

Class Actions

A Summary of Class
Action Decisions

Employment Misclassification Case Certified Against Deloitte

Justice Belobaba has certified a class action against Deloitte in respect of the alleged misclassification of document reviewers. The class at issue consisted of lawyers in Toronto working as document reviewers for Deloitte, and other companies. The document reviewers were treated as independent contractors, and therefore not entitled to the same payments and benefits given to employees under the *Employment Standards Act, 2000* (ESA).

In certifying the case, Justice Belobaba considered the primary hurdle to be establishing commonality pursuant to section 5(1)(c) of the *Class Proceedings Act, 1992*. In examining whether there was commonality, Justice Belobaba considered the guiding question in all independent contractor misclassification cases, that question being “Whose business is it”. Justice Belobaba found that there was sufficient commonality to answer the question of “Whose business is it” on a common basis.

His Honour made several other important holdings regarding the representative plaintiff. Justice Belobaba found that the proposed representative plaintiff was not suitable and directed that she be replaced within 60 days. In support of his conclusion, His Honour relied on the finding that the representative plaintiff had not reviewed the responding materials or timetable and chose to repeat misstatements from her cross-examination.

Justice Belobaba also held that the ongoing class definition was not appropriate, and the end date should be the date of certification. This holding does not recognize the use of ongoing class definitions in other employment class actions. In *Rosen v. BMO*, another misclassification class action, an ongoing class period was certified because the business was a going concern.

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JUSTICE MATTERS

Of interest from the certification decision is Justice Belobaba's obiter that as a result of the changing nature of work, an increase in misclassification cases is likely on the horizon.

Sondhi v Deloitte, **2017 ONSC 2122**

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This edition of Class Action News was produced and edited by the Class Action Department at [Koskie Minsky LLP](#)

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