

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-06-000660-130

S U P E R I O R C O U R T
(CLASS ACTION CHAMBER)

RAHIM, an individual domiciled and residing at 5400 W. Parmer Lane, Apt. 321, in Austin, State of Texas, 78727, United States of America

- and -

SYED MUHAMMAD ALI RIZVI, an individual domiciled and residing at Plot No. 38-39K, 3rd floor, Blog 6, P.E.C.H.S. Extension, K-Market, Karachi, Pakistan

Plaintiffs

v.

THE MINISTER OF IMMIGRATION, DIVERSITY AND INCLUSION and THE GOVERNMENT OF QUÉBEC, both represented by the **ATTORNEY GENERAL OF QUÉBEC**, having a place of business at 1 Notre-Dame Street East, Suite 8.01, in the City and District of Montréal, Province of Québec, H2Y 1B6

Defendant

AMENDED ORIGINATING APPLICATION
(Art. 583 C.C.P.)

IN SUPPORT OF THEIR ORIGINATING APPLICATION, THE PLAINTIFFS STATE AS FOLLOWS:

A. INTRODUCTION

1. The Plaintiffs, Rahim and [...] Syed Muhammad Ali Rizvi, represent a class of thousands of foreign nationals who applied for a *Certificat de sélection du Québec* (“**selection certificate**” or “**CSQ**”) in order to immigrate to the province. They

suffered financial harm when their CSQ applications became doomed to failure by regulatory changes enacted by the Minister of Immigration, Diversity and Inclusion.

2. In 2013 and then again in 2017, the Minister adopted regulatory amendments that altered the number of points allotted for certain selection criteria and (in 2017) raised the points threshold that applicants had to meet to qualify for a CSQ.
3. These amendments were of immediate effect, meaning that they were applied to CSQ applications that had already been submitted and for which foreign nationals had already paid the required filing fee.
4. As a result, some applicants who had accumulated enough points to qualify for a CSQ prior to these amendments no longer had enough points to be selected. Their applications were therefore refused, or will be refused. Thousands of applicants found themselves in this position.
5. Despite knowing what the effect of these regulatory changes would be on these foreign nationals – indeed, despite *intending* this effect – the Minister did not offer the vast majority of affected applicants the opportunity to withdraw their applications and receive a reimbursement of their fees.
6. It is a basic legal principle that where a state actor has the power to adopt rules and regulations, that power must be exercised reasonably, in good faith, and consistently with any promises that actor has made to affected individuals. Failure to conform to this principle renders the state liable for the harm caused to those who are affected by its actions.
7. Thus, while the Minister is entitled to change the weighting of selection criteria in the CSQ application process, and to give such regulatory changes immediate effect, this must be done in good faith. For the Minister to keep the fees from the applications that had intentionally been doomed to failure by the 2013 and 2017 regulatory amendments constitutes an abuse of rights. Moreover, it resulted in the Minister's unjust enrichment at the expense of the affected foreign nationals.
8. The Minister's behaviour was therefore abusive, such that the *Ministère de l'Immigration, Diversité et l'Inclusion* (the "**MIDI**") must reimburse the application fees paid by the Plaintiffs and all other class members.

B. THE AUTHORIZED CLASS

9. On February 19, 2018, the Plaintiffs were authorized by the Honourable Pepita G. Capriolo, J.S.C. to institute a class action against the Defendants. The Plaintiffs were named representatives of the following groups of persons (the "**Class**" or "**Class Members**"):

Group 1

All individuals who filed an application with the *Ministère de l'Immigration et des Communautés culturelles du Québec* for a selection certificate in the “skilled worker” category prior to July 8, 2013; whose application had not reached the preliminary processing stage as of August 1, 2013; whose application included form A-1520-AA or A-1520-AF containing the phrase “Your application for a selection certificate will be processed based on regulations in effect when it was submitted” or similar language; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer accumulated enough points to pass preliminary processing or to be selected.

Group 2

All individuals who filed an application with the *Ministère de l'Immigration et des Communautés culturelles du Québec* for a selection certificate in the “skilled worker” category prior to July 8, 2013, whose application had not reached the preliminary processing stage as of August 1, 2013; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected.

Group 3

All individuals who filed an application with the *Ministère de l'Immigration, Diversité et Inclusion du Québec* for a selection certificate in the “skilled worker” category, whose application had not reached the preliminary processing stage as of March 8, 2017, and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the March 8, 2017 amendments to the immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected.

C. FACTUAL BACKGROUND

1) The Statutory Scheme for Immigration to Québec

10. Pursuant to the *Act respecting immigration to Québec*, CQLR c. I-0.2 (the “**Immigration Act**”), immigration to Québec is overseen by the Minister of Immigration, Diversity and Inclusion (formerly the Minister of Immigration and Cultural Communities; in all cases the “**Minister**”).

11. Foreign nationals who wish to immigrate to Québec must apply for a selection certificate in accordance with section 3.1 of the *Immigration Act*.
12. The *Immigration Act* apportions regulation-making powers between the Government and the Minister.
13. Per section 3.3 of the *Immigration Act*, the Government may make regulations determining the conditions of selection applicable to different classes of foreign nationals, including the criteria based on which a foreign national's application for a CSQ will be judged; determining when selection interviews will be held; and establishing the fees that must be paid for filing a CSQ application.
14. The Minister, meanwhile, is enabled by section 3.4 of the *Immigration Act* to establish the weighting scores assigned to selection criteria, as well as the passing scores (or "cut-off scores") in relation to selection criteria which are applicable to the selection process for applicants in the various classes created by the Government.
15. The Minister controls the timing and the coming into force of the regulations he or she enacts.
16. Practically speaking, these regulatory powers work in tandem. The Government establishes the conditions of selection for different categories of foreign nationals through the *Regulation respecting the selection of foreign nationals*, CQLR c. I-0.2, r. 4 (the "**Selection Regulation**"); these conditions include the relevant criteria used to assess applications under each category of CSQ.
17. The Minister then enacts and amends the *Regulation respecting the weighting applicable to the selection of foreign nationals*, CQLR c. I-0.2, r. 2 (the "**Weighting Regulation**"), which sets out the cutoff scores and number of points granted to foreign nationals for different selection criteria (e.g. education, linguistic ability, professional experience, etc.).

2) The Skilled Worker program

18. Section 17 of the *Selection Regulation* sets out three classes of foreign nationals who may make applications to settle in Québec. Among these is an economic subclass that covers foreign nationals who are at least 18 years of age and "who settle[] in Québec to hold employment the foreign national is likely able to hold" (section 21 of the *Selection Regulation*). This is the "Skilled Worker" subclass.
19. The selection process applicable to foreign nationals in the Skilled Worker subclass is set out in the *Selection Regulation* as follows:

32. The Minister, upon receiving an application for a selection certificate from a foreign national in the economic class, assesses the

32. Le ministre saisi d'une demande de certificat de sélection d'un ressortissant étranger de la catégorie de

application by awarding the points as provided in the Regulation respecting weighting in respect of the factors and criteria listed in the Selection grid for the economic class in Schedule A that apply to the foreign national's subclass.

l'immigration économique procède à l'appréciation de sa demande en attribuant les points prévus au Règlement sur la pondération à l'égard des facteurs et critères de la Grille de sélection de l'immigration économique de l'annexe A applicables à la sous-catégorie à laquelle appartient le ressortissant étranger.

20. The *Selection Regulation* specifies how the Minister must treat the application of a foreign national who applies for a selection certificate in the economic class and obtains enough points:

8. The Minister shall issue a selection certificate to a foreign national in the economic class who

38. Le ministre délivre un certificat de sélection à un ressortissant étranger de la catégorie de l'immigration économique qui remplit les conditions suivantes:

(a) obtains, in the awarding of the points as provided in the *Regulation respecting weighting* in respect of the factors and criteria listed in the Selection grid for the economic class in Schedule A that apply to the foreign national's subclass, the number of points required as the cutoff score, where applicable, and as the passing score;

a) il obtient, lors de l'attribution des points prévus au Règlement sur la pondération au regard des facteurs et critères de la Grille de sélection de l'immigration économique prévus à l'annexe A applicables à sa sous-catégorie, le nombre de points requis comme seuil éliminatoire, le cas échéant, et comme seuil de passage;

21. Thus, individuals applying through the Skilled Worker program who meet or surpass the cutoff score for selection, as established by the *Weighting Regulation*, are eligible to obtain a CSQ.

3) 2013 Amendments to the Weighting Regulation

22. Prior to 2015, the CSQ application process for a foreign national in the Skilled Worker subclass was broken into two substantive stages in which the applicant's number of points would be assessed.

23. Once a foreign national had submitted an application and paid the applicable filing fee – which averaged \$1,000, with some variation for the number of dependents included on an application – and the file was deemed complete, it entered the “preliminary processing” stage. At this stage a first assessment of an applicant’s points was conducted. An immigration officer of the MIDI would determine, among other things, whether the candidate had enough points to pass the applicable cutoff threshold to proceed to the second stage (the “selection stage”).
24. At the selection stage, the MIDI would determine if the foreign national had accumulated enough points to pass the cutoff threshold to qualify for a CSQ. Candidates who had enough points to pass out of preliminary processing, but not enough points to qualify for a CSQ directly, were invited to attend a selection interview with the MIDI at which they had the possibility of receiving more points under the “Adaptability” criterion.
25. At all times, according to the *Selection Regulation* and the *Weighting Regulation*, one of the categories in which foreign nationals applying for a CSQ in the Skilled Worker subclass could receive points was language proficiency – that is, applicants’ French and English comprehension and expression, as well as their spouses’ French comprehension and expression.
26. While language proficiency was not, in 2013, an “eliminary criterion” unlike education or employability (meaning that foreign nationals did not need to accumulate a minimum number of points *in this category alone* to pass the preliminary processing or selection stages), it gave foreign nationals the opportunity to amass a significant number of points, which could go a long way to meeting the required cutoff scores at both the preliminary processing and selection stages. French comprehension and expression was eligible for more points than a corresponding ability in English.
27. Until August 1, 2013, the combined effect of the *Selection Regulation* and the *Weighting Regulation* was that points were awarded to applicants for language proficiency in French or English on a graduated scale. Applicants with beginner ability in either language were awarded a few points, while applicants with advanced ability were awarded more.
28. On July 10, 2013, the Government published amendments to the *Selection Regulation*, which came into force on August 1, 2013. The effect of these amendments to the *Selection Regulation* was to create a more detailed scale of proficiency for French and English comprehension and interaction.
29. A week later, on July 17, 2013, the Minister published amendments to the *Weighting Regulation*, which also came into force on August 1, 2013 (the “**2013 Amendments**”).

30. The effect of the 2013 Amendments was twofold. First, oral interaction in French and English was broken down into comprehension and expression factors, and written expression and comprehension factors were added.
31. Second, and crucially, foreign nationals could no longer accumulate *any* points for having beginner-level expression or comprehension of French or English. Points were now only awarded for intermediate and advanced language proficiency.
32. The net effect of these changes was that applicants with a beginner level oral or written proficiency in French and/or English no longer received any points for that level of proficiency.
33. In practice, when applied to individuals who had submitted applications prior to August 1, 2013 but whose applications had not yet reached the preliminary processing stage, the 2013 Amendments had an immediate and significant impact on some of these applicants.
34. Some foreign nationals who, under the previous selection grid, would either have been eligible to pass preliminary processing and to receive an interview under the selection grid, *or* who would have amassed enough points to qualify for a CSQ outright, no longer obtained enough points under the new grid to pass either of these thresholds.
35. The effect of the 2013 Amendments was essentially to render these applicants *ineligible* for a CSQ and therefore to doom their applications to failure.
36. Notably, some of the affected individuals, including Mr. Rahim, had applied for a CSQ on an application form containing the phrase “Your application for a selection certificate will be processed based on regulations in effect when it was submitted”.
37. This phrase, or some variant of it, appeared on the MIDI’s application forms for skilled workers between February 2012 and May 2013, the whole as appears from a copy of MIDI form A-1520-AA, version 2012-02, entitled “Documents submitted in support of the Application for Selection Certificate”, as well as English and French versions of this form until 2013, communicated *en liasse* herewith as **Exhibit P-1**.
38. Nevertheless, the MIDI ultimately applied the selection grid created by the 2013 Amendments even to individuals whose application forms contained this phrase, in direct contradiction of the promise that had been made to them in writing. This in turn doomed some of these applications to failure.
39. Although individuals may withdraw their CSQ application if they consider that they no longer have a chance of success under the new selection grid, they will generally not be reimbursed their application fees if they do so.

40. However, on August 26, 2013 the Minister sent a letter to the immigration attorneys of foreign nationals who had applied for a CSQ, informing them of the adoption of the 2013 Amendments, the whole as appears from a copy of that letter communicated herewith as **Exhibit P-2**. The letter went on to state:

*À noter que pour les candidats du Programme régulier des travailleurs qualifiés ayant présenté une demande d'immigration et qui souhaitent maintenant retirer leur demande, il est possible de le faire si le Ministère a reçu leur demande entre le 8 juillet et le 16 août. La date de réception d'une demande de certificat de sélection correspond à la date inscrite (estampillée) par le Ministère sur la demande au moment de la réception. Si vous représentez des candidats qui souhaitent retirer leur demande, vous devez nous soumettre le formulaire électronique Retrait de la demande d'immigration [...] **au plus tard le 16 septembre 2013**.*

La demande d'immigration du candidat que vous représentez vous sera retournée dans un délai de deux à trois mois, et ce, sans que les frais exigés n'aient été encaissés.

41. As a result, only individuals who already had notice of the impending regulatory changes but who chose to apply for a CSQ in the skilled worker program *anyway*, as well as a tiny fraction of the individuals who had received no advance notice at all of the 2013 Amendments (since the amendments were only published in the *Gazette officielle* on July 10), were given the opportunity to withdraw their applications and obtain a reimbursement of their fees.
42. Those who had applied before July 8 were not provided with the opportunity to be reimbursed, despite the fact that they had not been given any prior notice of the regulatory changes.

4) 2017 Amendments to the Weighting Regulation

43. Between 2013 and 2017, the *Selection Regulation* and *Weighting Regulation* were both amended several more times. 2015 amendments to the *Weighting Regulation* eliminated the “Adaptability” criterion, for which applicants had previously been able to obtain additional points during a selection interview, which would enable them to increase the number of points they had after preliminary processing.
44. In practical terms, these amendments made the “preliminary processing” and “selection” stages function identically from a points perspective, since applicants could no longer cumulate additional points at a selection interview.
45. Applicants – particularly those represented by lawyers familiar with the Skilled Worker points allocation system – could always assess with some degree of certainty the number of points they could expect to receive based on their individual profile, and consequently would only submit an application and pay the

corresponding fee if they had a high degree of certainty that they should receive the number of points required.

46. As a result of the 2015 amendments, however, foreign nationals should now be able to assess almost definitively, prior to submitting an application for a CSQ, whether they have enough points to pass the eliminatory and selection thresholds established by the *Selection and Weighting Regulations*, and whether they are eligible to obtain a CSQ.
47. It is in this context that the Minister published new amendments to the *Weighting Regulation* in the *Gazette officielle du Québec* (the “**2017 Amendments**”), the whole as appears from a copy of the notice published in the *Gazette officielle du Québec* on March 8, 2017, communicated herewith as **Exhibit P-3**.
48. These amendments again pertained to the number of points allotted to applicants in the Skilled Worker subclass. They modified the maximum number of points an applicant can obtain for his or her area of training, and raised the cutoff scores required of applicants to pass the eliminatory threshold or the selection threshold in order to qualify for a CSQ.
49. Like the 2013 Amendments, these amendments applied immediately to all applicants in the Skilled Worker subclass, except those who had filed their application before March 8, 2017 *and* for whom preliminary processing had already commenced.
50. It is not surprising, then, that the practical effect of these most recent amendments was to once again to render some applicants *ineligible* to receive a CSQ, even if prior to the 2017 Amendments they would have obtained enough points to qualify for a selection certificate.
51. Following the adoption of the 2017 Amendments, no applicant was offered a refund of his or her application fees, regardless of the effect of these amendments on the applicant’s eligibility for a CSQ.
52. Indeed, the MIDI has indicated that no refund would be forthcoming, the whole as appears from an article in *Le Devoir* about the 2017 Amendments, communicated herewith as **Exhibit P-4**. This is despite the fact that approximately 28,000 applications already in the system were affected by these amendments, as appears from Exhibit P-4.

D. THE PLAINTIFFS

1) Rahim

53. Petitioner Rahim is a Pakistani citizen whose legal name is Rahim, the whole as appears from a copy of his passport, communicated herewith as **Exhibit P-5**. He currently resides in Texas, in the United States.

54. On October 1, 2012, through his attorney, Rahim submitted an application for a CSQ pursuant the *Immigration Act* in the Skilled Worker category, as appears from the application submitted by his attorney, communicated herewith as **Exhibit P-6**. Rahim's spouse, Ayesha, as well as their son, Aydin, were also included on his application.
55. The application included the applicable processing fees of \$1,062.00 (\$750 for Rahim and \$156 (x2) for each dependent), as appears from the bank draft from the Toronto-Dominion bank communicated herewith as **Exhibit P-7**.
56. Notably, Rahim submitted his application on the form A-0520-AA, which at the time contained the promise "Your application for a selection certificate will be processed based on regulations in effect when it was submitted".
57. As part of his application, Rahim's attorney submitted a cover letter dated September 27, 2012 outlining the breakdown of points Rahim was expected to receive for each selection factor, as appears from the cover letter and calculation communicated herewith *en liasse* as **Exhibit P-8**. According to that calculation, Rahim's attorneys considered that he should receive 60 points at the preliminary processing stage, which would be enough to render him eligible for an interview.
58. Rahim was therefore confident that, under the *Weighting Regulation* in effect at the time he submitted his application form, he would receive enough points to pass to an interview, at which point he was also confident that he would receive enough points in the Adaptability criterion to qualify for a CSQ. He would not have applied for a CSQ otherwise.
59. On January 17, 2013, the MIDI issued an Acknowledgement of Receipt with a reference number for Rahim's file. A receipt for the government processing fees in the amount of \$1,062 was also provided, the whole as appears from the letter from the MIDI dated January 17, 2013, communicated herewith as **Exhibit P-9**.
60. Over the course of the following months, Rahim received a number of communications from the MIDI and submitted a variety of additional documents in response, the whole as appears from the documents communicated herewith *en liasse* as **Exhibit P-10**.
61. The MIDI determined that Rahim had enough points to pass the preliminary processing phase and attend a selection interview. Following various exchanges between the MIDI and Rahim regarding the scheduling of a selection interview, communicated herewith *en liasse* as **Exhibit P-11**, Rahim finally attended the interview with a MIDI official on March 6, 2014 in New York City. At that interview, he received 3 points for the "Adaptability" factor.
62. On November 5, 2014, the Minister refused Rahim's application for a selection certificate, the whole as appears from a copy of the refusal letter from the Minister dated communicated herewith as **Exhibit P-12**.

63. As appears from that letter, and contrary to the promise contained on Rahim's application form, the immigration agent's notes showed that Rahim's application had been treated according to the new selection grid in place as of August 1, 2013. Based on that selection grid, Rahim and his wife only garnered 60 points in total, which was 3 points short of the 63 points required to qualify for a selection certificate.
64. Had the old selection grid been applied to Rahim's application, as the Minister had promised to do, Rahim would have had the requisite points to qualify for a selection certificate, the whole as appears from a side-by side comparison of the Minister's final evaluation of Rahim's application with an evaluation based on the selection criteria in effect in October 2012 prepared by the undersigned attorneys, communicated herewith as **Exhibit P-13**, as well as the "*Note sur les procédures en immigration NPI 2013-012*" communicated herewith as **Exhibit P-14**.
65. In short, the application of the selection grid established by the 2013 Amendments to Rahim doomed his CSQ application to failure.

2) **[...] Syed Muhammad Ali Rizvi**

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74.1 The Plaintiff Syed Muhammad Ali Rizvi is a citizen and resident of Pakistan.

74.2 On June 13, 2016, Mr. Rizvi submitted an online application for a CSQ in the Skilled Worker subclass, the whole as appears from the summary of his online application, communicated herewith as **Exhibit P-20**.

74.3 On June 13, 2016, Mr. Rizvi received a confirmation of online payment of the applicable processing fees of \$773.00 the whole as appears from a copy of this confirmation, communicated herewith as **Exhibit P-21**.

- 74.4 On June 15, 2016 the Minister issued an Acknowledgement of Receipt with a reference number for the file, communicated herewith as **Exhibit P-22**.
- 74.5 When he submitted his application, Mr. Rizvi had calculated that he should have received a total of 51 points pursuant to the *Weighting Regulation* in force at the time, the whole as appears from
- 74.6 However, as of the filing of this Amended Originating Application, Mr. Rizvi's application has not yet reached the preliminary processing stage. Consequently, when preliminary processing of his application finally begins, the new selection grid established by the 2017 Amendments will be applied to his case.
- 74.7 Under that selection grid, Mr. Rizvi will have lost 3 points in the "area of training" category, and will now have obtained only 48 points, which is 2 points short of the 50 points now required for a single applicant to qualify for a CSQ, the whole as appears from a side-by side comparison of the points presently allotted to Mr. Rizvi's application with an evaluation based on the *Weighting Regulation* in effect in June 2016 prepared by Mr. Rizvi himself, communicated herewith as **Exhibit P-23**.
- 74.8 Were the pre-March 8, 2017 selection grid applied to Mr. Rizvi's application, he would have had the requisite points to qualify for a selection certificate.
- 74.9 Indeed, had Mr. Rizvi known with certainty in June 2016 that he would *not* have enough points to qualify for a CSQ, he would not have applied in the first place.
- 74.10 Under the selection grid now in force as a result of the 2017 Amendments, however, Mr. Rizvi's application has become doomed to fail, and he expects that the Minister will refuse it.
- 74.11 Because of his expectation that his application will be refused, if it were possible for Mr. Rizvi to withdraw his application now and receive a reimbursement of the fees he paid, he would do so. However, since he understands that the MIDI does not offer to reimburse the fees of individuals who withdraw their CSQ applications, he has not withdrawn his own.

E. THE MINISTER'S LIABILITY AND ENSUING DAMAGES

1) Unjust enrichment

75. The Minister's failure to offer Class Members a reimbursement of the fees they paid to file applications for selection certificates, even once these Class Members had become ineligible to receive a CSQ as a result of the immediate application of the 2013 and 2017 Amendments, constituted an unjust enrichment.

76. All Class Members were impoverished in the amount of the fees they paid when submitting their CSQ application, which average out to approximately \$1,000, with some variation depending on the number of dependents included in the application. The MIDI was correspondingly enriched in the same amount.
77. In no Class Member's case did any justification for the impoverishment exist.
78. With respect to members of Group 1, such as Rahim, the promise contained on their application form created a legitimate expectation that their application would be treated in a particular way – that is, according to the selection criteria in force at the time the application was submitted.
79. Accordingly, the only possible justification for Group 1 members' impoverishment was the treatment of their applications in accordance with the Minister's promise. Absent such treatment, their impoverishment was not justified.
80. The impoverishment of members of Group 2 and 3, meanwhile, could only be justified if there had been a *good faith* treatment of these group members' applications. However, as explained below, the Minister acted in bad faith and abused her rights in applying the 2013 and 2017 Amendments to these group members without offering them a chance to withdraw their applications and receive a reimbursement. Accordingly, their impoverishment cannot be justified.
81. None of the Class Members had access to any other recourse or means of obtaining a reimbursement of their fees, since asking the Minister for a refund was not an option.

2) Extra-contractual liability

82. The Minister also committed an extra-contractual fault vis-à-vis all Class Members by deliberately making it impossible for these individuals to qualify for a CSQ, and then keeping the fees they had paid to submit their applications. In the particular circumstances of this case, the severity of the Minister's fault rises to the level of bad faith and an abuse of rights.
83. No reasonable person would apply for a CSQ knowing that they are already ineligible for one because they do not, or cannot, achieve the number of points required by the *Weighting Regulation*. Class Members would not have applied for a CSQ and paid a filing fee at all had they known their applications would be doomed to failure.
84. By making the 2013 and 2017 Amendments apply immediately to applications that were already in the system, the Minister deprived Class Members of that choice. Consequently, the Minister should have given CSQ applicants the opportunity to withdraw their applications and receive a reimbursement of their fees if applicants considered that their eligibility for a CSQ would be affected by the amendments.

85. The Minister's failure to do so constitutes a civil fault. What is more, the circumstances surrounding the adoption of the amendments make it clear that the Minister abused her rights in failing to offer Class Members a reimbursement.
86. First, when the 2013 Amendments were adopted, the new weighting criteria enacted by those Amendments were applied immediately to applications not yet in preliminary processing specifically in order to reduce the number of applicants eligible for a CSQ.
87. That is, the Minister's express intention with the adoption of the 2013 Amendments was to doom some applicants – referred to by the Minister's representatives as "*inventaires*" – to failure, as appears from the testimony of MIDI representative Pascale de Latrémoille-Bernier in court file no. 500-17-078740-134, communicated herewith as **Exhibit P-19**. In particular, the goal of the 2013 Amendments was to weed out applicants who did not, in the MIDI's estimation, possess sufficient French language ability.
88. At the same time, the Minister was fully aware of the financial impact of the 2013 Amendments, as is demonstrated by Exhibit P-2. Yet bizarrely and improperly, she only offered a reimbursement of fees to a miniscule proportion of CSQ applicants, the majority of which received notice of the 2013 Amendments.
89. As for Class Members in Group 3, who were affected by the 2017 Amendments, the Minister *again* ruled out the possibility of reimbursement (Exhibit P-4), despite being once again well aware of the financial impact these amendments would have on those group members.
90. All of this took place in the context of an existing statutory mechanism, established by section 3.5 of the *Immigration Act*, for reducing the number of applications in the MIDI's system.
91. That mechanism, however, limits the scope of any decision the Minister takes to affect applications already in the system, and requires reimbursement of fees to affected applicants. The Minister's adoption of the 2013 and 2017 Amendments improperly circumvented that process.
92. In these circumstances, the Minister's failure to offer a reimbursement to *all* applicants potentially affected by the regulatory changes was a clear abuse of the right to manage the selection criteria for immigrants to Québec, and a demonstrative case of bad faith.
93. The Plaintiffs, along with all Class Members, are consequently entitled to a reimbursement of the fees they paid in order to file an application for a selection certificate that ultimately became doomed to failure as a result of the Minister's illegal actions.

F. QUESTIONS TO BE TREATED COLLECTIVELY

94. This Court has authorized the following questions to be treated collectively:

- (a) Should the Minister be condemned to reimburse the fees collected for the applications of the Class Members who do not opt out of the class action?

And, in particular:

- (b) Were the Class Members impoverished, and the Minister enriched, in the amount of the application fees, the whole without juridical reason?
- (c) What is the amount of the Class Members' impoverishment and the Minister's enrichment?
- (d) Alternately, did the Minister commit an extra-contractual fault and act in bad faith?
 - a. If so, what is the amount of damages suffered by the Class Members as a direct result of the Minister's faults?
- (e) In all cases, can the aggregate amount of the fees to be reimbursed be awarded on a collective basis?

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

- I. **GRANT** the Plaintiffs' action against the Defendant, the Minister of Immigration, Diversity and Inclusion;
- II. **DESCRIBE** the Groups that this judgment binds as follows:

Group 1

All individuals who filed an application with the *Ministère de l'Immigration et des Communautés culturelles du Québec* for a selection certificate in the "skilled worker" category prior to July 8, 2013; whose application had not reached the preliminary processing stage as of August 1, 2013; whose application included form A-1520-AA or A-1520-AF containing the phrase "Your application for a selection certificate will be processed based on regulations in effect when it was submitted" or similar language; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer accumulated enough points to pass preliminary processing or to be selected

Group 2

All individuals who filed an application with the *Ministère de l'Immigration et des Communautés culturelles du Québec* for a selection certificate in the "skilled worker" category prior to July 8, 2013, whose application had not reached the preliminary processing stage as of August 1, 2013; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected

Group 3

All individuals who filed an application with the *Ministère de l'Immigration, Diversité et Inclusion du Québec* for a selection certificate in the "skilled worker" category, whose application had not reached the preliminary processing stage as of March 8, 2017, and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the March 8, 2017 amendments to the immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected;

- III. **CONDEMN** the Defendant to pay each Class Member who has not opted out of the class action an amount equivalent to the fees paid for their applications for a selection certificate in the Skilled Worker category filed prior to July 8, 2013, or the fees paid for applications doomed to failure by the 2017 Amendments, with interest and the additional indemnity from the date of the notification of the application for authorization of this class action;
- IV. **ORDER** the collective recovery of all amounts to be paid by the Defendant to the Class Members;
- V. **RECONVENE** the parties before the Court, at a date to be fixed within thirty (30) days of the date on which any judgment granting whole or partial relief to the Plaintiffs becomes final, in order to hear representations with respect to:
 - a) the deposit of the established amounts for collective recovery either in the office of the Court or with a financial institution operating in Québec;
 - b) the mechanism for the distribution of the established amounts to Group Members;
 - c) the publication of the notice pertaining to the description of the Group and the terms of the judgment;
 - d) the opportunity to provide measures, if any, designed to simplify the execution of the judgment.

THE WHOLE with costs, including the costs of publication of notices and the costs of the execution of the judgment.

MONTREAL, September 14, 2018

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C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° 500-06-000660-130

S U P E R I O R C O U R T
(CLASS ACTION CHAMBER)

RAHIM
-and-
SYED MUHAMMAD ALI RIZVI

Petitioners

v.
THE MINISTER OF IMMIGRATION,
DIVERSITY AND INCLUSION and THE
GOVERNMENT OF QUEBEC, both
represented by the ATTORNEY GENERAL
OF QUEBEC

Respondent

LIST OF ADDITIONAL EXHIBITS

- Exhibit P-20** Summary of Syed Muhammad Ali Rizvi's online application;
- Exhibit P-21** Confirmation of Syed Muhammad Ali Rizvi's online payment;
- Exhibit P-22** Acknowledgment of receipt from the MIDI dated June 15, 2016;
- Exhibit P-23** Side-by-side comparison of points allotted to Syed Muhammad Ali Rizvi's application with an evaluation based on the *Weighting Regulation* in effect in June 2016.

MONTREAL, September 14, 2018

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RAHIM, RHIA BASNET

Subject Application to Substitute a Representative Plaintiff and for Permission to Amend
Case name Rahim et al. v. The Minister of Immigration, Diversity and Inclusion, and the Government of Québec
Court file number 500-06-00060-130
Generated on Fri, Sept. 14 2018, at 14:16
Report number **A24693R46307**

Document(s) Notified

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N° 500-06-000660-130

SUPERIOR COURT (Class Action Chamber)
DISTRICT OF MONTREAL
PROVINCE OF QUEBEC

RAHIM

-and-

RHIA BASNET

Plaintiffs

v.

**THE MINISTER OF IMMIGRATION,
DIVERSITY AND INCLUSION and THE
GOVERNMENT OF QUEBEC, both
represented by the ATTORNEY GENERAL
OF QUEBEC**

Defendant

**AMENDED ORIGINATING
APPLICATION**

NOTIFICATION COPY



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