

OVERTIME CLASS ACTIONS – LEAVE TO APPEAL DENIED

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In June 2012, the Ontario Court of Appeal released two decisions allowing class action lawsuits to proceed against major Canadian banks: *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444 (CanLII); and *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443 (CanLII). See our previous bulletin - "overtime class actions given the green light", July 2012.

As noted in our prior bulletin, in *Fresco* and *Fulawka* class members alleged that the overtime policies and practices of their employer (or former employer) violated the *Canada Labour Code*, as well as pleading causes of action in breach of contract, tort and unjust enrichment. In both cases, the Court of Appeal was prepared to grant certification on the grounds that there were allegedly systemic issues, shared by all class members, with the employer's overtime policies.

The defendants in both *Fresco* and *Fulawka* sought leave to appeal to the Supreme Court of Canada (the "SCC"). On March 21, 2013, the SCC denied leave to appeal the Ontario Court of Appeal's decisions. Therefore, these two class action lawsuits will likely proceed to trial unless they are settled by the parties in the interim.

Class action lawsuits are notoriously lengthy and expensive, even if the defendants are successful at the end of the day. Therefore, even though these cases have not yet been decided on their merits, they serve as an important reminder for employers to ensure that their overtime policies and practices comply with applicable laws and contracts.

by Lyndsay A. Wasser

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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