

Labour, Employment and Human Rights Bulletin

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Judge Rejects Overtime Class Action Suit Against CIBC

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Yesterday, in a much anticipated decision, the Ontario Superior Court refused to certify a class proceeding against CIBC in which, among other things, the representative plaintiff was seeking compensation for unpaid overtime on behalf of a class that potentially included upwards of 31,000 current and former front line bank employees.

In the claim, the plaintiff alleged that CIBC's overtime policy was unlawful, that CIBC required employees to do more work than could reasonably be completed within standard working hours, that employees regularly worked overtime and that they were discouraged from submitting claims in respect of such overtime. The lawsuit sought \$500 million in compensatory damages and an additional \$100 million in punitive damages.

In a decision that will, no doubt, give pause to others who have or may be considering bringing similar claims, the Court determined that, given the specific facts of this particular case, a class proceeding was not the preferable procedure for resolving the prospective class members' alleged overtime claims. After careful consideration, the Court concluded that at their essence, overtime claims are individual in nature and, absent

evidence of pervasive or systemic abuse, lack the essential element of commonality necessary to justify a class action proceeding.

CIBC successfully relied on its Overtime Policy, which the Court found was both reasonable and lawful, to defend itself against the plaintiff's allegations of unpaid overtime. Specifically, the Court found nothing improper with the Company requesting employees to obtain prior approval from their manager for overtime.

While CIBC, as a federally regulated employer, is subject to the *Canada Labour Code*, the reasons of the Court will, arguably, have application to similar proceedings brought in respect of provincially regulated employers.

This case is one of the first of its kind in Canada and is a decision that is likely to be appealed. The result here should not be seen as determining the outcome in other pending class action proceedings currently before the Court, such as the claim involving C.N. Railway, where the plaintiff is alleging that the railway misclassified operational supervisors as management in order to avoid paying them the overtime required under the *Canada Labour Code*. These so-called

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“misclassification” cases raise different issues which have yet to be addressed by a Canadian court.

The CIBC decision highlights to employers the importance of actively managing overtime issues and having the proper policies and training in place, so that they can avoid and, if necessary, successfully defend against similar claims.

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