

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

No.: 500-06-

RIDWAN SULAIMON

and

DUROWOJU HIQMAT SULAIMON

Personally and in their capacity as guardians of their child **A.B.**, all three of whom reside at [REDACTED], Province of Quebec,

Plaintiffs

v.

ATTORNEY GENERAL OF QUEBEC, having a place of business at the Legal Affairs Branch, located at 1 Notre-Dame East, 8th Floor, District of Montreal, Province of Quebec, H2Y 1B6

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION, AND
TO OBTAIN THE STATUS OF REPRESENTATIVES
(Art 575 C.p.c.)**

**IN SUPPORT OF THEIR APPLICATION, PLAINTIFFS RESPECTFULLY SUBMIT
THE FOLLOWING:**

INTRODUCTION

1. The Ministère de la Santé et des Services sociaux (the "MSSS") denies access to coverage under the Régie d'assurance maladie (the "Plan") to minors who are Canadian citizens living in Quebec, due to their parents' immigration status. Such refusal has the effect of limiting access to health care for these children;
2. This practice is contrary to the ¹*Health Insurance Act* (the "HIA") and violates the rights protected by the *Canadian Charter of Rights and Freedoms* (the "Canadian Charter") and the *Charter of Human Rights and Freedoms* (the "Quebec Charter") (collectively the "Charters") of these children. Specifically, this

¹ *Health Insurance Act*, RLRQ c A-29.

practice violates their right to life, safety and integrity and constitutes cruel and unusual treatment;

3. Moreover, this practice marginalizes and isolates them. It hinders their integration into Quebec society and perpetuates the message that these children do not deserve the same protection as other Canadian citizens living in Quebec, and instead that they should be treated separately from Quebec society. In this sense, this practice constitutes discriminatory treatment within the meaning of the *Charters*;
4. This class action for declaratory judgment, and compensatory and punitive damages aims to have this practice declared wrongful and contrary to the *Charters*. It further aims to ensure that such practice ceases and that the members are fairly compensated.

I- THE PARTIES

A) Plaintiffs and Class Members

5. The Plaintiffs, Ridwan Sulaimon and Durowoju Hiqmat Sulaimon, are acting on their own behalf and as guardians of their daughter A.B., born on February 4, 2020 in Montreal, as appears from A.B.'s birth certificate, Exhibit **P-1** in support hereof;
6. Mr Ridwan Sulaimon and Ms Durowoju Hiqmat Sulaimon request to be appointed as legal guardians of their child A.B. for Group 1 and on their own behalf for Group 2. The groups are defined as such:

Group 1: Any non-emancipated minor born in Canada and established in Quebec who has been refused access to coverage under the Régie de l'assurance maladie du Québec plan because of the immigration status of his or her parents.

Group 2: Any legal guardian of a Group 1 member

B) The defendant

7. The Attorney General of Québec is prosecuted in his capacity as the representative of the Minister of Health and Social Services (the "Minister"), responsible for the application of the *Act respecting health services² and social services (the "AHSSS")*, the *HIA and the³Hospital Insurance Act*, the *Regulation respecting the eligibility and registration of persons with the Régie de l'assurance maladie du Québec⁴* (the "Regulation"), and the *Act respecting the Régie de l'assurance maladie du Québec⁵*, collectively the "Acts", as appears from the MSSS website dated July 2, 2020, Exhibit **P-2** in support hereof;

² *An Act respecting health services and social services*, RLRQ c S-4.2.

³ *Hospital Insurance Act*, RLRQ c A-28.

⁴ *Regulation respecting the eligibility and registration of persons with the Régie de l'assurance maladie du Québec*, RLRQ c A-29, r 1.

⁵ *An Act respecting the Régie de l'assurance maladie du Québec*, RLRQ c R-5.

II- THE FACTS GIVING RISE TO THE PLAINTIFFS' ACTION

A) The wrongful practice of the defendant

8. The mission of the MSSS is described on its website as follows:

The Ministère de la Santé et des Services sociaux's mission is to maintain, improve and restore the health and well-being of Quebecers by providing access to a range of quality and integrated health and social services, thereby contributing to the social and economic development of Québec.

as appears from the excerpt from the MSSS website dated July 2, 2020, Exhibit **P-3**;

9. The general function of the MSSS is further described as follows:

According to this mission, the MSSS's chief role is to ensure the proper functioning of Québec's health and social services system. With a view to improving population health and well-being, the MSSS:

(...)

- proposes priorities for intervention to the State and other social actors in order to positively influence conditions that promote population health and well-being

as appears from the excerpt from the MSSS website, Exhibit P-3;

10. The AHSSS provides that the objectives of the health care plan include fostering the recovery of users' health and well-being, fostering the protection of public health, reducing the impact of problems that threaten the stability, fulfillment and autonomy of users, and attaining comparable standards of health and well-being in the various strata of the population and the various regions, as set out in section 1 of the AHSSS;

11. The Supreme Court of Canada in *Chaoulli*⁶ reiterated that the purpose of the HIA "is to promote health care of the highest possible quality for all Quebecers regardless of their ability to pay. Quality of care and equality of access are two inseparable objectives under the statutes";

12. The Régie d'assurance maladie du Québec ("RAMQ") reports directly to the Minister. Indeed, the RAMQ website states the following:

RAMQ reports directly to the Minister of Health and Social Services.

The Minister may, within the scope of the responsibilities and powers entrusted to him with respect to the use of public moneys, public health, the rights of insured persons to insured services and observance of

⁶ *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, para. 49.

agreements to which he is a party, issue directives bearing on the goals and orientations of RAMQ. Such directives must be submitted to the Government for approval. Once approved, they bind RAMQ, which must comply with them.

RAMQ must provide the Minister with any information that he may require respecting its operations.

as appears from the excerpt from the RAMQ website dated July 2, 2020, Exhibit **P-4**;

13. The RAMQ's function is to "administer and implement the programs of the health insurance plan instituted by the Health Insurance Act (chapter A-29) and any other program entrusted to it by law or by the Government"⁷;
14. Section 79 of the AHSSS states that the following institutions will provide the health services covered by the Plan under the Minister's responsibility: a local community service centre, a hospital centre, a child and youth protection centre, a residential and long-term care centre, and a rehabilitation centre (the "Institutions");
15. Section 1 of the HIA defines an insured person as: "a resident or temporary resident of Québec who is duly registered with the Board";
16. Section 5 of the HIA sets out the conditions for a person to be considered a resident of Quebec:

For the purposes of this Act, a resident of Québec means a person domiciled in Québec who meets the conditions prescribed by regulation and who is

- (1) a Canadian citizen;
- (2) a permanent resident within the meaning of the Immigration and Refugee Protection Act (Statutes of Canada, 2001, chapter 27);
- (3) an Indian who is registered as an Indian pursuant to the Indian Act (Revised Statutes of Canada, 1985, chapter I-5);
- (4) a person having been granted refugee status, within the meaning of the Geneva Convention, in Canada, by a competent authority; or
- (5) a person belonging to any other class of persons determined by regulation.

However, an unemancipated minor who is not already domiciled in Québec for the purposes of article 80 of the Civil Code is considered to be domiciled in Québec, if the minor has settled in Québec.

A person becomes a resident of Québec at the time and subject to the conditions determined by regulation, and ceases to be a resident of Québec at the time and subject to the conditions determined by regulation.

⁷ *An Act respecting the Régie de l'assurance maladie du Québec, RLRQ c R-5, s 2.*

17. Subsection 4.5(3) of the Regulation provides that a child born in Quebec and referred to in the second paragraph of section 5 of the HIA becomes a person who resides in Quebec as of the date of birth:

4.5. The following shall become residents of Québec from their date of birth:

(...)

(3) a child referred to in the second paragraph of section 5 of the Act who is born in Québec; and

18. Neither the Civil Code, the HIA, or the Regulations define "establishment" or "settled";

19. The RAMQ associates the concept of "Settlement" with the "domicile". In fact, in the document *Receiving and processing applications for first registration: Participant's Manual, section 2.1 Concepts of establishment* written for agents processing applications for registration, the RAMQ states the following:

(...)

A person settled in Quebec is a person who arrives in Quebec with the intention of staying there permanently, that is, to establish his or her domicile in Quebec.

Note: The agent must **accurately determine the client's domicile**, that is, the place where he/she is settled (...)

20. When a child is born in Quebec, the Directeur de l'État civil sends all the information required for registration to the Plan directly to the RAMQ;

21. In fact, the RAMQ states the following on its website in the section *Registering a child born in Quebec* :

Parents who are settled in Québec or registered with the plan as temporary residents of Québec don't have to register their child if he or she is born in Québec.

All the new parents need to do is register their child with the Directeur de l'état civil, using the form obtained from the hospital or given to them by the midwife. The information needed for registering the child with the Health Insurance Plan and, where applicable, for the Public Prescription Drug Insurance Plan will be sent to RAMQ automatically. Thereafter, RAMQ will assess the child's eligibility.

22. Also, in the section of the RAMQ website entitled "Know the eligibility conditions: Register my child for health insurance" :

Your child born in Québec is automatically eligible for Québec health insurance if you or the other parent is settled in Québec or eligible as a temporary resident at the time of birth. In this case, you have nothing to do.

Call us if you want to register your child born outside Québec or your adoptive child.

23. However, despite the HIA and the Regulation, the RAMQ also indicates on its website that the following persons are not eligible for coverage under the Plan:

Tourist and his child born in Quebec

Student and any person from another Canadian province staying in Quebec

Foreign student from a country not covered by a social security agreement and his child born in Québec

Refugee claimant (you may be eligible for coverage under the Interim Federal Health Program)

as appears from the RAMQ website dated June 16, 2016, Exhibit **P-5** in support hereto;

24. In addition to those cases, it is the practice of the defendant to refuse access to the Plan to children born in Canada when the parents fit in one of the following situations:

- a. foreign students, except for those from countries with an agreement with Québec, mainly Europeans;
- b. visitors and individuals with temporary resident permits, such as those with work permits;
- c. individuals without regular migration status, that is, people who remain in Canada without legal permission;
- d. failed refugee claimants who remain on Quebec territory after their removal date for various reasons, for example, because their country is under a moratorium on removals, or because the claimant appeals the removal decision;

as appears from the Brief submitted by Médecins du Monde Canada on February 3, 2015, as part of the *Consultation of the Commission des relations avec les citoyens: vers une nouvelle politique québécoise en matière d'immigration, de diversité et d'inclusion*, Exhibit **P-6**;

25. Being deprived of the public health insurance plan, Group 2 members find themselves forced to choose between: contributing to a private insurance covering dependents, paying for care when it is provided or avoiding consulting doctors when their children need it. All of these situations are the direct result of the defendant's fault;
26. By not providing access to the Plan to which they are entitled, the defendant places those children at risk of serious damage to their health. Indeed, some parents will not be able to consult for their child before it becomes too serious.

The clinics will charge them high fees before the consultation when it is not an emergency. When it is an emergency, hospitals will provide the necessary care, but a hefty bill will follow;

27. As a result, these children are at risk of medical complications, which could have been avoided by a simple visit to the doctor, as reported by the association Médecins Québécois pour le Régime public, Exhibit **P-7**;
28. For all these reasons, the defendant is extracontractually liable for :
 - a. adopting a practice that is contrary to the Acts whose observance it must ensure;
 - b. adopting a practice contrary to the objective of the RAMQ and the general function of the MSSS;
 - c. acting in a grossly negligent manner, manifestly deviating from the standard of conduct that might be expected given his or her actual function and mission;

B) Illegal and intentional infringement of the rights protected by the *Charters*

29. The illegality of this practice has been known to the MSSS for many years;
30. The parliamentary debates of 1999 leading up to the adoption of the HIA clearly demonstrate that the legislator's intention was precisely to ensure that the parents' immigration status did not affect their children's RAMQ coverage. The Minister at the time, Ms. Pauline Marois, made this clear by making the following comments during the detailed study of the *Act to amend the Act respecting health insurance and other legislative provisions*, the relevant excerpt of which is produced as Exhibit **P-8** in support of the present decision⁸:

Ms. Marois: Okay, so we're amending clause 5. In fact, we're replacing it. It's the notion of "person resident of Quebec". (...) When a child is born in Quebec, he or she is a Canadian citizen, and is settled in Quebec, it is appropriate to make him or her eligible for the plan even if his or her parents are not domiciled in Quebec, in accordance, in this sense, with recent decisions rendered by the Tribunal administratif du Québec. The new provision therefore allows this to continue to be the case despite the introduction of the domicile requirement at the beginning of the text of this new section. (...)

Ms. Lamquin-Éthier: Perfect. And the paragraph below: "However, an unemancipated minor..." So you're talking about children who are ultimately born in Canada, who are born in Quebec to parents who would not be eligible. You confirm that, despite the fact that the parents would

⁸ Quebec, National Assembly, Social Affairs Committee, "Detailed study of Bill 83 - An Act to amend the Act respecting health insurance and other legislative provisions" in *Journal des débats de la Commission des affaires sociales*, vol 36, no 22 (8 December 1999).

be ineligible, the children would be eligible and would be entitled to the services. Is that correct?

Ms. Marois: Yes. (...) As soon as the person is born in Quebec, that's it⁹.

(Our translation and underlining)

31. As stated in these lines, the purpose of paragraph 2 of article 5 of the HIA is to cover children who would not be considered domiciled in Quebec under article 80 of the *Civil Code of Quebec* because of their parents' status and domicile. The objective is, therefore, to dissociate the status of the children from that of their parents for the purposes of applying the Plan;
32. This intention is also in line with the principle, well known in civil law, that decisions concerning a child should be taken in his or her best interests;
33. In 2013, the Commission des droits de la personne et des droits de la jeunesse du Québec (hereinafter "the Commission") was seized with the question of whether migration status should be considered an analogous ground within the meaning of section 10 of the Québec Charter. In a substantial opinion based on empirical studies, the Commission concluded that the waiting period during which the RAMQ does not cover newcomers applied primarily to persons whose origin is not Canada and was therefore discriminatory within the meaning of the Québec Charter.
34. Although the Commission's report does not specifically address the practice denounced by the present action, it does highlight the vulnerable nature of migrants and their children. The report also highlights the fact that migrants are a historically disadvantaged group and victims of prejudice, which are essential conditions for basing an action on discriminatory treatment;
35. Moreover, these findings of the Commission, in 2013, were a clear indication to the Defendant that the denial of coverage to Canadian citizen children on the basis of their parents' immigration status is discriminatory within the meaning of the *Quebec Charter*;
36. Indeed, the report highlights that migrants are a minority and isolated group of individuals, often economically fragile and victims of stereotypes. Their children, the members of Group 1, also suffer from these prejudices. The defendant is well aware that his practice targets children whose parents are migrants, and he is well aware that this is a particularly vulnerable group;
37. In addition, since the fall of 2011, Médecins du Monde has been providing care to migrants with precarious immigration status in Quebec through its "Migrants Project" program. The Migrants Project includes a front-line clinic that welcomes, treats, and refers migrants who do not have access to the Plan, as appears from Médecins du Monde's Annual Report 2018-2019, Exhibit **P-9** in support of this report;

⁹ Exhibit P-8, pp. 48, 50 and 52.

38. On 3 February 2015, Médecins du Monde submitted a brief to the *Consultation of the Committee on Relations with Citizens: Towards a new policy on immigration, diversity and inclusion*. This brief raises the problem of access to RAMQ coverage for children born in Canada whose parents have precarious immigration status, as appears from the brief, Exhibit P-6;
39. In 2015, the Clinique internationale de défense des droits humains of the Université du Québec à Montréal, in collaboration with Médecins du Monde, submitted a report highlighting the human and legal problems resulting from the refusal to cover care for migrants and their children, as appears from the report entitled " Access to Perinatal Care for All Women in Quebec: Myth or Reality. Portrait de l'accès aux soins périnataux des migrantes à statut précaire et de leurs enfants au Québec ". This report is produced as Exhibit **P-10** in support of this motion;
40. Later, in its 2018-2019 activity report, Médecins du Monde indicated that it had questioned the Ombudsperson in 2017 regarding such practice and had collected 20,000 signatures on a petition to the then Minister, Dr. Gaétan Barrette, as appears from the Médecins du Monde activity report, Exhibit **P-11**;
41. On May 30, 2018, the Ombudsperson issued a report on the illegality of this practice by the defendant, as appears from the Report of the Ombudsperson, produced as Exhibit **P-12**:

Even though they are born in Québec and are therefore Canadian citizens, the children of parents with a precarious immigration status are not eligible for the public health insurance plan. And yet, they are residents of Québec within the meaning of the Health Insurance Act and the Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec (the Regulation).

The Québec Ombudsman's investigation into this issue showed that the Régie de l'assurance maladie du Québec (RAMQ) uses a restrictive, if not a faulty, interpretation of the Act and the Regulation.

These children born in Québec do not have a right to coverage under the public plan because RAMQ correlates their eligibility with their parents' immigration status. This means that these children could be deprived of the health services and social services they need if their parents cannot afford the cost thereof. The consequences can be physical as well as psychological and can hinder the children's integration within school and the community

In the Québec Ombudsman's opinion, because these children are Canadian citizens, the Health Insurance Act and the Regulation enable them to be considered eligible from birth when their regular place of residence is Québec.¹⁰

(Underlining)

¹⁰ Exhibit P-12, p. 4.

42. The Ombudsperson concluded as follows:

The Québec Ombudsman considers that the solution lies in applying the Act as written. It presumes an interpretation of the notion of a child born in Québec and settled in Québec that respects the legislator's intention to distinguish children's status from their parents' immigration status for public health plan eligibility purposes.¹¹

43. The Médecins Québécois pour le Régime public also criticized this practice in their 2018 annual report, as appears from the report entitled " Santé pour tous, sans Exception! Étude des barrières à l'accès au système de santé public québécois" produced as Exhibit P-7. In a section dedicated to the RAMQ's practice of denying coverage to children born in Canada, they express themselves as follows:

The importance of access to quality care during the crucial period of physical and psychological development that is childhood is well established, and barriers to access to the health care system can have a major and dramatic impact on long-term health¹².

Our translation

44. The Canadian Paediatric Society has highlighted the problems arising from non-coverage of policyholders on its website. It expressed itself as follows:

Uninsured and underinsured patients are at risk for poor health outcomes. They report higher levels of anxiety, stress and advanced illness.⁶ They may also:

- delay or forego seeking health care, including prenatal and preventive health care,
- be denied care when they seek it,
- be discriminated against when they seek care,
- endure financial hardship from paying for care when resources are severely limited.

as appears from an excerpt from the website entitled " Health Insurance for Immigrant and Refugee Families " affiliated with the Canadian Paediatric Society, whose section on *Medicare for the Care of Immigrants and Refugees* is produced as Exhibit **P-13**¹³;

45. The Lucie and André Chagnon Foundation's Observatoire des tout-petits, one of whose objectives is to help place the development and well-being of toddlers at the heart of the priorities of Quebec society, published a report in April 2019 entitled " Accès aux soins de santé pour les femmes enceintes et les tout-petits de familles migrantes", produced as Exhibit **P-14**. This report highlights the discriminatory and arbitrary nature of the practice:

¹¹ Exhibit P-12, p. 7, para. 17.

¹² Exhibit P-7, p. 9.

¹³ Exhibit P-13, p. 7.

Indeed, research has shown that these families generally live in more difficult living conditions: sometimes unhealthy housing, low income, difficult working conditions. Barriers to access to health care also make these vulnerable families even more vulnerable, which can become an issue for Quebec society. Indeed, the absence of preventive health care leads to more medical complications that are then more complex to treat and more costly for the system, and therefore for society¹⁴.

Our translation

46. Finally, in an open letter published in *Le Devoir* on April 16, 2019 and co-signed by dozens of lawyers, Me François Crépeau, full professor at the Faculty of Law of McGill University and director of the Centre for Human Rights and Legal Pluralism, also indicated in these terms that this practice is illegal:

For children born in Quebec, many of whom have never lived elsewhere, this is contrary to the Health Insurance Act (the Act) and the Regulation respecting eligibility and registration of persons with the RAMQ (the Regulation). These two pieces of legislation were amended in 2001 to ensure that children born and established in Quebec are eligible for the Quebec health insurance plan, regardless of their parents' domicile or residence.

(...)

This systematic refusal by the RAMQ is also contrary to international law. Québec is in fact bound by the International Convention on the Rights of the Child, article 24 of which states: "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. They shall strive to ensure that no child is deprived of the right of access to such services. »

(Our translation and underlining)

as appears from the letter, filed as Exhibit **P-15**;

47. In short, it appears from the foregoing that the Defendant undertake this wrongful practice, which is contrary to the *Charters*, despite the fact that it has long been aware of the harmful and disastrous consequences that it can have on the lives of these children and their families. This is clearly an intentional breach within the meaning of section 49 of the *Quebec Charter*;

C) The Defendant is in breach of its international obligations

48. International law plays an interpretative role with respect to domestic law;
49. Canada is a signatory to the United Nations Universal Declaration of Human Rights, which affirms the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including medical care,

¹⁴ Exhibit P-14, p. 4.

without discrimination, as set out in the United Nations Universal Declaration of Human Rights, articles 2 and 25, filed as Exhibit **P-16**;

50. Canada also ratified the *International Covenant on Economic, Social and Cultural Rights* in 1976, thereby committing itself to take steps necessary for the "creation of conditions which would assure to all medical service and medical attention in the event of sickness", as set out in the *ICESCR*, Exhibit **P-17**¹⁵;
51. As well, Canada is a state party to the *Convention on the Rights of the Child*. Article 24 of this convention provides that signatories recognize the right of the child to enjoy the highest attainable standard of health and to benefit from medical services;
52. Article 3 of the *Convention on the Rights of the Child* also provides that the best interests of the child shall be a primary consideration of States parties in all actions concerning them, as shown in Exhibit **P-18**;
53. In 2012, the Committee on the Rights of the Child, a United Nations-related body responsible for monitoring the implementation of the *Convention on the Rights of the Child* by States parties, expressed concern about "[s]ubject and widespread discrimination in access to basic services for vulnerable children, including children belonging to minorities, immigrant children and children with disabilities";
54. The Committee recommended that Canada "address the disparities in access to services for all vulnerable children, including ethnic minority children, children with disabilities, immigrant children and others", i.e., the members of Group 1, as reflected in the *Concluding Observations on the Third and Fourth Periodic Reports of Canada*, produced as Exhibit **P-19** in support of the present report¹⁶;
55. The plaintiffs argue that the defendant, in its application of the HIA, is implementing a practice contrary to Canada's international obligations by penalizing children solely on the basis of their parents' migration status to the detriment of their best interests;
56. Although these international instruments are not legally binding on the Defendant, they highlight the grossly negligent and particularly cruel nature of its practice. At a time when all the States of the world agree to grant a special status to children's health and when the legislator also provides for additional protection in its Acts and in the *Civil Code of Québec*, the defendant adopts an interpretation at odds with these instruments and deprives children of the protection of the Plan to which they are entitled;

D) Damage

57. The present extra-contractual liability action entitles members of both groups to be compensated for all damages caused by the defendant's fault, including:

¹⁵ *ICESCR*, Art. 12.

¹⁶ United Nations, Committee on the Rights of the Child, *Concluding Observations on the Third and Fourth Periodic Reports of Canada*, UN Doc CRC/C/CAN/CO/3-4 (6 December 2012), pp. 7-8.

- hospitalization, care and medication expenses normally covered by the Plan, additional private insurance expenses to cover members of Group 1;
58. Also, they are entitled to all compensatory damages resulting from this practice, such as: physical pain, stress, anxiety, humiliation, as well as the medical consequences of being denied coverage;
 59. Unsuccessful attempts to obtain coverage, systemic misinformation by the defendant, refusals by hospitals to treat their children at no cost, or inability to pay for such costs, create stress for members of Group 2;
 60. The result for them is a feeling of abandonment and exclusion as well as rejection by the society that has nevertheless chosen to welcome them and where they have decided to have their children grow up;
 61. In addition, Group 2 members experience the anxiety and stress of seeing their children in physical distress, entitling them to damages of their own;
 62. This practice jeopardizes the right to security, life and integrity of these children, in addition to constituting cruel and unusual treatment. The mere violation of the rights protected by the *Charters* entitles the child to compensatory and punitive damages as an appropriate remedy within the meaning of section 24 (1) of the *Canadian Charter* for Group 1;
 63. Group 1 members are also entitled to compensatory damages for violations of their right to be treated without discrimination. Indeed, these children receive discriminatory treatment because of the immigration status of their parents, which is contrary to the *Charters*;
 64. In addition, the coverage provided by the Plan is a basic tool for integration into Quebec society. For example, many school outings require medical insurance coverage, which Group 1 members do not have, further isolating them. Thus, this already vulnerable and excluded group only sees its situation made worse by the defendant's fault;
 65. Under no circumstances can this discriminatory practice be justified under section 1 of the *Canadian Charter* or section 9.1 of the *Quebec Charter*, since no law provides for the possibility of contravening it. On the contrary, the HIA is clear to the effect that the members of the group are entitled to RAMQ coverage;

E) The situation of Plaintiffs

66. Mr Ridwan Sulaimon and his wife Mrs Duwoju Hiqmat Sulaimon, born Ayobami, are from Nigeria. They arrived in Montreal on December 23, 2019 with their son, born on August 16, 2017 in Nigeria;
67. Mr. Sulaimon obtained a student visa to complete his Ph.D. in Chemistry at Concordia University. His student visa is filed as Exhibit **P-20 in** support hereto;
68. As of September 2019, Concordia's health insurance plans for students no longer cover dependents;

69. Ms. Durowoju Hiqmat Sulaimon holds an open work permit, which expired on July 22, 2020, as appears from the work permit submitted as Exhibit **P-21** in support of this application;
70. Applications to renew the status of the three family members with Immigration Canada were filed, and were granted on June 3, 2020. The visas were extended until August 31, 2023, as shown in exhibits **P-22** and **P-23** in support;
71. It is clear from this documentation that Mr. Sulaimon's intention is to settle in Quebec to complete his doctoral studies and that Ms. Durowoju Hiqmat Sulaimon has the opportunity to work, as indicated on her permit. They have no intention of leaving the country any time soon;
72. Ms. Sulaimon gave birth to A.B. on February 4, 2020, at the Sacré-Cœur Hospital;
73. Ms. Sulaimon gave birth quickly and without complications. She stayed one night at Sacré-Coeur Hospital following A.B.'s birth. Medical expenses of \$3,500.00 and hospitalization expenses of \$3,228.00, for a total of \$6,728.00, were charged to Ms. Sulaimon for the delivery, as appears from the Statement of Account of the Sacré-Cœur Hospital, Exhibit **P-24**, and from the table of fees set out in the document entitled "Childbirth Rates for Non-Canadian Residents without a Health Insurance Card", Exhibit **P-25**;
74. Also, Sacré-Cœur Hospital issued a Statement of Account to A.B., named Sulaimon BB of Durowoju Hiqmat, in the amount of \$2,541.00 for one night of hospitalization following her birth, as appears from the Statement of Account of Sacré-Cœur Hospital, Exhibit **P-26**;
75. A few days after her birth, A.B. was in immediate need of care. His parents noticed a mass on her back. Mr. and Ms. Sulaimon went to the Sacré-Cœur Hospital and were referred to Sainte-Justine Hospital, a university hospital for children;
76. Mr. and Ms. Sulaimon went to Sainte-Justine Hospital on February 10, 2020 where an attendant at Sainte-Justine Hospital told them that there was a \$721.50 fee to open a file, since A.B. did not have a health insurance card. As they did not have the means to pay these fees, Mr. and Ms. Sulaimon returned home with A.B., without having been able to consult a doctor;
77. The next day, February 11, 2020, they went to Sainte-Justine Hospital hoping to ask for a delay in paying the fees to open a file. This delay was granted and A.B. was hospitalized there until February 14, 2020 to undergo several tests and ensure her health;
78. Sainte-Justice Hospital sent Mr. and Ms. Sulaimon an invoice of \$721.50 to open her file, as appears from the Emergency Visit Invoice, Exhibit **P-27**, as well as a document indicating the fees for clients without a health insurance card, as appears from the document entitled "Fees for Clients without a Quebec Health Insurance Card" from Sainte-Justine Hospital, Exhibit **P-28**;

79. Sainte-Justine Hospital also issued an invoice in the amount of \$998.34 in the name of Ms. and Mr. Sulaimon on February 11, 2020 for a magnetic resonance imaging of A.B.'s spine, as appears from the MRI Invoice, Exhibit **P-29**;
80. A.B. requires medical follow-up, as appears from an excerpt from his medical file, Exhibit **P-30**;
81. Finally, an invoice in the amount of \$14,850.00 was issued by the Sainte-Justine Hospital for short-term hospitalization and medical care provided to A.B., as appears from the Sainte-Justine Hospitalization Invoice, Exhibit **P-31**;
82. A.B. was born in Canada and is a Canadian citizen under paragraph 3(1)(a) of the *Citizenship Act* (R.S.C.). (R.S.C. 1985, c. C-29);
83. A.B. was born in Quebec and has never left Quebec since her birth on February 4, 2020, she is therefore settled there, according to the common meaning of the word;
84. A.B. clearly meets the requirements to be covered by the HIA;
85. The claimant received a letter from the RAMQ informing him that the Directeur de l'État civil had notified the RAMQ of A.B.'s birth and invited Mr. Sulaimon to contact the RAMQ so that it could determine the child's eligibility, as appears from the RAMQ's letter dated May 26, 2020, Exhibit **P-32**, and the letter from the Directeur de l'état civil dated May 20, 2020, Exhibit **P-33**, in support of the present;
86. On June 1, 2020, the claimant contacted the RAMQ by telephone in accordance with this letter. During this "pre-registration" telephone call (see section 1 of the Regulation), the claimant indicated to the RAMQ agent that he just started a doctorate at Concordia University and that it would last approximately 5 to 6 years. He also stated that he intended to stay in Quebec after completing his studies;
87. During this call, Mr. Sulaimon was denied access to the RAMQ for his daughter. The officer told him that his daughter was not eligible for the Plan. No form was subsequently sent to the Plaintiff to allow him to provide additional information about A.B.'s situation;
88. On June 12, 2020, a formal notice was sent to the RAMQ to obtain the issuance of a health insurance card for A.B. , communicated as Exhibit **P-34**;
89. On June 18, 2020, the RAMQ sent an acknowledgement of receipt of the formal notice, as appears from an e-mail from Me Tardif of the RAMQ to Me Dagenais-Lespérance, Exhibit **P-35**;
90. On June 19, 2020, by e-mail, Ms. Tardif of the RAMQ indicated that documents in support of the application for a health insurance card must be sent to Agent Ms. Fleury of the RAMQ, who will handle the file, as appears from an exchange of e-mails between Ms. Tardif of the RAMQ and Ms. Dagenais-Lespérance, Exhibit **P-36**;

91. On 22 June 2020, the documents and supporting documents were sent to Ms. Fleury for the granting of a health insurance card, as appears from the letter addressed to her, Exhibit **P-37**;
92. On July 6, 2020, Mr. Sulaimon received the RAMQ Decision Letter dated June 26, 2020, regarding A.B.'s eligibility: A.B. is not eligible as she is not "settled, in other words permanently established" in Quebec, as appears from the RAMQ Decision Letter on Eligibility, Exhibit **P-38**;
93. In this letter, the RAMQ uses the principles of domicile and establishment without distinction, and imposes the criterion of permanence on both concepts;
94. As a result of this refusal, the Plaintiffs cannot go to the Institutions to have their daughter treated without paying a significant amount of money, despite the medical report advising follow-ups and tests to be carried out. In fact, the Plaintiffs already owe a major debt to Sainte-Justine Hospital for their daughter's hospitalization in February and, unfortunately, they are currently unable to pay for this care;
95. Since the June 1st call, Mr. and Ms. Sulaimon have been under a lot of stress as they have seen their health care bills increase and are unable to pay for their daughter's medical care;
96. This situation affects the integrity and safety of A.B. who cannot receive the care required by her condition. Violations of her rights protected by the *Charters* entitle her to compensatory and punitive damages as an appropriate remedy within the meaning of section 24 (1) of the *Canadian Charter* and to the cessation of this infringement within the meaning of section 49 of the *Quebec Charter*;

III- THE COMPOSITION OF THE GROUP

97. Group 1 members are Canadian children whose parents are migrants. Group 1 is a particularly vulnerable population in financial, social and human terms. For the vast majority of them, collective action is the only vehicle that will give them access to justice;
98. The parents of these children, members of Group 2, are also a very vulnerable population because of their migration status, which is often precarious;
99. The composition of these two groups makes it difficult or impractical to apply the rules on retainer or joinder;
100. It is indeed impossible for the Plaintiffs to contact all members of these groups, let alone obtain a warrant from them, since this action is likely to affect several hundred people, based only on the cases referred to in the various reports mentioned above. The members of the group are currently scattered throughout the province and it is difficult to contact them, considering that their identity is unknown;

IV- COMMON ISSUES

101. The identical, similar or related questions of fact and law connecting each class member to the defendant that the plaintiffs intend to have determined by the class action are :
1. Does the defendant's practice of refusing to grant access to the Plan to the members of Group 1 violate their rights protected by sections 1 and 10 of the *Quebec Charter*, namely the right to life, security and integrity?
 2. Does the defendant's practice of refusing to grant access to the Plan to members of Group 1 violate the rights of the members of the group protected by sections 7, 12 and 15 of the *Canadian Charter*?
 3. Are Class 1 members entitled to damages as a fair and appropriate remedy under section 24(1) of the *Canadian Charter*?
 4. Are the members of Group 1 entitled to the cessation of this infringement under section 49 of the *Quebec Charter*?
 5. Does the defendant, by its practice of refusing to grant access to the Plan to the members of Group 1, illegally and intentionally violate the rights of the members of this group protected by the *Quebec Charter*?
 6. Does the identified practice entitle the plaintiffs and Class 1 members to punitive damages under the *Quebec Charter*?
 7. Does the defendant, by its practice of refusing to grant access to the Plan to the members of Group 1, commit a civil fault towards the members of both groups?
 8. Does the defendant have to compensate the plaintiffs and members of both groups for the damage caused by this civil fault?

V- THE CONCLUSIONS SOUGHT

102. The plaintiffs identify the findings in the class action as follows:

HOST the action for declaratory judgment and punitive and compensatory damages by the plaintiffs on behalf of all members of both classes;

DECLARE that the Defendant's practice of refusing RAMQ Plan coverage to Group 1 members contravenes the HIA, the *Quebec Charter* and the *Canadian Charter* and constitutes civil fault;

CONDEMN the defendant to pay to each of the members of Group 1 an amount of \$5,000 for the violation of their rights protected by the *Canadian Charter* and the *Quebec Charter*, the whole with interest at the

legal rate plus the additional indemnity since the filing of the request for authorization to institute a class action;

ORDER the Defendant to pay to each of the members of Class 1 an amount of \$2,000 as punitive damages for the intentional violation of their rights protected by the *Québec Charter*;

ORDER the Defendant to pay damages to the members of Group 2 who were obliged to pay amounts to insure their child or to ensure that their children receive medical care which is nevertheless covered by the LAM;

CONDEMN the defendant to indemnify the members of both groups for all moral damages resulting from this wrongful practice;

ORDER that the claims of class members be subject to collective recovery;

ORDER alternatively individual recovery if collective recovery cannot be ordered;

REMOVE the parties within 30 days of the final judgment in order to determine the measures for distribution of the amounts recovered collectively;

ALL with expenses, including the costs of experts, opinions and expenses of the administrator;

VI- ADEQUATE REPRESENTATION

103. The plaintiffs are members of Class 2 and legal guardians of their daughter A.B. , herself a member of Class 1. They have a good knowledge of the file, having undertaken the various steps with the hospitals and the RAMQ;
104. They are prepared to invest the resources and time necessary to carry out all the formalities and tasks related to the exercise of this class action and they undertake to cooperate fully with its lawyers;
105. They act in good faith with the sole aim of obtaining justice for themselves, their daughter and each of the members of the groups;
106. For these reasons, Plaintiffs are able to ensure adequate representation of the members of the groups they intend to represent;

VII- THE JUDICIAL DISTRICT

107. The plaintiffs request that the class action be brought before the Superior Court in the district of Montreal;

108. The Plaintiffs as well as a large proportion of the group members currently reside in the Montreal district. The defendant also has one of its principal places of business there;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the action for declaratory judgment and punitive and compensatory damages by the plaintiffs on behalf of all members of both classes;

AUTHORIZE the class action for declaratory judgment and compensatory and punitive damages against the defendant;

PROVIDE Plaintiffs with representative status for the following two groups:

Group 1: Any non-emancipated minor born in Canada and established in Quebec who has been refused access to coverage under the Régie de l'assurance maladie du Québec coverage plan because of the immigration status of his or her parents.

Group 2: Any legal guardian of a Group 1 member.

IDENTIFY as follows the main questions of fact or law to be dealt with collectively :

1. Does the defendant's practice of refusing to grant access to the Plan to the members of Group 1 violate their rights protected by sections 1 and 10 of the *Quebec Charter*, namely the right to life, security and integrity?
2. Does the defendant's practice of refusing to grant access to the Plan to members of Group 1 violate the rights of the members of the group protected by sections 7, 12 and 15 of the *Canadian Charter*?
3. Are Class 1 members entitled to damages as a fair and appropriate remedy under section 24(1) of the *Canadian Charter*?
4. Are the members of Group 1 entitled to the cessation of this infringement under section 49 of the *Quebec Charter*?
5. Does the defendant, by its practice of refusing to grant access to the Plan to the members of Group 1, illegally and intentionally violate the rights of the members of this group protected by the *Quebec Charter*?
6. Does the identified practice entitle the plaintiffs and Class 1 members to punitive damages under the *Quebec Charter*?
7. Does the defendant, by its practice of refusing to grant access to the Plan to the members of Group 1, commit a civil fault towards the members of both groups?

8. Does the defendant have to compensate the plaintiffs and members of both groups for the damage caused by this civil fault?

IDENTIFY as follows the related conclusions sought:

GRANT the action for declaratory judgment and punitive and compensatory damages by the plaintiffs on behalf of all members of both classes;

DECLARE that the Defendant's practice of refusing Group 1 members coverage under the RAMQ Plan contravenes the HIA, the *Quebec Charter*, the *Canadian Charter* and constitutes civil fault;

CONDEMN the defendant to pay to each of the members of Group 1 an amount of \$5,000 for the violation of their rights protected by the *Canadian Charter* and the *Quebec Charter*, the whole with interest at the legal rate plus the additional indemnity since the filing of the request for authorization to institute a class action;

ORDER the Defendant to pay to each of the members of Class 1 an amount of \$2,000 as punitive damages for the intentional violation of their rights protected by the *Québec Charter*;

ORDER the Defendant to pay damages to the members of Group 2 who were obliged to pay amounts to insure their child or to ensure that their children receive medical care which is nevertheless covered by the LAM;

CONDEMN the defendant to indemnify the members of both groups for all moral damages resulting from this wrongful practice;

ORDER that the claims of class members be subject to collective recovery;

ORDER alternatively individual recovery if collective recovery cannot be ordered;

RECONVENE the parties within 30 days of the final judgment in order to determine the measures for distribution of the amounts recovered collectively;

ALL with expenses, including the costs of experts, opinions and expenses of the administrator;

DECLARE that unless excluded, class members will be bound by any judgment to be entered on the class action in the manner provided by law;

SET the exclusion period at sixty (60) days after the date of the notice to members, at the end of which time the members of the groups who have not availed themselves of the means of exclusion shall be bound by any judgment to be rendered;

ORDER the publication of a notice to the members in the manner to be determined by the Tribunal;

REFER the file to the Chief Justice for determination of the district in which the class action is to be brought and designation of the judge to hear it;

THE WHOLE, with legal fees, including notice costs.

Montréal, July 9, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Plaintiffs' counsel

WRIT OF SUMMONS
(Articles 145 et seq. C.C.P.)

1. Filing a legal claim

Take notice that the plaintiffs have filed with the Clerk of the Superior Court of the Judicial District of Montreal this application for authorization to institute a class action and to be appointed representative.

2. Response to this request

You must respond to this request in writing, personally or through a lawyer, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, H2Y 1B6, within 15 days of being served with this request or, if you do not have a domicile, residence or establishment in Quebec, within 30 days of this request. This response must be served on the plaintiffs' lawyer or, if the plaintiffs are unrepresented, on the plaintiffs themselves.

3. Failure to respond

If you do not respond within the time limit, 15 or 30 days, as the case may be, a default judgment may be rendered against you without further notice upon the expiration of this period and you may, depending on the circumstances, be required to pay court costs.

4. Content of the answer

In your answer, you must indicate your intention, either :

- to agree to the settlement of the case;
- to offer mediation to resolve the dispute;
- to contest the application and, where required by the Code, to establish for this purpose, in cooperation with the Plaintiffs, the protocol that will govern the conduct of the proceedings. This protocol must be filed with the clerk of the Court of the district mentioned above within 45 days of service of this notice or, in family matters, or, if you have no domicile, residence or establishment in Québec, within three months of such service;
- to propose a settlement conference.

This response should include your contact information and, if you are represented by a lawyer, the name and contact information of the lawyer.

5. Change of judicial district

You may apply to the court for the transfer of this originating application to the district where your domicile or, failing that, your residence or the domicile you have elected or agreed with the plaintiffs is located.

If the request relates to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable that serves as your principal residence and you are the consumer, employee, insured, beneficiary of the insurance contract or mortgagor, you may request this referral in the district where your domicile or residence or this immovable or the place of loss is located. You submit this request to the special clerk of the district with territorial jurisdiction after notifying the other parties and the clerk of the court that was already seized of the matter.

6. Transfer of the claim to the Small Claims Division

If you have the capacity to act as a claimant under the small claims rules, you may also contact the clerk of the court to have this application processed under those rules. If you make this request, then the claimant's legal costs will not be allowed to exceed the amount of the small claims recovery fee.

7. Convening a management conference

Within 20 days of the filing of the above-mentioned protocol, the court may convene you to a management conference to ensure the smooth conduct of the proceedings. Failing that, the protocol will be deemed to have been accepted.

8. Exhibits in support of the application

In support of the *Request to Institute a Class Action and in order to be designated as representatives*, the plaintiffs rely on the following exhibits:

- Pièce P-1 :** Birth certificate of A.B;
- Pièce P-2 :** Extract from the MSSS website entitled "The organization and its commitments : Laws and regulations" dated July 2, 2020;
- Pièce P-3 :** Extract from the MSSS website entitled "The organization and its commitments : Mission and mandates" dated 2 July 2020;
- Pièce P-4 :** Excerpt from the RAMQ website entitled "About RAMQ: Minister" dated July 2, 2020;
- Pièce P-5 :** Excerpt from the RAMQ website entitled "Immigrants and foreign workers or students: Eligibility for the health insurance plan" dated June 16, 2016;
- Pièce P-6 :** Brief submitted by Médecins du Monde dated February 3, 2015 as part of the *Consultation of the Commission des relations avec les citoyens: vers une nouvelle politique québécoise en matière d'immigration, de diversité et d'inclusion*;

- Pièce P-7 :** Report by Médecins québécois pour le régime public entitled "La santé pour tous et toutes, sans exception! Étude des barrières à l'accès au système de santé public québécois" and dated June 2018;
- Pièce P-8 :** Quebec, National Assembly, Social Affairs Committee, "Detailed study of Bill 83 - An Act to amend the Act respecting health insurance and other legislative provisions" in *Journal des débats de la Commission des affaires sociales*, vol 36, ^{no} 22 (8 December 1999);
- Pièce P-9 :** Médecins du Monde Annual Report 2018-2019;
- Pièce P-10 :** Report by the Clinique internationale de défense des droits humains of the Université du Québec à Montréal, in collaboration with Médecins du Monde, entitled "Access to Perinatal Care for All Women in Quebec: Myth or Reality? Portrait de l'accès aux soins périnataux des migrantes à statut précaire et de leurs enfants au Québec" and dated June 2015;
- Pièce P-11 :** Médecins du Monde 2018-2019 activity report;
- Pièce P-12 :** Report of the Public Protector entitled "Donner accès au régime québécois d'assurance maladie aux enfants nés au Québec de parents au statut migratoire précaire" and dated May 30, 2018;
- Pièce P-13 :** Excerpt from the Canadian Paediatric Society's website entitled "Medicare for the Care of Immigrants and Refugees" as of June 17, 2020;
- Pièce P-14 :** Report by the Lucie and André Chagnon Foundation's Observatoire des tout-petits entitled "Access to health care for pregnant women and toddlers from migrant families", published in April 2019;
- Pièce P-15 :** Open letter entitled "Health: children of migrant parents who are victims of discrimination", published in *Le Devoir* on 16 April 2019 and co-signed by dozens of lawyers;
- Pièce P-16 :** United Nations Universal Declaration of Human Rights;
- Pièce P-17 :** *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 UNTS 3 (entry into force 3 January 1976, accession by Canada 19 May 1976);

- Pièce P-18 :** *Convention on the Rights of the Child;*
- Pièce P-19 :** United Nations, Committee on the Rights of the Child, *Concluding Observations on the Third and Fourth Periodic Reports of Canada*, UN Doc CRC/C/CAN/CO/3-4 (6 December 2012);
- Pièce P-20 :** Student visa of Mr Ridwan Sulaimon;
- Pièce P-21 :** Work permit of Mrs Durowoju Hiqmat Sulaimon;
- Pièce P-22 :** Student visa renewed until 31 August 2023 Mr Ridwan Sulaimon;
- Pièce P-23 :** Renewed work permit until 31 August 2023 of Mrs Durowoju Hiqmat Sulaimon;
- Pièce P-24 :** Account statement of Hiqmat Sulaimon of Sacred Heart Hospital;
- Pièce P-25 :** Document entitled "Childbirth Rates for Non-Canadian Residents without a Health Insurance Card";
- Pièce P-26 :** Account statement of A.B. of Sacred Heart Hospital;
- Pièce P-27 :** Invoice Emergency Visit of Sainte-Justine Hospital;
- Pièce P-28 :** Document entitled "Fees for Clients without a Quebec Health Insurance Card" from Sainte-Justine Hospital;
- Pièce P-29 :** MRI bill from Sainte-Justine Hospital;
- Pièce P-30 :** Extract from A.B.'s medical records..;
- Pièce P-31 :** Hospitalization bill from Sainte-Justine Hospital;
- Pièce P-32 :** Letter from RAMQ dated May 26, 2020;
- Pièce P-33 :** Letter from the Registrar of Civil Status dated 20 May 2020;
- Pièce P-34 :** Formal notice sent to the RAMQ and dated June 12, 2020;
- Pièce P-35 :** E-mail from Me Tardif of the RAMQ to Me Dagenais-Lespérance dated June 18, 2020;

- Pièce P-36 :** Exchange of e-mails between Me Tardif of the RAMQ and Me Dagenais-Lespérance;
- Pièce P-37 :** Letter addressed to Ms. Fleury of the RAMQ and faxed on June 22, 2020;
- Pièce P-38 :** RAMQ decision letter on eligibility dated June 26, 2020.

These parts are available on request.

9. Application with Notice of Submission

In the case of an application submitted in the course of proceedings or an application covered by Books III, V, except those relating to family matters mentioned in Article 409 or VI of the Code, the preparation of a protocol of the proceedings is not required; however, such an application must be accompanied by a notice indicating the date and time of its submission.

Montréal, July 9, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Plaintiffs' counsel

PRESENTATION NOTICE
(Article 574 C.C.P.)

À : **GENERAL ATTORNEY OF QUEBEC**, having a place of business at the Legal Affairs Branch, located at 1 Notre-Dame East, 8th Floor, District of Montreal, Province of Quebec, H2Y 1B6

TAKE NOTICE that the *Application for authorization to institute a class action, and to obtain the status of representatives* will be presented before one of the Honourable Judges of the Superior Court at the Montreal Court House, located at 1 Notre-Dame Street East, at a date and time to be determined.

PLEASE ACT ACCORDINGLY.

Montréal, July 9, 2020

TRUDEL JOHNSTON & LESPÉRANCE
Plaintiffs' counsel