

Court File No.:07-CV-345166CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**CINDY FULAWKA**

Plaintiff

- and -

**THE BANK OF NOVA SCOTIA**

Defendant

(Collectively, the "Parties")

PROCEEDING UNDER THE *CLASS PROCEEDING ACT, 1992*

**Amended Minutes of Settlement**

**WHEREAS**, in December 2007, the plaintiff commenced a class action on behalf of certain current and former employees working in retail branches of The Bank of Nova Scotia (the "Bank") claiming compensation for unpaid overtime (the "Class Action");

**WHEREAS** the action was certified on February 19, 2010;

**WHEREAS**, in July 2014, the parties reached an agreement to settle the action (the "Initial Settlement Agreement") which was approved by this Court on August 12, 2014 ("Approval Order");

**WHEREAS** the Initial Settlement Agreement provided for a claims process in which the Bank was appointed as claims administrator and those class members who had not opted out of the

Class Action (the "Class Members") could file a claim in prescribed form (the "Claims Process");

**WHEREAS** in November and December 2014, the Bank filed a motion to extend the deadline to complete the Claims Process ("Motion for Extension") and the plaintiff served a notice of motion seeking an order requiring the Bank to produce certain documents relating to the Claims Process and for directions ("Motion for Directions");

**WHEREAS**, on December 11, 2014, the Bank completed the Claims Process and provided responses to all claimants whose claims were filed on or before October 15, 2014;

**WHEREAS** the Motion for Extension and the Motion for Directions were adjourned *sine die* as the plaintiff indicated her intention to amend her motion;

**WHEREAS**, on July 17, 2015, the plaintiff served an amended notice of motion seeking, *inter alia*, to set aside the Claims Process ("Claims Process Motion");

**WHEREAS**, in response, the Bank served a notice of motion in which it sought to strike the plaintiff's amended notice of motion and portions of the supporting affidavits ("Motion to Strike");

**WHEREAS** the parties wish to fully and finally resolve all matters in dispute between them in relation to the Class Action, the Motion for Extension, the Motion for Directions, the Claims Process Motion and all issues that arise, or could arise therefrom or from the Bank's role as claims administrator pursuant to the Initial Settlement Agreement (the "Disputes");

**NOW THEREFORE** for good and valuable consideration received, the Parties stipulate and agree that the Disputes shall be fully and finally settled and resolved on the terms and

conditions set forth in these Minutes of Settlement (the "Settlement Agreement"), subject to approval by this Court:

1. **Court Approval** -- The Settlement Agreement is conditional upon approval of this Court in accordance with the terms that follow. The terms of the Settlement Agreement will only become effective upon such approval, including the expiration of any appeal rights and/or the dismissal of any appeals in relation to such approval (the "Final Approval").
2. **Objective** -- In exchange for the consideration referred to in paragraph 5 herein, all claims by Class Members against the Bank in relation to the Disputes are fully and finally resolved without further recourse or right of appeal.
3. **No Admission of Liability** -- The Settlement Agreement is made without any admission of liability by the Bank.
4. **Supersedes Initial Settlement Agreement, Approval Order and/or Claims Process** - The terms of the Settlement Agreement supersede and replace the terms of the Initial Settlement Agreement, the Approval Order and/or the Claims Process. For further clarity, in those instances where the terms of the Initial Settlement Agreement, the Approval Order and/or the Claims Process conflict with the terms of this Settlement Agreement, the terms of this Settlement Agreement shall govern.
5. **Payment by Bank** --
  - a. The Bank will make payment of ~~\$20.5~~ approximately \$20.6 million by way of lump sum to be distributed to claimants in accordance with the formula attached hereto as Schedule "A"; and

b. The Bank will pay to class counsel the amount of \$2.3 million, plus HST, as further reimbursement for its legal fees and disbursements incurred in connection with the Disputes, save and except those in relation to the Class Action for which class counsel has already been compensated.

6. **Statutory Deductions** - All payments made under subparagraph 5(a) shall be subject to tax and source deductions as required by law as well as deductions for the Class Proceedings Fund Levy as further described below.

7. **Class Proceedings Fund Levy** - In accordance with the Approval Order, the Bank shall deduct 10% from the gross amounts payable to claimants under subparagraph 5(a) above prior to deductions of any withholding tax or source deductions required by law, and shall hold that money in trust pending the final determination of the quantum required to satisfy the Class Proceedings Fund Levy.

8. **Late Claims** - Any and all claims by Class Members in respect of the Disputes submitted following December 31, 2014 will be precluded by operation of this Settlement Agreement. For greater certainty, any claims that are submitted following December 31, 2014, will not be:

- a. reviewed or considered in accordance with paragraphs 19 and/or 20 of the Claims Process or otherwise; and/or
- b. entitled to compensation under the Initial Settlement Agreement and/or the Settlement Agreement other than as set out in subparagraph 5(a) of the Settlement Agreement.

9. **The Administration of the Settlement** -

- a. **Directions from this Court** – Within 30 days of the execution of the Settlement Agreement, or such other date as this Court directs, the parties will jointly schedule a case conference before Belobaba, J., for the purpose of obtaining directions from His Honour on the administration of the Settlement Agreement and the steps leading to its approval;
- b. **Notice** – Subject to approval by this Court, notice of the Settlement Agreement (the “Notice”) shall be published by way of:
  - i. Email or direct mail of the Notice to all Class Members described in paragraph 5 who filed claims in the Claims Process and the claims were declined or partially approved ~~and in respect of whom the Bank has a current mailing address~~, to their last known email or mailing address within the Bank’s records ~~or such other updated address as is available to Class Counsel~~; and
  - ii. copies of and/or links to the Notice on each of [www.unpaidovertime.ca](http://www.unpaidovertime.ca), [www.joyconnor.ca](http://www.joyconnor.ca), [www.cmlaw.com](http://www.cmlaw.com), [www.goldblattpartners.com](http://www.goldblattpartners.com), and [www.soroslip.com](http://www.soroslip.com);
- c. **Notice Costs** - The Bank will pay the costs of the dissemination of the Notice as set forth at paragraph 9(b) and the costs of the mediator;
- d. **The Motion for Settlement Approval and Fee Approval** – The Plaintiff will bring, at her own expense, a motion for settlement approval (which includes approval of class counsel fees referred to in subparagraph 5(b) above, which approval of fees the Bank will consent to) on a date to be set by this Court, upon the

return of which motion any objections to the approval of the Settlement Agreement will be made in accordance with the directions of this Court;

e. **If the Settlement is Not Approved** -- In the event that the Settlement Agreement is not approved by this Court, this Court will be asked by the parties for further directions in respect of the Claims Process Motion, the Motion to Strike and the Motion for Extension;

f. **If the Settlement is Approved** -- In the event that the Settlement Agreement is approved by this Court,

i. the Bank shall pay, within 60 days of the Final Approval:

1. the claimants the amounts described in subparagraph 5(a) above, net of all deductions described in paragraphs 6 and 7 above; and

ii. the Bank shall pay, within 30 days of the Final Approval:

1. Class counsel further legal fees and disbursements in the amount of \$2.3 million plus HST as described in subparagraph 5(b) above.

10. **Binding on Each Class Member / Full and Final Release** -- The Settlement Agreement is binding on each Class Member and the Bank is fully and finally released from any claims by Class Members in relation to the Disputes. For greater certainty, and without limiting the generality of the foregoing, the Bank is released from the claims of any Class Member in relation to the Disputes whether or not such Class Member:

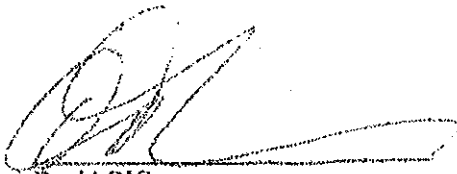
a. receives compensation pursuant to the Initial Settlement Agreement and/or the Settlement Agreement; and/or

b. made a claim in the Claims Process at any time.

11. **Appeal Rights** -- The Appeal Rights set out in paragraphs 27 to 35 of the Claims Process will be extinguished and removed such that no Class Member will have the right to appeal a decision of the Bank in relation to their claim either pursuant to the Claims Process or in respect of the distributions made in accordance with subparagraph 5(a) herein.
12. **Assurances** -- The Parties will consent to such Order(s) and sign such other documentation as is reasonably required to give effect to the Settlement Agreement and undertake to seek no additional relief in respect to the Disputes nor make any submissions to the Court other than as may be required to obtain approval of the Settlement Agreement.
13. **Entire Agreement** -- The 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, including the Claims Process. The Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by this Court.
14. **Applicable laws** -- The terms of the Settlement Agreement shall be interpreted and enforced in accordance with the laws of the Province of Ontario without regard to the choice of laws provisions. A case management judge shall maintain jurisdiction over this Settlement Agreement.
15. **Execution** -- The Settlement Agreement may be executed in counterparts and a facsimile copy shall be valid in the same fashion as an original.

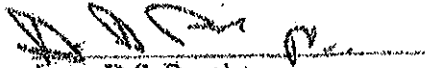
Date: December 17, 2015

Signature:



David O'Connor  
(as counsel for the Plaintiff)

Signature:



James D.G. Douglas  
(as counsel for the Defendant)



Amended Schedule "A" to Settlement Agreement dated December 17, 2016

| Declines       | Payout Percentage |
|----------------|-------------------|
| <20k           | 70%               |
| >20k and <30k  | 50%               |
| >30k and <40k  | 50%               |
| >40k and <50k  | 50%               |
| >50k and <60k  | 25%               |
| >60k and <70k  | 25%               |
| >70k and <80k  | 25%               |
| >80k and <90k  | 25%               |
| >90k and <100k | 25%               |
| >100,000       | 25%               |

| Partial Declines | Payout Percentage |
|------------------|-------------------|
| <20k             | 100%              |
| >20k and <30k    | 80%               |
| >30k and <40k    | 80%               |
| >40k and <50k    | 80%               |
| >50k and <60k    | 60%               |
| >60k and <70k    | 60%               |
| >70k and <80k    | 60%               |
| >80k and <90k    | 60%               |
| >90k and <100k   | 60%               |
| >100,000         | 60%               |

|                       |                      |
|-----------------------|----------------------|
| TOTAL Partial:        | \$ 8,936,236         |
| TOTAL Declines:       | \$ 10,729,302        |
| Opt outs              | \$ 40,853            |
| Total for Late Claims | \$ 910,826           |
| <b>GRAND TOTAL</b>    | <b>\$ 20,816,917</b> |

Note 1: The following claims are excluded: not in class; opt outs (except [redacted]); withdrawn; signed releases; late claims received post December 31, 2014; incomplete claims; not with the Bank; and outside limitation period.

Note 2: The payout percentage is on a declining basis for both Declines and Partial Declines. However, the Partial Declines start at a higher rate based on the legitimacy of the partially approved claims.

Note 3: The payout percentage will be calculated on the total amount of each claimant's claim, and represents a net total recovery. In other words, the total recovery, inclusive of amounts already paid, will be capped at the indicated percentage.

Note 4: The Grand Total is a gross amount subject to tax and source deductions as required by law and the deduction of the Case Proceedings Fund Levy.

Note 5: The included late claims and the included 2 opt outs have been treated as Declines.