

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

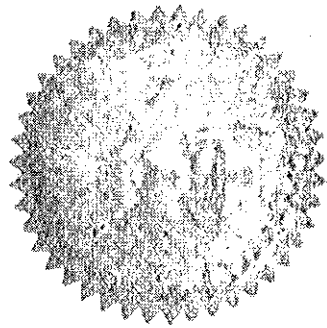
MICHAEL BOZSIK

Plaintiff

- and -

LIVINGSTON INTERNATIONAL INC.

Defendant



PROCEEDING 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 \$10,000.00 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 \$100.00 for costs and have the costs assessed by the court.

Date: October 1 2014

Issued by


Local registrar

Address of
court office

TO: **LIVINGSTON INTERNATIONAL INC.**
400-405 The West Mall
Mississauga, Ontario
M9C 5K7
and/or
5500 N. Service Road, 7th Floor
Burlington, Ontario
ON L7L 6W6

CLAIM

1. The Plaintiff, Michael Bozsik (“Plaintiff”) claims:
 - a. an order certifying this proceeding as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class (as described below);
 - b. \$75 million in general damages for the Class or such other sum as this Honourable Court deems just;
 - c. an interim, interlocutory and final mandatory order directing that the Defendant accurately record all hours worked by members of the Class (“Class Members”) and pay Class Members for all hours worked as follows:
 - i. at their agreed normal hourly rate for hours worked up to the agreed standard hours, and at their agreed overtime rate of one and a one-half (“1.5”) times their normal hourly rate for all hours worked in excess of their agreed standard hours, or at the rate specified in the applicable employment standards legislation in their province of employment (as set out in Schedule “A” attached hereto), whichever is greater;
 - ii. in the alternative, at their agreed normal hourly rate for hours worked up to the threshold for overtime as set out in the applicable employment standards legislation in their province of employment

and at the specified overtime rate prescribed by statute for all hours worked thereafter;

- d. an interim, interlocutory and final order declaring that the Defendant's current Overtime Policy (as defined below) is a term in the contracts of employment of Class Members except to the extent that it does not meet the minimum standards prescribed by provincial employment standards legislation;
- e. an interim, interlocutory and final order declaring that the minimum standards prescribed by provincial employment standards legislation are terms in the contracts of employment of Class Members except to the extent that the Overtime Policy provides for greater benefits;
- f. an order, pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information concerning or relating to hours of work performed by members of the Class, and an order directing the Defendant to preserve and disclose to the Plaintiff all records, in any form, relating to hours worked by members of the Class;
- g. in the alternative to the claim for damages as claimed above, an order directing the Defendant to account to Class Members for all unpaid hours, including overtime, worked by each member of the Class, and an order requiring the Defendant to disgorge to Class Members all amounts withheld by it in respect of such unpaid hours;

- h. in the alternative, a declaration that the Defendant has been unjustly enriched, to the deprivation of members of the Class, by the value of the unpaid hours, including overtime, worked by members of the Class, and an order requiring the Defendant to disgorge to the Class all amounts withheld by it in respect of such unpaid hours;
- i. a declaration that the Defendant has breached its contracts of employment with members of the Class;
- j. a declaration that the Defendant has breached its obligation to act in good faith in the performance of its contracts of employment with Class Members by, among other things:
 - i. failing to pay for all hours worked by the Class Members, including overtime, despite requiring and/or permitting such hours, including overtime, to be worked;
 - ii. retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;
 - iii. creating and/or permitting a working environment and circumstances in which the Class Members are: (i) required to work overtime hours in order to carry out the duties assigned to them; (ii) dissuaded from reporting such overtime hours; and (iii) dissuaded from claiming or obtaining compensation for their unpaid overtime;

- iv. failing to record and maintain accurate records of all actual hours worked by the Class Members;
 - v. imposing on the Class Members an overtime policy that purports to create an unlawful barrier to payment of overtime; and
 - vi. failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by Class Members and ensuring that Class Members are compensated for all hours worked;
- k. a declaration that the Defendant was negligent in the performance of its contracts with the Class Members by, among other things:
- i. failing to record and maintain all hours worked by the Class Members;
 - ii. failing to pay for all hours worked by the class members, including overtime, despite requiring and/or permitting such hours, including overtime, to be worked;
 - iii. failing to advise the Class Members of their right to recover for such unpaid hours and, in particular, of the express or implied terms of their contracts under the applicable employment standards legislation and regulations in their province of employment;

- iv. retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;
- v. creating and/or permitting a working environment and circumstances in which the Class Members are: (i) required to work overtime hours in order to carry out the duties assigned to them; (ii) dissuaded from reporting such overtime hours; and (iii) dissuaded from claiming or obtaining compensation for their unpaid overtime;
- vi. imposing on the Class Members an overtime policy that purports to create an unlawful barrier to payment of overtime; and,
- vii. failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by Class Members and ensuring that Class Members are compensated for all hours worked;
- l. pre-judgment and post-judgment interest on the amounts payable as set out above in equity or otherwise at common law, or alternatively pursuant to sections 128 and 129 of the *Courts of Justice Act*, compounded annually;
- m. punitive, aggravated and exemplary damages in the amount of \$10 million or such other amount as this Honourable Court deems just;

- n. costs of this action on a substantial indemnity basis, together with applicable Harmonized Value-added Tax thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- o. the costs of administering the plan of distribution of the recovery in this action in the sum of \$1 million or such other sum as this Honourable Court deems appropriate; and
- p. such further and other relief as may be required by the *Class Proceedings Act, 1992* or as this Honourable Court may deem just.

The Defendant

- 2. Livingston International Inc. ("the Defendant) is Canada's largest customs broker and freight forwarding organization. The Defendant operates along the U.S.-Canada border, with regional air/sea hubs in Los Angeles, New York and Norfolk, Virginia. The Defendant employs over 3,200 employees at more than 100 border points, seaports, airports and other locations across North America, Europe and the Far East. The Defendant operates 44 offices within Canada in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan. The Defendant's head office is located in Toronto, Ontario.
- 3. As a licensed customs broker, the Defendant provides, among other things, the following services for a wide variety of clients:
 - a. obtaining the release of imported goods;
 - b. paying any duties that apply;

- c. obtaining, preparing, and presenting or transmitting the necessary documents or data;
 - d. maintaining records; and
 - e. responding to any Canada Border Services Agency ("CBSA") concerns after payment.
4. The principal function of the Defendant is to coordinate the importation of goods into Canada from the United States at various air, ground and sea crossings across the country. The Defendant works with importers and shippers to ensure their compliance with the relevant regulations and statutory requirements imposed by the United States and Canadian governments and in particular, those enforced by CBSA.

The Plaintiff & the Class

5. The Plaintiff brings this action on his own behalf and on behalf of all current or former non-management employees of the Defendant in its offices across Canada, who are or were employed in administrative, clerical, technical and supervisory job classifications or otherwise subject to the Defendant's overtime policy or policies as referred to below.
6. In 2006, the Defendant acquired the Plaintiff's former employer (Peace Bridge Brokers Inc.). As a result of the acquisition, the Plaintiff became employed by the Defendant. As set out below, the Plaintiff was employed by the Defendant at its Toronto office, in a series of positions, until his employment was terminated without cause in November 2012. At the time of the termination of his employment the Plaintiff was a Senior Import Analyst and was earning approximately \$55,000/year.

7. Goods of all sorts are shipped into and out of Canada at an extremely high volume 365 days per year. Goods arrive in Canada via truck, rail, aircraft or ship. The importation and transportation of goods is a complicated process. Every load of goods imported into Canada must first be cleared by Canada Customs to ensure, among other things, that any duties owing have been paid and all other regulatory requirements have been met. Due to, among other things, the inherent nature of the Defendant's customs brokerage business, the duties of the Class Members are performed "on demand" and are time sensitive.
8. It is critical to the Defendant's business model and operations that the Class Members meet the needs and requirements of their assigned clients. The Defendant requires Class Members, no matter their position, to provide a high level of customer service to its clients and to take responsibility for correcting the myriad of issues that inevitably arise in the context of its business. To this end, Class Members are routinely instructed to "own the problem" meaning that they must do whatever is necessary to ensure that clients' shipment are not delayed.
9. The Plaintiff, like the balance of the Class Members, serviced a set list of clients and was expected, and required, to see to their needs and/or demands on short notice.
10. The duties of the Class Members include, but are not limited to, the following:
 - a. reviewing shipping manifests;
 - b. reviewing customs documentation;
 - c. coordinating the import, release and transportation of goods with Canada Customs; and
 - d. assisting with and facilitating the foregoing.

11. At all material times, the duties performed by and associated with the Class Members, as well as the policies and practices of the Defendant that affect the conditions of their employment, were, and remain, materially uniform and consistent across the Defendant's various offices and locations.

12. There are various factors that routinely and consistently contribute to the necessity of the Class Members to work overtime including the following:

- a. the time-sensitive nature of customers' needs for the import, release and transportation of goods;
- b. the trend toward "just in time delivery" of goods;
- c. the continuous importation of goods into Canada;
- d. the on-demand nature of the Class Members' duties;
- e. understaffing, including but not limited to understaffing resulting from the Defendant's downsizing;
- f. the limited capacity to deal with excess volume;
- g. the need for Class Members to cover for absent co-workers (e.g. due to illness or the termination of employment);
- h. the chronic backlog of work expected to be completed;
- i. technical or other computer system problems and outages;
- j. backlogs of transactions that regularly accumulate over weekends and holidays;

- k. assisting other locations that may be behind schedule;
- l. seasonal volume;
- m. constant interruptions (e.g. urgent phone calls, emails, etc.) in the Class Members' task queues;
- n. training;
- o. travel;
- p. accounting issues; and
- q. the requirement that Class Members wait for confirmation (between 15 minutes and one or more hours) from CBSA that shipments have cleared customs.

13. Although the need for Class Members to work overtime is chronic, the nature of Class Members' duties are such that it is usually impracticable for them to know in advance when specific instances of overtime will be required.

14. Notwithstanding that the Defendant knows, or should know, that Class Members are consistently required to work overtime to satisfy their duties, and indeed routinely directs them to do so, the Defendant has a consistent practice and unwritten policy of refusing to compensate Class Members for overtime worked and discouraging them from making claims for overtime compensation.

15. The Defendant has a written Overtime Policy (as described below) that requires Class Members to secure advance authorization to work overtime, and provides that the Defendant will not pay overtime absent such advance authorization. In this regard, the

Overtime Policy is contrary to Class Members' contracts of employment, and to law on its face and thereby operates as a systemic barrier to Class Members being compensated for their overtime. Moreover, the Defendant regularly refuses to grant advance authorization to work overtime, notwithstanding that such overtime is routinely necessary for Class Members to fulfill their duties. To the extent that lieu time was made available, there was no reasonable opportunity for Class Members to take lieu time.

Entitlement to Overtime

16. It is an express or implied term of the Class Members' contracts of employment with the Defendant that they are entitled to be paid at their agreed normal hourly rate for hours worked up to their agreed standard hours, and at their agreed overtime rate of 1.5 times their normal hourly rate for all hours worked in excess of their agreed standard hours, or at the rate specified in the applicable employment standards legislation in their province of employment, whichever is greater.
17. In the alternative, it is an express or implied term of the Class Members' contracts of employment with the Defendant that, in accordance with the employment standards legislation applicable in the respective provinces where Class Members work, Class Members are entitled to be paid for overtime at the prescribed rate after they have exceeded the threshold for overtime compensation.
18. As the Defendant is a provincially regulated corporation, it is required to comply with the employment standards legislation applicable in the respective provinces where Class Members work in respect of such matters as wages, hours of employment, and severance entitlement. These minimum standards are intended, among other things, to protect

vulnerable employees from undue exploitation by employers who may seek to take advantage of superior economic and bargaining power by setting unlawfully onerous terms and conditions of employment.

The Defendant's Overtime Policy

19. At all material times, the Defendant has, as an express or implied term of its contracts of employment with the Class Members, various overtime policies all of which provided that the Class Members be paid overtime for hours worked in excess of an eight hour work day. At August 15, 2007, the Defendant had the following version of its overtime policy in place:

Scope

This policy applies to all employees who are covered by the overtime provisions of the applicable employment standards legislation. Generally, it applies to non-management employees, who are in administrative/clerical and technical/supervisory job classifications and work a regular seven-and-a-half or eight-hour day.

Where an employee's work schedule differs from the standard work day or work week, specific overtime practices will be applied based on legislative requirements.

Policy statement

*Overtime is to be avoided as much as possible and must be **pre-approved** by the manager. The company will pay overtime at the rate of one-and-a-half times the employee's regular salary for authorized overtime in excess of eight hours per day or the rate specified by the applicable employment standards legislation, whichever is greater. Preauthorized overtime hours worked in excess of an employee's standard work day but which are not in excess of eight hours will be compensated at straight time.*

*Payment for overtime hours worked outside of an employee's **regularly scheduled** work week, for example Saturday or Sunday, will be at the rate of one and a half times regular salary for authorized overtime in excess of 40 hours per week. In this case, all preauthorized overtime hours up to 40 hours per week will be compensated at straight time or the rate specified by the applicable employment standards legislation, whichever is greater.*

Subject to operational needs and any relevant legislation, overtime will be banked and compensated by a mutually agreed time-off. This time in lieu must be taken within three months. In no case may an employee bank more than 60 hours of overtime at any given time. Overtime is banked at the same rate at which it would have otherwise been paid.

Employees will not be paid overtime for business travel outside of regular work hours except in accordance with the applicable employment standards legislation.

20. As set out above, the Defendant's Overtime Policy unlawfully restricts payment of overtime to those situations where employees have received prior authorization to work overtime. It does not allow for payment of overtime to persons who, like the Class Members, are routinely required or permitted to work overtime to fulfil the basic duties of their employment absent such advance authorization.
21. Moreover, the Defendant's Overtime Policy and systemic practice unlawfully restricts overtime compensation to time off in lieu and purports to place limits on the accumulation and taking of lieu time that do not accord with provincial employment standards legislation. Furthermore, and without limitation, the Overtime Policy fails to provide that lieu time that cannot be taken will be otherwise compensated.
22. By purporting to limit the Defendant's obligation to pay overtime, as set out above, the Defendant's Overtime Policy creates unlawful barriers to claims for payment for hours of overtime worked.
23. The application of the Defendant's Overtime Policy will continue to violate the overtime protections provided in the applicable employment standards legislation in Class Members' provinces of employment, unless prevented from doing so by Court Order.

24. The Class Members are powerless to challenge the unlawful aspects of the Defendant's Overtime Policy. In attempting to do so they would risk discharge and/or other employment and career-related sanctions.

The Plaintiff's Employment with Livingston

25. The Plaintiff worked in the customs brokerage industry since his graduation from college in 1983. The Plaintiff was employed by a number of customs brokerages in a variety of positions until he commenced his employment with the Defendant in 2006.

26. Between 2006 and 2012, the Plaintiff was employed by the Defendant as an Import Analyst.

27. Throughout his employment with the Defendant, the Plaintiff, and the Class Members, were regularly directed, required and/or permitted to work more than their agreed standard hours, in the absence of, and without the opportunity to obtain, advance authorization.

28. For his part, the Plaintiff worked many hours per week of additional work, for which he was not paid, beyond his agreed standard hours. This additional work was performed by the Class Members, including the Plaintiff, in order to fulfill their duties as listed above. The Defendant has regularly refused or otherwise failed to remunerate in full the regular, standard and overtime hours of the Class Members.

29. The Defendant routinely refused advance authorization for overtime even when such advance authorization was specifically requested, and actively discouraged the making of

such requests, despite knowing that such overtime was being worked and was regularly necessary to the fulfillment of the duties of the Class Members.

30. The circumstances referred to above are the result of a uniform, consistent and systemic practice of the Defendant of refusing or otherwise failing to pay compensation to Class Members for their hours worked, notwithstanding its obligations to do so.

Systemic Breach of Employment Contracts

31. The Defendant has breached the express or implied term of its contracts of employment with the Class Members, as set out above, including that it compensate for all hours worked, including its obligation to pay overtime at a rate of 1.5 times the Class Members' regular hourly rates for hours worked in excess of their standard hours, or at the rate specified in the applicable employment standards legislation in their province of employment, whichever is greater.
32. In the alternative, the Defendant has breached the implied terms of the contracts of employment with the Class Members by failing to comply with the applicable employment standards legislation to record and pay for all hours worked, including its obligation and duty to pay overtime or, in the alternative, its duty to prevent Class Members from working overtime that the Defendant did not intend to compensate.

Breach of Duty of Good Faith

33. The Class Members are in a position of vulnerability in relation to the Defendant. As a result and otherwise, the Defendant owes a duty to the Class Members to act in good faith, which includes a duty to honour its statutory and contractual obligations to them.

34. The Defendant has breached its duty of good faith by, among other things:

- a. failing to compensate for all hours worked by the Class Members, including overtime, despite requiring and/or permitting such hours, including overtime, to be worked;
- b. failing to advise the Class Members of their right to recover for such unpaid hours and, in particular, of the express or implied terms of their contracts under provincial employment standard legislative requirements;
- c. retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;
- d. creating and/or permitting a working environment and circumstances in which the Class Members are: (i) required to work overtime hours in order to carry out the duties assigned to them; (ii) dissuaded from reporting such overtime hours; and (iii) dissuaded from claiming or obtaining compensation for their unpaid overtime;
- e. failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things:
 - i. recording all hours worked by Class Members;

- ii. ensuring that Class Members were compensated at the appropriate rates for all hours worked or otherwise prevented from working overtime that the Defendant did not intend to compensate; and
 - iii. recording all lieu time accumulated and taken by Class Members and correlating same with all overtime hours worked by Class Members (if “lieu time” is a lawful alternative to overtime pay which is not admitted but denied);
- f. failing to maintain accurate records of all actual hours worked by the Class Members; and
 - g. imposing on the Class Members an overtime policy that purports to create an unlawful barrier to payment of overtime.

Unjust Enrichment

35. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Plaintiff and the other members of the Class. The precise value of such unpaid hours of work is not known to the Plaintiff but is within, or should be within, the exclusive knowledge of the Defendant as the Defendant is required under employment standards legislation applicable in the respective provinces where Class Members’ work to accurately record the hours worked by Class Members.

36. The Plaintiff and the other members of the Class have suffered a deprivation, in the form of wages corresponding to the unpaid hours that they have worked.

37. There is no juristic reason why the Defendant should be permitted to retain the benefit of the unpaid hours worked by the Plaintiff and the other members of the class. The Defendant's current Overtime Policy, which purports to restrict the availability of paid overtime to situations where managerial authorization has been secured in advance, is unlawful and does not provide a juristic reason.

Negligence

38. The Defendant owed a duty of care to the Plaintiff and the other Class Members to ensure that they were properly compensated for all hours worked at the appropriate rates. The Defendant breached this duty by, among other things:

- a. failing to take reasonable steps to monitor and record all hours worked by the Class;
- b. failing to take reasonable steps to ensure that the Class was properly compensated for all hours worked including overtime, despite requiring and/or permitting such hours, including overtime, to be worked;
- c. failing to advise the Class Members of their right to recover for such unpaid hours and, in particular, of their right to such recovery pursuant to the express or implied terms of their contracts under provincial employment standard legislative requirements;
- d. creating a working environment and circumstances in which the Class Members are, among other things:

- i. required to work overtime hours in order to carry out the duties assigned to them;
 - ii. dissuaded from reporting such overtime hours; and
 - iii. dissuaded from claiming or obtaining compensation for their unpaid overtime;
- e. failing to maintain accurate records of all actual hours worked by the Class Members;
- f. imposing on the Class Members an overtime policy that creates an unlawful barrier to payment of overtime;
- g. failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which was centrally and uniformly controlled and applied, for, among other things:
 - i. recording all hours worked by Class Members;
 - ii. ensuring that Class Members were compensated at the appropriate rates for all hour worked; and
 - iii. recording all lieu time accumulated and taken by Class Members and correlating same with all overtime hours worked by Class Members;
- h. such further particulars as known to the Defendant and as will be provided at discovery and prior to the trial herein.

39. The Plaintiff pleads that the actions, conduct and omissions of the Defendant as aforesaid were unlawful, high-handed and carried out in bad faith. Moreover, they were carried out to enrich the Defendant and with a complete disregard for the rights and interests of the

Class Members, who were and are to the knowledge of the Defendant vulnerable to the actions, decisions and power of the Defendant. Without limiting the generality of the foregoing, the Defendant flagrantly imposed an overtime policy purporting to allow payment for overtime hours only if the hours were authorized in advance in the face of, among other things, employment standards legislation and regulations including (without limitation) section 6(1)(a) of Ontario Regulation 285/01 under the *Employment Standards Act, 2000*. The actions, conduct and omissions as aforesaid warrant awards of aggravated, exemplary and punitive damages.

40. The Plaintiff pleads and relies on the following statutes:

- a. *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
- b. The employment standards statutes, and related regulations, set out at Schedule “A” hereto:
 - i. *Employment Standards Code*, R.S.A. 2000, c. E-9 (“Alberta”);
 - ii. *Employment Standards Act*, R.S.B.C. 1996, c. 113 (“British Columbia”);
 - iii. *Employment Standards Code*, C.C.S.M. c. E110 (“Manitoba”);
 - iv. *Employment Standards Act*, S.N.B. 1982, c. E-7.2 and Reg. 2011-54 (“New Brunswick”);
 - v. *Labour Standards Code*, 1989, R.S.N.S. c. 246 (“Nova Scotia”);
 - vi. *Employment Standards Act, 2000*, S.O. 2000, c. 4 (“Ontario”);
 - vii. *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1 (“Quebec”); and
 - viii. *Labour Standards Act*, R.S.S. 1978, c. L-1 (“Saskatchewan”).

The Plaintiff proposes that this action be tried in Milton, Ontario.

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Lawyers for the Plaintiff

Schedule "A"

Employment Standards Legislation by Province

Province	Relevant Statutes	Overtime Hours	Overtime Pay	Time off in lieu
Alberta	<i>Employment Standards Code</i> , R.S.A. 2000, c.. E-9	<p><u>Section 21</u> Overtime hours in respect of a work week are:</p> <p>a) The total of an employee's work hours in excess of 8 on each work day in the work week, or</p> <p>b) An employee's hours of work in excess of 44 hours in a work week, whichever is greater, and, if the hours in clauses (a) and (b) are the same, the overtime hours are those common hours.</p>	<p><u>Section 22</u></p> <p>(1) An employer must pay an employee overtime pay of at least 1.5 times the employee's wage rate for overtime hours.</p> <p>(2) Subsection (1) does not apply to an employer or employee who has entered into an overtime agreement.</p>	<p><u>Section 23</u></p> <p>(1) An employee or the majority of a group of employees may enter into an overtime agreement</p> <p>(a) as a part of a collective agreement, or</p> <p>(b) if there is no collective agreement, in a written agreement between the employee or group of employees and the employer, that provides that, wholly or partly instead of overtime pay, the employer will provide, and the employee or group of employees will take, time off with pay instead of overtime pay.</p> <p>(2) An agreement referred to subsection (1) is deemed to include at least the following provisions:</p> <p>(a) time off with pay instead of overtime pay will be provided, taken and paid at the employee's wage rate at a time that the employee could have worked and received wages from the employer;</p> <p>(b) if time off with pay</p>

				<p>instead of overtime pay is not provided, taken and paid in accordance with clause (a), the employee will be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked;</p> <p>(c) time off with pay instead of overtime pay will be provided, taken and paid to the employee within 3 months of the end of the pay period in which it was earned unless</p> <p>(i) the agreement is part of a collective agreement and the collective agreement provides for a longer period within which the time off with pay is to be provided and taken, or</p> <p>(ii) the Director issues a permit authorizing an agreement that provides for a longer period within which the time off with pay is to be provided and taken;</p> <p>(d) no amendment or termination of the agreement is to be effective without at least one month's</p>
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				<p>written notice given by one party to the agreement to the other.</p> <p>(3) An employer must provide a copy of the employment agreement to each employee affected by it.</p>
British Columbia	<p><i>Employment Standards Act, R.S.B.C. 1996, c. 113</i></p>	<p><u>Section 35</u></p> <p>(1) An employer must pay an employee overtime wages in accordance with section 40 if the employer requires, or directly or indirectly allows, the employee to work more than 8 hours a day or 40 hours a week.</p>	<p><u>Section 40</u></p> <p>(1) An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement under section 37,</p> <p>(a) 1 1/2 times the employee's regular wage for the time over 8 hours, and</p> <p>(b) double the employee's regular wage for any time over 12 hours.</p> <p>(2) An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement under section 37, 1 1/2 times the employee's regular wage for the time over 40 hours.</p> <p>(3) For the purpose of calculating weekly overtime under subsection (2), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.</p>	<p><u>Section 42</u></p> <p>(1) At the written request of an employee, an employer may establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee within the time required under section 17.</p> <p>(2) Overtime wages must be credited to a time bank at the rates required under section 37 (4), (5) or (6) or 40.</p> <p>(3) If a time bank is established, the employee may at any time request the employer to do one or more of the following:</p> <p>(a) pay the employee all or part of the overtime wages credited to the time bank;</p> <p>(b) allow the employee to use the credited overtime wages to take time off with pay at a time agreed by the employer and the employee;</p> <p>(c) close the time bank.</p> <p>(3.1) The employer may close an employee's time bank after one month's written notice to the employee.</p> <p>(3.2) Within 6 months of closing an employee's time</p>

				<p>bank under subsection (3.1), the employer must do one of the following:</p> <ul style="list-style-type: none"> (a) pay the employee all of the overtime wages credited to the time bank at the time it was closed; (b) allow the employee to use the credited overtime wages to take time off with pay; (c) pay the employee for part of the overtime wages credited to the time bank at the time it was closed and allow the employee to use the remainder of the credited overtime wages to take time off with pay. <p>(4) [Repealed 2003-65-6.]</p> <p>(5) On termination of employment or on receiving the employee's written request to close the time bank, the employer must pay the employee any amount credited to the time bank.</p> <p>(6) [Repealed 2003-65-6.]</p>
Manitoba	<i>Employment Standards Code</i> , C.C.S.M. c. E110	<p><u>Section 10</u></p> <p>The standard hours of work for an employee are</p> <ul style="list-style-type: none"> (a) 40 hours per week, or any greater number of hours per week prescribed by regulation or permitted by the director under section 13; and (b) eight hours per day, or any greater number of hours per day <ul style="list-style-type: none"> (i) provided for in a collective agreement that applies to the employee, or (ii) prescribed by 	<p><u>Section 17</u></p> <ul style="list-style-type: none"> (1) Subject to section 18 and the regulations, an employer must pay an employee a wage for overtime at an hourly rate that is not less than 150% of the employee's regular wage rate. (2) Overtime does not include time that an employer provides an employee as a break if the employee is not required to stay on the business premises or be on duty during the 	<p><u>Section 18</u></p> <p>"Banked time" defined</p> <ul style="list-style-type: none"> (1) In this section, "banked time" means time that an employer is to provide to an employee as time off with pay under this section in lieu of wages for overtime. Agreement for paid time off in lieu of overtime pay (2) If a collective agreement or a written agreement between an employer and employee so provides, the employer may credit the employee with banked time in lieu of

		<p>regulation or permitted by the director under section 13, if no collective agreement applies to the employee.</p>	<p>break.</p>	<p>wages for some or all of the employee's overtime. Rate of time off (3) The amount of banked time credited by the employer must not be less than 150% of the overtime for which the employee is to receive time off with pay in lieu of wages for overtime. When banked time off to be provided (4) The time off to be provided in respect of banked time must be provided during the employee's regular hours of work within (a) three months after the end of the pay period in which the overtime giving rise to the banked time occurred; or (b) any longer period prescribed by regulation or approved by the director. Regular wage rate applies to time off (5) For each hour or part of an hour of time off in respect of banked time, the employer must pay the regular wage rate that applies to the employee's regular hours of work during the pay period in which the time off occurs. (6) For the purpose of this Code, the hours of time off in respect of banked time are deemed to be regular hours of work. Wage payable for banked time not taken (7) The employer must pay the employee a wage in accordance with</p>
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				<p>section 86 (wages to be paid within certain time), at the regular wage rate, for any banked time</p> <p>(a) that the employee has remaining when his or her employment terminates; or</p> <p>(b) for which the employee did not receive time off with pay by the end of the period within which it was to have been provided under subsection (4).</p>
New Brunswick	<p><i>Employment Standards Act</i>, S.N.B. 1982, c. E-7.2</p> <p>And</p> <p>Reg. 2011-54</p>	<p><u>Reg 2011-54 (s. 4)</u></p> <p>The maximum number of hours of work for which the minimum wage fixed under section 5 shall be paid is 44 hours per week.</p>	<p><u>Section 16</u></p> <p>Where a regulation is in effect under subsection 15(1), an employee who works for an employer in excess of the prescribed maximum hours of work shall be paid by the employer at a rate of not less than one and one half times the minimum wage rate.</p>	N/A
Nova Scotia	<p><i>Labour Standards Code</i>, 1989, R.S.N.S. c. 246</p>	<p><u>Section 40</u></p> <p>Notwithstanding anything contained in this Act, where an employee is required to work more than forty-eight hours in a week, that employee shall be paid one and a half times the employee's regular hourly wage for each additional hour worked in that week in excess of forty-eight hours.</p>	<p><u>Section 40</u></p> <p>Notwithstanding anything contained in this Act, where an employee is required to work more than forty-eight hours in a week, that employee shall be paid one and a half times the employee's regular hourly wage for each additional hour worked in that week in excess of forty-eight hours.</p>	N/A
Ontario	<p><i>Employment Standards Act</i>, 2000, S.O. 2000, c. 41</p>	<p><u>Section 22(1)</u></p> <p>An employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in</p>	<p><u>Section 22(1)</u></p> <p>An employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in</p>	<p><u>Section 22(7)</u></p> <p>(7) The employee may be compensated for overtime hours by receiving one and one-half hours of paid time off work for each hour of overtime worked</p>

		each work week or, if another threshold is prescribed, that prescribed threshold. 2000, c. 41, s. 22 (1); 2011, c. 1, Sched. 7, s. 1.	each work week or, if another threshold is prescribed, that prescribed threshold. 2000, c. 41, s. 22 (1); 2011, c. 1, Sched. 7, s. 1.	instead of overtime pay if, (a) the employee and the employer agree to do so; and (b) the paid time off work is taken within three months of the work week in which the overtime was earned or, with the employee's agreement, within 12 months of that work week. 2000, c. 41, s. 22 (7).
Quebec	<i>An Act Respecting Labour Standards</i> , C.Q.L.R. c. N-1.1	<u>Section 52</u> For the purposes of computing overtime, the regular workweek is 40 hours except in the cases where it is fixed by regulation of the Government.	<u>Section 55</u> Any work performed in addition to the regular work-week entails a premium of 50% of the prevailing hourly wage paid to the employee except premiums computed on an hourly basis. ...	<u>Section 55</u> ... Notwithstanding the first paragraph, the employer may, at the request of the employee or in the cases provided for by a collective agreement or decree, replace the payment of overtime by paid leave equivalent to the overtime worked plus 50%. Subject to a provision of a collective agreement or decree, the leave must be taken during the 12 months following the overtime at a date agreed between the employer and the employee; otherwise the overtime must be paid. However, where the contract of employment is terminated before the employee is able to benefit from the leave, the overtime must be paid at the same time as the last payment of wages.
Saskatchewan	<i>Labour Standards Act</i> , R.S.S. 1978, c. L-1	<u>Section 6</u> , (1) Subject to sections 7, 9 and 12, no employer shall, unless he complies with subsection (2), require or	<u>Section 6</u> , (2) Subject to sections 7 and 9, an employer who requires or permits an employee	N/A

		permit any employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week.	to work or to be at his disposal for more than eight hours in any day or 40 hours in any week shall pay to that employee wages at the rate of time and one-half for each hour or part of an hour in excess of eight hours in any day, or 40 hours in any week, during which he requires or permits the employee to work or to be at his disposal.	
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MIKE BOZSIK
Plaintiff

-and-

LIVINGSTON INTERNATIONAL INC.
Defendant

Court File No.: 5270/14

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT MILTON

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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