

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARC-OLIVER BAROCH

Plaintiff

and

**CANADA CARTAGE DIVERSIFIED GP INC., DIRECT GENERAL PARTNER
CORPORATION and CANADA CARTAGE SYSTEM, LIMITED**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

NOTICE OF MOTION

The Plaintiff will make a Motion to Justice Belobaba, the Case Management Judge in this proposed class action, on December 10, 11 and 12, 2014 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- (a) An order certifying this proceeding as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (b) An order approving the description of the class as:
 - (i) all persons who, at any time between March 1, 2006 and the date of the certification order in this action, were employed by Canada Cartage

Diversified GP Inc., Direct General Partner Corporation, or Canada Cartage System, Limited (collectively "Canada Cartage") and who were entitled to receive overtime compensation pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2, and its regulations (the "Class"); or

- (ii) such other description of the Class as the Court may direct;
- (c) An order appointing Marc-Oliver Baroch ("Baroch") as representative Plaintiff on behalf of all members of the Class;
 - (d) An order approving the common issues for the class:
 - (i) In the form set out in Schedule "A" attached hereto; or
 - (ii) In such form as the Court may direct based upon the totality of evidence submitted on the Motion;
 - (e) An order approving Baroch's Litigation Plan;
 - (f) An order approving the form and method of notice to be given to the members of the Class to notify them of the certification of the class proceeding and the manner in which Class members may opt out of the Class;
 - (g) An order directing that members of the Class who elect to opt out of the class proceeding must do so within 30 days after the first publication or delivery of the notice of certification;
 - (h) An order directing that Canada Cartage shall pay all costs associated with the publication or delivery of the notice of certification;

- (i) An order imposing terms on the conduct of the class proceeding;
- (j) An order granting the Plaintiff the costs of this Motion fixed and payable forthwith;
and
- (k) Such further and other Relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (a) The Statement of Claim discloses valid causes of action against Canada Cartage;
- (b) There is some basis in fact to find an identifiable class of two or more persons that will be represented by Baroch as representative Plaintiff;
- (c) The claims of the members of the proposed Class raise common issues of fact and law and there is some basis in fact to support each of the common issues;
- (d) There is some basis in fact to conclude that a class proceeding is the preferable procedure for the resolution of the common issues;
- (e) There is some basis in fact to find that Baroch is a representative plaintiff who:
 - (i) Will fairly and adequately represent the interests of the Class;
 - (ii) Has a litigation plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the Class; and
 - (iii) Does not have, on the common issues of the Class, an interest in conflict with the interest of any other Class members.

- (f) Sections 2, 5, 6, 8, 9, 10, 12, 17, 21, 22, 24, and 32 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
- (g) Rules 1, 2, 12, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
and
- (h) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The affidavit of Marc-Oliver Baroch, sworn on March 22, 2014;
- (b) The affidavit of Dawid B. Juszczak, sworn on March 21, 2014;
- (c) The affidavit of Lilly Iannacito, sworn on March 21, 2014; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 24, 2014

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SCHEDULE "A"

CANADA CARTAGE CLASS ACTION – LIST OF COMMON ISSUES

- 1) Did Canada Cartage have, at any time during the Class Period, a policy or practice whereby it paid Class Members, irrespective of the duties they were performing, for overtime only after 60 hours of work per week?
- 2) Was it a term of Class Members' contracts of employment that they would be paid for overtime in a manner that complied with the provisions of the Canada Labour Code and the applicable regulations thereunder?
- 3) If the answer to 2 is "yes", did the practice of Canada Cartage during the Class Period, whereby it paid all Class Members for overtime only after 60 hours of work per week, constitute a breach of Class Members' contracts of employment?
- 4) Did Canada Cartage have a duty (in contract or otherwise) to monitor and accurately record the hours worked and duties performed by Class Members and ensure that Class Members were paid for all overtime hours in accordance with the provisions of the Canada Labour Code and the applicable regulations thereunder?
- 5) If the answer to 4 is "yes", did Canada Cartage breach that duty?
- 6) a. Was Canada Cartage enriched by failing to pay overtime to Class Members in accordance with their applicable statutory and contractual entitlements?
b. If the answer to 6(a) is "yes", did the Class suffer a corresponding deprivation?
- 7) a. Did the policy or practice of Canada Cartage with respect to the payment of overtime change in or about July of 2012?
b. If the answer to 7(a) is "yes", did the practice adopted by Canada Cartage after this change violate the applicable provisions of the Canada Labour Code and/or the applicable regulations thereunder and/or did the change in practice constitute an unlawful unilateral change in the material terms and conditions of the affected Class Members?

- 8) If the answer to any of the foregoing common issues is “yes”, what remedies are Class Members entitled to?
- 9) If the answer to any of the common issues is “yes”, is Canada Cartage potentially liable on a class-wide basis? If “yes”:
 - a. Can damages be assessed on an aggregate basis? If “yes”:
 - i) Can aggregate damages be assessed in whole or in part on the basis of statistical evidence, including statistical evidence based on random sampling?
 - ii) What is the quantum of aggregate damages owed to Class Members?
 - iii) What is the appropriate method or procedure for distributing the aggregate damages award to Class Members?
 - b. Is the class entitled to an award of aggravated, exemplary or punitive damages based upon Canada Cartage’s conduct?

MARC-OLIVER BAROCH
Plaintiff

-and- CANADA CARTAGE DIVERSIFIED GP INC. et al.
Defendants

Court File No. CV-13-492525-00CP

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PROCEEDING COMMENCED AT
TORONTO

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