CITATION: Sondhi v. Deloitte, 2017 ONSC 2122
COURT FILE NO.: CV-15-523524-CP
DATE: 20170413

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SHIREEN SONDHI, Plaintiff

AND:

DELOITTE MANAGEMENT SERVICES LP, DELOITTE & TOUCHE LLP and PROCOM CONSULTANTS GROUP LIMITED, Defendants

Proceedings under the *Class Proceedings Act, 1992,* S.O. 1992, C. 6

BEFORE: Justice Edward P. Belobaba

COUNSEL: *Andrew Monkhouse, Samuel Marr and David Fogel* for the Plaintiff

Patricia Jackson, Lisa Talbot and Davida Shiff for the Defendants Deloitte Management Services LP and Deloitte & Touche LLP

Deborah Berlach and Thanasi Lampropoulos for the Defendant Procom Consultants Group Ltd.

HEARD: March 28 and 29, 2017

MOTION FOR CERTIFICATION

[1] In this proposed class action, the plaintiff alleges that document reviewers hired as independent contractors to work on discrete projects on their own schedule are actually employees and are entitled to the benefits provided under the *Employment Standards Act*[1] ("ESA"), such as overtime, vacation and holiday pay. The plaintiff asks that the action be certified as a class proceeding under s. 5(1) of the *Class Proceedings Act*[2] ("CPA").

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[1] *Employment Standards Act, 2000,* S.O. 2000, c. 41.

[2] *Class Proceedings Act, 1992,* S.O. 1992, c. 6.

[2] The defendants are Deloitte Management Services LP and Deloitte & Touche LLP ("Deloitte"), providers of document review services for client law firms, and Procom Consultants Group Limited ("Procom"), a placement agency, that in this case was retained by Deloitte to provide project-related payroll services. The plaintiff says, among other things, that Deloitte and Procom were "common employers" and are thus jointly and severally liable for any ESA-related damages that may be due and owing.

Background

[3] Like many unemployed lawyers in the Toronto market who are between jobs or pursuing other careers, Shireen Sondhi earned extra money as a document reviewer. As already noted, document reviewers are hired by a document review company as independent contractors to work on discrete projects. They decide which projects to work on and they work on their own schedule, docketing their time and earning about or just under $50 per hour.

[4] Ms. Sondhi worked as a document reviewer on two projects that relate to this action, one in November 2013 with ATD Legal Services Professional Corporation ("ATD") and the other in January and February 2014 with Deloitte, after ATD was acquired by Deloitte in mid-January 2014. The project with ADT lasted 32 days; Ms. Sondhi worked a total of 78 hours, averaging about 6.4 hours per day. The project with Deloitte lasted 26 days; Ms. Sondhi worked a total of 68 hours, averaging about 5.2 hours per day. Deloitte points to the hours worked to support its submission that even if Ms. Sondhi was found to be an employee, she would not be entitled to any overtime pay (this point is correct because she never exceeded 44 hours per week[3]) or statutory holiday or vacation pay (this point is incorrect because, under the ESA, holiday and vacation pay is based on a percentage of hours worked and does not require that one actually work on a holiday.[4])

[5] Although Ms. Sondhi worked on one project for ATD before it was acquired by Deloitte, she is not suing ATD. Rather, she is alleging that in addition to being liable in its own right for unpaid benefits under the ESA, Deloitte is also liable as a "successor

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[3] ESA, *supra*, note 1, s. 22(1).

[4] Under s. 24(1) of the ESA, employees are entitled to receive pay for statutory holidays even if they do not work on the holiday. The payment is based on the average of their last 20 working days and, given 11 statutory holidays per year, amounts to about 4% of employee wages. Under s. 35.2 of the ESA, employees must be paid 4% vacation pay for every hour worked.

employer" for any employment benefits that should have been paid by ATD. I will return to the ATD issue shortly.

[6] I advised counsel during the hearing of the motion that my primary concern was the s. 5(1)(c) requirement - whether the plaintiff could provide some basis in fact for the existence and commonality[5] of her allegation that the document reviewers, who worked only on projects of their choosing at their own pace and on their own schedule with little in the way of supervision or control, were employees. I further advised counsel that my other two concerns, the class definition under s. 5(1)(b) and the suitability of Ms. Sondhi as the proposed representative plaintiff under s. 5(1)(e), would only be addressed if the common issues hurdle was cleared. I also told counsel that in my view neither the cause of action requirement under s. 5(1)(a), at least as it related to Deloitte or Procom, nor the preferability requirement under s. 5(1)(d) deserved much discussion.

[7] For the reasons set out below, I find that the common issues hurdle has been cleared but only with respect to Deloitte. I find some basis in fact for the allegation that the Deloitte document reviewers were employees. But I can find no such basis in fact relating to the defendant Procom. And certainly no basis in fact or in law for involving ATD. In short, of the seven proposed common issues[6] ("PCIs") as set out in the Appendix, I am prepared to certify PCI Nos. 1 (with respect to Deloitte only), 2 and 7, but not PCI Nos. 3, 4, 5 and 6.

[8] It goes without saying that the certification has nothing to do with the merits of the claims that have been made. Deloitte may well prevail when all of the evidence is presented and assessed at trial or on a summary judgment motion.

[9] Given that PCIs Nos. 1, 2 and 7 as against Deloitte are certified, I must consider the class definition problem and the suitability of the representative plaintiff. For the reasons set out below, I conclude that neither of these requirements is satisfied.

[10] I am therefore adjourning the certification motion under s. 5(4) of the CPA to allow class counsel to rectify the class definition problem and find a replacement

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[5] *Dine v Biomet*, 2015 ONSC 7050 at paras. 15-19; aff'd 2016 ONSC 4039 (Div.Ct.).

[6] Initially class counsel had proposed 12 common issues. During the hearing, however, five of the PCIs were abandoned, leaving the seven PCIs as set out in the Appendix.

representative plaintiff.[7] However, I direct that this must be done within 60 days, with a further attendance before me, or this motion for certification will be dismissed.

[11] I explain all of this in detail below.

Analysis

(1) No claim relating to ATD

[12] Ms. Sondhi is not suing ATD. She is asking in PCI No. 1 whether the ATD document reviewers were employees, and if they were, whether (under PCI No. 5) Deloitte was obliged to pay their ESA benefits as a "successor employer" to ATD.

[13] On the facts herein, even if the ATD document reviewers were employees, there is no basis in law, and no legal authority cited, to support the proposition that Deloitte, simply by acquiring ATD, became a "successor employer" liable for all of the ESA benefits that had not been paid by ATD. Deloitte had nothing to do with the document reviewers when they were providing services to ATD. ATD was a separate document review business that ceased to operate after Deloitte purchased almost all of its assets.

[14] There is no basis in fact for the certification of PCI No. 5. And if PCI No. 5 is not certified, it follows that the reference to ATD in PCI No. 1 must also be deleted because, absent PCI No. 5, the reference to ATD in PCI No. 1 does nothing to advance the litigation. PCI No. 1 remains in place but only with respect to Deloitte.

(2) No claim relating to Procom

[15] The evidence is uncontroverted, from both the plaintiff and Procom, that even though Procom often provided services as a placement agency, in this case it was only acting as a payment processer and contract administrator and not as a placement agency. Procom played no role in Deloitte's acquisition of ATD or in the placement of the document reviewers. It was Deloitte that recruited, interviewed and hired the document reviewers and assigned them to the various projects. Procom only kept track of the hours worked and provided the payroll services.

[16] There is no basis in fact for the suggestion that the document reviewers worked in any way for Procom. There is no basis in fact, even under the approach discussed below, for the suggestion that the document reviewers were "employees" of Procom or

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[7] Rather than using s. 5(4), I could have certified the action (that is PCI Nos. 1, 2, and 7) on the condition that the class definition was corrected and a replacement representative plaintiff was found within 60 days. Either approach would have achieved the same result.

that Deloitte and Procom were common or related employers. At no point did any document reviewer working for Deloitte reasonably believe that he or she was also providing document review services to Procom.

[17] There is also no basis for the application of s. 74.3 of the ESA which provides that a temporary help agency will be deemed to be an employer if the agency assigns or attempts to assign temporary workers for its client. It is true that Procom has been found to be a "placement agency" by the Customs and Revenue Agency for certain CRA purposes and it has also been described as such in a backdrop umbrella agreement involving the two defendants. But on the uncontroverted evidence herein, Procom only provided payroll services. Procom had nothing to do with the placement of document reviewers – it did not "assign or attempt to assign [the document reviewers] to perform work on a temporary basis for [a] client." As already noted, this was Deloitte's responsibility. Section 74.3 of the ESA does not apply.

[18] In short, there is no basis in fact for PCI Nos. 3, 4 (need not be answered) or 6.

(3) Some basis in fact for PCI Nos. 1, 2 and 7 relating only to Deloitte

[19] Having recently certified *Omarali v. Just Energy*[8], a class action asking whether door-to-door sales agents hired full-time as independent contractors were actually employees, I was initially of the view that the analytical approach used in *Omarali* could also be used here. That is, whether the plaintiff could show some evidence for one or more of the so-called "factors" that are recognized and listed in the case law – level of control, economic dependency, etc.

[20] In *Omarali,* I applied the "three element" test as set out in a leading Canadian employment law text:

> Canadian courts and administrative tribunals use various formulations of the test for determining employee status, but three elements are common: (1) the employer must exercise a relatively high degree of bureaucratic control over the when and the where of employment; (2) the worker must be economically dependent on the employer; and (3) the worker must not be an entrepreneur operating a business as a going concern but must form part of the employer's business.[9]

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[8] *Omarali v. Just Energy*, 2016 ONSC 4094.

[9] England, *Individual Employment Law* (2008) at 19.

[21] In *Omarali,* there was ample evidence of control (over where and when the sales agents worked, what they wore and what they said to potential customers) and economic dependence (the sales agents worked full-time and exclusively for Just Energy) and I had no difficulty finding some basis in fact for both the existence and commonality of the proposed common issues.

[22] Tracking the approach in *Omarali,* and focusing on the traditional factors, Deloitte argued that on the record there was no evidence of control, economic dependence exclusive service, using one's own tools etc. Deloitte correctly noted that the document reviewers could work as they wished, choosing their projects and hours of work; they could come and go as they pleased; and they could work simultaneously for other document review companies. The only requirements were to attend at a designated work site, receive a briefing about the project, use the Deloitte-provided computer technology, docket one's time, and comply with the company's codes and policies.

[23] Deloitte argued that there was no real control, no exclusivity, and no economic dependence because the work was not guaranteed, and in any event, any assessment of economic dependence would require individual inquiry and would not satisfy the commonality test. Much of the hearing, frankly, involved an overly exhaustive examination of Deloitte's work codes and policies that applied to the document reviewers - such as no-scent cologne, a nut-free environment and the inappropriate use of cell phones or social media – to see if these codes and policies provided some evidence of the "high degree of bureaucratic control" that seemed to be required in the case law.

[24] It is important to note, however, that this kind of factors-focused approach that made sense to the plaintiff in *Omarali* is not the only way to establish 'some basis in fact' for the proposed common issues. Two background points will place this observation in context. First, class actions alleging the misclassification of employees as independent contractors are increasing. Because of increasing pressure to reduce labour costs and increase productivity, "many Canadian employers are substituting self-employed labour for employees ... transforming the workers into self-employed casuals who report for duty only when required."[10] Second, the applicable law in this area is changing quickly and the historic utility of some of the so-called key factors is being called into question. For example, the oft-cited control test may not assist in every case: "[t]he proliferation of high-trust, high-discretion occupations during the twentieth century ill fits the traditional control test [because modern day workers] exercise much independence over how they

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[10] England, *supra,* note 9, at 18 and 22. Also see Fudge, Tucker and Vosko, *"Employee or Independent Contractor? Charting the Legal Significance of the Legal Distinction in Canada,"* (2003) 10 C.L.E.L.J. 193 at 3: "In Canada, few of the self-employed conform to the ideal of entrepreneurship ... the majority of the self-employed in Canada resemble employees more than they do entrepreneurs."

perform their work."[11] Another factor, exclusivity, is no longer very reliable – the fact that a person works for more than one employer does not necessarily make that person an independent contractor. An employee can simultaneously hold multiple jobs.[12]

[25] In *Sagaz Industries,*[13] the Supreme Court wisely made clear that "there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor" [14] and that "the central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account."[15] The Supreme Court explained:

> The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.
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> It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.[16]

[26] In other words, one should not focus on any one factor but weigh all of the factors in combination, always keeping in mind that the "central question" is whether the individual who has been engaged to perform the services is performing them as "a person in business on his own account." This "central question" was restated by the Court of

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[11] England, *supra,* note 9, at 18.

[12] *Ibid.,* at 21. Also see Barnacle et al, *Employment Law in Canada,* (4th ed. Looseleaf) at 2-18: "[t]he recent expansion of part-time and casual work has resulted in more employees becoming multi-job holders."

[13] *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.,* 2001 SCC 59.

[14] *Ibid.,* at para. 46.

[15] *Ibid.,* at para. 47.

[16] *Ibid.*

Appeal in *Braiden v. La-Z-Boy*[17] as "Whose business is it?" The Court of Appeal said this:

> In many ways, the question ... whose business is it? ... lies at the heart of the matter. Was the individual carrying on business for him or herself or was the individual carrying on the business of the organization from which he or she was receiving compensation?[18]

[27] The clear identification by our appellate courts of the core or central question that is "at the heart of the matter" means that while it may make sense for counsel in some misclassification cases (such as *Omarali*) to focus only on discrete factors rather than the central question, in other cases (such as the case here) it will be sufficient to simply provide some basis in fact for the over-arching or central question.

[28] Focusing then on the central question as just stated, has the plaintiff provided some evidence (some basis in fact) for PCI No. 1 - that Deloitte document reviewers are not carrying on a document review business for themselves but are being compensated to carry on Deloitte's document review business? The answer, in my view, is yes. By adducing some evidence about each of the following, the plaintiff has provided in combination some basis in fact for the central question, "Whose business is it?"

- There is at least some level of control over the worker's activity – the document reviewers must do their work at a designated Deloitte work site that is open for use at designated hours; they are briefed on the project and must use Deloitte's technology; training is provided if needed; there is always some level of supervision; and they must comply with all applicable codes and policies while working on a project.

- The document reviewers are required to use Deloitte's tools and equipment;

- They must do their own work and cannot outsource their work or hire helpers;

- There is no evidence that any financial risk is assumed by the document reviewers – they are simply paid an hourly rate for time worked;

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[17] *Braiden v. La-Z-Boy Canada Ltd.*, (2008) 294 D.L.R. (4th) 172 (C.A.).

[18] *Ibid.*, at para. 34.

- There is no evidence of any degree of responsibility for investment and management; and

- There is no evidence of any opportunity for profit in the performance of the tasks in question.[19]

[29] I therefore find there is some basis in fact for the core allegation that the document reviewers were not carrying on a document review business for themselves but were being compensated to carry on Deloitte's document review business. The overall weight of each of the factors just noted (as well as any other relevant factors) will be determined when the case proceeds to the merits and all of the evidence is presented and assessed at trial or on a motion for summary judgment. On this motion for certification, however, it is enough for me to find, as set out above, that there is some basis in fact for PCI No. 1 relating to Deloitte only.

[30] PCI No. 1 is certified. It follows that PCI No. 2 must also be certified. And, because any ESA-related damages that may be due and owing for overtime, holiday or vacation pay can be reasonably determined by reviewing existing records in the possession of Deloitte or its payroll administrator, the aggregate damages question in PCI No. 7 is also certified.

(3) The class definition problem

[31] Let me first deal with two points relating to the s. 5(1)(b) requirement that do not concern me. The fact that several document reviewers filed affidavits saying that they are not employees and prefer to work as independent contractors is not determinative of anything. As the Court of Appeal noted in *Keatley*,[20] "the representative plaintiff does not have to conduct a referendum to determine how many class members want to sue."[21] If document reviewers wish to disassociate themselves from Ms. Sondhi's allegations and opt out of the class action, they will have every right to do so. In any event, the views or intentions of any given worker, or even a majority of workers, however credible or heart-felt, do not decide the applicability of the ESA.

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[19] *Sagaz, supra*, note 13 at para. 54, explains that the risk of loss and opportunity for profit will depend, for example, on whether the worker tracked and tallied expenses (such as travel expenses) that exceeded her level of compensation. Here there is no evidence that the document reviewers approached a project with anything more in mind than simply docketing their time and getting paid the hourly rate.

[20] *Keatley Surveying Ltd. v. Teranet Inc.*, 2015 ONCA 248.

[21] *Ibid.*, at para. 72.

[32] Nor am I concerned about the fact that there is no explicit evidence of "two or more persons that would be represented by the representative plaintiff." It is true that only Ms. Sondhi has filed an affidavit in support of her action. Nonetheless, as the Court of Appeal noted, again in *Keatley*,[22] "the existence of more than one claim [may] be apparent from the very nature of the claim being advanced."[23] This is the case here. According to Deloitte, the potential class includes some 418 individuals. It is not at all unlikely that two or more other people in addition to Ms. Sondhi, may have claims for ESA-related benefits.

[33] I am, however, concerned about the class definition, albeit it is a concern that can be easily resolved by class counsel. The plaintiff proposes the following class definition:

> All persons since 2010 having performed or currently performing document review or e-discovery services at ATD and/or Deloitte pursuant to an independent contractor agreement, exclusive of any person performing the duties of a Project Manager.

[34] The plaintiff also proposes three sub-classes: the first to include the document reviewers who worked at ATD until it was acquired by Deloitte in mid-January 2014; a second sub-class to include those who worked for Deloitte from the time that it purchased ATD to the present; and a third sub-class that was intended to deal with a PCI that was abandoned at the hearing. The ATD sub-class for reasons that have already been discussed is not tenable and the third sub-class is no longer needed - both should be deleted, leaving only the general class definition.

[35] The problem with the proposed class definition is with the start date and the end date. The start date cannot refer to ATD and should be the precise date in January 2014 when ATD was acquired by Deloitte. The end date should be the certification date so that class members can exercise their statutory right to opt out.[24] Class counsel would also be well advised to consider Deloitte's submissions about the applicability of limitation periods when revising the class definition.

[36] Assuming the suggested revisions are made, s. 5(1)(b) will be satisfied.

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[22] *Keatley, supra*, note 20.

[23] *Ibid.*, at para. 70.

[24] See *Magill v. Expedia Canada Corporation*, 2010 ONSC 5247 at para. 33, "[a]ssuming certification is granted, an end date cannot be after the date of certification [because] it would deny class members their statutory right to opt out." Also see *Re Collections Inc. v. Toronto Dominion Bank*, 2010 ONSC 6560 at para. 152: "[t]here cannot be a constantly changing class composition as there would be no mechanism for newly-added members to opt-out."

(4) The suitability of the proposed representative plaintiff

[37] The final requirement set out in s. 5(1)(e) of the CPA, a representative plaintiff who can "fairly and adequately represent the interests of the class" may be more difficult to satisfy.

[38] My concern here is not that Ms. Sondhi never worked more than 44 hours per week and is not entitled to overtime. Other class members can make this claim.[25] And all class members can claim for statutory and vacation pay as already noted.[26] The fact that different remedies are sought for different class members is not a bar to certification.[27] And there is no conflict of interest under s. 5(1)(e)(ii) just because some class members may not agree with the action or otherwise may decide to opt out.[28]

[39] I am also not overly concerned that Ms. Sondhi has moved to an island in British Columbia and no longer practices law. She is still entitled to pursue this action as the representative plaintiff if she can "fairly and adequately represent the interests of the class."[29] The Supreme Court has described the qualities required of a representative plaintiff as follows:

> The proposed representative need not be "typical" of the class, nor the "best" possible representative. The court should be satisfied however, that the proposed representative will vigorously and capably prosecute the interests of the class.[30]

[40] The problem for me is this. I am not satisfied on the record before me that Ms. Sondhi will vigorously and capably prosecute the interests of the class. Or that she will do so in a diligent and responsible fashion.

[41] Ms. Sondhi's evidence on this motion was at best unreliable and at worst untruthful. The affidavit provided by Ms. Sondhi in support of this motion, and sworn to

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[25] The evidentiary record shows that many document reviewers may have overtime claims, some of which are substantial.

[26] Recall above at note 4.

[27] CPA, *supra*, note 2, s. 6.

[28] Recall discussion above at para. 31.

[29] CPA, *supra*, note 2, s. 5(1)(e)(i).

[30] *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para 41.

be true, contains a number of significant misstatements that were recanted on cross-examination. For example, that every document reviewer worked the same number of hours and that Ms. Sondhi's work hours were pre-determined (she admitted on cross-examination that neither of these points was true); or that she was subject to quotas of documents to review (she admitted on cross-examination that this was not true.) Having recanted this incorrect evidence on cross, Ms. Sondhi nonetheless proceeded to repeat the same misstatements in her factum on this motion.

[42] Even if her affidavit and factum were drafted by class counsel, as is often the case, it is obvious that neither document was reviewed by the plaintiff before it was sworn or filed with the court. Ms. Sondhi also chose not to review the defendants' responding motion records or the timetable for the certification motion. I find in all of this a disturbing level of unreliability, disinterest and even indifference on the part of the proposed representative plaintiff. The proposed class members are entitled at the very least to a representative plaintiff who can be counted on to take her job seriously, review key documents and demonstrate an appropriate level of interest in a class action that is being brought in her name and that is claiming hundreds of millions of dollars in damages.[31]

[43] In sum, I am not persuaded that Ms. Sondhi will "fairly and adequately represent the interests of the class." I direct that the proposed representative plaintiff must be replaced with another within 60 days.

[44] One final point. I have no concerns about the preferability requirement set out in s. 5(1)(d) of the CPA. I agree with class counsel that a class proceeding is not only the preferable procedure for the prosecution of the common issues, it is the only reasonable and meaningful method of adjudicating these claims for the benefit of the proposed class members.[32]

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[31] *Sullivan v. Golden Inter-capital (GIC) Investments Corp.*, 2014 A.B.Q.B. 212 at paras. 55-62; *Wilkinson v. Coca-Cola Ltd.*, 2014 QCCS 2631 at paras 107-108; and *Horse Lake First Nation v. R*, 2015 F.C. 1149 at para. 88, aff'd 2016 F.C.A. 238.

[32] The Court of Appeal has certified ESA-related misclassification cases: see, for example, *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443; *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444; and *McCracken v. Canadian National Railway*, 2012 ONCA 445.

Disposition

[45] For the reasons set out above, PCI Nos. 1, 2 and 7 are certified only as against Deloitte. PCI Nos. 3, 4, 5 and 6 are not certified.

[46] The certification motion is adjourned under s. 5(4) of the CPA for 60 days so that the class definition problem can be addressed and the proposed representative plaintiff can be replaced. Counsel should arrange to re-attend before or shortly after the 60 day mark. If the required amendments have not been effected by class counsel within this time period, the motion for certification will be dismissed.

[47] Costs submissions may be made once this motion has been decided in full.

Belobaba J.

Date: April 13, 2017

<u>APPENDIX: PROPOSED COMMON ISSUES</u>

[PCI Nos. 1 (Deloitte only), 2 and 7 are certified.]

(1) Did the actual circumstances of the relationship between <u>ATD and/or</u> Deloitte and the class members constitute an employer/employee relationship, such that class members were in fact employees of <u>ATD/</u>Deloitte and not "independent contractors"?

(2) If the answer to (1) "yes", is Deloitte liable to the class for employee benefits pursuant to the *Employment Standards Act* (including unpaid vacation pay and public holiday pay and overtime) and for compensation for improper remittances?

(3) In the alternative, if the class members are found not to be employees of <u>ATD/</u>Deloitte are they employees of Procom?

(4) If the answer to (3) is yes, is Procom liable to the class members for the above-noted benefits?

(5) Is Deloitte a successor employer of ATD to the class and therefore liable for any damages awarded to the class?

(6) Are Deloitte and Procom properly considered to be a single employer of the class pursuant to s. 4 of the *Employment Standards Act* and/or common law principles?

(7) If liability is established, are aggregate damages available?

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