



Court File No. CV-20-00643720-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

THURSDAY, THE 29TH

JUSTICE EDWARD BELOBABA

)

)

DAY OF DECEMBER, 2022

BETWEEN:

LEIGH CUNNINGHAM

Plaintiff

- and -

RBC DOMINION SECURITIES LIMITED / RBC DOMINION VALEURS MOBILIERES
LIMITEE and RBC DOMINION SECURITIES INC. / RBC DOMINION VALEURS
MOBILIERES INC.

Defendants

Proceeding Under the Class Proceedings Act, 1992

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this action as a class proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "CPA") was heard by video attendance on June 20, September 28, October 27 and November 16, 2022.

ON READING all materials filed by the Plaintiff and the Defendants, and on hearing the submissions of the lawyers for the Plaintiff and the Defendants:

AND WHEREAS JUSTICE BELOBABA died on May 4, 2023 before this Order could be issued and entered.

AND WHEREAS rule 59.04 (14) of the *Rules of Civil Procedure* provides that if a judge ceases to hold office or becomes incapacitated after making an order but before it is signed, another judge may settle and sign it.

1. THIS COURT ORDERS that this action is certified as a class proceeding pursuant to s. 5 of the CPA with respect to the claims and causes of action of breach of contract, negligence, breach of fiduciary duty and unjust enrichment relating to vacation and public holiday pay as set out in the Amended Statement of Claim.

2. THIS COURT ORDERS that the Class is defined as:

All former and current employees of either Defendant who are or were employed as an Investment Advisor, wealth advisor, portfolio manager, or similar or predecessor title, whose job responsibilities include (or included) providing clients with investment advice and/or growing the Defendants' client base and include those who provide (or provided) assistance to those who provide (or provided) such advice, including Associates and Assistants, and who were employed in a Province or Territory of Canada (other than British Columbia or Alberta):

- (i) in Québec from March 15, 2017 to the Notice Date;
- (ii) in Nunavut, Northwest Territories, and Prince Edward Island from July 9, 2014 to the Notice Date;
- (iii) in Yukon from March 27, 2014 to the Notice Date;
- (iv) in Saskatchewan, Ontario, New Brunswick, and Nova Scotia from July 9, 2005 to the Notice Date; and,
- (v) in Manitoba and Newfoundland & Labrador from July 9, 1990 to the Notice Date,

and who are (or were) remunerated either fully or partially based on commissions.

3. THIS COURT ORDERS that Leigh Cunningham is approved as the Representative Plaintiff for the Class.
4. THIS COURT ORDERS that Cavalluzzo LLP, Roy O'Connor LLP and Whitten & Lublin PC are appointed as lawyers for the Class.
5. THIS COURT ORDERS that the following proposed common issue is certified:
 1. Are the Defendants liable in contract, negligence, breach of fiduciary duty, and, or unjust enrichment to take reasonable steps to ensure that the Class members were properly compensated with vacation and public holiday pay, and to pay vacation and public holiday pay that was owing to the class members?
6. THIS COURT ORDERS that the content and the plan for distribution of the Notice of Certification, and the costs of distribution of the Notice of Certification, will be considered and decided upon by the Court by way of a separate motion.
7. THIS COURT ORDERS that, as agreed by the Parties, the Defendants will pay the Plaintiff the all-inclusive amount of \$300,000.00 in respect of the Plaintiff's costs and disbursements for this motion.

This Order bears interest at the rate of 4% per annum.

Perrell, J

CUNNINGHAM
Plaintiff

-and-

RBC DOMINION SECURITIES LIMITED et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER
(CERTIFICATION)

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