C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action Division)

NO: 500-06-001263-231

THE CLASS

and

ASSOCIATION FOR THE RIGHTS OF HOUSEHOLD AND FARM WORKERS

Representative Plaintiff

and

BYRON ALFREDO ACEVEDO TOBAR

Designated Member

v.

ATTORNEY GENERAL OF CANADA

Defendant

DEFENCE

(s. 170 of the *Code of Civil procedure*)

TABLE OF CONTENTS

OVERVIEW

1. As a sovereign country, Canada is entitled to determine who may enter its borders, and for what duration and purpose. The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) and its regulations serve that purpose.

2. Canada welcomes foreign nationals seeking to temporarily work in Canada to bolster its economy and fill temporary labour needs under the Act and its regulations. To ensure that these needs are adequately met, reliance on foreign nationals is predicated on the demonstration by an employer that they are unable to fill a position by relying on the Canadian labour market, or by the foreign national that they meet broader Canadian economic, social, and cultural goals.

3. Where an employer has identified a need for a temporary foreign worker to enter Canada, foreign nationals can apply for employment directly with the employer. Once provisionally hired by the employer, the foreign national submits their application for a work permit. If the work permit is issued, the foreign national is to work for the specific employer who demonstrated a labour need. The foreign national has the same labour rights as Canadian citizens or permanent residents,

including the ability to change employers. The provisions in the Regulations also protect their rights as temporary foreign workers in Canada.

4. The provisions challenged by the Representative Plaintiff, which came into force in 2002, implement these core principles.

5. Previous acts or regulations that have since been repealed cannot be relied upon by the Representative Plaintiff to support its allegations.

6. One of the objectives of ss. 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) (Regulations) is to use temporary immigration to support Canada's interests and economy by facilitating Canadian employers to access labour needs in case of shortages (Temporary Foreign Worker Program - TFWP) or for economical, social or cultural benefits (International Mobility Program - IMP), in a rational and tailored way.

7. These provisions do not violate the rights protected by s. 7 and s. 15 of the *Canadian Charter of Rights and Freedoms* (Charter).

8. In the alternative, any infringement is justified in a free and democratic society.

9. Moreover, while the claim encompasses all potential claims since 1982, all those prior to September 14, 2017, at the latest, are statute-barred.

IN RESPONSE TO THE ORIGINATING APPLICATION OF A CLASS ACTION (ORIGINATING APPLICATION), THE ATTORNEY GENERAL OF CANADA (CANADA) STATES THE FOLLOWING:

10. Canada denies the allegations of paragraphs 1 to 15 of the Originating Application.

11. With respect to the allegations of paragraphs 16 to 19 of the Originating Application, Canada refers to the authorization judgment dated September 13, 2024, and denies anything inconsistent therewith. Canada notes that with respect to paragraph 17 of the Originating Application, the Class was modified by the Court on May 14, 2025, as follows:

"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 authorized 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.

For clarity, subparagraph (b)(ii) includes (without limitation) accredited domestic workers employed in a personal capacity by certain foreign representatives, such as ambassadors, high commissioners, heads of international organizations, special representatives, or individuals occupying similar positions, but does not include individuals who were employed by a foreign State or other foreign entity to work at an embassy, a high commission, a consulate, a permanent delegation to a United Nationals agency, or a special representative office, and also does not include individuals employed by the United Nations, its agencies or an international organization of which Canada is a member".

12. Canada denies as drafted the allegations of paragraphs 20 to 43 of the Originating Application.

13. With respect to the allegations contained in paragraphs 44 to 66 of the Originating Application, Canada refers to the Act and the Regulations, denying anything inconsistent therewith. As for the policies, procedures and/or guidelines purportedly created for the application of the Act and Regulations, if these are challenged, they are non-binding and cannot fetter an officer's discretion under the Act and Regulations.

14. Canada denies as drafted the allegations contained in paragraph 67 of the Originating Application.

15. With respect to paragraph 68 of the Originating Application, Canada refers to ss. 124 and 125 of the Act, denying anything inconsistent therewith.

16. Canada denies the allegations contained in paragraphs 69 and 70 of the Originating Application.

17. Canada denies as drafted the allegations contained in paragraphs 71 to 74 of the Originating Application, adding that they are irrelevant to the issues to be decided.

18. Canada denies the allegations of paragraphs 75 to 88 of the Originating Application.

19. Canada has no knowledge of the allegations of paragraphs 89 to 139 of the Originating Application.

20. Canada denies the allegations of paragraphs 140 to 172 of the Originating Application.

21. Canada denies as drafted the allegations of paragraphs 173 to 182 of the Originating Application, adding that they are irrelevant to the issues to be decided.

22. Canada denies the allegations of paragraphs 183 and 184 of the Originating Application.

23. Canada denies as drafted the allegations of paragraphs 185 to 190 of the Originating Application and adds that exhibits P-7 to P-11 are inadmissible in evidence as they are covered by parliamentary privilege and that exhibits P-12 and P-13 are also inadmissible in evidence and therefore, cannot form the basis of the Representative Plaintiff's claim.

24. Canada denies the allegations contained in paragraph 191 of the Originating Application.

25. With respect to paragraphs 192 and 193 of the Originating Application, Canada refers to the *Regulations Amending the Immigration and Refugee Protection Regulations* (SOR/2019-148), denying anything inconsistent therewith.

26. Canada denies the allegations contained in paragraphs 194 to 199 of the Originating Application.

AND RECTIFYING THE FACTS, CANADA ADDS THE FOLLOWING:

I. INTRODUCTORY REMARKS

27. The Representative Plaintiff challenges the constitutionality of ss. 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 Regulations (Impugned Provisions) under s. 7 and s. 15 of the Charter. The

Representative Plaintiff asks for a declaration of unconstitutionality of the Impugned Provisions and pecuniary and non-pecuniary compensatory damages and punitive damages for each Class Members pursuant to paragraph 24(1) of the Charter.

28. Canadian immigration legislation and regulation is complex and has evolved considerably over time, adapting as Canadian society evolves. With respect to foreign workers, it has evolved to meet the needs of the Canadian labour market and support Canada's broader economic goals.

29. The Impugned Provisions form part of this large scheme. They are constitutionally valid and do not infringe the Charter.

30. Collectively, the objectives of the Act and of the Impugned Provisions under the Regulations are to:

- Facilitate the entry of foreign nationals into Canada for the purpose of work while protecting the health, safety and security of Canadians;

- Grant work permits to fill temporary labour market needs (under the TFWP) or help achieve broader economic, social, cultural and humanitarian goals or reciprocal benefits for Canada (under the IMP);

- Protect foreign workers on employer-specific work permits through a robust employer compliance regime and provide foreign workers with opportunities to become permanent residents; and

- With respect to paragraph 186(b) of the Regulations, Canada gives effect to the *Vienna Convention on Consular Relations*, the *Vienna Convention on Diplomatic Relations,* and the *Headquarters Agreement Between the Government of Canada and the International Civil Aviation Organization,* as further explained below.

31. The temporary foreign workers under an employer-specific work permit chose to apply for a work permit to come work in Canada. Once in Canada, they have rights and are protected. They can also look for other employment and/or apply for another

work permit while in Canada. They can stay in Canada until the end of their authorized stay, even if they cease working, as further detailed below.

32. The Impugned Provisions challenged by the Representative Plaintiff came into force starting in 2002. Previous acts or regulations that have since been repealed cannot be relied upon by the Representative Plaintiff to support their allegations.

33. Moreover, all potential claims before September 14, 2017, at the latest, are statute-barred by application of s. 32 of the *Crown Liability and Proceedings Act* (R.S.C., 1985, c-50).

II. IMMIGRATION LEGISLATION AND REGULATIONS

34. For the purposes of the period covered by the Class, and subject to Canada's position on the prescription and limitation bar that applies to the Claim, the present section describes the evolution of the broader legislative and regulatory context of the Impugned Provisions. The following description also covers other sections of the Regulations that, although not challenged by the Representative Plaintiff, form an integral part of the broader scheme.

35. On January 1, 1973, Canada introduced employment visa regulations requiring all persons who wish to work in Canada, other than Canadian citizens and landed immigrants, to have an employment visa.

36. In 1977, the *Immigration Act, 1976*, SC 1976-77, c. 52, s. 10 came into effect, as per **Exhibit D-1.**

37. The *Regulations Respecting Admission and Removal from Canada of Persons who are Not Canadian Citizens* were adopted in 1978 (SOR/1978-172), as per **Exhibit D-2**.

38. The current Act received royal assent on November 1, 2001. Section 3 of the Act came into force on June 28, 2002, as per **Exhibit D-3**.

39. The Regulations came into force on June 28, 2002, as per **Exhibit D-4**.

III. IMPUGNED PROVISIONS

40. The Impugned Provisions, reproduced in Annex A, are the following:

    (a) Paragraph 185(b) of the Regulations;

    (b) Paragraph 186(a) combined with ss. 187(1) and 187(3) of the Regulations;

    (c) Paragraph 186(b) of the Regulations;

    (d) Subparagraph 200(1)(c)(ii.1) combined with ss. 200(5) of the Regulations;

    (e) Subparagraph 200(1)(c)(iii) combined with s. 203 of the Regulations.

41. The Impugned Provisions are explained and contextualized in the next section by tracing the typical experience of a foreign national who wishes to work in Canada.

42. There is also an administrative context pertaining to the Impugned Provisions, reflected in policies, procedures, and guidelines.

IV. TYPICAL STEPS UNDERTAKEN BY A TEMPORARY FOREIGN WORKER TO WORK IN CANADA

43. Foreign nationals do not have an unqualified right to enter or remain in Canada.

44. Parliament has the right to adopt an immigration policy and to enact legislation prescribing the requirements under which non-citizens will be permitted to enter and remain in Canada.

45. The Act and the Regulations set out the requirements applicable to foreign nationals seeking entry to Canada, including temporary foreign workers.

46. Foreign nationals cannot work in Canada unless they are authorized to do so by a work permit or the Regulations (s. 30 of the Act; s. 196 of the Regulations).

47. A foreign national seeking a work permit must apply for the permit in accordance with s. 197-199 of the Regulations (before entry in Canada under s. 197, on entry under s. 198 or after entry under s. 199 of the Regulations) and must meet the requirements set out in s. 200 of the Regulations, as further detailed below.

48. The typical experience of a temporary foreign worker with a work permit will be illustrated by Group 1. The Impugned Provisions pertaining to this group are paragraph 185(b), subparagraph 200(1)(c)(ii.1) combined with s. 200(5) and subparagraph 200(1)(c)(iii) combined with s. 203 of the Regulations.

49. The circumstances under which a foreign national is authorized to work in Canada without a work permit are set out in s. 186 of the Regulations. The typical experience of a temporary foreign worker without a work permit will be illustrated by Group 2. The Impugned Provisions pertaining to this group are paragraphs 186(a) and (b) and paragraphs 187(1) and (3) of the Regulations.

a) Group 1 – employer-specific work permit under the TFWP or the IMP

50. Employer-specific work permits exist under the Temporary Foreign Worker Program (TFWP) for work that would fill a temporary labour shortage in Canada or under the International Mobility Program (IMP) for work that will provide a broader economic, cultural or other competitive advantages for Canada or reciprocal benefits for Canadians.

51. Section 200 of the Regulations outlines the requirements to be met for the issuance of such work permits. There are two types of work permits: those issued based on offered employment, and those that are not.

52. A foreign national who has been offered employment in Canada and is seeking a work permit must apply for that work permit under s. 200(1)(c)(ii.1) (IMP) or s. 200(1)(c)(iii) (TFWP) of the Regulations. Work permits issued under these provisions encompass a vast and heterogeneous group of individuals and types of employment and employment sectors. The work permits issued under these provisions require an offer of employment.

53. The issuance of a work permit under s. 200(1)(c)(iii) requires a positive Labour Market Impact Assessment (LMIA) in respect of that specific employment in accordance with s. 203 of the Regulations. The issuance of a work permit under

s. 200(1)(c)(ii.1) requires an offer of employment in respect of that specific employment in accordance with s. 209.11 of the Regulations.

54. For the employer to receive a positive LMIA, the requirements of s. 203(1)(a) to (g) of the Regulations must be met. Whether the employment of the foreign national will likely have a neutral or positive effect on the labour market in Canada is assessed notably on the factors outlined in s. 203(3) of the Regulations.

55. In reviewing a work permit application supported by a positive LMIA or by an offer of employment submitted in accordance with s. 209.11 of the Regulations, the officer must also be satisfied that the employment offer is genuine based on the factors outlined in s. 200(5) of the Regulations.

56. When a foreign national applies for a work permit associated with a positive LMIA, the officer matches the LMIA with the application and conducts an assessment of the offered employment (under s. 203 of the Regulations), and of the foreign national's eligibility (under s. 200 of the Regulations) to determine if a work permit should be issued. If the officer makes a favourable determination, a work permit is issued with a corresponding condition that the worker is authorized to work only for the specified employer who obtained the LMIA and offered the employment. When a foreign national applies for a work permit based on an offer of employment submitted in accordance with s. 209.11 of the Regulations, the offer is matched to the work permit application and the officer conducts an assessment of the offered employment under the applicable regulatory sections (s. 204, 205, or 207) and of the foreign national's eligibility (under s. 200 of the Regulations) to determine if a work permit should be issued. If the officer makes a favourable determination, a work permit is issued with a corresponding condition that the worker is authorized to work only for the specified employer who submitted the offer of employment in accordance with s 209.11 of the Regulations. They are known as employer-specific work permits.

57. A temporary foreign worker in Canada may apply to renew their work permit before their work permit expires if they have complied with all the conditions imposed on

their entry, as outlined in s. 201(1) of the Regulations. If at the time of the application for renewal the temporary foreign worker continues to meet the requirements of s. 200, the officer is required to renew the work permit, pursuant to s. 201(2) of the Regulations.

b) Group 2 – working in Canada without a work permit

58. Pursuant to s. 186 of the Regulations, foreign nationals are authorized to work in Canada without a work permit in specific circumstances, including as business visitors (s. 186(a), 187(1) and (3) of the Regulations) and as foreign representatives (excluded from the Class) and their domestic workers (s. 186(b) of the Regulations).

i. Business visitors under 186(a) and 187(1) and (3) of the Regulations

59. Section 186(a) and 187(1) and (3) of the Regulations define a business visitor as a foreign national who comes to Canada and is seeking to engage in international business activities in Canada *without* directly entering the Canadian labour market, as per **Exhibit D-5**. Such international business activities include, for example:

a. buying Canadian goods or services for a foreign business or government.

b. taking orders for goods or services.

c. going to meetings, conferences, conventions or trade fairs.

d. giving after-sales service as part of a warranty or sales agreement.

e. being trained by a Canadian parent company outside Canada.

f. training employees of a Canadian branch of a foreign company.

g. being trained by a Canadian company that has sold you equipment or service.

60. Business visitors usually stay in Canada for a few days or a few weeks to attend meetings or an event and can generally stay for up to 6 months.

61. Business visitors are visiting Canada in the context of their professional activities and depart Canada after their short stay.

62. Section 186(a), 187(1) and (3) of the Regulations pertaining to business visitors on its face do not engage Charter rights.

ii. Foreign representatives under 186(b) of the Regulations

63. Subsection 186(b) of the Regulations is used to allow accredited foreign representatives and their accredited foreign domestic workers to work without a work permit.

64. The Domestic Worker Accreditation Program (DWAP) is further described below.

V. PROGRAMS AVAILABLE FOR FOREIGN NATIONALS SEEKING TO WORK IN CANADA COVERED BY THE ORIGINATING APPLICATION

65. When a foreign national applies for a work permit, they must meet the requirements of one of the programs available.

66. Since 2014, there are two umbrella programs, namely the Temporary Foreign Worker Program (TFWP) administered by Employment and Social Development Canada (ESDC), Immigration, Refugees and Citizenship Canada (IRCC) and Canadian Border Services Agency (CBSA), and the International Mobility Program (IMP) administered by IRCC and CBSA.

67. There is also the Domestic Worker Accreditation Program (DWAP) administered by Global Affairs Canada (GAC). Section 186(b) of the Regulations authorizes workers in the program to work without a work permit. Workers who are exempt from the requirement to obtain a work permit pursuant to s. 186 are included in IRCC's IMP.

a) The Temporary Foreign Worker Program (TFWP)

68. The TFWP aims to address labour and skills shortages by enabling employers to meet their workforce needs on a temporary basis when no qualified Canadian citizens or permanent residents are available.

69. A foreign national seeking to work in Canada under the TFWP will typically apply for a work permit based on a positive LMIA in one of the following streams:

(i) High-Wage Stream: covers positions with a wage offered that at or above the provincial or territorial wage threshold, as per **Exhibit D-6**.

(ii) Low-Wage Stream: covers positions with a wage offered below the provincial or territorial wage threshold, as per **Exhibit D-7**. This stream now includes applications that were previously filed in the Caregiver program since 2014.

(iii) Primary Agriculture Stream: covers positions in primary agricultural work within the boundaries of a farm, nursery or greenhouse. The designated member Mr. Byron applied in this stream to work in Canada. The Primary Agriculture Stream includes four sub-streams: Seasonal Agricultural Worker Program (SAWP), Agricultural, Low-wage and High-wage substreams, as per **Exhibit D-8**.

The SAWP includes foreign nationals coming to Canada to work and operates under Memorandum of Understanding (MOUs) between Canada and Mexico, Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago, as per **Exhibit D-9 *en liasse*.**

(iv) Global Talent Stream: this stream was developed to help employers hire highly skilled temporary foreign workers for specialized positions where there is a demonstrated labour market demand, as per **Exhibit D-10**.

70. For all these streams, the issuance of a positive LMIA by ESDC is a prerequisite for the issuance of a work permit.

71. Key sectors covered by the TFWP are vast and include agriculture, food and seafood processing, construction, accommodation, and transportation.

b) The International Mobility Program (IMP)

72. The IMP aims to advance Canada's broad economic, social and cultural interests or other national interests, as provided under s. 25.2 of the Act and ss. 204 to 208 of the Regulations.

73. The IMP can generally be divided into seven (7) categories:

(i) Public policy considerations (s. 25.2 of the Act)

(ii) Agreements or arrangements (s. 204 of the Regulations):

- Canada-international agreements (para. 204(a));
- Provincial/territorial-international agreements (para. 204(b));
- Canada-provincial/territorial agreements (para. 204(c)); and
- Youth mobility (para. 204(d)).

(iii) Canadian interests (s. 205 of the Regulations):

- Significant benefit (para. 205(a)), including e.g. unique work situations, entrepreneurs or self-employer business owners;
- Reciprocal employment (para. 205(b)), including e.g. unique work situations, coaches and athletes, academic exchanges and performing arts;
- Designated by minister (para. 205(c)), including e.g. for research or the competitiveness of Canada's academic institutions or economy; and
- Charitable or religious work (para. 205(d)).

(iv) No other means of support (s. 206 of the Regulations);

(v) Permanent residence applicants in Canada (s. 207 of the Regulations);

(vi) Vulnerable workers (s. 207.1 of the Regulations); and

(vii) Humanitarian reasons (s. 208 of the Regulations).

As per **Exhibit D-11**.

74. The issuance of work permits in the IMP does not require an LMIA.

75. No positive LMIA is required in the IMP because of the program's focus on broader, economic, cultural or other competitive advantages for Canada, as well as on the reciprocal benefits enjoyed by Canadians and permanent residents.

76. Foreign nationals benefiting from a work permit under the IMP may be authorized to work for almost any employer, anywhere, in any type of work or be limited to a specific employer, occupation or location depending on the work permit category.

77. From the IMP, the Class only includes those individuals who are issued employer-specific work permits.

78. Most workers issued an employer-specific work permit under the IMP generally have higher education, are skilled and earn a higher wage.

c) The Domestic Worker Accreditation Program (DWAP)

79. The DWAP allows certain foreign representatives to employ a domestic worker who will live and work in their private household during the foreign representative's posting in Canada by their home government, as per **Exhibit D-12**.

80. The presence in Canada of domestic workers under the DWAP reflects Canada's decision to give effect to the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations* (Conventions), as per **Exhibit D-13**.

81. It also reflects Canada's decision to give effect to the *Headquarters Agreement Between the Government of Canada and the International Civil Aviation Organization*, as per **Exhibit D-14**.

82. These Conventions codify rules of customary international law relating to diplomatic privileges and immunities. Certain provisions are formally incorporated into domestic law via the *Foreign Missions and International Organizations Act* S.C. 1991, c.41.

83. When in Canada, domestic workers under the DWAP are required to enter into employment contracts with the accredited foreign representative that hires them. The purpose of domestic workers' employment under the DWAP' is to support that foreign representative during their posting. The types of jobs such domestic workers perform while in Canada are diverse.

84. The employment contracts between the foreign representative and the domestic worker are governed by provincial law and provincial labour standards, as well as other requirements prescribed by GAC. For example, GAC requires that foreign representatives hiring a domestic worker under the DWAP:

    (i) pay their employee by cheque or bank transfer to the employee's Canadian bank account (cash payments are prohibited);

    (ii) ensure that their employee opens a bank account within 30 days of arrival in Canada and provide the Office of Protocol of Canada proof that this has been done;

    (iii) produce complete, accurate and timely payroll, and provide a copy of this to the Office of Protocol on a responsive basis;

    (iv) pay up-front the transportation costs from their employee's country of current residence to Canada;

    (v) pay the transportation costs from Canada at the end of the posting or upon termination of the employment, whichever comes first; and

    (vi) pay the transportation costs when the domestic worker is required to attend any meetings, trainings or information session provided by GAC (these costs cannot be deducted from the employee's wages for attendance).

85. Domestic workers under the DWAP are not hired by Canada or Canadian employers. Rather, per the Conventions, they are employees of the foreign representative who hired them.

86. Contrary to what is alleged in the Originating Application, the DWAP was created so that Canada's diplomatic practices would align with international diplomatic law frameworks. The legal authority for the program flows from the royal prerogative on foreign affairs.

87. GAC's decision to allow domestic workers to be hired by diplomatic representatives without a work permit is within the Crown's authority under the royal prerogative over international affairs and consistent with customary international law, which forms part of the common law of Canada.

88. Subsection 186(b) of the Regulations allows accredited foreign representatives and their accredited foreign domestic workers to work without a work permit.

89. Subsection 186(b) of the Regulations does not prohibit accredited foreign domestic workers in diplomatic households from working in more than one household or requiring consent to change employer. This is a discretionary decision of GAC exercised under the royal prerogative and consistent with current diplomatic practice. It is reflected in the employment contract between the foreign domestic worker and the accredited foreign representative, as per **Exhibit D-15**.

90. Subsection 186(b) of the Regulations on its face does not engage Charter rights.

VI. THE IMPUGNED PROVISIONS DO NOT ENGAGE OR BREACH SECTIONS 7 AND 15 OF THE CHARTER

a) Historical laws are not determinative of the Charter claims

91. The Impugned Provisions must be assessed on their own, without having regard to prior legislative schemes.

92. Canada is not bound by past policy choices.

93. The relevant legislative and regulatory schemes for the purposes of Charter analysis in this case are those in force. Earlier legislation and regulations are not challenged by the Representative Plaintiff. Therefore, the Charter viability of previous schemes is not properly before the Court and should not colour the analysis.

94. Representative Plaintiff's allegations at paragraphs 38 to 43, 71 to 74 and 170 to 184, concerning the historical development of the SAWP in 1966, as well as earlier legislative provisions going as far back as after the Second World War in 1945, are irrelevant and should not be considered when assessing the constitutionality of the Impugned Provisions.

b) The Impugned Provisions do not engage or breach s. 7 of the Charter

95. The Representative Plaintiff has not shown that the Impugned Provisions engage the Class Members or the Designated Member's right to life, liberty or security of the person within the meaning of s. 7 of the Charter.

96. The right to life, liberty and security of the person encompasses fundamental life choices, not economic interests.

97. Section 7 does not impose a positive obligation on the State to ensure the enjoyment of life, liberty and security of the person.

98. Foreign nationals working in Canada benefit from the same labour rights as Canadian citizens or permanent residents, including the right to seek redress under federal and provincial law, to leave employment and to seek new employment.

99. The alleged power imbalance, if established, is not widespread and common to employer-specific workers of all skill levels, levels of education, types of occupation, provinces and territories, and employment sectors, as it will be demonstrated at trial.

1) The Designated Member's s. 7 rights are not engaged

100. The Impugned provisions did not deprive the Designated Member of his right to life, liberty or security of the person or interfere with this right to a degree that warrants at all Charter protection.

101. The Designated Member chose to come to work in Canada under employer-specific work permits and chose to return on six occasions, ultimately working with three different employers in the province of Quebec.

102. The harm allegedly suffered by the Designated Member is not the result of the employer-specific work permits, but rather the alleged conduct of his employers and colleagues.

103. Additionally, some of the Designated Member's allegations are overstated. For instance, the workload he alleges to have endured, as described in the Originating Application, is inaccurate in light of his testimony. He confirmed that the quotas referred to at paragraph 95 applied to the 9-person team he was a member of, not to him individually. The Designated Member was never expected to personally catch 40 000 chickens per day.

104. The Designated Member was able to explore other employment options while working for his employers in Canada and was also eligible to apply for another work permit from within Canada.

105. The Designated Member benefited from standard accommodation and working wages.

106. During his employment, the Designated Member also always benefited from appropriate health care services. Following his lower-back injury on September 13, 2015, the Designated member was promptly and adequately treated. During his leave and recovery, he continued receiving adequate medical treatment, including follow-up appointments, physiotherapy and ergotherapy, as per **Exhibit D-16 under seal**.

107. The Designated Member was supported by his employer during this time, who drove him to all his appointments and exams, as per **Exhibit D-17 *en liasse***.

108. Additionally, on or around December 8, 2015, the Designated member said that his morale was good, that he was satisfied of his work, and he had a good relationship with the employer and his colleagues and that he wanted to return to work as he thought he could already do his tasks, as per **Exhibit D-18 – under seal**.

109. The Designated Member's progressive return to work was ordered by his treating physician on February 29, 2016, and after he was evaluated by a doctor, he

continued to pursue physiotherapy and other treatment as prescribed by his treating physicians, as per **Exhibit D-16 – under seal**.

110. The Designated Member has not filed an application for an open-work permit for vulnerable workers (OWP-V) since this type of permit became available in 2019, nor did he apply for another work permit to work for another employer.

111. The Designated Member filed complaints to the *Commission des droits de la personne* which was dismissed*, Service Canada* which was withdrawn and *Commission des normes de l'équité, de la santé et de la sécurité du travail* (CNESST) which was refused verbally given the delays, as per **Exhibit D-19 *en liasse*** and as it will be demonstrated at trial.

112. The Designated Member has not faced any deportation or removal proceedings.

113. The Designated Member obtained his Canadian permanent residence in December 2022 and obtained his Canadian citizenship in December 2025.

114. The Designated Member's s. 7 of the Charter rights are not engaged.

2) No breach of the right to liberty of the Class Members

115. The right to liberty protects an irreducible sphere of personal autonomy within which individuals can make inherently private decisions without state intervention, insofar as those decisions involve fundamental choices that concern individual dignity and independence.

116. The scope of personal autonomy protected by the right to liberty is not synonymous with unlimited freedom.

117. Foreign nationals do not have an unqualified right to enter, live and work in Canada. They only have a conferred permission to do so in accordance with the Act and Regulations.

118. Paragraph 6(1) of the Charter recognizes and gives effect to these principles in providing that only citizens have the right to enter, remain in and leave Canada.

119. In sum, s. 7 does not protect the right to change or chose employers or pursue one's chosen means of generating income.

120. In any event, it should be noted that the Regulations provide mechanisms for employer-specific permit workers to change employment and/or employer. The employer-specific work permits scheme does not restrict foreign nationals' physical liberty and capacity to make fundamental choices or assert their legal rights.

121. The Impugned Provisions do not prevent foreign workers from resigning from the employer named in the permit. Choosing to resign from their employment does not jeopardize the ability of a temporary resident to remain in Canada so long as they are within their authorized period of stay.

122. Any foreign national who holds a valid work permit may apply for a new work permit while in Canada, pursuant to s. 199(a). Under this provision, foreign workers in Canada can apply for any type of work permit available under s. 200(1) of the Regulations.

123. A foreign worker with an employer-specific work permit can apply for a different job or take proactive steps to secure a new position. Prior to starting employment with a new employer, they are required to obtain a new work permit.

124. Foreign workers can apply for a new work permit at any time while in Canada. Under the *Changing Employers Temporary Public Policy* (CETPP), implemented by IRCC in May 2020 pursuant to s. 25.2 of the Act, a foreign worker can commence the new employment once they have submitted their application for the new or renewed work permit, and prior to its issuance, once their request under the CETPP is approved.

125. The Originating Application does not address nor challenge the applicable provisions of the Act and Regulations that govern the foreign national's period of authorized stay in Canada.

126. A foreign national's authorization to remain in Canada is not determined by their employment status. Work permits do not become invalid if employment is terminated prior to the expiry date stated on the permit. The foreign national's work permit

becomes invalid when it expires or when it is cancelled under s. 243.2 of the Regulations (s. 209 of the Regulations).

127. If their employment is terminated, a foreign worker can seek new employment and apply for a new work permit if previously under an employer-specific work permit from within Canada (s. 199(a)(b) of the Regulations).

128. Foreign nationals may also leave Canada at any time or by the end of their period of authorized stay.

129. The termination of a temporary foreign worker's employment does not entail loss of access to health coverage, nor does it affect their temporary resident status. It does not affect the immigration status of family members, nor does it lead to removal or trigger deportation of a temporary foreign worker along with their spouses and children.

130. Of the three situations in which a foreign national may lose temporary resident status set out in s. 47 of the Act, the only one relevant to this case is where their temporary resident status ends and they fail to leave Canada before the end of the authorized period. In that situation, a foreign national may be subject to removal proceedings (s. 47 of the Act).

131. Employer-specific work permits provide authorization for the foreign national to work in Canada. Access to health and social benefit programs depends on whether the applicant meets the specific benefit program criteria.

132. The voluntary action to come to Canada as a temporary foreign worker is not a fundamental choice relating to personal autonomy or liberty that engages s. 7.

133. Individuals of the Class were not deprived of their right to liberty through their voluntary participation in the Canadian temporary foreign worker programs.

3) No breach of the right to security of the Class Members

134. Any alleged harms, if established, are not caused by the Impugned Provisions themselves, but by individual employers' conduct. There is insufficient causal connection between the alleged harms and the Impugned Provisions.

135. The right to the security of the person consists of two components: protection of physical integrity and protection of psychological integrity.

136. Any alleged risk to the physical integrity of individuals of the Class is not a result of state action. The Representative Plaintiff has not established a causal connection between the alleged harms suffered by individuals of the Class and Canada's conduct. Any harm an individual of the Class may have suffered was caused by other factors, like employers' conduct.

137. Any alleged risk to the psychological integrity of individuals of the Class does not attain a standard recognized by s. 7 of the Charter.

138. The stress and inconvenience alleged by the Representative Plaintiff's fall short of engaging this right, which must be greater than the ordinary stresses and anxieties of a person of reasonable sensibility.

4) No breach of the right to life of the Class Members

139. The Impugned Provisions and the state action do not breach the right to life.

140. To the extent that the Class Member alleges that their workplace is unsafe, he/she is protected by all the standard workplace protections provided by law to all workers, such as employment and occupational safety standards.

5) No causal connection

141. The Impugned Provisions by themselves do not directly or indirectly cause, impact or increase the alleged damages of exploitation, abuse and human and labour rights

violations, based on the real link test attributed to the employers' abuses, when these are found.

6) Principles of fundamental justice

142. In the alternative, if the Impugned Provisions do deprive class members of their rights of life, liberty and/or security, they are consistent with the principles of fundamental justice alleged by the Representative Plaintiff.

143. The Impugned Provisions are not arbitrary or grossly disproportionate.

i. The Impugned Provisions are not arbitrary

144. A law is arbitrary only where there is no connection between the effect and the object of the law.

145. The objective of the Impugned Provisions, as per paragraphs 164 to 176 below, is generally, in a rational and tailored way, to use immigration to support Canada's interests and economy by facilitating Canadian employers to access temporary labour needs in case of shortages (TFWP) or for economical, social or cultural benefits (IMP).

146. The Impugned provisions also allow for various safety valves that are practical and accessible, as described in the next subsection.

ii. Canada's Impugned Provisions are not grossly disproportionate

147. The rule against gross disproportionality only applies in extreme cases. Such is not the case here. The inquiry compares a law's purpose with the negative effects on the rights of the claimants and asks whether the seriousness of the deprivation is totally out of proportion to the objective of the measure.

148. Employer-specific work permits' scheme in the Impugned Provisions is not grossly disproportionate. Various preventive and curative measures exist, including those contained in the OWP-V and also, among others, the possibility to leave and/or

change employer, voluntary departure from Canada, which are tailored to address the potential vulnerabilities alleged by the Representative Plaintiff.

c) The Impugned provisions do not engage or breach paragraph 15 (1) of the Charter

149. The Impugned Provisions do not engage the Class Members' right to equality guaranteed by paragraph 15(1) of the Charter.

150. The s. 15 analysis is highly contextual and must consider all relevant background to the claim at hand. Key context in the present claim is the long-recognized reality that non-citizens do not have an unqualified right to enter or remain in Canada.

1) No distinction based on an enumerated or analogous ground of discrimination

151. The Impugned Provisions apply equally to all temporary foreign workers, whatever their race, national or ethnic origin, or colour.

152. Nor do the Impugned Provisions create or have a disproportionate impact on Class Members on the basis of race, national or ethnic origin, or colour.

153. In adverse impact or indirect discrimination claims, the Representative Plaintiff must demonstrate a nexus between the impugned law or action and the alleged discriminatory impact. It is particularly important to distinguish between adverse impacts "caused" or "contributed to" by the impugned law and those which "exist independently of" the impugned law or state action.

154. The class of persons with employer-specific work permits is diverse, and there is no group against whom the Class Members can be compared to show a distinction based on an enumerated or analogous ground.

155. Employer-specific work permits are issued to foreign nationals if, and when, 1) employers demonstrate labour and/or skills shortages to meet their workforce needs and when no qualified Canadian citizens or permanent residents are available (TFWP) and 2) to support Canada's economic, social and cultural priorities (IMP).

156. Employer-specific work permits are also issued to foreign nationals based on international agreements negotiated between Canada and foreign countries:

- Canada–International Free Trade Agreements (R204(a)), as per **Exhibit D-20**;
- Canada–International Non-Trade Agreements (R204(a)), as per **Exhibit D-21**; and
- Memorandums of understanding (MOUs) between Canada and each of Mexico, Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago, as per **Exhibit D-9 *en liasse* above**.

157. The presence of foreign workers in Canada from certain countries is the result of global migration trends and international agreements, not discrimination based on a prohibited ground. Canada offers immigration programs, and participation depends on the interest of foreign states and their citizens.

158. If there exists a distinction in the treatment of Class Members, which is expressly denied, it would solely based on immigration status or employment status, which is not a recognized protected ground under paragraph 15(1) of the Charter.

2) The distinction, if any, is not discriminatory and it does not reinforce, perpetuate, or exacerbate a disadvantage

159. There is no evidence that the Impugned Provisions and employer-specific work permits reinforce, perpetuate, or exacerbate a disadvantage specific to temporary foreign workers based on an alleged ground.

160. Class Members have not suffered any disadvantage that is attributable to their race, national or ethnic origin, or colour. Their situation has not worsened because they obtained an employer-specific work permit.

161. On the contrary, Class Members generally gain a positive experience from working in Canada for a specific employer.

162. The Designated Member is an example of that. He returned to work in Canada through the TFWP various times and eventually obtained permanent residency in Canada and is now a Canadian citizen.

163. As noted, Canada has the power to adopt an immigration policy and to enact legislation prescribing the conditions under which foreign nationals will be permitted to enter and remain in Canada. Foreign nationals do not have an unqualified right to enter or remain in Canada. Canada does not have a positive obligation to remedy global social inequalities that may already exist. The alleged disadvantage, if any, does not result from the Impugned Provisions, but from other existing social, political, and economic factors.

VII. IN THE ALTERNATIVE, ANY LIMITATION ON CHARTER RIGHTS ARE JUSTIFIED UNDER SECTION 1 OF THE CHARTER

a) The objectives of the Impugned Provisions are pressing and substantial

164. The Impugned Provisions form part of a broad and comprehensive legislative and regulatory scheme.

165. The overarching objectives of the Act have remained largely unchanged through time. They are enumerated at s. 3(1) of the Act. These broad objectives are relevant to determine the objectives of the Impugned Provisions found in the Regulations, as per **Exhibit D-22**.

166. These overarching objectives are:

> (a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
>
> (b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;
>
> (b.1) to support and assist the development of minority official languages communities in Canada;
>
> (c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;
>
> (d) to see that families are reunited in Canada;

(e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

(f.1) to maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system;

(g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

(h) to protect public health and safety and to maintain the security of Canadian society.

(i) to promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons who are criminals or security risks;

(j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

167. Under s. 3(3), the Act and Regulations are to be construed and applied in a manner that:

(a) furthers the domestic and international interests of Canada;

(b) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;

(c) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;

(d) ensures that decisions taken under this Act are consistent with the Charter, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;

(e) supports the commitment of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and

(f) complies with international human rights instruments to which Canada is signatory.

168. While the Impugned Provisions apply equally to the TFWP and the IMP, both programs have their own specific objectives, in accordance with the overarching objectives of the Act.

1) The objectives of the TFWP

169. Some of the TFWP's objectives are to:

a) assist Canadian employers in recruiting temporarily qualified workers for whom there is an immediate specific demand in Canada for positions that cannot be filled by Canadians or permanent residents of Canada;
b) protect the Canadian labour market by ensuring that employment opportunities remain available to Canadians first;
c) provide an effective system to keep track of temporary foreign workers and ensure their protection.

170. For example, the recruitment of agricultural workers satisfies an urgent seasonal requirement of Canadian farmers, which, if unmet, could impair Canada's agricultural or industrial productivity.

2) The objectives of the IMP

171. The IMP aims to advance Canada's broader economic, social, cultural and humanitarian objectives, and reciprocal opportunities for Canadians.

172. It is designed to support Canada's interests through the issuance of temporary work permits with specialized skills or in specific circumstances, when they are deemed to be of strategic interest to Canada.

3) The objectives of the DWAP

173. As mentioned above, the DWAP's objective is to facilitate diplomatic relations with countries having representatives posted to Canada and thus allow certain foreign representatives to employ a domestic worker in their household while posted in Canada.

4) Conclusion on the objectives of the Impugned Provisions

174. The Impugned Provisions through the TFWP and the IMP, provide crucial support for Canada's economy. Their primary objective is to ensure that Canada's economy remains viable under two programs with complementary purposes.

175. While the TFWP's labour market benefits are more easily quantifiable (i.e. number of job vacancies filled), the IMP provides more intangible benefits to Canadians such as providing Canadian employers with access to top international talent, including to help address the shortages of doctors in rural areas of Canada.

176. The objectives described above are not exhaustive and will be more fully developed at trial. They are pressing and substantial. Their purpose is to control who enters Canada, the reason for their stay and their duration. It also ensures that the Canadian economy can rely on temporary immigration to fill work needs to develop and maintain a prosperous economy.

b) The Impugned Provisions are proportionate to attain their objectives

1) The Impugned Provisions are rationally connected to their object

177. Through the challenge of the Impugned Provisions, the Representative Plaintiff is contesting Canada's decision to issue employer-specific work permits to foreign nationals applying for work in the TFWP and the IMP.

178. The employer-specific work permits' scheme preserves the integrity of the Canadian immigration system and the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada. The integrity of the immigration system generally refers to the system's ability to operate fairly, efficiently, and without fraud or abuse.

179. For the TFWP, through the LMIA process, each job offer is individually assessed for its impact on the labour market in Canada, as per **Exhibit D-23 *en liasse***. The work permit is employer-specific because it is the specific employer who must demonstrate the need for the temporary foreign worker in Canada.

180. Employer-specific work permits are an important mechanism by which Canada not only maintains oversight over the integrity of its worker programs, but also ensures that employers meet labour standards, and that Canadians and permanent residents are given first priority for job opportunities, in the context of the TFWP, as per **Exhibit D-23 *en liasse***.

181. Employer-specific work permits also enable inspections of employers for compliance with regulatory conditions that serve to protect foreign workers. The named employers become subject to the conditions imposed under Division 4 of the Regulations, during the period of employment for which the work permit is issued.

182. For work permits issued under s. 200(1)(c)(iii) of the Regulations, s. 209.3(1) of the Regulations imposes a list of conditions on the employer who made the offer of employment associated with the work permit application. For the IMP, the work permit is issued under s. 200(1)(c)(ii.1) and conditions are set out in s. 209.2(1) of the Regulations.

183. Division 6 of Part 11 of the Regulations sets out an administrative monetary penalties regime and other consequences to employers who fail to comply with conditions imposed under s. 209.2(1) and s. 209.3(1) of the Regulations. Enforcement action under this regime can include warnings, administrative monetary penalties, ineligibility to hire foreign workers, and publication of information about the non-compliant employer on a Government of Canada website.

184. Section 207.1 of the Regulations sets out the requirements which, if met, can support the issuance of an OWP-V, which does not require an offer of employment under s. 200(1)(c)(ii) of the Regulations. Section 207.1(1) provides that a work permit may be issued under s. 200 where there are reasonable grounds to believe that the foreign national with a work permit issued under ss. 200(1)(c)(ii.1) or

200(1)(c)(iii), or a foreign national who has applied for a renewal of that permit and is authorized to work without a permit while the application is being processed, is experiencing abuse or at risk of experiencing abuse in the context of their employment in Canada.

185. In addition to statutory obligations, Canada has implemented various initiatives for the protection of foreign workers that include the operation of a confidential tip line, an online reporting tool, and publication of information on worker protection.

186. Canada also supports foreign workers through the Migrant Worker Support Program, which provides funding to community-based organizations across Canada that deliver services and supports to foreign workers to help them better understand and exercise their rights.

187. For the TFWP, approving temporary foreign workers to work in specified positions, for which there has been an assessment, and specifying the employer with which they must work, to whom conditions apply during the period of employment of the temporary foreign workers, seeks to protect the Canadian labour market, as per **Exhibit D-23 *en liasse***.

2) The Impugned Provisions minimally impair the Class members' rights, if at all

188. The Impugned Provisions are minimally impairing.

189. They create a level of assurance of employment to foreign nationals upon their entry in Canada.

190. They provide a full compliance regime, including for instance inspections, that protects temporary foreign workers and ensure they benefit from working conditions that are the same as those provided to Canadians or permanent residents.

191. They also provide remedies and reasonable tools, including to temporary foreign workers facing difficulties or wanting to change employers.

192. Many reasons can lead a temporary foreign worker to change employer, not only alleged discrimination or abuse, including taking on a new role with another employer, lay-offs, conflict or incompatibility within the workplace or seeking a professional growth opportunity with a different employer. The circumstances alleged in the Originating Application rely on experiences that do not reflect the actual reality faced by temporary foreign workers in Canada.

193. Parliament's choice to allow foreign nationals to work in the TFWP and the IMP by issuing employer-specific work permits minimally impairs the workers' rights.

194. Issuing open work permits to temporary foreign workers where a Canadian employer has identified a specific need for the temporary foreign worker would undermine the employer's ability to fulfill the need.

195. Open work permits do not guarantee employment to foreign nationals prior to their entry into Canada. Once in Canada, foreign nationals would need to seek employment, competing with Canadians and permanent residents in areas where there may not be work shortages. They may remain unemployed. This would be contrary to the overarching objective of the Act that temporary foreign workers are meant to fill shortages in the Canadian workforce (TFWP) and/or advance Canada's broad economic and cultural national interests (IMP) and are expected to return in their country of origin at the end of their authorized stay.

196. Open work permits do not allow Canada to determine where the workforce is located within its territory, which is contrary to the Act's overarching objectives to ensure the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada. Issuing open work permits for TFWP and all IMP applicants would prevent Canada from addressing the labour needs in particular industries that these programs are intended to address.

197. The issuance of open work permits would not provide the additional protections offered by employer-specific work permits. While open work permits may allow foreign nationals to easily change employers, they provide no oversight to assess

whether employers are complying with program conditions, including requirements surrounding hiring, wages, working conditions and housing.

198. Canada also chose to proceed by regulation rather than by including the Impugned Provision in the Act, with a view of facilitating rapid changes responding to changes in Canadian society and economic markets and the needs of the temporary foreign workers.

3) Final Balancing: the beneficial effects outweigh the deleterious effects

199. Requiring that foreign nationals wishing to work in Canada be issued an employer-specific work permit contingent upon a specific need from an employer and providing for the issuance of open work permits in particular circumstances ensures an equilibrium is achieved among the varied objectives of Canada's immigration system, which include preserving the integrity of the system, developing a strong and prosperous Canadian economy, and facilitating the entry of temporary foreign workers and allowing for their movement throughout Canada.

200. Any negative effects suffered by the Class Members are outweighed by the benefits of the Impugned Provisions.

201. Eliminating employer-specific work permits in favour of open work permits in every case would not reduce the alleged abuse and exploitation.

VIII. NO DAMAGES WARRANTED UNDER PARAGRAPH 24(1) OF THE CHARTER

202. In the alternative, if there is a breach of s. 7 and/or 15 of the Charter that is not saved by s. 1 of the Charter, which is not admitted but expressly denied, the appropriate and just remedy is a declaration of invalidity under paragraph 52(1) of the *Constitution Act, 1982*.

203. An individual remedy under paragraph 24(1) of the Charter (such as damages) will rarely be available in conjunction with a remedy under paragraph 52(1) of the *Constitution Act, 1982* (such as a declaration of invalidity). Ordinarily, a declaration

of invalidity will be the end of the matter and there is no remedy available under paragraph 24(1) of the Charter.

204. The Representative Plaintiff has not established any basis for an award of damages under paragraph 24(1) of the Charter.

205. Damages would not be a just and appropriate remedy.

206. Damages under paragraph 24(1) of the Charter may only be awarded if it is established that the legislation or subordinate legislation was clearly unconstitutional, or that its enactment was in bad faith or an abuse of power. Canada benefits from a relative immunity when damages are sought because of the exercise of its law-making power. This immunity applies when it enacts legislation and subordinate legislation that is subsequently declared unconstitutional.

207. The Impugned Provisions were not clearly unconstitutional at the time of their enactment. Canada did not enact them in an act of bad faith or as a result of an abuse of power.

208. Moreover, the Originating Application fails to establish that the provisions related to employer-specific work permits in force starting April 17, 1982, were, at the time of their enactment, clearly unconstitutional or enacted in bad faith or an abuse of power.

209. The estates of the Class Members are not entitled to damages under s. 24 of the Charter.

IX. PARLIAMENTARY PRIVILEGE

210. The Representative Plaintiff relies on Standing Committee Reports of the Parliament of Canada filed under Exhibits P-7 to P-11 to establish “evidence of abuse” of migrant workers, the existence of calls for the elimination of employer-specific work permits, and a claim in damages under paragraph 24(1) of the Charter.

211. Canada objects to the admissibility into evidence of these documents as they are subject to parliamentary privilege (*Constitution Act, 1867,* s. 18; *Parliament of Canada Act*, s. 4 and 5).

X. MOREOVER, A LARGE PART OF THE CLAIM IS STATUTE BARRED

a) Prescription and limitation period

212. A large part of the claim is statute barred.

213. The prescription and limitation period to claim damages under s. 24(1) of the Charter regarding the adoption of the Impugned Provisions is set out by s. 32 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50.

214. The Application for the Authorization to Institute a class action was filed on September 14, 2023.

215. As such, the class period cannot have begun prior to September 14, 2017 at the latest.

b) Impossibility to act

216. There are no allegations in the Originating Application pertaining to the impossibility to act of the Representative Plaintiff, Designated Member and/or Class Members.

217. There are no common circumstances for the Class Members relevant to the determination of whether the prescription or limitation period began to run.

218. The Representative Plaintiff, the Class members and the Designated Member were not in the impossibility to act and were capable to act much earlier than September 13, 2023.

219. The Representative Plaintiff even indicated its intent to institute the proceedings on June 10, 2013, as it appears from **Exhibit D-24**.

XI. ALTERNATIVELY, ANY DECLARATION OF INVALIDITY SHOULD BE SUSPENDED

220. If the Impugned Provisions are declared invalid under paragraph 52(1) of the *Constitution Act*, 1982, this declaration should be suspended for a period of two years to allow the Government of Canada to enact legislative and regulatory changes.

221. An immediate declaration of invalidity would endanger compelling public interests.

222. If the Impugned Provisions are immediately struck, there would be no regulatory link for the compliance regime applicable to all employers, rendering that regime inoperable.

223. There would be no work permit pathways for many occupations that Canada relies on for food security, to fill labour shortages, or to provide a broader social, economic or cultural benefit to Canada (including attraction of highly skilled workers to advance certain interests/projects). This would have significant impacts on economy/labour market, productivity, and quality of life in Canada.

224. In the case of ss. 186b) of the Regulations, an immediate declaration of invalidity could have an important impact on Canada's international and diplomatic relations. It would namely require that all accredited diplomats, consular officers, and other staff who perform core diplomatic duties obtain work permits. This would create a severe internal administrative burden that could paralyze foreign missions in Canada. In addition, embassies and consulates would not be able to perform basic tasks such as issuing passports, supporting citizens, or conducting political and trade work until work permits have been approved.

XII. CONCLUSION

225. The Impugned Provisions do not violate the Charter rights under s. 7 and paragraph 15(1).

226. If there is any violation, it is saved by s. 1 of the Charter in a free and democratic society.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS the Originating Application of a Class Action;

DISMISS the claims for pecuniary and non-pecuniary compensatory damages and punitive damages pursuant to paragraph 24 (1) of the Charter;

DISMISS the claim for collective recovery;

DISMISS the claim for individual liquidation.

THE WHOLE, WITH COSTS.

MONTREAL, **February 13**, **2026**

Attorney General of Canada

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Quebec Regional Office
200 René-Lévesque Blvd. West
East Tower, 9th Floor
Montréal (Québec) H2Z 1X4
Fax: (514) 496-7876
Telephone: (514) 629-6794
Notification by a technological means:
NotificationPGC-AGC.Civil@justice.gc.ca

Per: Mariève Sirois-Vaillancourt
Telephone: 514-629-6794
Marieve.sirois-vaillancourt@justice.gc.ca
Per: Émilie Tremblay
Telephone: 514-463-9332
emilie.tremblay@justice.gc.ca
Per: Kim Nguyen
Telephone: 438-596-6817
kim.nguyen@justice.gc.ca
Per: Sean Doyle
Telephone: 438-341-6650
sean.doyle@justice.gc.ca
Per: Maria Rodriguez
Telephone: 514-214-8278
maria.rodriguez2@justice.gc.ca

Counsel for the Defendant

ANNEX A OF THE DEFENCE

"IMPUGNED PROVISIONS"

The Impugned Provisions are the following:

(a) Paragraph 185(b) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (Regulations);

(b) Paragraph 186(a) combined with subsections 187(1) and 187(3) of the Regulations;

(c) Paragraph 186(b) of the Regulations;

(d) Subparagraph 200(1)(c)(ii.1) combined with subsection 200(5) of the Regulations;

(e) Subparagraph 200(1)(c)(iii) combined with section 203 of the Regulations.

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
Paragraph 185(b) of the Regulations; **185. Specific conditions** – 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, **(ii.1)** the duration of the work for any one employer, **(iii)** the location of the work,	**Paragraphe 185(b) du Règlement;** **185. Conditions particulières** – Les conditions particulières ci-après peuvent être imposées, modifiées ou levées par l'agent à l'égard du résident temporaire : (…) **b)** l'exercice d'un travail au Canada, ou son interdiction, et notamment : **(i)** le genre de travail, **(ii)** l'employeur, **(ii.1)** la période de travail par employeur, **(iii)** le lieu de travail, **(iv)** les modalités de temps de celui-ci,

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
(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;	**(v)** dans le cas d'un membre d'équipage, le délai à l'intérieur duquel il doit se rendre au moyen de transport;
Paragraph 186(a) combined with subsections 187(1) and 187(3) of the Regulations; **186. No permit required** – 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) Business visitors** – 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) Factors** – 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.	**Paragraphe 186(a) combiné aux paragraphes 187(1) et 187(3) du Règlement ;** **186. Permis non exigé** – L'étranger peut travailler au Canada sans permis de travail : **a)** à titre de visiteur commercial au Canada au sens de l'article 187; (…) **187. (1) Visiteur commercial au Canada** – Pour l'application de l'alinéa 186a), est un visiteur commercial au Canada l'étranger visé au paragraphe (2) ou celui qui cherche à participer à des activités commerciales internationales au Canada sans s'intégrer directement au marché du travail au Canada. (…) **(3) Facteurs** – Pour l'application du paragraphe (1), l'étranger cherche à participer à des activités commerciales internationales au Canada sans s'intégrer directement au marché du travail au Canada si, à la fois : **a)** la principale source de rémunération des activités commerciales se situe à l'extérieur du Canada; **b)** le principal établissement de l'étranger et le lieu où il réalise ses bénéfices demeurent principalement à l'extérieur du Canada.
Paragraph 186(b) of the Regulations; **186. No permit required** – A foreign national may	**Paragraphe 186(b) du Règlement ;** **186. Permis non exigé** – L'étranger peut travailler

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
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;	au Canada sans permis de travail : (…) **b)** à titre de représentant étranger dûment accrédité par le ministère des Affaires étrangères et du Commerce international, se trouvant au Canada dans le cadre de fonctions officielles en tant qu'agent diplomatique, fonctionnaire consulaire, représentant ou fonctionnaire d'un pays étranger, des Nations Unies ou de l'un de ses organismes ou de tout autre organisme international dont le Canada est membre;
Subparagraph 200(1)(c)(ii.1) combined with subsection 200(5); **200. (1) Work permits** – 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) Genuineness of job offer** – A determination of whether an offer of employment is genuine shall be based on the following factors:	**Sous-alinéa 200(1)c)(ii.1) combiné au paragraphe 200(5) ;** **200. (1) Permis de travail – demande préalable à l'entrée du Canada** – Sous réserve des paragraphes (2) et (3), et d l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis : (…) **c)** il se trouve dans l'une des situations suivantes : (…) **(ii.1)** il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5), (…) **(5) Authenticité de l'offre d'emploi** – L'évaluation

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
(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.	de l'authenticité de l'offre d'emploi est fondée sur les facteurs suivants : **a)** l'offre est présentée par un employeur véritablement actif dans l'entreprise à l'égard de laquelle elle est faite, sauf si elle vise un emploi d'aide familial; **b)** l'offre correspond aux besoins légitimes en main-d'oeuvre de l'employeur; **c)** l'employeur peut raisonnablement respecter les conditions de l'offre; **d)** l'employeur – ou toute personne qui recrute l'étranger en son nom – s'est conformé aux lois et aux règlements fédéraux et provinciaux régissant le travail ou le recrutement de main-d'oeuvre, y compris d'étrangers, dans la province où il est prévu que l'étranger travaillera.
Subparagraph 200(1)(c)(iii) combined with section 203 of the Regulations. **200. (1) Work permits** – 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 (…)	**Sous-alinéa 200(1)c)(iii) combiné à l'article 203 du Règlement.** **200. (1) Permis de travail – demande préalable à l'entrée du Canada** – Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis : (…) **c)** il se trouve dans l'une des situations suivantes : (…) **(iii)** il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à g);

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
203. (1) Assessment of employment offered – 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	**203. (1) Appréciation de l'emploi offert** – Sur présentation d'une demande de permis de travail conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)c)(i) à (ii.1), l'agent décide, en se fondant sur l'évaluation du ministère de l'Emploi et du Développement social, sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et sur tout autre renseignement pertinent, si, à la fois : **a)** l'offre d'emploi est authentique conformément au paragraphe 200(5); **b)** le travail de l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien; **c)** la délivrance du permis de travail respecte les conditions prévues dans l'accord fédéral-provincial applicable aux employeurs qui embauchent des travailleurs étrangers; **d)** s'agissant d'un étranger qui cherche à entrer au Canada à titre d'aide familial : **(i)** il habitera dans une résidence privée au Canada et y fournira sans supervision des soins à un enfant ou à une personne âgée ou handicapée, **(ii)** son employeur lui fournira, dans la résidence, un logement privé meublé qui est adéquat, **(iii)** son employeur possède les ressources financières suffisantes pour lui verser le salaire offert; **e)** l'employeur : **(i)** n'a pas, directement ou indirectement, perçu

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
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,	ni recouvré de l'étranger les frais prévus au paragraphe 315.2(1) ou les frais liés au recrutement de celui-ci, à l'exception des frais prévus aux paragraphes 296(1), 298(1) et 299(1) ou des frais liés au recrutement de l'étranger dont la perception ou le recouvrement est autorisé en vertu d'un accord international conclu entre le Canada et un ou plusieurs pays concernant les travailleurs agricoles saisonniers,
(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;	**(ii)** a veillé à ce que toute personne qui recrute l'étranger en son nom n'a pas perçu ni recouvré, directement ou indirectement, de l'étranger les frais prévus au paragraphe 315.2(1) ou les frais liés au recrutement de celui-ci, à l'exception des frais prévus aux paragraphes 296(1), 298(1) et 299(1) ou des frais liés au recrutement de l'étranger dont la perception ou le recouvrement est autorisé en vertu d'un accord international conclu entre le Canada et un ou plusieurs pays concernant les travailleurs agricoles saisonniers;
(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	**f)** dans le cas où l'employeur n'a pas employé d'étranger visé au sous-alinéa 200(1)c)(iii) au cours des six ans précédant la date de la réception, par le ministère de l'Emploi et du Développement social, de la demande d'évaluation faite au titre du paragraphe (2), au cours de la période commençant deux ans précédant la date de la réception de la demande d'évaluation et se terminant à la date à laquelle l'évaluation est fournie pendant laquelle il a été véritablement actif dans l'entreprise à l'égard de laquelle il a fourni des renseignements au titre du présent paragraphe et du paragraphe (2.1), l'employeur :
(i) made reasonable efforts to provide a workplace that is free of abuse, and	**(i)** a fait des efforts raisonnables pour fournir un lieu de travail exempt de violence,

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
(ii) was not an affiliate of an employer referred to in subparagraphs 200(3)(h)(ii) or (iii); and	**(ii)** n'était pas une filiale d'un employeur visé aux sous-alinéas 200(3)h)(ii) ou (iii);
(g) the employer committed	**g)** l'employeur s'est engagé :
(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	**(i)** à conclure avec l'étranger, au plus tard le premier jour de travail de l'étranger qui est pendant la période d'emploi pour laquelle le permis de travail est délivré à celui-ci, un contrat d'emploi qui, à la fois :
(A) provides for employment in the same occupation and the same wages and working conditions as those set out in the offer of employment,	**(A)** vise un emploi dans la même profession ainsi que le même salaire et les mêmes conditions de travail que ceux qui sont précisés dans l'offre,
(B) is drafted in the foreign national's chosen official language of Canada, and	**(B)** est rédigé dans la langue officielle du Canada choisie par l'étranger,
(C) is signed by both the employer and the foreign national,	**(C)** est signé par l'employeur et l'étranger,
(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),	**(ii)** à fournir à l'étranger, au plus tard le premier jour de travail de l'étranger qui est pendant la période d'emploi pour laquelle le permis de travail est délivré à celui-ci, une copie du contrat d'emploi visé au sous-alinéa (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	**(iii)** à ne pas, directement ou indirectement, percevoir ni recouvrer de l'étranger les frais prévus au paragraphe 315.2(1) ou les frais liés au recrutement de celui-ci, à l'exception des frais prévus aux paragraphes 296(1), 298(1) et 299(1) ou des frais liés au recrutement de l'étranger dont la perception ou le recouvrement est autorisé en vertu d'un accord international conclu entre le Canada et un ou plusieurs pays concernant les travailleurs agricoles saisonniers,
	(iv) à veiller à ce que toute personne qui recrute l'étranger en son nom ne perçoive ni ne recouvre, directement ou indirectement, de

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
(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.	l'étranger les frais prévus au paragraphe 315.2(1) ou les frais liés au recrutement de celui-ci, à l'exception des frais prévus aux paragraphes 296(1), 298(1) et 299(1) ou des frais liés au recrutement de l'étranger dont la perception ou le recouvrement est autorisé en vertu d'un accord international conclu entre le Canada et un ou plusieurs pays concernant les travailleurs agricoles saisonniers.
Effect on labour market — language **(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).	**Effets sur le marché du travail — langue** **(1.01)** Pour l'application de l'alinéa(1)b), le travail de l'étranger n'est pas susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien lorsque l'offre d'emploi prévoit comme exigence d'emploi l'habileté à communiquer dans une langue autre que l'anglais ou le français, sauf dans l'un ou l'autre des cas suivants : **a)** l'employeur ou le groupe d'employeurs démontre que l'habileté à communiquer dans cette autre langue constitue une exigence d'emploi véritable pour accomplir les tâches reliées au travail; **b)** l'offre d'emploi est présentée à l'égard d'un travail visé par un accord international conclu entre le Canada et un ou plusieurs pays concernant les travailleurs agricoles saisonniers; **c)** l'offre d'emploi est présentée à l'égard d'un autre travail dans le secteur de l'agriculture primaire, au sens du paragraphe 315.2(4).
Effect on labour market **(1.1)** For the purposes of paragraph (1)(b), the employment of the foreign national is unlikely to have	**Effets sur le marché du travail** **(1.1)** Pour l'application de l'alinéa (1)b), le travail de l'étranger n'est pas susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
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. **Assessment on request** **(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). **Offer of employment** **(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. **Suspension of processing of requests** **(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	lorsque, selon le cas : **a)** le salaire prévu dans l'offre d'emploi ne correspond pas aux taux de salaire courants pour la profession en cause; **b)** le travail de l'étranger est susceptible de nuire au règlement d'un conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit. **Évaluation sur demande** **(2)** Sous réserve du paragraphe (2.02), le ministère de l'Emploi et du Développement social fournit l'évaluation visée au paragraphe (1) à la demande de l'agent ou de tout employeur ou groupe d'employeurs, à l'exception de l'employeur qui, selon le cas : **a)** offre, sur une base régulière, des activités de danse nue ou érotique, des services d'escorte ou des massages érotiques; **b)** est visé aux sous-alinéas 200(3)h)(ii) ou (iii). **Offre d'emploi** **(2.01)** La demande peut être faite à l'égard : **a)** soit de l'offre d'emploi présentée à l'étranger; **b)** soit d'offres d'emploi qu'un employeur ou un groupe d'employeurs a présentées ou envisage de présenter. **Suspension du traitement des demandes** **(2.02)** Si l'une des circonstances prévues à l'article 209.5 se présente, le traitement de la demande

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
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. **Basis of Assessment** **(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. **Factors — effect on labour market** **(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	d'évaluation visée au paragraphe (2) est suspendu tant que le ministère de l'Emploi et du Développement social a des motifs de soupçonner, à la fois : **a)** que l'employeur ayant fait la demande ne respecte pas ou n'a pas respecté l'une des conditions prévues au sous-alinéas 209.3(1)a)(i), 209.3(1)a)(iv) quant aux conditions de travail visées à ce sous-alinéa, 209.3(1)a)(v) ou 209.3(1)a)(vii) à 209.3(1)a)(xii); **b)** que le non-respect par l'employeur de l'une des conditions visées à l'alinéa a) entraînerait, advenant la délivrance du permis de travail, un sérieux risque pour la santé ou la sécurité de l'étranger. **Fondement de l'évaluation** **(2.1)** Dans l'évaluation qu'il fournit au sujet des éléments prévus aux alinéas (1)a) à g), le ministère de l'Emploi et du Développement social se fonde sur tout renseignement fourni par l'employeur qui présente l'offre d'emploi et sur tout autre renseignement pertinent. **Facteurs – effets sur le marché du travail** **(3)** Le ministère de l'Emploi et du Développement social fonde son évaluation relative aux éléments visés à l'alinéa (1)b) sur les facteurs ci-après, sauf dans les cas où le travail de l'étranger n'est pas susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien en raison de l'application des paragraphes (1.01) ou (1.1) : **a)** le travail de l'étranger entraînera ou est susceptible d'entraîner la création directe ou le maintien d'emplois pour des citoyens canadiens ou des résidents permanents; **b)** le travail de l'étranger entraînera ou est

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
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). **Period of validity of assessment** **(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). **Province of Quebec** **(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.	susceptible d'entraîner le développement ou le transfert de compétences ou de connaissances au profit des citoyens canadiens ou des résidents permanents; **c)** le travail de l'étranger est susceptible de résorber une pénurie de main-d'oeuvre; **d)** les conditions de travail qui sont offertes à l'étranger satisfont aux normes canadiennes généralement acceptées; **e)** l'employeur embauchera ou formera des citoyens canadiens ou des résidents permanents, ou a fait ou accepté de faire des efforts raisonnables à cet effet; **f)** [Abrogé, DORS/2022-142, art. 7] **g)** l'employeur a respecté ou a fait des efforts raisonnables pour respecter tout engagement pris dans le cadre d'une évaluation précédemment fournie en application du paragraphe (2) relativement aux facteurs visés aux alinéas a), b) et e). **Période de validité de l'évaluation** **(3.1)** L'évaluation fournie par le ministère de l'Emploi et du Développement social indique la période durant laquelle elle est en vigueur pour l'application du paragraphe (1). **Province de Québec** **(4)** Dans le cas de l'étranger qui cherche à travailler dans la province de Québec, le ministère de l'Emploi et du Développement social établit son évaluation de concert avec les autorités compétentes de la province. **Filiale**

Immigration and Refugee Protection Regulations (SOR/2002-227) (Regulations)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227) (Règlement)**
Affiliate **(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. **Control** **(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.	**(5)** Pour l'application du présent article, la notion de filiale vise notamment : **a)** l'employeur qui est contrôlé par un autre employeur; **b)** deux employeurs qui sont sous un contrôle commun; **c)** les employeurs qui ont un lien de dépendance entre eux. **Contrôle** **(6)** Pour l'application du paragraphe (5), la notion de contrôle, qu'il soit direct ou indirect, exercé ou non, vise notamment : **a)** la propriété commune; **b)** la gestion commune; **c)** les intérêts communs; **d)** le partage d'installations ou de matériel; **e)** l'utilisation commune des services d'employés.

Nº 500-06-001263-231

SUPERIOR COURT
(Class Action Division)
District of Montreal

THE CLASS

and

ASSOCIATION FOR THE RIGHTS OF HOUSEHOLD AND FARM WORKERS

Representative Plaintiff

and

BYRON ALFREDO ACEVEDO TOBAR

Designated Member

v.

ATTORNEY GENERAL OF CANADA (AGC)

Defendant

DEFENCE AND ANNEX A
(s. 170 of the Code of Civil procedure)

O R I G I N A L

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Quebec Regional Office
Guy-Favreau Complex
200 René-Lévesque Blvd. West
East Tower, 9th Floor
Montréal (Québec) H2Z 1X4
Fax: 514-496-7876

PER: M^tre^ Marième Sirois-Vaillancourt / M^tre^ Émilie Tremblay / M^tre^ Kim Nguyen / M^tre^ Sean Doyle / M^tre^ Maria Rodriguez

Telephones: 514-629-6797 / 514-463-9332 / 438-596-6817 / 438-341-6650 / 514 214-8278

Emails: Marieve.Sirois-Vaillancourt@justice.gc.ca, Emilie.Tremblay@justice.gc.ca, Kim.Nguyen@justice.gc.ca, Sean.Doyle@justice.gc.ca, Maria.Rodriguez2@justice.gc.ca
Counsel for the Defendant

Notification by a technological means: NotificationPGC-AGC.Civil@justice.gc.ca

Our Reference number: 500154960

OP 0828 BC 0565