

SEAL
16-Aug-19

Vancouver
REGISTRY



Amended pursuant to Rule 6-1(1)(b)(ii)
Original filed December 10, 2015

No. S1510284
Vancouver Registry

In the Supreme Court of British Columbia

Between

Prakash Basyal, Arthur Gortifacion Cajés, 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

THIRD FURTHER AMENDED NOTICE OF CIVIL CLAIM

“Brought under the Class Proceedings Act”

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview

1. This case is brought on behalf of foreign workers (the “**Class Members**”) who were recruited from abroad by the related Defendants Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd. (collectively, “**Overseas**”) and Trident Immigration Services Ltd. (“**Trident Immigration**”) to work at stores of the Defendant Mac’s Convenience Stores Inc. (“**Mac’s**”) in British Columbia, Alberta, Saskatchewan and the Northwest Territories (“**Western Canada**”) under Canada’s Temporary Foreign Worker Program.
2. Overseas was authorized by Mac’s to recruit Temporary Foreign Workers (“**TFWs**”) to work at its stores in Western Canada, which expressly agreed that it would be held responsible for the actions of Overseas in recruiting TFWs on its behalf. Advertising guaranteed employment in Canada, Overseas charged each Class Member approximately \$8,000 to secure employment at Mac’s (the “**Recruitment Fee**”).

3. Mac's executed standard form employment contracts with each of the Class Members regarding their terms of employment. These contracts all contained the identical terms prohibiting Mac's from recouping any costs of recruitment from the Class Members. Furthermore, charging employees a fee for a job is prohibited by legislation in both British Columbia and Alberta.
4. In reliance upon and in consideration of these binding terms, many of the Class Subclass Members left their homes and jobs abroad and spent considerable money and effort to travel to Canada to work for Mac's in Western Canada.
5. When the Class Subclass Members arrived in Canada, some found that the jobs that they had contracted to perform did not exist. Because of their immigration status, they were not allowed to legally work in any positions in Canada other than those they had contracted with Mac's to perform.
6. The Defendant Mac's breached the terms of the Class Subclass Members' employment contracts when its agents charged Recruitment Fees and by failing to perform the contracts honestly and in good faith.
7. Further, Overseas and Trident Immigration are ~~the Defendants~~ are liable for unjust enrichment, and Overseas is liable breach of fiduciary duty.
8. On behalf of themselves, and members of the Class, the Representative Plaintiffs seek awards of special, general, aggravated, and punitive damages to make themselves whole for the damages suffered due to the Defendants' violations of law, and to ensure the Defendants will not subject them and other foreign workers to mistreatment in the future.

Parties

Representative Plaintiffs

9. ~~The Plaintiff~~ Prakash Basyal is a citizen of Nepal and currently resides in Vancouver, British Columbia.

10. ~~The Plaintiff~~ Arthur Gortifacion Cajes is a citizen of the Philippines and currently resides in Alberta.
11. ~~The Plaintiff~~ Edlyn Tesorero is a citizen of the Philippines and currently resides in Dubai, United Arab Emirates.
12. ~~The Plaintiff~~ Bishnu Khadka is a citizen of Nepal and currently resides in Vancouver, British Columbia.

Mac's

13. The Defendant Mac's is a company incorporated under the laws of Ontario, with a registered office at 305 Milner Avenue, Suite 400, 4th Floor in Toronto, Ontario, and a British Columbia mailing address at 1800-510 West Georgia Street in the City of Vancouver, British Columbia. It is a chain of convenience stores with locations throughout Canada. Geoff Higuchi is the Senior Recruitment and Training Manager in Mac's Western Division. At all material times, Mr. Higuchi was authorized by Mac's to recruit foreign workers to work in Mac's Convenience Stores in Western Canada.
14. At all material times, Mr. Higuchi worked in Mac's British Columbia District Office in Surrey, British Columbia.
15. Mac's is directly and/or vicariously liable for the actions of its employees, including Mr. Higuchi. The acts alleged to have been committed by Mr. Higuchi in this Notice of Civil Claim were done in the course of Mr. Higuchi's employment with Mac's.

Overseas

16. The Defendant Overseas Immigration Services Inc. is a company incorporated under the laws of British Columbia with a registered office at 7269-131A Street in Surrey, British Columbia ("**Overseas Immigration**"). The sole Director of Overseas Immigration is Kuldeep Kumar Bansal.
17. The Defendant Overseas Career and Consulting Services Ltd. is a company incorporated under the laws of British Columbia with a registered office at 204, 12830-80th Avenue in

Surrey, British Columbia ("**Overseas Consulting**"). The sole Director and President of Overseas Consulting is Kuldeep Kumar Bansal.

18. Overseas Immigration and Overseas Consulting (~~collectively~~, "**Overseas**") are related companies under the control of Mr. Bansal. They supply foreign workers to local, national and multinational businesses.
19. Mr. Bansal is a Regulated Canadian Immigration Consultant, authorized to represent and advise workers with respect to the Canadian immigration system.
20. Ajay Mann is the Corporate Manager of Overseas, and is also a Regulated Canadian Immigration Consultant, authorized to represent and advise workers with respect to the Canadian immigration system.
21. Regulated Canadian Immigration Consultants are governed by the Code of Professional Ethics established and enforced by the Immigration Consultants of Canada Regulatory Council ("**ICCRC**").
22. The ICCRC's Code of Professional Ethics provides, among other things, that ICCRC members are required to:
 - a. be honest and candid when advising clients;
 - b. represent the client's interests; and
 - c. exercise independent judgement on behalf of a client.
23. Overseas is directly and/or vicariously liable for the actions of its Director and employees, including, but not limited to, Mr. Bansal and Mr. Mann. The acts alleged to have been committed by Mr. Mann and other employees or representatives of Overseas in this Notice of Civil Claim were done in the course of his employment with Overseas. The acts alleged to have been committed by Mr. Bansal in this proceeding were done in the course of his role as sole Director of both Overseas Immigration and Overseas Consulting.

Trident Immigration

24. The Defendant Trident Immigration Services Ltd. is a company incorporated under the laws of British Columbia with a registered office at 201, 12899-80th Avenue in Surrey, British Columbia (~~"Trident Immigration"~~). The sole Director of Trident Immigration is Minakshi Bala.
25. Ms. Bala is Mr. Bansal's sister.
26. Trident Immigration shares office space with Overseas.
27. Ms. Bala is a Regulated Canadian Immigration Consultant, authorized to represent and advise workers with respect to the Canadian immigration system.
28. Trident Immigration is directly and/or vicariously liable for the actions of its Director and employees.

The Class

29. Mr. Basyal, Mr. Cajal, Ms. Tesorero and Mr. Khadka bring this action on their own behalves and on behalf of:

a) a class consisting of the following:

all persons who, on or after December 11, 2009 to the opt-out/opt-in date set by the Court, made payments to Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and/or Trident Immigration Services Ltd. and who were thereafter provided with employment contracts offering employment at Mac's Convenience Stores in British Columbia, Alberta, the Northwest Territories and Saskatchewan ("**Western Canada**") under Canada's Temporary Foreign Worker Program, which offers they accepted; and

b) a subclass consisting of the following:

all persons who, on or after December 11, 2009, to the opt out/opt in date set by the Court, made payments to Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and/or Trident Immigration Services and who thereafter:

- i) entered into binding contracts of employment with Mac's Convenience stores to work in Western Canada under Canada's Temporary Foreign Worker Program;
- ii) obtained a valid work permit and (where required) travel visas to enter Canada to undertake such employment;
- iii) validly entered Canada and reported to work or to Overseas as available for work; and
- iv) were not provided by Mac's with work at all, or were not provided with work in the amount specified in the contract of employment, or in respect of whom Mac's failed to pay expenses related travel which Mac's was obligated to pay under such employment contracts.

(the "**Subclass**")

Temporary Foreign Worker Program

30. The Temporary Foreign Worker Program ("**TFWP**") is a program which allows Canadian employers to hire foreign nationals on a temporary basis where it is shown that qualified Canadian citizens or permanent residents are not available. It is jointly managed by Citizenship and Immigration Canada ("**CIC**") and Employment and Social Development Canada ("**ESDC**").
31. In order to qualify to bring in workers through the TFWP, employers are required to apply for a positive Labour Market Opinion ("**LMO**") (as of June 2014, LMOs were renamed Labour Market Impact Assessment, or LMIA). A positive LMO confirms that the employer has tried but been unable to find a Canadian or permanent resident for the job, that the job offer is genuine, and that the employer has met job offer commitments to temporary foreign workers it has hired in the past.
32. In order to work in Canada under the TFWP, foreign workers are required to submit a positive LMO, an offer of employment, and an employment contract to CIC. CIC may then issue the worker a travel visa and a work permit. The visa permits the worker to travel to Canada and the work permit authorizes the worker to work in Canada. In most cases, the worker receives the work permit at the border crossing upon entry to Canada.

33. A work permit for most workers under the TFWP restricts how long the worker is entitled to stay in Canada, and the employer and location at which the worker is permitted to work.
34. Workers in Canada under the TFWP are uniquely vulnerable to abuse by reason of their immigration status and restrictions on their mobility within the Canadian labour market.
35. Under certain circumstances, temporary foreign workers who have worked in Canada under the TFWP may become eligible for permanent immigration status in Canada.

Recruitment of the Plaintiffs and Class Members

36. Sometime prior to 2012, Mac's experienced difficulty in finding Canadian workers to employ in stores it was operating in Western Canada.
37. Geoff Higuchi, then Senior Recruitment and Training Manager for the Western Region of Mac's, met with representatives of Overseas, including its principal, Kuldeep Bansal, to determine if Overseas could assist in addressing Mac's' labour needs by recruiting foreign workers under the TFWP. Overseas also provided Mac's with documentation detailing their services and providing background about Overseas. In these materials, Overseas advised that its legal company name was Overseas Career and Consulting Services Ltd., but that it operated as Overseas Immigration.
38. Overseas indicated that it would charge Mac's a \$500 retainer for each worker, plus \$1,000 following the successful completion of a three month probationary period. In return, Overseas would provide Mac's the following services in recruiting qualified candidates:
 - a. recruitment trips on behalf of Mac's to locate and interview candidates;
 - b. pre-screening of candidates;
 - c. video conference interviews of the pre-screened candidates;
 - d. settlement services for workers; and

- e. completion of all required business and immigration documents required, both Federally and Provincially, including complete assistance with Mac's' Labour Market Opinion application.

39. In addition, Overseas advised Mac's that, for candidates from countries requiring a visa for entry into Canada, and if the candidate requested Overseas to process their documentation, Overseas would charge the workers for their time and disbursements for completing the same.

40. Mac's then entered into a contract with Overseas for the recruitment of workers, including the recruitment of Food Service Supervisors, Retail Store Supervisors, Cashiers, and Food Counter Attendants.

41. Further to its agreement with Mac's, in or around July 2012, Overseas began submitting LMO applications to ESDC on behalf of Mac's. In order to do so, Mac's was required to execute an ESDC "Appointment of Representative" form, appointing Mr. Bansal on behalf of Overseas as its representative in obtaining LMOs, which forms provided:

I, Geoff Higuchi, residing at c/o Mac's Convenience Store Inc. ... hereby appoint Kuldeep Kumar Bansal of Overseas Career and Consulting Services Ltd. ... as my representative to act on my behalf in order to obtain from HRSDC/Service Canada a labour market opinion relating to [name of individual to whom employment has been offered]. I, hereby, agree to ratify and confirm all that my representative shall do or cause to be done by virtue of this appointment.

42. In addition, in the LMO/LMIA application forms submitted to ESDC, Mac's was required to and did make certain declarations or "attestations", including the following:

- I will provide the foreign worker(s) I hire with the wages, working conditions and employment in an occupation that are substantially the same as those described in the positive Labour Market Opinion Letter and annex.
- I will immediately inform Service Canada/Temporary Foreign Worker Program officers of any subsequent changes related to the temporary foreign workers' terms and conditions of employment, as described in the Labour Market Opinion confirmation letter and annex.

- I am compliant with, and agree to continue to abide by, the relevant federal/provincial/territorial legislation related to the temporary foreign worker's recruitment applicable in the jurisdiction where the job is located. I declare that all recruitment done or that will be done on my behalf by a third party was or will be done in compliance with federal/provincial/territorial laws governing recruitment. I am aware that I will be held responsible for the actions of any person recruiting temporary foreign workers on my behalf.
- I have a legitimate need to fill a vacant or new position and I am offering the temporary foreign worker(s) the position(s), job descriptions and duties that are related directly to my main business activities.
- I can demonstrate in a review that my business is able to fulfill the terms and conditions related to the employment of the temporary foreign worker(s), the subject of this application, for the duration of the temporary worker's work permit. The job offered is full-time employment (a minimum of 30 hours per week), as is in line with the job description provided with this application and it meets acceptable employment standards.

43. The LMO applications for Mac's, including the Appointment of Representative forms, were completed by employees of Overseas and the attestations signed by Geoff Higuchi on behalf of Mac's.
44. Between July 2011 and July 2014, Overseas secured positive LMOs for over 450 positions at stores in Western Canada. These LMOs permitted Mac's to employ TFWs in those stores, subject to their obtaining visas (where necessary) and work permits.
45. In providing Mac's with LMO approvals, EDSC sent confirmation packages each of which included a list of the attestations signed in the LMO applications, including the attestation that recruitment would be done in compliance with applicable laws and that Mac's would be held responsible for the actions of any person recruiting TFWs on its behalf.

46. Representatives of Overseas, including Mr. Bansal, travelled to Dubai, United Arab Emirates with Geoff Higuchi, to recruit TFWs on behalf of Mac's to work at its stores in Western Canada. Relying on the LMOs it had secured for Mac's, Overseas advertised guaranteed jobs in Canada, holding recruitment fairs and otherwise recruiting workers on the promise that it could guarantee them a job in Canada.
47. The ~~Plaintiffs and~~ Class Members attended Overseas Recruitment Fairs or otherwise contacted Overseas because they wished to obtain employment in Canada. Overseas required that they pay an initial deposit of \$2,000 before they could be considered for such employment, which the ~~Plaintiffs and~~ Class Members reasonably understood they were paying in order to obtain a job in Canada.
48. Overseas representatives held themselves out to the ~~Plaintiffs and the~~ Class Members as Mac's' representatives in locating recruits for available jobs in Canada, and as possessing expertise in matters of Canadian immigration. The ~~Plaintiffs and Class m~~Members relied on them to secure their employment with Mac's in Canada, including providing advice on obtaining the requisite immigration documents which would allow them to carry out such employment.
49. After payment of the initial deposit, Overseas contacted and arranged for most ~~Plaintiffs and~~ Class Members to be interviewed by Geoff Higuchi of Mac's, either in person or over the phone. Overseas then provided each ~~Plaintiff and~~ Class Member with a positive LMO, which identified Kuldeep Bansal of Overseas Consulting as the third party representative of Mac's. Overseas further provided each ~~Plaintiff and~~ Class Member with an offer of employment and employment contract with Mac's, both signed by Geoff Higuchi on behalf of Mac's.
50. At all material times Overseas acted as agents for Mac's, and were vested with the express, implied, or apparent authority to recruit the ~~Plaintiffs and~~ Class Members for Mac's under the TFWP.

51. The job offers and contracts of employment with Mac's provided by Overseas to the ~~Plaintiffs and Class Members~~ were standard-form contracts stipulated by EDSC, each having substantively identical terms. Each employment contract contained the following terms:

- a. the term of employment is 24 months;
- b. the job description was either as a cashier or as supervisor, depending on the position that the worker was hired for;
- c. the hours were 37.5 or 40 hours per week;
- d. Mac's "shall not recoup from the EMPLOYEE, through payroll deductions or any other means, any costs incurred from recruiting the EMPLOYEE";
- e. Mac's shall "provide health insurance at no cost to the foreign worker until such time as the worker is eligible for applicable provincial health insurance"; and
- f. Mac's shall abide by provincial labour standards;

52. In addition, certain ~~Class~~ Subclass Members had a provision in their employment contracts that Mac's would pay the transportation costs for the worker to travel to and from their country of origin.

53. ~~The Some of the Plaintiffs and some of the~~ Class Members were then directed by Overseas to apply for visas permitting them to travel to Canada. Once they obtained such a visa, Overseas directed them to pay the remainder of the Recruitment Fees either to Overseas or to Trident Immigration before they could travel to Canada to commence employment with Mac's. The Representative Plaintiffs were directed as follows:

- a. ~~the Plaintiff~~ Prakash Basyal was directed by Mr. Bansal to pay the remaining \$6,000 in cash to Overseas' Mr. Bansal;
- b. ~~the Plaintiff~~ Arthur Cajés was directed by Mr. Bansal to pay the remaining \$6,000 to an account held by the Defendant Trident Immigration;

- c. ~~the Plaintiff~~ Edlyn Tesorero was directed by an employee of Overseas to wire \$5,500 to the Defendant Trident Immigration; and
- d. ~~the Plaintiff~~ Bishnu Khadka was directed by an employee of Overseas to pay the remaining amount of \$5,500 USD to the Defendant Trident Immigration.

54. In total, Overseas and Trident charged ~~each of the Plaintiffs and~~ the Class Members approximately \$8,000 to access the guaranteed jobs it advertised. Some of ~~the Plaintiffs and~~ the Class Members used up life savings or took out loans to pay the Recruitment Fee.

55. Overseas employees told ~~some Plaintiffs and~~ some Class Members to destroy and not to bring with them to Canada any records that showed payments were made to Overseas, and to close their social media accounts and to destroy any social media communications with or about Overseas.

56. In reliance on their signed employment contracts with Mac's, the ~~Plaintiffs~~ Subclass Members ~~and some of Class Members~~ left the Middle East to travel to Canada. In doing so, they left behind family, jobs, employment opportunities, and friends. They came to Canada with an expectation that their Canadian jobs would improve their own lives and the lives of people who depended on them.

57. The ~~Plaintiffs and Class~~ Subclass Members were told to travel initially to Vancouver, British Columbia. The ~~Plaintiffs and many of the Class~~ Subclass Members received work permits when they arrived at the Canadian border. Their work permits authorized them to work in the position for which they were contracted and included the following restrictions:

- a. Not authorized to work in any occupation other than stated;
- b. Not authorized to work for any employer other than stated; and
- c. Not authorized to work in any location other than stated.

58. When the ~~Plaintiffs and Class~~ Subclass Members arrived in British Columbia, they were housed by Overseas in over-crowded housing or hotels.

59. Some of the ~~Plaintiffs and Class~~ Subclass Members had to pay for their own airfare, contrary to the terms of their contract.
60. Upon arriving in Canada, the ~~Plaintiffs~~ Subclass Members reported to Overseas' offices and/or to Mr. Bansal, as directed, rather than to a Mac's Convenience Store.
61. After the Representative Plaintiffs and many of the ~~Class~~ Subclass Members arrived in Canada, Overseas informed them that the jobs with Mac's they had contracted to perform did not exist
62. Mac's signed employment contracts with the ~~Plaintiffs and Class~~ Subclass Members knowing that the positions they contracted to provide may not exist by the time the ~~Plaintiffs and Class~~ Subclass Members obtained travel visas and arrived in Canada. Mac's breached the employment contracts by refusing or failing to provide employment to the ~~Plaintiffs and Class~~ Subclass Members and/or otherwise not fulfilling the terms of their contracts.
63. Overseas and Trident Immigration charged the ~~Plaintiffs and Class~~ Members Recruitment Fees for jobs which Mac's knew may not exist by the time the ~~Plaintiffs and Class~~ Members obtained travel visas and arrived in Canada.
64. Overseas directed some of the ~~Plaintiffs and Class~~ Subclass Members to work elsewhere contrary to the terms of their work permits. Of those who nonetheless complied, some found that even these illegal jobs were not available to them or if they were that they were not paid.
65. As temporary foreign workers, the ~~Plaintiffs and Class~~ Subclass Members had no access to social assistance or health benefits. Some ended up homeless or dependent on the charity of others to survive as a result of being deprived of employment.
66. The effect of the Defendants' conduct was that the ~~Plaintiffs and Class~~ Members lost significant sums of money and/or were left without any legal means to support themselves

or their families and some were forced by their circumstances into working in contravention of Canadian immigration law. They suffered hardship and mental distress.

67. The Recruitment Fees paid by the ~~Plaintiffs~~ and Class Members benefitted Mac's ~~because they~~ included costs of recruitment which Mac's was obligated to pay under the terms of the employment contracts and TFWP. These include:

- a. costs of airfare to Canada;
- b. costs of Overseas pre-screening candidates for employment and ascertaining their motivation to emigrate to Canada;
- c. costs of preparing and submitting immigration documents required to work in Canada; and
- d. costs of initial settlement in Canada.

68. There is a need to deter employers and recruiters from engaging in this sort of reprehensible conduct.

Part 2: RELIEF SOUGHT

Conduct of the class action

69. The Plaintiffs seek an order pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 certifying this action as a class proceeding and appointing Mr. Basyal, Mr. Cajés, Ms. Tesorero and Mr. Khadka as the Representative Plaintiffs of the Class.

70. The Plaintiffs seek an interim, interlocutory, and final mandatory order directing the Defendants to publicize a Notice under the *Class Proceedings Act*, and otherwise disseminate a communication at the Defendants' expense, with the approval of the Court, that properly explains that:

- a. Class Members resident in British Columbia are automatically entitled to be included in this action, if certified as a class proceeding, unless they opt-out;
- b. Class Members not resident in British Columbia shall be included in this action, if certified as a class proceeding, if they opt-in; and

- c. Class Members may participate and testify in this action without fear of retaliation and being threatened by the Defendants to not exercise their legal rights.

Declarations and Damages and Other Remedies

71. The Plaintiffs seek, on their own behalves and on behalf of the Class, the following:

A. Declarations

- a. a declaration that Mac's breached the terms of its contracts of employment with the ~~Plaintiffs and~~ Subclass Members; and
- b. a declaration that Mac's owed to the ~~Plaintiffs and~~ Subclass Members a duty to honestly perform the terms of their employment contracts, and that Mac's breached this duty;
- c. a declaration that at all material times Overseas, its officers, directors, employees, agents or representatives were acting as agents for Mac's in the recruitment of the Class Members under the TFWP;
- d. a declaration that Overseas owed a fiduciary duty to the ~~Plaintiffs and~~ Class Members, and that Overseas breached this fiduciary duty; and
- ~~e. Mac's owed a fiduciary duty to the Plaintiffs and Class Members, and that Mac's breached this fiduciary duty; and~~
- f. e. a declaration that ~~the Defendants~~ Overseas and Trident Immigration have been unjustly enriched to the deprivation of the ~~Plaintiffs and~~ Class Members.

B. Damages

- a. an order that Mac's identify each Class Member from its records and pay compensatory damages into a fund for distribution ~~to each Class Member:~~
 - i. the ~~value~~ amount of all wages and benefits payable under the terms of the contracts of employment for each Subclass Member;
 - ii. the ~~value~~ amount of the Recruitment Fees paid by the Class Members; and

- iii. the cost of return airfare for some of the Subclass Members between Canada and their home countries;
 - b. an order that Overseas and Trident Immigration identify each Class Member from their records and pay damages into a fund for distribution to the Class Members, in the ~~value~~ amount of Recruitment Fees paid by the Class Members;
 - c. an order that all Defendants pay to the Class Members:
 - i. general damages;
 - ii. aggravated damages; and
 - iii. punitive damages.
- C. Other Remedies
- a. an accounting and restitution of all funds received by the Defendants from fees paid to the Defendants Overseas and Trident Immigration by Class Members;
 - b. Costs, including, for the administration of the plan of distribution for the recovery in this action in a sum as this Honourable Court deems is appropriate;
 - c. pre-judgment and ~~P~~post-judgment interest pursuant to the *Court Order Interest Act*; and
 - d. the Plaintiffs claim such further and other relief as this Honourable Court may allow.

Part 3: LEGAL BASIS

72. The Plaintiffs plead and rely upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

Breach of contract

73. Mac's breached its contracts of employment with the ~~Plaintiffs and~~ Subclass Members.

74. Each of the ~~Plaintiffs~~ and Subclass Members entered into binding contracts of employment with Mac's, with express terms in respect of the term of employment, hours of work, wages, health insurance, travel, payment of recruitment costs, and application of provincial labour standards.

75. Mac's breached the employment contracts of all Subclass Members by:

- a. not paying the full costs of recruitment of the ~~Plaintiffs~~ and Subclass Members.
- b. failing to abide by provincial labour standards, in that Overseas, as its agent and/or third party representative charged a fee for employment in contravention of s. 10 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, and/or in contravention of s. 12 of the *Employment Agency Business Licensing Regulation*, A.R. 45/2012;

76. Mac's breached the employment contracts of the ~~Plaintiffs~~ and some of the Class Subclass Members by:

- a. failing to provide 24 months of work for the contractually agreed number of hours per week, at the agreed-upon wage; and
- b. failing to pay travel costs which it agreed to pay.

77. At all material times Overseas acted as agent of Mac's and Mac's was responsible for the actions of Overseas, its officers, directors, employees, representatives and agents in respect of the recruitment of the ~~Plaintiffs~~ and Class Members.

- a. Mac's contracted with Overseas to recruit Class Members to fill the 450 positions for which Mac's obtained positive LMO/LMIAs under the TFWP;
- b. Mac's appointed Kuldeep Bansal of Overseas Consulting as its third party representative under the TFWP;
- c. Mac's signed a declaration that its recruitment of workers under the TFWP would be in compliance with applicable provincial legislation and that it would be responsible for the actions of persons recruiting workers on its behalf;

- d. Mr. Higuchi interviewed workers at Overseas' recruitment fairs and hired only those workers who had paid the first instalment of the Recruitment Fee to Overseas; and
 - e. The ~~Plaintiffs and Subclass Members~~ received Mac's' positive LMO, Mac's' offer of employment and contract of employment signed by Mr. Higuchi from Overseas representatives;
 - f. The ~~Plaintiffs and Subclass Members~~ received instructions from Overseas representatives about when to travel to Canada to work at Mac's and where to report upon arrival.
78. The contract between Mac's and Overseas, described at paragraphs 40 - 45 granted Overseas actual authority to act as Mac's' agent in recruiting foreign workers.
79. The Appointment of Representative form and the declarations that Mac's signed when it applied for LMOs/LMIAs confirm the agency relationship between Mac's and Overseas constitute ratification by Mac's of the actions of Overseas in recruiting foreign workers on Mac's' behalf.
80. To the extent that Overseas may have acted outside of the actual authority granted by the contract between Mac's and Overseas, Overseas had the apparent authority at all material times to act on behalf of Mac's in all transactions related to the recruitment of the ~~Plaintiffs and the Subclass~~ Class Members under the TFWP, including the charging of Recruitment Fees.
81. Mac's directed Overseas to communicate with the ~~Plaintiffs and Class Members~~ about their employment on Mac's' behalf. The Plaintiffs and Class Members had little to no direct contact with Mac's or its employees.
82. By granting Overseas the power to control the flow of information between itself and the ~~Plaintiffs and Subclass Members~~ Class Members, Mac's created the appearance, to the ~~Plaintiffs and Subclass Members~~ Class Members, that Overseas had authority to act on

Mac's behalf in recruiting them. Principals are liable for the conduct of their agents when their agents act within apparent authority, even where the authority is not actual.

83. Mac's acted dishonestly by misleading the ~~Plaintiffs and~~ Subclass Members about the availability of employment. In so doing, it breached its duty to honestly perform the terms of the employment contracts.

84. As a result of Mac's' breach of contract, the ~~Plaintiffs and~~ Subclass Members have suffered loss and damage.

Unjust enrichment

85. Overseas and Trident Immigration have been unjustly enriched by receiving the Recruitment Fees paid by the ~~Plaintiffs and the~~ Class Members.

86. At all material times, including when it collected Recruitment Fees, Overseas was acting as Mac's' agent. Overseas was unjustly enriched by collecting the Recruitment Fees which were both illegal under statute, and, in many cases, paid for jobs that did not exist. Mac's is responsible for the actions of its agent where those are carried out under express or implied actual authority, or under apparent authority, as set out above.

~~87. In addition, Mac's was unjustly enriched by and benefited from the payment of the Recruitment Fees as set out in paragraph 67 of this Notice of Civil Claim.~~

~~88. 87.~~ The ~~Plaintiffs and the~~ Class Members suffered the deprivation of the money paid in the form of Recruitment Fees.

~~89. 88.~~ Fees recovered by the Defendants Overseas and Trident Immigration resulted from the Defendants' wrongful or unlawful acts as it is unlawful to charge a fee for employment in British Columbia and in Alberta under *Employment Standards Act*, R.S.B.C. 1996, c. 113, and the *Employment Agency Business Licensing Regulation*, A.R. 45/2012. ~~The fees that Overseas and Trident Immigration charged the Plaintiffs and Class Members~~

~~are costs that Mac's should have borne pursuant to the employment contracts and the terms of the TFWP.~~

- ~~90.~~ 89. Because the Recruitment Fees recovered by the Defendants Overseas and Trident resulted from the Defendants' their wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants' their retaining any part of it.

Breach of fiduciary duty

- ~~91.~~ 90. In the further alternative, Overseas Immigration and Overseas Consulting the Defendants owe a fiduciary duty to and the Class Members and that fiduciary duty was breached.

Mac's

- ~~92.~~ Mac's' undertaking to act in the best interests of the Plaintiffs and Class Members is set out in the responsibilities imposed on employers under the TFWP, and specifically in the attestations that employers must make when applying for an LMO. They include that Mac's has a legitimate vacancy to fill, will provide the job as promised, and is responsible for the actions of any person recruiting workers on its behalf.

- ~~93.~~ The undertaking also arises from the terms of the Plaintiffs' and Class Members' work permits, which only authorize them to work for Mac's at the specific Mac's Convenience Store identified on their work permits.

- ~~94.~~ Mac's was in a position to exercise power over the Plaintiffs and Class Members, and the Plaintiffs and Class Members were peculiarly vulnerable to how Mac's exercised that power. In particular:

- ~~a.~~ The Plaintiffs and Class Members were only able to enter Canada based on their prospective employment with Mac's, which they could only obtain by paying the Recruitment Fee to Mac's' agent Overseas. As such, Mac's was uniquely positioned to exercise control over whether the Plaintiffs and Class Members could come to Canada, which they sought to do; and

- ~~b. The Plaintiffs and Class Members were only legally authorized to work for the specific Mac's Convenience Store location identified on their work permits. As such, Mac's was uniquely positioned to exercise complete power over whether the Plaintiffs and Class Members could work and support themselves once they arrived in Canada. This is a responsibility which arises not from the employment relationship, but from participation in the TFWP.~~

~~95. Mac's' power over the Plaintiffs and Class Members affected their legal and financial interests. Mac's exercised this power to promote its own interests in a manner that conflicted with its overriding duty not to take advantage of the Plaintiffs' and Class Members' vulnerability. In particular:~~

- ~~a. By representing that the Plaintiffs and Class Members would obtain gainful employment with Mac's in Canada, Mac's granted its agent Overseas apparent authority to act on its behalf and as a result placed its agent Overseas in a position to extract substantial Recruitment Fees.~~
- ~~b. By providing the Plaintiffs and Class Members with a contract of employment, Mac's induced the Plaintiffs and some of the Class Members to leave jobs and surrender employment opportunities to travel to Canada for work.~~
- ~~c. By failing or refusing to provide employment to the Plaintiffs and some of the Class Members as set out in their LMOs and employment contracts, Mac's deprived the Plaintiffs and the Class Members of the opportunity to perform legal work and earn an income in Canada.~~
- ~~d. By failing or refusing to provide employment to the Plaintiffs and some of the Class Members as set out in their LMOs and employment contracts, Mac's placed the Plaintiffs and some of the Class Members in a precarious situation where some were forced or deceived into performing illegal work and jeopardizing their opportunities to live and work in Canada.~~
- ~~e. By failing or refusing to provide employment to the Plaintiffs and some of the Class Members as set out in their LMOs and employment contracts, Mac's deprived the~~

~~Plaintiffs and some of the Class Members of a primary value of the contract, which was the possibility of achieving permanent resident status in Canada.~~

Overseas

96. 91. The Defendants Overseas Immigration and Overseas Consulting were under an undertaking to act in the best interests of the ~~Plaintiffs and Class Members~~.

97. 92. Overseas held themselves out to the ~~Plaintiffs and Class Members~~ as professional advisers in the field of Canadian immigration law.

98. 93. Mr. Bansal and Mr. Mann are Regulated Canadian Immigration Consultants and, as such, are governed by the Code of Professional Ethics established and enforced by the Immigration Consultants of Canada Regulatory Council.

99. 94. The ICCRC's Code of Professional Ethics provides, among other things, that ICCRC members are required to:

- a. be honest and candid when advising clients;
- b. represent the client's interests; and
- c. exercise independent judgement on behalf of a client.

100. 95. The ~~Plaintiffs and Class Members~~ paid Recruitment Fees to Overseas so that Overseas would use its special skills to find and secure employment for them in Canada.

101. 96. The ~~Plaintiffs and Class Members~~ trusted Overseas and paid significant fees to them in the belief that Overseas was acting in their best interests in obtaining employment for them in Canada.

102. 97. Overseas exercised power over the ~~Plaintiffs and Class Members~~. In particular:

- a. the ~~Plaintiffs and Class Members~~ placed trust and reliance on Overseas to secure employment for them in Canada;

- b. Overseas acted as the gatekeeper standing between the ~~Plaintiffs and Class~~ Members and their employer in Canada, Mac's; and
- c. the ~~Plaintiffs and Class m~~Members relied on that employment in Canada not only as a source of income but as the basis for their ability to legally enter and remain in Canada and possibly to obtain permanent resident status.

403. 98. The ~~Plaintiffs and Class~~ Members were peculiarly vulnerable to Overseas:

- a. the ~~Plaintiffs and Class~~ Members wanted to pursue employment opportunities in Canada and were willing to pay large sums of money for those opportunities; and
- b. advice and information given by Overseas in its capacity as immigration consultant and as agent would not likely be viewed with suspicion.

404. 99. Overseas' power over the ~~Plaintiffs and Class~~ Members affected their legal and financial interests. Overseas exercised this power to promote its own interests in a manner that conflicted with its overriding duty not to take advantage of the ~~Plaintiffs' and Class Members'~~ vulnerability. In particular:

- a. By representing that the ~~Plaintiffs and Class~~ Members would obtain gainful employment in Canada, Overseas extracted substantial Recruitment Fees from them.
- b. By representing that the ~~Plaintiffs and Class~~ Members would obtain gainful employment with Mac's in Canada, Overseas induced some of them to leave jobs and surrender employment opportunities to travel to Canada for work.
- c. By failing or refusing to provide employment to the ~~Plaintiffs and~~ some of the ~~Class~~ Subclass Members as promised, Overseas placed the ~~Plaintiffs and~~ some of the ~~Class~~ Subclass Members in a precarious situation where some were later forced or deceived into performing illegal work and jeopardizing their opportunities to live and work in Canada.

Plaintiffs' address for service:

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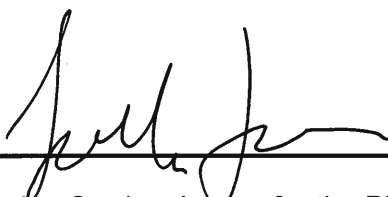
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Place of trial: Vancouver, British Columbia

The address of the registry is:

800 Smithe Street
 Vancouver, BC
 V6Z 2E1

Date: August 16, 2019


 For: Charles Gordon, lawyer for the Plaintiffs


 Carmela Allevato, lawyer for the Plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Class action related to breach of contract and tortious causes of action.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☒ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

☒ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☐ none of the above

☐ do not know

Part 4: ENACTMENTS RELIED UPON:

1. *Class Proceedings Act*, RSBC 1996, c. 50;
2. *Employment Standards Act*, R.S.B.C. 1996, c. 113; and
3. *Employment Agency Business Licensing Regulation*, A.R. 45/2012.

