

By JOSEPH G. LARIOS

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CHICAGO (*jGLi*) – A Superior Court of Quebec in Montreal, Canada denied recently the motion to dismiss filed by the Quebec Human Rights Commission against eight Filipina Live-in Caregivers (LIC's) and P.I.N.A.Y., a Montreal-based Filipina civil-rights group, a landmark ruling that gives a psychological boost to Canada's effort to attract "many Filipino caregivers arriving in Canada every day".

A press handout to this reporter received from a P.I.N.A.Y.'s support group said Justice Thomas Davis recognized that the

circumstances in this particular case justify the delay of two months in filing the motion.

Mr. Justice Davis also emphasized the serious prejudice that the Filipina women would suffer if their motion for Judicial Review was dismissed. Mr. Justice Davis also highlighted the importance of the present case and its potential for justice to present and future LICs.

In fact, in the judge's words, "the importance of the matter is further magnified by the fact that over and above the Plaintiffs, there are many Filipino caregivers arriving in Canada every day".

The Superior Court rejected the Commission's core arguments as to why the application for judicial review should be dismissed. The Commission argued that the application for judicial review was filed more than five months after the decision was taken; that it fulfilled its duty of procedural fairness

during the investigation; that the Commission enjoyed large discretion in its investigation and that the women could still sue the respondents in regular courts at their own expense.

The Filipina women brought the case to court, citing the Quebec Human Rights Commission's numerous errors of fact and law during HRC's investigation into a complaint filed against it by the eight LIC's, P.I.N.A.Y. and 26 women, which asked the Superior Court to reverse the Commission's decision and send the file back to the Commission to re-do the investigation. Because of attrition, other LIC's moved on with their lives, only eight LIC's were left to file the case.

The group also asks for a total of \$90,000 in moral damages against the Commission for gross negligence.

## **26 LIC's DISCRIMINATED AGAINST, HARASSED AND EXPLOITED**

The Filipina women filed an application for judicial review before Justice Davis after the Commission dismissed their complaint in June 2012 that was filed back in May 2009 on behalf of 26 Filipina LICs, who were discriminated against, harassed and exploited in employment, housing and immigration by their recruiter John Aurora, a West Island, Quebec, immigration consultant, who died in September 2009.

The Court also rejected another Commission's argument by recognizing that "plaintiffs' rights could be seriously prejudiced if their motion is dismissed at this stage. While it is true that they could institute proceedings on their own, and might ultimately have to do so, such proceedings would be costly and there is potential for prescription."

In so doing, the Court obviously was taking judicial notice of the obvious economic conditions of many LICs whose low incomes prevented them from suing the immigration consultant and others who exploited them. It also rejected the Commission's argument that these women could still sue those who violated their civil rights, even if the Commission had previously recognized in its own decision that it was already too late to take legal action against these wrongdoers in the first place. Finally, the Court concluded that at the preliminary stage, the Court cannot deny these women the right to present their case on the merits. "Only following a full hearing will allow the Court to adjudicate on the validity of Plaintiff's claims," stated Mr. Justice Davis.

## **"THIS JUDICIAL SENSITIVITY GIVES US HOPE"**

"This kind of judicial sensitivity gives us hope," said Ms. Evelyn Calugay, president of P.I.N.A.Y. "The Court is sending a very important message to society as whole about the obstacles

encountered by migrant and domestic workers in seeking protection against civil rights violations, something which the human rights commission seems to have problems understanding.”

“I am very glad about the Superior Court's decision not to dismiss our motion for judicial review because it means these women are one step closer to obtaining justice,” said Me Melissa Arango, who is acting on behalf of the women and P.I.N.A.Y. in the case.

The case, which is expected to cost the group several thousand dollars, has been brought by the P.I.N.A.Y. to the United Nations as an example of the lack of effective protection of domestic workers in Canada from discrimination, human trafficking and exploitation.

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The present decision by the Superior Court is believed to be a landmark decision, in that it is the first decision in favour of the eight LICs and P.I.N.A.Y. since their legal battle began three years ago.

There has never been a discrimination case involving live-in caregivers that has been brought by the Commission before the Quebec Human Rights Tribunal since the latter's creation in 1990. # # #

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