

Amended pursuant to Rule 6-1(1)(a)
original Notice of Civil Claim Filed 10/12/2015

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

APR 08 2016

No. S1510284



Vancouver Registry

In the Supreme Court of British Columbia

Between

Prakash Basyal, Arthur Gortifacion Cajes, 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

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. The Plaintiffs bring this class action on behalf of a class of persons (the "**Class Members**") who, on or after December 11, 2009, made payments to Overseas Immigration Services Inc., Overseas Consulting 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 ("**Western Canada**") under Canada's Temporary Foreign Worker Program ~~but whose employment as set out in the employment contracts was not provided.~~
2. The Class Members were working abroad when the Defendants advertised jobs in Canada. The Defendants charged each Class Member approximately \$8,000 ostensibly to secure employment at Mac's Convenience Stores in Western Canada (the "**Recruitment Fee**").
3. The Defendant Mac's Convenience Stores Inc. ("**Mac's**") entered into employment contracts with members of the Class regarding wages, hours of work, travel, health, and other working conditions. Those employment contracts prohibited Mac's from recouping any costs of recruitment from the Class Members.

4. In reliance upon and in consideration of these binding terms, the Class Members left their homes and jobs abroad and spent considerable money and effort to travel to Canada to work for Mac's Convenience Stores in Western Canada.
5. When the Class Members arrived in Canada, they 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 Defendants breached the terms of the Class Members' employment contracts by charging Recruitment Fees and by failing to perform the contracts honestly and in good faith.
7. Further, and in the alternative, the Defendants are liable for fraudulent misrepresentation, negligent misrepresentation, conspiracy, unjust enrichment, waiver of tort, and breach of fiduciary duty.
8. On behalf of themselves, and members of the Class, the 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

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.
14. 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.
15. At all material times, Mr. Higuchi worked in Mac's British Columbia District Office in Surrey, British Columbia.
16. 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

17. 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.
18. 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.
19. 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.
20. Mr. Bansal is a Regulated Canadian Immigration Consultant, authorized to represent and advise workers with respect to the Canadian immigration system.

21. 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.
22. 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

23. 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.
24. Ms. Bala is Mr. Bansal's sister.
25. Trident Immigration shares office space with Overseas.
26. Ms. Bala is a Regulated Canadian Immigration Consultant, authorized to represent and advise workers with respect to the Canadian immigration system.
27. Trident Immigration is directly and/or vicariously liable for the actions of its Director and employees.

Temporary Foreign Worker Program

28. The Temporary Foreign Worker Program ("**TFWP**") is a program jointly managed by Citizenship and Immigration Canada ("**CIC**") and Employment and Social Development Canada ("**ESDC**", formerly called Human Resources and Skills Development Canada ["**HRSDC**"]). It allows Canadian employers to hire foreign nationals to fill temporary labour and skill shortages when qualified Canadian citizens or permanent residents are not available.

29. In order to qualify to bring in workers through the TFWP, employers are required to apply for a Labour Market Impact Assessment (“**LMIA**”) from ESDC. Prior to June 2014, LMIAs were referred to as Labour Market Opinions (“**LMO**”). In the LMIA, ESDC determines whether employment of a foreign national is likely to have a positive, neutral, or negative effect on the Canadian labour market. A positive LMIA 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.
30. In order to work in Canada under the TFWP, foreign workers are required to submit a positive LMIA, an offer of employment, and an employment contract to CIC. CIC may then issue the worker a 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.
31. 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.
32. Temporary foreign workers are uniquely vulnerable to abuse by reason of their immigration status and restrictions on their mobility within the Canadian labour market.
33. To protect against abuse, employers that hire foreign workers under the TFWP are subject to strict rules governing the treatment of those workers and the conditions for their employment. Those rules include:
 - a. ensuring the genuineness of any job offer;
 - b. ensuring that wages, occupation and working conditions are consistent with those set out in the LMIA/LMO and any employment contract;
 - c. making reasonable efforts to provide a workplace free from abuse; and
 - d. being subject to inspections for compliance with the TFWP.
34. Under certain circumstances, temporary foreign workers who have worked in Canada under the TFWP may become eligible for permanent immigration status in Canada.

The Defendants' scheme

35. Overseas frequently hosts large recruitment fairs in the Middle East to recruit foreign workers to work in Canada. At those recruitment fairs, Overseas advertises guaranteed jobs in Canada.
36. Overseas charges workers approximately \$8,000 to secure employment in Canada (the "**Recruitment Fee**"). Of that fee, approximately \$2,000 must be paid up front. The remainder is paid after the worker is supplied with a positive LMO/LMIA and an employment contract from a Canadian employer.
37. The Recruitment Fees are paid by foreign workers to Overseas Immigration, Overseas Consulting and/or Trident Immigration (collectively, the "**Recruitment Agents**").
38. At some point, known only to the Defendants, Mac's entered into an agreement with Overseas Immigration and/or Overseas Consulting, wherein Mac's authorized Overseas Consulting to act as its agent to recruit workers from abroad to work in Mac's Convenience Stores in Western Canada, through Canada's TFWP.
39. At all material times Overseas acted as agents for Mac's, and were vested with the express, implied, or apparent authority to facilitate and/or arrange the Class Members' employment with Mac's on behalf of Mac's.
40. It is unknown whether Mr. Higuchi and/or Mac's received a portion of the Recruitment Fees or another payment from the Recruitment Agents in exchange for its role in the scheme, which was to apply to ESDC/HRSDC for LMOs and LMIAs and issue job offers based on those LMOs and LMIAs, even where the jobs offered did not actually exist or would not be provided to the workers to whom they had been offered. The particulars of this arrangement are known only to the Defendants.
41. Between July 2011 and July 2014, the Defendants secured positive LMOs or LMIAs for over 425 450 positions at Mac's Convenience Stores in Western Canada.
42. Those authorized positions were then used by Mac's to offer employment contracts to the Plaintiffs and Class Members. Offers of employment and employment contracts were signed by Mr. Higuchi on behalf of Mac's.

43. Mac's used a standard form employment contract based on a template provided by ESDC, for the Plaintiffs and all Class Members. Therefore, the Plaintiffs and all Class Members have substantively identical contracts with substantively identical terms.
44. Those employment contracts all included provisions that:
- a. the term of employment is 24 months;
 - b. the worker is guaranteed a set wage;
 - c. the worker is guaranteed weekly hours of work;
 - 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.
45. In addition, certain Class 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. Certain Class Members had a provision in their employment contracts that Mac's will ensure that reasonable and proper accommodation is available and will provide the Class Members with suitable accommodation, if necessary.
46. Each Plaintiff and Class Member who contracted with Mac's under this scheme was charged a Recruitment Fee. The provision of an offer of employment and employment contract with Mac's induced the worker to pay the bulk of the Recruitment Fee, or approximately \$6,000.
47. The \$8,000 Recruitment Fee is a large sum for low-skilled foreign workers, including the Plaintiffs and members of the Class.
48. In reliance on their signed employment contracts with Mac's, the Plaintiffs and 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.

49. The Plaintiffs and Class Members were told to travel initially to Vancouver, British Columbia.
50. When the Plaintiffs and Class Members arrived in British Columbia, they were housed by Overseas in over-crowded ~~apartments~~ housing or hotels.
51. After arriving in Canada, the Plaintiffs and Class Members learned that the jobs they had contracted to perform did not exist or were not made available to them.
52. Mac's breached its employment contracts with the Plaintiffs and Class Members by refusing or failing to provide them with employment.
53. Under the terms of their Canadian work permits, the Plaintiffs and Class Members were not permitted to work for any other employer than the specific Mac's Convenience Store identified on the work permit.
54. As a result, the Plaintiffs and Class Members were left without any legal source of income in Canada. They suffered mental and physical distress, humiliation and loss of self-esteem.
55. The Defendants profited from this scheme by using positive LMOs/LMIAs secured by Mac's to charge workers Recruitment Fees and without providing them with the employment promised.

Representative plaintiffs

Prakash Basyal

56. In 2012, Mr. Basyal was living in Dubai, United Arab Emirates. He was working full time in a Baskin Robbins ice cream shop and remitting money back to Nepal to support his family.
57. In or around the summer of 2012, Mr. Basyal attended a recruitment fair where Overseas was advertising guaranteed jobs in Canada.

58. Mr. Basyal wanted to work in Canada in the hope that he could eventually secure permanent resident status in Canada.
59. Mr. Bansal, on behalf of Overseas, told Mr. Basyal that he was a Canadian immigration consultant. He represented to Mr. Basyal that he could guarantee him a job in Canada in exchange for a \$8,000 fee, with an initial payment of \$2,000 required up front and the remaining \$6,000 to be paid as a second instalment once the LMO and employment contract were secured.
60. Mr. Basyal retained Overseas to secure him a job in Canada.
61. Mr. Basyal paid \$2,000 directly to Mr. Bansal on the date he attended the recruitment fair.
62. Mr. Bansal arranged for Mr. Basyal to be interviewed by Geoff Higuchi, on behalf of Mac's.
63. Mr. Higuchi interviewed Mr. Basyal in Dubai for a position at a Mac's Convenience Store.
64. On or around February 4, 2013, Mr. Basyal was interviewed a second time by Mr. Higuchi over the phone.
65. The next day, Mr. Basyal received:
 - a. an offer of employment signed by Mr. Higuchi on behalf of Mac's to work as a cashier in Edmonton, Alberta;
 - b. an employment contract signed by Mr. Higuchi on behalf of Mac's, for Mr. Basyal to work as a cashier for Mac's dba Subway in Edmonton, Alberta; and
 - c. a positive LMO dated January 1, 2013, which authorized Mac's to bring in 40 temporary foreign workers to work as cashiers in Edmonton, Alberta. The LMO had an expiry date of April 15, 2013. The LMO identified Overseas Consulting as a third party authorized to act on behalf of Mac's. The LMO also identified Mr. Higuchi as the Employer Contact.
66. Mr. Basyal signed the employment contract with Mac's.
67. The employment contract provided, among other things, the following terms:

- i. that the term of employment is 24 months;
 - ii. that Mr. Basyal shall work as a cashier;
 - iii. that Mr. Basyal shall work 37.5 hours per week for a wage of \$11.40 per hour;
 - iv. that Mac's will assume transportation costs of Mr. Basyal's round trip travel between the United Arab Emirates and Edmonton, Alberta;
 - v. that Mac's shall provide health insurance at no cost to Mr. Basyal until he is eligible for applicable provincial health insurance;
 - vi. that Mac's would not recoup the costs of his recruitment from Mr. Basyal; and
 - vii. that Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act.
68. Mr. Basyal used the positive LMO, offer of employment and employment contract with Mac's to apply to CIC for a visa and a work permit.
69. In or around December 2013, Mr. Basyal was issued a visa to travel to Canada as a temporary foreign worker.
70. On or about December 23, 2013, Mr. Basyal attended another Overseas recruitment fair in Dubai. At the recruitment fair, Mr. Bansal instructed Mr. Basyal to pay the remaining \$6,000 of the Recruitment Fee in cash directly to Mr. Bansal by wiring the money to an account held by Trident Immigration. On the same day, Mr. Basyal paid \$6,000 in cash directly to Mr. Bansal.
71. ~~In or around January 2014, Mr. Basyal wired \$6,000 to Trident Immigration.~~
72. Mr. Baysal quit his job and, on or about January 8, 2013, he flew to Nepal to wait to travel to Canada to work. He repeatedly called Overseas inquiring about when he could start work in Canada but received no response about when he could travel to Canada. Eventually, an employee of Overseas instructed Mr. Basyal to book a flight to Vancouver, British Columbia.

73. Mr. Basyal booked, and paid for, a flight from Kathmandu, Nepal, to Vancouver, British Columbia.
74. Mr. Basyal arrived in Vancouver on April 18, 2014.
75. Upon arrival in Canada, Mr. Basyal received a work permit authorizing him to work as a cashier for Mac's Convenience Store Inc. dba Subway in Edmonton, Alberta.
76. The conditions on Mr. Basyal's work permit included the following:
 - a. Not authorized to work in any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
77. Mr. Bansal instructed Mr. Basyal to live in ~~an apartment~~ a house with six to eight other workers in Surrey, British Columbia.
78. Mr. Basyal was not sent to work.
79. In or around May 2014, Mr. Bansal told Mr. Basyal that there was no work for him as a cashier at the Mac's Convenience Store in Edmonton. He told Mr. Basyal that he would send Mr. Basyal to work on a farm for a few months. Mr. Basyal refused.
80. Mr. Basyal was not legally permitted to work for any employer other than the specific Mac's store for which he had been issued a work permit. As a temporary foreign worker, he was also not entitled to any public benefits or services. As a result, he was without any source of income or financial support.
81. Several days later, Mr. Bansal told Mr. Basyal that he had found work for him at a bottle depot in Calgary, Alberta. Mr. Bansal told Mr. Basyal that he would have to begin immediately, and that he would receive a new work permit once he arrived in Calgary. He told Mr. Basyal he would receive \$11 per hour.
82. Mr. Basyal agreed, understanding the work to be legal.

83. Overseas bought Mr. Basyal a bus ticket to Calgary. Mr. Basyal travelled to Calgary on or around May 10, 2014.
84. Mr. Basyal worked 40 hours per week at the bottle depot in Calgary until around June 2014. He was never paid for that work.
85. In or around June 2014, the Canada Border Services Agency (“**CBSA**”) discovered Mr. Basyal working illegally and brought him to a homeless shelter in Calgary.
86. In or around July 21, 2014, the CBSA helped Mr. Basyal return to Vancouver, where he lived in a homeless shelter.
87. At no point was Mr. Basyal ever given employment with Mac’s in accordance with the terms of his employment contract.
88. Mr. Basyal suffered mental distress and hardship as a result of the Defendants’ conduct.

Arthur Cajes

89. In or about November 2012, Mr. Cajes was living with his wife in Abu Dhabi, United Arab Emirates. He was working as a cook in a restaurant. His two daughters were, and still are, living in the Philippines with his sister.
90. Mr. Cajes aspired to come to Canada to work. He knew that, unlike in the United Arab Emirates, working in Canada could lead to permanent residence and citizenship. His goal was to obtain permanent resident status in Canada and bring his wife and two daughters to start a new life here.
91. Mr. Bansal, on behalf of Overseas, told Mr. Cajes that he was a Canadian immigration consultant. He represented to Mr. Cajes that he could guarantee a job in Canada in exchange for a \$8,000 fee, with an initial payment of \$2,000 required up front and the remaining \$6,000 to be paid as a second instalment once a job offer, LMO, and employment contract were provided.
92. Mr. Cajes retained Overseas to secure him a job in Canada.

93. On November 1, 2012, Mr. Cajés wired \$1,525 CAD to Overseas Consulting in partial payment of the Recruitment Fee. On or about November 18, 2012, Mr. Cajés paid a further \$500 toward the Recruitment Fee in cash to Cynthia Hirak, an employee of Overseas.
94. On or around April 4, 2013, Mr. Cajés received the following from Overseas:
 - a. an offer of employment signed by Mr. Higuchi on behalf of Mac's to work as a Food Service Supervisor in Calgary, Alberta;
 - b. an employment contract signed by Mr. Higuchi on behalf of Mac's, for Mr. Cajés to work as a Food Service Supervisor in Calgary, Alberta; and
 - c. a positive LMO dated November 29, 2012, which authorized Mac's to bring in 18 temporary foreign workers to work as Food Service Supervisors in Calgary, Alberta. The LMO had an expiry date of April 19, 2013. The LMO identified Overseas Consulting as a third party authorized to act on behalf of Mac's. The LMO also identified Mr. Higuchi as the Employer Contact.
95. Mr. Cajés signed the employment contract with Mac's on or about April 10, 2013.
96. The employment contract provided, among other things, the following terms:
 - i. that the term of employment is 24 months;
 - ii. that Mr. Cajés shall work as a Food Services Supervisor;
 - iii. that Mr. Cajés shall work 37.5 hours per week for a wage of \$13.00 per hour;
 - iv. that Mac's shall provide health insurance at no cost to Mr. Cajés until he is eligible for applicable provincial health insurance;
 - v. that Mac's would not recoup the costs of his recruitment from Mr. Cajés; and
 - vi. that Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act.

97. Mr. Cajés used the positive LMO, offer of employment and employment contract with Mac's to apply to CIC for a visa and ~~work permit~~ to travel to Canada.
98. On or about October 17, 2013, Mr. Cajés received his visa to travel to Canada as a foreign worker.
99. Mr. Bansal instructed Mr. Cajés to pay the remaining \$6,000 of the Recruitment Fee to an account held by Trident Immigration. Mr. Cajés did so on or around October 30, 2013.
100. Mr. Cajés' wife took out an interest-bearing loan to pay the remaining portion of the Recruitment Fee.
101. The terms and conditions of his employment contract induced Mr. Cajés to travel from his home in Abu Dhabi, United Arab Emirates, leaving behind his wife and his job, and spend considerable money and effort to travel to Canada to work for Mac's.
102. Prior to travelling to Vancouver, Mr. Cajés was instructed by Cheryl Bodie, an employee of Overseas, not to bring any receipts showing payments made to Overseas with him to Canada, and to close his social media accounts. She told him these instructions were from Mr. Bansal.
103. On or about February 16, 2014, Mr. Cajés travelled to Vancouver by air. He understood that he was to complete training in Vancouver before travelling to Calgary to commence work with Mac's.
104. Mr. Cajés received a work permit upon arrival in Canada authorizing him to work as a Food Service Supervisor for Mac's in Calgary, Alberta. The conditions on Mr. Cajés' work permit included the following:
 - a. Not authorized to work in any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
 - c. Not authorized to work in any location other than stated.
105. Mr. Bansal instructed Mr. Cajés to live in an apartment in Surrey along with a number of other workers.

106. On or about February 17, 2014, Mr. Cajés attended at the office of Overseas to inquire about starting his job. He spoke to an employee of Overseas who advised him that there was no work for him at Mac's.
107. Due to the terms of his work permit, Mr. Cajés was not legally permitted to work for any employer other than the specific Mac's store for which he had been issued a work permit. As a temporary foreign worker, he was also not entitled to any public benefits or services. As a result, he was without any source of income or financial support.
108. At no point was Mr. Cajés ever given employment with Mac's in accordance with the terms of his employment contract.
109. Mr. Cajés lived in Vancouver with no income for approximately one month. In order to survive, he was forced into working illegally, thereby jeopardizing his immigration status and his dream of bringing his family to Canada.
110. In the event that Mr. Cajés leaves Canada, he will have to pay his own return airfare.
111. Mr. Cajés suffered severe mental distress and hardship as a result of the Defendants' conduct.

Edlyn Tesorero

112. In or around June 2012, Ms. Tesorero was living and working in Dubai, United Arab Emirates. She contacted Mr. Mann, Corporate Manager at Overseas, to inquire about finding a job in Canada.
113. Ms. Tesorero wanted to work in Canada so that she could eventually secure permanent resident status in Canada.
114. In or around June 6, 2012, Mr. Mann emailed Ms. Tesorero and told her to pay \$2000 to process her application. In exchange, he promised to secure her a job in Canada.
115. On or around October 14, 2012, Ms. Tesorero wired \$2000 to Overseas Immigration.
116. Ms. Tesorero understood that, by paying the first instalment of the Recruitment Fee, she had retained Overseas to secure her a job in Canada.

117. On or around November 20, 2012, Ms. Tesorero was interviewed by Mr. Higuchi for a job working at a Mac's Convenience Store in Canada.
118. On or around April 9, 2013, Ms. Tesorero received:
- a. an offer of employment signed by Mr. Higuchi on behalf of Mac's to work as a Food Service Supervisor in Calgary, Alberta;
 - b. an employment contract signed by Mr. Higuchi on behalf of Mac's, for Ms. Tesorero to work as a Food Service Supervisor for Mac's; and
 - c. a positive LMO dated November 29, 2012, which authorized Mac's to bring in 18 temporary foreign workers to work as cashiers in Calgary, Alberta. The LMO had an expiry date of April 19, 2013. The LMO identified Overseas Consulting as a third party authorized to act on behalf of Mac's. The LMO also identified Mr. Higuchi as the Employer Contact.
119. Ms. Tesorero signed the employment contract with Mac's in Dubai.
120. The employment contract provided, among other things, the following terms:
- a. that the term of employment is 24 months;
 - b. that Ms. Tesorero shall work as a Food Services Supervisor;
 - c. that Ms. Tesorero shall work 37.5 hours per week for a wage of \$13.00 per hour;
 - d. that Mac's shall provide health insurance at no cost to Ms. Tesorero until she is eligible for applicable provincial health insurance;
 - e. that Mac's would not recoup the costs of her recruitment from Ms. Tesorero; and
 - f. that Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act.
121. Ms. Tesorero used the positive LMO, offer of employment and employment contract with Mac's to apply for a visa and work permit from CIC.

122. On or around September 10, 2013, CIC issued Ms. Tesorero a visa to travel to Canada.
123. On or around October 8, 2013, an employee of Overseas instructed Ms. Tesorero to pay a further \$5,500 to Trident Immigration.
124. On or around October 15, 2013, Ms. Tesorero wired \$5,500 to Trident Immigration.
125. The terms and conditions of her employment contract with Mac's induced Ms. Tesorero to travel from her home in Dubai, United Arab Emirates, leaving behind her sister and then-fiancé, and spend considerable money and effort to travel to Canada to work for Mac's.
126. On or around November 5, 2013, Ms. Tesorero purchased a plane ticket to travel from Dubai to Vancouver, British Columbia.
127. On or around December 1, 2013, Ms. Tesorero travelled by air to Vancouver, British Columbia. She understood that once she arrived, she would be taken to Calgary to commence work with Mac's.
128. On arrival in Canada, Ms. Tesorero was issued a work permit to work for Mac's as a Food Services Supervisor in Calgary, Alberta.
129. The conditions on Ms. Tesorero's work permit included, among other things:
 - a. Not authorized to work in any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
 - c. Not authorized to work in any location other than stated.
130. During her stay in Vancouver, Mr. Bansal instructed Ms. Tesorero to live in a hotel room with two other workers.
131. On or around December 9, 2013, Mr. Bansal confirmed with Ms. Tesorero that there was a job for her at a Mac's Convenience Store in Calgary.
132. On or around December 10, 2013, Ms. Tesorero travelled by bus to Calgary.

133. On or around December 12, 2013, Ms. Tesorero contacted a person at the Mac's Convenience Store where she was to work and was told that there was no job for her.
134. On or around December 19, 2013, Ms. Tesorero emailed Mr. Higuchi to ask about her job. On or around December 19, 2013, Mr. Higuchi replied by email that there was no job for her.
135. Due to the terms of her work permit, Ms. Tesorero was not legally permitted to work for any employer other than the Mac's in Calgary indicated on her work permit. As a temporary foreign worker, she was also not entitled to any public benefits or services.
136. As a result, Ms. Tesorero was without any source of income or financial support from the time of her arrival in Canada until she returned to Dubai on or around June 30, 2014.
137. To survive without income during this period, Ms. Tesorero used up her savings and borrowed money from friends. She was homeless and stayed in the homes of Filipino community members and friends.
138. Ms. Tesorero suffered mental distress and hardship as a result of the Defendants' conduct.

Bishnu Khadka

139. In 2012, Mr. Khadka was living and working full time as a waiter in Dubai. He financially supports his wife, son and parents, who live in Nepal.
140. On May 23, 2012, Mr. Khadka met with Ajay Mann. Mr. Mann, on behalf of Overseas, told Mr. Khadka that he was a Canadian immigration consultant. He represented to Mr. Khadka that he could guarantee him a job in Canada in exchange for a \$8,000 USD fee, with an initial payment of \$2,000 required up front and the remaining \$6,000 to be paid as a second instalment once the LMIA and employment contract was secured.
141. Mr. Khadka wanted to work in Canada because he perceived Canada as a place where there were opportunities to improve his life and the lives of his family members. He hoped to eventually achieve permanent resident status in Canada.

142. Mr. Khadka paid the initial \$2,000 USD fee to Mr. Mann, in cash, on or around May 24, 2012.

143. In or around December 2012, Mr. Khadka received:

- a. an offer of employment signed by Mr. Higuchi on behalf of Mac's to work as a cashier in Calgary, Alberta;
- b. an employment contract signed by Mr. Higuchi on behalf of Mac's, for Mr. Khadka to work as a cashier for Mac's Convenience Store in Calgary, Alberta; and
- c. a positive LMO dated December 20, 2012, which authorized Mac's to bring in 40 temporary foreign workers to work as cashiers. The LMO identified Overseas Consulting as a third party authorized to act on behalf of Mac's. The LMO also identified Mr. Higuchi as the employer contact.

144. Mr. Khadka signed the employment contract in the United Arab Emirates.

145. The employment contract provided, among other things, the following terms:

- i. that the term of employment is 24 months;
- ii. that Mr. Khadka shall work as a cashier;
- iii. that Mr. Khadka shall work 37.5 hours per week for a wage of \$11.40 per hour;
- iv. that Mac's will assume transportation costs of Mr. Khadka's round trip travel from the United Arab Emirates to Calgary, Alberta;
- v. that Mac's shall provide health insurance at no cost to Mr. Khadka until he is eligible for applicable provincial health insurance;
- vi. that Mac's would not recoup the costs of his recruitment from Mr. Khadka; and
- vii. that Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act.

146. Mr. Khadka used the positive LMO and employment contract with Mac's to apply to CIC for a visa to travel to Canada as a foreign worker. His application was approved on or around July 29, 2013.
147. An employee of Overseas advised Mr. Khadka that the remaining payment was due. On or around November 10, 2013, Mr. Khadka sent a money transfer of \$5,500 USD to Trident Immigration.
148. Overseas booked Mr. Khadka a flight to Vancouver, British Columbia.
149. Prior to travelling to Vancouver, Mr. Khadka was instructed by an employee of Overseas to destroy any records that showed payments were made to Overseas, as well as any social media communications with or about Overseas.
150. Mr. Khadka arrived in Vancouver on April 13, 2014.
151. Mr. Khadka received a work permit on arrival in Canada authorizing him to work as a cashier for Mac's in Calgary, Alberta. The conditions on Mr. Khadka's work permit included the following:
 - a. Not authorized to work in any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
152. Mr. Bansal instructed Mr. Khadka to live at an apartment in Surrey, British Columbia, with a number of other workers.
153. Mr. Khadka was not sent to Calgary to work.
154. Mr. Khadka was not legally permitted to work for any employer other than the specific Mac's store for which he had been issued a work permit. As a temporary foreign worker, he was also not entitled to any public benefits or services. As a result, he was without any source of income or financial support.
155. On or around April 19, 2014, Overseas arranged for Mr. Khadka to fly to Kitimat, British Columbia to work as a cashier at a Mac's Convenience Store. Mr. Khadka understood this to be legal employment, when in fact it was in violation of the terms of his work permit.

156. Mr. Khadka began work in Kitimat on or around April 20, 2014. His employer did not provide him with the hours of work guaranteed under his employment contract, and he struggled to make enough money to survive. He slept on the floor of an unfurnished apartment and had little to no food to eat.
157. With the help of a community services society in Kitimat, Mr. Khadka was able to return to Vancouver.
158. On or around May 14, 2014, Mr. Khadka met with Mr. Bansal. Mr. Bansal shouted at Mr. Khadka and threatened Mr. Khadka that his options were to either work on a farm in Canada or to return to Nepal.
159. At no point was Mr. Khadka ever given employment with Mac's in accordance with the terms of his employment contract.
160. Mr. Khadka suffered mental distress and hardship as a result of the Defendant's conduct.

The Class

161. Mr. Basyal, Mr. Cajes, Ms. Tesorero and Mr. Khadka bring this action on their own behalves and on behalf of a class consisting of the following persons:
- all persons who, on or after December 9¹¹, 2009, made payments to Overseas Immigration Services Inc., Overseas Consulting 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—~~but whose employment as set out in the employment contracts was not provided.~~
162. At all material times Mac's used a standard form employment contract based on a template provided by HRSDC, both for the Plaintiffs and all Class Members. Therefore, the Plaintiffs and all Class Members have substantively identical contracts with substantively identical terms.
163. At all material times Overseas acted as agents for Mac's, and were vested with the express, implied, or apparent authority to facilitate and/or arrange the Plaintiffs' and Class Members' employment with Mac's on behalf of Mac's.

164. At all material times, Trident Immigration acted in concert with or at the direction of Overseas in order to receive Recruitment Fees.
165. At all material times Mac's, acting on its own behalf or through its agents, made binding promises regarding wages, hours of work and working conditions in the form of contracts of employment. In reliance upon and in consideration of these binding promises, the Plaintiffs and Class Members left their existing homes and employment and spent considerable money and effort to travel to Canada in order to work for Mac's.
166. The Plaintiffs and Class Members claim that they have each paid approximately \$8,000 in Recruitment Fees to the Recruitment Agents for the purpose of securing employment with Mac's in Western Canada.
167. The Plaintiffs and some of the Class Members claim that when they arrived in Canada there was, in fact, no employment for them at Mac's at all, or at the Mac's store at which they were authorized to work under the terms of their work permits, and that they were legally precluded from working elsewhere. Each of the Plaintiffs and some of the Class Members therefore lost the value of the employment contracts they had with Mac's.
168. Some of the Class Members claim that they left jobs in order to take employment with Mac's, and lost all pay and benefits of those jobs when they did so.
169. Some of the Class Members claim that they paid their own airfare to come to Canada, in addition to the Recruitment Fees paid.
170. Class Members claim that they have had to pay their return airfare home.
171. Class Members claim that they have suffered humiliation, anxiety, damage to self-confidence or self-esteem and loss of dignity as a result of the Defendants' conduct.
172. The Class Members are readily ascertainable by a review of the records of each of the Defendants and are in excess of ~~300~~ 450 people.

Part 2: RELIEF SOUGHT

Conduct of the class action

173. 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. Cajes, Ms. Tesorero and Mr. Khadka as the Representative Plaintiffs of the Class.
174. 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.
175. The Plaintiffs seek an interim, interlocutory, and final mandatory order directing the Defendants to refrain from communicating with the Class Members regarding this proceeding except on consent of Plaintiffs' counsel, or otherwise with approval of the Court.
176. The Plaintiffs seek an interim, interlocutory, and final mandatory order directing the Defendants to refrain from engaging in acts of retaliation of any kind against the Plaintiffs or any Class Member for participating in this action.
177. The Plaintiffs seek an order pursuant to the *Class Proceedings Act*, directing an aggregate assessment of damages.

Remedies for breach of contract

178. The Plaintiffs seek, on their own behalves and on behalf of the Class, remedies for breach of contract.
179. In this regard, the Plaintiffs seek the following declaratory relief:

- a. a declaration that Mac's breached the terms of its contracts of employment with the Plaintiffs and Class Members; and
 - b. a declaration that Mac's owed to the Plaintiffs and Class Members a duty to honestly perform the terms of their employment contracts, and that Mac's breached this duty.
180. The Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendant Mac's for general compensatory damages arising from breach of contract.
181. The Plaintiffs seek an order that the general compensatory damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court.
182. The Plaintiffs seek an order that the Defendant identify each Class Member from its record and pay into a fund for distribution to each Class Member the average amount of the following without the need for any specific claim by each Class Member:
- a. the value of all wages and benefits payable under the terms of the contracts of employment for each Class Member, less any mitigation;
 - b. the Class Members' payment of Recruitment Fees; and
 - c. the cost of return airfare for the Class Members between Canada and their home countries.
183. The Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendant Mac's for general and aggravated damages arising from breach of contract. The facts on which the Plaintiffs rely in support of this claim are those set out in this Notice of Claim and that:
- a. the Plaintiffs and Class Members suffered mental distress from having to leave their homes, pay large sums of money and move to Canada only to find that there was no work;

- b. the Plaintiffs and Class Members suffered humiliation from being duped by the Defendants; and
- c. the Plaintiffs and Class Members suffered hardship because they were unable to work legally in Canada other than for Mac's, and to support themselves financially in Canada.

184. The Plaintiffs, on their own behalves and on behalf of the Class, claim against Mac's punitive damages for breach of contract. Mac's conduct in breaching its contracts with the Plaintiffs and Class Members was harsh, malicious, and reprehensible. The facts on which the Plaintiffs rely in support of this claim are those set out in this Notice of Claim and that:

- a. as temporary foreign workers, the Plaintiffs and Class Members were uniquely vulnerable to their employer;
- b. Mac's exploited that vulnerability to extract money from the Plaintiffs and Class Members;
- c. Mac's' conduct was high-handed and outrageous, and constitutes profiteering from the vulnerability of foreign workers seeking to improve their fortunes by living and working in Canada;
- d. the effect of Mac's' conduct was that Plaintiffs and Class Members were left without any legal means to support themselves or their families in Canada, and some were forced by their circumstances into working in contravention of Canadian immigration law; and
- e. there is a need to deter employers from engaging in this sort of reprehensible conduct.

Remedies for fraudulent misrepresentation, negligent misrepresentation and conspiracy

185. In the alternative, the Plaintiffs seek, on their own behalves and on behalf of the Class, remedies for fraudulent misrepresentation, negligent misrepresentation and conspiracy.

186. In this regard, the Plaintiffs seek the following declaratory relief:

- a. a declaration that that Overseas fraudulently and/or negligently misrepresented that it could secure legal employment in Canada for Class Members in exchange for payment of a Recruitment Fee;
- b. a declaration that the Defendants, and each of them, fraudulently and/or negligently misrepresented that the Plaintiffs and Class Members would be employed by Mac's pursuant to the terms of valid employment contracts, in exchange for payment of a Recruitment Fee; and
- c. a declaration that the Defendants, and each of them, participated in conspiracies to injure the Plaintiffs and Class Members.

187. The Plaintiffs also claim against the Defendants, and each of them, general compensatory damages for:

- a. fraudulent misrepresentation;
- b. negligent misrepresentation; and/or
- c. conspiracy.

188. The Plaintiffs seek an order that the general compensatory damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court.

189. The Plaintiffs seek an order that the Defendant identify each Class Member from its record and pay into a fund for distribution to each Class Member the average amount of the following without the need for any specific claim by each Class Member:

- a. the value of all lost income suffered by Plaintiffs and Class Members, less mitigation;
- b. the Class Members' payment of Recruitment Fees; and
- c. the cost of traveling to and from Canada.

190. The Plaintiffs also claim against the Defendants, and each of them, general and aggravated damages for:
- a. fraudulent misrepresentation;
 - b. negligent misrepresentation; and/or
 - c. conspiracy.
191. The facts on which the Plaintiffs rely on in support of this claim are those set out at paragraph 183 of this Notice of Claim.
192. The Plaintiffs also claim against the Defendants, and each of them, punitive damages for:
- a. fraudulent misrepresentation;
 - b. negligent misrepresentation; and/or
 - c. unlawful conspiracy.
193. The facts on which the Plaintiffs rely in support of this claim are those set out in this Notice of Claim and that:
- a. as temporary foreign workers, the Plaintiffs and Class Members were uniquely vulnerable;
 - b. the Defendants, and each of them, exploited that vulnerability to extract money from the Plaintiffs and Class Members;
 - c. the Defendants' conduct was high-handed and outrageous, and constitutes profiteering from the vulnerability of foreign workers seeking to improve their fortunes by living and working in Canada;
 - d. the effect of the Defendants' conduct was that Plaintiffs and Class Members lost significant sums of money and were left without any legal means to support

themselves or their families in Canada and some were forced by their circumstances into working in contravention of Canadian immigration law; and

- e. there is a need to deter employers and immigration consultants from engaging in this sort of reprehensible conduct.

Remedies for breach of fiduciary duty

194. In the further alternative, the Plaintiffs seek, on their own behalves and on behalf of the Class, remedies for breach of fiduciary duty.

195. Specifically, the Plaintiffs seek:

- a. a declaration that the Defendants Overseas owed a fiduciary duty to the Plaintiffs and Class Members, and that Overseas breached this fiduciary duty; and
- b. A declaration that the Defendant Mac's owed a fiduciary duty to the Plaintiffs and Class Members, and that Mac's breached this fiduciary duty.

196. Further, the Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendants Overseas and Mac's, and each of them, general compensatory damages for breach of fiduciary duty.

197. Further, the Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendants Overseas and Mac's, and each of them, an accounting of profits made by the Defendants as a result of their breach of fiduciary duty.

198. Further, the Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendants Overseas and Mac's, and each of them, general and aggravated damages for breach of fiduciary duty. The facts on which the Plaintiffs rely in support of this claim are those set out at paragraph 183 of this Notice of Claim.

199. Further, the Plaintiffs, on their own behalves and on behalf of the Class, claim against the Defendants Overseas and Mac's, and each of them, punitive damages for breach of fiduciary duty. The facts on which the Plaintiffs rely in support of this claim are those set out at paragraph 193 of this Notice of Claim.

Remedies for unjust enrichment and waiver of tort

200. In the further alternative, the Plaintiffs seek, on their own behalves and on behalf of the Class, remedies for unjust enrichment and waiver of tort.
201. In this regard, the Plaintiffs seek a declaration that the Defendants have been unjustly enriched to the deprivation of the Plaintiffs and Class Members.
202. Further, the Plaintiffs seek accounting and restitution of all funds received by the Defendants from fees paid to the Recruitment Agents.
203. Further, the Plaintiffs seek an order that the Defendants be required to disgorge to the Plaintiffs and other Class Members all profits related to the charging of Recruitment Fees to the members of the Class.

Other remedies

204. The Plaintiffs seek the cost of the administration of the proceeding, including the administration of the plan of distribution for the recovery in this action in a sum as this Honourable Court deems is appropriate.
205. The Plaintiffs claim interest.
206. The Plaintiffs claim such further and other relief as this Honourable Court may allow.

Part 3: LEGAL BASIS

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

Breach of contract

208. Mac's breached its contracts of employment with the Plaintiffs and Class Members.

209. Each of the Plaintiffs and Class Members entered into contracts of employment with Mac's, with express terms in respect of the term of employment, hours of work, wages, health insurance and application of provincial labour standards.
210. The obligations contained in those employment contracts were breached when Mac's did not provide the Plaintiffs and Class Members with employment that complied with the terms of their employment contract and work permits. In particular, Mac's breached the employment contracts by:
- a. failing to provide 24 months of work for the contractually agreed number of hours per week, at the agreed-upon wage;
 - b. recouping the costs of recruitment from the workers;
 - c. failing to provide health insurance; and
 - d. failing to abide by provincial labour standards, by charging 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.
211. In addition, Mac's breached the employment contracts of some of the Class Members by failing to assume transportation costs of the Plaintiffs' and Class Members' round trip travel to and from their place of origin and place of intended employment.
212. Further, Mac's owed a duty to honestly perform the terms of its employment contracts with the Plaintiffs and Class Members.
213. Mac's acted dishonestly by misleading the Plaintiffs and Class Members about the availability of employment. In so doing, it breached its duty to honestly perform the terms of the employment contracts.
214. As a result of Mac's' breach of contract, the Plaintiffs and Class Members have suffered loss and damage.

Fraudulent misrepresentation

215. In the alternative, the Defendants, either themselves or through their agents, knowingly and/or recklessly made materially false statements to the Plaintiffs and Class Members, which caused the Plaintiffs and Class Members to suffer damages.

216. Mr. Bansal, and/or Mr. Mann, and/or another employee or representative of the Overseas:

- a. made materially false representations to the Plaintiffs and Class Members when they promised to secure employment in Canada in exchange for the Recruitment Fee;
- b. knew or were reckless with respect to the fact that they would not secure legal employment for the Plaintiffs and Class Members in Canada; and
- c. intended that the Plaintiffs and Class Members would rely on these false representations to pay a Recruitment Fee to the Recruitment Agents.

217. In reliance or reasonable reliance on the false representations set out at paragraph 216, the Plaintiffs and Class Members paid Recruitment Fees to the Recruitment Agents. The Recruitment Agents then failed to secure legal employment in Canada as promised.

218. In addition, Mr. Bansal, Mr. Mann, and/or Mr. Higuchi, and/or another employee or representative of the Defendants:

- a. made materially false representations to the Plaintiffs and Class Members when they represented that there was work available for the Plaintiffs and Class Members at Mac's Convenience Stores in Western Canada, and extended offers of employment respecting that work;
- b. knew or were reckless with respect to the fact that the promised employment did not exist;
- c. intended that the Plaintiffs and Class Members would rely on these representations to:

- i. pay the Recruitment Fees;
- ii. enter into employment contracts with Mac's; and
- iii. leave their homes and jobs and travel to Canada to work for Mac's.

219. In reliance or reasonable reliance on the false statements set out at paragraph 218, the Plaintiffs and Class Members:

- a. paid the Recruitment Fees to the Recruitment Agents;
- b. entered into employment contracts with Mac's;
- c. gave up their jobs and/or surrendered employment opportunities; and
- d. left their homes, families, and friends and travelled to Canada to work for Mac's.

220. As a direct result of the Defendants' knowing, willing, intentional, and/or reckless actions, the Plaintiffs and Class Members suffered loss and damage, including:

- a. the value of the Recruitment Fee;
- b. the cost of relocating to Canada; and
- c. lost income.

221. The Defendants are liable for the fraudulent misrepresentations made by their employees.

Negligent misrepresentation

222. The Defendants owed a duty of care to the Plaintiffs and Class Members. In particular:

- a. Overseas held itself out to the Plaintiffs and Class Members as professional immigration consultants who would assist them with the process of gaining employment in Canada; and

- b. Mac's owed a duty of care to the Plaintiffs and Class Members as a prospective employer.

223. Further:

- a. It was foreseeable that the Plaintiffs and Class Members would rely on representations made by Overseas, including representations made by Mr. Bansal, and Mr. Mann and/or another employee or representative of Overseas, with respect to the prospect of employment in Canada;
- b. It was foreseeable that the Plaintiffs and Class Members would rely on representations made Overseas and Mac's, including representations made by Mr. Bansal, Mr. Mann, and Mr. Higuchi, and another employee or representative of the Defendants, with respect to offers of employment with Mac's; and
- c. It was reasonable for the Plaintiffs and Class Members to rely on those representations.

224. Mr. Bansal, ~~and/or~~ Mr. Mann, and/or another employee or representative of Overseas:

- a. made materially false representations to the Plaintiffs and Class Members when they promised to secure employment in Canada in exchange for the Recruitment Fee, in circumstances where no legal employment existed;
- b. failed to exercise reasonable care to ensure that these representations were accurate; and
- c. intended that the Plaintiffs and Class Members would rely on these representations to pay a Recruitment Fee.

225. In reliance or reasonable reliance on the representation set out at paragraph 224, the Plaintiffs and Class Members paid Recruitment Fees to the Recruitment Agents.

226. In addition, Mr. Bansal, Mr. Mann, and/or Mr. Higuchi, and/or another employee or representative of the Defendants:

- a. made materially false representations to the Plaintiffs and Class Members when they represented that there was work available for the Plaintiffs and Class Members at Mac's Convenience Stores in Western Canada;
- b. failed to exercise reasonable care to ensure that these representations were accurate; and
- c. intended that these representations would induce the Plaintiffs and Class Members to:
 - i. pay the Recruitment Fees;
 - ii. enter into employment contracts with Mac's; and
 - iii. leave their homes and jobs and travel to Canada to work for Mac's.

227. In reliance or reasonable reliance on the representations set out at paragraph 226, the Plaintiffs and Class Members:

- a. paid the Recruitment Fees to the Recruitment Agents;
- b. entered into employment contracts with Mac's;
- c. gave up their jobs and/or surrendered employment opportunities; and
- d. left their homes, families and friends and travelled to Canada to work for Mac's.

228. As a direct result of the Defendants' negligent actions, the Plaintiffs and Class Members suffered loss and damage as set out at paragraph 220 of this Notice of Claim.

229. The Defendants are liable for the negligent misrepresentations made by their employees.

Conspiracy

230. In the further alternative, the Defendants committed the tort of conspiracy.
231. At some point, known only to the Defendants, the Defendants, through their employees Mr. Bansal, Ms. Bala, and Mr. Higuchi and other employees or representatives, combined or conspired with each other to:
- a. offer foreign workers employment in Canada in exchange for a Recruitment Fee, which would be paid by the worker to the Recruitment Agents;
 - b. collect an initial instalment of the Recruitment Fee;
 - c. secure unnamed LMOs or LMIAs allowing Mac's to hire foreign workers through the TFWP; and
 - d. extend offers of employment and enter into corresponding employment contracts with foreign workers to work at Mac's locations in Western Canada, which would prompt the payment of the final instalment of the Recruitment Fee.
232. Mr. Bansal, Mr. Higuchi, and/or Ms. Bala, and/or other employees or representatives of the Defendants knowingly and willingly agreed to defraud and deceive the Plaintiffs and Class Members regarding the availability of work with Mac's in Western Canada.
233. In so doing, Mr. Bansal, Mr. Higuchi, and Ms. Bala, and other employees or representatives of the Defendants intended to injure the Plaintiffs and Class Members by taking Recruitment Fees from them and inducing them to leave their homes and jobs to travel to Canada.
234. In the alternative, Mr. Bansal, Mr. Higuchi, and Mrs. Bala, and other employees or representatives of the Defendants acted unlawfully in circumstances where they knew, or should have known, their actions would likely cause injury to the Plaintiffs and Class Members. In particular:
- a. the Recruitment fees charged and collected by the Defendants are illegal under the *Employment Standards Act*, R.S.B.C. 1996, c. 113 and/or the *Employment Agency Business Licensing Regulation*, A.R. 45/2012; and

- b. it is contrary to the express terms of the employment contracts entered into with Mac's for Mac's to seek to recoup the costs of recruiting workers from the workers themselves.

235. The Defendants are liable for the unlawful acts of their employees.

236. As a result of the Defendants' conspiracy, the Plaintiffs and Class Members suffered loss and damage as set out at paragraph 220 of this Notice of Claim.

Unjust enrichment and waiver of tort

237. In the alternative, the Defendants have been unjustly enriched by receiving the Recruitment Fees paid by the Plaintiffs and the Class Members.

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

239. Because the Recruitment Fees recovered by the Defendants resulted from the Defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants' retaining any part of it.

240. In the further alternative, the Plaintiffs waive the tort and plead that they and other Class Members are entitled to recover the unjust enrichment accruing to the Defendants rather than their tort damages.

Breach of fiduciary duty

241. In the further alternative, the Defendants owe a fiduciary duty to the Plaintiffs and the Class Members and that fiduciary duty was breached.

Mac's

242. As an employer contracting with foreign workers through the TFWP, Mac's was under an express or implied undertaking of responsibility to act in the best interests of the Plaintiffs and Class Members. This undertaking is evident in the responsibilities imposed on employers under the TFWP, set out at paragraph 33 of this Notice of Claim.

243. 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.
244. 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 wanted to pursue employment opportunities in Canada and were willing to pay large sums of money for those opportunities.
 - b. The Plaintiffs and Class Members were seeking permanent resident status in Canada and their ability to do that depended on their employment contracts with Mac's.
 - c. The Plaintiffs and Class Members were only legally authorized to work for the specific Mac's Convenience Store 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.
 - d. Once they arrived in Canada, the Plaintiffs' and Class Members' occupational and geographical mobility were restricted under the terms of the TFWP.
245. 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 extracted substantial Recruitment Fees from the Plaintiffs and Class Members.

- b. By representing that the Plaintiffs and Class Members would obtain gainful employment with Mac's in Canada, Mac's induced the Plaintiffs and 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 Class Members as set out in their LMOs/LMIAs and employment contracts, Mac's deprived the Plaintiffs and 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 Class Members as set out in their LMOs/LMIAs and employment contracts, Mac's placed the Plaintiffs and 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 Class Members as set out in their LMOs/LMIAs and employment contracts, Mac's deprived the Plaintiffs and Class Members of a primary value of the contract, which was the possibility of achieving permanent resident status in Canada.

Overseas

- 246. The Defendants Overseas Immigration and Overseas Consulting were under an undertaking to act in the best interests of the Plaintiffs and Class Members.
- 247. Overseas held themselves out to the Plaintiffs and Class Members as professional advisers in the field of Canadian immigration law.
- 248. 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 ("**ICCRC**").
- 249. 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.

250. 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.

251. The Plaintiffs and Class Members trusted Overseas and disclosed confidential information to its staff.

252. 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; and
- b. once it received the Recruitment Fees, only Overseas could provide the Plaintiffs and Class Members with a positive LMIA/LMO and employment contract.

253. 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 would not likely be viewed with suspicion.

254. 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 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 Class Members as promised, Overseas placed the Plaintiffs and Class 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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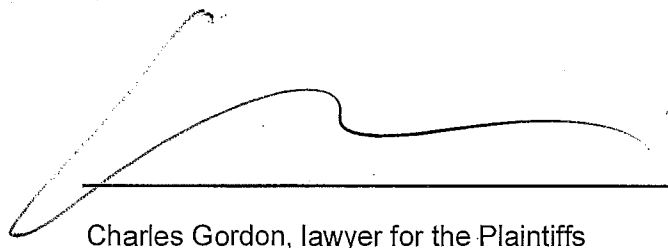
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Place of trial: Vancouver, British Columbia

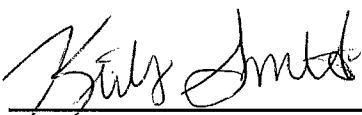
The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: April 8, 2016



Charles Gordon, lawyer for the Plaintiffs

for 

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.