



P. Basyal, #1  
June 29, 2016

No. S-1510284  
Vancouver Registry

**In the Supreme Court of British Columbia**

**Between**

**Prakash Basyal, Arthur Gortifacion Cajos, Edlyn Tesorero and Bishnu Khadka**

**Plaintiffs**

**And**

**Mac's Convenience Stores Inc, Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and Trident Immigration Services Ltd.**

**Defendants**

**Affidavit #1 of Prakash Basyal**

I, **Prakash Basyal**, am a Restaurant Supervisor and reside at [REDACTED] in the city of Vancouver, in the province of British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Plaintiff herein and as such I have personal knowledge of the facts and matters hereinafter deposed to except where stated to be on information and belief and in those cases I verily believe them to be true.
2. I am a Nepali national.
3. I currently live in Vancouver, British Columbia.
4. In 2012, I was living in Dubai, United Arab Emirates ("UAE"). I was working full time in a Baskin Robbins ice cream shop and remitting money back to Nepal to support my family.

5. In or around the summer of 2012, I attended a recruitment fair where Overseas was advertising guaranteed jobs in Canada.
6. Two of my friends had already met with Overseas representatives and I decided to meet with Overseas to discuss working in Canada.
7. At a recruitment fair put on by Overseas at the Flora Creek Hotel in Dubai, I met the Defendant, Kuldeep Bansal. I understood that Mr. Bansal was the main representative of Overseas.
8. Mr. Bansal, on behalf of Overseas, told me that he was a Canadian immigration consultant. He told me that he could guarantee me a job in Canada if I paid \$8,000 CAD fee (the "**Recruitment Fee**"), with an initial payment of \$2,000 CAD required up front and the remaining \$6,000 CAD to be paid as a second instalment once I received the Labour Market Opinion ("**LMO**") and employment contract.
9. I paid the initial installment, \$2,000 CAD in cash directly to Mr. Bansal that day. I understood that I was paying this initial fee in order to get a job in Canada.
10. Mr. Bansal arranged for me to be interviewed by Geoff Higuchi, who I understood to be a representative of the Defendant, Mac's Convenience Stores Inc. ("**Mac's**").
11. In or around November 2012, Mr. Higuchi interviewed me in Dubai for a position at Mac's in Canada. This interview took place at a recruitment fair organized by Overseas. Attached as **Exhibit "A"** to this my affidavit is an e-mail chain between employees of Overseas and myself regarding the scheduling of this interview.
12. On or around February 4, 2013, I was interviewed a second time by Mr. Higuchi over the phone.
13. On or around February 7, 2013, I received:
  - a. an offer of employment signed by Mr. Higuchi on behalf of Mac's to work as a cashier in Edmonton, Alberta ("**Offer of Employment**"). Attached as **Exhibit "B"** to this my affidavit is a copy of my Offer of Employment;

- b. an employment contract signed by Mr. Higuchi on behalf of Mac's, for me to work as a cashier for Mac's in Edmonton, Alberta ("**Employment Contract**"). Attached as **Exhibit "C"** to this my affidavit is a copy of my Employment Contract; and
- c. a positive LMO dated January 17, 2013, which authorized Mac's to bring in 40 temporary foreign workers to work as cashiers in Edmonton, Alberta ("**LMO**"). The LMO had an expiry date of April 15, 2013. The LMO identified Overseas Career & Consulting Services Ltd. as a third party authorized to act on behalf of Mac's. The LMO also identified Mr. Higuchi as the Employer Contact. Attached as **Exhibit "D"** to this my affidavit is a copy of my Labour Market Opinion.

14. The Employment Contract, described as Exhibit "C" above, provided, among other things, the following terms:

- a. the term of employment is 24 months;
- b. the position is as a cashier;
- c. hours of work are 37.5 hours per week for a wage of \$11.40 per hour;
- d. 4.00% vacation pay;
- e. Mac's will assume transportation costs of my travel between the United Arab Emirates and Edmonton, Alberta, and back to my home country;
- f. Mac's shall provide health insurance at no cost to me until I am eligible for applicable provincial health insurance;
- g. Mac's will not recoup, through payroll or by any other means, any costs incurred from its recruitment of me;
- h. Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act; and

- i. Mac's will ensure that reasonable and proper accommodation is available for me and will provide me with suitable accommodation, if necessary.
15. I had calculated approximately how much I was going to earn at Mac's based on the terms of my Employment Contract. I understood that I was going to work 37.5 hours per week for a wage of \$11.40 per hour for 24 months. I made the decision to sign the Employment Contract based on those working hours, wage rate, time period and calculated earnings.
16. Around the end of March 2013, I signed the Employment Contract with Mac's.
17. On or about March 27, 2013, I used the positive LMO, Offer of Employment and signed Employment Contract with Mac's to apply directly to Citizenship and Immigration Canada for a visa and a work permit. Attached as **Exhibit "E"** to this my affidavit is a copy of an e-mail chain between Mr. Bansal and me in which I confirm that I submitted my application to the Canadian Embassy on March 27, 2013.
18. In or around December 2013, I was issued a visa to travel to Canada as a temporary foreign worker. Attached as **Exhibit "F"** to this my affidavit is a copy of my visa.
19. On or about December 23, 2013, I attended another Overseas recruitment fair at the Flora Creek Hotel in Dubai. Mr. Bansal was at the fair and he instructed me to pay the remaining \$6,000 of the Recruitment Fee and then Overseas would purchase a plane ticket for me to travel to Canada.
20. On the same day, I paid \$6,000 fee in cash directly to Mr. Bansal at the Flora Creek Hotel.
21. In early January 2014, I quit my job in Abu Dhabi.
22. On or about January 8, 2014, I returned to Nepal to wait to travel to Canada to work. I informed Overseas that I was in Nepal and waited for Overseas to send me a plane ticket to Canada. Attached as **Exhibit "G"** to this my affidavit is a copy of an e-mail I sent to Overseas informing them of my travel plans.

23. Over the next few months, I repeatedly called and e-mailed Overseas inquiring about when I could travel to Canada to start work but I received no response about when I could travel to Canada. Attached as **Exhibit "H"** is copy of an e-mail that I sent to Mr. Bansal describing my attempts to find out when Overseas would send me to Canada to work.
24. Eventually, in March or April 2014, a representative of Overseas, who was identified as Prashad, instructed me to book a flight to Vancouver, British Columbia.
25. I booked and purchased my own air transportation from Kathmandu, Nepal, to Vancouver, British Columbia. I paid approximately \$1,000 for the ticket. Attached as **Exhibit "I"** to this my affidavit is a copy of my plane ticket.
26. I notified Overseas that I would be arriving in Vancouver on April 18, 2014. Attached as **Exhibit "J"** to this my affidavit is a copy of an email I sent to Overseas attaching my plane ticket. Attached as **Exhibit "K"** to this my affidavit is a copy of an email I sent to Overseas again confirming my arrival.
27. I arrived in Vancouver on Friday, April 18, 2014.
28. Shortly after arriving in Canada, I received a work permit authorizing me to work as a cashier for Mac's Convenience Store Inc. dba Subway in Edmonton, Alberta ("**Work Permit**"). Attached as **Exhibit "L"** to this my affidavit is a copy of my Work Permit.
29. My Work Permit set out, among other things, the following:
- a. Not authorized to work in any occupation other than stated.
  - b. Not authorized to work for any employer other than stated.
30. After arriving in Vancouver, Mr. Bansal instructed me to live in a basement apartment with six to eight other workers in Surrey, British Columbia.
31. Approximately one week after arriving in Vancouver, Overseas paid me \$500 CAD by cheque as a partial reimbursement for the cost of my air transportation. Apart from this \$500, I have never been reimbursed for the remainder of my air transportation ticket by Mac's or anyone else.

32. I was not sent to work.

33. In or around May 2014, Mr. Bansal told me that there was no work for me as a cashier at the Mac's store in Edmonton. He told me that he would send me to work on a farm for a few months. I refused.

34. I was not legally permitted to work for any employer other than Mac's Convenience Store Inc. dba Subway in Edmonton store for which I had been issued the Work Permit. As a temporary foreign worker, I was also not entitled to any public benefits or services. As a result, I was without any source of income or financial support.

35. Several days later, Mr. Bansal told me that he had found work for me at a bottle depot in Calgary, Alberta. Mr. Bansal told me that I would have to begin immediately, and that I would receive a new work permit once I arrived in Calgary. He told me I would receive \$11 per hour.

36. I agreed based on my understanding that this work was legal.

37. Overseas bought me a bus ticket to Calgary. I travelled to Calgary on or around May 10, 2014.

38. Upon arrival on May 11, 2014, the owner of the bottle depot, Pradeep Chawal, picked me up and brought me to the home of his father, Harmail Singh, where I was to stay. I started work the next day, on May 12, 2014.

39. I worked 40 hours per week at the bottle depot in Calgary until around June 2014. I never received the work permit that I was expecting upon arrival in Calgary.

40. I was never paid for that work at the bottle depot, despite Overseas having told me that I would be paid \$11 per hour. All I received for my full-time work was room and board and \$100, which Mr. Singh provided me when I had no money to purchase basic necessities.

41. In or around June 2014, the Canada Border Services Agency ("CBSA") discovered that I was working illegally. CBSA officers detained me, placed me in handcuffs and ultimately brought me to a homeless shelter in Calgary.

42. On or around July 21, 2014, the CBSA helped me return to Vancouver, where I lived in a homeless shelter.
43. At no point was I ever given employment with Mac's in accordance with the terms of my Employment Contract.
44. I had been very excited and proud to come to Canada to work and save money for my family and myself. After arriving in Canada, I was anxious and scared when I discovered that I had come all the way to Canada after quitting my job in Abu Dhabi to find that there was no job for me. My pride was wounded and I was very worried about what my parents, friends and others back home would think when they found out.
45. I felt humiliated and fearful when the CBSA officers detained me because I had never been placed in handcuffs or arrested before and had no idea what was going to happen to me.
46. I suffered mental distress and hardship as a result of the conduct of Mac's Convenience Stores Inc, Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and Trident Immigration Services Ltd. (the "**Defendants**").

**Suitable to be Representative Plaintiff**

47. I have been advised by Class Counsel and verily believe that there are in excess of 450 putative Class Members.
48. I have been advised and verily believe that many of the putative Class Members are Nepali and/or live in the Lower Mainland, just as I do. I know several temporary foreign workers living in the Lower Mainland who worked with Overseas to come to Canada to work for Mac's but who were not provided the jobs they were promised. I have met these workers in person or online through Facebook.
49. I am fluent in Nepali, the native language of Nepal, as well as English.
50. I am prepared to act as a representative of the Class in this proceeding.
51. I understand that the major steps in a class action are generally as follows:

- Commencement of the action by issuance of the Notice of Civil Claim;
- Application for certification;
- Notice to the Class of the certification and the right to opt out or, in the case of non-residents, to opt in;
- Discovery of documents;
- Examination for discovery;
- Pre-trial conferences;
- Trial of the common issues;
- Notice to the Class if individual participation is required;
- Determination of proceeds of resolution by way of judgement or settlement; and possibly
- Appeals

52. I also understand that in agreeing to seek and accept an appointment by the Court as a representative plaintiff, it is my responsibility, among other things:

- To become familiar with the issues to be decided by the Court;
- To review the Notice of Civil Claim and any amendments;
- To assist in the preparation and execution of an Affidavit in support of the application for certification;
- To attend, if necessary, with Class Counsel for cross-examination on my affidavit;
- To attend, if necessary, with Class Counsel for an examination for discovery where I will be asked questions;
- To attend, if necessary, with Class Counsel at trial and give evidence regarding the case;
- To receive briefings from Class Counsel
- To express my opinion to Class Counsel and to the Court if offers of settlement are made;
- To express my opinion to Class Counsel and to the Court if settlement positions are to be formulated; and
- To assist in preparation of an execution of an Affidavit in support of Court approval of any settlement

53. To date, I have taken the following steps to fairly and adequately represent the interests of the Class Members:

- I retained two law firms, Koskie Glavin Gordon and Allevato Quail & Worth as Class Counsel;



- I have met with Class Counsel, Mr. Charles Gordon and Ms. Carmela Allevato, and associate lawyers working for their firms on numerous occasions to discuss the case and to provide information for the Notice of Civil Claim and this affidavit;
- I have reviewed the Notice of Civil Claim;
- I have advised putative Class Members of the Notice of Civil Claim and advised them that the Notice of Civil Claim is available for review on the websites of Koskie Glavin Gordon and Allevato Quail & Worth; and
- I aided in drafting this affidavit.

54. I intend to take the following steps to continue to fairly and adequately represent the interests of the Class Members:

- To interact with other Class Members, receive their input and relay information to and from Class Counsel;
- To monitor the Koskie Glavin Gordon and Allevato Quail & Worth websites for information about the case; and
- Instruct Class Counsel.

55. I have reviewed the Notice of Application and understand that the proposed class definition in this action is as follows:

- all persons who, on or after December 11, 2009, made payments to Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and/or Trident Immigration Services Ltd. for the purpose of securing employment in Canada, and who were thereafter provided with employment contracts to work at Mac's Convenience Stores in British Columbia, Alberta, the Northwest Territories and Saskatchewan under Canada's Temporary Foreign Worker Program.

56. From my review of the Notice of Application, I understand that the proposed common issues are as follows:

#### **A. Breach of Contract**

- i. What are the relevant terms (express, implied or otherwise) of the Class' employment contracts with the Defendant Mac's respecting:
  - a. wage rate;
  - b. hours of work;
  - c. length of the contract;
  - d. recruitment fees;

- e. payment of two-way air transportation; and
  - f. reasonable and proper accommodation?
- ii. Did the Defendant Mac's or its agents breach any of the forgoing contractual terms? If so, how?
- iii. Does the contract require the Class Members to mitigate their damages?

**B. Agency**

- i. Were the Defendants Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and/or Trident Immigration Services Ltd. (collectively, "**Overseas**") acting as agents of the Defendant Mac's in recruiting Class Members to work for Mac's, including by securing employment contracts and LMOs for Class Members to work at stores operated by the Defendant Mac's and/or otherwise facilitating their entry into Canada?
- ii. If the answer to (B)(i) is "yes", is the Defendant Mac's thereby liable for their agents charging and receiving Recruitment Fees from Class Members?

**C. Negligent Misrepresentation**

- i. Did the Defendants, or any of them, owe a special duty of care to the Class Members?
- ii. Did the Defendants Overseas misrepresent to the Class Members that it would secure legal employment in Canada for the Class Members in exchange for the payment of a Recruitment Fee;
- iii. Did the Defendants, or any of them, misrepresent to the Class Members that the Class Members would be employed by Mac's pursuant to the terms of a valid employment contract in exchange for the payment of a Recruitment Fee;
- iv. If the answer to C(ii) is "yes", was the misrepresentation made negligently by the Defendants Overseas?
- v. If the answer to C(iii) is "yes", was the misrepresentation made negligently by any of the Defendants?

- vi. If the answer to any of C(iv-v) is yes, did the Class Members rely to their detriment on the misrepresentation(s)?
- vii. If the answer to C(vi) is "yes," are the Defendants, or any of them, liable for negligent misrepresentation?

#### **D. Fraudulent Misrepresentation**

- i. Did the Defendants Overseas deliberately or recklessly misrepresent to the Class Members that it would secure legal employment in Canada for the Class Members in exchange for the payment of a Recruitment Fee?
- ii. Did the Defendants, or any of them, deliberately or recklessly misrepresent to the Class Members that the Class Members would be employed by Mac's pursuant to the terms of a valid employment contracts in exchange for the payment of a Recruitment Fee?
- iii. If the answers to D(i) and/or (ii) is "yes", did the Defendants, or any of them, intend to induce the Class Members to rely on their misrepresentation to their detriment?
- iv. If the answer to D(iii) is "yes," are the Defendants, or any of them, liable for fraudulent misrepresentation?

#### **E. Conspiracy**

- i. Did the Defendants conspire to harm the Class Members?
- ii. Did the Defendants act in furtherance of the conspiracy?
- iii. Was the predominant purpose of the conspiracy to harm the Class Members?
- iv. Did the conspiracy involve unlawful acts?
- v. Did the Defendants know that the conspiracy would likely cause injury to the Class Members?
- vi. Did the Class Members suffer economic loss?
- vii. What damages, if any, are payable by the Defendants to the Class Members?

**F. Unjust Enrichment & Waiver of Tort**

- i. Was the Defendant Mac's unjustly enriched by not having to pay the Class pursuant to the terms of the employment contracts?
- ii. Were the Defendants, or any of them, unjustly enriched by having the Class pay the Recruitment Fees; and
- iii. Were the Defendants, or any of them, unjustly enriched by not paying the cost of two-way air transportation for the Class?
- iv. What restitution, if any, is payable by the Defendants, or any of them, to the Class Members based on the doctrine of waiver of tort?
- v. Are the Defendants, or any of them, liable to account to the Class Members for the Recruitment Fees, if any, that they obtained from the Class Members based on the doctrine of waiver of tort?

**G. Breach of Fiduciary Duty**


- i. Did the Defendants, or any of them, owe a fiduciary duty to the Class?
- ii. If the answer to F(i) is "yes", has there been a breach of that duty?

**H. Remedy & Damages**

- i. If the answer to any of the common issues is "yes", what remedies are Class Members entitled to?
- ii. If the answer to any of the common issues is "yes", are the Defendants potentially liable on a class-wide basis?
- iii. What is the appropriate method of procedure for distributing the damages award to the Class?
- iv. Is the Class entitled to an award of aggravated or punitive damages based upon the Defendants' conduct and, if so, in what amount?
- v. If the answer to H(iv) is "yes, what is the appropriate method of procedure for distributing any aggravated or punitive damages to the Class?

57. Class Counsel has produced a plan for the conduct of the litigation. Attached to my affidavit as **Exhibit "M"** is a copy the litigation plan.
58. Class Counsel has prepared a proposed Notice to the Class. Attached to my affidavit as **Exhibit "N"** is a copy of the Notice to the Class.
59. I am not aware of any conflict between myself and other members of the proposed class. I believe that I can fairly and adequately represent the interests of the Class Members and I am committed to fulfilling my responsibilities.
60. I have no knowledge of anything to suggest that any Class Member has a sufficient ability or interest in controlling the prosecution of separate actions.
61. I do not have sufficient resources to pursue a Small Claims Court action.
62. I was unaware of my legal rights under the British Columbia *Employment Standards Act* until well beyond the six-month limitation period in this statute for recovery of paid Recruitment Fee from the date of paying those fees.
63. I am not aware of any facts material to this application that is not disclosed in this affidavit.

SWORN BEFORE ME at the city )  
 of Vancouver, in the Province of British )  
 Columbia this 29th day of June 2016. )

  
 Kirby Smith )  
 A Commissioner for Taking Affidavits in )  
 the Province of British Columbia )

  
 Prakash Basyal

**KIRBY SMITH**  
**Barrister & Solicitor**  
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