

## **THE BANK OF NOVA SCOTIA** **OVERTIME CLAIMS PROCESS**

### **Introduction**

1. This document sets out the process that The Bank of Nova Scotia and the Representative Plaintiff, Cindy Fulawka, have negotiated and designed to address claims for overtime pay, as part of the settlement of the class action *Fulawka v. Bank of Nova Scotia*.
2. Class members are invited to submit claims for overtime that was required or permitted by the Bank, and was worked, but not compensated, during the period between the commencement of the statutory limitation period in the Province or Territory in which they performed the work for which they are making a claim and August 12, 2014, through the Claims Process set out in this document.
3. The Bank acknowledges and accepts that its overtime and hours of work policies are subject to the provisions of the *Canada Labour Code*. Class members are entitled to be paid for all overtime that the Bank requires or permits them to work, regardless of whether the overtime was approved, and regardless of what the Bank's written policies may have otherwise stated at any time,.
4. This Claims Process is designed to provide a relatively informal, simple, efficient and effective way to decide claims. The Bank is committed to compensating its employees fairly for hours worked. The Bank recognizes that employees may not have records to support their overtime claims, in whole or part, for various reasons including the fact that they may not have realized that they were entitled to be paid for overtime. The fact that employees may not have such documents does not mean that their claims will not be paid. However, employees should present any available documents in support of their claims.
5. In cases where no documents are available, claims will have to be evaluated reasonably on the basis of best estimates without supporting documents. The Arbitrator (referred to below) is specifically empowered and directed to do his or

her best to reasonably estimate the amount of unpaid overtime in cases where it is difficult to assess.

6. The Bank will ensure that Class members who submit claims will not be subject to retaliation or adverse consequences as a result. The Bank has instructed its managers and supervisors not to discuss with any Class members any claims submitted through this Claims Process or otherwise seek to discourage any Class member from submitting a claim. If any Class member believes that they have been subject to such retaliation, adverse consequences, discussions or discouragement, they should contact counsel for the Class Roy O'Connor LLP 200 Front Street West, Toronto, Ontario M5V 3K2, Telephone: 416-362-1989, email: [ag@royoconnor.ca](mailto:ag@royoconnor.ca); Fax: 416-362-6204.

### ***Class Members***

7. This Claims Process applies only to members of the "Class", consisting of every person who currently, or at any time since 2000, was a full-time personal banking or small business banking employee at one of the Bank's retail branches and who held one or more of the following positions:
  - a. Personal Banking Officer;
  - b. Senior Personal Banking Officer;
  - c. Financial Advisor; or
  - d. Account Manager Small Business (including its predecessor positions of Account Managers and Account Officers).

### ***Notice Plan***

8. There will be a Court-approved Notice Plan for the purpose of providing notice of the settlement and this Claims Process to all members of the Class.
9. The Notice Plan will include letters to Class members, newspaper advertisements, website postings and any other means of notice as directed by

the Court. The letters to the Class members will be prepared and finalized between the parties and approved by the Court.

10. The Notice Plan will advise the recipients of this Claims Process and invite those persons who worked eligible overtime for which they have not been compensated to make a claim. The Notice Plan will also enclose a copy of this document (or provide a link to it) and confirm that employees who submit claims will not suffer adverse consequences as a result.

### ***Eligible Overtime***

11. The Bank has agreed, as part of the settlement of this Class Action, that it is obligated to pay Class Members all of their eligible overtime between the commencement of the statutory limitation period in the Province or Territory in which they performed the work for which they are making a claim and August 12, 2014.
12. Eligible Overtime is work performed in excess of eight hours per day, or 37.5 hours per week, whichever is greater that:

- a. The employee worked between the commencement of the statutory limitation period in the Province or Territory in which they performed the work for which they are making a claim and August 12, 2014;
  - b. Was required or permitted, with “permitted” overtime work meaning work that an employee performed for the benefit of the Bank (whether expressly directed to do so or not and whether or not the overtime was approved by the Bank), provided that the employee’s supervisors knew or ought reasonably to have known that such work was being done (regardless of whether the supervisor was present at the branch at the time the specific work was performed) and did not object to the employee performing the work in question;
  - c. The employee has not already been compensated for (either through payment or time off “in lieu”); and
  - d. Has not already been dealt with in a formal settlement agreement with the Bank.
13. Class members who worked Eligible Overtime are entitled to be compensated for such work at the rate of 1.5 times their hourly wage.
  14. The Bank recognizes that additional hours of work may have been required for various reasons, including, but not limited to, meeting specific customer needs, completing paperwork, periods of excessive volume, special projects or meetings, and staffing fluctuations (caused by absent or ill employees, retirements, etc.).
  15. Eligible Overtime includes both work performed before and after an employee’s regular shift and any unpaid breaks during which the employee worked.

### ***Claims***

16. Class members who believe that they worked Eligible Overtime may submit a Claim in writing (using the form attached as Schedule 1 to this document),

together with supporting documentation (if any) to the Shared Services HR Service Centre, which will act as an Administrator for the purposes of receiving Claims.

17. The Claimant will send the Claim to the Administrator by regular mail or by fax to Shared Services Human Resources Service Centre, 7th floor, 888 Birchmount, Scarborough, Ontario M1K 5L1, Facsimile: 416-288-6900 or by email to [hrcallcentre@scotiabank.com](mailto:hrcallcentre@scotiabank.com). The Administrator will submit the Claim and any supporting documentation to the Bank's Shared Services Employee Relations department. The Administrator shall be a person outside of the normal human resource stream within the Bank. The fact that a Claimant has made a claim will be kept confidential within and outside the Bank except to the extent that disclosure of this fact is reasonably necessary to investigate and respond to the Claim.
18. Claims must be postmarked by no later than October 15, 2014 in the case of Claims submitted by mail, or be received by the Administrator by no later than October 15, 2014 if sent by fax or email, in order to be considered as part of the Claims Process.
19. Any Claims that are submitted after this deadline will not be considered under this process unless the Bank (or, if applicable, the Arbitrator) determines that there is a reasonable explanation for the delay.
20. If the Bank refuses to consider a Claim on the basis that the Claimant has not provided a reasonable explanation for having failed to submit the Claim by the deadline, then the Claimant can appeal that decision to the Arbitrator, in accordance with the process described below.
21. A person who submits a Claim under this process cannot seek retroactive overtime compensation from the Bank in any other way with respect to any overtime that he or she could have claimed under this process. Specifically, the person must finally and irrevocably agree not to bring or participate in any civil

action or other proceeding (including, but not limited to, a complaint under the Canada Labour Code) against the Bank or any of its directors, officers, employees, successors or affiliates, with respect to any overtime that he or she worked between the commencement of the statutory limitation period in the Province or Territory in which he or she performed the work for which he or she is making a claim and August 12, 2014.

22. Any Claims that could have been submitted pursuant to this Claims Process, but that were not submitted, will be forever barred, as though the employee had submitted a Claim and the Claim had been rejected, subject only to any extension of time permitted or ordered pursuant to paragraphs 20 or 35.

### ***Bank's Response***

23. A representative of the Bank's Shared Services Employee Relations department may contact the Claimant or his or her representative to obtain clarification or request further information concerning the Claim. Such contact shall be in writing, and may be made by mail, e-mail or facsimile. For clarity, the representative of the Bank who may contact the Class member will not be the Class member's branch manager or anyone else who has held a supervisory position with respect to the Class member.
24. The Bank will pay the Claim if the employee has established through his or her own statement, the statement of any co-workers and/or any supporting documents, that: (i) the work was performed; (ii) it was either required or permitted; and (iii) the employee has not been compensated for it previously. Furthermore, the Bank will not reject the claim, in whole or in part, unless the Bank's position is reasonably and objectively supported by documentary or sworn evidence (for example: documents showing that the Claimant was away sick on the dates claimed, or showing that the branch was closed on the relevant date, or the sworn statement of a current or former supervisor or another current or former employee of the Bank).

25. Unless the Bank and the employee agree upon an amount that the Bank will pay the employee in respect of the Claim, the Bank will provide the Claimant with a written Response to the Claim by no later than November 28, 2014. If the Bank rejects a Claim, in whole or in part, the Bank's Response will include an explanation for the rejection, copies of any documents that the Bank reviewed in its consideration of the Claim, and any information that the Bank obtained from any person about the Claim.
26. If the Claimant is not satisfied with the Bank's Response, the Claimant will have the opportunity to contact a lawyer to seek advice whether to appeal that decision. Class counsel will provide reasonable assistance to Class members in respect of any appeal at no expense to class members. Alternatively, class members may consult a different lawyer (at their own expense) if they so wish.

#### ***Appeal of Bank's Decision***

27. If the Bank decides not to pay the Claim or to pay only part of the Claim, the Claimant will have the right to appeal the Bank's decision by requesting an Arbitration.
28. The Arbitrator(s) will be selected by mutual agreement of the Parties or, if the Parties cannot agree, by the Case Management Judge.
29. A person seeking to appeal must deliver to the Administrator an Arbitration Form, using the form attached as Schedule 2 to this document, and attach any supporting documents, within 30 days of receiving the Bank's Response. The Claimant will send the Arbitration Form to the Administrator by regular mail, fax or email as provided in paragraph 15. The Administrator will promptly deliver to the Arbitrator and to the Bank a copy of the Arbitration Form and supporting documents, together with a copy of the Claim (including any documents that were attached to it) and the Bank's Response.

30. The Bank will have 30 days to deliver to the Administrator a written Reply to the Arbitration Form, which will include any supporting documents upon which the Bank intends to rely, as well as any argument. If the Bank relies upon any statements from supervisors or other Bank employees, the Bank's Reply must include sworn statements from those supervisors or employees. The Bank will not be entitled to put forward any new grounds for denying the Claim at this stage, except in order to respond to arguments that the Claimant raised for the first time in the Arbitration Form. The Administrator will promptly deliver to the Arbitrator and the Claimant a copy of the Bank's Reply.
31. The Claimant will have 15 days from the date of receiving the Reply to deliver to the Administrator a written Answer to the Reply. The Answer cannot raise new issues. It must be limited to materials that respond to issues that the Bank raised in its Reply. The Administrator promptly will deliver to the Arbitrator a copy of the Answer.
32. In deciding the Appeal, the Arbitrator will consider all of the written materials sent to the Administrator. Additionally, the Arbitrator may, in his or her sole discretion, contact the Claimant or the Bank to obtain clarification or request further information. If this occurs, the opposite party shall be advised of any additional information or documents provided by the party whom the Arbitrator has contacted, and be given an opportunity to respond to such additional evidence. In addition, if the Claim seeks payment in an amount greater than \$25,000, the Arbitrator, in his or her sole discretion, may decide to hold an oral hearing. The oral hearing shall be no longer than one hour in the case of Claims for \$25,000 to \$50,000 and no longer than half a day for Claims in excess of \$50,000, unless the arbitrator in his/her discretion concludes that the claim is exceptional and cannot be resolved within these time limits. The parties may be represented by counsel. The oral hearing may be held in person, at a place and time designated by the Arbitrator, and convenient to the Claimant, or by telephone or video conference, or by other electronic means.



33. The Arbitrator will determine on a balance of probabilities, based on the evidence and argument, whether the claimant has established that (i) the work was performed; (ii) it was either required or permitted; and (iii) the employee has not been compensated for it previously. If the Arbitrator determines that these criteria are met, the Arbitrator will determine or estimate the amount of compensation to which the Claimant is entitled. The Arbitrator will consider any documentary and oral evidence and may make determinations of credibility. The absence of documents supporting a Claim will not preclude the Arbitrator from finding that the Claimant worked Eligible Overtime, nor will the Arbitrator be precluded from drawing inferences or shifting the evidentiary onus in the same manner as a court of law.
34. The Arbitrator will make his or her best efforts to deliver to the Claimant and to the Bank a decision within 10 days of the date on which he or she has received all of the evidence he or she requires. The Arbitrator's decision will either dismiss the Claim or grant an Award in a specified amount. The Arbitrator shall not award interest, or legal costs to either side.
35. The Arbitrator's Decision will be final and is not subject to further appeal or judicial review. The Arbitrator will have authority to determine if a Claimant had a reasonable explanation for not submitting a claim within the time lines set out above, and if the Arbitrator so finds, the Claim will be determined on the merits.
36. The Bank will pay to the Claimant the amount of any Award within 30 days of receiving the Award, less any applicable income tax and other statutory deductions. The Bank shall pay all of the Arbitrator's fees and disbursements associated with the Appeal, regardless of the outcome of that Appeal.
37. The Case Management Judge shall maintain jurisdiction over the claims process and may, upon motion of either party, resolve any issues that arise in relation to compliance with or the implementation of this claims process.