

Amended this 6<sup>th</sup> day  
of January 2016

Pursuant to .....  
Rule 26.02(b).....

Court File No.: CV-15-2547-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Jonathan Pooley 

BETWEEN:

**CLAUDETTE WOOD, BRUCE COOK and JOHN FEATHERSTONE**

Plaintiffs

and

**~~CTS OF CANADA CO., CTS OF CANADA HOLDING CO., CTS OF CANADA GP  
LTD., CTS OF CANADA L.P., AND CTS CORPORATION~~**

Defendants

**AMENDED STATEMENT OF CLAIM**

**PROCEEDING UNDER the *Class Proceedings Act*, 1992**

**TO THE DEFENDANTS**

**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 \$400.00 for 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 June 03, 2015

Issued by ....*"Samantha Moeller"*  
Local registrar

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Brampton, ON L6W 4T6

TO **CTS of Canada Co.**  
80 Thomas Street  
Streetsville, ON L5M 1Y9  
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~~AND TO **CTS of Canada Holding Co.**  
905 West Boulevard North  
Elkhart, Indiana  
46514  
Tel: 574.293.7511  
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~~AND TO **CTS of Canada GP Ltd.**  
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AND TO **CTS Corporation**  
905 West Boulevard North  
Elkhart, Indiana  
46514  
Tel: 574.293.7511  
Fax: 574.293.6146

## CLAIM

1. The Plaintiffs claim:
  - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class Members, as defined at paragraph 12, below;
  - (b) a declaration that the Plaintiffs and all Class Members, employees of the Defendants, were terminated by the Defendants;
  - (c) a declaration that the Plaintiffs and all Class Members are entitled to the payment of termination and severance pay pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41;
  - (d) damages for breach of statute or, further or in the alternative, breach of contract, including damages calculated on the basis of:
    - (i) the provision of reasonable notice of termination or pay in lieu thereof starting from a date in or around May, 2015;
    - (ii) further or in the alternative, the termination and severance pay payable to the Class Members pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41; and,
    - (iii) further or in the alternative, damages measure on account of the financial losses to the Class Members associated with the loss of the benefits to which they were entitled had proper *Employment Standards Act, 2000* notice been given, such benefits as outlined

and particularized more fully, below, and such damages including loss of income and loss of earning capacity;

- (e) general damages in the amount of \$2,500,000.00 payable to the Class Members on the basis, *inter alia*, that the Defendants have failed to comply with their duty of good faith in the manner in which they treated the Class Members, both during their employment and on the termination of same, and that they have failed to comply with the *Employment Standards Act, 2000*, S.O. 2000, c.41;
- (f) punitive, aggravated, and exemplary damages in the amount of \$2,500,000.00, or such other amount as to this Honourable Court seems just;
- (g) an interlocutory and a final mandatory order directing that the Defendants specifically perform its contracts of employment with the Class Members and comply with the *Employment Standards Act, 2000*, S.O. 2000, c.41;
- (h) a declaration that the Defendants have breached their contracts of employment with each Class Member;
- (i) a declaration that the Defendants have breached their obligation to act in good faith in the performance of their contracts of employment with the Class Members by failing to comply with their contractual obligations toward its employees, by failing to adhere to statutory requirements respecting the payment of termination and severance pay as required by the *Employment Standards Act, 2000*;

- (j) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended;
- (k) costs on a substantial indemnity scale;
- (l) the costs of administering a plan of distribution of the recovery in this Action on such sum as this Honourable Court deems appropriate; and,
- (m) such further and other relief as this Honourable Court may deem just, including as may be required by the *Class Proceedings Act, 1992*.

### **The Parties**

2. CTS of Canada Co. is a corporation incorporated in Nova Scotia that specializes in the design and manufacture of automobile parts. CTS of Canada Co. owns, controls and operates a manufacturing plant located at 80 Thomas Street, in Streetsville, Ontario (the "Streetsville Plant"). CTS of Canada Co. wholly owns the land, property, fixtures, and chattels located at the Streetsville Plant ["CTS Canada"].

~~3. CTS of Canada Holding Co., CTS of Canada GP Ltd., and CTS of Canada L.P. are, respectively, a corporation incorporated in Nova Scotia, a corporation incorporated in Ontario, and a limited partnership operating in Ontario.~~

~~4. CTS of Canada L.P. was formed by CTS of Canada Holding Co. and CTS of Canada GP Ltd. CTS of Canada L.P. maintains one general partner at present, CTS of Canada GP Ltd.~~

~~5. — Alone, or together, CTS of Canada Co., CTS of Canada Holding Co., CTS of Canada GP, Ltd., and CTS of Canada L.P. own, control, and operate the Streetsville Plant. Alone, or together, these entities employed the Plaintiffs and all Class Members, at all material times. These four entities, alone or together, shall hereinafter be referred to as "CTS-Canada".~~

6. 3. CTS Corporation is a corporation incorporated and registered in the State of Indiana, in the United States of America, with its head office at 905 North West Boulevard, in Elkhart, Indiana.

7. 4. CTS Corporation, at all material times, owned, controlled, and directed the affairs of CTS Canada including, but not limited to, the operation of the Streetsville Plant.

8. 5. As particularized below, CTS Canada and CTS Corporation employed the Plaintiffs and all Class Members, and were the Plaintiffs' and Class Members' common employer.

9. 6. The proposed representative plaintiff, Claudette Wood, is 59 years old and currently lives in Mississauga, Ontario. She was hired by the Defendants on or about May 25, 1994 and is a products scheduler. She is a non-salaried full-time employee who earns \$22.38 per hour plus overtime, vacation pay, bonus, benefits, and accrued and unused sick days. She is a member of the Defendants' Pension and RRSP top-up Plan.

~~40.~~ 7. The proposed representative plaintiff, Bruce Cook, is 59 years old and currently lives in Mississauga, Ontario. He was hired by the Defendants on or about July 26, 1994 and is a maintenance mechanic. He is a non-salaried full-time employee who earns \$23.64 per hour plus overtime, vacation pay, bonus, benefits, and accrued and unused sick days. He is a member of the Defendants' Pension and RRSP top up Plan.

~~41.~~ 8. The proposed representative plaintiff, John Featherstone, is 60 years old and currently lives in Brampton, Ontario. He was hired by the Defendants on or about June 27, 1977 and is a sheet metal worker. He is a non-salaried full-time employee who earns \$34.06 per hour plus overtime, vacation pay, bonus, benefits, and accrued and unused sick days. He is a member of the Defendants' Pension and RRSP top up Plan.

~~42.~~ 9. The Class Members are all persons who were employed by the Defendants at the Streetsville Plant and who were advised in or around April 17, 2014 that their employment was to be terminated without cause as a result of the closure of the Streetsville Plant, a closure the Defendants notified the Plaintiffs and Class Members would take place, for most Class Members, on or about March 31, 2015.

~~43.~~ 10. On the date this Statement of Claim was issued, all of the Plaintiffs and the Class Members are presently employed or were recently employed at the Streetsville Plant.



### **Common Employer**

44. 11. The Plaintiffs plead that, at all material times or, further or in the alternative, on the date when they were notified of the termination of their employment, the Plaintiffs and Class Members were employed by both CTS Canada and CTS Corporation.

45. 12. Particulars of the relationship between CTS Canada and CTS Corporation are more fully within the knowledge of the Defendants. The Plaintiffs plead and rely on, *inter alia*:

- (a) the fact that senior employees at CTS Canada and at the Streetsville Plant reported to employees and managers at CTS Corporation;
- (b) the presence of common directors within CTS Canada and CTS Corporation;
- (c) the fact that ~~the entities forming "CTS Canada" are~~ is a subsidiary subsidiaries of CTS Corporation or further, or in the alternative, the fact that CTS Canada is a subsidiary of other corporations, holding companies, or other entities that themselves are subsidiaries of CTS Corporation;
- (d) the fact CTS Corporation approved many changes at CTS Canada, and in particular any changes concerning the remuneration or promotion of employees at CTS Canada;

- (e) the fact that CTS Corporation directed the shutdown of the Streetsville Plant;
- (f) the fact that CTS Corporation has transferred, over the last year, employees from its operations in Mexico to the Streetsville Plant in order for those employees to receive training, advice, and support from the Class Members;
- (g) the fact that CTS Corporation has transferred, over the last year, or will transfer, employees employed at the Streetsville Plant to work at its plant in Mexico, either temporarily or permanently;
- (h) the fact that CTS Corporation, through one of its most senior officers, notified the Class Members of the termination of their employment, as particularized below;
- (i) the fact that CTS Corporation treats ~~the four entities forming~~ CTS Canada as part of its operations, and this in, for instance, communications and regulatory and financial disclosures made available to the public, and this in, also, the fact that CTS Canada's revenues, assets, expenses, and finances are counted as part of CTS Corporation's total revenues, assets, expenses, and finances; and,
- (j) the fact that CTS Corporation's 2014 Annual Report to its shareholders describes the Streetsville Plant as owned by CTS Corporation.

### **The First Severance Letters**

46. 13. Sometime shortly before April 17, 2014, the Defendants decided to shut down the Streetsville Plant and to move its operations to a CTS Corporation plant located in Mexico.

47. 14. By April 17, 2014, the Defendants knew that it would terminate the employment of the Class Members at times consistent with the planned shutdown date of the Streetsville Plant.

48. 15. On or about April 17, 2014, the Defendants provided the Class Members with letters which set out that their employment was to end. These letters set out their resulting severance entitlements (the "First Severance Letters"). The First Severance Letters appear on CTS of Canada Co. letterhead and advise that the Class Members' "employment with the Company" would be terminated.

49. 16. The First Severance Letters request that, at some point shortly after receipt of their First Severance Letters, the recipients execute an acceptance accepting what amounts to continued employment and the payment of an incentive pay amount of a certain number of weeks of pay payable in the event that the Class Member remains within the Defendants' employ until their last day of employment, a date described in the First Severance Letters as the "Separation Date".

~~20.~~ 17. The Severance Letters further request that the recipient execute a Release in favour of CTS of Canada Co., but provide that the Release is to be executed shortly after the Separation Date.

~~21.~~ 18. Most of the First Severance Letters specify, as the Separation Date, a date in late March 2015.

~~22.~~ 19. The signatory of the First Severance Letters, Tony Urban, was, on the date the Severance Letters were delivered, a Vice-President employed by CTS Corporation and working out of CTS Corporation's head office in Elkhart, Indiana.

~~23.~~ 20. The First Severance Letters were delivered in the middle of Passover, and on Holy or Maundy Thursday in the middle of the Easter Week.

~~24.~~ 21. On the same day, towards the end of the day, Mr. Urban sent another email to a number of CTS Corporation staff located around the World, including the Class Members, in which Mr. Urban delivered an Easter greeting, wishing them "good health, longevity and prosperity this Easter".

~~25.~~ 22. In addition to the working notice described above, the First Severance Letters provide the following:

- (a) a lump sum payment paid shortly after the Separation Date;

- (b) continuous benefits coverage, albeit unspecified, until the Separation Date; and,
- (c) A letter of employment.

~~26.~~ 23. The First Severance Letters provide that the payment referred to in paragraph ~~25~~ 22(a), above, is only payable in the event that the recipient continues to work until their respective Separation Date.

~~27.~~ 24. The First Severance Letters further provide that the working notice and the amounts set out in paragraph ~~25~~ 22, above, "include all amounts to which you may be entitled under the Ontario *Employment Standards Act, 2000*, including pay in lieu of notice of termination, severance pay if applicable".

~~28.~~ 25. The Plaintiffs plead, and the fact is, that the payment referred to in paragraph ~~25~~ 22 (a), above, is designed to be, and in fact is, a retention bonus or incentive payment to ensure that the recipient remain within the Defendants' employ until the Separation Date.

~~29.~~ 26. Further, the Plaintiffs plead, and the fact is, that the staggered Separation Dates and the retention or incentive payments referred to in paragraph ~~25~~ 22 (a), above, have been designed with a schedule in mind, one which provides for the transport or transfer of products and product lines to CTS Corporation's operations outside of Canada, notably in Mexico.

~~30.~~ 27. Further, the Plaintiffs plead, and the fact is, that the Defendants' motivation for offering the First Severance Letters and their motivation for the changes to be described below was and is the transport or transfer of products and product lines to CTS Corporation's operations outside of Canada, notably in Mexico. Particulars of this motivation or intent include, but are not limited to:

- (a) the transfer of such product to operations in Mexico;
- (b) having numerous Class Members work additional overtime hours recently to build and stockpile a bank of additional products so that, when production of new products stops, there will be additional product available to ship to Mexico to continue operations;
- (c) having less but some Class Members remain after production stops to ensure delivery of products to the Mexico facility;
- (d) the transfer, temporarily, of employees from the Defendants' Mexico operations to the Streetsville Plant to assist with operations and to receive training; and,
- (e) the transfer or intent to transfer, temporarily, employees from the Streetsville Plant to the Defendants' Mexico operations to assist with the transfer of operations.

~~34.~~ 28. The Plaintiffs therefore plead that the purpose of the First Severance Letters was to secure the Class Members' continued employment to effect the orderly transfer of the Defendants' operations at the Streetsville Plant to CTS Corporation's operations outside of Canada, notably in Mexico.

~~32.~~ 29. The Plaintiffs plead, and the fact is, that the Defendants then intend to sell, lease, subdivide, develop, or use the Streetsville Plant in order to build homes, townhomes, or condominiums, and to sell the Streetsville Plant in order to earn a capital gain related to such sale, lease, subdivision, development, or use.

~~33.~~ 30. The Plaintiffs plead, and the fact is, that the Class Members continued and continue to work significant hours up to the Separation Date(s) set out in First Severance Letters, dates which were extended, as particularized below.

~~34.~~ 31. Further, while the First Severance Letters provide that the Class Members will receive the assistance of employment counselling or related services from "Right Management", such services have been sparingly offered or used, and the Defendants did not take seriously the notion of assisting the Class Members in seeking alternative employment.

~~35.~~ 32. Particulars of the failure to make the Right Management services available or effectively available include, but are not limited to:

- (a) the Class Members' workload in effecting the transfer of operations, including the request that Class Members work increasing overtime hours, such workload preventing Class Members from using business hours to improve their resumes and seek alternative employment;
- (b) the request by Class Members to managers at the Defendants that the Defendants offer a process or flexibility to ensure that Class Members will

- be able to take time off from work to try and obtain alternative employment, such requests having been ignored or denied;
- (c) the fact Right Management was first made available to Class Members earning hourly wages only in January, 2015;
  - (d) the fact that Right Management was first made available to Class Members on salary on or about February 12, 2015;
  - (e) the minimal amount of training the Class Members received in January and February, 2015, at sessions run by Right Management employees;
  - (f) the fact that computer files provided by Right Management for the Class Members' use were only made available on the Defendants' internal networks when few Class Members had access to computers or those networks or, alternatively, were not given such access nor could effectively access such networks or computers given their workload; and,
  - (g) the fact that a substantial majority of the courses offered by Right Management once one logs in to their online resources or website are ones offered during business hours (with the employee logging in at home), rendering those courses inaccessible to many of the Class Members.

~~36.~~ 33. The First Severance Letters advise that the "separation package is conditional in that in order for it to be binding upon the Company" the employee must: (a) "sign a copy of [the] letter" by May 8, 2014; and, (b) "sign and return a witnessed copy of the Release form" shortly after the Separation Date.



~~37.~~ 34. The First Severance Letters do not advise the Plaintiffs or the Class Members of their right, within the statutory notice period defined in the *Employment Standards Act, 2000*, to resign their employment and receive severance pay pursuant to this statute.

~~38.~~ 35. The First Severance Letters likewise erroneously provide that severance pay pursuant to the *Employment Standards Act, 2000* may not apply when, in fact, severance pay was payable to substantially all of the Class Members.

~~39.~~ 36. Finally, the First Severance Letters suggest that continued employment by Class Members is being provided in lieu of severance pay pursuant to the *Employment Standards Act, 2000* when continued employment cannot be offered in lieu of severance pay.

#### **Revisions to the Severance Letters**

~~40.~~ 37. A number of Class Members raised concerns with the Defendants over the adequacy of the payments provided for in the First Severance Letters.

~~41.~~ 38. In response, the Defendants, on or about May 12, 2014, delivered fresh letters identical in content to the First Severance Letters [the "Second Severance Letters"] except that the Second Severance Letters: (a) increased the amounts payable at the "Separation Date"; and, (b) provided for a further lump sum payment in lieu of lost benefits owing after the Separation Date.

### **Adjustments to the Separation Dates**

42. 39. In accordance with paragraph 2 of the First Severance Letters and Second Severance Letters, which paragraphs provide that the Defendants may extend the "Separation Date" by as much as 13 weeks after the original Separation Date, the Defendants have, on at least one or two occasions, in 2015, extended the Separation Date for those Class Members still employed as of the date the extension(s) was (or were) provided.

43. 40. The letters to Class Members extending their employment are written on letterhead containing the names "CTS Corporation" and "CTS Canada" at the top and are signed by Mr. Urban. In these letters, the Class Member is advised that their Separation Date is being pushed forward and that, in recognition of ongoing contributions to the Defendants, further monies are being offered in addition to the lump sums being promised should the Class Member remain employed until the Separation Date. The letters likewise indicate that the lump sum additional payments may increase if the Separation Date is further adjusted.

44. 41. The Plaintiffs plead that these letters extending the Separation Dates provide additional incentive payments or bonuses to incent the recipient to stay and that these additional payments are paid as a lump sum without any reference to the *Employment Standards Act, 2000*.

**Violations of the *Employment Standards Act, 2000***

45. 42. The Plaintiffs plead and rely upon the *Employment Standards Act, 2000*, S.O. 2000, c. 41 and the Regulations thereunder.

46. 43. The Plaintiffs plead, and the fact is, that at the time the Defendants notified the Class Members of the pending termination of their employment, in April and May 2014, the Defendants did not notify Ontario's Ministry of Labour of these terminations or the planned plant closure of the Streetsville Plant.

47. 44. Further to paragraph 46 43, at no time prior to May 2015 did the Defendants notify Ontario's Ministry of Labour of these terminations or the planned plant closure of the Streetsville Plant.

48. 45. Further to paragraphs ~~46-47~~ 43-44, at no time prior to May 2015 did the Defendants notify Ontario's Ministry of Labour of these terminations or the planned plant closure of the Streetsville Plant by utilizing the "Form 1" notification process required by the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation).

49. 46. Sometime in May 2015, the Defendants first notified Ontario's Ministry of Labour of these terminations or the planned plant closure of the Streetsville Plant by utilizing the "Form 1" notification process required by the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation).

50. 47. As a result, the Defendants then first posted the "Form 1" notification document at the Streetsville Plant on or about May 12, 2015.

51. 48. Accordingly, the Defendants failed to comply with the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation) for over a year including by: (a) failing to provide notification to the Ministry of Labour; and, (b) failing to post the "Form 1" in a conspicuous place at the Streetsville Plant.

52. 49. The Defendants' failure to comply with these statutory and regulatory requirements deprived the Class Members of a number of benefits and programs offered by Ontario's Ministry of Labour and Ministry of Training, Colleges, and Universities or, further or in the alternative, to information about those benefits and programs. Those programs included, but are not limited to:

- (a) rapid re-employment and training services;
- (b) an adjustment advisory program;
- (c) access to information about programs and services, including those listed here;
- (d) re-training services;
- (e) employment or career counselling;
- (f) job search skills training;
- (g) referrals;
- (h) information and advice on starting up a small business;

- (i) personal support to deal with, *inter alia*, the stress and distress associated with job loss;
- (j) financial counselling;
- (k) apprenticeship programs and pre-apprenticeship programs;
- (l) the creation of adjustment committees to assist the Class Members find alternative employment;
- (m) the creation of community adjustment committees;
- (n) access to the Canada Ontario job grant program;
- (o) access to the Ministry of Training, Colleges, and Universities' Second Career program;
- (p) access to the Ministry of Training, Colleges, and Universities' Job Creation Partnership;
- (q) access to literacy and basic skills programs;
- (r) access to a self-employment benefit program;
- (s) access to the "Second Career" program; and,
- (t) other steps, programs, committees, and support to of an industry and sectoral nature.

~~53.~~ 50. Further to paragraph ~~52~~ 49, the failure to comply with these statutory and regulatory requirements deprived the Plaintiffs of a cooperative approach to their re-training, development, and re-employment, such an approach involving the Defendants engaging with the relevant Ministries to invest in services and otherwise approach the task of reintegrating the Class Members into the labour force in a systemic and efficient manner.

~~54.~~ 51. The violations pleaded above are such that the First Severance Letters and the Second Severance Letters, and any documents extending the Class Members' Separation Dates in accordance with the First Severance Letters and the Second Severance Letters, are void.

~~55.~~ 52. Alternatively, the violations pleaded above are such that any parts of the First Severance Letters and the Second Severance Letters, and any parts of the documents extending the Class Members' Separation Dates in accordance with the First Severance Letters and the Second Severance Letters, which parts purport to provide Class Members with termination notice pursuant to the *Employment Standards Act, 2000*, are void.

~~56.~~ 53. The Plaintiffs plead, and the fact is, that one or more employees, between April 17, 2014 and May 12, 2014, raised with the Defendants the possibility that they had failed to comply with their obligations pursuant to the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation).

~~57.~~ 54. The Plaintiffs therefore plead that the Defendants knew, or ought reasonably to have known, that the Defendants were in breach of the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation), and this since at least around late April 2014.

~~58.~~ 55. Further particulars of the Defendants' knowledge of their obligations under the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation) are more fully within the possession and knowledge of the Defendants.

~~59.~~ 56. Further, the Plaintiffs plead that the Defendants have failed to comply with, or, further or in the alternative, the proposal in the First Severance Letters and the Second Severance Letters fails to comply with or will fail to comply with the *Employment Standards Act, 2000*, and in particular the severance payment provisions thereof.

~~60.~~ 57. Both the First Severance Letters and Second Severance Letters:

- (a) erroneously advise the recipient that the statutory severance pay provisions in the *Employment Standards Act, 2000* may not apply when, in fact, they do apply to substantially all of the Class Members;
- (b) fail to advise the recipient of their right to resign their employment during the *Employment Standards Act, 2000* statutory notice period but still collect the severance pay owing;
- (c) treat the severance payment as an incentive payment to secure the Class Members' ongoing employment, a fact confirmed by the 2015 documents and letters extending employment and rewarding continued employment to the Separation Date with additional lump sum payments;
- (d) fail to identify which part of the working notice period, if any, and which part of the payment payable after the Separation Date, if any, constitutes pay in lieu of severance pay;

- (e) calculate the working notice and the payments payable after the Separate Date in a way that is different from the method used to calculate severance pay, including by increasing payments to Class Members to stay longer when those Class Members have over 26 years' service with the Defendants and would not be entitled, on a severance pay calculation, to any additional sums for any additional service;
- (f) suggest that the working notice period may be being provided in lieu of severance pay, contrary to law; and,
- (g) are ambiguous, confusing, and misrepresentative.

~~61.~~ 58. The Plaintiffs therefore claim on their own behalf and on behalf of all Class Members damages in lieu of the severance pay amounts to which all of the Plaintiffs and the Class Members are entitled pursuant to the *Employment Standards Act, 2000* and the regulations thereto, notably O.Reg. 288/01.

~~62.~~ 59. The Plaintiffs further plead that the Defendants are not exempt from the operation of this statute by any regulation.

### **Relevant Contractual Obligations**

~~63.~~ 60. At all material times, the Class Members were employed under individual terms and conditions of employment or pursuant to a contract of employment with the Defendants, whether such contract was verbal or written in nature.



64. 61. It is an express or implied contractual term of those contracts that the Class Members are and were entitled, on termination or on being notified of same, to be provided with reasonable notice of termination (or pay in lieu thereof).

65. 62. Further, it is an express or implied contractual term of those contracts that the Class Members are and were entitled, on termination or on being notified of same, to be provided with notice of termination (or pay in lieu thereof) that complied with the *Employment Standards Act, 2000* and O.Reg. 288/01.

66. 63. It is an express or implied contractual term that the Class Members are and were entitled to be paid severance pay that complied with the *Employment Standards Act, 2000* and O.Reg. 288/01 on severance from employment, as occurred here.

67. 64. For the reasons outlined above, the Defendants have breached the express or implied terms of their contracts of employment with the Class Members by:

- (a) failing to provide termination pay or notice of termination pay that complies with the *Employment Standards Act, 2000* and the regulations thereto, including O.Reg. 288/01 (and in particular sub-ss. 3(2) and 3(3) of this regulation), and this by failing to comply with the Ministry notice requirements articulated above; and,
- (b) failing to provide severance pay in accordance with the *Employment Standards Act, 2000* and O.Reg. 288/01.

### **Breach of the Defendants' Duty of Good Faith**

68. 65. Being non-managerial employees and being employed at a facility where the work is now being moved to Mexico, the Class Members are in a position of vulnerability in relation to the Defendants.

69. 66. As a result of this vulnerability or simply as a result of employment with the Defendants, the Defendants owed and owe a duty to act in good faith towards its employees, and in particular towards the Class Members, and to honour its statutory and contractual obligations towards the Class Members.

70. 67. The Defendants have breached this duty of good faith by, *inter alia*:

- (a) failing to notify the Ministry of Labour of the planned plant closure of the Streetsville Plant, depriving the Class Members for over a year of the numerous re-employment benefits outlined above;
- (b) using the First and Second Severance Letters to inaccurately portray their obligations and the Class Members' rights with respect to the *Employment Standards Act, 2000* in order to secure the Class Members' continued employment to help the Defendants transition the work, products, inventory, and other chattels associated with the Streetsville Plant to the Defendants' other operations;
- (c) using the First and Second Severance Letters to inaccurately portray their obligations and the Class Members' rights with respect to the *Employment Standards Act, 2000* in order to secure the Class Members' continued

~~74.~~ 71. The alternative is a multiplicity of proceedings where similar factual and legal issues would be raised. This would be inefficient and could produce inconsistent rulings.

### **Damages**

~~75.~~ 72. The Plaintiffs and Class Members have not to date received notice of termination or, further or in the alternative, statutory termination notice that complies with the *Employment Standards Act, 2000* and all applicable regulations thereto.

~~76.~~ 73. The Plaintiffs plead that the entire notice given to the Class Members to date is void and illegal.

~~77.~~ 74. Further, or in the alternative, the Plaintiffs plead that the portion of the notice that comprises the notice period required by statute is void and illegal.

~~78.~~ 75. As a result of the Defendants' breach of its employment contracts with the Class Members and its breaches of the *Employment Standards Act, 2000*, the Plaintiffs and Class Members have suffered and will suffer damages.

~~79.~~ 76. Those damages include the following damages:

- (a) damages on account of the income payable to a Class Member during the period of reasonable notice owed to them, including damages calculated as or on account of,

- (i) the loss of hourly pay or base salary payable during this period of reasonable notice;
  - (ii) the loss of overtime pay payable during this period of reasonable notice;
  - (iii) the loss of benefits during this period of reasonable notice;
  - (iv) the loss of membership in any pension or RRSP plan during this period of reasonable notice; and,
  - (v) the loss of any other monies on account of bonuses, incentive payments, taxable benefits, or any other form of remuneration during this period of reasonable notice.
- (b) damages measures based on the amounts payable pursuant to the *Employment Standards Act, 2000* and all applicable regulations thereto for termination and severance pay;
- (c) damages for the loss of the benefits the Class Members would have received had timely notice been given to the Minister of Labour, particulars of such notice and benefits having been outlined above; and,
- (d) consequential damages owing to the lack of access to those benefits for over a year, being damages associated with the loss to Class Members that they will experience during their lifetime as they try and re-establish themselves in the labour market.

~~80.~~ 77. The Class Members further claim general damages for the Defendants' actions, including its breaches of its duties of good faith, as set out above.

81. 78. The Class Members also claim aggravated, exemplary and punitive damages in the amount of \$2.5 million as a result of the arbitrary, callous, and highhanded actions of the Defendants, as set out above.

**Class Proceeding and Place of Trial**

82. 79. The Plaintiffs plead and rely upon the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

83. 80. The Plaintiffs propose that this action be tried at the City of Brampton.

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Court File No. CV-15-2547-00

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
BRAMPTON

**AMENDED STATEMENT OF CLAIM**

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