

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-

RHIA BASNET, an individual domiciled and residing at Building 12, Flat 8, Ezdan Village 21 Al Wakra, Al Wakra 82228, Qatar

Petitioners

v.

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

Respondent

**RE-AMENDED MOTION FOR AUTHORIZATION OF A CLASS ACTION
AND TO BE DESIGNATED AS REPRESENTATIVES**
(Art. 574 C.C.P.)

IN SUPPORT OF [...] THEIR MOTION FOR AUTHORIZATION OF A CLASS ACTION AND TO BE DESIGNATED AS REPRESENTATIVES, PETITIONERS STATE [...] AS FOLLOWS:

A. INTRODUCTION

1. Petitioner Rahim is one of tens of thousands of applicants for a certificate of selection as a skilled worker under the Quebec immigration regime whose application was affected by a change in the criteria and weighting applicable to language proficiency that came into force on August 1, 2013;
2. The change was effected through two amending regulations enacted respectively by the Government of Quebec (the “**Government**”) and the Minister of Immigration and Cultural Communities and Minister responsible for the Charter of French Language (now called the Minister of Immigration, Diversity and Inclusion) (the “**Minister**”);
3. Contrary to past practices and official statements made by the Minister, including on the application forms filed by applicants such as [...] Rahim, the amending regulations

applied to all applications filed *before* they came into force, so long as preliminary processing of these applications had not yet begun;

4. Some such applications date back to 2009;
5. Given the important changes made to the selection grid for skilled worker applicants with regards to language proficiency, [...] Rahim, like a large majority of the affected applicants does not have the required number of points to meet the threshold to be granted a selection certificate under the new selection grid, the whole as it appears from the selection grids dated October 14, 2009 and August 1, 2013 communicated in support hereof as **Exhibit R-1**;
 - 5.1 [...] Rahim's case is neither unique nor accidental;
 - 5.2 Indeed, in choosing to make the [...] 2013 restrictive selection grid applicable to pending applications, the Minister was well aware of the devastating effect that it would have on existing applicants. The Minister's representative has testified that the decision was precipitated by recent increases in the "inventory" of applications that had been accumulated, the whole as appears from the testimony of the Minister's representative in case file 500-17-178740-134 on October 21, 2014, communicated in support hereof as **Exhibit R-2**;
 - 5.3 Petitioner Rhia Basnet was affected by subsequent regulatory action taken by the Minister;
 - 5.4 On March 8, 2017, the Minister introduced new amending regulations that altered the weighing applicable to certain factors considered in skilled workers' applications for selection certificates;
 - 5.5 These changes apply to all applications filed before the date of the amendments, so long as preliminary processing for these applications has not yet begun;
 - 5.6. The retroactive application of the amended 2017 selection grid has doomed Ms. Basnet's application to failure because she no longer has enough points to be eligible to receive a selection certificate. The most recent amendments will have the same effect for many pending applications that would otherwise have been eligible for a selection certificate;
6. [...]
7. As a result of these changes, the Respondent is now set to benefit from a windfall of upwards of 50 million dollars from applicants who applied and paid their application fees under either the [...] pre-2013 regime or under the pre-2017 regime, but whose applications were doomed to fail as a result of these retroactive changes [...];
8. Through the proposed class action, [...] Petitioners are seeking the reimbursement of all [...] fees paid to the Respondent [...] by applicants [...] under either of the [...] regimes [...] where those applicants have had their applications denied pursuant to either the new 2013 or the new 2017 selection grids by the date of final judgment herein [...];

B. PROPOSED GROUPS

9. The Petitioners seek authorization for three distinct groups affected by the Minister's actions in 2013 and 2017;

10. [...]

10.1 In [...] Rahim's case, the Minister undertook in writing to process his application for a certificate of selection based on the criteria then in force:

Nous traiterons votre demande de certificat de sélection selon la réglementation en vigueur au moment où vous la déposerez.

Your application for a selection certificate will be processed based on regulations in effect when it was submitted.

the whole as appears from a copy of Immigration Quebec form A-1520-AA, version 2012-02, entitled "Documents submitted in support of the Application for Selection Certificate" as well as the French and English versions of this form until 2013, communicated *en liasse* in support hereof as **Exhibit R-3**;

10.2 However, despite the Minister's undertaking, [...] Rahim's application was processed based on the selection criteria in effect at the time of processing, the whole as it appears from the Minister's letter dated November 5, 2014, communicated in support hereof as **Exhibit R-4**;

10.3 Individuals who were similarly denied the benefit of the written undertaking received from the Minister in form A-1520-AA or form A-1520-AF will comprise the first proposed group;

10.4 Individuals who submitted their applications before the new selection grid came into effect in 2013, but who did not receive such a written undertaking from the Minister, will comprise the second proposed group;

10.5 Finally, individuals whose applications became doomed to failure as a result of the 2017 amendments will comprise the third proposed group, regardless of when these applications were submitted;

11. Rahim and Ms. Basnet are therefore seeking the authorization to institute a class action on behalf of the following groups of individuals (the "**Proposed Group 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 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. [...] PETITIONERS' PERSONAL CLAIMS

12. Petitioners' personal claims against Respondent [...] are based on the following facts;

A. Rahim

I. RAHIM'S APPLICATION FOR A SELECTION CERTIFICATE

13. Petitioner Rahim is a Pakistani citizen whose legal name is Rahim, the whole as appears from a copy of his passport, communicated in support hereof as **Exhibit R-5**;

14. He currently resides in Texas, in the United States;

15. On October 1, 2012, through his attorney, [...] Rahim submitted an application for a Quebec certificate of selection pursuant to the *Act respecting Immigration to Quebec*, chapter I-0.2 (the "*Immigration Act*") under the skilled worker category, the whole as appears from the application submitted by [...] his attorney, communicated in support hereof as **Exhibit R-6**;

16. The application included the applicable processing fees of \$1,062.00 (\$750 for Rahim and \$156 (x2) for each dependent), the whole as appears from the bank draft from the Toronto-Dominion bank communicated in support hereof as **Exhibit R-7**;

17. [...]

17.1 [...] Rahim's spouse, Ayesha, as well as their son, Aydin, were also included on his application (Exhibit R-6);

18. [...]

- 18.1 [...] Rahim and his spouse were born in Pakistan. Their son was born in the United States;
- 18.2 The breakdown of points for each selection factor was outlined in the cover letter included in the initial submission of the application, the whole as appears from the cover letter and the calculation from [...] Rahim's attorney dated September 27, 2012 communicated in support hereof *en liasse* as **Exhibit R-8**;
- 18.3 On October 26, 2012, the Minister requested another copy of [...] Rahim's and his spouse's passports, as well as an updated checklist form, which was provided, the whole as appears from the letter from the Minister dated October 26, 2016, and the response thereto, communicated in support hereof *en liasse* as **Exhibit R-9**;
- 18.4 On January 17, 2013, the Minister issued an Acknowledgement of Receipt with a reference number for the 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 Minister dated January 17, 2013, communicated in support hereof as **Exhibit R-10**;
- 18.5 On May 8, 2013, [...] Rahim submitted additional documents, which included French test results for him and his spouse, the whole as appears from the letter from Petitioner's attorneys dated May 7, 2013, communicated in support hereof as **Exhibit R-11**;
- 18.6 On August 7, 2013, the Minister issued an Intention to Reject indicating that the application would be rejected unless certain documents were received within 90 days, the whole as appears from the letter from the Minister dated August 7, 2013, communicated in support hereof as **Exhibit R-12**;
- 18.7 The documents requested by the Minister were submitted on October 22, 2013, the whole as appears from the letter from [...] Rahim's attorney dated October 22, 2013, communicated in support hereof as **Exhibit R-13**;
- 18.8 On November 29, 2013, the Minister informed [...] Rahim that he had been placed on the waiting list for an interview, the whole as appears from the letter from the Minister dated November 29, 2013, communicated in support hereof as **Exhibit R-14**;
- 18.9 On December 16, 2013, the Minister informed [...] Rahim that an interview with an immigration officer was scheduled to take place in New York on February 26, 2014, the whole as appears from the letter from the Minister dated December 16, 2013, communicated in support hereof as **Exhibit R-15**;
- 18.10 [...] Rahim asked to reschedule that interview, and it was scheduled to take place on March 6, 2014, in New York, the whole as appears from the letter from the Minister dated January 20, 2014, communicated in support hereof as **Exhibit R-16**;
- 18.11 On March 6, 2014, [...] Rahim attended the interview in New York;
- 18.12 On November 5, 2014, the Minister refused [...] Rahim's application for a selection certificate. The immigration agent's notes showed that the Petitioner and his wife only garnered 60 points pursuant to the new selection grid, which was 3 points short of the 63 points required to qualify for a selection certificate, the whole as appears from **Exhibit R-4**;

18.13 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 obtain his 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 in support hereof as Exhibit R-17, as well as the "Note sur les procédures en immigration NPI 2013-012" communicated in support hereof as Exhibit R-18;

B. Rhia Basnet

18.14 Petitioner Rhia Basnet is a citizen of the Philippines, currently residing in Qatar;

18.15 On June 13, 2016, Ms. Basnet submitted an online application for a Quebec certificate of selection pursuant to the *Immigration Act* under the skilled worker category, for herself as well as her spouse Deepak Basnet and their child, the whole as appears from the summary of her online application, communicated in support hereof as Exhibit R-26;

18.16 On June 13, 2016, Ms. Basnet received a confirmation of online payment of the applicable processing fees of \$1,105.00, the whole as appears from a copy of this confirmation, communicated in support hereof as Exhibit R-27;

18.17 On July 12, 2016 the Minister issued an Acknowledgement of Receipt with a reference number for the file, communicated in support hereof as Exhibit R-28;

18.18 Ms. Basnet's application has not yet reached the preliminary processing stage;

18.19 When she submitted her application, Ms. Basnet had calculated that she should have received a total of 53 points at the preliminary processing stage and 58 points at the selection stage pursuant to the grid in force at the time, the whole as appears from a side-by side comparison of the points presently allotted to Ms. Basnet's application with an evaluation based on the selection criteria in effect in June 2016 prepared by the undersigned attorneys, communicated in support hereof as Exhibit R-29;

18.20 However, under the new selection grid in place as of March 8, 2017, Ms. Basnet has lost points in the "area of training" category, and will now have obtained only 50 points at the preliminary stage, which is 2 points short of the 52 points now required to obtain a selection certificate for an applicant with a spouse, the whole as appears from Exhibit R-29;

18.21 Had the pre-March 8, 2017 selection grid been applied to Ms. Basnet's application, she would have had the requisite points to obtain a selection certificate;

18.22 Under the selection grid now in force, however, Ms. Basnet expects that the Minister will refuse her application;

18.23 On April 10, 2017, Ms. Basnet was informed, through her *Mon Projet Québec* account, that it was now possible to update her application online should she want to update her contact details, add or remove a dependent (spouse or common law partner or child), add a new language test result or update the application with a potential new family member residing in Quebec, the whole as appears from Exhibit R-30;

- 18.24 In order to keep her application current so that she would not have to start the process over should there be further modifications to the rules which change the point-attribution status in a way that is favorable to her case, Ms. Basnet further updated her application by declaring her newborn baby Wansh Basnet;
- 18.25 A confirmation of this update was notified to her through her *Mon Projet Québec* account, asking her also to pay the fees related to this update within thirty days. A new *Fiche d'accompagnement* was also available on her *Mon Projet Québec* account to indicate the exact fees due, the whole as appears from Exhibits R-31 and R-32 en liasse;
- 18.26 The fees were paid by bank draft sent to the MIDI on May 4th, 2017 through her legal representative, the law firm of Campbell Cohen and do not form part of her claim;

II. THE QUEBEC IMMIGRATION REGIME

a. Evolution of Quebec's Powers over Immigration

19. Pursuant to s. 95 of the *Constitution Act, 1867*, immigration is a shared head of jurisdiction between the federal government and the provinces;
20. Quebec first created an immigration department in 1968;
21. In 1971, Canada and Quebec concluded their first immigration agreement, the “Lang-Cloutier Agreement”, which allowed Quebec to have representatives in Canadian embassies and to do counselling abroad with regards to immigration to the province;
22. In 1975, Canada and Quebec concluded the “Andras-Bienvenue Agreement”, which for the first time gave Quebec a role in the federal selection of immigrants, allowing Quebec to conduct interviews and to make recommendations to federal visa officers;
23. In 1978, Canada and Quebec concluded the “Cullen-Couture Agreement”, which authorized Quebec to define its own selection criteria for immigrants to the province;
24. In 1991, Canada and Quebec entered into the “Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens”, which expanded on the “Cullen-Couture Agreement”, providing Quebec with the power to select immigrants to the province, a first in Canada;

b. The *Immigration Act*

25. On April 1, 1985, Quebec introduced the *Act respecting the Conseil des Communautés culturelles and Immigration*, R.S.Q., c. C-57.2, which in 1994 became the *Immigration Act*;
26. The *Immigration Act* apportions regulation-making powers between the Government and the Minister;
27. Pursuant to s. 3.3 of the *Immigration Act*, the Government may make regulations:
- (a) determining classes of foreign nationals who have filed an application for a selection certificate referred to in section 3.1;

[...]

- (b) determining the conditions of selection applicable to each of such classes of foreign nationals, having regard, in particular, to criteria such as the vocational or professional training and experience of the foreign national, the needs of the labour market in Québec as regards his profession, the age and personal qualities, education, knowledge of languages, and financial capacity of the foreign national, the assistance he may receive from relatives or friends residing in Québec, his place of destination in Québec, and the place of establishment of his enterprise; such conditions and criteria may vary within the same class, in particular by reason of the foreign national's contribution to enriching the socio-cultural or economic heritage of Québec;

[...]

- (b.2) determining the classes of foreign nationals in respect of which subparagraph b applies to a family member of a foreign national, as defined by regulation, and providing for cases of total or partial exemption of a family member of a foreign national from conditions or criteria of selection; such conditions and criteria may vary according to the family situation of the foreign national and also within the same class;
- (b.3) determining, from among the criteria prescribed under subparagraph b, those which apply to a preliminary processing for selection intended to identify the applications which will be processed, prescribing the classes of foreign nationals to which the criteria will apply and determining the cases of total or partial exemption of foreign nationals; the criteria may vary according to the class and also within the same class;
- (b.4) prescribing the classes of foreign nationals in respect of which a selection interview must be held, determining the cases of total or partial exemption from this obligation and providing that the obligation may vary within the same class;

[...]

- (f.2) establishing the fees payable for processing an application for an undertaking, a certificate of statutory situation, a selection certificate or a certificate of acceptance, for issuing any such certificate or for subscribing an undertaking, and determining the cases where total or partial exemption from payment is to be granted; the fees may vary in the case of an undertaking according to the family situation of the foreign national, in the case of a certificate of statutory situation according to the authorization allowing the foreign national to be in Canada, in the case of a selection certificate according to the classes of foreign nationals or to the stages in the processing of an application or, in the case of a certificate of acceptance according to the reason for the temporary admission of the foreign national to Québec;

[...]

28. As for the Minister, her regulatory powers are set out at s. 3.4 of the *Immigration Act*, pursuant to which she may:

- (a) establish the weighting of selection criteria and the passing score and, where expedient, the cut off score determined in relation to a selection criterion,

applicable to the preliminary stage of selection established under paragraph b.3 of section 3.3 and to the selection established under paragraph b of section 3.3, which weighting and which scores may vary according to the family situation of the foreign national, according to the classes of foreign nationals and within the same class of foreign nationals;

29. Pursuant to s. 3.4(b) of the *Immigration Act*, the Minister may determine that a regulation she enacts applies to applications that were filed prior to the coming into force of the regulation:

(b) determine that the regulation applies to applications that are being processed, or to applications filed after a particular date that are being processed, or to those that have not yet reached a particular stage on the date of coming into force of the regulation.

30. No equivalent power is granted to the Government with respect to regulations enacted by it pursuant to s. 3.3 of the *Immigration Act*;

31. As a result, whereas regulations adopted by the Minister may apply to applications that were filed prior to their coming into force, Government regulations may only apply to applications filed after their coming into force;

31.1 That being said, this change to the regulations is the first time that the Minister has exercised her power to make them retroactive, the whole as was admitted by the Ministers' representative during the hearing in case file 500-17-178740-134 on October 21, 2014 (**Exhibit R-2**);

c. Relevant Regulations

32. There are two regulations which are particularly relevant to this case;

33. The *Regulation respecting the selection of foreign nationals*, chapter I-0.2, r. 4 (the "**Selection Regulation**") was enacted by the Government;

34. It establishes the conditions for submitting an application under the various immigration categories, including the skilled worker category;

35. The *Regulation respecting the weighting applicable to the selection of foreign nationals*, chapter I-0.2, r. 2 (the "**Weighting Regulation**") was enacted by the Minister;

36. It establishes the point grid on which applications submitted by would-be immigrants are evaluated;

37. The two regulations work hand in hand, in that:

(a) The Government chooses the relevant criteria which will be used to assess applications under each category of selection certificates; and

(b) The Minister determines how many points will be assigned to the different criteria selected by the Government;

d. [...] Amendments to Language Proficiency Requirements

38. Up until August 1, 2013, the combined effect of the *Selection Regulation* and the *Weighting Regulation* was that points were awarded to applicants for language ability in French or English on a graduated scale;
39. As such, applicants with beginner ability gained few points while applicants with advanced ability were awarded many points;
40. Until December 6, 2011, an applicant's language ability was assessed by documents submitted in support of an application or by a Quebec immigration officer during a selection interview;
41. Since December 6, 2011, all applicants under the skilled worker category have been required to demonstrate language proficiency by submitting official results from language tests approved by the Minister;
42. Said requirement applies to both the principal applicant and his or her spouse, as the case may be;
43. On July 10, 2013, the Government published in the *Gazette officielle du Québec* an amendment to the *Selection Regulation*, which was set to come into force on August 1, 2013, the whole as appears from a copy of the notice published in the *Gazette officielle du Québec* on July 10, 2013, communicated in support hereof as **Exhibit R-19**;
44. A week later, on July 17, 2013, the Minister published in the *Gazette officielle du Québec* an amendment to the *Weighting Regulation*, which was also set to come into force on August 1, 2013 and which gave effect to the amendment to the *Selection Regulation*, the whole as appears from a copy of the notice published in the *Gazette officielle du Québec* on July 17, 2013, communicated in support hereof as **Exhibit R-20**;
45. Pursuant to these amendments, as of August 1, 2013, points are now awarded for French written expression and comprehension, while applicants with beginner or low intermediate ability in French are not awarded any points;
46. Similarly, points are now awarded for English written expression and comprehension, while applicants with beginner ability in English are not awarded any points;
47. In practice, these regulatory amendments have effectively cut off applicants who do not possess a high intermediate French ability, except for applicants who can otherwise make up the missing points through other criteria on the selection grid;
48. Given the relative weight of French proficiency in the selection grid, very few applicants who do not possess a high intermediate French ability will be able to meet the cut off score;
- 48.1 That said, although applicants who expect to be unsuccessful under the new selection grid have the option of withdrawing their application, there is no way for them to obtain reimbursement of the fees they paid to apply;

e. Further Amendments to the *Weighting Regulation*

49. On March 8, 2017, the Minister published new amendments to the *Weighting Regulation* in the *Gazette officielle du Québec*, 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 R-33**;
50. These amendments pertain to the number of points allotted to skilled worker applicants. They modify the maximum number of points an applicant can obtain for his or her area of training, as well as the minimum thresholds required to qualify for a Quebec selection certificate;
51. The 2017 amendments also raise the cutoff score required of skilled worker applicants to pass through the preliminary processing stage or the selection stage for a certificate;
52. Like the 2013 amendments, these amendments apply retroactively to all applicants in the skilled worker class, except those who had filed their application before March 8, 2017 and for which preliminary processing had already commenced;
53. It is not a surprise, then, that the practical effect of these most recent amendments is to once again make it impossible for some applicants to obtain a selection certificate, even if prior to the 2017 amendments they had the number of points required;
54. Individuals may withdraw applications if they consider that they no longer have a chance of success under the new selection grid, but will not be reimbursed their application fees if they do so, and no applicant has been offered a refund of his or her application fees if they no longer qualify as a result of these amendments;
55. Indeed, the MIDI has indicated that no refund would be forthcoming, the whole as appears from an article in the *Devoir* about the most recent changes to the *Weighting Regulation*, communicated in support hereof as **Exhibit R-34**;

D. PERSONAL CLAIMS OF THE PROPOSED GROUP MEMBERS

56. The facts giving rise to personal claims by each of the members of Proposed Group 1 are the following;
57. The claims of each of the Proposed Group 1 Members are founded on the same facts as the Petitioner's claim as further elaborated below;
58. The undertaking made by the Minister to process applications for a selection certificate according to the selection grid in force at the time the applications were filed was made generally and in writing to all applicants in Proposed Group 1;
59. Despite this undertaking, the Minister announced that the new grid, which came into force on August 1, 2013, would apply to all applicants for a selection certificate similarly situated as [...] Rahim, the whole as appears from Questions and Answers posted on the Immigration Quebec's website, a print-out of which was made on August 27, 2013 and communicated in support hereof as **Exhibit R-21**;
- 59.1 The Minister knew that her decision to apply the new grid to pending applicants would be meaningful and devastating to them;

60. Like [...] Rahim, a large portion of the applicants in Proposed Group 1 would have qualified for a selection interview or a certificate under the selection grid in place prior to August 1, 2013 but do not qualify under the new rules;
61. [...]
- 61.1 The same can be said of the applicants in Proposed Group 2;
- 61.2 The facts giving rise to personal claims by each member of Proposed Group 2 are the same as those in Proposed Group 1, save for the fact that their applications did not contain an express written undertaking that their applications would be treated based on the rules in force when they applied;
 - 61.2.1 The personal claims of each member of Proposed Group 3 are founded on the same facts as Ms. Basnet's claim;
 - 61.2.2 Specifically, members of Proposed Group 3 would have passed through preliminary processing or qualified for a selection certificate under the selection grid in place before March 8, 2017, but they no longer qualify under the most recent amendments;
- 61.3 The Petitioners submit [...] that the Proposed Group Members had the right to be reimbursed their application fees once the Minister changed the grid in a manner that doomed their applications to failure;
- 61.4 Indeed, the Proposed Group Members have all paid application fees on applications that effectively became moot, and yet, the Minister has not returned their fees to them;
- 61.5 The result is that the Minister has unjustly appropriated the application fees in connection with thousands of applicants;
- 61.6 The Proposed Group Members are impoverished by the application fees they paid. The Minister is enriched by the same amount;
- 61.7 Alternatively, the relationship between the Proposed Group Members and the Minister may be regarded as contractual in nature;
- 61.8 The applications for the [...] Proposed Groups contained an implied term that the applications would be considered in good faith, and that the fees retained in connection therewith would be fair and reasonable in the circumstances. These were core, central obligations in the Proposed Group Members' contracts with the Minister;
- 61.9 However, the applications were not considered in good faith. After they were submitted, [...] restrictive selection grids were [...] adopted with the express intention of refusing pending applications. Because of the new selection grids, applications were destined to be refused [...];
- 61.10 Nor were the fees retained fair and reasonable in the circumstances. A fee is not fair and reasonable when it is retained in connection with an application that has no chance of success, in a context where the applicant was led to believe otherwise;

- 61.11 The foregoing contractual faults give rise to a right, on the part of the Proposed Group Members, to have their contracts with the Minister resolved and their fees returned;
- 61.12 Finally, the retention of the application fees in the present circumstances constitutes a civil fault or, to the extent there was any basis in law for such retention (which is denied), an abuse of rights;
- 61.13 Before August 1, 2013, the Minister had never before changed the selection grid in a manner that affected pending applications. When she did so both on August 1, 2013 and on March 8, 2017 [...], she did so knowing and fully intending that many applications that would have been accepted under the old grid would now be refused;
- 61.14 The Minister [...] appeared to have recognized the injustice of keeping the application fees in the context of the 2013 amendments, yet [...] had offered to return them to only a miniscule subset of applicants;
62. Indeed, the Minister had [...] indicated that applicants for a certificate of selection in the skilled worker category who had filed their applications between July 8 and August 16, 2013 could elect to have their applications returned to them and the application fees reimbursed, so long as they requested same by September 16, 2013, the whole as appears from the form letter from the Minister dated August 26 2013 communicated in support hereof as **Exhibit R-22**;
63. As such, applicants such as [...] Rahim who filed their applications before July 8, 2013 are offered no remedy and will lose or have lost their application fees;
- 63.1 Furthermore, the Minister has not offered to reimburse any of the individuals affected by the 2017 amendments;
- E. THE COMPOSITION OF THE PROPOSED GROUPS MAKES THE APPLICATION OF [...] THE RULES OF MANDATES TO SUE ON BEHALF OF OTHERS OR FOR CONSOLIDATION OF PROCEEDINGS DIFFICULT OR IMPRACTICAL**
64. Pursuant to s. 4 of the regulation amending the *Selection Regulation* and to s. 5 of the regulation amending the *Weighting Regulation in 2013*, these changes apply to skilled worker applications submitted prior to August 1, 2013 whose “preliminary processing” had not yet begun as of that date;
- 64.1 Similarly, s. 2 of the regulation amending the *Weighting Regulation in 2017* indicates that these changes apply to skilled worker applications submitted prior to March 8, 2017 whose “preliminary processing” had not yet begun as of that date;
65. “Preliminary processing” constitutes in the initial examination of an application by a Quebec immigration official in order to determine whether or not the applicant has sufficient points to pass the cutoff score;
66. The moment when preliminary processing begins varies depending on the Immigration Quebec processing unit where it is submitted, which in turn is determined by an applicant’s nationality or residence, the whole as appears from a print-out of a page on Immigration Quebec’s website entitled “Processing Times”, communicated in support hereof as **Exhibit R-23**;

67. According to the Minister, there were approximately 35,000 applications for a certificate of selection under the skilled worker category filed between August 2012 and August 2013 and which had yet to reach the preliminary processing stage as of August 2013, meaning that they will be or were affected by the amendments to the regulations, the whole as appears from a copy of an article published in *La Presse* on August 3, 2013, communicated in support hereof as **Exhibit R-24**;
68. It is further estimated that there are approximately 51 972 applications filed since 2009 that could be affected by these changes in the manner described above, the whole as it appears from the answers to Undertakings in case file 500-17-178740-134 provided by the Minister, communicated in support hereof as **Exhibit R-25**;
- 69.1 The exact number of applications that would be affected by the most recent amendments to the *Weighting Regulation* is currently unknown; however, it is estimated that the number of affected applications may be as high as 30,000, the whole as appears from a copy of the *Devoir* article produced as Exhibit R-33;
70. The composition of the proposed group, made up of tens of thousands of individuals residing everywhere around the world whose identity is unknown, makes the application of the rules of mandates to sue on behalf of others or for consolidation of proceeding highly impractical, if not impossible;

F. ISSUES TO BE DETERMINED ON A COLLECTIVE BASIS

71. The identical, similar, or related questions of fact and law between each Proposed Group Member and Respondent which Petitioners wish [...] to have decided by the proposed class action are:
 - (a) [...]
 - (b) Should the Minister be condemned to reimburse the fees collected for the applications of the Proposed Group Members who do not opt out of the proposed class action?

And, in particular:

 - (b) Were the Proposed Group Members impoverished, and the Minister enriched, in the amount of the application fees paid, the whole without juridical reason?
 - (c) What is the amount of the Proposed Group Members' impoverishment and the Minister's enrichment?
 - (d) Alternately, is the relationship between the Proposed Group Members and the Minister contractual in nature?
 - a. If so, did the Minister commit a contractual fault?
 - b. If so, do the Proposed Group Members have the right to resolve their contracts with the Minister?

- c. If so, what is the amount of restitution owed to the Proposed Group Members?
- (e) Alternately, did the Minister commit an extra-contractual fault?
 - a. If so, what is the amount of damages suffered by the Proposed Group Members as a direct result of the Minister's faults?
- (f) In all cases, can the aggregate amount of the fees to be reimbursed be awarded on a collective basis?

G. NATURE OF THE RECOURSE UNDER THE PROPOSED CLASS ACTION

72. The nature of the recourse which Petitioners wish [...] to exercise on behalf of the Proposed Group Members, for all Proposed Group Members who do not opt out of the proposed class action, is:

- (a) An action in unjust enrichment for restitution of the fees the Minister collected from the Proposed Group Members in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013 or in regards to applications doomed to failure by the 2017 amendments;
- (b) Alternately, an action to resolve the contracts between the Minister and the Proposed Group Members, and to effect the restitution of prestations, in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013 or in regards to applications doomed to failure by the 2017 amendments;
- (c) Alternately, an action in extra-contractual liability for the fees incurred by the Proposed Group Members in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013 or in regards to applications doomed to failure by the 2017 amendments;

H. CONCLUSIONS SOUGHT ON THE PROPOSED CLASS ACTION

73. The conclusions sought by [...] the Petitioners [...] for the proposed class action are the following:

- I. **GRANT** [...] the Petitioners' action against Respondent;
- II. [...]
- III. **CONDEMN** the Respondent to pay to each Group Member who have 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;
- IV. **ORDER** the collective recovery of all amounts to be paid by the Respondent to the Group Members;

V. *On an alternate basis, in addition to the foregoing: ORDER that the contracts formed between the Respondent and the Group Members in regards to the applications for a selection certificate in the skilled worker category filed by the latter prior to July 8, 2013, or in regards to the applications doomed to failure by the 2017 amendments, are resolved;*

THE WHOLE with costs, including the costs of publication of notices.

I. **PETITIONERS [...] ARE IN A POSITION TO REPRESENT THE PROPOSED GROUP MEMBERS**

74. [...] Rahim requests that he be ascribed the status of representative for proposed groups 1 and 2 the following reasons:

- (a) He is a member of the first two proposed groups, having filed an application for a skilled worker certificate with the Minister and paid the application[...] fees prior to July 8, 2013 and, to the best of [...] his knowledge, preliminary processing of [...] his application had not begun as of August 1, 2013;
 - (a.1) His application for a skilled worker certificate was refused on November 5, 2014;
- (b) He indicated to his attorney that he would be willing to act as representative in a proposed class action on behalf of all applicants around the world similarly situated;
- (c) [...] He is well informed of the facts alleged in [...] this motion;
- (d) He has the required time, determination and energy to bring this matter to a conclusion and adequately represent the Proposed Group Members;
- (e) He cooperates with his attorneys and responds diligently and articulately to requests they make and he fully comprehends the nature of the class proceeding;
- (f) He is not aware of any conflict of interest with other Proposed Group Members; and
- (g) He is represented by two law firms who complement one another in terms of expertise and knowledge, namely:
 - (i) Irving Mitchell Kalichman, which specializes in litigation and which areas of expertise include administrative law and class actions; and
 - (ii) Campbell Cohen Worsoff, which specializes in immigration law and which has [...] several hundred clients whose applications for a selection certificate in the skilled worker category are affected by the [...] August 1, 2013 changes to the *Selection Regulation* and the *Weighting Regulation*;

74.1 Rhia Basnet requests that she be ascribed the status of representative for proposed group 3 the following reasons:

- (a) She is a member of the third proposed group, having filed an application for a skilled worker certificate with the Minister that has not yet reached the preliminary processing stage;
- (b) Her application for a skilled worker certificate is likely to be refused because of the application of the point system and cutoff scores established by the March 8, 2017 amendments to the *Weighting Regulation*;
- (c) She indicated to her attorney that she would be willing to act as representative in a proposed class action on behalf of all applicants around the world similarly situated;
- (d) She is well informed of the facts alleged in this motion;
- (e) She has the required time, determination and energy to bring this matter to a conclusion and adequately represent the Proposed Group Members;
- (f) She cooperates with her attorneys and responds diligently and articulately to requests they make and she fully comprehends the nature of the class proceeding;
- (g) She is not aware of any conflict of interest with other Proposed Group Members; and
- (h) She is represented by two law firms who complement one another in terms of expertise and knowledge, namely:
 - (i) Irving Mitchell Kalichman, which specializes in litigation and which areas of expertise include administrative law and class actions; and
 - (ii) Campbell Cohen Worsoff, which specializes in immigration law and which has several hundred clients whose applications for a selection certificate in the skilled worker category are affected by the March 8, 2017 changes to the *Weighting Regulation*;

J. PROPOSED JUDICIAL DISTRICT

75. The Petitioners propose[...] that the class action be brought in the judicial district of Montreal for the following reasons:
- (a) The Petitioners as well as most other Proposed Group Members currently reside outside Quebec;
 - (b) The Petitioners' attorneys practice their profession in the district of Montreal; and
 - (c) The district of Montreal is one of two official places of service of proceedings against the Respondent;

WHEREFORE, MAY IT PLEASE THIS COURT TO:

- I. **GRANT** the [...] Petitioners' Motion for Authorization of a Class Action and to Be Designated as Representatives;

II. AUTHORIZE the institution of a class action as follows:

- a) An action in unjust enrichment for restitution of the fees the Minister of Immigration, Diversity and [...] Inclusion collected from the Group Members in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013, or in regards to applications doomed to failure by the 2017 amendments;
- b) Alternately, an action to resolve the contracts between the Minister and the Proposed Group Members, and to effect the restitution of prestations, in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013, or in regards to applications doomed to failure by the 2017 amendments; and
- c) Alternately, an action in extra-contractual liability, for the fees incurred by the Proposed Group Members in regards to their applications for a selection certificate in the skilled worker category filed prior to July 8, 2013, or in regards to applications doomed to failure by the 2017 amendments;

III. DESIGNATE Petitioner Rahim as representative of the following groups:

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 cumulated 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;

III.I DESIGNATE Petitioner Rhia Basnet as representative of the following group:

Group 3: All individuals who filed an application with the Ministère de l'Immigration, Diversité et Inclusion 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 immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected;

IV. IDENTIFY the principal questions of fact and law to be dealt with collectively as follows:

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

And, in particular:

- (b) Were the Proposed Group Members impoverished, and the Minister enriched, in the amount of the application fees paid, the whole without juridical reason?
- (c) What is the amount of the Proposed Group Members’ impoverishment and the Minister’s enrichment?
- (d) Alternately, is the relationship between the Proposed Group Members and the Minister contractual in nature?
- i. If so, did the Minister commit a contractual fault?
 - ii. If so, do the Proposed Group Members have the right to resolve their contracts with the Minister?
 - iii. If so, what is the amount of restitution owed to the Proposed Group Members?
- (e) Alternately, did the Minister commit an extra-contractual fault?
- i. If so, what is the amount of damages suffered by the Proposed Group Members as a direct result of the Minister’s faults?
- (f) In all cases, can the aggregate amount of the fees to be reimbursed be awarded on a collective basis?

V. IDENTIFY the conclusions sought by [...] the Petitioners with respect to such questions as follows:

I. **GRANT** [...] the Petitioners’ action against Respondent;

II. [...]

III. **CONDEMN** the Respondent to pay to each Group Member who have 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;

- IV. **ORDER** the collective recovery of all amounts to be paid by the Respondent to the Group Members;
- V. **On an alternate basis, in addition to the foregoing: ORDER** that the contracts formed between the Respondent and the Group Members in regards to the applications for a selection certificate in the skilled worker category filed by the latter prior to July 8, 2013, or in regards to applications doomed to failure by the 2017 amendments, are resolved;

THE WHOLE with costs, including the costs of publication of notices.

- VI. **DECLARE** that any Group Member who has not requested exclusion from the Group be bound by any judgment to be rendered on the class action, in accordance with the *Code of Civil Procedure*;
- VII. **FIX** the time limit for exclusion at sixty (60) days from notice to Group Members;
- VIII. **ORDER** that a Notice to the Group Members in the form annexed to this motion be posted on the Immigration Quebec website and mailed by the Minister of Immigration[...] Diversity and Inclusion, in both French and English, to the last address provided by each Group Member within thirty (30) days of the judgment to be issued on this motion;
- IX. **ORDER** the Respondent to assume the publication and mailing costs of the Notice to Group Members;
- X. **ORDER** that the file be referred to the Chief Justice of this Court or to a judge designated by him so that he may fix the district wherein the class action is to be brought and the judge before whom it will be heard;

THE WHOLE with costs to follow suit.

MONTREAL, this 16th day of May 2017

(s) Irving Mitchell Kalichman LLP

M^E CATHERINE MCKENZIE
M^E OLGA REDKO
IRVING MITCHELL KALICHMAN LLP
BI0080
3500 De Maisonneuve Boulevard West
Suite 1400
Montreal, Quebec H3Z 3C1

Tel: 514-934-7729
Fax: 514-935-2999
Attorneys for the Petitioners
RAHIM
RHIA BASNET

(s) CAMPBELL COHEN WORSOFF

COPIE CONFORME/TRUE COPY

Irving Mitchell Kalichman

IRVING MITCHELL KALICHMAN

M^E DAVID COHEN
CAMPBELL COHEN WORSOFF
1980 Sherbrooke West
Suite 800
Montréal, Quebec H3H 1E8
Tel: 514- 937-9445
Fax: 514- 937-2618
Attorneys for the Petitioners
RAHIM
RHIA BASNET