



October 26, 2017

By Fax: 416.964.5895

Stephen Moreau /Genevieve Cantin
Cavalluzzo Shilton McIntyre Cornish LLP
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Kristin R. Taylor
ktaylor@casselsbrock.com
tel: +1 416 860 2973
fax: +1 416 644 9341

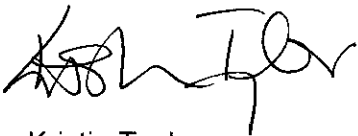
Dear Counsel:

Re: Claudette Wood et al v. CTS of Canada Co. et al; Appeal File No. TBD

Please find enclosed our client's Notice of Appeal and Appellants' Certificate, served in accordance with the *Rules of Civil Procedure*.

Yours truly,

Cassels Brock & Blackwell LLP



Kristin Taylor
Partner
KT/nm

Encl.

cc: CTS Canada Co. et al (by email)

Court File No.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CLAUDETTE WOOD, BRUCE COOK and JOHN FEATHERSTONE

Plaintiffs
(Respondents)

- and -

CTS OF CANADA CO. and CTS CORPORATION

Defendants
(Appellants)

NOTICE OF APPEAL

THE DEFENDANTS, CTS OF CANADA CO. and CTS CORPORATION, APPEAL to the Court of Appeal from the Judgment of the Honourable Justice Sproat (the "**Motion Judge**") dated September 26, 2017, made at the Superior Court of Justice, Ontario (Brampton) in Court File No. CV-15-2547-00 (the "**Judgment**").

THE APPELLANTS ASK that the Judgment on common issues (ii)-(iv), (vi), (viii), (xi) and (xii) be set aside and judgment be granted in favour of the Appellants, as follows:

- (a) The Appellants were required to notify the Ministry of Labour of the closure of the Streetsville Plant on May 1, 2015, the beginning of the statutory notice period, not on April 17, 2014, the day common law notice of termination of employment was first provided;
- (b) The Appellants were 12 days late notifying the Ministry of Labour of the closure, not 13 months late, and the late notification does not render the notice of termination provided on April 17, 2014, void;

-2-

- (c) The Appellants did not conduct the closure of the Streetsville Plant in such a way that the working notice period is rendered void as a result of overtime hours being worked by any of the class members;
- (d) The Appellants are entitled to credit for working notice provided to all class members as of April 17, 2014 when the class members first received notice of termination of their employment;
- (e) Awarding the Appellants costs of the motion and of this appeal; and
- (f) Such further and other relief as counsel may advise and deemed just by this Honourable Court.

THE GROUNDS OF APPEAL are as follows:

I. History

1. CTS of Canada Co. ("**CTS Canada**") is a Canadian corporation that engaged in the business of designing and manufacturing vehicle components at a manufacturing facility located in Streetsville, Ontario (the "**Streetsville Plant**"). CTS Canada is a wholly-owned subsidiary of the defendant, CTS Corporation. For the purpose of this action, it was conceded that CTS Corporation and CTS Canada (together "**CTS**") were common employers of the class members.
2. In February 2014, CTS announced the Streetsville Plant would be closed. On April 17, 2014, CTS notified employees in writing of the termination of their employment. The Streetsville Plant closed permanently in November 2015.

-3-

3. The plaintiffs are three former employees of the Streetsville Plant and representative plaintiffs in a class proceeding brought against CTS for wrongful dismissal.

4. The class members are 74 former employees of the Streetsville Plant who were employed as of April 17, 2014 and, unlike 49 of their co-workers, did not execute a release in favour of CTS in connection with the closure, were not dismissed for just cause and were not absent due to disability. The class included employees who resigned prior to their scheduled end date of employment.

5. By Order dated January 19, 2016, 17 common issues were certified on consent. A chart of the common issues is set out in Appendix "A" to this Notice of Appeal. The common issues focused on the following primary issues:

- a. Did CTS violate the Ontario *Employment Standards Act, 2000* (the "ESA") by failing to notify the Ministry of Labour of the closure of the Streetsville Plant on April 17, 2014 when the class members received common law working notice of termination of their employment, such that the working notice period is rendered void? [Common Issues (ii)-(iv), (vi), (viii), (xi), (xii)]
- b. Did CTS conduct the plant closure in such a way that the working notice period is rendered void as a result of: (i) overtime hours being worked; or (ii) misleading termination letters? [Common Issues (vii), (viii), (xi)]
- c. Did CTS violate the ESA by failing to provide severance pay to the class members? [Common Issues (v), (vi), (xi)]

-4-

d. Did CTS breach its duty to act in good faith to the class members?

[Common Issues (ix), (x), (xiii), (xv), (xvi)]

6. The Motion Judge also considered whether the working notice period was rendered void for five class members who had their original separation dates extended by more than 13 weeks.

7. The class members moved for summary judgment to resolve all of the common issues. CTS did not dispute that summary judgment was appropriate.

II. The Judgment Under Appeal

8. In the Judgment, the Motion Judge interpreted any reference to “notice period” in the ESA as referring to any notice period provided by an employer, including statutory notice, or a greater period of notice. As a result, CTS was required to provide the Ministry of Labour with the prescribed form (the “**Form 1**”) at the beginning of the common law notice period on April 17, 2014. The Motion Judge held that CTS was therefore not entitled to credit for working notice provided from April 17, 2014 until May 12, 2015, the date the Form 1 was provided. The Motion Judge further held that CTS forced certain employees to work overtime and that for those employees, CTS was not entitled to credit for working notice where the overtime had a significant adverse effect on job search efforts. The Motion Judge also held that for the class members who worked more than 13 weeks beyond their original separation date, CTS was entitled to credit for working notice only from the date of the last letter extending their separation date.

-5-

9. The Motion Judge made the following findings, which are not under appeal: (a) the termination letters were not misleading; (b) CTS was entitled to credit for severance payments; and (c) CTS did not act in bad faith.

III. Grounds For Appeal

10. In the Judgment, the Motion Judge made errors of law, and mixed fact and law, as follows:

a. The Motion Judge erred in law in finding that the reference to the first day of the “notice period” in subsection 58(2)(b) of the ESA refers to the first day of the greater working notice period provided by CTS and not the first day of the statutory notice period prescribed by the ESA. In particular, the Motion Judge erred by:

- (i) Failing to interpret the language of the ESA, including the language of section 60 and the definition of “statutory notice period” under subsection 1(1) of the ESA, to find that “notice period” means only the statutory notice period prescribed by the ESA;
- (ii) Failing to find that both the legislative history and the ESA’s intent to provide for uniform minimum standards, supports the interpretation that “notice period” under subsection 58(2) refers to statutory notice period;

-6-

- (iii) Failing to follow the ESA Policy and Interpretation Manual (the “**Manual**”) which expressly provides that “notice period” under subsection 58(2) and section 60 refers to the statutory notice period, based on an incorrect assumption that the Manual was not updated with the coming to force of the ESA.

- b. The Motion Judge erred in law in finding that the appropriate remedy for failing to provide the Form 1 on April 17, 2014 is to invalidate the 13 month working notice period from April 17, 2014 until May 12, 2014, and in particular:
 - (i) Failing to interpret the remedial provision in subsection 58(4) of the ESA as applying to only the statutory notice period provided prior to the filing of the Form 1, and not to a greater working notice period; and
 - (ii) Incorrectly applying contractual principles with respect to the interpretation of termination provisions in employment contracts to find that a breach of the ESA invalidates the entire working notice period provided by CTS.

- c. The Motion Judge erred in mixed fact and law in finding that the ESA triggers significant assistance and benefits to employees such that compliance with the Form 1 requirement is a significant contractual term, notwithstanding that the evidence establishes that the Form 1 process only

-7-

triggers an offer of government support for services, not a requirement for employers to provide any of those services.

d. The Motion Judge erred in mixed fact and law in finding that CTS is denied credit for working notice with respect to class members who were forced to work overtime during the working notice period where the overtime had a significant adverse effect on the ability of class members to look for new employment, and in particular:

(i) Finding, without an evidentiary basis, that CTS forced certain class members to work overtime; and

(ii) Finding that a working notice period is invalidated where employees work overtime during the working notice period.

e. The Motion Judge erred in mixed fact and law in finding that, for the class members who worked more than 13 weeks beyond their original separation date, CTS is entitled to credit for working notice only from the date of the last letter extending their separation date, notwithstanding that:

(i) The evidence establishes that the class members were provided with a choice to accept the extension over 13 weeks and accepted the extension; and

(ii) The evidence establishes that all five class members were provided with additional consideration for the extension.

-8-

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

11. This Court has jurisdiction as follows:
- (a) Under section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c.43;
 - (b) Under section 30(3) of the *Class Proceedings Act*, 1992, S.O. 1992;
 - (c) The Judgment under appeal is a final Order of a judge of the Superior Court of Justice; and
 - (d) Leave to appeal is not necessary.

October 26, 2017

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Kristin Taylor LSUC #: 373390
Tel: 416.860.2973
Fax: 416.644.9341
ktaylor@casselsbrock.com

Caitlin Russell LSUC #: 63847M
Tel: 416.869.5976
crussell@casselsbrock.com

Lawyers for the defendants (appellants)

TO: **CAVALLUZZO SHILTON MCINTYRE & CORNISH LLP**

Barristers and Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Stephen J. Moreau LSUC #: 48750Q
Genevieve J. Cantin LSUC #: 69073S
Tel: 416.964.1115
Fax: 416.964.5895

Lawyers for the plaintiffs (respondents)

Appendix A

#	Common Issue
(i)	Were the Defendants common employers of the Class Members at the times material to the Action?
(ii)	Did the Defendants, or any one of the Defendants, violate the <i>Employment Standards Act, 2000</i> , S.O. 2000, c. 41 [the "ESA"] and/or the Regulations thereto by failing to notify the Ministry of Labour of the closure of the Streetsville Plant prior to May 1, 2015?
(iii)	Did the Defendants, or any one of the Defendants, violate the <i>ESA</i> and/or the Regulations thereto by failing to post the "Form 1" notification document at the Streetsville Plant prior to May 1, 2015?
(iv)	When were the Defendants, or any one of the Defendants, required to a) notify the Ministry of Labour of the closure of the Streetsville Plant; and, b) post the "Form 1" notification document at the Streetsville Plant?
(v)	Did the Defendants, or any one of the Defendants, violate the <i>ESA</i> , and in particular, the severance pay provisions of the <i>ESA</i> ?
(vi)	If the answer to either (ii) or (iii) or (v) is yes, then: a) Does the violation or violations of the <i>ESA</i> and/or the Regulations thereto render the First Severance Letters void? b) Does the violation or violations of the <i>ESA</i> and/or the Regulations thereto render the Second Severance Letters void? c) Does the violation or violations of the <i>ESA</i> and/or the Regulations thereto render any portion, or the entire portion, of the notice period given to employees from April 17, 2014 onward, void? d) Does the violation or violations of the <i>ESA</i> and/or the Regulations thereto result in the Class Members being owed new termination pay or fresh severance pay as provided for in the <i>ESA</i> ? e) Does the violation or violations of the <i>ESA</i> and/or the Regulations thereto result in the Class Members being owed a new reasonable notice period and pay in lieu of such a reasonable notice period?
(vii)	What are the relevant terms (express, implied, or otherwise) of the Class Members' contracts of employment with the Defendants, or any subset of the Defendants, concerning: a) the term of their employment, notably whether such term was of fixed or indefinite duration? b) the termination of their employment, and whether same requires the provision of reasonable notice prior to termination or pay in lieu thereof? c) the manner in which such employment can be terminated including the obligations of the Defendants or any one of the Defendants to comply with the <i>ESA</i> and/or the regulations thereto including the obligations outlined in response to questions (ii) – (v), above?
(viii)	Did the Defendants or any one of the Defendants breach any of those contractual terms? If so, how?
(ix)	Did the Defendants or any one of the Defendants owe a contractual or other duty to act in good faith towards the Class Members in administering its statutory and contractual obligations towards them?
(x)	If the answer to (ix) is yes, then did the Defendants or any one of the Defendants breach this duty of good faith? If so, how?
(xi)	If the answer to any of the foregoing common issues is "yes", what remedies are Class Members entitled to?
(xii)	In assessing damages for the failure to provide reasonable notice of termination or pay in lieu

-10-

	thereof, are the Defendants precluded from relying on any notice they gave prior to their compliance with their obligations under the <i>ESA</i> , the regulations thereto, and/or the contract to notify the Ministry of Labour of the closure of the Streetsville Plant and to post the "Form 1" notification document at the Streetsville Plant?
(xiii)	Is the Class entitled to an award of general or aggravated damages based upon the Defendants' conduct?
(xiv)	Is the Class entitled to an award of exemplary or punitive damages based upon the Defendants' conduct?
(xv)	If the answer to question (xiii) and/or (xiv) is "yes", can these damages be determined on an aggregate basis?
(xvi)	If the answer to question (xv) is "yes", what is the appropriate method or procedure for distributing any aggregate general, aggravated, exemplary or punitive damages to Class Members?
(xvii)	Should the Defendants pay the cost of administering and distributing recovery to the Class?

CLAUDETTE WOOD et al.
Plaintiffs (Respondents)

and

CTS OF CANADA CO. et al.
Defendants (Appellants)

Court File No.

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Kristin Taylor LSUC #: 373390
Tel: 416.860.2973
Fax: 416.644.9341
ktaylor@casselsbrock.com

Caitlin Russell LSUC #: 63847M
Tel: 416.869.5976
crussell@casselsbrock.com

Lawyers for the defendants (appellants)

Court File No.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CLAUDETTE WOOD, BRUCE COOK and JOHN FEATHERSTONE

Plaintiffs
(Respondents)

- and -

CTS OF CANADA CO. and CTS CORPORATION

Defendants
(Appellants)

APPELLANTS' CERTIFICATE

The Appellants certify that the following evidence is required for the Appeal, in the Appellants' opinion:

1. Motion Record of the Plaintiffs/Moving Parties (4 volumes), undated;
2. Motion Record of the Defendants/Respondents (1 volume), dated January 16, 2017;
3. Reply Motion Record of the Plaintiffs/Moving Parties (1 volume), undated;
4. Supplementary Motion Record of the Plaintiffs/Moving Parties (2 volumes), undated;
5. Transcript from the Cross Examination of Tony Urban on March 27, 2017;
6. Transcript from the Cross Examination of John Featherstone on March 29, 2017;

-2-

7. Transcript from the Cross Examination of Claudette Wood on March 29, 2017;
8. Transcript from the Cross Examination of Leonard Park on March 29, 2017;
9. Transcript from the Cross Examination of Lynne Campbell on March 31, 2017;
10. Transcript from the Cross Examination of Mitchell Lipton on April 3, 2017;
11. Transcript from the Cross Examination of Ruben Lindy on April 3, 2017;

October 26, 2017

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Kristin Taylor LSUC #: 373390

Tel: 416.860.2973

Fax: 416.644.9341

ktaylor@casselsbrock.com

Caitlin Russell LSUC #: 63847M

Tel: 416.869.5976

crussell@casselsbrock.com

Lawyers for the defendants (appellants)

TO: **CAVALLUZZO SHILTON MCINTYRE & CORNISH LLP**

Barristers and Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Stephen J. Moreau LSUC #: 48750Q

Genevieve J. Cantin LSUC #: 69073S

Tel: 416.964.1115

Fax: 416.964.5895

Lawyers for the plaintiffs (respondents)

CLAUDETTE WOOD et al.
Plaintiffs (Respondents)

and

CTS OF CANADA CO. et al.
Defendants (Appellants)

Court File No.

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT
TORONTO

APPELLANTS' CERTIFICATE

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Kristin Taylor LSUC #: 373390
Tel: 416.860.2973
Fax: 416.644.9341
ktaylor@casselsbrock.com

Caitlin Russell LSUC #: 63847M
Tel: 416.869.5976
crussell@casselsbrock.com

Lawyers for the defendants (appellants)