CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

CLASS ACTIONS DIVISION
SUPERIOR COURT

NO : 500-06-001263-231

ASSOCIATION FOR THE RIGHTS OF HOUSEHOLD AND FARM WORKERS, having its head office at 1340 Saint-Joseph Boulevard East, in the city and judicial district of Montréal, province of Québec, H2J 1M3

Applicant

and

A.B., domiciled and residing at [address to be filed under seal], in the city of [to be filed under seal], judicial district of [to be filed under seal], province of Québec, [postal code to be filed under seal]

Designated Member

v.

ATTORNEY GENERAL OF CANADA, having a regional office at Guy-Favreau Complex, East Tower, 9th Floor, 200 René-Lévesque Boulevard West, in the city and judicial district of Montréal, province of Québec, H2Z 1X4

Defendant

APPLICATION FOR AUTHORIZATION OF A CLASS ACTION
(Article 574 *C.C.P.*)

TABLE OF CONTENTS

IN SUPPORT OF ITS APPLICATION FOR AUTHORIZATION OF A CLASS ACTION, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

INTRODUCTION

1. For over 50 years, the Government of Canada has restricted the ability of certain temporary foreign workers[1] to change employers while in the country. Such restrictions have stemmed from regulatory measures providing for the issuance of "closed" or "employer-specific" work permits, among other things. Hundreds of thousands of migrant workers have been subjected to employer-tying measures in Canada.

2. The harmful impacts of those measures are widely known and well-documented.

3. The employer-tied workers' inability to change employers creates a striking power imbalance in favour of the employer, making migrant workers uniquely vulnerable to several forms of exploitation, abuse, and human and labour rights violations, while simultaneously limiting their capacity to assert their rights and to seek redress for their breach.

4. As further explained in this Application, the employer-tying measures imposed by the Government of Canada have at all times infringed temporary foreign workers' right to life, liberty and security of the person and failed to accord with principles of fundamental justice in doing so.

5. Such measures have also at all times been intrinsically incompatible with human dignity and have given rise to a cruel and unusual treatment of the employer-tied workers.

6. Consequently, those measures have been in violation of sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (the "***Charter***") since it came into force on April 17th, 1982.

7. Employer-tying measures have also been in violation of paragraph 15(1) of the *Charter* since it came into force on April 17th, 1985. The modern Canadian labour migration regimes involving employer-tied workers were established when temporary foreign workers in designated occupations ceased being predominantly white and began including increasing numbers of persons of colour. The incorporation of employer-tying measures within those regimes was rooted in

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[1] Also referred to as "**migrant workers**" in this Application.

discrimination based on race, national or ethnic origin and colour. The discriminatory effects of employer-tying measures persist to this day.

8. The Applicant therefore seeks a declaration that the provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "***IRPR***") which currently allow the Government of Canada to continue binding temporary foreign workers to specific employers (the "**Impugned Provisions**") are unconstitutional and of no force and effect.

9. However, a bare declaration of unconstitutionality would be insufficient to provide a proper remedy to the temporary foreign workers who were subjected to employer-tying measures.

10. An award of damages is appropriate and just, notably to compensate the harm suffered by employer-tied migrant workers, to vindicate their *Charter* rights and to deter future breaches thereof by the Government of Canada. Such an award is justified in light of the gravity of the government's conduct in relation to the use of employer-tying measures in Canada.

11. The discriminatory attitudes underlying the introduction of employer-tying measures led the Government of Canada to disregard the affected workers' human rights and dignity and the foreseeable harm that employer ties would cause them.

12. The Government of Canada has since been made aware, on repeated occasions, of the harmful impacts of employer-tying measures. It has now had knowledge of those impacts for decades and has even expressly acknowledged them.

13. Yet, despite the foregoing, the Government of Canada has not ceased to resort to employer-tying measures. It has instead continued to subject a growing number of temporary foreign workers to those measures – and it still continues to do so today.

14. The Government of Canada's failure to put an end to those measures evidences its continued clear disregard for the employer-tied migrant workers' *Charter* rights and human dignity.

15. The Applicant therefore seeks the authorization of this Court to institute a class action for declaratory relief as described above, and for an award of damages under paragraph 24(1) of the *Charter* and of compensatory and punitive damages under private law.

16. The Applicant seeks the authorization to institute this class action on behalf of the members of the class described below (the "**Class**"), formed of all temporary foreign workers who were unconstitutionally subjected to an employer-tying measure in Canada (the "**Class Members**"):

> Any person who **(a)** on or after April 17th, 1982, worked in Canada as a foreign national (*i.e.* without being a Canadian citizen or a permanent resident of Canada at the time, and including a stateless person) and **(b)(i)** was issued a work permit conditional on engaging in work for a specific employer or group of employers or at a specific employer workplace location or group of locations; or **(ii)** was allowed to work without a work permit as a result of being employed by a foreign entity on a short-term basis or as a result of being employed in a personal capacity by a temporary resident, including a foreign representative.

17. A proper understanding of the facts on which the claims of the Designated Member and other Class Members against the Defendant are based requires an overview of the programs under which foreign nationals may currently be hired to work in Canada on a temporary basis (**Part I**) and a presentation of the Impugned Provisions and their administrative context (**Part II**).

I. THE CANADIAN PROGRAMS FOR TEMPORARY FOREIGN WORKERS

A. THE CURRENT PROGRAMS

18. Employers may currently hire temporary foreign workers either under the Temporary Foreign Worker Program (the "**TFWP**") or under the International Mobility Program (the "**IMP**").

19. The TFWP is formally presented as a program that allows "*employers to hire foreign workers to fill temporary jobs when qualified Canadians are not available*", as appears from the copy of a webpage entitled "Temporary Foreign Worker" contained on the website of Employment and Social Development Canada ("**ESDC**"), a department of the Government of Canada, communicated herewith as **Exhibit P-1**.

20. The IMP is formally presented as a program that allows employers to hire temporary foreign workers where there are "*broader economic, cultural or other competitive advantages for Canada*" or "*reciprocal benefits enjoyed by Canadians and permanent residents*", as appears from the copy of a webpage entitled "Temporary workers" contained on the website of Immigration, Refugees and Citizenship Canada ("**IRCC**"), a department of the Government of Canada, communicated herewith as **Exhibit P-2**.

21. Foreign nationals who are authorized under the *IRPR* to work in Canada without a work permit are admitted under the IMP, as appears from Exhibit P-2.

22. The key difference between the TFWP and the IMP is whether the employer needs a positive Labour Market Impact Assessment (an "**LMIA**") in order to be authorized to hire the temporary foreign worker.

23. The aims of an LMIA include assessing whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada and confirming that no Canadians or permanent residents are available to do the job.

24. A positive LMIA is always required, in addition of a positive "job offer genuineness" assessment, to be authorized to hire a temporary foreign worker under the TFWP.

25. The TFWP is administered by ESDC and IRCC. ESDC is responsible for issuing the LMIA to the employer. IRCC is responsible for assessing the genuineness of the offer of employment. Once a positive LMIA and a positive "job offer genuineness" assessment have been issued to the employer or group of employers, the temporary foreign worker can apply for a work permit, a process for which IRCC is responsible.

26. Conversely, "[t]*he IMP lets employers hire temporary workers without an LMIA*", as appears from Exhibit P-2.

27. "*In most cases*" under the IMP, the employer must "*submit an offer of employment*" and be issued a positive "job offer genuineness" assessment by IRCC before the temporary foreign worker can apply for a work permit, as appears from the copy of a webpage entitled "Hire a worker without an LMIA: About the process" contained on IRCC's website, communicated herewith as **Exhibit P-3**. These cases are hereinafter referred to as the "**job offer genuineness streams of the IMP**".

28. Another difference between the TFWP and the IMP pertains to whether the work permits issued under such programs are "open", "restricted" or "closed".

29. A "closed" or "employer-specific" work permit only allows the temporary foreign worker to work in Canada according to the specific conditions on the work permit, including the name of a specific employer or group of employers, as appears from the copy of a webpage entitled "Work permit: About the process" contained on IRCC's website, communicated herewith as **Exhibit P-4**.

30. An "open" work permit allows the temporary foreign worker to work for any employer in Canada, subject to restrictions applying generally to all work permits.

31. A "restricted" work permit allows the temporary foreign worker to work for any employer under certain other conditions, such as specific occupations.

32. As further explained at paragraphs 48 and 49 below, any work permit issued under the TFWP will be a "closed" work permit. The employer or group of employers who obtained the positive LMIA will be specifically designated on the work permit.

33. Conversely, under the IMP, “open”, “closed” or otherwise “restricted” work permits can be issued. But as a matter of policy, a “closed” work permit will in the vast majority of cases be issued under the job offer genuineness streams of the IMP. The employer or group of employers who obtained the positive “job offer genuineness” assessment will be specifically designated on the work permit.

34. Finally, both the TFWP and the IMP are subdivided in several streams with diverse requirements and operating procedures. In particular, one of the streams included under the umbrella of the TFWP is the Seasonal Agricultural Worker Program (the “**SAWP**”).

35. Under the SAWP, “*the employers can hire* [temporary foreign workers] *from participating countries for a maximum period of 8 months*” for activities related to on-farm primary agriculture, as appears from the copy of a webpage entitled “Hire a temporary worker through the Seasonal Agricultural Worker Program: Overview” contained on ESDC’s website, communicated herewith as **Exhibit P-5**.

36. A particular feature of the SAWP is that the Government of Canada imposes a standard, non-modifiable contract of employment to the temporary foreign worker. The current standard contracts for seasonal agricultural workers from Mexico and from the other participating Caribbean countries (collectively, the “**SAWP Contracts**”) are communicated herewith *en liasse* as **Exhibit P-6**.

B. THE HISTORICAL DEVELOPMENT OF THE PROGRAMS

37. Employer-tying measures were first built into the initial iteration of the SAWP in 1966, which provided for the hiring of temporary agricultural workers from Jamaica.

38. Migrant workers under the SAWP are bound to specific employers. This was the case in 1966 and it remains the case today.

39. In 1973, the Government of Canada introduced its first comprehensive regulatory framework governing the entry of temporary workers in Canada specifically based on specific employers’ labour market needs: the Non-Immigrant Employment Authorization Program (the “**NIEAP**”).

40. The basic features of the SAWP and NIEAP still exist in the modern-day TFWP: among other things, workers are bonded to a specific employer and hiring is limited by various requirements for employers, including a requirement to demonstrate labour market needs.

41. The NIEAP was gradually updated over the years, and it eventually became known as the TFWP.

42. From 1973 until the adoption of the current *IRPR* in 2002, the regulatory language used to provide for employer-tying measures remained for all intents and purposes the same.

43. The Government of Canada consolidated in 2014 all non-TFWP streams into the current-day IMP.

II. THE IMPUGNED PROVISIONS AND THEIR ADMINISTRATIVE CONTEXT

A. THE CURRENT PROVISIONS

44. The regulatory provisions which currently set out the Government of Canada's authority to tie a temporary foreign worker to a specific employer or group of employers, either directly or indirectly – the Impugned Provisions – are the following:

(a) paragraph 185(b) of the *IRPR*;

(b) paragraph 186(a), combined with subsections 187(1) and 187(3) of the *IRPR*;

(c) paragraph 186(b) of the *IRPR*;

(d) subparagraph 200(1)(c)(ii.1), combined with subsection 200(5) of the *IRPR*; and

(e) subparagraph 200(1)(c)(iii), combined with section 203 of the *IRPR*.

45. The Impugned Provisions are supplemented by several policies, procedures and guidance of an administrative nature and, in the case of the SAWP, by the SAWP Contracts (the "**Administrative Context**").

i. Paragraph 185(b) of the *IRPR*

46. Paragraph 185(b) of the *IRPR* provides as follows:

> **185** An officer may impose, vary or cancel the following specific conditions on a temporary resident:
>
> […]
>
> (b) the work that they are permitted to engage in, or are prohibited from engaging in, in Canada, including
>
> (i) the type of work,
>
> (ii) the employer,

> (iii) the location of the work,
>
> (iv) the times and periods of the work, and
>
> (v) in the case of a member of a crew, the period within which they must join the means of transportation;
>
> [our emphasis]

47. Paragraph 185(b) of the *IRPR* formally provides Canadian immigration officers with the authority to issue a "closed" work permit at their discretion.

48. However, as a result of the Administrative Context, this discretion is systematically exercised in favour of the issuance of a "closed" work permit to temporary foreign workers for whom a positive LMIA was needed (under the TFWP) or for whom the employer was required to obtain a positive "job offer genuineness" assessment (under the TFWP or the job offer genuineness streams of the IMP), as appears from the copy of a webpage entitled "Conditions and validity period on work permits (temporary workers)" contained on IRCC's website, communicated herewith as **Exhibit P-7**:

> **The employer (mandatory imposition)**
>
> When issuing a work permit under subparagraph R200(1)(c)(ii.1) [sic], officers must ensure an employer is identified and **the employer name matches** the employer named on the LMIA or the offer of employment [R185(b)(ii)].
>
> Although this condition is imposed by writing the employer's name on the work permit, officers are also advised to add the condition "Not authorized to work for any other employer" to the work permit, for clarity.

49. The SAWP Contracts reassert and strengthen the employer-tying measures imposed as result of the Impugned Provisions and their Administrative Context, as appears from Exhibit P-6.

50. Employer-tying measures are also imposed on certain temporary foreign workers who are allowed to work in Canada without a work permit, despite the fact that such workers do not fall within the scope of paragraph 185(b) of the *IRPR*. Such employer-tied workers include some of those who are subject to paragraphs 186(a) and 186(b) of the *IRPR* and their related provisions, presented below.

ii. Paragraph 186(a) of the *IRPR* and Related Provisions

51. Paragraph 186(a) and subsections 187(1) and 187(3) of the *IRPR* allow foreign nationals qualifying as business visitors to work in Canada without a work permit. They provide as follows:

> **186** A foreign national may work in Canada without a work permit
>
> > (a) as a business visitor to Canada within the meaning of section 187;
>
> […]
>
> **187 (1)** For the purposes of paragraph 186(a), a business visitor to Canada is a foreign national who is described in subsection (2) or who seeks to engage in international business activities in Canada without directly entering the Canadian labour market.
>
> […]
>
> (3) For the purpose of subsection (1), a foreign national seeks to engage in international business activities in Canada without directly entering the Canadian labour market only if
>
> > (a) the primary source of remuneration for the business activities is outside Canada; and
> >
> > (b) the principal place of business and actual place of accrual of profits remain predominately outside Canada.

52. The Administrative Context of these provisions establishes in particular that "*foreign nationals employed in a personal capacity, for example, as a domestic servant, personal assistant or nanny (caregiver), on a full-time basis by short-term temporary residents generally meet the business visitor criteria in paragraphs R187(3)(a) and (b). They may enter as business visitors <u>if accompanying or joining their employers</u>*" [our emphasis], as appears from the copy of a webpage entitled "Business visitors [R186(1)]: Authorization to work without a work permit - International Mobility Program" contained on IRCC's website, communicated herewith as **Exhibit P-8**.

53. Such migrant workers are therefore tied to their specific employers in Canada. Other migrant workers admitted as business visitors may also be so tied.

iii. Paragraph 186(b) of the *IRPR*

54. Paragraph 186(b) of the *IRPR* allows persons under diplomatic status to work in Canada without a work permit. It provides as follows:

> **186** A foreign national may work in Canada without a work permit
>
> […]
>
> > (b) as a foreign representative, if they are properly accredited by the Department of Foreign Affairs and International Trade and are in Canada to carry out official duties as a diplomatic agent, consular officer, representative or official of a country other than Canada, of

> the United Nations or any of its agencies or of any international organization of which Canada is a member;

55. Under this provision, the Office of Protocol of Global Affairs Canada ("**GAC**"), a department of the Government of Canada[2], has established the Domestic Worker Accreditation Program.

56. This program allows "*domestic workers of certain high-level members of a diplomatic mission, consular post or international organization*" to work in Canada, as appears from the copy of a webpage entitled "International Mobility Program: Domestic workers of foreign representatives" contained on IRCC's website, communicated herewith as **Exhibit P-9**.

57. As a result of the Administrative Context of paragraph 186(b) of the IRPR, domestic workers in diplomatic households "*cannot work for more than one employer at a time*" and cannot work for another foreign representative in Canada "*without the express consent of the Office of Protocol*", as appears from the copy of webpages entitled "Hiring a domestic worker and related accreditation program" and "Accredited Domestic Workers in Diplomatic Households – About your Rights and Protections" contained on GAC's website, communicated *en liasse* herewith as **Exhibit P-10**.

58. As will be established at trial, this Administrative Context restricts the ability of domestic workers in diplomatic household to change employers and results in their subjection to employer-tying measures.

iv. Subparagraphs 200(1)(c)(ii.1) and 200(1)(c)(iii) of the *IRPR* and Related Provisions

59. Whereas the foregoing Impugned Provisions and their Administrative Context give rise to *direct* employer-tying measures, the remainder of the Impugned Provisions and their Administrative Context establish *indirect* employer-tying measures by interfering with employers' capacity to legally hire migrant workers.

60. Indirect employer-tying measures further restrict temporary foreign workers' ability to change employers by restricting their capacity to accept an alternative offer of employment once they are already in Canada.

61. Subparagraph 200(1)(c)(ii.1) and subsection 200(5) of the *IRPR* provide as follows:

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[2] Previously known as the Department of Foreign Affairs and International Trade and also currently known as the Department of Foreign Affairs, Trade and Development.

> **200 (1)** Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that
>
> […]
>
> (c) the foreign national
>
> […]
>
> (ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, that the offer is genuine under subsection (5), or
>
> […]
>
> **(5)** A determination of whether an offer of employment is genuine shall be based on the following factors:
>
> (a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, unless the offer is made for employment as a live-in caregiver;
>
> (b) whether the offer is consistent with the reasonable employment needs of the employer;
>
> (c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
>
> (d) the past compliance of the employer, or any person who recruits the foreign national for the employer, with the federal or provincial laws that regulate the employment or recruitment of employees, including foreign nationals, in the province in which it is intended that the foreign national will work.
>
> [our emphasis]

62. Those provisions establish the job offer genuineness streams of the IMP. Section 200(5) of the *IRPR* also defines "job offer genuineness" for the purposes of the assessment required under the TFWP.

63. Conversely, subparagraph 200(1)(c)(iii) and section 203 of the *IRPR* establish the LMIA regime under the TFWP. They provide as follows:

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

[…]

(c) the foreign national

[…]

(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (g); and

[…]

203 (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an assessment provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and of any other relevant information, if

(a) the job offer is genuine under subsection 200(5);

(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

(c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,

(ii) the employer will provide the foreign national with adequate furnished and private accommodations in the household, and

(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national;

(e) the employer

(i) has not, directly or indirectly, charged or recovered from the foreign national the fees referred to in subsection 315.2(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1) and fees related to the recruitment of the foreign national that are authorized to be charged or recovered under an international agreement between Canada and one or more countries concerning seasonal agricultural workers,

(ii) ensured that any person who recruits the foreign national for the employer did not, directly or indirectly, charge or recover from the foreign national the fees referred to in subsection 315.2(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1) and fees related to the recruitment of the foreign national that are authorized to be charged or recovered under an international agreement between Canada and one or more countries concerning seasonal agricultural workers;

(f) in the case where the employer has not employed a foreign national referred to in subparagraph 200(1)(c)(iii) during the six years before the day on which the request for an assessment made under subsection (2) is received by the Department of Employment and Social Development, during the period beginning two years before the day on which the request for an assessment is received and ending on the day that an assessment is provided, when the employer was actively engaged in the business for which the employer has provided information under this subsection and subsection (2.1), the employer

(i) made reasonable efforts to provide a workplace that is free of abuse, and

(ii) was not an affiliate of an employer referred to in subparagraphs 200(3)(h)(ii) or (iii); and

(g) the employer committed

(i) to conclude with the foreign national, on or before the first day of work of the foreign national that is during the period of employment for which the work permit is issued to them, an employment agreement that

(A) provides for employment in the same occupation and the same wages and working conditions as those set out in the offer of employment,

(B) is drafted in the foreign national’s chosen official language of Canada, and

(C) is signed by both the employer and the foreign national,

(ii) to provide the foreign national, on or before the first day of work of the foreign national that is during the period of employment for which the work permit is issued to them, a copy of the employment agreement referred to in subparagraph (i),

(iii) to not, directly or indirectly, charge or recover from the foreign national the fees referred to in subsection 315.2(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1) and fees related to the recruitment of the foreign national that are authorized to be charged or recovered under an international agreement between Canada and one or more countries concerning seasonal agricultural workers, and

(iv) to ensure that any person who recruits the foreign national for the employer does not, directly or indirectly, charge or recover from the foreign national the fees referred to in subsection 315.2(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1) and fees related to the recruitment of the foreign national that are authorized to be charged or recovered under an international agreement between Canada and one or more countries concerning seasonal agricultural workers.

(1.01) For the purposes of paragraph (1)(b), the employment of a foreign national is unlikely to have a positive or neutral effect on the labour market in Canada if the offer of employment requires the ability to communicate in a language other than English or French, unless

(a) the employer or group of employers demonstrates that the ability to communicate in the other language is a bona fide requirement for performing the duties associated with the employment;

(b) the offer of employment relates to work to be performed under an international agreement between Canada and one or more countries concerning seasonal agricultural workers; or

(c) the offer of employment relates to other work to be performed in the primary agriculture sector, within the meaning of subsection 315.2(4).

(1.1) For the purposes of paragraph (1)(b), the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada if

(a) the wages set out in the offer of employment are not consistent with the prevailing wage rate for the occupation; or

(b) the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

(2) Subject to subsection (2.02), the Department of Employment and Social Development must provide the assessment referred to in subsection (1) on the request of an officer or an employer or group of employers, none of whom is an employer who

(a) on a regular basis, offers striptease, erotic dance, escort services or erotic massages; or

(b) is referred to in subparagraph 200(3)(h)(ii) or (iii).

(2.01) A request may be made in respect of

(a) an offer of employment to a foreign national; and

(b) offers of employment made, or anticipated to be made, by an employer or group of employers.

(2.02) If any of the circumstances set out in section 209.5 exist, the processing of a request for an assessment under subsection (2) is suspended so long as the Department of Employment and Social Development has a reason to suspect that

(a) the employer who made the request is not complying with or has not complied with any of the conditions set out in subparagraph 209.3(1)(a)(i), 209.3(1)(a)(iv) with regard to the working conditions referred to in that subparagraph, 209.3(1)(a)(v) or 209.3(1)(a)(vii) to 209.3(1)(a)(xii); and

(b) the employer's failure to comply with any of the conditions referred to in paragraph (a) would put at serious risk the health or safety of the foreign national, if the work permit was issued.

(2.1) The assessment provided by the Department of Employment and Social Development on the matters set out in paragraphs (1)(a) to (g) must be based on any information provided by the employer making the offer and any other relevant information.

(3) An assessment provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) must, unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application of subsection (1.01) or (1.1) be based on the following factors:

(a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

(b) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

(c) whether the employment of the foreign national is likely to fill a labour shortage;

(d) whether the working conditions offered to the foreign national meet generally accepted Canadian standards;

(e) whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;

(f) [Repealed, SOR/2022-142, s. 7]

(g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any assessment that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

(3.1) An assessment provided by the Department of Employment and Social Development shall indicate the period during which the assessment is in effect for the purposes of subsection (1).

(4) In the case of a foreign national who intends to work in the Province of Quebec, the assessment provided by the Department of Employment and Social Development shall be made in concert with the competent authority of that Province.

(5) For the purposes of this section, an affiliate includes

(a) an employer that is controlled by another employer;

(b) two employers that are under common control; or

(c) employers that are not operated at arm's length.

(6) For the purposes of subsection (5), control, whether direct or indirect, exercised or not, includes

(a) common ownership;

(b) common management;

(c) common interests;

(d) shared facilities or equipment; or

(e) common use of services of employees.

[our emphasis]

64. The Administrative Context of the foregoing Impugned Provisions is detailed and voluminous, as appears from the list contained in Exhibit P-2, among other things.

65. These Impugned Provisions provide Canadian immigration officers and/or ESDC with the authority to recognize a specific employer or group of employers as being authorized to hire a foreign national under the LMIA or "job offer genuineness" regimes.

66. Other employers are unable to hire the temporary foreign worker – even for the same type of work and in the same geographical area – without first having gone through a separate LMIA and/or "job offer genuineness" process.

67. An employer who nevertheless hires the temporary foreign worker may commit an offence under paragraph 124(1)(c) and section 125 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27, which provide as follows:

> **124 (1)** Every person commits an offence who
>
> […]
>
> (c) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed.
>
> […]
>
> **125** A person who commits an offence under subsection 124(1) is liable
>
> (a) on conviction on indictment, to a fine of not more than $50,000 or to imprisonment for a term of not more than two years, or to both; or
>
> (b) on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or to both.

68. The LMIA and "job offer genuineness" processes are lengthy, complex and costly for employers.

69. As evidenced by the criteria set out in the Impugned Provisions, such processes will only be successful in certain circumstances (depending on the sector, skills involved, region, employer record and content of the job offer, among other things).

70. As a result, the requirement for separate LMIA or "job offer genuineness" processes before other employers can hire temporary foreign workers constitutes a major restriction on migrant workers' ability to change employers, and acts as an indirect employer-tying measure.

B. THE PREVIOUS PROVISIONS

71. Regulatory provisions allowing the Government of Canada to impose employer-tying measures have existed, in some form or another, at least since the inception of the SAWP in 1966 in respect of workers employed in agriculture, and more generally across sectors since the inception of the NIEAP in 1973.

72. In particular, provisions akin to the Impugned Provisions have been in force since the advent of the *Charter*.

73. Section 23 of the now-repealed *Immigration Regulations, 1978*, SOR/1978-172 (the "***1978 Regulations***"), communicated herewith as **Exhibit P-11**, previously set out the immigration officers' authority to impose employer-tying conditions on work permits, currently found in paragraph 185(b) of the *IRPR*:

> *Terms and Conditions of Admission*
>
> **23.** Where terms or conditions may be imposed
>
> (a) by an immigration officer pursuant to paragraph 14(2)(a), subsection 14(3) or (4) or paragraph 17(2)(b) of the Act,
>
> (b) by a senior immigration officer Pursuant to paragraph 23(1)(a) or subsection 23(2) of the Act, or
>
> (c) by an adjudicator pursuant to paragraph 32(3)(a) or subsection 32(4) of the Act,
>
> only terms or conditions of the following nature may be imposed, namely,
>
> […]
>
> (e) in the case of a visitor,
>
> […]
>
> (iv) the type of employment in which he shall engage,
>
> (v) the employer with whom he shall engage and continue in employment,
>
> […]
>
> [our emphasis]

74. Similarly, section 20 of the *1978 Regulations* laid down the precursor to the current LMIA process:

> **20. (1)** An immigration officer shall not issue an employment authorization to a person if,

> (a) in his opinion, employment of the Person in Canada will adversely affect employment opportunities for Canadian citizens or permanent residents in Canada; or
>
> (b) the issue of the employment authorization will affect
>
> (i) the settlement of any labour dispute that is in Progress at the place or intended place of employment, or
>
> (ii) the employment of any person who is involved in such a dispute.
>
> (2) An immigration officer shall not issue an employment authorization to any person who has previously engaged in employment in Canada without proper authorization or has contravened the terms or conditions of a previous employment authorization unless the immigration officer is satisfied that the previous engagement or contravention was unintentional or was excusable for any other reason.
>
> (3) In order to form an opinion for the purposes of paragraph (1)(a), an immigration officer shall consider
>
> (a) whether the prospective employer has made reasonable efforts to hire or train Canadian citizens or permanent residents for the employment with respect to which an employment authorization is sought;
>
> (b) the qualifications of the applicant for the employment for which the employment authorization is sought; and
>
> (c) whether the wages and working conditions offered are sufficient to attract and retain in employment Canadian citizens or permanent residents.
>
> (4) For the purpose of considering the questions set out in Paragraphs (3)(a) and (c), an immigration officer shall consult an officer of the office of the National Employment Service Serving the area in which the person seeking an employment authorization wishes to engage in employment.
>
> […]
>
> [our emphasis]

III. THE FACTS ON WHICH THE DESIGNATED MEMBER'S CLAIM AGAINST THE DEFENDANT IS BASED

A. THE DEMONSTRATED HARMFUL IMPACTS OF EMPLOYER-TYING MEASURES

75. The harmful impacts of employer-tying measures are widely known and well-documented.

76. Temporary foreign workers subject to employer-tying measures automatically lose their capacity to work legally in Canada upon the termination of their employment with the designated employer or group of employers. As such, the termination of their employment for any reason results in the worker being legally prohibited from earning a livelihood in Canada for an indeterminate period of time.

77. Recovering the capacity to work legally in Canada is lengthy, difficult, costly, and most importantly highly uncertain. Migrant workers may not be able to request the issuance of a new work permit, and any such request may be denied.

78. Given the larger Canadian regulatory framework which applies to temporary foreign workers, the termination of their employment additionally entails losing access (or significant delay in access) to health coverage, permanent legal status for the foreign workers and legal status for the foreign workers' spouses and children.

79. Foreign workers as well as their spouses and children face deportation by the Canada Border Services Agency – possibly more indebted than before.

80. Employer-tying measures therefore create a striking power imbalance between the foreign workers and their employers.

81. As a result of this power imbalance, employer-tied status results in, among other things:

    (a) a restricted capacity to resign and to make other fundamental choices concerning their work and their livelihood in Canada;

    (b) a restricted freedom of movement;

    (c) a major psychological stress associated with the fear of losing legal status, with options and risks being at every moment dependent on the will of the employer;

    (d) a restricted access to social interactions and resulting social isolation;

    (e) a restricted access to potential assistance, including community networks, and support networks such as legal clinics or unions;

    (f) a restricted access to health and social services;

    (g) a restricted access to health and social benefit programs to which migrant workers contribute, including unemployment insurance and labour benefits such as salary compensation and paid treatments in case of work-related

accidents, injuries or illnesses, and their frequent deprivation of the benefits of those programs; and

(h) a restricted capacity of migrant workers to assert their legal rights and to seek redress for the violation of such rights through administrative or judicial processes, even in situations where migrant workers have knowledge of their legal rights and resources.

82. The dependency on the employer created by employer-tying measures makes temporary foreign workers uniquely vulnerable to several forms of exploitation, abuse and human and labour rights violations, including but not limited to:

(a) financial abuses, such as non-payment, late payment or underpayment of wages, wage theft, illegal deductions or fees and debt bondage;

(b) employer control over movements, including running errands for basic necessities, and over social interactions, during off-duty hours;

(c) unsafe working conditions, which may involve hazardous tasks, exposure to physical or chemical hazards, exposure to extreme weather, lack of personal protective equipment, exposure to faulty or broken equipment or machinery, inadequate training, unsafe transportation methods, unsustainable productivity targets, excessive working hours, and insufficient breaks and periods of rest;

(d) work-related accidents, injuries, illnesses or death;

(e) experiencing poor living conditions, including inadequate, unsanitary, overcrowded or poorly-maintained accommodation, inadequate nutrition, lack of access to clean drinking water, lack of access to sanitation facilities, sleep deprivation, and lack of privacy;

(f) experiencing discrimination, intimidation or psychological harassment;

(g) physical violence or assault;

(h) sexual harassment, sexual assault or rape;

(i) chronic fatigue, stress and mental health issues, including depression and anxiety disorders;

(j) substance use disorders;

(k) experiencing situations of illegal or undocumented work or of irregular status, as a result of incompetency, negligence or fraud; and

(l) becoming a victim of human trafficking.

83. These harmful impacts are compounded when temporary foreign workers work in remote locations, reside in employer-provided accommodation or live in their employer's own home, among other things.

84. Yet these harmful impacts do not only occur in particular situations. They are widespread and common to employer-tied workers of all skill levels, levels of education, types of occupation, provinces and territories, and employment sectors.

85. Beyond the harms caused to temporary foreign workers, employer-tying measures also result in broader harmful impacts on Canadian society as a whole.

86. They exert a downward pressure on the working conditions offered by employers to Canadian citizens, permanent residents and other non-tied workers in the country.

87. They also incentivize employers to replace such employees with additional employer-tied migrant workers.

88. They facilitate the impunity of abusive employers, constitute a major obstacle to the operation of human and labour rights legislations, and more generally detrimentally impact the rule of law in Canada.

B. THE HARMFUL IMPACTS SUFFERED BY THE DESIGNATED MEMBER

89. The Designated Member personally suffered most of the demonstrated harmful impacts of employer-tying measures.

90. A.B. was born in Guatemala in 1992.

91. When he was an infant, his aunt emigrated to Canada as a political refugee, in the context of the Guatemalan Civil War. As a child, A.B. would receive postcards from his aunt. He formed a dream to live in Canada one day.

92. In 2014, he was put in contact with a man from Guatemala who was working in Québec. This man told A.B. that, in exchange for CAD$3,000, he could provide him with an offer of employment from the man's employer, which would allow A.B. to obtain a work permit. A.B., who had been living in poverty, used his economies to pay this fee.

93. A few months later, A.B. obtained a first "closed" work permit valid from November 2014 to October 2016 under the Agricultural stream of the TFWP (which, for clarity, is not the same as the SAWP), and he entered Canada to begin employment for a poultry catching business in the province of Québec.

94. In the context of this first employment, A.B. and other employees were driven to poultry farms. They were required to catch poultry which would then be brought to slaughterhouses.

95. A.B. was required to work every night from Monday to Friday, starting at or around 7 PM, with an average of 12 hours each night and only three pauses of 10 minutes. He was expected to catch up to 40 000 chickens per night, at a rate of five chickens in each hand for every catch.

96. A.B. was paid for every 1 000 birds he would catch. For big chickens, he would receive $3.75 per thousand; for turkeys, which are heavier than chickens, $12.00 per thousand. Québécois workers would be paid double these rates. Moreover, A.B. was only paid for his catches, never for the time spent being transported to or from farms, however distant. He was frequently underpaid or paid late.

97. A.B. did not receive appropriate training for the job. He was forced to work in dangerous work sites, often with partly collapsed floors or with improper heating, air conditioning and/or aeration. He was also forced to work in blazing heat or in extreme cold, without appropriate winter clothing and boots.

98. His coworkers and him regularly came in contact with poultry feces or with dead and decomposing poultry. Yet they were provided with no masks or gloves. They were told that they were expected to buy their own gloves.

99. At the end of his shifts, A.B. would often go to bed with rips and tears on the skin of his hands and with his muscles aching all over. When he woke up, he was often unable to extend his hands, which would remain contracted and curled in a “catching” position.

100. As a matter of fact, A.B. and most of his coworkers would consume Tylenol to be able to work. Some of A.B.’s coworkers also took stronger drugs.

101. Many workers developed skin conditions as a result of allergic reactions. The employer would then “medically” repatriate them immediately without compensation. This deterred A.B. and those who remained from complaining.

102. A.B. lived with coworkers in cramped lodgings assigned by his employer, where they would sleep in bunk beds, without any privacy.

103. As a result of his “closed” work permit, A.B. had no choice but to endure this treatment.

104. He feared that complaining could lead to being fired, threatening his status in Canada, his ability to obtain a renewal of his permit (including as a result of

blacklisting), his ability to earn a living and his longer-term project of immigrating to Canada permanently.

105. In September 2015, A.B. suffered a work injury. While catching turkeys, around midnight, he bent down and was unable to re-straighten his back.

106. A.B. advised his supervisor, who gave him pills but refused to take him to the hospital and instead required him to wait in a vehicle, in pain, for several hours until the end of the shift.

107. A.B. was then driven home and told that he should call the employer later. He did do so around 8 AM. He was told that it was too late to go to an emergency room as it was past 5 AM, and was required to wait until 5 AM the next day, while still in severe pain.

108. When A.B. was finally driven to the hospital, he was accompanied by his employer's interpreter, as a result of his limited knowledge or French or English. The doctor diagnosed a back sprain. He prescribed sick leave for six weeks, strong medication, as well as physiotherapy and occupational therapy treatments.

109. A.B. asked the doctor whether he might be suffering from a hernia. The doctor answered that the treatment would in any event be the same and did not perform additional tests.

110. A.B.'s sick leave was renewed on multiple occasions for additional periods of six weeks, as A.B.'s pain did not cease.

111. During A.B.'s sick leave, his employer frequently accused him of faking, of lying and of taking advantage of the situation not to work. He told him that they would send him back to Guatemala when they could.

112. A.B. was completely demoralized and felt worthless.

113. A.B.'s employer eventually told him that they had had enough and required him to be assessed by a private doctor. This doctor prescribed a progressive return to work. A.B. mentioned that he was still feeling constant pain. The doctor did not prescribe further tests and answered that A.B. would have to grow used to the pain.

114. A.B. then continued to work on a full-time basis for the remainder of his work permit, while continuing to feel pain.

115. His contract was not renewed when it ended. A.B. was told by his employer that if he left now, they would sponsor him again in six months – which they never did.

He was given and required to sign a document stating that he was leaving of his own will and would not blame his employer.

116. A.B. went back to Guatemala. He underwent an MRI, which confirmed that he had been suffering, and continued to suffer, from a herniated disc.

117. A few months later, A.B. met someone who put him in contact with a second employer, a family dairy farm in another region of Québec.

118. From 2017 to 2019, A.B. worked for this employer on three other “closed” work permits under the Agricultural stream of the TFWP. His initial work contract was renewed twice.

119. A.B.’s work involved working with cows on the farm. He was not given training, and was frequently hit by the animals.

120. A.B. was also required to do various odd jobs, such as splitting wood for the wood-burning stove, repairing the artesian well and other construction work, often without appropriate equipment.

121. A.B. was regularly overworked and often did not have adequate breaks or time to eat lunch. He either had one day off per week or none. He experienced colossal stress.

122. While A.B.’s salary was supposed to be paid on a bi-weekly basis, it was frequently paid late, up to several weeks after the due date.

123. Throughout his second employment (but with upturns when a contract renewal approached), A.B. was subject to psychological harassment by his employer and the latter’s wife, including aggressive behaviour, homophobic and racial slurs, rants against the incompetence of migrant workers, and humiliating and degrading comments.

124. A.B. suffered as a result of this abuse. He grew discouraged and anxious and regularly cried when he was by himself. He saw himself growing accustomed to being insulted and mistreated. He again felt worthless.

125. A.B.’s suffering was exacerbated by social isolation. A.B. was not provided with an access to a telephone line or to Internet despite the fact that he was the only migrant worker on the farm, which was located remotely in the countryside. He had access to a car, but his employers did not allow him to use it for personal purposes (other than travelling between the farm and A.B.’s housing).

126. He considered leaving his job, but felt that it was the only way to maintain his right to work in Canada and to avoid jeopardizing his longer-term project of securing permanent resident status in the country.

127. In 2019, A.B. had an accident which aggravated the pain from his 2015 work injury. He asked his employer to take him to the hospital.

128. For several days, his employer refused to do so. He mentioned that the farm would have problems.

129. Instead, he told A.B. to take Tylenol and to apply Voltaren. He also pressured him to work, which A.B. did until the pain became so severe that he struggled to walk.

130. At that point, A.B.'s employer announced that he had communicated with the recruitment agency and told A.B. that he was leaving for Guatemala shortly.

131. It was only after A.B. managed to reach out to the recruitment agency, who was able to convince his employer, that A.B. was finally taken to the hospital.

132. On the way there, he was accused by his employer's wife of being a swindler who wanted to steal their money. She told him that they would make sure that he couldn't work in Canada again.

133. At the hospital, A.B. discovered that his employer had never completed the formalities required for him to have health insurance. The hospital graciously assumed most of the costs of the tests, and A.B.'s employer accepted to pay a small portion thereof.

134. Following his return to the farm, A.B.'s employer dismissed him, even though his recently-renewed work contract was supposed to extend into 2021.

135. A.B. returned to Guatemala in November 2019 in worse condition than the first time. He felt extremely sad, discouraged and depressed, and again felt worthless.

136. A month later, his cousin put him in contact with another dairy farm in another region of Québec.

137. From 2020 to 2022, A.B. worked for this third employer on two other "closed" permits under the Agricultural stream of the TFWP.

138. During his third employment, A.B. also experienced, among other things:

    (a) psychological harassment, including manipulative and aggressive behaviour and degrading comments;

(b) intimidation by an alcoholic coworker, which the employer refused to put an end to despite A.B.'s request;

(c) underpayment for his work, which now involved certain managerial and supervisory duties; and

(d) poor living conditions, overcrowding and lack of privacy in employer-provided housing.

139. While occupying his third employment, A.B. reached out to other employers on several occasions, seeking to obtain an offer from them and a new work permit. His efforts were unsuccessful. Other employers would frequently refer to him as "belonging" to the farm which hired him.

C. EMPLOYER-TYING MEASURES ARE INCONSISTENT WITH SECTION 7 OF THE *CHARTER*

140. As appears from the preceding sections, the harmful impacts of employer-tying measures on temporary foreign workers' physical and psychological health, as well as on their liberty, autonomy, dignity, and capacity to assert their rights and access justice are extremely severe.

141. Employer-tying measures have at all times infringed migrant workers' right to life, liberty and security of the person, engaging section 7 of the *Charter* since its entry into force on April 17th, 1982.

142. With respect to liberty, employer-tying measures restrict temporary foreign workers' physical liberty and capacity to make fundamental life choices by preventing them from changing employers and, more generally, by making them wholly dependent on their employers for the preservation of their legal status in the country, and by restricting their capacity to seek redress for a violation of their rights through judicial or administrative processes.

143. With respect to life and security of the person, as explained at paragraphs 82 to 84 above, employer-tying measures expose migrant workers to death, serious physical or serious psychological harm, or increased risks of each such consequence.

144. The employer-tying measures to which A.B. was subject infringed his section 7 of the *Charter* rights in this manner.

145. In addition, employer-tying measures clearly run counter to important international obligations of Canada, as codified in international human rights instruments

adopted in Canadian law such as the *International Covenant on Economic, Social and Cultural Rights* (the "**ICESCR**"), which provides at Article 6(1):

> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
>
> […]

146. The Supreme Court of Israel notably relied on Article 6(1) of the ICESCR to declare that a similar "restrictive employment arrangement" included in the immigration statutes of Israel violated foreign workers' right to dignity and liberty (see *Kav LaOved Worker's Hotline and others v. Government of Israel*, [2006] (1) IsrLR 260 ("***Kav LaOved***").

147. These deprivations were caused at all times, in the first place, (a) by the Government of Canada's adoption of the Impugned Provisions and their predecessors; and (b) by its continued reliance on them despite clear awareness and acknowledgement of their harmful impacts.

148. Moreover, the state-caused infringements of the Class Members' right to life, liberty and security of the person have never been in accordance with principles of fundamental justice.

149. Firstly, the deprivations of life, liberty and security of the person caused by employer-tying measures are arbitrary, as will be established at trial.

150. The purposes of employer-tying measures explicitly expressed by the Government of Canada are the protection of Canadian workers' labour market interests and the protection of employer-tied temporary foreign workers.

151. In light of the demonstrated harmful impacts of employer-tying measures both on migrant workers and on Canadian society as a whole, as explained at paragraphs 75 to 88 above, there can be no rational connection between these purposes and those impacts, which directly contravene them.

152. Secondly, even if there was such a rational connection, the employer-tying measures' harmful impacts on the life, liberty and security of migrant workers would be grossly disproportionate to the foregoing purposes.

153. In particular, less harmful alternatives to admission under "closed" work permits or other employer-tying measures exist and are reasonably available. They include, among other things:

(a) immigration selection programs; or

(b) unconditional access to permanent legal status upon arrival;

(c) admission under “open” work permits (which is already the case for certain temporary foreign workers admitted under the IMP), with governments or non-profit organizations as official sponsors.

154. The foregoing breaches of section 7 of the *Charter* cannot be justified in a free and democratic society pursuant to section 1 of the *Charter*.

155. The employer-tying measures imposed by the Government of Canada are and have therefore been in violation of section 7 of the *Charter* since its entry into force on April 17th, 1982.

D. EMPLOYER-TYING MEASURES ARE INCONSISTENT WITH SECTION 12 OF THE *CHARTER*

156. As a result of their harmful impacts, employer-tying measures are also inherently dehumanizing.

157. The numerous times at which A.B. felt worthless as a result of the abuses, exploitation and psychological harassment he was subjected to, with no ability to escape, are illustrative of this deprivation of human dignity.

158. In his concurring reasons in *Kav LaOved*, Vice-President Emeritus M. Cheshin of the Supreme Court of Israel explicitly linked restrictive employment arrangements, similar to the employer-tying measures imposed in Canada under the Impugned Provisions and their predecessors, to a modern form of slavery:

> 4. […] Every human being — even if he is a foreigner in our midst — is entitled to his dignity as a human being. Money is divisible. Dignity is not divisible. This is true of both the dignity and the liberty of the workers.
>
> Indeed, we cannot avoid the conclusion — a painful and shameful conclusion — that the foreign worker has become his employer’s serf, that the restrictive arrangement with all its implications has hedged the foreign worker in from every side and that the restrictive arrangement has created a modern form of slavery. In the restrictive arrangement that the state itself determined and applied, it has pierced the ears of the foreign workers to the doorposts of their employers and bound their hands and feet with bonds and fetter to the employer who ‘imported’ them into Israel. It is nothing less than this. The foreign worker has changed from being a subject of the law — a human being to whom the law gives rights and on whom it imposes obligations — into an object of the law, as if he were a kind of chattel. The arrangement has violated the autonomy of the workers as human beings, and it has de facto taken away their liberty. According to the restrictive arrangement, the foreign workers have become work machines —

> especially in view of the fact that the employers have allowed themselves, unlawfully, to transfer them from one employer to another — and they have become likes slaves of old, like those human beings who built the pyramids or pulled oars to row the ships of the Roman Empire into battle.
>
> [our emphasis]

159. In the same vein, the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences (the "**U.N. Special Rapporteur**"), upon completing his country visit to Canada, stated on September 6th, 2023 that certain categories of employer-tied migrant workers "*are made vulnerable to contemporary forms of slavery in Canada*" as appears from a copy of his End of Mission Statement, communicated herewith as **Exhibit P-12**.

160. In essence, "closed" work permits strip migrant workers of their autonomy and dignity, confining workers to a state of serfdom.

161. Accordingly, the imposition of employer-tying measures by the Government of Canada has at all times deprived temporary foreign workers of their human dignity and constituted cruel and unusual treatment.

162. Since April 17th, 1982, such employer-tying measures, and the provisions authorizing them, including the Impugned Provisions, have been inconsistent with section 12 of the *Charter.*

163. This breach of section 12 of the *Charter* cannot be justified in a free and democratic society pursuant to section 1 of the *Charter*.

E. EMPLOYER-TYING MEASURES ARE INCONSISTENT WITH PARAGRAPH 15(1) OF THE *CHARTER*

164. As further explained at paragraphs 176 to 187 below, the incorporation of employer-tying measures within the modern Canadian labour migration regimes was rooted in direct discrimination based on race, national or ethnic origin and colour.

165. Employer-tying measures continue to be imposed disproportionately on – and their harmful impacts to be felt disproportionately by – minorities characterized by their race, national or ethnic origin and colour, resulting in adverse impact discrimination against them.

166. The harmful impacts of employer-tying measures have the effect of perpetuating the disadvantages to which those minorities have long been subjected.

167. Consequently, employer-tying measures, and the provisions authorizing them, including the Impugned Provisions, have also been in violation of paragraph 15(1) of the *Charter* since it came into force on April 17th, 1985.

168. This breach of paragraph 15(1) of the *Charter* cannot be justified in a free and democratic society pursuant to section 1 of the *Charter*.

F. THE REMEDIES SOUGHT

i. A Declaration of the Impugned Provisions' Unconstitutionality

169. In light of the above-described *Charter* breaches and in accordance with section 52(1) of the *Constitution Act, 1982*, the Impugned Provisions are unconstitutional and of no force and effect.

ii. Damages Pursuant to Paragraph 24(1) of the *Charter*

170. However, in and of itself, a declaration of unconstitutionality would be insufficient to remedy the harm suffered by the Designated Member and the Class Members as a result of the employer-tying measures to which they were subjected.

171. An award of damages pursuant to paragraph 24(1) of the *Charter* constitutes an appropriate and just remedy to:

(a) compensate the Class Members for such harm and for the suffering and negation of dignity associated with the serious constitutional rights violations described above;

(b) vindicate the Class Members' *Charter* rights and the large-scale harm to Canadian society associated with binding migrant workers to their employers, as described in sections III. A and III. B above; and

(c) deter future *Charter* breaches through the adoption of regulatory provisions authorizing similar direct or indirect employer-tying measures, particularly in light of such measures' long-standing history.

172. An award of *Charter* damages is justified considering the gravity of the Government of Canada's conduct in relation to the use of employer-tying measures in the country, as explained below.

173. On the one hand, since their initial introduction in the 1960s, temporary foreign worker schemes have perpetuated, through employer-tying measures, the discriminatory policies that existed under the previous Canadian immigration system. When it introduced such measures, the Government of Canada showed

a clear disregard for the affected workers' human rights and dignity, and for the foreseeable harm that employer ties would cause them.

174. On the other hand, faced with clear evidence of the harmful impacts described above, the Government of Canada has persisted in imposing employer-tying measures on foreign workers.

175. Therefore, both at the initial adoption of employer-tying measures in 1966 and by their subsequent maintenance, the Government of Canada has demonstrated a clear disregard for temporary foreign workers' rights and human dignity throughout this period.

a. A clear disregard for migrant workers' rights on the basis of discrimination

176. Until after the Second World War, Canadian immigration laws contained explicit provisions distinguishing between immigrants from "preferred" countries of origin immigrants from "non-preferred" countries of origin.

177. It was not until the 1960s that the Government of Canada began to dismantle its overtly discriminatory immigration laws and modified its immigration policy from being focused on the maintenance of a national identity to one based on longer-term economic interests.

178. At the same time as it removed overt discrimination from its immigration policy, the Government of Canada introduced other admission schemes which perpetuated the discriminatory effect of the former laws. In particular, it developed temporary admission schemes for foreign workers in caregiving and agricultural occupations.

179. The Government of Canada notably introduced a domestic worker recruitment program for Caribbean women in 1955 and subsequently the SAWP in 1966, initially for Jamaican agricultural workers only.

180. A hallmark of these schemes was their reliance on employer-tying measures.

181. The development of these schemes coincided with a shift in the demographics of the immigrants entering Canada to work in these occupations. They had previously included predominantly "white" immigrants. There were now increasing numbers of persons of colour.

182. These schemes were justified on the basis that the immigrants of certain races, colours, or ethnic or national origins were considered unable to assimilate to Canada's climate and society and to be better-suited for "unfree" and low-skilled work, as explained in a 2021 IRCC Publication entitled "Racism, Discrimination

and Migrant Workers in Canada: Evidence from the Literature" (at pp. 47-52), a copy of which is communicated herewith as **Exhibit P-13**, and as will be further established at trial.

183. In 1973, the NIEAP was introduced as a comprehensive regulatory framework for temporary foreign workers expressly based on specific employers' labour needs.

184. By design and effect, the NIEAP responded to those needs by admitting low-skilled workers, generally from formerly "non-preferred" countries, as appears from Exhibit P-13 (at pp. 54-55).

185. It too had as a hallmark its use of employer-tying measures.

186. In point of fact, the employer-tying measures used in those schemes represented the continuation of the Government of Canada's previous openly discriminatory immigration criteria.

187. As will be established at trial, the discriminatory attitudes underlying the introduction of employer-tying measures led the Government of Canada to disregard the foreseeable harm that they would cause the affected migrant workers.

b. A clear disregard for migrant workers' rights on the basis of inaction despite acknowledged awareness

188. Secondly, the Government of Canada has acknowledged, on repeated occasions, that employer-tying measures involve an inherent power imbalance conducive to the abuse and ill-treatment of migrant workers.

189. Parliamentary committees have been instrumental in bringing evidence of abuse to the Government of Canada's attention.

190. Two different House of Commons Standing Committees, namely the Standing Committee on Citizenship and Immigration (CIMM) in 2009 and the Standing Committee on Human Rights, Skills, Social Development and the Status of Persons with Disabilities (HUMA) have in fact specifically called for the elimination of employer-specific work permit requirements from the temporary foreign worker regimes, as appears from the reports entitled "Temporary Foreign Workers and Non-status Workers" (CIMM, May 2009)[3] and "Temporary Foreign Worker

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[3] See Recommendation 20: "The Committee recommends that the Government of Canada discontinue making work permits of temporary foreign workers employer-specific, and that it make such work permits sector- and province-specific instead. Where there is a change of employers, employers should be able to claw-back the recruitment and associated costs from subsequent employers to earlier employers on a pro-rated basis."

Program" (HUMA, September 2016)[4] respectively communicated herewith as **Exhibit P-14** and **Exhibit P-15.**

191. In 2019, the Government of Canada amended the *IRPR* to introduce a program allowing migrant workers demonstrably experiencing abuse or at risk of experiencing abuse to apply for open work permits upon meeting specific conditions.

192. In the context of those regulatory amendments, the Government of Canada underlined the particular risks and abuse faced by foreign workers on employer-specific permits, as appears from its Regulatory Impact Assessment Statement on the *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148, communicated herewith as **Exhibit P-16**:

> "Migrant workers on employer-specific in Canada are only authorized to work for the employer named on their permit, making it inherently difficult for them to change jobs. While most employers are committed to proper treatment of their workers, the power imbalance created by this dynamic favours the employer and can result in a migrant worker enduring situations of misconduct, abuse or other forms of employer retribution. This is compounded by other potential factors facing migrant workers, including language barriers and the costs involved in navigating the complex legal recourse mechanisms.
>
> […][T]he analysis also confirms that this type of work permit can create some conditions under which risks of abuse could be higher. Among these conditions are the structural and financial barriers to mobility for migrant workers experiencing abuse, or at risk of abuse, related to their employment(e.g. by a business owner, a supervisor, a recruiter, or other party).
>
> [our emphasis]

193. The new open work permit for vulnerable workers does not provide an effective solution, as notably highlighted in the U.N. Special Rapporteur's End of Mission Statement (Exhibit P-14), and as will be further established at trial:

> While migrant workers in situations of exploitation and abuse can apply for an Open Work Permit for Vulnerable Workers, this is not an effective solution due to the fact that the worker must remain with the abusive employer or survive in Canada without the ability to work legally or access most social services until the open work permit application is granted, the

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[4] See Recommendation 14: "That Employment and Social Development Canada take immediate steps to eliminate the requirement for an employer-specific work permit; provided that it implement appropriate measures to ensure temporary foreign labour is only utilized within the existing provisions of the Labour Market Impact Assessment process, including sector and geographic restrictions."

> high evidentiary standard required in practice to receive a positive decision in spite of a legal threshold of "reasonable grounds", and language barriers and lack of ability to navigate the legal process to obtain a permit without external assistance. Even once the permit is received, it is of limited duration and not renewable, and stigmatizing for many in practice as future employers may view holders of the permit as "troublemakers". In practice, therefore, access to justice and remedies is severely limited for most workers.

194. Among other things, this solution is ineffective as it requires workers to hold a valid work permit when their application is made. This makes the worker highly vulnerable to termination and loss of status should the employer find out about the application.

195. The mechanism also places the onus of proving the existence or potential existence of abuse on the migrant workers, who must submit documentary evidence, including affidavits. This is not feasible for workers whose off-duty hours and ability to travel away from their work place are limited and often strictly supervised by their employers.

196. The addition of the open work permit for vulnerable workers consequently has not mitigated the harmful impacts of employer-tying measures and employer-tied migrant workers' rights continue to be massively breached by the Government of Canada.

197. In 2021, the House of Commons Standing Committee on Citizenship and Immigration tabled its report entitled "Immigration Programs to Meet Labour Market Needs", communicated herewith as **Exhibit P-17** and stated (at pp. 31-33) that:

> The vulnerability of temporary foreign workers is most clear in relation to their dependence on the employer to which their work permit and LMIA are connected. Witnesses highlighted that the work permit that gives the temporary foreign worker access to a job also makes avoiding poor treatment or overwork difficult, because the permit is employer-specific or "closed." Workers cannot simply move to another employer instead. Similarly, they cannot exercise control over their workloads by finding additional work at other businesses later in the season. At the same time, they often find returning home early to be prohibitively expensive. They are more prone to stay—and more easily taken advantage of—because they have few other options.
>
> […]
>
> The Committee thus heard that temporary foreign workers may be exploited in Canada under the LMIA, because they lack the status and protections to challenge abuse by employers, consultants and recruitment agents.
>
> [our emphasis; citations omitted]

198. Finally, as recently as September 6th, 2023, the U.N. Special Rapporteur stated, following his visit to Canada, that the TFWP constitutes a "*breeding ground for contemporary forms of slavery*", as appears in its End of Mission Statement (Exhibit P-14):

> [T]he Special Rapporteur is disturbed by the fact that certain categories of migrant workers are made vulnerable to contemporary forms of slavery in Canada by the policies that regulate their immigration status, employment, and housing in Canada, and he is particularly concerned that this workforce is disproportionately racialized, attesting to deep-rooted racism and xenophobia entrenched in Canada's immigration system. In particular, he takes a view that the agricultural and low-wage streams of the Temporary Foreign Workers Programme (TFWP) constitute a breeding ground for contemporary forms of slavery, and he is perturbed by reports that the share of workers entering Canada through this programme is sharply on the rise. The Government of Canada has been made aware of the potential for abuse and exploitation and the lack of effective oversight of temporary foreign worker programmes on multiple instances over the past decade, including through reports from the Auditor General and relevant Parliamentary Committees.
>
> Workers that enter Canada through these programmes receive closed work permits, meaning that they cannot change employers and may face deportation upon termination of their employment. […] This creates a dependency relationship between employers and employees, making the latter vulnerable to exploitation and abuse, who many feel unable to report for fear of losing their migration status and/or employment, in spite of policies introduced in September 2022 to protect workers from reprisals.
>
> [our emphasis]

199. The U.N. Special Rapporteur notably recommended that the Government of Canada "[m]*odify the Temporary Foreign Workers Program to enable workers to choose employers freely without any restriction and discrimination*" (Exhibit P-12).

200. In the face of the clearly-documented and known harmful impacts of employer-tying measures and of direct calls in favour of discontinuing their use, the government's persistent reliance on such measures shows its clear disregard for the Class Members' constitutional rights.

201. The gravity of the Government of Canada's conduct far exceeds the minimum fault threshold for state liability for *Charter* damages in this case.

202. As a consequence of the above-described *Charter* violations and in light of the government's clear disregard for the Designated Member and other Class Members' rights, an award of damages under paragraph 24(1) of the *Charter* constitutes an appropriate and just remedy.

iii. Compensatory Damages in Private Law

203. Additionally, the servants of the Government of Canada, namely Canadian immigration officers and/or ESDC agents, have committed a fault (in Québec) and a tort (in the rest of Canada).

204. Canadian immigration officers and ESDC agents are civil servants whose faults or torts can give rise to vicarious Crown liability under subparagraphs 3(a)(i) and 3(b)(i) of the *Crown Liability Proceedings Act*, RSC 1985, c. C-50.

205. The relationship between these Government of Canada officers and the Class Members is such that the latter were entirely dependent on the former's decisions as to the issuance of work permits.

206. The demonstrated and documented harmful impacts of employer-tying-measures were reasonably foreseeable to the Government of Canada's agents.

207. The Government of Canada's agents owed a duty of care to the Class Members.

208. The agents systematically imposed employer-tying measures on the Class Members (a) where the Impugned Provisions and their predecessors did not require it; and (b) where the harmful impacts of employer-tying measures rather required the agents to refrain from such an imposition.

209. The Government of Canada's servants' conduct constitutes systemic negligence in the operationalization of the Impugned Provisions and their predecessors.

210. Their systemic negligence breached the duty of care set out above and, in Québec, breached their general duty to abide by the rules of conduct incumbent on them, according to the circumstances, usage or law, so as not to cause injury to the Class Members.

211. The Government of Canada is liable for the damage caused by this fault, in Québec, and in respect of this tort, in the rest of Canada.

212. The harmful impacts suffered by A.B. as a result of this systemic negligence – and, more particularly, of A.B.'s six "closed" work permits constitute indemnifiable damage in Québec.

213. While A.B. did ultimately obtain his Canadian permanent residence, on or around December 8th, 2022, he never entirely recovered from the abuses he suffered during the time he was bound to his employers.

214. Physically, he continues to feel back pain on a daily basis.

215. From a mental health perspective, his life is now marked by recurring episodes of sadness, anxiety and depression, panic attacks, anger management issues, as well as feelings of emptiness, worthlessness or powerlessness, which interfere with his social relationships.

216. As a result of the foregoing, A.B. is entitled to an award of pecuniary and non-pecuniary compensatory damages, in an amount to be determined.

iv. Punitive Damages

217. The conduct of the Government of Canada and of its agents constitutes oppressive, arbitrary or unconstitutional action.

218. As a result of the foregoing, A.B. is entitled to an award of private law damages, in an amount to be determined.

IV. THE FACTS ON WHICH THE CLASS MEMBERS' CLAIMS AGAINST THE DEFENDANT ARE BASED

219. A.B.'s traumatic experience is not an isolated case.

220. All Class Members were subjected to employer-tying measures since the entry into force of the *Charter*.

221. For the reasons set out above, all such measures were inconsistent with the Class Members' rights under sections 7 and 12 and paragraph 15(1) of the *Charter*, and all of Class Members' *Charter* rights were clearly disregarded by the Government of Canada.

222. All Class Members suffered the harmful impacts of employer-tying measures.

223. Consequently, all Class Members are entitled, beyond declaratory relief, to an award of *Charter* damages as an appropriate and just reparation pursuant to paragraph 24(1) of the *Charter*.

224. Additionally, all Class Members were impacted by the Government of Canada's servants' systemic negligence in the operationalization of the Impugned Provisions and their predecessors.

225. All Class Members are therefore entitled to an award of pecuniary and non-pecuniary compensatory damages under private law and of punitive damages , in an amount to be determined.

226. As a result of the unique vulnerability which the Class Members experienced in consequence of the employer-tying measures to which they were subjected – and,

in particular, their restricted capacity to assert their legal rights and to seek redress for violations thereof – the Class Members have been and remain incapable in fact of acting to commence proceedings against the Government of Canada.

227. Accordingly, the prescription or limitation period applicable to the Class Members' claims against the Defendant has not begun to run or, in the alternative, has been suspended or tolled since it began to run.

V. THE DIFFICULTIES RELATED TO THE COMPOSITION OF THE CLASS

228. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings.

229. Merely taking into account the period covered by the Class Members' claims, the Class is extremely large and includes hundreds of thousands of employer-tied temporary foreign workers.

230. Authorizing the collective exercise of the Class Members' claims is clearly proportional and in the interests of the proper administration of justice.

VI. THE ISSUES OF LAW AND FACT RAISED BY THE CLASS ACTION

231. The identical, similar or related issues of law and fact raised by the Class Members' claims against the Defendant are the following:

(a) Did the imposition of employer-tying measures by the Government of Canada deprive the Class Members of life, liberty or security of the person, as they are understood under section 7 of the *Charter*?

(b) Did such deprivation fail to accord with the principles of fundamental justice, in violation of section 7 of the *Charter*?

(c) Did the imposition of employer-tying measures by the Government of Canada subject the Class Members to cruel and unusual treatment, in violation of section 12 of the *Charter*?

(d) Did the imposition of employer-tying measures by the Government of Canada infringe the Class Members' right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, or colour, in violation of paragraph 15(1) of the *Charter*?

(e) Were such violations justified under section 1 of the *Charter*?

(f) Are the Impugned Provisions unconstitutional and consequently of no force and effect, insofar as they allow the Government of Canada to continue subjecting foreign nationals to direct or indirect employer-tying measures?

(g) Is it appropriate and just to award damages to the Class Members pursuant to paragraph 24(1) of the *Charter*? If so, what is the appropriate quantum of such damages?

(h) Did the servants of the Government of Canada commit a fault (in Québec) or a tort (in the rest of Canada) by their systemic negligence in imposing employer-tying measures on the Class Members since April 17th, 1982?

(i) Are the Class Members entitled to an award of pecuniary compensatory damages as a result of the employer-tying measures to which they were subjected? If so, what is the total quantum of such damages?

(j) Are the Class Members entitled to an award of non-pecuniary compensatory damages as a result of the employer-tying measures to which they were subjected? If so, what is the total quantum of such damages?

(k) Does the conduct of the Government of Canada justify an award of punitive damages to the Class Members? If so, what is the total quantum of such damages?

(l) What prescription or limitation period applies to the Class Members' claims for damages?

(m) What circumstances common to the Class Members are relevant to the determination of whether the prescription or limitation period began to run and, if so, whether it was suspended or tolled?

VII. THE CONCLUSIONS SOUGHT BY THE CLASS ACTION

232. The action that the Applicant intends to bring on behalf of the Class Members is a class action seeking a declaration that the Impugned Provisions are unconstitutional and are therefore of no force and effect, as well as an award of damages under paragraph 24(1) of the *Charter* and of private law compensatory and punitive damages.

233. The conclusions sought by the class action are the following:

GRANT the originating application;

DECLARE that sections 185(b), 186(a), 186(b), 187(1), 187(3), 200(1)(c)(ii.1), 200(1)(c)(iii), 200(5) and 203 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are unconstitutional and of no force and effect;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, damages pursuant to paragraph 24(1) of the *Charter*, in an amount to be determined;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, pecuniary and non-pecuniary compensatory damages, in an amount to be determined;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, punitive damages, in an amount to be determined;

ORDER the collective recovery of the damages to be paid to the Class Members by the Attorney General of Canada;

ORDER the individual liquidation of the Class Members' claims or the distribution of an amount to each Class Member;

THE WHOLE, with costs.

VIII. THE ABILITY OF THE APPLICANT TO PROPERLY REPRESENT THE CLASS MEMBERS

234. The Applicant is a legal person established for a private interest incorporated in 1977 as a non-profit organization, as appears from a copy of its statement of information in the Québec Enterprise Register, communicated herewith as **Exhibit P-18**.

235. The Designated Member is a member of the Applicant and his interest is related to the purposes for which the Applicant is constituted.

236. Indeed, the mission of the Applicant is to provide support to household and farm workers under temporary foreign worker status and to ensure the collective defence of their rights.

237. Most of the Applicant's members have personal experience or extensive expertise of certain aspects of household and/or farm work under temporary foreign worker status.

238. The Applicant's members have a direct and personal interest in the proceedings.

239. The Applicant has collaborated for decades with academic researchers to produce empirical studies, policy evaluations and legal analysis on the impact of Canada's

household and farm labour migration programs, in particular regarding the systemic barriers to workers' ability to meaningfully exercise their rights in the country.

240. Through collective legal action projects, as well as research, political advocacy and public education initiatives, the Applicant works towards the systemic policy advancements necessary to ensure the respect, for all household and farm workers, of their fundamental rights.

241. The Applicant has the interest, the will, the capacity and the expertise to bring forward a class action to obtain justice on behalf of all Class Members.

CONCLUSION

242. The Class Members' claims relate to the adoption and maintenance of a federal regulatory regime regarding the imposition of employer-tying measures on temporary foreign workers that applies in all provinces.

243. The impugned conduct of the Government of Canada and of its agents occurred across Canada.

244. The harmful impacts of employer-tying measures were suffered by Class Members across Canada.

245. The criteria to authorize the bringing of a national class action on behalf of the Class Members are met.

246. The Applicant requests to be appointed as representative plaintiff.

247. The Applicant proposes that the class action be instituted in the district of Montréal for the following reasons.

248. The Applicant and its lawyers are domiciled in the district of Montréal.

249. The Defendant has its Québec regional office in the district of Montréal.

250. The proposed class action concerns past or present temporary foreign workers who may potentially be located not only in Québec, but across all provinces and territories of Canada, and potentially outside Canada. In this respect, Montréal's relatively central location within the province and status as a metropolis will facilitate logistics and travel arrangements for witnesses from within Québec, from elsewhere in Canada or from other countries.

251. This Application for Authorization of a Class Action is well-founded in law and fact.

WHEREFORE, MAY IT PLEASE THE COURT TO:

[A] **GRANT** this Application for Authorization of a Class Action;

[B] **AUTHORIZE** a class action seeking a declaration that sections 185(b), 186(a), 186(b), 187(1), 187(3), 200(1)(c)(ii.1), 200(1)(c)(iii), 200(5) and 203 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are inconsistent with sections 7 and 12 and paragraph 15(1) of the *Canadian Charter of Rights and Freedoms* (the "***Charter***") and are therefore of no force and effect, as well as an award of damages under paragraph 24(1) of the *Charter* and of private law compensatory and punitive damages to the Class Members.

[C] **APPOINT** the applicant Association for the Rights of Household and Farm Workers as the representative plaintiff for the purpose of bringing this class action on behalf of the class described below:

> Any person who **(a)** on or after April 17th, 1982, worked in Canada as a foreign national (*i.e.* without being a Canadian citizen or a permanent resident of Canada at the time, and including a stateless person) and **(b)(i)** was issued a work permit conditional on engaging in work for a specific employer or group of employers or at a specific employer workplace location or group of locations; or **(ii)** was allowed to work without a work permit as a result of being employed by a foreign entity on a short-term basis or as a result of being employed in a personal capacity by a temporary resident, including a foreign representative.

[D] **IDENTIFY** the main issues to be dealt with collectively as the following:

(a) Did the imposition of employer-tying measures by the Government of Canada deprive the Class Members of life, liberty or security of the person, as they are understood under section 7 of the *Charter*?

(b) Did such deprivation fail to accord with the principles of fundamental justice, in violation of section 7 of the *Charter*?

(c) Did the imposition of employer-tying measures by the Government of Canada subject the Class Members to cruel and unusual treatment, in violation of section 12 of the *Charter*?

(d) Did the imposition of employer-tying measures by the Government of Canada infringe the Class Members' right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, or colour, in violation of paragraph 15(1) of the *Charter*?

(e) Were such violations justified under section 1 of the *Charter*?

(f) Are the Impugned Provisions unconstitutional and consequently of no force and effect, insofar as they allow the Government of Canada to continue subjecting foreign nationals to direct or indirect employer-tying measures?

(g) Is it appropriate and just to award damages to the Class Members pursuant to paragraph 24(1) of the *Charter*? If so, what is the appropriate quantum of such damages?

(h) Did the servants of the Government of Canada commit a fault (in Québec) or a tort (in the rest of Canada) by their systemic negligence in imposing employer-tying measures on the Class Members since April 17th, 1982?

(i) Are the Class Members entitled to an award of pecuniary compensatory damages as a result of the employer-tying measures to which they were subjected? If so, what is the total quantum of such damages?

(j) Are the Class Members entitled to an award of non-pecuniary compensatory damages as a result of the employer-tying measures to which they were subjected? If so, what is the total quantum of such damages?

(k) Does the conduct of the Government of Canada justify an award of punitive damages to the Class Members? If so, what is the total quantum of such damages?

(l) What prescription or limitation period applies to the Class Members' claims for damages?

(m) What circumstances common to the Class Members are relevant to the determination of whether the prescription or limitation period began to run and, if so, whether it was suspended or tolled?

[E] IDENTIFY the conclusions sought in relation to those issues as the following:

GRANT the originating application;

DECLARE that sections 185(b), 186(a), 186(b), 187(1), 187(3), 200(1)(c)(ii.1), 200(1)(c)(iii), 200(5) and 203 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are unconstitutional and of no force and effect;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, damages pursuant to paragraph 24(1) of the *Charter*, in an amount to be determined;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, pecuniary and non-pecuniary compensatory damages, in an amount to be determined;

CONDEMN the Attorney General of Canada to pay to each of the Class Members, including the Designated Member, punitive damages, in an amount to be determined;

ORDER the collective recovery of the damages to be paid to the Class Members by the Attorney General of Canada;

ORDER the individual liquidation of the Class Members' claims or the distribution of an amount to each Class Member;

THE WHOLE, with costs.

[F] **DECLARE** that all Class Members who have not opted-out will be bound by any judgment to be rendered on the class action in the manner provided for by law;

[G] **DETERMINE** that the class action is to be instituted in the judicial district of Montréal;

[H] **CONVENE** the parties to a hearing to hear their representations in respect of the notices to the Class Members required under article 579 of the *Code of Civil Procedure*, CQLR c. C-25.01 and of the time limit for opting-out of the Class;

[I] **THE WHOLE**, with costs, including the costs of the notices to the Class Members.

Montréal, September 14th, 2023

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for the Applicant

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SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the Applicant and Designated Member has filed this Application for Authorization of a Class Action in the office of the Superior Court of Québec in the judicial district of Montréal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 rue Notre-Dame Est, Montréal, Québec within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of

the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the Applicant and Designated Member intends to use the exhibits listed on the attached List of Exhibits. These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

CLASS ACTIONS DIVISION
SUPERIOR COURT

NO : 500-06-001263-231

ASSOCIATION FOR THE RIGHTS OF HOUSEHOLD AND FARM WORKERS

Applicant

and

A.B.

Designated Member

v.

ATTORNEY GENERAL OF CANADA

Defendant

LIST OF EXHIBITS

Exhibit P-1: Copy of a webpage entitled “Temporary Foreign Worker” from the website of Employment and Social Development Canada (“ESDC”);

Exhibit P-2: Copy of a webpage entitled “Temporary workers” contained from the website of Immigration, Refugees and Citizenship Canada (“IRCC”);

Exhibit P-3: Copy of a webpage entitled “Hire a worker without an LMIA: About the process” from the IRCC’s website;

Exhibit P-4: Copy of a webpage entitled “Work permit: About the process” contained from the IRCC’s website;

Exhibit P-5: Copy of a webpage entitled “Hire a temporary worker through the Seasonal Agricultural Worker Program: Overview” from the ESDC’s website;

Exhibit P-6: *En liasse*, copies of standard employment contracts for seasonal agricultural workers from Mexico and from other participating Caribbean countries;

Exhibit P-7: Copy of a webpage entitled “Conditions and validity period on work permits (temporary workers)” from IRCC’s website;

Exhibit P-8: Copy of a webpage entitled “Business visitors [R186(1)]: Authorization to work without a work permit - International Mobility Program” from the IRCC’s website;

Exhibit P-9: Copy of a webpage entitled “International Mobility Program: Domestic workers of foreign representatives” from the IRCC’s website;

Exhibit P-10: Copy of webpages entitled “Hiring a domestic worker and related accreditation program” and “Accredited Domestic Workers in Diplomatic Households – About your Rights and Protections” from the GAC’s website, *en liasse*;

Exhibit P-11: *Immigration Regulations*, 1978, SOR/1978-172 (repealed);

Exhibit P-12: Copy of the United Nations Special Rapporteur on contemporary forms of slavery End of Mission Statement dated September 6th, 2023;

Exhibit P-13: IRCC - Policy Research, Research and Evaluation Branch (July 2021), “Racism, Discrimination and Migrant Workers in Canada: Evidence from the Literature”, 117 p.;

Exhibit P-14: House of Commons, Standing Committee on Citizenship and Immigration (CIMM), “Temporary Foreign Workers and Non-status Workers”, Report of the Standing Committee on Citizenship and Immigration, 40th Parliament, 2nd session, May 2009;

Exhibit P-15: House of Commons, Standing Committee on Human Rights, Skills, Social Development and the Status of Persons with Disabilities (HUMA), “Temporary Foreign Worker Program”, Report of the Standing Committee on Human Rights, Skills, Social Development and the Status of Persons with Disabilities, 42nd Parliament, 1st session, September 2016;

Exhibit P-16: *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148;

Exhibit P-17: House of Commons, Standing Committee on Citizenship and Immigration, “Immigration Programs to Meet Labour Market Needs”, Report of the Standing Committee on Citizenship and Immigration, 43rd Parliament, 2nd session, June 2021.

Exhibit P-18: Copy of Applicant's statement of information in the Québec Enterprise Register.

Montréal, September 14th, 2023

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for the Applicant

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abelleymckinnon@dwpv.com
File : 287026

NOTICE OF PRESENTATION

TO :

ATTORNEY GENERAL OF CANADA, having a regional office at Guy-Favreau Complex, East Tower, 9th Floor, 200 René-Lévesque Boulevard West, in the city and judicial district of Montréal, province of Québec, H2Z 1X4

Defendant

TAKE NOTICE that this Application for Authorization of a Class Action will be presented before the Superior Court at the Montréal Courthouse, located at 1 Notre-Dame Street East, in the city and judicial district of Montréal, province of Québec, H2Y 1B6, on a date to be determined by the Coordinating Judge of the Class Actions Division.

DO ACT ACCORDINGLY.

MONTREAL, September 14th, 2023

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
M^tre^ Jean-Philippe Groleau
M^tre^ Guillaume Charlebois
M^tre^ Alexandra Belley-McKinnon

Counsel for the Applicant

ATTESTATION

We, the undersigned, attorneys for the Applicant, the Association for the Rights of Household and Farm Workers, attest in accordance with section 55 of the *Regulation of the Superior Court of Québec in civil matters*, RLRQ c. C-25.01, r. 0.2.1 that this Application for Authorization of a Class Action will be entered in the in the national class action register.

MONTREAL, September 14th, 2023

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
M^tre^ Jean-Philippe Groleau
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Counsel for the Applicant

Nº 500-06-001263-231
(Class Actions Division)
S U P E R I O R C O U R T
District of Montréal

ASSOCIATION FOR THE RIGHTS OF HOUSEHOLD AND FARM WORKERS

Applicant

A.B.

Designated Member

v.

ATTORNEY GENERAL OF CANADA

Defendant

APPLICATION FOR AUTHORIZATION OF A CLASS ACTION
(Article 574 C.C.P.)

ORIGINAL

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