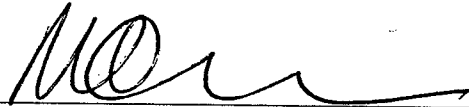


**TAB C**

This is Exhibit C referred to in the  
Affidavit of Graham Lowe affirmed  
before me, this 25 day of January,  
2011.



\_\_\_\_\_  
A Commissioner for taking affidavits, etc.

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# **Unpaid Overtime in Canada's Retail Investment Sector**

**REPORT TO JUROVIESKY LLP**

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**January 24, 2011**

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## EXECUTIVE SUMMARY

- This report documents unpaid overtime in the retail investment sector, where investment advisors are employed.
- The most accurate and ongoing source in Canada of statistical information on work hours, including overtime, is the Labour Force Survey (LFS).
- The North American Industry Classification System (NAICS) industry codes 5221 and 523 include retail investment services, where investment advisors are employed.
- There is a consistent pattern in NAICS 5221 and 523 of overtime being reported by non-managerial employees and most of this overtime is not compensated at all.
- Between 2006 and 2009, approximately 15% of all non-managerial employees in NAICS 5221 reported working overtime for which they received no compensation whatsoever.
- In NAICS 523, during 2006 to 2009, between 16% and 20% of all non-managerial employees reported working overtime for which they received no compensation whatsoever.
- In the NAICS that include retail investment, most overtime worked by non-managerial employees is uncompensated. Specifically, in NAICS 5221, between 70% and 75% of all overtime between 2006 and 2009 is unpaid. And in NAICS 523, unpaid overtime accounts for between 71% and 86% of all overtime reported in the same period.
- Average weekly unpaid overtime hours reported by non-managerial employees range between 6.2 and 6.6 in NAICS 5221, and between 7.2 and 9 hours weekly in NAICS 523, during the 2006 to 2009 period.
- Similar unpaid overtime patterns are observed for non-managerial employees in NAICS 5221 over a ten-year period, 2000 to 2009.
- Data from the Survey of Employment, Earnings and Hours confirms the small amount of overtime pay provided by employers in NAICS that include retail investment, where investment advisors are employed.

## OBJECTIVES

This report examines unpaid overtime in the retail investment sector in Canada, where investment advisors are employed. The report has three specific objectives:

1. Provide the most accurate information publicly available in Canada on the incidence and average duration of unpaid overtime in retail investment.
2. Document unpaid overtime trends in retail investment since 2000.
3. Present the most recent information publicly available on overtime earnings paid by employers in retail investment.

Statistics Canada data are used to address these objectives.

## METHODOLOGY

### Identifying the Retail Investment Sector

The North American Industry Classification System (NAICS) is used by Statistics Canada to classify industries in all of its labour market and economic surveys.<sup>1</sup> The NAICS is accepted by labour market researchers, economists, and other experts as the standard system for industrial classification in Canada.

The NAICS provides three levels of detail. The financial services 2-digit NAICS code is 52 (Finance and Insurance). This is the most aggregated measure of the financial services sector. The 2-digit NAICS codes produce a 20-category industrial classification, which is suitable for many reporting purposes but too broad to differentiate among types of financial services. At a more detailed level, the 3-digit NAICS code 522, Credit Intermediation and Related Activities, is defined as follows:

- This subsector comprises establishments primarily engaged in lending funds raised from depositors or by issuing debt, and establishments that facilitate the lending of funds or issuance of credit by engaging in such activities as mortgage and loan brokerage, clearinghouse and reserve services, and cheque-cashing services.

However, NAICS 522 is still too broad for our purposes. We can isolate the chartered banks by using the most detailed classification available for labour market data: the 4-digit NAICS code 5221, Depository Credit Intermediation. NAICS code 5221 includes personal, commercial, corporate, and institutional banking (chartered banks) as well as local credit unions. It is defined as follows:

- This industry group comprises establishments primarily engaged in accepting deposits and lending funds. Deposits are the principal source of funds loaned.

If investment advisors are directly employed by a bank they would be included in 5221. However, some investment advisors work in specialized retail investment businesses that are separate operating divisions of chartered banks. In such corporate arrangements, cross-marketing of financial products and services is common. For example, bank-owned brokerages also offer their clients banking services, just the banks' retail customers are offered some of the investment products available through bank-owned brokerages.

Firms specializing in retail investment services are included in NAICS 3-digit code 523, Securities, Commodity Contracts, and Other Financial Investment and Related Activities. NAICS 523 is defined as follows:

- This subsector comprises establishments primarily engaged in putting capital at risk in the process of underwriting securities issues or in making markets for securities and commodities; acting as intermediaries between buyers and sellers of securities; providing securities and commodity exchange services (furnishing space, marketplaces, and often facilities for the purpose of facilitating the buying and selling of stocks, stock options, bonds or commodity contracts); facilitating the marketing of financial contracts; asset management (managing portfolios of securities); and providing investment advice, trust, fiduciary, custody and other investment services.

This report focuses on NAICS 5221 and 523, arguing that these two industry categories together provide accurate evidence of unpaid overtime worked by employees in the retail investment sector.

## Data Sources

Two Statistics Canada surveys provided the information presented in this report. The major data source is the Labour Force Survey (LFS) for the 2000 to 2009 period. The second survey is the Survey of Employment, Earnings and Hours (SEEH) for the 2005 to 2009 period. Both surveys report annual averages for the relevant NAICS codes.

### Labour Force Survey

The most accurate and ongoing source in Canada of statistical information on work hours, including overtime, is the Labour Force Survey (LFS).<sup>2</sup> The LFS is conducted monthly by Statistics Canada. It provides key labour market indicators that are extensively used by economists, business planners, policy-makers and other researchers and decision-makers. In Canada, the LFS is widely considered to be the most reliable ongoing source of labour market information. The LFS uses a sample containing approximately 54,000 households and collects information on all civilians 15 years of age and older who use the household as their usual place of residence. The LFS sample is a rotating panel design: households stay in the sample

for six consecutive months, and each month about 17% are rotated out and replaced by new households.

The LFS asks respondents to report extra hours worked during the reference week (i.e., the week prior to the survey, which is the week of the month that includes the 15<sup>th</sup> day), above usual work hours reported. Respondents are then asked to identify paid overtime and extra hours without pay (unpaid overtime). The *Guide to the Labour Force Survey*<sup>3</sup> uses these definitions:

- *Extra hours worked*: the number of hours worked during the reference week in excess of the usual hours reported in main job. It includes all extra hours, whether the work was done at a premium or regular wage rate, or without pay. Since January 1997, extra hours are collected from employees only, in the form of 2 questions: number of paid overtime hours worked in reference week, and number of extra hours worked without pay.
- *Paid overtime*: includes any hours worked during the reference week over and above standard or scheduled paid hours, for overtime pay or compensation (including time off in lieu).
- *Extra hours without pay (unpaid overtime)*: refers to time spent directly on work or work-related activities over and above scheduled paid hours. These must be extra hours worked for which the respondent received no additional compensation.

The LFS questions on usual hours or actual hours worked in the reference week in a person's main job begin with "Excluding overtime,..."<sup>4</sup> Two follow-up questions ask about paid overtime and extra hours without pay during the reference week. These two follow-up questions are asked of employees only, not the self-employed or anyone who was unemployed at the time of the survey. These two questions on overtime are the focus of the analysis provided in this report. All LFS data reported below were obtained as custom tabulations from Statistics Canada.

### **Survey of Employment, Earnings and Hours**

The Survey of Employment, Earnings and Hours (SEEH) is Canada's only source of detailed information on month-to-month payroll and earnings trends at industrial, provincial, and territorial levels. SEEH is a census, therefore no sampling is required. It identifies employers using the Business Registry and Canada Revenue Agency's Business Number program. SEEH provides the principal input to labour income estimates, is a proxy output measure for about 15% of Real and Gross Domestic Product, is used by the private sector for wage rate determination and by Canada Revenue Agency to revise the maximum pensionable earnings and retirement savings plan contribution limits.

The SEEH questionnaire asks for information about overtime payments.<sup>5</sup> The following payment overtime definition is provided to respondents:

- These are payments for all hours worked in excess of the standard workday or workweek in the last pay period of the month. Overtime pay represents the payment due after rate factors have been applied.

In this report, a custom tabulation from the SEEH is used to provide information about weekly earnings in the banking sector.

## Data Quality

Statistics Canada is the national statistical agency. It has a legislated mandate to use the highest standards possible to ensure the quality of the data it reports to the public. Statistics Canada therefore reports coefficients of variation (CV) on the counts from all sample surveys to determine the accuracy of population estimates from these counts. The CV is a percentage that expresses the size of a standard error as a proportion of the estimate to which it is related. This measure tells us how far out the estimated value could be from the actual value for the target population. For example, a CV of 10% indicates that the standard error is +/- 10% of the estimate.

Statistics Canada either reports with caution or suppresses CVs greater than 16.5% (the closer the CV is to zero, the more accurate the population estimate). It is Statistics Canada's policy that CVs equal to or less than 16.5% have no release restrictions because the data are of sufficient accuracy. The CV can be interpreted in terms of probability. For example, if a population estimate is 100,000 with a CV of 7%, the true population value will lie between 93,000 and 107,000 with 68% certainty and between 86,000 and 114,000 with 95% certainty.<sup>6</sup>

Table 1 reports CVs for NAICS code 5221 for national-level 2007 LFS estimates of key measures examined in this report (CVs for other years reported are almost identical).

<b>Table 1: Coefficients of variation on NAICS code 5221, Labour Force Survey, Canada, annual averages for 2007</b>	
<i>Labour Force Survey measure</i>	<b>CV</b>
Total employees at work	2.68
Employees working overtime	4.55
Worked overtime unpaid	5.02
Worked overtime paid	7.68
Worked overtime paid and unpaid	4.55

## OVERTIME PATTERNS AND TRENDS

This section presents information on unpaid overtime from the LFS. Because the LFS is a monthly survey, annual averages are reported here. This is accepted practice by labour market researchers when documenting patterns and trends.

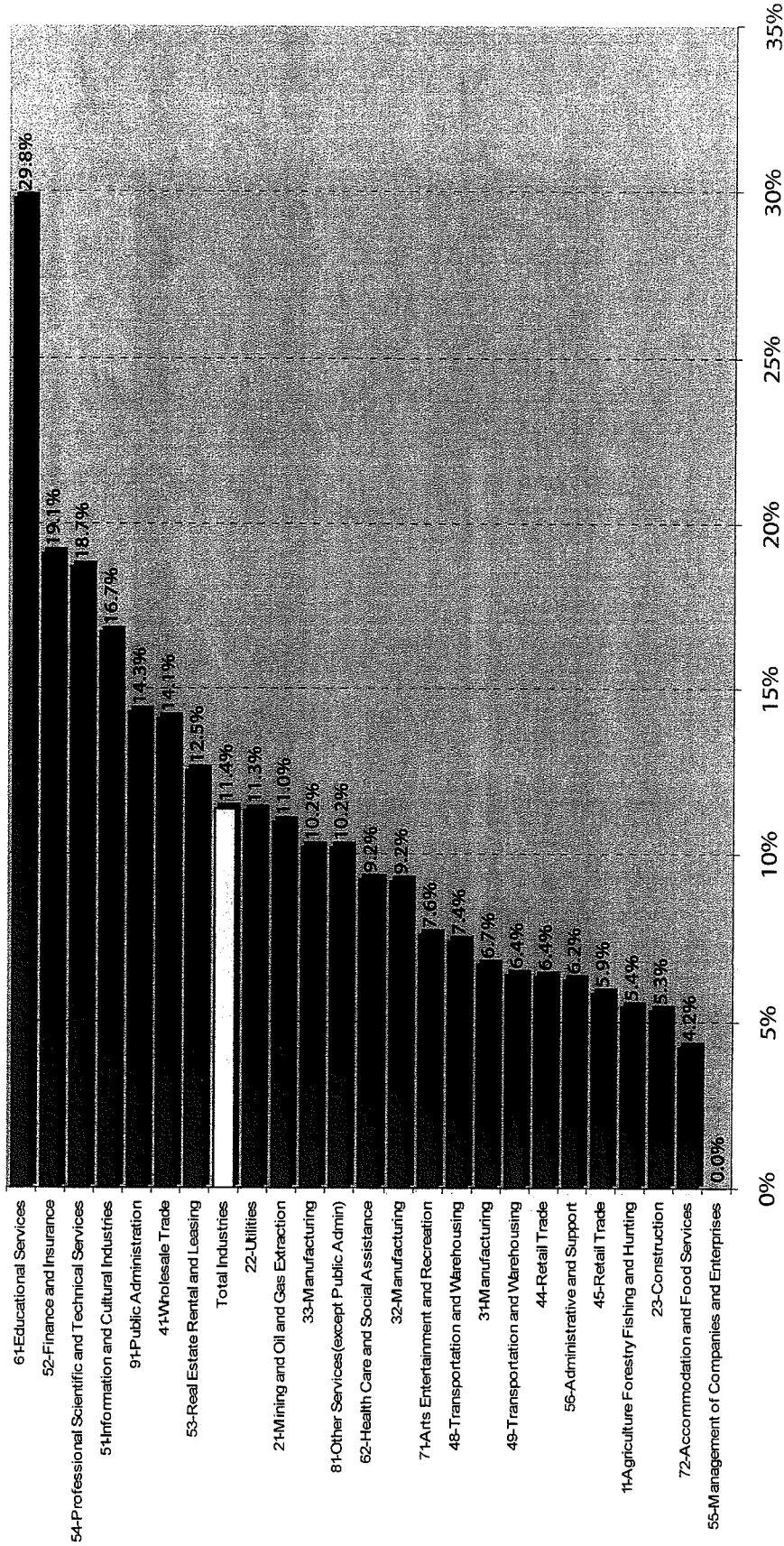
### Overtime in 2-digit NAICS

To set the stage for a detailed analysis of overtime in the retail investment sector, we begin with 2-digit NAICS codes to report the incidence and average duration of unpaid overtime (see Figures 1 and 2) in the employee population nationally.

Looking at Figure 1, note that in 2009, Finance and Insurance (the 2-digit NAICS code that includes retail investment) had the second-highest incidence of working overtime for which no compensation at all was received, at 19.1%. (The numbers preceding the industry labels in figures and tables are the NAICS codes.) The highest incidence of unpaid overtime is in Educational Services (29.8%), while the average for all industries is 11.4%.

Figure 2 documents average weekly hours of overtime for those employees who reported that they received no compensation at all for the overtime they worked in 2009. This ranges from a high of just over 10 hours in Educational Services to zero in Management of Companies and Enterprises, with a national average of 8.4 hours. Employees who worked overtime for no compensation at all in Finance and Insurance did so for approximately one hour less each week (7.3 hours) than the national average.

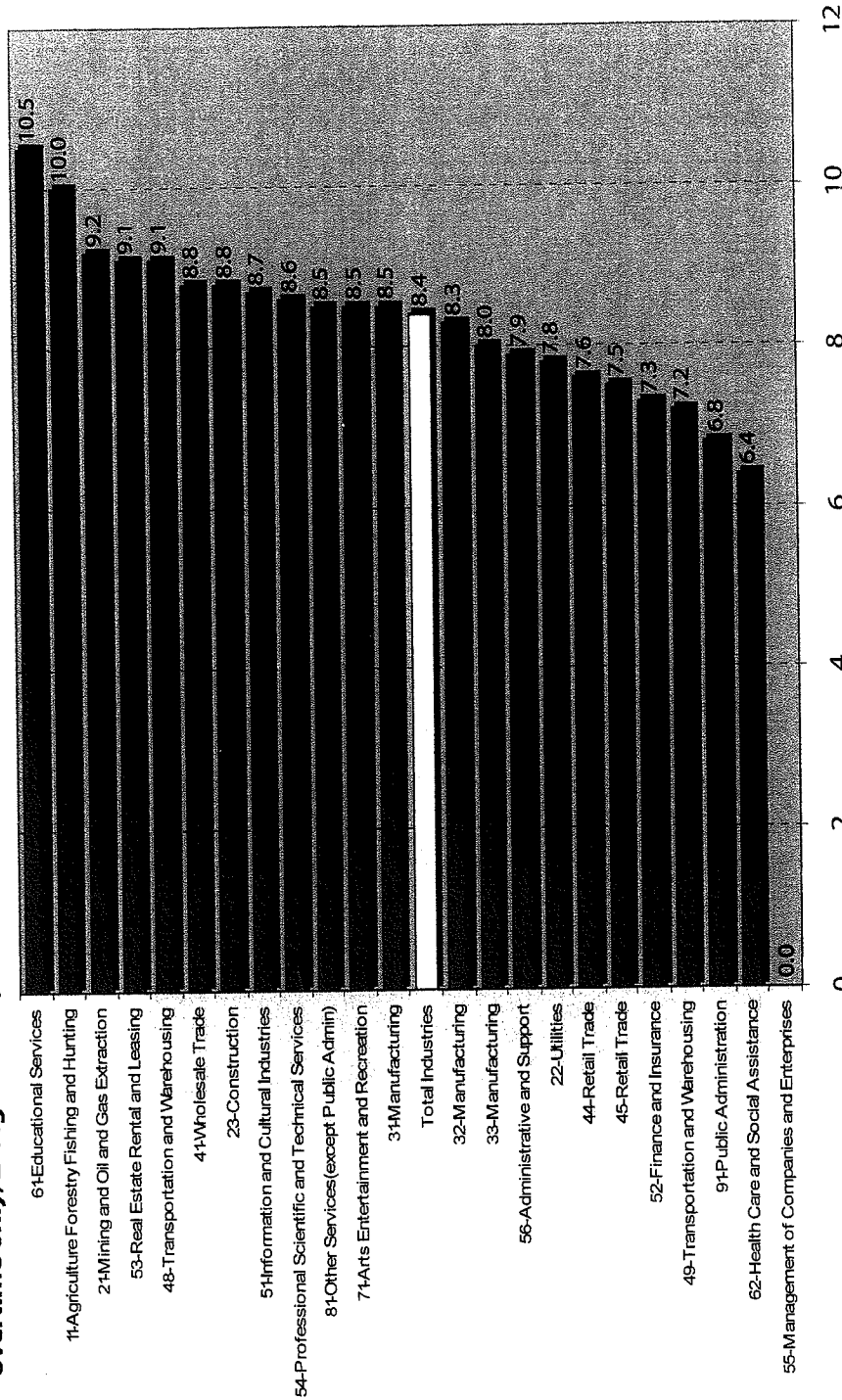
**Figure 1: Percentage of employees working unpaid overtime, 2-digit NAICS, Canada, 2009**



Percent working overtime for which they received no compensation at all

Source: Statistics Canada, Labour Force Survey

**Figure 2: Average number of weekly unpaid overtime hours for employees who worked unpaid overtime only, 2-digit NAICS, Canada, 2009**



**Average weekly hours of overtime for which no compensation at all was received**  
 Source: Statistics Canada, Labour Force Survey

<b>Table 2: Number of employees working overtime and incidence of overtime work by 2-, 3-, and 4-digit NAICS codes for the financial sector, Canada, 2006</b>										
<b>NAICS code</b>	<b>Total employees</b>	<b>Number of employees working any overtime</b>	<b>Percent of employees working any overtime</b>	<b>Number of employees working unpaid overtime only</b>	<b>Percent of employees working unpaid overtime only</b>	<b>Number of employees working paid overtime only</b>	<b>Percent of employees working paid overtime only</b>	<b>Number of employees working both paid and unpaid overtime</b>	<b>Percent of employees working both paid and unpaid overtime</b>	<b>Percent of employees working both paid and unpaid overtime</b>
Total Industries	12,848,200	2,887,600	22.5%	1,473,500	11.5%	1,315,200	10.2%	98,900	0.8%	0.8%
52-Finance and Insurance	617,400	157,700	25.5%	118,800	19.2%	33,800	5.5%	5,100	0.8%	0.8%
522-Credit Intermediation and Related Activities	345,000	89,700	26.0%	67,700	19.6%	19,100	5.5%	2,900	0.8%	0.8%
5221-Depository Credit Intermediation	306,600	79,900	26.1%	62,200	20.3%	15,000	4.9%	2,600	0.9%	0.9%
523-Securities and Commodity Activities	73,300	19,300	26.3%	16,000	21.8%	3,100	4.2%	0	0%	0%

Source: Statistics Canada, Labour Force Survey

<b>Table 3: Number of employees working overtime and incidence of overtime work by 2-, 3-, and 4-digit NAICS codes for the financial sector, Canada, 2009</b>									
<b>NAICS code</b>	<b>Total employees</b>	<b>Number of employees working any overtime</b>	<b>Percent of employees working any overtime</b>	<b>Number of employees working unpaid overtime only</b>	<b>Percent of employees working unpaid overtime only</b>	<b>Number of employees working paid overtime only</b>	<b>Percent of employees working paid overtime only</b>	<b>Number of employees working both paid and unpaid overtime</b>	<b>Percent of employees working both paid and unpaid overtime</b>
Total Industries	12,930,100	2,670,400	20.7%	1,471,200	11.4%	1,111,600	8.6%	87,600	0.7%
52-Finance and Insurance	637,200	150,700	23.7%	121,700	19.1%	25,900	4.1%	3,200	0.5%
522-Credit Intermediation and Related Activities	350,300	80,700	23.0%	64,900	18.5%	14,400	4.1%	0	0%
5221-Depository Credit Intermediation	304,300	69,800	22.9%	56,000	18.4%	12,600	4.1%	0	0%
523-Securities and Commodity Activities	75,200	18,700	24.9%	16,600	22.1%	1,900	2.5%	0	0%

Source: Statistics Canada, Labour Force Survey

<b>Table 4: Average weekly overtime hours, by 2-, 3-, and 4-digit NAICS codes for the financial sector, Canada, 2006 and 2009</b>				
<b>NAICS code</b>	<b>Average overtime hours per week of overtime workers</b>	<b>Average overtime hours per week of employees working unpaid overtime only</b>	<b>Average overtime hours per week of employees working paid overtime only</b>	<b>Average overtime hours per week of employees working both paid and unpaid overtime</b>
Total Industries	8.5	8.5	8.2	12.0
52-Finance and Insurance	7.4	7.8	5.7	10.0
522-Credit Intermediation and Related Activities	6.9	7.3	5.1	9.8
5221-Depository Credit Intermediation	6.9	7.3	5.2	8.7
523-Securities and Commodity Activities	9.4	9.7	7.8	0.0
Total Industries	8.4	8.4	8.1	11.9
52-Finance and Insurance	7.1	7.3	5.5	11.9
522-Credit Intermediation and Related Activities	6.9	7.3	4.9	0.0
5221-Depository Credit Intermediation	6.8	7.2	4.9	0.0
523-Securities and Commodity Activities	8.7	8.9	7.0	0.0

Source: Statistics Canada, Labour Force Survey

### Overtime in NAICS 5221 and 523

Tables 2 and 3, above, present details on employment and overtime for 2-, 3-, and 4-digit NAICS codes that include retail investment, where investment advisors are employed. Tables 2 and 3 report two years – 2006 and 2009 – to demonstrate that there is only minor year-to-year fluctuation in overtime patterns. Codes 5221 and 523 are the most relevant for our purposes. However, we should note that the proportion of employees reporting overtime is very similar at the more aggregated two-digit NAICS code 52, which covers the entire financial sector of the economy.

Focusing on NAICS code 5221, in 2006 and 2009, approximately one in four employees (26.1% in 2006, 22.9% in 2009) in this sector reported working any overtime. Most reported that they were not paid at all for their overtime work. In 2006 and 2009, respectively, 20.3% and 18.4% of all employees in NAICS 5221 worked overtime for which they were not compensated and worked no compensated overtime. This is substantially higher than the rate for all industries (11.5% and 11.4% in 2006 and 2009, respectively). Generally, overtime patterns in NAICS 5221 differ from the national trends, considering that in 2006 and 2009, slightly less than 5% of employees in code 5221 reported being compensated for all of their overtime hours, compared with about 10% nationally.

Turning to NAICS code 523, we can make three main observations based on Tables 2 and 3. First, in 2006, the incidence of total, unpaid or paid overtime in NAICS 523 mirrors that in NAICS 5221. Second, there is a slight decline in overall overtime reported between 2006 and 2009 in both NAICS 5221 and 523. However, there is a slight rise in the incidence of unpaid overtime in NAICS 523 over the same period. Third, in both 2006 and 2009 there is a slightly higher incidence of unpaid overtime in NAICS 523, compared with NAICS 5221. This difference is somewhat greater in 2009.

Table 4, above, presents detailed information on average overtime hours in 2006 and 2009 for 2-, 3-, and 4-digit NAICS codes that include retail investment. Again, we will focus on NAICS codes 5221 and 523. In NAICS 5221, the average weekly overtime hours for employees working overtime for which they received no compensation whatsoever is 7.3 in 2006 and 7.2 in 2009, compared to 5.2 and 4.9 hours reported by employees who were paid for all of their overtime. This differs from the national pattern in each year examined. Average weekly hours of paid and unpaid overtime are almost identical, at just over 8 hours.

Also evident in Table 4 is that employees in NAICS 523 report a higher average number of unpaid overtime hours, compared with employees in 5221. Average unpaid overtime hours for employees in NAICS 523 were 9.7 in 2006 and 8.9 in 2009. Similarly, those employees reporting only paid overtime worked a higher average number of hours weekly, compared to employees in NAICS 5221. Interestingly, in both 2006 and 2009 there are no employees in NAICS 523 who combined paid and unpaid overtime, suggesting that distinct employee groups are involved in these two overtime practices within this particular industrial sector.

## Overtime among non-managerial employees

The data reported so far cover all employees, including some who have managerial responsibilities and therefore would be excluded from work hour provisions in Ontario's *Employment Standards Act, 2000*. To narrow the focus, Table 6 reports overtime among only non-managerial employees in NAICS codes 5221 and 523.

Statistics Canada uses the National Occupational Classification for Statistics (NOC-S) to classify occupational information from the Labour Force Survey and other statistical surveys.<sup>7</sup> The NOC-S provides a systematic way to identify and categorize the full range of occupational activity in Canada. The basic principle of classification is the kind of work performed (i.e., usual tasks, duties, and responsibilities). Among the factors taken into consideration are the degree of responsibility and complexity of work.

Similar to the NAICS, the NOC-S provides several levels of aggregation. The highest level of aggregation, Broad Occupational Categories, comprises the following:

- A – Management Occupations
- B – Business, Finance and Administrative Occupations
- C – Natural and Applied Sciences and Related Occupations
- D – Health Occupations
- E – Occupations in Social Science, Education, Government Service and Religion
- F – Occupations in Art, Culture, Recreation and Sport
- G – Sales and Service Occupations
- H – Trades, Transport and Equipment Operators and Related Occupations
- I – Occupations Unique to Primary Industry
- J – Occupations Unique to Processing, Manufacturing and Utilities

Table 6, below, excludes all employees in Management Occupations (Broad Occupational Category A), which is defined as follows:

- Occupations in this broad occupational category are primarily concerned with carrying out the functions of management by planning, organizing, co-ordinating, directing, controlling, staffing, and formulating, implementing or enforcing policy, either directly or through other levels of management. Supervising is not considered to be a management function.

Within Broad Occupational Category B are some supervisory occupations. At a more detailed level of aggregation, the supervisory occupational group most likely to be found in NAICS codes 5221 and 523 is "B412 Supervisors, Finance and Insurance Clerks," which is described as follows:

- Supervisors in this unit group supervise and co-ordinate the activities of workers in the following unit groups: Accounting and Related Clerks (B531), Payroll Clerks (B532), Customer Service Representatives - Financial Services (B533), Banking, Insurance and Other Financial Clerks (B534) and Collectors (B535). They are

employed by banks and other financial institutions, insurance companies, and by other establishments throughout the private and public sectors.

### Overtime trends among non-managerial employees, 2006-2009

We have examined relevant data for two years – 2006 and 2009 – and found some minor changes, as well as a few notable differences between the overtime patterns in NAICS 5221 and 523. At this point, it is useful to document year-over-year overtime patterns for retail investment (NAICS codes 5221 and 523). In other words, is there a consistent trend among employers in these sectors regarding unpaid overtime? This question is answered in Tables 5, 6 and 7 below.

By comparing the “Total Employees” columns in Tables 2 and 3 with the same column in Table 5, we see that approximately 85% of all employees in NAICS 5221 are non-managers in 2006 and 2009. In NAICS 523, these numbers are 89% and 85%, respectively.

The exclusion of managers in Table 5 reduces the rate of unpaid overtime somewhat (compared with Tables 2 and 3, which include all employees). However, in NAICS 5221 in each of the four years being examined, at least 15% of all non-managerial employees reported working unpaid overtime. In NAICS 523, this rate tends to be higher, ranging between 15.7% and 19.8%. Adding the years 2007 and 2008 to what we already have documented for 2006 and 2009 and excluding managers serves to confirm that unpaid overtime is a consistent practice for employers in both NAICS 5221 and 523.

In NAICS 5221, approximately 15% of all non-managerial employees reported working unpaid overtime only in these four years. In NAICS 523, this ranged from 15.7% to almost 20% of all non-managerial employees.

In both sectors, most overtime worked by non-managerial employees is uncompensated. Approximately 70% to 75% of all overtime worked by non-managerial employees in NAICS 5221 was unpaid, compared with a range of 71% to 86% in NAICS 523.

Note that there is more year-to-year fluctuation in the incidence of unpaid overtime and unpaid overtime as a share of all overtime worked in NAICS 523, compared with NAICS 5221. However, both measures suggest that that unpaid overtime is somewhat more pervasive in the former sector than in the latter.

Looking at average weekly unpaid overtime hours reported by non-managerial employees, these range between 6.2 and 6.6 in NAICS 5221 during the period under investigation, to between 7.2 and 9 in NAICS 523.

Table 6 takes this analysis one step further. This table excludes not only all the managers (NOC-S broad category A), but also supervisors of finance and insurance clerks (NOC-S detailed category B412). It is important to point out that B412 includes relatively few

employees. During the 2006 to 2009 period, fewer than 5% of employees in NAICS 5221 and less than 3% of those in NAICS 523 were supervisors of finance and insurance clerks.

Further comparing the results in Tables 5 and 6, we also can conclude that the incidence and average hours of unpaid overtime change very little when supervisors in occupational code B412 (Supervisors, Finance and Insurance Clerks) are excluded from the broader group of non-managerial employees. Changes in unpaid overtime incidence in both NAICS 5221 and 523 when B412 employees are excluded amount to less than half a percentage point. The biggest difference is in NAICS 5221 during 2009, when the exclusion of B412 brings the unpaid overtime rate down to 14.5% of all employees from 15.2% (still less than a percentage point change). Similarly, the exclusion of B412 in Table 6 overtime calculations has virtually no impact on the percent of all overtime that is unpaid. Finally, in both sectors, the exclusion of B412 either does not change average unpaid overtime hours or results in a very small reduction (at most, 0.2 hours weekly).

### **Overtime trends among non-managerial employees, 2000-2009**

Our trend analysis has focused on the years between 2006 and 2009. It is important to determine if the trends observed during this four year period reflect the entire decade, going back to 2000. Table 7 reviews trends in NAICS 5221 for non-managerial employees over the ten years from 2000 to 2009.

Between 11.7% and 16.8% of non-managers in NAICS 5221 worked overtime for which they received no compensation at all during the 2000 to 2009 period. There was a jump within NAICS 5221 between 2000 (11.7%) and 2001 (14.2%) in the percentage of non-managerial employees reporting overtime work for which they received no compensation at all. The peak year was 2005 (16.8%); the incidence between 2006 and 2009 hovered around 15%.

Most overtime worked by non-managerial employees in NAICS code 5221 is unpaid. During the 2000 to 2009 period, this ranged between 62.2% and 74.7% of all non-managerial employees who reported working overtime only worked unpaid overtime. The average weekly number of unpaid overtime hours worked among non-managerial employees in NAICS code 5221 during this ten-year period is stable, at about 6.

### **Summary of unpaid overtime patterns and trends**

To summarize, there is a consistent pattern in NAICS 5221 and 523 of overtime being reported by non-managerial employees and most of this overtime was not compensated at all.

Approximately 85% or more of all employees in NAICS 5221 and 523 are non-managers in 2006 and 2009. Between 2006 and 2009, approximately 15% of all non-managerial

employees in NAICS 5221 reported working overtime for which they received no compensation whatsoever. In NAICS 523, during the same period, between 16% and 20% of all non-managerial employees reported working overtime for which they received no compensation whatsoever.

In those NAICS that include retail investment, where investment advisors are employed, most overtime worked is uncompensated. Specifically, in NAICS 5221, between 70% and 75% of all overtime between 2006 and 2009 is unpaid. And in NAICS 523, unpaid overtime accounts for between 71% and 86% of all overtime reported in the same period. Average unpaid overtime hours weekly range between 6.2 and 6.6 in NAICS 5221 during the 2006 to 2009 period, to between 7.2 and 9 hours weekly in NAICS 523.

When interpreting the LFS data on overtime, it is important to bear in mind that it is reporting the percentage of employees who worked overtime for no compensation at all during the reference week of the month, averaged over the calendar year. To be clear, this is a monthly snapshot of overtime averaged over a 12-month period.

The LFS does not report the overall extent of overtime in the workforce during a year; that is, the percentage of all employees who worked overtime without receiving any compensation at any time during the past year. It is very likely that the percentage of employees who worked any overtime that was not in any way compensated during a 12-month period is higher than the average monthly incidence reported above. Logically, it cannot be any lower. The LFS sample is replenished twice over a 12-month period. Given this sample design feature, more individuals than counted in a specific month's unpaid overtime incidence will have worked overtime without being compensated at some point during any given year.

<b>Table 5: Incidence of unpaid overtime work and average weekly unpaid overtime hours, excluding managers<sup>1</sup> in all industries and NAICS codes 5221 and 523, Canada, 2006 to 2009</b>						
<b>NAICS code and year</b>	<b>Total Employees</b>	<b>Number of employees working any overtime</b>	<b>Number of employees working unpaid overtime only</b>	<b>Percent of employees working unpaid overtime</b>	<b>Percent of employees working overtime who only work unpaid overtime</b>	<b>Average unpaid overtime hours per week</b>
<b>2006</b>						
Total Industries	11,913,000	2,489,800	1,115,300	9.4%	44.8%	8.0
5221-Depository Credit Intermediation	259,900	57,300	40,500	15.6%	70.7%	6.2
523-Securities and Commodities	65,400	15,300	12,300	18.8%	80.4%	9.0
<b>2007</b>						
Total Industries	12,099,200	2,549,000	1,134,100	9.4%	44.5%	8.1
5221-Depository Credit Intermediation	254,800	53,300	38,200	15.0%	71.7%	6.2
523-Securities and Commodities	64,200	14,200	10,100	15.7%	71.1%	8.2
<b>2008</b>						
Total Industries	12,299,900	2,542,100	1,154,000	9.4%	45.4%	7.9
5221-Depository Credit Intermediation	265,400	59,000	41,200	15.5%	69.8%	6.5
523-Securities and Commodities	63,200	15,400	11,400	18.0%	74.0%	7.2
<b>2009</b>						
Total Industries	11,990,200	2,312,100	1,149,300	9.6%	49.7%	8.0
5221-Depository Credit Intermediation	254,800	51,800	38,700	15.2%	74.7%	6.6
523-Securities and Commodities	64,000	14,700	12,700	19.8%	86.4%	8.8

Source: Statistics Canada, Labour Force Survey

1. Excludes National Occupational Classification for Statistics (NOC-5) broad occupational category A: "Management Occupations."

<b>Table 6: Incidence of unpaid overtime work and average weekly unpaid overtime hours, excluding managers<sup>1</sup> and supervisors<sup>2</sup>, in all industries and NAICS codes 5221 and 523, Canada, 2006 to 2009</b>						
<b>NAICS code and year</b>	<b>Total Employees</b>	<b>Number of employees working any overtime</b>	<b>Number of employees working unpaid overtime only</b>	<b>Percent of employees working unpaid overtime</b>	<b>Percent of employees working overtime only unpaid overtime</b>	<b>Average unpaid overtime hours per week</b>
<b>2006</b>						
Total Industries	11,877,200	2,477,600	1,106,400	9.3%	44.7%	8.0
5221-Depository Credit Intermediation	247,000	53,100	37,500	15.2%	70.6%	6.3
523-Securities and Commodities	63,600	14,600	11,700	18.4%	80.1%	9.2
<b>2007</b>						
Total Industries	12,069,400	2,540,000	1,127,800	9.3%	44.4%	8.1
5221-Depository Credit Intermediation	244,300	49,900	35,700	14.6%	71.5%	6.3
523-Securities and Commodities	62,300	14,000	9,900	15.9%	70.7%	8.2
<b>2008</b>						
Total Industries	12,264,500	2,529,800	1,145,300	9.3%	45.3%	7.9
5221-Depository Credit Intermediation	252,900	55,300	38,800	15.3%	70.2%	6.5
523-Securities and Commodities	62,300	15,000	11,100	17.8%	74.0%	7.2
<b>2009</b>						
Total Industries	11,954,400	2,300,200	1,139,400	9.5%	49.5%	8.0
5221-Depository Credit Intermediation	245,200	48,300	35,500	14.5%	73.5%	6.8
523-Securities and Commodities	62,300	14,400	12,400	19.9%	86.1%	8.8

Source: Statistics Canada, Labour Force Survey

1. Excludes National Occupational Classification for Statistics (NOC-S) broad occupational category A: "Management Occupations."
2. Excludes National Occupational Classification for Statistics (NOC-S) detailed occupational category B412: "Supervisors, [of] Finance and Insurance Clerks."

**Table 7: Incidence of unpaid overtime work and average weekly unpaid overtime hours, excluding managers<sup>1</sup> in NAICS code 5221, Canada, 2000 to 2009**

Year	Total Employees	Number of employees working any overtime	Number of employees working unpaid overtime only	Percent of employees working unpaid overtime	Percent of employees working overtime who only work unpaid overtime	Average unpaid overtime hours per week
2000	206,200	38,900	24,200	11.7%	62.2%	6.2
2001	226,100	47,200	32,000	14.2%	67.8%	5.9
2002	226,200	46,700	34,400	15.2%	73.7%	6.3
2003	222,200	46,500	34,500	15.5%	74.2%	6.4
2004	232,300	49,400	33,400	14.4%	67.6%	5.6
2005	238,400	55,400	40,000	16.8%	72.2%	6.1
2006	259,900	57,300	40,500	15.6%	70.7%	6.2
2007	254,800	53,300	38,200	15.0%	71.7%	6.2
2008	265,400	59,000	41,200	15.5%	69.8%	6.5
2009	254,800	51,800	38,700	15.2%	74.7%	6.6

Source: Statistics Canada, Labour Force Survey

1. Excludes National Occupational Classification for Statistics (NOC-S) broad occupational category A: "Management Occupations."

<b>Table 8: Average weekly earnings, excluding and including overtime, for all employees in NAICS codes 52, 522, 523 and 5221, Canada, 2005 - 2009</b>			
<b>NAICS Code and Year</b>	<b>Average weekly earnings (excluding overtime)</b>	<b>Average weekly earnings (including overtime)</b>	<b>Average overtime earnings</b>
<b>2005</b>			
52-Finance and Insurance	\$914.03	\$921.01	\$ 6.98
522-Credit Intermediation and Related Activities	\$849.89	\$857.99	\$ 8.10
5221-Depository Credit Intermediation	\$844.03	\$851.81	\$7.78
523-Securities and Commodities	\$1,168.74	\$1,172.72	\$3.98
<b>2006</b>			
52-Finance and Insurance	\$944.88	\$951.17	\$6.29
522-Credit Intermediation and Related Activities	\$870.15	\$874.75	\$4.60
5221-Depository Credit Intermediation	\$856.68	\$860.86	\$4.18
523-Securities and Commodities	\$1,241.57	\$1,248.18	\$6.61
<b>2007</b>			
52-Finance and Insurance	\$990.39	\$998.93	\$8.54
522-Credit Intermediation and Related Activities	\$922.52	\$928.55	\$6.03
5221-Depository Credit Intermediation	\$911.30	\$916.79	\$5.49
523-Securities and Commodities	\$1,293.34	\$1,303.03	\$9.69
<b>2008</b>			
52-Finance and Insurance	\$990.77	\$1,002.03	\$11.26
522-Credit Intermediation and Related Activities	\$926.31	\$933.56	\$7.25
5221-Depository Credit Intermediation	\$910.24	\$916.71	\$6.47
523-Securities and Commodities	\$1,252.55	\$1,257.80	\$5.25
<b>2009</b>			
52-Finance and Insurance	\$1,030.27	\$1,036.81	\$ 6.54
522-Credit Intermediation and Related Activities	\$945.36	\$948.37	\$3.01
5221-Depository Credit Intermediation	\$928.38	\$931.14	\$2.76
523-Securities and Commodities	\$1,244.84	\$1,254.69	\$ 9.85

Source: Statistics Canada, Survey of Employment, Earnings and Hours. Special tabulation.

## EARNINGS IN RETAIL INVESTMENT

Table 8, above, uses data from the Survey of Employment, Earnings and Hours (SEEH) to determine average earnings for all employees in NAICS codes 52, 522, 5221 and 523. By providing information on average earnings with and without overtime included, it is possible to confirm the small amount of overtime pay provided by employers in NAICS that include retail investment, where investment advisors are employed. In this regard, SEEH data corroborate the previous analysis based on LFS data.

Specifically, in 2005, employers in NAICS code 5221 paid average weekly earnings of \$844.03. When overtime pay is included, the average weekly earnings rise by \$7.78, to \$851.81. Note that this is monetary compensation only, so excludes time off in lieu that may have been received as compensation for overtime. This is the most overtime weekly pay received during the 2005 to 2009 period, with the least (\$2.76) being paid in 2009.

Weekly earnings are higher in NAICS 523, compared with 5221, but overtime payments also make up a relatively small percentage of overall weekly pay. Specifically, in 2005 employers in NAICS 523 paid average weekly overtime of \$3.98 on top of average weekly earnings of \$1168.74. During the 2005 to 2009 period, employers in NAICS 523 paid annual average overtime ranging between \$3.98 and \$9.85. Note also that there is no consistent upward or downward trend in either NAICS 5221 or 523 regarding the dollar amount paid for overtime during the 2005 to 2009 period. In both industry categories, there are year-to-year fluctuations.

If we use the findings from Table 5 on the incidence and duration of overtime for which no compensation at all was received, we would expect higher average weekly earnings if employees had been paid for all of this overtime. For example, based on a 37.5 hour workweek the average hourly wage of employees in NAICS 5221 was \$24.30 in 2007. We know that 19.1% of employees in this sector were not compensated at all for their overtime in 2007, putting in an average of 7 overtime hours weekly without any compensation. If these employees were fully compensated at straight time, this would raise the 2007 average weekly earnings by \$32.49, to \$943.79.<sup>8</sup> If overtime was compensated at time-and-a-half, average weekly earnings for the entire sector would rise by \$48.73. Either way, the result is considerably more than \$5.49.

<sup>1</sup> For details on the NAICS, see:

<http://www.statcan.ca/english/Subjects/Standard/naics/2002/naics02-menu.htm>

<sup>2</sup> All the data on which the Report is based was obtained from Statistics Canada and is accurate and up to date as of January 20, 2011. Statistics Canada routinely reviews its data series. I am informed that Statistics Canada recently has started reviewing its historical Labour Force Survey (LFS) data back to 1996 (the "Review"). The results of the Review are expected to be available in March, 2011.

<sup>3</sup> Statistics Canada, *Guide to the Labour Force Survey, 2006*. Catalogue no. 71-543-GIE, page 11. <http://www.statcan.ca/english/freepub/71-543-GIE/71-543-GIE2006001.pdf>

<sup>4</sup> For the LFS questionnaire, see:

[http://www.statcan.ca/english/sdds/instrument/3701\\_Q1\\_V2\\_E.pdf](http://www.statcan.ca/english/sdds/instrument/3701_Q1_V2_E.pdf)

<sup>5</sup> For details on the SEEH, see: Statistics Canada's website: <http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=2612&lang=en&db=imdb&adm=8&dis=2>

For the SEEH questionnaire, see:

[http://www.statcan.ca/english/sdds/document/2612\\_D9\\_T1\\_V2\\_E.pdf](http://www.statcan.ca/english/sdds/document/2612_D9_T1_V2_E.pdf)

<sup>6</sup> This is the example used in Statistics Canada, *Guide to the Labour Force Survey, 2006*. Catalogue no. 71-543-GIE, page 22.

<sup>7</sup> Definitions in this section are from Statistics Canada, *National Occupational Classification for Statistics (NOC-S)*, 2006. Catalogue no. 12-583-XIE.

<sup>8</sup> Here is the calculation:  $\$24.30 \times 7 \text{ hours} = \$170.10$ . Multiplying  $\$170.10$  by  $.191$  (because 19.1% of all employees work unpaid overtime) =  $\$32.49$ . This represents the average wage increase spread across all employees in NAICS code 5221 if overtime was compensated at  $\$24.30$  per hour.

YEGAL ROSEN  
Plaintiff

BMO NESBITT BURNS INC.  
and  
Defendant

Court File No: CV-10-396685CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF GRAHAM LOWE  
(AFFIRMED JANUARY 25, 2011)**

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