

CV-15-00523524-00CP

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SHIREEN SONDHI

Plaintiff

– and –

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

Defendants

Proceedings commenced under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: 9th March 2015.

Issued by: 
Local Registrar

Address of Court Office:
393 University Avenue
Toronto, ON M5G 1E6

TO: **DELOITTE MANAGEMENT SERVICES LP,
DELOITTE & TOUCHE LLP**
Shelby Austin, Partner
26 Soho Street, 4th Floor
Toronto, Ontario M5T 1Z7

AND TO: **PROCOM CONSULTANTS GROUP, LIMITED**
Simon Gray, Manager, Consulting Services
2200 Yonge Street, Suite 700
Toronto, Ontario M4S 2C6

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I – RELIEF CLAIMED

1. The Proposed Representative Plaintiff claims the following on her behalf, and on behalf of members of the Class:
 - a) an order certifying this action as a class proceeding and appointing Shireen Sondhi as Representative Plaintiff of the Class;
 - b) a declaration that the members of the Class were employees of the Defendant(s), or in the alternative, were contractors dependent on the Defendant(s);
 - c) the sum of \$260,000,000.00 for pay in lieu of reasonable notice;
 - d) the sum of \$2,000,000.00 for unpaid overtime;
 - e) the sum of \$2,000,000.00 for unpaid Public Holiday pay;
 - f) the sum of \$2,000,000.00 for breach of contract and unjust enrichment;
 - g) the sum of \$1,000,000.00 for improperly removed statutory deductions;
 - h) the sum of \$12,000,000.00 for failure to remove statutory deductions and lost employment insurance benefits;
 - i) general and special damages in the amount of \$30,000,000.00 or such other amount as this court deems appropriate;
 - j) aggravated, punitive, exemplary and/or moral damages based on the actions of the Defendants in the amount of \$75,000,000.00;
 - k) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - l) post-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - m) any goods and services tax or harmonization tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;
 - n) the costs of this action on a substantial indemnity basis; and
 - o) such further and other relief as counsel may advise and this Honourable Court permit.

II – BACKGROUND

A – The Parties & Class

(i) The Defendants

2. The Defendant Deloitte Management Services LP, Deloitte & Touche LLP (“Deloitte”) is an independent member firm of Deloitte Touche Tohmatsu Limited, a company based in the United Kingdom. Deloitte provides a range of services to clients, predominantly focused on audit, consulting, financial advisory, risk management, and tax-related services. Since purchasing ATD Legal Services, Deloitte also provides e-discovery services to law firms.
3. ATD Legal Services (“ATD”) was a Toronto-based law firm founded by Shelby Austin (“Shelby”), which provided e-discovery services to law firms. ATD exclusively hired legal professionals for these services. ATD was purchased by Deloitte in or about January of 2014. Shelby and her ATD partner Andrea Taylor (“Andrea”) became partners of Deloitte following this purchase.
4. The Defendant, Procom Consultants Group, Limited (“Procom”) is a temporary placement agency, specializing in the placement of computer and IT professionals. Per communications from Deloitte to the Class, Procom is a third party company used by Deloitte to administer contracts.

(ii) The Class

5. This action is brought on behalf of a class of persons, defined as:

All persons having performed or currently performing document review and/or e-discovery services at ATD or/and Deloitte, who have been classified as independent contractors.

6. Within this Class, there are three subclasses of persons:

- A. All persons who performed document review and/or e-discovery services at ATD from the time of its foundation, until its purchase by Deloitte, and were classified as “independent contractors”;
- B. All persons performing Document Review and/or e-discovery services at Deloitte from the time of its purchase of ATD until present, and were or are classified as “independent contractors”;
- C. All persons who accepted Deloitte’s offer to work at a rate of \$47.00 per hour, and were subsequently remunerated at a lower rate.

(iii) The Proposed Representative Plaintiff

7. The proposed Representative Plaintiff is Shireen Sondhi (“Shireen”). Shireen resides in the City of Toronto, in the Province of Ontario, and is a lawyer licensed by the LSUC. Shireen worked for both ATD Legal Services Professional Corporation (“ATD”) and Deloitte LLP (“Deloitte”) as a Document Reviewer. Shireen also accepted Deloitte’s offer of work at a rate of \$47.00 per hour, sent via email on January 14, 2015.
8. Shireen is representative of all individuals who worked while classified as independent contractors at ATD, Deloitte, or both, providing documentary review services. Shireen seeks an order that she be authorized by the Court to seek damages on behalf or for the benefit of all individuals described in paragraph 5 above (herein collectively referred to as “the Class” o/a “Class Members” o/a “Members of the Class”). Shireen further seeks an order authorizing her to represent each of the three subclasses as described in paragraph 6 above, herself being a member of each of them.

(iv) Document Review and Legal Services

9. “E-discovery services” or “document review” in this claim refers to work outsourced by law firms to ATD or/and Deloitte. In particular, it involves the review and analysis of documents relevant to a legal case. Document Reviewers are briefed on the issues, and then review source documents for privilege, confidentiality, and relevance to the legal issue for which the client law firm has been retained. They then use software to track their reviews, tagging documents to set specifications pre-determined by ATD/Deloitte’s client.
10. An example of such work would be an investigation by a regulatory body. The regulatory body may require a Corporation to disclose all documents in their possession relating to a myriad of issues. Documents that do not relate to those issues, on the other hand, need not be disclosed. Document Reviewers will use software to sort these documents, tagging documents to pre-set issues, or indicating non-relevance. They will additionally review the documents for potential confidentiality or privilege. Occasionally, Document Reviewers may also be asked to tag documents as “hot”, indicating that they are documents of particular importance to the legal issue.
11. Of relevance to this claim is the ongoing issue of whether or not document review constitutes legal services, as referred to in the By-Laws of the Law Society of Upper Canada (“LSUC” or/and the “Law Society”). In particular, it should be noted that a barrister or solicitor providing legal services is required to maintain an active status with the Law Society, and is required to pay insurance premium levies in accordance with the *Law Society Act* by-laws.
12. If document review work constitutes legal services, then it is at all times necessary that Document Reviewers maintain an active, practicing status with LSUC, and continue to maintain their insurance through LawPRO.

13. If document review does not constitute legal services, then individuals performing this work are not employed as practitioners of law. They would not be required to maintain active status with the Law Society, nor would they be required to maintain LawPRO insurance.

B – The Proposed Representative Plaintiff’s Employment with ATD and Deloitte

14. Shireen was hired by ATD on October 29, 2013. Shireen contacted ATD directly, after which she was called in to the office for an interview with Andrea Taylor, a managing partner. Shireen was told that the position entailed providing document review or e-discovery services, and that she would be considered an independent contractor by ATD.
15. Shireen was informed that she would be paid \$50.00 per hour for time worked on projects, and would be added to ATD’s “roster” of lawyers. Although it was not discussed at the time, Shireen learned later that she would earn no vacation pay, receive no paid breaks, and would not be eligible for an overtime rate. In addition, Shireen learned that she would not have any statutory deductions removed from her salary. Andrea informed Shireen that when work became available for her on a project, she would be offered work a contract. Each new project would necessitate a new contract.
16. Andrea also informed Shireen that the position was conditional on her being a lawyer. Shireen was required to maintain her good standing with LSUC, and was to continue to maintain insurance with LawPRO for the duration of each project she worked on while at ATD.
17. In November 2013, Shireen and a number of her co-workers were offered work on one of two complementary projects, Project Bread and Project Butter. Project Butter was the first of multiple projects that Shireen eventually worked on with ATD and Deloitte. Shireen accepted the offer, and attended at ATD’s offices. There she was instructed to log in to an ATD managed timesheet in order to track her hours, which she was to log out of for any break, including attending the washroom. She was then provided with a contract setting out the terms of her tenure with ATD. Shireen was also asked to sign an affidavit confirming that she was a licensed lawyer in good standing with LSUC. Shireen signed both of these documents.
18. Shireen was then briefed on the legal matter underlying Project Butter, and trained on the use of software for e-discovery. During her training, ATD set out a number of very clear rules for Shireen and her co-workers. Shireen was only permitted to do her work at ATD’s offices, and only on the computer and software provided to her by ATD. Shireen was also not permitted to remove any documentation with respect to the case from the office, including any of her personal notes.
19. Shireen was introduced to the supervisor of the site where she was working, Greg Sullivan (“Greg”), who informed her that – for now – the hours for this project were 9:00am to 5:00pm. Greg assigned Shireen a computer, and a login for the computer and software. Shireen was then directed to the individual who would provide her with a batch

of documents to review. She was to complete her batch, and then request that her supervisor assign her with a new batch to review. There was an approximate “quota” of batches that Class Members were expected to meet each day, and they were informed at varying points that their pace was being monitored. Once her batch was completed, she was told that it would be re-reviewed by a member of the Quality Control Team (“QC”), assessing for the accuracy with which the documents had been tagged.

20. The above hiring, training, and working process was the standard procedure, and generally describes the experience for all Class Members and projects, both at ATD and Deloitte. Document Reviewers were required to sign in to a monitored time sheet, and use provided login information for access to ATD/Deloitte computers. Work was only to be done at ATD/Deloitte offices with ATD/Deloitte tools and software, and no materials relating to the project in any way could be removed from the premises. Hours were pre-determined, and a failure to meet them often led to removal of the Reviewer from the project, or from consideration for subsequent projects. Work was assigned, speed and quality were monitored, and Reviewers were always supervised.
21. As project deadlines approached, there was also increasing pressure from ATD/Deloitte management to increase the speed of review and number of hours worked. It was understood that a failure to meet quotas or keep assigned hours might lead to early dismissal from the project, or the removal of one’s name from the roster for future projects. On occasion, Class Members were sent home in the middle of workday, not to be recalled, where they were found not to be keeping up to the requisite pace.
22. Start dates of projects at ATD and Deloitte were never clear when Shireen agreed to a project. Typically ATD/Deloitte would canvass their roster of lawyers for interest in an upcoming project, and provide a start date estimate. Once a date was finally confirmed, the Document Reviewers would attend ATD for training and case briefing. However, if documents were not prepared to be reviewed, or technical difficulties presented, Reviewers would often be sent home without advance warning, to be called back at an undetermined time.
23. Similarly, end dates of projects were never clear. Typically a new project at ATD/Deloitte would be estimated to last approximately two to three weeks, but these projections were rarely realistic. Project Bread and Project Butter, for instance, lasted approximately two months. On the other hand, some projects which were projected to last several weeks would end without warning after only a few days, leaving Reviewers without expected income. Depending on the project, Class Members might have some idea that a project was drawing to a close, but there would be no notice of when the project would finish. Not unusually, it would be announced that there were no more batches available, and that a Reviewer should leave when they completed the batch they were working on, giving Reviewers only a few hours’ notice of the termination of their contracts.

C – The Transition of the Class Members’ ATD Contracts to Deloitte and Procom

24. On January 14, 2014, Shireen and the other members of Subclass C were sent an email from “careers@atdlegal.com”, an email account administered by Andrea. This email was an offer to join ATD’s newest project, later named “Project Genesis”. The email stated the following [emphasis in the original]:

Hey Team,

We have a crazy new project which will be starting this Friday.

There will be no weekend work on January 18th or 19th.

That said, we will need reviewers to work on the weekend of January 25th and 26th and the weekend of February 1st and 2nd so please indicate your availability for these days when you write back.

The project will run for 2-3 weeks.

The good news is that for this contract reviewers will *not* require LawPro insurance. The less good news is that as a result the hourly rate for this contract is \$47.

Please let me know if you can join us as soon as you can.

25. Shireen emailed back the following day, January 15, 2014, accepting the offer for work. This was standard procedure for signing on to a new project at ATD. She followed up later that day with an email asking for confirmation that her email had been received. Shireen now considered herself contracted to work on the upcoming project at a rate of \$47.00 per hour, as indicated in the offer.
26. On January 16, 2014, every individual who had accepted Andrea’s offer for work received an email from careers@atdlegal.com signed by both Shelby and Andrea. The email informed the Members of Subclass C that the project for which they were contracted to work was due to begin the next day, Friday, January 17, 2014.
27. This email also informed them that ATD was being acquired by Deloitte that day, and Friday would be the first day operating as Deloitte. Shelby and Andrea advised that the Reviewers would no longer be providing legal services, and so there would be no requirement to maintain their LawPRO insurance. Finally, the email advised Shireen and her co-workers that “Deloitte uses a third party called ProCom [sic] to administer contracts. Attached please find an introductory message with some further information regarding ProCom [sic].”
28. Attached to this email was an information sheet from Deloitte’s Contract Services group and a Procom representative, which read as follows [emphasis in the original]:

Hello Team,

Deloitte's Contract Services group is pleased to welcome you to your new contract engagement, and would like to convey some key information:

- Procom Consultants Group, Limited ("Procom") – will administer your contract with Deloitte, and will manage your timesheet entry/approval and fees payment; you will be provided with contracts from Deloitte and from Procom for your review and signature; Procom will pay you on a bi-weekly basis, and will provide you with a schedule outlining payment dates and timesheet deadline
- As part of this process, and in order to ensure compliance with our Independence policies, we need you to complete an Independence Disclosure Form (attached). *Deloitte will be unable to engage you as an Independent Contractor, or allow you to continue services, until the form is returned to Deloitte and you are advised of approval.*
- Business Classification – Once we have been provided your business status (Sole Proprietor or Incorporation) information, we can prepare your contracts, which will then be submitted to Procom so they can initiate on-boarding with you directly

Note: As per CRA rules, Sole Proprietor status contractors must have **personal** EI/ CPP payroll taxes deducted at source by Procom, who will then remit these deductions to the CRA on your behalf.

As well, Deloitte's practice is to require that the Sole Proprietor status contractor absorb **corporate** EI/ CPP payroll taxes, as it is our philosophy that the firm should not be penalized monetarily by the business classification of the contractor. These payroll tax deductions will be removed from your base rate, leaving a net hourly rate which will be reflected in your Procom Agreement.

If you incorporate your business, these personal and corporate payroll tax deductions WILL NOT APPLY.

Professional Corporations are not eligible to be utilized for your contractual relationship with Deloitte/Procom.

HOURLY RATES AT DELOITTE

- Hourly rate for document reviewers at Deloitte may vary from contract to contract. We will advise you of the hourly rate before you commence a new project.

- Procom charges an hourly fee for payroll administration. Deloitte will absorb these fees and they will not be deducted from your hourly rate.
- Deloitte does not require document reviewers to carry LawPro insurance.

Procom provides **Deloitte** with Errors & Omissions and Liability insurance for each contractor. Therefore, it is your prerogative to continue to retain your own E & O and Liability insurance. It is important to understand that while Deloitte does not require you to provide this insurance (as we are covered by Procom's insurance) you are **NOT** protected by Procom's insurance coverage, so you must decide for yourself whether or not to obtain this insurance coverage directly

- Before you can be paid by Procom for your timesheet submissions, a fully executed set of contract agreements must be in place, so please expedite your review and execution of agreements.

We look forward to working with you in your new contract engagement! If you have any questions, please feel free to contact Marlena Hasiak to discuss at mhasiak@deloitte.ca or Kendra Holly at kendrah@procom.ca.

29. As much of what was being referenced in the Information Sheet was new information, entirely unprecedented in work with ATD, Subclass C Members had a number of questions about its contents. Specifically, there had never before been a discussion of base rates versus hourly rates or statutory deductions, and – notably – Subclass C Members had never heard previous mention of a contract with Procom.

D – The Concerns of the Subclass

30. When the Subclass C members began work the following day, Friday, January 17, 2014, they did so with many unanswered questions surrounding the implications of the Information Sheet. Confusion increased as Subclass C Members were briefed on the new project, and realized that the nature of the work they were performing was fundamentally unchanged from the work they had done under ATD. As the Subclass Members had previously been told that document review work was legal in nature, requiring the maintenance of LawPRO and an active status with LSUC, the assertion by Deloitte that this was no longer the case raised alarm. This was compounded when Reviewers were again asked to sign an affidavit confirming they were lawyers in good standing with LSUC – an impossibility if lawyers are not paying insurance premiums when required to do so.
31. Following a briefing with the client and initial training, Shelby addressed the group of Document Reviewers. She acknowledged that she understood there was much concern and confusion surrounding the new employment structure, and advised there would be a conference call held on Tuesday, January 21, 2014 with Procom, wherein questions would be answered and concerns would be addressed. This conference call would

ultimately be postponed until Thursday, January 23rd, 2014. In the meantime, additional updated were sent to the Subclass.

32. On Saturday, January 18, 2014 an email was sent to Subclass C from Kendra Holly (“Kendra”) of Procom, asking for proof that the Reviewers were operating a formal business. It also indicated that a Procom contract for the period of January 17th 2014 to December 31st 2015 would follow once this information was received. This contract was to be for an hourly pay rate of \$47.00 minus 7.792% Employer EI/CPP burden, and Kendra added that the Reviewers would not receive the information to process payment until the contract was signed.
33. This new post-deduction hourly rate was at varying points expressed by Procom as being either \$43.60 per hour, or \$43.34 per hour. The actual rate paid out to Subclass C Members was ultimately \$43.34 per hour, less employee statutory deductions. Given the discrepancy, for simplicity’s sake, this rate will be referred to as “the \$43.00 hourly rate”.
34. Shireen developed a number of concerns about Deloitte’s new work structure, which she shared with other Members of Subclass C. Namely,

- i. The unilateral introduction of Procom:

Although Shireen considered herself to have formed a contract directly with ATD/Deloitte via email on January 14th and 15th, 2014, she was now being informed that she was to sign a contract for these services with Procom. While Procom had been described as a “payroll administrator”, it was becoming apparent that Procom was actually a placement agency. Procom was being paid to “place” Shireen with a company she already worked with.

- ii. The deduction of placement fees from Reviewer wages:

Even though Procom had done nothing to find Shireen her position, the placement fee was being deducted from Shireen’s wages. While the information sheet she been sent by Procom and Deloitte had claimed that “Deloitte will absorb these fees and they will not be deducted from your hourly rate”, this was clearly not the case. It became apparent to Subclass C Members that the reduction in rate from the previous \$50.00 per hour to \$47.00 per hour was not because LawPRO was not required, but in order to pay Procom’s hourly rate.

- iii. The claim that the maintenance of LawPRO was no longer required:

When Shireen and her co-workers were made the offer to work on Project Genesis, Andrea advised that they would not require LawPRO and “as a result” the rate would only be \$47.00 per hour, as opposed to the previous \$50.00 per hour. Shireen had agreed to work on Project

Genesis on the understanding that this project would not require her to use her legal skills or maintain LawPRO insurance.

However, once Project Genesis began, it was clear the work Subclass C Members were performing was no different than it had been previously, when ATD had maintained that it was legal in nature. Deloitte again required Shireen and her co-workers to sign an affidavit confirming they were lawyers in good standing with LSUC. Shireen was immediately concerned, as the *Law Society Act* and its by-laws require any person engaged in the practice of law in Ontario to pay insurance premium levies, unless otherwise exempted. LawPRO refused to grant an exemption for this work. Although Deloitte was maintaining the position that insurance through LawPRO was not needed, it continued to require signed affidavits from Document Reviewers confirming that they were lawyers in good standing with LSUC – an impossibility unless that individual paid their insurance levies or LawPRO allowed for an exemption.

iv. The removal of employee statutory deductions:

Shireen and her fellow Subclass C Members were told that they would now have both employee and employer statutory Employment Insurance and Canadian Pension Plan deductions removed from their wages by Procom. As the relationship between the Document Reviewers and ATD/Deloitte had not fundamentally changed, it was not clear to the Reviewers why EI and CPP should now be deducted, when ATD had failed to make these deductions previously.

v. The removal of employer payroll deductions:

So long as the Class Members remained sole proprietors without incorporating, they were to additionally have employer payroll deductions taken from the agreed rate of \$47.00 per hour. Deloitte's reasoning for this was "it is our philosophy that the firm should not be penalized monetarily by the business classification of the contractor".

Deloitte did indicate that incorporating would exempt individuals from employer payroll deductions. However, this condition was impossible to meet if document review was properly legal services, as under the *Law Society Act* and its by-laws, lawyers are only permitted to set up their practices as sole proprietorships, general partnerships, limited liability partnerships, or professional corporations. Deloitte had specifically stated that professional corporations were ineligible to contract with Deloitte for these services.

35. Over the following few days, Shireen and a number of her fellow Subclass C Members voiced these concerns with Procom and Deloitte representatives via email.
36. On January 22, 2014, five days after Shireen had begun work on Project Genesis, Procom sent Shireen the contract that Kendra had earlier alluded to in her mass email of January 18, 2014. This contract was emailed to all Subclass C Members around this time, the exact date dependent on when they delivered the information Kendra had requested in her previous email.
37. Along with this contract, Kendra advised that Subclass C Members would only be sent login and access information to Procom's invoicing system once the signed contracts had been received and approved by Procom's accounting department. In other words, the Subclass Members would not be paid for the work they were currently doing until they signed this new contract, which had fundamentally different terms than had previously been agreed to.
38. In addition to the compensation issues which had already come to light, the new contract also contained a number of new terms which Document Reviewers took issue with, including indemnity and non-competition clauses.
39. On Thursday, January 23, 2014, Procom held a conference call in order to answer questions that the Subclass Members had about the contract. This call was held during the workday, and so the call was broadcast via speakerphone throughout Deloitte offices, though members could also phone in should they be away that day. Shelby was present in the Deloitte offices for this call. Present via telephone were Andrea Taylor, Sean Ford of Deloitte ("Sean") and Simon Gray ("Simon"), Manager Consulting Services at Procom.
40. The call involved a number of heated questions from Members of Subclass C who felt they had been misled with respect to the terms of their contract; in particular, Reviewers questioned the role of Procom, the rate at which they were being paid, the removal of payroll deductions, and the need for LawPRO insurance.
41. During this conference call, a significant amount of misinformation was passed on to the Subclass by Procom and Deloitte. For instance, Subclass C Members were told:
 - a) that employee statutory deductions and employer payroll deductions had to be removed from their rate because "an individual is an employee of their sole proprietorship";
 - b) that they could fill out an "exemption form" with the Canada Revenue Agency ("CRA") which would exempt them from the removal of statutory deductions, when in fact the "exemption form" Document Reviewers were being directed to was an application for a ruling on their employment status through the CRA; and

- c) that they did not require LawPRO as they were not providing legal services, when in actuality LawPRO had (at the time) been informing Document Reviewers that the opposite was true.
42. During this call, Shelby responded to concerns by indicating that some amendments would be made to the contract, particularly with respect to the non-competition clause. She indicated that Deloitte was still in discussions with the Law Society surrounding the legal nature of document review services. Because of the uncertainty surrounding the legal nature of the work, Shireen – along with a number of Subclass Members – continued to maintain her LawPRO insurance and active status with LSUC. Shireen emailed Kendra the following day, Friday, January 24, 2014, informing her that Shelby had advised that the Reviewers should not sign the contract until amendments were made.
43. The following Tuesday, January 28, 2014, Kendra sent out a new email to the Subclass. Kendra sought to explain the employer payroll deductions to the Reviewers by attaching the Employers Guide to Deductions and specifically referencing the “Placement Agency” obligations. At this point, the Subclass Members had already been working for nearly two weeks.
44. The January 28, 2014 email also stated the following [emphasis in the original]:

As a reminder, Procom is not able to process your contract documents, and therefore set you up for payroll, until we receive your personal information outlined in the welcome email from Kendra Holly.

45. On February 8, 2014, Subclass C was sent an email from Simon, a Manager in Consulting Services at Procom, which further sought to explain the rationale behind the removal of the statutory deductions by Procom. The email acknowledged that there had been many questions received from the Subclass, alluded to the fact that “some consultants may even be questioning our ethics”, and sought to defend Procom.
46. The February 8, 2014 email explanation of the statutory deductions stated the following [emphasis in the original]:

Understanding Government Burden and Withholding

As a placement agency, Procom is required to deduct Employer and Employee burden at source until such a time where we reach the maximum annual contribution according to the following table:

	Employer Costs (% of Gross Wage)	Employer Maximum Remittance	Employee Maximum Remittance
Employment Insurance (EI)	2.632%	\$1,041.01	\$743.58

Canada Pension Plan (CPP)	4.95%	\$2,425.50	\$2,425.50
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How Does This Affect Me?

What this means to you is that rather than you having to remit both the Employer and Employee burdens at tax time, Procom will be deducting them and remitting them at source on each and every pay check. This means that your effective pay rate will be reduced by 7.792% to cover the Employer Burden until such a time where the EI and CPP maximum contribution amounts have been received. In addition to the Employer Burden you will also see the Employee Burden coming off of your pay check every pay period until the EI and CPP maximums have been reached. Once you reach the maximums, the deductions will stop for the remainder of the calendar year.

Note: The Employer Payroll Tax Burden deduction from your starting rate was a **business decision made by Deloitte**, as it is the position of Deloitte that the firm should not be affected monetarily by the business structure chosen by the Independent Contractor. As per a recent email sent by Procom to you, there are 2 options available to you to eliminate the Payroll Tax Burden (Employer and Employee) deductions at source:

- Seek a CPP/EI waiver exemption form from the CRA (if your waiver exemption request is granted by the CRA, all payroll tax burden deducted to date would be returned to you); Procom can provide the link to the CRA site for payroll tax burden waiver exemption requests again if necessary
- Incorporate your business

In each instance, the payroll tax burden deductions at source would either no longer apply (Incorporation status) or they would no longer apply and you would receive a return of all payroll tax burden deductions (CRA exemption ruling) made to date.

An Example Showing Your Rates

Starting Rate		\$47.00
Hours Worked		37.50
Less:	%	\$
Employer EI	2.632%	\$1.24
Employer CPP	4.95%	\$2.33
WSIB	0.21%	\$0.10
Gross Pay		\$43.34

Less:	%	\$
Employee EI	1.880%	\$0.81
Employee CPP	4.95%	%2.15

Net Pay (Hourly)	\$40.38
Approximate Pay in Account **	\$1,514.17

** \$3,500 CPP exemption calculated per pay period changes slightly

I want to reiterate that once you have reached the maximum contributions during each calendar year your rate will be adjusted to reflect it.

Of course please feel free to reach out if you have any questions.

E – Deloitte and Procom’s Refusal to Honour the Initial Terms of the Contract

47. A newly amended contract was sent to Shireen and her co-workers shortly afterwards. Shireen received the amended contract on February 11, 2014. Few, if any, of the fundamental concerns that Subclass C raised had been addressed.
48. Concerned about some of the provisions still included in the contract, Shireen replied via email the following day to a number of Procom and Deloitte representatives, indicating that she was not comfortable signing the contract as it was written.
49. On Thursday, February 13, 2014, Shireen received an email from Simon. He advised her that “Procom/Deloitte” had reviewed the contract and were unwilling to make any further changes. Simon advised Shireen that if she remained unwilling to sign the contract as it was, her engagement with Deloitte would be considered terminated, effective immediately, and that she was not to return to the office the following day. Shireen was advised to inform Andrea of any outstanding hours, so that she could be paid via cheque. Shireen immediately sent Simon and Andrea an invoice for her hours worked at Deloitte, at a rate of \$47.00 per hour, as previously agreed upon.
50. Shireen also immediately emailed a number of her fellow Subclass Members who had also been vocal in expressing the concerns of Subclass C to Procom and Deloitte, informing them that she had been terminated. Shireen’s co-workers expressed concern to Shireen and each other that if they continued to voice opposition to Deloitte’s breach of contract that they would also be terminated.
51. Around this time, Reviewers who had still refused to sign the contract were sent login information for Procom’s invoicing system. This email began with the sentence: “Dear [Subclass C Member Name], Congratulations on your contract! This is a confirmation of terms for your contract at Deloitte Inc.” It had been approximately one month since Project Genesis had begun, and Subclass C Members who had refused to sign the new contract with Procom had not been remunerated for their services at all during this time.

52. Shireen was not paid for several months following the end of her contract. In spite of her vocal opposition to the agreement to work at Procom's reduced rate, and delivering invoice for \$47.00 per hour, like Members of Subclass C, Shireen was only remunerated at the \$43.00 rate (\$40.38 after employee statutory deductions), after she had begun working on Project Genesis.
53. Following this, a number of emails were exchanged between Shireen and Simon Gray, of Procom. Although these emails were not sent to the entire Subclass, they are informative of the situation as it affected Subclass C in its entirety.
54. On April 1, 2014, in response to an email from Shireen requesting an explanation for the variance in base rate from the initial email written by Andrea Taylor on January 14, 2014, to the reduced rate she was now being paid, Simon wrote the following:

Hi Shireen,

I believe that email was written before the new processes for Deloitte came into effect. This email reflected what Deloitte could afford to pay per hour – but it didn't take into consideration the costs associated with administering the contract. The \$47 is the pay rate to Procom, once we determine your legal structure we the costs [sic] of administering your contract and arrive at the amount we are able to offer – in this case \$43.60.

Hope that helps.

Simon

55. Shireen replied that day, and pointed Simon to the documents sent to the Subclass on January 16, 2014, and February 8, 2014.
56. Simon replied immediately, stating the following:

Yes, this is the document that created all the confusion and it wasn't written by us, nothing is deducted from your rate as Deloitte has absorbed our fee.

Showing the employer burden was just to illustrate that we have extra costs associated with the administration of SP contracts vs. INC. When we explained the costs associated, Deloitte chose not to pay them, so the offer rate changed to \$43.60 – perhaps that wasn't communicated very well. For some reason, people seem to believe that EI and CPP are optional – it is an obligation of everyone working in Ontario – if you were incorporated and we could reduce our costs – the obligation that we face would simply shift to your corporation but wouldn't be avoided – so to be honest I'm not sure why there is so much turmoil over this – I've been doing this for 10 years and never seen anything like it.

Prior to Jan. 17th, I wasn't involved – I offered you a contract rate and you declined, which is of course [sic] your prerogative, but I can't honor [sic] a rate I never offered.

Thanks,
Simon

57. Following Shireen's response indicating that she had agreed to work for the rate of \$47.00 per hour, and nothing else, Simon then wrote the following:

Hi Shireen,

I never offered you a rate of \$47 per hour – so a contract didnt [sic] exist – verbal or otherwise. My only communication to you was the \$43 offer which you chose not to accept.

You didn't end up signing the standard contract but we will reimburse you for your hours at the same rate as everyone else, but we require an invoice.

58. Shireen and her fellow Subclass C Members were never provided with full remuneration in accordance with their agreement of January 14 and January 15, 2014.

III – ISSUES

59. The issues of this Statement of Claim can be broken down as follows:

- A. The Class was Misclassified as Independent Contractors;
- B. In the Alternative, the Class Members were Dependent Contractors;
- C. Breach of Contract with Subclass C;
- D. Procom's Unjust Enrichment;
- E. Employer Payroll Taxes and Statutory Deductions; and
- F. Punitive, Aggravated and Moral Damages.

A – The Class Members were Misclassified as Independent Contractors

(i) The Class Members were Employees of ATD/Deloitte

60. Shireen, as proposed Representative Plaintiff, pleads that the Members of the Class were independent contractors in name only, and are properly classified as employees of the Defendant(s). Shireen pleads that notwithstanding any contracts signed between the

parties, it is the character of her employment, rather than its classification, which ought to determine whether she is an employee or an independent contractor.

61. Shireen pleads and relies upon the *Employment Standards Act, 2000* (the “ESA”) – specifically Section 5 – which states that employees are not able to contract out of their statutory entitlements. Shireen pleads that any contract limiting entitlements or purporting to classify her or the Class as independent contractors are void as per the *ESA* and that therefore only the implied terms of her true employment contract ought to be enforced.
62. The contracts signed by Class Members to perform document review services were, in their form and function, contracts *of* service, rather than contracts *for* service. The actual conduct of the parties clearly indicates the true nature of the relationship between Class Members and the Defendants. During the course of their work for ATD and Deloitte, Class Members:
 - (a) were not permitted to work from home or their own offices, but required to work on ATD/Deloitte premises at all times;
 - (b) were not permitted to determine their own hours freely, but informed what the next day’s hours were to be, and unable to work beyond the time chosen by an ATD/Deloitte appointed supervisor;
 - (c) were not permitted to use their own tools or software to complete work, instead being assigned a specific computer and provided with an access code to software purchased and licensed by ATD/Deloitte;
 - (d) were not permitted to determine the manner in which the work was performed;
 - (e) were not permitted to remove any materials from ATD/Deloitte’s offices that were related to the case, including any documents, training manuals, contracts, or even their own hand-written notes;
 - (f) were not permitted to hire any assistants, associates or other employees to assist with the completion of the work;
 - (g) were not permitted to outsource work to any third parties;
 - (h) were not permitted to work unless they were supervised by an ATD/Deloitte appointed supervisor at all times;
 - (i) were required to review documents under strict guidelines established by ATD/Deloitte that allowed for minimal discretion;
 - (j) were to seek guidance and assistance from ATD/Deloitte appointed supervisors in connection with the work being performed;

- (k) were specifically required in their contracts to "...report directly to Shelby Austin or any other party designated...";
- (l) were unable to negotiate their hourly rate, which was unilaterally decided upon by ATD/Deloitte without consultation with Members of the Class;
- (m) had no chance of profit or risk of loss associated with the work done, or projects of ATD/Deloitte;
- (n) were subject to monitoring of both their work speed and their work accuracy;
- (o) were required to log-in to an ATD/Deloitte managed timesheet;
- (p) were subject to a seniority system, in which more senior reviewers were given priority over those with less seniority;
- (q) were subject to ATD/Deloitte's dress code when required (for instance, business attire was required during client meetings); and
- (r) were subject to policies in the workplace, including a "scent-free" policy, and a "nut-free" policy.

63. Shireen further pleads that Class Members were at all times employees of ATD or/and Deloitte, rather than independent contractors placed by Procom, for the following reasons:

- (a) Class Members applied to join ATD/Deloitte's roster of lawyers directly;
- (b) Class Members were vetted and hired to ATD and Deloitte's roster of lawyers by ATD/Deloitte Partners and Associates directly;
- (c) Class Members were transitioned to Deloitte's roster of lawyers when Deloitte acquired ATD;
- (d) Class Members were trained directly by ATD/Deloitte's staff and attended staff meetings with ATD/Deloitte;
- (e) Class Members continue to be advised of new projects and work opportunities by Deloitte Partners and Employees directly;
- (f) Class Members continue to accept these temporary employment offers by communicating their agreement directly to a Deloitte Partner or Employee;
- (g) Procom is a placement agency for Computer Professionals, to which none of the Class Members applied for placement;

- (h) Procom was introduced to the Class by Deloitte, rather than vice versa;
- (i) Procom was represented to Class Members as a contract administrator, rather than an intermediary or agency;
- (j) Procom had no involvement in the recruiting, vetting, or hiring of Class Members; and,
- (k) Class Members have never attended Procom's offices, or personally met with Procom representatives.

64. Shireen submits that Deloitte would therefore be liable for employee benefits pursuant to the *Employment Standards Act, 2000* (the "ESA"), and compensation for improper remittances.

(ii) In the Alternative, the Class Members were Employees of Procom

65. In the alternative, if the Class Members are found not to be employees of ATD/Deloitte, Shireen pleads that Subclass B Members should be found to be employees of Procom.

66. Shireen submits that, as outlined above, the Class Members were employed in terms of a contract of service. This is evident when considering the level of control, the provision of equipment, the inability to subcontract and hire assistants, the lack of opportunity for profit, the low degree of financial risk of loss, and the low degree of responsibility for investment and management and other factors.

67. In the alternative the proposed Shireen relies upon Sections 74.3(a)&(b), and 74.4 of the *ESA* that as a temporary help agency Procom is, by statute, the employer of any person that they place with Deloitte.

68. Procom would therefore be liable for unpaid vacation pay, notice of termination of contracts of service, and unpaid overtime as described below.

69. In the further alternative, that since all three companies worked together to oversee the employment relationship, all three of the Defendants should be found to be joint employers of the Class.

(iii) Liability of the Employer

70. Shireen pleads that she and her fellow Members of the Class are owed:

- (a) Reasonable notice of their terminations, or pay in lieu thereof;
- (b) Employee benefits pursuant to the *ESA*, including unpaid vacation pay, and public holiday pay; and
- (c) Compensation for improper remittances

(a) Notice Period

71. Shireen pleads on behalf of herself and the Class that it was an implied term of their contracts that they would be entitled to reasonable notice of the termination of their employment contracts of service.
72. Class Members were placed on projects with vague and unclear timelines, often subject to change. The majority of projects required Class Members to work for a different duration than the loosely established timelines of their short-term contracts. On some occasions, projects would stretch weeks or months beyond initial projections, while on other occasions, projects would end prematurely and without warning. The Class Members were not subject to fixed term contracts with clear end-dates.
73. Class Members often had very little, if any notice that their employment was coming to an end. On many instances, Class Members would learn only a day or two before the end of a project that the work was projected to be completed. It was not unusual that a contract would end when Reviewer asked a Project Manager for more documents to review, only to be told that they were finished the project, and should pack up immediately.
74. Since Class Members often did not know if they would be working the next day, finding alternate employment became difficult. Even taking on document review projects with other document review companies was difficult when they were committed to projects with ATD/Deloitte for a vague and uncertain duration. Class Members thus regularly found themselves suddenly unemployed, without Employment Insurance coverage.
75. Shireen pleads that Class Members are entitled to a period of reasonable notice of termination of their employment, which they are now owed pay in lieu thereof.
76. Factors which increase the notice period are that:
 - a. the Class Members are professionals, licensed to work in a profession with a glut of unemployed persons with comparable education and skills sets;
 - b. due to outsourcing by law firms to companies like ATD and Deloitte, there are less traditionally professional positions available to Class Members;
 - c. many Class Members are youths, being under 30 years old – an age range in which unemployment is currently particularly high;
 - d. the legal market has seen a significant contraction in recent years, including the collapse of a number of law firms, thereby increasing unemployment in their qualification range, and increasing competition as more experienced persons enter the job market;

- e. the class are all highly skilled professionals with niche skills, which means that it will take them longer to find comparable reemployment;

77. It is the submission of the proposed Representative Plaintiff that each class member ought to have been given three to six months' notice or pay in lieu thereof.

(b) Employee Benefits

78. Should this Honourable Court find that the Class ought to be rightfully recognized as employees, rather than independent contractors, the Members of the Class ought not be prohibited from recovering their statutory benefits merely because they are lawyers.

79. Shireen pleads that the work done by the Class does not constitute legal services, and therefore does not fall under the exemptions enumerated under O. Reg 285/01 to the *ESA*.

80. O. Reg 285/01 to the *Employment Standards Act, 2000* states

Exemptions from Parts VII to XI of Act

2(1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,

(a) as a duly qualified practitioner of,

(ii) law,

81. Parts VII, VIII, IX, X and XI refer to the following sections of the *Employment Standards Act, 2000*:

Part VII: Hours of Work and Eating periods

Part VIII: Overtime Pay

Part IX: Minimum Wage

Part X: Public Holidays

Part XI: Vacation with Pay

82. Should the Class Members be found to be employees, Shireen pleads that they do not fall under the exception O. Reg 285/01 S. 2 (1)(a)(ii). Although Class Members were licensed lawyers, they were not providing legal services.

83. Pursuant to the By-Laws of the Law Society, lawyers who do not practice or provide legal services are required to change their status, are eligible for reduced Law Society fees, and may apply for an exemption from the LawPRO requirement. These changes are permitted because an individual who is not providing legal services or working in a legal role is not considered a practitioner of law.

84. Shireen pleads that since Class Members were not providing legal services or working in a legal role, Class Members did not qualify as practitioners of law in their roles at Deloitte.
85. The provisions of employee benefits under the *ESA* exist for the protection of employees in an otherwise great power imbalance. Statutory exceptions to these protections ought to be construed narrowly. Shireen pleads that the Members of the Class were not employed as legal practitioners at Deloitte, and therefore ought to be excluded from the provision.
86. The Members of the Class were not provided with the benefits outlined in Parts VIII, X and XI of the *ESA*.

Part VIII - Overtime Pay

87. As the work done by the Class does not constitute legal services, Class Members would not be exempt from the overtime provision of the *ESA*. For every hour worked in excess of 44 hours per week, Class Members are owed 1.5 times their hourly wage, per both the *ESA* and the principal of *Quantum Meruit*.
88. Since both the Defendant(s) and the Class kept meticulous, to-the-minute records of time spent by Class Members on each project, it would be a simple calculation to determine how much overtime would be owed to any particular Class Member.

Part X - Public Holidays

89. Part X of the *ESA* mandates that employers must pay their employees public holiday pay. Class members were not paid wages for Public Holidays.
90. As employees, each class member ought to be compensated for unpaid Public Holiday pay, as per the *ESA* and related regulations. As irregular working employees, Class Members would be eligible for an averaged wage on each Public Holiday, as per Section 24(1)(a) of the *ESA*.
91. There are nine (9) public holidays in Ontario each year. The Proposed Representative Plaintiff pleads that every Class Member is entitled to remuneration for holidays which occurred during their tenure with ATD, Deloitte, and/or Procom.
92. Since both the Defendants and Members of the Class tracked their employment, it should be simple to determine which holidays passed during each individual Class Members tenure, and how much is therefore owed.

Part XI - Vacation with Pay

93. Part XI of the *ESA* provides that employees are entitled to vacation time and pay. The Representative Plaintiff pleads that the Defendant(s) denied the Class Members their Vacation Pay, properly owed under Section 35.2.

94. The amount of vacation pay is set at 4% of wages for the time worked as per Section 35.2. Therefore each Class Member is entitled to be compensated an additional 4% for each hour that they worked, as compensation for their denied vacation pay.
95. Shireen pleads that each Class Members is entitled to an additional \$2.00 per hour worked while they were being compensated at a rate of \$50.00 per hour. Calculated at the other rates in dispute, Class Members are entitled to an additional \$1.88 per hour worked at the hourly rate of \$47.00, or an additional \$1.73 per hour worked at the hourly rate of \$43.34.
96. Since the Defendant(s) kept meticulous records of the hours and minutes worked by each individual Member of the Class, it would be easy to determine how much is owed to each class member for Vacation Pay.

(c) Statutory Deductions

97. Since the Class Members were incorrectly classified as independent contractors rather than employees, their statutory deductions were dealt with incorrectly.

Prior to the Purchase of ATD by Deloitte

98. Prior to the purchase of ATD by Deloitte, ATD failed to make any statutory deductions or remittances on behalf of Class Members.
99. As a result, the time worked at ATD did not qualify Subclass Members for Employment Insurance (“EI”), or the Canadian Pension Plan (“CPP”).
100. ATD benefitted enormously from this scheme in a number of ways. ATD saved substantial amounts of money by escaping statutorily required employer remittances for these programs. In addition, ATD was able to deduct the Harmonized Sales Tax (HST) paid to the Subclass A Members from the HST that they were required to remit to the government.
101. Because of their misclassification, Members of the Subclass were not qualified to receive benefits related to EI, and could not gain the hours worked towards their CPP for when they retire.
102. A particularly vulnerable group, given the sporadic, and often unpredictable nature of document review work, EI would have provided a major benefit to many Subclass Members when they were dealing with on again/ off again work from ATD.
103. Shireen pleads that ATD should be obliged to pay to the government both the Employer and Employee portion of the remittances that were neglected during the period in question.

104. Because of their self-serving misclassification of their employees, ATD also has a legal obligation to make the Subclass Members whole. Shireen pleads that ATD ought to provide Members of Subclass A with EI benefits lost due to their misclassification, or the value thereof.

After the Purchase of ATD by Deloitte

105. Although statutory deductions and remittances were made following Deloitte's purchase of ATD, Shireen pleads that these deductions were made improperly.

106. The issue of the manner in which statutory deductions were removed and remitted will be discussed in greater detail below, under issue "E – Employer Payroll Taxes and Statutory Deductions".

B – In the Alternative, the Class Members were Dependent Contractors

107. In the alternative to Issue A, above, Shireen pleads that should the Class Members be found not to be employees of Procom or Deloitte, that they should, at a minimum, be found to be dependent contractors of the Defendant(s).

108. The Class Members were in a state of dependence on the Defendant(s). They were at all times in substantial economic dependence on the Defendants, and are therefore owed reasonable notice of the termination of their contracts.

C – Breach of Contract during the Deloitte/ATD transfer

109. Deloitte breached the terms of the contract it formed with Members of Subclass C on January 14 and 15, 2014.

110. As indicated above, on January 14, 2014, Andrea Taylor sent an email to Subclass C which stated the following [emphasis in the original]:

Hey Team,

We have a crazy new project which will be starting this Friday.

There will be no weekend work on January 18th or 19th.

That said, we will need reviewers to work on the weekend of January 25th and 26th and the weekend of February 1st and 2nd so please indicate your availability for these days when you write back.

The project will run for 2-3 weeks.

The good news is that for this contract reviewers will *not* require LawPro insurance. The less good news is that as a result the hourly rate for this contract is \$47.

Please let me know if you can join us as soon as you can.

111. Shireen pleads that this email constitutes an offer to contract, which she and her fellow Subclass C Members subsequently accepted.

112. The following day, Subclass Members were sent an email with an informational attachment which stated that [emphasis in the original]:

“... Deloitte’s practice is to require that the Sole Proprietor status contractor absorb **corporate** EI/ CPP payroll taxes, as it is our philosophy that the firm should not be penalized monetarily by the business classification of the contractor. These payroll tax deductions will be removed from your base rate, leaving a net hourly rate which will be reflected in your Procom Agreement.”

The information sheet then went on to state:

HOURLY RATES AT DELOITTE

- Hourly rate for document reviewers at Deloitte may vary from contract to contract. We will advise you of the hourly rate before you commence a new project.

113. Shireen pleads that this information sheet did not properly convey that it was Deloitte’s intention to remove the corporate EI/ CPP payroll taxes from the offered \$47.00 per hour rate. Rather, this information sheet indicated that employer payroll deductions were to be removed from a “base rate, leaving a net hourly rate”. As the initial January 14, 2014 offer was referred to as an “hourly rate”, and the information sheet specifically stated “We will advise you of the hourly rate before you commence a new project”, Subclass Members had no reason to believe that their compensation would be anything other than \$47.00 per hour when they began working on January 17, 2014. Shireen pleads that the commencement of work by Subclass C Members on January 17, 2014 represents good consideration for the contractual term of a \$47.00 hourly rate.

114. Even were this not the case, Shireen pleads that the terms “base rate” and “hourly rate” were ambiguous and undefined, and that the Subclass could not be expected to understand Deloitte’s unusual intention from this informational attachment. Shireen pleads where a contract is vague and ambiguous, it should be interpreted against the interests of the drafting party, pursuant to the principle of *contra preferentem*.

115. However, even if the information sheet had clearly communicated that Deloitte and Procom intended the \$47.00 per hour to be a base rate from which corporate EI/ CPP payroll deductions were removed, rather than an hourly rate, Shireen pleads that this was

not the term accepted by Subclass C Members in the initial contract. Rather, this information sheet, sent after Subclass Members had accepted the offer made by Andrea Taylor on January 14, 2014, represents an attempt to unilaterally alter the terms of the contract, which Members of the Subclass did not accept.

116. In the wording of the initial offer, Andrea used bolded letters to emphasize:

The good news is that for this contract reviewers will *not* require LawPro insurance. The less good news is that as a result the hourly rate for this contract is \$47.

117. Shireen pleads that this wording implied to Subclass C Members that they were being paid \$47.00 per hour, rather than their previous rate of \$50.00 per hour, only because they were not required to maintain LawPRO for this particular project. This phrasing implied to Subclass C Members that if LawPRO insurance had been required, they would have received the usual rate of \$50.00 per hour.

118. At the date these pleadings were drafted, the legal nature of document review services, and the requirement to maintain LawPRO by Document Reviewers is an ongoing and unresolved issue. Shireen pleads that if the final determination is that LawPRO insurance was properly required for the work performed by Subclass C Members during the material time, then Subclass Members ought to have been paid an hourly rate of \$50.00.

119. In only remunerating Subclass C Members at the \$43.00 hourly rate (\$40.38 after employee statutory deductions), Deloitte has breached the terms of the contract formed between it and the Members of the Subclass. Given that Subclass Members ought to have been paid either \$47.00 per hour, or \$50.00 per hour, Shireen pleads that the Subclass are owed either \$3.37 or \$6.37 per hour worked.

120. In the alternative, should the court find that Procom was the proper employer of Subclasses B and C, Shireen pleads that Procom is responsible for these amounts.

D – Procom’s Unjust Enrichment

121. Procom was unjustly enriched at the expense of Members of Subclass C, and therefore has an obligation to make restitution to the Subclass.

122. No contract was ever properly formed between Procom and Members of Subclass C. Following the introduction of Procom to the Subclass, Members may broadly be divided into two groups: those who refused to ever sign a contract with Procom, and those who signed a contract with Procom under duress.

123. Shireen pleads that Subclass C Members who, like her, refused to sign the contract proposed by Procom were never party to any agreement with Procom. Furthermore, Shireen pleads that the email sent to her by Simon on April 1, 2014 indicates that Procom also did not consider itself to be a party to that contract. In that email, Simon wrote:

Hi Shireen,

I never offered you a rate of \$47 per hour – so a contract didnt [sic] exist – verbal or otherwise. My only communication to you was the \$43 offer which you chose not to accept.

You didn't end up signing the standard contract but we will reimburse you for your hours at the same rate as everyone else, but we require an invoice.

124. Those Subclass C Members who did sign a contract with Procom did so under economic duress.
125. Even prior to informing Class Members of their actual hourly rate, or providing them with the contract, Deloitte and Procom began indicating that Subclass C Members would not receive any payment for the work they did without executing a full set of contracts. On multiple occasions following the commencement of work for Deloitte, the Class were sent emails indicating that without a full set of executed contracts, Subclass C Members would not be provided the login access information which would allow them to access the timesheet – the only invoicing method which Procom would accept. This point was reinforced as Procom did not provide login access information to those who did not sign the contract for approximately a month following the commencement of work.
126. Although login information was eventually provided to Subclass C Members who had refused to sign the contract, Members who opposed the new contract worked for a month without remuneration, and were unsure whether they would ever receive the pay they had been promised. For the duration of that month, many Class Members held the legitimate belief that individuals who refused to sign the contract sent by Procom would not receive pay for the work they had performed unless they chose to pursue legal action. More importantly, they believed that refusing to sign the contract or choosing to pursue a legal remedy would cost them their place on Deloitte's roster of document reviewers – a fear which subsequently proved well-founded.
127. Shireen pleads that those Subclass Members who did sign contracts with Procom clearly did so under economic duress, and that the contracts are therefore not enforceable.
128. Moreover, Shireen pleads that there was an existing duty for Subclass Members to be paid for the work they were performing pursuant to the earlier contract formed with Deloitte at a rate of \$47.00 per hour. No good consideration was subsequently exchanged between Procom and Members of the Class that would render the proposed contracts that followed binding.
129. Although no contract was ever formed between Procom and the Members of the Subclass C, Procom was nonetheless paid a placement fee at a rate of \$3.00 per hour per subclass C member.

130. While both Deloitte and Procom have represented that Deloitte was “absorbing” Procom’s fees, Shireen pleads that this is not the case. Rather, it is clear that Class Members received a reduction in their remuneration at a rate of \$3.00 per hour, which was in turn paid to Procom as a placement agency fee.
131. Shireen pleads that Deloitte and Procom represented to subclass C that the new rate of \$47.00 per hour was being offered because LawPRO was no longer required, when in fact Class Members were being forced to pay for the services of a placement company which provided no benefit to them, and with whom no proper contract was ever formed.
132. Procom was unjustly enriched at the expense of Class Members, individuals with whom they never formed an enforceable contract, and who stood to gain no benefit from Procom that they were not already entitled to receive pursuant to their existing contract with Deloitte.

E – Employer Payroll Taxes and Statutory Deductions

133. Shireen pleads that after the transition from ATD to Deloitte, Procom improperly deducted the employer side statutory remittances and corporate Employment Insurance (“EI”) and Canadian Pension Plan (“CPP”) contributions from the wages of Subclass B Members.
134. Following Deloitte’s purchase of ATD, Deloitte recognized that the true nature of the relationship between Class Members and ATD was one of employer-employee. Recognizing the potential liability of such a relationship, Deloitte sought to minimize their own liability to Class Members by unilaterally introducing Procom as a third party between themselves and the Class Members to “administer contracts”.
135. In actuality, Procom considered itself to be a computer professional placement agency, and conducted itself in this manner.
136. The basis on which Procom claimed to be properly removing statutory deductions from Class Members was pursuant to the Canadian Revenue Agency (“CRA”) produced *Employers’ Guide Payroll Deductions and Remittances* (“*Employer’s Guide*”). Procom informed the Class in the email of January 28, 2014 sent by Kendra Holly that the CRA defined their engagement as one of a Contract of Service, and that Placement Agencies placing individuals into such a role are responsible for the removal and remittance of statutory deductions.
137. Shireen pleads that as no binding agreements were made between Procom and the Class, and because Procom’s role was that of a contract administrator rather than a placement agency, that Procom was not responsible for the removal of statutory deductions from those wages. Instead, Deloitte, as the employer of the Members of Subclass B was responsible for the remittances to the CRA.

138. Regardless of who was ultimately responsible for these remittances, Shireen pleads that the Statutory Deductions ought to have been removed from a wage of \$47.00 per hour, as was the agreed upon wage, instead of deducted from the unilaterally imposed the \$43.00 hourly rate.
139. Similarly, Procom's removal of employer deductions from the agreed wage of the Class Members was improper in this instance. Corporate taxes are not levied on either employees or independent/dependent contractors. Rather, where a contract is found to be a contract of service, corporate taxes are levied against the employer or placement agency. The unilateral removal of a tax or remittance owed by Deloitte or/and Procom from the \$47.00 hourly wage accepted by Subclass Members was in clear breach of the terms of the contract.
140. Shireen pleads that should the Court find that the Subclass are employees of Deloitte, corporate remittances ought not to have been removed from their wages, and should be returned to the Class.
141. In the alternative, Shireen pleads that should the Court find that the Class are properly independent or dependent contractors, that the Class therefore had no contract with Procom as a placement agency. As such, the removal of any statutory deductions and corporate taxes was improper, and should be returned to the Class.

F – Punitive and Exemplary Damages

(i) Breach of the Employment Standards Act, 2000

142. The Defendant(s) attempted to structure their company in order to circumvent their obligations under the *Employment Standards Act, 2000*.
143. The Defendant(s) reason for circumventing the statutory legislation protecting employees was self-serving, and intended to enrich themselves. This unfair and unjust enrichment resulted in major losses for the vulnerable Class including the loss of notice of termination, EI, CPP, and income.
144. In addition the Class members were greatly disadvantaged by the Defendant(s) misclassification of their employment status, losing other non-financial benefits, which employers are legally required to provide to their employees.
145. For instance ATD failed to establish a recurring pay period as required by Part V of the *ESA* at Section 11(1). Thus Class Members were required to wait, often the duration of the entire project, in order to be paid for their work, which would not be acceptable for employees. Similarly, Class Members were deprived of the protections set out in Part VII of the *ESA*, specifying hours of work and eating periods for employees, and Part VI, specifying record keeping requirements.

146. The Class ought to be compensated, and the Defendants properly punished, by an award of Punitive, Aggravated, and/or Moral damages for the blatant violation and deprivation of statutory rights.

(ii) Duty of Good Faith and Honesty in Contractual Performance

147. Shireen pleads that the Defendants in this case had a duty to act in good faith in the performance of their contractual obligations. This duty required the Defendants to behave honestly and reasonably in their contractual performance, so as to give appropriate consideration to the legitimate interests of the Class, their contracting partners.

148. Shireen pleads that in the performance of their contractual obligations, the Defendants did not have appropriate regard for the Class, and instead actively sought to undermine the interest of Class Members where it was beneficial to ATD/Deloitte and Procom.

149. Additionally, and in the alternative, Shireen pleads that at a minimum the Defendants have a duty of honest performance, requiring that they not lie or mislead Class Members about their contractual performance. Class Members ought to have been able to rely on a minimum standard of honesty from Deloitte and Procom in relation to their contracts. Instead, the Defendants deliberately and knowingly misled the Class on a repeated and ongoing basis.

150. Shireen pleads that the Defendants breached their duty of good faith and honest contractual performance, constituting an actionable wrong for which punitive damages would be properly awarded.

151. ATD/Deloitte:

- (a) Was dishonest about the reason that the remuneration of Class Members was reduced from \$50.00 per hour, alleging it was related to the LawPRO requirement, rather than fees levied by Procom;
- (b) Was dishonest about Procom's role, indicating that they had been contracted by Deloitte to administer contracts, when they were being used as a Placement Agency to create the impression of an arm's length relationship between Deloitte and Class Members in their attempt to limit their liability as an employer;
- (c) Unilaterally forced Class Members to form a contract with Procom, withholding wages from Class Members who refused to enter into a contract with Procom;
- (d) Claimed to have "absorbed" Procom's fees, when they were actually removed from the wage of Class Members;

- (e) Authoritatively told Class Members that LawPRO was not required for document review work, although at the time LawPRO had released official announcements to the contrary;
- (f) Formed a contract with Subclass C Members for a rate of \$47.00 per hour, which they subsequently refused to honour;
- (g) Refused to engage in any meaningful communication with Subclass C Members about the breach of contract, always directing Class Members to Procom representatives;
- (h) Advised Class Members to either (i) apply for a ruling from the CRA for a determination of independent contractor status, or (ii) incorporate a business, as a means of obtaining the \$47.00 hourly rate agreed to, though both options were solely in Deloitte and Procom's interest; and
- (i) Intimidated Class Members into silence by terminating Shireen Sondhi for voicing objections to Deloitte's actions.

152. Similarly, Procom:

- (a) Charged placement fees for Class Members with whom they had no binding agreement;
- (b) Removed employer payroll deductions from Class Members' wages;
- (c) Participated in the coercive imposition of their contract on Class Members, by withholding timesheet login access and wages from Class Members who refused to sign a contract;
- (d) Advised Class Members to act in opposition to their own interests, in either (i) apply for a ruling from the CRA for a determination of independent contractor status, or (ii) incorporate a business, as a means of obtaining the \$47.00 hourly rate agreed to;
- (j) Intimidated Class Members into silence by terminating Shireen Sondhi for voicing objections to Deloitte's actions.

153. Shireen submits that this conduct was particularly egregious given the vulnerability of the Class, and the blameworthiness of the Defendant's actions.

154. The Class Members in this case are particularly vulnerable in relation to the Defendants.

155. The vast majority of Class Members in this case are new and recent calls to the bar. The combination of a stumbling economy and ever-increasing numbers of new graduates from Canadian law schools has flooded the market with young lawyers, competing for fewer and fewer positions in their field. The failure of large and reputable law firms in

Canada has only served to worsen their prospects, as more experienced and established counsel enter the marketplace to compete for these jobs.

156. This issue has been further compounded by the rise of document review companies like Deloitte, which has led to the outsourcing of legal work, and decrease in available positions for new calls. While the Law Society has made attempts to introduce programs to compensate for the reduction in articling positions, there are few options available to newly called lawyers.
157. For many young lawyers, saddled with staggering student debt and desperate not to leave the field of law, document review is a last resort. Deloitte is one of only a few document review companies in Ontario, and for many Class Members, represents their sole source of income. There are limited alternatives available to Class Members, and as such, Procom and Deloitte are in great positions of power over the Class.
158. ATD/Deloitte exercised this power imbalance to its fullest. Knowing how desperate many young lawyers were for work in the legal field, and the ready availability of replacements, ATD/Deloitte used the constant threat of termination and removal from their roster to exploit Class Members, making examples of vocal individuals like Shireen.
159. ATD/Deloitte used this power imbalance to use Class Members solely for their own benefit. Class Members were expected to honour the terms of any agreement they made to work on projects, but to accept early or sudden ends to the agreement where terminated by Deloitte. They were often expected to work an unreasonable numbers of hours well over a standard workweek – often a full lunch break or weekend off was frowned on.
160. Deloitte exploited this power imbalance, forcing Class Members to silently accept their misclassification as independent contractors, deprivation of employee protections, breaches of contract, unexpected wage cuts, and even the unilateral imposition of a contract with a third party placement agency.
161. Similarly, Procom took advantage of the power imbalance that Deloitte had over its independent contractors to forcibly impose a placement contract on Class Members. Individuals who had no desire to contract with Procom, and stood to gain nothing from the agreement were given no option but to sign Procom's agreement.
162. Moreover, when individuals objected to the unilateral imposition of these contracts, Procom used their management of timesheets and invoices to withhold wages from those Class Members who would not sign contracts, or terminate their agreements with Deloitte.
163. Shireen pleads that this behaviour is particularly egregious given that:

- (a) The actions of the Defendants were planned and deliberate;

- (b) The intent of the Defendants was to enrich themselves, at the expense of the Class;
 - (c) The Defendants have persisted in their conduct for a significant length of time;
 - (d) The Defendants are aware of the impact of their conduct on the Class;
 - (e) The Defendants profited and continue to profit from their misconduct
164. The conduct engaged in by the Defendants in this matter is dishonest, exploitative, and in bad faith. Shireen pleads that such behaviour should be strongly denounced by the Courts, to deter other employers from engaging in similar practices.
165. Shireen pleads that punitive and exemplary damages would be rightfully awarded in the circumstances.

IV – LIABILITY

166. It is the position of the Proposed Representative Plaintiff that Deloitte is a successor employer of ATD Legal Services, and that Deloitte ought therefore to have shared liability for all actions of ATD regarding this action. Separately, and in addition, the Plaintiff relies upon Section 4 of the *Employment Standards Act, 2000*, referring to relation to associated or related business, and pleads that the Defendant(s) ought to be treated as one employer. Further, also separately and in addition, the Plaintiff relies upon the common law principles in her submission that the Defendant(s) ought to be treated as one employer.

V – LOCATION

167. Shireen proposes this action be tried at the City of Toronto, in the Province of Ontario.

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Monkhouse Law
357 Bay Street, Suite 804
Toronto, Ontario, M5H 2T7

Andrew H. Monkhouse
Barrister and Solicitor
LSUC No. 64529L

Anna Koppelman
Barrister and Solicitor

LSUC No. 63720Q

Tel: 1-416-907-9249

Fax: 1-888-501-7235

Lawyers for the Plaintiff

SHIREEN SONDHI and
PLAINTIFF

DELOITTE MANAGEMENT SERVICES LP, DELOITTE & TOUCHE LLP; and
PROCOM CONSULTANTS GROUP LTD.
DEFENDANTS

Court file No.:

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

**Andrew Monkhouse
Barrister and Solicitor
(LSUC # 64529L)**

**Anna Koppelman
Barrister and Solicitor
(LSUC #63720Q)**

**Monkhouse Law
330 Bay Street, Suite 820
Toronto, Ontario M5H 2S8**

Tel: (416) 907-9249
Fax: (888) 501-7235

Lawyers for the Plaintiff