



Court File No. 07-CV-334113CP00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE PERELL

)  
)  
)

MONDAY, THE 19<sup>th</sup>  
DAY OF JUNE, 2023

B E T W E E N:

DARA FRESCO

Plaintiff

and

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**(Amending Distribution Protocol)**

**THIS MOTION**, made by the Plaintiff for an Order amending the Distribution Protocol was heard in writing at Toronto.

**AND WHEREAS** the proposed Distribution Protocol has been approved by Order dated March 3, 2023;

**AND WHEREAS** the Distribution Protocol provides for payment to the Class and Class Proceedings Fund, respectively, of the proceeds of the Settlement Fund, less approved fees, disbursements, taxes thereon, and administration costs;

**AND WHEREAS** Class Counsel requested fees of \$44 million, plus applicable taxes, as well as disbursements of \$4,415,520.94, payable to the Class Proceedings Fund and disbursements of \$1,683,461.55 payable to Class Counsel;

**AND WHEREAS**, on June 2, 2023, this Court approved Class Counsel fees of \$25 million, plus applicable taxes, as well as disbursements of \$4,415,520.94 payable to the Class Proceedings Fund and disbursements of \$1,683,461.55 payable to Class Counsel;

**AND WHEREAS** Class Counsel is appealing the Order of this Court dated June 2, 2023, with respect to the balance of the requested fees not approved by this Court;

**AND WHEREAS** such appeal should not unreasonably delay the distribution of the Settlement Fund to the Class and Class Proceedings Fund, or the payment of approved Class Counsel fees and disbursements;

**ON READING** the materials filed, including the proposed Amended Distribution Protocol, attached to this Order as **Schedule “A”**;

1. **THIS COURT ORDERS** that the Distribution Protocol, as set out in the Order of this Court dated March 3, 2023, be amended in accordance with the proposed changes set out in the proposed Amended Distribution Protocol, attached to this Order as **Schedule “A”**;
2. **THIS COURT ORDERS** that the notices attached as **Schedules “B”** and **“C”**, respectively, to the Order of this Court dated March 3, 2023, be amended in accordance with the proposed changes set out in the notices attached as **Schedules “B”**, and **“C”**, respectively, to this Order;

3. **THIS COURT ORDERS** that the remaining terms of the Order of this Court dated March 3, 2023 remain in force.

Perell, J.

The Honourable Justice Perell

entered on, June 30<sup>th</sup>, 2023.

**SCHEDULE “A”**

***AMENDED DISTRIBUTION PROTOCOL***

**DARA FRESCO AND SARAH GAUDET**

(the “**Plaintiffs**”)

and

**CANADIAN IMPERIAL BANK OF COMMERCE** (the “**Defendant**”)

**CIBC OVERTIME CLASS ACTION NATIONAL DISTRIBUTION PROTOCOL**  
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## SECTION 1- DEFINITIONS

For the purposes of this Distribution Protocol all defined terms have the same meaning as in the Settlement Agreement, unless specified otherwise.

(1) ***Employment Position*** means:

- (a) Customer Service Representatives (also formerly known as Tellers) (CSR);
- (b) Assistant Branch Managers (Level 4) (ABM);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors) (FSR);
- (d) Financial Service Associates (FSA);
- (e) Branch Ambassadors (BA); and
- (f) Other employees who performed the same or similar job functions as the above under a different or previous CIBC job title,

(2) ***Relative Share*** means the proportion of the Net Settlement Amount that individual Class Members will be entitled to. The final Net Settlement Amount will depend on the resolution of Class Counsel's appeal of the Order of the Court, dated June 2, 2023, awarding Class Counsel fees. For the purposes of this Amended Distribution Protocol, the amount at issue in Class Counsel's appeal (\$19 million, plus applicable taxes, hereafter referred to as the "Contested Fee"), being the difference between the requested fees of \$44 million, plus applicable taxes, and the awarded fees of \$25 million, plus applicable taxes, shall be held in trust by Class Counsel, in an interest-bearing account, pending determination of the appeal. Depending on the outcome of the appeal, any portion of the Contest Fee that is not awarded as additional Class Counsel fees, plus applicable taxes shall be added to the second distribution, as set out below.

(3) ***Tenure*** means the total calendar days between a Class Member's start date with CIBC and the Class Member's termination date with CIBC, according to the records of CIBC or as otherwise determined by the Administrator in accordance with section 6 of this Protocol, inclusive of the start and

termination dates but excluding any time before or after the Class Period and excluding anytime that a Class Member did not occupy an Employment Position. For greater clarity, Tenure shall not include anytime for which a Class Member was not employed in an Employment Position within CIBC or any employment outside of CIBC.

## **SECTION 2– GENERAL PRINCIPLES OF THE DISTRIBUTION AND ADMINISTRATION**

- (1) This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Amount recovered in the Actions.
- (2) This protocol is intended to ensure the claims procedure is user friendly, expedient, efficient and accessible to Class Members.
- (3) To ensure Relative Shares in the Net Settlement Amount are tailored to each individual Class Member, as much as reasonably possible, the Relative Share shall be a product of the yearly average wage applicable to Employment Positions held by a Class Member and the Tenure worked in each Employment Position. Class Members who worked longer in higher paying Employment Positions will receive relatively more than those who worked shorter periods of time in lower paid Employment Positions.
- (4) Class Members will not be required to establish hours worked or overtime hours worked under any circumstances. Class Members for whom Tenure and Employment Position information is available will only need to verify their identity, Social Insurance Number, contact information, and submit a Claim Form to be entitled to payment. For Class Members whose Tenure and Employment Position information is not available or disputed, the Class Member will be required to provide that information with supporting documentation, where reasonably available, and make a solemn declaration when submitting a Claim Form.

### **SECTION 3– DUTIES AND RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR**

(1) The Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreement and the ongoing authority and supervision of the Courts.

(2) In addition to all duties imposed on the Administrator pursuant to the Settlement Agreement and otherwise as are reasonably required, requested or directed, the Administrator's duties and responsibilities shall include the following:

- (a) providing notice(s) to the Class Members as may be required;
- (b) receiving information from the Defendant, including Class Members' identifying information, start and termination dates, Employment Position(s), Tenure and average wage if available;
- (c) developing a database for calculating Class Members' Relative Share of the Net Settlement Amount pursuant to this protocol and for pre-populating the Claim Form with available Employment Position and Tenure data organized by calendar year;
- (d) making timely determinations of Class Members' Employment Positions and Tenure as required by Claim Forms and in the absence of available records from CIBC;
- (e) developing, implementing and operating the administration process including a bilingual administration website;
- (f) making timely calculations of Class Members' Relative Share of the Net Settlement Amount and notifying Class Members of their Relative Share and the inputs for the calculation;
- (g) arranging payment to Class Members in a timely fashion;
- (h) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the



Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement;

- (i) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Courts;
- (j) maintaining the administration information so as to permit Class Counsel to review the administration at the discretion of Class Counsel or if ordered by the Courts;
- (k) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
- (l) providing Class Counsel and the Defendant with the proposed process for addressing the Remittances prior to doing so in accordance with section 10.1(3) of the Settlement Agreement;
- (m) calculating the amounts of the Remittances and withholding and remitting same within the time limits required by law;
- (n) preparing and distributing T4A forms to Class Members;
- (o) remitting amounts payable to the Class Proceedings Fund;
- (p) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Courts;
- (q) reporting to Class Counsel respecting Claims received, determination made and administration expenses;
- (r) holding the Net Settlement Amount in the Escrow Account and making all payments from the Net Settlement Amount from the Escrow Account as authorized;
- (s) cash management and audit control; and
- (t) preparing and submitting reports and records, and responding to reasonable inquiries, as directed or requested by Class Counsel or the Courts.

#### SECTION 4– RELATIVE SHARE CALCULATION

- (1) For each Class Member (including, as applicable, their heirs, executors, estates, successors, and assigns who wish to make claims) who submits a valid Claim Form, the Administrator shall use the records of CIBC, or make a determination as described in Section 6 below, to assign the Class Member to an Employment Position(s) by year of the Class Period. Where a Class Member became employed, or left employment or changed their Employment Position during a calendar year, such assignment will be on a pro-rated basis.
- (2) The Administrator shall then allocate the Class Member's Tenure to specific Employment Positions by year, or portion thereof, based upon the records of CIBC or the Administrator shall make a determination as described in Section 6 below.
- (3) At the end of steps (1) and (2) above, the Administrator shall have for each Class Member their Employment Position(s) by year, or portion thereof, of the Class Period and the total Tenure applicable to each of the Class Member's Employment Positions by year.
- (4) The Administrator shall have or obtain information relating to the average hourly wage applicable to each Employment Position by year of the Class Period. A single estimated average hourly wage shall be used for all Employment Positions for all Tenure prior to January 1, 2003, depending on the available records of CIBC.
- (5) The Administrator shall then calculate points applicable to the Class Member's Claim Form. The total points applicable to a Claim Form shall be calculated by multiplying a Class Member's Tenure by the average wage applicable to the Employment Position in a given year, represented by the following formula:

***Tenure in Employment Position X Average wage for Employment Position = points***

- (6) The monetary value of one (1) point shall be calculated by dividing the Net Settlement Amount by the total numbers of points calculated from all valid Claim Forms, represented by the following formula:

***Net Settlement Amount / total points for all valid claims = monetary value of one (1) point***

(7) The Class Member shall then be awarded the monetary value of their points by multiplying their total points for all Employment Positions in the Class Period by the monetary value of a point.

(8) For any points calculated for Tenure outside the applicable provincial limitation periods listed below, the monetary value of each point shall be reduced by 50%.

Province	Applicable Legislation	Provincial Limitation Periods
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act</i> , 2002, S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ- 1991,	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005
	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c.	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8,	June 4, 2001 – June 18, 2009
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

(9) Some consideration may be given to whether every Class Member who submits a valid claim shall be entitled to a minimum payment, to be determined subsequently.

## SECTION 5 - THE ADMINISTRATION PROCESS

(1) Generally, the claims administration will be as follows:

(a) **Step 1: Submission of Online Claim Forms and Confirmation of Records**

The Claim Form shall be made available on a secure website that will require Class Members to enter their first and last names, date of birth, Social Insurance Number, Address, email and phone number.

When a Class Member enters their first and last name on the online Claim Form it shall display the Class Member's Employment Position(s) and Tenure in the respective Employment Position(s) by year, or portion thereof. The Class Member will be asked to agree or disagree with the records presented at the time of submitting the Claim Form.

If a Class Member disagrees with the available records, or no records are responsive to the Class Member's name, the Class Member will be required to submit a Claim Form with what they claim are the correct Employment Position(s) and Tenure by year, or portion thereof, along with any available supporting records, and make a solemn declaration upon submission. The Administrator shall then determine the applicable Employment Position(s) and Tenure by year and notify the Class Member of their determination. The determination process shall be governed by the procedure described in Section 6.

**(b) Step 2: Correction of Deficiencies**

If the Administrator finds that deficiencies exist in a completed Claim Form, the Administrator shall forthwith notify the Class Member of the deficiencies. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of the Claims Bar Deadline or sixty (60) days from the date of the request from the Administrator to rectify the deficiency, although the Administrator may consider late corrections of deficiencies in their discretion.

**(c) Step 3: Identification and Prevention of Potentially Fraudulent Claims**

The administrator shall flag potentially fraudulent claims, including those with a P.O. box address, an address outside of Canada, claims using the same mailing address, phone number or email and duplicate claims by name. Such claims will be

set aside for review and follow-up by the Administrator and provided to Class Counsel.

(d) **Step 4: Calculation of Relative Share**

After all Claims Forms are received with Class Members agreeing to the available records and all final determinations of Employment Position(s) and Tenure made in accordance with Section 6, the Administrator shall calculate the Relative Share of each Class Member.

(e) **Step 5: First Distribution**

Class Members shall be sent a cheque consisting of 70% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, and Class Proceedings Fund ("CPF") Levy ("First Distribution").

(f) **Step 6: Second Distribution**

~~Within a set time after the First Distribution,~~ Following the disposition of the appeal of Class Counsel's fee award, the Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 30% of their Relative Share, plus their relative share of any portion of the Contested Fee not awarded to Class Counsel, less employee and employer portions of CPP, EI and income tax withholding, CPF Levy, and amount owing to the Fonds d'aide aux actions collectives. The Relative Shares of the Second Distribution may be adjusted and may not account for the remaining 30% of the First Distribution to account for, among other things, any errors identified following the First Distribution and potential acceptance of late claims ("Second Distribution").

(g) **Step 7: Remittance**

The Administrator will make the Remittances to the Canada Revenue Agency and any other applicable government entities, including Revenu Québec and provide T4A and related forms to Class Members, including RL-1 forms to Quebec Class



Members. The Administrator will remit the CPF Levy to the CPF and, if required, any amounts owing to the Fonds d'aide aux actions collectives in Quebec.

(h) **Step 8: Report**

The Administrator will report to the Plaintiffs and Defendant upon the payment of Relative Shares to Class Members at the completion of the First and Second Distributions, or any other payment tranches, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

**SECTION 6- DETERMINATIONS OF EMPLOYMENT POSITION(S),  
TENURE AND EMPLOYMENT YEARS**

- (1) An absence of CIBC records showing Employment Position(s) or Tenure for a Class Member shall not prohibit entitlement to a Relative Share of the Net Settlement Amount.
- (2) In the event a Class Member disputes the records of CIBC regarding Tenure, Employment Position(s) or years of employment, or no such records exist, the Class Member shall complete a Claim Form and shall advise the Administrator of the claimed Employment Position(s), Tenure and years of employment and provide documentation and/or written reasons in support of their claim, all to be solemnly affirmed.
- (3) The Claims Administrator may ask the Class Member further questions in their discretion, but the Class Member shall not be subject to cross-examination or inquiries from the Defendant under any circumstances.
- (4) The Administrator shall review the information provided in paras (2) to (3) above and make a determination as to the applicable Employment Position(s), Tenure and employment years. The principles of access to justice, expediency and accessibility shall guide all determinations. The

Administrator shall, within a reasonable time frame, advise the Class Member of its determination, by email or letter mail. The determination of the Administrator is final and not subject to appeal in any court or review in any manner by any court, tribunal, board or authority.

(5) Class Counsel shall review the first thirty (30) determinations prior to the determination being communicated to the Class Member. Class Counsel may review further determinations as reasonably requested or required, and may ask for reports regarding the total determinations made and statistics regarding the outcomes of the determinations, plus further information in their discretion.

(6) No appeals shall lie by any Class Member based on distributions made substantially in accordance with this Protocol, or with any other order or judgment of the Courts. No claims shall lie against Class Counsel or the Defendant based on this Protocol, or based on any distributions made substantially in accordance with this Protocol, or the reporting or withholding of Remittances, or with any other order or judgment of the Court on any terms of this Protocol.

#### **SECTION 7- CLASS COUNSEL**

(1) Class Counsel shall oversee the claims process and provide assistance and directions to the Administrator regarding this Distribution Protocol and the claims process.

(2) Class Counsel shall have no role in the calculation of individual entitlements or the calculation and remittance of income taxes, CPP or EI.

#### **SECTION 8- RESIDUAL DISCRETION**

(1) Notwithstanding the foregoing, if, during the administration, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Courts for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Net Settlement Amount.

(2) In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Administrator.

## **SECTION 9- RESIDUAL DISTRIBUTION**

(1) If there remains any amount of the Net Settlement Amount after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Courts to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy-près* or article 596, paragraph 3 CCP distribution, if appropriate.

(2) Under no circumstances will any residual amounts from the Net Settlement Amount revert to CIBC.

## **SECTION 10- CONFIDENTIALITY**

(1) All information received from the Defendant or the Class Members is collected, used, and retained by the Administrator pursuant to, inter alia, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any analogous provincial legislation as may be applicable, for the purposes of administering their Claims.

(2) All reasonable steps shall be taken to ensure the identity of Class Members submitting Claims Forms is kept confidential from the Defendant. The Defendant shall be entitled to see aggregate statistics on the number of claims made, average value of claims and total payment made. The Defendant will not be entitled to know the identity of Class Members who submit a Claim Form or how much individual Class Members are awarded, except as required by regulatory or tax reporting requirements.



## **SCHEDULE "B"**

### ***APPROVED SETTLEMENT NOTICE (FRESCO – DIRECT NOTICE)***

#### **CIBC UNPAID OVERTIME CLASS ACTION – NOTICE OF SETTLEMENT APPROVAL IN *FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE***

**TO:** Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

This Notice is directed to all individuals who fall within the definition noted above, except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by any outcome in) the case. Estate of deceased class members are eligible to make a claim.

You are receiving this notice because a review of the records of the Defendant indicates that you are a Class Member (as described and defined above) in this unpaid overtime class action lawsuit. You were previously notified of the certification of this action by the Court-approved Notice of Certification dated ★ and Notice of Settlement Approval Hearing dated ★.

#### **A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST CIBC FOR UNPAID OVERTIME**

#### **PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES WHAT YOU NEED TO DO IN ORDER TO BE COMPENSATED**

For more information about this class action and the settlement, please visit the following website [cibcunpaidovertime.ca](http://cibcunpaidovertime.ca). If you have further questions, you can also contact the Settlement Administrator by email at ★, or by phone at ★.

#### **How to get your compensation ~~What should I do?~~**

If you are an eligible Class member and want money from the Settlement, ~~complete the enclosed Settlement Payment Form and mail it to ★ or~~ complete the form online at ★, using the enclosed claim ID and PIN. If you wish to complete a paper claim form, please call ★ or email ★. You must complete the online form or mail the paper form by send the completed form by no later than ★ (the "Filing Deadline"). After you complete the form and after the Filing

Deadline has passed, you will get a cheque and letter explaining how the cheque was calculated.

Class members' share of the settlement fund will be based on a Distribution Protocol that will take into account the length of time, during the class period, that class members worked in one of the affected positions, as well as the specific position or positions worked. The amount that each Class member receives will also depend on how many Class Members make claims.

The compensation paid to Class members will be paid from the Net Settlement Fund, which is the amount of money remaining after deducting the Court-approved legal fees and disbursements (including taxes) as well as the costs of administering and distributing the money to Class Members, from the \$153 million.

Class Counsel had sought legal fees of 30% of the settlement, less disbursements, which amounted to \$44 million, plus applicable taxes. By order dated June 2, 2023, the Court awarded legal fees of \$25 million, plus applicable taxes. Class Counsel is appealing the Court's order, pending which, in accordance with the Court's order, \$19 million, plus applicable taxes, (the "Disputed Fee") will be held in trust.

The distribution of compensation will take place in two parts, a first distribution of 70% of the Net Settlement Fund will be paid out in 2023 and a second distribution of the remaining 30%, plus the amount of the Disputed Fee, if any, not awarded to Class Counsel after the appeal.

All amounts paid to Class Members will be subject to any relevant deductions (including deduction and remittance to the Canada Revenue Agency), and a statutory levy to be paid to the Class Proceedings Fund.<sup>1</sup> Class members will need to complete a claim form in order to receive compensation.

You can read the full Distribution Protocol at [www.cibcunpaidovertime.ca](http://www.cibcunpaidovertime.ca).

### **What was the case, and what is the settlement?**

The common issues to be decided by the Court were:

1. Did the Defendant have a duty (in contract or otherwise) to prevent Class Members from working, or a duty not to permit or not to encourage Class Members to work, overtime hours for which they were not properly compensated or for which the Defendant would not pay? If "yes", did the Defendant breach that duty?
2. Did the Defendant have a duty (in contract or otherwise) to accurately record and maintain a record of all hours worked by Class Members to ensure that Class Members were appropriately compensated for same? If "yes", did the Defendant breach that duty?
3. If the answer to common issues 1(a) or 2(a) is "yes", and to the extent found necessary by the common issues trial judge, did the Defendant thereby require or permit all uncompensated hours of the class members?

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<sup>1</sup> The Class Proceedings Fund, a body established by statute to provide support for class actions brought in Ontario. Further information about the Class Proceedings Fund can be found at <https://lawfoundation.on.ca/for-lawyers-and-paralegals/class-proceedings-fund/>. In exchange for its support, the Class Proceedings Fund is entitled to repayment of monies advanced plus 10% of net settlement funds payable to Class members (i.e. after legal fees, taxes, disbursements and administration expenses). ~~In this case, the Class Proceedings Fund's levy will amount to approximately 10% of the total settlement.~~

4. What are the relevant terms (express or implied or otherwise) of the Class Members' contracts of employment with the Defendant respecting:
  - a. Regular and overtime hours of work?
  - b. Recording of the hours worked by Class Members?
  - c. Paid breaks?
  - d. Payment of hours worked by Class Members?
5. Did the Defendant breach any of the foregoing contractual terms?
6. Was the Defendant enriched by failing to pay Class Members appropriately for all their hours worked? If "yes",
  - a. Did the class suffer a corresponding deprivation?
  - b. Was there no juristic reason for the enrichment?
7. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", what remedies are Class Members entitled to?
8. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", is the Class entitled to an award of aggravated, exemplary or punitive damages based upon the Defendant's conduct? If "yes" (i) Can these damages be determined on an aggregate basis? and (ii) What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?
9. Can the defendant's monetary liability be determined on an aggregate basis? If so, in what amount?

The plaintiff Dara Fresco sought compensatory and punitive damages pursuant to each of these questions.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy (as discussed further below). The Superior Courts of Ontario and Quebec approved the settlement as being fair, reasonable and in the best interests of the Class by orders dated March 3, 2023 and May 18, 2023.

The settlement will result in payment of compensation to every eligible class member. Class members will not have to prove their claims and the claims will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which class members make claims.**<sup>2</sup>

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<sup>2</sup> In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

### **Where can I ask more questions?**

For more information, please visit [cibcunpaidovertime.ca](http://cibcunpaidovertime.ca). If you have further questions or require assistance in completing your claim ~~that are not answered online or by email~~, **please contact the Court-appointed administrator ★** by email at ★, or by phone at ★.

The law firms of Sotos LLP, Roy O'Connor LLP, and Goldblatt Partners LLP are Class Counsel and represent members of this class action in Canada.

Goldblatt Partners LLP can be reached at:

Telephone: 416-979-4233  
Email: [tatherfold@goldblattpartners.com](mailto:tatherfold@goldblattpartners.com)  
Mail: 20 Dundas Street West, Suite 1039, Toronto ON M5G 2C2

Roy O'Connor can be reached at:

Telephone: 416-362-1989  
Email: [info@royoconnor.ca](mailto:info@royoconnor.ca)  
Mail: 1920 Yonge Street, Suite 300, Toronto ON M4S 3E6

Sotos LLP can be reached at:

Telephone (toll free): 1-888-977-9806  
Email: [info@sotosclassactions.com](mailto:info@sotosclassactions.com)  
Mail: 180 Dundas Street West, Suite 1200, Toronto ON M5G 1Z8

~~Counsel for CIBC can be reached at: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2 Canada, (416) 865-0040.~~

### **Interpretation**

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

**PLEASE DO NOT CALL CIBC, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION.**

This notice was approved by the Ontario Superior Court of Justice.

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## SCHEDULE "C"

### *APPROVED SETTLEMENT NOTICE (FRESCO – PUBLICATION)*

#### **CIBC UNPAID OVERTIME CLASS ACTION - SETTLEMENT APPROVED IN *FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE***

**If you were a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009 you could receive compensation in this class action settlement.**

**A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009.**

The class action lawsuit alleges that CIBC's overtime policies and record-keeping systems contravened the Canada Labour Code, resulting in front-line bank employees not being compensated for overtime. The representative plaintiff, Dara Fresco, sought compensatory and punitive damages for herself and on behalf of the class.

A settlement for \$153 million has been reached with CIBC.

The settlement applies to the following group of people (except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by the outcome in) the case:

(1) Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy. The legal fees of Class Counsel are currently under appeal and the final amount payable to Class Members will be determined following Class Counsel's appeal.

The settlement will result in payment of compensation to every eligible class member. Class members will not have to prove their claims and the claims will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which class members make claims.**<sup>1</sup>

#### **What should I do?**

If you are an eligible Class member and would like to make a claim, or obtain more information about the settlement, obtain the contact information of the claims administrator and legal counsel in the file, or obtain the method for distributing funds please visit: <https://cibcunpaidovertime.ca/>.

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<sup>1</sup> In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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