

Court File No. CV-08-365119CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MICHAEL BROWN and BRIAN SINGER**

Plaintiffs

-and-

**CANADIAN IMPERIAL BANK OF COMMERCE  
and CIBC WORLD MARKETS INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTARY AFFIDAVIT OF BRIAN SINGER**

(Affirmed January 13, 2011)

I, BRIAN SINGER, OF THE CITY OF TORONTO, IN THE PROVINCE OF  
ONTARIO, AFFIRM AND SAY:

1. I am one of the proposed representative plaintiffs in this action and as such I have knowledge of the matters deposed to herein, except where I have been informed of such facts, in which case I have stated the source of such facts and I hereby state that I believe such facts to be true.

2. I affirm this supplementary affidavit in support of a motion to certify the within action as a class proceeding and to clarify or expand on the evidence in my previous affidavit sworn April 30, 2010.
3. This affidavit is to be read in conjunction with my previous affidavit.
4. Where it is necessary to repeat certain information from my previous affidavit to place the new information herein in proper context or for background, I have repeated my evidence from the previous affidavit.

**History of Employment with CIBC World Markets**

5. I was an employee of CIBC World Markets Inc. ("CIBCWM") in various roles from 1994 until 2002. First I was a "bond salesperson" with CIBCWM, and then I was, what is now known as, an Investment Advisor with CIBC Wood Gundy. I recall that my title at the time was a Financial Consultant but I understand that the title to my position has changed over the years at CIBCWM and is now called an Investment Advisor or Financial Advisor. I understand that the roles and responsibilities of an Investment Advisor or Financial Advisor are the same as the roles and responsibilities that I performed under the title Financial Consultant. I will refer to my position as Investment Advisor herein for consistency.
6. CIBC Wood Gundy is a division of CIBCWM. Attached as **Exhibit "A"** is a printout of the website address "<http://www.cibcwm.com/wm/individual-investors.html>" showing that CIBC Wood Gundy is a division of CIBCWM.
7. Attached as **Exhibit "B"** are T4s I received from CIBCWM for the years 1999, 2000 and 2001 from when I was working at CIBC Wood Gundy.

**Fixed Income Associate**

8. I began working for CIBCWM as a Fixed Income Associate in May 1994 as a retail bond salesperson. The last title I had in that position at CIBCWM was "Fixed Income Specialist".
  
9. My job tasks involved processing and analyzing information to determine the suitability of bonds for my clients. I did not perform managerial functions. In particular I did not:
  - a. supervise other employees;
  - b. have the power to hire, fire and/or discipline other employees;
  - c. have the ability to make decisions on behalf of the company;
  - d. exercise discretion and independent judgment in management affairs; or
  - e. perform a leadership or administrative role as opposed to an operational role.

**Retail Bond Desk**

10. While I was employed at the Retail Bond Desk I developed a proprietary database to assist me and the firm in identifying which bonds would be suitable for sale to my clients according to various criteria. I did not perform managerial functions. In particular I did not:
  - a. supervise other employees;
  - b. have the power to hire, fire and/or discipline other employees;
  - c. have the ability to make decisions on behalf of the company;
  - d. exercise discretion and independent judgment in management affairs; or
  - e. perform a leadership or administrative role as opposed to an operational role.
  
11. While working on this innovation I worked 70-80 hours per week developing the platform. Management was aware that I was working those hours and encouraged it; however, I never received any overtime pay. CIBCWM was treating me as ineligible for overtime pay in accordance with their policy.

12. Despite Management being aware of the hours that I worked, management never tracked my hours or asked me to fill out sheets with the number of hours or overtime hours that I worked.

### Investment Advisor

13. In 1996 I became an Investment Advisor for the division of CIBCWM known as CIBC Wood Gundy.

14. I was employed by CIBCWM in that capacity until November 2002.

15. As an Investment Advisor with CIBCWM I advised CIBCWM clients on suitable investments. I did not perform any managerial functions. Again, as an Investment Advisor I did not:

- a. supervise other employees;
- b. have the power to hire, fire and/or discipline other employees;
- c. have the ability to make decisions on behalf of the company;
- d. exercise discretion and independent judgment in management affairs; or
- e. perform a leadership or administrative role as opposed to an operational role

16. My remuneration as an Investment Advisor at CIBCWM was based on a commission on the fees generated by the sale of securities and other financial products, and a percentage of the asset management fees paid by clients. The percentage of fees were paid to me was dictated by a "grid".

17. The grid was a proprietary formula devised by CIBCWM that dictated what percentage of the fees generated would be paid to the Investment Advisor as remuneration.

18. The grid compensation structure fostered a work place where an advisor needed to constantly work overtime to meet and sign new clients and grow assets under

management and meet the expectations of management. At the end of each month a chart would be prepared ranking all the advisors in the branch, increasing the work expectations.

19. As a result of the above, my job tasks included signing up new clients, understanding clients' financial goals and objectives, researching investments that would be appropriate to recommend to them, and purchasing the securities or products on their behalf. I had no management authority or responsibility.
20. All trading was required to be done in the office. I spent the majority of my time working in the office. To satisfy client service expectations, I would meet with clients at their home or business if that was required. I would try to do meetings in the mornings or in the evenings. I would also call them from my office if a meeting was not required.
21. During the time I was an Investment Advisor I worked between 65-70 hours per week including weekends. The pressure to work long hours prospecting for clients and servicing their needs was pervasive and was encouraged by management. Despite Management being generally aware of the hours that I worked, management never tracked my hours or asked me to fill out sheets with the number of hours or overtime hours that I worked. To the contrary, at least one of my pay stubs arbitrarily and incorrectly reflected standard work weeks of 37.5 hours, notwithstanding that I believe management was aware and required that I worked overtime. Attached as **Exhibit "C"** is a copy of a pay stub in this regard.
22. The behavior of CIBCWM management was consistent with the CIBCWM policy which treated Investment Advisors as ineligible for overtime pay. At the time, as a result of the CIBCWM policy, I was misled by CIBCWM and was not aware that I would be entitled to overtime pay, and therefore did not pursue any such claim.

23. I was not the only Investment Advisor working those types of hours. Management was aware of such long hours and encouraged it for all Investment Advisors, including in its training program for new recruits.
24. All Investment Advisors at CIBCWM regardless of their "employee level" performed similar tasks. To my knowledge Investment Advisors do not perform managerial functions. However, all of them, were classified by CIBCWM as ineligible for overtime.

**CIBC's Overtime Policy Misclassifies Certain Employees as Ineligible**

25. I do not have a copy of the written CIBC overtime policy which was in place while I was employed. However, I have been provided with a copy of the written overtime policy (and the managerial guidelines for the implementation of the policy) which was harmonized for CIBC and CIBCWM in 2006, which are attached as Exhibit "D" and "E" respectively. In that policy, Investment Advisors that are level 6 or above are ineligible for Overtime. This policy is consistent with what I understood was the policy in place in CIBC when I was employed.

26. It is my understanding that CIBCWM never paid any overtime to Investment Advisors at level 6 or above.

**The Value of My Claim for Overtime Pay as an Investment Advisor**

27. I believe that my claim for unpaid overtime as an Investment Advisor is valued at approximately \$50,000 per year.

28. This estimate is based on my hourly rate of approximately \$32.00 per hour (calculated based on an average annual pay of approximately \$75,000 per year over my career at CIBCWM) for an overtime rate of \$48.00 per hour at an average of 20 hours per week unpaid overtime, for the duration of my employment as an Investment Advisor.

**Revised Definition of the Class**

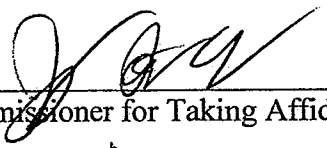
29. I am advised by counsel that since I affirmed my first affidavit, the description of the class has been revised to be:


“All Ontario current and former CIBC and CIBCWM employees, since 1996, who were classified by CIBC and CIBCWM as Level 6 or higher, who held the positions of Analyst or Investment Advisor (otherwise known as Financial Advisor), or who performed the same or similar job functions under a different or previous CIBC or CIBCWM job title.

30. I am a class member and fully prepared to act as a representative plaintiff for the revised class in this matter.

31. I make this affidavit in support of the motion to certify this action as a class proceeding and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of  
Toronto, in the Province of Ontario  
this 13 day of January, 2011

  
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Commissioner for Taking Affidavits  
Jody Brown

  
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BRIAN SINGER