

07-CV-339348CP
Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Alison Corless

Plaintiff

-and-

KPMG LLP

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 \$5,000.00 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 \$400.00 for costs and have the costs assessed by the court.

Date: August 31, 2007

Issued By:



Local Registrar

(M Brenton)

Address of
court office:

393 University Avenue, 10th Floor
Toronto, Ontario M5E 1G6

TO: **KPMG LLP**
199 Bay Street,
Commerce Court West
No. 3300
Toronto, ON
M5L 1B2

CLAIM

1. The plaintiff claims:

- a. an order certifying this proceeding as a Class proceeding and appointing the plaintiff as representative plaintiff for the Class;
- b. an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- c. \$20 million in general damages for the Class, or such other sum as this Honourable Court deems just;
- d. an interlocutory and a final mandatory order directing that Defendant comply with the Ontario *Employment Standards Act ("the Act")*, and other similar employment standards legislation in other provinces, as applicable (similar Employment Legislation in other provinces may be referred to collectively herein as "the Acts") and, in particular, to accurately record all hours worked by Class Members, and to pay Class Members their statutory entitlement for all hours that they worked in excess of the applicable threshold for overtime pay entitlement under applicable Provincial legislation (the "Overtime Threshold") at a rate of time and a half their normal hourly rate;
- e. an order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information concerning hours of work performed by members of the Class, and an

order directing KPMG to preserve, and disclose to the plaintiff, all records (in any form) relating to the hours of work performed by Class Members;

- f. in the alternative to the claim for damages in (b) and (c) above, an order directing the Defendant to account to each Class Member for the hours he/she worked in excess of the applicable Overtime Threshold , and an order requiring KPMG to disgorge to the Class Members all amounts withheld by it in respect of such unpaid overtime;
- g. in the alternative to (c), (f), a declaration that KPMG has been unjustly enriched, to the deprivation of members of the Class, by the value of the work performed by members of the Class and an order requiring KPMG to disgorge to the Class members all profits earned by Defendant as a result of the hours worked by the Class Members in excess of the applicable Overtime Threshold for which the Class Members have not been paid, or in the alternative a declaration that Defendant has been unjustly enriched to the deprivation of the Class Members in the amount of overtime pay due to the Class Members that has not been paid by Defendant;
- h. pre-judgment and post-judgment interest on the amounts payable pursuant to subparagraphs (c), (f), and (g) pursuant to the *Courts of Justice Act*;
- i. punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as to this Honourable Court deems just;

- j. a declaration that KPMG has breached its contracts of employment with each member of the Class;
- k. a declaration that KPMG has breached its obligation to act in good faith in the performance of its contracts of employment with the Class by failing to comply with its statutory obligations toward its employees and by failing to adhere to statutory requirements respecting the payment of wages for hours worked beyond the applicable Overtime Threshold, and by retaining for itself amounts due to the Class in respect of the wages for these hours;
- l. a declaration that KPMG breached its statutory obligations under Part VIII, Section 22(1) of the *Act*, and similar provisions in the *Acts*;
- m. a declaration that KPMG has breached its statutory obligations under Part VII, Section 17 (1)(b) of the *Act*, and where applicable similar provisions in the *Acts*;
- n. costs of this action on a substantial indemnity basis plus Goods and Services Tax;
- 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.

PARTIES

2. The plaintiff Alison Corless (“Plaintiff”) resides in Toronto, Ontario. She was a non-management employee of KPMG from February 2000 to July 2004.
3. The Defendant, KPMG LLP (variously KPMG or Defendant) is the Canadian member firm of KPMG International, a global network of professional firms providing Audit, Tax, and Advisory services. KPMG International operates in 144 countries and has more than 104,000 professionals working in member firms around the world.
4. Defendant is one of the world’s and Canada’s largest accounting and professional services firms, it generates revenues of hundreds of millions of dollars in Canada, and billions of dollars of revenue annually. None of its employees are unionized, and consequentially, due to the vast inequality of bargaining power between the Class Members and KPMG, there is little or no job security.

THE CLASS

5. The Plaintiff brings this action on her own behalf and on behalf of all persons resident in Canada who:
 - a. were employed by Defendant; and
 - b. were required by Defendant to work, or with the knowledge of Defendant worked, hours per week in excess of the applicable Overtime Threshold in their applicable Province; and

- c. did not receive payment for the hours they worked in excess of the applicable Overtime Threshold in accordance with section 22(1) of the *Act*, or under applicable provisions in other *Acts*; and
- d. who claim that they are not exempted from sections 22(1) or section 17 (1)(b) of the *Act* under applicable exemptions prescribed by Regulations to the *Act*, or regulations prescribed under other *Acts*.

The Overtime Claims of Class Members Have Common Issues of Fact and Law

- 6. The policies and practices of KPMG which affect the conditions of employment of the Class Members at Defendant's branches, are relatively uniform and consistent throughout Defendant's branches.
- 7. As KPMG knew or should have known, or as it directed or permitted, Class Members are routinely required to work hours in excess of the applicable provincial Overtime Threshold, and the applicable Permissible Threshold in order to complete their employment responsibilities.
- 8. In addition, KPMG expressly required or directed employees to perform employment functions from time to time, which caused such Class Members to work hours that exceeded applicable Permissible and Overtime Thresholds, for which Class Members have not been compensated for in accordance with the *Act* or *Acts*, or at all.
- 9. Furthermore from time to time Class Members received directives from their supervisors stating that they were required to *charge* more hours per week than employees are permitted to *work* under applicable provincial legislation. For example,

directives would go from Defendant's management to employees saying that they had to *charge* 50 and 60 hours per week.

10. It is well known in the accounting and professional industry that hours worked by a productive employee are approximately 1/3 more than the hours they charge.
11. Accordingly, when management at KPMG told employees to charge 50 and 60 hours per week, management was aware that such employees would be required to work between 65 and 90 hours to complete such charge requirements.
12. Furthermore, KPMG management has an unwritten policy that employees must only record the hours they worked that can be recovered under the budget for a particular project. If an employee was to work more hours on a project than management could recover, the employee would receive a poor performance review, based on "low recovery percentage". Accordingly, employees would "eat their time" so as not to receive poor performance evaluations.
13. The reason for such policy is that the Manager who is responsible for supervising the project must "pass-up" the particular project to his/her own immediate supervisor, the Partner that has the relationship with the particular client (the "Relationship Partner"). The Relationship Partner is squeezed by his/her own supervisor, to charge the hours as shown on the docket. However, the Relationship Partner is conflicted by his/her own relationship with the Client, and desires to keep the Client happy.

14. Thus, the Relationship Partner squeezes his subordinate, the Supervisor, to ensure that the employees that are performing the applicable service do not input more hours in the docket than can be recovered by the Relationship Partner.
15. Accordingly, Defendant's "line" employees were pressured to "eat-time" to pacify their immediate Supervisors and ultimately, the Relationship Partner.
16. Plaintiff alleges that the pressure to eat time was pervasive, and that employees that did not "eat their time" were pushed out by Defendant.
17. Thus, Defendant's internal policies are to require that their employees work more hours than is permissible under the *Act* or *Acts*, to force such employees not to record hours that could not be recovered in contravention of same, and not to pay overtime as required under the *Act* or *Acts*.
18. When employees and Class Members have claimed overtime, KPMG has refused citing an internal policy that salaried employees are not entitled to overtime pay, in contravention of the *Act*, and *Acts*.

Applicable Provincial Legislation

19. KPMG is a limited liability partnership organized under the laws of Ontario with operations around the country. It is therefore required to comply with the minimum conditions set out in the respective *Act* and *Acts* with respect to such matters as wages, hours of employment, and rights to vacation. The minimum standards contained in the respective *Act* and *Acts* including those relating to overtime pay, seek, among other things, to protect vulnerable employees from undue exploitation by

employers who may seek to take advantage of superior economic and bargaining power in setting unlawfully onerous terms and conditions of employment.

20. Section 17 of the *Act* provides that:

(1) Subject to subsections (2) and (3), no employer shall require or permit an employee to work more than,

(a) eight hours in a day or, if the employer establishes a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and

(b) 48 hours in a work week.

(2) An employee's hours of work may exceed the limit set out in clause (1) (a) if the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a day in excess of the limit and his or her hours of work in a day do not exceed the number specified in the agreement.

(3) An employee's hours of work may exceed the limit set out in clause (1) (b) if,

(a) the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a work week in excess of the limit;

(b) the employer has received an approval under section 17.1 that applies to the employee or to a class of employees that includes the employee; and

(c) the employee's hours of work in a work week do not exceed the lesser of,

- (i) the number of hours specified in the agreement, and*
- (ii) the number of hours specified in the approval.*

21. Section 22 of the *Act* further provides that:

(1) 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 each week or, if another threshold is prescribed, that prescribed threshold

22. Section 15(1) of the *Act* obliges an employer, to accurately record and maintain records of its employees' hours of work each day and each week under paragraph 4. However Section 15(3) provides that an employer is not required to record the information described in paragraph 4 of subsection (1) with respect to an employee who is paid a salary if,

(a) the employer records the number of hours in excess of those in his or her regular work week and,

(b) the number of hours in excess of eight that the employee worked in each day,
or

(c) if the number of hours in the employee's regular work day is more than eight hours, the number in excess.

23. Other *Acts* contain similar provisions.

24. Accordingly, pursuant to the requirements of the *Act*, and *Acts*, Defendant must retain employee employment records that show the numbers of hours they worked in the

week in excess of the applicable Overtime Threshold, and must pay employees overtime pay in accordance with the above provisions.

The Plaintiff's Employment History At KPMG

25. The Plaintiff began working for KPMG in February 2000. The position was advertised as an assistant to a specialist and was to be comprised of data entry work. Despite the Job Description advertised by Defendant, and despite Plaintiff having had no experience in the field, and not having completed a university degree, upon being hired, Plaintiff was almost immediately required to compile complex corporate tax returns. Plaintiff's official title was a "technician" in the US Corporate Tax Group.
26. The Plaintiff's starting salary as a "technician" was \$30,000 per year, however, she received consistent raises throughout her tenure working for Defendant. At the time Plaintiff stopped working for Defendant she was earning \$56,000 per year, although her job title never advanced beyond "technician".
27. During the first few months of Plaintiff's employment, she was not required by her employment responsibilities, or otherwise to accumulate overtime hours. However, as the "busy season" approached, she was compelled to work beyond the applicable Overtime and Permissible thresholds in order to complete her duties. At times, Plaintiff was required to stay until midnight to complete her work, resulting in 16-hour work shifts.
28. Defendant's Management was aware of hours worked by the Plaintiff as Plaintiff worked alongside management in preparing and compiling tax returns.

29. During the tax preparation busy season, Plaintiff would habitually receive, and did receive email directives purporting to require that all employees charge 50 hours per week.
30. Plaintiff also received directives from management from time to time, purporting to require that she charge 60 hours per week.
31. On or about July, 2001, a new "technician" joined the group, as a transfer from Defendant's Montreal office.
32. The "new technician" told Plaintiff that "in Montreal, Defendant pays 'overtime' to technicians", and suggested that they should approach management together about overtime pay.
33. Plaintiff approached management together with her colleague and they requested that they be paid "overtime pay" in accordance with the *Act*.
34. Subsequently, Plaintiff and her colleague were called into a manager's office, and she was told in the presence of her colleague and an additional manager, that "the Firm's policy is" that she and the other technicians were not entitled to overtime pay, as it was included in her salary.

The Act mandates that Plaintiff and the other technicians are entitled to Overtime

Pay

35. Plaintiff claims that pursuant to the sections of the Act cited above, Defendant was obligated to pay her overtime at one and half times her usual rate, for the hours she worked in excess of the Overtime Threshold of 44 hours per week.
36. Plaintiff also claims that Defendant also breached the Act by requiring her, or in the alternative permitting her, to work hours in excess of the applicable Permissibility Threshold.
37. Plaintiff pleads that Defendant derives large profits from its policy of requiring or permitting its applicable employees to work longer hours than permissible under applicable legislation, and by denying the employees their rightful overtime pay.
38. Plaintiff pleads that as a result, Defendant should be penalized with Punitive Damages, and the same should be awarded to the Class Members.
39. Plaintiff claims that she is not exempt from any of the requirements of the Act relating to Overtime Thresholds, and/or Permissibility Thresholds.
40. The exact number of hours that Plaintiff worked in excess of the applicable Overtime Threshold, and the applicable Permissibility Threshold, are in the knowledge of Defendant.
41. However, Plaintiff claims that she averaged around 800 overtime hours per year during the course of her employment with Defendant.

42. The Plaintiff's approximate salary and value of additional time, for which she has not been paid, is as follows:

Year	Salary	Amount Owed
2000	\$ 30,000	\$ 13,000
2001	\$ 36,000	\$ 18,000
2002	\$ 46,000	\$ 24,000
2003	\$ 50,000	\$ 27,000
2004	\$ 54,000	\$ 5,000

43. Plaintiff Claims that the exact amount Defendant owes her on account of Overtime Pay is within the particular knowledge of Defendant.

44. Pursuant to O.REG. 285/01 the Plaintiff does not fall into any exempted category of employee from the payment of Overtime Pay. Specifically the Plaintiff's work is not supervisory or managerial in character.

Defendant Has been Unjustly Enriched by its wrongful "Overtime Policy"

45. Defendant has been unjustly enriched as a result of receiving the benefit of the services of the plaintiff and the other members of the Class, and not having paid them their applicable statutory Overtime Pay.

46. The Class has suffered a corresponding Deprivation, and there is no juristic reason for the enrichment of Defendant.

Breach Of Employer's Duty Of Good Faith

47. Being non-management employees, members of the Class are in a position of vulnerability in relation to the Defendant. As a result, Defendant owes a duty to act in good faith towards its employees, in particular towards the Class, and to honor its statutory and contractual obligations towards them.

48. Defendant has breached its duty of good faith by, *inter alia*:

- a. failing to pay for the additional hours of work of the Class Members despite permitting such work to be performed;
- b. failing to advise the Class Members of their right to recover for such additional hours, and in fact misleading them as to their rights;
- c. directing employees to not record additional hours or the actual hours worked;
- d. failing to maintain accurate records of all actual hours worked by the Class Members;
- e. creating a working environment and circumstances in which vulnerable, non-management employees are compelled to:
 - i. work additional hours in order to carry out the duties assigned to them;
 - ii. not report such additional hours; and
 - iii. not attempt to claim or obtain compensation for their additional hours.

A Class Proceeding Is Appropriate

49. The Class Members as individuals risk losing their jobs if they pursue individual claims and are unable to match Defendant's resources. Furthermore, the individual claims of each Class member would not be economical to pursue as separate lawsuits, and therefore the Class Members would be denied access to justice in the absence of a Class proceeding.
50. It is unlikely that an individual could or would seek prospective relief to deter future overtime misconduct by KPMG. Moreover, the Defendant is sufficiently large and well resourced that an individual lawsuit would unlikely have any significant impact on its behavior. A class proceeding in this instance will presumably induce a voluntary change of behavior by the Defendant and many other companies involved in similar practices.
51. The only alternative to a national class proceeding is a multiplicity of proceedings in a variety of jurisdictions across Canada, where similar factual and legal issues would be raised, which would lead to inefficiency and could produce inconsistent rulings.

Damages

52. As a result of KPMG's breach of its implied conditions of employment and its unjust enrichment, as set out above, the Plaintiff, and members of the Class, have consequently suffered damages. This is an appropriate case for the class proceedings judge to admit statistical evidence of the Class Members' losses, and to award damages on the basis of an aggregate assessment.

53. Members of the Class therefore also claim aggravated, exemplary and punitive damages in the amount of \$10 million as a result of the arbitrary, callous and highhanded actions of KPMG as set out above.
54. The Plaintiff pleads and relies upon the following statutes on behalf of herself and the Class Members:
- (a) *Employment Standards Act, 2000*, S.O. 2000, c. 41; (Ontario)
 - (b) *Employment Standards Code*, RSA 2000, c. E-9; (Alberta)
 - (c) *Employment Standards Act*, RSBC 1996, c. 113; (British Columbia)
 - (d) *Class Proceedings Act 1992*, S.O. 1992 c. 6.
55. The plaintiff proposes that this action be tried in the City of Toronto.

August 31, 2007

JUROVIESKY AND RICCI LLP

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Solicitors for the Plaintiffs

Alison Corless
Plaintiff

v.

KPMG LLP
Defendant

Court File No: 07-CV-339348CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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