

December 22, 2021

Phillip v Deloitte Management Services et al

CV-15-523524-CP

- *Mr. Monkhouse, Ms. Monkhouse, Ms. Singer and Ms. Cutler* for the Plaintiff
- *Ms. Plumpton, Ms. Talbot, Ms. Whitmore, Ms. Wise, Ms. Shiff and Mr. Gilchrist* for the Defendants

Refusals motion heard in writing - Certified class action alleging misclassification of “document reviewers” as independent contractors rather than employees – class action now proceeding to summary judgment – certain questions and documents refused at cross-examinations on affidavits – P brings refusals motion relating to 11 questions and 9 documents – Parties positions are set out in detail in their respective factums and summarized in the Refusals Chart.

Decision: Except for Q. 473 which is deferred to be decided in conjunction with P’s motion to extend the class period, the remaining 10 questions should be answered and the 9 documents should be incorporated into the record.

Reasons: I agree with and accept P’s submissions as set out in his Factum, his Reply Factum and summarized in the Refusals Chart — that the 10 questions and the 9 documents are relevant to Common Issue No. 1 (and in particular, the extent of “control”) in the upcoming summary judgment motion and that the 9 documents are “ordinary course” business records under s. 35 of the *Evidence Act* and as such should be incorporated into the record. In doing so, of course, I make no determination about weight or probative value. I also leave open the question whether D should be entitled to file additional material that explains or otherwise relates to the 9 documents.

Costs: If costs are being sought by P and cannot be resolved by the parties, I will be pleased to receive brief written submissions within 21 days from P and within 21 days thereafter from D.

Signed: *Justice Edward Belobaba*

Notwithstanding Rule 59.05, this Judgment [Order] is effective and binding from the date it is made and is enforceable without any need for entry and filing. Any party to this Judgment [Order] may submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

DATE: December 22, 2021