

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001263-231

SUPERIOR COURT
(CLASS ACTION)

ASSOCIATION FOR THE RIGHTS OF
HOUSEHOLD AND FARM WORKERS

Applicant

and

BYRON ALFREDO ACEVEDO TOBAR

Designated Member

v.

ATTORNEY GENERAL OF CANADA

Defendant

APPLICATION OF THE ATTORNEY GENERAL OF CANADA
FOR LEAVE TO FILE RELEVANT EVIDENCE
(Art. 574(3) *Code of Civil Procedure*)

TO THE HONORABLE JUSTICE SILVANA CONTE OF THE SUPERIOR COURT OF QUEBEC, DESIGNATED JUDGE TO HEAR ALL PROCEEDINGS RELATED TO THE PRESENT PROPOSED CLASS ACTION, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE ATTORNEY GENERAL OF CANADA, RESPECTFULLY SUBMITS THE FOLLOWING:

A. OVERVIEW

1. The Attorney General of Canada (**AGC**) seeks leave to file relevant evidence pursuant to art. 574(3) of the Code of Civil Procedure (**C.C.P.**) for the purpose of the hearing of the Amended Application for authorization of a class action dated November 24, 2023 (**Amended Application**).
2. AGC requests to adduce evidence on the Canadian Programs and Streams of the temporary foreign workers targeted by the Amended Application, but not adequately presented.
3. The purpose of the proposed relevant evidence is to demonstrate the absence of common questions and an arguable case as well as the Applicant's inadequate representation for a part of the proposed group.

B. AMENDED APPLICATION FOR AUTHORIZATION OF A CLASS ACTION

4. The Amended Application seeks the authorization to institute a class action on behalf of the members of the class described below (the **Group**):

“Any person who **(a)** on or after April 17, 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 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.”

5. The proposed class action requests a declaration that the closed nature of work permits for temporary foreign workers violates their rights under sections 7, 12 and 15 of the Canadian Charter of Rights and Freedoms (**Charter**) because they are subject to abuse and exploitation by their employers.
6. The proposed class action requests 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 (IRPR)* are unconstitutional and of no force and effect.
7. The proposed class action also seeks damages under 24(1) of the Charter as well as compensatory and punitive damages, not quantified at this stage.

C. PURPOSE OF THE EVIDENCE THE AGC SEEKS TO FILE

8. The proposed evidence is essential to analyze the authorization criteria and to demonstrate the lack of common questions (**art. 575(1) C.C.P.**) and of an arguable case (**art. 575(2) C.C.P.**) and the Applicant’s inadequate representation (**art. 575(4) C.C.P.**) for a part of the proposed Group.
9. While the Amended Application seeks to represent all said foreign workers, it only describes the Agriculture Stream¹ of the Temporary Foreign Worker Program (**TFWP**) and the Domestic Workers of Foreign Representatives Program² of the International Mobility Program (**IMP**).
10. The Amended Application states that “*both the TFWP and the IMP are subdivided in several streams with diverse requirements and operating procedures*”³.
11. However, the Amended Application fails to describe adequately all the other Streams (High Wage, Low Wage, Global Talent and Permanent Residency) and Programs available under the TFWP and IMP.
12. This factual gap is preventing the Court from understanding the composition and scope of

¹ Cf. paras. 34-36 of the Amended Application and Exhibits P-5 and P-6.

² Cf. paras. 52, 54-58 of the Amended Application and Exhibits P-8, P-9 and P-10.

³ Cf. para. 34 of the Amended Application.

the proposed Group.

13. The Court must have in hand the relevant evidence to understand the composition and scope of the proposed Group and assess if there are common questions (**art. 575(1) C.C.P.**) and an arguable case (**art. 575(2) C.C.P.**).
14. This proposed evidence will also allow the Court to assess if the Applicant, a non-profit organization defending temporary foreign household and farm workers' rights⁴, can properly represent all the proposed Group under the other Streams and Programs unrelated to agriculture and domestic workers (**art. 575(4) C.C.P.**).
15. Moreover, the Designated Member recognizes himself that he obtained his closed work permits only under the Agricultural stream of the TFWP.⁵

D. DOCUMENTS AS RELEVANT EVIDENCE THE AGC SEEKS TO FILE

16. For the Court to better understand the context and extent of the Streams and Programs of the TFWP and the IMP, the following short Affidavits include information on the context and structure of the Streams and Programs:

AGC-1-A Affidavit from Employment and Social Development Canada's (ESDC) representative on the TFWP;

AGC-1-B Affidavit from Immigration, Refugees and Citizenship Canada's (IRCC) representative on the IMP.

17. The Affidavit AGC-1-A contains additional information on the Streams and Programs in a more global fashion not contained in the succinct excerpts of the Government of Canada official websites below (AGC-2 to AGC-7).
18. To complete the factual context of the claim for the Court to seize the composition and scope of the proposed Group, the proposed evidence explains all the Streams of the **TFWP** from the Government of Canada official websites:

AGC-2 Excerpts of the Government of Canada website re: Hire a temporary foreign worker in a **high-wage position**.

AGC-3 Excerpts of the Government of Canada website re: Hire a temporary foreign worker in a **low-wage position**.

AGC-4 Excerpts of the Government of Canada website: re: Hire a temporary worker as an in-home **caregiver**⁶.

AGC-5 Excerpts of the Government of Canada website re: Hire a temporary foreign

⁴ Cf. para. 236 of the Amended Application.

⁵ Cf. paras. 93, 118 and 137 of the Amended Application.

⁶ The Caregiver Program used to be a separate stream.

agricultural worker.

AGC-6 Excerpts of the Government of Canada website re: Hire a top foreign talent through the **Global Talent Stream**.

AGC-7 Excerpts of the Government of Canada website re: Hire a skilled worker to support their **permanent residency**.

19. The Amended Application does not provide an adequate description of the **IMP**⁷.
20. The Affidavit AGC-1-B therefore provides a description and context of the IMP for the Court to understand the scope, diversity and implications of this Program not properly presented in the Applicant's Amended Application and Exhibits.
21. The following proposed evidence illustrates the numerous and complex categories of positions of foreign workers under the IMP, such that the Applicant cannot contend that it can adequately represent all these foreign workers under the IMP for this proposed class action:

AGC-8 Excerpts of the Government of Canada website re: Labour market impact assessment (LMIA) exemption codes - International Mobility Program.

AGC-9 Officer Quick Reference Guide to Occupations⁸.

22. In summary, this evidence is therefore relevant for the Court's definition of the proposed Group, including the composition and scope of the group, that needs to be delimited at the authorization stage in line with the facts alleged in the Amended Application (**art. 575(1) and 575(2) C.C.P.**) and the adequate representation of the Applicant (**art. 575(4) C.C.P.**).

E. CONCLUSION

23. The AGC's evidence is relevant, appropriate, and proportionate in the specific circumstances and facts of the case, regarding the allegations and content of the Amended Application.
24. Exhibits AGC-1 to AGC-9 are essential to the analysis of the criteria set out at art. 575 C.C.P., more specifically art. 575(1), 575(2) and 575(4) C.C.P., in view of the hearing on authorization of the class action.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

AUTHORIZE the Attorney General of Canada to file the following evidence:

AGC-1-A Affidavit of ESDC's representative.

⁷ Cf. paras 20-22, 27, 33 and Exhibits P-2, P-3, P-8 and P-9 of the Amended Application.

⁸ This document is listed in Exhibit P-2's hyperlinks but the content is not included.

- AGC-1-B** Affidavit of IRCC's representative.
- AGC-2** Excerpts of the Government of Canada website re: Hire a temporary foreign worker in a high-wage position.
- AGC-3** Excerpts of the Government of Canada website re: Hire a temporary foreign worker in a low-wage position.
- AGC-4** Excerpts of the Government of Canada website: re: Hire a temporary worker as an in-home caregiver.
- AGC-5** Excerpts of the Government of Canada website re: Hire a temporary foreign agricultural worker.
- AGC-6** Excerpts of the Government of Canada website re: Hire a top foreign talent through the Global Talent Stream.
- AGC-7** Excerpts of the Government of Canada website re: Hire a skilled worker to support their permanent residency.
- AGC-8** Excerpts of the Government of Canada website re: Labour market impact assessment (LMIA) exemption codes - International Mobility Program.
- AGC-9** Officer Quick Reference Guide to Occupations.

THE WHOLE without costs, unless the present Application is contested.

Montréal, January 31, 2023

Attorney General of Canada

ATTORNEY GENERAL OF CANADA

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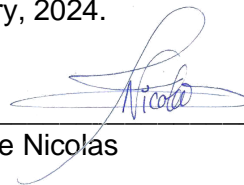
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AFFIDAVIT

I, the undersigned, **Isabelle Nicolas**, paralegal at the Department of Justice Canada, having my professional address at Guy-Favreau Complex, 200 René-Lévesque Blvd. East Tower, 9th Floor, Montreal, Quebec, H2Z 1X4, do solemnly declare:

1. I am a member of the legal team for the Attorney General Canada in this matter.
2. All the facts alleged in this Application are true.

AND I HAVE SIGNED by technological means, in the city of Brossard, in the province of Québec, this 31st day of January, 2024.



Isabelle Nicolas

Solemnly affirmed before me, by technological means, in the city of Saint-Rémi, in the province of Québec, this 31st day of January, 2024.

Anna Mrowczynski

Anna Mrowczynski No. 237706
Commissioner for Oaths for Québec
and for Outside Québec

NOTICE OF PRESENTATION

TO: DAVIES WARD PHILLIPS & VINEBERG LLP
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Mtre Jean-Philippe Groleau
Mtre Guillaume Charlebois
Mtre Alexandra Belley-McKinnon

Counsel for the Applicant

TAKE NOTICE that the foregoing *Application of the Attorney General of Canada for Leave to file relevant evidence* attached hereto, will be presented for adjudication before to the Honorable Justice Silvana Conte, sitting in and for the Judicial District of Montréal, at the Montréal Courthouse, situated at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, or virtually using the Courthouse Teams link, at a date to be determined by the Court of the Class Action Division.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 31, 2024

Attorney General of Canada

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O R I G I N A L

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