timestamps per hour. It is unlikely that the average ABM performed only three work-related instances of activity per hour. On the other hand, the average number of gaps between time-stamped data for the CSR class position is between two to six times larger than other class positions. While this data still cannot capture every single work-related instance of activity for the CSR, this class position appears to have more activity captured by electronic systems than other employees.

116. Table 8 below shows the average number of timestamp gaps extracted by class position.

Table 8: Average Number of Gaps per Day by Class Position

Class Position	Average Number of Gaps per Day
ABM	24
BA	43
CSR	148
FSA	35
FSR	72

117. To estimate the average break during the lunch period, I took the following steps:

- a. Limited data to timestamps included in the analysis of Overtime.
- b. Removed gaps larger than 60 minutes. This step was taken to ensure the analysis was not driven by employees with lack of adequate data coverage. This step resulted in capturing and utilizing 98.8% of employee-daily-gaps during the lunch period (in other words, it only removed 1.2% of daily gaps).

- c. Took employees' maximum gap per day during the lunch period 11:30am to 2:29pm.
- d. Took the average of these maximum gaps.

118. The results of my analysis are displayed in Table 9.

Table 9: Average Potential Lunch Gap by Position

Class Position	Mean Gap
ABM	26
BA	30
CSR	27
FSA	28
FSR	32

119. Upon completion of this analysis, I've found that a 30-minute gap is a reasonable estimate for the average lunch break taken by the employees. Accordingly, we deducted 30 minutes from the adjusted elapse time between maximum and minimum daily timestamps.

5.11 MACS Active Directory Analysis

120. The MACS Active Directory is a system that "captured records relating to the authentication and access of a given user to CIBC's computer network and some applications on that network".⁵² "The only Active Directory/MACS data that was not destroyed by CIBC for the Class Period is for five employees over the period of approximately one month November 2007".⁵³ It is unfortunate that CIBC destroyed this dataset insofar as it would have provided a rich source of information. However, the data that remains, although only for five persons, is the best available data that has been made available from which to estimate the effect that the Active Directory/MACS would have had on the overall calculations.

121. To estimate this effect, we looked at the average change in each of the employees first time stamp of the day when the MACS data was included in the Deloitte analysis. We then shifted class members' first timestamp of the day by the average observed shift by class position from the data

⁵² Reid Affidavit, Page 6.

⁵³ Reid Affidavit, Page 7.

underlying the Deloitte analysis. It turns out that this only materially affects the first timestamp for the CSR and BA positions.

122. Based on the Deloitte Report backup materials produced, the MACS Active Directory dataset captures, on average, earlier first timestamps than other systems. Table 10 below shows average deviations of time worked for the different class positions as evidenced by the data underlying the Deloitte analysis:

Table 10: MACS Active Directory Adjustment

Class Position	Average Shift H:MM:SS
All Positions	0:04:31
ABM	0:00:28
BA	0:02:56
CSR	0:08:28
FSA	0:00:27
FSR	0:00:13

Where:

- a. **Class Position:** refers to the employee class position
- b. **Average Shift:** refers to the average elapse time between the MACS Active Directory first timestamp compared to that in other systems. The MACS Active Directory, on average, captures timestamps before those in other systems.

123. The results in Table 10 above show that the MACS Active Directory dataset captures earlier timestamps than the combination of CBFE, CIF, Horizon, SM@RT, and IIS data for two of the class positions, namely CSR and BA.⁵⁴ The other class positions show an average difference of less than a minute.

124. To calculate the effect of MACS Active Directory data, I calculate the average duration with and without the MACS Active Directory data. The rounded difference of 8 minutes for CSRs and 3 minutes for BAs was applied in damages scenarios to the CSR and BA class position.

⁵⁴ The CSR position in the Deloitte Report backup has the UserID “CK00520” in the MACS data as opposed to “CK00250” ; however, the data appears to be related to the same person. Source: ...\\CK00250\\MACS\\AuditedEvents.xls.

6 Damages Estimates & Scenario Analyses

6.1 Calculate Damages

125. Once these inputs were calculated, the following formula was used to calculate an estimate of damages.

Equation 9: Damages Calculation

Damages =

$$\sum_{week [w]=1}^N Emp_w \times 1.5 \times \overline{Wage_w} \times \overline{OT_w} + Emp_w \times \overline{Wage_w} \times \overline{OTC_w} - Emp_w \times \overline{OTPaid_w}$$

Where:

- a. \overline{Wage} = *Average Hourly Wage of Class Weighted by Class Position*
- b. \overline{OT} = *Average Weekly Estimated Overtime per Employee (Hours)*
- c. \overline{OTC} = *Average Weekly Estimated Off the Clock per Employee (Hours)*
- d. \overline{OTPaid} =
Average Weekly Estimated OT Paid per Employee (Dollars) of Class Weighted by Class Position
- e. Emp = *Estimated Class Employee Count of Week*

6.2 Damages Scenarios

126. Upon Counsel's request, we computed damages with respect to four periods and two interest scenarios:

- a. **February 1, 1993 to June 18, 2009:** Damages were backcast to **February 1, 1993**. Employee damages were calculated through June 18, 2009. Compound and Simple Interest were calculated through the present.
- b. **February 1, 1993 to Present:** Damages were backcast to **February 1, 1993** and forecasted through the present. Employee damages were calculated through June 18, 2009. Compound and Simple Interest were calculated through the present.

- c. **Provincial Limitation to June 18, 2009:** Damages were backcast to the applicable provincial limitations detailed in Table 11 below. Employee damages were calculated through June 18, 2009. Compound and Simple Interest were calculated through the present.
- d. **Provincial Limitations⁵⁵ to Present:** Damages were backcast to the applicable provincial limitations detailed in Table 11 below. Employee damages were calculated through June 18, 2009. Compound and Simple Interest were calculated through the present.

127. For the Provincial Limitation to June 18, 2009, we were asked to only calculate damages for class members stemming from the following periods in Table 11 below. Each of these ends on June 18, 2009; for the Provincial Limitation to Present, damages are extended through the present for the estimated number of employees who would remain at CIBC past June 18, 2009.

Table 11: Provincial Limitation to June 18, 2009

Province	Applicable Legislation	Periods Included
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ-1991, s. 2925	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005
	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c. L150, s. 2	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8, ss. 7 and 9	June 4, 2001 – June 18, 2009

⁵⁵ The presumptive provincial limitations were applied by using overall province frequencies of payroll employees. The province was determined using the payroll fields “home_org_unit” and “location description”. Specifically, for a given week, if the province was not within the corresponding damages period, the percentage of payroll employees attributed to that province was backed out of damages.

Province	Applicable Legislation	Periods Included
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-8, s. 2	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

128. Upon Counsel’s request, we computed damages with simple interest or compound interest using a rate of 4.5% which we were advised is the statutorily prescribed rate for claims that were commenced in the second quarter of 2007.

129. To calculate damages with interest, we calculated interest from the first day of the month after unpaid overtime or straight time had occurred until December 31, 2021. Thus, damages in November 2021 would not accrue any interest. Weekly damages with simple interest are calculated for each month “x” by using the following formula:

Equation 10: Damages with Simple Interest

$$Damages\ with\ Simple\ Interest_x = Damages_x \times \left(1 + \left(\frac{4.5\%}{12}\right) \times N_{Months}\right)$$

130. Weekly damages with compound interest are calculated by using the following formula:

Equation 11: Damages with Compound Interest

$$Damages\ with\ Compound\ Interest_x = Damages_x \times \left(1 + \frac{4.5\%}{12}\right)^{N_{Months}}$$

131. In these equations N_{Months} represents the number of months between the first day of the following month and December 31, 2021.

132. Utilizing the approach and estimation techniques presented in this report, we derived the following class-wide damages estimates with and without interest:

- a. **February 1, 1993 to Present:** Damages without interest range from \$218M to \$256M depending on the sensitivity. The margin of error (“MOE”)⁵⁶ related to the 90% Confidence Interval of these damages ranges from 9.6% to 10.2%.
- b. **February 1, 1993 to June 18, 2009:** Damages without interest range from \$140M to \$164M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 8.7% to 9.2%.
- c. **Provincial Limitation to Present:** Damages without interest range from \$136M to \$160M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 9.6% to 10.2%.
- d. **Provincial Limitation to June 18, 2009:** Damages without interest range from \$58M to \$68M depending on the sensitivity. The MOE related to the 90% Confidence Interval of these damages ranges from 7.2% to 7.7%.

Table 12: Damages 2/1/1993 – Present

Relevant Time Period	Sensitivity ⁵⁷	No Interest	Simple Interest	Compound Interest
2/1/1993 – Present	Model 1	\$218M	\$369M	\$462M
2/1/1993 – Present	Model 2 - Extend to Open / Close	\$227M	\$384M	\$481M
2/1/1993 – Present	Model 3 - Extend to Pre Open / Post Close	\$256M	\$432M	\$542M

Table 13: Damages 2/1/1993 - 6/18/2009

Relevant Time Period	Sensitivity	No Interest	Simple Interest	Compound Interest
2/1/1993 - 6/18/2009	Model 1	\$140M	\$268M	\$356M
2/1/1993 - 6/18/2009	Model 2 - Extend to Open / Close	\$146M	\$279M	\$371M
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$164M	\$314M	\$417M

⁵⁶ Yadolah Dodge. (2008). The Concise Encyclopedia of Statistics, Springer-Verlag, Pages 108 to 109. A margin of error is typically expressed as a plus/minus range and refers to half the width of the confidence interval. It has to be pointed out that confidence intervals do not have to be symmetric around the point estimate. This is only true in the case when the data follow a bell-shaped curve. In this case, I calculated non-parametric confidence intervals that do not assume a bell-shaped curve.

⁵⁷ See Section 5 for description of sensitivities.

Table 14: Damages Provincial Limitation – Present

Relevant Time Period	Sensitivity	No Interest	Simple Interest	Compound Interest
Provincial Limitation – Present	Model 1	\$136M	\$201M	\$226M
Provincial Limitation – Present	Model 2 - Extend to Open / Close	\$142M	\$209M	\$235M
Provincial Limitation – Present	Model 3 - Extend to Pre Open / Post Close	\$160M	\$236M	\$265M

Table 15: Damages Provincial Limitation – 6/18/2009

Relevant Time Period	Sensitivity	No Interest	Simple Interest	Compound Interest
Provincial Limitation - 6/18/2009	Model 1	\$58M	\$100M	\$120M
Provincial Limitation - 6/18/2009	Model 2 - Extend to Open / Close	\$60M	\$104M	\$125M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$68M	\$117M	\$140M

133. Across these sensitivities and scenarios, the margin of error (“MOE”) has been calculated for the confidence levels of 90% and 95% for the estimates of Unpaid Straight Time and Overtime. In the following, Table 16 through Table 19, show the MOE for each sensitivity.

Table 16: MOE 2/1/1993 – Present

Relevant Time Period	Sensitivity	1 st Set 90%		2 nd Set 95%	
		MOE %	MOE	MOE %	MOE
2/1/1993 – Present	Model 1	10.2%	\$22M	12.2%	\$27M
2/1/1993 – Present	Model 2 - Extend to Open / Close	10.0%	\$23M	11.9%	\$27M
2/1/1993 – Present	Model 3 - Extend to Pre Open / Post Close	9.6%	\$25M	11.5%	\$29M

Table 17: MOE 2/1/1993 - 6/18/2009

Relevant Time Period	Sensitivity	1 st Set of 90%		2 nd Set of 95%	
		MOE %	MOE	MOE %	MOE
2/1/1993 - 6/18/2009	Model 1	9.2%	\$13M	11.0%	\$15M
2/1/1993 - 6/18/2009	Model 2 - Extend to Open / Close	9.0%	\$13M	10.7%	\$16M
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	8.7%	\$14M	10.3%	\$17M

Table 18: MOE Provincial Limitation – Present

Relevant Time Period	Sensitivity	1 st Set of 90%		2 nd Set of 95%	
		MOE %	MOE	MOE %	MOE
Provincial Limitation – Present	Model 1	10.2%	\$14M	12.1%	\$17M
Provincial Limitation – Present	Model 2 - Extend to Open / Close	10.0%	\$14M	11.9%	\$17M
Provincial Limitation – Present	Model 3 - Extend to Pre Open / Post Close	9.6%	\$15M	11.4%	\$18M

Table 19: MOE Provincial Limitation – 6/18/2009

Relevant Time Period	Sensitivity	1 st Set of 90%		2 nd Set of 95%	
		MOE %	MOE	MOE %	MOE
Provincial Limitation - 6/18/2009	Model 1	7.7%	\$4M	9.2%	\$5M
Provincial Limitation - 6/18/2009	Model 2 - Extend to Open / Close	7.6%	\$5M	9.0%	\$5M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	7.2%	\$5M	8.6%	\$6M

134. The estimates provided for this report build on the methodologies I have applied in numerous cases involving time-keeping data, of which, several are described at paragraph 6 of this report. The achieved margins of error related to the 90% and 95% confidence intervals in the presented damages calculations ranging from approximately 7% to 12% are an indication that the estimates of damages are reliable.

135. For sample results to be deemed reliable, the margin of error has to be small (e.g., 5% to 15%) and the confidence level has to be high (e.g., 90% to 95%). If, on the contrary, the confidence level is low (e.g., 60%) and the margin of error is wide (e.g., 80%) then the corresponding point estimate of the unknown population parameter cannot be relied upon.

136. For instance, if a sample produced a result where the statistician was 90% confident that the cure rate for a new medication was between 10% and 90%, the interval would be so wide as to be useless to assess the cure rate of the new medication. However, a sample result where the statistician was 90% confident that the cure rate for a new medication was between 85% and 95%, then the confidence interval would be narrow enough to provide useful information about the cure rate of the new medication.

137. A statement about the results from a statistical sample that only refers to a confidence level, but fails to mention the margin of error, makes no sense from a statistical perspective. It is

meaningless to speak generically about a 90% confidence interval: the central question is how wide that confidence interval is. If the 90% confidence interval is extremely wide, then the results from the underlying sample are not reliable and must be rejected. The facts discussed above are well documented in statistical literature and universally accepted in legal proceedings.⁵⁸

7 Summary and Conclusion

138. In this report, I have discussed in detail the methodology developed and applied to extract time-stamped data from large electronic data systems to perform an analysis of class members' work activities outside of regularly paid work hours. In my expert opinion, this analysis yielded accurate and reliable quantifications of class-wide economic losses that arose from unpaid overtime and straight time work suffered by the class members.

139. Due to the nature of missing data systems, as well as the evidence in the data that employees are starting their shifts before the branch opens and ending their shifts after the branch closes, my opinion is that Model 3 contains the most reliable estimate of class wide damages. This decision relies on the assumption, which is supported by the data, that employees typically do not start and end their shifts right at the branch open and close time.

140. In summary, we have reached the following expert opinion regarding the quantification of class-wide damages:

Table 20: Summary of Damages Scenarios

Relevant Time Period	Sensitivity	No Interest	Simple Interest	Compound Interest
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$164M	\$314M	\$417M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$68M	\$117M	\$140M
2/1/1993 – Present	Model 3 - Extend to Pre Open / Post Close	\$256M	\$432M	\$542M
Provincial Limitation – Present	Model 3 - Extend to Pre Open / Post Close	\$160M	\$236M	\$265M

⁵⁸ Center, Federal Judicial, and National Research Council. (2011). Reference Manual on Scientific Evidence, 3rd Edition, Pages 243-246.

8 Detailed Discussion of Data Utilized in Damages Model

8.1 October 2020 & March 2021 Data Production

141. CIBC produced data from October 2020 to March 2021. The specific systems produced are described in detail below.

142. In October 2020, CIBC produced a set of SM@RT and Horizon data, which contains data corresponding to 5 years of the class period. This data required a substantial amount of time to review as a result of it being disorganized. The majority of these files were unrelated to employee timestamps and of no use.⁵⁹ The Horizon data production contained over 40K files and required a hard drive space of over 440GB. The SM@RT data produced contained over 24K files and required hard drive space of over 1.6TB.

143. In March 2021, CIBC produced data specified as CBFE, IIS and ISI. We received these data on a 2TB hard drive. Upon unzipping and extracting the data from this hard drive, we were able to identify approximately 4.7 million individual files totaling over 18TB of data containing nested archival files.⁶⁰ To make these data usable for analysis following my proposed methodology, my team developed specialized un-archiving methodologies to unzip millions of files in parallel across several computers which alone took weeks of computer run time.

144. Once the files were unzipped, my team developed solutions to identify which files contained employee timestamps, and therefore, would be relevant for our work. This task was accomplished by developing an automated scanning process through millions of directories to find files that contained timestamps. This scanning process was performed on Azure's Cloud⁶¹ which

⁵⁹ Non timestamp data included daily network use summaries, system activity log files, as well as other Horizon system support documents.

⁶⁰ Nested archives refers to archive files located within other archive files. For example, a single tar.gz file that was produced would need to be extracted at least twice (once for the .gz, once for the .tar archive). Once the .tar files were extracted, data would be found in .zip files which would then require another level of unzipping.

⁶¹ The Azure cloud is a network of computers, hard drives, and programs that can be used for data analyses of any size. We used computers and drives hosted on the Azure cloud due to the size of this data. This had a tremendous impact on our normal operating costs. These costs were increased because additional computers and hard drive space had to be allocated to this casework. Had CIBC only produced relevant data, the use of additional computers and hard drive space would not have been necessary. These costs resulted in higher expert fees accrued by BRG.

allowed the use of powerful multi-core computers with hundreds of gigabytes of ram/memory as well as 10s of TBs of dedicated space.

145. This effort turned into a more time consuming task than necessary because the data production contained millions of megabytes of irrelevant data and virtually no information regarding how the structure of the data productions were organized. In order to streamline the process of data extraction and analysis, we had suggested that a “meet and confer” process⁶² be utilized. Unfortunately, however, despite repeated requests in this regard, CIBC rejected this request.⁶³

146. Upon closer inspection of the March 2021 data production, another complicating factor in addition to the size of the data received, was that the hard drive contained additional Horizon data, SM@RT data, and other seemingly unrelated data.⁶⁴ The presence of additional Horizon and SM@RT data was neither expected, nor described by CIBC and my team was therefore required to reconcile the newly received Horizon and SM@RT data with the data received in October 2020.

147. Due to the size of the data, duplication of produced data, inclusion of corrupted data, and other items discussed within this section, Plaintiff’s Counsel reiterated their request for an index and description of the data received.

148. On August 10, 2021, Defendant’s Counsel sent a letter along with an index of the data produced.⁶⁵ This index was non-informative and provided no assistance in understanding the data

⁶² The general purpose of a “meet and confer” process is to collaborate between parties to establish a unilateral understanding of the data at an early stage of the analysis. Typically, this exercise will be beneficial to both parties as it would prevent unnecessary and excessive exploration of the data.

⁶³ Letter Regarding Production from Linda Plumpton to Louis Sokolov dated March 29, 2021 (“Letter from Plumpton, March 29, 2021”).

⁶⁴ Unrelated data includes and is not limited to administrative emails, IBM Eclipse Developers Kit and Invoices CIBC received from third parties.

⁶⁵ Letter Regarding Production from Linda Plumpton to Louis Sokolov dated August 10, 2021 (“Letter from Plumpton, August 10, 2021”) Pages 3 to 4.

produced. This index simply confirmed that my team had previously received all zip folders and that these zip folders were of the same size.⁶⁶

8.1.1 SM@RT Data:

149. SM@RT Data was received in two productions. It was first received in October 2020 and subsequently what was simply described as directories “Sid-0008”, “Sid-0009” and “Sid-0059” in the March 2021 production. It is apparent that the March 2021 production is a duplicate of the October 2020 production. Further, it was not specified that the March 2021 production contained SM@RT Data. The data received covers the period September 27, 2004 until June 30, 2009. The production of duplicated data increased the time needed to analyze the productions.

150. The following example⁶⁷ shows a row of data in the raw data files from the SM@RT system and how it could be transformed to readily useable timestamp data for a UserID.⁶⁸

Figure 2: Raw Timestamp Record in SM@RT Data

11/6/200818:05:55 W3SVC1806728781159.231.164.132
AD\PL0042710.148.194.105

151. The following Figures 3 and 4 demonstrate how relevant information could be obtained from the raw data presented in Figure 2 and extracted into a useable format:

Figure 3: Data Line with Fields in SM@RT Data

date	Time	s-sitename	s-ip	cs-username	c-ip
11/6/2008	18:05:55	W3SVC1806728781	159.231.164.132	AD\PL00427	10.148.194.105

⁶⁶ However, this index was created following the archival of the individual files. This process does not ensure that the unarchived files properly represent those archived. The provided index also did not identify the system from which the files were extracted and archived.

⁶⁷ Source: October 2020 production, ex081106_sccsmtproweb01.log.

⁶⁸ UserID in the data are listed as “cs-username”, “Operator”, or inferred based on column position depending on the system. I use these interchangeably in this report.

Which can be converted to a timestamp data point that was usable for my analysis:

Figure 4: Standardized SM@RT Timestamp Record

Date	Time	UserID	System
11/6/2008	18:05:55	PL00427	SM@RT

Where the relevant data fields are defined as follows:

- a. **Date:** refers to the date of the activity;
- b. **Time:** refers to the time of the activity;
- c. **S-sitename:** refers to the internet service name and instance number that was running on the client;
- d. **S-IP:** refers to the IP address of the server on which the log file entry was generated;
- e. **CS-username:** refers to the name of the authenticated user that accessed the server;
- f. **C-ip:** refers to the IP address of the client that made the request;⁶⁹ and
- g. **System:** is a field that I added to the data to create an audit trail identifying where the timestamp came from.

8.1.2 Horizon Data:

152. CIBC has provided sworn evidence that Horizon represents a “set of applications that allows employees to track sales leads, summarize client interactions, and diarize upcoming tasks”.⁷⁰

153. The Horizon data was initially produced in October 2020 across over forty thousand files containing data for class members for the date range February 2007 to July 2009. Previously,

⁶⁹ These data field descriptions can be found at the following Microsoft link. <https://docs.microsoft.com/en-us/windows/win32/http/w3c-logging>. It is important to note that CIBC has not produced crosswalks between these codes and who or what they represent.

⁷⁰ Reid Affidavit, Page 8.

Plaintiff's Counsel requested information regarding certain missing data.⁷¹ Several of the specified date ranges were subsequently provided in the folders Sid-0002, Sid-0006, and Sid-0007 of the 2021 production.

154. The following example⁷² shows a string of Horizon raw data and how it could be transformed to obtain readily useable timestamp data. The "OperatorID" below corresponds to an employee username that is assigned within their system. This field corresponds to a "cs_username" and "ACF2ID" field found in SM@RT and IIS data which can be matched to a given employee.⁷³

Figure 5: Raw Timestamp Record in Horizon Data

```
13556956: 2009 Jan 19 10:29:51:563 EST ==>TransactionID: 4875224-
159.231.178.230-1232378990755OperatorID: <PL00427 > Transit: <07102>
IP:<10.148.194.105>DS::OMNIHARTS::GetCustomer 790ms
```

Which contains the time-stamped data:

Figure 6: Standardized Horizon Timestamp Record

Date	Time	UserID	System
1/19/2009	10:29:51	PL00427	Horizon

155. The Horizon data provided included missing periods as set out below in Table 2. These missing periods of data are not the result of inherent deficiencies of the data systems themselves, but rather they are due to data destruction by CIBC.⁷⁴ Date ranges for which the Horizon data is missing for the class employees⁷⁵, are set out in Table 21, below.

⁷¹ Letter Regarding Production from Louis Sokolov to Linda Plumpton, dated June 15, 2021 ("Letter from Sokolov, June 15, 2021"), Page 3.

⁷² Source: Sid-0002/E/unzip/Jan2009/UNIX.19Jan09.TranxServerTrace.log.

⁷³ See Section 8.1.7 "Data Standardization and Normalization Procedures" for more information about data standardization across systems.

⁷⁴ Boedeker Affidavit, February 2019, paragraph 2.

⁷⁵ Missing days refers to those for which I was not able to match users in the system to class employees found in payroll with basic pay.

Table 21: Dates Missing in the Horizon Data⁷⁶

First Date	Last Date	Days Missing
4/1/2007	1/30/2008	305
3/2/2008	3/30/2008	29
5/25/2008	5/31/2008	7
12/25/2008	12/25/2008	1

Where

- a. **First Date:** refers to the first date that is missing within the date range of the system.
- b. **Last Date:** refers to the last date that is missing within the date range of the system.
- c. **Days Missing:** refers to the total days in the range missing within the date range of the system.

8.1.3 Central Banking Front End (“CBFE”) Data:

156. CBFE data represents a front-end platform. A front-end platform is a piece of software used by individuals to access and update data in an electronic system. This system is used by CIBC employees to conduct customer transactions, including cheque cashing, issuing certified cheques, bank drafts, pay bills and account deposits and withdrawals. CIBC has deposed that this data exists from July 2006 to the end June 2009.⁷⁷

157. The CBFE data were stored within four subfolders in the March 2021 production: “Sid-0001”, “Sid-0004”, “Sid-0010”, and “Sid-0023”. These subfolders contain zipped files for each “Year-Month” combination. Once unzipped, these four subfolders contained approximately 133 thousand, 216 thousand, 216 thousand and 61 thousand files respectively, amounting to approximately 9TB of data containing timestamps related to class employees’ activities for the period June 29, 2006 to March 30, 2009.

⁷⁶ Letter from Plumpton, August 10, 2021, on Page 3 that Horizon data is available from March 2007, February 2008, and April 2008-June 2009. The days missing in this table reflect those during timeframe of the Horizon data from March 2007 through June 30, 2009.

⁷⁷ Reid Affidavit, Page 7.

158. The CBFE data were comprised of a large variety of log data. Many of these files contained evidence of system activity that was not relevant to employees' timestamps and the specific log data of interest containing employee timestamps had to be identified by a system of queries. Upon a detailed review, my team and I found data files containing the words "Timing Points"⁷⁸ in the file path. It is common for system developers to choose key words to identify output files that are common across a subset of an electronic system. Further, these files contained specific UserID that are found in other datasets.

159. Figure 7 below shows an example of raw data containing a timestamp which can be found in the CBFE Data.

Figure 7: Raw Timestamp Record in CBFE Data

18012,-1257420086,Servlet,LOGON,07102,PL00427 ,null,1232375639853,1232375639913,60,07102,PL00427 ,null,null

160. In this record, the timestamp is not immediately noticeable. However, based on my teams' expertise and experience, we recognized that the string of numbers in orange, 1232375639853, represents a timestamp. It is common for electronic systems and software programs to record time as the elapsed time from a specific point in time. A commonly chosen date is "1970-01-01". This is sometimes referred to as "Unix Epoch" which represents the number of seconds that have elapsed since "1970-01-01".⁷⁹

161. For example, the timestamp 1232375639853 can be converted as follows:

- a. Divide 1232375639853 by 24 hours, 60 minutes, 60 seconds, and 1000 milliseconds to obtain a total of 14,263.6069427 days.
- b. 14,263 days corresponds to 39 years and 19 days which added to 1/1/1970 results in 1/19/2009.

⁷⁸ The naming convention of "Timing" or "Timing_Points" also matches that in the Deloitte report backup which labels these files "Timing"; see Section 8.1.7 below.

⁷⁹ <https://www.epoch101.com/> provides a calculator to convert a Unix Timestamp to Human Readable Form. Our analysis consistently removes seconds from timestamps; thus this time is reflected as 14:33.

c. 0.6069427 days is 14.56 hours which corresponds to 14:33:59.⁸⁰

d. In summary, 1232375639853 corresponds to 1/19/2009 at 14:33:59.

162. It is also noteworthy that the alphanumeric string in green, PL00427, is the UserID that corresponds to the one found in the Horizon Data, thus creating a link between the two systems. Creating this link between systems is essential to capturing an employees' timestamps across systems. The commonality between specific UserIDs also lets us know that the fields of interest represent the same information, regardless of the naming convention ("CS Username, Operator ID, UserID, etc.").

163. Figure 8 below the shows the converted string of raw data displayed in Figure 7 in a standardized timestamp format:⁸¹

Figure 8: Standardized CBFE Timestamp Record

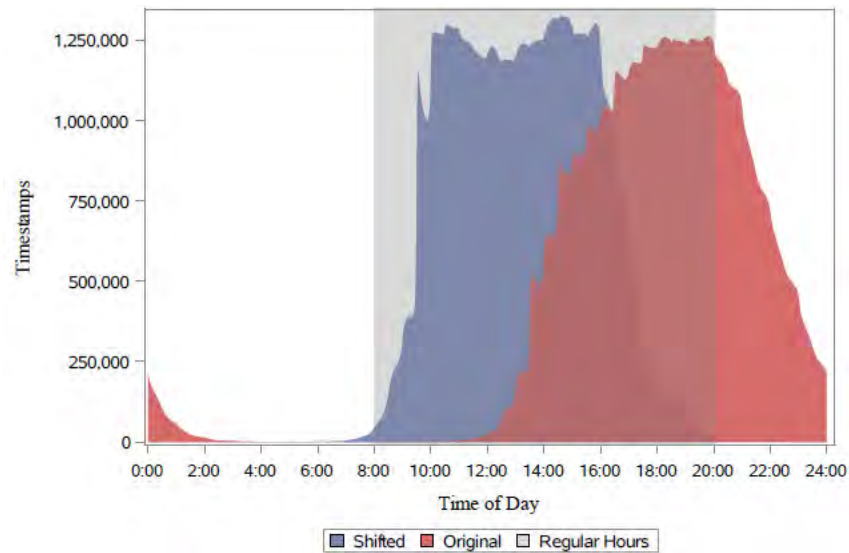
Date	Time	UserID	System
1/19/2009	14:33	PL00427	CBFE

164. The timestamps in the CBFE data indicate an additional complicating factor in the analysis, namely converting the timestamps in the data to the employees' proper time zones where the work was performed. Notably, the Fotheringham Affidavit stated that these data are recorded in Eastern time.⁸² However, after my team and I loaded the CBFE data and analyzed it as Eastern time, it was apparent that the observed timestamp activity was concentrated from 1PM through 11PM. Figure 9 below demonstrates how converting these data to UTC time created timestamps that were concentrated between 9AM and 8PM.

⁸⁰ The conversion from milliseconds to the relevant date time is justified through empirical analyses. For example, following the methodology described file "Sid-0004\export\home\chroot\export\home\logs_backup\2006-07\2006-07-01\timing_points.prod-srv11.log.Jul01-2006-0030;" contains timestamps related to 6/30/2006 and 7/1/2006. 99% are associated with 6/30/2006. To ensure the correct daily adjustment, we looked at the distribution of days of weeks following the aggregation of all employee-days in the CBFE data. This results in a distribution that is dominated by Monday-Saturday.

⁸¹ See Figure 4 for a description of the fields.

⁸² Corey Fotheringham Affidavit, Dara Fresco v. Canadian Imperial bank of Commerce, Ontario Superior Court of Justice, Court File No. 07-CV-334113CP, (Sworn May 13, 2008) ("Fotheringham Affidavit"), at 1929.

Figure 9: Time Zone Conversion in CBFE Data

165. Figure 9 above shows the block of time between 8:00am to 8:00pm highlighted by a light gray box. In front of this box, the Original CBFE Timestamps are represented by a red histogram. The blue histogram shows the distribution of timestamps following the UTC to Eastern time zone conversion as well as the shift to an employee's individual time zone. Notably, the CBFE system does not observe daylight savings time, so the shift is either 4 or 5 hours depending on the date and year.

166. Due to data destruction by CIBC, not all data for a system may be available within the time range where data are generally available. Table 22 shows date ranges for which the CBFE data is missing for class employees⁸³. As with the Horizon data, these ranges of missing data were caused by destruction of data by CIBC and are not inherent deficiencies of the data systems themselves.

Table 22: Dates Missing in the CBFE Data

First Date	Last Date	Days Missing
7/9/2006	7/9/2006	1
9/3/2006	9/3/2006	1
11/19/2006	11/19/2006	1
12/25/2006	12/25/2006	1
1/31/2007	2/26/2007	27

⁸³ Missing days refers to those for which I was not able to match users in the system to class employees found in payroll with basic pay.

First Date	Last Date	Days Missing
7/22/2007	7/22/2007	1
12/25/2007	12/25/2007	1
12/25/2008	12/25/2008	1

167. It is evident that CBFE data is completely missing for class members from the period January 31, 2007 to February 26, 2007. The first week in this date range, and the last week in this date range contain CBFE data on a subset of the dates. For these two weeks, we calculated the average daily overtime captured on dates with CBFE data and added this average daily overtime amount to dates without CBFE data during these weeks. For the other weeks in this date range, no CBFE data is available for class members. These weeks completely missing CBFE data were not adjusted.

8.1.4 Intranet Webserver (IIS) Data

168. The Intranet WebServer application recorded activity on CIBC's intranet or internal website. It included items such as promotions, procedure changes, management communications and organization charts.⁸⁴

169. IIS data was stored in the subfolders “Sid-0005” and “Sid-0021” which contain 12,198 files (58GB) and 162,990 files (3TB) respectively. The data on these drives contained the same key fields as the SM@RT data including but not limited to “cs-username”, “c-ip”, “date”, “time”, etc.⁸⁵

8.1.5 Investor Services Inc. Online Webserver (ISI) Data

170. Neither CIBC nor Defendant’s Counsel explicitly identified which folders or files pertain to ISI data. My team and I were able to identify the ISI data within CIBC’s production, and its stated context through the process of elimination as there was no benchmark to compare this data to. We were able to identify that the Sid-0069\archive\legacy subfolder which contains 745GB of data across 2 million files was the location of the ISI data.

⁸⁴ Reid Affidavit, Page 9.

⁸⁵ This data contained the same key fields as the SM@RT data so was processed in the same manner.

171. The file names in this subfolder do not contain any meaningful or discernable information regarding the origin or content of the files. These are almost exclusively “.dat” files with the naming convention of “bsst” followed by 3 digits. For example, file names include “bsst107.dat”, “bsst014.dat”, “bsst268.dat”. These file names provide no information regarding the content of the specific files.

172. This dataset was not standardized and could not be included into the analysis because the format of the UserID does not match that of other systems. If a crosswalk of class members to UserID for this system were available and would be produced to me, I could easily incorporate this dataset into my analysis which could potentially impact my estimates of uncompensated overtime or straight time worked. This crosswalk would include the UserIDs in the data system and match them to the EmployeeIDs found in payroll.

8.1.6 IIS Cookie Field

173. CIBC refused to produce a crosswalk linking UserIDs in the different data systems to class members, its counsel asserting that this was not possible:

“CIBC has provided extensive evidence that correlating user IDs across data systems for the class may be difficult or impossible. CIBC has not been able to locate any dataset or document that correlates user IDs to employees across the class.”⁸⁶

174. This was not an accurate statement. After receiving the class payroll data, my team and I designed search queries across all data received to look for names across the millions of data files. We were able to find that on a subset of the IIS data records, a “cs_cookie” field contained relevant first/last name information associated with the users which was subsequently extracted and incorporated into the analysis. Figure 10 below shows an example of the “cs_cookie” field output for Dara Fresco. Highlighted in yellow are the data that were extracted.

⁸⁶ Letter from Plumpton, March 29, 2021, Page 5.

Figure 10: Example of Name Information in “cs_cookie” Field

HORIZON.V1=%FFTHIN_SESSION_ID%3DLOGON%FF**OPERATOR**_ACF2
 ID%3D**DF00445**%FFOPERATOR_LANGUAGE%3DE%FF**OPERATOR_SUR**
NAME%3D**FRESCOSTEHR**%FF**OPERATOR_GIVEN_NAME**%3D**DARAPA**
ULINE%FFOPERATOR_AUTHORITY_LEVEL%3DD%FFOPERATOR_ACC
 ESS_LEVELS%3DYYYYYIYYNNNNYYNNNNNNNNNNNNNNNNNNNNNNNNNN
 NNNNNNNNNNNYYNNNNINNNNYNNNNNNNNNNNNNNNNNNNNNNNNNNNN
 NNNNNNNNNNNNNNNNNNNNNNNNN%FFTRANSIT%3D03602%FFHOSTENV%3
 D%FFBUS_UNIT_TRANSIT%3D%FFBUS_UNIT_FLAG%3DN%FFIS_CON
 TINGENCY_SIGNON%3DN%FFCOINS_EFFECTIVE_PROCESSING_DATE
 %3D20070306%FFCOINS_ACTUAL_DATE%3D20070305%FFIS_DELTA_B
 RANCH%3DN%FFIS_TELEPHONE_BANKING%3DN%FFIS_TRAINING%3
 DN%FFBRANCH_AREA_CODE%3D800%FF**BRANCH_TIME**
ZONE%3D+0.0%FFBRANCH_REGION_CODE%3D35%FFPROVINCE_COD
 E%3DON%FFWORK_FOR_TR_PROV_CODE%3D%FFMFM_COINS_ID%3
 DHBR705440068;+CIBCTodayProdSite=/C8/Retail/default.aspx

175. The “cs_cookie” field is *URL Encoded*⁸⁷ and can be decoded into useable content as can be seen by the following example. The highlighted information in Figure 10 contains the following employee information:

- a. **Operator_ACF2ID:** The system ID associated with the user.
- b. **Operator Surname:** The last name of the employee.
- c. **Operator Given Name:** The first name of the employee.
- d. **Branch Time zone:** The relevant time zone of the employee branch.

⁸⁷ URL encoding is a mechanism for translating unprintable or special characters to a universally accepted format by web servers and browsers. <https://www.techopedia.com/definition/10346/url-encoding>

176. Table 23 below shows the same information highlighted below in yellow as Figure 10 after the URL code translation. This chart contains two columns. Each cell in the table contains a piece of information found in the decoded cookie field:

Table 23: Exemplar of URL Code Translation

THIN SESSION ID=LOGON	IS CONTINGENCY SIGNON=N
OPERATOR_ACF2ID=DF00445	COINS_EFFECTIVE_PROCESSING_DATE=20070306
OPERATOR_LANGUAGE=E	COINS_ACTUAL_DATE=20070305
OPERATOR_SURNAME=FRESCOSTE HR	IS_DELTA_BRANCH=N
OPERATOR_GIVEN_NAME=DARAPA ULINE	IS TELEPHONE BANKING=N
OPERATOR_AUTHORITY_LEVEL=D	IS_TRAINING=N
OPERATOR_ACCESS_LEVELS=YYYYYIYYNNNNYYNNNNNNNNNNNN	BRANCH_AREA_CODE=800
TRANSIT=03602	BRANCH_TIME_ZONE= 0.0
HOSTENV=	BRANCH_REGION_CODE=35
BUS UNIT TRANSIT=	PROVINCE_CODE=ON
BUS UNIT FLAG=N	WORK FOR TR PROV CODE=

177. The label of the field is found on the left side of each “=” sign. The right side of each “=” includes the relevant information; for example, OPERATOR_ACF2ID to the left of the equal sign in the second data row of the left column in Table 23 indicates that this field contains an Operator ID and the alpha numeric code DF00445 is Dara Fresco’s Operator ID.

178. It is my understanding that CIBC contends that some employees share emails or workstations which, in CIBC’s opinion, allegedly causes a bias in my methodology.⁸⁸ We have found that timestamps are related to specific UserID that are linked to a specific Employee. However, the “cs_cookie” field in some cases, includes a given or surname name that includes the value “TRAINING” or “MULTIPLE USERS”. The given and surname are the fields used to link the UserIDs to the Employees in the payroll data. Since UserIDs including “TRAINING” or “MULTIPLE USERS” cannot be linked to individual employees in payroll, we did not include

⁸⁸ Reid Affidavit, Page 2.

them in these analysis.⁸⁹ The exclusion of such UserIDs makes the analysis conservative because individual employees may have used such UserIDs in addition to their own individual UserID.

8.1.7 Deloitte Report Backup

179. It is my understanding that, in advance of the certification motion, Corey Fotheringham, a Director of Computer Forensics at Deloitte had been engaged by Torys LLP on behalf of CIBC to analyze electronic activity of five CIBC employees from November 2007. Each of these five employees was in a different position at CIBC.

180. It is further my understanding that Mr. Fotheringham received data from November 2007 for five employees from the following systems from November 2007: CBFE, CIF, Horizon, ISI Online, PESA, MACS, SM@RT, Surf Control (Internet), Intranet (Internet Information Services (IIS) logs), Windows events from local machines as well as accessible servers, COINS, COLT, and PDAO.

181. The Deloitte report demonstrated how electronic systems utilized by CIBC produced time-stamped records which could, in turn, be used to estimate the start and stop times of class members' workdays in much the same that timesheets records these events., Some of the data that formed the basis of the Deloitte report, which were among the richest source for timestamps were subsequently destroyed by CIBC. See Table 2 for a description of the systems destroyed.

182. Specifically, in this report, we analyze how the MACS/Active Directory captures earlier timestamps, on average, than those captured by the systems produced to my team. We received this data in March of 2021 in a separate production. Details of the function of Active Directory/MACS data is discussed in Section 5.11 in greater detail.

8.2 Additional Data Productions

183. In addition to the large scale data productions in October 2020 and March 2021, we received additional data from different systems at various, irregular points in time.

⁸⁹ These UserIDs start with a “#T” or “#M”.

8.2.1 Personal Electronic Signing Authorities (PESA)

184. The PESA data system allowed branch employees to view electronic signing authorities for personal accounts.⁹⁰ My team and I received PESA data in July 2021. PESA data were not included in my analysis due to its limited coverage and lack of overlapping UserIDs with other systems. PESA data only contained 129 UserIDs as well as approximately 350 thousand rows. This is a very small number compared to billions of rows and thousands of class members found in other CIBC data systems. Thus, we did not use this PESA data in the damages model.

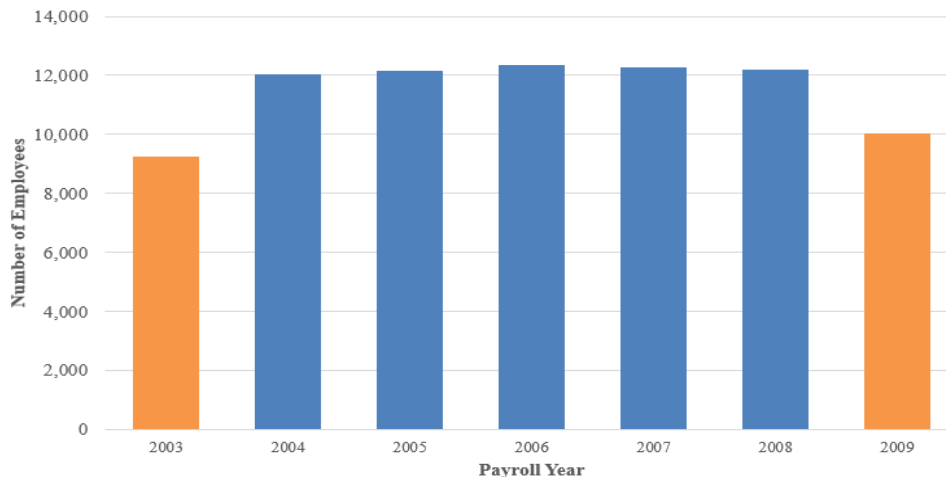
185. Plaintiff's Counsel has requested confirmation of coverage of the production but to my knowledge has yet to receive a definitive response. I reserve the right to update my analysis if more PESA data will be produced at a future point in time.

8.2.2 Payroll Data

186. CIBC Payroll data were produced for the period August 29, 2003 through June 18, 2009. It is our understanding that the payroll data was extracted for every employee who worked in a class position in that time period. This data contains predominantly bi-weekly paid amounts along with hours and descriptions of the earned wages. The data does not provide a complete history for each employee. For example, fields like manager, location, and salary are stagnant across a respective employee's tenure. This means the data records this information at a given point of time, so many of the fields are not complete.

187. Figure 11 below shows the range of the class period for which payroll data has been produced. Orange bars indicate years for which incomplete data was produced.

⁹⁰ Reid Affidavit, Page 8.

Figure 11: Employee Counts and Payroll Data Produced

Yearly employee counts are higher than weekly employee counts due to the fact that not every employee works every week of the year. The years 2003 and 2009 are highlighted in orange because they are incomplete years. 2003 data is available from September through December; 2009 data is available from January through mid June.

8.2.3 Class List

188. In correspondence to Plaintiff’s Counsel, Defendant’s Counsel stated that “CIBC will provide a list of class members along with their relevant payroll and HR data in excel format. The information provided will cover the beginning of available records during the class period to June 18, 2009, without prejudice to CIBC’s position on appeal in respect of limitation periods.”⁹¹

189. It is my understanding that the payroll data produced from 8/29/2003 to 6/18/2009 is limited to class members. This was stated in correspondence from Defendant’s Counsel as follows:

*Please find enclosed at the link in this email the available payroll data for the class. This data contains the payroll and class list information set out in section 2(b) of your January 27, 2021 letter.*⁹²

190. However, on October 14, 2021, CIBC produced two additional files containing updates to the payroll data:

⁹¹ Letter from Plumpton, March 29, 2020, Pages 11-12.

⁹² Letter from Sokolov, June 15, 2021.

- a. “ListofEmployeePPEtoRemove.csv”, contains employee-pay periods that that had to be removed from the unpaid overtime calculations; and
- b. “ListofEmployeeIDstoRemove”, contains EmployeeIDs that had to be removed from the unpaid overtime calculations.

191. On December 14, 2021, we received an additional Class List production. This data, corresponding to the dates 6/4/2001 to 8/31/2003, was received in a document labeled “2001-2003 Class List”. In the letter attached to this production, it is stated “Note that this supplemental class list does not include information about employees already listed in the spreadsheets produced to you on June 17, 2021.”⁹³ Upon review, we have confirmed that there is no overlap in the EmployeeID found in these data.⁹⁴ Thus, they are indeed mutually exclusive. The usefulness of this data in calculating damages is undermined by the fact that it gives no precise information regarding the total number of employees working in a given week. Thus, it was not incorporated into the analysis. The reasons this data is insufficient for updating various damage estimates are found below:

- a. **Employee Count per Week:** The new produced data contains a “Start Date” and an “End Date” for employees that were not included in the prior payroll production. Thus, we have no information about each employee’s actual worked weeks. Further, this data gives no information for when employees who were included in the prior payroll production worked during the period of the “2001-2003 Class List”.
- b. **Employee Wage:** Employee wage is calculated based on weeks employees received “Basic Pay”. Thus, the estimate of class-wide average wage cannot be estimated using this data because the average requires knowledge of when employees worked.
- c. **Average Overtime/Straight Time Hours:** The new data contains employees who worked from 6/4/2001 to 8/31/2003; this does not correspond to the period for which CBFE data were available. Thus, these employees would not be included in the

⁹³ Letter from Plumpton, December 13, 2021, Page 2.

⁹⁴ Human Resources ID (“HRID”), found in the new class list production, and EmployeeID (“EmplID”), found in the prior payroll productions, are both strings of numbers that uniquely identify employees.

analysis. In Section 9.4 , we further elaborate on the CBFE timeframe limitation of the analyses.

192. Our decision to not include this data in the analysis does not impact damages insofar as we used the weekly employee proportion of FTE at CIBC year over year to estimate the employee counts and weighted these by class position based on the frequency present in payroll. It is currently unknown to me if there will be any further production of payroll data. Specifically, no payroll data was produced for dates before 8/29/2003 and after 6/18/2009. I reserve the right to update my analysis and amend this report if further payroll data are made available to me.

8.2.4 MACS Active Directory

193. The MACS Active directory is a dataset that captures records relating to the authentication and access of a given user to CIBC's computer network and some applications on that network. This data is only available for the five employees whose data was analyzed in the Deloitte report coinciding with five days in the month in November 2007 as a result of CIBC's destruction of this data.⁹⁵

8.2.5 Blotter Data

194. It is my understanding that the Blotter data pertains to CSRs' cash balancing tasks. We received Blotter data across 6 productions, or tranches, ranging from October 2021 through November 2021. In total we received 106,774 unique documents related to the Blotter Data.⁹⁶

195. The figure below shows an example of a Blotter PDF. The handwritten time on the Blotter is highlighted in yellow. This Blotter file also contains the UserID that is found across the CBFE, CIF, Horizon, IIS, and SM@RT data.

⁹⁵ Reid Affidavit, Page 7.

⁹⁶ Blotters were received in PDF and Text file format. It is apparent that each Blotter document was run through Optical Character Recognition (OCR) and output to a ".txt" file. The OCR quality is adequate to identify which documents contained information related to CSR end-of-day tasks. My team searched text documents for OperatorID which represent Employee system UserID beginning with two letters followed by 5 numbers. Documents with such UserID, as well as matches to any of the following key words were considered potential sources of timestamp information: "Cash Lock Up", "Cash Examined", "FX Posting", "Totals Printed At", "Journalized".

Figure 12: Example of Blotter PDF

2211827
4945 86 0501

CASH BALANCE SHEET FEUILLE DE CAISSE

CIBC **00200** **REVENUE, INC.** **JUN 15 2007**

ON-LINE CLOSING TOTALS TOTALS DE FERMETURE - TRAITEMENT
TELLER 001 Jun 15, 2007 CASHBOX 0001 SUB-TOTALS

DEBITS	34	588715.03	59	748709.36
CREDITS				
SHORT		159994.33		
Last Journalized Transaction = 0101 For DH00619				

LINE 7 LIGNE 7

LINE 13 LIGNE 13

LINE 18 LIGNE 18
TELLER 001 Jun 15, 2007 CASHBOX 0001 CLOSED

DEBITS	35	748709.36	59	748709.36
CREDITS				
BALANCED		0.00		
Last Journalized Transaction = 0102 For DH00619				

NAME NOM [REDACTED]

DEBIT DEBIT	POST TO ACCT 22-0106 PAISER AU CPT 22-0106	CREDIT CREDIT
	YESTERDAY'S CASH ACCT BALANCE SOLDE DE COMPTE D'ENCAISSE DE LA VILLEE	\$194 744.69
\$159 994.33	TODAY'S CASH ACCT BALANCE SOLDE DU COMPTE D'ENCAISSE DU JOUR	

CSR LOCK UP DETAILS EFFETS DU RSC DANS LE COFFRE

CASH EXAMINED ENCAISSE VERIFIEE	TIME	TIME
	5:20	5:20
CASH LOCK UP ENCAISSE DANS LE COFFRE		

ENGRAVED FORMS FORMULES GRAVEES

REMARKS INCLUDING EXPLANATION OF CASH OVER/SHORT
OBSERVATIONS Y COMPRIS LES DETAILS DE L'EXCEDANT DU DEFICIT DE CAISSE

50 1638 86229
86237

CSR STAMP TIMBRE DE CAISSE

010-86200
010-86200
JUN 15 2007
010-86200

4506 4452 54901221

Bank of Canada Notes - Teller
Billets de la Banque du Canada - Tiroir-caisse

X 2		
34 X 5		170
42 X 10		420
88 X 20		1 760
X 50		
X 100		
SPECIAL SPECIAUX		125
MUTILATED MUTILES	1 390	3 865 00

Bank of Canada Notes - Reserve
Billets de la Banque du Canada - Réserve

X 2		
484 X 5		2 420
200 X 10		2 000
420 X 20		8 400
300 X 50		15 000
302 X 100		30 200
SPECIAL SPECIAUX		
		58 020 00

BANK OF CANADA NOTES - TOTAL
BILLETTS DE LA BANQUE DU CANADA - TOTAL

		61 885 00
--	--	-----------

COIN PRICES
MONNAIES

TILLER	TILLER	RESERVE
.01	0.13	
.05	1.30	12.00
.10	4.40	50.00
.25	0.50	180.00
.50		
1.00	25.00	125.00
2.00	35.00	150.00
TOTAL	67.33	517.00

U.S. NOTES BILLETS EN DOLLARS
COUPONS COUPONS
FOREIGN NOTES BILLETS EN D'AUTRES DEVISES
OTHER CAD
CHEQUES ETC.

		584.33
		6 330.00
		91 195.00

CASH ON HAND ENCAISSE

CASH AC BAL TODAY SOLDE DU COMPTE D'ENCAISSE DU JOUR	159 994.33
OVER/SHORT TODAY EXCEDANT/DEFICIT DU JOUR	0.00
OVER/SHORT YESTERDAY EXCEDANT/DEFICIT DE LA VILLEE	0.00
NET VARIATION (OVR/SHORT DIFFERENCE NETE DU JOUR (EXCEDANT/DEFICIT))	0.00

196. In the affidavit provided by Mr. Silverthorn on May 14, 2008, a Senior Vic-President of Human Resources at CIBC, he states that “blotters exist for most CSRs most of the time”.

197. Based on Mr. Silverthorn’s testimony, a rough estimate of the number of Blotters that should be available can be obtained as follows using the payroll data. The payroll data produced contains 768,976 distinct two week pay periods associated with CSRs receiving “Basic Pay” with start dates between 8/31/2003 to 5/31/2009.

198. Thus, my team and I prepared to intake Blotter data corresponding to millions of days worked by CSRs. By contrast, we were provided with only 106,774 unique documents related to the Blotter Data. A subset of these unique documents identified a single daily Blotter sheet for a specific Employee. Other documents did not contain relevant information. Due to the fact that only a small fraction of the expected blotters were produced by CIBC, and not knowing the basis upon

which these blotters were selected by CIBC (despite Class Counsel's request for information in this regard), this data source has attenuated value in the determination of uncompensated time worked, although it is still a potential input source of information for my methodology.

8.2.6 Time in Lieu Data

199. On October 12th, 2021 my team and I received a single ".csv" file of what was described as Time in Lieu data containing 10,474 rows of data for 3,896 unique employees, ranging from February 1st, 2003 to June 18th, 2009. This appears to be the result of data entry with no corresponding documentation to verify its legitimacy. It contained dates where employees purportedly used time in lieu, along with the information of how many hours they used. No back-up data or source data was provided. Moreover, my understanding is that CIBC has provided no explanation of how this spreadsheet was prepared nor has it disclosed any of the source documents.

200. The Time in Lieu data contains a field "absencereason" which is blank on 80% of the records and absence hours. Further, the "absencereason" often does not appear to be related to Time in Lieu. For example, the "absencereason" contains non time in lieu entries including, but not limited to, "achiever's trip to cancun", "achiever's vacation", "doctor's orders", "snow day off", "remembrance day".

201. Due to the nature of the data provided, counsel has instructed us to not make any adjustment related to Time taken in Lieu of overtime.

8.2.7 CIF Data

202. On 10/12/2021, CIBC produced a single 10.8GB ".csv" file containing CIF data with information for 18,164 unique employees for the time period between 01/13/2007 and 06/17/2009. Importantly, the CIF data contained a crosswalk of UserID to employee. This crosswalk is achieved by taking the distinct set of "Operator ID" and "EmplID" in the data. Figure 13 below shows that the data contains "Operator ID" and "EmplID" on the same line of data. These fields were joined, or matched, together initially by using the IIS Cookie Data. The fact that the CIF data system already matched the Operator ID and the EmplID directly contradicts CIBC Counsel's claim that such mapping did not exist and would be impossible to create from existing data sources.

Had CIBC Counsel produced the CIF dataset earlier, then a significant amount of time would not have needed to be spent to match employees to IDs in the table.

203. Figure 13 below shows an example of a record of raw data from the CIF system: Notably, the data is readily useable following conversion of the timestamp from “GMT” time to “Eastern” time.

Figure 13: Raw Timestamp Record in CIF Data

Operator ID	Bus Svc ID	Legal Name	EmplID	Org Unit Num	Audit TS GMT
DE00186	13	Darlene Elizabeth ⁹⁷	3386	2308	20070430T161434+0000

204. The fields in Figure 13 are defined as follows:

- a. **Operator_ID:** Operator_ID of the employee corresponding to UserID found in other systems;
- b. **Bus_Svc_ID:** ID corresponding to the type of system activity;
- c. **Legal_Name:** Name of the Employee;
- d. **EmplID:** EmployeeID corresponding to EmplID found in Payroll Data;
- e. **Org_Unit_Num:** Field corresponding to Home Org Unit found in Payroll Data; and
- f. **Audit_Ts_GMT:** Timestamp of the activity.

205. Due to data destruction by CIBC not all data for the CIF system are available within the time range where data are generally available. Table 24⁹⁸ below shows the date ranges for which CIF data are missing for class employees.

⁹⁷ The actual “Legal_Name” has been replaced with an exemplar of an illustrative example of a name for the Operator ID. We can prepare the figure with the actual employees name should it be required.

⁹⁸ Table 24 omits single-day gaps.

Table 24: Dates Missing in the CIF Data⁹⁹

First Date	Last Date	Days Missing
1/18/2007	2/16/2007	30
2/18/2007	4/15/2007	57
4/17/2007	4/21/2007	5
12/25/2007	12/26/2007	2

206. The CIF data can be used to validate and supplement the UserID-employee crosswalk that we algorithmically produced and described in Section 5.4. Our computer algorithm generated 21,902 matches between Operator ID and EmployeeID. 74.89% of these matches were also found in native to the CIF Data. Only 111 matches made by the algorithm were conflicting with the CIF data. Conflicting matches were removed from the damages analysis.

8.3 External Data Sources

8.3.1 StatCan Data

207. In order to make the backcasting and forecasting of uncompensated overtime hours more robust, I have utilized Statistics Canada (“StatCan”) data.

208. Statistics Canada is an agency of the Government of Canada which creates and maintains statistics to aid Canadians in understanding their country’s population, resources, economy, society, and culture. StatCan actively conducts more than 350 surveys in addition to piloting a national census every five years.¹⁰⁰ The quality, fidelity, and use of StatCan’s data is ensured under the *Statistics Act* of 2015.¹⁰¹

209. Among the manifold of datasets available on StatCan’s website is a monthly labor dataset which tracks employees working overtime, categorized by occupation and pay status.¹⁰² In each

⁹⁹ Reid Affidavit specifies on Page 11 that CIF data was deleted from April 2005 and November 2007. Further it specifies that the CIF logs from November 2007 until the end of the Class Period are available. It is unknown why the discrepancies do not match those specified in the Reid Affidavit.

¹⁰⁰ StatCan About Us, available at <https://www.statcan.gc.ca/en/about/about?MM=as>.

¹⁰¹ Statistics Canada Policy on the Use of Administrative Data Obtained under the Statistics Act, available at https://www.statcan.gc.ca/en/about/policy/admin_data.

¹⁰² StatCan labor data, available at <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410030801>.

month, overtime worker counts are presented in total and disaggregated by whether laborers were compensated for overtime work. In addition, StatCan's website enables a viewer to tailor the data to specific industries using National Occupation Codes (NOCs). The NOC taxonomy uses a hierarchical classification system.

210. Specifically, NOCs fall under a broad, single-digit occupational category, a "Major Group" subcategory, a "Minor Group" category within this major group, and finally a "Unit group" which contains a narrowly defined set of occupations. Bank tellers and financial service representatives fall under NOC 6551, defined as:

*Customer service representatives in this unit group process customers' financial transactions and provide information on related banking products and services. They are employed by banks, trust companies, credit unions and similar financial institutions.*¹⁰³

NOC 6551 is defined as "Customer services representatives - financial institutions". This NOC is directly related to CIBC employees involved in the class. Data for NOC 6551 was not available, so we used NOC 65 which contains NOC 6551 as well as other "Service representative and other customer and personal services occupations".¹⁰⁴

9 Data Standardization and Normalization Procedures

211. In this section I explain how the data received is used to generate a reliable timestamp database for class employees.

9.1 Standardizing Electronic System Data

212. Data standardization refers to the process of combining datasets from multiple systems into a single dataset. This process involves activities ranging from finding relevant data, revising data field names to be consistent across data sets, and standardizing time zones of the data sets etc.

¹⁰³ StatCan 6551 NOC (Definition Customer services representatives - financial institutions), available at <https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=122372&CVD=122376&CPV=6551&CS T=01012011&CLV=4&MLV=4>.

¹⁰⁴ Other minor groups that fall under major group 65 include the following: 651 Occupation in food and beverage service; 652 Occupations in travel and accommodation; 653 Tourism and amusement service occupations; 654 Security guards and related security service occupations; 656 Other occupations in personal service.

213. We had requested data dictionaries and explanations of productions in order to better understand the data provided and streamline the processing of data. In my experience in many similar cases, these are almost always provided by defendants. Unfortunately, in this case, CIBC declined to assist in this matter. As a result, my team has relied on the methodologies a-c below to identify timestamp data. Had detailed documentation of CIBC's production been provided, the task to compile and statistically analyze the timestamp data would have required significantly less time, effort and expense.

- a. Matching data format to that in the Fotheringham Affidavit.
- b. Looking for key words in data paths (not applicable to CBFE, Horizon or ISI),
- c. Looking for UserID found in prior loaded systems.

214. Lastly, each dataset is loaded and limited to the following fields associated with users found in the IIS "cs_cookie" field:

- a. **System:** Name of Electronic System;
- b. **UserID:** UserID, Username, Operator ID from the Data;
- c. **ID_BRG:** Field identifying the file ID; and
- d. **Datetime:** Timestamp native to the dataset.

215. Figure 14 shows an example of standardized data.

Figure 14: Example of Standardized Data

system	UserID	id_brg	datetime
CBFE	AA00402	SID0004_829	06JUL2006:13:15:00.000
CBFE	AA00402	SID0004_829	06JUL2006:13:16:00.000
CBFE	AA00402	SID0004_829	06JUL2006:13:18:00.000
CBFE	AA00402	SID0004_829	06JUL2006:13:20:00.000
CBFE	AA00402	SID0004_829	06JUL2006:13:59:00.000
CBFE	AA00402	SID0004_829	06JUL2006:14:00:00.000

9.2 Standardizing Time Zones

216. In the next step, each electronic system is standardized to Eastern time from the native time zone of the system; UTC is adjusted to observe daylight savings time. This adjustment is made on

a daily level. Horizon timestamp data contains EDT/EST and does not require an adjustment. The following bullet points show the time zone native to each dataset:

- a. CBFE: UTC
- b. SM@RT: UTC
- c. Horizon: Eastern (EDT/EST)
- d. IIS: UTC
- e. CIF: UTC

217. Following the system time zone adjustment to Eastern, the IIS data field “branch_time zone”¹⁰⁵ is applied to further standardize all UserID to Eastern time. Employees that are not found in the IIS “cs_cookie” field but are found in the CIF data are matched to time zones using a combination of the “home_org_unit” and “location_description” fields in the payroll data.¹⁰⁶ UserIDs with multiple time zones are inevitably dropped from the analysis due to uncertainty involving the actual time zone which could inflate or deflate damages. Table 25 below shows how many UserIDs have multiple time zones.

Table 25: Number of Branch Time Zones per IIS UserID¹⁰⁷

Time zones	Count of UserID	% Total
1	34,628	97.9%
2	694	2.0%
3	55	0.2%
4	7	0.0%
Total	35,384	100.0%

218. The fields in Table 25 above represent:

- a. **Time zones:** refers to the number of time zones for a given UserID;
- b. **Count of UserID:** refers to the number of UserIDs with a given number of time zones;

¹⁰⁵ This data field can easily be obtained from the “cs_cookie” field.

¹⁰⁶ See technical appendix for a detailed description of the matching process. The “home_org_unit” field often takes the value of the location’s transit code which identifies the branch.

¹⁰⁷ The permutations of time zones represented in Table 25 can be found in the technical appendix provided.

c. **% Total:** refers to the % of total UserIDs that have a given number of time zones

219. There were approximately 2.1% of UserIDs with more than one time zone, I excluded all UserIDs with more than a single time zone in the IIS data because it is not possible to determine the exact time zone the employee worked in on a given day across all data systems. This reduces the impact of mis-aligning UserIDs to time zones in our analysis which if not corrected for would otherwise introduce data integrity issues to the analysis.

9.3 Name Matching from “cs_cookie” Field to Payroll Data

220. We applied an algorithm to match given and surnames in the IIS “cs_cookie” field to the names in the payroll data.¹⁰⁸ The algorithm is applied in several steps:

- a. Exact Match – First + Middle, Last Name
- b. Exact Match – First, Last Name
- c. Fuzzy Match – First, Middle, Last Name
- d. Fuzzy Match – First, Last Name

221. Table 26 below, provides an example of each match type.

Table 26: Examples of Match Types¹⁰⁹

Match Types	Payroll	IIS Cookie Data	
	Employee Name	Given Name	Surname
[1] - Exact Match - First + Middle, Last	Loch,Susan Bernice	SUSANBERNICE	LOCH
[2] - Exact Match - First, Last	Plant,Nicole Mary	NICOLE	PLANT
[3] - Fuzzy Match - First, Middle, Last	Norton,Abigail Eliza	ABIGAILELIZABETH	NORTON
[4] - Fuzzy Match - First, Last	Morton,John Michael Robert	JOHNMICHAEL	MORTON

¹⁰⁸ For example, the payroll data produced by CIBC contains the following name for Dara Fresco: “Fresco Stehr,Dara”, which matches the entry in the cookie field.

¹⁰⁹ The names in this table do not reflect actual names of class employees. We have examples of actual matches that were made that reflect the same nature as those in this table. We will produce these at the request of counsel.

222. The first match type “[1] – Exact Match – First + Middle, Last” shows an example where the First + Middle name, as well as the Last name in the Payroll data are found in the IIS Cookie data. The second line corresponding to “[2] – Exact Match – First, Last” shows an example where the First and Last names in the payroll data are found in the IIS Cookie data.

223. The fuzzy matches mean that only part of the name was able to be matched. For match type “[3] – Fuzzy Match – First, Middle, Last”, notice how the Payroll data truncates “Elizabeth” to “Eliza” in “Norton,Abigail Eliza”. A fuzzy match is required to match “Eliza” in the payroll data to “Elizabeth” in the IIS Cookie data. For match type “[4] – Fuzzy Match – First, Last”, “Ross” in Payroll data is not found in the IIS Cookie data. Thus, a fuzzy match from “John” in the payroll data is required to match it to “JOHNROBERT” in the IIS Cookie data

224. Between steps, employees that are matched are removed to prevent them from being matched to less precise matches. For example, the first set of matches looks at exact matches on First, Middle and Last name. This means that both the IIS Cookie data and the Payroll data had the same First, Middle, and Last names evident. The next step matched employees who had the exact same First and Last name in the IIS Cookie data and the Payroll Data.

225. Next, we applied fuzzy matches. A fuzzy match looks for part of a word in another word. For example, this type of match would match “Steve Weissberg” to “Steven Weissberg”.

226. Table 27 below shows the results of the matching algorithm between employee names in the payroll data and those found in the IIS data field “cs_cookie”:

Table 27: Match Types Between Employee Payroll Data and IIS Cookie Field

Match Types	Employees	%Total
[1] - Exact Match - First + Middle, Last Name	7,017	33%
[2] - Exact Match - First, Last Name	4,145	20%
[3] - Fuzzy Match - First, Middle, Last Name	374	2%
[4] - Fuzzy Match - First, Last Name	5,853	28%
Additional CIF Matches	3,809	18%
Total Employees Matched	21,198	100%

Where

- a. **Match Types:** refers to the type of join, which are as follows:
 - i. Exact match on First, Middle, and Last Name;
 - ii. Exact match on First and Last Name;
 - iii. Fuzzy match on First, Middle, and Last Name;
 - iv. Fuzzy match on First and Last Name;
 - v. Additional CIF Matches are those brought in using the CIF data which contains UserID and EmplID for each timestamp record.
- b. **Employees:** refers to the number of employees in payroll that were matched on the given join type; and
- c. **% Total:** refers to the percent of employee matches that were made on the given join type.

227. We are confident in this process because we matched each UserID to a single employee. Further, the CIF data contains the UserID field and the EmployeeID field on the same line. These are the IDs that we matched using the algorithm. When we looked at the EmployeeID that occur in both systems, we matched to the same UserID 99.6% of the time.

228. It is important to note that my initial crosswalk only captured UserIDs that are found in the IIS data; thus not all UserID for a given employee may be included making my approach more conservative. Following the match to the field EmployeeIDs (EmplID) in the payroll data, 94% of employees are found in three or more systems. Table 28 below shows the number of employees mapped to evident combinations of systems in the data:

Table 28: Frequency of EmployeeID Across Data Systems¹¹⁰

Systems	EmployeeIDs	% Total
CBFE CIF Horizon IIS SM@RT	14,582	69.3%
CBFE CIF Horizon IIS	416	2.0%
CBFE CIF IIS SM@RT	1,422	6.8%
CBFE Horizon IIS SM@RT	1,190	5.7%
CIF Horizon IIS SM@RT	265	1.3%
CBFE CIF IIS	201	1.0%
CBFE Horizon IIS	99	0.5%
CBFE IIS SM@RT	1,404	6.7%
CIF Horizon IIS	18	0.1%
CIF Horizon SM@RT	5	0.0%
CIF IIS SM@RT	66	0.3%
Horizon IIS SM@RT	9	0.0%
CBFE CIF	11	0.1%
CBFE IIS	177	0.8%
CIF Horizon	12	0.1%
CIF IIS	24	0.1%
CIF SM@RT	5	0.0%
Horizon IIS	4	0.0%
Horizon SM@RT	7	0.0%
IIS SM@RT	501	2.4%
CBFE	8	0.0%
CIF	8	0.0%
Horizon	1	0.0%
IIS	70	0.3%
SM@RT	537	2.6%
Total	21,042	100.0%

Where:

- a. **Systems:** refers to the combination of data systems employees can be found in;
- b. **EmployeeIDs:** refers to the number of employees found in the given combination of systems; and

¹¹⁰ The 21,198 employees mapped to the payroll data is reduced to 21,042 after initial limitations associated with opt outs and data aggregation steps. This number is lowered further due to employees with insufficient data coverage.

- c. **% Total:** refers to the % of employees belonging to the specific combination of data systems. For example, 69% of employees that were matched to a UserID in the total of all data systems were found across the CBFE, IIS, Horizon, SM@RT, and CIF data systems

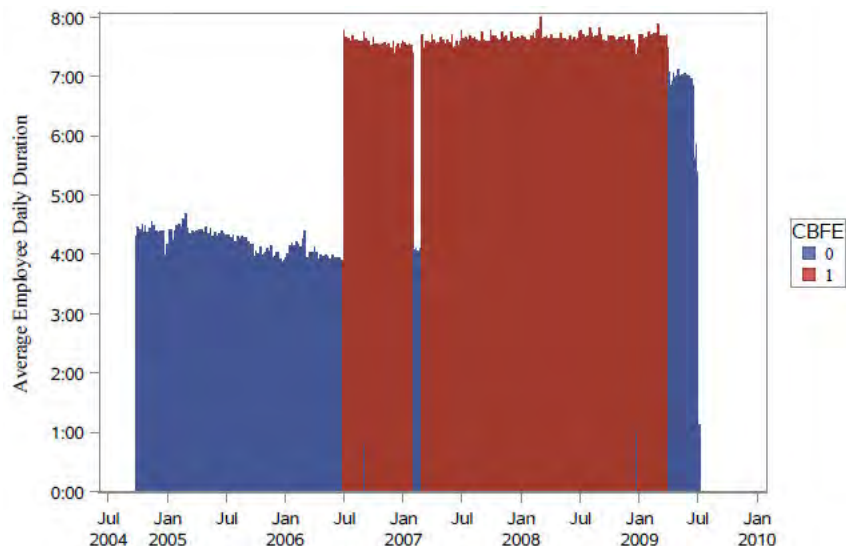
9.4 Choice of Time Period of Time Stamp Analysis.

229. Once the dataset was aggregated to the EmployeeID¹¹¹ and week level, the following criteria had to be met to be included in the analysis:

- The employee had “Basic Pay” records in payroll data for the given period while in a class position.
- The employee had CBFE records in a given week OR had a daily average of seven hours or more per observed day and has CBFE records on at least one other date.¹¹²

230. Figure 15 below demonstrates that the days with CBFE Data (red) capture reasonable shifts whereas the days without CBFE Data (blue) do not. This change in the average was driven by the richness of the CBFE data compared to other systems.

Figure 15: Choice of Time Period of Timestamp Analysis



¹¹¹ EmployeeID refers to the data field in payroll and CIF labeled as “EmplID”.

¹¹² The CBFE system is used by all class positions. Limiting to employees with CBFE data.

231. The CBFE date range is between June 29, 2006 to March 30, 2009 with a gap in 2007.¹¹³ Periods outside this range do not provide rich enough data to measure reasonable employee shifts. Thus, my analysis utilized the CBFE data range where the employee has CBFE data or > 7 hours/day observed.

9.5 Limit Data to Class Employees

232. To obtain the correct input data for the damages model, my team and I performed an analysis to limit the data to class employees found in the payroll data produced by CIBC. The electronic data systems utilized in this analysis are SM@RT, Horizon, (CBFE), CIF, and Intranet Webserver (IIS).

233. This analysis consisted of including only UserIDs that have been linked to the EmplID in the payroll data by:

- a. Matching Employee Names found in the IIS data to Payroll Names; and
- b. Using the CIF Data which contained both the UserID and EmplID on each line of data.

234. As described in Section 8.2.3 above, all employees who were not class members or who opted out were removed from the damages calculations.

9.6 Estimation of Employees' First and Last Timestamps

235. Due to the fact that not all electronic systems which employees used in their daily work were preserved, it is inevitable that some of class members' first and last timestamps are not necessarily captured in the systems made available. Furthermore, the distribution of employees' timestamp data in the analysis indicates that the majority of employees, once mapped to branch location start and end-times, begin their shifts before the branch opening time indicated in the payroll data and end their shifts after the branch closing time.

¹¹³ The visible gap in the beginning of 2007 ranges from 1/31/2007 to 2/26/2007; there are also four one-day gaps in the CBFE data - see Table 22.

236. Because CIBC did not produce shift data for employees, we performed an analysis to assess when employees arrive before the branch opens and leave after the branch closes. We computed the mode elapse time between:

- a. Employees' first timestamp and the branch open time, and
- b. Employees' last timestamp and the branch close time.

237. This analysis is used to estimate an adjustment to employees' first and last timestamp of the day.¹¹⁴ This adjustment is necessary because:

- a. The data produced do not capture every single employee's first and last work related activity.
- b. It is unlikely that employees whose first or last timestamp of the day is close to the branch opening or branch closing time, did not arrive at or before branch opening or after branch closing time.

238. This analysis is limited in that it relies on a document "AD Stratification"¹¹⁵ to obtain branch hours. This analysis also relies on the transit code that is contained in the IIS Cookie Data and the "home org unit" field which can be found in the Payroll Data. In the event that CIBC produces branch hours, as well as employee respective branches worked over the damages period, we will revise the analysis.

239. Table 29 below shows that the mode elapse time between employees' first timestamp and the available matched branch open time is 34 minutes before the branch opens. It further shows that the mode elapse time between the employees' last timestamp and the available matched branch close time is 25 minutes after the branch closes.

¹¹⁴ These timestamps have been adjusted for the results from my analysis of the MACS Active Directory and Blotter data.

¹¹⁵ This document was part of the production related to the Deloitte report.

Table 29: Analysis of Timestamp Bookends and Branch Open/Close Times

Description	Mode	Threshold	Mean (0 to Mode)
First Timestamp Compared to Open Time	34	25	20
Last Timestamp Compared to Close Time	25	27	14

240. The mode represents the most common value in the dataset. This mode is used as opposed to the mean because there are employees who record a first and last time stamp several hours later than the open time or before the close time. These are likely employees who are starting work at a later shift or are not fully captured by the timestamp data. Thus, the mode is not affected by these employees and is a better estimator for employees who are starting at the first shift of the day.

241. Table 30, below, has been prepared to show the distribution of employees' initial timestamp compared to the branch open time. It shows that 80%, shaded in light gray, of the employees arrive at or before their branch open time. Notably, 5.7% of the employees are arriving inside of 24 minutes after the branch open time. Based on observations of other employees' data, it is reasonable that employees with timestamps close to the branch open and close times actually began their work at or before the branch open time or finished their work at or after the branch closing time. This is because businesses require employees to perform functions before and after the hours available to the public.

Table 30: Employee First Timestamp Compared to Open Time

Description	Percent of Employee Days
Greater Than 59 Minutes Before Open Time	21.8%
Between 59 and 34 Minutes Before Open Time	26.6%
Between 33 and 20 Minutes Before Open Time	16.9%
Between 19 and 0 Minutes Before Open Time	15.0%
Between 1 and 24 Minutes After Open Time	5.7%
Between 25 and 59 Minutes After Open Time	4.3%
Greater than 59 Minutes After Open Time	9.6%

242. Table 31, below, has been prepared to show the distribution of employees' final timestamp compared to the branch close time. It shows that 72%, shaded in light gray, of the employees leave at or after their branch closure time.

Table 31: Employee Last Timestamp Compared to Close Time

Description	Percent of Employee Days
Greater Than 60 Minutes Before Close Time	14.2%
Between 59 and 27 Minutes Before Close Time	5.2%
Between 26 and 1 Minutes Before Close Time	8.5%
Between 0 and 13 Minutes After Close Time	10.8%
Between 14 and 25 Minutes After Close Time	14.4%
Between 25 and 59 Minutes After Close Time	28.9%
Greater than 60 Minutes After Close Time	18.0%

243. Next, we established a cutoff for which we could identify employees who are likely to be missing data and would have started their shift before the branch opens or after the branch closes. The establishment of a cutoff is necessary because an employee with a first timestamp two hours after the branch open time is less likely to have started their shift at or before the branch open time than an employee with an observed timestamp 2 minutes after the branch open time. The establishment of a cutoff is more conservative than simply extending all employees' first/last timestamp to the branch open/close time or before the branch open/close time. To determine this cutoff, we analyzed the distribution of data points corresponding to employees whose timestamp analysis resulted in a start time after the branch opens and end time before the branch closes.

244. Specifically, we looked at the distributional percentage of employee-days corresponding to different elapsed times between employee bookend times and the branch open and close times. Notably, this percentage fluctuated. We chose the cutoff point as the point in the distribution where we observed a monotone relationship between the minutes, and the frequency at which the minutes occurred.

245. Based on the analysis described above, we adjusted the employee's daily start time if it is within 25 minutes of the branch open time, and employee's daily end time if it is within 27 minutes of the branch closing time. These values were calculated from the distribution of timestamps outside the branch open and close hours.

246. We also performed additional analyses that adjust employees' daily start and end times before the branch open and close time. It is reasonable to assume that employees arrive at their branches before it opens and leave after the branch closes to the public, in order to complete the

tasks necessary for opening and closing the branch. To determine a reasonable estimate for when employees arrive before the branch opens, we looked at the mean of the lapse time, falling between the branch open time and the mode lapse time before the branch open time. Similarly, to determine a reasonable estimate for when employees leave after the branch closes, we looked at the mean of the lapse time falling between the branch close time and the mode lapse time after the branch close time. This resulted in values of 20 minutes before the branch open time and 14 minutes after the branch close time. Accordingly, we shifted employees first timestamp to 20 minutes before the branch open time if:

- a. employee's daily start time if it is between 20 minutes before the branch open time and 25 minutes after the branch open time

247. We shifted employees last timestamp to 14 minutes after the branch close time if:

- a. employees' daily end time if it is between 27 minutes before the branch close time and 14 minutes after the branch close time.

10 Data Imputation Methods

248. During the time period where electronic time-stamped data are available, not all employees have complete electronic system records during pay periods when they received payment in the payroll data corresponding to "Basic Pay." To address the absence of data, I applied data normal and accepted imputation methods¹¹⁶ to estimate employees' incomplete weekly overtime hours during the period with CBFE records for all days in the week starting July 2, 2006, to March 30, 2009.

249. Data imputation methods refer to statistical approaches to replace missing data with values that follow the distribution of the existing data. Data imputation methods have the advantage of preserving rather than discarding records that have missing data points, which would bias

¹¹⁶ Molenberghs, G., G. Fitzmaurice, M. Kenward, A. Tsiatis, and G. Verbeke (Editors), Editors. (2015). Handbook of Missing Data Methodology, Section IV.

statistical calculations. Once missing data have been imputed standard statistical approaches can be applied.¹¹⁷

250. As a general rule, I applied data imputation methods to estimate overtime hours for employees when they received “Basic Pay” while in a class position for a given week. The approaches I utilized combine an autoregressive model with a simple average-based data imputation method depending on the specific data situation. In the following, I describe the two methods in the two sections below.

10.1 Data Imputation for Employees with Partially Missing Electronic Timestamp Data

251. I applied an autoregressive time series model¹¹⁸ for data imputation purposes in those instances where an employee had incomplete electronic time-stamped data. An autoregressive model describes a time-series process that relies on previously observed data points to explain and predict succeeding observations. In other words, the currently observed outcome variable is a function of past outcome variables; the relationship between past and current values is typically estimated via maximum-likelihood techniques. Autoregressive models will yield reliable predictions for unknown future or past values of the time series as well as for data missing within the existing data of the time series. Therefore, they are widely used for predictive purposes.¹¹⁹

252. Autoregressive models are amenable to situations where observations for a single entity are captured in multiple periods. Autoregressive models can also be used in the presence of panel data; this simply means observations for several entities are recorded in multiple periods. The estimation technique we employ, a fixed effect, panel AR(1) or autoregressive, lag one, leverages the value in $t-1$ to explain variation in the subsequent value of the outcome variable in period t at the individual level; a single parameter estimate pins down this relationship and is then used to predict unobserved overtime measures.

¹¹⁷ Molenberghs, G., G. Fitzmaurice, M. Kenward, A. Tsiatis, and G. Verbeke (Editors), Editors. (2015). Handbook of Missing Data Methodology, Pages 3-5.

¹¹⁸ Autoregressive Process of Order One [AR(1)]: A time series model whose current value depends linearly on its most recent value plus an error term.

¹¹⁹ Jeffrey Wooldridge. (2012). Introductory Econometrics A Modern Approach, Chapter 11.

253. In this context, fixed effects refer to characteristics, unobserved or captured, that do not vary with time for an individual. Aside from the lagged outcome variable and fixed effects, I included indicator variables to account for time variation and adjustments to an individual's class position. The AR(1) process is estimated via the following equation:

Equation 12: Autoregressive Model

Overtime for employee in week t equals:

$$OT_{i,t} = \alpha + \lambda_i + \beta OT_{i,t-1} + \omega Month_t + \rho Class_{i,t} + u_{i,t},$$

Where

- a. α represents the intercept;
- b. λ_i represent fixed effects specific to each person and does not vary with time;
- c. $OT_{i,t}$ represents overtime for person i in period t ;
- d. $Month_t$ is a matrix of dummy variables for each month and period;
- e. $Class_{i,t}$ is an individual specific variable that captures the class position of person i in period t ; and
- f. $u_{i,t}$ is the error term.

10.2 Data Imputation for Employees Without Electronic Timestamp Data

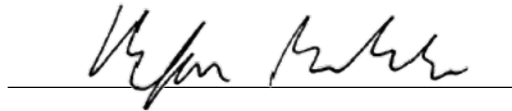
254. While the AR(1) approach described above can estimate missing overtime calculations for individuals with timestamp data, it is not designed to impute values for those employees without timestamp records. For example, if two consecutive overtime measures are not observed for a given employee across two weeks $OT_{i,t}$ and $OT_{i,t-1}$, then the parameter value cannot be used to estimate unobserved overtime in a period without data. To impute missing overtime calculations in those instances, we computed separate average weekly OT worked by year, month, week, and class position for the employees with electronic timestamp data which was then used to impute overtime calculations for employees without timestamps.¹²⁰

¹²⁰ Molenberghs, G., G. Fitzmaurice, M. Kenward, A. Tsiatis, and G. Verbeke (Editors), Editors. (2015). Handbook of Missing Data Methodology, Pages 35-38.

11 Acknowledgement and Signature

255. I acknowledge that my duty in accordance with Rule 4.1 of the Rules of Civil Procedure is to provide independent assistance to the Court with opinion evidence that is fair, objective, non-partisan and within my areas of expertise. I acknowledge that this duty prevails over any obligation owed by me to the party that engaged me. Attached hereto and marked as Exhibit C is the Form 53 Acknowledgment of Expert's Duty duly executed by me.

Respectfully submitted – Las Vegas, NV on January 12, 2022.

A handwritten signature in black ink, appearing to read 'Stefan Boedeker', is written over a horizontal line.

Stefan Boedeker

TECHNICAL APPENDIX

TO

STEFAN BOEDEKER REPORT

FILED JANUARY 12, 2022

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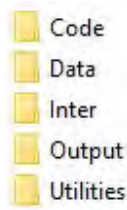
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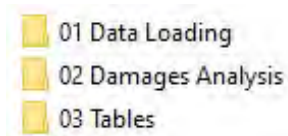
Technical Appendix

1 Introduction

1. This Technical Appendix explains details about the scripts and computer programs that comprise the production of documents and data that are utilized to create the results presented in the Boedeker Report, dated 1/12/2022. The production contains the following folders:



2. The **Data** folder contains input data for the scripts. Data that was not produced to BRG by CIBC, but that is publicly available, and that is used as inputs into the scripts, has been included, while data that was part of the CIBC data productions has been omitted to reduce the size of the production. However, subfolders have been created for the housing of this CIBC-produced data. The **Inter** folder contains subfolders designed to store the intermediary output from the production scripts. The intermediary files themselves have been omitted since they can be recreated using the provided scripts. The **Output** folder contains the tables and figures found in the report. The **Utilities** folder only contains a R Header script, which is called in other R scripts and contains packages and functions called in other scripts.
3. The **Code** folder contains three subfolders, shown below. These subfolders should be run sequentially as they build onto each other, with each subfolder completing a key step of the production process. Similarly, the scripts within the subfolder should, unless otherwise specified in README files, be run sequentially. The **01 Data Loading** folder does the initial data parsing, stacking, and standardization, while **02 Damage Analysis** folder contains the scripts for the modeling, imputation, and other processes required to obtain the damage estimates in the report. The **03 Tables** folder contains the scripts to produce additional tables and figures found in the report. These three subfolders constitute the sections of this technical appendix, with their subfolders as subsections.



4. Contained within the **Code** folder is a file “**SAS Header.sas**” that contains the specifications of the libraries and macro variables referenced in other SAS scripts. This script is called in other SAS scripts and must be adjusted to reflect the location of the production on the user’s computer. The **Code** folder also contains a multitude of README text files that provide more detailed instructions on the sequence in which scripts should be run.

2 Data Loading

5. CIBC produced raw data from different electronic data systems, which we utilized to implement the proposed damages model. The code corresponding to load the separate raw data from these electronic systems utilized in our analysis can be found in the folder “**...Report Production\Code\01 Data Loading**”. This folder is comprised of sub-folders for the different data systems.

2.1 Payroll Data

6. The payroll data folder “**...Report Production\Code\01 Data Loading\01 Payroll**” contains three scripts.
7. Script 1, “**01 – Payroll.sas**”, reads in and stacks seven yearly payroll Excel files for 2003-2009. The native files could not be read into SAS, so they were converted to XLSX workbooks. The names of the native Excel files were *CONFIDENTIAL INFORMATION _ WD0155 - AdHoc Request -FRESCO-yyyy.XLS* where yyyy denotes a placeholder for the years from 2003 to 2009.
8. “**01 – Payroll.sas**” also standardizes job titles per employee creating a field called “JobID_BRG”. The following table summarizes the job code standardization rules to create “JobID_BRG”:

Job Code at Pay End Date	Job Description at Pay End Date	JobID_BRG	Note
140	Customer Svc Rep, Business	CSR	Customer Service Representative
3062	Sr. Customer Service Rep I	CSR	Customer Service Representative
3063	Sr. Customer Service Rep II	CSR	Customer Service Representative
3075	Customer Service Rep	CSR	Customer Service Representative
3072	Branch Ambassador	BA	Branch Ambassador
3073	Inactive Job Code-ABM	ABM	Assistant Branch Manager
3077	Financial Services Rep I	FSR	Financial Service Representative
3086	Financial Service Associate	FSA	Financial Service Associate
3092	Financial Service Assoc, RD	FSA	Financial Service Associate.
237	Inactive Job Code-ABM/FSR	ABM/FSR	Dual Position
3033	Customer Serv Mgr I (Revised)	CSMngr	Excluded from all analyses at Counsels Request.

9. **“01 – Payroll.sas”** then reads in the following two files to remove certain employees (Opt-outs and non-class members) from the payroll data:

a. **“ListofEmployeePPEtoRemove.csv”**

b. **“ListofEmployeeIDstoRemove.csv”**

10. **Further, “01 – Payroll.sas”** generates a summary that shows which positions were removed, and then saves the resulting table as **“pr.pr_all”**.

11. Script 2, **“02 - PDF Transit Code Extraction.R”**, is used to create a dataset of transit-codes and addresses. The pdf found at the following url <https://www.payments.ca/sites/default/files/07-16-mbrbnksn.pdf> is used in this script.

12. <https://www.payments.ca/sites/default/files/07-16-mbrbnksn.pdf> contains a list of bank branches in Canada. For each branch it contains its routing numbers, its electronic paper (MICR), and the postal address. Using R, a free software environment for statistical computing and graphics, this PDF is divided into pages that mention “Canadian Imperial Bank of Commerce”, splits those pages into paragraphs to group the institutions per page, and then parses the data into a three-column dataset.

13. This three-column data is subset to where the MICR number is of the pattern: five numeric characters, followed by a dash, and then followed by three more numeric characters. The sequence of five numeric characters, a dash, and a sequence of three numeric characters contain the five-digit transit code for a branch and the three-digit institution number of a branch. Finally, the data was filtered to entries where the institution number is equal to '010' which is the institution number representing CIBC.

14. Script 3, **"03 -Time zone Extraction from PDF Scrape.R"**, processes the addresses found in the PDF. **"03 -Time zone Extraction from PDF Scrape.R"** splits the address into components for the street address, the town, and the zip code and then merges them into a single comprehensive address. We then use Google's API to extract the latitude and longitude for each of the addresses. After obtaining the latitude and longitude, they can be used as input to obtain the time zone associated with that latitude and longitude. The Google API is a dynamic database that can change over time, The output of our analysis can be found in **"...\Report Production\Inter\PR"**

15. Occasionally the API fails to find the address or time zone when there are '#' in the address. Thus, we remove any '#' from the address, and run those addresses through the latitude and longitude, and the time zone API again, and append them to the output from the previous step.

16. **"03 -Time zone Extraction from PDF Scrape.R"** produces a data set containing a column for the routing number, the transit code, the institution number, the address as found in the PDF, the address after we cleaned and processed it, the address that was found through Google's API, the latitude, the longitude, and the time zone of all the CIBC bank branches.

2.2 02 IIS Cookie Field

17. The next folder at **"...\Report Production\Code\01 Data Loading\02 IIS Cookie Field"** contains scripts used to limit the data and identify optouts as well as employees. The scripts should be run in order. They are as follows:

2.2.1 Step 1: "00 - CIF OPS.sas"

18. **"00 - CIF OPS.sas"**, reads in the CIF data and outputs a dataset with the distinct "Operator ID". This is used in conjunction with the IIS Cookie Operator to load data that contains "Operator

ID” that can be matched to “EmplID” in payroll. “Operator ID” is synonymous with “UserID” and “CS Username”.

2.2.2 Step 2: “01 - IIS Cookie Field Files.sas”

19. “01 - IIS Cookie Field Files.sas”, assembles an index containing each potential format of IIS data that we identified in Sid0221. This index contains information read in from 6 indexes of different IIS file types including: filename, file path, the file extension, a unique file-specific identifier, all the columns in the file, and the load number. The file path in this index will need to be changed to reflect where the user has the data saved

2.2.3 Step 3: “02 - Load Macros.sas”

20. The IIS files where the metadata indicated the presence of a “cookie” and an “operator_given_name” are then read into SAS using format-specific macros that read in the data and parse the encoded cookie field. These macros are found in the script “02 - Load Macros.sas”

2.2.4 Step 4: “03 - Run Batches - (1-12).sas”

21. To ensure efficiency, the IIS files are randomly divided into 12 batches, which can then be submitted in parallel using scripts labeled “03 - Run Batches – (#).sas” to reduce runtime. Note that a few seconds must be taken between batch submitting each script to allow the table “btchcnt” to increment up by 1. This “btchcnt” table must be created using script “01 - IIS Cookie Field Files.sas” and take the value 1 before starting the process.

2.2.5 Step 5: “04 - Stack Batches Output.sas”

22. After the data loading process, the consolidated IIS cookie data is stacked using script “04 - Stack Batches Output.sas” and has the following fields: “Operator ID”, “Operator Surname”, the “Operator Given Name”, “Branch Time Zone”, “Branch Region Code”, “Province Code”, and “Transit Code” of the branch.

2.2.6 Step 6: “05 - OptOuts.sas”

23. “05 – OptOuts.sas”, links OptOuts to the Payroll data. These OptOuts are employees who opted out of the class. We were provided with an Excel file titled “Fresco - opt out record &

updated contact info.xlsx” that contained a tab listing the first and last names of the potential class employees who opted out of the case, and whose information needed to be excluded from the analysis.

24. **“Fresco - opt out record & updated contact info.xlsx”** was read into SAS, and the first and last names were cleaned and standardized (this included the removal of unexpected characters, and the parsing of composite names into their components). Personal information not used in the analysis was scrubbed from this document. The previously processed payroll data was then referenced to determine likely matches between the OptOuts and the Employee IDs (“EmplID”) in the payroll data by determining if the matches were exact or partial in employees’ first or last names. The table containing the likely matches between the opt-out and payroll data was then output for manual review, along with a column containing the Levenshtein Distance¹ between the names as they appear in the opt-out and payroll data. This output was then independently reviewed by team members.

25. The manually reviewed output was then read into SAS, and the records where the two reviewers agreed that a match was factual were flagged. The names of employees in the OptOuts who had not yet been matched were then cleaned again, and run through another matching algorithm to attempt to match them to the payroll data. For this second iteration the second occurring first and last name were considered in the event the first occurring first/last name contained fewer than 3 characters. This second round of algorithmic matches were then again exported for manual review. The results of these two manual reviews of the programmatic matches were then saved.

26. The resulting data set contains the “EmplID” numbers of the employees who opted out of the litigation, and that need to be removed from the analyses. In total, we identified 673 employees who opted out of the class, and therefore, they were excluded from the damages calculations.

¹ The Levenshtein distance is the difference between two strings; see, e.g., Hjelmqvist, Sten (26 March 2012), [Fast, memory efficient Levenshtein algorithm.](#)

2.2.7 Step 7: “06 - IIS Cookie to Payroll Matching.sas”

27. “06 - IIS Cookie to Payroll Matching.sas” creates a crosswalk between the “EmplID” and “Operator ID”. The relevant IIS fields for this step are the operator id code (contains two letters, followed by five digits), the “Operator Surname”, and the “Operator Given Name”. The payroll data contains the employees’ full name, their first, middle, and last name, along with their assigned “EmplID”. The process described below establishes a programmatic method of determining matches between the payroll and IIS data using the names of the employees. This methodology was run prior to receiving the list of employees and pay periods to be removed from payroll. Thus, the table “**pr.ID_lu_pre.sas7bdat**” table is used which contains all names in the payroll data initially received.

28. The IIS data contains some observations where the “Operator Given Name” had the value “#”, such as “#Training” and “#MultipleUser”. These have been excluded from the IIS cookie data considered for this analysis since it is assumed that these records are indicative of multiple users sharing the same workstation which makes it impossible to assign the corresponding timestamp to an individual Employee ID.

29. For each operator (based on unique first and last names) in the IIS data, we created a column containing all unique operator ids associated with that employee. A hierarchical seven-level algorithm was developed to identify and evaluate similarities in employee names across the two data sources:

- a. Level 1 considers exact matches, where the first names are exact matches, and the concatenation of the first and middle name of the payroll data is equal to the given name in the IIS data.
- b. Level 2 considers exact matches between the last names and the first names.
- c. Level 3 considers an exact match on first and last name, but with the names processed to have all non-alphabetical characters removed prior to evaluation.
- d. Level 4 considers an exact match on first and last name, but removes all non-alphabetical characters and all spaces in the last name.

- e. Level 5 is a nested hierarchical fuzzy matching step with three sub levels.
 - i. Sublevel 1 considers whether the first, first middle, second middle, and last name from the payroll data are subsets of the names found in the IIS data.
 - ii. Sublevel 2 repeats the above procedure but considers only one middle name rather than two.
 - iii. Sublevel; 3 considers only the first and last name.
 - f. Level 6 considers fuzzy matches where the first name from the payroll data is in the given name in the IIS data, and the last name is a subset of the surname in payroll.
 - g. Level 7 considers a fuzzy match where the first name, and last name occur in the concatenation of given and surname. For this level we consider concatenations both with native spaces, and with spaces removed.
30. After each iteration, matched employees are removed from the corpus of unmatched employees to ensure that employees receive a match in a single level of the hierarchy and that they will not be available for matching in less precise tiers.
31. The resulting matches are then stacked and are limited to where an “EmplID” matches to exactly one “Operator ID”, and to “Operator ID”’s that match to exactly one employee id.
32. The last step is the implementation of an “Operator ID” crosswalk to bring in unmatched “Operator ID”’s that are related to other “Operators” which were matched to an “EmplID”. These are then appended to the “EmplID” – “Operator ID” cross walk. These are limited to where the operator is associated with only a single “EmplID”. It is noted in Betty Reid’s affidavit on page 13 that “Users...frequently had different User IDs for different systems...and many employees had more than one User ID throughout the time period.” Thus, it is expected and observed in the data that employees have multiple User IDs, or rather “Operator ID”’s.
33. The resulting table contains a column for: “Employee ID”, “Operator ID”, a field tracking in which step of the hierarchy the match was determined, and a column denoting whether an employee was in the list of OptOuts.

2.2.8 Step 8: “07 - Op and TZ LU.sas”

34. Another consideration before the IIS data can be incorporated into the data systems is the identification of time zones to allow for DST and other adjustments. The script **“08 - Op and TZ LU.sas”** generates the Operator and Time zone lookup available in the IIS data. To that end we first remove records where the operator contained “#”, or was blank. Following that, we determine the number of branch time zones that are associated with each “Operator ID”. We create a column tracking whether an operator had multiple, or a single, time zone associated with them. If a user had multiple time zones, the most frequently occurring time zone for that operator was selected.

35. The resulting table has three columns: “Operator ID”, “Branch Time Zone”, and a column tracking whether the “Operator ID” was associated with single or multiple time zones.

2.2.9 Step 9: “08 - Update Op and TZ LU.sas”

36. Following the reception of CIF data this table was updated to reflect the new data. To do that the CIF operators were stacked to the operators from the IIS data in the script **“08 - Update Op and TZ LU.sas”**. The CIF data was then compared to the match determinations coming from the Payroll – Cookie Matching Algorithm discussed above. If CIF disagreed with the Payroll-Cookie matching algorithm the operator would receive the natively occurring time zone, not the one brought on through the join with the employee ID.

37. The file **“tzlu.txt”** file created in script **“...\\Report Production\\Code\\01 Data Loading\\07 Province LU\\Create Province LU.R”**², which contains the “EmplID” with its corresponding time zone. This lookup is used to bring on the time zones associated with the “EmplID” that have not been matched to a time zone. The output table has the same three columns mentioned in the previous paragraph.

2.3 02b CIF Data

38. We received a single, 10.8GB “.csv” file containing CIF data. The data received contained the “Operator ID”, a field denoted as “Bus Svc ID”, “Legal Name”, “EmplID”, “Org Unit Numb”,

² See Section 2.9 below.

and a field containing date-time information in GMT which is equivalent to UTC time. This data is processed in script **“00 - Standardize CIF Data.sas”**.

39. After reading the CIF data into SAS, we removed OptOut employees, and limit the data to employees that were in the payroll data we received. **“00 - Standardize CIF Data.sas”** then:

- a. Adds the time zone;
- b. Adds the single time zone per employee flag, from the IIS data by joining on the “Operator ID”.
- c. Standardizes the CIF data into Eastern Time;
- d. Accounts for daylight saving time;
- e. Parses the native date-time field into two designated date and time fields; and
- f. Aggregates the CIF data to obtain the first and last times of activity per operator, per day, and compute the difference between these. The difference of interest is limited to hours 7am through 9pm.

2.4 03 IIS & CBFE Data

40. The folder “...Report Production\Code\01 Data Loading\03 IIS & CBFE Data” contains eight scripts.

41. Script 1, **“00 - Load Macros.sas”**, contains seven macros to load each type of IIS and CBFE data. The CBFE data was in a single format. This data was limited to “servlet” lines as was done in the data available in the Fotheringham report. This step was performed by tracing examples of data between the two sources. The six IIS formats vary based on the fields available. Five of these IIS formats contained a field “CS_Referer_” which contains “information associated with the URL to the web page that the client software application is embedded within, except if the client software application was not embedded in a web page”.³ For these formats, we limited the

³ https://docs.microsoft.com/en-us/openspecs/windows_protocols/ms-wmlog/485dd068-0638-43e5-b166-7f5b44835271

data to where “cibc” was found in the field. This is to ensure non-CIBC webpage visits are not included in the data output. These seven load Macros result in an output file for each data file loaded.

42. Script 2, **“01 - Create Directories.sas”**, generates an index of files to load. The file path in this index will need to be changed to reflect where the data saved. For the IIS data, this again leverages the six IIS directory files that list the contents of SID 221. SID 221 was a folder located on the hard drive produced in March 2021. These contain the “File Name”, “File Path”, “File Extension”, a “Unique Identifier” per file, and a column listing all the columns in the file. For the CBFE data, we read in two “.txt” files containing an index of the “timing” and “timing points” CBFE files. These are file paths that contain the words “timing” or “timing points” in the path of the file. These two tables contain the “SID” containing the file, the “File Name”, the “File Path”, the “File Extension”, a “Unique Identifier” per file, and a column tracking the row number within the index. These two indices are stacked, and then stacked onto the stacked IIS indices. This stacked index is then randomly ordered and split into equally sized batches to allow parallelized loading.

43. Script 3, **“02 - Run Batches”**, performs a parallelized loading process. This speeds up the loading process dramatically. These loads rely on a “btchcnt” table found and placed in the folder **“...\Report Production\Inter\IIS & CBFE\lims”**. Thus, this table must be created before running the load scripts. Further, a few second pause must be taken between batch submitting files.

44. To stack these files, Script 4, **“03a - Index Limited Files.R”**, is used to quickly create two indices of these loaded files - one index for IIS and another for CBFE files.

45. These indices are then used in Scripts 5, **“03b - Stack CBFE Batches.sas”**, and Script 6 **“03c - Stack IIS Batches.sas”** to stack all the IIS files, and all the CBFE files to create two master files for the two systems.

46. Once these consolidated tables have been created, Scripts 7 **“04a - Order CBFE Batches.sas”** and Script 8 **“04b - Order IIS Batches.sas”** sort the data by user, and date, and adjust the natively occurring date-times to standardize them to Eastern time, and to account for

DST. Lastly, we roll up the data, restricted to hours between 7am through 9pm, to obtain the first and last times of activity per operator, per day, and compute the difference between these.

2.5 04 Horizon Data

47. The folder “...Report Production\Code\01 Data Loading\04 Horizon Data” contains ten scripts.

48. Script 1, “**01 – Paths.sas**”, specifies paths that will be used in the loading process; these file paths will need to be changed to reflect where the user has the data saved.

49. Script 2 “**02 - Generate Horizon Directory.sas**”, generates a SAS table containing the index of relevant files.

50. There are several distinct formats of Horizon data that each need their own designated process to import into SAS. The aforementioned directory contains the paths, and key to identify which files are read in and how.

51. The first of these is the SC Trace data subset. These are designated by Script 3 containing “**03 – Load SC Trace Data.sas**”. These files contain information containing timestamp information for operators. Using the previously created index, we subset to a certain batch of SC files (the creation of these batches allows the scripts to be split into multiple smaller scripts, each handling a batch, which drastically improves runtime if they are run in parallel), and then iterate through the day, month, year of the identified file in the index. We import each of these identified SC files, retaining records where time or Operator IDs are identified, and format the substrings indicative of dates for ease of future processing. Each file within the batch then gets read in, processed, and added to the batch data. The resulting dataset for each of these SC batches contains a column for the operator, a date-time field, and a column tracking which source the data was from (the source is identified by Day-Month-Year).

52. The second Horizon subset is SC TranxServer Error logs. These are designated by Script 4 containing “**04 - Load SC Error Data.sas**”. These have a similar format as the SC Trace data, where the data contains paragraphs grouping operators and their timestamps. These files are also split into batches, with each file with a batch read into SAS using the file path structure, then

restricted to where time or operator ids are found. Then they also have their date-time processed to standardize them.

53. The Horizon data also contains Unix Error files. These are designated by Script 5 containing **“05 - Load Unix Error.sas”**. Like the above process, these files are split into batches, with each file being read in, and restricted to where time or operator information are found. Here we understand that date-time information is indicated by rows containing “RTSSession: establishing 1 DYNAMIC connection”, and operators can be identified as being in rows containing the phrase “oid”. These operator ids can be identified as the sequence of letters and numbers prior to a “@” in these rows. After parsing the date and time, and cleaning the time into a standardized format, the operators are paired with their corresponding time. The resulting output has the same three columns as the output for the SC stacks: “Operator”, “Date Time”, and “Source”.

54. Unix TransXServerTrace and TranXServerError are two subsets of the Unix Horizon files, and have two file formats: one until September 9, 2008, and then one thereafter. These are designated by Script 6 containing **“06 - Load Unix TranxError.sas”** and Script 7 containing **“07 - Load Unix TranxTrace.sas”**. These files’ timestamp records can be identified by lines that contain “==>” while operator IDs can be found in lines containing “OperatorID”. We further identify that the timestamp for the operator occurs two lines before the “Operator ID” is listed.

55. The Horizon Train data is loaded using a similar process as described above, and is found in Script 8 **“08 - Load Train.sas”**, where the presence of “==>” identifies records, and the “Operator ID”’s can be identified by “OperatorID:”. We further identify that the operator ID comes two rows after the corresponding timestamp.

56. Script 9, **“09 - Stack Horizon File Types.sas”**, is used to stack the data.

57. Script 10, **“10 - Standardize Horizon.sas”**, is used to standardize the stacked data. The data is loaded, and the time zone is standardized to the time zone linked to the “Operator ID”. Next, the data is summarized to the Operator-Day, taking the first and last timestamp between 7am and 9pm.

2.6 04b Horizon Data

58. In addition to the Horizon data discussed in Section 2.5 above which pertained to the November 2020 data production, the folder SID-0002 of the March 2021 data production contained a small set of additional Horizon data files that used a nomenclature that did not match the one used in the prior production. This folder contains eight scripts used to load these data. Specifically, these data matched the Unix and SC formats.

59. Script 1, **“01a Load Horizon Productions (New File Names).sas”**, assembles an index of files that were not previously received.

60. Scripts 2 through 7, **“01b....sas”** through **“01g....sas”**, dynamically load the Horizon files. See the prior section for information on the Unix and SC subsets.

61. Finally, Script 8, **“02 Stack & Standardize New Horizon Files.sas”**, stacks and standardizes the data in the same manner as the prior Horizon standardization script.

2.7 05 SM@RT Data

62. The folder “...Report Production\Code\01 Data Loading\05 SM@RT Data” contains seven scripts.

63. Script 1, **“01 - Smart Directory.sas”**, assembles a directory of SM@RT data file paths; these file paths will need to be changed to reflect where the user has the data saved. This script results in a directory that contains the name of all the smart log files, along with their size (in Bytes), the first four lines from each of the SM@RT files, along with their field names and paths. These files are then divided into three batches based on the field names present in the files.

64. Script 1, **“02 - Smart Data Load Macros.sas”**, contains the macros that are used to load the SM@RT data. Each macro loads the respective format and extracts out the “Date”, “CS_Username”, and “Time” fields associated with operator who are found in the CIF and IIS Cookie fields.

65. These macros are run in Scripts 3 through 5, **“03 - Smart Batch 1 Macro.sas”**, **“04 - Smart Batch 2 Macro.sas”**, and **“05 - Smart Batch 3 Macro.sas”**.

66. Script 6, “**06a - Smart Stack.sas**”, and Script 7, “**06b - Smart Standardize.sas**”, sort the data by user, and date, and adjust the natively occurring date-times to standardize them to Eastern time, and to account for DST. Finally, we roll up the data restricted to hours between 7am through 9pm to obtain the first and last times of activity per operator, per day, and compute the difference between these.

2.8 06 Deloitte Data

67. We received an Excel file, “**AD Stratification.xls**” as part of the Deloitte data report backup that contained information about the hours of operation of various branches per day of the week.

68. The purpose of the two Deloitte data scripts listed below is to create an employee – branch hour crosswalk per person per day.

- a. “01 – Emplid – Earliest Close Time Crosswalk.sas”
- b. “02 – Emplid – Latest Opening Time Crosswalk.sas”

69. In each script, IIS Cookie Data is limited to where the Operator ID does not start with “#” and the transit code matches one found in the “**AD Stratification.xls**” Excel file from the Deloitte report. Next, the employee-operator cross walks created in the Payroll – Cookie matching algorithm, as well as those coming from the CIF data are used to bring on the “EmplID”. The resulting table has three columns: “Operator ID”, “Home Org Unit”, and the “EmplID”.

70. Next, we create a lookup table from the Deloitte data that contains columns showing the “Transit Code”, the “Day of Week”, and the “Open Time” / Close Time”. This is then merged onto the “Employee”-“Operator”-“Home Org Unit” table using the “Home Org Unit” and “Transit Code”. In the event that an employee works in multiple branches, and thus has conflicting “Open” / “Close” times for a certain date we are conservative and select the latest start time, and earliest close time. The resulting two tables (one for open, one for close), have a column for the employee, a column for the day of the week, and a column tracking the latest open / earliest close time. The data sometimes does not contain branch hours on certain days of the week. We thus do not adjust these employees’ timestamps observed on these days.

2.9 07 Province Look Up

71. The purpose of the script, **“Create Province LU.R”**, is to create two tables. The first contains a crosswalk between “EmplID” and the time zone associated with them. The second contains a cross walk between “EmplID” and their provinces. These can then be used to remove a percentage of damages associated with the count of employees in a given province for the provincial limitations as well as bring on the time zone per employee to adjust their timestamps to their individual time zone.

72. The script uses several tables generated in prior steps of the production:

- a. Stacked IIS Cookie Data;
- b. CIF-Operator ID – EmplID crosswalk;
- c. Payroll – IIS Cookie Operator ID Matching crosswalk;
- d. Branch Address Extraction; and
- e. Payroll Data

73. The first step of the script matches “Location Description” from the payroll data to addresses found in PDF parsed and output from the scripts **“...Report Production\Code\01 Data Loading\01 Payroll\02 - PDF Transit Code Extraction.R”** and **“...Report Production\Code\01 Data Loading\01 Payroll\03 - Timezone Extraction from PDF Scrapping.R”**. This is done by taking the first match with four overlapping words between the “Location Description” and parsed addresses (“address”).

74. Next, the crosswalk between “Operator ID” and “EmplID” is generated. This is completed by stacking the crosswalk resulting from the IIS Cookie to Payroll matching algorithm with that native to the CIF data. Records from the algorithm that contradict those in the CIF data are removed.

75. The addresses parsed from the PDF and API scrape contained one address that was missing a province. This record was manually fixed to include the correct province.

76. A five-step hierarchical join is used to match employees to addresses and thus province and time zone.

- a. Step 1: Join payroll “Home Org Unit” to “Transit Code” in aforementioned PDF Transit Code Extraction and Scraping scripts’ output to bring on “Address”.
- b. Step 2: Use “Transit Code” from IIS Cookie Data to join additional “Address[es]” from aforementioned PDF Transit Code Extraction and Scraping scripts to individual employees.
- c. Step 3: Limit Step 1 Join to those where a “Location Description” was matched to a single “Address” from aforementioned PDF Transit Code Extraction and Scraping scripts’ output.
- d. Step 4: Leverage the distinct list of the payroll “Location Description” and matched “Address” list created before these joins to bring on “Address”.
- e. Step 5: Match the city found in the “Address” to cities found in “Location Description”.

77. At the end of these programmatic joins, a manual matching process is done in an attempt to make the matching procedure as complete as possible. Finally, the actual “Address” matched is dropped and the “Time Zone” and “Province” associated are used in subsequent analyses. The final tables are labeled “**provincelu.txt**” and “**tzlu.txt**”.

2.10 08 Blotter Data

78. The next folder at “...Report Production\Code\01 Data Loading\08 Blotter Data” contains a script named “**Load and Sample Blotter Data.R**” which loads Blotter data, and selects a random sample of Blotter sheets for further review.

79. The Blotter data was received in six tranches, with each tranche containing PDF files and their “.txt” equivalent. “**Load and Sample Blotter Data.R**” is used to create a list of all of the files that were received, which are then all loaded through use of a parallelized function that extracts the lines in the “.txt” files, and stacks them into a table.

80. We have identified that the Blotter files that are most likely to contain timestamps and/or operator information contain words such as: “FX POSTING”, “TOTALS PRINTED AT”, “JOURNALIZED”, “CASH LOCK UP”, or “CASH EXAMINED”. We also identified that the

employee UserIDs in these files are of the structure matching that in other electronic data systems: two alphabetical characters, followed by 5 digits. Date-times can be identified as being in the format of three alphabetical characters, two digits, a “/”, followed by a space, followed by two digits, then a colon, and then two more digits (ex: JAN01/01 01:01). Rows that contain any of the above information are flagged and parsed.

81. Further, a set of “.dat” files were included. These files appear to have the native paths of the Blotter Data in CIBC’s, or a CIBC contracted company’s server. For example, a file produced as “CIBCBLOTP0000032966.TXT” and “CIBCBLOTP0000032966.PDF” would be found in the set of “.dat” files and could be matched to a date and descriptive path of the data: “Financial\InstantTellerCashWorksheetandBlotter\CIBC\CIBCBLOTP_Tranche001\TEXT\TEXT0033\CIBCBLOTP0000032966”.⁴

82. The script then subsets the loaded data to employees-operators-weeks that are used in the damages analyses. This amounts to 26,021 Blotter files. Finally, these data are matched to the employee-province lookup generated in the “**provincelu.txt**” file. We originally selected a 15% random sample of the Blotter files weighted by province such that the sample size is proportional. This province weight is determined by the overall weight of all employees in the payroll data. Nova Scotia, Nanavut, Prince Edward Island, and Yukon were excluded from these proportions as they are not sufficiently represented in the Blotter data, with each having less than 1% of the total population. Ultimately, the goal was to analyze 5% of the blotters we matched to the analysis weighted by province. The sample of 15% was taken to account for issues with the sample drawn such as non-recorded timestamps or illegible timestamps in the documents reviewed. Once the sample was drawn from the frame of Blotter files matched to the damages analysis, we export the sample results to an Excel file where each province has its own tab.

83. Next, team members reviewed Blotter files until they obtained timestamps for 33% of each of the Province samples drawn. Following the review of the sample, New Brunswick and Quebec were unable to reach 5% samples due to either not enough Blotter records available or illegible timestamps and records missing timestamps. Additional New Brunswick files were selected, but there were still not enough to obtain a representative sample. To account for lack of timestamps

⁴ CIBCBLOTP_Tranche001.dat

extracted for Quebec and New Brunswick, additional Blotter files were reviewed for other provinces until 5% of the total matched blotters were identified.

84. The Blotter sample results can be reviewed in the file "**...\Report Production\Output\Blotter Sample\Blotter Sample Results.xlsx**". In total 1,316 timestamps were extracted from the Blotter files.

3 Damages Analysis

85. This Appendix provides descriptions of the steps taken to compute the damage estimates after the data has been loaded. The corresponding code can be found in the folder "**...\Report Production\Code\02 Damages Analysis**". The scripts should be run in the following order:

- a. **"00 - StatCan Coefficients.sas"**
- b. **"01 – Estimate Employee Count.sas"**
- c. **"02 – Estimate Employee Wage.sas"**
- d. **"03 – Estimate OT Paid per Employee per Week.sas"**
- e. **Scripts included in subfolder "\Aggregate Timestamp Data"**
- f. **Scripts included in subfolder "\STATA Modeling"**
- g. **"06 – Stack STATA Output.sas"**
- h. **"06b – Monte Carlo OT Analysis.sas"**
- i. **"06c – OT Analysis.sas"**
- j. **"06d – Stack OT Analysis.sas"**
- k. **"06e – Monte Carlo Straight Time Analysis.sas"**
- l. **"06f – Straight Time Analysis.sas"**
- m. **"06g – Stack Straight Time Analysis.sas"**

n. **“07a – Provincial Weights.sas”**

o. **“07b – Damage Calculation.sas”**

3.1 00 - StatCan Coefficients.sas

86. StatCan data was first downloaded to the folder “...**Report Production\Data\StatCan**”. It is associated with employees working overtime (weekly) by occupation, monthly, unadjusted for seasonality. This data ranged from 1/1/1997 to 10/1/2021 and was available on a monthly basis. The script “**00 – StatCan Coefficients.sas**” loaded the data and extracted the data for the Canadian population, people ages 15 and older of both sexes, to the variable “Average overtime hours of overtime workers” and National Occupation Code 65: “Service representatives and other customer and personal services occupations”.

87. The StatCan data related to this subset can be found in “...**Report Production\Data\StatCan\14100308.csv**”

88. Next, we created a set of indicator variables for each year. These indicator variables were used as variables in a regression with the value from the specified subset of the StatCan data as the response variable. For the back-casting period we used indicator 1997-2006 as dummies, while for the forecasting we use 2009-2021 as indicator variables.

89. Since neither the forecasting, nor the backcasting regression contains indicator variables for 2007 or 2008, the effect for those two years will be contained within the estimate for the intercept. We then use the formula: $Coef_{year} = \frac{\beta_0 + \beta_{year}}{\beta_0}$ to calculate the observable difference between any of the forecast/backcast years and the years for which we have datapoints for all months. A lower and upper bound is calculated using the lower bound and upper bound 90% and 95% confidence intervals of each of the coefficients. These “multipliers” are then used to adjust overtime for the out of sample period for which we do not have data.

3.2 01 – Estimating Employee Count.sas

90. The script “**01 – Estimate Employee Count.sas**” is used to estimate the total number of employees in class positions for each year 1993 to 2021. To obtain these values, the payroll data

were limited to the rows with an Earn Code of “BAS” which denotes “Basic Pay” in the Earn Code Description field. Next, **“01 – Estimate Employee Count.sas”** determines all Sundays between employees “Pay Begin Date” and “Pay End Date”. Employee weeks are limited to those with hours > 0 and amount paid > 0. It is understood that the hourly rate is calculated as “Amount / Hours”. Approximately .03% of values have calculated hourly rates < \$8/hour and > \$30/hour. **“01 – Estimate Employee Count.sas”** caps hourly rates to be \$8 and \$30 if the calculated hourly rate is below \$8 or over \$30.

91. Before determining the count of employees per week, **“01 – Estimate Employee Count.sas”** removes OptOuts determined by the script **“...Report Production\Code\01 Data Loading\02 IIS Cookie Data\05 – OptOuts.sas”**, as well as “CSMngr” from the data.⁵ Additional information associated with employees such as the “Company”, “Birth Date”, “Gender”, “Hire Date”, “Rehire Date”, and “Termination Date” are added to the data table. This table is then saved as **“empshellall.sas7bdat”**.

92. **“empshellall.sas7bdat”** only contains employee counts for weeks with complete payroll data. To calculate employee counts in class positions outside the range of the initial payroll data production, data is collected from CIBC information published online which contained information about the Full-Time-Equivalent (“FTE”) count for the years 2005-2021 and 1992-2000. For the years 2001-2004 Employee Regular Workforce Counts data are available. For years 2005-2008 both FTE and Employee Regular Workforce Counts data are available. Thus, an overall ratio of Employee Regular Workforce Counts / FTE is calculated across years 2005-2008. The 2005-2008 Regular Workforce count is then divided by the calculated ratio to obtain an FTE count for these years. For years 2004-2008 which have complete payroll data, the average of the weekly employee count divided by the FTE is taken. This average percentage Weekly Class Employees / FTE is then applied to the FTE outside of the range for which data is available to estimate the number of class employees working in a given week.

⁵ It is our understanding that CSMngr are not part of the class.

3.3 02 – Estimate Employee Wage.sas

93. The script “**02 – Estimate Employee Wage.sas**” is used to estimate the employee wage rates for weeks before and after the payroll data is available. This script utilizes the data from the “**empshellall.sas7bdat**” table generated in the script “**01 – Estimate Employee Count.sas**”.

94. This “**empshellall.sas7bdat**” data is summarized at the year and payroll week level, and the weighted mean hourly rate is computed for that week across all class employees. Thus, this average wage rate is weighted by class positions derived from the data. We also repeat this process, but aggregated to the year, rather than year-week level.

95. Next, we load in the CPI index downloaded from StatCan at: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000413>.

The CPI dataset contains yearly CPI levels for Canada for various sectors. We utilized the data for the “Services Sector”. The CPI values are then merged with the table containing the mean yearly hourly wage rates. To compute the wage estimates for years in which we are missing payroll data, we adjust the closest observed mean wage rate calculated from a full year with the CPI factor. If actual data is available for a given year, then those data are used rather than the calculated ones.

3.4 03 – Estimate OT Paid per Employee per Week.sas

96. The script “**03 – Estimate OT Paid per Employee per Week.sas**”, estimates the amount of dollars for overtime that were paid per week in the class period and before/after. The payroll data is used and is restricted to non-OptOuts and non-“CSMngr” employees. After that we compute the weekly average overtime paid per week of the year. Due to the fact that the payroll data contains bi-weekly periods, the total overtime per employee associated with the start month of each period is calculated. This value is then divided by the number of weeks in the month. Finally, the overtime paid is divided by the number of employees in each week to determine the overtime paid per employee per week.

97. The estimates are then forecasted and backcasted. Specifically, the CPI data referenced in the prior section is loaded and used to calculate weekly overtime amounts in 2004 and 2008 dollars

for all complete years with data. These years are chosen because they contain complete payroll data for the employees.

98. The average of the 2004 scaled weekly values are then back casted to 1993 and the average of the 2008 scaled weekly values are forecasted to 2021. This is done by multiplying the average weekly estimates of overtime for weeks 1-52 (combining 52 and 53) by the estimation year CPI / 2004 CPI for the backcast and estimation year CPI / 2008 CPI for the forecast.

3.5 Aggregating Timestamp Data

99. The data across systems is aggregated in a subfolder of the “**...Report Production\Code\02 Damages Analysis**” folder which is labeled “**Aggregate Timestamp Data**”. This folder contains scripts used to compute aggregate minimum and maximum timestamps per employee for various sensitivities:

- a. “**00 – Initial Aggregation.sas**”
- b. “**00b – Initial Aggregation (No Horizon).sas**”
- c. “**01 – Aggregate Timestamps & Calculate OT – M#.sas**”
- d. “**01b – Aggregate Timestamps & Calculate Horizon Factor – M#.sas**”

100. Each of the sensitivities have their own set of 01 and 01b scripts. The 01 scripts compute the overtime with Horizon data, while the 01b scripts compute it without Horizon data. These scripts should be run sequentially.

101. The “**00 Initial Aggregation.sas**” scripts serve to stack the data associated with each system. “**01b....sas**” scripts compute aggregations excluding the Horizon data. After stacking the aggregated timestamp data from each system, these data are further aggregated to take the minimum of the first timestamp observed in each system and the maximum of the last timestamp observed in each system. The “EmplID” is then merged into the data, and it is again aggregated to observe the first and last timestamp per “EmplID”. This is due to the fact that some employees, who are each represented by a single “EmplID”, have multiple “Operator ID”s. This aggregation is done using “EmplID” resulting from the CIF and IIS Cookie Matching Algorithm. This step

removes” EmplID” who are matched to an “Operator ID” in the IIS Cookie Matching Algorithm that is conflicting with matches in the CIF data in native format.

102. The result of these initial aggregations is a dataset that includes one value per employee per day. This dataset is then saved and is used as the input of various model sensitivities.

103. Next, the “01....sas” and “01b....sas” scripts have to be run. Each of these scripts starts by defining the location which the data will be saved as well as a suffix for the model, “M1”, “M2”, and “M3”. “M1” corresponds to the sensitivity named “Model 1” in the report, “M2” corresponds to the sensitivity names “Model 2” in the report, and “M3” corresponds to the sensitivity names “Model 3” in the report.

104. All model sensitivity scripts begin by shifting CSRs’ initial timestamps 8 minutes earlier to account for missing MACS Active Directory Data and shifting CSRs’ final timestamp 7 minutes later to account for missing Blotter Data. BA’s initial timestamps are shifted 3 minutes earlier to account for missing MACS Active Directory Data.

105. Next an adjustment is made for days that never have CBFE data for any employees. These correspond to the period 1/31/2007 to 2/26/2007. The first and last week in this date range have CBFE data on a subset of days. The daily overtime averages are calculated by class position and by week for these weeks on days with CBFE data. The daily overtime amounts are then added to the weekly overtime amounts for each day missing CBFE data for the first and last week in the period missing CBFE data. The weeks that are entirely missing CBFE data are not adjusted.

106. Next overtime per employee per week is calculated. This is calculated as the greater of hours over 37.5 in a week or the sum of daily hours over 8 on all days in given week. For each day where the elapse time between the min and max timestamp is over 30 minutes long, we deducted 30 minutes from the elapse time. These calculations are limited to employees who are found in the CBFE data.

107. The 01 and 01b scripts labeled “M2” and “M3” are the same as those labeled “M1” apart from steps necessary to differentiate the sensitivities as explained in the report.

108. The scripts with the label “M2”, corresponding to sensitivity named Model 2, repeats the same steps as the scripts labeled “M1”, corresponding to Model 1, except the “M2” scripts it shift any employee who has an initial daily timestamp resulting from the analysis within 25 minutes after the branch opening time to the branch opening time. It also shifts any employee who has a final daily timestamp resulting from the analysis with 27 minutes before of the branch closing time to the branch closing time.

109. The scripts with the label “M3”, corresponding to sensitivity named Model 3, repeats the same steps as the scripts labeled “M1”, corresponding to Model 1, except the “M3” scripts shift any employee who has an initial daily timestamp resulting from the analysis between 20 minutes before and 25 minutes after the branch opening time to 20 minutes before the branch opening time. It also shifts any employee who has a timestamp resulting from the analysis between 27 minutes before and 14 minutes after the branch closing time to 14 minutes after the branch closing time.

110. The calculation of the thresholds and cutoffs for the adjustments in sensitivities related to Model 2 and Model 3 are found in the script “**...\Report Production\Code\03 Tables\Open and Close Adjustments.sas**”.

111. This process is repeated in the “**01b....sas**” scripts for the scenarios without Horizon data.

3.6 STATA Modeling

112. The second Damage Analysis folder also contains a subfolder labeled “**...\Report Production\Code\02 Damages Analysis\STATA Modeling**”. The STATA modeling scripts create estimates for overtime amounts for each considered sensitivity. The process uses the output from that data aggregation scripts. Each sensitivity has a subfolder with the naming convention “**...\Report Production\Code\02 Damages Analysis\STATA Modeling\Sensitivity**”. These folders each contain a script labeled “**00_All_Emp_Lunch_Ded_Shell.do**”

113. In order to run these scripts, the following file must be copied into the respective model folder housing the STATA scripts “**...\Report\Production\Inter\Damages\Week_Shell_ALL.dta**”.

114. Further, the following commands must be run to install additional STATA packages:

- a. `ssc install gtools`
- b. `ssc install mipolate`
- c. `ssc install carryforward`

115. For some employees, we were unable to match hourly data or hourly data for a given week the employee received “Basic Pay” as determined by the “Earn Code Description” field in payroll; weeks of missing data vary across individuals without a clear pattern. For other employees, the systems did not fully capture workers’ time stamps. Therefore, if employees are not observed in CBFE in weeks they received “Basic Pay”, then we treated their hours as missing unless they had at least 7 hours on average per day in the week.

116. To better capture overtime hours worked per week, we first merged a dataset that identifies whether employees received “Basic Pay” in a given week “**Emp_Week_Shell_ALL.dta**” with another dataset that contains overtime hours worked in that week by employee “**WeeklyData_ALL.dta**”.

117. Because the payroll records monitor the same individuals over time, they form a panel dataset. Ergo, the in-sample imputation strategy will draw upon panel data techniques. Note that since individuals are not employees for the full pay weeks with CBFE data, July 2, 2006 through March 22, 2009, the data comprise an unbalanced panel.

118. To facilitate the analysis and account for time periods not in the records for particular employees, we expand the dataset to cover the first period of payroll data to the last period of payroll data per employee.⁶ Finally, we ensure the data are limited to the pay weeks with potential CBFE data starting July 2, 2006 through March 22, 2009.

119. To predict missing overtime measures, we first implement an autoregressive one, lagged fixed effects panel data model, which can be abbreviated as AR(1). This method estimates parameters by exploiting the variation between two sequentially observed periods of overtime for

⁶ In Stata, this command is *tsfill, full* after declaration of a panel dataset (via the *xtset* command). This tool only creates a unique time value and a identifier for each employee in weeks they received “Basic Pay.” All other features of the data, *e.g.* start date, must be separately placed in the data.

specific employees “i” at a given time “t”, $OT_{i,t}$ and $OT_{i,t-1}$. The parameter on the lagged variable, which we denote by β , indicates a correlational relationship between overtime in one period and the next across all employees.

120. Several features of the model account for individual specific attributes. For one, the fixed effects identify static features of employees; these unobserved parameters (λ_i) reduce variability in estimates and the error term. Secondly, a class specific dummy ($Class_{i,t}$) shifts the intercept contingent upon position held by individuals.

121. To address seasonality and secular trends, we include a unique dummy for each time period ($Month_t$).⁷

122. After calculating the AR(1) parameters, we iteratively cycle through the data using the estimates to construct overtime for individuals who received “Basic Pay” but who have no observed overtime value. If overtime is captured, it is never replaced. Similarly, if the estimated value is negative, we supplant the fitted value with a zero.

123. To account for employees during the period with CBFE data, that earned “Basic Pay” but still do not have any observations in weeks worked, we estimate these individuals’ remaining unobserved overtime by taking the average overtime for their class in that specific week. This is necessary because these employees did not ever work consecutive weeks, thus, the AR(1) model is unable to address these gaps alone.

124. To calculate confidence intervals about the overtime estimates, we use a regression-oriented strategy. The variance about the estimates is given by $x_i^T (X^T X)^{-1} x_i \sigma^2$, where x_i is a vector that contains the exact regressor values taken by the independent variables for a specific individual, X is a matrix that contains the stacked x_i for all individuals, and σ^2 is the true variance of the error term. Each term involving variability of the data is observed, i.e. x_i and X . However, σ^2 is not directly seen. Therefore, we constructed this value by squaring the residual, which is given by the difference between $OT_{i,t}$ and $\widehat{OT}_{i,t}$. For observed values, i.e. OT measures are not

⁷ “As a general rule... it is a good idea to allow for separate intercepts for each time period. Doing so allows for aggregate time effects that have the same influence on” outcomes for everyone. See Jeffrey Wooldridge. (2010). *Econometric Analysis of Cross Section and Panel Data*. MIT Press. Page 192.

missing, we force standard errors to take a value of zero. For missing OT measures not estimated by the panel AR(1) process, we still use regression standard errors to maintain consistency; 90% and 95% confidence intervals are thus given by the following equations.⁸

$$\hat{y} \pm 1.645\sqrt{x_i^T (X^T X)^{-1} x_i \hat{\sigma}}$$

$$\hat{y} \pm 1.96\sqrt{x_i^T (X^T X)^{-1} x_i \hat{\sigma}}$$

125. The STATA Modeling folder also contains a folder labeled “**Survival Model**”. This folder contains the script related to, as well as the output of, the Kaplan-Meier (“KM”) Survival Estimator. This estimator is used to estimate how much longer someone who is employed as of June 7, 2009 would stay at CIBC in a class position.

126. The estimator for this specific exercise is given by the formula below:

$$S(t) = \sum_{f \leq t}^t (1 - \frac{d}{n}),$$

where t is the current time, f is all values of time up until t , d is departure from a class position at CIBC, and n is the total number of individuals that have not left CIBC.

127. To implement this approach, we first use the data on basic features of employees “**Emp_Week_Shell_ALL.dta**” to determine their tenure.⁹ To simplify the analysis, we assume that employees hold whatever position they occupied when initially hired. This assumption avoids complications that arise when employees move in and out of class positions.

128. Thereafter, we calculate the KM estimates by initial class position alone.¹⁰ For each class position, this produced value indicates the likelihood an employee remains employed at the bank for a given number of weeks.

⁸ In Stata, this is executed by the *predict* command with the *stdp* option.

⁹ For employees with a single hire and termination date, this process is simple. For employees who are rehired, we average their tenures. That is, we take the average of: (Termination Date – Rehire Date) and (Rehire Date – Hire Date). The data contain at most one termination date, which requires us to implement this step.

¹⁰ We use the *sts* command in Stata with the *by* option to do so.

129. We combine these estimates with the number of employees on the final week of the class period to estimate the percentage of those who remain in such positions to date.

3.7 06 – Stack STATA Outputs.sas

130. The results from the STATA modeling script are then stacked using the script “**06 – Stack STATA Output.sas**”. For days without any horizon data for any employees, the estimate overtime amounts are multiplied by the horizon factor, or ratio. This factor was calculated by class position and is the result of [Overtime with Horizon Data] / [Overtime without Horizon Data]; this is calculated on all dates ever containing Horizon data.

131. The model sensitivities are then assigned an iteration number and run through the Synthetic Panel Analysis described in the next section.

3.8 Monte Carlo OT Analysis

132. The synthetic panel analysis for overtime relies of the following scripts:

- a. “06b - Monte Carlo OT Analysis.sas”
- b. “06c - OT Analysis - M#.sas”
- c. “06d - Stack OT Analysis.sas”

133. To estimate precise weekly averages for the out-of-sample period, we opted to use a Monte-Carlo simulation. This is achieved by estimating a panel of 5,000 weighted by the proportions of employees in each class position across the period with timestamped data. The number 5,000 is chosen because it is smaller than the actual observed employees in any given week. For each week 1-52 in the year, after combining weeks 52 and 53, we draw a sample with replacement from the estimates resulting from the STATA modeling process. This sample with replacement is large enough to satisfy 1,000 robust estimates of the average Overtime in a week 1-52. We trim the top and bottom 1% of values for each job and month to ensure the estimation is not driven by employees with high values of overtime.

134. These 1,000 class wide estimates of average overtime are then used to create the point estimate, the upper bound, and the lower bound. The lower bound, point estimate, and upper bound

are defined as the 2.5th or 5th percentile, median, and 95th or 97.5th percentile of the 1,000 averages. The 2.5th and 97.5th percentiles result in a non-parametric 95% confidence interval. The 5th and 95th percentiles result in a non-parametric 90% confidence interval for the average overtime in each given week 1-52.

135. For the period with estimates determined by the STATA Modeling process, we trim top and bottom 1% of values for each job and payroll week. We then take the average of the lower bound, estimate, and upper bound values for individual overtime amounts to achieve 90% and 95% confidence intervals.

136. The analysis is then run via scripts labeled “06c....sas” for each model. These estimates are then stacked in the script labeled “06d – Stack OT Analysis.sas”. This script applies the lowerbound, estimate, and upper bound of the StatCan Coefficient Multiplier calculated in script “00 – StatCan Coefficients.sas”. StatCan Multiplier values for 1997 are used for years 1993-1996 for which no StatCan data was available. These coefficients take the values 1 for datapoints estimated by the STATA Modeling process. Although the week of July 2, 2006 has estimates, the results of the Monte Carlo analysis are used due to the fact that the Standard Error could not be measured for the first week of data which had no lagged term.

3.9 Monte Carlo Simulation for Unpaid Straight Time

137. The unpaid straight time analysis is conducted in the following scripts:

- a. “06e - Monte Carlo Straight Time Analysis.sas”
- b. “06f - Straight Time Analysis - M#.sas”
- c. “06g - Stack Straight Time Analysis.sas”

138. The straight time analysis similarly utilizes the Monte-Carlo simulation, but requires additional data manipulation. The initial step reads in the payroll data, and limits to where the hours are non-zero, and standardizes the data to bi-weekly pay periods where necessary.

139. The payroll data is then aggregated to compute the total hours worked per employee per pay period, with the payroll data restricted to where the earn code description was one of the

following: “Basic Pay”, “Temporary Salary”, “Hours Override”, or where it contained the word “overtime”. These additional measures are incorporated to ensure that the Off the Clock analysis includes any hours potentially paid for work completed. The data is then limited to where these pay-period hours are non-negative and non-blank.

140. Next, we bring in an intermediary output from the data aggregation scripts corresponding to that specific sensitivity and compute the daily overtime with and without lunch deductions. This output contains daily amounts worked per employee. This table is then aggregated to the employee-week level. Here we also compute the implied weekly overtime using a 30 minute lunch deduction and recode the weekly overtime per person as the maximum of the per-week overtime, or the sum of their daily overtime. Next, the data is limited to where the employee either had CBFE data, or had at least 7 hours of work on average in that week. We also restrict the data to weeks starting between July 2, 2006 – March 31, 2009. Next the opt outs are removed, and the data is limited to where a single time zone was present for the user. To find the off the clock hours, we compute the difference between the hours worked according to the timestamp data, and the paid hours. From this we subtract the overtime hours, and half an hour per day for the lunch break.

141. Since the payroll data is biweekly, we divide the unpaid hours evenly across the two weeks. Finally, the payroll data is used to bring on the class position for the employee-week. After this the data can be fed into the Monte-Carlo simulation discussed above.

142. After the off the clock data has been run through the Monte-Carlo simulation, it is stacked, and adjusted according to the StatCan adjustment methodology discussed previously.

3.10 “07a - Provincial Weights.sas”

143. The script “**07a – Provincial Weights.sas**” estimates the proportion of class employees that belong to each province. This uses the “**provincelu.txt**” file output from the scripts in the folder “**...Report Production\Code\01 Data Loading\01 Payroll Data**”. The txt file is read into SAS and used to compute the proportion of employees found in each of Canada’s provinces. We then create several tables containing information for whether specific employees in specific provinces are eligible to be in the class under the various eligibility scenarios described in this

report for each week. For each week in these scenarios, we sum the proportion of employees who are eligible and stack the results into a single table.

144. We consider four scenarios of eligibility:

- a. Provincial Limitations up to June 18, 2009;
- b. Provincial Limitations up to the present;
- c. February 1, 1993 to June 18, 2009; and
- d. February 1, 1993 to June 18, 2009.2/1/1993 – 6/18/2009. The fourth considers 2/1/1993 – present.

3.11 “07b - Damages Calculation.sas”

145. To obtain a final damage estimate, the script “**07b - Damages Calculation.sas**” utilizes employee count calculations, the wage rate calculations, overtime calculations, calculations of overtime already paid, the employee attrition calculated from the survival model, the proportion of eligible employees from the province limitations, and the calculations of unpaid straight time.

146. The last payroll week with earn code descriptions taking the value “Basic Pay” is June 7, 2009. Utilizing the Kaplan-Meier Survival Model; we calculated probability of survival for all employees who were current employees in the last payroll week.

147. We then merge all datasets and calculate damages as well as the damages resulting from simple interest and compound interest at a rate of 4.5%. This process is described in detail the “Calculate Damages” section of this report.

148. The output of this script is formatted to show the Margin of Errors as well as damage estimates in the file labeled “**...Report Production\Output\Damages\Damages Output.xlsx**”.

4 Tables

149. This section provides descriptions of the steps taken to compute inputs for the tables and figures found in the file labeled “**...Report Production\Output\Damages\Damages Output.xlsx**”. The corresponding code can be found in the folder “**...Report Production\Code\03 Tables**”. The scripts do not need to be run in any particular order. Each

subsection in this appendix contains the name of the script and figure or table of interest. They are as follows:

4.1 "Choice of Time Period of Timestamp Analysis.sas"

150. The script generates the figure in this report titled **"Choice of Time Period of Timestamp Analysis"**. This script reads in the stacked and aggregated data across all systems. It then adds on an indicator if CBFE data was ever found on the corresponding date. Finally, it generates a figure showing the average duration across all detected employees and colors regions with / without CBFE in corresponding red / blue. This figure is not limited to employees who meet data sufficiency requirements for damage analyses.

4.2 "Employee Counts and Payroll Data Produced.sas"

151. This script generates the figure in this report titled **"Employee Counts and Payroll Data Produced"**. This script reads all records from payroll where an employee has at least one line with "Basic Pay". The count of distinct "EmplID" is then taken for each payroll year

4.3 "Time Zone Conversion in CBFE Data.sas"

152. This script generates the figure in this report titled **"Time Zone Conversion in CBFE Data"**. This script reads in the timestamps that were loaded from the CBFE data. It subsequently takes the count of records associated with original times in the data and times that have been shifted to Eastern time accounting for individual employee time zones and daylight savings time. The two distributions of records versus time are then plotted.

4.4 "Average Wage by Class Position.sas"

153. This script generates the data behind the table in this report titled **"Average Wage by Class Position"**. This script simply takes the average wage across all employee-weeks for a given year that were determined to have "Basic Pay". The ABM/FSR position is not included in the summary as it only accounts for .4% of employee-weeks in the data. The yearly averages are then pivoted and exported.

4.5 "Estimation of Count of Weekly Employees in Class Positions.sas"

154. This “.txt” file is a placeholder which points to script **"...Report Production\Code\02 Damages Analyses\01 - Estimate Employee Count.sas"**. The code to produce this data for this chart is found at the end of the script. It simply outputs the FTE count as well as corresponding count of estimated Employees in Class Positions for each year 1993 to 2021.

4.6 "Frequency of Employee ID Across Data Systems.sas"

155. This script generates the report table **"Frequency of Employee ID Across Data Systems"**. This script begins by stacking each electronic system. The corresponding “EmplID” is then joined onto the data removing conflicts between the Payroll - Cookie Matching algorithm and those native to the CIF data. Then for each employee we compute in which data system they occur at least once. For each employee we then create a concatenation of all the systems containing data for them, and then compute the number of employees for each combination of system. This is then exported to Excel, where a column is added showing the percentage of the total employees that fall into each category.

4.7 "Example of Horizon Data Adjustment Weekly OT in Hours.sas"

156. This script generates the report table **"Example of Horizon Data Adjustment Weekly OT in Hours"**. It simply exports the set of Average Overtime by Class Position with and without the Horizon data across the Models. These data are generated in the M1, M2, and M3 script found at:

"...Report Production\Code\02 Damages Analyses\Aggregate Timestamp Data\01b - Aggregate Timestamps & Calculate Horizon Factor - M1.sas"

"...Report Production\Code\02 Damages Analyses\Aggregate Timestamp Data\01b - Aggregate Timestamps & Calculate Horizon Factor – M2.sas".

"...Report Production\Code\02 Damages Analyses\Aggregate Timestamp Data\01b - Aggregate Timestamps & Calculate Horizon Factor – M3.sas".

157. The Horizon Data Adjustment tables across all Model sensitivities are found below:

Class Position	Sensitivity	OT Without Horizon	OT With Horizon	Percent Difference
ABM	Model 1	1.77	1.81	1.84%
ABM/FSR	Model 1	1.31	1.34	2.10%
BA	Model 1	0.44	0.45	4.05%
CSR	Model 1	0.57	0.58	1.81%
FSA	Model 1	0.87	0.97	11.32%
FSR	Model 1	0.94	0.98	5.20%
ABM	Model 2	1.80	1.83	1.76%
ABM/FSR	Model 2	1.31	1.34	2.06%
BA	Model 2	0.47	0.49	3.76%
CSR	Model 2	0.58	0.59	1.74%
FSA	Model 2	0.93	1.03	10.85%
FSR	Model 2	0.99	1.04	4.98%
ABM	Model 3	1.93	1.96	1.72%
ABM/FSR	Model 3	1.39	1.41	1.96%
BA	Model 3	0.61	0.63	3.07%
CSR	Model 3	0.65	0.66	1.60%
FSA	Model 3	1.07	1.17	9.83%
FSR	Model 3	1.16	1.21	4.17%

4.8 "Match Types Between Employee Payroll Data and IIS Cookie Field.sas"

158. This script generates the output for table “**Match Types Between Employee Payroll Data and IIS Cookie Field**”. It simply pulls the results from the IIS Cookie Matching Algorithm and summarizes how the matches between “Operator ID” and “EmplID” were initially made. The additional matches stemming from the CIF data are then added to the table and the summary is exported.

4.9 "Number of Branch Time Zones per IIS UserID.sas"

159. This script generates the output for table “Number of Branch Time Zones per IIS UserID”. The script simply reads in the results of the IIS Cookie Data, and assigns time zones to each corresponding to “Pacific Time”, “Mountain Time”, “Central Time”, “Eastern Time”, “Atlantic Time”, “Newfoundland Time”. It was determined that a “Branch Time zone” of “0.0” in the IIS Cookie data was related to Eastern Time and a value of “-3.0” related to “Pacific Time”. “Branch Time zone” from the IIS Cookie Data that are blank, or have the values of “3.0” or “9.0” were classified as “Unknown”.

160. A table with the permutations of time zones identified in the IIS Cookie Data can be found below. These represent all UserID in the IIS Cookie Data not starting with “#”. Not all UserIDs are used in the damages analysis.

Time zones	UserIDs	% Total	Time zones	UserIDs	% Total
Eastern	20,137	56.9%	Atlantic Pacific	6	0.0%
Pacific	5,323	15.0%	Eastern Newfoundland	5	0.0%
Mountain	4,896	13.8%	Mountain Newfoundland	4	0.0%
Central	2,582	7.3%	Atlantic Central	1	0.0%
Atlantic	1,293	3.7%	Newfoundland Pacific	1	0.0%
Newfoundland	368	1.0%	Eastern Pacific Unknown	22	0.1%
Unknown	29	0.1%	Atlantic Eastern Mountain	11	0.0%
Eastern Pacific	165	0.5%	Atlantic Eastern Pacific	8	0.0%
Central Eastern	115	0.3%	Eastern Mountain Pacific	6	0.0%
Mountain Pacific	102	0.3%	Central Eastern Pacific	5	0.0%
Eastern Mountain	78	0.2%	Atlantic Eastern Newfoundland	1	0.0%
Atlantic Eastern	61	0.2%	Central Eastern Mountain	1	0.0%
Pacific Unknown	56	0.2%	Central Mountain Pacific	1	0.0%
Central Mountain	45	0.1%	Atlantic Central Eastern Pacific	4	0.0%
Central Pacific	23	0.1%	Atlantic Eastern Mountain Pacific	1	0.0%
Atlantic Newfoundland	15	0.0%	Atlantic Eastern Newfoundland Pacific	1	0.0%
Eastern Unknown	9	0.0%	Central Eastern Mountain Pacific	1	0.0%
Atlantic Mountain	8	0.0%	Total	35,384	100.0%

4.10 "MACS Active Directory Adjustment.sas"

161. This script generates the output for table “**MACS Active Directory Adjustment**”. This script loads CBFE, CIF, Horizon, IIS, SMART, and MACS Active Directory data that was produced for the Fotheringham Deloitte Report. Some of this data was not produced to Fotheringham in the same format that data was produced to our team, thus there are some differences in how the timestamps are handled.

162. First, IIS data was loaded for available employees analyzed. This appeared to be produced in UTC time and was standardized to Eastern. Next, Deloitte CBFE data was loaded for available employees. This data was already converted to Eastern when Fotheringham received it. Next, SM@RT data was loaded and converted to Eastern time from UTC for available employees. Next, Horizon data was loaded for available employees which is already in Eastern time. Next, the

MACS Active Directory data was loaded for available employees where the event description was not equal to “Not Applicable”. This data appeared to be in Eastern time. Finally, CIF data was loaded for available employees and appeared to already be in Eastern time.

163. The initial timestamps of the day were then compared with and without the MACS Active directory. The average difference in the initial timestamp of the day was then taken and reported.

4.11 "Earn Codes.sas"

164. This script generates the output for the report table **“Earn Codes”**. The script reads in payroll data, and summarizes to the native field “Earn Code Description”. An additional step counts the distinct employees in payroll as well as those not attributed to categories specifically listed in the table.

4.12 "UserID per Employee.sas"

165. This script generates the output for the report table **“UserID per Employee”**. The script reads in the output table from the IIS Cookie to Payroll Matching Algorithm and combines it with the distinct set of “EmplID” and “Operator ID” native to the CIF data. The script then counts and outputs the number of “Operator ID” that are associated with each “EmplID”.

4.13 "Lunch Gap Analyses.sas"

166. This script generates the output for the report tables **“Average Number of Gaps perDay by Class Position”** as well as **“Average Potential Lunch Gap by Position”**. The first step of the script stacks all disaggregated timestamps, adjusted for daylight savings time and individual employee time zones, and limits the data to individual days with CBFE data. Next, the Employee ID is joined with the stacked data and optouts are removed.

167. The data is then sorted by employee, date, and time. The next time of the day is then merged into the table to identify the gap length in minutes. Further, the corresponding dates in payroll are identified for each employee. Subsequently, the data is limited to employees with CBFE data or having greater than 7 hours in average duration on days throughout the week.

168. The average number of timestamps per day by position is then computed. This is followed by the computation of each employee-days maximum gap under 60 minutes in a given day between 11:30am and 2:29pm. The average maximum gap per day by class position is then calculated

4.14 "Dates Missing in the Data.sas"

This script generates the output used to create tables **"Dates Missing in the Horizon Data"**, **"Dates Missing in the CBFE Data"**, and **"Dates missing in the CIF Data"**. Specifically, the data is limited to dates where class employees are observed. Next, the dates, or gaps missing in the data were assessed and output.

4.15 "Open and Close Adjustment.sas"

169. This script generates the output used to create tables "Analysis of Timestamp Bookends and Branch Open/Close Times", "Employee First Timestamp Compared to Open Time", and "Employee Last Timestamp Compared to Close Time".

170. The first step in this script reads in the aggregated timestamp data, limits it to class employees found in payroll, subsets to weeks where CBFE data is available, and applies the adjustments made for the MACS Active Directory and Blotter data. The data is also limited to days with greater than 7 hours or containing CBFE data, as well as employees who are ever found in CBFE data.

171. Next, the open and close time of each employees' matched branch is merged into the table. Employees' first and last timestamps are then compared to the assigned branch opening and closing times. Specifically, the open adjustment is calculated as the observed first timestamp minus the branch opening time. The close adjustment is calculated as last observed timestamp minus the branch closing time.

172. Next, the mode of the open and close adjustments are calculated. These represent employees' timestamps with the most frequent number of minutes (rounded to full minutes) before branch opening times and after branch closing times.

173. The mode of the elapse times are used to limit the data to observed employees who have open and close adjustments between 0 and the mode adjusting the distributions of employees who

have timestamps before the branch opening time or after the branch closing time. Further, the mean of these distributions is then calculated to establish the adjustment for Model 3.

174. To identify employees who have timestamps close to the branch opening and closing times, the distribution of employees arriving after the branch opening time or before the branch closing time are analyzed. We analyzed the datapoints from this distribution with elapse times from the open and close times from 1 through 30 minutes to identify a cutoff point from which on the decline in the relative frequency is monotone. These cutoff points were identified as 25 minutes after the open time and 27 minutes before the close time. Tables associated with this analysis are found below:

Elapse Time: First Time After Open Time (Minutes)	Percent Total Employee Days	Decline in Percent
1	1.964%	
2	1.869%	TRUE
3	1.768%	TRUE
4	1.645%	TRUE
5	1.553%	TRUE
6	1.432%	TRUE
7	1.370%	TRUE
8	1.257%	TRUE
9	1.197%	TRUE
10	1.140%	TRUE
11	1.093%	TRUE
12	1.040%	TRUE
13	1.001%	TRUE
14	1.005%	FALSE
15	0.990%	TRUE
16	0.997%	FALSE
17	0.972%	TRUE
18	0.999%	FALSE
19	0.981%	TRUE
20	1.011%	FALSE
21	0.974%	TRUE
22	0.996%	FALSE
23	0.986%	TRUE
24	0.954%	TRUE
25	0.908%	TRUE
26	0.889%	TRUE
27	0.844%	TRUE

Elapse Time: Last Time Before Close Time (Minutes)	Percent Total Employee Days	Decline in Percent
1	1.343%	
2	1.301%	TRUE
3	1.265%	TRUE
4	1.222%	TRUE
5	1.165%	TRUE
6	1.164%	TRUE
7	1.187%	FALSE
8	1.245%	FALSE
9	1.234%	TRUE
10	1.226%	TRUE
11	1.234%	FALSE
12	1.259%	FALSE
13	1.295%	FALSE
14	1.328%	FALSE
15	1.334%	FALSE
16	1.369%	FALSE
17	1.393%	FALSE
18	1.417%	FALSE
19	1.418%	FALSE
20	1.438%	FALSE
21	1.435%	TRUE
22	1.454%	FALSE
23	1.451%	TRUE
24	1.457%	FALSE
25	1.454%	TRUE
26	1.452%	TRUE
27	1.422%	TRUE

Elapse Time: First Time After Open Time (Minutes)	Percent Total Employee Days	Decline in Percent
28	0.783%	TRUE
29	0.736%	TRUE
30	0.698%	TRUE

Elapse Time: Last Time Before Close Time (Minutes)	Percent Total Employee Days	Decline in Percent
28	1.407%	TRUE
29	1.389%	TRUE
30	1.363%	TRUE

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Education

- BS in Statistics
University of Dortmund, Germany
- BA in Business Administration
University of Dortmund, Germany
- MS in Statistics
University of Dortmund, Germany
- MA in Economics
University of California, San Diego
- ABD in Economics
University of California, San Diego

Professional Associations

- Member of the American Economic Association (AEA)
- Member of the American Statistical Association (ASA)
- Member of the Econometric Society
- Member of the Mathematical Association of America (MAA)
- Member of the American Association for Public Opinion Research (AAPOR)
- Member of the Insights Association (FKA MRA)
- Member of AICPA task force dealing with statistical methodology questions in Corporate Integrity Agreements (CIA).

Background

Stefan is a Managing Director at Berkeley Research Group where he focuses on the application of economic, statistical, and financial models to a variety of areas such as solutions to business issues, complex litigation cases, and economic impact studies. He has extensive experience applying economic and statistical theories and methodologies to a wide variety of cases where But-for-scenarios have to be developed based on probabilistic methods and where statistical predictive modeling has to be applied to assess liability and damages.

Stefan has applied these techniques in business disputes, single-plaintiff cases, multi-plaintiff cases, and class action proceedings in the areas of class certification, liability assessment, developing damages scenarios, and post settlement or judgment distributions.

Professional and Business Experience

Representative Engagements

Employment Litigation

Stefan has extensive experience applying economic and statistical theories and methodologies to employment related matters such as discrimination, wrongful termination, and wage and hour cases. His work in such cases to date has included, but is not limited to, designing and conducting surveys, time and motion studies, observational studies, statistically analyzing the results of such surveys and studies (his own and other experts' studies), applying statistical sampling methodologies to extrapolate results from a subset to a universe of individuals, developing statistical models and tests to answer liability questions, applying economic theory to develop damages scenarios, and analyzing large employment related databases.

WAGE AND HOUR

- » For a computer equipment leasing company Stefan utilized statistical models to estimate exposure due to alleged forfeiture of unpaid vacation time.
- » In several cases involving 12-hour shift workers at hospitals Stefan performed rebuttal analyses of plaintiff's damages computations.
- » For a large electronic retail chain Stefan calculated exposure based on the failure of paying overtime for store managers.
- » For a major department store Stefan performed a statistical analysis of manager surveys where he found significant differences in the managers' allocation of time across department and stores. Ultimately, due to these differences a class was not certified.
- » For a large sporting goods retail chain Stefan assisted in defining the size of the potential class and in estimating the potential exposure which led to a favorable, early settlement of the case.
- » For a women's shoes retail chain Stefan designed and statistically analyzed an observational study to quantify the amount of time spent on exempt versus non-exempt tasks.
- » For a video rental store chain Stefan developed sampling algorithms based on in-store security cameras to analyze time spent by assistant managers on exempt versus non-exempt activities.
- » For a large fast food chain Stefan directed a team collecting employee work information from restaurant locations in order to monitor and gain compliance in response to litigation
- » For a large mass merchandiser Stefan developed a document and data reconciliation tool and he developed a statistical sampling mechanism to proof compliance with a court ordered document retention procedures in the course of a wage and hour litigation.
- » For a limousine company Stefan developed a statistical sampling based exposure model to quantify the impact of alleged unpaid overtime and missed meal breaks.
- » Stefan worked with a Fortune 500 bank in a class action suit to review the claims of managers that were misclassified and should have been paid overtime. To compute damages, Stefan reviewed the overtime records of employees in this position prior to a job classification change and, in the absence of overtime data after the job classification change, Stefan reviewed sign in and sign out times of the office building.
- » For a long-term care provider Stefan used data from timesheets, payroll, and other scheduling records to create comprehensive reports showing potential exposure for each of the claimed areas: timely wage payment, overtime wage payment, adequate daily meal and rest break periods, and travel time compensation.
- » For a maternity clothing store chain Stefan performed analyses related to exempt/non-exempt status issues for managers and assistant managers. Stefan also conducted a break time analysis for all employees.

- » For a commercial flooring contractor Stefan assessed the job duties and responsibilities of a group of supervisors. During the engagement, the scope of work expanded to include an analysis of misclassification and back-pay exposure for additional groups of employees.
- » For a software developer Stefan analyzed how department and project specific characteristics impacted the work flow and the correlation of that impact to certain exemptions.
- » For a large meatpacker Stefan conducted a time and motion study to properly assess the duration of certain separately compensated activities to rebut allegations of violation of minimum wage laws.
- » For a public university housing department Stefan conducted an extensive time and motion study to identify the tasks (and associated time range to perform each task) related to processing a contract cancellation.
- » For a large drugstore chain Stefan used in-store cameras for the smaller stores and actual in-store observations for the larger stores to conduct a time motion study and quantify the time spent by assistant managers on certain pre-defined tasks.
- » For a large public storage company Stefan conducted a detailed time and motion study to determine the cost of collection and administration of late payments. Using both self-logging and independent review techniques, Stefan defined each step in the late payment process, calculated the cost to the company for such activities, and compared this cost to the late fees under dispute.
- » For a large retail store chain Stefan performed statistical analyses of regularly conducted employee activity surveys.
- » For a mass merchandiser, Stefan conducted an observational study of activities of all individuals classified as managers to show significant differences in daily activities.
- » For a department store, Stefan conducted an in-store observational study of managers and assistance managers to assess the percentage of time spent on managerial tasks.
- » For a state ferry system in the Pacific Northwest, Stefan conducted an observational study of engine room personnel during shift changes to quantify potentially unpaid time worked.
- » For a large retail chain Stefan conducted an extensive analysis of the company's compliance with break time rules and regulations and also the employees' usage and potential abuse of break time.
- » For a large mass merchandise retailer Stefan compiled a comprehensive database of punch clock data, payroll data, point of sales data, hardcopy information about manual edits of time entries, store security system data, etc. to analyze allegations of inserting breaks, deleting time and forcing employees to work after they clocked out.
- » For a large electronic retail chain Stefan analyzed time card data, point of sales data and other store specific attributes to quantify potentially missed meal and rest breaks.

DISCRIMINATION, WRONGFUL TERMINATION

- » For a large telecommunications company, Stefan provided a rebuttal analysis of plaintiffs' expert's damages analysis in a multi-plaintiff action alleging wrongful termination and age discrimination. Stefan also developed alternative damages scenarios and addressed questions of liability.
- » In an OFCCP investigation alleging discriminatory hiring practices at several food processing plants, Stefan constructed employment databases and performed statistical analyses to address the allegations.
- » In a gender discrimination case involving a client in the food processing industry, Stefan analyzed the impact of the implementation of an Affirmative Action Plan on the allegedly discriminatory employment practices.
- » In a wrongful termination case alleging age discrimination for a vegetable seed company, Stefan performed rebuttal work of the plaintiff's expert's liability and damages analysis.
- » In a wrongful termination case alleging age discrimination for a major aerospace company, Stefan performed statistical analyses to rebut allegations of age discrimination.
- » In a class action race discrimination suit against the Alabama Department of Transportation, Stefan developed statistical regression models and tests to analyze the alleged discrimination.
- » In a class action gender discrimination case against a large real estate brokerage firm, Stefan provided deposition testimony to class certification issues.
- » In a wrongful termination dispute of a regional property manager, Stefan utilized economic and statistical models to assess the allegations of economic loss due to the separation of employment.
- » In a gender discrimination case against a temporary employment agency, Stefan performed econometric analyses to disprove salary discrimination against two former female employees. Stefan addressed plaintiffs' expert's damages calculations and developed alternative scenarios.
- » In a case involving a job lottery for dock workers, Stefan performed a statistical analysis of the process showing that the lottery did not create a disparate impact.
- » For a large meat processing plant, Stefan performed statistical analyses of employment data to address allegations of discriminatory hiring practices.

OTHER DISPUTES

- » In a class action alleging misleading advertising practices, Stefan performed statistical analyses in the class certification stage.
- » In a large variety of patent, copyright, and trademark infringement cases, Stefan rebutted expert reports utilizing economic theory or statistical techniques, in particular economic demand models, regression models and statistical sampling methods.

- » For a large U.S. food and beverage company, Stefan specified and estimated multivariate econometric and statistical models to derive the value of trademarks involved in a business acquisition.
- » In several cases involving confusion of trademarks, Stefan designed, conducted, and statistically analyzed the results from consumer surveys that were designed to assess the market penetration of certain trademarks.
- » In several cases involving similar sounding advertising slogans, Stefan designed, conducted, and statistically analyzed the results from consumer surveys that were designed to assess the likelihood of confusion as to which manufacturer was behind a particular slogan.
- » For a large real estate developer who was accused by several individual architects of having used their designs and plans in their developments without paying royalties, Stefan used statistical models to assess the “likeness” of the plans involved.
- » In a copyright infringement case alleging the use of lyrics from another song, Stefan used probabilistic models to assess the “likeness” of the lyrics in question and he also calculated the probability that a certain sequence of words used in the lyrics would happen by chance.
- » In a case involving the use of a “look-alike” of a celebrity chef and cookbook author, Stefan conducted an economic demand analysis of the spice market to estimate the goodwill of the particular brand as compared to other branded and several unbranded competitors. In the same case, Stefan predicted future book sales and estimated future royalty payments for books already in print and books to be published
- » For a patent infringement case on micro-motors, Stefan analyzed data of production and sales of goods that contain micro-motors and ran econometric regressions to determine price erosion.
- » In a patent infringement case on electronic regulators used in automobiles, Stefan utilized multivariate regression models to determine market segment specific price erosion.
- » For a patent infringement case on industrial machines, Stefan analyzed scenarios based on economic demand models and price elasticity calculations to determine past and future lost profits as well as price erosion.
- » For a large U.S. food and beverage company, Stefan worked on an evaluation of intangible assets based on an econometric model comparing the demand of branded and private label products.
- » In a copyright infringement case of used car evaluation guides, Stefan specified and estimated linear and non-linear regression models to determine the effect of the infringement of the copyright on sales over time.
- » In several cases alleging the theft of trade secrets when high level employees left a company, Stefan performed economic analyses to estimate the impact of the theft of the trade secret.
- » In a large variety of patent, copyright, and trademark infringement cases, Stefan rebutted expert reports utilizing economic theory or statistical techniques, in particular economic demand models, regression models and statistical sampling methods.

- » In a class action alleging improper practices of charges for gym memberships, Stefan performed statistical analyses in the class certification analysis. Based on the analysis, the ultimately certified class was significant smaller than initially defined. In this case, Stefan also developed statistical models to assess damages.
- » In a class action alleging losses to consumers due to faulty window regulators in automobiles, Stefan utilized statistical models to assess economic damages.
- » In a class action against a large financial institution alleging fee overcharges for personal trust accounts, Stefan utilized statistical analyses to segment the account holders and ultimately reduce the size of the class.
- » In a case where a provider of a used car evaluation model was ordered by the court to test if their model did not significantly undervalued cars, Stefan performed statistical analyses.
- » In a class action case over fee overcharges in the payment process of car insurance, Stefan developed a distribution model of repayments to class members after a settlement had been reached.
- » In a class action of home owners over alleged diminution of property values due to proximity to a plume of contaminated soil, Stefan performed statistical analysis to assist counsel in a motion against class certification.
- » In a natural resource damage case, Stefan provided econometric analysis of property value loss due to proximity to a solid waste site utilizing hedonic regression models.
- » In a natural resource damage case, Stefan provided econometric analysis of property value loss due to proximity to a polluted river utilizing hedonic regression models.
- » For a case involving potential damage from a landfill in a state park, Stefan analyzed data about travel, tourism and park attendance. Stefan specified and estimated linear regression models and time series models to predict park attendance.
- » In a class action case involving alleged diminution of property values due to ground-water contamination, Stefan specified and estimated hedonic regression models to show that other factors than the contamination contributed significantly to the loss in property value.
- » In a class action against a large financial institution alleging non-payment of coupon payments for bearer bonds Stefan designed and administered large-scale databases to reconstruct accounting records of a large financial institution's Corporate Trust Department. He developed statistical models to analyze bondholders' presentment behavior of Bearer bonds.
- » In a class action dispute between the Department of Interior and individual Native Americans over mismanagement of individual trust accounts, Stefan performed a statistical analysis of an electronic database with approximately 60 million records in order to draw a statistically valid sample of accounts for further analysis.
- » In a trademark infringement case of video equipment, Stefan calculated damages based on the defendant's unjust enrichment utilizing statistical time trend models.

- » For a shareholder derivative action against a leading publicly-traded health care provider, employed an econometric approach to quantify potential damages per share due to alleged section 10b-5 violations and other claims. For the same matter, developed a multi-trader model to estimate the number of shares potentially damaged.
- » In a dispute between a major health care provider and private payor groups, Stefan developed statistical stratified sampling models to assess exposure across different contract types.
- » For a large financial institution's personal trust department, Stefan designed a random sample to estimate the potential exposure due to fee overcharges.
- » For a computer equipment leasing company Stefan utilized statistical models to estimate exposure due to alleged forfeiture of unpaid vacation time in a class action of former and current employees.
- » For a leading publicly-traded developer of enterprise management software, employed statistical approach to demonstrate the diversity of investment styles among proposed lead plaintiffs for a securities class action lawsuit alleging section 10b-5 violations and other claims. Employed an econometric approach to estimate potential damages for each lead plaintiff.
- » For a leading publicly-traded developer of enterprise management software, Stefan employed econometric time-series model to analyze allegations of insider trading and the timing of certain stock transactions relative to information available to officers in the company.
- » For a shareholder derivative action against a leading publicly-traded health care provider, employed an econometric approach to quantify potential damages per share due to alleged section 10b-5 violations and other claims. For the same matter, developed a multi-trader model to estimate the number of shares potentially damaged.
- » For a publicly-traded manufacturer of office supplies, developed a Black-Scholes application and utilized a binomial distribution probability methodology to evaluate the appropriateness of the size of a loan loss reserve related to a loan collateralized by the assets of an employee stock purchase plan.
- » For a large software developer, Stefan performed statistical modeling to assist in a securities class action litigation involving allegations of improper revenue recognition, reserve allocations, financial statement disclosures and other accounting irregularities
- » For a failed computer hardware company in defense of a 10b-5 securities litigation action, Stefan performed statistical analyses of accounting transactions, inventory and receivable reserves and the auditor's work papers in its evaluation of the allegations.
- » In several Rule 10b(5) class actions, Stefan used the event study approach to calculate the value line of a security. In these cases Stefan applied complex and advanced one, two, and multi-trader models.

Depositions

1. MRO Communications, Inc vs. American Telephone and Telegraph Company, United States District Court District of Nevada, Case. No. -5-95-903-PMP, Deposition on September 26, 1996
2. Yolanda Aiello Harris, individually and on behalf of all others similarly situated; Jennifer Hopkins, individually and on behalf of others similarly situated; Shannon L. Bradley, individually and on behalf of others similarly situated, Plaintiffs, vs. CB Richard Ellis, Inc., a California corporation; CB Commercial INC., a California corporation; Defendants, Superior Court of California, County of San Diego, Case No. GIC 745044, Deposition on January 5, 2001.
3. State of Tennessee, ex rel., Douglas Sizemore, Petitioner vs. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No 99-917-II, Deposition on October 11, 2001.
4. Howard Wright, Inc., a California corporation doing business as AppleOne Employment Services, Plaintiffs, vs. Olsen Staffing Services, Inc., a Delaware Corporation, Dagney Smith, an individual, Vicky Riechers, an individual, and Linda Shiftman, an individual, Defendants, Superior Court of the State of California for the County of Los Angeles, Case No. BC 200657, Deposition on December 7, 2001.
5. Sacred Heart Medical Center, et al., Plaintiffs, -vs- Department of Social and Health Services, and Dennis Braddock, the Secretary of the Department of Social and Health Services, Defendants, Superior Court of the State of Washington in and for the County of Thurston, No. 00-2-01898-1, Deposition on January 23, 2003.
6. Patrick Bjorkquist individually and on behalf of all others similarly situated, Plaintiff, vs. Farmers Insurance Company of Washington, Defendant, in the Superior Court of the State of Washington for King County, Case No.: 02-2-11684-1 SEA, Deposition on November 3, 2003.
7. Diversified Property, a general partnership, Dora Saikhon Family Trust, and Nancy Saikhon Borrelli, an individual, Plaintiffs vs. Manufacturers Life Insurance (U.S.A.), a Michigan corporation, erroneously sued as Manufacturers Life Insurance Company, Inc., Defendants in the Superior Court of California, County of San Diego, Case No.: GIC 815128, Deposition on July 21, 2004.
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103. Ira Kleiman, as the personal representative of the Estate of David Kleiman, and W&K Info Defense Research, LLC v. Craig Wright, United States District Court, Southern District of Florida, Case No. 9:18-cv-80176-BB/BR, Deposition on April 22, 2020.
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126. Guy Reggev v. Brius Management Co., Superior Court of California County of Los Angeles, Central District, Case No. 18STCV08773, Deposition on January 10, 2022.

Testimony

1. State of Tennessee, ex rel., Douglas Sizemore, Petitioner vs. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No 99-917-II, Trial Testimony on October 16, 2001.
2. State of Tennessee, ex rel., Douglas Sizemore, Petitioner vs. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No 99-917-II, Rebuttal Testimony on October 26, 2001.
3. Howard Wright, Inc., a California corporation doing business as AppleOne Employment Services, Plaintiffs, vs. Olsen Staffing Services, Inc., a Delaware Corporation, Dagney Smith, an individual, Vicky Riechers, an individual, and Linda Shiftman, an individual, Defendants, Superior Court of the State of California for the County of Los Angeles, Case No. BC 200657, Trial Testimony on March 4, 2002.
4. Columbia/HCA Healthcare Corporation - Billing Practices Litigation, United States District Court, Middle District of Tennessee, Nashville Division, Case No. 3-98-MDL-1227 on June 28, 2002.
5. Sacred Heart Medical Center, et al., Plaintiffs v. Department of Social and Health Services, and Dennis Braddock, the Secretary of the Department of Social and Health Services, Defendants, Superior Court of the State of Washington in and for the County of Thurston, No. 00-2-01898-1, Testimony in Liability Trial on April 14, 2003.

6. Diversified Property, a general partnership, Dora Saikhon Family Trust, and Nancy Saikhon Borrelli, an individual, Plaintiffs v. Manufacturers Life Insurance (U.S.A.), a Michigan corporation, erroneously sued as Manufacturers Life Insurance Company, Inc., Defendants in the Superior Court of California, County of San Diego, Case No.: GIC 815128, Trial Testimony on October 25, 2004.
7. Bridgestone/Firestone North American Tire v. Sompō Japan Ins. Co. of America, United States District Court for the Middle District of Tennessee Nashville Division Civil Action NO. 3-02-1117 on March 7, 2005
8. Group Anesthesia Services, A Medical Group, Inc., Claimant, vs. American Medical Partners of North Carolina, Inc., etc., et al., Respondents, JAMS Arbitration, Reference No. 1100040919, Arbitration Testimony on March 23, 2005.
9. Goldman et al. v. RadioShack Corporation, United States District Court, Eastern District of Pennsylvania, Case No. 03 CV 0032, Testimony in Liability Trial on June 28 and 29, 2005.
10. Goldman et al. v. RadioShack Corporation, United States District Court, Eastern District of Pennsylvania, Case No. 03 CV 0032, Rebuttal Testimony in Liability Trial on July 5, 2005.
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12. School Districts' Alliance v. State of Washington, United States District Court, Eastern District of Thurston, Case No. 04-2-02000-7, Trial Testimony on November 13, 2006.
13. In the Matter of Premier Medical Group, PC, Appellant – Department of Health and Human Services, Office of Medicare Hearings and Appeals, Southern Field Office, ALJ Appeal No. 1-221579701, Medicare Appeal No. 1-18761858, Provider No. 3706654, AR No. 9406352171039, Judge Zaring Robertson, US Administrative Law Judge, Testimony on April 1, 2008.
14. Darensburg et al. v. Metropolitan Transportation Commission, U.S. District Court, Northern District of California, Case No. C-05-1597-EDL, Trial Testimony on October 9, 2008.
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17. In the matter of University of Tennessee Cancer Institute, ALJ Appeal No. 1-446 575 318, Office of Medicare Hearings & Appeals, Judge Z. Robertson, US Administrative Law Judge, Testimony on April 20, 2010.
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23. In the matter of American Home Patient, ALJ Hearing, Appeal No. 1-924297238, Office of Medicare Hearings & Appeals, Irvine Office Western Field Division, Hearing Testimony on February 28, 2013.
24. TaylorMade Golf Company Challenge to Callaway Golf Company's Final Response, National Advertising Division, New York, Testimony on March 13, 2013.
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Speaking Engagements

1. Global Brand Protection: Challenges and Opportunities, December 8, 2015.
2. Washington Health Care Conference, May 2016.
3. 4th Advanced Forum on False Claims & Qui Tam Enforcement Conference, January 2017.
4. False Claims Act/Qui Tam Whistleblowers Litigation: Hot Buttons in 2017 Live Webcast, March 2017.
5. Fraud & Abuse: Part II – Understanding Statistical Sampling, Live Webcast, September 2017.
6. American Hospital Association Chief Compliance Officers Roundtable: Defending against audits using statistical sampling and extrapolation, April 2018.
7. How to Effectively Use Statistical Sampling in Class Action Litigation: Tips and Strategies in 2019 Live Webcast, December 2018.
8. Statistical Sampling in Healthcare Audits and Investigations, HCCA's 23rd Annual Compliance Institute, April 9, 2019.
9. False Claims Act: A Look Back and 2021 Expectations LIVE Webcast, The Knowledge Group Webinar, December 03, 2020.
10. False Claims Act Liability: Best Practices in Managing Complexities, The Knowledge Group Webinar, April 2021.
11. Surveys and Certification in Consumer-Finance Class Action: Supporting, Attacking Predominance and Superiority, Strafford, August 26, 2021.
12. Class Certification in Antitrust: Key Considerations to Avoid Pitfalls Live Webcast, The Knowledge Group Webinar, September 15, 2021.

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Recognition

Stefan was identified by Who's Who Legal as one of the Leading Practitioners in the field of Litigation Expert Witness in 2020. <https://whoswholegal.com/stefan-boe>

Professional and Business History

- » Berkeley Research Group, 2010 - Present, Managing Director
- » Resolution Economics, 2008 - 2010, Partner
- » Alvarez & Marsal, 2007 - 2008, Managing Director
- » LECG LLC, 2005 - 2007, Director
- » Navigant Consulting Inc., 2004 - 2005, Managing Director in Litigation and Investigation Practice
- » Deloitte & Touche LLP, 2003 - 2004, Leader of the Economic and Statistical Consulting Practice in the West Region
- » PricewaterhouseCoopers LLP, 2002 - 2003, Leader of the Litigation Consulting Group in Los Angeles, Leader of the Economic and Statistical Consulting Practice in the West Region
- » Andersen LLP, 1992 - 2002, Partner (since 2000), last position held: Director of Economic and Statistical Consulting practice in the Pacific Region
- » University of California, San Diego, 1989 -1991, Teaching Assistant, Department of Economics
- » German Government, 1986 -1989, Economic Research Assistant

Exhibit B: Materials Relied Upon
Dara Fresco V. Canadian Imperial Bank of Commerce
Materials Relied Upon as of January 12, 2022

Any document reviewed or cited anywhere in the expert report of Stefan Boedeker, dated January 12, 2022

Doc. No.	Documents
1	Betty Reid Affidavit, dated April 17, 2017
2	Boedeker Affidavit, dated August 1, 2019 and associated materials considered
3	Boedeker Affidavit, dated February 8, 2019 and associated materials considered
4	Boedeker Affidavit, dated July 14, 2016 and associated materials considered
5	Corey Fotheringham Affidavit, dated May 13, 2008
6	John Silverthorn Affidavit, dated May 14, 2008
7	Letter Regarding Production from Linda Plumpton to Louis Sokolov, dated August 10, 2021
8	Letter Regarding Production from Linda Plumpton to Louis Sokolov, dated December 13, 2021
9	Letter Regarding Production from Linda Plumpton to Louis Sokolov, dated March 29, 2021
10	Letter Regarding Production from Louis Sokolov to Linda Plumpton, dated June 15, 2021

Doc. No.	Data Received
11	2001-2003 Class List.csv
12	AD Stratification.xls
13	Applications by Role (6).xls
14	AuditedEvents.xls
15	Blotter Production, Tranches 1-6
16	CIF Inquiries - CK00520 (2).xls
17	CIF Timestamp Dataset (ecif.csv)
18	CK00520.txt
19	CK00520_Convert CBFE.txt
20	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2003.xls
21	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2004.xls
22	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2005.xls
23	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2006.xls
24	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2007.xls
25	CONFIDENTIAL INFORMATION WD0155 - AdHoc Request -FRESCO-2009.xls
26	CONFIDENTIAL INFORMATION WD0155- AdHoc Request -FRESCO-2008.xls
27	DR00268_ADlog.xls
28	DR00268_CBFE_timingLog.txt
29	DR00268_CIFlog.xls
30	DR00268_HorizonTransTrance.txt
31	dr00268_SM@RT_log.txt
32	DR00268-AuditedEvents.csv
33	DR00268-Nov-AuditedEvents.xls
34	DS01132_ADlog.xls
35	DS01132_CBFE_timingLog.txt
36	DS01132_CIFlog.xls
37	DS01132_HorizonTransTrance.txt
38	DS01132_SM@RT_log.txt
39	DS01132-AuditedEvents.csv
40	DS01132-Nov-AuditedEvents.xls
41	Fresco - opt out record & updated contact info.xlsx
42	inlieu.csv
43	ListofEmployeeIDstoRemove.csv

Exhibit B: Materials Relied Upon
Dara Fresco V. Canadian Imperial Bank of Commerce
Materials Relied Upon as of January 12, 2022

Any document reviewed or cited anywhere in the expert report of Stefan Boedeker, dated January 12, 2022

44	ListofEmployeePPEtoRemove.csv
45	March 2021 Production of Data Systems
46	MU00029_ADlog.xls
47	MU00029_CBFE_timingLog.txt
48	MU00029_CIFlog.xls
49	MU00029_HorizonTransTrance.txt
50	mu00029_SM@RT_log.txt
51	MU00029AuditedEvents.csv
52	MU00029-Nov-AuditedEvents.xls
53	October 2020 Production of SMART and Horizon Data
54	VG00003_ADlog.xls
55	VG00003_CBFE_timingLog.txt
56	VG00003_CIFlog.xls
57	VG00003_HorizonTransTrance.txt
58	VG00003-AuditedEvents.csv
59	VG00003-Nov-AuditedEvents.xls

Doc. No.	External Data
60	Canadian Banks.pdf. Available at https://www.payments.ca/sites/default/files/07-16-mbrbnksn.pdf
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62	StatCan Monthly Overtime Metrics (14100308.csv). Available at https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410030801
63	StatCan Yearly CPI Data (1810000501_databaseLoadingData.csv). Available at https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000413

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67	Kotz, S. and Norman Johnson. (1988). Encyclopedia of Statistical Sciences, Volume 4, John Wiley & Sons

Exhibit B: Materials Relied Upon
Dara Fresco V. Canadian Imperial Bank of Commerce
Materials Relied Upon as of January 12, 2022

Any document reviewed or cited anywhere in the expert report of Stefan Boedeker, dated January 12, 2022

68	Kotz, S. and Norman Johnson. (1988). Encyclopedia of Statistical Sciences, Volume 5, John Wiley & Sons
69	Kotz, S. and Norman Johnson. (1988). Encyclopedia of Statistical Sciences, Volume 9, John Wiley & Sons
70	Molenberghs, G., G. Fitzmaurice, M. Kenward, A. Tsiatis, and G. Verbeke (Editors), Editors. (2015). Handbook of Missing Data Methodology
71	Robert, Christian and George Casella. (2004). Monte Carlo Statistical Methods, Springer Verlag
72	Wooldridge. (2010). Econometric Analysis of Cross Section and Panel Data
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76	Definition of NOC 6551. https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=122372&CVD=122376&CPV=6551&CST=01012011&CLV=4&MLV=4
77	Hjelmqvist, Sten (26 March 2012), Fast, memory efficient Levenshtein algorithm available at https://www.codeproject.com/Articles/13525/Fast-memory-efficient-Levenshtein-algorithm-2
78	StatCan About Us. https://www.statcan.gc.ca/en/about/about?MM=as
79	Statistics Canada Policy on the Use of Administrative Data Obtained under the Statistics Act. https://www.statcan.gc.ca/en/about/policy/admin_data
80	URL Encoding. https://www.techopedia.com/definition/10346/url-encoding

FORM 53
EXHIBIT C TO STEFAN BOEDEKER EXPERT REPORT
SWORN ON January 12, 2022

Court File No. 07-CU-334113PD2

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DARA FRESCO

Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the Class Proceedings Act, 1992

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Stefan Boedeker. I live in the City of Las Vegas, in the State of Nevada, United States of America.
2. I have been engaged by or on behalf of the Plaintiff to provide evidence in relation to the above noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

(c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: January 12, 2022


STEFAN BOEDEKER

NOTE: This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

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For Mediation Purposes Only

Court File No. 07-CU-334113PD2

ONTARIO SUPERIOR COURT OF JUSTICE

DARA FRESCO

Plaintiff

v.

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

REPLY REPORT OF

STEFAN BOEDEKER

July 18, 2022

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1 Introduction

1. On January 12, 2022, my team and I submitted an Expert Report to the Ontario Superior Court of Justice (“Boedeker Report”). The Boedeker report detailed the steps we took to extract, standardize, and clean Systems Data, provided examples of the data we were using to build our model, explained gaps in the data and what imputation methods were used to fill those gaps, and described our statistical methodology to determine damages.

2. The following Table 1 summarizes data systems that CIBC produced in this litigation:

Table 1: Summary of Available Data Systems

System	Description	Coverage ¹
SM@RT	“Sales Management & Reporting Tool,” known as SM@RT, tracked customer relationships to advisors and provides sales management solutions. It captured sales activities, and product sales reports. FSRs and ABMs had access to Sm@rt. CSRs and BAs only had access to the referral functionality in Sm@rt.	September 2004 to June 18, 2009.
Horizon	Horizon was a set of applications that allowed employees to track sales leads, summarize clients and diarize upcoming tasks. It also contained planning records and customer care information. CSRs, FSRs, FSAs, BAs and ABMs all had access to Horizon.	March 2007 until June 18, 2009.
CBFE	CBFE is the “CIBC Banking Front End” application. It allowed CIBC employees to conduct customer transactions, including cheque cashing, issuing certified cheques, bank drafts, pay bills and account deposits and withdrawals. It was based on CIBC servers and is used during the balancing process. CSRs, FSRs, FSAs, BAs and ABMs all had access to CBFE, although we understand the usage could vary.	July 2006 until June 18, 2009.
CIF	CIF provided information [to employees] relating to customers and customer accounts. CSRs, FSRs, FSAs, BAs and ABMs has access to applications captured by CIF.	October 2006 until June 18, 2009.
IIS	The Intranet Webserver application recorded activity on CIBC’s intranet or internal website. It included items such as promotions, procedure changes, management communications and organization charts. CSRs, FSRs, FSAs, BAs and ABMs all had access.	March 2006 until June 18, 2009.
ISI ²	“Investor Services Inc. Online,” or ISI Online, was introduced at CIBC in January 2003. It gave employees access to investment-related applications and information including an application for opening investment accounts. FSAs had access to ISI.	December 2003 until June 18, 2009.

3. The data produced by CIBC were incomplete because of deletion by CIBC and for other reasons.³ Tables 21, 22, and 24 from the Boedeker Expert Report specify periods of data that were missing in the Horizon, SMART, and CIF data sets, respectively. These include, and are not limited

¹ The coverage period in this column reflects information disclosed across affidavits and letters received from CIBC’s counsel. Discrepancies in the denoted coverage periods are explained in the Boedeker Report.

² ISI data was excluded from the analysis due to the fact that a crosswalk between ISI User ID and other systems could not be developed and was not produced by CIBC.

³ Other reasons include lacking crosswalks to identify employees as well as sporadic missing dates in production. We are unaware why these dates are missing.

to, 305 concurrent days from Horizon between 4/1/2007 and 1/30/2008, 27 concurrent days from CBFE data from 1/31/2007 to 2/26/2007, and 57 concurrent days missing from CIF from 2/18/2007 to 4/15/2007. We are unaware why these date ranges were missing from the data produced.

4. In addition to these data, we understand that the Blotter set of 106,774 data files produced⁴ was significantly underinclusive insofar as CSRs filled out Blotters for cash balancing tasks.⁵ Given that the payroll data produced contains 768,976 distinct two week pay periods with CSRs receiving “Basic Pay”, we expected to receive several million blotter files from CIBC.⁶ Despite counsel’s request for clarification, CIBC did not specify how Blotters were identified, why the Blotters produced were produced, or what happened to the rest of the Blotters.

5. The following Table 2 gives an overview of the data systems that were deleted in their entirety by CIBC in the course of this litigation.

Table 2: Summary of Deleted Data Systems

System	Description	Deletion
Active Directory/ MACS	Active Directory captured records relating to the authentication and access of a given user to CIBC’s computer network and applications on that network. MACS is a related application that captures and maintains some of the Active Directory records in a more easily readable format. Active Directory and MACS are server-based applications. This data showed when all Class Members logged on and logged off the network. Most of the employee class positions would be caught by log off and log on records. CSRs, FSRs, FSAs, BAs and ABMs all engaged in activity that would be captured.	All records were deleted, except for the sample used in the Deloitte report (discussed below) namely five employees for approximately one month in November 2007. ⁷

⁴ Not all files in the blotter data contained a CSR’s hand-written time entry. Most reflect other system generated output.

⁵ John Silverthorn Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CV-334113PD2 (Sworn May 14, 2008) (“Silverthorn Affidavit”), ¶ 109.

⁶ For example, if each of these two week pay periods correspond to 10 days, we would expect 7,689,760 Blotter Files (768,976 x 10). Thus, if every single file received in the Blotter data represents a CSR’s Blotter, only 1.39% of documents were produced (106,774 / 7,689,760). While the number of actual CSR-days is lower than this amount due to employees who did not work 10 days in the pay period, it is evident that the produced data files are far less than what is expected. Moreover, only 26,021 files out of 106,774 were matched to employee-days. This is due to the fact that a subset of the 106,774 documents were not reflective of CSR hand-written cash balancing.

⁷ Betty Reid Affidavit, *Fresco v. Canadian Imperial Bank of Commerce*, Ontario Superior Court of Justice, Court File No. 07-CV-334113PD2 (Sworn April 17, 2017) (“Reid Affidavit”), p. 7.

System	Description	Deletion
PESA	"Personal Electronic Signing Authorities," or PESA, was introduced in 2006 and allowed branch employees to view electronic signing authorities for personal accounts. CSRs, FSRs, FSAs, BAs and ABMs all had access to PESA.	CIBC deleted all records except for five employees for approximately November 2007. PESA "update logs," which contain updates to electronic signatures but no other data (approximately 10% of total transactions on PESA) are available from October 2006 until at least June 18, 2009.
Surf Control	Surf Control was an application that recorded websites accessed by employees, and the time of that access. It was not possible to determine the duration of a user's activity. Surf Control is a server-based application. All employees with internet had access to this.	CIBC deleted all records except for five employees from October to December 2007
PDAO (Mainframe)	PDAO stands for "Personal Deposit Account Open". It was a front-end user interface that allowed for the opening personal deposit accounts and creates log files in COLT. FSRs, FSAs and ABMs had access to PDAO.	CIBC deleted all records, except for five employees for approximately one month in November 2007.
COLT (Mainframe)	COLT is an application used to open and maintain transaction accounts and to process financial transactions. COLT is a mainframe-based application. CSRs, FSRs, FSAs, BAs and ABMs all had access to COLT.	CIBC deleted all records, except for five employees for approximately one month in November 2007.
Local System Event Logs	This data reflects events that occurred on the physical computer workstations. All class employees worked on physical computer workstations.	These records were not retained due to expense and duplication in other systems, such as Active Directory / MACS, which was deleted as described above.

6. As can be seen in Table 2 above, the Active Directory and the MACS data systems contain some of the most important data points within CIBC's data systems because they captured records relating to the authentication and access of a given user to CIBC's computer network and the applications on that network. The MACS data system is a related application that captures and maintains some of the Active Directory records in a more easily readable format. Active Directory and MACS data showed when all Class Members logged on and logged off the network. Most of the employee class positions logoff and logon records would be captured in the Active Directory and MACS data. The Active directory was introduced at CIBC in 1999-2000 and was outsourced to Hewlett-Packard in 2001 and brought back in-house at CIBC in 2007.⁸ The Active Directory/MACS system were replaced in 2010 by a product called Intrust Change Auditor for AD Logging; at this time the prior Active Directory/MACs systems were deleted.⁹ The deletion

⁸ Reid Affidavit, p. 7.

⁹ Reid Affidavit, p. 7.

of these data systems during the litigation effectively erased some of the most important data points in the determination of uncompensated straight time and overtime hours.

7. The work presented in the Boedeker Report resulted in an estimate of \$58 million to \$256 million in damages, exclusive of interest, based on a “present day” calculation as of December 31, 2021. The estimation varied depending on which of three specific time periods were used, and which of our three damage models were used in the estimation.¹⁰ We have been instructed by counsel to update these damages using a “present day” calculation based on December 1, 2022. This has generated a current damages range to between \$58 million to \$262 million, exclusive of interest.¹¹ Damages with simple or compound interest accrued through December 1, 2022 increase (from the damages presented in the original Boedeker Report) between the range of \$3M to \$18M and \$6M to \$32M respectively depending on which of three specific time periods were used, and which of our three damage models were used in the estimation.

8. The Table 3 below shows revised damages in chart format, with the prior damages in parenthesis.

Table 3: Revised Damages

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$164M (\$164M)	\$321M (\$314M)	\$436M (\$417M)
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$68M (\$68M)	\$120M (\$117M)	\$147M (\$140M)
2/1/1993 - Present	Model 3 - Extend to Pre Open / Post Close	\$262M (\$256M)	\$451M (\$432M)	\$574M (\$542M)
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$167M (\$160M)	\$250M (\$236M)	\$284M (\$265M)

9. This results in the following increases in damages:

¹⁰ Boedeker Report, ¶ 41.

¹¹ The lower bound remains \$58M exclusive of interest because it corresponds to the provincial limitation to June 18, 2009.

Table 4: Difference in Damages Due to Revisions

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close		\$7M	\$19M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close		\$3M	\$6M
2/1/1993 - Present	Model 3 - Extend to Pre Open / Post Close	\$7M	\$18M	\$32M
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$7M	\$14M	\$19M

10. Additional tables related to damages revised through December 1, 2022 can be found in “Appendix A: Revised Damages through December 1, 2022” of this report.

11. On June 15, 2002, Ankura Consulting, LLP (specifically, Sonya Kwon and Jeremy Guinta¹²) submitted a Rebuttal Report (“Ankura Report”) in response to the Boedeker Report.¹³ This report is my reply which is being submitted for the mediation which is underway.¹⁴

12. We reserve the right to supplement my opinions and amend this report if further documents or data are made available to me or if counsel asks us to perform additional analyses. The purpose of this report is to reply to the principal assertions in the Ankura report, rather than comprehensively reply to every issue raised or comment made. The fact that an issue is raised in the Ankura Report but not specifically replied to in this report, should not be taken to mean that we agree with Ankura’s approaches and findings.

2 Summary of Opinions and Conclusions

13. In this report we present six opinions, each of which addresses how the Ankura Report misinterprets and misrepresents the Boedeker Report in advancing its (Ankura’s) assertions about alleged flaws in the Boedeker Report.

¹² As it was not made explicit in the Ankura Report who of the two authors took accountability and authorship of the different section in the report, I will refer to Sonia Kwon and Jeremy Guinta collectively as “Ankura” for the remainder of this report.

¹³ Ankura Report p. 4.

¹⁴ My curriculum vitae, which includes matters in which I have testified as a statistical expert, is attached to this report as Exhibit A. My opinions herein are based on my education, professional experience, and independent review of documents and data provided, as well as third party documents and data obtained by me or BRG (for a list of all data and documents relied upon see Exhibit B).

Opinion 1: The Boedeker Report sufficiently validated the data, whereas Ankura performed no or insufficient checks of their own.

Opinion 2: The Ankura Report creates a “Strawman” that does not correctly represent the Boedeker Report, and then criticizes the Strawman, rendering its conclusions irrelevant.

Opinion 3: The Ankura Report misrepresents the statistical methodology in the Boedeker Report by confusing standard statistical concepts and incorrectly applying them.

Opinion 4: The Ankura Report improperly proposes productivity as a criterion for compensating hours spent at the workplace.

Opinion 5: Exemplars from the Ankura Report are exaggerated or cherry-picked from the universe of Systems Data and generalizations from those examples are grossly misleading.

Opinion 6: The Ankura Report concludes that there are uncompensated overtime hours.

14. Based on these Opinions. We conclude the following:

Conclusion 1: The Ankura Report completely ignores the extent of CIBC’s deletion of data and its impact in in this litigation and never acknowledges that the Boedeker Model always made use of the existing data and that all assumptions made are based on existing data.

Conclusion 2: While acknowledging the existence of uncompensated overtime hours, the Ankura Report artificially reduces the true amount of uncompensated overtime hours by misrepresenting the work presented in the Boedeker Report and by confusing and incorrectly applying standard statistical concepts.

Conclusion 3: We have reviewed the Ankura Report and its backup materials, and we have concluded that none of the criticisms raised in the Ankura Report would lead us to change the methodology for the computation of unpaid straight time and unpaid overtime.

Conclusion 4: The only change to the Boedeker Report that is necessary is to make the damages calculations current. In this regard, we have been instructed to use December 1, 2022 as the as-of-date for the damages calculation including interest.

3 Executive Summary

15. The Ankura Report is based on the premise that the each of the assumptions underlying the methodology presented in the Boedeker Report resulted in an inflated estimate of alleged overtime worked because the analysis did not properly analyze the System Data and does not consider all available information. This premise is demonstratively wrong as the remainder of the Boedeker Reply will show. Furthermore, the Ankura Report misrepresents the scope of the Boedeker Report as computing predictions of individual Class Members’ uncompensated straight time and overtime when the correct scope of the Boedeker Report is the calculation of class-wide uncompensated straight time and overtime. The methodology in the Boedeker Report was not designed to allocate any settlement or judgment amount to individual Class Members; rather it was developed to give guidance on the total (or “aggregate damages”) dollar amount of class-wide uncompensated straight time and overtime to the trier of fact.

16. In this Executive Summary, we will first summarize the many aspects of the Boedeker Report that are based on conservative assumptions and then we will summarize the flaws in Ankura's assessment of so-called inflationary assumptions.

3.1 Methodology

17. In the introduction to the Boedeker Reply, we pointed out that the work to develop the Boedeker Model was driven by the vast data deletion during this litigation. However, every step of the way the use of existing data and assumptions based on existing data guided the development of the model.

18. It is our understanding that the Court has already decided that CIBC did not properly keep time records for hours worked by the class during the class period. Before the data deletion became known, we had suggested an approach to use timestamps, generated from Class Members' use of electronic systems, to approximate potential uncompensated time and uncompensated overtime by a methodology called the "bookend approach." In this approach, a database of all employee-workday combinations is created, and then timestamped data are identified and mapped into the grid of employee-workday. In effect, this methodology acts as a proxy for the time records that CIBC did not keep. As computer algorithms search through the data systems for timestamps, each new timestamp found in the systems is compared to the "bookends," i.e., the first and last timestamp for each employee-workday. When a newly found timestamp is outside the previously identified range determined by the bookends, then the bookend corresponding to the newly found timestamp is moved to account for the new timestamp.

19. The fact that CIBC deleted data necessarily yields more conservative estimates of unpaid time. The additional timestamps in the now deleted data would either be within the existing bookends or outside the existing bookends. If an additional timestamp were to fall within the bookends, there would be no change to the elapsed time between the bookends; if it were to fall outside the bookends, then one of the bookends would move and the elapsed time between the bookends would increase. The bookend approach is inherently very conservative.

20. Considering the vast amount of deleted data in conjunction with the logic of the bookend approach as described above, the bookend approach is conservative in nature and does not yield an inflated damages calculation.

3.2 Conservative Assumptions

21. Ankura asserts that “Each of Mr. Boedeker’s assumptions resulted in an inflated estimate of alleged overtime worked.”¹⁵ That is simply not the case. In sections 3.2 and 3.3 below, we discuss areas where conservative assumptions were in fact applied in the Boedeker Report.

22. Before we discuss the details of our conservative assumptions generally, we do note for illustrative purposes that by examining just two of our conservative assumptions significantly reduced the total damages in the Boedeker Report. The two assumptions (which are discussed in greater detail below in paragraphs 37 and 29) are:

- a. Trimming the data of the top 1% and bottom 1% of Overtime and Uncompensated time.
- b. Restricting employees in the analysis from those that had Basic Pay in a pay period, to those that had Basic Pay, Temporary Salary, or Hours Override.

23. The following Table 5 and Table 6 shows damages but-for these two conservative assumptions as well as the original calculated damages in parenthesis. These two conservative assumptions decrease damages exclusive of interest by amounts ranging from \$17M to \$64M for Model 3 presented in the Boedeker Expert Report.

Table 5: Damages Results Based on Changes to Two Conservative Assumptions

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 – 6/18/2009	Model 3 – Extend to Pre Open / Post Close	\$204M (164M)	\$391M (314M)	\$520M (417M)
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$85M (68M)	\$146M (117M)	\$175M (140M)
2/1/1993 – Present	Model 3 - Extend to Pre Open / Post Close	\$319M (256M)	\$540M (432M)	\$676M (542M)
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$200M (160M)	\$296M (236M)	\$332M (265M)

¹⁵ Ankura Report, Opinion 1.

24. Conversely, the application of these two conservative assumptions resulted in the following decreases in damages:

Table 6: Net Difference Based on Changes to Two Conservative Assumptions

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$40M	\$77M	\$102M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$17M	\$29M	\$35M
2/1/1993 - Present	Model 3 - Extend to Pre Open / Post Close	\$64M	\$108M	\$135M
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$41M	\$60M	\$67M

25. Additional tables related to damages without these two conservative assumptions can be found in “Appendix B: Damages Without Just Two Conservative Assumptions” of this report.

3.2.1 Use of General Data Exclusion Filters

26. The analysis in the Boedeker Report is based on timestamped system data between the hours of 7:00am and 10:00pm.¹⁶ This time range was determined empirically by analyzing the distribution of timestamps over a 24-hour day. The system data generated between the hours of 7:00am and 10:00pm because it contains over 99% of the data, with a statistically significant drop before and after these cutoffs.

27. This general filter eliminates data outside the time-window above to avoid inflating the data, contrary to Ankura’s assertion that every decision we made was to inflate damages. Indeed, removing these timestamps is conservative because it applies the assumption that not a single class member out of over 30,000 over the entire class period ever worked before 7:00am or worked after 10:00pm.

28. Section 9.6 in the Boedeker Report explains in detail that the daily start and stop times of only a subset of employees were adjusted. This included employees with a start time within 25 minutes after branch open and end time within 27 minutes before branch close.

29. The Boedeker Report limits the calculation of uncompensated straight time and overtime to pay periods with payroll records including the pay code “Basic Pay.” However, there are two

¹⁶ Boedeker Report, ¶67.

other pay codes that likely represent employee work weeks: “Hours Override” and “Temporary Salary.” Due to the fact that CIBC did not provide definitions of the pay codes, the Boedeker Report only included employees that had evidence of “Basic Pay” in their payroll records. This is conservative because it resulted in the exclusion of approximately 9.2% of employee-weeks. Including these employees would increase damages. This is one of the conservative assumptions referred to above in paragraphs 22, where we quantified the actual reduction of damages resulting from just two of our assumptions.

30. Contrary to the assertion on Page 41 of the Ankura Report, we excluded Operator IDs related to multiple operators or training operators. Had these timestamps been associated with employees captured in our analysis, these timestamps would only increase the durations captured for the employee-days already captured by the analysis.

31. When loading data related to IIS data, which captured certain web browser activity, we removed any timestamp that was not related to a search related to CIBC. This excludes timestamps related to browsing Google, Facebook, etc.¹⁷ We also note that, while Mr. Fotheringham used Surf Control dataset in his analysis (which would have included internet surfing), this Surf Control data was neither preserved nor produced. This is discussed further in paragraph 157 of this report.

32. Furthermore, all timestamp data that did not have an Operator ID were excluded from the Boedeker Model. This general data filter leads to the exclusion of hundreds of millions of timestamps. Out of all the data provided to BRG, the analysis of timestamp data was restricted to a subset of the potential timestamps that could have captured employee activity. Timestamps from ISI, email, PESA, Surf Control, PDAO, and COLT systems were not utilized in the analysis. Descriptions of these datasets can be found in Table 1 and Table 2 of this report (Pages 17 and 18 in the Boedeker Report). These removed timestamps are likely associated with both user-generated activity as well as system-generated activity. Had they been linked to employees-days in our

¹⁷ When loading the IIS data, all timestamps with a “cs referrer” field that does not indicate CIBC were removed. This field shows the last website the employee was on. This limitation excludes instances where the employee was browsing Google, Facebook, etc.

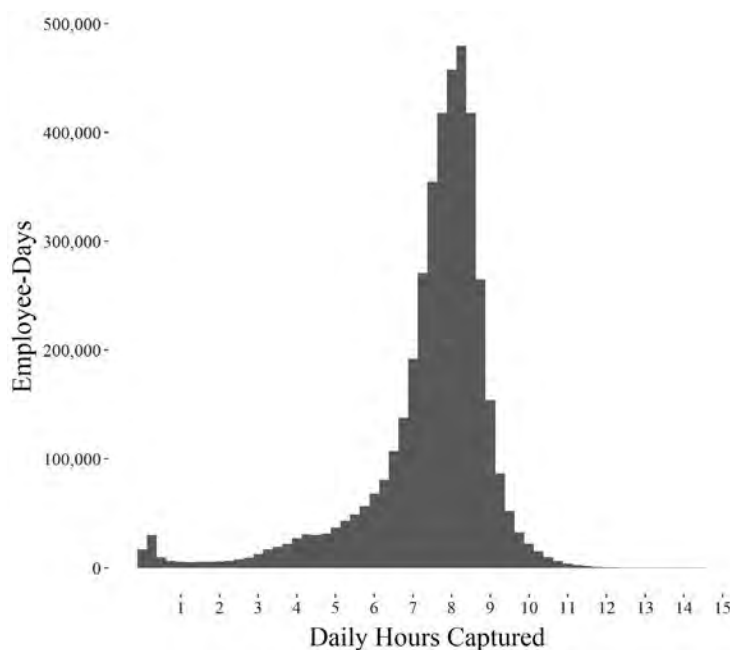
analysis, an increase in weekly overtime and uncompensated straight time would have been observed. Further, gaps throughout the day would have been split by additional captured activity

3.2.2 Employee-Days with Basis Pay in Timestamp Data that have Unrealistically Low Captured Hours were not Adjusted

33. For certain employee days, the timestamp data captures hours below that of a temporary employee. It is unlikely that employees worked on these days for such a short time. We did not adjust any of these daily records that appeared to under-capture employees' work durations which is conservative in nature because any adjustment upward would have increased the employees' weekly hours worked which could contribute to uncompensated time and overtime directly contradicting Ankura's assertion that "Each of Mr. Boedeker's assumptions resulted in an inflated estimate of alleged overtime worked."¹⁸

34. Figure 1 below shows the distribution of daily hours represented in time stamps across all employee-days used in the damages model referred to as Model 1 in the Boedeker Report:

Figure 1: Histogram of Hours per Day



¹⁸ Ankura Report, Opinion 1.

35. For 4.8% of days that contributed to Model 1, the daily amount of hours observed in the timestamp data was less than four hours, and for 2.1% of days that contributed to Model 1, the daily amount of hours observed in the timestamp data was less than two hours.¹⁹ Each of these days with low hours contribute a zero to daily overtime and a lower-than-expected value for weekly overtime. These zeros and low values may very well be inaccurate because it is unlikely that all of these observed low duration days were associated with employees who worked less than four hours. By including these employee-days with less than four hours, the overall weekly average overtime estimates (daily overtime + weekly overtime) were calculated using employee-days that would never generate any overtime.

3.2.3 Outlier Treatment to Counteract Inflation of Overtime Estimates

36. To ensure that so-called “outliers” would not inflate the model, a further conservative data step was applied by eliminating the 1% largest and 1% smallest observations before calculating averages during the period with data (July 2007 to March 2009) and the period without data. This is explained in detail in Paragraph 85 of the Boedeker Report. By including this data processing step, as alluded to above, the calculated average estimates for uncompensated overtime dropped by 8%-10% across the three models of the Boedeker Expert Report.²⁰ This is the second conservative assumption referred to above in paragraphs 22, where we quantified the actual reduction of damages resulting from just two of our assumptions.

37. When calculating the weekly uncompensated straight time and average overtime for the time period without data, the Boedeker Report implemented a Monte Carlo simulation of average weekly overtime hours. This simulation is run after eliminating the top and bottom 1% of data and results in a range of possible uncompensated straight time and overtime metrics. The damages estimate relies on the middle value of the range of possible metrics. The design of the simulation, along with the elimination of the top and bottom 1% of data results in an analysis that is not driven by outliers.²¹ A Monte Carlo simulation is a commonly used statistical method to estimate

¹⁹ Notably, this distribution is negatively skewed, implying that it contains a disproportionately larger share of short workdays which do not inflate the uncompensated overtime estimates.

²⁰ These three models are defined as M1, M2, and M3, respectively.

²¹ Boedeker Report, ¶85.

population parameters through the use of randomly generating data that simulate the population. The specific simulation that was applied in the Boedeker Report first “trimmed” the data by (as noted above) removing the 1% largest and 1% smallest data points, and then sampled with replacement from the weekly overtime and uncompensated straight time data. Damages were calculated after the data trimming had taken place, which means that the weekly average uncompensated straight time hours and overtime hours were not influenced by extremely large datapoints that could potentially inflate the results.

38. Timestamp data for employees who had timestamps from only a single data system on a given day were not adjusted. This amounts to approximately 10% of all employee-days used in the analysis. Adding additional electronic systems for employees would have inevitably resulted in a potential increase in the daily hours captured for the employee. The only adjustment regarding missing data systems was made for the Horizon data, which was made in a conservative manner, by only adjusting overtime measures for employee-weeks missing Horizon data that already had timestamped data indicating overtime hours from other data systems. The Boedeker Report did not make additional adjustments for employees missing IIS, CBFE, or SM@RT on a given day.²²

39. The Boedeker Model does not impute a single day of missing data as the Ankura Report falsely claims. Weekly averages were imputed only in cases where an employee had hours under the pay code “Basic Pay” for a pay period in the payroll data, but there were no observed data in the timestamp data for the same employee in the same pay period.

3.3 Ankura’s Incorrect Assertions of the Methodology in the Boedeker Report Leading to Inflationary Damages Estimates

40. In this Section, we respond to Ankura’s assertions that every assumption in the Boedeker Report resulted in inflationary damages estimates. As set out below, those assertions are incorrect. In the remainder of this Reply Report, we will discuss in more detail the flaws in the Ankura Report that render its conclusions invalid and not relevant to the results presented in the Boedeker Report. What follows is a summary discussion of Ankura’s incorrect assertions, followed by a detailed

²² The weeks missing CBFE data entirely were adjusted for all employees. This is explained in paragraph 29 of the Boedeker Report.

discussion of our Opinions as set out above. There is some repetition in sections below because some of the assertions by Ankura touch upon various issues and Opinions that are explained below.

3.3.1 Incorrect Ankura Assertion 1:

41. Ankura Assertion 1: “Mr. Boedeker’s bookend approach, which assumes the first and last timestamp record for an employee during the day, is flawed because it does not account for significant gaps that occur between System Data records and does not account for the evidentiary record regarding how employees worked at the bank.”

42. Boedeker Reply: There are significant gaps in the Systems Data because a large amount of data was not usable, not produced, or deleted by CIBC during the course of this litigation. Furthermore, as repeatedly pointed out by CIBC and its experts,²³ not all work performed by Class Members is tracked in electronic systems. There are many daily tasks within the paid hours, such as meetings, paperwork, telephone calls, and other interactions with customers and other employees that do not generate electronic timestamps. It is unreasonable to expect that every hour or minute of work is documented in some digital form.

43. The premise of Ankura’s assertion – i.e., that periods for which no time stamps are referenced should be deducted from the calculation of hours worked -- is methodologically unsound. Even in a workplace with a functioning time-keeping system like time clocks or time sheets, gaps are not deducted from the hours worked.

3.3.2 Incorrect Ankura Assertion 2:

44. Ankura Assertion 2: “Mr. Boedeker did not account for outliers in regard to System Data timestamps occurring before or after a branch opened or closed.”

45. Boedeker Reply: We removed observations from the hours of 10 PM to 7 AM. Ankura errs in producing specific, misrepresentative examples in an effort to undermine a class-wide approach to determine damages. We also removed the top and bottom 1% of observations for our Monte

²³ “Not all work performed by Class members involves computer systems” and “not all computer systems have timestamps,” Denise Martin Affidavit, p. 5.

Carlo simulation for the estimation of uncompensated overtime hours when Systems Data is not available.

3.3.3 Incorrect Ankura Assertion 3:

46. Ankura Assertion 3: “Mr. Boedeker’s AR(1) process is flawed and does not have any justification. It imputes overtime to periods that employees did not work, and periods employees could not have worked.”

47. Reply: An auto-regressive process relies on previously observed data points to explain and predict succeeding observations. It is reliable for imputing a series of data through forecasting or backcasting and is a widely used, scientifically accepted basis for prediction.²⁴ Because we used a fixed effect panel AR(1) process, we were able to control for effects beyond just the natively populated observations. The process leverages the value in $t-1$ to explain variation in the subsequent value of the outcome variable in period t at the individual level; a single parameter estimate pins down this relationship and is then used to predict unobserved overtime measures. In particular, we controlled for seasonal effects, by controlling for month, and controlled for differences due to job classification, by controlling for class position and job title. Ankura’s claim that the model imputes periods where employees did not or could not work is simply wrong. The AR(1) process is only used for periods in which an employee has payroll data with “Basic Pay” but no timestamp data. Practically, the AR(1) process imputes weekly data points based on the employee’s history of weekly data points. This imputation is always based on other weeks in the data. These other weeks in the data include instances where employees only worked for a portion of the week. Therefore, the imputed values take into consideration these weeks where employees did not work every day. This is discussed more in paragraphs 168 and 172 of this report.

3.3.4 Incorrect Ankura Assertion 4:

48. Ankura Assertion 4: “Mr. Boedeker did not account for all time paid as compared to time worked based on the System Data.”

²⁴ See, for instance, Molenberghs, G., G. Fitzmaurice, M. Kenward, A. Tsiatis, and G. Verbeke (Editors), Editors. (2015). Handbook of Missing Data Methodology, pp. 3-5, and Jeffrey Wooldridge. (2012). Introductory Econometrics - A Modern Approach, Chapter 11.

49. Boedeker Reply: All overtime paid as evidence in the payroll data was deducted from the unpaid straight time and overtime totals.

3.3.5 Incorrect Ankura Assertion 5:

50. Ankura Assertion 5: “Mr. Boedeker assumed a lunch period of 30 minutes but omitted data to obtain this result.”

51. Boedeker Reply: We performed an analysis indicating that the average lunch gap implied by the data ranges from 26-32 minutes across different class positions (based on an analysis of 98.8% of the lunch gaps), which lead to the reasonable, data-based assumption of a half hour (30 minute) lunch gap. The methodology is described in detail in the Boedeker Report.

52. It is important to note that any “gap” analysis conducted is meaningfully impacted by CIBC’s deletion of timestamp data. Any gap that is detected could be “split” by activity that would have been captured by the data systems CIBC deleted (Active Directory/MACS, PESA, Surf Control), as well as data systems that CIBC did not produce (e-mail), and employee work-related activity not ever captured by electronic systems (phone calls, meetings, paperwork, etc.). In other words, the gaps that were observed are not evidence that work was not performed. The gap analysis, given the foregoing factors, will inevitably result in a larger average “lunch gap” assumption than the actual average lunch break taken.

3.3.6 Incorrect Ankura Assertion 6:

53. Ankura Assertion 6: “Mr. Boedeker inflated his System Data time by making adjustments based on MACS data and Blotter data, but he did not account for outliers in each of those datasets and did not statistically test the reliability of those estimates.”

54. Boedeker Reply: The analysis of the MACS and Blotter adjustments is not inflationary because we only used the data provided to us. No analytical steps were performed, nor were assumptions made to arbitrarily inflate the results. As mentioned later in this Reply Report, Ankura’s criticisms that we did not statistically test the reliability of these estimates are unfounded. One of Ankura’s arguments in this context is that the 95% confidence interval crosses zero for the

BA job class as it relates to the MACS data. However, to get this result, Ankura incorrectly calculates the confidence interval. This is discussed further in paragraphs 86 and 87 of this report.

3.3.7 Incorrect Ankura Assertion 7:

55. Ankura Assertion 7: “Mr. Boedeker’s assumption that employees would always start their shifts at or before branch opening time if the System Data timestamps were after the branch opened has no foundation.”

56. Boedeker Reply: Ankura has mischaracterized the Boedeker Report. We did not assume that employees would always start their shifts at or before branch opening time if the first System Data timestamp was after the branch opened. Only first timestamps for employee days within 25 minutes of branch opening time were adjusted. This adjustment was included because a) the Systems Data is incomplete for the reasons set out above, and b) the empirical timestamp data supports the hypothesis that the majority of employees arrived before the branch opens. The data show that 80% of employees arrive at or before their branch open time.²⁵ Moreover, these changes only appear in the M2 and M3 models, although we maintain that the M3 model is the most reasonable and appropriate model.

3.3.8 Incorrect Ankura Assertion 8:

57. Ankura Assertion 8: “Mr. Boedeker’s assumption that employees would always end their shifts at or after branch closing time if the System Data timestamp was before the branch closing times has no foundation.”

58. Boedeker Reply: This is another mischaracterization of the Boedeker Report. We did not assume that employees would always end their shifts at or after branch closing time if the last System Data timestamp was before the branch closed. Only last timestamps for employee days within 27 minutes of branch closing time were adjusted. This adjustment was included because a) the Systems Data is incomplete, and b) the empirical timestamp data supports the hypothesis that the majority of employees leave after the branch closes. The data show that 72% of employees

²⁵ Boedeker Report, ¶241.

leave at the closing time or after the branch closes.²⁶ Moreover, these changes only appear in the M2 and M3 models, although we maintain that the M3 model is the most reasonable and appropriate model.

3.3.9 Incorrect Ankura Assertion 9:

59. Ankura Assertion 9: “Mr. Boedeker’s M2 and M3 models are in direct contradiction to his Blotter and MACS analysis. M2 and M3 models were designed to account for additional time that the employee spent working but was not captured by the System Data.”

60. Boedeker Reply: Ankura fundamentally misunderstands and misrepresents the methodology in the Boedeker Report. The MACS and Blotter adjustments are not substitutes for the M2 and M3 adjustments, they are meant to complement those analyses.²⁷ The MACS adjustment is made to CSR and ABM first timestamps of the day because the limited Active Directory/MACS data that was not deleted by CIBC supports making this adjustment. The Active Directory/MACS data definitively captures employees’ “authentication and access times of a given user to CIBC’s computer network and some applications on the network.”²⁸ The limited Active Directory/MACS data that was not deleted is effectively being used as additional data points (additional timestamps that would have been available). The deletion of data by CIBC resulted in the loss of a dataset of actual timestamps that would have significantly simplified the methodology, and thus lowered the time and cost to perform this analysis.

61. The Blotter adjustment is made to the CSR last timestamp of the day.²⁹ Again, this adjustment is effectively being used as additional data points in our analysis.

62. It is our opinion that these adjustments only partially make up for the lack of aforementioned missing data and data that could not be included in the analysis.

63. M2 and M3 adjustments are made for two reasons:

²⁶ Boedeker Report, ¶242.

²⁷ Boedeker Report, ¶ 31-32. Boedeker Report, Section 9.6.

²⁸ Reid Affidavit, ¶ 19.

²⁹ Boedeker Report, ¶ 31-32.

- a. The data supports the fact that employees arrive before the branch opens and leave after the branch closes.³⁰
- b. The data produced do not capture every single employee's first and last work-related activity.³¹

64. It is unlikely that employees whose first or last timestamp of the day is close to the branch opening or branch closing time, did not arrive at or before branch opening or after branch closing time.³²

65. It is also our opinion, that the MACS and Blotter adjustments, which were made to a subset of class employees, should be treated as timestamps (as noted above) that are meant to adjust the bookends of the systems data. Thus, these timestamps are evidence that employees arrived at or before the branch opening or after branch closing time.

66. It is simply not correct to assert that the M2 and M3 adjustments contradict the Blotter and MACS adjustments.

4 Detailed Support for Opinion 1

Opinion 1: The Boedeker Report sufficiently validated the data, while Ankura performed no or insufficient checks of their own.

67. While the final product of the analyses presented in the Boedeker Report is reliable and accurate, we want to point out the difficulty that arose in this case due to the fact that multiple data sources were deleted by CIBC while the litigation was ongoing. Numerous Affidavits document the process that ultimately resulted in data provided to BRG for analysis. At each step in the work on this case, all data points available to me and my team were processed and analyzed. Calculated assumptions were made based on available data and the use of available data took priority above assumptions and calculated or imputed data.

³⁰ Boedeker Report, Table 29. Boedeker Report, Table 30. Boedeker Report, Table 31.

³¹ Boedeker Report, ¶ 237.

³² Boedeker Report, ¶ 237.

68. Ankura's critiques are unfounded and often not supported by the data analyzed in the Boedeker Report. These critiques amount to a "strawman" version of the Boedeker Report that bears little resemblance to the methodology actually developed and applied in the Boedeker Report. We put enormous effort into standardizing, extracting, formatting, and cleaning the CIBC Systems Data. Section 8 in the Boedeker Report provides a detailed description of the data utilized in the damages model presented in the Boedeker Report. In that Section, we described when and how we received data from each system (comprising the SM@RT Data, the Horizon Data, the CBF E data, the IIS data, and the ISI data). We also provided a description of the dataset and a sample record of each system, as well as a data dictionary of relevant fields that we used to link to other datasets and extract for calculation of hours worked. Additionally, we described extra steps needed in the processing of specific datasets, like the time standardization of the Horizon Data. We also provided an overview of selected other datasets, including the PESA Data, payroll data, MACS active directory, Blotter data, time in lieu data, and CIF data.

69. Section 9 in the Boedeker Report described the standardization processes my team performed to ready the data for analysis. We set out the steps taken to get from the Systems Data to an estimation of hours worked, which included:

- a. Standardizing dates, times, user IDs, and other fields across datasets,
- b. Standardizing time zones,
- c. Matching the IIS data to the payroll data,
- d. Aggregating data to the Employee and week level so that we could limit the data to class employees and dropping time periods outside the CBF E time period because lack of sufficient coverage, and
- e. Finally, estimating the employees first and last timestamp of each workday

70. Section 10 in the Boedeker Report describes the methodology to derive data for periods with missing data or periods with missing employee specific data. In this section, we gave an overview of the AR process that backcasted and forecasted overtime data for employees with

partially missing data, and also described how we imputed data for missing employees by averaging over year, month, week, and class position.

71. Despite our efforts, which were thoroughly documented, to produce the most complete and accurate Systems Data possible, the Ankura Report asserts that we simply took the data at face-value, performed no quality control checks of the data, and then haphazardly performed an analysis. Ankura writes that “Had Mr. Boedeker followed well-accepted data analysis techniques, considered the available data, and validated his assumptions against the evidentiary record and other sources of data, any allegedly owed overtime calculation would have been much lower.”³³ Later, they add “Another critical aspect of accurate data analysis is quality control throughout the entire process...[I]t is evident that Mr. Boedeker failed to quality review his work, failed to properly query the data to assess its reliability, and failed to test the assumptions he made regarding the information he relied upon for his opinions”.³⁴

72. These criticisms are without foundation. In fact, one could observe that it was CIBC and its associated work teams that neglected to put in the effort to properly vet the data. Through this entire process, CIBC and related teams have maintained that using the data is impossible despite evidence to the contrary. This was not true. After months of costly work and analysis, we were able to develop the link to employees, standardize and use the Data. Moreover, the assertions that the Data could not be linked or used was proven wrong in October 2021 when CIBC itself produced the CIF data, which contained a link or crosswalk connecting the Operator ID and EmplID.

73. The Ankura Report adopts clearly contradictory positions. It simultaneously claims that the data is not missing observations or employees and remains unspoiled³⁵ while also declaring that “[A] data analyst should constantly question the accuracy and validity of the data relied on, and should 1) Assume that the data has inaccuracies, 2) sufficiently evaluate the data to determine deficiencies with the data, 3) work to resolve inaccuracies/deficiencies or develop sound assumptions to account for them, and 4) disclose and acknowledge the inaccuracies if the

³³ Ankura Report, p. 17.

³⁴ Ankura Report, p. 20.

³⁵ Ankura Report, p. 5.

deficiencies in the data cannot be resolved.”³⁶ In fact, we repeatedly requested additional information about the data provided to us in order to deal with apparent inaccuracies and deficiencies in the data but received very little assistance.³⁷ Consequently, and as noted or alluded to above, we had to develop our own methodology to assemble and analyze the data and account for its incompleteness. Our efforts in this regard are described in detail in the Boedeker Report.³⁸

74. Even though we produced the work product underlying the Boedeker Report including computer algorithms, Ankura declined to run the computer programs to recreate the data.³⁹ This is an unusual decision – typically, the first thing done after receiving an expert’s work product is running the code to ensure the input data matches the final output. Ankura’s decision to not review and run the code provided is likely a driver of their unfounded critiques of our work. However, Ankura accepts our work product and noted that “[T]his preliminary check did not reveal substantive data processing issues or errors, a more thorough review of the data processing may reveal errors.”⁴⁰

75. In addition to Sections 8-10 in the Boedeker Report describing the data and methodology, we also provided a forty-page technical appendix that provides a step-by-step walkthrough of the work underlying the Boedeker Report. Within this walkthrough, we instruct the user how to reconstruct the intermediate tables (those that Ankura ultimately ended up using) and also describe how to run the scripts creating the damages numbers for the different scenarios.

76. The Ankura Report separates CIBC employees into three categories: full-time, part-time, and temporary employees. The amount of possible potential overtime for these three categories was arbitrarily restricted in the Ankura Report.⁴¹ Full-time employees are defined as working more than 70 hours per pay period and may accrue daily or weekly overtime, while employees working

³⁶ Ankura Report, p. 19.

³⁷ Letter Regarding Production from Louis Sokolov to Linda Plumpton, dated June 15, 2021 (“Letter from Sokolov, June 15, 2021”); Letter Regarding Production from Linda Plumpton to Louis Sokolov dated March 29, 2021 (“Letter from Plumpton, March 29, 2021”); Letter Regarding Production from Linda Plumpton to Louis Sokolov dated August 10, 2021 (“Letter from Plumpton, August 10, 2021”).

³⁸ Boedeker Expert Report, Sections 8, 9, and 10, and Technical Appendix.

³⁹ Ankura Report, p. 15.

⁴⁰ Ankura Report, p. 15.

⁴¹ Ankura Report, p. 72.

15-70 hours are classified as part-time employees who are treated by Ankura as if they may only accrue daily overtime (not weekly). Lastly, temporary employees (sometimes also referred to as casual employees) are defined as working less than 15 hours per pay period and are treated by Ankura as simply not accruing any.⁴²

77. There are three flaws in Ankura's classification of employees into full-time, part-time, and temporary:

- a. The definitions of full-time, part-time, and temporary workers, along with the associated overtime assumptions, are constructed by Ankura rather than being objectively defined and supported by the data.
- b. The Ankura Report did not provide any background documents that would yield evidence that CIBC categorized its workers in such a fashion and that CIBC assigned overtime hours based on the categories rather than based on prevailing overtime laws.
- c. Based on how the Ankura Report divided employees, it is possible that the same employee would somehow be assigned to different classifications pay period to pay period.

78. Ankura criticizes the Boedeker Report for not considering the employee classification, and instead applying the same average overtime to all employees' missing time periods.⁴³ We did not consider the full/part/temporary employee classification suggested in the Ankura Report in our analysis because such employee classification was not relevant. Rather, our methodology was based on the data itself, calculating average uncompensated straight time and overtime based on timestamped systems data and payroll data, and then calculating a total/aggregate for unpaid hours. By contrast, any methodology based on a classification using assumed limits for overtime hours is arbitrary and thus less scientific than a method that uses timestamped systems data and payroll data. Without having an objective classification of employees, it does not make sense to use an arbitrary classification to compute uncompensated straight time and overtime. Moreover, we are

⁴² Ankura Rebuttal Report, p. 70.

⁴³ Ankura Report, pp. 75-76.

not calculating total unpaid hours for each of three separate groups or silos – we are calculating total or aggregate unpaid hours for the entire class.

79. When applying the classification of employees based on the criteria in the Ankura Report, employees frequently change classifications. There are over 100,000 instances where an employee's Ankura defined classification would be different from the prior payroll periods. This amounts to approximately 8% of all pay periods. This provides further evidence that the Ankura employee classification is arbitrary and thus, inappropriate for a reliable determination of uncompensated straight time and overtime.

80. Ankura's assertion that the Boedeker Report not account for Operator IDs being shared and multiple employees using the same workstation⁴⁴ is also without merit. Every timestamp utilized in the analysis in the Boedeker Report is attached to an Operator ID that is not associated with multiple or training operators. Operator IDs that were associated with multiple names as well as Operator IDs that were coded in specific ways⁴⁵ were excluded.

81. Moreover, the Ankura Report

- a. failed to provide any evidence that the sharing of workstations is associated with sharing Operator IDs,
- b. failed to provide any evidence that this would lead to an inflation of the estimates of uncompensated straight time and overtime, and
- c. failed to acknowledge that shared Operator IDs as described in Footnote 45 were excluded from our analysis.⁴⁶

82. Ankura also asserts that CIBC was less computer dependent in the past, and thus a backcasting of digital timestamp would likely overestimate the digital timestamps that would have

⁴⁴ Ankura Report, p. 41.

⁴⁵ Information in a specific data field called "operator surname" in the IIS Cookie data indicated that Operator IDs beginning with "#M" and "#T" are always associated with "MULTIPLEOPERATOR" or "TRAININGOPERATOR" respectively. All these Operator IDs were excluded in the analysis performed in the Boedeker Report.

⁴⁶ Boedeker Report, ¶ 178.

occurred in an earlier era.⁴⁷ This assertion misrepresents what the model in the Boedeker Report actually does. It is not a model that estimates digital timestamps – we do not argue that the number of digital timestamps in 1993 would be the same as 2009. Our model rather effectively serves as a proxy for unavailable accurate timesheets or calculation of average hours actually worked by the Class, which is then compared to payroll payments and used to calculate uncompensated straight time and overtime hours. This average is then back-cast using methodologies described in paragraphs 86 to 89 in the Boedeker Report.

83. Further, the Ankura Report fails to consider that the work using computers and other technology would have to be performed in different ways before computer technology was present. In general, labor and technology are substitutes in production, and so the fact that less technology would have been available previously means more labor would have had to be done by hand. Therefore, it is simply incorrect to assume without evidence that there was *less* work performed by Class Members in the ‘90s than in the ‘00s.

84. The Ankura Report further criticizes the methodology for standardizing timestamps. The Ankura Report ascertains that the choice of the most common time zone for employees with multiple time zones, biases the results.⁴⁸ However, the Ankura Report contains no support for this assertion because it neither describes the mechanism that would create this alleged bias, nor does it quantify the extent of this alleged bias. Moreover, Ankura did not correctly characterize the treatment of time zones. “UserIDs⁴⁹ with multiple time zones were dropped from the analysis due to uncertainty involving the actual time zone which could inflate or deflate damages.”⁵⁰ Moreover, even if these UserID with multiple time zones had been included, the possible bias is limited, as only 2.1% of UserIDs matched to multiple time zones, as mentioned in the Boedeker Report.⁵¹

85. The Ankura Report also asserts that a mistake was made of time zone standardization of the Blotter data, claiming that there is a cluster of observations with an approximately one-hour

⁴⁷ Ankura Report, pp. 5.

⁴⁸ Ankura Report, p. 15.

⁴⁹ UserID and Operator ID can be used interchangeably.

⁵⁰ Boedeker Report, ¶ 217.

⁵¹ Boedeker Report, ¶ 217

time difference between the latest system time and Blotter timestamp.⁵² This assertion by Ankura is speculative. While the Boedeker Report makes reasonable assumptions about the timestamps on the Blotter data, Ankura disregards any Blotter data they considered to be outliers without any actual evidence.

86. Along with the Blotter Data, the Ankura Report criticizes the fact that outliers were not removed from the MACS data.⁵³ Ankura also calculates wide confidence intervals around our estimation of time that should be added to the workday based on the MACS data and finds an interval so large for the BA employee that the interval crosses zero, meaning there is no statistical basis for concluding the estimate is different than zero.⁵⁴ This confidence interval is nonsensical because it improperly includes negative values. This means that, according to the flawed Ankura Methodology, for the BA employee class, it cannot be determined with confidence that the typical amount of time added by the MACS data is greater than 0.

87. The MACS data produced in the Fotheringham report data contained one employee per class position. Furthermore, Ankura's method of calculating a two-sided symmetric confidence interval based on the normal approximation is incorrect. The normal distribution runs from negative infinity to infinity and follows a bell-shape with the bulk of the observations bunched in the middle. But all values in the MACs analysis are positive. The negative result for the lower bound should have been a sign to Ankura that something was wrong, but instead Ankura decided to focus on the negative result as evidence of unreliability in our limited analysis.

88. The approach chosen by Ankura is valid only for random samples that are sufficiently large. The MACS data were not derived based on a random sample and therefore, besides being calculated incorrectly; the confidence intervals presented in the Ankura Report are grossly misleading because they simply are not confidence intervals in the statistical sense.

89. Moreover, the small sample size of the MACS data was not based on the design of the Boedeker Model but rather was a direct result of CIBC's deletion of data. Had the MACS data, or

⁵² Ankura Report, pp. 43-45.

⁵³ Ankura Report, pp. 11, 18, 42.

⁵⁴ Ankura Report, p. 43.

the associated Active Directory data been properly preserved and made available, then the additional data could be easily integrated into the Boedeker Model. However, in the circumstances, and through no fault of BRG, the limited sample of MACS data was the best that was available.

90. Another reason to not identify outliers in the MACS data is because there is no statistical method to identify or establish what an “outlier” is when only five employees were sampled. The Ankura Report did not provide documentation for a statistically valid approach to define what constitutes an “outlier.”

91. Ankura also claims it is inappropriate to extrapolate the MACS data to other employees because the sample of five employees was not done randomly. It is true that a random sample is necessary for a statistically valid extrapolation, the limited data that was provided was still relevant useful and, as stated above, the best that was available because of CIBC’s deletion of the larger dataset. We reiterate that we analyzed all available data provided to me by CIBC. Further, we were conservative in only extrapolating the MACS data to only two out of five class positions as explained in paragraph 124 of the Boedeker Report.

92. The integration of the payroll data is another instance of Ankura’s mistaken assertion that the Boedeker Report did not conduct proper data test procedures. The Ankura Report falsely points to “overpayments” in the payroll data that the Boedeker Report allegedly did not consider. The Ankura Report seems to imply that when employees’ timestamp data show less hours than that in the payroll then these employees were “overpaid” which should be offset against any uncompensated straight time and overtime within that pay period.⁵⁵

93. The idea that employees whose time stamped bookends amounted to hours that were less than the hours that they were paid for were somehow “overpaid” is a construct invented in the Ankura report. Again, the fact that timestamps were absent is not evidence that employees were not working. It may simply be evidence of a lack of data equally explainable by the fact that (1) the work did not generate a time stamp or (2) CIBC deleted and/or did not produce the data showing that timestamp. See further my discussion in support of Opinion 5 that describes the flaws in Ankura’s approach of equating only productive time with compensable time.

⁵⁵ Ankura Report, p. 38.

94. Furthermore, the Ankura Report ignores the conservative nature of the Boedeker Model which flows directly from the very nature of the Systems Data. Missing observations in the Systems Data can only increase the amount of uncompensated straight time and overtime for employee-dates already captured by the data.

95. Ankura's "overpayment" methodology is even more aggressive than just the situation described above. Even without earned overtime, Ankura suggests deducting "overpayments" from the damages total. They give the example of an employee whose timestamps indicate working 70 hours in a pay period in the Systems Data but who was paid for 75 hours. The Ankura overtime calculations then deducted five hours from the overall damages estimate.⁵⁶

96. Further, the Ankura Report criticizes the Boedeker Report for not using the time in lieu data. Ankura used this dataset as allegedly representing time in lieu data in conjunction with the payroll data to demonstrate that the Boedeker Model imputed overtime for some employees who in fact had accrued time in lieu that "exchanged" overtime hours for time off. We reviewed the so-called lieu time spreadsheet. It appeared to be a hand-entered dataset with no corresponding documentation to verify its legitimacy, and without pointing to the source data on which these calculations are based.⁵⁷ The spreadsheet appeared haphazard and unreliable⁵⁸. It also had entries on their face that appeared not to correspond to time taken in lieu of overtime being paid. We are advised that class counsel repeatedly requested the supporting documents from which the lieu time spreadsheet was derived but that CIBC failed to provide these. As a result of the foregoing factors, we did not feel that it was appropriate to utilize what appeared to be an unreliable spreadsheet, which perspective was also confirmed at the instruction of Counsel.⁵⁹

⁵⁶ Ankura Report, p. 72.

⁵⁷ Boedeker Report, ¶ 199.

⁵⁸ 80% of the Time in Lieu data contained blank descriptions. A subset of observations implied over 40 hours of Time in Lieu taken on a single day.

⁵⁹ Boedeker Report, ¶ 201.

5 Detailed Support for Opinion 2

Opinion 2: The Ankura Report creates a “Strawman” that does not correctly represent the Boedeker Report, and then criticizes the Strawman as if it were the Boedeker Report, rendering its conclusions invalid.

5.1 Branch Opening and Closing Hours

97. There are several instances where the Ankura Report grossly misrepresents the methodology presented in the Boedeker Report and then continues to criticize its own interpretation of the Boedeker Report which we will refer to as the “strawman” in this Section.

98. The most egregious and frequently repeated misrepresentation throughout the Ankura Report concerns the application of the M2 and M3 models.⁶⁰ These models adjust the time of employees with Systems Data falling near the branch opening or closing time.⁶¹ In the case of a branch opening, the start time is adjusted to the branch opening time in the M2 model, and to 20 minutes before opening in the M3 model. In the case of a branch closing, their end time is adjusted to the branch closing time in the M2 model, and to 14 minutes after closing in the M3 model. These time ranges were determined by the mean and mode of the “lapse time,” or the time between the first/last time stamp and the opening/closing of the branch.⁶² These thresholds, and their foundation, are discussed at length in section 4.15 of the Technical Appendix to Boedeker Report.

99. Ankura repeatedly states that this adjustment is improper because it implies that some employees who are not authorized to open or close a branch did so.⁶³ Specifically, Ankura says that “CSRs, BAs, and FSAs could not open or close a branch [and] only ABMs and certain FSRs at a few smaller branches were able to open a branch.” There are two major flaws in Ankura’s reasoning.

⁶⁰ Ankura Report pp. 8-9, 11, 18, 45, 54-60, 68.

⁶¹ Boedeker Report, ¶ 60.

⁶² Boedeker Report, ¶ 246.

⁶³ Ankura Report, pp. 8, 9, 20, 24, 26, 28, 29, 30, 31, 75.

100. The fundamental flaw is the assumption that the employees in class positions are the employees who open or close branches on their own, as opposed to, for example, branch managers. Moreover, the overwhelming prevalence of timestamps before and after regular branch opening hours is in stark contrast to Ankura's assumption that bank employees start and stop working at the exact opening and closing time of a branch.

101. Ankura's assumption is also flawed on a practical level. In order for a branch to start receiving customers at its regular opening time, it is necessary for employees to be ready at their posts before the branch opens – otherwise, delays would be inevitable. At any bank branch, like any other retail operation, there is preparation at the beginning of the day that needs to be done before customers arrive and closing work that needs to be done after customers they leave. It is reasonable for employees to be working before and after the doors are open to customers; it is hard to imagine a bank where the customer service representatives enter the bank with the first customers or exit the bank along with the customers when closing time just passed.

102. Furthermore, and as noted above, the timestamped system data give overwhelming evidence that supports work before branch opening and after branch closing. Based on the overwhelming evidence of timestamps by Class Members before branch opening, it is self-evident that someone else must have opened the branch if employees in class positions are not allowed to open the branch.

103. In the damages calculations presented in the Ankura Report,⁶⁴ Ankura not only fails to extend any bookends like the Boedeker Report proposes in the M2 and M3 models, but it also goes a step further by *removing* valid timestamps under the assumption that CSRs, BAs, and FSAs never work before branch opening hours. Ankura removes the first timestamp of the day if that timestamp falls more than a half hour before the branch opens and removes the last timestamp of the day if that timestamp occurs more than a half hour after closing.⁶⁵ These 30 minute cutoffs are decided arbitrarily by Ankura and are not supported from the timestamp data.

⁶⁴ Ankura Report, p. 74.

⁶⁵ Ankura Report, pp. 61-62.

5.2 Assigning Employees to Multiple Branches

104. Another example of attacking a strawman rather than the Boedeker Report can be found on Page 15 in the Ankura Report, where it is stated that “[Boedeker] assigned employees to multiple branch numbers (i.e., transit codes) without providing evidence that the employee was working at different branches.”

105. This assertion has no basis. It is evident that employees do work at multiple branches. By way of example only, the representative Dara Fresco worked at over a dozen CIBC branches and was associated with 2 transit codes in the data.⁶⁶

106. As the Boedeker Report states in Section 8.1, the data itself disclosed that some employees worked at multiple branches. We determined this by, first, decoding the systems data into timestamps based on the OperatorID. Since this data also contained location information, the transit code of the branch where the employee worked could be identified. Then, the operator ID was linked to the employee ID (since employees could have more than one operator ID associated with them) to standardize and all timestamps and create one comprehensive database for all timestamps by employee. In this process, there are only three possible places for error: (i) matching employee ID and operator code, (ii) decoding the Systems Data into timestamps, and (iii) the Systems Data themselves.

107. However, Ankura did not find any errors in the matching and decoding process, consistent with the results from our thorough internal quality control process which also concluded these steps were performed correctly with a high degree of certainty.

108. Nor is there any reason to believe that the systems data is wrong. The phenomenon of employees assigned to multiple branch codes was a feature of the data and not something we created.

⁶⁶ <https://www.reuters.com/article/cibc-lawsuit/cibc-faces-class-action-suit-over-unpaid-overtime-idUKN0526542420070605>

109. Furthermore, Ankura failed to demonstrate the causal effect if and how the treatment of multiple branches inflates the aggregate damages calculations (if at all). Therefore, Ankura's criticism about the treatment of multiple branches in the Boedeker Report is without merit.

5.3 Ankura Inconsistently Criticizes the Boedeker Report for Removing Outliers but also for Not Removing Outliers

110. The Ankura Report takes issue with the removal of outliers from the Systems Data applied in the Boedeker Report.⁶⁷ The primary exclusion of systems data applied in the Boedeker Report was to drop records between 10 PM and 7 AM.⁶⁸ This adjustment ensures the exclusion of automated overnight system activity (if any) which – if included – would have significantly increased damages. The Ankura Report argues that this adjustment is “arbitrary” ignoring the criteria to select these hours which is based on an inspection of the data that showed that the range from 7AM to 10PM contained 99.97% of all timestamps. Without having precisely defined what an outlier is, Ankura's use of the term in this context clearly misunderstands the concept of an outlier.

111. The Ankura Report continues its argument by saying “if the 6:59 AM record is an outlier and should be removed, then it is also reasonable to assume that the additional set of System Data time until, for example, 7:04 AM should have been removed.” This argument lacks any foundation and leads to the nonsensical conclusion that all intervals should be indefinitely shortened, until no data is left. Ankura's criticism to redefine the boundaries of the included systems data is without merit. Moreover, Ankura's argument can be applied to their own cutoff of 30 minutes regarding their deletion of data discussed in paragraph 103 of this report, as well as their employee classifications discussed in paragraph 76 of this report.

112. Selecting an interval that captures a large enough proportion of the observations, which is exactly the methodology applied in the Boedeker Report, is the only non-arbitrary manner of approaching the analysis.

⁶⁷ Ankura Report pp. 9, 25. It has to be noted that at other places, the Ankura Report also takes issue with not removing enough outliers while failing to provide a consistent definition of what constitutes an outlier or a method to detect an outlier.

⁶⁸ Boedeker Report, ¶ 67.

5.4 Ankura's Lunch Gap Analysis is Designed to Deflate Damages

113. While CIBC did not keep records showing when employees started or ended their lunch breaks, it is our understanding that the evidentiary record from CIBC contains evidence of 30 minute lunch breaks for some Class Members as well as a policy within CIBC of allowing at least a 30 minute meal break after five hours of work. We understand that the evidentiary record contains some evidence of Class Members working through their breaks. We further understand that various affidavits submitted by CIBC contain evidence about some employees being entitled to one-hour lunch breaks.

114. Since there are no timestamps indicating the start time and the end time of the lunch break, the Boedeker Report assumed a lunch window between 11:30am and 2:29pm and analyzed all gaps starting in this window. The Ankura Report now argues that our analysis incorrectly calculates the length of the Class Members' average lunch break because we "did not consider the possibility that employees took a longer lunch."⁶⁹

115. Ankura's criticism is misplaced because it ignores the fact that the lunch gap analysis in the Boedeker Report does not measure the length of the gap during which the employee was actually at lunch but rather analyzes gaps in the existing electronic timestamped data during the lunch window to approximate if a 30 minute deduction for lunch is reasonable.

116. In order to test if a 30 minute deduction for lunch is reasonable, we removed gaps in the lunch window lasting longer than an hour, based on the evidentiary record that employees were granted a lunch break of up to one hour. Furthermore, our analysis of the timestamp data indicated that there were gaps between timestamps due to missing system data and the fact that not all activities generate timestamp data. These gaps occur before the lunch window,⁷⁰ during the lunch window, and after the lunch window. Using the filter of a one-hour gap eliminated only 1.2% of the gaps – the other 98.8% of gaps were included in the lunch gap analysis by averaging the longest gap in the lunch window by class position and found that a half hour was a reasonable estimate across class positions. By contrast, the Ankura Report arbitrarily excludes all gaps that are five

⁶⁹ Ankura Report, p. 9.

⁷⁰ The lunch window was defined from 11:30am to 2:29pm, Boedeker Report, ¶ 117.

minutes or shorter and arbitrarily increases the potential lunch gap up to two hours. Not surprisingly, Ankura's approach to the lunch gap parameters resulted in a substantially increased average lunch gap as shown in Table 7 below:

Table 7: Lunch Gap Analysis

Class Position	BRG Mean Gap	BRG Implemented Gap	Ankura Mean Gap
ABM	26	30	51
BA	30	30	54
CSR	27	30	41
FSA	28	30	54
FSR	32	30	52

117. However, Ankura's assumptions do not align with the data. In fact, the data shows gaps in excess of several hours throughout the day. As discussed above, the lengthy gaps are simply evidence of an absence of time stamps and non-system captured activity, the reasons for which are discussed above.

118. Ankura asserts that the exclusion of gaps greater than one hour created a significant negative bias on the length of the average lunch time gap. They criticized the approach in the Boedeker Report, i.e., using timestamp data to test the reasonableness of an assumption rather than calculating the length of an actual lunch break. However, Ankura's approach ignores the fact that there are no records of actual lunch breaks, because CIBC either failed to track them or keep them. In summary, Ankura's analysis of the average length of a lunch break does not measure the average lunch break. Further, Ankura's analysis deflates damages because it assumes uncaptured work is part of the lunch break. Such uncaptured work could include:

- a. activity captured by data systems which CIBC deleted;
- b. unused data systems; and
- c. employee activity that would never generate an electronic timestamp.

119. Further, by discarding gaps less than five minutes, the Ankura Report assumed that employees never worked through lunch. That assumption appears to be without foundation. In any

event, even if Ankura's inclusion of gaps greater than one hour were correct during the lunch window, 30 minutes is still the most reliable estimate of the average lunch gap based on available data.

120. The arguments in the Ankura Report related to the lunch gap analysis demonstrate yet another instance of a clear contradiction by Ankura. The Ankura Report claims that, since the distribution of lunch gaps is multi-modal, it "does not have a single average value and that a single average value is a poor estimator for the distribution"⁷¹. This is simply incorrect because every data distribution has one average simply defined as the sum of all data points divided by the number of data points. Furthermore, even though the Ankura Report states that a multimodal distribution does not have a "single average," the Ankura Report calculates a single average for the lunch gap by class position.

121. Further, the Ankura Report promotes the use of the median rather than the mean to measure central tendency, particularly when the underlying distribution is right-skewed.⁷² However, Ankura uses the mean in its lunch gap analysis which inflates the length of the gap. The distribution of the gap data is right skewed which means that the mean is generally larger than the median. Ankura appears to have cherry-picked the mean, as opposed to median, for this particular analysis because it generates a larger value for the lunch gap analysis – which measures the longest gap during the lunch window, and not the length of a lunch break taken by employees.

122. Lastly, the Ankura Report repeatedly points to the evidentiary record, including but not limited to testimony referring to one-hour lunch entitlements by Class Members, but that evidence is cherry-picked. More fundamentally, the point of the methodology is to analyze objective data relating to the class as a whole, not a few idiosyncratic examples in affidavits prepared by lawyers. Moreover, even if this approach were appropriate, which it is not, the results of Ankura's own calculations prove that Class Members are not getting a one-hour lunch. Indeed, notwithstanding Ankura's approach to inflating measures of a potential lunch gap by:

- a. excluding all maximum gaps of less than 5 minutes;

⁷¹ Ankura Report, p. 41.

⁷² Ankura Report, p. 73, Footnote 143.

- b. including all gaps up to two hours; and
- c. utilizing the larger average instead of the median to measure central location of the lunch gap distribution.

None of the Ankura Report's calculated average lunch gaps by class position is 60 minutes or longer. In fact, the average lunch gap for the CSRs is only 40.8 minutes. This is of particular importance because CSRs comprise the largest class position and also have the largest number of maximum gaps of five minutes or less which are excluded in the Ankura Report (even though these small gaps may be evidence that no lunch break was taken).

5.5 The Ankura Report Falsely Claims that the Boedeker Report Assumes that Class Members Work "Remotely"

123. Another specific instance of misrepresentation of the methodology in the Boedeker Report is the repeated assertion in the Ankura Report that the Boedeker Report assumes CIBC employees work outside the office in a remote work setting.⁷³ The Boedeker Report does not refer to employees working outside of the branches.

5.6 The Ankura Report Misrepresents the Use of StatCan Data in the Boedeker Report

124. The Ankura Report misrepresents the use of StatCan data tracking employees' overtime hours by occupation and pay status. Ankura asserts this data is inappropriate to use because the CIBC system data produced does not provide as "high" of weekly overtime values as that in StatCan.⁷⁴

125. In the backcasting and forecasting calculations, the Boedeker Report used data from the National Occupation Code (NOC) 65 which includes, but is not limited to, customer service representatives for financial institutions to track overtime trends over time.⁷⁵ Ankura noted that the NOC 65 bucket includes other industries such as tourism employees and that the overtime

⁷³ Ankura Report pp. 8, 9, 20, 24, 25, 28-29, 31.

⁷⁴ Ankura Report p. 76.

⁷⁵ Boedeker Report, ¶¶ 208-210.

hours in StatCan are larger than in the Boedeker Report.⁷⁶ However, this is irrelevant because the actual overtime hours from the StatCan data were not used in the calculation of CIBC employees' uncompensated overtime. Only the trend of overtime hours over time expressed as an index calculated from the StatCan data was utilized in the Boedeker Report. The use of the StatCan data ensured that the estimates from the period with timestamped data (July 2006 - March 2009) were properly adjusted using macro trends from official Canadian unpaid overtime statistics. This step was necessary for two reasons. Firstly, we need to rely on timestamped data as a proxy or basis for time-worked because CIBC did not keep accurate records of all hours actually worked for all Class Members as found by the courts (and thus did not compensate all Class Members accordingly). Secondly, we did not have sufficient timestamped data for all years in the damages period because of the extent of CIBC's vast data deletion. The following Table 8 shows the estimates which are used to adjust the calculated uncompensated straight time and overtime hours. This is explained further in Section 5.5 of the Boedeker Report.

Table 8: StatCan Calculated Coefficients⁷⁷

Year	Estimate
1997	1.102
1998	1.187
1999	1.163
2000	1.061
2001	1.003
2002	1.024
2003	1.016
2004	0.986
2005	0.993
2006	1.005
2007	1.000
2008	1.000
2009	0.982
2010	1.013
2011	0.949
2012	0.940
2013	0.940
2014	0.939
2015	1.038
2016	0.953

⁷⁶ Ankura Report, p. 76.

⁷⁷ 2007 and 2008 are set as the base year because complete data is available. Coefficients are set to 1 for the year.

Year	Estimate
2017	1.040
2018	0.989
2019	1.076
2020	0.986
2021	1.063

6 Detailed Support for Opinion 3

Opinion 3: The Ankura Report misrepresents the statistical methodology in the Boedeker Report by confusing standard statistical concepts and incorrectly applying them.

126. The Ankura Report contains many misrepresentations of the proper statistical methodology as applied in the Boedeker Report and then confuses the issues by incorrectly applying standard statistical methodology.

6.1 Ankura’s misuse of the Median versus the Mean versus the Median in the Estimation of a Population Total.

127. The Ankura Report states in a footnote as follows:

The median represents the point in a distribution of numbers in which 50% of the numbers are above that point and 50% of the numbers are below that point. A median statistic is generally more robust to outlier data (that is, cases where the distribution of the data is heavily skewed) than using an average (or mean) statistic. Outlier data is data that trends to the extremes of any scenario and far away from the mean (or average). Since outlier data is prevalent in the Systems Data, the median is more reliable than an average statistic, which would average overtime across the Systems Data and therefore over-emphasize the impact of any outliers.

The median is a better measurement of “Central Tendency” when outliers are present in the data. See Statistics and Data Analysis, by Abebe, Daniels, McKeanpa, and Kapenga, 2001, pgs. 19,20 and [t]he median provides the preferred measure of location when the data are highly skewed” Statistics for Business and Economics 11th Edition David R. Anderson, Dennis J. Sweeny, Thomas A. Williams, 2011, pg. 103.⁷⁸

⁷⁸ Ankura Report, p. 73, Footnote 143.

128. The above footnote discusses the median as a better measurement of central tendency when outliers are present. In general, in descriptive statistics, a measurement of central tendency refers to a single value that attempts to describe a set of data by identifying the central position within that set of data. The most common measurements of central tendency are the mean (or more specifically, the arithmetic mean), the median, and the mode.

129. While the median may be a better measurement of central tendency in certain situations, it is well-settled that it is an inappropriate measurement to estimate a total or “aggregate” amount of damages.⁷⁹

130. This is illustrated in the following example. Assume there are 11 employees who worked a total of 22 hours of overtime in Week 1 distributed as follows:

- 1 - Employee 1: 0
- 2 - Employee 2: 0
- 3 - Employee 3: 0
- 4 - Employee 4: 0
- 5 - Employee 5: 0
- 6 - Employee 6: 0
- 7 - Employee 7: 4
- 8 - Employee 8: 4
- 9 - Employee 9: 4
- 10 - Employee 10: 5
- 11 - Employee 11: 5

131. The median - defined as the point in a distribution of numbers in which 50% of the numbers are above that point and 50% of the numbers are below that point data – for this data set of overtime hours is the data point in the middle (row number 6) corresponding to Employee 6 which is zero. From the median of this set of overtime data (e.g., zero hours of overtime) it is impossible to ascertain the correct total number of overtime hours which is 22. In contrast, using the average of two hours of overtime (22 hours divided by 11 employees) it is easy to verify that a total of 22

⁷⁹ The average hours worked is the appropriate measurement to determine class damages in an unpaid time case, see <https://www.advocatemagazine.com/article/2019-august/calculating-damages-with-class>. See the formulas for the estimation of a population total in William Cochran (1977), *Sampling Techniques*, Wiley, New York, Chapter 3 for simple random sampling and Chapter 5 for stratified random sampling.

overtime hours (i.e., 11 Employees times average overtime of two hours) which is the correct number.

132. Assume that in Week three the same 11 employees worked a total of 22 hours of weekly overtime distributed as follows:

- 1 - Employee 11: 0
- 2 - Employee 9: 0
- 3 - Employee 7: 0
- 4 - Employee 5: 0
- 5 - Employee 3: 1
- 6 - Employee 1: 1
- 7 - Employee 2: 1
- 8 - Employee 4: 4
- 9 - Employee 6: 4
- 10 - Employee 8: 5
- 11 - Employee 10: 5

133. The median for this data set of overtime hours is the data point in the middle (row number 6) corresponding to Employee 1 which is one. From the median of this set of overtime data (e.g., one hour of overtime) it is impossible to ascertain the correct total number of overtime hours which is 22. In contrast, using the average of two hours of overtime (22 hours divided by 11 employees) it is easy to verify that a total of 22 overtime hours (i.e., 11 Employees times average overtime of two hours) which is the correct number.

134. As the Ankura Report noted on Page 73, “the overtime distribution is highly skewed, and nearly all employee-pay-periods have zero overtime calculated.” In this case, the data show that overtime worked by the class was not evenly distributed, but rather weighed towards the portion of the class who worked the most overtime. This is a right-skewed distribution. In a right skewed distribution, the median is typically smaller than the mean and, as illustrated above, is an inappropriate metric for measuring a total or aggregate amount. Here, using a median to calculate total uncompensated hours not only yields the wrong result but moreover, would also virtually always result in a smaller estimate for total uncompensated hours. There is no scientific basis to use a median here to calculate an aggregate number of overtime hours.

6.2 Ankura's incorrect use of the concept of Outliers.

135. While the Boedeker Report explains in detail the choice of timestamps for the analysis, the Ankura Report uses the outlier concept in many different, not always consistent, ways leading to confusion and incorrect results. The Boedeker Report describes a method of trimming the distribution of weekly uncompensated overtime hours by excluding unusually large observations from the analysis. In contrast to this definition, the Ankura Report uses the outlier concept without ever defining what it means:

(1) However, it is not clear why Mr. Boedeker did not take additional steps to adjust the data to account for outliers that occurred hours outside of banking hours. Instead, he leaves in System Data timestamps that are obvious outliers before a branch opens and after a branch closes.⁸⁰

136. Given the vast amount of data analyzed prior to the completion of the Boedeker Report, the statement to “adjust data” is overly broad and general that it becomes meaningless. Furthermore, the Ankura Report repeatedly promotes the concept of data that are “obvious outliers” without reference to any systematic or statistical concept which makes those comments irrelevant. Furthermore, these statements are not based on “statistical rigor” which is deemed necessary for proper analysis in the Ankura Report.⁸¹

(2) The next and final two System Data records for this date are clear outliers with timestamps of 9:16 PM and 9:29 PM⁸²

137. In this quote above, the concept of outliers applies to specific timestamps and the Ankura method of determining the outliers is based on self-evidence because the data are “clear” outliers.

(3) His analysis is flawed and filled with outliers.⁸³

(4) Mr. Boedeker also failed to analyze the data fully and correctly account for the evidence and outliers.⁸⁴

⁸⁰ Ankura Report, p. 25.

⁸¹ Ankura Report, p. 67.

⁸² Ankura Report, p. 29, Footnote 66.

⁸³ Ankura Report, p. 40.

⁸⁴ Ankura Report, p. 40.

138. These two statements above are made in the context of the lunch gap analysis where one of the criticisms in the Ankura Report is that the Boedeker Report excludes long time gaps.

(5) Third, Mr. Boedeker only attempted to account for outliers on one-half of the distribution.⁸⁵

139. The last exemplar above shows the utter confusion about the concept of outliers by referring to an unspecified “one-half” of the distribution.

140. In the context of the determination of total uncompensated overtime hours, the treatment of so-called outliers in the Ankura Report is incorrect. The Ankura Report proposes to delete all outliers without defining what an outlier is. I will use the above example of weekly overtime hours to demonstrate the flaw in the Ankura approach.

141. Assume that in Week 3 the same 11 employees worked again a total of 22 hours of weekly overtime distributed as follows:

- 1 - Employee 8: 0
- 2 - Employee 10: 0
- 3 - Employee 2: 0
- 4 - Employee 4: 1
- 5 - Employee 6: 1
- 6 - Employee 1: 1
- 7 - Employee 3: 1
- 8 - Employee 5: 1
- 9 - Employee 7: 1
- 10 - Employee 9: 1
- 11 - Employee 11: 15

142. In this example, Employee 11 worked 15 hours of overtime while the other 11 employees worked no overtime or one hour of overtime. The Ankura approach would label Employee 11 an “outlier” and discard this employee’s 15 hours of uncompensated overtime from the calculations. Clearly, this approach incorrectly deflates the total uncompensated overtime hours.

⁸⁵ Ankura Report, p. 41.

6.3 Ankura's failure to properly present the AR(1) Model in the Boedeker Report.

143. The Ankura Report states that “*Mr. Boedeker's AR(1) process is flawed and does not have any justification.*”⁸⁶ This is an example of making an unsubstantiated statement and ignoring the explanations in the Boedeker Report which clearly defines how the AR(1) model was developed and specified. The Ankura Report does not contain evidence or proof that would show why our process is flawed.

6.4 Ankura misrepresents Monte Carlo simulations in general, and the Monte Carlo simulation in the Boedeker Report in particular.

144. The Ankura Report states “Additionally, Mr. Boedeker applied a Monte Carlo Simulation to estimate the margin of error in his estimates and then applied that margin of error to all periods.”⁸⁷ This is a mischaracterization. In fact, the Boedeker Report describes in Section 5.5 how Monte Carlo Simulations were used in this case:

5.5 Monte Carlo Simulation Study of Unpaid Overtime Hours for Time Periods Where Time-Stamped Data is Not Available

81. *In Sections 5.2 and 5.4, I describe how weekly employee unpaid overtime and unpaid straight time hours were estimated. My team and I utilized these estimated hours to estimate weekly average values of overtime and unpaid straight time for the class across the entire class period.*

82. *For this estimation, we applied a statistical methodology known as Monte Carlo Simulation.*⁸⁸ *In a Monte Carlo simulation, a model is used to generate multiple data sets (thousands or even millions depending on the specific needs). Those data sets are generated by a random process that draws from an existing pool of data.*

83. *The Monte Carlo Simulation is a commonly used statistical method to estimate population parameters through the use of sampling. I*

⁸⁶ Ankura Report, p. 10.

⁸⁷ Ankura Report, p. 6.

⁸⁸ Kotz, S. and Norman Johnson. (1988). Encyclopedia of Statistical Sciences, Volume 5, John Wiley & Sons, pp. 612-617, give a broad overview of the methodology and its widespread use while Robert, Christian and George Casella. (2004). Monte Carlo Statistical Methods, Springer Verlag dedicate nearly 600 pages to the theoretical foundations of such methods.

have applied Monte Carlo Simulations in numerous cases including but not limited to the following:

a. Simulating the customer flow and the service time in bank branches to optimize the staffing of bank tellers relative to customer demand; based on my work, a national bank implemented staffing schedules in its branches;

b. Simulating customer demand for bank branches in varying geographical areas to optimize branch locations and opening of new branches and closing/relocating underperforming branches; based on my work, a regional bank opened and closed branches to realize profitability gains; and

c. Simulating customer demand for bundled products based on historical data and then introduced new or existing additional products to existing product bundles to optimize the profitability impact of cross-selling opportunities to existing customers and to attract new customers; based on my work, a regional bank implemented marketing campaigns to improve customer retention and new customer acquisition.

84. In this case, we simulated overtime and uncompensated straight-time distributions for time periods without electronic time-stamped data by randomly drawing from the pool of estimated weekly data derived from the electronic system data with timestamps.

85. More specifically, for each week in a year, my team and I generated 1,000 random samples of 5,000 employees' overtime and uncompensated straight-time estimates that had been calculated for the time period with data. These random samples were proportionally weighted by the count of employees in the different class positions. The sample selection process utilized sampling with replacement from the weekly estimates described in Sections 5.2 and 5.4. Further, the sampling frame from which the 1,000 random samples were drawn had been trimmed by excluding the lower and upper 1% of estimated overtime data. The combination of the trimming process as well as sampling with replacement ensured that estimates in the forecast and backcast were not skewed by potential outliers. i.e., individual observations that are unusually large. These observations would be related to employees who had comparatively larger time durations captured during a given week.

145. The Ankura Report misrepresents the purpose of the Monte Carlo simulation in the Boedeker Report as a method to calculate a margin of error “to estimate confidence intervals from distributions of unknown origins (typically, distributions that are not Gaussian),”⁸⁹ when in fact

⁸⁹ Ankura Report, p. 67.

the methodology was utilized to estimate the unpaid straight time and overtime hours for time periods where timestamped data was not available.

146. The assertion that the Monte Carlo procedure was designed to estimate confidence intervals from distributions of unknown origins demonstrates a misunderstanding of basic statistical concepts. First, confidence intervals are calculated based on sample or modeling results – they are not estimated. Second, Monte Carlo procedures are designed to generate multiple data sets (thousands or even millions depending on the specific needs) which are generated by a random process that draws from an existing pool of data. Alternatively, many applications of Monte Carlo procedures simulate data sets based on assumptions about the distribution of such data.

147. Ankura appears to be confusing the Monte Carlo simulation discussed in the Boedeker Report with “bootstrapping” which is a statistical resampling methodology that is utilized to compute confidence intervals for estimators from random samples that have non-Gaussian distributions. Based on this obvious confusion, the discussion of Monte Carlo simulations in the Ankura Report is meaningless. From both a theoretical and practical perspective, the Monte Carlo simulations were performed correctly and used the proper assumptions in their execution.

6.5 Ankura Misrepresents the Computation of Confidence Intervals in the Boedeker Report and then Incorrectly Computes Confidence Intervals in the Ankura Report.

148. We have already pointed out that Ankura’s interpretation of how the Boedeker Report computes confidence intervals is incorrect.⁹⁰ Furthermore, the Ankura Report utilizes an incorrect method to calculate confidence intervals when attempting to prove that the confidence intervals in the Boedeker Report are incorrect. Therefore, Ankura’s criticism leads to conclusions that are invalid.

6.6 Ankura’s confusion about the concept of an Average.

149. The Ankura Report states:

⁹⁰ Paragraph 89 in the Boedeker Report explains how confidence intervals for the damages estimates were calculated.

Second, the overall distribution of maximum gaps is multi-modal.⁸⁷ This means that the distribution does not have a single average value and that a single average value is a poor estimator for the distribution.⁹¹

150. The Ankura Report is wrong when stating that a multi-modal distribution does not have a single average value. In fact, the average is always the sum of all data points divided by the number of data points regardless of how many modes there are. Furthermore, the second statement in the quote that “a single average value is a poor estimator for the distribution” is irrelevant because it does not specify what parameters of the distribution are estimated and in what context the estimation takes place.

7 Detailed Support for Opinion 4

Opinion 4: The Ankura Report Incorrectly Proposes Productivity as a Criterion for Compensating Time Worked.

151. We were asked to “opine on and, if possible and appropriate, to develop and apply a method to compute aggregate damages for hours that were not properly compensated.”⁹² Our goal was to develop a methodology to accurately and robustly determine how many hours were not compensated at the appropriate straight and overtime rate of time and a half the respective base rate of pay. We created this methodology without regard for the type, quality, or quantity of work performed by employees.

152. This is made clear both in my Affidavits as well as the Boedeker Report. In my Affidavits, we respond to Denise Martin, who claims that gaps between timestamped work hours imply lack of productivity that should be deducted when calculating damages. My response was clear: “[I]f an employee was not productive during his or her scheduled hours of work – for instance by surfing the web – that is a concern to be addressed by management through performance or discipline measures. Low productivity does not make otherwise compensable hours of work non-compensable.”⁹³ As I continue, “[E]mployees are scheduled for certain hours and paid for those

⁹¹ Ankura Report, p. 41. The footnote in the quote reads as follows: A multimodal distribution is a probability distribution with two or more modes. See <https://www.statology.org/multimodaldistribution/>

⁹² Boedeker Report, ¶ 50.

⁹³ Third Affidavit of Stefan Boedeker, ¶¶ 15-16.

hours. My methodology seeks to identify unpaid compensable work done before or after those scheduled hours.”⁹⁴ In the Boedeker Report, we stated that we are not discriminating between low-productivity and high-productivity time.⁹⁵ The argument that any hours should be excluded from the total of compensable hours due to low productivity is outside my expertise in statistics and economics because there is no available data available to measure how and when employees had low productivity. Thus, any deduction would be based on speculation alone.

153. Despite making clear that we are calculating uncompensated hours regardless of productivity, the Ankura Report repeatedly appeals to low productivity arguments as reasons for not paying employees.

154. The Ankura Report cites two examples of activities within work hours that they opine should not be compensable:

- a. “[N]on-work, personal activities while at work,” and
- b. “[A]n accommodation, such as pumping breast milk, and so they were not seen on the System Data.”⁹⁶

155. These two examples are repeated three times throughout the Ankura Report. However, these are speculative and cannot be measured using the data CIBC produced. Ankura presents this cherry-picked evidence as a serious critique of the methodology presented in the Boedeker Report while at the same time criticizing the Boedeker Report for lacking statistical rigor. Had accurate time records been kept by CIBC, these activities could have been measured if that was appropriate.

156. Additionally, the Ankura Report points out that employees were taking breaks within the day bookended by the first and last timestamp.⁹⁷

157. These critiques were first seen in the Fotheringham Affidavit. He notes that within the Systems Data, he found examples of employees visiting websites related to hotel reservations,

⁹⁴ Third Affidavit of Stefan Boedeker, ¶ 17.

⁹⁵ Boedeker Report, ¶ 67.

⁹⁶ Ankura Report pp. 25, 54, 58.

⁹⁷ Ankura Report p. 75.

media, airline searches, news, and sports.⁹⁸ Notably, these examples are found in the “Surf Control” system.⁹⁹ This system was deleted by CIBC and thus, not used in my analysis.

158. Likewise, the Martin Affidavit notes that there are some examples of employees logged into multiple applications at the same time. She writes that “If one application is work-related while one is not (e.g., internet surfing), there is no way of determining which application the employee was actually engaged in at the time.”¹⁰⁰ Contrary to her point, the IIS data often contains the website related to employee browsing. When this field was available, we only included datapoints related to websites containing “CIBC” in the name (e.g., we would have eliminated or excluded data relating to Facebook, general google searches, travel, etc.). Further and in any event, it is my understanding that issues related to personal web browsing are issues that should be resolved by management.

159. Beyond the fact that the Ankura Report does not concede that CIBC employees are paid to be present and available at work, as opposed to generating system captured activity, the Ankura Report fails to provide an objective measure of productivity. It is also unrealistic to assume that even complete systems data would fully capture all productive time of all employees, because (as noted several times above) there are numerous activities that do not leave electronic timestamps such as meetings, phone calls, handling paperwork, or having interactions with customers.¹⁰¹

8 Detailed Support for Opinion 5

Opinion 5: Examples in the Ankura Report to Discredit the Boedeker Report are Exaggerated or Cherry-picked from the large Universe of Systems Data and Generalizations from those Examples are grossly misleading

⁹⁸ Fotheringham Affidavit, ¶ 5.11.

⁹⁹ Fotheringham Report Backup Data: wsactivityfiltnofilt_block_allow_nov07.pdf, wsactivityfiltnofilt_block_allow_oct07.pdf, wsactivityfiltnofilt_block_allow_sep07.pdf, wsactivityfiltnofilt_block_allow_nov07_dr00268.pdf, wsactivityfiltnofilt_block_allow_nov07_DS01132.pdf, wsactivityfiltnofilt_block_allow_nov07_mu00029.pdf, wsactivityfiltnofilt_block_allow_nov07_vg00003.pdf

¹⁰⁰ Martin Affidavit, p. 6.

¹⁰¹ Boedeker Report, ¶ 114-115.

160. The Ankura Report provides examples from the Systems Data that are out of context, grossly misleading, or cherry picking:

- a. Some employees have large gaps in their timestamp data, and we are assuming these employees are working between their bookend timestamp observations.¹⁰²
- b. We do not properly remove time outliers in the data.¹⁰³
- c. We did not make the assumption that data was missing because employees were on vacation or were at an appointment.¹⁰⁴
- d. Some employees consistently arrived at a specific time before opening, but instances in the timestamp data suggesting they arrived just after opening should not be extended in the M2 and M3 models.¹⁰⁵
- e. The Boedeker Model extends closing times without basis in the M2 and M3 models.¹⁰⁶

161. Ankura misuses these examples to suggest that the data validation efforts in the Boedeker Report are insufficient and do not reflect the evidentiary record of this case. However, the use of individual and anecdotal examples of just a few specific employees is insufficient to prove or disprove aggregate damages stemming from unpaid straight time and overtime during a multiple decade long class period covering over 30,000 employees.

162. Ankura presents examples of employees with large gaps in the data. Indeed, many of Ankura's cherry-picked outliers were in fact removed from my analysis. The following are examples which the Ankura Report points out as leading to inflated damages. However, these specific examples were in fact removed from the analysis in the Boedeker Report for Model 1 as a result of trimming the top 1% of the distribution of overtime before calculating final average weekly overtime and uncompensated time:

¹⁰² Ankura Rebuttal Report p. 20.

¹⁰³ Ankura Rebuttal Report p. 25.

¹⁰⁴ Ankura Rebuttal Report p. 31.

¹⁰⁵ Ankura Rebuttal Report, p. 46.

¹⁰⁶ Ankura Rebuttal Report, p. 55.

Table 9: Misleading Ankura Examples

Ankura Example	Topic	Empid	Date
Example 2, Page 27	Outlier Gaps Before the Branch Opens	100012103	12/28/2007
Example 3, Page 27 Example 2, Page 62	Outlier Gaps Before the Branch Opens Initial Adjustment for Outlier Start Times	100030612	02/22/2008
Example 5, Page 28 Example 1, Page 62	Outlier Gaps after the Branch Closes Initial Adjustment for Outlier Start Times	024679201	10/30/2008
Example 8, Page 30 Example 2, Page 63	Outlier Gaps After the Branch Closes Initial Adjustment for Outlier End Times	100014820	10/23/2008

163. The Ankura Report presents four examples on Pages 32-36 to show “improper imputation”. Each of these examples show the following pattern for each of the four cherry-picked employees:

- a. Week 1: Employee has a week of datapoints
- b. Week 2: Employee is missing a week of datapoints
- c. Week 3: Employee has a week of datapoints

164. The Ankura Report states that because no timestamps were observed in “Week 2”, the employee was absent. As stated repeatedly above, the absence of time stamped data is not or may not be evidence of anything other than the fact that no time stamped data was produced for that period. Indeed, significant absences in time stamped data are not surprising given the deletion of data by CIBC and other electronic datasets that were not produced for analysis in our report. Furthermore, there appears to be direct evidence that the employee worked during Week 2 because the payroll data showed the employee to be working. The earn code description “Basic Pay” indicates employee workdays and the earn code description “Vacation Taken Canada” indicates when the employee is taking vacation. All four employees had “Basic Pay” amounts of 68-75 hours during the biweekly period, indicating that the employee worked during both weeks. Thus, there is indeed evidence that the employee worked during the period in question. The fact that timestamp data are missing for one week during the pay period, but the pay code is “Basic Pay” may be a result of the deletion of systems data or failure in production by CIBC, rather than CIBC systematically paying employees who were not working. The following examples show payroll records that show payments as “Basic Pay” for the hours in the payroll record associated with the weeks Ankura pulled data for:

Example 1: Ankura falsely states there is no evidence that Emp ID 020988952 worked during the week of March 16, 2008

EmplID	Pay Begin Date	Pay End Date	Earn Code Description	Hours	Amount
020988952	3/9/2008	3/22/2008	Additional Flex Credit	0	\$ 10
020988952	3/9/2008	3/22/2008	General Program Credit	0	\$ 9
020988952	3/9/2008	3/22/2008	Basic Pay	75	\$ 1,262

Example 2: Ankura falsely states there is no evidence that Emp ID 021025341 worked during the week of December 21, 2008

EmplID	Pay Begin Date	Pay End Date	Earn Code Description	Hours	Amount
021025341	12/14/2008	12/27/2008	Basic Pay	68	\$ 906
021025341	12/14/2008	12/27/2008	General Program Credit	0	\$ 9
021025341	12/14/2008	12/27/2008	Additional Flex Credit	0	\$ 7

Example 3: Ankura falsely states there is no evidence that EmplID 087105888 worked during the week of June 22, 2008.

EmplID	Pay Begin Date	Pay End Date	Earn Code Description	Hours	Amount
087105888	6/15/2008	6/28/2008	Additional Flex Credit	0	\$ 14
087105888	6/15/2008	6/28/2008	General Program Credit	0	\$ 9
087105888	6/15/2008	6/28/2008	Basic Pay	75	\$ 1,668

Example 4: Ankura falsely states there is no evidence that EmplID 100024042 worked during the week of January 25, 2009.

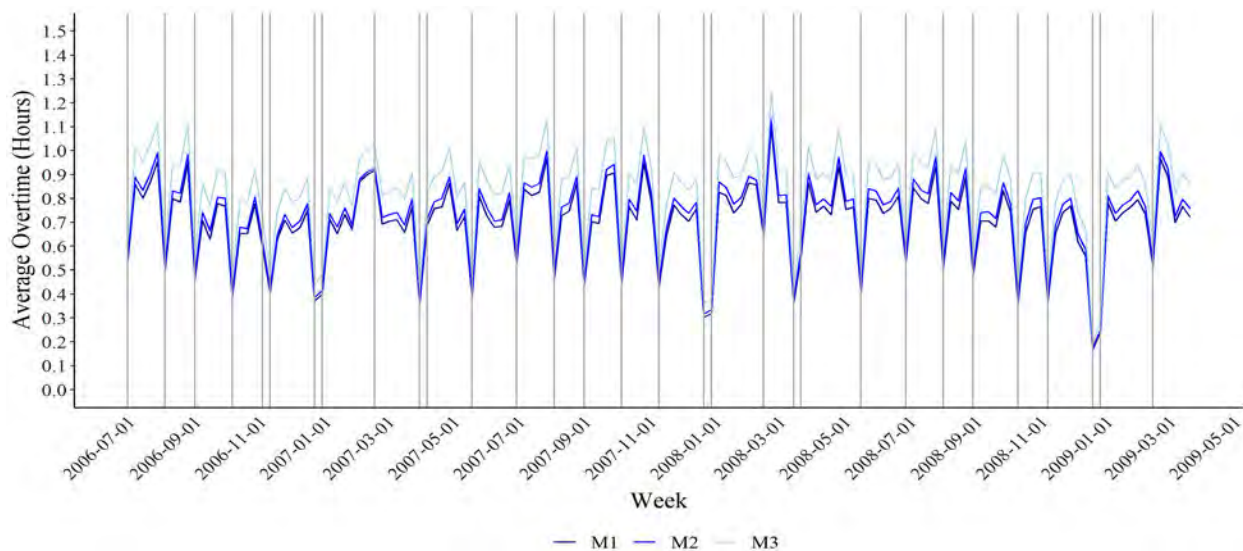
EmplID	Pay Begin Date	Pay End Date	Earn Code Description	Hours	Amount
100024042	1/25/2009	2/7/2009	Basic Pay	75	\$ 1,041
100024042	1/25/2009	2/7/2009	General Program Credit	0	\$ 9
100024042	1/25/2009	2/7/2009	Additional Flex Credit	0	\$ 8

165. Furthermore, the Ankura Report incorrectly states that the Boedeker Model does not capture bank holidays, and therefore, inflates damages. The damages methodology presented in the Boedeker Report multiplies the estimated employee count in a given week by the following estimated amounts:

- a. Average Overtime Observed
- b. Average Uncompensated Pay Observed
- c. Average Overtime Paid

166. Thus, on weeks with bank holidays, the average overtime calculated is lower because there are fewer daily data points. The following Figure 2 shows blue horizontal lines for the average overtime amount determined by Model 1 (M1), Model 2 (M2), and Model 3 (M3). The vertical lines represent holidays.

Figure 2: Average Weekly Overtime¹⁰⁷



167. The vertical lines in Figure 2 represent Canadian bank holidays and it can be seen that the estimated uncompensated overtime in weeks with Canadian bank holidays is much lower than in other weeks.

168. The Ankura Report also incorrectly asserts that the Boedeker Model assumes that employees never take a vacation.¹⁰⁸ The following example demonstrates the incorrectness of the assertion in the Ankura Report. Let's consider the following three scenarios:

- a. Scenario 1: Employee works on some days during both weeks of a two week pay period,

¹⁰⁷ Holidays plotted include New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civi/Provincial Day, Labor Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, Christmas Eve, and Family Day.

¹⁰⁸ Ankura Report, p. 8.

- b. Scenario 2: Employee takes off an entire week of a two week pay period, and
- c. Scenario 3: Employee takes off the entire two week pay period.

169. Under Scenario 1, if actual timestamps are available during both weeks, no datapoints are imputed. The weeks would be based on lower total hours and would thus bring down that employee, or class positions, average amount of weekly hours and overtime worked.

170. Under Scenario 2, if actual timestamps are available for one week and not the other, we would impute an average and count the employee when they are off.

171. Under Scenario 3, the employee would not have Basic pay for either week, and thus would not be part of the overtime and uncompensated hours analysis.

172. The impact of Scenario 2 is small. After removing optouts and non-class employees from the payroll data, approximately 10% of employee pay periods have the earn code description “Vacation Taken Canada”. This represents all scenarios above. For an employee to fall in scenario 2, we would expect amount paid for “Vacation Taken Canada” / (“Vacation Taken Canada” + “Basic Pay”) to be greater than, or equal to 50%, which only impacts approximately 1% of employee pay periods. 1% represents an upper bound of the impact of Scenario 2 due to the fact that it would include an employee who took off half of a pay period, but split the time taken off across both weeks. For example, an employee could have worked 10 days, took two days off in week 1 and three days off in week 2. It would be speculative to assume that employees always took their vacation in consecutive five day increments. In fact, that there are 252 combinations of ten days how an employee can take five days off. When employees take less than a week off, and have timestamp data, the imputation and extrapolation process utilizes these weeks which have fewer overtime hours and uncompensated weekly hours, and thus do not have an inflationary impact.

173. The Ankura Report mentions examples of employees who consistently come in to work early but had the odd late day that we give credit to in our M2 and/or M3 models by assuming that they arrived earlier than their first timestamp. It is noteworthy that the logic in Ankura’s Analysis contradicts their often repeated point that CSRs cannot do work before the branch opens or after it closes because they are not authorized to open and close the branch.

174. Take the first example – Employee 10348274, a CSR at the Huron-New Hamburg CIBC branch. As Ankura correctly notes, this individual appears to be a model employee. The branch opens at 9:30 AM, and the employee consistently arrives early. As described in the Rebuttal Report, this employee was early or just on time for work for 70 consecutive days, but on January 11th the Systems Data first shows a timestamp at 10:16 AM, which we adjusted to 10:00 AM in the M2 model and 9:40 AM in the M3 model. Ankura provides a month’s worth of earliest System Time which consistently shows the employee arriving before the branch opens.

175. Likewise, their second, third, and fourth examples are of other CSRs who consistently come in early to work before the branch opens.¹⁰⁹ The seventh and eighth examples are FSAs who consistently come in early, except one day they allegedly came in late, ostensibly due to weather.

176. All of these examples are of employees who, as repeatedly mentioned in the Ankura Report, should not have been authorized to open or close branches. Ankura repeatedly declares that these employees cannot work before the branch opens – contrary to the results of their timestamp analysis. Moreover, they are performing trackable actions, not just sitting in their car waiting for the branch to open. Clearly, these employees are doing work, and branch opening and closing times are not the appropriate bookends for analysis.

177. As a point of clarification, the Ankura Report falsely implies that my methodology assumes the bookend timestamp data is missing.¹¹⁰ We assume that there are missing data throughout the day, but generally these missing data do not influence the calculation of time worked unless a missing timestamp occurs on one of the bookends. However, it is logical that the first or last timestamp may be disproportionately likely to be “missing” as employees may be planning or cleaning up after their day, activities that are less likely to generate a digital timestamp in the data systems produced. Notably, the datasets that likely would have produced the earliest and latest time stamps (the MACS / Active Directory systems which recorded when Class Members logged on and logged off CIBC’s network) were deleted and thus not produced.

¹⁰⁹ Ankura Rebuttal Report, pp. 47-49.

¹¹⁰ Ankura Rebuttal Report, p. 46.

9 Detailed Support for Opinion 6

Opinion 6: The Ankura Report concludes that there are uncompensated overtime hours.

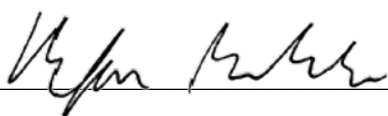
178. The detailed support for our opinions provides ample evidence that the Ankura Report prepared a model that would deflate or reduce damages. As described above, Ankura's assumptions, and calculations that achieve the goal of deflating damages are unsupported. Further, Ankura makes no attempt to account for and adjust its model for the fact that the data production by CIBC is incomplete due to the vast deletion of systems data.

179. However, it is important to point out that even with these deflationary assumptions, the Ankura Report still calculates substantial damages including interest up to \$125.2M.

10 Summary and Conclusion

180. In this Reply Report, we have responded to critiques and assertions by Ankura. Nothing in the Ankura Report has led us to change the opinions offered in the Boedeker Report and the conclusions drawn from the opinions. The methodology we have developed and applied to extract timestamped data from large electronic data systems to perform an analysis of Class Members' work activities outside of regularly paid work hours yielded accurate and reliable quantifications of class-wide economic losses that arose from unpaid overtime and straight time work suffered by the Class Members. Due to the nature of missing data systems, as well as the evidence in the data that employees are starting their shifts before the branch opens and ending their shifts after the branch closes, our opinion is that Model 3 contains the most reliable estimate of class wide damages. This decision relies on the assumption, which is supported by the data, that employees typically do not start and end their shifts right at the branch open and close time.

Respectfully submitted – Las Vegas, NV on July 18, 2022.



Stefan Boedeker

Appendix A: Revised Damages through December 1, 2022

1. In this Appendix, we provide damages through December 1, 2022. These damages expand the period interest is accrued and employee coverage for damages through the present. Updated CPI data is leveraged to account for differences in hourly rates from 2021 to 2022. Updated StatCan data is leveraged to account for differences in macroeconomic trends in 2021 and 2022.

2. The damages are organized by Relevant time period and the Model applied. Descriptions of the relevant time periods can be found in section 6.2 of the Boedeker Expert Report. Descriptions of the Models can be found in section 5 of the Boedeker Expert Report.

Appendix A - Table 1: Damages 2/1/1993 – Present

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - Present	Model 1	\$224M	\$385M	\$490M
2/1/1993 - Present	Model 2 - Extend to Open / Close	\$233M	\$400M	\$510M
2/1/1993 - Present	Model 3 - Extend to Pre Open / Post Close	\$262M	\$451M	\$574M

Appendix A - Table 2: Damages 2/1/1993 - 6/18/2009

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - 6/18/2009	Model 1	\$140M	\$274M	\$372M
2/1/1993 - 6/18/2009	Model 2 - Extend to Open / Close	\$146M	\$285M	\$388M
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$164M	\$321M	\$436M

Appendix A - Table 3: Damages Provincial Limitation – Present

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
Provincial Limitation - Present	Model 1	\$142M	\$213M	\$242M
Provincial Limitation - Present	Model 2 - Extend to Open / Close	\$148M	\$222M	\$252M
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$167M	\$250M	\$284M

Appendix A - Table 4: Damages Provincial Limitation – 6/18/2009

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
Provincial Limitation - 6/18/2009	Model 1	\$58M	\$102M	\$125M
Provincial Limitation - 6/18/2009	Model 2 - Extend to Open / Close	\$60M	\$107M	\$130M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$68M	\$120M	\$147M

Appendix B: Damages Without Just Two Conservative Assumptions

1. In this Appendix, we provide damages through December 31, 2021 with two adjustments:
 - a. Trimming the data of the top 1% and bottom 1% of Overtime and Uncompensated time.
 - b. Restricting employees in the analysis from those that had Basic Pay in a pay period, to those that had Basic Pay, Temporary Salary, or Hours Override.
2. The damages are organized by Relevant time period and the Model applied. Descriptions of the relevant time periods can be found in section 6.2 of the Boedeker Expert Report. Descriptions of the Models can be found in section 5 of the Boedeker Expert Report.

Appendix B - Table 1: Damages 2/1/1993 – Present

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - Present	Model 1	\$279M	\$472M	\$591M
2/1/1993 - Present	Model 2 - Extend to Open / Close	\$288M	\$488M	\$611M
2/1/1993 - Present	Model 3 - Extend to Pre Open / Post Close	\$319M	\$540M	\$676M

Appendix B - Table 2: Damages 2/1/1993 - 6/18/2009

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
2/1/1993 - 6/18/2009	Model 1	\$178M	\$341M	\$454M
2/1/1993 - 6/18/2009	Model 2 - Extend to Open / Close	\$184M	\$353M	\$469M
2/1/1993 - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$204M	\$391M	\$520M

Appendix B - Table 3: Damages Provincial Limitation – Present

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
Provincial Limitation - Present	Model 1	\$175M	\$258M	\$290M
Provincial Limitation - Present	Model 2 - Extend to Open / Close	\$181M	\$267M	\$300M
Provincial Limitation - Present	Model 3 - Extend to Pre Open / Post Close	\$200M	\$296M	\$332M

Appendix B - Table 4: Damages Provincial Limitation – 6/18/2009

Relevant Time Period	Sensitivity	No INT	Simp INT	Comp INT
Provincial Limitation - 6/18/2009	Model 1	\$74M	\$128M	\$153M
Provincial Limitation - 6/18/2009	Model 2 - Extend to Open / Close	\$77M	\$132M	\$158M
Provincial Limitation - 6/18/2009	Model 3 - Extend to Pre Open / Post Close	\$85M	\$146M	\$175M

STEFAN BOEDEKER

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Education

- BS in Statistics
University of Dortmund, Germany
- BA in Business Administration
University of Dortmund, Germany
- MS in Statistics
University of Dortmund, Germany
- MA in Economics
University of California, San Diego
- ABD in Economics
University of California, San Diego

Professional Associations

- Member of the American Economic Association (AEA)
- Member of the American Statistical Association (ASA)
- Member of the Econometric Society
- Member of the Mathematical Association of America (MAA)
- Member of the American Association for Public Opinion Research (AAPOR)
- Member of the Insights Association (FKA MRA)
- Member of AICPA task force dealing with statistical methodology questions in Corporate Integrity Agreements (CIA).

Background

Stefan is a Managing Director at Berkeley Research Group where he focuses on the application of economic, statistical, and financial models to a variety of areas such as solutions to business issues, complex litigation cases, and economic impact studies. He has extensive experience applying economic and statistical theories and methodologies to a wide variety of cases where But-for-scenarios have to be developed based on probabilistic methods and where statistical predictive modeling has to be applied to assess liability and damages.

Stefan has applied these techniques in business disputes, single-plaintiff cases, multi-plaintiff cases, and class action proceedings in the areas of class certification, liability assessment, developing damages scenarios, and post settlement or judgment distributions.

Professional and Business Experience

Representative Engagements

Employment Litigation

Stefan has extensive experience applying economic and statistical theories and methodologies to employment related matters such as discrimination, wrongful termination, and wage and hour cases. His work in such cases to date has included, but is not limited to, designing and conducting surveys, time and motion studies, observational studies, statistically analyzing the results of such surveys and studies (his own and other experts' studies), applying statistical sampling methodologies to extrapolate results from a subset to a universe of individuals, developing statistical models and tests to answer liability questions, applying economic theory to develop damages scenarios, and analyzing large employment related databases.

WAGE AND HOUR

- » For a computer equipment leasing company Stefan utilized statistical models to estimate exposure due to alleged forfeiture of unpaid vacation time.
- » In several cases involving 12-hour shift workers at hospitals Stefan performed rebuttal analyses of plaintiff's damages computations.
- » For a large electronic retail chain Stefan calculated exposure based on the failure of paying overtime for store managers.
- » For a major department store Stefan performed a statistical analysis of manager surveys where he found significant differences in the managers' allocation of time across department and stores. Ultimately, due to these differences a class was not certified.
- » For a large sporting goods retail chain Stefan assisted in defining the size of the potential class and in estimating the potential exposure which led to a favorable, early settlement of the case.
- » For a women's shoes retail chain Stefan designed and statistically analyzed an observational study to quantify the amount of time spent on exempt versus non-exempt tasks.
- » For a video rental store chain Stefan developed sampling algorithms based on in-store security cameras to analyze time spent by assistant managers on exempt versus non-exempt activities.
- » For a large fast food chain Stefan directed a team collecting employee work information from restaurant locations in order to monitor and gain compliance in response to litigation
- » For a large mass merchandiser Stefan developed a document and data reconciliation tool and he developed a statistical sampling mechanism to proof compliance with a court ordered document retention procedures in the course of a wage and hour litigation.
- » For a limousine company Stefan developed a statistical sampling based exposure model to quantify the impact of alleged unpaid overtime and missed meal breaks.
- » Stefan worked with a Fortune 500 bank in a class action suit to review the claims of managers that were misclassified and should have been paid overtime. To compute damages, Stefan reviewed the overtime records of employees in this position prior to a job classification change and, in the absence of overtime data after the job classification change, Stefan reviewed sign in and sign out times of the office building.
- » For a long-term care provider Stefan used data from timesheets, payroll, and other scheduling records to create comprehensive reports showing potential exposure for each of the claimed areas: timely wage payment, overtime wage payment, adequate daily meal and rest break periods, and travel time compensation.
- » For a maternity clothing store chain Stefan performed analyses related to exempt/non-exempt status issues for managers and assistant managers. Stefan also conducted a break time analysis for all employees.

- » For a commercial flooring contractor Stefan assessed the job duties and responsibilities of a group of supervisors. During the engagement, the scope of work expanded to include an analysis of misclassification and back-pay exposure for additional groups of employees.
- » For a software developer Stefan analyzed how department and project specific characteristics impacted the work flow and the correlation of that impact to certain exemptions.
- » For a large meatpacker Stefan conducted a time and motion study to properly assess the duration of certain separately compensated activities to rebut allegations of violation of minimum wage laws.
- » For a public university housing department Stefan conducted an extensive time and motion study to identify the tasks (and associated time range to perform each task) related to processing a contract cancellation.
- » For a large drugstore chain Stefan used in-store cameras for the smaller stores and actual in-store observations for the larger stores to conduct a time motion study and quantify the time spent by assistant managers on certain pre-defined tasks.
- » For a large public storage company Stefan conducted a detailed time and motion study to determine the cost of collection and administration of late payments. Using both self-logging and independent review techniques, Stefan defined each step in the late payment process, calculated the cost to the company for such activities, and compared this cost to the late fees under dispute.
- » For a large retail store chain Stefan performed statistical analyses of regularly conducted employee activity surveys.
- » For a mass merchandiser, Stefan conducted an observational study of activities of all individuals classified as managers to show significant differences in daily activities.
- » For a department store, Stefan conducted an in-store observational study of managers and assistance managers to assess the percentage of time spent on managerial tasks.
- » For a state ferry system in the Pacific Northwest, Stefan conducted an observational study of engine room personnel during shift changes to quantify potentially unpaid time worked.
- » For a large retail chain Stefan conducted an extensive analysis of the company's compliance with break time rules and regulations and also the employees' usage and potential abuse of break time.
- » For a large mass merchandise retailer Stefan compiled a comprehensive database of punch clock data, payroll data, point of sales data, hardcopy information about manual edits of time entries, store security system data, etc. to analyze allegations of inserting breaks, deleting time and forcing employees to work after they clocked out.
- » For a large electronic retail chain Stefan analyzed time card data, point of sales data and other store specific attributes to quantify potentially missed meal and rest breaks.

DISCRIMINATION, WRONGFUL TERMINATION

- » For a large telecommunications company, Stefan provided a rebuttal analysis of plaintiffs' expert's damages analysis in a multi-plaintiff action alleging wrongful termination and age discrimination. Stefan also developed alternative damages scenarios and addressed questions of liability.
- » In an OFCCP investigation alleging discriminatory hiring practices at several food processing plants, Stefan constructed employment databases and performed statistical analyses to address the allegations.
- » In a gender discrimination case involving a client in the food processing industry, Stefan analyzed the impact of the implementation of an Affirmative Action Plan on the allegedly discriminatory employment practices.
- » In a wrongful termination case alleging age discrimination for a vegetable seed company, Stefan performed rebuttal work of the plaintiff's expert's liability and damages analysis.
- » In a wrongful termination case alleging age discrimination for a major aerospace company, Stefan performed statistical analyses to rebut allegations of age discrimination.
- » In a class action race discrimination suit against the Alabama Department of Transportation, Stefan developed statistical regression models and tests to analyze the alleged discrimination.
- » In a class action gender discrimination case against a large real estate brokerage firm, Stefan provided deposition testimony to class certification issues.
- » In a wrongful termination dispute of a regional property manager, Stefan utilized economic and statistical models to assess the allegations of economic loss due to the separation of employment.
- » In a gender discrimination case against a temporary employment agency, Stefan performed econometric analyses to disprove salary discrimination against two former female employees. Stefan addressed plaintiffs' expert's damages calculations and developed alternative scenarios.
- » In a case involving a job lottery for dock workers, Stefan performed a statistical analysis of the process showing that the lottery did not create a disparate impact.
- » For a large meat processing plant, Stefan performed statistical analyses of employment data to address allegations of discriminatory hiring practices.

OTHER DISPUTES

- » In a class action alleging misleading advertising practices, Stefan performed statistical analyses in the class certification stage.
- » In a large variety of patent, copyright, and trademark infringement cases, Stefan rebutted expert reports utilizing economic theory or statistical techniques, in particular economic demand models, regression models and statistical sampling methods.

- » For a large U.S. food and beverage company, Stefan specified and estimated multivariate econometric and statistical models to derive the value of trademarks involved in a business acquisition.
- » In several cases involving confusion of trademarks, Stefan designed, conducted, and statistically analyzed the results from consumer surveys that were designed to assess the market penetration of certain trademarks.
- » In several cases involving similar sounding advertising slogans, Stefan designed, conducted, and statistically analyzed the results from consumer surveys that were designed to assess the likelihood of confusion as to which manufacturer was behind a particular slogan.
- » For a large real estate developer who was accused by several individual architects of having used their designs and plans in their developments without paying royalties, Stefan used statistical models to assess the “likeness” of the plans involved.
- » In a copyright infringement case alleging the use of lyrics from another song, Stefan used probabilistic models to assess the “likeness” of the lyrics in question and he also calculated the probability that a certain sequence of words used in the lyrics would happen by chance.
- » In a case involving the use of a “look-alike” of a celebrity chef and cookbook author, Stefan conducted an economic demand analysis of the spice market to estimate the goodwill of the particular brand as compared to other branded and several unbranded competitors. In the same case, Stefan predicted future book sales and estimated future royalty payments for books already in print and books to be published
- » For a patent infringement case on micro-motors, Stefan analyzed data of production and sales of goods that contain micro-motors and ran econometric regressions to determine price erosion.
- » In a patent infringement case on electronic regulators used in automobiles, Stefan utilized multivariate regression models to determine market segment specific price erosion.
- » For a patent infringement case on industrial machines, Stefan analyzed scenarios based on economic demand models and price elasticity calculations to determine past and future lost profits as well as price erosion.
- » For a large U.S. food and beverage company, Stefan worked on an evaluation of intangible assets based on an econometric model comparing the demand of branded and private label products.
- » In a copyright infringement case of used car evaluation guides, Stefan specified and estimated linear and non-linear regression models to determine the effect of the infringement of the copyright on sales over time.
- » In several cases alleging the theft of trade secrets when high level employees left a company, Stefan performed economic analyses to estimate the impact of the theft of the trade secret.
- » In a large variety of patent, copyright, and trademark infringement cases, Stefan rebutted expert reports utilizing economic theory or statistical techniques, in particular economic demand models, regression models and statistical sampling methods.

- » In a class action alleging improper practices of charges for gym memberships, Stefan performed statistical analyses in the class certification analysis. Based on the analysis, the ultimately certified class was significant smaller than initially defined. In this case, Stefan also developed statistical models to assess damages.
- » In a class action alleging losses to consumers due to faulty window regulators in automobiles, Stefan utilized statistical models to assess economic damages.
- » In a class action against a large financial institution alleging fee overcharges for personal trust accounts, Stefan utilized statistical analyses to segment the account holders and ultimately reduce the size of the class.
- » In a case where a provider of a used car evaluation model was ordered by the court to test if their model did not significantly undervalued cars, Stefan performed statistical analyses.
- » In a class action case over fee overcharges in the payment process of car insurance, Stefan developed a distribution model of repayments to class members after a settlement had been reached.
- » In a class action of home owners over alleged diminution of property values due to proximity to a plume of contaminated soil, Stefan performed statistical analysis to assist counsel in a motion against class certification.
- » In a natural resource damage case, Stefan provided econometric analysis of property value loss due to proximity to a solid waste site utilizing hedonic regression models.
- » In a natural resource damage case, Stefan provided econometric analysis of property value loss due to proximity to a polluted river utilizing hedonic regression models.
- » For a case involving potential damage from a landfill in a state park, Stefan analyzed data about travel, tourism and park attendance. Stefan specified and estimated linear regression models and time series models to predict park attendance.
- » In a class action case involving alleged diminution of property values due to ground-water contamination, Stefan specified and estimated hedonic regression models to show that other factors than the contamination contributed significantly to the loss in property value.
- » In a class action against a large financial institution alleging non-payment of coupon payments for bearer bonds Stefan designed and administered large-scale databases to reconstruct accounting records of a large financial institution's Corporate Trust Department. He developed statistical models to analyze bondholders' presentment behavior of Bearer bonds.
- » In a class action dispute between the Department of Interior and individual Native Americans over mismanagement of individual trust accounts, Stefan performed a statistical analysis of an electronic database with approximately 60 million records in order to draw a statistically valid sample of accounts for further analysis.
- » In a trademark infringement case of video equipment, Stefan calculated damages based on the defendant's unjust enrichment utilizing statistical time trend models.

- » For a shareholder derivative action against a leading publicly-traded health care provider, employed an econometric approach to quantify potential damages per share due to alleged section 10b-5 violations and other claims. For the same matter, developed a multi-trader model to estimate the number of shares potentially damaged.
- » In a dispute between a major health care provider and private payor groups, Stefan developed statistical stratified sampling models to assess exposure across different contract types.
- » For a large financial institution's personal trust department, Stefan designed a random sample to estimate the potential exposure due to fee overcharges.
- » For a computer equipment leasing company Stefan utilized statistical models to estimate exposure due to alleged forfeiture of unpaid vacation time in a class action of former and current employees.
- » For a leading publicly-traded developer of enterprise management software, employed statistical approach to demonstrate the diversity of investment styles among proposed lead plaintiffs for a securities class action lawsuit alleging section 10b-5 violations and other claims. Employed an econometric approach to estimate potential damages for each lead plaintiff.
- » For a leading publicly-traded developer of enterprise management software, Stefan employed econometric time-series model to analyze allegations of insider trading and the timing of certain stock transactions relative to information available to officers in the company.
- » For a shareholder derivative action against a leading publicly-traded health care provider, employed an econometric approach to quantify potential damages per share due to alleged section 10b-5 violations and other claims. For the same matter, developed a multi-trader model to estimate the number of shares potentially damaged.
- » For a publicly-traded manufacturer of office supplies, developed a Black-Scholes application and utilized a binomial distribution probability methodology to evaluate the appropriateness of the size of a loan loss reserve related to a loan collateralized by the assets of an employee stock purchase plan.
- » For a large software developer, Stefan performed statistical modeling to assist in a securities class action litigation involving allegations of improper revenue recognition, reserve allocations, financial statement disclosures and other accounting irregularities
- » For a failed computer hardware company in defense of a 10b-5 securities litigation action, Stefan performed statistical analyses of accounting transactions, inventory and receivable reserves and the auditor's work papers in its evaluation of the allegations.
- » In several Rule 10b(5) class actions, Stefan used the event study approach to calculate the value line of a security. In these cases Stefan applied complex and advanced one, two, and multi-trader models.

Depositions

1. MRO Communications, Inc vs. American Telephone and Telegraph Company, United States District Court District of Nevada, Case. No. -5-95-903-PMP, Deposition on September 26, 1996
2. Yolanda Aiello Harris, individually and on behalf of all others similarly situated; Jennifer Hopkins, individually and on behalf of others similarly situated; Shannon L. Bradley, individually and on behalf of others similarly situated, Plaintiffs, vs. CB Richard Ellis, Inc., a California corporation; CB Commercial INC., a California corporation; Defendants, Superior Court of California, County of San Diego, Case No. GIC 745044, Deposition on January 5, 2001.
3. State of Tennessee, ex rel., Douglas Sizemore, Petitioner vs. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No 99-917-II, Deposition on October 11, 2001.
4. Howard Wright, Inc., a California corporation doing business as AppleOne Employment Services, Plaintiffs, vs. Olsen Staffing Services, Inc., a Delaware Corporation, Dagny Smith, an individual, Vicky Riechers, an individual, and Linda Shiftman, an individual, Defendants, Superior Court of the State of California for the County of Los Angeles, Case No. BC 200657, Deposition on December 7, 2001.
5. Sacred Heart Medical Center, et al., Plaintiffs, -vs- Department of Social and Health Services, and Dennis Braddock, the Secretary of the Department of Social and Health Services, Defendants, Superior Court of the State of Washington in and for the County of Thurston, Case No. 00-2-01898-1, Deposition on January 23, 2003.
6. Patrick Bjorkquist individually and on behalf of all others similarly situated, Plaintiff, vs. Farmers Insurance Company of Washington, Defendant, in the Superior Court of the State of Washington for King County, Case No. 02-2-11684-1 SEA, Deposition on November 3, 2003.
7. Diversified Property, a general partnership, Dora Saikhon Family Trust, and Nancy Saikhon Borrelli, an individual, Plaintiffs vs. Manufacturers Life Insurance (U.S.A.), a Michigan corporation, erroneously sued as Manufacturers Life Insurance Company, Inc., Defendants in the Superior Court of California, County of San Diego, Case No. GIC 815128, Deposition on July 21, 2004.
8. Alan Powers, Plaintiff, vs. Laramar Group et al., Defendants in the United States District Court, Northern District of California, Case No. C-02-3755 SBA, Deposition on August 27, 2004.
9. Group Anesthesia Services, A Medical Group, Inc., Claimant, vs. American Medical Partners of North Carolina, Inc., etc., et al., Respondents, JAMS Arbitration No. 1100040919, Deposition on February 9, 2005.
10. Group Anesthesia Services, A Medical Group, Inc., Claimant, vs. American Medical Partners of North Carolina, Inc., etc., et al., Respondents, JAMS Arbitration No. 1100040919, Deposition on March 11, 2005.
11. Fujitsu v. Cirrus Logic et al., United States District Court, Northern District of California, San Jose Division, Case No. 02CV01627. Deposition on April 21 and 22, 2005.

12. Goldman et al. v. RadioShack Corporation, United States District Court, Eastern District of Pennsylvania, Case No. 03 CV 0032, Deposition on May 18, 2005.
13. Perez et al. v. RadioShack Corporation, United States District Court, Northern District of Illinois, Eastern Division, Case No. 02-CV-7884, Deposition on December 13, 2005.
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99. Inteliquent, Inc. v. Free Conferencing Corporation; HDPSTN, LLC d/b/a HD Tandem; Wide Voice, LLC; Yakfree, LLC; and Carrierx, LLC, United States District Court for the Northern District of Illinois Eastern Division, Case No. 1:16-CV-06976, Deposition on October 18, 2019.
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103. Ira Kleiman, as the personal representative of the Estate of David Kleiman, and W&K Info Defense Research, LLC v. Craig Wright, United States District Court, Southern District of Florida, Case No. 9:18-cv-80176-BB/BR, Deposition on April 22, 2020.
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105. Jennifer Song and Scott Wertkin, et al. v. Champion Petfoods USA, Inc. and Champion Petfoods LP, United States District Court District of Minnesota, Case No. 18-cv-03205-PJS-KMM, Deposition on December 2, 2020.
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113. Rachel Colangelo and Kathleen Paradowski, et al. v. Champion Petfoods USA Inc. and Champion Petfoods LP, United States District Court Northern District of New York, Case No. 6:18-cv-01228 [LEK/DEP], Deposition on March 16, 2021.
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117. Wendy Manemeit, et al. v. Gerber Products Co., The United States District Court for the Eastern District of New York, Case No. 2:17-cv00093, Deposition on June 4, 2021.
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124. Clay Kramer v. Brixinvest, LLC, United States District Court Central District of California, Case No. 2:20-cv-08844-AB-JPR, Deposition on January 6, 2022.
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126. Guy Reggev v. Brius Management Co., et al., Superior Court of California County of Los Angeles, Case No. 18STCV08773, Deposition January 10, 2022.
127. Lorraine Larson, et al. v. Mark Twain Medical Center, Superior Court of California for the County of Calaveras, Case No. 19CV44062, Deposition January 18, 2022.
128. Jared Le Feuvre v. Enterprise Rent-A-Car Canada Company, Ontario Superior Court of Justice, Court File No. CV-20-00647858-00CP, Cross-Examination on March 3, 2022.
129. Smartmed, Inc., et al. v. FirstChoice Medical Group, Inc., et al., Superior Court of California County of Fresno - B.F. Sisk Courthouse, Case No. 18CECG00374, Deposition on May 2, 2022.

Testimony

1. State of Tennessee, ex rel., Douglas Sizemore v. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No. 99-917-II, Trial Testimony on October 16, 2001.
2. State of Tennessee, ex rel., Douglas Sizemore v. Xantus Healthplan of Tennessee, Inc., Chancery Court of Davidson County, Tennessee at Nashville, Case No. 99-917-II, Rebuttal Testimony on October 26, 2001.
3. Howard Wright, Inc., et al. v. Olsen Staffing Services, Inc., et al., Superior Court of the State of California for the County of Los Angeles, Case No. BC 200657, Trial Testimony on March 4, 2002.
4. Columbia/HCA Healthcare Corporation - Billing Practices Litigation, United States District Court, Middle District of Tennessee, Nashville Division, Case No. 3-98-MDL-1227 on June 28, 2002.
5. Sacred Heart Medical Center, et al. v. Department of Social and Health Services, et al., Superior Court of the State of Washington in and for the County of Thurston, Case No. 00-2-01898-1, Testimony in Liability Trial on April 14, 2003.
6. Diversified Property, et al. v. Manufacturers Life Insurance (U.S.A.), et al., Superior Court of California, County of San Diego, Case No. GIC 815128, Trial Testimony on October 25, 2004.
7. Bridgestone/Firestone North American Tire v. Sompo Japan Ins. Co. of America, United States District Court for the Middle District of Tennessee Nashville Division Civil Action No. 3-02-1117 on March 7, 2005
8. Group Anesthesia Services, A Medical Group, Inc., v. American Medical Partners of North Carolina, Inc., etc., et al., American Arbitration Association, JAMS Arbitration No. 1100040919, Arbitration Testimony on March 23, 2005.

9. Goldman et al. v. RadioShack Corporation, United States District Court, Eastern District of Pennsylvania, Case No. 03 CV 0032, Testimony in Liability Trial on June 28 and 29, 2005.
10. Goldman et al. v. RadioShack Corporation, United States District Court, Eastern District of Pennsylvania, Case No. 03 CV 0032, Rebuttal Testimony in Liability Trial on July 5, 2005.
11. Mauna Loa Vacation Ownership LLP v. Accelerated Assets, LLP. United States District Court, District of Arizona, Case No. CIV 03-0846 PCT DGC. Trial Testimony on February 22, 2006.
12. School Districts' Alliance v. State of Washington, United States District Court, Eastern District of Thurston, Case No. 04-2-02000-7, Trial Testimony on November 13, 2006.
13. In the Matter of Premier Medical Group, PC, Appellant – Department of Health and Human Services, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-221579701, OMHA Appeal No. 1-18761858, Testimony on April 1, 2008.
14. Darensburg, et al. v. Metropolitan Transportation Commission, United States District Court, Northern District of California, Case No. C-05-1597-EDL, Trial Testimony on October 9, 2008.
15. R. Molina, et al. v. Lexmark International, Inc., Superior Court of the State of California for the County of Los Angeles, Case No. BC339177, Trial Testimony on October 22 and 26, 2009.
16. Dole Fresh Fruit International, Ltd, Hyundai Precision America, Inc., ADRS Case No. 05-1138-RTA, Trial Testimony on February 19, 2010.
17. In the matter of University of Tennessee Cancer Institute, ALJ Appeal No. 1-446 575 318, Testimony on April 20, 2010.
18. Urga, et al. v. Redlands Community Hospital, Superior Court of the State of California, County of San Bernardino, Case No. SCVSS 123769, Trial Testimony on July 20, 2010.
19. Marine Engineers' Beneficial Association v. Department of Transportation, Ferries Division Federal Mediation & Conciliation Service Case No. 110105-52404-6, AGO Matter No. 10499471, July 19, 2011.
20. Ben Davis, et al. v. State of Washington, Department of Transportation - Superior Court of Washington - Pierce County, Case No. 04-2-10585-0, Trial Testimony on July 21, 2011.
21. Richard Robinson v. County of Los Angeles, et. al., United States District Court of California, Central District, Case No. CV06-2409 GAF (VBKx), Trial Testimony on December 1, 2011.
22. In the matter of American Home Patient, ALJ Appeal No. 1-982137828, Testimony on October 29, 2012.
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26. United States of America v. Houshang Pavehzadeh, United States District Court for the Central District of California, No. CR 13-0320-R, Testimony on May 19, 2014.
27. Sherman Way Oil, Inc. (Bijan Pouldar), American Pacific Enterprises Group (Sherwin Louie), Bahman Kohanteb, Hamid Kalhor, Claimants, v. Circle K Stores, Inc., Respondent, Alternative Dispute Resolution Case No's. 13-7103-DSC through 13-7106-DSC, Arbitration Testimony on October 10, 2014.
28. Heidi's Children Dental Center (DC14-0813-204-LM) v. Denti-Cal, Testimony at Administrative Law Judge Hearing, Judge Lewis Munoz, in Los Angeles on November 5, 2014.
29. AdvanceMed Audit of Altercare of Wadsworth, OMHA Appeal No. 1-912446681, Bertha Sanchez, et al. v. St. Mary Medical Center, et al., Superior Court of the State of California for the County of San Bernardino, Case No. CIVDS 1304898, Certification Hearing Testimony on October 21, 2016.
30. Bertha Sanchez, et al. v. St. Mary Medical Center, et al., Superior Court of the State of California for the County of San Bernardino, Case No. CIVDS 1304898, Certification Hearing Testimony on October 21, 2016.
31. In Re Dial Complete Marketing and Sales Practice Litigation, United States District Court, District of New Hampshire, Case No. 11-md-2263-SM (MDL Docket No. 2263), Hearing Testimony on November 16, 2016.
32. United Healthcare Insurance Company v. Lincare Inc., et al., American Arbitration Association, Arbitration No. 01-15-0003-4095, Arbitration Testimony on February 6, 2017.
33. The United States of America and The State of Florida ex rel. Angela Ruckh v. CMC II, LLC, United States District Court for the Middle District of Florida Tampa Division, Civil Action No. 8:11 CV 1303 SDM-TBM, Trial Testimony on February 8, 2017.
34. Federal Government of Germany v. A Consortium of Publicly Traded Companies in an arbitration under the laws of Germany, Arbitration Testimony on March 21 and 22, 2017.
35. In Re Determination of Royalty Rates and Terms for Transmission of Sound Recordings by Satellite Radio and "Preexisting" Subscription Services (SDARS III), United States Copyright Royalty Judges The Library of Congress Washington, D.C., Case No. 16-CRB-0001-SR/PSSR (2018-2022), Trial Testimony on May 9, 2017.
36. ZPIC Audit Appeal of Providence Health System Southern California, Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-1823418684, Hearing Testimony on October 16, 2017.
37. New Beacon Healthcare Group, LLC, Office of Medicare Hearings & Appeals, OMHA Appeal Number 1-1269788965, Hearing Testimony on December 1, 2017.
38. Arriva Medical LLC, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-1874414073, Post Pre-Hearing Conference Testimony on March 23, 2018.

39. Christopher Corbin, et al. v. Indus Investment, Inc., Superior Court of the State of California for the County of Los Angeles, Case No. BC565881, Trial testimony on April 6, 2018.
40. Toll Collect GmbH v. Federal Republic of Germany, Hearing Testimony on April 16, 2018.
41. Arriva Medical, LLC, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-1945149644 (Sub-Universe August 2013), Appellant's Hearing Testimony on April 18, 2018.
42. Arriva Medical, LLC, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-2049326076 (Sub-Universe September 2013), Telephonic Hearing Testimony on September 11, 2018.
43. Arriva Medical, LLC, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-1572478459 (Sub-Universe January to June 2013), Telephonic Hearing Testimony on September 20, 2018.
44. Brendan C. Haney v. Costa Del Mar Inc., In The Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 16-2017-CA-004797-XXXX-MA, Hearing Testimony on December 5, 2018.
45. Arriva Medical, LLC, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-2159094909, Telephonic Hearing Testimony on January 23, 2019.
46. Bay Hospital, Inc. d/b/a Gulf Regional Medical Center, et. al., v. WellCare of Florida, Inc., et al., American Arbitration Association, Arbitration No. 01-19-003-9745, Telephonic Arbitration Hearing on June 10, 2020.
47. Nurse on Call, Inc. – Naples, Office of Medicare Hearings & Appeals, ALJ Appeal No. 1-6478330371, Telephonic Hearing Testimony on April 19, 2021.
48. Discovery Medical Diagnostic Services LLC., Office of Medicare Hearings & Appeals, OMHA Appeal No. 3-5984168562, Telephonic Hearing Testimony on April 20, 2021.
49. Interim Healthcare of Northwestern Ohio, Inc., Office of Medicare Hearings & Appeals, OMHA Appeal No. 3-5132031191, Telephonic Hearing Testimony on August 31, 2021.
50. Afshin Zarinebaf, et al. v. Champion Petfoods USA, Inc., et al., United States District Court Northern District of Illinois Eastern Division, Case No. 1:18-cv-06951, Hearing Testimony on August 9, 2021.
51. Mississippi Homecare of Jackson II, LLC, Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-5894034302R1, Telephonic Hearing Testimony on September 10, 2021.
52. Clayton Dezan, et al. v. Dignity Health, Superior Court of The State of California for the County of San Bernardino, Case No. CIVDS1516658, Trial Testimony on September 30, 2021.
53. Kenneth John Williams v. Toyota Motor Corporation Australia Limited (CAN 009 686 097), New South Wales Registry - Federal Court of Australia, File No. NSD1210/2019, Trial Testimony on December 06, 2021 and December 07, 2021.
54. Sutter Health, et al. v. Health Plan of San Joaquin, American Arbitration Association, JAMS Arbitration No. 1130009155, Hearing Testimony on November 17, and December 13, 2021.

55. Community Home Care of Vance County, LLC, Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-7153823774, Hearing Testimony on January 12, 2022.
56. Norwalk Hospital Inpatient Rehabilitation Facility, Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-3731869901, Hearing Testimony on February 10, 2022.
57. US Med, LLC., Office of Medicare Hearings & Appeals, OMHA Appeal No. 17255890416-000, Hearing Testimony on March 16, 2022.
58. Medical Facilities of America, Office of Medicare Hearings & Appeals, OMHA Appeal No. 1831202985, Hearing Testimony on March 24, 2022.
59. CHE Senior Psych Services P.C., Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-4156833004, Hearing Testimony on March 30, 2022.
60. Infinity Home Care of Lakeland, LLC., Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-8815945674, Hearing Testimony on April 13, 2022.
61. Infinity Home Care of Pinellas, LLC., Office of Medicare Hearings & Appeals, OMHA Appeal No. 1-8815941917, Hearing Testimony on April 27, 2022.
62. Nurse on Call, Inc., Office of Medicare Hearings & Appeals, OMHA Appeal No. 3-7050865432, Hearing Testimony on April 29, 2022.
63. US Med, LLC, Office of Medicare Hearings & Appeals, OMHA Appeal No. 3-7324070651, Hearing Testimony on May 11, 2022.
64. Houston County Healthcare, Office of Medicare Hearings & Appeals, OMHA Appeal No. 3-7134723932, Hearing Testimony on June 28, 2022.
65. New Beacon Healthcare Group, LLC., Office of Medicare Hearings & Appeals, ALJ Appeal No. 3-6784515374, Hearing Testimony on July 11, 2022.

Speaking Engagements

1. Global Brand Protection: Challenges and Opportunities, December 8, 2015.
2. Washington Health Care Conference, May 2016.
3. 4th Advanced Forum on False Claims & Qui Tam Enforcement Conference, January 2017.
4. False Claims Act/Qui Tam Whistleblowers Litigation: Hot Buttons in 2017 Live Webcast, March 2017.
5. Fraud & Abuse: Part II – Understanding Statistical Sampling, Live Webcast, September 2017.
6. American Hospital Association Chief Compliance Officers Roundtable: Defending against audits using statistical sampling and extrapolation, April 2018.
7. How to Effectively Use Statistical Sampling in Class Action Litigation: Tips and Strategies in 2019 Live Webcast, December 2018.
8. Statistical Sampling in Healthcare Audits and Investigations, HCCA's 23rd Annual Compliance Institute, April 9, 2019.

9. False Claims Act: A Look Back and 2021 Expectations LIVE Webcast, The Knowledge Group Webinar, December 03, 2020.
10. False Claims Act Liability: Best Practices in Managing Complexities, The Knowledge Group Webinar, April 2021.
11. Surveys and Certification in Consumer-Finance Class Action: Supporting, Attacking Predominance and Superiority, Strafford, August 26, 2021.
12. Class Certification in Antitrust: Key Considerations to Avoid Pitfalls Live Webcast, The Knowledge Group Webinar, September 15, 2021.
13. Looking Ahead: The Future of Class Action Litigation Live Webcast, The Knowledge Group Webinar, January 13, 2022.
14. The Evolving Standards for Antitrust Class Certification: Exploring Unresolved Issues Live Webcast, The Knowledge Group Webinar, February 9, 2022.

Publications

1. Boedeker, Stefan and Goetz Trenkler. (2001). "A Comparison of the Ridge and Iteration Estimator" - in: Econometric Studies: A Festschrift in Honour of Joachim Frohn (ed. by Ralph Friedmann, Lothar Kneuppel, and Helmut Luetkepohl), New Brunswick.
2. Boedeker, Stefan (2013). Observational Studies in a Litigation Context: Important Practices in a Large-Scale Study. BRG Review, Spring 2013 Issue.
3. Boedeker, Stefan and Andreas Groehn. (2021). Mini Roundtable: Calculating Damages in Cross-Border Class Actions. Corporate Disputes Magazine, Jul-Sep 2021 Issue.
4. Boedeker, Stefan. (2022). One-On-One Interview: Class Certification In Antitrust Litigation. Corporate Disputes Magazine, Apr-Jun 2022 Issue.

Recognition

1. Stefan was identified by Who's Who Legal as one of the Leading Practitioners in the field of Litigation Expert Witness in 2020, access <https://whoswholegal.com/stefan-boe>.
2. Included in "Marquis Who's Who in America" as a Subject of Biographical Record in 2021-22.
3. Included in "Marquis Who's Who in the World" as a Subject of Biographical Record in 2021-22.
4. Recipient of the Albert Nelson Marquis Lifetime Achievement Award, 2021.

Professional and Business History

- » Berkeley Research Group, 2010 - Present, Managing Director
- » Resolution Economics, 2008 - 2010, Partner
- » Alvarez & Marsal, 2007 - 2008, Managing Director
- » LECG LLC, 2005 - 2007, Director
- » Navigant Consulting Inc., 2004 - 2005, Managing Director in Litigation and Investigation Practice

- » Deloitte & Touche LLP, 2003 - 2004, Leader of the Economic and Statistical Consulting Practice in the West Region
- » PricewaterhouseCoopers LLP, 2002 - 2003, Leader of the Litigation Consulting Group in Los Angeles, Leader of the Economic and Statistical Consulting Practice in the West Region
- » Andersen LLP, 1992 - 2002, Partner (since 2000), last position held: Director of Economic and Statistical Consulting practice in the Pacific Region
- » University of California, San Diego, 1989 -1991, Teaching Assistant, Department of Economics
- » German Government, 1986 -1989, Economic Research Assistant

Exhibit B: Materials Relied Upon
Dara Fresco V. Canadian Imperial Bank of Commerce
Materials Relied Upon as of July 18, 2022

Any document reviewed, produced, or cited corresponding to the expert reply report of Stefan Boedeker, dated July 18, 2022

Doc. No.	Documents
1	Ankura Report Production dated June 15, 2022
2	Boedeker Expert Report dated January 12, 2022 and All Corresponding Materials Relied Upon
3	Denise Martin Affidavit, April 17, 2017
4	ExpertReportofSonyaKwonandJeremyGuinta_CIBC_20220615_wExhibits ("Ankura Report")

Doc. No.	Data Received
5	Fotheringham Report Backup Data Corresponding to Surf Control Electronic System: wsactivityfiltnofilt_block_allow_nov07.pdf, wsactivityfiltnofilt_block_allow_oct07.pdf, wsactivityfiltnofilt_block_allow_sep07.pdf, wsactivityfiltnofilt_block_allow_nov07_dr00268.pdf, wsactivityfiltnofilt_block_allow_nov07_DS01132.pdf, wsactivityfiltnofilt_block_allow_nov07_mu00029.pdf, wsactivityfiltnofilt_block_allow_nov07_vg00003.pdf

Doc. No.	External Data
6	StatCan Monthly Overtime Metrics (14100308.csv). Available at https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410030801 Revised as of July 7, 2022
7	StatCan Yearly CPI Data 18100005.csv). Available at https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501 Revised as of July 7, 2022

Doc. No.	Websites/Miscellaneous
8	https://www.advocatemagazine.com/article/2019-august/calculating-damages-with-class
9	https://www.reuters.com/article/cibc-lawsuit/cibc-faces-class-action-suit-over-unpaid-overtime-idUKN0526542420070605
10	https://www.timeanddate.com/holidays/canada/

This is Exhibit "L" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Court File No. 07-CV-334113PD2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DARA FRESCO

Plaintiff / Moving Party

and

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant / Responding Party

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

The Plaintiff will make a motion to the Honourable Justice Belobaba on a date to be set by the Court, at the Court House at 361 University Avenue, Toronto, Ontario, or alternatively by way of video conference.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that Judgment be granted on Common Issue 9 and that the Defendant (“CIBC”) pay the following to members of the Class:
 - a. For the period between the presumptive limitation periods (set out at Schedule “A”) and June 18, 2009;
 - i. Aggregate Damages of \$68,000,000,

- ii. Compound interest at the rate of 4.5% in the amount of \$72,000,000, or, alternatively, simple interest at the rate of 4.5% in the amount of \$49,000,000 for the period up until December 31, 2021; and
- b. For the period between June 19, 2009, and December 31, 2021;
 - i. Aggregate Damages of \$92,000,000,
 - ii. Compound interest at the rate of 4.5% in the amount of \$33,000,000, or, alternatively, simple interest at the rate of 4.5% in the amount of \$27,000,000 for the period up until December 31, 2021; and
- c. For the period between February 1, 1993, and the presumptive limitation periods (set out at Schedule “A”);
 - i. Aggregate Damages of \$96,000,000,
 - ii. Compound interest at the rate of 4.5% in the amount of \$181,000,000, or, alternatively, simple interest at the rate of 4.5% in the amount of \$101,000,000 for the period up until December 1, 2021;

In the alternative to the amounts set out at subparagraphs 1(a)(i), (b)(i) and (c)(i) above, the Plaintiff seeks such other amounts as may be determined by the Court for the Class Members, or a subset thereof, for the periods of time set out above.

- 2. A Declaration that Class Members whose employment continued after June 18, 2009 are entitled to damages for the period of their employment after that date;
- 3. An Order for statutory vacation pay to be paid on any amounts ordered under paragraph 1;
- 4. An Order for a taxation gross-up to be paid on any amounts ordered under paragraph 1;

5. An Order for payment of compound interest, or alternatively simple interest, until the date of Judgment, and Post-Judgment interest thereafter, on any amounts ordered under paragraph 1;
6. An Order declaring that any limitations defence asserted by CIBC is rebutted on a class-wide basis or, in the alternative, rebutted for a subset, or for individual Class Members;
7. In the alternative, and to the extent that a limitations defence is not rebutted for the class, or a subset thereof as aforesaid, an Order permitting and directing the use of a discount to the aggregate amounts owing to the Class, or a subset thereof, for the periods prior to the statutorily presumptive limitation period, with such discount to be determined through a fair, efficient and expeditious process which may include (but is not limited to) the use of statistical evidence that may be derived from random sampling, and “test case” adjudications;
8. In the further alternative, in respect of periods for which aggregate damages are not ordered, an Order that, pursuant to s. 25 of *the Class Proceedings Act* or otherwise, a fair, efficient and expeditious process be employed to assess remaining damages, such process may include, one or more of the following, without limitation:
 - a. A declaration that Class Members, or a subset thereof, or the individual members of the Class, are presumptively entitled to the amounts awarded in respect of subparagraph 1(c) (or such amount awarded under subparagraph 1(d) for the same temporal period covered by subparagraph 1(c)), above,
 - b. The Court applying a class-wide discount (as aforesaid) to the damages otherwise calculated and attributable to the temporal periods prior to the statutorily presumptive limitation period; and/or, alternatively,

- c. CIBC establishing, through a fair, efficient and expedition process (which may include sampling or “test case” adjudications), that any entitlements of specific Class Members to their share of the amounts in paragraph 1(c), above, are statute-barred,
- 9. that CIBC pay costs of this action on a full indemnity basis, or alternatively on a substantial or partial indemnity basis; and
- 10. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Certification

1. This action was commenced in June 2007 and the certification hearing took place in December 2008.
2. In June 2009, the Plaintiff’s certification motion was dismissed by Justice Lax. A majority of the Divisional Court dismissed the Plaintiff’s appeal. Justice Sachs dissented.
3. The Plaintiff’s certification appeal, which was heard along with the companion case of *Fulawka v. Bank of Nova Scotia*, was decided by the Court of Appeal in June 2012. The Court of Appeal certified eight common issues. The liability issues (Common Issues 1-5) asked systemic or system-wide questions that required the Court to consider whether CIBC’s overtime policies and related practices acted as institutional impediments to Class Members being compensated. The remaining issues (Common Issues 6-8) focused on remedies. The certified Common Issues are appended to this Notice of Motion as Schedule “B”.
4. The Court of Appeal declined to certify a common issue regarding aggregate damages, solely on the basis that the methodology formerly proposed by the Plaintiff for aggregate

damages (obtaining evidence directly from class members) did not meet the criteria under s. 24(1)(c) of the *Class Proceedings Act*, because the methodology depended on “proof by individual class members.” The Plaintiff has employed a different aggregate assessment methodology in support of this motion that relies on a review of CIBC’s records.

5. The Court of Appeal ordered that class membership was defined temporally as between February 1, 1993 and June 18, 2009, but did not order that the damages incurred by members of the class ceased to be accrued after June 18, 2009.
6. CIBC sought leave to appeal to the Supreme Court of Canada, which was dismissed in March 2013.

Documentary Production

7. CIBC delivered its productions on a rolling basis, starting in February 2014 and by July 2015, CIBC asserted it had produced all non-privileged documents relevant to the common issues.
8. CIBC’s productions included a number of internal bank documents relating to uncompensated overtime, including direct admissions of systemic overtime violations, which directly contradicted sworn evidence that CIBC had tendered to the Court on certification and on which the Court relied in dismissing certification at first instance.
9. The Plaintiff served a motion for summary judgment on all the common issues in October 2015. The Plaintiff also sought an order directing an assessment of aggregate damages, or alternatively certification of an additional common issue regarding aggregate damages, on the basis of a new expert methodology that would not require evidence from individual Class Members.

10. The Plaintiff served her summary judgment motion record in July 2016. The record included an expert report in support of the aggregate damages request, detailing how the damages could be calculated in the aggregate by using extrapolated time-stamped data from the Bank's electronic records, as well as paper records.
11. In April 2017, only a few days before it was due to deliver its responding record, the Defendant produced hundreds of new documents directly relevant to the certified common issues, necessitating an adjournment of the hearing, then scheduled for September 2017.
12. In its subsequently delivered responding record, CIBC revealed that it had destroyed large amounts of relevant records containing time-stamped data, which it had previously undertaken to maintain under litigation hold. This data was relevant to the assessment of damages both on an aggregate, as well as an individual level. CIBC subsequently failed to retain and produce blotter records which demonstrate unpaid working time on the part of Class Members.
13. In August 2017, in response to a Plaintiff's notice of motion for additional disclosure, the Bank delivered hundreds more documents. Based on these productions, the Plaintiff filed additional evidence at summary judgment, including expert evidence.

Summary Judgment and Certification of Aggregate Damages Question

14. The summary judgment motion was heard in December 2019.
15. The Court released its decision on the Common Issues 1-5 (the liability issues) on March 30, 2020, deciding all five of the liability issues in favour of the Class.
16. After further argument, the Court released its decision on remedies on August 10, 2020. The Court decided Common Issue 6-7 (unjust enrichment and remedies) in favour of the Class,

holding that Class Members were entitled to damages and declaratory relief. The Court further certified Common Issue 9 (aggregate damages) and directed that a further hearing take place after the Defendant had made production of documents relevant to aggregate damages and the parties had exchanged expert reports. Common issue 9 reads as follows:

9. Can the defendant's monetary liability be determined on an aggregate basis? If so, in what amount?

An Aggregate Award is Fair and Appropriate

17. Following repeated requests for production of time-stamped data as well as additional documents necessary for the preparation of the aggregate assessment, the Defendant began to produce documents in October 2020 and completed production in November 2021.
18. Notwithstanding that the Court directed CIBC to provide productions in “usable form” CIBC refused to provide indices of the data produced nor user ID’s associated with the data. CIBC further refused requests from the Plaintiff to attend “meet and confer” sessions for the purpose of answering questions that the Plaintiff’s experts had regarding the data as well as attempting to streamline the production process and reduce the expense associated with preparation of the aggregate assessment.
19. As a result of the failure of CIBC to reasonably cooperate in the discovery process, the time and expense required to produce evidence regarding aggregate damages was greatly increased.
20. Using CIBC’s records, the Plaintiff’s experts have produced a reasonable estimate of the aggregate damages that CIBC owes to all Class Members. The Plaintiff reserves her right to amend or supplement the foregoing estimate subject to CIBC’s response to the within motion.

21. CIBC's electronic time-stamped records show working time in excess of the hours paid to the Class by CIBC. The electronic time-stamped records are a fair and reasonable proxy for records of working time, given CIBC's failure to accurately record working time.
22. The Plaintiff's experts have produced a fair and reasonable extrapolation using available data.
23. The aggregate damages have been calculated in relation to three distinct periods: (a) the period between the presumptive limitation periods (set out at Schedule "A") and June 18, 2009 (the end of the class eligibility period); (b) the period between June 19, 2009 and December 31, 2021; and (c) the period between February 1, 1993 (the beginning of the Class membership period) to presumptive limitation periods (set out at Schedule "A").
24. The requirements for an aggregate assessment set out in section 24 of the *Class Proceedings Act* are met in this case, namely
 - a. monetary relief is claimed on behalf of some or all class members,
 - b. no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the Defendant's monetary liability, and
 - c. the aggregate or a part of the Defendant's liability to some or all class members can reasonably be determined without proof by individual class members.
25. It is fair and appropriate for the Court to declare that any limitations defence asserted by CIBC in response to Class Members' claims is rebutted on a class-wide basis (or, alternatively, a subset thereof or otherwise) because:
 - a. CIBC unilaterally drafted or otherwise imposed the terms of its uniform employment contracts on the Class Members;

- b. Class Members were uniquely vulnerable to the power imbalance between themselves and their employer – one of the largest corporations in Canada;
- c. CIBC consistently told Class Members that its overtime policies (including approval) were lawful when in fact, as subsequently found by this Court, they were unlawful;
- d. CIBC consistently and misleadingly told Class Members that it had the right to impose its policies and practices, and that Class Members had a contractual obligation to follow same; and
- e. CIBC told Class Members that, if they did not comply with the policies, they would be subject to serious negative repercussions.

26. Alternatively, in the event that this Court declines to declare that any limitations defence asserted by CIBC in response to individual Class Members' claims is rebutted on a class-wide basis (or a subset thereof), it is fair and appropriate, for this Court to Order that a discount be applied to the damages for the periods prior to the statutorily presumptive limitation periods, or that the Court direct and adopt, pursuant to section 25 of the *Class Proceedings Act*, an efficient and expeditious process to determine any remaining limitations issues on the bases set out above (or otherwise).

27. CIBC presented no evidence in the context of the summary judgment motion that, at any time after June 18, 2009 it changed its relevant policies or practices relating to hours of work, recording of hours, payment of hours actually worked or preventing hours for which the Bank did not intend to compensate Class members. To the contrary, it presented sworn evidence that its 2006 Overtime Policy remained in force. There is no evidence that Class members who remained employed at CIBC after June 19, 2009 did not continue to work

the same unpaid hours that they had before that date.

Costs

28. The Plaintiff and the Class have already been substantially successful in this action and on the summary judgment motion, with the Defendant having been found in breach of its duties to the Class.
29. The Plaintiff and the Class are entitled to costs in respect of the action, the summary judgment motion, and this motion.
30. The conduct of CIBC in this litigation warrants an award of costs on a full indemnity basis, including, without limitation, the following:
 - a. CIBC filed misleading evidence at certification, claiming that internal “reviews and inquiries” revealed no systemic overtime problems when the opposite was true, resulting in a denial of certification at first instance and on appeal before the Divisional Court, which in turn resulted in years of delay and the expenditure of millions of dollars in legal fees;
 - b. CIBC withheld or failed to disclose material evidence relating to the Bank’s internal surveys until 10 years after the litigation began;
 - c. Notwithstanding that, in the context of documentary productions, CIBC insisted that “the systemic issues raised by the certified common issues do not involve a consideration of individual employee’s circumstances or their claims for unpaid overtime” and did not produce documents relating to individual experiences about unpaid overtime, it tendered dozens of irrelevant affidavits detailing individual experiences with respect to overtime issues on summary judgment;

- d. CIBC recklessly destroyed time-stamped data that were subject to a litigation hold and were relevant for the damages determination;
- e. CIBC withheld material evidence relating to the revision of its Overtime Policy until after this Court had reached its decision on the common issues; and
- f. CIBC failed to provide reasonable cooperation in disclosing evidence relevant to the assessment of damages, resulting in significant delay and increased expense in the preparation of evidence relevant to the assessment of damages.

31. Sections 11, 12, 23, 24, 25, 26 of the *Class Proceedings Act*, S.O. 1992, c. 6,

32. Sections 128, 129, 130 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and

33. Such further and other grounds as counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. the affidavit of Stefan Boedeker, sworn January 21, 2022;
- 2. the affidavit of Jean-Marc Leclerc, sworn January 21, 2022;
- 3. the pleadings and proceedings herein; and
- 4. such further and other evidence as counsel may advise and this Honourable Court may permit.

Schedule “A” – Presumptive Limitation Periods

Province	Applicable Legislation	Periods Included
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act</i> , 2002, S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ-1991, s. 2925	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005
	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c. L150, s. 2	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8, ss. 7 and 9	June 4, 2001 – June 18, 2009
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-8, s. 2	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

Schedule “B” – Certified Common Issues

The Defendant's Overtime Policies and Recording of Hours Worked

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?
 - a. 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?
 - a. If "yes", did the Defendant breach that duty?
3. If the answer to common issues 1(a) or 2(a) 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?

Breach of Contract

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?

Unjust Enrichment

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?

Remedy & Damages

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 award be determined on an aggregate basis?
 - ii.* What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?

January 21, 2022

SOTOS LLP

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Lawyers for the Defendant,

Canadian Imperial Bank of Commerce

DARA FRESCO
Plaintiff

-and-

CANADIAN IMPERIAL BANK OF COMMERCE
Defendant

Court File No. 07-CV-334113PD2

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the Class Proceedings Act, 1992

NOTICE OF MOTION

ROY O'CONNOR LLP

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Lawyers for the Plaintiff

This is Exhibit "M" mentioned and referred to
in the Affidavit of Jody Brown, sworn
remotely by Jody Brown stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in
the Province of Ontario, on February 23, 2023,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: info@royconner.ca; [Sotos Class Actions](#); [Adam Jason Messina](#)
Subject: CIBC Unpaid Overtime Class Action
Date: January 25, 2023 8:16:24 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.gif](#)

Good morning,

I have received this Notice of Settlement letter on the CIBC Unpaid Overtime Class Action, and I am just following the next steps as per this letter .

This is my Written Submission on Wednesday January 25th , 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I support this settlement simply on the fact when I worked for CIBC everyday you were there a significant amount of time before your shift start and well after your shift end for end of day duties . Questions were never asked by myself because at the end of the day I was just grateful I had and job in a Bank and thought that it came with the nature of the business .

As for the hearing on March 3rd I will be try my best to attend this meeting via video conference , but unfortunately, I can not confirm at this time due to work for me right now being extremely busy .

If there is anything else that is needed from me, please reach out and look forward to hearing the outcome of this settlement .

Keep up the great work and best regards ,

From: [REDACTED]
To: [Sotos Class Actions](#)
Subject: CIBC Unpaid Overtime Class Action-Notice of Settlement Approval Hearing in Fresco V. CIBC
Date: January 27, 2023 5:33:48 PM

As formerly known Personal Banker or Personal Banker Associate, I, [REDACTED] at [REDACTED]
[REDACTED] would like to submit
my name to support as one of several Class Members found CIBC's overtime policies and
record-keeping in place between 1993 and 2009 contravened Canada Labour Code resulted in
employees not being compensated for overtime. At the moment , I do not wish to attend
settlement approval hearing.

Respectively,

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC Unpaid Overtime Class Action re [REDACTED]
Date: Friday, February 10, 2023 11:56:15 AM

[REDACTED]
[REDACTED]
I worked at CIBC as a Customer Service Representative(also formerly known as Teller) from May 01,1988 through August 29, 2014. There were many times I was expected to work 7 hours of unpaid overtime per week but in general it averaged about 4 hours of unpaid overtime per week during my tenure at CIBC

I support and appreciate the efforts of the team involved in this unfortunate situation and happy to see the Class Members compensated for this unpaid work.

[REDACTED]
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: Re: CIBC unpaid overtime class action
Date: Sunday, February 19, 2023 10:28:17 AM

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I am writing to submit my support to the court on the proposed settlement. When I was employed with CIBC starting June 2008 as a teller, there were numerous times I worked overtime and was not compensated. Nights we were told, you cannot leave until you balance your till. I also acted as Custodian where I was sometimes responsible to open the branch. I would be required to show 30 minutes before my shift start and was not compensated for the time. At first they had me part time at 35 hours per week, even though some weeks I would work 40 hours which meant I was working full time but only receiving benefits of a part time employee.

I will not be attending the approval hearing.

Thank you

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: CIBC Unpaid Overtime Class Action
Date: Saturday, February 18, 2023 6:49:01 PM

February 18, 2023

To whom it may concern,

I support the proposed settlement. I was employed by CIBC during the mentioned time period. My position was Personal Banker and I did work uncompensated overtime during the class period.

I will not be attending the settlement approval hearing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 17, 2023 9:58 AM
To: Tanya Atherfold
Subject: Re: Class Counsel

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Yes this a statement in support of the settlement.

Sent from my iPad

On Feb 16, 2023, at 10:37 PM, Tanya Atherfold <tatherfold@goldblattpartners.com> wrote:

Dear [REDACTED]

Thank you for your email. Are you intending for this to be a statement in support of the settlement? If so, we will add your submission to our materials which will be sent to the Defendant and the Court.

If you are planning on attending the virtual hearing on March 3, 2023, the link will be posted on the Class Action Website: [CIBC Unpaid Overtime Class Action](#).

Regards,
Tanya

Tanya Atherfold-Desilva (she/her)

Law Clerk

T 416.979.4233

F 416.591.7333

E tatherfold@goldblattpartners.com



20 Dundas Street W., Suite 1039
Toronto ON M5G 2C2
www.goldblattpartners.com

THIS E-MAIL MAY CONTAIN CONFIDENTIAL INFORMATION WHICH IS PROTECTED BY LEGAL PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE IMMEDIATELY NOTIFY US BY REPLY E-MAIL OR BY TELEPHONE (COLLECT IF NECESSARY), DELETE THIS E-MAIL AND DESTROY ANY COPIES.

From: [REDACTED]
Sent: February 16, 2023 12:55 PM
To: Tanya Atherfold <tatherfold@goldblattpartners.com>
Subject: Class Counsel

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[REDACTED]

I worked at CIBC from Oct. 1999 to Dec. 2014, and worked many hours after my scheduled time.

I will not be attending the settlement approval hearing.

Sent from my iPad

Tanya Atherfold

From: [REDACTED]
Sent: February 3, 2023 10:51 AM
To: Tanya Atherfold
Subject: Notice of Settlement Approval Hearing Fresco V. Canadian Bank of Commerce

Follow Up Flag: Follow up
Flag Status: Completed

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February 3 2023

Hello

Yes I am an employee of Canadian Bank of Commerce .

My Name [REDACTED]
[REDACTED]
[REDACTED]

Mobile [REDACTED] Home [REDACTED]

Yes I Agree with the settlement terms .

I will not be in attendance
Best to contact me by phone , mail or email

Thank you
[REDACTED]

From: [REDACTED]
To: [Info; tatherfold@goldblattpartners.com](mailto:info@tatherfold@goldblattpartners.com); info@sotosclassactions.com
Subject: Fresco vs. Canadian Imperial Bank of Commerce Class Action Lawsuit - [REDACTED]
Date: Tuesday, February 14, 2023 9:37:25 AM

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I accept the settlement terms as I don't anticipate more can be achieved and may result in longer wait times to gain access to the monies owed to former front line employees of CIBC, like me.

I will likely attend virtually via www.cibcunpaidovertime.ca on March 3, 2023, at 11am EST. (as listed within the recent letter package I received).

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 15, 2023 12:23 PM
To: Tanya Atherfold
Subject: Claim submission re; CIBC unpaid overtime

Follow Up Flag: Follow up
Flag Status: Completed

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Hello,

I wish to support the proposed settlement terms of the CIBC unpaid overtime lawsuit. I worked for CIBC for approximately 5 years ending in 2011 at the [REDACTED] as a CSR and was made to work overtime with just regular pay. The Manager then was [REDACTED]. This was a regular occurrence.

Here are my details;

Name- [REDACTED]

Address- [REDACTED]

Phone- 4 [REDACTED]

email; [REDACTED]

Please feel free to contact me at the phone number or email here. Note I share the email with my husband [REDACTED].

Thank you,
[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: February 4, 2023 9:14 PM
To: Tanya Atherfold
Subject: CIBC overtime Class action

Follow Up Flag: Follow up
Flag Status: Completed

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I am a former employee of this time period and have received a letter of the CIBC Front-line retail branch employees class action.

I worked for CIBC between 1978 -2007.

I do support this calls action suit , I remember us all being asked or demanded to come to work everyday ½ hr to 45 minutes before start as standard practice . lots of late nights and offered “ time in lui of” but not received .

Lots of night functions and meetings and call nights . expected but not paid OT

By information :

[REDACTED]

I cannot attend the hearing but I would like the Link to watch virtually .

Sent from [Mail](#) for Windows

Tanya Atherfold

From: [REDACTED] >
Sent: February 15, 2023 11:55 AM
To: Tanya Atherfold
Subject: Re: CIBC Unpaid Class Action

Follow Up Flag: Follow up
Flag Status: Completed

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Good Morning Tanya,

Thank you for the explanation. I will sign up for the class action settlement. My understanding is to send you the information below:

[REDACTED]

Statement: I support the terms of the class action law suit. I feel we were not compensated properly for all the overtime we worked after our shift was done. We stayed later to balance our cash and could not leave until the job was done - without pay.

I will not be attending the settlement approval hearing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC unpaid overtime
Date: Tuesday, January 24, 2023 8:09:19 PM

[REDACTED]

I received a document indicating that I should email you with a brief statement noting my support of the settlement terms of this matter.

I am in full support as I worked at CIBC as a Customer Service Representative (Teller) from 1997 to 2012 and assure you, I worked many hours of overtime without any compensation for CIBC; a company who made billions each quarter and could afford to compensate their employees. fairly. It was irresponsible of CIBC to take advantage of their staff the way the did.

[REDACTED]

[REDACTED]

Sent from my iPhone

Tanya Atherfold

From: [REDACTED] >
Sent: February 9, 2023 5:25 PM
To: Tanya Atherfold
Subject: cIBC unpaid overtime class action

Follow Up Flag: Follow up
Flag Status: Completed

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I would like to be included in the class action for unpaid overtime.

[REDACTED]

I support the claim for unpaid overtime and want to be included in the class action.

I worked as financial services representative and senior fsr at cIBC smithers branch transit [REDACTED] from 2002 to 2015, thirteen years. I worked overtime almost every day usually 1 to 2 hours as I was usually fully booked with clients and had to stay after closing to get documents prepared and didn't have time during working hour to complete and submit files. I did complain to the manager and district manager about unpaid time but was told CIBC doesn't pay overtime. I feel that they owe us for ALL the extra hours we had to work to be successful at our job. I cannot attend the hearing but would like to attend virtually if you could kindly send me the link. Thank you [REDACTED]
Sent from [Mail](#) for Windows 10

From: [REDACTED]
To: [Sotos Class Actions](#)
Subject: CIBC class action suit
Date: January 28, 2023 11:36:29 AM

[REDACTED]

I am now a retired member receiving a work pension from CIBC.

As a class member, I definitely support the proposed settlement terms. I will not be able to personally attend, but look forward to following the hearing virtually.

It was my experience that unpaid overtime was always a consistent issue throughout my working tenure with CIBC.

As a CSR at my branch, we were required to fill out time sheets showing our hours worked. However....no extra time was allowed to be shown on those sheets if we had to stay later due to serving late clients, balancing later or including times when we came in early to prepare for the days activities.

Any extra time had to be approved by your manager. The only approvals given were requested staff meetings by the manager whereby all staff were asked to stay behind either for training or a regular staff meeting.

These hours could be shown on our time sheets.

Many of us spent countless hours of our own time either on lunch hours or before and after working hours to find cash differences and other sundry duties that couldn't be performed during normal hours open to our clients.

Many of us were unhappy and of course complained to management. The managers would then tell us we would be able to take accumulated time as time off " in lieu of " but only when it was convenient to the business structure and approved by management. Needless to say, there was always a reason as to why this was not feasible due to staff shortages, illness or vacations. Therefore, " lieu time " was most times non-existent.

I find it very disappointing and disheartening that such a large corporation such as CIBC would expect loyalty, honesty and integrity from their employees while they themselves don't reciprocate those same qualities by stealing time from their members.

I hope you find this statement to be helpful.

Respectfully,
[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: January 25, 2023 12:44 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

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Hello my name is

[REDACTED]
[REDACTED]
[REDACTED]

I want to express that I support the proposed settlement terms. This will provide thousands of CIBC current and past employees with the overtime compensation they deserve.

I was a CIBC employee for 32 plus years and there were lots of unpaid late nights in my role as an FSR and this was expected if you wanted to be successful in your position.

I will not be attending the settlement approval hearing.

[REDACTED]

Sent from [Outlook for iOS](#)

Follow Up Flag:	Follow up
Flag Status:	Completed

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My name is [REDACTED]. From March 1999 to December 2016, I was employed as a CSR (teller). I support the settlement terms for the suit as numerous times I was required to stay late for varying reasons without pay. I will not be attending the hearings. I have listed my contact information below. Thank you for the notice.

[illegible]

From: [CIBC Unpaid Overtime](#)
To: [Sotos Class Actions](#); ryanfoster3108@gmail.com
Subject: CIBC Micro-Site Registration Notification
Date: February 4, 2023 4:37:37 PM
Attachments: [ninja-forms-submission.csv](#)

First Name:

[REDACTED]

Phone:

Extension (if applicable):

May we call you at this phone number?:

Yes

Email:

May we send you emails at this email address?:

Yes

Home Address:

City:

Province or Territory:

Position:

Teller Supervisor/Assistant
Mgr

Current or Last Branch Location or Address:

Current or Last Branch Number (if known):

Start Date:

06/01/1986

End Date:

07/07/2007

Are/were you working at CIBC Full Time, Part Time, or Both?:

Both

Did you ever work overtime for which you were not paid?:

Yes

HTML:

For the next part, if you are/were a Full Time employee, answer only the questions related to Full Time and if you are/were employed Part Time only answer the Part Time questions.

As a Full-time employee, how many hours of unpaid overtime do/did you work in a typical week?:

As a Part-time employee, how many hours IN EXCESS of your regular scheduled hours do/did you work in a typical week?:

Have you worked at more than one branch?:

Yes

If you have worked at more than one branch, how many?:

3

Did you work unpaid overtime at any of those branches?:

Yes

Comments:

Hello,

I totally support the CIBC Unpaid Overtime Class Action law suit. The

following outlines my decision and lists the various positions that I held with CIBC from 1986-2008....

I started with CIBC in June 1986 ([REDACTED]) as a teller

Moved to Winnipeg, MB
July 1989 started working part-time at CIBC [REDACTED]
[REDACTED] August 1989-1991 as a branch teller part time (as I was in school)

Started working at CIBC [REDACTED]
[REDACTED] 1991 (secretary)

Profile banking from 1993-1994 Profile banking Ambassador/Personal Banking Rep)

CIBC Trust 1994-1997 as a Branch Administrator.
Working at [REDACTED] but traveling to various branches. Most times working more then 10 hours (and not getting paid) a day during month end.

CIBC [REDACTED] from 1997-2008 Various Positions: Teller, Teller Supervisor, Personal Banking Representative, Branch Ambassador, Teller Supervisor.

Most positions I held was salary and some hourly.

Over the time with CIBC, I can remember the strict rule that you were not to work any OT but were expected to finish your daily tasks in order to meet the branch

target numbers. Very frustrating.

I left the banking world when CIBC was more worried about target numbers. In order to reach those targets they were burning employees out with working unpaid OT to achieve them. At the end of the day, the customer's would loose out because the employees were so focused to pushing products on customers instead of servicing the customers needs at that time.



By checking this confirmation box, I certify the following: (a) I am NOT a person who is or was a management employee, director or officer of CIBC or its affiliates or related organizations; (b) I am NOT submitting this form on behalf of CIBC or otherwise submitting this form as a representative or agent of CIBC or its affiliates or related organizations; (c) I am NOT a person who otherwise was or is involved in the decision-making process for CIBC or its affiliated or related organizations; (d) I am NOT a person whose acts or omissions may expose or may have exposed CIBC or its affiliated or related organizations to potential liability in relation to the claims made in the statement of claim (namely, claims relating to alleged unpaid overtime for non-management employees).:

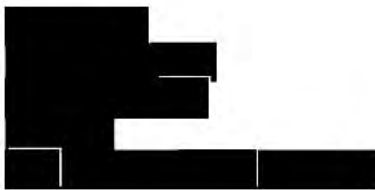
Checked

Tanya Atherfold

From: [REDACTED] >
Sent: January 31, 2023 11:08 AM
To: Tanya Atherfold
Cc: [REDACTED]
Subject: Submission to court - CIBC unpaid overtime class action

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Hello and Good Day,

I am written to you in response to a Notice of settlement I received via mail this week.

I was employed by CIBC from June 1998 - May 2007

I am writing in support of the proposed settlement terms.

The relevant terms I am supporting are

- a. Regular and overtime hours of work.
- b. Recording of the hours worked by Class Members.
- c. Paid/unpaid breaks
- d. Payment of hours worked by Class Members

I will try my best to attend the hearing, however if not possible, I will keep up to date on the progress of the settlement via the designated website

I look forward to hearing from you regarding this topic in the near future.

Thank you in advance for your efforts

[REDACTED]



Tanya Atherfold

From: [REDACTED] >
Sent: January 23, 2023 12:17 PM
To: Tanya Atherfold
Subject: Fwd: Unpaid Overtime Class Action ~ Fresco v CIBC

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Subject: Unpaid Overtime Class Action ~ Fresco v CIBC

- a) [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]
b) I support the proposed settlement terms because it is owed.
c) I plan to attend the settlement hearing virtually.

[REDACTED]
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC unpaid overtime class action
Date: Saturday, January 28, 2023 3:55:58 PM

[REDACTED]

I received a notice about this class action lawsuit by mail and will support this motion in my and the other plaintiff's favor.

I was a prior CIBC front line worker during this stated time period and felt at times my work hours was not properly compensated.

Sorry, I will not be able to attend the settle approval hearing.

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Karen Whibley](#)
Subject: Support for CIBC Unpaid Overtime Class Action Settlement
Date: February 16, 2023 11:49:57 PM

Hello,

I am writing to voice my support for the approval of the CIBC Unpaid Overtime Settlement as I will not be attending the hearing in person. My name is [REDACTED] and you can find all my details at the bottom of this email.

The reason I support the approval is due to the culture of pressure from management to work overtime without compensation within the CIBC branch network. I've experienced/witnessed this pressure, to varying degrees, my entire tenure with the organization (2005 – 07, 2009 – 2015, on LTD since 2016). In general, at most of the 15+ branches I've worked at over the years, the pressure is implied however I have had managers tell me outright that I was expected to work extra hours, unpaid, in order to help the branch meet sales goals. I have experienced this pressure first hand and also witnessed other employees, especially the Tellers/CSRs being forced to stay after hours to correct outages or help their colleagues, etc. sometimes for several hours multiple times per month. At many of the branches I worked at, it was extremely frowned upon for staff to leave on time on a regular basis.

I could go on with many more examples of situations I experienced myself or witnessed but I'll keep this brief. It's for the above reasons that I fully support the approval of the settlement and hope that the Class is properly compensated for the likely tens of thousands of collective unpaid hours we have worked.

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sent from [Mail](#) for Windows

From: [REDACTED]
 To: tatherfold@goldblattpartners.com
 Cc: [Info](#)
 Subject: Fwd: CIBC Unpaid Overtime Clss Action
 Date: Tuesday, January 31, 2023 3:54:34 PM

----- Forwarded message -----

From: [REDACTED]
 Date: Mon, Jan 30, 2023 at 2:20 PM
 Subject: CIBC Unpaid Overtime Clss Action
 To: <info@sotosclassactions.com>

[REDACTED]

My positions at CIBC were CSR, FSR, FSA and numerous other positions.

I support the proposed settlement terms 100%. It's about time some of CIBC employees are recognized for their hard work and dedication to the company. I started my career with CIBC in [REDACTED]. My goal was to work for CIBC for 50 years and retire at the age of 67. I was a very dedicated employee and took pride in my job. Back in those days you were paid for all overtime hours. As the years went by the rules changed. I worked thousands of hours of overtime and was never compensated. When I put my real hours on my timesheet I was told to change them as CIBC doesn't pay overtime anymore. I complained because I felt I should be paid for my hours worked. I was told that these are the rules and I'm to abide by them if I want to continue my career at CIBC.

When I was a CSR if I didn't balance I had to stay after hours until I found my difference. When I was a PBR I dealt with a lot of clients from the Northern Communities. They were in a very different situation as their communities were fly in only except for a very small window of winter roads (weather permitting). This was their opportunity to fly in and purchase automobiles etc. and take them back to their community over the winter roads. They would also drive to Sioux Lookout to purchase snow machines etc. to take back to their communities. Numerous times I would pick CIBC clients up from the airport, take them to the bank to sign documents and print a draft then take them to the dealership to purchase their automobile. Each time was on my own time, my vehicle and my gas.

CIBC is all about numbers and goals. It's sad that they didn't worry more about their employees.

The district manager [REDACTED] had an ugly on for me and to this day I don't know why but she took every opportunity to make my life miserable. CIBC gave their top salespeople for the year an all expenses paid vacation. In [REDACTED] I was the top salesperson but wasn't acknowledged for all my hard work and many hours of overtime because the district manager said I didn't do enough volunteer work in the community. Around this time I had my first mental breakdown. The branch manager and back to work facilitator encouraged me to

return to work which I did. The bullying didn't stop.

[REDACTED]. I was covering numerous positions due to many employees quitting and the FA had transferred. I couldn't do my own position during working hours so I don't know how they expected me to fill all these other positions. I was getting worse by the day. It also said I was a [REDACTED] on the CIBC website which was a bare face lie. I didn't have the credentials to be a [REDACTED]. My hours of work were 7:30 AM to 4:00 PM (the branch closed at 4). The district manager sent me an email stating that my working lifestyle had been revoked with no explanation and said I would have to work from 8:30 to 5. The last kick while I was already down. This finished me off. I left the branch and was taken to the hospital. I was diagnosed with PTSD and required counselling and psychiatric help which was all documented. I was suicidal and could no longer deal with anything. I was broken. My career was gone, my marriage was in trouble and I lost all my confidence and self esteem. I've never been the same person since. I still have nightmares to this day about CIBC and the district manager.

CIBC ruined my life!

I would like to attend the settlement approval hearing via the website.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC unpaid overtime class action - notice of settlement
Date: Wednesday, February 15, 2023 9:18:01 AM

[REDACTED]

[REDACTED]

I support the class action lawsuit against CIBC because as a front-line employee I wasn't paid overtime. When someone didn't balance, the entire branch had to stay until they did. Most day, it would be hours after branch closing.

I do not plan to attend the settlement hearing.

Thank you,

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 20, 2023 12:46 PM
To: Tanya Atherfold; info@royoconnor.ca
Subject: Fresco vs. CIBC

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[REDACTED]
[REDACTED]

My personal experience of working at CIBC is that the goal is to meet sales targets.
I was on a salary and worked additional hours to meet these quotas.

It was encouraged.

I do not plan on attending the hearing.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblatterpartners.com; Info
Subject: CIBC Unpaid OT Class Action - [REDACTED]
Date: Tuesday, January 31, 2023 3:36:25 PM

Hi Glodblatt Partners LLP and Roy O'Connor,

- A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- B. I support this settlement – I worked in a branch in (full time and part time 2001-2007) Terrace BC and I worked part time in two branches in Prince George BC (2003-2006) while attending university. We regularly worked overtime to complete work tasks uncompensated. Myself and colleagues spent many hours working late.
- C. I will try to attend the Settlement Approval Hearing if I can get the time off from my current job. I would like the virtual link

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 5, 2023 3:49 PM
To: Tanya Atherfold
Subject: CIBC Class Action Settlement

Follow Up Flag: Follow up
Flag Status: Completed

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My Name: [REDACTED]

Address: [REDACTED]

Phone number: [REDACTED]

I am submitting my support of the proposed settlement. I have worked in a number of branches over the course of thirty years.

Positions held over that time include all of the positions except Branch Ambassadors listed in the definition of the class. There always was overtime worked and not paid. I have been retired for almost 10 years now and unsure of how much overtime was worked over the years.

I do not plan on attending the settlement approval hearing.

Regards

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: Class action against CIBC
Date: Sunday, February 19, 2023 8:17:00 PM

[REDACTED]

I completely support this class action. As an employee it was greatly frowned upon if you chose to take a coffee break or refused to stay late. It would impact your career advancement.

I plan on attending the video conference on March 3rd @11:00

[REDACTED]

[REDACTED]

[REDACTED]

From: [CIBC Unpaid Overtime](#)
To: [Sotos Class Actions](#); ryanfoster3108@gmail.com
Subject: CIBC Micro-Site Registration Notification
Date: January 24, 2023 6:12:56 PM
Attachments: [ninia-forms-submission.csv](#)

First Name:

Last Name:

Phone:

Extension (if applicable):

May we call you at this phone number?:

Yes

Email:

May we send you emails at this email address?:

Yes

Home Address:

[REDACTED]

[REDACTED]

Position:

Customer Service
Representative

Current or Last Branch Location or Address:

Current or Last Branch Number (if known):

Start Date:

06/01/2004

End Date:

05/30/2009

Are/were you working at CIBC Full Time, Part Time, or Both?:

Full-time

Did you ever work overtime for which you were not paid?:

Yes

HTML:

For the next part, if you are/were a Full Time employee, answer only the questions related to Full Time and if you are/were employed Part Time only answer the Part Time questions.

As a Full-time employee, how many hours of unpaid overtime do/did you work in a typical week?:

3

As a Part-time employee, how many hours IN EXCESS of your regular scheduled hours do/did you work in a typical week?:

Have you worked at more than one branch?:

No

If you have worked at more than one branch, how many?:

Did you work unpaid overtime at any of those branches?:

No

Comments:

I support the proposed settlement terms and I don't wish to attend the hearing but

be kept up to date on all hearing matters.
I wasn't considered Permanent full time but I worked full time hours each and every week and worked a minimum of 1/2 hour each day of overtime five days a week.

By checking this confirmation box, I certify the following: (a) I am NOT a person who is or was a management employee, director or officer of CIBC or its affiliates or related organizations; (b) I am NOT submitting this form on behalf of CIBC or otherwise submitting this form as a representative or agent of CIBC or its affiliates or related organizations; (c) I am NOT a person who otherwise was or is involved in the decision-making process for CIBC or its affiliated or related organizations; (d) I am NOT a person whose acts or omissions may expose or may have exposed CIBC or its affiliated or related organizations to potential liability in relation to the claims made in the statement of claim (namely, claims relating to alleged unpaid overtime for non-management employees):.

Checked

RECEIVED

FEB 01 2023

535

GOLDBLATT PARTNERS LLP

Jan 30/23

Goldblatt Partners

20 Dundas St W

#1039

Toronto

MSG 2C2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I do support the proposed settlement

I am unable to attend the settlement approval
hearing

Thank you

Where do I find - Class Members Claim form

Tanya Atherfold

From: [REDACTED]
February 16, 2023 7:57 AM
To: Tanya Atherfold
Subject: CIBC - CLASS COUNSEL

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Good Morning!

This is my written submission for the class action:

[REDACTED]

Phone number [REDACTED]

I support the proposed settlement terms as if this is money owed to employees that have worked for CIBC over the years to put them where they are today as a huge business and took advantage of the employees I full support the proposed action.

I will not be attending the settlement approval hearing.

Thank you!

Tanya Atherfold

From: [REDACTED]
Sent: January 28, 2023 1:35 PM
To: Tanya Atherfold
Subject: CIBC Overtime Class Action / Class Counsel

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Name : [REDACTED]

Address : [REDACTED]

Phone Number : [REDACTED]

I STRONGLY Support the Courts in this Lawsuit , And "YES" Many , Many Hours of Extra work was done in my Position , mainly caused from Lack of Staff , and I was told being in Management , I was NOT Entitled to Overtime.

I will definitely stand will ALL of the Employees regarding this Matter.

I will Not be attending the Approval Hearing , as I live in [REDACTED].

Thank You for your time ,

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 7, 2023 7:48 PM
To: Tanya Atherfold
Subject: CIBC settlement

Follow Up Flag: Follow up
Flag Status: Completed

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Good day

My name is [REDACTED]



I am in support of the proposed settlement. I often worked longer and was not compensated.

Thank you

[REDACTED]

Sent from [Mail](#) for Windows

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: January 26, 2023 10:50 AM
To: Tanya Atherfold
Subject: FW: diane clark re unpaid overtime

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Sent from my Galaxy

----- Original message -----

From: [REDACTED] <[REDACTED]>
Date: 2023-01-26 7:36 a.m. (GMT-08:00)
To: tatherford@goldblattpartners.com
Subject: [REDACTED] re unpaid overtime

I received a letter in the mail regarding our unpaid overtime
 my name is [REDACTED]

I worked at cibc as Frontline for many years around 13 having worked many hours . Staying late for unbalanced tellers . tellers staying late for not balancing. Staying late to process mortgage documents or whatever other business that needed to be completed I remember bringing home work to try and find differences for outages. I absolutely am happy to hear that this has gone to court I believe that anyone working longer then 8 hours should b paid overtime. I remeb3r being told that if you don't balance you stay to find the differences
 I live in [REDACTED] so I am unable to attend this hearing.
 I look forward to hearing the outcome of this hearing.
 Thank you for sending me this letter.

Thank you
 [REDACTED]

Sent from my Galaxy

January 25, 2023

To Whom It May Concern:

Re: CIBC Unpaid Overtime Class Action-Notice of Settlement Approval Hearing In Fresco V. Canadian Imperial Bank of Commerce

I am in support of this proposed settlement. I worked at CIBC as a Teller/CSR when I was a 19 Year Old single mother so around 1999/2000, I cannot remember how long I was employed there and CRA online records only go back to 2010. I remember being told by the Assistant Branch Manager not to write down what time we got off and to only record our regular hours because CIBC did not pay overtime. All timesheets were kept in a binder behind the tellers so we often all filled out our timesheets at the same time being told this. We often stayed late to balance our cash or help other tellers balance. At that time daycare charged \$3 for every minute you were late picking up your child but if everyone wasn't balanced and the safe was still open we could not leave and had to stay but never received any overtime ever. Every end of day was anxiety ridden trying to balance and help everyone else balance so you didn't work too late without pay yet receiving a daycare bill because you picked up your child late.

I will not be attending the settlement hearing as I just live too far away but I look forward to hearing the outcome. I can be reached by mail at [REDACTED], [REDACTED], or by phone [REDACTED].

Thank you, [REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: Class Council - CIBC unpaid overtime
Date: Friday, February 3, 2023 9:31:45 AM

> Hello

>

> As per request:

>

> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

>

> I support the proposal settlement terms but will not be attending the approval hearings.

>

> [REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info](#)
Subject: Fwd: CIBC Class Action
Date: Friday, February 17, 2023 4:18:24 PM

Please accept this email as confirmation of my participation in the CIBC unpaid overtime class action suit.

I was employed by The Canadian Imperial Bank of Commerce from 1990-2007 as a frontline worker. I am in full support of the settlement and can attest that working above and beyond one's scheduled hours, missing scheduled breaks and lunch hours was commonplace. Although time sheets were completed, we were not 'allowed' to input any extra hours above/beyond our weekly hours per management. I was even advised on occasions where my targets/deliverables were short that I needed to put in 'extra' time to meet these expectations.

I needed to work. I wasn't aware of workers rights and responsibilities.

I resigned in February 2007. The employer refused me my vacation pay.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Karen Whibley](#)
Subject: Re: CIBC class action [SOTOS-SLLP_DMS.FID174382]
Date: January 31, 2023 7:54:36 AM
Attachments: [sotosca signature oct2022@2x fecf69d5-38db-4a48-b48f-f378e656c95b.png](#)

Good Morning Karen,

I would like to support the class action against CIBC. I worked a teller at CIBC from 2000 to 2013. I would not know the hours that we worked late without pay but it happened quite frequently. It was always just known/stated to us that they don't pay overtime. My dad could not believe it when I would tell him. He would just say how could a huge company like that do that. At the time I was just a young single mother of 4 working late without pay.

[REDACTED]

Thank you for your quick reply.

Sent from my iPhone

On Jan 31, 2023, at 5:52 AM, Karen Whibley <kwhibley@sotos.ca> wrote:

Good Morning [REDACTED]

Thanks for your email.

I have added your contact information to our mailing list so you will receive notices regarding the status of the class action going forward.

There is nothing you need to do at this time. However, if you would like to submit an email showing support for the settlement, please send to my attention by February 20th. All emails/written submissions in support of, or objecting to, the settlement will be handed up to the Judge at the hearing on March 3rd.

Best Regards,

Karen

[<sotosca signature oct2022@2x fecf69d5-38db-4a48-b48f-f378e656c95b.png>](#)

Karen Whibley
 Senior Law Clerk
 Office: 416.572.7313

180 Dundas Street West, Suite 1200
Toronto, Ontario M5G 1Z8
www.sotosclassactions.com

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From: [REDACTED]
[REDACTED], 2023 9:28 PM
To: Sotos Class Actions <classactions@sotos.ca>
Subject: Fwd: CIBC class action

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: January 27, 2023 at 8:11:56 PM CST
To: info@sotosclassaction.ca
Subject: CIBC class action

Hello, I worked for CIBC in [REDACTED] as a customer service representative from 2000 to 2013. I have received the letter but I am not sure what my next step is.

[REDACTED]

Sent from my iPhone

Tanya Atherfold

From: [REDACTED]
Sent: February 5, 2023 3:02 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime

Follow Up Flag: Follow up
Flag Status: Completed

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My name is
[REDACTED]
[REDACTED]
[REDACTED]

I support the proposed settlement.

Many hours of overtime were worked by myself and other staff.

Early morning meetings, end of day overtime hours assisting each other to balance the days work, gathering inter office mail for couriers, meetings on how to improve customer relations, improve sales techniques, meetings with district managers. There was always grumbling about not getting paid for the additional time we worked but it was always dismissed as part of the job.

If you complained to often, staff who were part time, could see there weekly hours reduced. I saw this personally. I remember a time when a confidential staff survey was expected of us to be completed. We were asked to come in early for a meeting on how to fill it out. It was mandatory. We were then told that if we could not answer every question favorably we needed to meet with the branch manager on a one to one meeting as to why we could not, after hours. Not paid. Intimidation was always used. I was the only staff member who verbalized my concerns in a forceful dialogue. I reduced the female Branch Manager to tears. I believe it was around 2004. It is still talked about amongst the staff who were working that day. I left the bank in 2006 after 16 years. I did not like the way the bank was going and the way we were being treated.

I am unable to attend due to a prior commitment. I will be following this closely.

Thank You
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: support CIBC overtime class action
Date: Monday, January 23, 2023 3:20:06 PM

I, [REDACTED] support the class action suit on overtime payment at CIBC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 12, 2023 7:38 AM
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

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To the legal counsels of goldblatt partners,

My name is [REDACTED], a ex-employee of CIBC who was employed at one of the CIBC branch between the years 2014-2015 (over a year) as a customer service representative and personal banking associate during my tenure.

I support the proposed settlement terms given that the \$153 million sounds fair.

I have no plan to attend the settlement approval hearing. Any questions, please feel free to contact me at my email.

Address: [REDACTED]

Phone : [REDACTED]

Best regards
[REDACTED]

Sent from my iPhone

From: [REDACTED]
To: [Info](#)
Subject: CIBC Unpaid Overtime Class Action
Date: Sunday, February 19, 2023 6:26:08 PM

Class Counsel: Mr. O'Connor

This email is to confirm my participation in the unpaid overtime class action lawsuit.

Submission information requested is noted below.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b. I support the settlement terms.

c. I will not be attending the settlement approval hearing.

Should you require any further information, feel free to contact me.

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 8, 2023 5:43 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

Follow Up Flag: Follow up
Flag Status: Completed

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Hello,

I have received a letter in the mail regarding the class action and unpaid overtime. It is understanding that at this time I need to provide the following information:

[REDACTED]
[REDACTED]
[REDACTED]
Mobile phone [REDACTED]
Home phone [REDACTED]

I started at CIBC Oct 2006, I support the proposed settlement. There were many times that I personally had to work overtime, even when I had to be at home at a specific time to see to my children's needs, all of which was never compensated fairly to me. Breaks may or may not have happened, sometimes it was because there was no staff coverage.

I do not plan on attending the settlement hearing.

Kind regards,
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC Unpaid Overtime Class Action
Date: Monday, January 30, 2023 9:31:38 AM

Hello,

Please accept this email as my support for the Class Action suit against CIBC. I have been an employee of CIBC since March of 2003. I believe that overtime was an issue during my time from March 2003 through June 2009.

[REDACTED]
[REDACTED]
[REDACTED]

I will not be attending the hearing, however, if time permits, I would attend virtually

Thank you,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 7, 2023 8:47 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime lawsuit.

Follow Up Flag: Follow up
Flag Status: Completed

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Hi I received a class action package. I was a CIBC employee from 2006-2010.
My name is [REDACTED]

I support this lawsuit, I've stated to management on many occasions of the overtime not being paid. I started as a customer service rep at the [REDACTED] location in [REDACTED]. I quickly moved up to front line teller and managed ATM as well as safety deposit book keeping. Then months later promoted to FSR 1. Then FSR 2. There are many occasions where after branch closure that all accounts, and accounting are required to be completed before ending the day. These were unpaid hours worked. If there was accounting errors throughout the line in any department it had to balance for end of day. Sometimes it took hours to locate the error over manually going over each transaction.

I was an over achiever with CIBC and "climbed the ladder quickly" for my young age at the time. But management did not take kind to overtime pay. In some cases management would just buy a pizza lunch to "make up" for the overtime. If I am not mistaken lunches were also not paid time.

To go a little further CIBC terminated my position 3 days prior to my maturity leave without cause and this happened a lot within the branches. Women were discarded to save them from paying maturity leave. I also sought legal advice when this happened Oct 2010. I had my son prematurely days later due to the stress I was put under over my termination. I would love nothing more than to add my name to the list of plaintiffs. So that I can get compensation for what I stated years ago to be true.

I would like to attend the settlement approval meeting if I am able too.

[REDACTED]

Thank you

[REDACTED]

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 15, 2023 10:03 AM
To: Tanya Atherfold
Subject: CIBC lawsuit

Follow Up Flag: Follow up
Flag Status: Completed

Hi there,
My name is [REDACTED]. My address is
[REDACTED]
Phone number [REDACTED]

I would like to support the current lawsuit against CIBC as I believe that the laws of employment should be respected and upheld by all employers including CIBC. The payment of overtime is of upmost importance when it comes to employment pay. To my recollection I do remember spending hours past my regular day shifts doing cold calling without extra compensation so I can definitely relate to these matters.

I will not be attending the settlement approval hearing.

thank you
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC UNPAID OVERTIME CLASS ACTION
Date: Saturday, January 28, 2023 2:46:21 PM

[REDACTED]

I support this class action lawsuit. I agree with the settlement terms.

I can not attend the hearing. I have to work and live in N.B.

Thank you.

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 17, 2023 7:53 PM
To: Tanya Atherfold
Subject: Class Action on CIBC Overtime

Sirs,

Please be advised;

1. [REDACTED] of [REDACTED], Manitoba [REDACTED]
2. Agrees with the settlement terms due to age and health.
3. I do not plan on attending the settlement approval hearing in person.

Thankyou for your efforts,

[REDACTED]

Sent from [Mail](#) for Windows

I am in support of the class action. I was repeatedly asked to work additional times and for different functions unpaid because I was a "Salaried" employee according to my job level as an Account manager.

I will not be attending hearing.

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[illegible]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC UNPAID OVERTIME CLASS ACTION - FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE
Date: Wednesday, January 25, 2023 5:41:50 PM

To Class Counsel:

[REDACTED]

- b. I support the proposed settlement terms because I was not paid overtime during my tenure as a Financial Service Representative at a CIBC branch during the period of March 2003 to February 2004.
- c. I plan to attend the settlement approval hearing.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; info@sotosclassactions.com
Subject: CIBC unpaid overtime class action
Date: Wednesday, February 8, 2023 5:46:20 PM

As a former CIBC employee, I am in full support of this lawsuit.

I was a CIBC employee from 1998-October 2001. During this time I was a CSR (teller)

[REDACTED]

Things that I did that I was not paid for :

1. Team meetings before the bank opened.
2. Setting up our tills and stations before shifts.
3. Closing and balancing our till at the end of the day. Cleaning our stations.
4. Waiting for safe to open in order to put our tills away.
5. Completing cross ticks after hours at work or taking it home to do. Even if other employees were allowed to work on our till at busy business hours. We had to find other employees' mistakes.
6. Setting up camera/ or changing video cassettes surveillance equipment before every shift.
7. Training new tellers before and after business hours.

I'm hoping that all the efforts of current and previous staff do not go unnoticed.

I will be watching the settlement approval hearing online. At the link provided.

Looking forward to the online streaming

From: [REDACTED]
To: tatherfold@goldblattpartners.com; Info
Subject: CIBC UNPAID OVERTIME CLASS ACTION
Date: Monday, February 13, 2023 9:25:36 PM

To whom it may concern,

I support the proposed settlement terms as a current CIBC employee since Jan/2006. When I first started my career with CIBC I was a full-time teller from 2005 to 2009 where I worked at 3 different branches in different parts of Calgary. During this period we did not have cash dispensing machines therefore all cash was held by each teller in their cash boxes. By the end of each shift, all tellers were expected to balance and were unable to leave the branch if this was not the case. Therefore if my peer was not balanced but I and the rest of the team was, we were not allowed to leave until our peer balanced as well. This would result to being held back at the branch from anywhere between 30mins-1hr long. My shift was from 9 AM to 5:00 PM every day with a half hour unpaid lunch break and most of the days we were held till 6PM due to balancing issues. Unfortunately, I worked many hours overtime particularly between 2006-2009 which I was never compensated for.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 20, 2023 12:33 PM
To: Tanya Atherfold
Subject: CIBC Overtime Class Action Settlement

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Hello,

I am writing because I received a letter in the mail regarding the CIBC Overtime Class Action Settlement, my name when I worked for CIBC was [REDACTED], my married name is [REDACTED] now. My mailing address is [REDACTED], MB [REDACTED]. My cell number is [REDACTED]. I support the proposed settlement and I would like to virtually attend the settlement hearing.

I worked for CIBC between the years of 2000 – 2002, I was hired as a Customer Service Representative and 3 months into my employment became the Head Customer Service Representative at the [REDACTED], MB branch [REDACTED]. My experience working there fresh out of college was not a positive experience and notice of this Class Action isn't a huge surprise. I am glad that someone is standing up, and speaking out against CIBC.

Thank-you,
[REDACTED]

Sent from [Mail](#) for Windows

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: January 26, 2023 12:08 PM
To: Tanya Atherfold
Subject: CIBC UNPAID OVERTIME CLASS ACTION - NOTICE OF SETTLEMENT APPROVAL HEARING

To: Class Counsel

Hello,

This e-mail is in response to the notification I recently rec'd in regards to the above-mentioned Class Action Law suit. My contact information is as follows:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Home# ([REDACTED])
Cell# ([REDACTED])
email - [REDACTED]

In response to this notice, I worked for CIBC from 1991 to 2007 to which I started out as a Bank Teller and held various other positions that included Head Bank Teller, Customer Service Representative and Financial Service Associate supporting Account Managers in Personal and Small Business Banking. During my tenure I worked at several CIBC branches including the [REDACTED] branch where I first started and also [REDACTED] Branch in [REDACTED] and [REDACTED], Ontario.

During this time frame, there were many times that I worked long hours and even went back to the branches at night just to stay a float with all of the paperwork and I logged my hours on the time sheets to show the overtime hours which were never paid out or even acknowledged it was just expected.

I am in full support of this class action law suit and hope that it will change things for the future no matter what the outcome.

Unfortunately I will not be able to attend the settlement approval hearing.

Thanking you in advance,

[REDACTED]

From: [REDACTED]
To: info@sotosclassactions.com
Cc: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC Unpaid Overtime Class Action - [REDACTED]
Date: Sunday, February 19, 2023 1:28:03 PM

To Class Counsel,

Re: CIBC Unpaid Overtime Class Action (Settlement Approval Hearing in Fresco V. CIBC)

I, [REDACTED], would like to make a submission to the Court supporting the proposed settlement.
It is not fair to work and not get paid for my time.
I was not paid for overtime during my tenure at CIBC and find this unfair.
I have worked my scheduled hours as well as additional hours as was required to perform my job.
I want to be paid for the hours I worked.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I will be virtually attending the settlement approval hearing.

Best Regards,

[REDACTED]

From: [CIBC Unpaid Overtime](#)
To: [Sotos Class Actions](#); ryanfoster3108@gmail.com
Subject: CIBC Micro-Site Registration Notification
Date: February 20, 2023 5:22:42 PM
Attachments: [ninia-forms-submission.csv](#)

First Name:

[REDACTED]

[REDACTED]

Extension (if applicable):

May we call you at this phone number?:

Yes

Email:

[REDACTED]

May we send you emails at this email address?:

Yes

Home Address:

[REDACTED]

City:

Province or Territory:

British Columbia

Position:

Teller / banking Advisor
/ Assistant Branch
Manager

Current or Last Branch Location or Address:

[REDACTED]

Current or Last Branch Number (if known):

Start Date:

08/01/1996

End Date:

12/31/2015

Are/were you working at CIBC Full Time, Part Time, or Both?:

Both

Did you ever work overtime for which you were not paid?:

Yes

HTML:

For the next part, if you are/were a Full Time employee, answer only the questions related to Full Time and if you are/were employed Part Time only answer the Part Time questions.

As a Full-time employee, how many hours of unpaid overtime do/did you work in a typical week?:

15

As a Part-time employee, how many hours IN EXCESS of your regular scheduled hours do/did you work in a typical week?:

10

Have you worked at more than one branch?:

Yes

If you have worked at more than one branch, how many?:

5

Did you work unpaid overtime at any of those branches?:

Yes

Comments:

I agree to the settlement and would love to

receive all the link for the hearing and update information for the case.

Please email and confirm that you have me registered and be a part of this class action.

By checking this confirmation box, I certify the following: (a) I am NOT a person who is or was a management employee, director or officer of CIBC or its affiliates or related organizations; (b) I am NOT submitting this form on behalf of CIBC or otherwise submitting this form as a representative or agent of CIBC or its affiliates or related organizations; (c) I am NOT a person who otherwise was or is involved in the decision-making process for CIBC or its affiliated or related organizations; (d) I am NOT a person whose acts or omissions may expose or may have exposed CIBC or its affiliated or related organizations to potential liability in relation to the claims made in the statement of claim (namely, claims relating to alleged unpaid overtime for non-management employees).:

Checked

From: [REDACTED]
To: [Sotos Class Actions](#)
Subject: CIBC Overtime Class Action National Distribution Protocol
Date: February 18, 2023 2:36:36 PM

Hello,

My name is [REDACTED] and I would like to state that I support the proposed settlement terms outlined in the letter I received in the mail regarding the CIBC Overtime Class Action National Distribution Protocol. My telephone number is [REDACTED]

On numerous occasions during my time as a teller with CIBC I was asked to clock out then perform additional duties to avoid overtime showing up on the payroll. I was never compensated for this time. This request was made by our, at the time, branch manager.

I do not plan to attend the settlement approval hearing. Please let me know what next steps are required.

[REDACTED]

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: January 27, 2023 10:04 AM
To: Tanya Atherfold
Subject: CIBC Unpaid overtime class action

Good Morning,

I am [REDACTED] at [REDACTED] Sk [REDACTED], Phone number [REDACTED]

I Do qualify as a member of the Class Action Lawsuit and I support the proposed Settlement terms. This email is in regards to the CIBC Unpaid Overtime Class Action.

I am including my personal email for future correspondence – [REDACTED]

I am unable to attend in person the hearing however I will join virtually.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Tanya Atherfold

From: [REDACTED]
Sent: February 7, 2023 6:42 PM
To: Tanya Atherfold
Subject: CIBC UNPAID OGVERTIME CLASS ACTION

Follow Up Flag: Follow up
Flag Status: Completed

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[REDACTED]

I SUPPORT THE PROPOSED SETTLEMENT TERM. I WILL NOT ATTEND THE SETTLEMENT HEARING.

[REDACTED]

From: [REDACTED]
To: [Sotos Class Actions](#)
Subject: CIBC unpaid overtime class action
Date: February 16, 2023 8:53:13 PM

Thank you for your part in this pursuit of reconciliation.

This is my formal support of this action.

During my employment with CIBC it was common that if we had to work overtime it was not to be recorded on our timesheets. This overtime work could be due to short staffing, customer volumes, customers lengthy transactions that had to go through late in day, finding cash differences, etc.

With thanks again

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 8, 2023 2:57 PM
To: Tanya Atherfold
Subject: CIBC unpaid OT Class Action

Follow Up Flag: Follow up
Flag Status: Completed

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Good afternoon,

A. My name is [REDACTED]
Address: [REDACTED] BC
Phone: [REDACTED]

B. I support the proposed settlement terms. I worked for CIBC many years and worked over my allotted hours many many times with no payment as an hourly employee.

C. I do not plan to attend settlement hearing.

Thank you for your time.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info; info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC - Unpaid Overtime
Date: Wednesday, February 1, 2023 3:27:20 PM

[REDACTED]

[REDACTED]

[REDACTED]

I support the class action lawsuit for unpaid overtime as there were many nights I had to stay late without any compensation.

I would like to be provided with a virtual link to attend the hearings.

Thank you,

[REDACTED]

From: [REDACTED]
To: [Sotos Class Actions](#)
Subject: Fwd: CIBC UPaid CLASS ACTION - Class Member - Jennifer Michenka
Date: February 22, 2023 10:56:09 AM

Good Morning,

My apologies. I had the incorrect email in my original.

See below.

Thank you

----- Forwarded message -----

From: [REDACTED]
Date: Wed, Feb 22, 2023 at 8:48 AM
Subject: CIBC UPaid CLASS ACTION - Class Member - [REDACTED]
To: <info@royoconnor.ca>, <tatherfold@goldblattpartners.com>, <info@sotoclassactions.com>

Good Morning,

a. My name is [REDACTED] currently residing at [REDACTED].
Formerly resided at [REDACTED].
My phone number to reach me at is [REDACTED].

b. I am writing in response to the CIBC Unpaid Overtime Class Action and in support of the proposed settlement terms as I was a front line CIBC employee during February 1, 1993 and June 18, 2009 as Teller and Branch Ambassador.

c. I would virtually attend the settlement approval hearing.

Please advise if you require anything further from me at this time.

Regards

[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 17, 2023 9:03 AM
To: Tanya Atherfold
Subject: CIBC Unpaid Overtime Class Action

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Good morning,

I wish to make a submission to the court supporting the proposed settlement. I worked at CIBC [REDACTED] and [REDACTED] branch from 2001 - 2006. I worked as a Customer Service Rep, A head Customer Service Rep and Personal Banking Associate. During my time as a rep I worked longer than my scheduled hours every day. We were expected to be there early and had to stay late in order to help other reps if they didn't balance at the end of their shift. I put in numerous complaints to the Branch Manager, [REDACTED]. The complaints were discussed and eventually ignored. I am in full support of this claim. We were underpaid and worked hours that we were not paid for. I will not be attending the settlement approval hearing. Thank you for going to the court with this claim.

Kind regards,

[REDACTED]

From: [REDACTED]
To: info@sotoclassactions.com; [REDACTED]; [Info; tatherfold@goldblattpartners.com](mailto:Info;tatherfold@goldblattpartners.com)
Subject: Letter of Support for Class Action Settlement CIBC
Date: Monday, January 23, 2023 2:07:43 PM
Attachments: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

January 23, 2023

Sotos LLP

180 Dundas Street West Suite 1200 Toronto ON M5G 1Z8 info@sotosclassactions.com

Roy O'Connor LLP

1920 Yonge Street Suite 300 Toronto ON M5G 2C2 info@royoconnor.ca

Goldblatt Partners LLP

20 Dundas Street West Suite 1039 Toronto ON M5G 2C2 tatherfold@goldblattpartners.com

Attention Class Counsel – Approval of Settlement CIBC Overtime Class Action Lawsuit

[REDACTED]

I received your paperwork regarding an upcoming court date regarding a settlement approval hearing on March 3, 2023. I am not able to attend so I am submitting this written submission expressing my approval of the settlement amount noted in your paperwork provided.

As requested, my following information is below:

- a) [REDACTED]
- b) *I starting working for CIBC in August 1998 and worked multiple roles during my employment with CIBC including roles of Customer Service Representative, Personal Banking Associate and Personal Banker. During this time of employment and in all of those different roles, there were many questionable payroll related decisions made by branch management and/or CIBC top management related to over-time hours. It was not uncommon to have worked extra hours for which approval was not given (unpaid) or instruction was given to not write down overtime worked. I believe it was all paper recording for payroll at the time where employees wrote down in a binder their hours (time sheet) and at payroll period time, manager would total and submit or discuss with employee if there was an issue. Final decision would have been reviewed and approved by customer service manager or branch manager role. A lot of times, the time stipulations put in place to complete your job's tasks were not reasonable or feasible. Many fellow employees I worked with quit CIBC or left on stress leave due to these conditions. My timeline with CIBC was from Aug 1998 until I left on my first maternity leave from [REDACTED]. Then from [REDACTED] until leaving for my secondary maternity leave [REDACTED]. I did not return to work after my second maternity leave. I feel this describes my reasoning behind support the settlement noted in regard to this class action lawsuit.*

- c) I do not plan on attending the settlement approval hearing in person as I live a distance away and have current work commitments. I may attend virtually and access the link from www.cibcunpaidovertime.ca



Tanya Atherfold

From: [REDACTED] >
Sent: February 2, 2023 12:28 PM
To: Tanya Atherfold
Subject: Fresco v CIBC

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Good morning,

I recieved notification about the class action lawsuit in the mail regarding the unpaid overtime.

Name: [REDACTED]
Address: [REDACTED]
Phone# [REDACTED]
Email: [REDACTED]

I support the lawsuit. It's about time someone did something.

I worked for CIBC as a Cusromer service rep, Financial service rep, Financial service rep II and an assistant Branch manager. When I was a teller and someone did not balance, we would all have to stay after working hours to help balance the teller. Sometime it was quick but most times it was hours. We complained to management and we were told it was part of the job.

When I was promoted to a Financial Service rep, we had to stay late to make sure all out outbound cold call targets were done and sale quotas were met. If the tellers did not balance though at this point I was not a teller, we would have to stay late to help balance. Staying late was an every day expectation. When I talked to the manager and higher up, I was told it was part of the job and we were all team players.....with no OT pay.

When I was promoted a assistant branch manager, my hours became ridiculous, I was always the first in and last out every single day. The manager never stayed late as it was a perk of being a manager.

I finally had enough and had to quit. I did not want to quit as I loved my job but working on average of 12 hours a day was be coming to much. During my exit interview, I told them why i was leaving and was advised that it was expected to stay competitive. I worked for CIBC from 2005 to late 2009.

If you need more information about to my experience with CIBC, let me know.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear Goldblatt Partners LLP & Roy O'Connor & Sotos LLP:

Re: *Fresco v. Canadian Imperial Bank of Commerce* Settlement.

During my tenure at CIBC, from the start of my employment in mid-2007 to its end in mid-2010, I was told from the beginning, no paid lunches, no paid overtime, we were on salary; hence, that was the extent of our compensation. Any bonus given to us reflected the performance tied to multiple metrics, none of which were tied to any additional hours worked.

Learning of this lawsuit(*Fresco v. Canadian Imperial Bank of Commerce*) a number of years ago. It would be nice to bring this matter to a conclusion, for myself and others involved in this action. Hence, I full support this settlement, to bring this matter to conclusion.

Unless deemed necessary by the courts, I will attempt to attend virtually. Doing so otherwise would be unnecessarily burdensome.

Please note, I have sent a copy to each of the named law firms.

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 1, 2023 1:18 PM
To: Tanya Atherfold
Subject: Cibc unpaid overtime

Follow Up Flag: Follow up
Flag Status: Completed

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Hello

I received a letter from you due to my job at cibc

I would like to know if I should write a letter pls stating that I was not paid anything for numerous extra time that I worked

When short staffed I went from my role as a personal banker towards the end of the time frame I was put on cash over lunches so the tellers could have a half hour lunch and keep the clients happy

If there was no one to balance the atm machines I was to do that also

At most I was given a short 15 min break for lunch ..

NOT ONCE was I ever given paid breaks

We were told if we took the paid breaks then we were to work continuously without being able to take a few minutes to do anything else so most people opted not to take the breaks

When on cash when I first started we were not given breaks either and if someone was sick we were expected to take a 15 min lunch so as not to annoy the customers

When on cash if we didn't balance and we had to stay longer to look for it we were not paid extra .. when I was the teller supervisor we were not paid extra when we had to stay and help the tellers

If we were asked to come in early for a meeting beyond our regular time to come in we were not paid extra

Cibc never gave us paid breaks ..

because I could cover many positions on the branch I was often expected to do my own job and help out to insure the branch ran smoothly if there was any one sick or on holidays etc .. I cannot even count the number of times I worked through lunch stayed late all with no extra pay .

Any overtime had to be authorized and it rarely was .

Breaks were discouraged . You were made to feel guilty if u said u wanted to take one . Often one person would be given a break in order to go to Tim Hortons and pick up a coffee or tea for us (and no the bank didn't pay if that's what you think)

If we were asked to stay after work for meetings or an end of the year meeting to acknowledge people's efforts it was never paid in overtime .. we got pizza

Should I write this all down and submit it

Thanks very much

[REDACTED]

Sent from my iPhone

Tanya Atherfold

From: [REDACTED]
Sent: February 19, 2023 2:34 PM
To: Tanya Atherfold
Subject: Re CIBC unpaid class action
Attachments: [REDACTED]

Importance: High

To whom it may concern,

My name is [REDACTED], I live in [REDACTED] Ontario [REDACTED]

I am a former CIBC employee, I worked for CIBC for 24 years beginning in 1989 -2013 when I quit for another bank for better work, life balance.

I support the proposed settlement terms. When I look back, it would never have been allowed today. We just did it, did not question it for fear of losing your job.

In the end I quit after 24 years so I could get paid to work.

I worked in all the positions throughout my career and can confirm that it was customary especially during RRSP season to work overtime.

I can confirm that we were all required to work late during RRSP season. Typical last day of RRSP's we would work from morning until midnight, with 1 hour lunch, 2 x15 min breaks. When I was a teller you were allowed to go home have dinner and comeback. When I was a personal Banker or senior banker they would feed us at our desk and we were required to work until midnight on the last day of RRSP. (no overtime)

I retained most of my employment agreements, performance reviews and salary letters from 1989- 2013. (attached are a few)

Although I will not be attending the hearing, I am sure you have all the documentation you require.

Having received my

Should you have any questions , I would be more than happy to speak with you .

Best Regards,

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: January 31, 2023 9:15 PM
To: Tanya Atherfold
Subject: CIBC Class action suit

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I am writing in response to the information I received regarding the class action suit against CIBC where I worked from January 1996 to Dec 2010.

I will not be able to attend the hearing on March 3rd, 2023 as I live in Northern Ontario.

I fully support the proposed settlement terms listed in the letter I received. Since moving on from CIBC, I work in payroll and I understand the importance of following labor laws and how they should be applied even when it favors the employee.

If you require further information please let me know.

Thank you.

[REDACTED]
[REDACTED], Ontario [REDACTED]

From: [REDACTED]
To: [Info](#)
Cc: tatherfold@goldblattpartners.com
Subject: Fresco v. CIBC
Date: Monday, February 13, 2023 12:21:43 PM

[REDACTED]

[REDACTED]

[REDACTED]

I support this class action 100 %. I won't be able to attend as I live too far. I started my career with CIBC in August 2002 and finished on March 29, 2021. Within the years of service I worked numerous positions. As per the claim, I worked as a CSR and Branch Ambassador between 2002 to 2009. I had worked numerous extra hours which we were not compensated for. On numerous occasions my husband and four children would need to wait in the car for myself to come out in all conditions and trust me they were not happy campers. It was Friday of a long weekend and we were lined to the door all day with customers to do their banking. I was scheduled to work until 3:00 pm that day, I didn't get out of work until 5:30 but paid until 3:00 pm this stuff happens all the time. We would tolerate this behaviour because we needed our jobs and medical benefits especially for me [REDACTED] they need to be held accountable with this class action.

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 9, 2023 11:47 AM
To: Tanya Atherfold
Subject: CIBC Class Action

Follow Up Flag: Follow up
Flag Status: Completed

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Good morning,

My name is [REDACTED] and I am in support of the Class Action lawsuit against CIBC due to my circumstances of having to work over time during my brief period of time spent there and not being paid for my time. I believe this Class action is justified. I do not plan on attending the settlement approval hearing. Below is my contact information.

[REDACTED]

Regards,

[REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: Class Council - CIBC unpaid overtime
Date: Friday, January 27, 2023 10:42:39 AM

Hello

As per request:

[REDACTED]

[REDACTED]

[REDACTED]

I support the proposal settlement terms but will not be attending the approval hearings.

[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: February 14, 2023 11:33 AM
To: Tanya Atherfold
Cc: Tanya Atherfold
Subject: Support for Settlement - CIBC

Follow Up Flag: Follow up
Flag Status: Completed

Hi Tanya,

Please accept this email as my support for settlement in the CIBC case.

Kind regards,
[REDACTED]

[Sent from Yahoo Mail for iPad](#)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E tatherfold@goldblattpartners.com



20 Dundas Street W., Suite 1039
Toronto ON M5G 2C2
www.goldblattpartners.com

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From: [REDACTED]
Sent: February 2, 2023 12:56 PM
To: Tanya Atherfold <tatherfold@goldblattpartners.com>
Subject: Re: CIBC

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Hi Tanya,

Do you need any other information from me?

Thanks,

[REDACTED]

[Sent from Yahoo Mail for iPad](#)

On Thursday, January 26, 2023, 2:35 PM, Kelly Samples [REDACTED] wrote:

Hi Tanya,

My mailing address is:

[REDACTED]

So I don't have to do anything until March 3rd then? And also, what information will you require from me and will there be a charge I have to pay for any of this? My last name has changed.

[REDACTED]

[Sent from Yahoo Mail for iPad](#)

On Thursday, January 26, 2023, 2:27 PM, Tanya Atherfold
<tatherfold@goldblattpartners.com> wrote:

Dear [REDACTED];

Thanks for contacting us.

The Notice (<https://goldblattpartners.com/wp-content/uploads/Fresco-Approval-Hearing-Direct-Notice-EN.pdf>) you received is to let you know that the parties have reached a settlement (subject to court approval) in this class action. **The Settlement Approval 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. Class Members and members of the public are welcome to watch the hearing, but are not required to do so.

If the proposed settlement is approved, you will receive a further Notice with instructions on how to make a claim. 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.

Please be sure to visit the [Class Action Website](#) for further updates and information (including the [Settlement Agreement](#)). Also, kindly ensure that we have your current contact information including mailing address.

Should you have further questions, do not hesitate to let me know.

Thank you,
Tanya

Tanya Atherfold-Desilva (she/her)

Law Clerk

T 416.979.4233

F 416.591.7333

E tatherfold@goldblattpartners.com



20 Dundas Street W., Suite 1039

Toronto ON M5G 2C2

www.goldblattpartners.com

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From: [REDACTED]
Sent: January 26, 2023 1:09 PM
To: Tanya Atherfold <tatherfold@goldblattpartners.com>
Subject: CIBC

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Report S

Hi, I was emailing in regards to some mail I received regarding CIBC. My mom has taken photos of the papers and sent them to me. I was wondering if you can give me a rundown about the case and how it all works. I was an employee of CIBC during the dates mentioned.

Kind regards,

[REDACTED]

[Sent from Yahoo Mail for iPad](#)

From: [REDACTED]
To: [Tanya Atherfold](mailto:tatherfold@goldblattpartners.com)
Cc: [Sotos Class Actions](#); [Royoconnor Info](#); tatherfold@goldblattpartners.com
Subject: Re: CIBC Unpaid Overtime Class Action
Date: February 21, 2023 12:24:18 PM
Attachments: [image001.gif](#)

Good Afternoon,

Thank you for taking my statement for the CIBC Unpaid Overtime Class Action.

I fully support this class action as a former employee of CIBC during the time period in question. I was subjected to working overtime hours on many occasions without compensation in the following roles - Customer Service Representative and Financial Services Representative. This was for reasons including but not limited to; any of the branch Customer Service Representatives not being balanced on cash register, not making enough calls/meeting targets/quotas etc, having to close the branch vault, entering combinations to vault and awaiting all other employees completing required work to be able to close the branch as a custodian with a branch key. On many occasions the Branch Manager would leave early and the remaining staff was left to manage the end of day procedures.

Please let me know if you require any further information.

Yours truly,

[REDACTED]

Monday, February 20, 2023, 9:00:52 PM EST, Tanya Atherfold <tatherfold@goldblattpartners.com> wrote:

Hi again [REDACTED] – I see that you wanted additional information before proceeding with a statement in support. I will be in the office tomorrow and can answer your questions at that time.

Have a nice night.

Tanya

From: Tanya Atherfold <tatherfold@goldblattpartners.com>
Sent: February 20, 2023 8:49 PM
To: [REDACTED] <[REDACTED]>
Cc: Tanya Atherfold <tatherfold@goldblattpartners.com>
Subject: RE: CIBC Unpaid Overtime Class Action

Dear [REDACTED]

Thank you for your statement in support of the settlement. We will add your submission to our materials which will be sent to the Defendant and the Court.

If you are planning on attending the virtual hearing on March 3, 2023, the link will be posted on the

Class Action Website: [CIBC Unpaid Overtime Class Action](#).

Regards,
Tanya

Tanya Atherfold-Desilva (she/her)

Law Clerk

T 416.979.4233

F 416.591.7333

E tatherfold@goldblattpartners.com

Email-Logo



20 Dundas Street W., Suite 1039
Toronto ON M5G 2C2
www.goldblattpartners.com

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From: [REDACTED]
Sent: February 16, 2023 12:20 PM
To: Tanya Atherfold <tatherfold@goldblattpartners.com>; info@royoconnor.ca;
info@sotosclassactions.com
Subject: CIBC Unpaid Overtime Class Action

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Good Afternoon,

I would like to proceed with a statement to support this Class Action.

I am a former CIBC front line staff member from December 2002 - April 2017

Branch Roles:

Customer Service Representative/Teller

Personal Banker/Financial Services Representative

Please advise of the following before I decide how to proceed:

1. Is there any fee that I/myself will personally have to pay at any point in time throughout this Class Action, regardless of the settlement outcome?

2. If an approved settlement is reached, what am I entitled to based on my work history?
3. Will I need to be present in any way, in person or virtually to any hearing or meeting throughout this Class Action?
4. Will my personal statement be used and will I be named or will it remain confidential?
5. What are next steps should I decide to proceed?

Regards

A solid black rectangular box used to redact a signature.

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 19, 2023 9:04 AM
To: Tanya Atherfold
Subject: Fresco v CIBC

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Thank you for the information received.

I fully support this CIBC unpaid overtime class action.

I worked endless hours of unpaid overtime over the years with CIBC.

I will not be able to attend the hearing in person at this time.

Thank you,

[REDACTED]

Get [Outlook for Android](#)

From: [CIBC Unpaid Overtime](#)
To: [Sotos Class Actions](#); ryanfoster3108@gmail.com
Subject: CIBC Micro-Site Registration Notification
Date: February 2, 2023 10:08:50 AM
Attachments: [ninja-forms-submission.csv](#)

First Name:

[REDACTED]

Phone:

Extension (if applicable):

May we call you at this phone number?:

Yes

Email:

May we send you emails at this email address?:

Yes

Home Address:

[REDACTED]

Province or Territory:

Position:

FSA

Current or Last Branch Location or Address:

[REDACTED]

Start Date:

November 01, 2008

End Date:

March 01, 2010

Are/were you working at CIBC Full Time, Part Time, or Both?:

Full-time

Did you ever work overtime for which you were not paid?:

Yes

HTML:

For the next part, if you are/were a Full Time employee, answer only the questions related to Full Time and if you are/were employed Part Time only answer the Part Time questions.

As a Full-time employee, how many hours of unpaid overtime do/did you work in a typical week?:

25

As a Part-time employee, how many hours IN EXCESS of your regular scheduled hours do/did you work in a typical week?:

Have you worked at more than one branch?:

No

If you have worked at more than one branch, how many?:

Did you work unpaid overtime at any of those branches?:

No

Comments:

I agree with this class action lawsuit. I was a full-time FSA with [REDACTED] November 2008-March 2010 then went into CSM role March 2010-November 2015. As a FSA, I

worked at least 25 hours unpaid overtime every week as this was the standard culture with CIBC at this time. It was expected to cover 2-4 additional Financial Advisors and therefore the workload was too extensive to get everything done in the standard work week of 40 hours per week. There was no time keeping in regards to overtime hours. As stated above this was simply the culture with CIBC and expected.

By checking this confirmation box, I certify the following: (a) I am NOT a person who is or was a management employee, director or officer of CIBC or its affiliates or related organizations; (b) I am NOT submitting this form on behalf of CIBC or otherwise submitting this form as a representative or agent of CIBC or its affiliates or related organizations; (c) I am NOT a person who otherwise was or is involved in the decision-making process for CIBC or its affiliated or related organizations; (d) I am NOT a person whose acts or omissions may expose or may have exposed CIBC or its affiliated or related organizations to potential liability in relation to the claims made in the statement of claim (namely, claims relating to alleged unpaid overtime for non-management employees).: ☒ Checked

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 6, 2023 10:15 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime

Follow Up Flag: Follow up
Flag Status: Completed

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A) [REDACTED]
[REDACTED]
[REDACTED] AB [REDACTED]

B) I fully support the proposed settlement. Been too long in the makings and front line workers being underpaid and sometimes not even paid for our overtime!

C) I will NOT be attending settlement approval hearing

[REDACTED]
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: CIBC class action
Date: Friday, February 10, 2023 5:18:14 PM

To whom it may concern,

I am writing in response to the CIBC unpaid overtime class action.

[REDACTED]

I am in support of this settlement as I was a salary paid employee for 5 years and definitely put in my overtime hours and was not paid for it.

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

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I totally support the proposed settlement terms but do not plan to attend settlement hearing

Thank you

[REDACTED]

February 2, 2023

TO: Goldblatt Partners LLP

[REDACTED]

[REDACTED]

[REDACTED]

RE: Fresco V CIBC Administrator

Good Afternoon,

I hope this email finds you well. I am writing in support of CIBC Unpaid Overtime Class Action. I was an employee of CIBC from 1994-2012. I have worked as a Customer Service Representative, Branch Ambassador, Personal Banking Associate, Personal Banker, Assistant Branch Manager & Mortgage Specialist.

Just to give you an insight into how I was affected. I was called to service a client during my break & lunch hour. I would continue to process transactions when the branch is closed. I would leave work around 6-8 p.m at night because tellers were not balanced at closing. I was working when I was on stress leave. I would stay after hours to make cold/warm calls and administrators would only provide dinner.

I do not plan to attend the hearing, because the hearing is being held during my work hours.

Please feel free to get intouch with me, if you need further information.

Warm Regards,

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 7, 2023 1:55 PM
To: Tanya Atherfold
Subject: CIBC Unpaid Overtime Class Action-Notice of Settlement Approval

Follow Up Flag: Follow up
Flag Status: Completed

Good Afternoon, Goldblatt Partners,

Thank you for your excellent work. At Last Justice for us all. We where not paid overtime for our diligent work when we would close the Bank in the evenings and count our cash tills. Finally some well deserved compensation. I will not be not attending the hearing .

Thank you,

My name : [REDACTED]
My Address: [REDACTED], [REDACTED] [REDACTED]

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: January 30, 2023 4:38 PM
To: Tanya Atherfold
Subject: CIBC class action suit

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Hi there I have received my class action papers regarding CIBC and overtime and would like to be included in this as I worked there for years and did not get paid for any of my overtime and approve of the class action lawsuit. My full name is

[REDACTED]
[REDACTED]
[REDACTED] Ontario
[REDACTED]

I would like to attend virtually if I can attend if I can find out the date and time. Thank you for your time and look forward to hearing from you.

Sent from my iPhone

Feb 1, 2023

Fresco v CIBC Administrator
PO Box 4454, Toronto Station A
25 The Esplanade
Toronto, ON M5W-4B1

Goldblatt Bowdler LL
20 Dundas Street W
Suite 1039
Toronto ON
MSG 2C2

As per the CIBC Unpaid overtime Class
action - Notice of Settlement Approval letter
I received.

I am writing a submission.

My Name, Address and telephone number:

[Redacted]

I was never paid any extra as in
overtime. I was only paid my regular
hours.

I stayed most times longer than what
I was paid.

I never even wrote my hours down, I
was just paid for my regular time.

I always stayed longer to balance off
and help others balance off, never paid extra

(2)
Also was sent down to the Archives
to look stuff up when I was
supposed to leave for the day. Again
never paid extra.
Just did what I was told.

I will not be attending the settlement
approval hearing.
Thanks in Advance.

Sincerely,



Tanya Atherfold

From: [REDACTED]
Sent: January 26, 2023 11:56 AM
To: Tanya Atherfold
Subject: CIBC class action

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My name is [REDACTED], I worked at CIBC from April 2000 to Sept 2006 as CSR and fill in CSR supervisor.

I agree with getting compensated for overtime that was worked and not paid..

I will not be attending the settlement approval hearing in March

My address is

[REDACTED], ON

Tel ([REDACTED])

Thank you

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 7, 2023 4:02 PM
To: Tanya Atherfold
Subject: CIBC Overtime Class Action , Support Letter

Good day,

My name is [REDACTED]. I have worked for CIBC since January 1986 and have had several roles over my career with CIBC.

I am contacting you to let you know that I do approve and support the lawsuit that has been brought to the courts by my co-workers Dara and Sarah. Although I do not know them personally I do agree that there was a prevalent and expected level of achievement that one can only attain by putting in many, many hours. It was not unusual to work till 6, 7, 8, 9 o'clock at night especially when we had campaigns. Since this has gone on for many years, I finally started to advise others to try and leave earlier because although you had personal satisfaction and done what is best for the client you were not appreciated by the bank monetarily. The goals were then set that much higher the following years which perpetuated the non-paid overtime. The last time I worked the investment season I asked my manager if I could actually keep track of my time and take off the hours in lieu of. In addition to working the full-time normal hours I logged 35-40 additional hours. Even though he was very shocked, to his credit he gave me the time off. It will be appreciated to have some compensation, but unfortunately we have lost many, many good and loyal employees because of CIBC's work culture.

Thank you for your time ,

[REDACTED]
CIBC # [REDACTED]
Phone # [REDACTED]

[REDACTED] BC [REDACTED]

Will not be able to attend in person

Lisa who is getting better at answering her phone

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

February 7, 2023

ATTENTION: CLASS COUNSEL

Goldblatt Partners LLP 20 Dundas Street West, Suite 1039, Toronto ON M5G 2C2

Sotos LLP, 180 Dundas Street West, Suite 1200, Toronto ON, M5G 1Z8

Roy O'Connor LLP, 1920 Yonge Street, Suite 300, Toronto ON, M4S 3E2



Dear Counsel,

I am letting you know that I approve the proposed settlement terms from the information mailed to me. I was an employee during some of the dates February 1, 1993 to June 18, 2009. I worked many uncompensated over time hours. I held several job titles over my 18-year career with CIBC, which most job roles are listed in the claim.

I will not be able to attend physically to the settlement approval hearing, but if I am available on March 3, 2023 @ 11:00 am (Eastern) I would be interested in watching.

[Redacted signature line]

[Redacted signature block]

From: [REDACTED]
To: tatherfold@goldblatt.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com); [REDACTED]
Subject: [REDACTED]
Date: Wednesday, January 25, 2023 5:03:19 PM

[REDACTED]

I support the proposed settlement.

Not able to attend the hearing.

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassations.com](mailto:info@sotosclassations.com)
Subject: CIBC Unpaid Overtime Class Action
Date: Monday, February 6, 2023 9:51:08 PM

Here is my written submission in regard to the CIBC unpaid overtime class action

- 1) [REDACTED]
- 2) I am in support of the proposed settlement terms
- 3) I will not be attending the settlement hearing on March 3, 2023

Regards,

[REDACTED]

RECEIVED

609

FEB 08 2023

GOLDBLATT PARTNERS LLP

January 30 2023



Goldblatt Partners LLP
20 Dundas Street West Suite 1039
Toronto On. M4S 3E2

Class Counsel for CIBC

I support the class action as I also worked unpaid overtime.

I will not be attending the settlement approval meeting in person.

Sincerely



February 6th, 2023

Goldblatt Partners LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] CIBC Overtime Class Action National Distribution Protocol
Dara Fresco and Sarah Gaudet vs Canadian Imperial Bank of Commerce

Attention: Class Counsel

Submission

I, [REDACTED] support the proposed settlement regarding the Class Action made by the Plaintiffs (Dara Fresco & Sarah Gaudet), that is against the Defendant (CIBC).

During my Employment with CIBC I was required to come into work at least once a week, a half hour before my shift started to attend branch meetings. This would make the work day at least 30 minutes longer for me during those time periods, which I am quite certain I was never compensated.

There were also times during my Lunch Breaks that they would get interrupted because I would have to go serve customers due to staffing shortages. At times I would be able to go back and finish the remainder of those breaks, other times I would not get them completed, resulting in no compensation.

I can relate to what the "**Plaintiffs**" have experienced during their Employment with CIBC. I myself really felt towards the end of my Employment with CIBC that I was treated unfairly at times. Which in return I had a difficult period understanding this, as I always prided myself with being a respectable employee and an "**Outstanding**" Customer Service Representative.

I was Employed with CIBC from **December of 2007 to August of 2008** and my **Position** at the Branch I worked at of [REDACTED] was: **Head/Cash Teller & Customer Service Representative**. Due to the length of time that has passed since my employment, I can not recall if I was paid wages by the hour or I was a Salaried Employee with CIBC.

I **will not** be Attending the Settlement Approval Hearing on March 3rd, 2023

Thank you for receiving and accepting my Submission Letter.

Regards,

[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: January 24, 2023 11:56 AM
To: Tanya Atherfold
Subject: Unpaid overtime Daria Fresco

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My name is [REDACTED], [REDACTED] [REDACTED] 4 home phone [REDACTED] cell [REDACTED]
[REDACTED]

I am writing this email to support the proposed settlement , I will not be attending the hearing but I will try to get into the video conference.

I am overjoyed at receiving all the information concerning this class action suit when I think back in the day meetings were called at 5.30 until 7.30 and was "Non Negotiable" according to the manager they threw us a pizza and called it overtime.

Congratulations to young Daria for taking on CIBC.

Regards,

[REDACTED]

[REDACTED] my iPad

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info](#)
Subject: CIBC unpaid overtime submission
Date: Wednesday, February 8, 2023 5:44:07 PM

Hello,

a) [REDACTED]

b) I worked at CIBC as a teller during the period of this claim and I support the settlement terms of this class action suite. During my employment with CIBC overtime was a daily occurrence, it was just a matter of how many unpaid hours were worked. After work my roommates would ask if I got paid for my overtime and I told them I did not. They told me that was illegal and I was entitled to compensation. To see that this was a company practice and that so many people were taken advantage of is very disturbing and this settlement is long past due.

c) I will not be attending the hearing in person and will be working that day but if I am able to, I will attend virtually.

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; Info
Subject: Subject: Fresco v CIBC Administrator - [REDACTED]
Date: Monday, February 20, 2023 9:51:12 PM

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I would like to inform you that I was a full time employee of CIBC from 1980 to January 2000..... And return to CIBC to work part-time, in the first of 2001 to third quarter of 2001 (I think March to early September).

For my brief statement of the reason why I support the proposed settlements terms, please see below:

I worked very late, every evening – due to brief with Account Manager. As I was a Personal Banking Associate, ATM Custodian, CSRs Supervisor (looked for CSRs, ATM and branch clearing difference). Also, Acting Customer Service Manager.

I gave CIBC my all and was not compensated for overtime.

And I do plan to attend at the settlement approval hearing.

[REDACTED]
[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

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Written submission

A. [REDACTED]

B. I support the proposed settlement because I myself worked as a customer service representative and worked a lot of overtime that was not paid put . I was told that it was my responsibility to stay late and finish my work .

C. I will not be attending the settlement approval hearing .

Sent from my iPhone

Tanya Atherfold

From: Rogers <[REDACTED]>
Sent: February 14, 2023 1:30 PM
To: Tanya Atherfold
Subject: Re: CIBC Unpaid Overtime Class Action

Follow Up Flag: Follow up
Flag Status: Completed

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Good afternoon,

I was pleased to learn that a class action lawsuit was brought against CIBC in June 2007. I was employed as a part time CSR (teller) from 2006-2011 and was one of many who were **not** paid to balance my register at the end of every shift, resulting in unpaid overtime.

Please let me know if there's anything else I could provide you with to assist in this matter.
Thank you!

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC UNPAID OVERTIME CLASS ACTION - NOTICE OF SETTLEMENT APPROVAL HEARING IN FRESCO V. CIBC
Date: Sunday, January 29, 2023 3:48:39 PM

To whom it may concern,

My name is [REDACTED]. I worked for CIBC starting 1983 and retired 2004 in the front line as a Customer Service Representative. I worked many hours of overtime throughout my career with CIBC. I'm very disappointed that CIBC's overtime policies and record-keeping systems in contravene to the Canada Labour Code which resulted in me not being compensated for all my overtime. During this time I was raising a family and the money owed at the time would have made life easier. I support this class action and the proposed settlement terms. I may virtually attend the settlement approval hearing on March 3, 2023. My contact is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: Cubic unpaid overtime class action
Date: Thursday, January 26, 2023 3:21:24 PM

[REDACTED]

I support the proposed settlement as over my 12 years with cibc I was never paid overtime or allowed any paid breaks during the day. I even questioned my manager to provide proof that this was justified but he couldn't

I will not attend the settlement approval hearing.

Thanks

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Cc: [REDACTED]
Subject: CIBC Class Action Overtime
Date: Wednesday, February 1, 2023 8:38:24 PM

Please find written submission for the following:

[REDACTED]

[REDACTED]

I support the proposed settlement terms as I consistently worked overtime for which I was not compensated during the period in question.

I do not plan to attend the settlement approval hearing.

Thank you,

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info: info@sotoclassactions.com](mailto:info@sotoclassactions.com)
Subject: CIBC unpaid overtime class action
Date: Monday, February 6, 2023 12:24:02 PM

Good Afternoon,

[REDACTED]

I am writing this email to support the CIBC unpaid overtime class action proposed settlement terms. Reasons are during my job role as Financial Services Representative (Personal Banking Associate) between 2007-2008 we worked certain hours on Saturdays each month to make calls and book appointments for our calendars in the coming weeks. Our branch at the time was not open on Weekends and my contracted hours were between Monday to Friday.

Also, on Thursdays and Fridays our branch was open till 7pm so if we had any clients before we closed we had to wait till all the paperwork and documentation was completed before we could sign off for the day and wait to leave until the client had left the office and the back office staff had carefully locked up the vault & cabinets.

Unfortunately, I will not be able to attend the settlement approval hearing due to medical reasons.

Best Regards,

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: Class action suit CIBC
Date: Saturday, January 28, 2023 12:37:54 PM

[REDACTED]

I approve the class action suit againsts CIBC Being a front line employee, from 1981-to1993, and from Aug 2007 to April 2009

We were Not allowed to claim the extra time worked once our regular hours were done.

Up until my Léa ing CIBC in 1993, We were paid 40/hres a week, worked around 42 hres +, extra time worked was not compensated

From 2007 to 2009 worked part time extra time worked after shift were not compensated.

I will not attend the settlement approval hearing.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Info: tatherfold@goldblatterpartners.com](mailto:tatherfold@goldblatterpartners.com)
Subject: CIBC overtime class action submission
Date: Friday, February 17, 2023 4:53:19 PM

Hello

I [REDACTED] am writing to agree with the statement of the proposed settlement terms for this overtime class action submission.

During my employment duration at CIBC, I was asked numerous times by my manager on duty to not record my overtime hours.

I will be unable to attend the settlement approval hearing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

From: [REDACTED]
Subject: CIBC Unpaid overtime
Date: Monday, January 30, 2023 11:08:37 AM

Hi there I received a class action notification and Im required to provide the written submission:

[REDACTED]
b) I believe in my many years working hard and diligently for CIBC working an abundance of overtime hours late into evenings as I remember. To find out about these events and unethical overtime record keeping practices really is disturbing and "we" deserve the proper justice and compensation for our work !

c) No, at the moment I do not plan on attending the hearing.

Thank you,

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 16, 2023 10:12 PM
To: Tanya Atherfold
Subject: Proposed Settlement

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To whom it may concern,

I support the proposed settlement terms as a current CIBC employee since 2008.

When I first started my career with CIBC I worked as a full-time teller. I unfortunately worked hours over time in most of my shifts because either I didn't balance or other front line colleagues were not balanced so this would result to being held back at the branch from anywhere between 30mins-1hr long which I was never got paid for those extra hours worked.

My contact number is [REDACTED] please reach out to me if you have any questions.

Sincerely

[REDACTED]

My address is [REDACTED] AB [REDACTED]

[Sent from Yahoo Mail on Android](#)

Feb 1, 2023

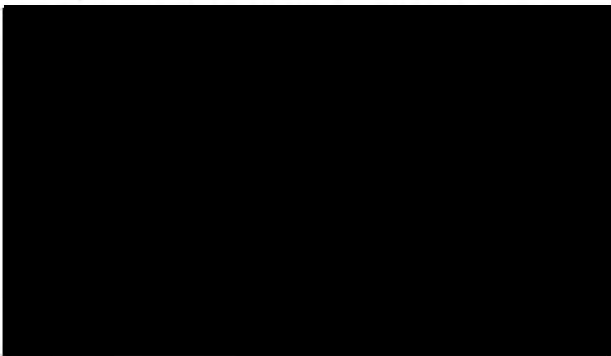
To Whom It May Concern:

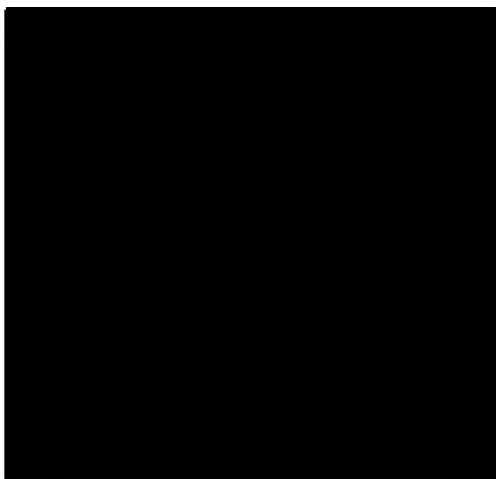
I am sending this letter in response to your Class Action.

I fully believe that CIBC was wrongful in the way we were paid for overtime. There were days we were so short staffed that we came in at 8:00 on a Friday and worked till 5:30 often only taking a half hour lunch. I also believe I was wrongfully dismissed by CIBC and to this day do not understand the reason I was let go. I fully support this Class Action as I was employed by CIBC as retail CSR from 2003- 2005 and 2006-2010.

I will not be attending the settlement hearing as I live in Alberta.

My name and address are listed below





From: [REDACTED]
To: [Info](#)
Subject: CIBC unpaid overtime class action
Date: Tuesday, February 7, 2023 12:54:58 AM

To whom it may concern,

I am writing in regards to the notice of settlement approval hearing in Fresco v. Canadian Imperial Bank of Commerce letter I have received.

I am submitting my submission to support the proposed settlement.

[REDACTED]

I support the proposed settlement terms as I feel it is important -as a front line branch employee- to be properly compensated for the extra work that must be completed before our day is over. It is also important to be compensated for the over time- when we must stay when there are customers in the branch- that must be assisted even after branch hours, which we were not compensated for.

I will not be attending the settlement approval hearing.

[REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: CIBC Unpaid Overtime Class Action - Notice of Settlement Approval
Date: Wednesday, February 1, 2023 2:43:28 AM
Attachments: [REDACTED]

To,

Sotos LLP

Goldblatt Partners LLP

Roy O'Connor LLP.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Sir/Madam,

I have received a notice of CIBC Unpaid Overtime Class Action and the notice advises me submit either a support or an objection to the proposed settlement in writing.

Please accept this letter as my support of the proposed settlement. My support for this settlement is primarily due to the fact that during all my time as a CSR I do not recall when I was paid over time, especially when I was asked to perform duties of a head CSR and had to make sure all entries for all CSRs were balanced before I could sign off and end my work day.

I do not plan to attend the settlement approval hearing.

I have included my address as well a my telephone number in this letter.

Thank you.

[REDACTED]
[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: February 6, 2023 11:12 AM
To: Tanya Atherfold
Subject: CIBC Class Counsel

Follow Up Flag: Follow up
Flag Status: Completed

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Name - [REDACTED]
Address [REDACTED]
Telephone - [REDACTED] **Home** [REDACTED] **Cell** [REDACTED]

I do support this settlement ..Overtime was never paid to us ..when we did fill out our time sheets it wasn't every day it could have been a few weeks or a month later
The manager needed to review them whenever, and would make us fill them out only because it was an audit note if they were not filled out and initialled. So back in the day most of us were paid for only our guaranteed hours not no overtime .

No I will not be attending the hearing the distance is too far
I do plan to watch it by video

Thank You

Tanya Atherfold

From: [REDACTED] >
Sent: February 3, 2023 12:54 PM
To: Tanya Atherfold
Subject: CIBC Overtime not paid

Follow Up Flag: Follow up
Flag Status: Completed

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Yes,
I AGREE CIBC SHOULD HAVE BEEN PAYING US ALOT MORE ! WE WORKED OUR TAILS OFF !!!

YES I AGREE . 100

I HOPE TO ATTEND VIRTUALLY.

THANKYOU.

[REDACTED] 2006 - 2019 BRANCH AMB AND CSR AND BRANCH OPS.

[REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: Fresco vs CIBC
Date: Wednesday, February 15, 2023 3:04:57 PM

I would like to congratulate Ms. fresco on her bravery for taking on such a Herculean task.

Many days I worked past my 5:00 quitting time. When I told my supervisor I was putting the time I worked until onto my time sheet, she said, put whatever you like down, " The Bank does not pay overtime!"
End of conversation. My husband always told me when I came home late that we were all foolish to stay so late with no compensation.

He was incredulous that an institution that made millions in profit would treat their staff in such a manner. He always told me to quit. I stayed because I loved the clients and had such wonderful fellow staff members to work beside. (we were all dummies I guess)!

Too bad this is not back dated to when I started at the Commerce in 1973.
It has been a decades long problem that they have ignored and turned a blind eye to. Now they have a black eye.

The Canadian Imperial Bank of Commerce (CIBC) was, and still is a true Goliath.
I thank you Ms Fresco for being our David.

You are a very special lady, thank you for your resolve.
I am unable to attend the settlement approval hearing, but I will be watching on March 3 @ 11:00.

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: info@sotosclassactions.com; tatherfold@goldblattpartners.com; [Info](#)
Subject: Class action - CIBC unpaid overtime
Date: Monday, February 13, 2023 11:35:14 PM

Hello,

I,

[REDACTED]

support the proposed settlement.

I worked several positions in various CIBC branches in Montreal QC from 2000-2012.

- January 2000 to October 2002 - CSR (Customer Service Representative - Teller)
- October 2002 to May 2003 - CSR Leader (Customer Service Leader)
- May 2003 to October 2005 - Personal Banking Associate
- October 2005 to 2012 - CSR (Customer Service Representative - Teller)

When we had meetings earlier or after our shift, I was never compensated for the extra time.

When I had to stay later to close, whether it was because a client left after the branch closed or I had to balance my cash or help colleagues balance their cash, I was never compensated.

On a few occasions, I had to skip my lunch break because we were understaffed and it was a busy day so we needed to work, I was never compensated.

We were never given breaks...your lunch time was the only break. If you needed to use the restroom, you had to be quick.

Once I remember going to the washroom and being followed by the branch manager so she could finish telling me something work related.

I do plan on attend the settlement approval hearing if it does interfere with my current work schedule.

[REDACTED]

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC Unpaid Overtime Class Action
Date: Tuesday, January 31, 2023 4:41:10 PM

Hello Firms of Sotos LLP, Roy O'Connor LLP, and Goldblatt Partners LLP,

I received your Notice of Settlement against CIBC for unpaid overtime, and I wish to support the class action against the bank

I was a CIBC teller/Head Teller during the years of 2001 - 2010. They do not pay overtime hours if you had to work longer than your expected shift, nor compensate you in lieu time for extra time worked. Any extra work you had to do was on your time. I worked at several branches and found this to be the case.

I wish to opt in to support the claim. Please let me know if there are any other steps I need to take for this settlement. Due to my working hours, I cannot attend the hearing on March 3, 2023.

Thank you,

[REDACTED]

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

SUBMISSION:

Name: [REDACTED]

Noter: worked at CIBC in 1998 to 2004

I support the proposed settlement because I know employees weren't paid overtime.

When you are a teller, you are given up to 30 minutes to balance when the bank is closed, for example if my shift was 9-4:30, you were expected to come in 15 min earlier to set up your cash before the bank opened at 9 and the bank closed at 4, giving you 30 minutes to balance. If you didn't balance by 4:30 (paid time), you stayed until you balanced or until the Supervisor called it a day. You could easily stay 1 hour to 1.5 hours later of unpaid time. You would then, take you work home with you, as instructed by management to find your difference after hours.

Note: The Teller Supervisor worked a lot of Overtime, never the Manager!

As the Head Teller, I got pretty good at balancing on time, but I was always asked to stay and help the other Tellers balance, which was past my paid time.

I also balanced the bank machines before the branch opened. When I had this job, I worked 8-5 and I had to take an hour break to avoid overtime.

As for working an average of an extra unpaid hour a day, I could get over that. The part that really bugged me about working there is it was a high stress environment, there was high expectations to sell and to volunteer and to do better, yet we were paid **\$12/hr**. I had a lot of responsibility when I worked at [REDACTED] and my Manager, [REDACTED] was a Bully to all the Tellers.

CIBC wants more from you, but they don't want to compensate your hard work. I've always said, they were the worst company to work for.

A teller back in 2000 started at \$18/hr at Credit Union, where I had 5 years or more of experience and I was paid \$12/hr

*I will not attend the Settlement Approval Hearing

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: January 27, 2023 6:58 PM
To: Tanya Atherfold; Peggy Gray
Subject: Re: Fw: FW: CIBC Unpaid over time -up dated new information

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Thank you Tanya.

. No, I didn't see it. I was having a computer problem and my computer had to go in for repair. I'm so happy to hear they settled. I'm praying it Approved. I worked for CIBC for 22 + years. We've tried for years to get CIBC to pay for the overtime, babysitting for staying late or even our dinner, with no luck. Others were talking about getting a union in place. The branches I worked for, the managers, said if we spoke of either one of those subjects again we would be fired on the spot!... Myself being a signal parent like others, we needed our jobs. I would have to work long hours helping tellers find their money differences or help them do their jobs. We had to find every penny even if the teller was out a penny you couldn't put a penny in, sometimes you were there till 10 at night or after that taking the work home to continue at home to find that penny. They said the books would be out of balance if we put a penny in, they said it would still be out a penny it had to be found ... I would have to pick my young daughter up from the daycare and bring her to the branch, they never covered you for daycare if you had to stay and I ordered & paid for our dinner, they never paid for overtime, babysitting, food, a drink not anything... I had to stay and stay late with ,my daughter if I couldn't find a babysitter at last notice, to do bank to do Statements manually, Filing, Branch Audits and when Head office did there Audits, that went on for a week or 2 weeks, open bank account, Loans,Mortgages, Student loans they alway came after school. I worked long hard hours staying till midnight during the at RSP, RRIF season, you stayed doing presentations for customers, taking orders and signing people up for RSP's & RRIF's . You were there till about 1 or 2 in the morning then drive home then I have to be back up for 6am to start the day all over again with my child. You didn't have a choice of staying or not, it was not a 9-5 job or like people thought 9-3 job, you had to stay or the manager threatened you with your job. . I'm so happy someone finally got to this point that we tried to for so many years, I pray without losing her job.

Thank you Tanya and the lawyers involved for getting this done.

Tanya Atherfold

From: [REDACTED]
Sent: January 31, 2023 11:55 AM
To: Tanya Atherfold
Cc: [REDACTED]
Subject: CIBC unpaid overtime class action

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Dear sir,

I agree with the proposed settlement for the lost unpaid overtime when I worked for CIBC between Feb 1, 1993 and June 18, 2009.

I do not plan to attend the settlement approval hearing

My information :

Name [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Yours truly,

[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC UNPAID OVERTIME CLASS ACTION

Importance: Low

Follow Up Flag: Follow up
Flag Status: Completed

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Feb/02/2023

E

Employed by CIBC from 1976 until Aug 2004 when I resigned
(1st 3 yrs in [REDACTED] Remainder in [REDACTED] BC)

At CIBC I held many positions ie: CSA, FSA, FSR and covered other positions for holidays and leave of absents.

I support the proposed settlement terms. I believe we (Class members) should never have had to go this far for payment. CIBC was one of the top charter banks and quarterly profits were in the billions of dollars. I believe each employee should have been paid for all hours worked, it is unlawful not to pay them.

I will not be in attendance for the Settlement Approval Hearing.
Thank you for your time it is greatly appreciated.

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: Friday, January 27, 2023 3:26 PM

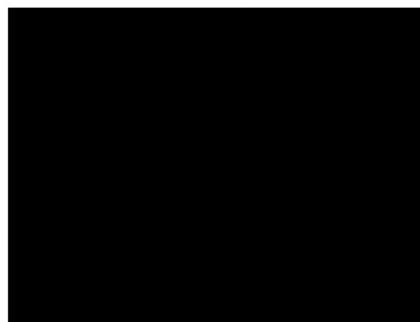
To: Info <info@royoconnor.ca>

Subject: [REDACTED]

Re: Fresco v Canadian Imperial Bank of Commerce

Please find attached a copy of my submission statement as per your request.

January 26, 2023



Class Counsel
Roy O'Connor
1920 Yonge Street West, Suite 300
Toronto, Ontario
M4S 2C2

(416) 362-1989

email: info@royoconnor.ca

Attn: Class Counsel – Roy O'Connor

Re: Fresco V. Canadian Imperial Bank of Commerce

Re: Class Member - [REDACTED] Submission Statement

Thank you for your letter regarding CIBC unpaid overtime class action: Notice of Settlement. I support the fact that CIBC did not pay any overtime to me over a period of twenty five years as a CIBC employee. I, worked at the branch, [REDACTED], Ontario, Transit [REDACTED] for twenty five years, full time from 1976 to 1994 and from 1994 to 2001 permanent part time (three days a week). I started in May 1976 until 1989 as a teller. Myself and my colleagues often worked ten to fifteen hours per week of overtime and sometime more. As a teller I, and other tellers was not allowed to leave until all teller's cash trays were balanced, often looking for cash shortage and overages, balancing the General Ledger, Domestic Commission Ledger, cheques run down and balancing and utilities run down and balance. In 1989 I excepted a position as a Personal Banker often working many long hours to complete customer demands and working overtime to complete the obligation of my job description.

Lending loans, mortgages, investments, GIC's, Mutual Funds, RRSP's, Term Deposit and etc., and it was a given to work overtime to make customer service (cold calls), in order to find them at home. In order for me to provide good customer service it required overtimes hours. I regret the fact that I will not be able to attend settlement approval hearing as I have [REDACTED]
[REDACTED] I trust the information I provided is satisfactory.

Thank you
[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: Re: Lawsuit CIBC , March 3rd, 2023.

Follow Up Flag: Follow up
Flag Status: Completed

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Hello,

I received something from the mail re: lawsuit settlement with CIBC.

My name is [REDACTED]. My updated address: [REDACTED], QC.

[REDACTED]
[REDACTED]
I do support the class members' lawsuit. I cannot attend the hearing on March 3rd, 2023 as I am working and cannot take time off work to hear it.

Please let me know what are the next steps to take are,

[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC Unpaid Overtime Class Action - Sandra Donato

Follow Up Flag: Follow up
Flag Status: Completed

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This Email is in support of the proposed settlement for the following reasons: while working for CIBC over the past 40 years there has been numerous occasions I would be required to remain at work to catch up on tasks without compensation. Had I not remained to complete those tasks this action would have resulted in a poor performance review or worse: other times I was asked to sign our hourly time sheet indicating no extra hours were worked however there was always times we would work without compensation.

I would like access to the virtual link on March 3rd. at 11 AM
Please forward it [REDACTED]

Please confirm receipt of this email.



From: [REDACTED]
To: [Info: tatherfold@goldblattpartners.com](mailto:tatherfold@goldblattpartners.com)
Subject: Fwd: CIBC Class Action Suit - Written Submission
Date: Wednesday, February 1, 2023 9:40:34 AM

Hello,

My name is [REDACTED], and I am writing to confirm my submission to the Class Action Suit I received in the mail. Please see the information requested below:

[REDACTED]

Statement: I am in support of the settlement terms. It is fair to compensate employees for time they had not been paid for.

I will not be attending the hearing, as I am not able to. I would like to be kept informed if possible.

Best Regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 20, 2023 4:35 PM
To: Tanya Atherfold
Subject: Support for CIBC Unpaid Overtime Class Action

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To Whom It May Concern,

[REDACTED]

I am writing to express my support for the proposed settlement terms for the CIBC Unpaid Overtime Class Action. During my time working for CIBC it was expected that we would have to work overtime, but not be paid for it. I was told this is just the way it is in the banking industry (I learned this wasn't true in later years working for another financial institution). I am grateful for the action that has been taken against CIBC, and hope this changes going forward.

I am planning to virtually attend the settlement approval hearing.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Sotos Class Actions](#)
Cc: [Amin Akhaji](#)
Subject: Written Submission for CIBC class action
Date: February 8, 2023 10:49:37 PM

Hello,

As requested, I would like to provide my submission for participation in this class action settlement.

Name: [REDACTED]
[REDACTED]

I support this class action because the défendant did not compensate for extra work, overtime etc during my period of employment

I will not be able to attend the hearing on March 3.

Please do not hesitate to let me know if you require any additional information.

Thank you!

[REDACTED]

Tanya Atherfold

From: [REDACTED]
Sent: February 10, 2023 7:28 PM
To: Tanya Atherfold
Subject: Re: CIBC Overtime Class Action Lawsuit

Follow Up Flag: Follow up
Flag Status: Completed

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Hello there,
As requested:

a. Name, Address and telephone number: [REDACTED], On [REDACTED]

b. Reason to support proposed settlement terms: I have worked overtime hours daily for all the branch roles in the lawsuit from Nov. 2002 to Nov. 2010.

c. Do not plan to attend the settlement approval hearing, will join via video conference.

Regards,

[REDACTED]

From: [REDACTED]
To: [Karen Whibley](#)
Subject: CIBC Unpaid Overtime Class Action
Date: January 25, 2023 12:39:16 PM

[REDACTED]
Married name: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

During the time that I was employed by CIBC I worked a lot of overtime that I wasn't remunerated for. During my time at CIBC, I was a Customer Service Representative, a Financial Service Representative and a Branch Ambassador. I was, on many occasions called in to work on my days off, and my holidays, stayed longer than my scheduled hours and wasn't paid overtime for these extra hours and duties worked. I recall working some nights until 8:00pm and never received overtime payment for this either. I often was required to do Branch Manager duties such as opening and closing the bank and being one of the few people with the authority to access the vault which triggered getting called in on my days off. We were often required to work longer hours to attend meetings.

I don't plan on attending the hearing in person but I do look forward to logging in to the video conference.

Sincerely yours,

[REDACTED]

Sent from [Mail](#) for Windows

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: Fresco V. CIBC
Date: Friday, January 27, 2023 9:10:00 AM

I do not plan to attend the settlement approval hearing in person but would like to voice my support of the settlement. I feel that people go to court to assist in reaching an outcome that both parties are able to accept, and it would appear that this has been reached. If both parties are acceptable to the proposed settlement then I feel that we should not be using up valuable court time to rehash the proposal.

Thank you,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
To: Tatherfold@goldblattpartners.com
Cc: [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: CIBC unpaid overtime class action - notice of settlement approval
Date: Monday, February 13, 2023 9:23:35 PM

To Whom It May Concern,

My name is [REDACTED] and I was a Customer Service Representative for CIBC between 2007 until 2009. I'm sending this email to confirm that I am supporting the proposed settlement. During my time with CIBC from 2007 until 2017, I had worked in several different roles including full time and part time roles. I had gone above and beyond to dedicate my time/hard work for the company however the compensation was never representing the efforts I had put in. I was not offered overtime pay in many situations and when asked to be paid overtime, I was given the option to work shorter days on some days that weren't as busy or just told to agree to alternative options that would not require for me to be paid overtime.

[REDACTED]

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: February 10, 2023 7:17 PM
To: Tanya Atherfold
Cc: Thantrey-Din, Shazia
Subject: RE CIBC UNPAID OVERTIME CLASS ACTION

Supporting Proposed settlement

NAME: [REDACTED]
ADDRESS: [REDACTED], Ont [REDACTED]
PHONE: [REDACTED]

I support the proposed settlement terms as working overtime (unpaid) was a norm in the Branches. When I was a front line employee, I was never compensated for the overtime and not given time off in lieu of the overtime hours worked. As an Assistant Branch Manager, I never took my lunch breaks.

I do not plan to attend settlement approval hearing, but plan to attend virtually.

Regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [CIBC Unpaid Overtime](#)
To: [Sotos Class Actions](#); ryanfoster3108@gmail.com
Subject: CIBC Micro-Site Registration Notification
Date: February 6, 2023 2:26:17 PM
Attachments: [ninia-forms-submission.csv](#)

First Name: [REDACTED]
 Last Name: [REDACTED]
 Phone: [REDACTED]
 Extension (if applicable):
 May we call you at this phone number?: Yes
 Email: [REDACTED]
 May we send you emails at this email address?: Yes
 Home Address: [REDACTED]
 City: [REDACTED]
 Province or Territory: Ontario
 Position: Personal Banking Associate
 Current or Last Branch Location or Address: [REDACTED]
 Current or Last Branch Number (if known): [REDACTED]
 Start Date: 05/08/2007
 End Date: 08/28/2009
 Are/were you working at CIBC Full Time, Part Time, or Both?: Full-time
 Did you ever work overtime for which you were not paid?: Yes
 HTML:

For the next part, if you are/were a Full Time employee, answer only the questions related to Full Time and if you are/were employed Part Time only answer the Part Time questions.

As a Full-time employee, how many hours of unpaid overtime do/did you work in a typical week?:

As a Part-time employee, how many hours IN EXCESS of your regular scheduled hours do/did you work in a typical week?:

Have you worked at more than one branch?: No

If you have worked at more than one branch, how many?:

Did you work unpaid overtime at

any of those branches?:

Yes

Comments:

I completely support Dara Fresco's claims, as I too worked as a Personal Banking Associate from May 2007 until August 2009 and was never compensated for any of the overtime hours that I was expected to work. It wasn't unusual for me to put in anywhere from 2 - 3 hours a day, sometimes upwards of 4-5 hours a day just to keep up with the work. I recall very clearly at one point when the Branch Manager had been on a medical leave for several weeks/months leaving me in charge (on top of my own job) and me stating to my Regional Manager that I had kept track of approximately 118 hours over the past several months in his absence. She was unamused and simply said, it was my job to keep things in order and that overtime wasn't paid to salaried employees. My Branch Manager at the time - [REDACTED] was always away sick/on medical leave and this happened to me on many occasions. The ultimate reason I left CIBC was due to the mental and emotional stress I encountered at CIBC's hands working the numbers of hours that I did. It was a completely unethical and unhealthy place to work. I'm happy that I didn't provide CIBC with anymore of my time than I did and I still to this day feel nothing but disgust at the way CIBC treats their employees.

By checking this confirmation box, I certify the following: (a) I am NOT a person who is or was a management employee, director or officer of CIBC or its affiliates or related organizations; (b) I am NOT submitting this form on behalf of CIBC or otherwise submitting this form as a representative or agent of CIBC or its affiliates or related organizations; (c) I am NOT a person who otherwise was or is involved in the decision-making process for CIBC or its affiliated or related organizations; (d) I am NOT a person whose acts or omissions may expose or may have exposed CIBC or its affiliated or related organizations to potential liability in relation to the claims made in the statement of claim (namely, claims relating to alleged unpaid overtime for non-management employees):

Checked

Tanya Atherfold

From: [REDACTED]
Sent: February 8, 2023 1:04 PM
To: Tanya Atherfold
Subject: CIBC Unpaid Overtime Class Action -Notice of Settlement Approval

Follow Up Flag: Follow up
Flag Status: Completed

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Hi

I have received a letter by mail and would like to respond to it. It's telling me that I'm a Class Member in this unpaid overtime class action Lawsuit.

I [REDACTED] of [REDACTED], Alberta Canada
Agree to this letter and say yes.

Sorry I won't be able to attend the Hearing in person
I will follow on the virtually linked hearing on March 3,

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info](#)
Subject: CIBC unpaid overtime class action
Date: Wednesday, February 1, 2023 5:46:17 PM

Good afternoon,

I am writing today after having received the latest communication on the CIBC unpaid overtime class action. I fully support this proposed settlement as I worked for CIBC as a front line bank employee who was affected in several ways.

Of course, the first way I was affected was I was not paid for my time worked, entitled to paid breaks , and how I was forced to stay after my shift. (again not paid). This was not an opinion you were staying.

I feel that the CIBC was negligent in the way they followed over time policies and made me feel as a young staff undervalued. I felt that I did not have a voice when I worked for CIBC as was told "that is the way it is here." This affected me emotionally and I carry that with me today.

I eventually quit working for the CIBC which is sad as that was my initial hope to peruse a career in the banking world. But I felt that I was not being treated fairly. Why should I be forced to stay late etc and not be compensated. I feel that their actions were not appropriate they knew it was wrong to enforce on their staff and should be held accountable.

When I read the latest correspondence it brought back all the feelings of being undervalued and I will say, bullied at the workplace. It was not a respectful place to work. I carry these feelings with me even at my current employer and I am always second guessing, checking I am compensated appropriately and feel at times have my back up due to my early work experience with CIBC.

I would love to virtually attend the settlement approval hearing if possible.

I appreciate you taking the time to read this,

[REDACTED]

Fresco v CIBC Administrator

Written Submission:

a. [REDACTED]

b. Brief Statement:

I support the proposed settlement terms as laid out in the documents received.

c. Attendance:

Unfortunately, I will not be able to attend the settlement approval hearing.

I worked as a "Customer Service Representative", formerly known as a Teller between 1996 and 2004.

- Yes, I worked overtime hours and received straight-time pay for all overtime hours I worked.
- I was hired on a casual basis but from my first day of work, there was no schedule, I was expected to work full-time, 5 days a week, PLUS overtime every Friday.
- Payment for any overtime incurred was known to be at straight time, and discussions did not occur to indicate otherwise
- Overtime hours were expected as the Teller position had balance their tills before leaving work.
- Although this settlement is regarding overtime, it is worthwhile to note that I was hired as a casual worker, and was expected to work full-time, 5 days a week. When I questioned my supervisor, asking what would happen if I did not want to work certain days, or was unable to work certain days (I was hired as a casual worker, not a full-time worker), I was told "well then you wouldn't have a job". Co-workers referred me to speak with HR who acknowledged that because I did not receive any benefits and no sick pay, yet worked full-time hours, that my position must be temporary and covering a maternity leave or other similar temporary leave. They could not understand how I was working full-time yet not receiving benefits or sick pay. They were not helpful because they could not provide me with any clarity on my actual position. I worked full-time with no benefits and no sick pay for years. This is more evidence that CIBC was not treating me fairly.

Thank-you for your time,

[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info](#)
Subject: Class Action Law Suit (CIBC)
Date: Sunday, February 12, 2023 1:04:49 AM

Dear Goldblatt Partners and Mr. Roy O'Connor,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Employment Role: Customer Service Representative

I support the the propsed settelement as I too experienced several days staying over my scheduled shift to balance my "cash till" without getting paid. If we served customers that were in the buildng still after closing time we had to help them, stay late and we were not compensated for our time.

I will not be attending the settlemt hearing in person but will be wathcing via video.

Please let me know if you need further information from me.

[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC Unpaid Overtime Class Action/Stacey Lund

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I fully support the unpaid Overtime Class Action; as I was hired by CIBC; after completing my University degree in the spring of 1996. I was hired as a Financial service representative to do lending, investing, etc. I was hired at "x" \$ per year based on a 40 hour work week. However, I was pressured by management to meet specific goals and was told to work whatever hours necessary to complete annual financial reviews. I was constantly told that if I was better at time management I could look after all the customers that I had on my portfolio; even the when I took over the position the previous employee was significantly behind on keeping up with the work load. I was not paid any overtime, even though I worked many evenings and weekends which resulted in 100s of overtime hours. Especially, being a motivated, recent University graduate with a Honours BSA in Economics I was eager to please my employer and was essentially bullied to work significant overtime. I worked for CIBC in several locations in Saskatchewan as a full time employee for over 3 years; spring 1996 to 1999.

In respect to the Questions; the answer if "yes", and there was no attempt by CIBC to keep track of unpaid overtime hours. It was a management top to down approach to make employees work more hours than they were getting paid for. They were very aware of what they were doing.

When I decided to quit CIBC; I actually was so upset about all the unpaid overtime that I had worked that I went to see a lawyer in our town of [REDACTED] to see if I could sue them; and or try to get paid somehow for all my dedicated work for them that was unpaid. The lawyer at the time said it would cost me way more than I was owed to pursue it.

As such, I am very pleased that this Class action law suit was brought forward and CIBC is 100% guilty as the Class action is presented. Its not just the monetary loss to all employees that is at stake here; its almost a mental relief that they might actually be held accountable after this many years.

I wont be able to attend the hearing as I am gone on holidays out of country; but you have my full support and if needed you have my permission to use my email as support.

Thank you

[REDACTED]

Sent from [Mail](#) for Windows

Tanya Atherfold

From: [REDACTED]
Sent: February 20, 2023 12:53 PM
To: Tanya Atherfold
Subject: CIBC UNPAID OVERTIME CLASS ACTION

This Message Is From an External Sender

Report Suspicious

Good Afternoon,

Thank you for sending out the notification for the *CIBC Overtime Class Action - Notice of Settlement Approval Hearing in Fresco V. Canadian Imperial Bank of Commerce*. Please accept this email as my written submission to support this Class Action. I do believe that if there are funds due to CIBC employee's that they should be paid out fairly.

I left CIBC in 2009/2010 [REDACTED]
[REDACTED]
[REDACTED]

My new last name is [REDACTED]
[REDACTED]

I would like to attend the video conference on March 3.

Your time is appreciated.

Thank you,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
To: [Info](#)
Subject: FW: CIBC Unpaid Overtime Class Action
Date: Wednesday, January 25, 2023 12:24:29 PM
Attachments: [REDACTED]

From: [REDACTED]
Sent: January 25, 2023 12:23 PM
To: tatherfold@goldblattpartners.com; infor@royoconnor.ca
Subject: CIBC Unpaid Overtime Class Action

I've mailed this letter to you. But thought I would send you a pdf in the meantime.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

January 25, 2023

Goldblatt Partners LLP
20 Dundas Street W.
Suite 1039
Toronto, Ontario
M5G 2C2

Re: CIBC Unpaid Overtime Class Action

[REDACTED]

I worked for CIBC from November 1, 1991, until June 30, 2008. I started as a Customer Service Representative and worked in all the positions listed in your notice of settlement letter during my 17-year employment with CIBC.

I support the proposed settlement terms and believe it should be approved. As a full-time employee, CIBC never compensated me for the over-time hours I worked. I constantly worked outside of business hours to complete the workload. During that time, I trained at least 4 new hires to pay grade positions much higher than I was. In 2006 I decided to apply for the position that I had trained others to perform. I was offered the position but was told I could not be compensated like an outside hire as I was current employee and that they had policies around moving employees up levels. So even though I had the skill set, the education, and all other qualifications CIBC required they would not compensate me like an external hire, or pay overtime. I took the position for the pay negotiated but eventually left in 2008.

Based on the workload requirements and overall compensation in comparison to all the extra hours I was working I made the decision to leave after 17 years of employment.

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC unpaid overtime class action

This Message Is From an External Sender

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Dear Goldbatt Partners LLP,

I received your letter and here's the information you requested before the February 20 deadline.

a) [REDACTED]

b) I worked at CIBC for a number of years during the eligible period of this claim and I support and approve the terms of the class action settlement because I was a victim of many hours of unpaid overtime. I would like to receive restitution for the unpaid OT.

c) I plan to attend the settlement hearing virtually

Thanks for taking care of this and keeping me informed.

[REDACTED]

[REDACTED]

-----Original Message-----

From: [REDACTED]

Sent: Tuesday, February 7, 2023 4:39 PM

To: tatherfold@goldblattpartners.com; Info <info@royoconnor.ca>; info@sotosclassactions.com

Subject: CIBC unpaid overtime class action

[REDACTED]

As a former CIBC employee, I am in full support of this lawsuit.

I was a CIBC employee from 1998-October 2015. During this time I filled many roles . From a CSR (teller) to a PBA (personal banking associate) to my final role as an ABM (Assistant Branch Manager)

I recall the following ...

Staying late to complete a cross tick (when a CSR was not balanced) or when I was the CSR

Attending before work meetings (huddles)

Completing PIPs (performance reviews) at home on my own time

Completing quarterly reports from home on my own time

Staying late when the vault had to be drilled open (worked all day and stayed until 12 midnight, when workers were done)

Preparing for internal audits (coming in early or staying late to complete)

If I stayed on the premises for lunch, I would be asked several time for either an override, initial or signature. My lunch was 1 hour unpaid, but I often was interrupted. I started leaving the premises for lunch at one point.

When I was hospitalized back in [REDACTED], I was called to see when I would be returning while I was still in the hospital. I was off with [REDACTED] and I was asked to come in and complete audit reports as the manager was not aware of what needed to be done. I was off sick at that point and I was convinced to come in I believe on 2 separate occasions

I'm hoping that all the efforts of current and previous staff do not go unnoticed

Looking forward to the online streaming

[REDACTED]

[REDACTED]

Tanya Atherfold

From: [REDACTED] >
Sent: January 26, 2023 7:56 PM
To: Tanya Atherfold
Subject: CIBC unpaid overtime

This Message Is From an External Sender

[Report Suspicious](#)

Please accept this as my written submission including information as advised in letter received to my home on January 26, 2023:

a) name: [REDACTED]
Address: [REDACTED], Ontario [REDACTED]
Phone number: [REDACTED]

b) I do approve and support the proposed settlement. I worked what we called bankers hours you never knew when your day would come to an end and we were never compensated for time spent. This would attribute to being a big reason why I left the bank. Having children and finding child care that didn't mind keeping your children longer than expected. Overwhelmed and frustrated on a daily basis while employed.

c) I will be going on the website and looking into the link to attend (virtually) the settlement approval hearing.

Thank you,
I will be sure to go to the website and look for the form also mentioned in the letter.

[REDACTED]

Sent from my iPhone

From: [REDACTED]
To: tatherfold@goldblattpartners.com; Info
Subject: CIBC Unpaid Overtime Class Action
Date: Monday, January 30, 2023 12:09:22 PM

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I support the proposed settlement terms, as when I was employed at CIBC, not only was I told not to charge overtime when I was a CSR, I was also asked by a manager (when I was assistant manager) to make sure that no one else charged overtime.

[REDACTED]

[REDACTED]
[REDACTED]

Tanya Atherfold

From: [REDACTED]
To: Tanya Atherfold
Subject: CIBC Class Action

Follow Up Flag: Follow up
Flag Status: Completed

This Message Is From an External Sender

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Good Morning,

I have received some mail in regards to the class action against CIBC, I would like to put my name towards it please. There were many days that I would have to work unpaid overtime in order to balance, as well as being at work before we got paid to have my workstation ready.

[REDACTED]

I do not plan to attend the settlement approval hearing.

Best Wishes,

[REDACTED]

1

February 15, 2023



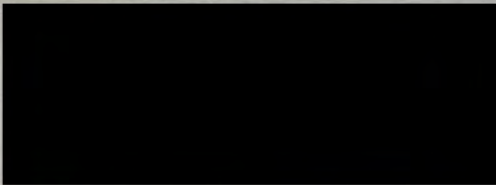
Attention: Law firms of Sotos LLP, Roy O'Connor and Goldplatt Partners LLP

To whom it may concern;

I, [REDACTED], am in support of the proposed settlement terms against CIBC .

I will not be able to attend the hearing on March 3, 2023 but will virtually attend the hearing .

Sincerely ,



From: [REDACTED]
To: tatherfold@goldblattpartners.com; [Info: info@sotoclassactions.com](mailto:info@sotoclassactions.com); [REDACTED]
Subject: CIBC Overtime Class Action.pdf
Date: Wednesday, January 25, 2023 11:05:21 AM
Attachments: [CIBC Overtime Class Action.pdf](#)

Good Morning,

Please see attached.

If you need anything further please let me know.

Thank you

[REDACTED]

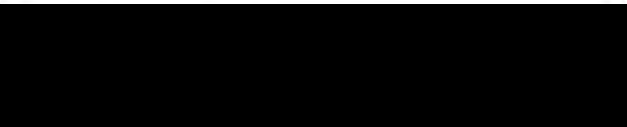
Goldblatt Partners LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
tatherfold@goldblattpartners.com

January 25, 2023

Roy O'Connor
1920 Yonge Street, Suite 300
Toronto, ON M4S 3E2
info@royoconnor.ca

Sotos LLP
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8
info@sotosclassactions.com

CIBC Overtime Class Action



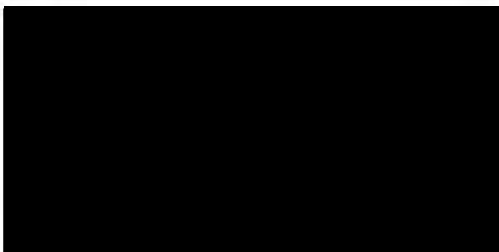
I completely support the proposed settlement terms. There were many days/shifts where I had to stay longer than I was scheduled, not to mention starting early.

I was late many times, for my second job due to missing my bus because of having to stay later than my scheduled shift.

We were **NEVER** compensated for staying past the scheduled shift. When I did inquire, (especially since I was now losing \$\$ from my second employment) I was just advised that this is how they pay.

Unfortunately, I will not be able to attend the settlement approval hearing.

Thank-you for everything you are doing to assist us that work/worked at CIBC.



From: [REDACTED]
To: [Info](#)
Subject: Class Action Fresko v. CIBC
Date: Sunday, February 12, 2023 3:42:23 PM

Good Afternoon,

I am writing in response to mail I received regarding CIBC unpaid overtime class action.

[REDACTED]

I support the decision in this case against CIBC for not adhering to policy regarding unpaid overtime. I will not be able to attend the hearing in person as I reside in PEI.

[REDACTED]

[REDACTED]

[REDACTED]

Montreal, 31st of January 2023

To: Goldblatt Partners LLP
20, rue Dundas Ouest, b. 1039
Toronto, ONT, M3G 2C2

From : [REDACTED]

Subject: CIBC UNPAID OVERTIME CLASS ACTION

Follow the reception of the description, I would like to state:

1. Held a teller position for a short period of time in CIBC branch in Westmount, rue Sherbrooke, Montreal;
2. Totally agree with the suite and the base for it;
3. Yes – we had to come at least 15 -20 minutes before officially starting time of the work, had 20-25 minutes lunch break, no other breaks. Every evening we had to stay another 30 minutes to be able to find the errors committed by someone (due to the imperfection and the chain connections of all computers). After that time, someone had to stay to lock the doors or do other chores in the bank. Ergonomically – zero accommodations – we had to stay up during all working hours (and never paid official overtime). It was "omerta" law – it was in the bank culture to "pass under silence" all normally given breaks, etc., and we were expected to obey without any comments. Very toxic environment, favoritism. Although new, I was placed in the center of the counter, the stream of people were heading mostly to me. Music was playing behind and above my head, loud conversations, etc., impossible to concentrate. The formation was fast and incomplete, outgoing during the working time.
4. I believe, this was (is) "normal" working conditions and that's why we see frequently new faces in all positions in the bank(s).

My worst experience in a work field in Canada.

Regards & hope you win for all other people, who gave so much efforts and time, surely adding up negativity to their already not easy life:

[REDACTED]
01/30/23
[REDACTED]

Verso →

Tanya Atherfold

From: [REDACTED] <[REDACTED]>
Sent: February 19, 2023 5:20 PM
To: ag@royoconnor.ca; info@royoconnor.ca; Tanya Atherfold
Subject: CIBC Unpaid Overtime Class ATTN: Amanda Grainger

This Message Is From an External Sender

[Report Suspicious](#)

To whom it may concern,

I am writing to you today as I received a letter in the mail regarding the CIBC Unpaid Overtime Class action notice.

I was employed by CIBC from 2005-2012.

During my time with CIBC my positions were Branch Ambassador and Assistant Branch Manager.
I worked at several different branches within the Durham region during my 7 year period.

My address is:

[REDACTED]
[REDACTED], Ontario [REDACTED]
[REDACTED]

I feel that I was not paid for my overtime hours during my employment with CIBC.

Unfortunately, I am unable to attend the settlement approval hearing in person however I will be attending the virtually hearing.

Please feel free to contact me if you have any further questions or concerns.

Thank you kindly,
[REDACTED]

From: [REDACTED]
To: tatherfold@goldblattpartners.com
Cc: [Info: info@sotosclassactions.com](mailto:info@sotosclassactions.com)
Subject: Fresco vs CIBC letter of support
Date: Monday, January 30, 2023 5:28:56 PM

To Whom It May Concern,

My name is [REDACTED] and I worked for CIBC from 2008 til 2020, in 6 different positions, 5 branches and 2 districts. I started briefly as a CSR, then FSR 1, 2, Senior FSR and was a manager for the last 7 years of employment. I am in huge support of this lawsuit, it's about time someone came forward. I saw it happening, it happened to me and many of my colleagues, and depending on which branch you work for or who your leader is, it was still happening when I left. As for the proposed settlement, I trust that the number is in the best interest for council, as it'll depend on the amount of employees involved in this.

Thank you for all you've done with this class action.

It only takes one person to come forward to make a change and this is a start!!

I unfortunately will not be able to attend the settlement hearing.

[REDACTED]

[REDACTED]

[REDACTED]

DARA FRESCO
Plaintiff

-and- **CANADIAN IMPERIAL BANK OF COMMERCE et al.**
Defendants

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
 PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF JODY BROWN
(AFFIRMED FEBRUARY 23, 2023)

ROY O'CONNOR LLP

Barristers
 1920 Yonge Street, Suite 300
 Toronto, Ontario M4S 3E2

David F. O'Connor (LSO # 33411E)
J. Adam Dewar (LSO # 46591J)
 Tel: 416- 362-1989

GOLDBLATT PARTNERS LLP
 20 Dundas Street West, Suite 1039
 Toronto, ON M5G 2C2

Steven Barrett (LSO #24871B)
Peter Engelmann (LSO #29064P)
Louis Century (LSO #66582C)
 Tel: (416) 979-6070

SOTOS LLP

180 Dundas Street West
 Suite 1200
 Toronto ON M5G 1Z8

Louis Sokolov (LSO # 34483L)
lsokolov@sotos.ca
Jean-Marc Leclerc (LSO #43974F)
jleclerc@sotos.ca
 Tel: 416-977-0007

Lawyers for the Plaintiff

Email for parties served:
 Linda Plumpton: lplumpton@torys.com
 John Field: john-field@hicksmorley.com

Court File No. 07-CV-334113-00CP

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***AFFIDAVIT OF DARA FRESCO****(Affirmed February 23, 2023)**

I, Dara Fresco, of the City of Toronto, in the Province of Ontario, SOLEMNLY AFFIRM:

1. I am the Plaintiff in this proceeding, and, as such, have knowledge of the matters contained in this affidavit. Where I make statements in this affidavit that are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to, I verily believe to be true.

2. I swear this affidavit in support of the following motions:

- (a) approval of the settlement agreement between the Plaintiff and the Defendant dated December 28, 2022, (the “**Settlement Agreement**”);

- (b) approval of a proposed distribution protocol for distributing the funds paid by the Defendant (“**CIBC**”) under the Settlement Agreement;
- (c) approval of Class Counsel’s fees and disbursements; and
- (d) approval of an honourarium of \$30,000 for my benefit.

BACKGROUND

3. I am 50 years old and live in the city of Toronto with my son. When this case started, I was 34 years old, and my son was in daycare. He is now in his last year of high school.

4. I worked at CIBC between 1998 and 2012 in various positions in the retail branch network, at various branches in the Toronto area. I currently work for the Government of Canada, Immigration and Refugee Board, as a Scheduler.

5. Throughout my employment with CIBC, I believed that I worked uncompensated overtime and believed that many of my co-workers did as well. As I recall, I raised this issue with various managers for whom I worked, as well as with CIBC’s Human Resources Department. However, my concerns were never adequately addressed from my perspective and the issue remained.

6. Following my return to work after my maternity leave, I met with lawyers at Sack Goldblatt Mitchell LLP (“**SGM**”), which I understand was the predecessor firm to Goldblatt Partners LLP (one of the firms that, along with Roy O’Connor LLP and Sotos LLP, are collectively, “**Class Counsel**”). In the course of my meetings, I provided SGM with, among other things, what I understood to be policies concerning overtime at CIBC, as well as information about practices.

7. After various discussions with SGM about overtime and class action issues, I agreed to act as a representative plaintiff in a proposed national class action against CIBC for uncompensated overtime. I understood that SGM intended to partner with Roy Elliott Kim O'Connor, the predecessor firm to Roy O'Connor LLP, and that both firms would act as Class Counsel.

8. In June 2007, I signed a retainer agreement, a copy of which is attached as **Exhibit "A"**. I reviewed the retainer carefully and accepted its terms.

9. At the time that I retained Class Counsel to start the Class Action, I had worked at CIBC for nearly a decade. I did not consider myself to be a disgruntled employee. To the contrary, I liked working for CIBC. I liked and respected my colleagues and enjoyed serving CIBC's customers and helping them with their financial needs. I did, however, believe that employees should be paid for all hours worked, and I thought that this class action was a fair and effective way to seek to address the issues that I had experienced.

10. I was, however, nervous about taking part in the Class Action. I was a full-time employee and intended to stay there. I was afraid that there could be repercussions if I started this class action. At the very least, I thought it would be very uncomfortable returning to work after the class action became public. In choosing to take part in this class action, I considered those risks and effects but decided that the case was important and that someone needed to step up.

11. I was aware when the case started that it would likely take years to complete and told Class Counsel that I was prepared to see it through to the end. I have remained interested and involved in the case since its start and have regularly consulted with Class Counsel (largely through Louis Sokolov) as it progressed. This included, but is not limited to, the following:

- (a) I reviewed the Statement of Claim before it was filed and consulted with Class Counsel about the strategy;
- (b) I attended a press conference when this case was started and gave numerous interviews to the media, in order to raise awareness about this case and the larger issues of employee rights that it raised;
- (c) I applied for funding from the Class Proceedings Fund and attended the meeting when my application was considered;
- (d) I swore two affidavits in support of certification and was cross-examined for the better part of a day by CIBC's (then) lead counsel, Trisha Jackson;
- (e) I consulted with Class Counsel about the strategy for certification;
- (f) After the certification motion was denied at first instance, I instructed Class Counsel to appeal. After the first appeal was dismissed by the Divisional Court, I further instructed Class Counsel to seek leave to appeal to the Court of Appeal and then bring the appeal to the Court of Appeal after it was granted;
- (g) I instructed Class Counsel to bring a conditional application for leave to appeal to the Supreme Court of Canada after the Court of Appeal ruled that aggregate damages should not be certified as a common issue;
- (h) I had discussions with Class Counsel about issues with documentary productions that were encountered after certification;

- (i) I frequently spoke with other Class Members to advise them about the progress of this action;
- (j) Class Counsel consulted with me about whether to bring a motion for summary judgment and I instructed Class Counsel to go ahead;
- (k) I spoke with Class Counsel repeatedly during the period prior to and during the summary judgment motion;
- (l) I reviewed the decisions of this Court, allowing summary judgment, and reviewed the factums of CIBC and Class Counsel before the Court of Appeal;
- (m) I consulted with Class Counsel about the strategy for damages, including the request for aggregate damages;
- (n) I reviewed the decision of the Court of Appeal, and discussed with it Class Counsel;
- (o) As further described below, I consulted with Class Counsel about mediation, instructed them to proceed with the mediation and reviewed materials filed by the parties; and
- (p) I consulted with Class Counsel during the course of, and following, the mediation and provided them with instructions to settle the case.

12. I understand from Class Counsel that I was the only current employee of CIBC that Class Counsel met with who was willing to sue my then current employer for unpaid overtime.

SETTLEMENT APPROVAL

13. I understand that CIBC and Class Counsel entered into settlement discussions beginning in April 2022. I was advised of this process by Class Counsel and instructed them to proceed.

14. I was aware that Class Counsel attended a mediation with William Kaplan on August 23 and 24, 2022. While I did not attend the mediation, I spoke with Mr. Sokolov by telephone before the mediation and after the first and second day of the mediation. Mr. Sokolov provided me with a summary of the progress of the mediation, and the positions taken by the parties.

15. I understood that the mediation ended after the second day of mediation. I continued to discuss the settlement negotiations that continued into the fall of 2022 with Mr. Sokolov.

16. On October 3, 2022, Mr. Sokolov sought my instructions to settle the case on the basis of an all-inclusive payment from CIBC of \$153 million. I instructed him to settle on this basis.

17. I understand from Mr. Sokolov that the parties subsequently entered into Minutes of Settlement following the mediation and that, following execution of the Minutes of Settlements, the parties negotiated and agreed upon the terms of a formal Settlement Agreement. I have been advised by Mr. Sokolov of the terms of, and rationale for, the Settlement Agreement. I understand that the Settlement Agreement must be approved by the Court.

18. I previously understood generally, and now understand specifically, from reviewing the Settlement Agreement that CIBC is required to pay \$153 million for the benefit of the Class (and has in fact paid this amount to Class Counsel to be held in escrow pending approval of the settlement) and that from this amount will be deducted, approved legal fees and disbursements, the costs of administering the settlement and the 10% levy owing to the Class Proceedings Fund

on the remainder payable in exchange for indemnifying me from costs. I further understand that the amounts that I and other Class Members will receive will be net of income tax withholding as well as both the employee and employer contributions and remittances relating to EI insurance and CPP premiums that are applicable (defined in the Settlement Agreement as the Remittances).

19. I understand the risk and delays associated with continuing to fight or litigate the case if it did not settle. I appreciate being able to receive compensation for unpaid overtime now rather than waiting several years for a contested hearing on damages, appeals and individual issues proceedings to be complete and risk receiving nothing, or less than what is payable under the Settlement Agreement.

20. I have discussed with Class Counsel the respective benefits and costs of the settlement. I believe that the Settlement Agreement is more than fair and reasonable and certainly in the best interest of the Class. Accordingly, I have instructed Class Counsel to seek approval of the Settlement Agreement.

DISTRIBUTION PROTOCOL

21. I understand from my discussions with Mr. Sokolov that Class Counsel have developed a proposed distribution protocol, and I have reviewed the proposed distribution protocol. I understand that this must be approved by the Court. I understood from Class Counsel that every class member will be eligible for compensation under the protocol and that individual entitlement will be calculated based on the length of each Class Member's tenure, during the Class Period, as well as the position(s) held, and their average wages.

22. I further understand that a discount of 50% will be applied to the tenure of Class Members for the period for which CIBC asserted a limitations defence. Class Counsel have explained the

rationale for this to me (i.e. that claims for damages for these periods would be less likely to succeed because of the limitations defence) and I agree that, in these circumstances, the discount is appropriate.

23. I believe that the proposed distribution protocol is fair and reasonable and in the best interest of the Class and have instructed Class Counsel to seek its approval.

CLASS COUNSEL FEES

24. I clearly understood from my discussions with Class Counsel that this litigation was undertaken on a contingency basis and that Class Counsel would not be paid unless the case was successful (either through a settlement or a trial). I did not have enough money to hire a lawyer in order to commence my own individual action, let alone on behalf of other employees. The only way Class Members and I could access legal counsel under the circumstances was on a contingency fee basis.

25. As set out above, I entered into a retainer agreement with Class Counsel in June 2007. I carefully read and understood the terms of that agreement at the time. I did not have any unanswered questions about the retainer. I agreed with the terms of the retainer agreement when I signed it and I agree with the terms now.

26. I further understand that it is Class Counsel's intention to request fees in the amount of 30% of the total value of the Settlement Agreement (less disbursements), plus applicable taxes, in accordance with the retainer. This is obviously a large amount of money, but I support this request for many reasons, including the following:

- (a) This case would never have been brought, and Class Members would not have received anything, had it not been for Class Counsel and their hard work;
- (b) Class Counsel have invested more than \$16 million of their time and, at various times, were personally at risk for having to pay millions of dollars of disbursements;
- (c) Over the last nearly 16 years, Class Counsel have fought extremely hard for me and other members of the Class, and never gave up, even when faced with significant hurdles, including losing at first instance at certification, losing at the Divisional Court, and failing to certify aggregate damages at the Court of Appeal. Class Counsel then fought for years in the hope of obtaining a summary judgment (and all the steps that entailed, including for example their efforts to obtain production of survey related documents, and to have aggregate damages certified);
- (d) As class representative, and based on my knowledge and involvement in this case, in my view, the results of this settlement are outstanding and will bring meaningful compensation to me and tens of thousands of other Class Members, and no one will have to prove their claim or be subjected to cross-examination to get their money; and
- (e) Finally, in my view, Class Counsel did everything that they agreed to under the retainer agreement and more. I believe that respecting the terms of the agreement with respect to class counsel fees would be fair and reasonable for me and for the rest of the class.

REQUEST FOR HONOURARIUM

27. Class Counsel has proposed to me that I apply to the Court to be paid an honourarium, based on my role in bringing this case forward. I want to be clear that this is not what motivated me to bring the case in the first place, nor did I ever expect to be paid anything other than compensation for overtime if the case were to be successful. I did not request an honourarium and my support for this settlement, distribution protocol and fee application is not dependent on, or in any way related to, my request for an honourarium. I understand that the decision as to whether to award on honourarium and, if so, how much, is entirely within the discretion of the Court.

28. Class Counsel has suggested that we request that I receive \$30,000. I would welcome this payment, or any other amount that this Court would award, if the Court is of the view that my contribution to this case is deserving of an honourarium.

AFFIRMED by Dara Fresco of the City of Toronto before me at the City of Toronto, in the Province of Ontario on February 23, 2023 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



Dara Fresco
Dara Fresco (Feb 23, 2023 08:47 EST)

DARA FRESCO

This is Exhibit “A” mentioned and referred to
in the Affidavit of Dara Fresco, affirmed remotely
by Dara Fresco stated as being
located in the City of Toronto, in the Province
of Ontario, before me at the City of Toronto, in the
Province of Ontario, on February 23, 2023, in
accordance with O. Reg. 431/20, Administering
Oath or Declaration Remotely.



*_ Commissioner for Taking Affidavits (or as may
be)*

CONTINGENCY FEE RETAINER AGREEMENT

1. Dara Fresco (hereinafter the "claimant"), hereby retains and employs the firms of Sack Goldblatt Mitchell LLP and Roy Elliott Kim and O'Connor LLP (collectively "Class Counsel") as her counsel in a national class proceeding pursuant to the *Class Proceedings Act* (the "Class Proceeding") against the Canadian Imperial Bank of Commerce ("CIBC") for failure to compensate its non-management employees for the overtime they have worked in excess of their standard working hours. The Claimant agrees to be the representative Plaintiff in the Class Proceeding.
2. The claimant authorizes Class Counsel to retain and instruct other counsel outside Ontario ("Regional Counsel") to assist in representing the interests of class members who reside outside Ontario.
3. The claimant agrees that the representation will be pursued on a contingency basis, such that all fees and disbursements and taxes of Class Counsel and Regional Counsel (the "legal fees"), will be payable only in the event of success. The claimant has discussed with Class Counsel retainer options other than by way of a contingency fee agreement, including retainer by way of an hourly rate retainer. The claimant has chosen to retain Class Counsel by way of a contingency fee agreement.
4. The claimant agrees that upon the successful resolution of the class proceeding, as defined in paragraph 9 below, the legal fees will be calculated on one of the

- 2 -

following two bases, the selection of which is to be made at the sole discretion of Class Counsel, subject to approval of the Court as provided by paragraph 10 below,

Contingency Percentage

- (a) the contingency fee shall be 30% plus G.S.T. of the settlement or judgment proceeds on behalf of all class members, net of disbursements;
or

Contingency Multiplier

- (b) the contingency fee shall be 4 x the ordinary hourly rates of counsel.

- 5. Any disbursements (and applicable taxes thereon), incurred by Class Counsel or Regional Counsel, not paid directly by the defendant, will be payable as a first charge against any settlement or judgment proceeds;

Example of Fee Calculation Under Contingency Percentage

- 6. If the class proceeding results in a settlement or judgment equal to \$10,000,000.00, and if Class Counsel and Regional Counsel have incurred disbursements, and taxes on these disbursements, of \$200,000.00, then the sum of \$200,000.00 will be paid first to Class Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be \$2,940,000.00 (30% of \$9,800,000.00) plus \$176,400.00 (G.S.T.), leaving \$6,683,600.00 for distribution to class members.

Example of Fee Calculation Under Contingency Multiplier

7. If the class proceeding results in a settlement on judgment equal to \$10,000,000.00, and if Class Counsel and Regional Counsel have incurred disbursements, and taxes on these disbursements, of \$200,000.00, and docketed time at their ordinary hourly rates (set out in Schedule "A") totalling \$750,000.00, then the sum of \$200,000.00 will be paid first to Class Counsel and Regional Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be \$3,000,000.00 (4x docketed time of \$750,000) plus \$180,000.00 (G.S.T.), leaving \$6,620,000.00 for distribution to class members (\$10,000,000.00, less \$200,000.00 disbursements, less \$3,000,000.00 contingency multiplier, less \$180,000.00 GST on fees).
8. Any costs ordered by the Court to be paid, and paid by the defendants to the class members, shall be paid to Class Counsel and applied against the legal fees owing to Class Counsel. The balance of the legal fees owing to Class Counsel will be paid out of the payment by the defendant to the claimant or class members.
9. Successful resolution of the class proceeding means:
 - (a) a judgment on the common issues in favour of some or all class members;
or
 - (b) a settlement that benefits one or more class members.

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10. The legal fees are subject to approval by the Superior Court of Justice.
11. Class Counsel reserves the right to terminate this retainer agreement, at their sole discretion, prior to the certification of the class. After certification of the class and/or obtaining funding from the class proceeding fund, Class Counsel may terminate this retainer only with the agreement of the claimant, or if in the opinion of Class Counsel, additional evidence has been obtained or changes in the law have occurred which would, in the reasonable opinion of Class Counsel, make it unlikely that the class proceeding would succeed.
12. The claimant may terminate the retainer at any time. In the event that there is subsequently a successful resolution of the class proceeding, she shall be liable to pay the legal fees as provided for in paragraph 4, above.
13. The claimant has the right to decide whether or not to accept an offer to settle the claim. However, if, prior to trial, a settlement offer is made to the claimant which Class Counsel recommends be accepted, and which the claimant does not accept, Class Counsel may terminate this contingency fee retainer agreement. In such instance, the claimant will be responsible to forthwith pay Class Counsel's fees incurred to date, as calculated on the basis of the solicitors' regular hourly rates, plus G.S.T., in addition, to any disbursements incurred.
14. This retainer agreement automatically terminates upon receipt of judgment at trial in the event that the class proceeding is unsuccessful at trial. If the class

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proceeding is successful at trial, this retainer agreement shall continue in respect of any appeals or references or other proceedings to complete or enforce a successful trial judgment.

15. If the class proceeding is unsuccessful at trial, and the claimant retains new counsel to represent her on appeal, and the appeal is successful, the legal fees as provided for in paragraph 4, shall be a first charge on any judgment or settlement subsequently obtained.
16. Class Counsel agree to make application to the Class Proceedings Fund to indemnify the claimant with respect to any costs award made against her as a result of the class proceeding.
17. The claimant acknowledges and agrees that, in retaining Class Counsel to provide the legal services described in this retainer, the collection, use, retention and disclosure of personal and other sensitive information may be required in order to fulfill those services and related obligations.

IN WITNESS WHEREOF the undersigned have executed this Retainer Agreement by their hands and seals.

- 6 -

Signed this 5 day of June, 2007.

Edna Dominguez
Witness

Dara Fresco

Signed this 5 day of June, 2007.**SACK GOLDBLATT MITCHELL, LLP**

Edna Dominguez
Witness

Per: LS
Louis Sokolov

Signed this 5 day of June, 2007.**ROY ELLIOTT KIM and O'CONNOR, LLP**

RS
Witness

Per: RE
R. Douglas Elliott

DARA FRESCO
Plaintiff

-and- **CANADIAN IMPERIAL BANK OF COMMERCE et al.**
Defendants

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF DARA FRESCO
(AFFIRMED FEBRUARY 22, 2023)

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Court File No.: 07-CV-334113CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	FRIDAY, THE
)	
JUSTICE BELOBABA)	3 RD DAY OF MARCH 2023
)	

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(SETTLEMENT APPROVAL)**

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendant and dismissing this action was heard this day by judicial videoconference at Toronto.

AND ON READING the materials filed, including the settlement agreement dated December 28, 2022 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there were no objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Action has passed on May 20, 2014, and 1,041 persons validly and timely exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Class that did not validly opt out of this Action, as well as all Releasors, including those Persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasors shall be and is hereby dismissed against the Releasees, without costs and with prejudice, subject to the terms of section 9.4 of the Settlement Agreement.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may

claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim.

10. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

11. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

12. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

13. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

14. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed without costs and with prejudice.

The Honourable Justice Belobaba

SCHEDULE "A"

CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Made as of December 28, 2022

Between

DARA FRESCO AND SARAH GAUDET

(the “**Plaintiffs**”)

and

CANADIAN IMPERIAL BANK OF COMMERCE (the “**Defendant**”)

**CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT
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CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Subject to the approval of the Courts as provided herein, the Plaintiffs and the Defendant hereby agree that in consideration of the promises and covenants set forth in this Settlement Agreement and conditional upon the Approved Settlement Order (Fresco) and the Quebec Settlement Order (both as defined herein) becoming Final Orders, these Actions will be settled and the Settlement implemented, pursuant to the terms and conditions described below.

SECTION 1 - RECITALS

- A. **WHEREAS** on June 4, 2007, a proceeding was commenced by the Plaintiff, Dara Fresco, as Ontario Superior Court of Justice (Toronto) file 07-CV-334113CP (the “**Fresco Action**”);
- B. **WHEREAS** on June 18, 2007, a proceeding was commenced by the Petitioner, Sarah Gaudet, as Superior Court of Quebec (District of Montreal) file 500-06-000404-075 (the “**Gaudet Action**”);
- C. **WHEREAS** the Fresco Action was certified by Order of the Ontario Court of Appeal dated June 12, 2012 on behalf of a national class, including a class of Quebec residents that is duplicative of and overlaps with the proposed class in the Gaudet Action;
- D. **WHEREAS** the Gaudet Action was stayed on October 2, 2007, by the Superior Court of Quebec, pending resolution of the Fresco Action;
- E. **WHEREAS** Class Members were provided an opportunity to opt-out of the Fresco Action, the deadline for Class Members to opt-out of the Fresco Action has passed, and there were 1,041 opt-outs from the Fresco Action, including approximately 126 from class members located in Quebec;
- F. **WHEREAS** the certified common issues were determined at first instance by summary judgment granted by the Ontario Superior Court of Justice on March 30, 2020, August 10, 2020 and October 21, 2020;

G. **WHEREAS** an additional common issue concerning aggregate damages was ordered certified by the Ontario Superior Court of Justice on August 10, 2020;

H. **WHEREAS** an appeal of the common issues judgment and the Order to certify an additional common issue was dismissed by the Court of Appeal for Ontario on February 9, 2022;

I. **WHEREAS** counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, including a three-day mediation with William Kaplan in August 2022;

J. **WHEREAS** as a result of these settlement discussions and negotiations, the Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiffs, both individually and on behalf of the classes the Plaintiffs represent, or in the case of Gaudet propose to represent, subject to approval of the Courts;

K. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense involved in further prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Amount, the Plaintiffs and Class Counsel have each concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent;

L. **WHEREAS** the Parties therefore wish to and hereby do agree to finally resolve the Proceedings on a national basis in accordance with an Order from the Ontario Court approving this Settlement Agreement;

M. **WHEREAS** in the event that it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Parties to the Gaudet Action consent to the authorization of the Gaudet Action solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals being granted by the Courts as provided for in this Settlement Agreement, on the express understanding that such authorization

shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. **WHEREAS** if it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Petitioner in the Gaudet Action asserts that she is an adequate class representative for the class she seeks to represent and will seek to be appointed representative plaintiff in the Gaudet Action; and

O. **WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court, following which the Parties will seek the recognition of the Ontario Court's approval in Quebec, or alternatively, will seek approval of this Settlement Agreement in Quebec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Fresco Action be settled and dismissed with prejudice, and that the Gaudet Action be settled and discontinued or declared settled out of Court as against the Defendant, all without costs as to the Plaintiffs, the classes they seek to represent or the Defendant, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and the schedules hereto:

- (1) **Actions** means the Fresco Action and the Gaudet Action.
- (2) **Administration Expenses** means all fees, disbursements (including all disbursements to experts relating to this Settlement Agreement and the Distribution Protocol), expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and translation costs of the notices. Administration Expenses shall not include Class Counsel Fees, Class Counsel Disbursements or the Class Proceedings Fund Levy.

(3) *Administrator or Claims Administrator* means the third-party professional firm and any employees of such firm, selected at arm's length by Class Counsel pursuant to the Minutes of Settlement executed on November 16, 2022, and appointed by the Court to do any one or more of the following:

- (a) facilitate dissemination of the Notices of Settlement Approval Hearing;
- (b) facilitate dissemination of the Approved Settlement Notices;
- (c) receive and review claims and administer the Settlement Fund in accordance with the Distribution Protocol; and
- (d) report to the Parties and the Court on the administration of the Settlement;

(4) *Approval Motion or Approval Motions* means, as the context requires, the motion or motions to approve the Settlement, the Approved Settlement Notices, the Plan of Notice, the Distribution Protocol, Class Counsel Fees, Class Counsel Disbursements and any other approvals required to give effect to the Settlement and its administration;

(5) *Approved Settlement Notices* means the Approved Settlement Notices (Fresco) and, should separate notices of settlement be ordered in the Gaudet Action, the Approved Settlement Notices (Gaudet);

(6) *Approved Settlement Notices (Fresco)* means the Approved Settlement Notice (Fresco – Direct Notice), the Approved Settlement Notice (Fresco – Publication), and the Approved Settlement Notice (Fresco – Digital Banner);

(7) *Approved Settlement Notice (Fresco –Direct Notice)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “A”**;

(8) *Approved Settlement Notice (Fresco –Publication)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “B”**;

(9) *Approved Settlement Notice (Fresco – Digital Banner)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “C”**;

(10) ***Approved Settlement Notices (Gaudet)*** means notices in English and French that are substantially similar to the Approved Settlement Notices (Fresco), the form and content of which shall be agreed upon by the Parties;

(11) ***Approved Settlement Orders*** means the Approved Settlement Order (Fresco) and the Approved Settlement Order (Gaudet);

(12) ***Approved Settlement Order (Fresco)*** means the order made by the Ontario Court, substantially in the form attached as **Schedule “D”**:

- (a) approving the Settlement;
- (b) approving the forms of the Approved Settlement Notices (Fresco);
- (c) approving the Plan of Notice for the purpose of the publication and dissemination of the Approved Settlement Notices (Fresco);
- (d) dismissing the Action as against the Defendant without costs and with prejudice; and
- (e) ordering the release of the Released Claims.

(13) ***Approved Settlement Order (Gaudet)*** means the order made by the Quebec Court that is substantially similar to the Approved Settlement Order (Fresco), the form and content of which shall be agreed upon by the parties;

(14) ***CIBC*** means the Defendant the Canadian Imperial Bank of Commerce;

(15) ***Claim Form*** means the form to be approved by the Court or, if settlement approval is required in Quebec, the Courts, which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member’s claim for compensation pursuant to the Settlement;

(16) ***Claims Bar Deadline*** means the date by which each Class Member must file a Claim Form and all supporting documentation with the Administrator; which date shall be one hundred and eighty (180) days after distribution of the first Approved Settlement Notices or such other date as may be fixed by the Court;

(17) ***Class or Class Members*** means 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 time from February 1, 1993 to 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,

but excludes anyone who opted out of the Fresco Action.

(18) ***Class Counsel*** means Plaintiffs' Counsel in the Fresco Action and the Gaudet Action.

(19) ***Class Counsel Disbursements*** include the disbursements, interest, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings and not reimbursed by the Class Proceedings Fund;

(20) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or person;

(21) ***Class Period*** means the period between February 1, 1993 to June 18, 2009;

(22) ***Class Proceedings Fund*** means the Class Proceedings Fund of the Law Foundation of Ontario as provided for by section 59.1 of the *Law Society Act*;

- (23) ***Class Proceedings Fund Levy*** means the levy to be paid to the Class Proceedings Fund as prescribed by section 10 of the *Class Proceedings Regulation* under the *Law Society Act*;
- (24) ***CPA*** means the *Class Proceeding Act, 1992*, S.O. 1992, c. 6;
- (25) ***Courts*** means the Ontario Court and Quebec Court;
- (26) ***Date of Execution*** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement;
- (27) ***Defendant*** means Canadian Imperial Bank of Commerce;
- (28) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, to be proposed by Class Counsel substantially in the form attached as **Schedule “E”** as approved by the Courts, or as amended by and otherwise directed by the Courts;
- (29) ***Effective Date*** means the date when Final Orders have been received from all Courts;
- (30) ***Eligible Claimant*** means a member of the Class who makes a claim for his or her share and is entitled to a share of the Settlement Fund;
- (31) ***Escrow Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario initially under the control of Sotos LLP, until the Approved Settlement Order (Fresco) and the Quebec Settlement Order are entered, following which it shall be transferred to the Administrator appointed pursuant to the Approved Settlement Order (Fresco);
- (32) ***Escrow Settlement Funds*** means the Settlement Amount plus any accrued interest in the Escrow Account;
- (33) ***Fee Approval Order*** means the order made by the Court approving Class Counsel Fees and Disbursements;
- (34) ***Final Orders*** means any order contemplated by this Settlement Agreement from which no appeal lies or in respect of which: (1) any right of appeal, or right to seek leave to appeal, has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal or (2) any right of appeal has been exercised and the appeal has been dismissed with no further right of appeal nor any further right to seek leave to appeal;

(35) ***Fresco Settlement Approval Hearing*** means the hearing of the motion for approval of this Settlement in Ontario and related relief;

(36) ***Net Settlement Amount*** means the amount available in the Escrow Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Class Proceedings Fund Levy and other amounts contemplated by subparagraphs 5(1)(a)-(g) hereof;

(37) ***Notices of Settlement Approval Hearing*** means the Notices of Settlement Approval Hearing (Fresco) and, if necessary, the Notices of Settlement Approval Hearing (Gaudet);

(38) ***Notices of Settlement Approval Hearing (Fresco)*** means the Notice of Settlement Approval Hearing (Fresco – Direct Notice), the Notice of Settlement Approval Hearing (Fresco – Publication) and the Notice of Settlement Approval Hearing (Fresco – Digital Banner);

(39) ***Notice of Settlement Approval Hearing (Fresco – Direct Notice)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “F”**;

(40) ***Notice of Settlement Approval Hearing (Fresco – Publication)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “G”**;

(41) ***Notice of Settlement Approval Hearing (Fresco – Digital Banner)*** means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “H”**;

(42) ***Notice of Settlement Approval Hearing Order (Fresco)*** means the Order of the Ontario Court substantially in the form as the attached **Schedule “I”**, which shall contain provisions:

- (a) appointing the Administrator;
- (b) approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing; and

- (c) fixing the date for the Settlement Approval Hearing Motion, as the context may require, in the Ontario Court;
- (43) ***Notices of Settlement Approval Hearing (Gaudet)*** means notices in French and English that are substantially similar to the Notices of Settlement Approval Hearing (Fresco), the form and content of which shall be agreed upon by the Parties;
- (44) ***Notice of Settlement Approval Order (Gaudet)***, means notice in French and English that is substantially similar to the Notice of Settlement Approval Order (Fresco) the form and content of which shall be agreed upon by the Parties;
- (45) ***Ontario Court*** means the Ontario Superior Court of Justice;
- (46) ***Ontario Plaintiff*** means Dara Fresco;
- (47) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Class Member either before or after the Effective Date.
- (48) ***Parties*** means the Defendant and the Plaintiffs;
- (49) ***Agreed Press Release*** means the press release set out at **Schedule “J”**;
- (50) ***Plaintiffs*** means Dara Fresco and Sarah Gaudet;
- (51) ***Plaintiff’s Counsel in Fresco*** means Goldblatt Partners LLP, Roy O’Connor LLP and Sotos LLP;
- (52) ***Plaintiff’s Counsel in Gaudet*** means Melançon Marceau Grenier Cohen s.e.n.c.;
- (53) ***Plan of Notice*** means the plan to provide notice of the settlement and the process for making claims, as approved by the Ontario Court, or if settlement approval is required in both Ontario and Quebec, as approved by the Ontario Court and the Quebec Court;
- (54) ***Proceedings*** means the Fresco Action and the Gaudet Action;
- (55) ***Quebec Common Issue*** means “Did Class Members, or some of them, work uncompensated overtime for the benefit of the Defendant?”;

- (56) **Quebec Court** means the Superior Court of Quebec;
- (57) **Quebec Petitioner** means Sarah Gaudet;
- (58) **Quebec Settlement Motion** shall have the meaning ascribed in paragraph 2.2(1) herein;
- (59) **Quebec Class** means members of the Class as defined in subparagraph (17) above who worked in Quebec;
- (60) **Quebec Class Member** means a member of the Class as defined in subparagraph (17) above who worked in Quebec;
- (61) **Quebec Settlement Order** means either (i) the judgment of the Superior Court of Quebec recognizing and enforcing the Approved Settlement Order (Fresco) in Quebec and approving the discontinuance of the Gaudet Action, or (ii) the judgment of the Superior Court of Quebec, substantially in the form as the Approved Settlement Order (Fresco), approving this Settlement Agreement;
- (62) **Released Claims** (or **Released Claim**) means all claims relating to the Class Period (including individual claims) by the Class, known and unknown, relating to all matters raised, or which could reasonably have been raised, in the Proceedings including: (i) all claims and causes of action pleaded relating to the Class Period; (ii) all matters addressed in the Ontario Plaintiff's expert Stefan Boedeker's reports, dated January 12, 2022, July 18, 2022, and September 16, 2022, but only insofar as such matters relate to the Class Period, inclusive of all claims for unpaid hours, overtime pay, vacation pay, and holiday pay; and (iii) claims, or claims over, relating to the Remittances;
- (63) **Released Party** or **Released Parties** means Releasees;
- (64) **Releasees** means, the Defendant and its predecessors, successors, assigns, parents, subsidiaries and affiliates, and together with all of their current and former officers, directors, employees, servants, trustees, representatives, lawyers, agents, insurers, and re-insurers along with shareholders of the Defendant and as applicable any of their respective heirs, executors, estates, successors, and assigns;
- (65) **Releasors** means the Class Members for themselves, their heirs, executors, estates, successors, and assigns;

- (66) **Remittances** means any employment withholdings, contributions, premiums, and remittances thereof, including in respect of Canada Pension Plan contributions and Employment Insurance premiums, taxes, penalties, and interest, that may be applicable, pursuant to provincial or federal legislation, in respect of the amounts distributed to the Class from the Settlement Amount;
- (67) **Settlement** means the settlement provided for in this Settlement Agreement;
- (68) **Settlement Agreement** means this Settlement Agreement, including the recitals and schedules;
- (69) **Settlement Amount** or **Settlement Fund** means one hundred and fifty-three million Canadian dollars (CAD \$153,000,000) to be paid by CIBC in settlement of the Actions, which amount is inclusive of (i) all claims that were made, or which could reasonably have been made, in the Fresco Action during the period from February 1, 1993 to June 18, 2009 (the “Class Period”), (ii) all claims that were made, or which could reasonably have been made, in the related class proceeding commenced in the Gaudet Action during the Class Period, (iii) all costs that may be incurred in relation to the approval and administration of this settlement, including costs of any notice program and related translation costs, (iv) all Class counsel fees and disbursements (including in respect of the notice and settlement approval hearings and any related appeals in respect of this settlement as well as the fees and disbursements related to the method of distribution of the Settlement Amount to the Class), (v) any applicable statutory amounts allegedly owing payable as wages, inclusive of unpaid hours, overtime pay, vacation pay, and holiday pay, during the Class Period, (vi) the Remittances, and (vii) Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, the Class Proceedings Fund Levy, any amount to which the Fonds d’Aide aux actions collectives may be entitled and any other costs (with the exception of costs paid by CIBC prior to the execution of the Settlement Agreement) or expenses otherwise related to the Actions.

SECTION 2 - APPROVAL AND NOTICE PROCESS

2.1 Best Efforts

- (1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Fresco Action and a prompt, complete resolution of the Gaudet Action pursuant to the recognition and enforcement of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action, or pursuant to the

authorization of the Gaudet Action for settlement purposes only and the subsequent approval of this Settlement Agreement by the Quebec Court.

(2) The parties will apply for the recognition of the Approved Settlement Order (Fresco) and the discontinuance of the Gaudet Action on consent and without costs, following the issuance of the Approved Settlement Order (Fresco). In the alternative, if required by the Quebec Court, the Parties will apply for the authorization of Gaudet as a class proceeding in Quebec solely for purposes of settlement, as well as the approval of this Settlement Agreement by the Quebec Court as set out in Sections 2.2 and 2.3 below.

(3) Until the Approved Settlement Order and the Quebec Settlement Order become Final Orders or the termination of this Settlement Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Actions, other than: (a) the motions and applications provided for in this Settlement Agreement; and (b) such other matters required to implement the terms of this Settlement Agreement.

2.2 Motions Seeking Approval of Notice of Settlement Approval Hearing Order (Fresco) and Notice of Settlement Approval Order (Gaudet)

(1) The Plaintiffs will, as soon as is reasonably practicable following the Execution Date, bring motions in relation to the Notice of Settlement Approval Hearing Order (Fresco) and in the Gaudet Action, following the issuance of the Final Approved Settlement Order (Fresco), an application seeking the recognition of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action on consent and without costs; or if required by the Quebec Court, seeking the authorization of the Gaudet Action solely for purposes of settlement and the subsequent approval of this Settlement Agreement by the Quebec Court (the “**Quebec Settlement Application**”).

(2) The Plaintiffs agree that, in the event that the Quebec Court requires an application for authorization of the Gaudet Action as a class proceeding for settlement purposes and for approval of this Settlement Agreement, the only common question that they will seek to define is the Quebec Common Issue and the only class that they will assert is the Quebec Class defined herein.

(3) The Defendant retains, subject to the final judgments, decisions, or orders previously rendered in both the Fresco Action and the Gaudet Action, all of its objections, arguments, and defences if the settlement set forth in this Settlement Agreement does not receive the Courts’ approval, if the Courts’

approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close.

(4) Similarly, if the settlement set forth in this Settlement Agreement does not receive the Court's approval (or if settlement approval must be sought in Quebec, the Courts' approval), if the Court or Courts' approval (as the case may be) is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, the Plaintiff and the Class retain, subject to the final decisions or orders previously rendered in the Actions, all of their rights to advance their claims and claims for damages or other relief relating to the issues in the Actions.

(5) Upon entry of the Notice of Settlement Approval Hearing Order (Fresco) and the Notice of Settlement Approval Hearing (Quebec) (should the latter be necessary to file as a distinct notice), the Administrator shall cause the Notice of Settlement Approval Hearing to be published in accordance with the Plan of Notice and the directions of the Court (or Courts, if settlement approval is required in Quebec). The costs of publishing the Notice of Settlement Approval Hearing shall be paid from the Escrow Account as and when incurred.

2.3 Approval Motion and Notice

(1) The Plaintiff will bring the Settlement Approval Motion (Fresco) in accordance with the Ontario Court's directions. The Defendant will consent to the issuance of the Approved Settlement Order (Fresco).

(2) Upon the granting of the Approved Settlement Order and the Quebec Settlement Application, Class Counsel may issue the Agreed Press Release and the Administrator shall cause the Approved Settlement Notices to be published and disseminated in accordance with the Plan of Notice as approved by the Courts. The costs of publishing the Approved Settlement Notices shall be paid from the Escrow Account as and when incurred.

2.4 Confidentiality

(1) Prior to the execution and filing with either of the Courts of this Settlement Agreement, the Parties shall keep the fact of this settlement, the contents of the Minutes of Settlement and this Settlement Agreement strictly confidential and shall not disclose them to anyone, issue any press releases or make any other public statements, including to the media, regarding this settlement, except as follows:

- (a) as required by law or regulation;
- (b) in the case of CIBC, as part of its disclosure in its quarterly or annual Management's Discussion & Analysis;
- (c) as the Parties agree otherwise;
- (d) by Class Counsel to the plaintiff national counsel team, their expert and the Class Proceedings Fund; or
- (e) by Class Counsel for purposes of soliciting an Administrator,

on condition that any disclosure to the individuals referred to in (d) or (e) above be made on condition that those individuals are advised that such information as disclosed is to remain strictly confidential prior to the execution and filing with either of the Courts of an executed copy of this Settlement Agreement.

(2) Following the execution and filing with either of the Courts of this Settlement Agreement, the Parties agree that, except as otherwise required to obtain approval of this Settlement and Class Counsel Fees and Class Counsel Disbursements, that:

- (a) They shall not issue any press releases or make any other public statements, including to the media, regarding this settlement, except those that are:
 - (i) the Agreed Press Release or otherwise agreed to by the Parties;
 - (ii) required by law or regulation;
 - (iii) in the case of Class Counsel (and while the Parties acknowledge that communications by Class Counsel to their clients (the Class) are privileged), statements or communications to their clients informing them about the settlement, the proposed distribution process and the reasonableness of the settlement and distribution by electronic, digital or virtual means that may reasonably be expected to be viewed, reviewed or received beyond members of the Class, including informing members of the Class or answering inquiries from Class members by way of virtual

town hall meetings or internet available recordings (or other similar more public means). Such statements or communications shall accord with subsection 2.4(2)(c) below, and Class Counsel shall share in advance with CIBC (through its counsel) for its review and approval a copy of any such communications, including any slides or slide deck to be presented at such town hall, to ensure that the content is fair, balanced, accurate and free from disparagement; or

- (iv) in response to media inquiries directed to either of the Parties (or their counsel), the Parties (and their counsel) shall act in good faith to agree in advance on responses that accord with subsection 2.4(2)(c) below. With respect to any unanticipated media inquiry, or any anticipated media inquiry in respect of which the parties did not agree to a response in advance, the Parties (or their counsel) may refer the inquirer to the public court file or the Agreed Press Release, or answer the inquiry in accordance with subsection 2.4(2)(c) below.

- (b) The Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the parties to comply with any order of the Courts, as may be required under any applicable law or regulation, or as may be agreed by counsel in seeking the approval of this settlement (or Class Counsel Fees/Disbursements) or the discontinuance of the Gaudet Action. This agreement applies notwithstanding anything to the contrary set out above.
- (c) The Parties shall act in good faith to ensure that any public statements, comments or communications regarding the Actions or this settlement are balanced, fair, accurate and free from disparagement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) CIBC shall pay the Settlement Amount for the benefit of the Class Members in full and final settlement of the Released Claims, within thirty (30) days of execution of the Settlement Agreement, to

Sotos LLP, in trust, to be deposited into the Escrow Account from which funds shall be paid toward Administration Expenses incurred in relation to the issuance of the Notice of Settlement Approval Hearing Orders and the Approved Settlement Orders.

(2) Upon the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall transfer control of the Escrow Account to the Administrator, in trust, for the benefit of the Class Members to be disbursed in accordance with this Settlement Agreement and the Approved Settlement Orders.

(3) The Settlement Amount and other valuable consideration set forth in the Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Defendant shall not have any obligation to pay any further amount to the Plaintiffs, the Class Members or Class Counsel with respect to this Settlement Agreement or the Actions for any reason, including any additional amounts for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Actions, the Released Claims, the Settlement, the Remittances, the Administration Expenses and any other expenses approved by the Court which shall be paid from the Settlement Funds.

(5) Sotos LLP shall account to the Administrator for all payments, if any, made from the Escrow Account prior to the transfer of the Escrow Account to the Administrator, which payments may include the payment from the Settlement Fund to cover costs in relation to the issuance of Notice of the Settlement Approval Hearing Order. The Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account, whether made by Sotos LLP or the Administrator. In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Parties no later than ten (10) days after the termination. Sotos LLP shall not pay out any of the monies in the Escrow Account except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(6) The Administrator shall pay the Fonds d'aide aux actions collectives (Class Action Assistance Fund) the amount owed pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* in respect of remittances to the Fonds d'aide aux actions collectives, and in case of any remaining balance to be allocated *cy près* (meaning pursuant to article 596, paragraph 3,

of the Quebec *Code of Civil Procedure*) to one or more recipients to be approved by the Ontario Court (or to be approved by the Quebec Court if settlement approval is required in Quebec), the *Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Class Members who are residents of Quebec.

3.2 Settlement Amount to be Held in Trust

(1) Prior to the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. After the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, the Administrator shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. No amount shall be paid out from the Escrow Account by either Sotos LLP or the Administrator, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

3.3 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of Class Members and shall become and remain part of the Settlement Fund.

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Escrow Account shall be paid from the Escrow Account. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from interest on the Settlement Amount in the Escrow Account, including any obligation to make tax payments. All taxes (including interest and penalties) due with respect to the interest earned by the Settlement Amount shall be paid from the Escrow Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to CIBC who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid.

SECTION 4 - NO REVERSION

(1) Unless this Settlement Agreement is terminated as provided herein, CIBC shall not be entitled to the repayment or reversion of any portion of the Settlement Amount or Escrow Settlement Funds. In the event this Settlement Agreement is terminated, CIBC shall be entitled to the repayment only to the extent of and in accordance with the terms provided herein.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT FUND

(1) On or after the Effective Date, the Administrator shall distribute the Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees, Class Counsel Disbursements, interest and taxes thereon to Class Counsel as awarded by the Ontario Court;
- (b) to pay all of the costs and expenses reasonably incurred in connection with the provision of the Approved Settlement Notices;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendant and the Class or Class Counsel are specifically excluded from being required to pay any costs and expenses under this subsection. All such costs and expenses shall be paid from the Settlement Amount;
- (d) to pay any taxes required by law to any governmental authority;
- (e) to pay the Class Proceedings Fund levy as prescribed by Section 10 of the Class Proceedings regulation under the *Law Society Act*;
- (f) to pay a share of the Net Settlement Amount to each Eligible Claimant in proportion to their claim as recognized in accordance with the Distribution Protocol, including payment of the Remittances; and
- (g) to pay any amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(2) Class Counsel shall propose for approval by the Court (or Courts, if settlement approval is required in Quebec) a Distribution Protocol in the form attached as **Schedule “E”** or such other form as may be directed by the Courts.

(3) The approval or denial by the Courts of the Distribution Protocol is not part of the settlement provided for herein, except as to the priorities of distribution expressly provided in section 5(1) and is to be considered by the Courts separately from its consideration of the fairness, reasonableness, and adequacy of the settlement provided for herein.

SECTION 6- EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement, anything contained in it, and any and all negotiations, discussions, and communications associated with this Settlement Agreement, shall not be deemed, construed or interpreted as a concession or admission of fault, wrongdoing, or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in the Actions.

6.2 Settlement Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in the Actions or in any other proceeding:

- (a) of the validity of any claim that has been or could reasonably have been asserted in the Actions by the Plaintiffs against the Defendant, or the deficiency of any defence that has been or could have been asserted in the Actions;
- (b) of wrongdoing, fault, neglect or liability by the Defendant; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Actions after trial.

(2) Notwithstanding Section 6.2(1), this Settlement Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Courts contemplated by this Settlement Agreement, in a proceeding to approve or enforce this Settlement Agreement, or as otherwise required by law.

6.3 Restriction on Further Litigation

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, application or demand against any Releasee or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee in respect of any Released Claim.

SECTION 7- TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 General

- (1) This Settlement Agreement shall automatically terminate if:
- (a) the Ontario Court refuses to approve this Settlement Agreement;
 - (b) the Quebec Court denies the Quebec Settlement Application in both forms referred to in section 2.2;
 - (c) following the return of the Settlement Approval Hearings, the Ontario Court or the Quebec Court issues an order or orders which is or are not substantially in the form of the Approved Settlement Orders, and such orders become Final Orders; or
 - (d) an Approved Settlement Order is reversed on appeal and the reversal becomes a Final Order.
- (2) In the event this Settlement Agreement is terminated in accordance with its terms:
- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement;
 - (b) any Approved Settlement Order which has been granted will be null and void and set aside on the consent of the Parties;

- (c) subject to subsection 7.1(2)(e), the Escrow Settlement Funds will be returned to CIBC;
 - (d) this Settlement Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
 - (e) any costs reasonably incurred and paid out of the Escrow Account for performing the services required to prepare to implement this Settlement, and amounts paid for the publication and dissemination of notices are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel; and
 - (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against any party to this Settlement Agreement except in respect of a dispute over the enforcement of any terms of this Settlement Agreement including any purported termination of this Settlement Agreement.
- (3) Notwithstanding the provisions of Section 7.1(2)(d), if this Settlement Agreement is terminated, the provisions of this Section and Sections 1, 2, 3.1(4), 3.3(2), 4(1), 6.1, 6.2 and 12 shall survive termination and shall continue in full force and effect.
- (4) If this Settlement Agreement is terminated, CIBC shall apply to the Court for orders:
- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions listed in subsection 7.1(3);
 - (b) giving directions as to whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice; and
 - (c) authorizing the repayment of all remaining funds in the Escrow Account, including accrued interest, to CIBC, less any amounts specified in subsection 7.1(2)(e), if any.

7.2 Accounting of Monies in the Escrow Account Following Termination

- (1) In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Plaintiffs and CIBC no later than ten (10) days after the termination.

7.3 Disputes Relating to Termination

(1) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion made by a Party on notice to the other Parties.

7.4 No Right to Terminate

(1) For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class, or any of them, about the proposed distribution of the Settlement Funds or the Distribution Protocol shall give rise to a right to terminate this Settlement Agreement.

SECTION 8- DETERMINATION THAT THE SETTLEMENT IS FINAL

(1) The Settlement shall be considered final on the Effective Date.

SECTION 9 - RELEASES AND JURISDICTION OF THE COURT

9.1 Release of Releasees

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, waive and discharge the Releasees from the Released Claims.

(2) The Releasors covenant, represent and warrant that, as of the Effective Date, they have no further claims against the Releasees for, or arising out of, the Released Claims. In the event that the Releasors have made or should make any claims or demands or commence or threaten to commence any actions, claims or proceedings or make any complaints against the Releasees arising out of the Released Claims, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(3) The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendant is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in connection with this Settlement and the administration of the Settlement.

(4) The Releasors further acknowledge that they may hereafter discover facts in addition to or different from those facts which they know or believe to be true with respect to the Released Claims, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such

intention, this release and, subject to the provisions of Section 7, this Settlement Agreement shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

9.2 No Further Claims

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand in respect of any Released Claim against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees.

(2) In the event that the Releasors make any claim or commence any proceeding in respect of the Released Claims against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claims, demand, action, proceeding or complaint.

9.3 Dismissal of the Proceedings

(1) Upon the Effective Date, the Fresco Action shall be dismissed with prejudice and without costs.

(2) Upon the Effective Date, the Gaudet Action shall be either (i) dismissed with prejudice and without costs pursuant to art. 168 of the Quebec *Code of Civil Procedure* or discontinued without costs pursuant to art. 213 and 585 of the Quebec *Code of Civil Procedure*, or (ii) declared settled out of Court and without costs, in accordance with Section 2 of this Settlement Agreement.

9.4 Dismissal of Other Actions

(1) Upon the Effective Date, the Releasors shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent (and only to the extent) such Other Actions relate to Released Claims.

(2) Upon the Effective Date, all Other Actions commenced in Ontario by the Releasors, to the extent (and only to the extent) such Other Actions relate to Released Claims, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

(3) Upon the Effective Date, each member of the Quebec Class, with the exception of those excluded under Article 580(2) of the *Code of Civil Procedure*, shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his or her Other Actions against the Releasees, to the extent such (and only to the extent) Other Actions relate to the Released Claims.

(4) For clarity, any claims or causes of action by the Releasors that are not part of the Released Claims shall not be dismissed or otherwise prejudiced by the provisions of this subsection 9.4 or any other provision in this Settlement Agreement.

SECTION 10 – ADMINISTRATION

10.1 Appointment of the Administrator

(1) The Plaintiff, through Class Counsel, will take reasonable steps to retain an Administrator that: (i) assumes full responsibility for the Remittances; (ii) agrees to carry out those responsibilities in a timely and proper manner; and (iii) has sufficient insurance for any actions or omissions that it takes in respect of the Remittances, which insurance will extend to any liability asserted against the Defendant in respect of the Remittances, and the consequences in respect thereof.

(2) The Defendant will have a right to review the Administrator's insurance policy referred to above in Section 10.1(1) in advance of the Plaintiff formally retaining the Administrator to confirm the existence, scope, and sufficiency of the insurance.

(3) The Administrator will be required to disclose to the Parties the process by which it intends to withhold or remit the Remittances (including the nature and timing of any such withholdings or remittances) in advance of taking these steps to permit the Parties to consider the proposed process and to provide any comments on changes that ought to be made to the process.

(4) The Administrator will report to the Parties upon the payment of amounts to Class Members at the completion of any tranche or stage of payments to Class Members, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

(5) Subject to Section 10.1(4), the Defendant shall be entitled to communicate reasonably with the Administrator (copied to Class Counsel) at periodic intervals for the purpose of inquiring into, or confirming, the status of the Remittances.

(6) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed to Eligible Claimants, to implement this Settlement Agreement and to ensure that the Settlement Amount is distributed in accordance with the Order(s) of the Court(s).

10.2 Information and Assistance from the Defendant

(1) The Defendant shall, forthwith and prior to the hearing of the Notice of Settlement Approval Hearing Motion, provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records), and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position.;

(2) The Defendant will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(1) from Class Counsel and/or the Administrator. The Defendant's obligation to make itself reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Defendant's obligation to cooperate pursuant to this Section shall cease when all settlement funds or court awards have been distributed.

(3) The Administrator or Class Counsel may use the information obtained under section 10.2(1) or 10.2(2) for the purpose of delivering the Notice of Settlement Approval Hearing and the Approved Settlement Notice and for the purposes of administering and implementing this Settlement Agreement,

the Plan of Notice and the distribution of the Net Settlement Amount to Eligible Claimants and the Distribution Protocol.

(4) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

10.3 Method of Distribution

(1) The process of distribution of the Settlement Amount to the Class will be as set out in the Distribution Protocol or as may be otherwise directed by the Court.

10.4 Conclusion of the Administration and Other Matters

(1) The Plaintiffs hereby acknowledge and agree, and the Class Members are hereby advised and are deemed to have acknowledged and agreed, that the Plaintiffs, Class Counsel, the Defendant and its counsel have no obligation to provide, and are in fact not providing, any advice about any potential taxes, tax consequences, tax obligations, deductions, withholdings, any other potential consequences, or any payment, remittance or reporting obligations (whether statutory, regulatory or otherwise) (including, but not limited to, acts, omissions, issues or facts relating in any way to the Remittances or the calculation, reporting or payment thereof), relating to the terms of this Settlement or any compensation available, payable or paid to Class Members under the Settlement (the “**Tax and Other Issues**”). The Class Members shall have no claims or remedies as against the Plaintiffs, Class Counsel, the Defendant or its counsel in respect of the Tax and Other Issues, the Administration, and/or the Remittances.

(2) If the Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount, any balance sufficient, in the opinion of Class Counsel and the Administrator acting reasonably, to warrant further distribution shall be allocated among Class Members, in accordance with the Distribution Protocol or such other distribution method as approved by the Court. In the event that the balance remaining in the Escrow Account is not sufficient to warrant a further distribution, the balance shall be distributed *cy près* (and consistently with article 596 CCP, paragraph 3, of the Quebec *Code of Civil Procedure*) to a recipient or recipients approved by the Courts and to pay any further Class

Proceedings Fund Levy and any further amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(3) Upon conclusion of the administration, the Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account. Upon request by either Party or their counsel or by the Court, the Administrator will provide a report on the status of administration and distribution, and any related accounting to the particular date in question.

SECTION 11 - THE AGREEMENT AND CLASS COUNSEL FEES

11.1 Motion for Approval of Class Counsel Fees

(1) Following the Settlement Approval Motion (Fresco), it is anticipated that Class Counsel will seek the approval of Class Counsel Fees and Class Counsel Disbursements to be paid from the Settlement Fund. The Defendant acknowledges that it has no interest in relation to the approval of Class Counsel Fees and Class Counsel Disbursements, and as such will have no involvement in the fee approval process to determine the amount of Class Counsel Fees and Class Counsel Disbursements and it will not take any position or make any submissions to the Court concerning Class Counsel Fees and Class Counsel Disbursements, except as specifically requested and required by the Court.

(2) The approval, or denial, by the Court of any requests for Class Counsel Fees and Class Counsel Disbursements to be paid out of the Settlement Fund are not part of the Settlement provided for herein, except for the priorities of distribution as expressly provided in section 5(1) and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(3) Any order or proceeding relating to Class Counsel Fees and Class Counsel Disbursements, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement or affect or delay the finality of the Approved Settlement Order and the Settlement of this Action provided herein.

11.2 Payment of Class Counsel Fees

(1) In accordance with section 5(1)(a) herein, on or after the Effective Date, the Administrator shall pay from the Escrow Account to Sotos LLP in trust the Class Counsel Fees and Class Counsel Disbursements approved by the Court.

SECTION 12 - MISCELLANEOUS

12.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Settlement Agreement, its administration or implementation, and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Defendants Have No Responsibility or Liability for Administration

(1) Except for the obligations in respect of the performance of the obligations under subsections 3.1(1), 10.2(1) and 10.2(2), the Defendant shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol, including, without limitation, the processing and payment of claims and Remittances by the Administrator.

12.3 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Ontario Court shall retain exclusive and continuing jurisdiction over the Fresco Action, the Parties and the members of the Class to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Approved Settlement Order.

12.4 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court(s).

12.5 Binding Effect

(1) If the Settlement is approved by the Court(s) and becomes final as contemplated in Section 8(1), this Settlement Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendant, Class Counsel, the Releasees and the Releasors, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

12.6 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.7 Negotiated Agreement

(1) This Settlement Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.8 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

12.9 Acknowledgments

(1) Each Party hereby affirms and acknowledges that:

- (a) he/she or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained by counsel;

- (c) he, she or its representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement of any other Party beyond the terms of the Settlement Agreement, with respect to the Party's decision to execute the Settlement Agreement.

12.10 Counterparts

- (1) This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by email or facsimile shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.11 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Steven Barrett
GOLDBLATT PARTNERS LLP
Barristers and Solicitors
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
Tel: 416.979.6422
Email: sbarrett@goldblattpartners.com

David O'Connor
ROY O'CONNOR LLP
1920 Yonge Street, Suite 330
Toronto, ON M4S 3E6
Tel: 416.362.1989
Email: dfo@royoconnor.ca

Louis Sokolov
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Email: lsokolov@sotosllp.com

Marie-Claude St-Amant
MELANÇON MARCEAU GRENIER
COHEN S.E.N.C.
1717, boul. René-Lévesque Est
Bureau 300
Montréal QC H2L 4T3
Tel: 514.525.3414
Email: mcstamant@mmgc.quebec

For the Defendant:

Linda Plumpton
 Torys LLP
 79 Wellington St. W.
 Box 270, TD South Tower
 Toronto, ON M5K 1N2
 Tel. 416.865.0040
 Email: lplumpton@torys.com

John Field
 Hicks Morley Hamilton Stewart Storie LLP
 77 King St W., 39 Floor,
 Box 371, TD Centre
 Toronto, ON M5K 1K8
 Tel. 416.864.7301
 Email : john-field@hicksmorley.com

12.12 Language of Agreement

- (1) The Parties have specifically requested that this Settlement Agreement be drafted in English. *Les parties ont spécifiquement demandé que la présente transaction soit rédigée en anglais.*

12.13 Date of Execution

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

DARA FRESCO on her own behalf and on behalf of the Ontario Class, by her counsel:

Name of Authorized Signatory:

Steven Barrett

Signature of Authorized Signatory:



Goldblatt Partners LLP
 Ontario Counsel

Name of Authorized Signatory:

David F. O'Connor

Signature of Authorized Signatory:



Roy O'Connor LLP
 Ontario Counsel

Name of Authorized Signatory:

Louis Sokolov


Signature of Authorized Signatory:



Sotos LLP
 Ontario Counsel

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory: Marie-Claude St-Amant

Signature of Authorized Signatory: 

Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory: _____
Signature of Authorized Signatory: _____
Torys LLP
Name of Authorized Signatory: _____
Signature of Authorized Signatory: _____
Hicks Morley Hamilton Stewart Storie LLP

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory:

Signature of Authorized Signatory:


Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory:

Linda Plumpton

Signature of Authorized Signatory:



Torys LLP

Name of Authorized Signatory:

John Field

Signature of Authorized Signatory:



Hicks Morley Hamilton Stewart Storie LLP

SCHEDULE “A”***APPROVED SETTLEMENT NOTICE (FRESCO – DIRECT NOTICE)*****CIBC UNPAID OVERTIME CLASS ACTION – NOTICE OF SETTLEMENT
APPROVAL IN *FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE***

TO: 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 time from February 1, 1993 to 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) Banking Financial Service Representatives (also formerly known as Personal Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

This Notice is directed to all individuals who fall within the definition noted above, except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by any outcome in) the case.

You are receiving this notice because a review of the records of the Defendant indicates that you are a Class Member (as described and defined above) 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 ● and Notice of Settlement Approval Hearing dated ●.

**A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST CIBC
FOR UNPAID OVERTIME**

**PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES WHAT YOU NEED TO
DO IN ORDER TO BE COMPENSATED**

For more information about this class action and the settlement, please visit the following website cibcunpaidovertime.ca. If you have further questions, you can also contact the Settlement Administrator by email at info@settlement.ca, or by phone at [1-877-333-3333](tel:1-877-333-3333).

What was the case, and what is the settlement?

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(a) or 2(a) 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.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers 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 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). The Superior Courts of Ontario and Quebec approved the settlement as being fair, reasonable and in the best interests of the Class in reasons for decision released on ● and ●.

The settlement will result in payment of compensation to every eligible class member. Class members will not have 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**

What should I do?

If you are an eligible Class member and want money from the Settlement, complete the enclosed Settlement Payment Form and mail it to ● or complete the form online at ●. You must send the completed form by no later than ● (the "Filing Deadline"). After you complete the form and after the Filing Deadline has passed, you will get a cheque and letter explaining how the cheque was calculated.

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.

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.

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.

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.

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

You can read the full Distribution Protocol at www.cibcunpaidovertime.ca.

Where can I ask more questions?

For more information, please visit cibcunpaidovertime.ca. If you have questions that are not answered online or by email, **please contact the Court-appointed administrator** ● by email at ●, or by phone at ●.

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 3E6

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

Counsel for CIBC can be reached at: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2 Canada, (416) 865-0040.

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.

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 ● of the total settlement.

SCHEDULE “B”***APPROVED SETTLEMENT NOTICE (FRESCO – PUBLICATION)*****CIBC UNPAID OVERTIME CLASS ACTION - SETTLEMENT APPROVED 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.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action lawsuit 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 representative plaintiff, Dara Fresco, sought compensatory and punitive damages for herself and on behalf of the class.

A settlement for \$153 million has been reached with CIBC.

The settlement applies to the following group of people (except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by the outcome in) the case:

(1) 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 time from February 1, 1993 to 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

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers 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 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.

The settlement will result in payment of compensation to every eligible class member. Class members will not have 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.**³

What should I do?

If you are an eligible Class member and would like to make a claim, or obtain more information about the settlement, obtain the contact information of the claims administrator and legal counsel in the file, or obtain the method for distributing funds please visit: <https://cibcunpaidovertime.ca/>.

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

³ 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.

SCHEDULE “C”***APPROVED SETTLEMENT NOTICE (FRESCO – DIGITAL BANNER)***

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? You may be entitled to a share of a \$153 million settlement of an overtime class action. Click [here](#) for more information.

SCHEDULE “D”
APPROVED SETTLEMENT ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	TUESDAY, THE
)	
JUSTICE BELOBABA)	7th DAY OF FEBRUARY 2023
)	

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(SETTLEMENT APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendant and dismissing this action was heard this day by judicial videoconference at Toronto.

AND ON READING the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there were ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Action has passed on [ntd: insert date], and ● persons validly and timely exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Class that did not validly opt out of this Action, as well as all Releasors, including those Persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasors shall be and is hereby dismissed against the Releasees, without costs and with prejudice, subject to the terms of section 9.4 of the Settlement Agreement.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim.

10. **THIS COURT ORDERS** that the direct notice of settlement approval (the “**Notice of Settlement Approval (“Direct”)**”) is approved, substantially in the form attached hereto as Schedule “A”.

11. **THIS COURT ORDERS** that the publication notice of settlement approval (the “**Notice of Settlement Approval (“Publication”)**”) is approved, substantially in the form attached hereto as Schedule “B”.

12. **THIS COURT ORDERS** that the digital banner notice of settlement approval (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**”) is approved, substantially in the form attached hereto as Schedule “C”.

13. **THIS COURT ORDERS** that the Plan of Notice for the purpose of the dissemination of notices of settlement is approved, substantially in the form attached hereto as Schedule “D”.

14. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

15. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

16. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

17. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

18. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed without costs and with prejudice.

The Honourable Justice Belobaba

SCHEDULE “E”
DISTRIBUTION PROTOCOL

DARA FRESCO AND SARAH GAUDET

(the “**Plaintiffs**”)

and

CANADIAN IMPERIAL BANK OF COMMERCE (the “Defendant**”)**

**CIBC OVERTIME CLASS ACTION NATIONAL DISTRIBUTION PROTOCOL
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SECTION 1- DEFINITIONS

For the purposes of this Distribution Protocol all defined terms have the same meaning as in the Settlement Agreement, unless specified otherwise.

(1) ***Employment Position*** means:

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

(2) ***Relative Share*** means the proportion of the Net Settlement Amount that individual Class Members will be entitled to.

(3) ***Tenure*** means the total calendar days between a Class Member's start date with CIBC and the Class Member's termination date with CIBC, according to the records of CIBC or as otherwise determined by the Administrator in accordance with section 6 of this Protocol, inclusive of the start and termination dates but excluding any time before or after the Class Period and excluding anytime that a Class Member did not occupy an Employment Position. For greater clarity, Tenure shall not include anytime for which a Class Member was not employed in an Employment Position within CIBC or any employment outside of CIBC.

SECTION 2– GENERAL PRINCIPLES OF THE DISTRIBUTION AND ADMINISTRATION

- (1) This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Amount recovered in the Actions.
- (2) This protocol is intended to ensure the claims procedure is user friendly, expedient, efficient and accessible to Class Members.
- (3) To ensure Relative Shares in the Net Settlement Amount are tailored to each individual Class Member, as much as reasonably possible, the Relative Share shall be a product of the yearly average wage applicable to Employment Positions held by a Class Member and the Tenure worked in each Employment Position. Class Members who worked longer in higher paying Employment Positions will receive relatively more than those who worked shorter periods of time in lower paid Employment Positions.
- (4) Class Members will not be required to establish hours worked or overtime hours worked under any circumstances. Class Members for whom Tenure and Employment Position information is available will only need to verify their identity, Social Insurance Number, contact information, and submit a Claim Form to be entitled to payment. For Class Members whose Tenure and Employment Position information is not available or disputed, the Class Member will be required to provide that information with supporting documentation, where reasonably available, and make a solemn declaration when submitting a Claim Form.

SECTION 3– DUTIES AND RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR

- (1) The Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreement and the ongoing authority and supervision of the Courts.
- (2) In addition to all duties imposed on the Administrator pursuant to the Settlement Agreement and otherwise as are reasonably required, requested or directed, the Administrator's duties and responsibilities shall include the following:

- (a) providing notice(s) to the Class Members as may be required;
- (b) receiving information from the Defendant, including Class Members' identifying information, start and termination dates, Employment Position(s), Tenure and average wage if available;
- (c) developing a database for calculating Class Members' Relative Share of the Net Settlement Amount pursuant to this protocol and for pre-populating the Claim Form with available Employment Position and Tenure data organized by calendar year;
- (d) making timely determinations of Class Members' Employment Positions and Tenure as required by Claim Forms and in the absence of available records from CIBC;
- (e) developing, implementing and operating the administration process including a bilingual administration website;
- (f) making timely calculations of Class Members' Relative Share of the Net Settlement Amount and notifying Class Members of their Relative Share and the inputs for the calculation;
- (g) arranging payment to Class Members in a timely fashion;
- (h) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement;
- (i) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Courts;
- (j) maintaining the administration information so as to permit Class Counsel to review the administration at the discretion of Class Counsel or if ordered by the Courts;
- (k) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;

- (l) providing Class Counsel and the Defendant with the proposed process for addressing the Remittances prior to doing so in accordance with section 10.1(3) of the Settlement Agreement;
- (m) calculating the amounts of the Remittances and withholding and remitting same within the time limits required by law;
- (n) preparing and distributing T4A forms to Class Members;
- (o) remitting amounts payable to the Class Proceedings Fund;
- (p) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Courts;
- (q) reporting to Class Counsel respecting Claims received, determination made and administration expenses;
- (r) holding the Net Settlement Amount in the Escrow Account and making all payments from the Net Settlement Amount from the Escrow Account as authorized;
- (s) cash management and audit control; and
- (t) preparing and submitting reports and records, and responding to reasonable inquiries, as directed or requested by Class Counsel or the Courts.

SECTION 4– RELATIVE SHARE CALCULATION

- (1) For each Class Member (including, as applicable, their heirs, executors, estates, successors, and assigns who wish to make claims) who submits a valid Claim Form, the Administrator shall use the records of CIBC, or make a determination as described in Section 6 below, to assign the Class Member to an Employment Position(s) by year of the Class Period. Where a Class Member became employed, or left employment or changed their Employment Position during a calendar year, such assignment will be on a pro-rated basis.
- (2) The Administrator shall then allocate the Class Member's Tenure to specific Employment Positions by year, or portion thereof, based upon the records of CIBC or the Administrator shall make a determination as described in Section 6 below.

(3) At the end of steps (1) and (2) above, the Administrator shall have for each Class Member their Employment Position(s) by year, or portion thereof, of the Class Period and the total Tenure applicable to each of the Class Member's Employment Positions by year.

(4) The Administrator shall have or obtain information relating to the average hourly wage applicable to each Employment Position by year of the Class Period. A single estimated average hourly wage shall be used for all Employment Positions for all Tenure prior to January 1, 2003, depending on the available records of CIBC.

(5) The Administrator shall then calculate points applicable to the Class Member's Claim Form. The total points applicable to a Claim Form shall be calculated by multiplying a Class Member's Tenure by the average wage applicable to the Employment Position in a given year, represented by the following formula:

$$\text{Tenure in Employment Position} \times \text{Average wage for Employment Position} = \text{points}$$

(6) The monetary value of one (1) point shall be calculated by dividing the Net Settlement Amount by the total numbers of points calculated from all valid Claim Forms, represented by the following formula:

$$\text{Net Settlement Amount} / \text{total points for all valid claims} = \text{monetary value of one (1) point}$$

(7) The Class Member shall then be awarded the monetary value of their points by multiplying their total points for all Employment Positions in the Class Period by the monetary value of a point.

(8) For any points calculated for Tenure outside the applicable provincial limitation periods listed below, the monetary value of each point shall be reduced by 50%.

Province	Applicable Legislation	Provincial Limitation Periods
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act</i> , 2002, S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ- 1991,	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005

	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c.	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8,	June 4, 2001 – June 18, 2009
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

- (9) Some consideration may be given to whether every Class Member who submits a valid claim shall be entitled to a minimum payment, to be determined subsequently.

SECTION 5 - THE ADMINISTRATION PROCESS

- (1) Generally, the claims administration will be as follows:

(a) **Step 1: Submission of Online Claim Forms and Confirmation of Records**

The Claim Form shall be made available on a secure website that will require Class Members to enter their first and last names, date of birth, Social Insurance Number, Address, email and phone number.

When a Class Member enters their first and last name on the online Claim Form it shall display the Class Member's Employment Position(s) and Tenure in the respective Employment Position(s) by year, or portion thereof. The Class Member will be asked to agree or disagree with the records presented at the time of submitting the Claim Form.

If a Class Member disagrees with the available records, or no records are responsive to the Class Member's name, the Class Member will be required to submit a Claim Form with what they claim are the correct Employment Position(s) and Tenure by year, or portion thereof, along with any available supporting records, and make a solemn declaration upon submission. The Administrator shall then determine the

applicable Employment Position(s) and Tenure by year and notify the Class Member of their determination. The determination process shall be governed by the procedure described in Section 6.

(b) **Step 2: Correction of Deficiencies**

If the Administrator finds that deficiencies exist in a completed Claim Form, the Administrator shall forthwith notify the Class Member of the deficiencies. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of the Claims Bar Deadline or sixty (60) days from the date of the request from the Administrator to rectify the deficiency, although the Administrator may consider late corrections of deficiencies in their discretion.

(c) **Step 3: Identification and Prevention of Potentially Fraudulent Claims**

The administrator shall flag potentially fraudulent claims, including those with a P.O. box address, an address outside of Canada, claims using the same mailing address, phone number or email and duplicate claims by name. Such claims will be set aside for review and follow-up by the Administrator and provided to Class Counsel.

(d) **Step 4: Calculation of Relative Share**

After all Claims Forms are received with Class Members agreeing to the available records and all final determinations of Employment Position(s) and Tenure made in accordance with Section 6, the Administrator shall calculate the Relative Share of each Class Member.

(e) **Step 5: First Distribution**

Class Members shall be sent a cheque consisting of 70% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, and Class Proceedings Fund (“CPF”) Levy (“First Distribution”).

(f) **Step 6: Second Distribution**

Within a set time after the First Distribution, the Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 30% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, CPF Levy, and amount owing to the Fonds d'aide aux actions collectives. The Relative Shares of the Second Distribution may be adjusted and may not account for the remaining 30% of the First Distribution to account for, among other things, any errors identified following the First Distribution and potential acceptance of late claims ("Second Distribution").

(g) **Step 7: Remittance**

The Administrator will make the Remittances to the Canada Revenue Agency and any other applicable government entities, including Revenu Québec and provide T4A and related forms to Class Members, including RL-1 forms to Quebec Class Members. The Administrator will remit the CPF Levy to the CPF and, if required, any amounts owing to the Fonds d'aide aux actions collectives in Quebec.

(h) **Step 8: Report**

The Administrator will report to the Plaintiffs and Defendant upon the payment of Relative Shares to Class Members at the completion of the First and Second Distributions, or any other payment tranches, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

SECTION 6- DETERMINATIONS OF EMPLOYMENT POSITION(S), TENURE AND EMPLOYMENT YEARS

- (1) An absence of CIBC records showing Employment Position(s) or Tenure for a Class Member shall not prohibit entitlement to a Relative Share of the Net Settlement Amount.

(2) In the event a Class Member disputes the records of CIBC regarding Tenure, Employment Position(s) or years of employment, or no such records exist, the Class Member shall complete a Claim Form and shall advise the Administrator of the claimed Employment Position(s), Tenure and years of employment and provide documentation and/or written reasons in support of their claim, all to be solemnly affirmed.

(3) The Claims Administrator may ask the Class Member further questions in their discretion, but the Class Member shall not be subject to cross-examination or inquires from the Defendant under any circumstances.

(4) The Administrator shall review the information provided in paras (2) to (3) above and make a determination as to the applicable Employment Position(s), Tenure and employment years. The principles of access to justice, expediency and accessibility shall guide all determinations. The Administrator shall, within a reasonable time frame, advise the Class Member of its determination, by email or letter mail. The determination of the Administrator is final and not subject to appeal in any court or review in any manner by any court, tribunal, board or authority.

(5) Class Counsel shall review the first thirty (30) determinations prior to the determination being communicated to the Class Member. Class Counsel may review further determinations as reasonably requested or required, and may ask for reports regarding the total determinations made and statistics regarding the outcomes of the determinations, plus further information in their discretion.

(6) No appeals shall lie by any Class Member based on distributions made substantially in accordance with this Protocol, or with any other order or judgment of the Courts. No claims shall lie against Class Counsel or the Defendant based on this Protocol, or based on any distributions made substantially in accordance with this Protocol, or the reporting or withholding of Remittances, or with any other order or judgment of the Court on any terms of this Protocol.

SECTION 7- CLASS COUNSEL

(1) Class Counsel shall oversee the claims process and provide assistance and directions to the Administrator regarding this Distribution Protocol and the claims process.

- (2) Class Counsel shall have no role in the calculation of individual entitlements or the calculation and remittance of income taxes, CPP or EI.

SECTION 8- RESIDUAL DISCRETION

- (1) Notwithstanding the foregoing, if, during the administration, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Courts for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Net Settlement Amount.
- (2) In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Administrator.

SECTION 9- RESIDUAL DISTRIBUTION

- (1) If there remains any amount of the Net Settlement Amount after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Courts to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy-près* or article 596, paragraph 3 CCP distribution, if appropriate.
- (2) Under no circumstances will any residual amounts from the Net Settlement Amount revert to CIBC.

SECTION 10- CONFIDENTIALITY

- (1) All information received from the Defendant or the Class Members is collected, used, and retained by the Administrator pursuant to, inter alia, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any analogous provincial legislation as may be applicable, for the purposes of administering their Claims.
- (2) All reasonable steps shall be taken to ensure the identity of Class Members submitting Claims Forms is kept confidential from the Defendant. The Defendant shall be entitled to see aggregate

statistics on the number of claims made, average value of claims and total payment made. The Defendant will not be entitled to know the identity of Class Members who submit a Claim Form or how much individual Class Members are awarded, except as required by regulatory or tax reporting requirements.

SCHEDULE “F”

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIRECT NOTICE)

**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.

You are receiving this notice 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 ●.

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(a) or 2(a) 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.**⁴

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 February 7, 2023 at 10:00 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.

Who 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:

(1) 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 time from February 1, 1993 to 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*

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

⁴ 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.

If you are unsure whether you are a class member, please contact [●](#).

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.

What steps should I take now?

Class Members and members of the public may attend the settlement approval hearing on February 7, 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 January 27, 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 hearing, a link will be posted at 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.⁵ 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 February 7, 2023 at 10:00 a.m. (Eastern). A link will be posted at 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 3E6

Sotos LLP can be reached at:

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

Email: info@sotosclassactions.com

⁵The 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.

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 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.

SCHEDULE “G”

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – PUBLICATION)

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.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action, known as *Fresco v. Canadian Imperial Bank of Commerce*, 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. Compensatory and punitive damages were sought on behalf of the class.

A settlement for \$153 million has been reached with CIBC, pending Court approval.

The settlement applies to the following group of people except those who previously took steps in 2013 to opt-out (i.e. ask to be removed) from the case:

(1) 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 time from February 1, 1993 to 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

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

A Court hearing in Toronto, Ontario has been scheduled for February 7, 2023 to consider whether to approve the settlement, the method for distributing funds to class members, and the requested legal fees.

If you would like to learn more information about the proposed settlement, the lawyers representing the parties, or the claims administrator or the proposed method for distributing funds and Class Counsel's fee request please visit: <https://cibcunpaidovertime.ca/>.

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

SCHEDULE “H”***NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIGITAL BANNER)***

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? A hearing to consider approval of a \$153 million settlement is scheduled for February 7, 2023. Click [here](#) for more information.

SCHEDULE “I”
NOTICE OF SETTLEMENT APPROVAL HEARING ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	●DAY, THE
)	
JUSTICE BELOBABA)	●th DAY OF DECEMBER 2022
)	

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(NOTICE APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the Notice of Hearing for the Motion for Settlement Approval, Distribution Protocol Approval and Fee Approval and the method of dissemination of said notice was heard this day by judicial videoconference / in writing at Toronto.

AND ON READING the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that the direct notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Direct”)**”) is approved, substantially in the form attached hereto as Schedule “**A**”.
2. **THIS COURT ORDERS** that the publication notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Publication”)**”) is approved, substantially in the form attached hereto as Schedule “**B**”.
3. **THIS COURT ORDERS** that the digital banner notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**”) is approved, substantially in the form attached hereto as Schedule “**C**”.
4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (“Direct”) be disseminated by direct mailings via email and/or direct mail to Class Members;
5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (Publication) and the Notice of Settlement Approval Hearing (“Digital Banner”) will be disseminated in accordance with the Notice Plan, attached hereto as Schedule “**D**”.
6. **THIS COURT ORDERS** that ● be appointed as administrator to disseminate the Notice of Hearing.
7. **THIS COURT ORDERS** that within ■ days following this Order, the Defendant, through its Counsel, will provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records) and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position;

8. **THIS COURT ORDERS** that within ten days following the receipt of the list described in paragraph 7 above, ● will disseminate the direct notices and the Class Counsel will publish the notices.

The Honourable Justice Belobaba

SCHEDULE “J”
AGREED PRESS RELEASE

FOR IMMEDIATE RELEASE:

December ●, 2022

Settlement Reached in CIBC Unpaid Overtime Class Action Lawsuits

The parties have agreed to settle class actions, launched in 2007, by retail branch employees alleging systemic unpaid overtime.

The settlement provides that CIBC will pay a total of \$153 million, which will be used to compensate approximately 30,000 class members (current and former front-line retail staff) for unpaid overtime, and also used to pay for legal fees and for the cost of distributing the settlement funds. The settlement must be approved by the Ontario Superior Court before it will become binding. A motion will be brought in February 2023 for approval of the settlement, a plan to distribute the settlement funds and payment of legal fees.

The settlement was reached after 15 years of contested litigation, and months of negotiation, which followed decisions on liability by the Ontario Superior Court and Court of Appeal. The Court left the calculation of compensation and CIBC’s related defences to a further hearing, which will no longer be necessary because of the negotiated settlement.

Dara Fresco, the former CIBC Bank teller, who brought this case in 2007, stated that she is pleased with the settlement. “It is good news for the class to have this case finally resolved”, said Ms. Fresco. “I am very happy that the case is settling. This settlement is a fair compromise that will bring meaningful compensation to thousands of my fellow class members.”

Class Counsel stressed that the settlement will provide for a simple and easy method for class members to be paid. “A big advantage of this settlement is that class members will not have to prove their claims, a task that could be challenging in cases where some claims may go back nearly 30 years.” “We believe that this settlement will put more money into more class members’ hands, a lot sooner, than would happen if the case continued to be fought.”

DARA FRESCO
Plaintiff

-and-

CANADIAN IMPERIAL BANK OF COMMERCE et al.
Defendants

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE PLAINTIFF
(SETTLEMENT APPROVAL)

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