

**NEWSLETTER – JULY 2007**

CLASS ACTION EMPLOYMENT LITIGATION

In our April 2007 newsletter, we raised the spectre of class action employment litigation. Specifically, we wrote:

“Class action litigation is fertile ground for plaintiffs’ lawyers in the U.S. to enforce minimum standards legislation. The question is whether this could occur in British Columbia.”

On June 6, 2007, an article bearing the following heading appeared on the front page of *The Globe and Mail*: “Employers urged to heed CIBC suit: Teller files landmark class-action claim for \$600-million”.¹

In Ontario, a personal banker and teller by the name of Dara Fresco has launched a class action lawsuit seeking \$500 million in general damages and \$100 million in punitive, aggravated and exemplary damages from her employer, the Canadian Imperial Bank of Commerce (“CIBC”).

Ms. Fresco is 34 years old. She has

worked for CIBC in a non-management, non-unionized capacity for the past ten years, and is presently paid a salary or \$30,715 per year.

At a press conference held on or around June 5, 2007, Ms. Fresco estimated “she is owed \$50,000 for unpaid overtime over the past decade”. She alleged that she and roughly 10,000 other front-line employees “at CIBC branches across the country regularly work overtime for which they do not get paid”.²

At the press conference, Ms. Fresco added:

“What is unfair is that my colleagues and I are rarely paid for the overtime that we are working and that’s just not right ...

I decided to seek out legal advice mainly to see if this was allowed and to find out what my options were. So, this is what brings me here today because it isn’t fair to work and not get paid for your time. It

¹ V. Galt and J. McFarland, “Employers urged to heed CIBC suit: Teller files landmark class-action claim for \$600-million”, *The Globe and Mail* (June 6, 2007) at pp. A1 and A7.

² *Ibid.*

isn't right for me and it isn't right for my fellow colleagues.”³

Ms. Fresco seeks to be appointed representative plaintiff for a class of persons composed of “current and former non-management, non-unionized employees of CIBC in Canada who are or were tellers or other front-line customer service employees (limited to personal bankers, commercial bankers and account executives), working at CIBC retail branch offices across Canada”.⁴

In her statement of claim filed with the Ontario Superior Court of Justice, Ms. Fresco alleged that CIBC has a “uniform, consistent and systemic practice ... to refrain from paying class members compensation for additional hours of work, notwithstanding ... contractual and statutory obligations to do so”.

She further alleged that “[a]ll class members are ... directed by CIBC not to report any of their additional time on their timesheets and not to make any claim for such additional hours, which CIBC knows are necessary in order to complete the standard job

requirements such as balancing before leaving work”.

One of the lawyers representing Ms. Fresco, Louis Sokolov of Toronto-based law firm, Sack Goldblatt Mitchell LLP, is on record as saying:

“We believe that unpaid overtime is widespread in many industries in this country ...”⁵

Mr. Sokolov's statement appears to be an accurate one. According to Statistics Canada, more than 1.6 million employees in Canada worked unpaid overtime in the month of April 2007.⁶

On the basis of the foregoing, we suspect that *Dara Fresco v. Canadian Imperial Bank of Commerce* will by no means remain a unique case.

It is a sign of things to come in cases involving a similar fact pattern. It also provides a foreshadowing of more frequent attempts in the future to enforce – through the medium of class action litigation – a broad range of employee rights.

If you have questions regarding the issues raised in this newsletter and how they may affect you or your company, please do not hesitate to contact any lawyer at our firm.

Lawyer contact information can be obtained by contacting us at (604) 806-0922 or visiting our website at www.ropergreyell.com.

³ “CIBC hit with overtime class-action lawsuit: Suit seeks \$600 million in damages for unpaid overtime for thousands of non-management, non-unionized employees across Canada”, *Canadian HR Reporter* (June 6, 2007), online: <<http://www.hrreporter.com>>.

⁴ Canadian Bar Association National Class Action Database (June 27, 2007), online: <<http://www.cba.org/classactions>>. As of June 27, 2007, *Dara Fresco v. Canadian Imperial Bank of Commerce* had not been certified as a class proceeding.

⁵ V. Galt and J. McFarland, *supra* at p. A7.

⁶ *Ibid.*

ROPER GREYELL MORNING EDUCATION SERIES – UPCOMING WORKSHOPS

We are very pleased to be able to offer the following Roper Greyell Morning Education Series workshops in the upcoming months:

- “Occupational Health and Safety – Employer’s Duty to Investigate, Criminal Liability and Managing Your Experience Rating”
September 14, 2007 – 7:30 to 9:00 a.m. at the offices of Roper Greyell LLP
- “Important Issues in Employment Contracts”
November 23, 2007 – 7:30 to 9:00 a.m. at the offices of Roper Greyell LLP

Please note that space for the above workshops is limited.

Remaining places can be reserved on a “first come, first served” basis by telephoning Catherine MacLeod at (604) 806-3871 or e-mailing her at cmacleod@ropergreyell.com.

* Every effort has been made to ensure accuracy in respect of this newsletter. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this newsletter. *