

**DECISION OF THE APPEAL BOARD CONSTITUTED  
UNDER THE FAIR TRADING ACT**

**Re: Appeal of the Decisions of the Director of Fair Trading (as delegated) to: (i) Cancel the Employment Agency Business License of Overseas Career and Consulting Services Ltd. ("Overseas AB"); and (ii) to levy a \$40,000 administrative Penalty against Overseas AB**

**November 24, 2017**

*Appeal Board: Paul Alpern (Chair); Caren Mueller; Nick Tywoniuk*

*Representing Overseas AB: Yasmeen Nizam, Quraishi Law; Eman Saj, Student-at-Law, Quraishi Law*

*Representing the Director of Fair Trading: Sarah Dolgoy, Alberta Justice Legal Services Division*

*Appeal Heard: May 1, 2, 3 and 5, 2017, July 24, 2017 and September 6-7, 2017.  
Location: Boardroom 3A, 3rd Floor, Commerce Place, 10155 - 102 Street,  
Edmonton, Alberta*

An Appeal Board constituted pursuant to section 179 of the *Fair Trading Act*, R.S.A. 2000, c. F-2, and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/1999) met to hear an appeal by Overseas AB of the March 1, 2016 decisions of the Director of Fair Trading (as delegated) (the "Director") to: (i) cancel the employment agency business license of Overseas AB pursuant to section 127 of the *Fair Trading Act*; and (ii) to levy an administrative penalty in the sum of \$40,000 against Overseas AB pursuant to section 158.1 of the *Fair Trading Act*.

### **THE ISSUES**

The issues in this appeal, as adapted from those raised by the parties in the course of the appeal, are as follows:

1. Does Alberta have jurisdiction in this matter?
2. Did Overseas AB breach sections 6(3)(c) and s. 132 of the *Fair Trading Act* (the "FTA" or the "Act") and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the *Employment Agency Business Licensing Regulation* ("EABLR") 45/2012?
3. Should the Director's chosen remedies of cancelling Overseas' business license and levying an administrative penalty of \$40,000.00 be confirmed?

### **RELEVANT LEGISLATION**

***Fair Trading Act, R.S.A. 2000, c. F-2***

*Sections 2.1, 5, 6(3), 6(4), 132, 104, 127, 128, 135, 166, 179,*

***Employment Agency Business Licensing Regulation (Alberta Regulation 189/1999)***

*Sections 3, 4, 7, 8, 9, 10, 12(1), 13(2)*

***Appeal Board Regulation (Alberta Regulation 195/1999)***

*Section 7*

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**Alberta Evidence Act, R.S.A. 2000, c. A-18**

Section 26

**Canada Evidence Act, R.S.C. 1985, c. C-5**

Section 23

**BACKGROUND**

1. Between July, 2014 and June, 2015, an investigator with the Consumer Investigations Unit of Service Alberta conducted an investigation into 10 complaints against Overseas AB involving numerous individuals who allege they paid several thousand dollars each to Overseas AB without getting commensurate services in return ("Complainants").
2. The investigation led to a letter dated March 1, 2016 to Overseas AB from the Director of Fair Trading ordering an administrative penalty to Overseas AB in the amount of \$40,000 and cancelling the employment agency license of Overseas AB.
3. By letter dated April 5, 2016, Overseas AB appealed both the administrative penalty and the license cancellation.
4. This Appeal Board was constituted on June 8, 2016 to hear Overseas AB's appeal.
5. There were numerous challenges in having this matter scheduled for a hearing.
6. Prior to their retaining legal counsel, representatives of Overseas AB were generally non-responsive to communications.
7. On September 29, 2016, Overseas AB's representative's (Asheel Waziri) wrote to the Chair indicating that Overseas AB "will be prepared to move ahead with the appeal after 25 November 2016". Accordingly, on December 23, 2016, this matter was scheduled for a hearing on January 26, 2017.
8. On January 19, 2017, the Chair heard from Overseas AB's principal Kuldeep Bansal via email as follows: *"I traveled to India on November 26th, 2016 and fell seriously ill. I am recovering and doctors has advised me to wait till full recovery before I travel. As it goes on I will be probably in Canada on the first week of Feb 017. Can you please ask for adjournment till then?"*.
9. The Chair also heard on the morning of January 19, 2017 from lawyer Yasmeeen Nizam, who advised that she had recently been retained by Overseas AB in this matter and was also requesting an adjournment.
10. By email to Mr. Bansal, Ms. Nizam and Ms. Dolgoy dated January 19, 2017, the Chair wrote: *"Given Overseas' general challenges to date in responding in any timely/meaningful way in this matter, I've indicated to Ms. Nizam that the next hearing date we schedule will be peremptory on Overseas, meaning the hearing will proceed on the next agreed to dates whether or not Overseas is ready, represented or in attendance (that is, no further requests from Overseas for adjournments will be considered)"*.
11. This matter was eventually rescheduled to May 1, 2, 3 and 5, 2017.
12. The Director proposed to call eight witnesses.
13. Overseas AB proposed to call nine witnesses.

### **Adjournment Application**

14. At the commencement of the hearing on May 1, 2017 Ms. Nizam brought a preliminary application for an adjournment pursuant to S. 7 of the Appeal Board Regulation on the basis of some related legal proceedings involving Overseas AB in Calgary.
15. Ms. Nizam advised that Overseas AB had pled guilty in Calgary Provincial Court on or about April 10, 2017 to two charges under the Fair Trading Act related to some of the matters in issue before this Appeal Board (the "Guilty Pleas") to avoid the time and expense of going to trial on those charges, but did not understand the potential implications of those guilty pleas on the issues before this Appeal Board, including questions related to this Appeal Board's jurisdiction to hear the matters in issue.
16. Ms. Nizam further suggested that Overseas AB was poorly represented by legal counsel in the Calgary Provincial Court matter, that guilty pleas should not have been entered, that Overseas AB was contemplating legal steps to have those pleas vacated and was considering filing a complaint against the lawyer who represented Overseas AB in that matter.
17. Ms. Nizam further argued that:
  - a. Both the Fair Trading Act charges in Calgary and the matters before this Appeal Board were wrongfully brought against Overseas AB as none of the transactions complained of are connected to Alberta;
  - b. Further, none of the consumer transactions are connected to Overseas AB;
  - c. The transactions complained of involve British Columbia companies and not Overseas AB;
  - d. The outcome of the proposed appeal of Fair Trading Act convictions in Provincial Court in Calgary goes to the heart of this matter which is whether this Appeal Board has the jurisdiction to hear this appeal;
  - e. This Appeal Board should not proceed today as to do so would be highly prejudicial to Overseas AB;
  - f. Her client needs to be able to provide a full defense and this cannot be achieved until proceedings in Calgary dealing with setting aside the guilty pleas have occurred;
  - g. Pursuant to S. 7 of the Appeal Board Regulation, the Appeal Board may grant an adjournment if there are compelling reasons or not granting the adjournment would amount to a denial of fairness to one or more parties of the appeal;
  - h. Evidence of possible attornment to Alberta jurisdiction is highly prejudicial and not granting an adjournment would amount to the denial of fairness to her client;
18. Ms. Dolgoy argued that:
  - a. Overseas AB had legal counsel in the matters before the Calgary Courts;
  - b. Overseas AB acknowledged that it had committed the offences;
  - c. Overseas AB and the Crown made a joint submission to the Court for restitution and fines;
  - d. Other charges had been dropped in exchange for the guilty pleas;
  - e. This hearing was peremptory on Overseas AB;
  - f. The matter in Calgary, while involving similar issues to those before this Appeal Board, involved a complainant not known to the Director;

- g. There is ample evidence to proceed with this hearing even without considering the issues before the Calgary Provincial Court; and
  - h. The request for an adjournment was another attempt by Overseas AB to delay or frustrate this hearing process.
19. This Appeal Board rejected the adjournment application.
20. At all relevant times, Overseas AB knew that it had concurrent proceedings before the Calgary Provincial Court and this Appeal Board. Overseas AB, apparently, chose not to advise Ms. Nizam of the related issues pending in the Calgary Courts or their intent to enter guilty pleas. In any event, there was no compelling reason to further delay these proceedings.

### **Jurisdiction Application**

21. Ms. Nizam then asked the Appeal Board to rule on the question of whether or not this Appeal Board has jurisdiction in these matters.
22. Ms. Nizam argued:
- a. S. 5(b) of the Fair Trading Act gives jurisdiction only to "an unfair practice involving a consumer transaction in which an offer or acceptance is made in or is sent from Alberta";
  - b. Overseas Career and Consulting Services Ltd. is an Alberta company. Overseas AB does not deal with employees or charge employees for recruitment. It deals only with obtaining Labour Market Opinions (LMOs) or Labour Market Impact Assessments (LMIAs) for BC employers who had business located in Alberta;
  - c. There are separate related companies incorporated and located in British Columbia: (i) Overseas Career & Consulting Services Ltd. BC ("Overseas BC"); and (ii) Overseas Immigration Services Inc. ("Overseas Immigration");
  - d. Overseas BC is a licensed employment agency in British Columbia providing recruitment services to employers and immigration services to individuals looking to relocate from the United Arab Emirates (UAE) and elsewhere to Canada;
  - e. Overseas Immigration provides immigration services;
  - f. Neither Overseas BC nor Overseas Immigration are agents for Overseas AB. Each company is a separate legal entity;
  - g. Kuldeep Bansal is a director of each of Overseas AB, Overseas BC and Overseas Immigration;
  - h. Overseas AB did not provide services to the Complainants. All dealings by the Complainants were with Overseas BC or Overseas Immigration in Dubai or British Columbia;
  - i. Overseas AB only dealt with BC employers who had business locations in Alberta;
  - j. The Complainants knew or ought to have known that they there were dealing with British Columbia companies. In fact, many of the documents produced by the Director confirm that some of the Complainants referred to Overseas Immigration when asked what company(ies) they had been dealing with;
  - k. Any money paid by the Complainants was transferred to British Columbia banks;

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- l. There is no evidence of any financial transactions having occurred in Alberta among any of the Complainants and Overseas AB;
  - m. This Appeal Board ought not exceed the jurisdiction set out in S. 5 of the Fair Trading act;
  - n. Accordingly, the case against Overseas AB, including the license cancellation and the Administrative penalty should be dismissed with costs.
23. On the question of jurisdiction, Ms. Dolgoy, on behalf of the Director, argued:
- a. As no evidence had yet been entered, it was premature for this Appeal Board to rule on the question of its jurisdiction;
  - b. The issue of jurisdiction is not a preliminary application question;
  - c. To decide jurisdiction and whether the Fair Trading Act of Alberta applies in this case, the Appeal Board must hear evidence to determine whether:
    - i. Overseas AB was a supplier of services;
    - ii. Overseas AB was an Employment Agency;
    - iii. The Complainants were charged thousands of dollars for their jobs;
    - iv. The employment being charged for (or promised) was in Alberta.
  - d. The Complainants reside or at one time resided in Alberta;
  - e. Jurisdiction isn't just a legal issue – it's a question of law and fact and rightly determined after all the evidence is heard;
  - f. Overseas AB has a registered office in or near Calgary, Alberta;
  - g. Overseas AB has an active business in Alberta;
  - h. Complainants from Dubai were placed into jobs in Alberta;
  - i. The evidence indicates that it was an Alberta branch of related Overseas companies that was involved in these matters;
  - j. S. 2.1 of the Fair Trading Act states that "In determining whether this Act applies to an entity or a transaction, a court or an appeal board must consider the real substance of the entity or the transaction and in doing so may disregard the outward form".
  - k. Where there are multiple companies across multiple jurisdictions and a related Alberta company is connected to or involved with unfair practices involving Complainants in Alberta, this Appeal Board has jurisdiction;
  - l. Moreover, S. 166 of the Fair Trading Act contemplates vicarious liability. The Act states: "For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred (a) in the course of the employee's employment with the person; or (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship."
  - m. Accordingly, Overseas AB is liable for any misconduct of Overseas BC or Overseas Immigration;
  - n. Overseas AB has already acceded to Alberta courts by entering guilty pleas to offences under the Fair Trading Act earlier this year in the Provincial Court of Alberta with similar facts to the accounts of the Complainants in this appeal;
  - o. The specific guilty pleas were to the following contraventions of the Employment Agency Business Licensing Regulation ("EABLR"):

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- i. Overseas unlawfully failed to enter into an agreement with an individual before securing employment for that individual in contravention of S. 10(1)(a) of the EABLR; and
- ii. Overseas unlawfully operated in a name other than the name on its own business license in contravention of S. 7 of the EABLR.
- p. S. 26 of the Alberta Evidence Act allows for a finding of guilt by a court in Canada to be admissible in evidence for the purpose of proving that the person committed the offence;
- q. The very fact that the guilty pleas occurred means that Overseas AB has already acceded to the jurisdiction of the Alberta Courts in a criminal court where the standard of proof is significantly higher than this proceeding.
- r. S. 5(a) of the Fair Trading Act states that the "Act applies to the following unfair practices: (a) an unfair practice in which the supplier or consumer is a resident of Alberta". Overseas AB is incorporated in Alberta and provided services to consumers (the Complainants) resident in Alberta;
- s. S. 5(c) of the Fair Trading Act states that the "Act applies to the following unfair practices: (c) an unfair practice made or received in Alberta involving a supplier's representative". The Complainants, all Recipients of the Overseas companies' unfair practices, each ended up in Alberta. Overseas companies took several thousand dollars from each of the Complainants and placed them with employers in Alberta;
- t. S. 6(3) of the Fair Trading Act states that "It is an unfair practice for a supplier (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services". The Complainants in this case received no reasonable benefit from the services rendered by the Overseas companies or no benefit commensurate with the fees paid;
- u. S. 13(2) of the EABLR states that "It is an unfair practice for an employment agency business operator to do any of the following: (a) exert undue pressure on or threaten a consumer, ...; (b) give false, misleading or deceptive information to a consumer with respect to matters relating to (i) employment positions, (ii) legal rights, (iii) immigration, or (iv) the general living or working conditions in Alberta." Overseas AB and/or the related Overseas companies breached each of the above in respect to each of the Complainants, each of whom were placed with employers in Alberta;
- v. Among the facts agreed to in the criminal process in Calgary were that Overseas AB was acting as a supplier of services in Alberta – specifically, Overseas AB admitted that they were acting as an employment agency in Alberta;
- w. This fact is admissible in the current proceeding through entering the transcript of criminal proceedings as evidence in this appeal through the public documents/judicial records exception to the hearsay rule pursuant to S. 23 of the Canada Evidence Act or pursuant to the common law doctrine of exemplification;
- x. The truth of the contents of this transcript is proven because Overseas AB had to be truthful in the criminal proceeding and because the court's findings of fact are in the transcript. If Overseas wants to dispute these facts now, they will essentially be admitting that they perjured themselves in the criminal process;
- y. Even without using the criminal transcript, the evidence in this case will prove that:

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- i. Overseas AB was a supplier of goods and resident in Alberta;
  - ii. Between June 1, 2011 and June 30, 2013 and between July 15, 2013 and July 31, 2015, Overseas AB was a licensed employment agency under the EABLR with Service Alberta;
  - iii. During that time, Overseas AB placed the Complainants with Alberta employers;
  - iv. Also, Overseas AB was a registered corporation in Alberta with a registered office at 52 Martinglen Place NE, Calgary, Alberta;
  - v. Accordingly, Overseas AB was domiciled in Alberta;
  - vi. Overseas AB breached S. 12(1) of the EABLR by collecting fees from the Complainants who were seeking employment and failing to enter into separate written agreements with the Complainants in breach of S. 13(2)(c) of the EABLR;
  - z. In short, the question of jurisdiction should be decided only after all the evidence is heard.
24. In response to Ms. Dolgoy's arguments on the question of jurisdiction, Ms. Nizam stated:
- a. Overseas AB did not place any employees in Alberta;
  - b. Overseas AB assisted employers in their recruiting efforts and charged employers a fee for this service;
  - c. Overseas AB had no connection to the alleged unfair trade practices and, accordingly, this Appeal Board has no jurisdiction in this matter as offences, if any, occurred in British Columbia or in the United Arab Emirates;
  - d. All transactions occurred outside of Alberta;
  - e. There is no real or substantial connection of the alleged offences or the Complainants to Alberta;
  - f. The jurisdiction question should be decided before the hearing is commenced, otherwise, it's a waste of time and resources.
25. The Appeal Board concluded that:
- a. A decision on the question of jurisdiction should wait until after the Appeal Board has heard evidence;
  - b. The Appeal Board has heard argument but has not yet heard or seen any evidence of the nexus between any of the Overseas' companies, the Complainants and Alberta;
  - c. The issue of jurisdiction is a question of law and fact;
  - d. The Appeal Board could hear evidence on the jurisdiction issue and then decide that issue, or could proceed with a hearing into the substantive issues under appeal, including jurisdiction evidence, and then decide on the question of jurisdiction;
  - e. Given that many of the of witnesses and much of the evidence will be the same on the jurisdiction question and the substantive issues under appeal, the Appeal Board was of the view that it would be more efficient, expedient and cost effective for all parties concerned to proceed with the hearing and then decide the jurisdiction question.

**Application to Adjourn Pending Application for Judicial Review**

26. Ms. Nizam brought a further application to adjourn these proceedings to give her client an opportunity to apply to the Court of Queen's Bench for judicial review of the Appeal

Board's decision not to decide the question of its jurisdiction at the commencement of this hearing;

27. Ms. Nizam argued there are complex matters in issue and her client does not accede to the jurisdiction of an Alberta Appeal Board in this matter;
28. Ms. Dolgoy argued:
  - a. No decision has yet been made on the jurisdiction question;
  - b. It is premature for judicial review;
  - c. Any hearing on the question of judicial review would take considerable time;
  - d. The Director opposes the application.
29. The Appeal Board concluded as follows:
  - a. an adjournment to allow Overseas AB to commence a judicial review application is premature;
  - b. no decision on the jurisdiction question has yet been made;
  - c. in fact, the Appeal Board has deferred that decision until after it has heard evidence;
  - d. the proposed adjournment is denied.
30. Ms. Nizam asked that her objection to this matter proceeding be noted on the record.

#### **THE DIRECTOR'S OPENING STATEMENT**

31. Ms. Dolgoy, on behalf of the Director, made an opening statement as follows:
  - a. This case is about many things, though at its core, it's fundamentally about unfairness. The evidence produced in this appeal will show that Overseas Career and Consulting services acted unfairly, and breached numerous provisions of the Fair Trading Act and Regulations.
  - b. Over the next few days, this appeal panel will see documentary evidence and hear witness accounts proving that Overseas acted as an employment placement agency, and charged workers substantial fees (thousands of dollars) for their services, in breach of the Fair Trading Act and regulations. The 10 complainants received little to nothing in return for their payments.
  - c. Overseas' conduct was egregious, and rightly resulted in the Director cancelling Overseas' business license and fining Overseas \$40,000.
  - d. Perhaps if it was one or two complaints, one could chalk Overseas' actions up to a mistake - a few disgruntled former clients fell through the cracks, did not get the service they wanted, and now want to complain. But that's not the case here. We have a pattern of 10 people with remarkably similar stories, all who met employees or agents of Overseas in Dubai, all of whom paid huge amounts of money in exchange for employment (or the promise of employment in Canada) and all of whom received little to no benefit for the fortunes they spent.
  - e. When asked to account for the exorbitant funds paid and asked to produce records, Overseas failed to produce anything substantial or relevant. They had no contracts showing their relationship with the Complainants - a significant breach in itself of the Act and Regulations. Instead of providing records, Overseas called foul and complained that the director was unfairly targeting them. Given the paper trail and

the excellent memories of these Complainants, 6 of whom will testify this week, Overseas' blanket denials and claims of bias will be shown for what they are -an attempt to avoid taking responsibility for behavior that significantly harmed all 10 of the Complainants.

- f. We intend to produce evidence in this appeal showing that these complaints are not isolated - there is a class action lawsuit currently launched in BC against overseas for charging temporary foreign workers thousands of dollars for employment in Canada.
- g. On the question of whether the penalties levied were appropriate, Overseas did not engage in a small indiscretion. I reiterate, the behavior was egregious, intentional, and occurred on numerous occasions. Following their conduct, Overseas has been unrepentant and uncooperative with the investigation process. As noted in the Director's letter of March 1, 2016, Overseas "... demonstrated an unacceptable lack of cooperation during the investigation, has refused to acknowledge that the activities engaged in were subject to the regulatory regime, failed to comply with even basic elements of the EABLR, such as record keeping and entering into agreements, and has engaged in egregious breaches around misrepresentations and breached of the fee prohibition." I encourage you to start your review of the director's evidence in this case with reviewing the March 1, 2016 decision letter.
- h. The Director is accountable to the people of Alberta. Among his roles under the Act are the protection of Albertans from those who would harm them through unscrupulous business dealings. This role arises through the provisions of the Act which allow the Director to find and reprimand those engaged in unfair business dealings. Though, at the end of the day, license cancellation is not just a penalty. It is a tool to assist the Director to fulfil his duty to protect the public. We submit that license cancellation is an appropriate penalty and result in this case.
- i. Also, the fines levied in relation to the breaches that will be evidenced in this case totaling \$40,000 are minor compared to the effect these breaches had on the lives of the Complainants. We submit that the administrative penalty should be upheld.
- j. The Director requests that this Appeal Panel confirm Darren Thomas' decision (or in any event find that Overseas engaged in unfair practices and breached numerous provisions of the Fair Trading Act and Regulations including ss. 6(3)(c) and s. 132 of the Fair Trading Act and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the Employment Agency Business Licensing Regulation.

## **EVIDENCE OF THE DIRECTOR**

- 32. Ms. Dolgoy, on behalf of the Director, called the following witnesses:
  - a. Laura Aydin
  - b. Darren Thomas
  - c. Sudesh Kumar
  - d. Mahadi Hasan
  - e. Limuel Olivar
  - f. Mylene Ricablanca

- g. Tripper Lactao
- h. Resar Tambis

### **Laura Aydin**

33. Aydin's evidence included the following:
- a. She has been an investigator employed by Service Alberta for approximately nine years and has conducted about 500 investigations, roughly half of which involved employment agencies;
  - b. She first got involved with this file in July 2014 when the first complaint was received by Service Alberta from a temporary foreign worker ("TFW") alleging they paid a fee to Overseas BC or Overseas AB operating as Overseas Immigration to obtain a job in Alberta;
  - c. In total, there are nine open/pending complaints and one closed complaint from TFW's against Overseas AB in the Service Alberta system;
  - d. She had numerous challenges getting cooperation from Overseas AB. They were non-compliant in producing documents requested and they asked for several extensions of time to produce those records;
  - e. Many records (including agreements with the Complainants) were never produced;
  - f. She personally interviewed all of the Complainants except for Sudesh Kumar and Suman Thapa, both of whom were interviewed by another investigator;
  - g. In general, all of the Complainants were introduced to the Overseas companies in Dubai, having attended one or more orientation seminars sponsored by the Overseas companies;
  - h. Invariably, each of the Complainants were told they needed to pay fees to Overseas to secure an LMO and an offer of employment;
  - i. Each of the Complainants completed their own work Visa applications;
  - j. The Complainants received very little in the way of settlement services upon arrival in Canada;
  - k. The Complainants' job placements in Alberta were either not as advertised or not as indicated in the LMOs;
  - l. A Corporate Registry search shows that Overseas Career and Consulting Services Ltd. is a registered Alberta corporation. They operate out of Unit 204, 12830 – 80<sup>th</sup> Avenue in Surrey, British Columbia, but have a registered office in Alberta located at 52 Martinglen Place NE, Calgary, AB. The sole director identified is Kuldeep Bansal;
  - m. A search of Service Alberta's Consumer Affairs Tracking System will show that that Overseas AB was licensed as an Employment Agency #314429 with Service Alberta from 2013-07-15 to 2015/07/31;
  - n. The most recent licensing application submitted and received July 8, 2013 will provide the following information:
    - i. The business operates under the name: Overseas Career and Consulting Services Ltd.;
    - ii. Kuldeep Kumar Bansal is the sole Director identified in the application;
    - iii. No other operating names were provided;

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- iv. They recruit both national and international classes and all National Occupation Classifications;
- v. Overseas AB was provided the Employment Agency Fee Prohibition Letter on July 15, 2013.
- o. Overseas AB also applied for licensure on May 30, 2011;
- p. Overseas AB was sent a letter from Service Alberta on June 1, 2011 advising of the prohibition against charging fees to individuals seeking employment;
- q. Overseas AB was sent a letter from the Director on June 18, 2012 informing them that the new EABLR comes into effect on September 1, 2012 and a short list of amendments was included in the letter and an FAQ. The letter and FAQ speak to the new expanded record keeping requirements, requirements surrounding employment agencies using their licensed name, requirements for written agreements with employers and individuals, fee prohibition and unfair practices;
- r. Throughout the various applications for licensure of Overseas AB with Service Alberta, Overseas AB showed a mailing address of 204-12830 80 Avenue, Surrey BC (the same address as Overseas BC and Overseas Immigration) and showed a website address of [www.overseasimmigration.com](http://www.overseasimmigration.com);
- s. Aydin gave evidence respecting interviews with a number of Complainants:
  - i. **Mahadi Hasan ("Hasan")** –
    - 1. Was working in Dubai, United Arab Emirates (UAE) and through a friend discovered the agency, Overseas Immigration. Hasan met with Overseas Immigration representative AJ Mann ("Mann") who identified himself as the manager of Overseas Immigration in January 2012 at the Hotel Al Raya located in Dubai;
    - 2. On May 11, 2012, Mann wrote to Hasan requesting \$2,000 to start the application process and to attach a copy of his CV, passport and UAE Visa;
    - 3. Payment was made on May 14, 2012 to the account details provided by Mann, specifically, to Trident Immigration Services Ltd. ("Trident");
    - 4. It was later determined that Trident's mailing address on their website is in the same building as Overseas BC. Minakshi Bala ("Bala") is a director of Trident and was the beneficiary of the funds paid by Hasan;
    - 5. Bala had been contacted by Service Alberta with a request for information about the services Trident provided to Hasan. No substantive response received;
    - 6. Bala was also a director of Overseas Immigration until 2012;
    - 7. Hasan received an email dated August 14, 2012 from Renu Dhaliwal, another representative of Overseas Immigration, indicating that Hasan has an interview with an employer at the Flora Creek Deluxe Hotel Apartments in Dubai on August 29, 2012;
    - 8. Hassan attended the interview. The employer was Subway;
    - 9. Following the interview, Hasan didn't hear back from Overseas Immigration for a significant time despite Hasan sending various follow-up requests for information and updates;

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10. On May 3, 2013, Hasan received an email from Mann indicating that he has secured employment and to see the attached LMO. Hasan reviewed the LMO and was upset to see that the employer was Fatburger and not Subway;
11. Hasan was told to complete his own paperwork for the Embassy;
12. On May 7, 2013, Hasan met with Mann in Dubai and expressed his concern of interviewing with Subway and then seeing Fatburger as the employer on the LMO. Hasan was told by Mann that Subway cancelled their contract with them. Hasan felt that he had no choice so he accepted the offer from Fatburger. Mann provided Hasan with a list of things he needed to do and was told to apply for his work permit before May 30, 2013;
13. On May 14, 2013, Hasan paid his Visa fee of \$150 and on May 30, 2013 brought his Visa Application to the Canadian Embassy;
14. On January 8, 2014, Hasan received his Visa from the Canadian Embassy;
15. Hasan stated that he did all the paperwork processing himself to obtain his Visa. He also paid for all other applications such as a police clearance;
16. Hasan notified Mann that he had obtained his Visa;
17. Mann Called Hasan and demanded another \$7,000. This was for airfare and processing. Hasan refused to pay the \$7,000 and Hasan stated that Mann threatened him and said that if he wanted to come to Canada, he has to pay the money or they will have his Visa cancelled. Hasan stated he felt helpless;
18. Hasan went back to his home country, Bangladesh, on March 4, 2014;
19. Eventually, Hasan had the \$7,000 paid to Mann on April 3, 2014;
20. Mann then demanded an another \$500 from Hasan as the airfare from Bangladesh was more expensive than from Dubai;
21. Hasan reluctantly had the additional funds paid to Mann;
22. Hasan arrived in Vancouver, Canada on June 17, 2014. He was provided with a taxi voucher prior to his departure. The address he and another temporary foreign worker ("TFW") were taken to was 13368 80 Avenue in Surrey, BC. When they arrived, it was a townhouse which they felt was not suitable for living in. There was no food, beds or utensils. It was just an empty space;
23. Mann assisted Hassan and another TFW obtain their Social Insurance Number ("SIN") and bank account. No further settlement services were provided;
24. A day or two later, Hasan was flown to Edmonton where a representative of his employer, Fatburger, picked him up from the airport and drove him to a coworkers' home. Hasan paid \$300 per month for rent. This is a private arrangement not facilitated by the employer or Overseas Immigration;
25. Hasan was advised by his employer that the employer paid AJ Mann for Hasan's airfare and that Hasan would have to question Mann as to a refund of his airfare. Mann was questioned and advised Hasan that since he is a skilled worker there is no airfare refund for him. Hasan's airfare has never been refunded;
26. Hasan has never signed a contract with Mann or the Overseas agencies or Trident. In total, Hasan has paid \$9,500 and Hasan cannot determine what services were provided for those fees. He was told it was a registration,

processing and airfare fee. No further breakdown has been provided by Overseas BC, Overseas Immigration, Overseas AB or Trident;

27. Ms. Dianna Lasenby ("Lasenby") of Fatburger Canada responded to Aydin's request for additional information. In relation to Hasan, the following information was provided:
  - a. Fatburger representatives did not interview Hasan. His selection was based on a resume provided by Overseas;
  - b. The LMO and employment offer were sent by Overseas (she referred to Overseas as the "recruiter") and not by Fatburger;
  - c. Hasan had to pay his own airfare as he was successful in obtaining a skilled position;
  - d. If a foreign worker was recruited from outside of Canada, Fatburger paid a fee of \$750 in recruiting fees to Overseas;
  - e. If a foreign worker was already in Canada, Fatburger paid a fee of \$500 in recruiting fees to Overseas
28. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 3, 7, 8(1), 9, 10(1), 10(2), 12(1)(a), 13(2)(c) and 13(2)(e) of the EABLR.

**ii. Resar Tambis ("Tambis") –**

1. Tambis was working in Dubai and, through friends, discovered Overseas and reached out to AJ Mann. They met the following day at the Al Raya Hotel apartment in Dunai. Tambis stated there was an orientation sponsored by Overseas there. Tambis met with Mann who stated he worked for Overseas Immigration;
2. Tambis had a follow-up meeting with Mann at the Flora Creek Hotel in Dubai. Mann provided him a list of documents he was required to collect in order to obtain an LMO;
3. Mann told Tambis that after nine months of completing the contract he would be able to apply for permanent residency in Canada;
4. Tambis emailed Mann on January 14, 2012 with the required documents (resume, academic achievements and passport);
5. Tambis called Mann to be sure Mann had received the documents and was instructed to forward a \$1,500 processing fee to Mann. Those fees were paid on January 24, 2012;
6. Tambis received an LMO and was instructed to complete the forms in a link sent via email to him. The link was to apply for his Visa. Tambis stated that he was confused as he felt this is what he paid Overseas a processing fee for. Tambis felt that he didn't have a choice and completed the Visa application himself;
7. Tambis paid \$150 for the Visa application fee on June 4, 2012. Tambis forwarded everything to the Canadian Embassy. Overseas did not review his application prior to submittal to the Embassy;
8. Tambis asked on several occasions for a copy of his retainer agreement which he had never seen and a receipt for his \$1,500 payment. Mann had told him that he would email it to him, but to date he has received nothing.

9. Tambis contacted Mann once he received his Visa and was instructed to resign from his current employer in Dubai, forward a copy of the resignation letter and provide Mann with a \$4,000 placement fee plus a \$1,500 airfare fee, both of which were paid by Tambis' aunt (at Tambis' request) to Mann;
10. Tambis arrived in Canada on November 30, 2012 in Calgary, Alberta. He obtained his work permit and flew to Edmonton. Tambis sent a text message to Mann who would pick him up at the airport and he was told someone would. He received a message over an hour later and was told he should take a taxi to the Fatburger at South Edmonton Common;
11. When he arrived at Fatburger, he was to ask the Manager to pay the taxi fare. He arrived and the fare was paid. Tambis met his new employer and was told that they did not have accommodations set up as of yet and that he could stay with another trainee;
12. Tambis had to contact his family in Vancouver to obtain \$300 for food as nothing was provided;
13. Tambis discovered that his job was a grill cook. He had been told that the job would be a cash job. He was also told he would have a bus pass, apartment and airbed, none of which was provided. His employer was making \$50 per pay cheque deductions for these items;
14. Mann also promised Tambis that after several months, Overseas would process his permanent residency application but that has never occurred and this "has been the worst experience";
15. Tambis stated that his co-workers assisted him in obtaining a phone, groceries and a place to stay. They all share an apartment and pay \$250 per month. There is no furniture;
16. Tambis asked his employer for reimbursement of his airfare money. It was promised on several occasions and almost a year later, the employer paid \$1,250, less than the \$1,500 he had paid for airfare;
17. Fatburger assisted Tambis in obtaining his SIN, Alberta Health card and bank account;
18. Tambis had a text exchange with Bansal as follows:
  - a. Bansal states that Tambis did not pay a placement fee, but rather a work permit processing fee which is non-refundable and has been filed with the government in taxes;
  - b. Bansal states that he has a legal document and tax filed receipt with the Government of Canada stating there was an immigration service fee in 2013;
  - c. Bansal won't refund Tambis as Tambis did not pay the fee originally; the aunt of Tambis paid the fee. Bansal states that the tax receipt is issued under the name of the payee;
19. Tambis confirmed that he completed and submitted his own Visa application without any review by Overseas;
20. No immigration services were provided by any of the Overseas companies;

21. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 3, 7, 8(1), 9, 10(1), 12(1)(a), and 13(2)(e) of the EABLR.

**iii. Tripper Lactao ("Lactao") –**

1. Lactao was working in Dubai and discovered Overseas Immigration through friends;
2. She attended a session at the Al Raya Apartment Hotel and met with Mann;
3. At the session, Lactao was told what documents to bring and fees. She was told about what type of work is available and what the benefits of coming to Canada are;
4. Lactao was told that after 9-12 months she will get permanent residency;
5. In November 2012, Lactao was advised of a 3,500 AED (~\$1,150) application and processing fee, 9,000 AED (~\$3,000) for the LMO, Visa and placement fee;
6. Several months later, Lactao received an LMO via email from Mann;
7. Lactao began to process documents at the Canadian Embassy to obtain her work permit;
8. She paid \$150 for the application fee as well as obtaining and paying for a police clearance;
9. No assistance was provided by Overseas Immigration;
10. Lactao paid 4960 AED (~\$1,600) to Mann for her airfare. The airfare was later reimbursed by the employer in the amount of \$1,350;
11. Lactao arrived in Vancouver, Canada on November 26, 2012. She was picked up at the airport by a Filipino couple apparently associated with Overseas Immigration;
12. Lactao stayed with the couple for several days. They helped her obtain her Alberta Health care card, SIN, cell phone and a bank account;
13. Mann paid Lactao's airfare from Vancouver to Edmonton and provided Lactao with \$500 cash as she had no spending money with her;
14. Lactao arrived in Edmonton on December 1, 2012 and began work on December 4, 2012 with Fatburger City Centre until March 23, 2013;
15. Lactao was transferred to Fatburger Gateway location on March 25, 2013;
16. Lactao's employment was terminated on May 13, 2013;
17. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 3, 7, 8, 12(1)(a), and 13(2)(e) of the EABLR.

**iv. Limuel Olivar ("Olivar") –**

1. Olivar was working in Dubai;
2. He learned of Overseas Immigration from a friend;
3. Olivar met with Bansal and Mann at the Flora Creek Hotel in Dubai;
4. They requested that Olivar provide his resume, work certificates, police clearance, immigration clearances from Dubai and the Philippines, diplomas, transcript, marriage certificate, and birth certificate;
5. Bansal and Mann requested a fee of 26,000 AED, 6000 AED of which was for an immigration fee and 20,000 AED for a placement fee;

**Re: Appeal of the Decisions of the Director of Fair Trading (as delegated) to: (i) Cancel the Employment Agency Business License of Overseas Career and Consulting Services Ltd ("Overseas AB"); and (ii) to levy a \$40,000 administrative Penalty against Overseas AB**

6. Olivar was also promised permanent residency after one year of residing in Canada;
7. No contracts were signed;
8. Olivar paid 6,000 AED cash (~\$1,600) to Mann in May 2012. No receipt was provided;
9. On August 15, 2012, other documents were requested of Olivar by a representative of Overseas Immigration (copy of passport, proof of funds, educational documents and birth certificate), which documents Olivar provided;
10. Olivar received an LMO on August 16, 2012 from a representative of Overseas Immigration. The job was with Best Western- - Cedar Park Inn in Edmonton;
11. Olivar paid his Visa fee of \$150 on August 23, 2012 and applied on his own on September 24, 2012 to the Canadian Embassy in Dubai. Olivar stated that he downloaded the required forms on his own, filled them out and submitted them without any assistance from Overseas Immigration;
12. Olivar paid a further 20,000AED (~5,400) Cash to Bansal in Bansal's hotel room at the Flora Creek Hotel in Dubai. No receipt was provided.
13. Olivar emailed Mann on November 7, 2012 advising that he had received his Visa;
14. Olivar arrived in Edmonton on February 6, 2013;
15. Olivar was told by Bansal that he would pick him up at the airport, however, after four hours of waiting late at night, Bansal did not show up. Olivar sent an email to Mann and several hours later received a response telling Olivar to take a cab to the employer hotel;
16. Olivar met his employer on the second day after arriving in Canada. The employer provided him with two weeks of accommodations. Olivar had been working for approximately two months at the hotel when the employer fired him without cause;
17. Mann found Olivar new employment at Fatburger;
18. A new work permit was obtained when Fatburger flew Olivar to Vancouver, Olivar being driven to the United States border by a representative of Overseas BC;
19. Olivar conducted an interview with immigration officials at the border, paid \$150 for his new permit, returned to Edmonton and began his employment. Olivar personally completed all the new paperwork to obtain the new permit;
20. Olivar paid a total of 26,000 AED (~ \$8,600) to Overseas Immigration. Best Western had paid for airfare;
21. Olivar was later laid off of his position at Fatburger. He had been told by Mann that Overseas would apply for his permanent residency status within one year of being in Canada, but that has not occurred;
22. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 8(1), 12(1)(a), 13(2)(b) and 13(2)(e) of the EABLR.

**v. Jill Seares ("Seares") –**

**Re: Appeal of the Decisions of the Director of Fair Trading (as delegated) to: (i) Cancel the Employment Agency Business License of Overseas Career and Consulting Services Ltd ("Overseas AB"); and (ii) to levy a \$40,000 administrative Penalty against Overseas AB**

1. Seares was working in Dubai and, through friends, discovered Overseas Immigration;
  2. She attended a session at the Al Raya Apartment Hotel and met with Mann;
  3. At the session, Seares was told what documents to bring and fees. She was told about what type of work is available and what the benefits of coming to Canada are;
  4. Seares was told that the total fee for the services of Overseas to find work in Canada was 28,545 AED (~\$8,400);
  5. The first payment of 5,600 AED was an immigration fee paid in August 2011;
  6. The second payment in the amount of 18,635 AED was a placement fee paid on October 22, 2012;
  7. The last payment she made on her own was 4310 AED for airfare;
  8. No contracts were signed between Overseas and Seares;
  9. Seares was told that after nine months she will get her permanent residency and that she will be able to bring her son and family to Canada;
  10. Several months later, Seares received an LMO;
  11. Seares began to process documents at the Canadian Embassy to obtain her work permit;
  12. She paid \$150 for the application fee on her own as well as paying for the police clearance and immigration clearance from the Philippines;
  13. Seares arrived in Vancouver, Canada on October 28, 2013 and stayed at accommodations provided by Mann;
  14. The accommodations had no furniture, no beds and no utilities. It was winter and the place was cold;
  15. No settlement services were provided by Overseas;
  16. After Seares arrived in Edmonton, her employer assisted in finding accommodations;
  17. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 8(1), 10(1), 12(1)(a), and 13(2)(e) of the EABLR.
- vi. Xi Yan Jia and Suman Thapa ("Jia" and "Thapa") –**
1. Jia and Thapa (wife/husband) heard of Overseas BC in Dubai;
  2. They attended a seminar on July 26, 2012;
  3. They were told to pay \$2,000 each for obtaining their LMO;
  4. Jia stated that they submitted copies of their resumes, passports and Visas to Overseas;
  5. On August 8, 2012, three individuals (Jia, her husband and another TFW paid a total of \$6,000 each;
  6. They were instructed that once their Visa was approved, they were to pay an additional \$5,000 each;
  7. They dealt with Bansal and Cynthia Hira ("Hira");
  8. There were no contracts signed;
  9. On December 27, 2012, Jia and Thapa received an LMO;
  10. They began the process of obtaining their Visas;

11. The LMO for Jian and Thapa was for two years of employment with Mac's Convenience Store;
12. In January 2013, Jia returned to China, her home country, to give birth to a child;
13. On July 11, 2013, Jia was to submit her original passport to the Embassy. Her husband made arrangements for this to occur from Dubai. Jia was issued a multiple entry Visa for Canada on July 24, 2013;
14. Bansal contacted Jia and left a message requesting that she pay the remaining balance of \$5,000 within 24 hours otherwise the Visa would be cancelled;
15. Jia asked Bansal when she would get her airfare ticket and where she would stay when she arrived in Canada and was told not to worry about it and that it would all be taken care of;
16. Jia stated that she was told she may have a chance of permanent residency in Canada;
17. Jia borrowed the \$5,000 from her parents and brother and paid the money to Bansal through a Chinese bank on August 19, 2013;
18. Thapa paid his \$5,000 on October 14, 2013;
19. Bansal then requested another \$500 for airfare or, alternatively, Jia could purchase her own airfare. Jia's brother purchased the airfare;
20. Jia landed in Vancouver on November 26, 2013;
21. When Jia arrived, she met with Bansal and HIRAK in their Surrey, BC office. They advised Jia that the job in Calgary was not available with Mac's. They were making arrangements for her and seven others (including Thapa) to obtain employment in Edmonton;
22. Bansal arranged for Jia to stay at the Best Western Hotel in Surrey;
23. On November 28, 2013, Bansal sent Jia and others to Edmonton by Greyhound bus;
24. They arrived at the bus depot in downtown Edmonton and did not know what to do. After several phone calls to Bansal, he agreed to book a hotel room at the Coast Edmonton Plaza hotel in downtown Edmonton. There was one room for Jia and the other two (both men) to share;
25. On November 29, 2013, Bansal and Mann came to Edmonton and took Jia to several employers looking for employment. They were unsuccessful and the employers did not have an open LMO;
26. Jia and the two men were moved to the Best Western Cedar Park Inn in Edmonton. Again, three people (Jian and two men) to one room;
27. Jia's husband Thapa arrived in Edmonton on December 10, 2013;
28. On December 11, 2013, Jia and the two men were forced to leave the hotel room as Bansal would not keep paying the hotel fees;
29. Bansal called the hotel and cancelled his credit card authorization;
30. Thapa called Bansal and was told that if they don't understand, Bansal will cancel their Visas and send them home;
31. Jia and Thapa found a place to rent;
32. Jia did find a job with Subway who were interested in applying for a new LMO;

33. Bansal became involved and told the Subway owner to pay \$275 to him to assist with the LMO;
34. The owner submitted the documents on January 27, 2014;
35. The Canadian Government had, at that time, cancelled the TFW program and the opportunity with Subway did not come to fruition;
36. Thapa had paid his \$5,000 on October 14, 2013;
37. Thapa is working, however, Jia has not worked in Canada at all;
38. No settlement services were provided to Jia and Thapa by Overseas. They obtained their own bank accounts, SIN, etc.;
39. No assistance was provided for Jia's Visa application or any other documentation prior to coming to Canada;
40. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 8(1), 10(1), 10(2), 12(1)(a), 13(2)(b), 13(2)(c) and 13(2)(e) of the EABLR.

**vii. Mylene Ricablanca ("Ricablanca") –**

1. Ricablanca met Mann and Bansal at the Flora Creek Hotel in Dubai on July 26, 2012;
2. She was advised that an initial payment of \$2,000 was required to begin the process of obtaining a job in Alberta;
3. Ricablanca paid \$2,000 cash to Mann;
4. Ricablanca was told by Mann that there was an opening at a Mac's Convenience store as a cashier;
5. Mann explained that the package of services included a job in Alberta, airfare, accommodations until they start work, LMO, Visa assistance and a taxi voucher upon their arrival in Canada to the Overseas' office in Surrey;
6. On October 13, 2012, Ricablanca received an email from Overseas Immigration stating that she was scheduled for an interview with Hiram and the prospective employer on August 30, 2012 at the Flora Creek Hotel in Dubai. The meeting was subsequently rescheduled to August 31, 2012;
7. On October 16, 2012, Ricablanca received an email from Bansal including an LMO for a job at a Mac's Convenience Store in Edmonton together with forms to complete to obtain a Visa;
8. On October 18, 2012, Ricablanca received another email from Bansal telling her to apply to the embassy before October 30, 2012;
9. On November 13, 2013, Ricablanca was told to pay a second fee of \$2,785.52 TO Trident Immigration Services. She sent the fee via Western Union;
10. On December 28, 2013, Ricablanca attended the Flora Creek Hotel and paid the final installment of \$3,000 cash directly to Bansal;
11. Ricablanca was told via email from Bansal that her plane to Canada leaves on June 16, 2014;
12. Bansal advised Ricablanca by telephone to delete all emails between both parties prior to coming to Canada and to say that she did not pay any fee to the agency;

13. Upon her arrival in Vancouver, Ricablanca used the taxi voucher given to her by Bansal and was driven to the Best Western hotel in Surrey;
14. Ricablanca then attended the offices of Overseas Immigration in Surrey. They assisted her in obtaining a SIN and bank account;
15. Ricablanca was then told that they needed to look for new employment as the Mac's job was not available;
16. On June 20, 2014, Ricablanca was advised that she had to leave the Best Western accommodations was forced to stay in a terrible home that was filthy, smelly and full of people waiting for employment who used the services of Overseas Immigration;
17. Ricablanca told Bansal that she would rather stay with a friend in Edmonton. Bansal booked Ricablanca a Greyhound bus ticket to Edmonton for June 20, 2014;
18. Ricablanca arrived in Edmonton and began calling Overseas Immigration asking when she could begin working for her employer. She was told she needed to be patient;
19. Weeks passed and Ricablanca kept calling looking for information in relation to her job. She told Bansal that she needed to send money home to her family and needed to start work right away. She was told there was a problem with the Mac's franchisee;
20. Ricablanca kept calling Bansal and was told that he will pay her a salary while she is waiting;
21. On July 29, 2014, she was sent \$730 and, on August 26, 2014, she was sent an additional \$713. The payment stopped then notwithstanding several insistent calls to Bansal;
22. Ricablanca was very upset that she came to Canada and was not given a job. She was sleeping on the couch of a friend and eating food, etc., without providing payment;
23. On September 11, 2014, Overseas Immigration sent Ricablanca a job offer at Elkhorn Gas Station. Ricablanca refused the offer saying that is not the job or the location offered her and was not the job specified on her Visa/Work Permit;
24. Ricablanca was told that if she did not accept the job offer, she needs to leave Canada;
25. Ricablanca did not hear from Overseas Immigration until she called Basal on November 29, 2014 stating that since he had not provided her with a job as stated in the LMO/Offer or on her Visa, she demanded her money back;
26. Ricablanca filed a complaint with Employment Standards;
27. Ricablanca had since received an open work permit (with the assistance of the Canadian Border Services Agency) and worked as a night auditor at a local hotel. Her permit was only for a six-month term;
28. Ricablanca came to Canada and had no job and no real services from Overseas Immigration;

29. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 3, 7, 8(1), 10(1), 10(2), 12(1)(a), 13(2)(b), 13(2)(c) and 13(2)(e) of the EABLR.

**viii. Marie Villegas ("Villegas") –**

1. Villegas had been working in Dubai for nine years when she met with Mann and Bansal at the Flora Creek Hotel;
2. She was advised that there was a \$2,000 application and consulting fee and subsequent costs but that, ultimately, they could find her a job in Canada and, in about two years' time, apply for her permanent residency status in Canada;
3. Villegas sent \$2,000 to Overseas Immigration on September 8, 2012;
4. In November, 2012, Villegas had an interview with a potential employer, a restaurant in Edmonton;
5. Mann and Bansal were present for the interview and explained to Villegas that if the employer did not select her, they will find another employer for her;
6. Eventually, Villegas received notice from Overseas Immigration that there was a position available with Fatburger as a food counter attendant and then the LMO process was underway;
7. The LMO came to Villegas on March 1, 2013 through email from Overseas Immigration;
8. The same email contained the Visa application form and a checklist of documents she needed to provide when applying for her Visa;
9. Villegas stated that she did not receive assistance in completing her Visa form. She submitted the form, together with the \$150 application fee, to the Embassy;
10. Villegas received several calls from Overseas Immigration demanding payment of an additional \$6,000, threatening that if she did not pay, she will lose the Fatburger position;
11. She was advised not to fly directly to Canada without paying in full first otherwise Overseas Immigration will report her to the immigration authorities before her arrival;
12. Villegas' parents borrowed money from their local bank in the Philippines in the amount of \$6,000;
13. Villegas forwarded the money to Overseas on February 21, 2014;
14. Villegas said that approximately two weeks before her departure to Canada, Overseas Immigration advised her by phone to turn off her cell phone when coming into Canada so that Immigration Officers would not look through her phone and also told her to delete all email correspondence between them;
15. Villegas arrived in Vancouver, BC on April 15, 2014, was interviewed by Immigration and received a work permit;
16. Nobody was there to pick her up;
17. Another TFW she was travelling with called Overseas and a taxi was sent;
18. She was taken to a rental property where there were lots of people. It was very uncomfortable as she was the only female in the home;

19. The following day, she walked to the Overseas Immigration offices and demanded a new place to stay. They arranged for her to stay at a Best Western hotel for 4 days before coming to Edmonton;
20. On her second day in Canada, she was taken to Service Canada to obtain her SIN card and a mobile phone;
21. On the third day, she was instructed to call Fatburger to arrange airfare from Vancouver to Edmonton;
22. She travelled to Edmonton, took a cab to a Fatburger location and was then taken to a house that was full of TFWs. Six weeks later, she was transferred to a different rental accommodation where she paid 400/month for rent;
23. She has never heard from Overseas Immigration again;
24. Aydin identified breaches of sections 6(3)(a), 6(4)(c) and 132(1) and (2) of the Fair Trading Act and sections 8(1), 10(1), 10(2), 10(3)(a), 12(1)(a), and 13(2)(e) of the EABLR.

**ix. Sudesh Kumar ("Kumar") –**

1. Kumar found out about Overseas Immigration in Dubai through a friend. Every three to six months, Overseas Immigration representatives would visit Dubai to recruit workers. They would advertise their arrival prior to coming;
2. On July 15, 2013, Kumar attended the Consumer Investigation Unit and filed a complaint against Overseas AB;
3. Kumar paid \$7,201 to obtain a position at Mac's Convenience Stores as a supervisor;
4. Kumar stated that he approached the agency for details on how to come to Canada;
5. They told him that the best way to Canada was through a job offer and by paying them money;
6. He had the option for permanent residency without seeking the help of the agency but they insisted that he go through an interview with an employer before making any decisions;
7. Kumar was then introduced to a representative from Mac's and was offered a supervisor position;
8. Kumar made two cash payments – one payment was 6,500 AED cash paid to Bansal to initiate the process; the next payment of 20,000 AED was paid on February 5, 2013;
9. Kumar received an LMO/employment offer from Overseas for Mac's Edmonton;
10. Kumar stated that he applied for a Visa using the forms supplied by Overseas Immigration;
11. Overseas reviewed the forms and Kumar sent them using a courier to the Canadian Embassy. A Visa was issued;
12. Kumar arrived in Vancouver, Canada on April 8, 2013 and was to begin working at Mac's upon his arrival;
13. Bansal paid for his airfare to Vancouver;
14. Overseas advised Kumar upon his arrival in that the supervisor position was not available, but that he could take a customer service representative position;

15. Kumar stayed at Overseas provided accommodation for two days;
  16. Kumar described the property, which is few blocks from the Overseas Immigration offices, as a "labour camp". Approximately 15 people were there with no food. The residents were obtaining food from a nearby Punjabi temple. Kumar is unsure who owns the property;
  17. On April 9, 2013, Overseas assisted Kumar with obtaining his SIN and bank account;
  18. Kumar arranged for his own mobile phone to establish a connection with family;
  19. Travel to Edmonton was arranged for and paid by Bansal;
  20. Once in Edmonton, Kumar was required to pay for his local bus transportation, hostel fees, food, etc.. No settlement services were provided upon his arrival in Edmonton;
  21. Kumar spoke with HiraK about having his wife and children come to Canada. HiraK demanded an additional \$3,000 which he did not pay;
  22. Kumar stated that Bansal and Mann only spoke of work permit related immigration to Canada. No other forms of immigration were discussed;
  23. On June 4, 2013, Kumar sent a demand email to Bansal demanding his \$8,000 fee be returned as the job and services were not as promised;
  24. Aydin identified breaches of sections 6(3)(a) and 6(4)(c) of the Fair Trading Act and sections 3, 7, 8(1), 10(1), 12(1)(a), 13(2)(b) and 13(2)(e) of the EABLR.
- t. Aydin also gave evidence respecting communications she or her colleagues had with Overseas:
- i. With respect to Kumar, Overseas AB stated:
    1. They are CSIC (Canadian Society of Immigration Consultants) and ICCRC (Immigration Consultants of Canada Regulatory Council) members for 8 years;
    2. They can charge for immigration services, resettlement services, flights, airport pick-up, temporary accommodations, assistance in finding accommodation, transportation to obtain SIN, AHC, applying for a bank account and obtaining a cell phone;
    3. Bansal met Kumar in 2012 in Dubai and explained his immigration options for himself, his wife and his children;
    4. In November 2012, Kumar was interviewed in Dubai by Mac's for a position in Edmonton;
    5. A work Visa was issued by the embassy in Dubai;
    6. The fees were \$7,000 and not \$8,000 as Kumar alleges;
    7. Overseas paid for his airfare, 4 in-person consults in Dubai, 6 consults in Canada, 25 phone calls, 50 emails, airport pick-up upon arrival, 10 days accommodation, transportation for SIN, bank account and cell phone and travel to Edmonton from Vancouver;
    8. Bansal explained that it was not his fault that Kumar was terminated by Mac's;
    9. There is no written agreement between Overseas and Mac's – verbal only;
    10. No recruitment services were provided to Kumar;
    11. Kumar was hired directly by Mac's in Dubai, not through Overseas;

12. Bansal says he is searching for the written agreement between Overseas Immigration and Kumar;
13. Bansal stated that Kumar did not seek his services to get a job but rather for immigration to Canada. Dubai is a tax free country and Kumar had a better job there with more wages. Kumar's intentions were to immigrate to Canada. The services Overseas Immigration provided were to assist him in coming to Canada. Kumar was directly interviewed by the employer and selected by the employer;
14. With respect to Hasan, Tambis, Lactao, Olivar, Jia/Thapa and Seares, On September 25, 2014, Aydin requested details of the arrangements Overseas had with each of them and copies of all agreements;
15. After repeated requests for extensions of time to respond, on November 19, 2014, Bansal replied as follows:
  - a. Overseas will not provide a copy of agreements entered into with each employer as they will require authorization from their clients to release that information;
  - b. In response to a request for copies of agreements entered into with persons seeking employment (specifically, the Complainants), Bansal replied that Overseas did not provide employment services for the individuals; they provided immigration services;
  - c. Bansal stated that none of the Complainants paid Overseas any fees for employment services; all fees were for immigration services;
  - d. In response to a request for copies of correspondence or agreements sent to or received from employers or the Complainants, Bansal stated that they will require authorization from their clients to release that information;
  - e. Bansal stated that their agency travels to Dubai, Abu Dhabi, India, Italy, Spain, United Kingdom, Australia, Russia and Ukraine for recruitment;
  - f. They have two business: Overseas Career and Consulting Services Ltd. and Overseas Immigration Services Ltd.;
  - g. Bansal is the only ICCRC member with Overseas Career and Consulting Services Ltd.;
  - h. Trident Immigration Services Ltd. is a company to whom they contract their work when their office has increased backlog;
  - i. In response to queries about all the Complainants, Bansal advised:
    - i. They could not locate or otherwise provide written agreements;
    - ii. The Complainants did not retain their company for job placement; rather, they were exploring options for immigration to Canada;
    - iii. That their settlement services generally include 10 days of accommodation upon arrival in Canada, introduction to wireless and banking services, transportation to and from the airport and assistance in locating accommodation.
  - j. With reference to Hasan, Bansal said the \$9,500 fee paid was for immigration consultation services including document preparation; that Hassan's fees were paid upon him obtaining a Visa as Overseas' services were fulfilled at that time;

- k. With reference to Tambis, Bansal said that he provided consultation with Tambis and a family member (aunt) on seven different occasions and assisted with the completion of his work permit documentation;
  - l. With reference to Lactao, Bansal said that they did not receive any fees from him; that they were retained by an employer to process documentation for Lactao's initial work Visa and then renewal after arrival in Canada;
  - m. With reference to Olivar, Bansal said that they did not receive any fees from him; that they were retained by the employer to process documentation for Olivar's initial work Visa, even though his employment was terminated for just cause; and that they assisted Olivar with the documentation for obtaining a work permit for a new employer;
  - n. With reference to Jia, Bansal said Jia retained his office to provide immigration services to process her work permit application, consultation, and telephone calls which were conducted after her interview with the employer and was completed upon receipt of her Visa and prior to her arrival in Canada; Bansal stated further that upon Jia's arrival in Canada, they also provided assistance in finding new employment as she did not wish to join the arranged employment as it was not in Edmonton where here spouse and friends were;
  - o. With reference to Seares, the \$8,500 paid by Seares was to explore immigration options and to prepare documentation. Services were fulfilled when Visas were obtained;
  - p. With reference to Ricablanca, Bansal said that Overseas did not receive \$7,785.52 from her; that they provided various consultation to her and assisted with document completion; that four days after Ricablanca's arrival in Canada, the original employer was able to fill their vacancy with a local candidate due to the lengthy delay in Ricablanca's arrival; that any suggestion that Ricablanca was instructed by Overseas to advise Immigration officials upon her arrival in Canada that she paid no fees is "a clear lie";
16. Aydin requested further information from Bansal and, after extending deadlines for a response several times, Aydin set a firm deadline of April 9, 2015. When no response was received by the deadline, Aydin sent an email to Bansal on April 14, 2015 requesting follow-up. Aydin received a letter from Bansal on April 21, 2015. The letter was dated April 2, 2015 but postmarked April 14, 2015. The letter included the following:
- a. Bansal does not require his employer clients to sign an agreement with Overseas for recruitment as they do not feel they need to bind their clients to ensure they keep their continued business so there is no agreement to produce;
  - b. Bansal stated that Overseas has not provided any of the Complainants with employment nor have they submitted any applications to government authorities for persons seeking employment (such as AINP applications, Visa forms, work permit documents, etc..);

- c. Aydin requested copies of correspondence sent between employers and Overseas. Bansal responded "not applicable";
- d. Bansal stated that their fees varied depending on individual cases and circumstances; there is no set fee schedule;
- e. Bansal stated that Overseas Immigration does not have an agreement for employees as they do not feel they need to bind their clients;
- f. Bansal stated that Overseas is not an agent of Trident Immigration;
- g. Each employer client is charged on an individual basis;
- h. Settlement services are not required but are offered;
- i. Bansal stated that he is unaware of any townhouse in which Hasan would have stayed upon arrival in Surrey and that Overseas is not responsible for their client's arrangements with a landlord;
- j. Bansal stated that they were not retained by Tambis or Lactao or Olivar and have not received any fees for services from Tambis or Lactao or Olivar;
- k. In response to requests for documentation related to Jia and Seares, Bansal stated that he would have to obtain the requested documentation from Dubai;
- l. In response to an April 29, 2015 request from the investigator for copies of financial records of Overseas AB and Overseas BC and related information, Bansal failed or refused to provide that information;
- m. Aydin determined that the ICCRC Code of Professional Ethics requires its members to enter into written agreements or engagement letters with their clients. On April 29, 2015, Aydin requested of Bansal such agreements or letters for the Complainants. On May 11, 2015, Bansal responded stating that due to time frames and as some clients did not pay any immigration fees, the agreements could not be found but if provided additional time he may be able to locate them.
- u. Aydin also gave evidence respecting interviews with Fatburger beginning November 18, 2014:
  - i. Dianna Lasenby, on behalf of Fatburger, did use the services of Overseas Career and Consulting Services Ltd. for recruitment and settlement services;
  - ii. Fatburger paid Overseas \$750 if the worker was recruited from out of the country and \$500 if the worker was already in Canada;
  - iii. There was no written agreement between Fatburger and Overseas;
  - iv. Lasenby often went to Dubai to recruit workers;
  - v. Lasenby advised that airfare is always paid by the employer. Overseas invoices the employer for the ticket price and the agency is paid by Fatburger;
  - vi. With reference to Hasan, Fatburger did not interview him personally. They based their selection on his resume. The employment offer/LMO were signed by Fatburger and sent by Overseas to Hasan. As for Hasan's airfare, he was a skilled worker and thus was not responsible for paying his own airfare;
  - vii. With reference to Tambis, Fatburger did not interview him personally. The employment offer/LMO were signed by Fatburger and sent by Overseas to Tambis. Fatburger reimbursed Tambis' airfare via cheque in the amount of \$1,250;

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- viii. With reference to Lactao, Fatburger did not interview her personally. They based their selection on her resume. The employment offer/LMO were signed by Fatburger and sent by Overseas to Lactao;
- ix. With reference to Olivar, Fatburger did not interview him personally. He was already in Canada as a foreign worker. The employment offer/LMO were signed by Fatburger and sent by Overseas to Olivar. No airfare was paid as he was already in Canada;
- x. With reference to Seares, Fatburger did not interview her personally. They based their selection on her resume. The employment offer/LMO were signed by Fatburger and sent by Overseas to Seares;
- v. Aydin concluded that Overseas AB is operating as Overseas Immigration in Alberta;
- w. Overseas AB assists BC based employers to recruit for Alberta employment opportunities;
- x. The Calgary office of Overseas AB appears to be a virtual office operating out of a residence. There do not appear to be any full-time staff of Overseas AB operating out of Alberta;
- y. As a licensed agency, they are required to produce their records upon request;
- z. Despite numerous requests for documentation, Bansal and Overseas AB have failed or refused to provide any material records for any of the Complainants with the exception of Kumar. This is a contravention of S. 132 of the Fair Trading Act, S. 8 of the EABLR AR 189/1999 and S. 9 of the EABLR AR 45/2012;
- aa. The employment agency license for Overseas AB does not reflect that they operate under a different name (i.e. Overseas Immigration). This is a contravention of S. 3 of the EABLR AR 189/1999 and S. 7 of the EABLR AR 45/2012;
- bb. The Complainants alleged that they were advised that as they could not apply for permanent residence status in Dubai, their only hope left was in Canada. Many were told that they could apply for residency in Canada after 9-12 months of working there. They were all told they would receive immigration services from Overseas Career and Consulting Services Ltd. for the fee paid and none of the individuals had any material immigration services provided such as processing their Visa with the Canadian Embassy. This is a breach of S. 6(3)(1) of the Fair Trading Act;
- cc. The Complainants allege that they were promised varying levels of settlement services which were not provided. The Complainants also allege that Overseas engaged in misrepresentations related to the employment opportunities promised to them, the living costs, and wages to be paid. This is a contravention of S. 6(4)(c) of the Fair Trading Act and S. 13(2)(b) of the EABLR AR 45/2012;
- dd. Overseas demanded and collected fees for the securing of employment from the Complainants. No training or career services such as resume writing were provided. No written agreements with the Complainants were produced by Overseas. This is a contravention of S. 9 of the EABLR AR 189/1999 and S. 12(1)(a), S. 13(2)(c) and S. 13(s)(e) of the EABLR AR 45/2012;
- ee. On several occasions, Mann and Hiraq of Overseas BC acted as agents of Overseas AB. No authorized agents have been identified on any of Overseas AB license applications. This is a contravention of S. 8(1) of the EABLR AR 45/2012;

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- ff. To date, no written agreements between Overseas and the Complainants or employers have been produced. This is a contravention of SS. 10(1), 10(2), and 10(3) of the EABLR AR 45/2012;
- gg. Several letter and emails were sent with questions to Bansal by Aydin to address the allegations. The responses provided were, invariably, late and non-responsive;
- hh. On cross-examination by Ms. Nizam, Aydin confirmed that several of the Complainants personally attended at the British Columbia offices of Overseas. Aydin was not aware if any of the Complainants ever personally attended at the Alberta offices of Overseas;
- ii. Aydin also confirmed that she was told by the Complainants that they were dealing with the Overseas company in BC;
- jj. Aydin stated that it was often unclear which Overseas company was engaged in an activity. They shared email addresses, websites, physical addresses (e.g. the Surrey Overseas address was on Overseas AB license application) and phone numbers. The company shared employees and their activities were often intermingled;
- kk. Aydin stated that once the Complainants paid the initial processing fee, Overseas representatives would pressure the Complainants to pay the balance;
- ll. Aydin confirmed that all Complainants were seeking immigration advice from Overseas to get permanent residence status in Canada;
- mm. In response to a question about the "going rate" for immigration consultant services, Aydin was not aware of the market rate;
- nn. To Aydin's knowledge, Overseas only had one registered immigration consultant, Bansal. Should all of Overseas' services be charged at Bansal's rate?
- oo. Aydin confirmed that most direct contact by the Complainants with Overseas representatives occurred either in Dubai or in British Columbia.

**Darren Thomas ("Thomas")**

- 34. Thomas' evidence included the following:
  - a. He is the Director of Fair Trading as delegated;
  - b. He reviewed the recommendations from the investigators;
  - c. He is responsible for administering various regulations, including the EABLR;
  - d. He made a decision in this matter after reviewing the evidence, analyze the materials and making assessments of whether the evidence supports the alleged breaches;
  - e. He prepared a proposal based on the principles of natural justice, including procedural fairness;
  - f. Those proposals were included in a letter to Overseas AB dated September 28, 2015 and included an administrative penalty of \$40,000 and cancellation of employment agency license of Overseas AB;
  - g. He gave notice of the proposal to Overseas AB and an opportunity to respond;
  - h. He stated that he had no conflict of interest or bias in this matter;

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- i. Overseas AB was given an opportunity to make representations in response to his proposals. He received no response from Overseas. He followed up and gave an extension of time to respond;
- j. Overseas Career and Consulting Services Ltd., through Bansal, did eventually respond by letter dated February 5, 2016;
- k. Thomas stated that he relied on Aydin's evidence and on Overseas' February 5, 2016 response in coming to a decision in this matter;
- l. In response to a question from Ms. Dolgoy about why it matters that there are no written agreements between the Overseas companies and TFWs, Thomas stated that the EABLR was amended in 2012 in response to an dramatic increase in the number of TFWs coming to Alberta; that, at one point, there were ~35,000 TFWs working legally in Alberta as professionals, in skilled trades and in low-skilled roles; that there were complaints that some TFWs were being exploited by recruiters because they were desperate to come to Canada for a better life;
- m. The new regulation specified record keeping requirements; this was intended to assist in investigating and prosecuting a case; otherwise, it's difficult to demonstrate breaches;
- n. The revised legislation also specified that no fees could be charged to foreign workers for securing employment; that services provided by employment agencies must be voluntary, reasonable and set out in writing. If they aren't, that's a contravention of the legislation.
- o. S. 132 of the Fair Trading Act requires that accurate financial and other records be kept and made available upon request to an inspector;
- p. S. 10 of the EABLR requires that an employment agency business operator enter into written agreements with an individual before securing employment for the individual and written agreements with an employer before securing an employee for that employer;
- q. There are other specific requirements for those agreements in the EABLR;
- r. None of the Complainants were given a written contract by Overseas. This is a serious breach of the legislation;
- s. Overseas collected the following money from the Complainants:
  - i. Hasan - \$9,500
  - ii. Tambis - \$7,000
  - iii. Lactao - \$4,150
  - iv. Olivar - \$7,000
  - v. Seares - \$6,800
  - vi. Jia/Thapa - \$14,000
  - vii. Ricablanca - \$7,785.52
  - viii. Villegas - \$8,000
  - ix. Kumar - \$8,000
- t. In response to the question why it matters how much is charged, Thomas replied that individuals in developing countries are willing to provide huge amounts of money to come to Canada;

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- u. In Alberta, recruiting agents can't charge individuals a fee for finding employment. Such fees must be paid by employers;
- v. Thomas stated that Overseas February 5, 2016 response letter did not change his opinion on this matter; that the information provided by Bansal supports the allegations that fees were collected from individuals and no written agreements were in place;
- w. While Overseas is taking the position that the fees they charged individuals were for immigration services only, not employment services, S. 12 of the EABLR is clear that no employment agency can directly or indirectly collect fees from an individual seeking employment;
- x. S. 12 of the EABLR goes on to say that fees can be collected for other services like resume writing and job-skills training, but such fees must form part of a written agreement and must be reasonable;
- y. Thomas says written agreements are required to spell out exactly what services are being provided and the fees associated with those services;
- z. Based on his review, no substantial immigration services were provided to the Complainant; certainly no services commensurate with the fees charged;
- aa. The one thing of significant value promised to the Complainants by Overseas was a job with an Alberta employer;
- bb. There is evidence of some services being provided by Overseas to the Complainants, including transportation arrangements, SIN arrangements, phone arrangements, temporary accommodations, Alberta Health Care card arrangements, etc.;
- cc. If there was a letter setting out specific services and the fees associated with those services, we'd look at that, but the fees charged appeared to be disproportionate to the actual services rendered;
- dd. The Complainants were consistent in their statements to the investigators that they were paying for a job being secured for them in Alberta;
- ee. Pursuant to the legislation, employment agencies operating in Alberta are not permitted to charge placement fees to individuals seeking employment in Alberta;
- ff. Overseas was unable to justify their fees;
- gg. There are multiple Overseas entities;
- hh. The Complainants had no idea there was more than one Overseas entity;
- ii. Overseas AB must be licensed in Alberta to place employees in Alberta;
- jj. All three Overseas companies have the same controlling mind – Bansal;
- kk. While Overseas may argue that immigration services were provided through Overseas Immigration, placement services through Overseas BC and recruiting services through Overseas AB, S. 2.1 of the Fair Trading Act requires the Director to look beyond the surface of individual transactions to the reality of the enterprise. S. 2.1 states "In determining whether this Act applies to an entity or a transaction, a court or an appeal board must consider the real substance of the entity or the transaction and in doing so may disregard the outward form";
- ll. The value proposition for all Complainants engaging with Overseas was a job in Alberta;

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- mm. Thomas also considered the statements from employers that they were using Overseas, without distinction among the various Overseas legal entities;
- nn. Overseas AB was licensed to recruit on behalf of Alberta employers;
- oo. For the purposes of enforcement, the Director treats that licensee as the responsible party for all related activities;
- pp. A recruiter acting on behalf of an Alberta employer must be licensed in Alberta;
- qq. There was evidence of long-term repeated misrepresentations to the Complainants about job availability in Alberta;
- rr. When an employee arrives in Canada, the job is no longer available;
- ss. Employees were recruited for positions that did not exist;
- tt. This bait and switch tactic caused disruption, additional fees, and lured the Complainants into paying fees to Overseas;
- uu. Once the Complainants arrived in Canada, they were tied to a work permit, committed and vulnerable, This was exploitation;
- vv. Very limited immigration services were provided by Bansal or any Overseas employee. In some instances, Overseas staff reviewed documents completed by the Complainants prior to the Complainants themselves submitting the documents to the Canadian Embassy, but the services were wholly disproportionate to the high fees charged;
- ww. The proposed \$40,000 administrative penalty was based on a range of breaches of the legislation over a long period of time. The penalty could have been substantially higher. Any penalty ought to act as a deterrent and remove the profit motive of unscrupulous agents or recruiters;
- xx. With respect to the question of Alberta's jurisdiction in this matter, recruiters on behalf of Alberta employers must be licensed in Alberta; they must meet the requirements of the regulations and are subject to unfair practices legislation in Alberta;
- yy. Regardless of where businesses are located, they can be licensed in Alberta but are subject to the rules in Alberta;
- zz. S. 2.1 of the Fair Trading Act was enacted to assist in the application and enforcement of the statute. Where there are multiple corporations operating in a tangled web across multiple jurisdictions, this can confuse or make enforcement difficult. S. 2.1 is intended to look at the reality of the situation and to assess whether there's a scheme or a common thread – in this case, the common thread is the sole Director of the companies, Bansal. In addition, all three companies, for all intents and purposes, operate out of the same offices, with the same employees, website, email, fax, etc.. There is no differentiation or distinction made to clients as to who they are dealing with;
- aaa. S. 166 of Fair trading speaks to vicarious liability, in essence making the licensee liable for the acts of its employees or agents;
- bbb. Thomas stated that it's entirely irrelevant where payments for services occurred;
- ccc. The Director regulates positions filled in Alberta; if a licensee collects fees outside of Alberta, they are still held accountable if they operate in Alberta; if an agent collects fees, the licensee has to show that they exercised appropriate due diligence;

- ddd. In response to questions from Ms. Nizam, Thomas stated that placement is a very broad term. Overseas was the agent connecting the employees with prospective employers. Without Overseas, there would be no placement. It was understood by the Complainants that the fees were for placement, the opportunity to be hired by an Alberta employer;
- eee. In response to a question about how it's Overseas' responsibility if a job is not available once an TFW comes to Canada, Thomas stated that Overseas is often a party to the LMO application process as agent for the employer;
- fff. Thomas stated that the TFW program was designed to give employers access to staff where no Canadian employees have been identified; generally, the TFW program is not a path to permanent residency. Rather, it is intended to fill immediate, short-term labour shortages. An agency providing placement services for a TFW is generally not providing immigration services, rather, it is providing employment agency services. That said, after receiving a work permit and having Canadian work experience, that could open up other paths (including skilled jobs) to permanent residency.

### **Sudesh Kumar ("Kumar")**

- 35. Kumar's evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
  - a. He is a Complainant in this matter;
  - b. He is working in Dubai. Returned to Dubai on August 20, 2013;
  - c. Was in Canada for three months;
  - d. Overseas brought him over to Canada. Met Overseas in middle of 2012;
  - e. Discussed a permanent residency or work permit opportunity;
  - f. Saw Bansal at the Flora Creek Hotel with other candidates;
  - g. Bansal said pay me 26,000 AED and I'll get you a job;
  - h. Met him at a different time and paid 6000 AED cash to start the process;
  - i. Met another person (Geoff Haguchi with Mac's) and had a meeting;
  - j. After that met Hira who said she would get in touch with him via email;
  - k. Had some phone calls;
  - l. Received an LMO. Then filled out forms and went to the Canadian embassy;
  - m. Later, paid an additional 20,000 AED to Overseas;
  - n. Arrived in Canada on April 8, 2013;
  - o. He was supposed to start work on April 12, 2013, but found out that the supervisor job he was led to believe was his was no longer available;
  - p. He was without any money after one week;
  - q. He was given another job with Mac's as a customer services representative, promised that this would lead to a supervisor role within three months, but was later fired;
  - r. There was no new LMO and he returned to Dubai;
  - s. Before leaving Canada, he called Bansal looking for assistance. Bansal said he can't do anything to help, Kumar said, "Ok, I'll go back home, give me my money back";

- Bansal asked Kumar why he was contacting Mac's directly, stating that if Kumar had issues with his employer, he should contact Bansal;
- t. Kumar had complained to Mac's about Overseas;
  - u. Kumar said Bansal told him: "I'm not going to help you... if you complain against a Canadian national, you can be sued for \$50 million";
  - v. When asked what he thought he was paying Overseas for, Kumar stated "recruitment";
  - w. Kumar says Overseas gave him only one option to come to Canada – pay Overseas money and they'd get him a job. Kumar did not believe what he got from Overseas was immigration advice;
  - x. Kumar was not reimbursed for his airfare;
  - y. Nobody met him at the Vancouver airport when he arrived in Canada. He tried to call Overseas from the airport, but there was no answer;
  - z. He took a taxi from the airport to the Surrey offices of Overseas. He paid for the taxi on his own but was later reimbursed by Bansal;
  - aa. He had wanted to bring his family over to Canada;
  - bb. He was promised permanent residency in Canada after 3-4 years of working here;
  - cc. Upon arrival in Canada, when he asked Overseas about bringing his wife and children over, he was told he would have to pay Overseas \$3,000 per family member
  - dd. He didn't get anything of value from Overseas;
  - ee. He wasn't looking for a low paying job and felt that he was misled by Overseas;
  - ff. There was no written agreement between him and Overseas;
  - gg. He received the offer of employment and LMO from Overseas via email;
  - hh. He had no contact with Mac's (other than first meeting with Haguchi) until he arrived in Canada;
  - ii. He submitted all his Visa documents himself and paid for it himself;

### **Mahadi Hasan ("Hasan")**

36. Hasan's evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
- a. He came to Canada through Overseas;
  - b. He's currently working at Fatburger as a Manager;
  - c. He's a permanent resident of Canada;
  - d. Until he arrived in Canada, all contact was with Overseas;
  - e. He never had any contact with a prospective employer;
  - f. When he got to Canada, nothing matched what he was promised by Overseas. The temporary accommodation was well below any reasonable standard and he had to work as a grill guy when he had been promised a supervisor position;
  - g. He had no written contract with Overseas;
  - h. He had to borrow money from his Dubai employer pension plan to pay Overseas;
  - i. He was threatened by Mann: "pay me money or I will cancel your work permit";
  - j. When he arrived in Edmonton, he worked at Fatburger for only 30 hours per week;
  - k. He called Overseas to complain, but never heard back;

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- l. He asked Overseas for a refund of his airfare, but he was not refunded;
- m. He brought a complaint because he doesn't want others to be ripped off by Overseas;
- n. He was given no substantive immigration advice by Overseas. He was told that if his objective was to come to Canada, Overseas could help him get a job and a work permit.

**Limuel Olivar ("Olivar")**

37. Olivar's evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
- a. He is working in Edmonton now;
  - b. In Dubai, he had been assistant manager at a cosmetics store;
  - c. When he first came to Canada, he was placed by Overseas in a job at a Best Western Hotel, but was fired;
  - d. He called Mann who helped him get a job with Fatburger about a month later, but he was also fired from that job;
  - e. He's now working for a cleaning company at an industrial facility in Sherwood Park;
  - f. He first met with Mann in Dubai;
  - g. Mann said Overseas would help him get permanent residency status in Canada where there's free school and free health care;
  - h. Was told there was a \$2,000 processing fee and a \$6,000 placement fee;
  - i. In exchange for those payments, Olivar was told he would get a job in Canada
  - j. He never signed a contract with Overseas;
  - k. He didn't get any real help from Overseas when he arrived in Canada. He was alone at the airport not sure what to do. A kind lady who worked at the money exchange helped him get his SIN and a bank account. No help was provided by Overseas;
  - l. In response to questions from Ms. Nizam, Olivar confirmed he's got his permanent residency status now;
  - m. Olivar went on to say that he got that status not because of any assistance Overseas provided. He said he chose to enter into a new relationship here in Canada to secure his residency status. In effect, he had to exchange his wife and children back home for residency status because Overseas didn't get him the job that they had promised him. If he knew the type of job he would be required to work here, he would not have traded his family for that;
  - n. He got his permanent residency status as a refugee.

**Mylene Ricablanca ("Ricablanca")**

38. Ricablanca's evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
- a. Currently working at Big Deal Liquidations as a retail supervisor;
  - b. It's a seasonal company (includes Spirit of Halloween);

- c. Had been working in Abu Dhabi for 5-6 years as an account assistant earning a good salary;
- d. She wanted to come to Canada for the benefit of her children. There's a good education system and good health care;
- e. She attended a seminar sponsored by Overseas Immigration;
- f. They assisted her with flight arrangements, airport pick-up and 5-days temporary accommodation;
- g. She never did get a job through Overseas;
- h. The Mac's job promised to her wasn't available when she arrived in Canada;
- i. Overseas proposed a job in Elkhorn, AB, but it was a long way from Edmonton and less money and she refused to go;
- j. An Overseas representative told her, if you don't want the job, go back to your country;
- k. She had been told by an Overseas representative to delete all emails before traveling into Canada and, if asked, to tell immigration officials that she met her prospective employer through Skype;
- l. She filed this complaint because she wants to stop Overseas' wrongdoing;
- m. She worked very hard to get the money she used to pay Overseas' fees and she got nothing of value in return;

#### **Tripper Lactao ("Lactao")**

39. Lactao's evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
- a. She went to an Overseas seminar at a hotel in Dubai;
  - b. She was told of the benefits of coming to Canada - education opportunities, healthcare, benefits, etc.;
  - c. She was promised by Mann that she could be a permanent resident after nine months and a landed immigrant after two years. Then she could bring her family over to Canada;
  - d. The fees were explained to her. She was told that in exchange for the fees, she would get a job, one-month free accommodation, food and help with processing all documents. She paid the fees, but none of what was promised materialized;
  - e. There was no written agreement with Overseas;
  - f. She was never interviewed with Fatburger;
  - g. She was placed at Fatburger by Overseas, got an employment agreement for Fatburger through Mann;
  - h. When she talked to Mann about jobs before leaving Dubai, she expressed an interest in fashion or cosmetics, areas in which she had experience;
  - i. When the Fatburger job was offered to her, she wasn't thrilled, but was told by Mann that this was just a stepping stone to get to Canada and other opportunities;
  - j. She completed her own Visa forms online while in Dubai;
  - k. She went to the Embassy and paid for her Visa herself;
  - l. She booked and paid for her own airfare to Canada;

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- m. Fatburger reimbursed her airfare about 2 years later;
- n. Overseas did not assist her with her permanent residency application;
- o. The only reason she can now remain in Canada is that she married a Canadian citizen;
- p. She stated she complained because she doesn't want others to get hurt or victimized by Overseas;
- q. She had not had such a bad experience even in her own home country – a third world country;
- r. She didn't know there were several Overseas companies;
- s. She was given no advice about different options to come to Canada;
- t. She took the job that Overseas placed her in;
- u. She didn't specifically choose to come to Alberta
- v. Overseas had said they would help her get her son to Canada, but they never did provide that help;
- w. Overseas offered other job opportunities, but she was not legally permitted to work at those jobs (not on her work permit), so she refused, saying her reputation is important to her.

**Resar Tambis ("Tambis")**

- 40. Tambis' evidence included (evidence not restated if included in Aydin's evidence unless there are inconsistencies):
  - a. He is now working in a restaurant in Prince Albert, Saskatchewan;
  - b. He had previously worked in Dubai;
  - c. He stated categorically that the money he paid to Overseas was a placement fee.
  - d. He was told to pay the fee and Overseas would find him a job in Canada;
  - e. He thought Overseas would do all the work;
  - f. All he got from them was a link to an online Visa application he had to complete and submit himself;
  - g. He thinks he got little value for what he paid for;
  - h. He got no written contract from Overseas;
  - i. He had no interview with Fatburger or with any other employer;
  - j. He's not sure how he ended up with Fatburger. He went where Overseas told him to go;
  - k. He had asked for a job in Vancouver as he had family there. Mann told him that the work in Alberta was just temporary. The company will transfer you to Vancouver. That never happened;
  - l. No immigration advice was provided other than going through the work placement program;
  - m. Eventually was reimbursed for airfare by Fatburger;
  - n. Overseas booked his plane ticket to Canada, but provided little to no other services;
  - o. He received no assistance with his permanent residency application;
  - p. He is not a permanent resident now;
  - q. He spent two years working at Fatburger then relocated to Price Albert;

- r. He didn't know there were multiple Overseas companies;
- s. The reason he paid Overseas – to get a job in Canada.

### **July 24, 2017 Adjournment Application**

- 41. The hearing did not conclude on May 5, 2017 and, accordingly, by agreement among the Appeal Board, Ms. Dolgoy and Ms. Nizam, the hearing was scheduled to continue on July 24 through July 27, 2017;
- 42. On the morning of July 21, Ms. Nizam, on behalf of Overseas AB, requested an adjournment on the basis that Mr. Bansal was unwell, under the care of a doctor and unable to travel or give instructions;
- 43. Ms. Nizam also advised that another of Overseas AB's witnesses, Cynthia Hirak, was on vacation in Fiji and unable to give evidence that week as scheduled;
- 44. Ms. Dolgoy, on behalf of the Director, objected to an adjournment and a hearing on the application for an adjournment was scheduled for the morning of July 24, 2017;
- 45. On July 24, 2017, while hearing the above representations from counsel, the Appeal Board pressed Ms. Nizam to attempt to make contact with Mr. Bansal and Ms. Hirak for updates as to their status/availability, and the hearing adjourned for 70 minutes to allow Ms. Nizam to attempt to reach Mr. Bansal and Ms. Hirak. When the hearing resumed, Ms. Nizam advised that Mr. Bansal is awaiting a specialist appointment and, contrary to her earlier representations, Ms. Hirak was not in Fiji (her trip was, apparently, cancelled), but was in British Columbia and not readily available to attend the hearing that week;
- 46. Ms. Nizam also advised that none of the other witnesses proposed in May were available to give evidence as scheduled that week or at all, that witness lists provided by her client, Overseas AB, kept changing, that she has had limited contact with Mr. Bansal and that, as it stands now, there appears to be only two prospective witnesses on behalf of Overseas AB: Mr. Bansal and potentially, Ms. Hirak;
- 47. Ms. Nizam's representations on the adjournment application included the following:
  - a. Kuldeep Bansal, a key witness and owner, sole director and shareholder of the Appellant, Overseas Career and Consulting Services Ltd., is under the care of a doctor for chest pains, shortness of breath and, accordingly, has not been able to think clearly, review the case against him, instruct counsel or receive advice from counsel;
  - b. Ms. Nizam produced a letter from a Dr. Sandeep Sharma dated July 20, 2017 in respect to Mr. Bansal reading as follows: "*The above patient is under my care and he will be unable to attend court date on July 24, 2017 to July 28, 2017 as patient is undergoing treatment for chest pain. Patient has appointment with cardiologist/internist tomorrow for further assessment/stress test*";
  - c. As the sole owner, Director and shareholder of Overseas, Mr. Bansal is the operating mind of the company. The operating mind is not healthy at the moment and should be given an opportunity to testify on behalf of the company at a later date.
  - d. If Overseas loses its license, Mr. Bansal will be personally affected and this will have a detrimental impact on his other business interests;

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- e. There were three key people involved with Overseas: Mr. Bansal, AJ Mann and Cynthia Hirak;
  - f. Mr. Mann left the company on bad terms;
  - g. Ms. Hirak is unavailable to testify this week. Ms. Hirak had indicated to Ms. Nizam that she would be on vacation in Fiji during the week of July 24, 2017 and unreachable by telephone. It was determined during the hearing on July 24 that Ms. Hirak was not, in fact, in Fiji but could not attend the hearing to give evidence during the week of July 24;
  - h. Overseas has a new office manager, but he did not begin employment with Mr. Bansal until 2015, after many of the events/complaints leading to these proceedings;
  - i. There are, accordingly, no witnesses available to testify on Overseas' behalf at the moment;
  - j. This is not a criminal proceeding where a delay in prosecution could cause irreparable damage to others. Overseas' employment agency license has been suspended and it can no longer use the license unless this case is resolved in its favor;
  - k. An adjournment is not a stalling tactic as it is not in the best interests of Mr. Bansal to prolong this case;
  - l. There remains a significant jurisdictional issue in this case. Why are Alberta taxpayers funding an expensive case against a British Columbia company?
  - m. There is no prejudice to the other parties if this matter is adjourned to allow Mr. Bansal to get treatment so that he can properly defend his company at a later date;
  - n. On the other hand, denying an adjournment request will be extremely prejudicial to Overseas and Mr. Bansal;
  - o. Giving Overseas one more adjournment does not compromise the administration of justice especially when there is no prejudice to any party;
  - p. The Crown already has its case prepared. There should be no further lawyers' hours expended on this matter except for reviewing the case prior to the resumption of proceedings;
  - q. Ms. Nizam referred to *BNP Parabis (Canada) v. Pawlus*, 2007 ABQB 339 wherein Justice Lee granted an adjournment to the Respondent based as on a letter written by the Respondent's physician, notwithstanding that the hearing was peremptory on the Respondent and several previous adjournments had been granted.
48. Ms. Dolgoy's representations on the adjournment application included the following:
- a. The Director opposes Overseas' application for an adjournment;
  - b. The hearing date was peremptory on Overseas;
  - c. This matter has been ongoing for years. Every time a deadline approaches, Overseas finds an excuse to have an extension granted or have matters rescheduled;
  - d. This appeal hearing was requested by Overseas and peremptory on Overseas. Overseas must proceed with its case according to the original order of this Panel;
  - e. Out of the 10+ witnesses Overseas advised they would produce (Mr. Bansal, Ms. Hirak, a former employer client and 5-10 employee clients), none are being produced for

- this week's scheduled hearing. If it was just a matter of rescheduling for one witness, I might ask for instructions from my client to proceed on another date for that one person, but Overseas has made an excuse for every witness who was supposed to testify. This is not about finding time for one witness – this is a stalling tactic that we have seen before on numerous occasions;
- f. Specifically, with regard to Mr. Bansal's health condition, we would be willing to make concessions to try to make the evidence giving process more comfortable for him, but that's not what's been requested;
  - g. This is Overseas' appeal and if Mr. Bansal cannot give evidence, he should find some who can testify. A number of people currently or formerly with Overseas were involved in this file and there is a new office manager at Overseas who should be able to step in;
  - h. It is unacceptable that at the 11<sup>th</sup> hour, Mr. Bansal is (again) making an excuse to delay the administration of justice;
  - i. There is no indication when Mr. Bansal's medical issues will subside, meaning this matter could be held in abeyance in perpetuity;
  - j. The Crown has put hundreds of lay person hours into this case since the beginning of the investigation and hundreds of lawyer hours since the hearing was scheduled. This Panel has already dedicated dozens of hours to this case. We have all been incredibly fair and lenient about timelines and agreeing to extensions. But we continue to hear things like "the documents are coming", or "the criminal conviction is being set aside", or "witness statements will be produced for early cross-examination", and nothing ever comes to fruition;
  - k. Adjourning this week to allow Overseas more time will not result in anything different than we've already seen;
  - l. In the meantime, delay will mean significantly more lawyer time wasted as we will have to re-prepare our case again for the next date;
  - m. In addition, the further we get away from the original hearing date, the more prejudiced the Crown is with respect to their evidence. This Panel's memory of the witness testimony and the impact the Crown witnesses had on the Panel diminishes over time. The more time goes by, the more likely Overseas is to be able to distance itself from the Crown's evidence. Further delay will have a significant impact on the strength of the Crown's case;
  - n. Ultimately, a decision in this matter must balance fairness to the appellant (Overseas – not Mr. Bansal personally) with fairness to the Complainants and people of Alberta who the Director must protect from seriously unfair (and illegal) business practices;
  - o. The Director and this Panel have been patient and more than fair to Overseas by allowing them numerous extensions, adjournments and concessions. It's time to be fair to the people of Alberta, stop wasting valuable Panel and public servant time, and give some finality to this issue;
  - p. If Overseas cannot produce their intended witnesses (or any witnesses) after it was peremptory in them to do so, we must proceed to submissions without their witnesses;
  - q. This case should be decided on the evidence and witnesses already produced.

49. On the adjournment application the Appeal Board concluded as follows:
- a. This Appeal Board shares many of the frustrations of Ms. Dolgoy in respect to the challenges in having this hearing scheduled and concluded;
  - b. It boggles the mind that of the nine witnesses Ms. Nizam proposed to call beginning July 24, 2017, none are available to attend or otherwise give evidence this week as scheduled;
  - c. Based on the scheduling and witness availability challenges to date, it appears that neither Overseas nor its principal director Mr. Bansal are giving this matter the attention it deserves;
  - d. Given the unavailability of any witnesses on behalf of Overseas this week and the existence of a doctor's note evidencing a suspected medical condition involving Mr. Bansal, this Appeal Board reluctantly concludes that granting a brief adjournment is appropriate but under the following express conditions:
  - e. The hearing will resume on September 6 and 7, 2017, beginning at 8:30 am each day (location to be confirmed);
  - f. The September 6 and 7, 2017 dates are peremptory on Overseas. To be clear, no further adjournments will be granted. If Mr. Bansal is unavailable to give evidence for any reason whatsoever, health related or otherwise, Overseas should consider making arrangements now to produce another witness (or witnesses) on behalf of the Corporate Appellant. If Mr. Bansal or other proposed witnesses for Overseas are unavailable for any reason whatsoever, this hearing will proceed in their absence. Furthermore, if Overseas is unrepresented or represented by new counsel, this matter will proceed in any event on September 6 and 7, 2017. If Overseas or its counsel fail to attend the hearing continuation at the appointed start time on September 6, 2017, the hearing will proceed in their absence in accordance with Section 12 of the Appeal Board Regulation;
  - g. Overseas' counsel will provide to Ms. Dolgoy and the Chair of the Appeal Board a list of Overseas' proposed witnesses no later than 4:00 pm Alberta time, August 23, 2017;
  - h. Each of the Appellant and Respondent will submit written arguments no later than 30 calendar days following the conclusion of the hearing.
50. The hearing resumed on September 6, 2017 with Ms. Nizam giving an opening statement.

#### **OVERSEAS AB OPENING STATEMENT**

51. Ms. Nizam, on behalf of Overseas AB, made an opening statement as follows:
- a. Overseas AB is a company duly incorporated pursuant to the laws of Alberta. It is a licensed employment agency. Kuldeep Bansal is the sole director, owner and operator;
  - b. Bansal also owns and operates Overseas BC, and Overseas Immigration (the "BC Companies"). These are companies which were incorporated in accordance with the laws of British Columbia;

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- c. The BC Companies are not agents of Overseas AB;
- d. Overseas AB had a completely different function and that was to assist employers in obtaining labour market opinions for employers who wished to employ foreign workers in Alberta;
- e. Overseas BC assists employers with labour market opinions to enable foreign workers to obtain work permits to work in BC. Overseas BC also engages in providing immigration services to clients and Overseas Immigration only engages in the business of providing immigration services to clients;
- f. Overseas AB had a fee for service arrangement with employers. Overseas AB was paid by employers. There is evidence in the government's disclosure to support this fact;
- g. At no time did Overseas AB charge foreign workers directly or indirectly to secure employment for them;
- h. The BC companies charged foreign workers for the immigration and settlement services provided by the BC Companies. These services included providing foreign workers with work permit application forms, advice on how to fill the forms and what documents were required for the application, review of the completed applications and settlement services when they arrived in Canada;
- i. The evidence thus far in the proceedings has shown that the ultimate goal for the Complainants in this case was to obtain immigration to Canada and that is the reason that they consulted with the BC companies;
- j. The BC companies provided services to the Complainants and charged them the bulk of their fees after they had been approved to come to Canada. The first installment was due at the time the workers provided the BC companies with their resumes and other personal information. Once the entry Visa to Canada was approved, the second installment of funds from the immigration clients was due and this installment included fees for immigration services, airfare, and settlement services. Those clients that obtained jobs classified as low skilled received reimbursement for their airfare;
- k. There is no evidence to suggest that Overseas AB received funds directly or indirectly from the Complainants. On the other hand, there is an abundance of evidence that indicates that the Complainants' transactions were with the BC companies and that these transactions did not happen in Alberta or originate from Alberta;
- l. The Complainants met representatives of the BC Companies and employers in Dubai, all communications were with the BC companies located in BC, fees were paid outside of Alberta and into BC bank accounts and settlement services were provided in BC;
- m. For the work performed, the Complainants did not pay exorbitant fees. The average cost of services for all the complaints was \$7,223.55 and in some instances, airfare was also reimbursed;
- n. At the end of the day, many of the Complainants who have testified have achieved permanent residence or are in the process of applying for permanent residence largely due to the fact that they were able to come to Canada with the assistance of the BC Companies.

## **EVIDENCE OF OVERSEAS ALBERTA**

52. Ms. Nizam, on behalf of Overseas AB, called one witness, Kuldeep Bansal.

### **Kuldeep Bansal ("Bansal")**

53. Bansal's evidence included:
- a. He is the sole Director of Overseas AB;
  - b. He has a Bachelor of Arts degree from studies in India;
  - c. He has Immigration Consultants of Canada Regulatory Council (ICCRC) training and membership in good standing with the ICCS;
  - d. Hourly rates immigration consultants can charge are typically \$350-\$600;
  - e. Consultants charge for consultation, filing of application forms and settlement services;
  - f. He went through a six-month training program through ICCS;
  - g. Overseas AB, based in Calgary, deals with employers only, assisting them with Labour Market Impact Assessments ("LMIA"s);
  - h. Employers pay Overseas AB for that assistance;
  - i. Overseas did not have written agreements with employer clients. There were verbal arrangements only;
  - j. Service Alberta changed the regulations in 2013 requiring written agreements;
  - k. Overseas AB lost some clients as a result of these changes;
  - l. Overseas AB clients include Fatburger, Petro-Canada, Mac's, CP Rail Terminals, and Shell;
  - m. He also owns and operates two companies in British Columbia: Overseas BC and Overseas Immigration;
  - n. Corporations pay Overseas AB for each employee placed in employment as follows: \$500 for a permanent resident of Canada or a Canadian citizen; \$750 for a low-skilled foreign national; and \$1,500 for a professional;
  - o. Overseas AB's employment agency license allowed them to apply for LMIA's on behalf of third party employers;
  - p. Overseas BC and Overseas Immigration are located in Surrey, British Columbia;
  - q. Overseas BC has an employment agency license in British Columbia and obtains LMIAs for employers in BC;
  - r. Overseas Immigration engages in marketing activities including social media;
  - s. Needs Overseas AB to obtain LMIAs for employers in Alberta;
  - t. Each of Overseas AB, Overseas BC and Overseas Immigration are separately incorporated; they have no relationship; no agreements among them and no right to act as agents of the others;
  - u. Overseas AB provided no services at all to any of the Complainants;
  - v. No money was paid to Overseas AB by any of the Complainants;
  - w. Bansal's hourly rates are \$350-\$550/hr.;
  - x. Most clients opt to pay a lump sum;

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- y. Overseas may charge \$10,000 +/- for a complex case (involving children and/or custody issues);
- z. The BC companies serve 500+ clients per year;
- aa. The BC companies have approximately 15 staff;
- bb. Sometimes, the Overseas BC companies outsource to other firms, including Trident Immigration Services;
- cc. Trident is a separate company, not affiliated with Overseas BC or Overseas Immigration;
- dd. Bansal is an immigration consultant, reviews documents, completes Visa applications and provides settlement services;
- ee. AJ Mann is an independent contractor solely working for the BC Overseas companies;
- ff. Mann's company is Mayfair Immigration Services;
- gg. Mann is no longer involved with Overseas companies;
- hh. Cynthia Hirak is a supervisor with Overseas BC. She deals with clients but doesn't advise them. She prepares forms which Bansal reviews;
- ii. The typical process is:
  - i. Client comes to Overseas BC;
  - ii. Overseas reviews their CV, experience, language ability and skills;
  - iii. Overseas assesses client's admissibility;
  - iv. Overseas determines possible class of entry, including low-skilled workers; investors (net worth greater than \$800,000); study Visa;
  - v. Overseas reviews various official documents: birth certificates, education certificates; citizenship;
  - vi. Overseas has a checklist they give to clients;
  - vii. It often takes 3-4 months to collect documents;
  - viii. Clients are given Visa forms to complete in draft;
  - ix. Overseas reviews and corrects the forms as necessary;
  - x. Documents are submitted to the Canada Immigration Centre ("CIC");
  - xi. Overseas addresses follow-up questions from the CIC;
  - xii. Visa is issued;
  - xiii. Once Visa is issued, the client pays Overseas an immigration services fee;
  - xiv. Overseas assists with travel arrangements (including passport and transit Visa requirements);
  - xv. Overseas advises clients what to carry with them (clothes, etc.);
  - xvi. Overseas arranges for taxi vouchers for new arrivals;
  - xvii. Once in Canada, Overseas assists clients with obtaining their SIN, getting a local bank account, acquiring a cell phone, picking up 5-10 days groceries, and making arrangements with employers;
- jj. A typical case takes 30-40 hours to complete, 15-20 hours of which for document and form review, 10-15 hours for settlement services;
- kk. Travel arrangements take 4-6 hours, pick up at airport takes 3-4 hours, pick up SINNs and phone takes 3-4 hours;

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- ll. Some clients were charged more than others because of complexity of their case, family size, how many countries they've lived in, translation requirements, number of documents, etc.;
- mm. Settlement services were provided in BC, never in Alberta;
- nn. Overseas AB had no involvement in settlement services or immigration services with any of the Complainants;
- oo. Bansal conducts immigration services in the UAE with Mann, Hira and others, recruiting new clients and assisting existing clients;
- pp. Bansal stated that he had retainer agreements with clients, but everything was on a laptop computer that was stolen from his house in 2013;
- qq. A police report was filed;
- rr. These records weren't kept at the Surrey office because of confidentiality concerns;
- ss. Bansal has no information about allegations that Ricablanca was told to delete all emails between both parties prior to coming to Canada and to say that she did not pay any fee to the agency;
- tt. There was no job available to Ricablanca because she chose to come seven months late;
- uu. She obtained her Visa in November, but didn't arrive in Canada until May;
- vv. Overseas looked for other job opportunities for Ricablanca but none were available;
- ww. We paid her ~\$1,400 to help her out;
- xx. None of the Complainants were charged a placement fee. All fees paid to Overseas were for Visa processing and immigration/settlement services only;
- yy. Bansal states that neither Lactao nor Olivar were charged any fees by any Overseas company;
- zz. Lactao had referred others to Overseas so Overseas' services were provided free of charge to her;
- aaa. Olivar's "godmother" (Emily Mercado) had referred 30-40 clients to Overseas and, as a courtesy to Ms. Mercado, no fees were charged to Olivar;
- bbb. Tambis paid \$4,000 to Overseas;
- ccc. Seares paid \$6,500 to Overseas;
- ddd. Jia and Thapa paid \$7,000 each to Overseas;
- eee. Villegas paid \$7,000 to Overseas;
- fff. Overseas does not charge any fees to employees for introducing those employees to prospective employers;
- ggg. Only immigration services fees are charged;
- hhh. Food or hospitality sector workers can apply for permanent residency six months after arrival in Canada under the Alberta Immigrant Nominee Program;
- iii. Overseas did not help any of the Complainants with their permanent residency applications because they each had started the complaint process;
- jjj. Under cross-examination by Ms. Dolgoy, Mr. Bansal confirmed that no one was higher than him in authority at Overseas AB or Overseas BC. Bansal confirmed he is a director of both companies;
- kkk. Overseas BC started in 2004;
- lll. Overseas AB started in 2009;

- mmm. Bansal is aware of all the activities of both companies;
- nnn. Overseas BC provides immigration consulting and employee placement;
- ooo. Overseas AB provides LMIA's for employers only;
- ppp. Recruitment is done by employers only. Overseas sends resumes to employers but Overseas does not make hiring decision;
- qqq. Overseas AB obtains LMIA's without names. When employers want additional staff, they advertise on their own;
- rrr. Overseas doesn't give LMIA's to employees. Those LMIA's are sent to employees directly by employers;
- sss. On occasion, employers may ask Overseas to send LMIA's to prospective employees;
- ttt. With respect to retainer agreements with Overseas' clients, Bansal stated that some were missing because of theft and some Complainants didn't have agreements at all because they paid no fee or were serviced by Trident Immigration Services;
- uuu. Bansal couldn't say how many files go to Trident on an overflow basis;
- vvv. Bansal confirmed that he uses one email address for both the Alberta and BC companies;
- www. He uses one BC address for personal and business correspondence for both the Alberta and BC companies;
- xxx. LMIA's in Alberta went to the Calgary address;
- yyy. No one from Fatburger ever went to Dubai. Bansal collected resumes and forwarded them to Fatburger. Hiring decisions were made by Fatburger;
- zzz. Companies didn't hire Overseas to recruit. Companies hired overseas to get LMIA's.

## **THE DIRECTOR'S ARGUMENTS**

54. Ms. Dolgoy, on behalf of the Director, submitted as follows:
- a. The evidence in this case is clear. Overseas Career and Consulting Services Ltd. ("Overseas") (also known as 'Overseas Immigration') engaged in numerous prohibited and unfair practices and failed to fulfill their legislated responsibilities in breach of sections 6(3)(c) and s. 132 of the *Fair Trading Act*, and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the *Employment Agency Business Licensing Regulation*.
  - b. Given the severity of Overseas' breaches of the *Act* and *Regulation* and the impact those breaches had on the lives of the 10 Complainants in this action, Overseas' business license cancellation and the \$40,000.00 administrative penalty levied against Overseas are appropriate and should be upheld.
  - c. Between July of 2014 and June of 2015, Laura Aydin ("Aydin") (an investigator with the Alberta Government Consumer Investigations Unit) conducted an investigation into 10 complaints against Overseas (the "Investigation"). Aydin found that Overseas breached numerous sections of the *Act* and *Regulations*.
  - d. Upon reviewing the Investigation, Darren Thomas ("Thomas") (the Director of Fair Trading with the Government of Alberta) found the following:

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- i. Overseas Career and Consulting Services Ltd. (or Overseas) was a licensed employment agency under the *Regulation*.
- ii. Overseas was acting as an employment agency during the recruitment of the Complainants on behalf of 1671788 Alberta Ltd., 1610264 Alberta Ltd., 1335117 Alberta Ltd., and Mac's Convenience Store Inc.
- iii. There were 10 Complainants in this matter:
  1. Mahadi Hasan;
  2. Resar Tambis;
  3. Tripper Rao Lactao;
  4. Limuel Albarracin Olivar;
  5. Jill Diago Sears;
  6. Xi Yan Jia;
  7. Suman Thapa;
  8. Mylene Ricablanca;
  9. Marie Jane Villegas; and
  10. Sudesh Kumar
- iv. Overseas demanded or collected fees relating to the securing of employment from the Complainants, in breach of provincial legislation.
- v. Overseas repeatedly failed to respond to requests for records from Service Alberta investigators, and ultimately only provided some records in relation to a single complainant, Kumar.
- vi. Overseas failed to create and maintain documentation required under provincial regulation.
- vii. Overseas was represented during the recruitment process by employees or agents Kuldeep Bansal, AJ Mann, Cynthia Hiram, Renu Dhaliwal, Cheryl Bodie, and Ashmepreet Kaur.
- viii. Overseas has not registered any other parties with Service Alberta as authorized agents
- ix. Overseas misrepresented the service to be provided and fees to be charged to the Complainants.
- e. Ultimately, Thomas found that Overseas breached sections 6(3)(c) and s. 132 of the *Act*, and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the *Regulation*. As a result of these breaches, Thomas canceled Overseas business license and issued a Notice of Administrative Penalty in the amount of \$40,000.00 (the "Decision").
- f. Overseas appealed the Decision to this Appeal Panel (the "Panel") via letter, which contained no new material or relevant evidence.
- g. Prior to the Appeal Hearing commencing (the "Appeal"), on April 10, 2017, Overseas pleaded guilty to the following 2 regulatory charges in criminal court:
  - i. Section 10(1)(a) EABLR - Unlawfully Fail to enter into an agreement with an individual before securing employment for that individual. (\$1150 fine)
  - ii. Section 7 EABLR – Unlawfully operate in a name other than the name on the business license. (\$1150 fine)

- h. During the Appeal, Aydin, Thomas, as well as 6 of the Complainants testified. None of their analyses, conclusions, or accounts of events were diminished through cross examination. It was still clear that
  - i. Overseas charged all of these Complainants to secure temporary foreign work placements in Canada (though some never received the jobs they were promised) in breach of the *Act* and *Regulations*;
  - ii. none of the Complainants received significant (or in many cases any) benefits for the thousands of dollars they paid Overseas (despite being promised benefits and services); and
  - iii. Overseas did not enter into written agreements with the Complainants, despite the requirements to do so under all applicable legislation.
- i. Thomas explained that having written agreements with employment placement clients is crucial as a means of protecting them from exploitation. Written agreements with job seekers are required to ensure that no issues arise in relation to the services to be provided by the employment agency, the terms of the agreements, potential work being sought, obligations on the job seeker, etc.
- j. During his testimony at the Appeal (and his evidence given during the Investigation), Kuldeep Bansal ("Bansal") stated that he gave significant assistance and benefits to all the Complainants, except Olivar who paid nothing for his services so received only help communicating with an employer. He also claimed that Overseas spent a minimum of 40 hours to assist each Complainant (whether or not they paid him for his services). Bansal provided absolutely no records to support these claims, contradicted himself on numerous occasions, spoke in generalities, and kept changing his story regarding Overseas hours or work. In addition, the testimonies of the Claimants do not support Bansal's claims.
- k. Bansal also testified that he did not charge the Complainants for 'recruitment' or 'placement' since he did not actually participate in the Complainants' hiring. He claimed that he charged for 'immigration advice and services.' However, he appears to have admitted that
  - i. Overseas primary 'immigration advice' was to advise the Complainants to hire Overseas to get them temporary work permits (which he represented to all the Complainants was a way to secure permanent immigration status in Canada, despite the limited ability of temporary foreign workers to secure that status);
  - ii. the Complainants paid Overseas or its affiliate, Trident, an initial payment to start their files (except Limuel Olivar and Tripper Lactao who he says he provided services to for free);
  - iii. only after this initial payment was made did Overseas provide the Complainants' information to prospective employers hired by Overseas to find them employees.
  - iv. Overseas was hired to apply for Labour Market Opinions (LMO) and Labour Market Impact Assessments (LMIA) that would allow employers to hire the Complainants on temporary foreign work permits;
  - v. Overseas acted as the only conduit between specific prospective employers and the Complainants in order to pass resumes, LMOs (or LMIA), and job contracts between the parties;

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- vi. once the Complainants' jobs were procured and work visas were processed, the Complainants would owe a second payment to Overseas;
  - vii. some attempts made by Complainants to back out of their agreement with Overseas, and some instances where Complainants took too long to reply to Overseas' communications were met with Overseas staff stating that they would inform the Canadian authorities that the Complainant was no longer interested in coming to Canada for their assigned job opportunity; and
  - viii. all Complainants had to procure the documents for their own visa process, and paid for their own visas at the Canadian embassy, with the only services from Overseas in relation to this process tied to some very limited review of some of the required documentation for a few of the Complainants.
- i. Steps i-viii above describe Overseas' recruitment and placement of the Complainants in specific job opportunities in Alberta. Overseas found the Complainants through job fairs targeted at job seekers, set them up with specific Alberta employers who had hired Overseas to find them employees, facilitated the hiring process through screening of applicants, exchange of resumes and (in some cases) setting up interviews, and facilitated the process of getting those Complainants to Canada under LMOs (which Overseas applied for on behalf of the employer) and work permits (on which Overseas provided limited or no substantive assistance). These specific Alberta employers hired the Complainants as a result of Overseas' recruiting them. Overseas was paid for this recruitment and these placements by both the employers noted in this case and the Complainants - employers paid \$500-\$750 and Complainants paid \$5,500-\$9,500.00.
  - m. Overseas produced no written contracts or really any relevant or material records for any of the Complainants either during the Investigation or Appeal. Throughout the Investigation, Bansal and his team continually stalled any document production by
    - i. "attempting to look" for these records for months at a time;
    - ii. then claiming that vacation, staff turnover, and illness were preventing Overseas from producing these records; and
    - iii. finally claiming that the Director's continued request for such information and documents were unfairly targeting Overseas – meaning that they should not have to produce anything.
  - n. During the Appeal, initially Bansal claimed that all of Overseas' records relating to these Complainants were stolen in 2013. He then blamed his former lawyers for not passing along the records relating for these Complainants. He also claimed that no notes or records were kept from meetings relating to any of the Complainants (or any meeting for anyone for that matter, despite Overseas being hired by 500 'immigration consulting' clients each year). He then finally admitted that for some of the Complainants, no contracts were ever created.
  - o. Ultimately, despite all the stories and unverified excuses, the most logical conclusion is that Overseas never created or kept records (including contracts) for any of these Complainants.
  - p. The facts relating to jurisdiction were also clarified during the Appeal. Overseas was a registered Alberta corporation, with an identical twin company in British Columbia.

- The two companies were inextricably linked, and effectively one in the same. They used the same name, employees, website, letterhead, mailing address, and email addresses. Overseas was hired by and placed employees at Alberta based jobs, a task they could only do because of their registration in Alberta. No records were tendered showing that Overseas British Columbia ("BC") was the company hired to recruit in Alberta, and the Alberta branch was necessarily engaged if recruitment was sought for Alberta based employment.
- q. All of the complaints understood their assigned work would occur in Alberta and ultimately that work did occur in Alberta (if the promised jobs were even available on entry into Canada).
- r. The issues in the case are as follows:
- i. *Is Alberta the correct jurisdiction to hear this case?***
1. Overseas was a Licensed and Engaged Recruiting Business in Alberta
  2. Alberta's recruitment agency licensing regime applies to any business engaged in the activities of recruiting on behalf of Alberta employers, regardless of that employers' location. Overseas required registration and licensing in Alberta because it was actively recruiting on behalf of Alberta employers. As such, it was bound by the regulatory framework for Alberta employment agencies.
  3. Overseas Engaged in Unfair Practices in Alberta
  4. Pursuant to sections 5(a) and (c), of the Act, this Panel has jurisdiction to hear matters involving "unfair practices" in which the supplier or consumer is a resident of Alberta, or matters where the unfair practice is made or received in Alberta involving a supplier's representative. The evidence tendered at Appeal proved that all of these circumstances apply in this case.
  5. Pursuant to S. 6 of the Act, it is an unfair practice for a supplier "...to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services."
  6. Pursuant to S. 5(d) of the Act (also see SS. 12 and 13 of the EABLR), it is also an unfair practice to
    - a. exert pressure on, threaten, or harass potential employees;
    - b. give all manner of false or misleading information to potential employees; and
    - c. fail to enter into agreements with potential employees; and
    - d. charge or collect any fee, reward, or other compensation (directly or indirectly) to potential employees to secure work if you are an employment agency.
  7. The documentary and oral evidence tendered in this case prove that Overseas engaged in all of the above unfair practices. They knew (or ought to have known) they were providing recruitment and placement services to the Complainants, having advertised and communicated their services as such. In exchange for the thousands of dollars Complainants paid in prohibited fees for those services, Overseas provided little in return.

8. Having charged prohibited fees, Overseas then exerted undue pressure on at least a few of the Complainants, and threatened them when they either attempted to back out of their relationship with Overseas or did not communicate in a timely enough manner with Overseas.
9. In addition, Overseas clearly failed to create and keep any records in relation to the Complaints. In particular, they failed to enter into written agreements with the Complainants.
10. Overseas operated in Alberta as a 'supplier' of employment recruitment services for Alberta worksites. The 'consumers' of the employment placements services were both Alberta employers, and the Complainants who were ultimately placed in Alberta (if jobs were available to them upon arrival). See the following definitions: Act s. 1(1)(l)(i) "supplier" and s. 1(1)(b)(i) "consumer"
11. According to S. 169(a) of the Act, any one instance of Overseas being hired by an Alberta based employer or workplace, or of placing an employee in Alberta would have been proof that Overseas carried on the business of employee recruitment in Alberta.
12. Overseas has attempted to argue that it was their BC branch that entered into business arrangements with the Complainants, and that their Alberta branch was not involved with these Complainants at all. This argument does not hold up.
13. Overseas provided recruitment services to Alberta based employers including Fatburger, Macs, and a number of other companies. All of the Complainants were hired by Alberta worksites that had already hired Overseas to recruit for them. If one could even draw a distinction between Overseas BC and AB (which we argue is not possible given they acted as one in the same when you look at the real entity in question here), then Overseas AB was necessarily engaged by their BC counterpart the minute any Alberta worksites hired them or the minute any placements were made in Alberta. Overseas BC could not have provided recruitment services in Alberta without engaging their Alberta registered company. See S. 2.1 of the Act.
14. Though even if this Panel found that the BC and AB entities were totally separate and were not directly acting on one another's behalf, pursuant to the Act, Overseas AB would still be vicariously liable for the acts of Overseas BC. No matter which way you cut this issue, Overseas AB was responsible for any breaches of the Act and Regulations. See S. 166 of the Act.
15. Overseas has already acceded to the Jurisdiction of the Alberta Courts.
16. Furthermore, in a parallel, separate regulatory case in which Overseas AB pleaded guilty, Overseas AB has already admitted that they accepted payment from an employee in exchange for getting him a job in Alberta. Through the facts of this case and this guilty plea, Overseas AB has admitted that their Alberta registered company was actively engaged in recruitment services by employees who paid for their jobs. Also through this case, Overseas AB has attorned to the jurisdiction of the Alberta courts (and Alberta law). See *Canada Evidence Act*, RSC 1985, c. C-5 s. 23. Also see *Hansen v. The Ocean Victoria Daichi Tanker K. K.*, *reflex*, [1985] 1 F.C. 451 at para. 8 [TAB 4].

Also see *Alberta Evidence Act*, RSA 2000, c A-18 s. 26 [TAB 5] and *Interpretation Act*, RSA 2000, c I-8 s. 28(nn) definition of person.

17. Overseas' guilty pleas are admissible as evidence in this civil proceeding by operation of section 26 of the *Alberta Evidence Act* and through the common law. See *Alberta Evidence Act* at s. 26. Also see *House v. Wawanese Mutual Insurance Company*, 2006 ABQB 450 (ABQB) at para. 8. Also see *F., K. (Litigation guardian of) v. White*, 2001 CanLII 24020 (ON CA).
  18. Assuming Overseas did not perjure itself in its regulatory trial, the facts of this case were true then, and it was the Judge's duty to find and record those facts. Thus, they remain true now for the purposes of this civil proceeding. See *R. v. Caesar*, 2016 ONCA 599 at para. 47, 53, and 80. Also see *Franco et al v. White*, 2001 CanLII 24020 (ON CA).
  19. Given all of the above and taking into consideration the real substance of Overseas' transactions with the Complainants in this case, Alberta is the correct jurisdiction for this matter to be heard. This case falls squarely within s. 5 of the *Act*, the Director had jurisdiction to issue the Decision, and this Appeal Panel has jurisdiction to hear the Appeal. See *Act*, s. 2.1 and s. 5.
- ii. **Did Overseas breach sections 6(3)(c) and s. 132 of the Act and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the EABLR 45/2012?**
1. The Director must prove on a balance of probabilities that Overseas breached the *Act* and *Regulations*. In this case, the preponderance of documentary and oral evidence proves that Overseas engaged in a number of unfair practices and acted in breach of the *Act* and *Regulations*.
  2. As already detailed, the transactions between Overseas and the Complainants were excessively one sided. The Complainants had no power (bargaining or otherwise) in the transactions, and no understanding of the laws in Canada prohibiting Overseas from charging for job placement services.
  3. Also, Overseas told the Complainants that in exchange for payment, Overseas would find them good, potentially lucrative work in Canada, and that the Complainants would be given the opportunity to access Canadian permanent residency. Overseas then took the Complainants exorbitant prohibited payments, and provided them little to nothing in return except jobs in low-end work as counter attendants or in fast food services.
  4. Furthermore, Overseas made representations that they knew or ought to have known placed undue pressure on the Complainants. For example, in some cases, Overseas threatened to inform Canada immigration if Complainants did not go through with Overseas' dictated process or pay the fees Overseas demanded.
  5. In addition, Overseas failed to create or maintain financial or any other records of their transactions with the Complainants, and failed to enter into written agreements with the Complainants. In contradiction to his earlier statement that written agreements existed between Complainants and Overseas but were misplaced by former counsel, stolen, or somehow otherwise destroyed, Bansal later explained that they had no written agreements with

the Complainants because they were engaged by these Complainants before the *Regulation* came into effect on September 1, 2012.

6. According to the Director, employment agencies were expected to ensure that they met the requirements of the new *Regulation* with any individual with whom they had an ongoing recruitment relationship that had not completed the recruitment process. Given that, this written agreement condition applied to at least Complainants Hasan, Jia, Thapa, Ricablanca, Villegas, and Kumar.
7. For all the above reasons and more, it is clear that Overseas engaged in numerous egregious, unfair practices and breaches of the legislation in relation to all 10 Complainants.

**iii. Should the Director's chosen remedies of cancelling Overseas' business license and levying an administrative penalty of \$40,000.00 be confirmed?**

1. Overseas demand and the Complainants paid prohibited fees equivalent to \$72,235.00. They were given very little in return other than work in low end jobs. What is worse, each Complainant was fed the promise of "the good life" in Canada and ultimately the chance at permanent residence immigration status. Overseas never fulfilled these promises.
2. Each Complainant provided either (or both) written and/or oral evidence about the impact of Overseas' broken promises on their lives. While some have worked hard and been sponsored to stay in Canada, or developed relationships with Canadians which allow them to stay in Canada, all felt diminished, deceived, and cheated by a company that took their (or members of their family's) savings illegally and offered them almost nothing in return.
3. Despite Overseas' promises of assistance and good jobs for their astronomical fees, Complainants had little to no assistance with any paperwork or arrangements to come to Canada (or once in Canada), and were given low end jobs (if jobs existed at all) that did not match their professional qualifications, their expressed desire for type of employment, or their promised wage. On arrival into Canada, in some cases, Complainants were left at airports without any information about their next steps. In other cases, they were taken by taxi chit to derelict housing situations, or were provided no housing or relocation assistance at all. Some received minimal help to get SIN numbers or bank accounts setup, which ultimately benefited the Complainants' employer as much as (if not more than) the Complainants themselves.
4. In his oral evidence, Bansal explained that Overseas gave 40-60 hours of 'assistance' to Complainants in exchange for payment. However, the hours Bansal claimed it took his staff to provide 'immigration consulting' services do not add up. A company cannot spend 40-60 hours on a client without creating a significant paper trail, at least some of which should have been produced during the Investigation or at Appeal. Also, the services Bansal described would take significantly less time to complete than Bansal claimed – for example, it is not reasonable to believe that it would take 15-20 hours

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(minimum) for Overseas staff to review visa documents, and 20 hours (minimum) for Overseas staff to complete the settlement services described for the Complainants, including getting a bank account set up, getting a SIN number, and getting people booked for a few nights' accommodation either at Overseas' own residences or at a hotel.

5. At the end of the day, a \$40,000.00 penalty was levied by the Director against Overseas, broken down as follows:

s. 6 (3)(c) (FTA) (Excessively one-sided):	\$2,000
s. 132 (FTA) Records:	\$1,000
s. 9 EABLR (Records):	\$2,000
s. 10 EABLR (Agreements):	\$2,000
s. 13 (2)(a) EABLR (Undue pressure):	\$1,000
s. 13 (2)(b) EABLR (Misrepresentations):	\$1,000
s. 13 (2)(c) EABLR (Separate Agreements):	\$1,000
s. 13 (2)(e) EABLR (Prohibited fees):	\$30,000

See *the Act*, s. 158.1

6. That penalty was significant, but with good reason. Overseas' behavior in this case was egregious. Small penalties for this reprehensible and illegal conduct to companies like Overseas (charging thousands of dollars each year to upwards of 500 clients) are not meaningful. Small penalties should not end up being part of the cost of doing business. \$40,000.00 is a meaningful penalty for engaging in the unfair practices outlined, breaching licensing requirements, and breaching the fee prohibition. It should be upheld.
7. Overseas has also been unrepentant and obstructionist throughout the whole Investigation and Appeal. Had Overseas made mistakes and owned up to them (and perhaps even offered restitution), the Director may have levied fines and directed them to clean up their business practices.
8. However, in this case, Overseas argue that they did nothing wrong. They have shown no interest in changing their business practices. If they were allowed to continue servicing clients in Alberta, the Director has every reason to believe they would continue to charge employees to find employment under the guise of 'immigration consulting services,' and would continue to flout Alberta law relating to record keeping created to protect the vulnerable from exploitation. License cancellation was (and continues to be) an appropriate penalty for this case. See the *Act* s. 127.
- s. In conclusion,
- i. Alberta is the correct jurisdiction to deal with these complaints;
  - ii. Overseas breached a number of provisions of the *Fair Trading Act* and *Employment Agency Business License Regulation*; and
  - iii. the \$40,000 penalty and license cancellation were the correct result in this case, and should be upheld.

## **OVERSEAS AB'S ARGUMENTS**

55. Ms. Nizam, on behalf of Overseas AB, submitted as follows:

- a. Overseas Career & Consulting Services Ltd. (Overseas AB) is an Alberta company that held an employment agency license. The main function of this company was to assist employers in obtaining labour market opinions (LMOs) for temporary foreign workers who would be working in Alberta. As a result of consumer complaints against the BC company, Overseas Immigration, the director of the *Fair Trading Act* of Alberta has imposed an administrative penalty of \$40,000.00 and cancelled the employment agency license of Overseas AB for allegedly breaching the provisions of the *Fair Trading Act* and the Employment Agency Business Licensing Regulations. Specific breaches alleged include but are not limited to charging employees the prohibited fee under the legislation, misrepresentation and failure to keep records.
- b. The evidence during the hearing in this matter shows that the Complainants were dealing with BC companies at all material times and not with Overseas AB. The BC companies include Overseas Career & Consulting Services Ltd. BC (Overseas BC) and Overseas Immigration Services which was incorporated in 2013. Overseas BC is a licensed employment agency in BC and is authorized to do LMO applications for BC employers. It also provides immigration services. Overseas Immigration Services Inc. provides immigration services. Mr. Kuldeep Bansal, Director of Overseas AB has testified that he wished to secure the name Overseas Immigration Services for his BC based company but was unable to secure the name Overseas Immigration Inc. until 2013. Overseas BC and Overseas Immigration Services Inc. will be collectively referred to as the "BC Companies."
- c. The issues in this case are as follows:

### **i. Does Alberta have jurisdiction in this matter?**

1. Overseas AB is an Alberta company incorporated pursuant to the laws of Alberta. The *Fair Trading Act of Alberta* applies only to suppliers or consumers that are residents of Alberta. It also provides that for an unfair practice to be found, it must be made or received in Alberta, or the unfair practice must be made or received in Alberta involving a supplier's representative.
2. The evidence indicates that all the Complainants in this matter dealt with BC companies, communicated with BC companies and representatives of the BC companies in person, and via email and telephone numbers belonging to BC companies. Monetary transactions were with BC companies in BC and Dubai.
3. All business cards, and addresses on email correspondence reference BC locations, and the Complainants arrived in BC from the United Arab Emirates and received settlement services in BC.
4. All offers of employment were made by BC employers located in BC and acceptance of those offers was made by the Complainants in Dubai. Laura Aydin, Service Alberta investigator, testified that all employment contracts indicated they were signed in BC. Offers and acceptance for services were

made in the United Arab Emirates between the BC companies and the Complainants who were located in Dubai.

5. In fact, the Complainants complained against Overseas Immigration located in Surrey, BC and cited the telephone number of Overseas Immigration in their consumer complaint forms to the Government of Alberta. No complaints were made against Overseas AB. Many times, the Complainants visited the offices of the BC companies in Surrey BC after their arrival in Canada. Thus, the Complainants cannot assert that they had no knowledge they were dealing with BC companies.
6. The Complainants in this case did not engage Overseas AB as Overseas AB's function was simply to assist their would-be employers to obtain LMOs required for their work permit applications.

**ii. Did Overseas AB breach the provisions of the Fair Trading Act and the EABLR?**

1. Overseas AB Had No Engagement with the Complainants.
2. The evidence during the hearing has shown that the BC Companies conducted immigration seminars in the United Arab Emirates where they would provide advice to those seeking to immigrate to Canada about various immigration options to immigrate to Canada. Indeed, the name of the company that advertised its immigration services in Dubai was Overseas Immigration. Thus, people attended the seminars for advice on how to immigrate to Canada.
3. This Appeal Panel heard that other than work permit applications, the BC companies also did other types of immigration applications. Since the Complainants wished to know the most expeditious way of immigrating to Canada, they were advised by the BC companies to obtain a job, work in Canada and then apply for permanent residence. The ultimate objective of all the Complainants was to immigrate to Canada.
4. Ability to Apply for Permanent Residence After Working in Canada- No Misrepresentation by BC Companies.
5. During the relevant periods of time when the Complainants approached the BC Companies, there were opportunities for temporary foreign workers both skilled and unskilled to obtain permanent residence after working for a year in Alberta. In fact, there was a program called the Alberta Experienced Class under the Alberta Provincial Nomination Program where high and low skilled workers could apply for permanent residence and bring their families to Canada after working in Alberta for one year. Similarly, there was another permanent residence application process called the Canadian Experience Class where higher skilled and semi-skilled workers could apply for permanent residence after working in Canada for one year. Mr. Darren Thomas, the Director of *the Fair Trading Act* of Alberta acknowledged that there were programs that allowed temporary foreign workers to apply for permanent residence.

6. The testimony of the Complainants also revealed that it was their intention to immigrate to Canada. Some of the Complainants stated that their ultimate goal was to immigrate to Canada. In fact, complainant Mahdi Hasan even admitted that he has achieved permanent residence after working in a skilled position.
7. It is submitted that the Complainants had excellent chances of obtaining permanent residence after working in Alberta for a year.
8. After attending the BC companies' seminar in the United Arab Emirates, people would typically contact the BC companies to find out what the best options were to immigrate to Canada. All of the Complainants in this case selected the most expeditious option that could get them to Canada. The Complainants were willing to leave their jobs in the United Arab Emirates for lower paying jobs in Canada because they knew they would have better future prospects in Canada.
9. There is no income tax payable in the United Arab Emirates, therefore, it is significant that the Complainants were willing to leave higher paying jobs in the United Arab Emirates to have an opportunity to immigrate to Canada. To reiterate, there were at the relevant times, economic immigration programs in Canada which would give workers the opportunity to apply for permanent residence after obtaining Canadian work experience. The BC Companies did not misrepresent facts about immigration prospects to the Complainants.
10. Mr. Bansal also testified that he would have assisted the Complainants with their PR applications, however, the Complainants initiated proceedings against the BC Companies and thus, Mr. Bansal was not at liberty to contact them again.
11. Functions of Overseas AB and the BC Companies
12. This Appeal Panel also heard that the BC Companies collected resumes from would be employees and passed them on to employers in order for them to select their candidates. On many occasions, employers would come to the United Arab Emirates to interview prospective employees before hiring them. Employers that hired employees to work in Alberta hired Overseas AB to prepare the LMOs. Employers paid Overseas AB between \$500.00 to \$1500.00 for its assistance.
13. The employers would then instruct the BC companies to forward their employment contract and positive LMOs to the BC companies' immigration clients, (the employer's potential employees). The BC companies would assist their immigration clients with the work permit application after which the client would send his or her application to the Canadian Embassy to obtain the work permit approval. The immigration clients would then travel to Canada where they would receive their work permit at the port of entry. Settlement services would generally be provided for the clients upon their arrival in British Columbia. Please see flowchart.
14. Immigration & Settlement Fees Paid by Clients – No Placement Fees or Recruitment Fees Charged to Clients

15. Employers paid Overseas AB for assistance with LMO applications. Immigration clients of the BC companies did not pay Overseas AB or the BC companies any placement or recruitment fees. Immigration clients paid the BC companies for immigration and settlement related services only.
16. The BC Companies' immigration clients knew or ought to have known that they were paying for immigration and settlement related services. Mr. Bansal testified that the distinction between placement fees and immigration fees was explained to the immigration clients. In fact, Mr. Bansal in his testimony referred to transfers of funds by the Complainants to BC accounts for application or migration related consulting fees.
17. The government's disclosure also indicates that complainant Sudesh Kumar confirmed that fees charged were "clearly communicated as visa processing fees." Visa processing is contrary to placement and is synonymous with immigration services.
18. How Fees Were Charged
19. Mr. Bansal testified that as an immigration consultant, he was permitted to charge an hourly rate for immigration and settlement related services to immigration clients. His hourly rate was between \$380.00 to \$500.00 per hour. Mr. Bansal testified that on average, it would take approximately 10 hours to assist with each work permit application from providing the forms, to continued advice on how to complete the application, reviewing the application and correcting the application to ensure accuracy as Citizenship & Immigration Canada would bounce applications if they were not accurate, complete and if the proper documents were not included. Mr. Bansal testified that clients were assisted via telephone and personally by himself and AJ Mann during their regular trips to Dubai.
20. Settlement services after the clients' arrival would take a few days of driving them around BC to obtain telephones, bank accounts, and health coverage. Even if it took only 20 hours for settlement services, this plus an additional 10 hours of work permit assistance would be 30 hours expended on each client. Thirty hours multiplied by \$380.00 per hour equates to \$11,400.00.
21. Mr. Bansal testified that clients were offered either a flat lump sum rate or an hourly rate and that most clients opted for the lump sum rate which was agreed to be based on the complexity of the specific case. An initial retainer for immigration fees was due when the resumes were collected from the immigration clients. No additional fees were charged when the positive LMO was received. Only after the approval of the entry visa to Canada was received was the balance of immigration fees payable. Overseas AB submit that if they were charging a placement or recruitment fee to the clients, they would have charged fees after the positive LMO was obtained when in fact, only after the immigration application was complete and entry visas approved, were the clients charged the balance of fees.

**iii. Is there an agency relationship between Overseas AB and the BC Overseas companies so as to make Overseas AB vicariously liable for the action of Bansal and the BC Companies and their employees/agents?**

1. No Agency Relationship
2. Black's Legal Dictionary defines agency as: "A fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions."
3. The Director of the *Fair Trading Act* testified that he was not aware whether there was a contractual relationship between OSSC Alberta and the BC companies that evidenced an agency relationship between Overseas AB and the BC companies.
4. Kuldeep Bansal testified that there were no contracts between Overseas AB and the BC companies that allowed the BC companies to act on behalf of Overseas AB.
5. In *Canada v. Merchant Law Group*, (2010 FCA 206 (CanLII)), cites G.H.L. Fridman's *Canadian Agency Law* and concludes that for an agency relationship to exist, "the agent must be able to affect the principal's legal position with third parties by engaging into contracts on the principal's behalf or by disposing of the principal's property."
6. Thus, if Overseas AB is the principal and the BC Companies and Kuldeep Bansal and others are its agents, they must have the ability to enter into contracts on behalf of Overseas AB.
7. The *City of Edmonton, v. Her Majesty the Queen*, 2015 TCC 172 at paragraph 37 refers to the *Merchant* case and sets out the three essential elements of an agency relationship:
  - a. Consent of both the principal and the agent;
  - b. Authority of the agent to affect the principal's legal position; and
  - c. The Principals Control of the Agents Actions.
8. In this case, there is no written or implied consent of Overseas AB and the BC Companies or Kuldeep Bansal and others to enter into an agency relationship, there is no authority for the BC companies or Kuldeep Bansal and others to affect Overseas AB's legal position, and finally, Overseas AB did not control the actions of the BC Companies and Kuldeep Bansal and others.
9. There is also no evidence that there is an employer/employee relationship between Overseas AB, the BC Companies and Kuldeep Bansal and others to signify that Overseas AB controls the actions of the BC Companies, and Kuldeep Bansal and others.
10. Overseas AB's Response to the Allegations of the Complainants Against the BC Companies & Details of Services Provided.
11. Mylene Ricablanca
  - a. Ms. Ricablanca paid \$8,000.00 in total including airfare to the BC companies and not to Overseas AB. (A portion of this amount was paid to Trident Immigration Services for its services).

- b. The BC companies provided immigration advice and assisted her with the work permit application.
  - c. Ms. Ricablanca chose the fastest route to immigrate which was to obtain a job as a high skilled worker, obtain Canadian work experience and apply for permanent residence after getting Canadian work experience.
  - d. Mr. Bansal testified that Ms. Ricablanca did not leave Dubai when she received her visa approval as she wished to get her bonus for completing her contract with her Dubai employer. When she arrived in Canada, she was too late for the job she was promised by Mac's.
  - e. It is submitted that keeping Ms. Ricablanca's job available was not the responsibility of Overseas AB or the BC companies.
  - f. In any event, the BC companies assisted her in obtaining alternate employment and Kuldeep Bansal personally assisted Ms. Ricablanca by paying her over \$1400.00 while she was looking for another job.
  - g. Mr. Bansal could not contact Ms. Ricablanca again to assist further as she made a consumer complaint against Overseas Immigration soon after her arrival in Canada in 2014.
  - h. Services Provided to Mylene Ricablanca by BC Companies:
    - i. Immigration advice
    - ii. Assistance with the work permit application which she confirms
    - iii. Travel arrangements
    - iv. Taxi vouchers provided
    - v. Accommodation
    - vi. Further advice immigration advice when Ms. Ricablanca arrived in BC
    - vii. Bus fare from Vancouver to Edmonton
12. Limuel Olivar
- a. Mr. Bansal testified that Mr. Olivar paid no fees. Mr. Olivar testified under cross examination that he got involved in a gay relationship to obtain permanent residence and that he would do anything to obtain permanent residence. There is no documentary evidence that any payment was made to Overseas AB or to the BC companies. Mr. Bansal testified that immigration services were provided to Mr. Olivar free of charge as a favour to Emily Mercado, a friend of Mr. Bansal who routinely referred clients to the BC companies.
  - b. Services Provided to Limuel Olivar by BC Companies:
    - i. Immigration advice
    - ii. Assistance with two work permit applications which Limuel confirmed in cross examination and is supported by the government's disclosure.
    - iii. Driving Mr. Olivar to the border to obtain second work permit.
13. Resar Tambis
- a. Mr. Bansal testified that immigration fees were paid to the BC Companies on behalf of Resar Tambis by his aunt who had also retained the immigration services of the BC Companies for her other relatives. The amounts paid by Mr. Tambis's aunt to the BC companies also included fees for services

- provided for her other relatives. The cheque from Mr. Tambis's aunt clearly states fees were for immigration services.
- b. Services provided to Resar Tambis by BC Companies:
    - i. Immigration advice
    - ii. Assistance with work permit application
14. Tripper Lactao
- a. Mr. Bansal testified that Ms. Lactao paid no fees to either Overseas AB or the BC companies and that he agreed to waive immigration fees for Ms. Lactao on the recommendation of AJ Mann because he believed that AJ Mann and Tripper Lactao were good friends. There is no documentary evidence that any payment was made.
  - b. Services Provided to Tripper Lactao by BC Companies:
    - i. Immigration advice
    - ii. Assistance with work permit application
    - iii. Accommodation, transportation
    - iv. Assistance getting Alberta Health Care
    - v. Assistance in getting social insurance number
    - vi. Assistance in obtaining telephone and bank account
    - vii. In addition to the above, AJ Mann also gave her \$500.00.
15. Sudesh Kumar
- a. Mr. Kumar paid the BC companies immigration fees of \$6,500.00 and not \$8,000.00 or \$7,201.00 as alleged by the Crown. Fees paid were for immigration related services. Indeed, the government's disclosure indicates that Mr. Kumar stated the fees were clearly communicated as visa processing fees. However, Mr. Kumar contradicted the Crown's disclosure under cross examination.
  - b. Services provided to Sudesh Kumar by the BC companies:
    - i. Immigration advice
    - ii. Assistance with work permit application
    - iii. Travel arrangements
    - iv. Accommodation
    - v. Assistance with transportation in BC
    - vi. Assistance in obtaining a bank account
    - vii. Assistance in obtaining SIN number
    - viii. Provision of airfare to Vancouver
    - ix. Bus fare to Edmonton
16. Mahadi Hasan
- a. Mr. Hasan's immigration matter was transferred to Trident Immigration Services, a company that dealt with the overflow of the BC Companies. Mr. Bansal testified that the initial retainer was paid to Trident Immigration Services and that he is not aware of where the balance of his fees was paid.
  - b. Services provided to Mahdi Hasan
    - i. Immigration advice
    - ii. Assistance with work permit application

- iii. Travel arrangements
  - iv. Accommodation
  - v. Assistance with transportation in BC
  - vi. Assistance in obtaining a bank account
  - vii. Assistance in obtaining SIN number
  - viii. Provision of airfare to Vancouver
  - ix. Bus fare to Edmonton
17. Jill Seares
- a. Ms. Seares paid the BC companies immigration fees of \$6,800.00 of which airfare of \$1,280.00 was refunded. No monies were paid to Overseas AB.
  - b. Services provided to Ms. Seares by the BC companies:
    - i. Immigration advice
    - ii. Assistance with work permit application
    - iii. Travel arrangements
    - iv. Accommodation
    - v. Assistance with transportation in BC
    - vi. Assistance in obtaining a bank account
    - vii. Assistance in obtaining SIN number
    - viii. Provision of airfare to Vancouver
    - ix. Bus fare to Edmonton
18. Marie Jane Villegas
- a. Ms. Villegas paid the BC Companies immigration fees of \$8,000.00. No monies were paid to Overseas AB. Fees paid were for immigration related services.
  - b. Services provided to Marie Jane Villegas by the BC companies:
    - i. Immigration advice
    - ii. Assistance with work permit application
    - iii. Travel arrangements
    - iv. Accommodation
    - v. Assistance with transportation in BC
    - vi. Assistance in obtaining a bank account
    - vii. Assistance in obtaining SIN number
    - viii. Provision of airfare to Vancouver
    - ix. Bus fare to Edmonton
19. Xi Jia & Suman Thapa
- a. Ms. Jia and Mr. Thapa each paid \$7,000.00 for immigration services to the BC companies. Monies were transferred to a BC account for "migration and consultancy services." Unfortunately, when they arrived, they had no jobs, however, the availability of jobs was the responsibility of the employer who was contractually obligated to have their jobs available for them. The BC companies tried to assist them to find other work however, the federal government placed a moratorium on the ability of employers to obtain labour market opinions in various industries.

**Re: Appeal of the Decisions of the Director of Fair Trading (as delegated) to: (i) Cancel the Employment Agency Business License of Overseas Career and Consulting Services Ltd ("Overseas AB"); and (ii) to levy a \$40,000 administrative Penalty against Overseas AB**

- b. It is submitted that keeping Ms. Jia's and Mr. Thapa's job available was not the responsibility of Overseas AB or the BC companies. In any event, the BC companies attempted to assist them in finding alternate employment.
- c. Services provided to Xia Jia & Suman Thapa by the BC Companies:
  - i. Assistance with work permit application
  - ii. Travel arrangements
  - iii. Accommodation to Xi Jia for two weeks in BC & Edmonton
  - iv. Assistance with transportation in BC
  - v. Assistance in obtaining SIN number
  - vi. Provision of airfare to Vancouver
  - vii. Bus fare to Edmonton
- d. Decision of the Director of the Fair Trading Act of Alberta
  - i. The Director of the Fair Trading Act of Alberta cancelled the employment agency license of Overseas AB and imposed an administrative penalty totaling \$40,000.00 for the following contraventions:

s. 6(3)(c) FTA (Excessively One Sided Transactions)	\$2,000.00
s. 132 FTA (Failure to Keep Records)	\$1,000.00
s. 9 EABLR (Failure to Keep Records)	\$2,000.00
s. 10 EABLR (Failure to have Agreements)	\$2,000.00
s.13(2)(a) EABLR (Undue Pressure)	\$1,000.00
s.13(2)(b) EABLR (Misrepresentations)	\$1,000.00
s.13(2)(c) EABLR (Separate Agreements)	\$1,000.00
s.13(2)(e) EABLR (Prohibited Fees)	\$30,00.00
	\$40,000.00
- e. The only legislative provisions that apply to Overseas AB is s. 132 of the Fair Trading Act, and s. 9 of EABLR as Overseas AB did not engage with the Complainants.
- f. With respect to s. 9, Mr. Bansal testified that there were no written agreements between Overseas AB and employers for whom they were providing assistance. There were only verbal agreements with Overseas AB and its employer clients.
- g. Mr. Bansal testified that requiring written agreements with employers was problematic as employers were not prepared to enter into written agreements. Mr. Bansal also testified that there were some agreements with immigration clients for ICCRC purposes. These agreements could not be located because they were on his personal computer which was stolen. The agreements were with immigration clients and are not required for the purposes of the *Fair Trading Act*.
- h. Conclusion - The evidence has shown that the Complainants did receive significant benefit for the amounts they paid to the BC Companies. The fees were not exorbitant in relation to the services provided and depending on their skill level, many Complainants were also reimbursed their airfare.

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- i. Even if Alberta does have jurisdiction in this matter, the Crown has not proven that Overseas AB charged these Complainants the prohibited fees referred to under s. 13(2)(e) of the Employment Agency Business Licensing Regulation.
- j. The Crown has also not proven that there was an agency relationship or an employer/employee between Overseas AB, the BC Companies and Kuldeep Bansal and others so as to make Overseas vicariously liable for the acts of the BC Companies or Kuldeep Bansal and others.
- k. With the exception of some lapses in record keeping and lack of agreements with employers, Overseas AB has not contravened the provisions of the *Fair Trading Act* of Alberta and the Employment Agency Business Regulations.
- l. Remedies Sought:
  - i. As Alberta has no jurisdiction, the case should be closed.
  - ii. Reinstatement of the employment agency license of Overseas Career & Consulting Services Ltd.

**THE DIRECTOR'S RESPONSE TO OVERSEAS AB'S ARGUMENTS**

56. Response # 1: Overseas misconstrued the role of the Alberta registered Overseas entity in this case.
- a. In their brief, Overseas attempts to draw a distinction between Overseas AB and Overseas BC. This is a distinction without substance, and ignores the bulk of the evidence in this case which shows that Overseas BC and AB were one in the same entity (with the same directing mind, same logo, same website, same contact information, and same employees). Bansal admitted this fact when he acknowledged in his February 22, 2013 letter that the Overseas AB is a branch of the Overseas BC office: "Please accept the attached as evidence of licensing requirements being met for our branch location in Chestermere and reinstate our employment agency business license."
  - b. Even if the Overseas entities were distinct, Overseas still misses the point of how Overseas AB was a crucial cog in the wheel of the entire Overseas business model. Overseas admits via their Alberta/BC flowchart that both the Alberta and BC Overseas entities were working together to the end of getting workers (which they call "immigration clients") to staff LMO positions procured by Overseas AB for Alberta businesses.
  - c. The Overseas entities relied on one another to complete the jobs they were paid by employees and employers to do. Any differentiation about whether it was the BC entity or the AB entity doing a task is essentially a red herring.
  - d. Whether the relationship between Overseas AB and Overseas BC falls under a common-law agency relationship is irrelevant if the companies were one in the same. Though if relevant because the companies were separate but acting together, either general common law agency with implied consent (given Bansal was the directing mind of both entities) or 'agency by estoppel' could easily be established on the evidence.

- e. Section 166 of the *Fair Trading Act* positing vicarious liability applies, and Overseas AB is liable for any breaches by any of the Overseas entities.
57. Response #2: In their brief, Overseas makes conclusions not supported by the tendered evidence.
- a. In their brief, Overseas concludes that "the Complainants had excellent chances of obtaining permanent residence after working in Alberta for a year." They further state that "there were at the relevant times, economic immigration programs in Canada which would give workers the opportunity to apply for permanent residence after obtaining Canadian work experience."
  - b. To the best of my recollection (without the benefit of transcripts), I do not recall Overseas leading evidence on this issue. If this issue was discussed in the evidence, it would have been the Director's statement that that ability to achieve permanent residency is dependent on the Alberta Immigrant Nominee Program. Overseas would have no control over (or ability to influence) permanent residency applications.
  - c. Given that Overseas could not guarantee anything in relation to permanent residency programs, it cannot now conclude that there was a high likelihood of the Complainants being able to successfully achieve permanent residency following their temporary work placements.
58. Response #3: It is unreasonable and unconscionable to charge \$380-500/hour for settlement services.
- a. In its brief, Overseas argues that even if it took Overseas 30 hours to help an immigration client at a rate of \$380/hour (Bansal's lowest hourly rate), this would amount to a cost of \$11,400. Overseas broke that down to explain that of those 30 hours, 10 of those hours would have been Bansal's service and 20 of those hours would likely have been settlement services. The implication here is that the Complainants were getting a bargain by paying a flat rate of \$7,000-\$8,000.00 for Overseas' services.
  - b. The evidence presented by the Appellant was that Bansal engaged in some of the work for the Complainants himself. However, it was his staff that would do the driving around and grunt work relating to settlement of these Complainants. As such, even if we actually believed that Overseas spent 30 hours on a complainant's case (20 hours of which was settlement services), it would have been unreasonable and unconscionable for Overseas to charge Bansal's rate when Bansal was not doing the work.
59. Response #4: Bansal is not a credible witness.
- a. There are a number of contradictory facts and conclusions as between Overseas' brief and the Director's brief. Where those facts diverge based on complainant testimony and Bansal's testimony, we submit that the Complainants' evidence should be preferred.
  - b. Bansal's evidence and all of his testimony are just not credible. Both during the investigation and Appeal process, Bansal failed to provide clear, consistent, and specific answers to the Director's or counsel's questions. Furthermore, he provided no records to substantiate his stories.

- c. In addition, Bansal has already pleaded guilty to charging an employee for finding him a work placement in Alberta. It is not reasonable to believe that Bansal would have charged only one person for a work placement, and would not have done it on other occasions.
  - d. Finally, all of the Complainants had very similar accounts of what happened during their interactions with Overseas. These accounts verify one another, and strongly support the Director's conclusions in this case.
60. Response #5: The theft from Bansal's home would not/should not impact this case.
- a. No evidence has been provided to substantiate the theft of records (or a computer) from Bansal's home.
  - b. In addition, the email from Overseas' counsel to the Panel chair on September 28, 2017 noted that the police report regarding the theft was made on January 3, 2012. In his oral evidence, Bansal has said that this theft had occurred in 2013.
  - c. Given that it is unclear when this theft happened, if it happened, and what was stolen, any testimony regarding this theft and the impact it would have on the ability to produce records in this case should be disregarded.
  - d. Though even if this Panel accepted the evidence and the fact that some records might have been stolen, assuming Bansal verified the date prior to counsel sending her email, if records were stolen in January of 2012, their theft would not have affected (or at the best, minimally affected) this case. As per the chart already provided in the Director's brief at Tab 10, almost all of the Complainants engaged Overseas after January 2012. Thus, the required records would have been generated post January 2012 and would not have been impacted by the theft.
61. In conclusion, the Director's position remains the same. Overseas engaged in significant, unfair practices in breach of the *Fair Trading Act* and *Employment Agency Business License Regulation*. The \$40,000 penalty and license cancellation were the correct result in this case, and should be upheld.

#### **OVERSEAS AB'S RESPONSE TO THE DIRECTOR'S ARGUMENTS**

- 62. In response to submissions of the Director, Overseas AB did not charge the Complainants any fees. Overseas AB charged fees to employers wishing to hire workers for their businesses in Alberta.
- 63. The Respondent implies that Overseas AB was responsible for keeping jobs available to the Complainants when in fact, it was the employers' obligation pursuant to their contracts with the Complainants to provide the Complainants with jobs. Overseas AB was not contractually obligated to provide any jobs to the Complainants.
- 64. Overseas AB never received remuneration from the Complainants. They were paid by the employers. All monies were paid to BC companies located in BC. There is no evidence to demonstrate any payments were made to Overseas AB in Alberta. There is no breach of the *Fair Trading Act* which provides that for a transaction to be considered an unfair practice, the offer or acceptance is made in or is sent from Alberta or is made or received in Alberta involving a supplier's representative. There is no evidence that any offers or

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acceptance were made in or sent from Alberta or were made or received in Alberta involving a supplier's representative. On the contrary, all offers or acceptances for services were made in Dubai and no transactions were made in or received in Alberta involving a representative of Overseas AB.

65. Overseas AB had no direct engagement with the Complainants. It was used by employers to assist them in obtaining LMO applications in order for them to hire foreign workers. BC Companies assisted the Complainants with immigration and settlement services which took up to 30 hours or more depending upon the complexity of the matter and the time expended with each individual complainant. These services included assistance and advice with work permit applications, travel arrangements, providing accommodation, and driving the Complainants around BC to obtain groceries, SIN numbers, health coverage, bank accounts, and telephones.
66. No agreements were required with the Complainants because Overseas AB did not engage with them.
67. In response to the submissions of the Director, Mr. Bansal was consistent in explaining the number of hours expended on each complainant. He explained that the number of hours expended on each complainant varied with the complexity of each complainant's individual case and he did not state that Overseas AB spent a minimum of 40 hours to assist each complainant.
68. In response to the submissions of the Director, Mr. Bansal did not admit that Overseas AB's primary immigration advice was to advise the Complainants to hire Overseas. Mr. Bansal explained that the BC Companies through its representatives gave immigration seminars in the United Arab Emirates and provided immigration advice to the Complainants whose ultimate objective was to immigrate to Canada. Working in Canada first before applying for permanent residence was the most expeditious way to achieve the Complainants' goals.
69. Once the Complainants worked in Canada for a year or more, the Complainants had excellent opportunities to achieve permanent residence through the immigration programs under the Alberta Immigrant Nominee Program, (Alberta Experience Class), and the Canadian Experience Class. Many clients of the BC companies have achieved permanent residence using those programs, and complainant Mahdi Hasan has obtained permanent residence after obtaining Canadian work experience.
70. After initial payment to the BC Companies and not Overseas AB did the BC Companies provide information to prospective employers in order for them to select their employees.
71. Overseas AB only assisted employers in preparing the LMO applications. It was the BC Companies including Overseas BC and Overseas Immigration Services that passed the resumes to the employers who selected their employees using the resumes provided and through interview processes. The BC Companies sent the positive LMOs and contracts to the Complainants pursuant to the instructions of the employers and assisted them with the work permit applications.
72. Once the employers hired the Complainants and LMOs were obtained, the BC Companies would assist with the work permit applications and only after the entry visa was approved, the second installment of fees was due.

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73. Mylene Ricablanca who was scheduled to arrive in Canada to begin her employment earlier but delayed in order to get a bonus for completing her contract for her Dubai employer. She may have been urged to arrive on time for her job. She did not arrive in Canada on time to commence her employment and her job was given away by the employer.
74. The BC Companies spent considerable time with the Complainants in assisting with the work permit applications such as providing advice on documentary requirements, how to answer specific application questions and reviewed all applications. In fact, Limuel Olivar admitted he received assistance on two work permit applications and was driven to the border to obtain his work permit.
75. Overseas AB provided assistance to employers and not to the Complainants. It was the BC companies who conducted the immigration seminars in the United Arab Emirates, and sent the resumes of the Complainants to the employers who chose and hired their own employees. In some cases, the Complainants were interviewed by the employers themselves in the United Arab Emirates. Overseas AB prepared the LMOs for the employers who wished to hire employees in Alberta. The BC Companies sent the positive LMOs and job offers/contracts to the Complainants. The BC Companies assisted with immigration and settlement services as described earlier.
76. Overseas AB is a distinct entity separate from Overseas BC. Overseas AB only existed for the purpose of assisting employers who wished to hire employees to work in Alberta. Overseas BC assisted employers to obtain LMOs for employers in BC.
77. The documentary and oral evidence tendered do not prove that Overseas AB engaged in any unfair practice. Overseas AB is a separate legal entity and its functions were completely separate and apart from the BC Companies. Overseas AB did not charge placement fees or any fees to the Complainants. They were paid by employers and had verbal agreements with employers. The BC Companies charged fees for immigration and settlement related services and the Complainants received significant benefit for the services they received. There is no evidence to suggest that Overseas AB received any funds from the Complainants. The evidence shows that Complainants sent funds to BC via bank transfers or payments were made in BC through representatives of the Complainants. Other payments for fees were made in Dubai, United Arab Emirates. No prohibited fees were paid to Overseas AB or to the BC Companies.
78. Overseas AB did not charge prohibited fees to the Complainants and again, there is no evidence to demonstrate any prohibited fees were paid by the Complainants to Overseas AB
79. Overseas AB was not required under *the Fair Trading Act* to keep records on the Complainants as they did not engage with them.
80. Overseas AB only engaged with the employers who were hiring people to work in their Alberta based businesses.
81. Overseas AB's function was to assist Alberta based employers with LMO applications for potential foreign workers or employees.
82. The Director argues that Overseas AB was engaged the moment the Alberta worksites hired the Complainants, however, Overseas AB's function was to assist the employer and not the employees. Overseas AB understood that it required the employment agency

license to be able to work with employers who hired people to work in Alberta. Its license was not used to work with potential employees and neither did it charge potential employees for its services.

83. The Director has not proven that Overseas AB is vicariously liable for the acts of the BC Companies or their representatives
84. With reference to the guilty pleas in Calgary Provincial Court, Overseas AB has not admitted that they accepted payment from an employee for a job.
85. Prior to the commencement of this Appeal on May 1, 2017, Overseas AB had argued that this Appeal Panel had no jurisdiction to hear this case. An adjournment application was made at that time to have this Appeal adjourned pending the determination of proceedings in Calgary to have Overseas AB's guilty pleas to regulatory charges under the *Fair Trading Act of Alberta* set aside. The Appeal Panel decided to hear the merits of the Appeal before making its decision on jurisdiction.
86. The charges in Calgary Provincial Court were wrongfully brought against Overseas AB as none of the transactions complained of occurred in Alberta or Canada.
87. Overseas AB pleaded guilty to operating under a name other than the name of the employment agency and to not having entered into a written agreement with the complainant in that case. Overseas AB did not plead guilty to charging prohibited fees to the complainant. Overseas AB was ill advised by counsel, to plead guilty to avoid the significant costs of a trial. Overseas AB and its director Kuldeep Bansal had no idea about the relationship of the Calgary proceedings to administrative tribunal proceedings in Edmonton and believed Overseas AB was mitigating its losses in exchange for guilty pleas.
88. Section 26(1)(a) of the *Alberta Evidence Act*, under admissibility of previous court proceedings provides that "conviction" means a conviction which is not subject to appeal or further appeal or in respect of which no appeal is taken. Overseas AB's conviction is subject to appeal.
89. The evidence of guilty pleas is inadmissible as Overseas AB is taking steps to have the guilty pleas and convictions set aside. It has retained the Calgary law firm of Kahane Law to look in to the pleas in the Provincial Court Matter. Further legal action in relation to those pleas may be pending.
90. No Territorial Jurisdiction - The common-law rule that a court has jurisdiction with respect to offences committed within its territorial jurisdiction applies in this case and thus, a Provincial Court Judge in Alberta would not have jurisdiction over an offence committed in another province or another country. Judges of the Provincial Court of Alberta have jurisdiction throughout Alberta.
91. Furthermore, Section 6 (2) the *Criminal Code of Canada* R.S.C. 1985, c. C-46. provides that "no person shall be convicted .... of an offense committed outside of Canada."
92. In *R. v. Libman*, (1985) 2 SCR 178, 1985, a leading case in territorial jurisdiction, the Supreme Court of Canada stated: "... all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada."
93. This case is distinguishable as the alleged breaches of the *Fair Trading Act* and *Employment Agency Business Licencing Regulations* occurred in Dubai. The immigration seminars were held in Dubai, initial contact, communications and agreements with the

Complainants occurred in Dubai and payment of fees by Complainants were made in or sent from Dubai. The operating minds of the BC Companies were situated in Dubai when the BC Companies became involved with the Complainants. All of these alleged breaches and offences involved the BC Companies and not Overseas AB.

94. It is submitted that a significant portion of the activities constituting the alleged breaches or offences occurred in Dubai and not in Canada and the Crown has not proven that Overseas AB has attained or acceded to the jurisdiction of Alberta. Therefore, Canadian courts and this Appeal Panel have no jurisdiction in this matter.
95. The Director argues that the Complainants had no power, bargaining or otherwise, however they did receive the services they paid for which were immigration and settlement services. There is also no evidence to suggest that any complainant attempted to back out of their agreements with the BC Companies. It is submitted that fees for the services mentioned earlier were not excessive for the amount of time expended on them.
96. The Complainants knew what types of jobs they were getting as they were provided job descriptions by the employer. The overarching objective of the Complainants was to eventually obtain permanent residence in Canada and they were willing to do any job that would culminate in that objective. All the Complainants had the opportunity to apply for permanent residence under immigration programs offered and many did in fact achieve permanent residence.
97. Prior to 2012, written agreements were not mandatory under ICCRC, the regulatory body governing immigration consultants in Canada.
98. Overseas AB did not charge prohibited fees or any fees to the Complainants. According to the testimony of Mr. Bansal, two Complainants were provided free services. Thus, the approximate fees charged to 8 Complainants were \$60,000.00 and not \$72,235.00. The Complainants received significant assistance with their involvement with the BC Companies and the Complainants knew about and were willing to perform the jobs that were promised by the employers.
99. The Complainants had no chance of permanent residency in the United Arab Emirates and no long-term future there. They wanted to achieve immigration status in Canada and the BC Companies provided them advice that would allow them to achieve their ultimate goal in the shortest possible time. Mr. Bansal testified that the BC Companies would have assisted the Complainants for their permanent residence applications were it not for the complaints made against them after their arrival in Canada.
100. It was the BC Companies and not Overseas AB that performed immigration and settlement services for the Complainants. Overseas AB did not promise the Complainants anything. If any complainant did not receive the jobs they were promised by the employers, it was the employers who were responsible for those broken promises and not Overseas AB. The Complainants were provided with the services that were agreed upon between the Complainants and the BC Companies.
101. In fact, the BC Companies tried to assist Mylene Ricablanca to find a new job and Mr. Bansal actually gave her over \$1,400.00 while Ms. Ricablanca was looking for new employment. Mr. Bansal also tried to assist Jia Xi to obtain a new job. Tripper Lactao was also provided \$500.00 to assist her.

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102. Most Complainants are still in Canada and are permanent residents or have the opportunity to obtain permanent residence. Had complainant Sudesh Kumar stayed in Canada and worked, he too may have had the opportunity to apply for permanent residence. Furthermore, if the BC Companies were as ruthless as being described by the Respondent, they would not have tried to assist people who didn't receive the jobs that were promised by the Alberta employers. Overseas AB did not take money from the Complainants and there is no evidence to support that contention.
103. The fees charged by the BC Companies were hardly astronomical and the Complainants did receive benefits for the fees paid to them. It is submitted that there are many unscrupulous consultancy companies that have charge hundreds of thousands of dollars to assist potential immigrants to Canada. Such fees are "astronomical" and not a few thousand dollars that were charged to the Complainants for benefits that they received while they were in Dubai and in British Columbia.
104. Again, all of the Complainants were content with the jobs that were offered, they knew the wages they were going to receive and ultimately, they chose to be employed with the employers offering the jobs. There was no pressure from anyone to make the Complainants accept "low end" jobs from the Alberta employers. Overseas AB and the BC Companies cannot be held responsible for the actions of the employers.
105. The Complainants did receive benefits for the monies they paid to the BC Companies. The accommodation provided may not have been five- star quality but they were certainly not "derelict" and had been inspected. In other cases, Complainants were provided with at least three-star hotel accommodation at hotels such as Best Western.
106. Mr. Bansal did not say the Complainants were provided with 40-60 hours of assistance. Mr. Bansal stated that it would generally require 10 hours to assist with the work permit applications and 20-30 hours for settlement services. It is not unreasonable to suggest that it takes substantial driving time and waiting time to obtain SIN numbers, bank accounts etc. It is also reasonable to suggest that a few days of driving, application, and waiting time would be required to get these documents. Furthermore, making travel arrangements for clients also takes significant time as well.
107. It is not just a matter of simply reviewing the documents that is time consuming. It is the advice back and forth, it is correcting deficiencies in the application and reviewing the documents to support the application. It is common knowledge among immigration lawyers and consultants that Citizenship & Immigration Canada now known as Immigration, Refugees, & Citizenship Canada returns or refuses applications for the slightest irregularities and unintended omissions. The fact that all the work permit applications were approved shows that the applications were complete and accurate and this was largely due to the services of the BC Companies in having reviewed them.
108. Overseas AB was not required to have written agreements in place with employers prior to September, 2012, however, after the requirement became effective, and as Mr. Bansal explained during the hearing, that he requested employers to enter into written agreements with Overseas AB, however, many refused and he lost business as a result.
109. Overseas AB's record keeping was less than optimal, but it did not charge prohibited fees to the Complainants and the decision to cancel its employment agency business license is an excessive and unreasonable penalty.

110. The bottom line is that the BC Companies assisted the Complainants by providing them with immigration services such as advice, help with work permit applications, and making travel and settlement arrangements. Furthermore, they attempted to help the Complainants who lost their jobs. Out of the six Complainants that testified, five remain in Canada either as permanent residents or as temporary residents in the process of obtaining permanent residence as a result of their involvement with the BC Companies. Essentially, their ultimate objective of immigrating to Canada has been or will be realized.

## **ANALYSIS AND CONCLUSION**

111. This Appeal Board has carefully considered the evidence and arguments of Overseas AB and the Director;
112. This Appeal Board found Overseas AB and its Director, Kuldeep Bansal, to be generally uncooperative and non-responsive during the investigation;
113. Overseas AB appeared intent on delaying or frustrating the investigation process with:
- a. Multiple failures to respond to requests for information;
  - b. Multiple requests for extensions of time to respond;
  - c. Uncorroborated excuses and changing stories about the reasons for not producing records (staff turnover; illness; records are in Dubai; need client authorization to produce records; records are in archives; need time to locate records; records were on laptop at home which was stolen; no records were created);
114. Based on his communications to the investigator, his conduct leading up to the hearing and his testimony at the hearing, this Appeal Board found Overseas AB's sole witness, Kuldeep Bansal, to be generally not credible with his evidence often unsubstantiated and inconsistent.
115. This Appeal Board found the Director's evidence to be credible, factual, consistent and reasonable, substantiated by the investigator and Complainant witnesses.

### **Does Alberta have jurisdiction in this matter?**

116. This Appeal Board concludes that it does have jurisdiction in this matter for the following reasons:
- a. Overseas AB was a registered Alberta corporation with a registered office in Alberta;
  - b. In its Application for a Business License received by Service Alberta on July 8, 2013 (Exhibit 9 in these proceedings), Overseas AB described itself as a "Recruitment Agency";
  - c. It's clear from Exhibit 9 and other evidence that Overseas AB used the same mailing address, website address and email addresses as Overseas BC and Overseas Immigration;
  - d. It's also clear from the evidence that Overseas AB, Overseas BC and Overseas Immigration shared employees, had a single controlling mind in Kuldeep Bansal, acted as single/integrated operation, and often interchanged the use of the varying corporate entities in communications with the Complainants;

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- e. This Appeal Board is satisfied based on all of the evidence that the Complainants made no distinction between the varying Overseas entities and reasonably believed that they were dealing with a single Canadian company with operations in BC and Alberta;
- f. Overseas AB represented itself as and, in fact acted as, a recruiter, linking the Complainants seeking work opportunities in Canada with Alberta employers seeking workers;
- g. The Director argues, in part, that:
  - i. The various Overseas entities engaged in unfair labour practices in Alberta;
  - ii. Pursuant to sections 5(a) and (c), of the *Fair Trading Act*, this Appeal Board has jurisdiction to hear matters involving "unfair practices" in which the supplier or consumer is a resident of Alberta, or matters where the unfair practice is made or received in Alberta involving a supplier's representative;
  - iii. Overseas operated in Alberta as a 'supplier' of employment recruitment services for Alberta worksites. The 'consumers' of the employment placements services were both Alberta employers and the Complainants who were ultimately placed in Alberta (if jobs were available to them upon arrival). See the following definitions: *Fair Trading Act* s. 1(1)(l)(i) "supplier" and s. 1(1)(b)(i) "consumer";
  - iv. According to S. 169(a) of the Act, any one instance of Overseas being hired by an Alberta based employer or workplace, or of placing an employee in Alberta would have been proof that Overseas carried on the business of employee recruitment in Alberta.
  - v. Overseas has attempted to argue that it was their BC branch that entered into business arrangements with the Complaints, and that their Alberta branch was not involved with these Complainants at all. This argument does not hold up.
  - vi. Overseas provided recruitment services to Alberta based employers including Fatburger, Macs, and a number of other companies. All of the Complainants were hired by Alberta worksites that had already hired Overseas to recruit for them. If one could even draw a distinction between Overseas BC and AB (which we argue is not possible given they acted as one in the same when you look at the real entity in question here), then Overseas AB was necessarily engaged by their BC counterpart the minute any Alberta worksites hired them or the minute any placements were made in Alberta. Overseas BC could not have provided recruitment services in Alberta without engaging their Alberta registered company. See S. 2.1 of the Act.
  - vii. Overseas AB, Overseas BC and Overseas Immigration are, in effect, the same company;
  - viii. Section 166 of the *Fair Trading Act* positing vicarious liability applies, and Overseas AB is liable for any breaches by any of the Overseas entities;
  - ix. All of the complaints understood their assigned work would occur in Alberta and ultimately that work did occur in Alberta (if the promised jobs were even available on entry into Canada).
- h. Overseas AB argues, in part, that:

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- i. The Complainants were dealing with BC companies at all material times and not with Overseas AB;
- ii. Overseas AB did not charge the Complainants any fees;
- iii. Overseas AB had no direct engagement with the Complainants. Overseas AB is a distinct entity separate from Overseas BC. Overseas AB only existed for the purpose of assisting employers who wished to hire employees to work in Alberta;
- iv. The evidence indicates that all the Complainants in this matter dealt with BC companies, communicated with BC companies and representatives of the BC companies in person, and via email and telephone numbers belonging to BC companies. Monetary transactions were with BC companies in BC and Dubai;
- v. All business cards, and addresses on email correspondence reference BC locations, and the Complainants arrived in BC from the United Arab Emirates and received settlement services in BC;
- vi. All offers of employment were made by BC employers located in BC and acceptance of those offers was made by the Complainants in Dubai. Laura Aydin, Service Alberta investigator, testified that all employment contracts indicated they were signed in BC. Offers and acceptance for services were made in the United Arab Emirates between the BC companies and the Complainants who were located in Dubai.
- vii. In fact, the Complainants complained against Overseas Immigration located in Surrey, BC and cited the telephone number of Overseas Immigration in their consumer complaint forms to the Government of Alberta. No complaints were made against Overseas AB. Many times, the Complainants visited the offices of the BC companies in Surrey BC after their arrival in Canada. Thus, the Complainants cannot assert that they had no knowledge they were dealing with BC companies;
- viii. The Complainants in this case did not engage Overseas AB as Overseas AB's function was simply to assist their would-be employers to obtain LMOs required for their work permit applications.
  - i. This Appeal Board favours the Director's arguments on the question of jurisdiction.
  - j. Overseas AB's arguments that none of the Complainants had any dealings with the Alberta company are not persuasive, especially given the intermingling of staff and services among the various Overseas companies;
  - k. Furthermore, in various documents produced in these proceedings, including a February 22, 2013 letter from Overseas Immigration to Thomas, Bansal referred to Overseas AB as a "Branch location" of Overseas Immigration and used the Overseas BC/Overseas Immigration mailing address for Overseas AB correspondence;
  - l. In its Application for a Business License received by Service Alberta on May 30, 2011 (Exhibit 10 in these proceedings), Overseas AB described itself as an "Employment Agency & Immigration Consultant" and indicated as follows: "Operation of same business in B.C.";
  - m. Overseas AB was a licensed Employment Agency;
  - n. Overseas AB (or Overseas BC or Overseas Immigration staff on behalf of Overseas AB) scheduled interviews for some or all of the Complainants with prospective Alberta

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- employers and submitted resumes of prospective employees to Alberta employers in Alberta;
- o. In one of the documents produced by the Director, AJ Mann writes to one of the Complainants as follows (emphasis added): "Attached are our account details. We provide you with work, resettlement, flight, bank account, airport pick-up, social insurance number, free accommodation for 10 days and assist you in bringing your family here with you. The initial retainer/registration fees are \$2000 CDN. Once you make the payment you become our client and we will process your paperwork with 3-6 months from our side and the Embassy can take anywhere from 2 weeks to 3 months to issue the visa. Every year we bring approximately 250 new workers to Canada, people just like you who dream of working in Canada. We make your dreams a reality....", suggesting that Overseas is providing more than immigration advice. They are providing work.
  - p. It's evident that Overseas AB, either independently or as part of an integrated group of the Overseas' companies, was providing employment agency, immigration and/or recruitment services to the Complainants and must answer in Alberta to allegations that it committed unfair practices in Alberta contrary to the legislation;
  - q. This Appeal Board takes note of S. 2.1 of the Fair Trading Act. That provision states that "In determining whether this Act applies to an entity or a transaction, a court or an appeal board must consider the real substance of the entity or the transaction and in doing so may disregard the outward form";
  - r. Director Thomas's statement was persuasive: "While Overseas may argue that immigration services were provided through Overseas Immigration, placement services through Overseas BC and recruiting services through Overseas AB, S. 2.1 of the Fair Trading Act requires the Director to look beyond the surface of individual transactions to the reality of the enterprise."
  - s. Where there are multiple related or "branch" companies across multiple jurisdictions and the related Alberta company is connected to or involved with alleged unfair practices involving Complainants in Alberta, this Appeal Board has jurisdiction;
  - t. In addition, on April 10, 2017, Overseas AB pleaded guilty to the following 2 regulatory charges in Provincial Court in Calgary, Alberta:
    - i. Section 10(1)(a) EABLR - Unlawfully Fail to enter into an agreement with an individual before securing employment for that individual.
    - ii. Section 7 EABLR – Unlawfully operate in a name other than the name on the business license.
  - u. Overseas AB was fined \$1,150 on each of the two charges;
  - v. Counsel for the Director suggests that by entering those pleas, Overseas AB has acceded to the jurisdiction of the Province of Alberta;
  - w. Counsel for Overseas AB argues that:
    - i. The charges in Calgary Provincial Court were wrongfully brought against Overseas AB as none of the transactions complained of occurred in Alberta or Canada;
    - ii. Overseas AB was ill advised by counsel, to plead guilty to avoid the significant costs of a trial;

- iii. Overseas AB and its director Kuldeep Bansal had no idea about the relationship of the Calgary proceedings to administrative tribunal proceedings in Edmonton and believed Overseas AB was mitigating its losses in exchange for guilty pleas;
- iv. Section 26(1)(a) of the *Alberta Evidence Act*, under admissibility of previous court proceedings provides that "conviction" means a conviction which is not subject to appeal or further appeal or in respect of which no appeal is taken. Overseas AB's conviction is subject to appeal;
- v. The evidence of guilty pleas is inadmissible as Overseas AB is taking steps to have the guilty pleas and convictions set aside. It has retained the Calgary law firm of Kahane Law to look in to the pleas in the Provincial Court Matter. Further legal action in relation to those pleas may be pending.
- x. Notwithstanding the proposed efforts by Overseas AB to have the Provincial Court convictions set aside, there is no evidence before this Appeal Board that any substantive steps have, in fact, been taken or will be taken to attempt to set aside those convictions. Accordingly, this Appeal Board concludes that Overseas AB has acceded to the jurisdiction of Alberta by entering those pleas. If this Appeal Board is wrong on this issue, there is ample other evidence as detailed above that Overseas AB is subject to Alberta's jurisdiction for the adjudication of allegations of violations of the Fair Trading Act and the EABLR.
- y. On the S. 166 Fair Trading Act issue (vicarious liability), this Appeal Board finds that Overseas AB is liable for the actions of any of the Overseas companies and their employees to the extent those actions impact a person in Alberta. In coming to this conclusion, this Appeal Board again considered S. 2.1 of the Fair Trading Act.

***Did Overseas breach sections 6(3)(c) and s. 132 of the Fair Trading Act and sections 9, 10, 13(2)(a), 13(2)(b), 13(2)(c), and 13(2)(e) of the Employment Agency Business Licensing Regulation ("EABLR") 45/2012?***

117. This Appeal Board finds as follows:

- a. There is insufficient evidence to conclude that Overseas AB breached s. 6(3)(c) of the Fair Trading Act by charging exorbitant fees. Reasons follow:
  - i. The fees charged to the Complainants by Overseas (whether directly by Overseas AB or through their affiliated companies - Overseas BC or Overseas Immigration) were, according to the Director, disproportionate to the actual services provided;
  - ii. It is acknowledged that Overseas provided the Complainants with document review, assistance with Visa processing, travel arrangements (airfare was generally paid for by the Complainants or the employers), provision of checklists for immigration to Canada and varying levels of settlement services;
  - iii. The Director alleges that the Complainants did not get fair value for the fees paid, that Mr. Bansal's purported hourly rate of \$350-\$550/hr. is exorbitant and, even if such rates are reasonable, that Mr. Bansal did not personally provide all of the services to the Complainants (settlement services, for example) and his rate should not be charged for all time spent by Overseas' support staff on a particular file;

- iv. No comparative data (for example, what other such consultants charge for similar services) or any other evidence was introduced to support a conclusion that the fees charged were excessive.
- b. Overseas AB breached s. 6(3)(c) of the Fair Trading Act (including terms or conditions that are harsh, oppressive or excessively one-side) by:
  - i. Making representations that they knew or ought to have known were false, misleading, harsh or oppressive. In some cases, Overseas is alleged to have threatened to inform Canada immigration if Complainants did not go through with Overseas' dictated process or pay the fees Overseas demanded. In other cases, Overseas is alleged to have threatened to have work visas cancelled if fees were not paid. In another instance, Overseas is alleged to have threatened one of the Complainants with a \$50 million lawsuit for making a complaint against a Canadian national;
  - ii. Taking advantage of the Complainants by promising but often not delivering work, airport pick-up, free accommodation for 10 days and assistance bringing families to Canada. Some details follow:
    - 1. Jobs were often not available or not as promised;
    - 2. Transportation from the airport consisted either of a taxi voucher or nothing (leaving new arriving Complainants with no idea where to go or what to do);
    - 3. Accommodation has been variously described as a "labour camp", "filthy", "smelly", "full of people waiting for employment", "15 people were there with no food", "no furniture, no beds and no utilities";
    - 4. There is no evidence of Overseas providing any services to the Complainants to assist them in bringing their families to Canada.
- c. Overseas AB breached s. 132 of the Fair Trading Act (requirement to maintain records) by:
  - i. Failing to create (or produce upon request) financial records and/or agreements with employers or persons seeking employment.
  - ii. In response to Overseas AB's evidence that they had no written agreements with the Complainants because they were engaged by these Complainants before changes to the EABLR requiring such records came into effect on September 1, 2012, the Director argues that employment agencies were expected to ensure that they met the requirements of the new Regulation with any individual with whom they had an ongoing recruitment relationship that had not completed the recruitment process. Given that, this written agreement condition applied to at least Complainants Hasan, Jia, Thapa, Ricablanca, Villegas, and Kumar;
  - iii. Mr. Bansal's evidence that no written agreements existed with Overseas AB's employer clients because such clients refused to enter such agreements is not credible. If such employers refused to sign such agreements, Overseas ought not to have continued business with them. The fact that business continued with employers such as Mac's and Fatburger without the required written agreements substantiates the conclusion that Overseas breached s. 132 of the Act.

- d. Overseas AB breached s. 9 of the EABLR (requirement to create and maintain records, including agreements with employers seeking employees and with persons seeking employment) by:
  - i. As noted above, failing to create (or produce upon request) agreements with employers or persons seeking employment;
  - ii. The record keeping requirements set in the EABLR are central to the regulatory regime. Not creating and maintaining agreements with employers or job seekers is a serious regulatory failure by a licensee;
  - iii. Overseas AB's evidence that some records existed but were on a stolen laptop is neither credible nor substantiated.
- e. Overseas AB breached s. 10 of the EABLR (requirement to create written agreements with an individual before securing employment for the individual and with employers before securing an employee for the employer; requirement to include in such agreements a statement respecting prohibited fees) by:
  - i. As noted above, failing to enter into written agreements with the Complainants or with employers;
  - ii. The agreement requirements are designed to ensure that the person seeking employment, the employer and the employment agency clearly understand the rights, obligations and services to be provided. The required provision of the fee prohibition notice ensures that the job seeker and the employer understand that the job seeker cannot be charged for the securing of employment.
- f. Overseas AB breached s. 13(2)(a) of the EABLR (exerting undue pressure on or harassing a consumer) by:
  - i. Various threatening some of the Complainants with reporting them to Canadian authorities to have their Visas or work permits cancelled;
  - ii. Threatening one of the Complainants with a \$50 million lawsuit if he complains about Overseas services;
- g. Overseas AB breached s. 13(2)(b) of the EABLR (giving false, misleading or deceptive information to a consumer with respect to employment positions, legal rights, immigration or the general living or working conditions in Alberta) by:
  - i. Misrepresenting the services to be provided and fees to be charged to the Complainants (visa processing, settlement, airport pick-up, temporary accommodation, assistance with family immigration, and availability of specific jobs - or any jobs - were often not as represented to the Complainants);
  - ii. There was evidence of long-term repeated misrepresentations to the Complainants about job availability in Alberta. When some of the Complainants arrived in Canada, the job promised was often no longer available. Complainants were sometimes recruited for positions that did not exist. This bait and switch tactic caused anxiety, additional expense and lured the Complainants into paying fees to Overseas. Once the Complainants arrived in Canada, they were tied to a work permit, committed and vulnerable to further exploitation by Overseas.
  - iii. Misrepresenting the availability of permanent residency to the Complainants.

- h. Overseas AB breached s. 13(2)(c) of the EABLR (failing to ensure that separate agreements are entered into with a person seeking employment for services offered that are not employment agency business services) by:
  - i. Failing to have any written agreements with the Complainants;
- i. Overseas AB breached s. 13(2)(e) of the EABLR (directly or indirectly demanding or collecting a fee or other compensation in contravention of section 12) by:
  - i. Charging fees to the Complainants relating to the securing of employment contrary to the prohibitions in s. 12 of the EABLR (notwithstanding evidence that Overseas AB had been in receipt on multiple occasion of a written fee prohibition notice from the Director);
  - ii. This Appeal Board does not accept Overseas AB's arguments that fees charged to the Complainants were for immigration consulting services only;
  - iii. Some immigration services were provided (assistance with compiling required documentation and review of visa applications), but it's clear from the evidence that Overseas AB, either directly or indirectly, was primarily acting as a recruiting business, that Overseas AB had arrangements (albeit unwritten) with various Alberta employers to secure workers for a fee (\$500 - \$1,500, depending on location and skill level of the worker), and that Overseas AB, either directly or indirectly, recruited the Complainants to fill those commitments to Overseas' employer clients. In effect, Overseas was being paid on both ends of the transaction – by employers to recruit and by workers for jobs, the latter contrary to the fee prohibition in the EABLR;
  - iv. The suggestion by Overseas AB that it or its related companies was only providing immigration advice and services is inconsistent with the evidence. Overseas acted as the agent, matching the Complainants with employers, being paid by both. Overseas recruited the Complainants with the promise of permanent residency in Canada, facilitated the hiring process through screening of applicants, exchange of resumes and (in some cases) setting up interviews, and facilitated the process of getting those Complainants to Canada under LMOs (which Overseas applied for on behalf of the employer) and work permits (for which Overseas provided limited or no substantive assistance). If the Complainants didn't pay Overseas' fees, Overseas would not pass their resumes on to prospective employers. The Complainants were after jobs in Canada. Overseas facilitated them getting those jobs for a fee;
  - v. It is true that after receiving a work permit and having Canadian work experience, a worker may have more options for permanent residency than they would have but for coming to Canada with the assistance of Overseas, but to suggest that Overseas' was exclusively providing immigration consulting services to the Complainants is a mischaracterization of the essence/substance of the transaction;
  - vi. The evidence indicates that Overseas managed all communications between prospective employers and the Complainants, cautioning the Complainants against directly contacting the employers, at least until Overseas' fees were paid in full;

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- vii. Overseas AB is responsible for and accountable for Alberta job placement fees charged to the Complainants, irrespective of where the money was paid (BC or Alberta) and to whom. In making this determination, the Appeal Board is guided by s. 2.1 of the Fair Trading Act and looked to the actual services provided where several entities are working together to recruit and place staff in Alberta

***Should the Director's chosen remedies of cancelling Overseas' business license and levying an administrative penalty of \$40,000.00 be confirmed?***

118. For the reasons stated above, including Overseas' substantive misconduct and Overseas' Director's uncooperative, non-responsive and obstructionist behavior during the investigation and appeal, this Appeal Board confirms the Director's decision to cancel the business license of Overseas Career and Consulting Services Ltd.. Overseas AB, through its Director Kuldeep Bansal, was generally evasive throughout the investigation and these proceedings and has demonstrated no evidence of compliance or intent to comply with the legal and regulatory requirements established for employment agencies operating in Alberta.
119. Furthermore, given the breaches by Overseas AB of the above noted provisions of the Fair Trading Act and EABLR, and the impact those breaches had on the Complainants, this Appeal Board confirms the administrative penalty of \$40,000 imposed on Overseas AB by the Director. The penalty is proportionate to Overseas AB's misconduct, denounces their misbehavior and sends a message to not only Overseas, but to others engaged as an employment agency in Alberta that breaches of the Fair Trading Act and EABLR (including failure to maintain records or enter into agreements with employees, arrangements that are excessively one-side, misrepresentations, and charging prohibited fees) will result in significant cost consequences.

## **DECISION**

Pursuant to s. 179(6) of the *Fair Trading Act*, this appeal board confirms the decision of the Director of Fair Trading (as delegated) to cancel the Alberta business license of Overseas Career and Consulting Services Ltd.. Furthermore, this Appeal Board confirms the administrative penalty of \$40,000 imposed on Overseas Career and Consulting Services Ltd. by the Director.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 24<sup>th</sup> day of November, 2017 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern (Chair)  
Caren Mueller  
Nick Tywoniuk