

SCOTIABANK OVERTIME CLASS ACTION

FULAWKA v. THE BANK OF NOVA SCOTIA

NOTICE OF REVISED SETTLEMENT APPROVAL

➔ **The revisions to the original August 2014 Court-approved settlement (the “Original Settlement”) of this action have been approved by the Ontario Superior Court of Justice.**

➔ **Please read this notice carefully – this notice is directed to Class Members who made claims for unpaid overtime under the Original Settlement and whose claims were rejected or reduced by the Bank.**

1. HISTORY OF THIS CLASS ACTION & PURPOSE OF THIS NOTICE

In December 2007, a class action lawsuit was commenced against The Bank of Nova Scotia (“BNS”) on behalf of certain full-time retail branch bank employees in Canada (“Class Members”). The lawsuit claimed that BNS failed to pay all the overtime compensation to which Class Members were entitled. The law firms of Roy O’Connor LLP, Goldblatt Partners LLP and Sotos LLP (collectively “Class Counsel”) act for the Class.

The lawsuit was “certified” as a class proceeding by the Ontario Superior Court of Justice in February 2010, meaning that it was permitted to proceed to trial. This decision was subsequently upheld by the Ontario Divisional Court and the Court of Appeal for Ontario, with leave to the Supreme Court of Canada being denied in 2013.

In 2014 the parties reached an agreement to settle the class action. The settlement was approved pursuant to the Order of Ontario Superior Court of Justice dated August 12, 2014 (the Original Settlement as noted above).

In November 2014, the Representative Plaintiff identified a number of concerns about the Bank’s responses to claims made under the Original Settlement and brought a motion before the Class Action Case Management Judge to address those concerns. The Bank brought its own motion to extend the deadline by which it was to have responded to Class Member claims. By order of the Class Action Case Management Judge, the appeal process set out under the Original Settlement was suspended until the Plaintiff’s and the Bank’s motions could be resolved.

Following a two-day mediation in December 2015, the Representative Plaintiff and the Bank agreed, subject to the approval of the Ontario Superior Court of Justice, to revise the terms of the Original Settlement in order to resolve the issues raised in both motions (the “Revised Settlement”). The approach in the Revised Settlement is more streamlined (involving the establishment of an

approximately \$20.6 million settlement fund and fixed thresholds of payout) and avoids further significant delays and risks for class members.

Following a hearing before the Class Action Case Management Judge on March 3, 2016, the Revised Settlement was approved by the Ontario Superior Court of Justice as being fair, reasonable and in the best interests of the Class Members. A copy of the Court Order approving the Revised Settlement and a copy of the Judge's Reasons for Decision can be found at www.unpaidovertime.ca. Under the Revised Settlement Class Members entitled to additional compensation will receive their settlement funds (less statutory deductions and the Class Proceedings Fund's 10%) by no later than **May 30, 2016**.

This notice summarizes the key terms of the Revised Settlement.

2. WHO DOES THE REVISED SETTLEMENT APPLY TO?

The Revised Settlement applies to only those Class Members who made a claim under the Original Settlement **and** whose claim was fully rejected or partially reduced by the Bank.

If you did not make a claim or your claim was paid in full, the Revised Settlement does not affect you. Class Members who did not make claims or whose claims were paid in full will not receive any compensation under the Revised Settlement.

Claims rejected because they were received by the Bank after the claims submission deadline (October 15, 2014) will now be paid in part, as set out in section 3 (c) below, if the claim was received by the Bank on or before December 31, 2014 (except if the claim was rejected for some other reason as well (for example, because the claim was otherwise substantially incomplete, the claim had been released, etc)).

Fifty-two (52) claims that were fully rejected by the Bank on the basis that the claimant was in an "ineligible position" (as determined by the Bank) will also now be paid, in part, as set out below.

The following people will not receive payments under the Revised Settlement:

- Class Members who have not made claims;
- Class Members whose claims were paid in full;
- Claimants who are not in the class;
- Class Members who opted out of the class action (but for 2 former Class Members who previously brought a motion to rescind their opt-outs);
- Class Members who withdrew their claims;
- Class Members who previously signed releases in favour of the Bank;
- Class Members who submitted claims after December 31, 2014 (late claims);
- Class Members who submitted substantially incomplete claims; and,
- Claimants who were not employed by the Bank or whose claims were outside the limitation period.

3. WHAT ARE THE TERMS OF THE REVISED SETTLEMENT?

The key terms and conditions of the Revised Settlement include:

- a. **\$20.6 Million Additional Compensation** – The Bank will pay the approximately \$20.6 million in additional compensation to the approximately 1,600 Class Members whose claims were fully rejected or partially reduced. This \$20.6 million amount is in addition to the approximately \$18.7 million already paid by the Bank to Class Members.

The amounts payable to Class Members out of the \$20.6 million shall be subject to all tax and source deductions, as well as the 10% levy owing to the Class Proceedings Fund (CPF);

- b. **Timing & Method of Payment** - Class Members will be paid (less statutory deductions and the Class Proceedings Funds 10% levy) by no later than **MAY 30, 2016**.

Current Bank employees and persons receiving a pension will receive payment by direct deposit into their bank accounts. Former employees will receive a cheque by mail.

- c. **Distribution of Additional Compensation** – Claimants do not need to submit any additional forms or documentation or take any additional steps to participate in the Revised Settlement. For clarity, no Class Member will need or be now able to launch and pursue an appeal. The percentages of claims to be paid range from a payout of 25% to 100%.

All claimants whose claims were partially reduced will receive 50% or more of their original claim and the majority of claimants whose claims were fully rejected will receive 50% or more of their original claims. All class members whose claims were partially reduced under the Original Settlement will, unless they have already been paid compensation in excess of the percentages set out below, receive more compensation under the Revised Settlement. In no event, will any class member be required to pay back any compensation already paid by the Bank under the terms of the Original Settlement.

The payout percentages are calculated based on whether the claim was fully rejected or partially reduced, and also based on the total amount of each claimants claim. The claimants' total recovery (inclusive of any amounts already paid) is capped at the following percentages:

Claims Which Were Fully Rejected	Payout Percentage
Under \$20,000	75% of claim
Between \$20,000 and \$49,999	50% of claim
\$50,000 and above	25% of claim

Claims Which Were Partially Reduced	Payout Percentage
Under \$20,000	100% of total amount claimed

Between \$20,000 and \$49,999	80% of total amount claimed
\$50,000 and above	50% of total amount claimed

Example 1: Fully Rejected Claims

If a Class Member made a claim totalling **\$30,000** of eligible unpaid overtime and that claim was fully rejected by the Bank, that Class Member would receive **50%** of their claim for a total of **\$15,000** (less appropriate deductions and the CPF Levy) under the Revised Settlement.

Example 2: Partially Reduced Claims

If a Class Member made a claim totalling **\$30,000** of eligible overtime and the Bank paid a reduced amount of **\$10,000**, that Class Member will receive **80%** of their claim for a total of **\$24,000** – given that \$10,000 was already paid, the Class Member would now be paid **\$14,000** more (less appropriate deductions and the CPF Levy) under the Revised Settlement.

Please note that the foregoing examples are simplified illustrations of how fully rejected and partially reduced claims are treated under the Revised Settlement. Actual calculations are more complex.

- d. **Late Claims** – Any and all claimants whose claims were rejected because they filed claims with the Bank after October 15, 2014 (the original claims submission deadline) will now receive payments in accordance with the foregoing distribution formula if their claim was filed with the Bank before December 31, 2014 (except if the claim was rejected for some other reason as well). Any claims filed with the Bank after December 31, 2014, will not be entitled to any payment under the Revised Settlement;
- e. **No Appeals** – Under the Revised Settlement, the appeal rights set out in paragraphs 27 to 35 of the original Claims Process (schedule A to the Settlement Approval Order dated August 12, 2014) are extinguished for all Class Members;
- f. **Class Counsel Fees** – The Bank will pay Class Counsel’s additional fees and disbursements incurred to address the foregoing issues (as noted below).

A copy of the Class Action Case Management Judge’s Order approving the full Revised Settlement is available at www.unpaidovertime.ca. [A copy of the Class Action Case Management Judge’s Reasons for Decision approving the Revised Settlement is available at: \[www.unpaidovertime.ca\]\(http://www.unpaidovertime.ca\), \[www.royconnor.ca\]\(http://www.royconnor.ca\), \[www.goldblattpartners.com\]\(http://www.goldblattpartners.com\), and \[www.sotosllp.com\]\(http://www.sotosllp.com\).](#)

4. THE COSTS OF THE REVISED SETTLEMENT

There is no cost to claimants to participate in the revised settlement.

As with the Original Settlement, Class Counsel will be paid directly by the Bank for the additional work required to reach the Revised Settlement. Class Members are not required to pay any fees. The Bank has agreed to pay, and the Court has approved, Class Counsel's additional fees and disbursements of \$2,278,446.64, plus HST in the amount of \$296,198.06.

The Representative Plaintiff has been granted funding and indemnification from an adverse costs award by the Class Proceedings Fund ("CPF"). The CPF is entitled by law to receive a 10% levy on any money that you are paid as part of the Revised Settlement.

5. MORE INFORMATION?

Please address any requests for further information about the Revised Settlement or this action to:

Roy O'Connor LLP

Attention: George Pakozdi
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Toronto, ON M5V 3K2
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PLEASE DO NOT CALL OR CONTACT THE COURT OR THE BANK OF NOVA SCOTIA ABOUT THIS CLASS ACTION.

THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE