

Court Action

PROPOSED CLASS PROCEEDING

FEDERAL COURT

BETWEEN:

MICHAEL PHILIPPUS BRINK

and

FUH-CHII YANG

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: March 11, 2021

Issued by: _____
(Registry Officer)

Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario K1A 0H9

TO: **HER MAJESTY THE QUEEN**

Overview

1. This is a proposed class action that seeks to remedy the discriminatory practices to which the Crown has subjected Canadian immigrants since as early as the 1990s.
2. Canada is a nation of immigrants, and owes much of its prosperity to the hard work and commitment of new immigrants. Despite that, for decades, the federal Crown has imposed various taxes on immigrants for the rights or privileges of being a Canadian, taxes that are not charged to those who were born in Canada for the same or similar rights or privileges.
3. This claim seeks restitution from the Crown for taxes that those immigrants have been forced to pay to become part of Canadian society:
 - a. a *Right of Permanent Residence Fee* (defined below) for non-Canadian born immigrants to become a permanent resident; and
 - b. a *Right to be a Citizen Fee* (defined below) for non-Canadian born immigrants to become a citizen.
4. The Plaintiffs claim that the fees are in fact taxes (akin to “head taxes”), contrary to the constitutional right to equality enshrined in the *Canadian Bill of Rights*, the *Canadian Charter of Rights and Freedoms*, and, for those residing in the province of Quebec, the *Quebec Charter of Human Rights and Freedoms*.
5. The Plaintiffs and the Class seek an order striking down the legislation and/or regulation that enacted these taxes as unconstitutional, and a full refund or restitution of these taxes at an appropriate interest rate, in addition to other remedies.

Claim of the Plaintiffs and the Class

6. The Plaintiffs claim, on their own behalves and on behalf of the Class Members:
 - a. an Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Courts Rules* (the “**Rules**”) certifying this action as a class proceeding, and appointing the Plaintiffs as the representative plaintiffs for the Class;

- b. a declaration that either or both these Taxes (defined below) are unconstitutional and contrary to:
 - i. the *Canadian Bill of Rights*;
 - ii. the *Canadian Charter of Rights and Freedoms*; and/or
 - iii. for Class Members residing in Quebec, the Quebec *Charter of Human Rights and Freedoms*;
- c. restitution of these Taxes for the Class;
- d. an Order:
 - i. striking down any legislative provisions that enacted the Taxes; or
 - ii. alternatively, a constitutional exemption for some or all of the Class Members from having to pay these Taxes;
- e. general, special, and/or nominal damages under section 24 of the *Canadian Charter of Rights and Freedoms*;
- f. legal costs of this action on a solicitor-client basis, or alternatively on a party-and-party basis;
- g. aggregate assessment of all monetary awards pursuant to Rule 334.28;
- h. pre-judgment and post-judgment interest on a compound basis, or alternatively at an elevated interest rate; and
- i. such further and other relief as this Honourable Court deems just.

The Parties and The Class

- 7. The Defendant, Her Majesty the Queen (the “**Crown**”), acting through Immigration, Refugees and Citizenship Canada (aka Department of Citizenship and Immigration), administers immigration related programs, including the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (the “**IRPA**”) and the *Citizenship Act*, R.S.C., 1985, c. C-29.

The Plaintiff Michael Philippus Brink

8. The Plaintiff, Michael Philippus Brink, is currently residing in the province of British Columbia. Mr. Brink is an immigrant to Canada.
9. On or about May 10, 2017, the Plaintiff Brink applied to be a permanent resident of Canada and paid a total of \$2,080 to the Crown, consisting of the following:
 - a. a “Permanent Resident Application Fee” of \$550 each for the Plaintiff and his spouse; and
 - b. a “Right of Permanent Residence Fee” of \$490 each for the Plaintiff and his spouse.
10. The Plaintiff Brink became a permanent resident of Canada on or about March 17, 2018.
11. The Permanent Resident Application Fees (above) are not subject of this proposed class action. The Right of Permanent Residence Fees are claimed as part of this proposed class action, and the Plaintiffs say that this fee legally amounts to a tax, as detailed further below.

The Plaintiff Fuh-Chii Yang

12. The Plaintiff Fuh-Chii Yang is a permanent resident of Canada that meets the requirements to become a Canadian citizen upon submitting an application and would be subject to the Right to be a Citizen Fee.
13. On or about July 13, 2019, the Plaintiff Yang applied to be a citizen of Canada and paid a total of \$630 to the Crown, consisting of the following:
 - a. a “Processing Fee” of \$530; and
 - b. a “Right to be a Citizen Fee” of \$100.
14. The Processing Fees for citizenship applications (above) are not subject of this proposed class action. The Right of Citizenship Fees are claimed as part of this proposed class action and the Plaintiffs say that this fee legally amounts to a tax, as detailed further below.

The Proposed Class

15. The Plaintiffs bring this action on their own behalves and on behalf of:

All individuals who were not born in Canada and between September 8, 2014 until the date of the court's trial judgment, have paid, or would otherwise be subject to the following fees:

- a. a Right of Permanent Residence Fee; and/or
- b. a Right to be a Citizen Fee,

excluding those who:

- c. have received a refund of the Right of Permanent Residence Fee under subsection 303(4) of the *Immigration and Refugee Protection Regulations*; or
- d. have received a refund of the Right to be a Citizen Fee under section 33 of the *Citizenship Regulations*.

(hereafter the "**Class**" or "**Class Member(s)**")

16. The aforementioned Class includes a subclass of Class Members that have a claim for the Right of Permanent Residence Fee (the "**Permanent Resident Subclass**") and Class Members that have a claim for the Right to be a Citizen Fee (the "**Citizen Subclass**").

17. The Plaintiffs are each a member of the proposed Class, and the Plaintiff Brink and the Plaintiff Yang are members of the Permanent Resident Subclass and Citizen Subclass, respectively.

18. The Plaintiffs qualify to be representatives of the Class, and the respective subclasses.

19. The Class comprises of individuals born outside of Canada that are otherwise fully qualified to permanently reside in Canada, or to have the right or privilege of being a Canadian citizen, and are charged taxes that are not charged to individuals born in Canada.

20. It is estimated that the Class consists of hundreds of thousands of immigrants to Canada.

The Impugned Taxes are Discriminatory and Unconstitutional

The Right of Permanent Residence Fee

21. Subsection 303(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “**IRPR**”) currently stipulates a fee of \$500 for the acquisition of permanent residency in Canada (the “**Right of Permanent Residence Fee**”).
22. The amount of the Right of Permanent Residence Fee varied since 1990.
23. The Right of Permanent Residence Fee is not a fee for services provided under the *IRPA*. Rather, it bears all the hallmarks of a tax, namely:
 - a. it is enforceable by law;
 - b. it is imposed under the authority of the legislature;
 - c. it is levied by a public body; and
 - d. it is intended for a public purpose.
24. The Right of Permanent Residence Fee is a fee required by the Crown to be paid to become a permanent resident. No service is provided in connection with the Right of Permanent Residence Fee.
25. The Right of Permanent Residence Fee is deposited into the Consolidated Revenue Fund, for a public purpose, and is not available for spending by the Department of Citizenship and Immigration.
26. The Right of Permanent Residence Fee is a tax on the Class Members for the right or privilege of being a permanent resident of Canada.
27. Since as early as 2006, the Crown knew that the Right of Permanent Residence Fee puts many of the Class Members at an economic disadvantage as compared to those who are not charged this tax.
28. The fees for processing a permanent residence application (i.e., the Permanent Resident Application Fees indicated above), which are under sections 301 to 302 of the *IRPR*, are not claimed as part of this proposed class action.

The Right to be a Citizen Fee

29. Section 32 of the *Citizenship Regulations*, SOR/93-246 presently stipulates a fee of \$100 for the citizenship right conferred by Her Majesty, a fee that is charged to an individual that is eighteen years of age or above (the “**Right to be a Citizen Fee**”). It states:

Fee for Right to Be a Citizen

32 The fee to be paid for the right to be a citizen conferred by or on behalf of Her Majesty on a person who is eighteen years of age or over is \$100 and is payable by the person at the time of making the application.

30. The Right to be a Citizen Fee is a fee required by the Crown to be paid to be a Canadian citizen.

31. The Right to be a Citizen Fee is deposited into the Consolidated Revenue Fund, for a public purpose, and not available for spending by the Department of Citizenship and Immigration.

32. The Right to be a Citizen Fee is a tax on the Class Members for the right and/or privilege of being a Canadian citizen.

33. The Crown knew that the Right to be a Citizen Fee puts many of the Class Members at an economic disadvantage as compared to those who are not charged this tax, and is an economic impediment to many Class Members.

34. The Right to be a Citizen Fee is not a fee for services provided under the *Citizenship Act*, or a fee for processing a citizenship application, which is captured under section 31 of the *Citizenship Regulations*, such as the \$530 processing fee.

35. The Right to be a Citizen Fee is substantially similar to the Right of Permanent Residence Fee (collectively the “**Taxes**”) in that both taxes are charged to individuals that are not born in Canada, and individuals born in Canada are not charged for the same rights and/or privileges.

36. The Plaintiffs claim that the Taxes are contrary to the constitutional guarantee of substantive equality (as described further below). Whether the Taxes are characterized as a “tax” or a “regulatory charge” does not change the substance of the claim that these payments are discriminatory and unconstitutional.

37. The Right to be a Citizen Fee and the Right of Permanent Residence Fee are not “user fees” as there was separate “user fees” already paid to the Crown.

The Two Taxes Charged to Immigrants are Unconstitutional

38. Section 15 of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 (the “**Canadian Charter**”), section 10 of the *Charter of Human Rights and Freedoms*, CQLR c C-12 (the “**Quebec Charter**”), and subsection 1(b) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 guarantees equality and the right of individuals before the law without discrimination based on national or ethnic origin, or analogous grounds.
39. The Taxes distinguishes between individuals born in Canada (who are not charged these taxes for the same rights and/or privileges) and individuals born outside of Canada (who are charged these taxes for the same rights or privileges).
40. This distinction created by the Taxes are based on national or ethnic origin, or country of origin.
41. The Taxes impose a burden on individuals born outside of Canada that perpetuates, reinforces, or exacerbates a disadvantage for individuals that were not born in Canada.
42. The differential treatment based on national or ethnic origin, or country of origin is not justifiable in a free and democratic society.
43. The Taxes are also a deprivation of the Class Members’ right to enjoyment of property under subsection 1(a) of the *Canadian Bill of Rights*.
44. The Class Members have the right to restitution of unconstitutional taxes.
45. The Plaintiffs and the Class Members have the constitutional right to be free from discrimination and singling out the Class Members under the guise of charging the Taxes have further injured their dignity, feelings, and self-respect.

Applicable Limitation Periods

46. For the Right of Permanent Residence Fee, the Plaintiffs plead and rely upon subsection 39(2) of the *Federal Courts Act* and section 32 of the *Crown Liability and Proceedings Act*, providing that a limitation period of six-years apply to causes of action arising otherwise than in a province because:
 - a. Section 303 of the *IRPR* was enacted in Ottawa, Ontario; and

- b. Most of the Class Members submitted their application for permanent residency and paid their Right of Permanent Residence Fee, from outside of Canada;
47. For the Right to be a Citizen Fee, the Plaintiffs plead and rely upon the same legislation in the above paragraph and says that a limitation period of six-years apply because:
- a. the Class Members' application for citizenship were physically sent to, and received by, the Crown in the province of Nova Scotia;
 - b. the Crown charged the Class Members the Right to be a Citizen Fee from the province of Nova Scotia; and
 - c. the Class Members sent their application for citizenship from various locations.
48. For both Taxes, the Plaintiffs further plead and rely upon the suspension of time limits from March 13, 2020 to September 13, 2020 under the *Time Limits and Other Periods Act (COVID-19)*, SC 2020, c 11, s 11.

Jurisdiction of the Federal Court

49. The Plaintiffs plead and rely upon section 17 of the *Federal Courts Act* providing that the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.
50. The Plaintiffs further plead and rely upon section 21(2) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, which provides that provincial superior courts will have no jurisdiction when proceedings against the Crown have been initiated in the Federal Court.

Location of Trial

51. The Plaintiffs propose that this action be tried at Vancouver, British Columbia.

Dated: March 11, 2021

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