

Common Ground? Class Action Updates

Plaintiffs' Motion to Discontinue Proposed Overtime Class Action Granted

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This post relates to an important procedural aspect of the class proceedings regime.

In [*Somani v. International Financial Group Ltd.*](#), the Ontario Superior Court of Justice granted the plaintiffs' motion to discontinue a proposed class action related to allegedly unpaid overtime, vacation, public holiday and premium pay.

After commencing the claim, issues arose with the proposed representative plaintiffs such that none were suited to move the litigation forward. Class counsel determined that the proposed class action as presently constituted was unlikely to be certified and were unable to find a new representative plaintiff. Accordingly, the plaintiffs sought to discontinue the action without prejudice to alternative representative plaintiffs commencing litigation in the best interest of the putative class.

Pursuant to section 29(1) of the Ontario *Class Proceedings Act*, a proposed class action may only be discontinued or abandoned with approval of the Court.

Justice Morgan, writing for the Court, concluded that neither party nor the putative class would be prejudiced by the discontinuance. Accordingly, the Court granted the plaintiffs' motion to discontinue the action without costs and without prejudice to its being reconstituted with new plaintiffs.