

If You Worked as an Investment Advisor for BMO Nesbitt Burns

This Class Action Lawsuit May Affect Your Rights.

A court authorized this notice. You are not being sued.

You are receiving this notice as you have been identified by BMO Nesbitt Burns as having held the position of Investment Advisor, Associate Investment Advisor or Investment Advisor Trainee in Ontario at some point since 2002. You may or may not be a class member in this class action (see further information below). If you qualify as a class member, you are automatically included and you do not have to do anything to participate in this class action.

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BASIC INFORMATION

1. Why was this notice issued?

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the requirements for class actions and may proceed to trial.

The case is known as *Yegal Rosen v. BMO Nesbitt Burns Inc.*, Court File CV-10-39668500CP. The person who sued (Mr. Rosen) is the Plaintiff, who is pursuing the action for the benefit of the entire class. BMO Nesbitt Burns Inc. is the Defendant.

This notice has been issued to advise about the certification of this action, to provide general information about the action including who may qualify as a class member, and to provide information about how class members may opt out if they do not wish to participate in the action.

You may visit this website to obtain further information from Class Counsel: www.kmlaw.ca/NesbittClassAction.

2. What is this lawsuit about?

The lawsuit alleges that BMO Nesbitt Burns Inc. improperly failed to pay overtime compensation to certain Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees.

The class action alleges that the Defendant, BMO Nesbitt Burns Inc. breached its duties to the class by requiring them to work overtime but failing to appropriately compensate them for those overtime hours. It is alleged that class members were routinely required to work overtime, but that BMO Nesbitt Burns misclassified the class members as being ineligible for overtime pay to which they were entitled.

BMO Nesbitt Burns Inc. has defended this action on the basis that it alleges that Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees are exempt from the payment of overtime compensation for three reasons:

1. These employees are self-managers who are self-directed, subject to regulatory oversight, and have substantial control over how they do their work;
2. Some of these employees carry out management and supervisory functions relating to members of investment advisors teams; and

3. Because these employees have significant control over when and how to build a book of business and have the opportunity to earn incomes based upon the performance of that book of business, they receive a greater benefit than receipt of overtime pay under the *Employment Standards Act, 2000*.

The plaintiff does not agree with these allegations of the defendant. The plaintiff's claims have not been proven and the Court has not yet decided whether the plaintiff or the defendant is correct.

A copy of the Statement of Claim (which describes the claims against BMO Nesbitt Burns), a copy of the Statement of Defence (which describes BMO Nesbitt Burns' position), and other legal documents associated with this case, can be viewed at www.kmlaw.ca/NesbittClassAction.

3. Why is this a class action?

In a class action one or more people called "representative plaintiffs" (in this case Yegal Rosen) sue on behalf of people who have similar claims. All of these people are a "class" or "class members." The court resolves the common issues for all class members, except for those who remove themselves from the class by opting-out.

4. Who is a member of the Class?

The Class includes:

All Ontario current and former Nesbitt employees who, since 2002, held the position of Investment Advisor, or who performed the same or similar job functions under a different or previous Nesbitt job title [note: which would include Associate Investment Advisor or Investment Advisor Trainee], exclusive of any time period for which they:

- a) held the position of Branch Manager; or
- b) held the position of Assistant Branch Manager; or
- c) held the position of Divisional Manager; or
- d) were Investment Advisors on a team that had one or more Associate Investment Advisors or Sales Assistants assigned to them.

Only Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees who fall within this definition are members of the Class. The fact that you have received this notice does not mean you are necessarily a member of the Class. You are only a member of the Class if you fall within the definition above. If you are not a member of the Class, this Notice does not affect you.

A final adjudication of who is included in the Class will not be made until a later date in these legal proceedings.

If you have any questions about whether you are a member of the Class, please contact Class Counsel at the contact information provided below.



5. Is there any money available now?

No money or benefits are available now. The next stage in the action is discovery and ultimately trial, at which point the common issues in the class action will be determined by the court. If the plaintiff is successful at trial on behalf of the class, there may be hearings to follow to determine the amount of money owed to the class members. If the plaintiff does not obtain a settlement, or is not successful at trial, the class members will not recover any money.

YOUR RIGHTS AND OPTIONS



6. How do I participate in the Class Action?

If you meet the class definition, you are automatically included in the class action as a class member. You do not need to take any action. If any money or other benefit is awarded, you may be entitled to share in such benefits and may need to take action at that stage in order to recover. You will be provided with further information at that stage if applicable.

The lawyers on behalf of the class (“Class Counsel”) are acting on a contingency basis which means that they will be paid only if successful in the case, and will be paid from the class member recovery and through costs awards granted by the Court. If the action is unsuccessful, you will not be liable for any of the lawyer’s costs or have to pay them any fees.



7. What if I don't want to be in the Class?

If you decide you do not wish to be included as a class member in the lawsuit, you must remove yourself – in other words, “opt out.” If you opt out, you will not be permitted to share in any money or other benefit that may be obtained as a result of this lawsuit.

Class members who opt out of the proceeding can choose to proceed individually against BMO NBI, outside of this class action or choose not to bring legal action. If you choose to opt out and proceed individually with a legal action, you will not be part of the class and will be responsible retain counsel at your own expense. However, class members who do not opt out of the proceeding cannot advance any claims individually against BMO NBI in respect of the allegations advanced in this class proceeding.

Class members who do not opt out will be bound by any decision of a judge in the class proceeding and/or by any settlement reached and approved by the Court.

To opt out of the action, you need to fill out the attached Opt-Out Form (which can also be obtained at www.kmlaw.ca/NesbittClassAction) and you must mail your Opt-Out Form by no later than **June 29, 2015** to: **BMO Nesbitt Burns Overtime Class Action**, 3-505, 133 Weber Street North, Waterloo, Ontario, N2J 3G9.

You should contact Class Counsel or your own lawyer to discuss whether it is advisable for you to opt out under the circumstances. You may reach Class Counsel as follows:

toll-free telephone: 1-866-777-6308
email: NesbittClassAction@kmlaw.ca



8. What if I still work at BMO Nesbitt Burns?

If you still work at BMO Nesbitt Burns you can still participate in this case.

In Ontario an employer is not allowed to take action against a current employee for legal actions related to their potential employment rights.

For further information about your employment you can contact Robert Dunnell, Senior Employee Relations Business Partner, 416-643-1123, for employment related information.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

The Court has appointed Koskie Minsky, LLP and Mr. Eli Karp to represent you and other Class Members as “Class Counsel.” You will not be charged for these lawyers at this time. Class Counsel will only receive compensation if they are successful in this case for the Class Members. The court must approve all fees paid to Class Counsel.

GETTING MORE INFORMATION

10. How do I get more information?

You can get more information about the class action from Class Counsel at www.kmlaw.ca/NesbittClassAction, by calling toll free **1-866-777-6308**, or writing to: **BMO Nesbitt Burns Overtime Class Action, Koskie Minsky LLP, 20 Queen Street West, Suite 900, M5H 3R3** or by email at NesbittClassAction@kmlaw.ca.