

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

In the matter of a Claim under the  
*Class Proceedings Act, 1992, S.O. 1992, c. 6*

BETWEEN:

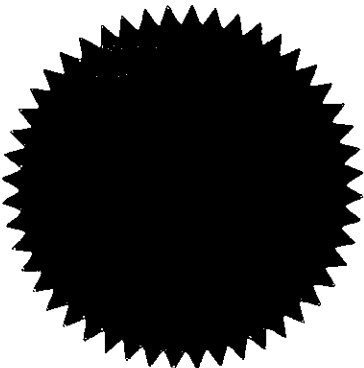
JAMES COTTON and SUZETTE KENNEDY

Plaintiff

and

MICHAELS STORES, INC.  
AND MICHAELS OF CANADA, INC.

Defendants



AMENDED

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

FILED THIS 3<sup>rd</sup> DAY OF December  
BY THE ORDER OF J. Beckwith  
20<sup>th</sup> DAY OF November  
2003  
COMPLIANT A L'ORDONNANCE DE  
L'ARTICLE 28  
[Signature]  
LOCAL REGISTRAR SUPERIOR COURT OF JUSTICE

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.

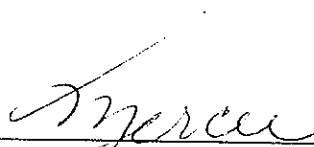
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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.

Date: December 20, 2002

Issued by

  
Local registrar

Address of court office:  
45 Main Street East, Suite 110  
Hamilton, Ontario  
L8N 2B7

TO: MICHAELS STORES, INC.  
8000 Bent Branch Drive  
IRVING, Texas  
USA  
75063

TO: MICHAELS OF CANADA, INC.  
8000 Bent Branch Drive  
IRVING, Texas  
USA  
75063

## CLAIM

1. The Plaintiffs claim on their own behalf and on behalf of all Class Members:
  - a. A declaration that the Defendants are in breach of the provisions of the *Employment Standards Act*, S.O. 2000, c.41, and equivalent/similar legislation in other provinces and territories, in failing to make payment to the Plaintiffs and Class Members for all overtime hours worked in excess of 44 hours per week in any given week at the rate of one and one-half times the regular rate of pay for all such weeks;
  - b. Damages for breach of contract as set-out below;
  - c. Payment to the Plaintiffs and all Class Members for all overtime hours worked in excess of 44 hours per week in any given week at the rate of one and one-half times the regular rate of pay, for all such weeks;
  - d. Punitive, aggravated and exemplary damages;
  - e. Pre and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
  - f. Costs on a substantial indemnity basis;

- g. Such further and other relief as this Honorable Court may deem just and appropriate in the circumstances.

## **THE PARTIES**

2. The Plaintiff, James Cotton is an individual residing in the City of Burlington, Ontario and was formerly an employee of the Defendant.
3. The Plaintiff, Suzette Kennedy is an individual residing in the City of Hamilton, Ontario and was formerly an employee of the Defendant.
4. The Defendant, Michaels Stores, Inc. ("Michaels") is a publicly-traded company on the New York Stock Exchange (NYSE) under the symbol "MIK".
5. The Defendant, Michaels of Canada, Inc. is a wholly-owned subsidiary of Michaels.
6. Michaels is the world's largest retailer of arts, crafts, framing, floral, decorative wall decor and seasonal merchandise for the hobbyist and do-it-yourself home decorator.
7. Michaels owns and operates approximately 750 Michaels stores in the United States and Canada, including approximately 35 stores in Canada.

## THE STATUTORY/REGULATORY SCHEME

8. Part VIII of the *Employment Standards Act*, S.O. 2000, c. 41 (the "Act"), specifically Subsection 22(1) provides as follows:

"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."

9. Subsection 22(9) of the Act provides as follows:

"If an employee who performs work of a particular kind or character is exempted from the application of this Section by the regulations or the regulations prescribe an overtime threshold of other than 44 hours for an employee who performs such work, and the duties of an employee's position require him or her to perform both that work and work of another kind or character, this Part shall apply to the employee in respect of all work performed by him or her in a work week unless the time spent by the employee performing that other work constitutes less than half the time that the employee

spent fulfilling the duties of his or her position in that work week”.

10. Subsection 5(1) of the Act provides as follows:

“Subject to Subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void”.

11. Subsection 8(1) of the Act provides as follows:

“Subject to Section 97, no civil remedy of an employee against his or her employer is affected by this Act”.

12. O. Reg 285/01, amended to O. Reg 361/01, provides in Subsection 8(b) that Part VIII of the Act does not apply to a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis.

13. Equivalent/similar legislation exists in other provinces and territories.

## **SITUATION OF THE PLAINTIFFS**

14. The Plaintiff, James Cotton, was employed by the Defendants from the period 1993 to approximately July, 2002.
15. The Plaintiff, Suzette Kennedy, was employed by the Defendants from the period September, 1995 to approximately July, 2002.
16. The Plaintiff, James Cotton, was employed in the capacity of "Store Manager" for a number of years.
17. The Plaintiff, Suzette Kennedy, was employed in the capacity of "Assistant Manager" for a number of years.
18. The Plaintiffs state that even though they had managerial titles, the titles were for purposes external to the Defendants, namely, to leave customers with the impression that the Plaintiffs had greater authority than they in fact did.
19. The Plaintiffs state that while they had some supervisory/managerial responsibility, the majority of their employment hours were spent on non-supervisory/non-managerial tasks.



20. The Plaintiffs state that their normal employment duties included the following:

- a. Control of stocking and pricing of merchandise;
- b. Assisting customers on the retail sales floor;
- c. Sales of product to customers;
- d. Cashier duties;
- e. Stocking of shelves and pricing of merchandise;
- f. Handling customer complaints and returns;
- g. Movement of product from stockroom/warehouse to retail sales floor;
- h. Arranging displays of product for sale;
- i. Physical layout and presentation of product on retail sales floor;
- j. Physical posting of signage, displays, promotions, etc.;
- k. Customer complaint resolution;

- I. Freight removal including loading and unloading trailers;
  - m. Clearance and preparation of stock room as required including manual labor;  
and
  - n. Various other non-supervisory/non-managerial tasks/responsibilities as were  
required.
21. The Plaintiffs state that they routinely worked in excess of 44 hours per week on behalf of the Defendants and indeed state that the Defendants specifically required that they work 50 hours per week at specific times and 60 hours or more during busy peak sales periods.
22. The Plaintiffs state that they did not at any time receive payment of overtime pay from the Defendants as required under the Act and its Regulations set-out above.

## THE CLASS

23. The Plaintiffs state that the Defendants employed/employ many individuals across Canada in their various retail stores classifying those employees as “salaried”, “supervisory/managerial” employees. Said employees were/are not paid for overtime hours worked in excess of 44 hours per week at a rate of one and one-half times the regular rate of pay as required pursuant to the Act and its Regulations and equivalent/similar legislation in other provinces and territories.
24. The Plaintiffs state that the Defendants required/require that employees with the title of “Managers”, “Assistant Managers”, and “Management Trainees” regularly work in excess of 44 hours per week on behalf of the Defendants.
25. The Plaintiffs furthermore state that the Defendants required/require that such employees perform non-supervisory/non-managerial tasks and that the Defendant were/are aware that those tasks occupy the majority of the employment hours worked by those employees.
26. The Plaintiffs propose that the class herein be defined as follows:

Any person in Canada who was/is a former employee/employee of the Defendants who worked in excess of 44 hours in any given week without receiving overtime pay

in accordance with the Act and its Regulations, and equivalent/similar legislation in other provinces and territories, at the rate of one and one-half times the regular rate of pay.

## **BREACH OF CONTRACT**

27. The Plaintiffs state that as between the Defendants and the Plaintiffs/Class Members, the parties intended the minimum standards of the Act, and equivalent/similar legislation in other provinces and territories, to govern with respect to payment for overtime.
28. The Plaintiffs state that the minimum standards mandated by the Act and equivalent/similar legislation in other provinces and territories, in respect of overtime pay, are implied terms of the employment contracts between the Defendants and the Plaintiffs/Class Members.
29. The Plaintiffs state that the Defendants are in breach of the said employment contracts in that they failed to make payment to the Plaintiffs and Class Members of overtime pay in accordance with the minimum standards mandated by the Act and equivalent/similar legislation in other provinces and territories,.

## **DAMAGES**

30. The Plaintiffs state that they and Class Members have suffered damages as a result of the breach of contract of the Defendant as described above, specifically, the Defendants have failed to make payment to the Plaintiffs and Class Members for each hour worked in excess of 44 hours per week at the rate of one and one-half times the regular rate of pay.
  
31. The Plaintiffs state that the Defendants are liable and responsible to them and Class Members for that loss and such further and other damages for breach of contract as the Plaintiffs and Class Members will stipulate and provide particulars prior to trial.
  
32. The Plaintiffs state that the Defendant knew or ought to have known that by classifying their employees as “salaried”, “supervisory” and “managerial”, the Defendants were avoiding liability for proper payment of overtime pay as required pursuant to the minimum standards mandated by the Act, and equivalent/similar legislation in other provinces and territories, and that accordingly, an award of punitive, aggravated and exemplary damages is appropriate in the circumstances.

## LEGISLATION

33. The Plaintiffs plead and rely upon the provisions of the *Class Proceedings Act, 1992*, S.O. 1992, c. C6, the *Employment Standards Act*, S.O. 2000, c. 41 and Regulations and equivalent/similar legislation in provinces and territories outside Ontario.

## SERVICE OUTSIDE ONTARIO

34. The Plaintiffs anticipate that it might be necessary to serve this Statement of Claim on the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, and in particular:
- a. Rule 17.02 (f) - a contract made in Ontario and/or breached in Ontario; and
  - b. Rule 17.02 (h) - damages sustained in Ontario.

35. The Plaintiffs propose that this action be tried at the City of Hamilton, Province of Ontario.

December 20, 2002

**SCARFONE HAWKINS** <sup>LLP</sup>

Barristers & Solicitors  
120 King Street West  
Suite 1050  
HAMILTON, Ontario  
L8N 3P9

DAVID THOMPSON (28271N)

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Solicitors for the Plaintiffs

## APPENDIX "A"

### Alberta

Part II of the *Employment Standards Code*, R.S.A. 2000, c.E-9.

#### Section 6:

Despite anything in this Act, the regulations under section 138 may

- (a) exempt an employment, employer or employee from Part II or any provision of it, and
- (b) modify or substitute any provision of Part II in respect of an employment, employer or employee.

#### Section 21:

Overtime hours in respect of a work week are

- (a) the total of an employee's hours of work in excess of 8 on each work day in the work week, or



(b) an employee's hours of work in excess of 44 hours in the work week, whichever is greater, and, if the hours in clauses (a) and (b) are the same, the overtime hours are those common hours.

Section 22(1):

An employer must pay an employee overtime pay of at least 1.5 times the employee's wage rate for overtime hours.

Section 22(2):

Subsection (1) does not apply to an employer or employee who has entered into an overtime agreement.

Part V of the *Employment Standards Code*, R.S.A. 2000, c.E-9.

Section 138(1):

The Lieutenant Governor in Council may make regulations

(a) exempting an employment, employer or employee from Part 2 or any provision of it;

- (b) modifying or substituting any provision of Part 2 in respect of an employment, employer or employee;
- (c) respecting fees for the purposes of this Act, including who may establish the fees, who is liable to pay the fees and the manner in which the fees may be recovered;
- (d) requiring an employer in an employment described in the regulations to provide an amount of money instead of providing an annual vacation and vacation pay or an amount of money instead of giving a general holiday with general holiday pay, the conditions of entitlement, what constitutes vacation pay and general holiday pay, the method of computing them, and when they must be paid, and designating days as general holidays;
- (e) prohibiting or regulating the employment of individuals under 18 years of age on the basis of their age, nature of employment or other circumstances and authorizing the Director to approve exceptions and to impose conditions on the employment;
- (f) fixing one or more minimum wages to be paid by employers to employees and authorizing the Director to approve exceptions,

prohibiting or permitting deductions from the minimum wage and fixing the maximum amount to be charged for board or lodging, or both, that are provided by employers to employees;

(g) authorizing an umpire to make an award concerning the imposition of costs specified in regulations, and specifying how those costs are to be recovered;

(h) authorizing a person who collects money owing to an employee under an order filed in the Court to recover the costs of collection from the person against whom the order was made and respecting the manner in which the costs may be recovered;

(i) respecting appeals from decisions of the Director on the certification of an individual under section 75 and the circumstances under which a certification under section 75 may be reviewed or revoked;

(j) respecting the conduct of officers;

(k) respecting the collection of the fees charged by a person engaged by the Director under section 72, who is liable to pay the fees and the manner in which they may be recovered;

- (l) specifying an operation to be a "primary agricultural operation" for the purpose of section 2.

Part I of the Employment Standards Regulation (AR 14/97).

Section 2(1):

Section 14(1)(a) of the Act (relating to the keeping of employment records for regular and overtime time hours of work) and Part 2, Divisions 3 and 4 of the Act (relating to hours of work, overtime and overtime pay) do not apply to

- (a) an employee who is employed in
  - (i) a supervisory capacity,
  - (ii) a managerial capacity, or
  - (iii) a capacity concerning matters of a confidential nature and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed;
  
- (b) an employee who is
  - (i) a salesperson, other than a route salesperson, remunerated in whole or in part by commission, who is engaged in soliciting orders, principally outside of the employer's place of business,

for goods or services that will subsequently be delivered or provided to the purchaser.

(ii) an automobile, recreational vehicle, truck or bus salesperson.

(iii) a manufactured home salesperson.

(iv) a farm machinery salesperson.

(v) a heavy duty construction equipment or road construction equipment salesperson.

(vi) a person employed by a person who builds residential homes to sell those homes.

(vii) authorized to trade in real estate as a real estate broker under the Real Estate Act.

(viii) a salesman registered under the Securities Act.

(ix) an individual holding a certificate under section 512 of the Insurance Act who is compensated for activities performed under that certificate entirely by way of commission income.

(x) an individual who has attained the age of 16 years and who engages in a direct selling business within the meaning of the Direct Selling Business Licensing Regulation (AR 190/99) under the Fair Trading Act on behalf of the holder of a direct selling business licence established by that Regulation.

(xi) a land agent licensed under the Land Agents Licensing Act.

(xii) an extra in a film or video production, or

(xiii) a counsellor or instructor at an educational or recreational camp that is operated on a charitable or not-for-profit basis

(A) for children or handicapped individuals, or

(B) for religious purposes, or to their respective employers while acting in the capacity of employer.

## British Columbia

Part VII of the *Employment Standards Act* [R.S.B.C. 1996] Chapter 113.

### Section 35(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.

### Section 35(2):

Subsection (1) does not apply for the purposes of an employee who is working under an averaging agreement under section 37.

### Section 37(1):

Despite sections 35, 36 (1) and 40 but subject to this section, an employer and employee may agree to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) of this section and wages payable under subsection (8) or (9) (b).

Section 37(2):

An averaging agreement under subsection (1) is not valid unless

- (a) the agreement
  - (i) is in writing,
  - (ii) is signed by the employer and employee before the start date provided in the agreement,
  - (iii) specifies the number of weeks over which the agreement applies,
  - (iv) specifies the work schedule for each day covered by the agreement,
  - (v) specifies the number of times, if any, that the agreement may be repeated, and
  - (vi) provides for a start date and an expiry date for the period specified under subparagraph (iii).



- (b) the schedule in the agreement under paragraph (a) (iv) is in compliance with subsection (3), and
  
- (c) the employee receives a copy of the agreement before the date on which the period specified in the agreement begins.

Section 37(3):

A work schedule in an agreement under this section must not provide for more than the following hours of work for the employee:

- (a) 40 hours, if the agreement specifies a 1 week period under subsection (2) (a) (iii);
  
- (b) an average of 40 hours per week, if the agreement specifies more than a 1 week period under subsection (2) (a) (iii).

Section 37(4):

An employer under this section who requires, or directly or indirectly allows, an employee to work more than 12 hours a day, at any time during the period specified in the agreement, must pay the employee double the employee's regular wage for the time over 12 hours.

Section 37(5):

An employer under this section who requires, or directly or indirectly allows, an employee to work more than an average of 40 hours a week within the period specified in the agreement must pay the employee 1 ½ times the employee's regular wage for the time over 40 hours.

Section 37(6):

An employer under this section who requires, or directly or indirectly allows, an employee to work more than the hours scheduled for a day during the period of the agreement must pay the employee

(a) 1 ½ times the employee's regular wage for,

(i) if fewer than 8 hours were scheduled for that day, any time worked over 8 hours, or

(ii) if 8 or more hours were scheduled for that day, any time worked over the number of hours scheduled, and

- (b) double the employee's regular wage for any time worked over 12 hours that day.

Section 37(7):

For the purpose of calculating average weekly hours for an employee under subsection (5),

- (a) only the first 12 hours worked by the employee in each day are counted, no matter how long the employee works on any day of the week, and
- (b) if subsection (6) applies, the time that the employee works beyond the scheduled hours and for which the employee is paid in accordance with that subsection, is excluded.

Section 37(8):

Section 36 (1) applies in relation to an averaging agreement if the period specified in the agreement is 1 week.

Section 37(9):

If the period specified in an averaging agreement is more than 1 week, the employer must either

- (a) ensure that for each week covered by the agreement, the employee has an interval free from work of 32 consecutive hours, whether the interval is taken in the same week, different weeks or consecutively any time during the weeks covered by the agreement, or
- (b) pay the employee 1 ½ times the regular wage for time worked by the employee during the periods the employee would otherwise be entitled to have free from work under paragraph (a).

Section 37(10):

At the employee's written request, the employer and employee may agree to adjust the work schedule referred to in subsection (2) (a) (iv) provided that the total number of hours scheduled in the agreement remain the same.

Section 37(11):

The parties to an averaging agreement under this section are bound by that agreement until the expiry date set out in the agreement or a later date provided in an agreement to repeat the averaging agreement, as the case may be, and the provisions of the averaging agreement apply for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) and wages payable under subsection (8) or (9) (b).

Section 37(12):

Subsections (2) to (11) are deemed to be incorporated in an averaging agreement under this section as terms of the agreement.

Section 37(13):

An employer must retain an averaging agreement under this section for 2 years after the employment terminates.

Section 37(14):

The application and operation of an averaging agreement under this section must not be interpreted as a waiver described in section 4.

Section 39:

Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

Section 40(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,

(a) 1 ½ times the employee's regular wage for the time over 8 hours, and

(b) double the employee's regular wage for any time over 12 hours.

Section 40(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 ½ times the employee's regular wage for the time over 40 hours.

Section 40(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.

**Manitoba**

Part II of the *Employment Standards Code*, C.C.S.M. 1998, c.E-110.

Section 10:

Except as otherwise provided in this Division or the regulations, the standard hours of work for an employee are 40 hours in a week and eight hours in a day.

Section 12(1):

Subject to subsection (2), an employer may require an employee who usually works in shifts to work for more hours than the daily or weekly standard hours of work that apply to the employee under section 10 without payment at the

overtime wage rate if the requirement, including the period of time over which it is to apply, is

(a) provided for under a collective agreement; or

(b) approved by order of the board, on application by the employer.

Section 12(2):

If, over the period of time referred to in subsection (1), an employee's average hours of work exceed the daily or weekly standard hours of work that apply to the employee under section 10, the employer shall pay the employee for the excess hours at the overtime wage rate.

Section 13:

If the board considers it unreasonable to apply the standard hours of work to an employer or business or a group or class of employers or businesses, the board may, on application by an employer or on application on behalf of a group or class of businesses, or on the board's initiative, by order



- (a) authorize daily, weekly or monthly standard hours of work that the board considers fair and reasonable; and
  
- (b) authorize the hours referred to in clause (a) to be applied for all or part of the year

Section 17(1):

The overtime wage rate that an employer shall pay an employee who works overtime is 150% of the employee's regular wage rate for each hour or part of an hour of overtime.

Saskatchewan

Part I of the *Labour Standards Act*, R.S.S. 1978, c.L-1.

Section 6(1):

Subject to sections 7, 9 and 12, no employer shall, unless he complies with subsection (2), require or 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.

Section 6(2):

Subject to sections 7 and 9, an employer who requires or permits an employee 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.

Section 6(3):

In applying subsection (2), where the total of the daily excesses differs from the weekly excess, the employer shall make payment in respect of the greater excess.

Section 6(4):

The hours during which an employee is required or permitted to work or to be at the disposal of his or her employer are deemed not to include any meal break allowed to employees if notice of the meal break is given in accordance with subsection 13.1(1) and if the employee is not in fact at the disposal of his or her employer during the meal break.

Section 6(5):

For the purpose of calculating the wages of an employee on an hourly basis in order that the employee may receive the wages to which he is entitled pursuant to this Act, the following rules apply:

1. Where the employee is paid his wages on a daily basis, the hourly wage of the employee shall be the regular wages of the employee for one day divided by the number of hours of the day during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed eight;
  
2. Where the employee is paid his wages on a weekly basis, the hourly wage of the employee shall be the regular wages of the employee for one week divided by the number of hours of the week during which the employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed 40;
  
3. Where the employee is paid his wages on a monthly basis, the hourly wage of the employee shall be the regular wages of the employee for one month multiplied by 12 and divided by the figure received when 52 is multiplied by the number of hours of the week during which the

employee is required or permitted to work or to be at the disposal of his employer, and in no case shall the number of hours exceed 40;

4. Where the employee is paid his wages on a basis other than an hourly, daily, weekly or monthly basis, the hourly wage of the employee shall be determined in accordance with the regulations.

Section 12(1):

Notwithstanding any other provision in this Act, no employer shall, without the consent of the employee, require an employee to work or to be at his disposal for more than 44 hours in any week or, in the circumstances referred to in clause 10(1)(a), 36 hours in any week, except in the case of emergency circumstances.

Section 12(2):

Where an employee refuses to work or to be at the disposal of an employer contrary to the employer's requirement made under subsection (1) and where no emergency circumstances exist, no disciplinary action shall be taken against the employee by the employer.

Section 12(3):

In any prosecution alleging a violation of this section, the onus shall be upon the employer to prove that an emergency existed or that the employee was discriminated against for good and sufficient other reason.

Section 12(4)

For the purposes of subsections (1) and (2), "emergency circumstances" means any sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer.

JAMES COTTON and SUZETTE KENNEDY v. MICHAELS STORES, INC. AND MICHAELS OF CANADA INC.

Court File No.

*02-8558*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT HAMILTON**

**AMENDED  
STATEMENT OF CLAIM**

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