Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

KEVIN PALMER and ANDREL PETERS

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $10,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 6, 2023

Issued by _____
Local registrar

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CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

a. **"Plaintiffs"** means the proposed representative plaintiffs, Kevin Palmer and Andrel Peters;

b. **"Defendant"** or **"Canada"** means the defendant, the Attorney General of Canada;

c. **"SAWP"** means the Seasonal Agricultural Workers Program;

d. **"TFWP – Agricultural Stream"** means the Agricultural Stream of the Temporary Foreign Workers Program; and

e. **"Class"** or **"Class Members"** means current and former agricultural workers who are or were employed in Canada on a contract basis under the SAWP and/or the TFWP – Agricultural Stream on or after January 1, 2008.

A. RELIEF SOUGHT

2. The Plaintiffs claim against Canada for:

a. An order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class;

b. An order, pursuant to s. 24 of the *Class Proceedings Act, 1992* ("*CPA*"), directing an aggregate assessment of damages;

c. Damages, including general and special damages, restitution and/or disgorgement, in the amount of $500 million for:

(i) breach of section 7 of the *Charter of Rights and Freedoms* (the "*Charter*");

(ii) breach of section 15 of the *Charter* on grounds of race, nationality and/or citizenship; and

(iii) unjust enrichment.

d. Declarations that the following state action by Canada, individually and taken together, infringes the rights of Class Members under sections 7 and 15 of the *Charter,* and that such infringements are not justified under section 1 of the *Charter*:

(i) Canada's imposition of tied employment on workers in the SAWP and the TFWP – Agricultural Stream, which tied Class Members' immigration status in Canada to employment at a specific agricultural employer;

(ii) With respect to Class Members in the SAWP, Canada's imposition of contractual termination clauses that authorized agricultural employers, *inter alia,* "to terminate the WORKER's employment hereunder and so cause the WORKER to be repatriated" or similar powers; and

(iii) With respect to Class Members in the SAWP, Canada's imposition of mandatory terms and conditions of employment requiring Class Members to "work and reside at the place of employment";

e. Declarations that the following state action by Canada, individually and taken together, infringes the rights of Class Members under section 15 of the *Charter,* and that such infringements are not justified under section 1 of the *Charter*:

(i) Canada's conduct in excluding Class Members from accessing regular and sickness benefits under the *Employment Insurance Act* ("*EIA*") through the imposition of tied employment, despite requiring Class Members to pay Employment Insurance ("EI") premiums; and

(ii) Sections 5, 18 and 37 of the *EIA*;

f. Orders pursuant to section 24(1) of the *Charter* to remedy the violations of sections 7 and 15 of the *Charter* enumerated in paragraphs (d) and (e) above, including but not limited to an award of *Charter* damages;

g. Punitive, aggravated and exemplary damages in the amount of $100 million;

h. Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;

i. Costs of this action on a substantial indemnity basis; and

j. Such further and other relief as this Honourable Court may deem just.

B. Overview

3. The Plaintiffs, Kevin Palmer and Andrel Peters, are agricultural workers from Jamaica and Grenada, respectively. They worked in Canada on a series of fixed-term contracts as part of the SAWP and the TFWP-Agricultural Stream. The Plaintiffs bring this action on behalf of themselves and all other current or former migrant agricultural workers in the SAWP and the TFWP-Agricultural Stream over the past 15 years.

4. This action is brought against the Government of Canada, which administers the SAWP and the TFWP-Agricultural Stream and dictates the terms and conditions of employment in both programs. The Plaintiffs challenge the imposition of "tied employment" in both programs, on the grounds that it violates the rights of Class Members under sections 7 and 15 of the *Charter*.

5. Tied employment restricts the freedom of migrant agricultural workers to resign from their employment and seek employment elsewhere. Canada imposes tied employment through employer-specific work permits that condition the worker's authorization to work and reside in Canada to continued employment at a specific agricultural employer, and through mandatory terms of contract that authorize the employer to terminate the worker's employment and so cause the worker to be repatriated.

6. Tied employment enhances the employer's termination power and transforms the employer-employee relationship. The termination of employment, for Class Members, does not only mean loss of a job; it means expulsion from the Canadian agricultural sector. By restricting the worker's freedom to withdraw their labour and change employers, and by ceding to private agricultural employers effective control over the worker's right to participate in the Canadian agricultural sector, tied employment creates a relationship of heightened dependency and

exploitation and subjects vulnerable farmworkers to even greater risks of abuse, resulting in work-related harms.

7. Tied employment was promulgated as part of the SAWP in 1966, when the first group of Jamaican farmworkers was admitted to Canada on a seasonal basis. Tied employment was imposed as a means to restrict the freedom of Black and Indo Caribbean farmworkers on racial grounds. It was motivated by overtly racist policy objectives articulated by Canadian officials who promulgated the program. Tied employment subjected Black and Indo Caribbean (and later Mexican) farmworkers to more restrictive and coercive conditions of employment because of their race and nationality.

8. The Canadian government understood tied employment to be a deprivation of freedom at the time it was implemented. Successive governments before and after the promulgation of the SAWP rejected the imposition of tied employment on farmworkers arriving from European countries on the grounds that doing so "would be contrary to the whole Canadian belief in freedom of the individual" (Hon. Walter Harris, Minister of Citizenship and Immigration, July 1952). In the same year that the SAWP was promulgated, the responsible Minister dismissed tied employment, in the context of European workers, as tantamount to "enslavement" and said he "opposed this form of contract" (Hon. Jean Marchand, Minister of Manpower and Immigration, June 1966) – while imposing precisely that form of contract on the Black and Indo Caribbean farmworkers in the SAWP.

9. From the outset, tied employment was predicated on the denial of a recognized freedom on racial grounds. Up until 1966, Canadian officials successfully resisted efforts to admit Black and Indo Caribbean farmworkers based on racist beliefs and stereotypes, including to prevent so-called "racial problems". With the advent of the SAWP, Black and Indo Caribbean farmworkers were finally admitted to Canada, but were subjected to restrictive conditions of employment, including tied employment (and forced residency at their employer's premises). Tied employment for Black and Indo Caribbean (and later Mexican) farmworkers was the means by which the Canadian government furthered the same racist policy objectives that previously justified the outright exclusion of these workers from Canada.

10. The devastating harms caused by tied employment are well-known and admitted by the Canadian government. For instance, in September 2016, the House of Commons Standing Committee tasked with reviewing the Temporary Foreign Worker Program recognized that "employer-specific work permits tying workers to one employer lead to a power imbalance that is conducive to abuse" and said Canada should "take immediate steps to eliminate the requirement for an employer-specific work permit."

11. More than five decades after tied employment was implemented in furtherance of racist and discriminatory policy objectives of the time, Canada continues to impose it on Class Members, in full knowledge of the suffering it causes. Tied employment makes the most vulnerable and precarious workers in Canada even less safe. The Supreme Court of Canada has already recognized that farmworkers, because of their inherent vulnerability, "have no recourse to protect their interests aside from the right to quit." Tied employment strips migrant farmworkers – a uniquely vulnerable subset of farmworkers – of the freedom to protect themselves against employer abuse by withdrawing their labour and seeking employment elsewhere. It puts migrant farmworkers at even greater risk of abuse, and does so in furtherance of the racist policy objectives of Canadian officials in the 1960s.

12. Tied employment in the SAWP and the TFWP-Agricultural Stream also has the effect of excluding migrant agricultural workers from accessing EI benefits, even though they are statutorily required to pay EI premiums. Every year, Canada collects tens of millions of dollars in EI premiums from Class Members while structurally excluding them from any possibility of receiving the benefit of those premiums. Over the past 15 years alone, the Canadian government has been enriched in the amount of $472 million on the backs of the most marginalized workers in the country.

13. The Plaintiffs claim that the imposition of tied employment in the SAWP and the TFWP-Agricultural Stream infringes their right to liberty and security of the person under section 7 of the *Charter*. In the context of the heightened risks and vulnerability experienced by migrant agricultural workers, the freedom to withdraw their labour and seek employment elsewhere is an essential measure of self-protection against risks of abuse. Tied employment strips Class Members of the autonomy to protect themselves. It puts migrant farmworkers at an even greater risk of

physical and psychological harm. The imposition of tied employment is sufficiently causally connected to the increased risks faced by Class Members to engage the protection of section 7.

14. The Plaintiffs also claim that tied employment infringes the equality rights of Class Members under section 15 of the *Charter* both on its face and in its impact. The discrimination was intentional. Tied employment was promulgated as a means to impose more coercive conditions of employment on racialized workers because of their race. The continued imposition of tied employment reinforces and perpetuates the very same racist beliefs and stereotypes about Class Members that motivated Canadian officials to implement it in the first place.

15. The discriminatory denial of freedom for racialized farmworkers in the SAWP, compared to European farmworkers, did not cease to be discriminatory simply because the number of European farmworkers admitted to Canada diminished over time. The opposite is true. The continued deprivation of freedom for racialized farmworkers in the SAWP, and now the TFWP-Agricultural Stream, decades after the promulgation of the policy, reinforces and perpetuates the discriminatory disadvantage created by earlier generations of the program. The result is a group of racialized farmworkers in Canada who continue to experience the generational effects of a racist and discriminatory policy that is still in place decades after its promulgation.

16. The deprivation of the right to liberty and security of the person and/or the equality rights of Class Members caused by the imposition of tied employment cannot be demonstrably justified in a free and democratic society under section 1 of the *Charter.* The objective of the measure must be assessed at the time the measure was adopted. An objective that is itself discriminatory or unconstitutional is not a pressing and substantial objective to justify the infringement of a constitutional right. The infringement of the rights of Class Members, in furtherance of racist and discriminatory policy objectives, cannot be demonstrably justified.

17. To the extent that Canada may attempt to justify tied employment based on broader objectives of filling agricultural labour shortages, the Plaintiffs plead that tied employment is neither necessary nor proportionate to such goals. Canada can address its labour needs without violating the rights of Class Members and doing so in a discriminatory manner. In decades prior to the advent of the *Charter,* Canada affirmed the freedom of (European) farmworkers to leave their employer and dismissed tied employment (for European workers) as a form of "enslavement"

that was contrary to freedom. It was only when Canada shifted its labour strategy to racialized farmworkers from the Caribbean (and later Mexico) that it adopted this rights-infringing measure.

18. Canada's implementation of the Open Work Permit for Vulnerable Workers ("OWP-V") policy in June 2019 also did not alleviate the rights violations. After more than five decades of imposing tied employment on racialized farmworkers, without any recourse for self-protection, Canada finally acknowledged that tied employment "can result in a migrant worker enduring situations of misconduct, abuse or other forms of employer retribution." However, rather than acting on the recommendations of multiple Parliamentary Standing Committees to end tied employment, Canada maintained tied employment and implemented an inadequate and ineffective half-measure to mitigate its harms. The OWP-V policy enables Class Members to apply for authorization to leave their employers *after* abuse has already occurred, while still depriving Class Members of the freedom and autonomy to protect themselves against the state-imposed risks of harm.

19. The Plaintiffs claim *Charter* damages to remedy the deliberate and knowing violation of the rights of all Class Members. *Charter* damages are necessary to compensate Class Members for the harms suffered, including the loss of hundreds of millions of dollars through their wilful exclusion from EI benefits while still paying EI premiums. *Charter* damages are also necessary to vindicate Class Members' rights to liberty, security of the person, and equality, and to deter future government misconduct. In respect of the millions of dollars in lost EI premiums and/or benefits, the Plaintiffs also plead unjust enrichment, in addition to their *Charter* damages claim.

C. Parties

(i) Plaintiffs

(b) Kevin Palmer

20. The Plaintiff Kevin Palmer ("Palmer") is a 42-year-old father of two from Jamaica. Palmer first came to Canada in March or April 2014 through the SAWP program on an eight-month contract to work cultivating peppers, tomatoes, and cumbers for Amco – a major greenhouse corporation near Leamington.

21. Palmer continued to work for Amco for the following six years. He would typically work for eight months each year, between the months of March and November or April and December. While working at Amco, Palmer stayed with other migrant workers in a bunkhouse connected to the very greenhouse where they worked.

22. Palmer worked approximately 40 hours each week and was paid the prevailing minimum wage. Although he would sometimes work overtime, he did not receive overtime pay. EI deductions were made on each paycheque received by Palmer. His field boss would swear and impose penalties if daily quotas were not met (such penalties included being sent to the bunkhouse early).

23. Pesticides were stored in the pump area of the greenhouse where Palmer worked. The bunkhouse where Palmer was assigned to live was on the second floor of a building attached to the greenhouse. The bunkhouse was separate from the greenhouse by a shutter-like divide that resembled a garage door. The kitchen used by the migrant workers was on the main floor, steps away from the greenhouse.

24. The work Palmer completed included spraying pesticides, pruning plants, and harvesting crops such as peppers, tomatoes and cucumbers. Although safety equipment was provided, Palmer received no training in how to properly use it. Nor did he receive any information about the chemicals being used on the crops. Questions about the chemicals were ignored by Palmer's employer. Palmer became increasingly concerned for his health after noticing once or twice a month that his urine would turn green after he had been exposed to chemicals used on the crops. Drinking water for Palmer and other workers was provided in water tanks within the greenhouse. Palmer avoided drinking it out of concern that it may be contaminated from the spraying.

25. In 2019 Palmer arrived at Amco in or around the month of March. In October he was notified that his employment had been terminated without cause by virtue of a notice posted in the workplace stating that a number of workers would be sent home (a list of names was provided). No one from Amco spoke with him about the termination, nor was he provided with an explanation. However, among the workers it was understood that Amco was reducing the number of staff due to crop difficulties.

26. Palmer did not receive two weeks pay in lieu of notice. Despite having paid into EI over six years, he could not receive EI because he was not authorized to continue working in Canada for another employer and was not even permitted to be in the country unless he was working for Amco.

27. Palmer was never invited to return to Amco and was never provided with an explanation as to why. His efforts to seek clarity from the Liaison Office were unsuccessful. His ability to participate in the SAWP was adversely impacted as well, as he has been unable to return on the program since the termination of his employment with Amco.

(c) Andrel Peters

28. The Plaintiff Andrel Peters ("Peters") is a 28-year-old father of two from Grenada. Peters first came to Canada in 2018 through the SAWP on a five-month contract to work at a marijuana farm near Leamington operated by Tilray, originally Aphria. Peters arrived in April or May 2018, worked until approximately October 2018 and then returned to Grenada.

29. While working on the farm Peters stayed in a bunkhouse on the farm property with between 11 to 13 other migrant workers. Approximately six workers shared a bedroom, which would lead to increased tension in the living quarters.

30. Peters worked approximately 45 hours each week and was paid $14 per hour to start and then eventually $15 per hour. EI deductions were made on each paycheque he received. Peters was not eligible for any overtime pay.

31. The work included pruning, spraying the plants with chemicals, inspecting plants and working in the processing room. Peters experienced a constant concern about exposure to chemicals, as he was not provided with a respirator, gloves, or similar safety equipment. However he did not object to orders from his employer out of fear that he would lose his job and his ability to support his family.

32. In July 2019, Peters returned to Canada again for a two-year contract through the TFWP – Agricultural Stream. Peters returned to work at the same marijuana farm as in 2018, with substantially similar working conditions. In March 2020 the COVID pandemic hit. Peters stayed

in Canada for two years working on the farm and was not able to leave to visit his family in Grenada. The SAWP and the TFWP – Agricultural Stream did not provide Peters with any opportunity to have his family join him in Canada. He experienced significant loneliness and isolation during his time away from his children.

33. During the COVID pandemic health inspectors required the Peters' employer to implement distancing measures, which led to workers being more spread out. During that time his employer also disallowed Peters and his fellow migrant workers from leaving the farm property, and enforced this through a security gate at the entrance to the property. Canadian workers, however, were free to come and go as they pleased.

34. In April 2021, Peters signed a new two-year contract. In late May 2022 Peters went back to Grenada for a planned two weeks of vacation. It was the first time in almost three years that Peters was able to return home to see his family. While in Grenada, Peters received a phone call from Tilray notifying him that his employment was being terminated without cause. A letter from Tilray followed confirming that Peters was dismissed without cause, effective June 14, 2022.

35. Peters received two weeks pay in lieu and notice. Many of Peters' belongings remained in Canada and he could not return to retrieve them. Peters could not receive EI because he was not be eligible to work in Canada and could not even reside in Canada, despite having paid EI premiums for over four years.

(ii) Defendant

36. The Defendant, the Attorney General of Canada, is the legal entity liable for the wrongful acts and torts committed by agents and servants of the Crown pursuant to section 3 of the *Crown Liability and Proceedings Act,* R.S.C. 1985 c. C-50, including:

a. The Minister of Employment, Workforce Development and Disability Inclusion and his delegates, and officials, employees, servants and agents of Employment and Social Development Canada ("ESDC"), which administers both the EI scheme and the SAWP and TFWP schemes, including the issuance of Labour Market Impact Assessments ("LMIA"); and

b. The Minister of Immigration, Refugees and Citizenship and his delegates, and officials, employees, servants and agents of Immigration, Refugees and Citizenship Canada ("IRCC"), which administers Canada's immigration system and issues tied work permits for Class Members pursuant to LMIA assessments done by ESDC.

D. The Class

37. The Plaintiffs bring this action on their own behalf and on behalf of a class of persons consisting of:

> Current and former agricultural workers who are or were employed in Canada on a contract basis under the Seasonal Agricultural Workers Program ("SAWP") and/or the Temporary Foreign Workers Program – Agricultural Stream ("TFWP-Agricultural Stream") on or after January 1, 2008.

38. The SAWP and the TFWP-Agricultural Stream are the two schemes Canada has created to fill agricultural labour shortages by enabling agricultural employers to hire migrant agricultural workers on a contract basis. The publicly reported number of workers in each program in recent years was as follows:

a. 2016: 34,766 in SAWP and 11,867 in TFWP-Agricultural Stream;

b. 2017: 35,004 in SAWP and 14,704 in TFWP-Agricultural Stream;

c. 2018: 36,008 in SAWP and 18,314 in TFWP-Agricultural Stream;

d. 2019: 37,120 in SAWP and 20,880 in TFWP-Agricultural Stream;

e. 2020: 30,822 in SAWP and 20,946 in TFWP-Agricultural Stream.

39. The Class is comprised of all workers in both programs from January 1, 2008 to the present.

40. While the contracts of employment in each program are for fixed-terms (up to 24 months in the TFWP and up to 8 months in the SAWP), many Class Members have worked successive contracts for a period of years and, in some cases, decades. Many Class Members have spent their entire careers as agricultural workers on Canadian farms, despite being excluded from permanently residing or participating in Canadian society.

41. Approximately one in four agricultural workers in Canada are migrant agricultural workers who form part of this Class. Migrant agricultural workers form the backbone of Canada's agriculture industry.

E. Tied Employment in the Agricultural Sector

42. Tied employment restricts the freedom of migrant agricultural workers to resign from their employment and seek employment at a different agricultural employer. Canada imposes tied employment through:

a. employer-specific work permits that only authorize the worker to work in Canada at a specific named employer; and

b. mandatory terms of contract imposed by Canada that authorize the employer to terminate the worker's employment and so cause the worker to be repatriated.

43. Tied employment transforms the employer-employee relationship by enhancing the employer's termination power. The decision by an employer to terminate employment, for Class Members, does not only mean loss of a job; it means expulsion from the Canadian agricultural sector. By restricting the worker's freedom to withdraw their labour and change employers, and by ceding to private employers effective control over the worker's right to participate in the Canadian agricultural sector, tied employment creates a relationship of heightened dependency and exploitation between Class Members and their employers.

44. This claim seeks damages in connection with the imposition of tied employment in the agricultural sector as part of the SAWP and the TFWP-Agricultural Stream.

(i) The Imposition of Tied Employment through Closed Work Permits

45. Individuals who are neither permanent residents nor Canadian citizens are referred to, in the *Immigration and Refugee Protection Act* ("*IRPA*"), as foreign nationals. A foreign national may not work in Canada unless authorized to do so under the *IRPA*. Under the *IRPA*, the conditions under which a foreign national can be authorized to work in Canada and the conditions that may be imposed on foreign nationals are to be provided for in regulations made under the *IRPA*.

46. Foreign nationals who are authorized to work in Canada are issued work permits. Under the *Immigration and Refugee Protection Regulations* ("*IRPR*"), a foreign national entering Canada to work must first obtain a work permit. In certain circumstances, a foreign national may apply for a work permit without having a job offer. In other circumstances, a foreign national must have a job offer to apply for a work permit, and their employer must have obtained a LMIA from ESDC finding that the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.

47. A work permit will state that the foreign national is authorized to work for any employer in Canada (an open work permit), to work in only one area of employment (an occupation-restricted work permit), to work in only one geographic area (a location-restricted work permit), or to work for only one employer (a closed or employer-specific work permit). A foreign national may only work as authorized by their work permit.

48. Foreign nationals admitted to Canada under either the SAWP or the TFWP – Agricultural Stream are issued employer-specific work permits. They are only authorized to work for the employer specified on their work permit and may not work for any other employer in Canada. If a worker in one of these programs ceases employment with their employer, they cannot work for any other employer.

(ii) Tied Employment in the SAWP

49. The SAWP is Canada's largest and most longstanding temporary migrant worker program, operating without interruption since 1966 to provide labour to agricultural employers on a seasonal basis. The SAWP (encompassing the Commonwealth Caribbean SAWP and the SAWP for workers from Mexico) began in 1966 when 264 Jamaican workers were admitted to Canada to work on a seasonal basis on Ontario farms. The program was expanded in 1967 to include workers from Trinidad and Tobago and Barbados, in 1974 to include workers from Mexico, and in 1976 to include workers from the Organization of Eastern Caribbean States.

50. The SAWP operates on the basis of bilateral agreements between Canada and Mexico, and Canada and the Caribbean states of Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago, expressed in memorandums of understanding ("MOUs"). The MOUs are negotiated by

representatives of the receiving country (Canada), the sending countries (Mexico and the aforementioned Caribbean states), and the Canadian agriculture industry. Migrant workers are denied any representation, participation, or other influence in the negotiation process.

51. The MOUs outline the responsibilities and obligations of employees, employers, and governments. They express an agreement that the workers would receive equal treatment to other workers in the agricultural sector:

a. Canada's MOU with Mexico codifies "guiding principles" including that workers shall receive "treatment equal to that received by Canadian workers performing the same type of work, in accordance with Canadian laws"; and

b. Canada's MOUs with Caribbean states similarly codify "guiding principles" including that the workers are to "receive fair and equitable treatment while in Canada under the auspices of the program."

52. Canada imposes the terms of contract for all SAWP workers through the "Contract for the Employment in Canada of Seasonal Agricultural Workers from Mexico" and the "Contract for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers."

53. The employment contracts are fixed-term contracts, lasting between a minimum of 240 hours (over a period of six weeks or shorter) and a maximum of eight months, and only permit work between January 1 and December 15 (the maximum duration was temporarily increased to nine months during the COVID-19 pandemic). The SAWP contract is structured around the issuance of an employer-specific work permit, which intentionally ties the worker's immigration status and authorization to work in Canada to continued employment at a specific named employer.

54. In order to participate in the program, employers, supported by employer associations, request labour through the LMIA process. Canadian government officials in the ESDC determine labour market needs. If the ESDC confirms no negative impact on the domestic labour market, then a favourable LMIA is issued which then results in the issuance of an employer-specific work permit for migrant workers seeking seasonal agricultural work. Through Canadian consulates abroad, Canadian officials then issue visas to migrant workers to come to Canada.

55. Canada imposes the following terms and conditions of employment, among others, on the workers, as part of the SAWP contracts for Mexico and the Caribbean:

a. Employer has the right to terminate the contract and so cause the worker to be "repatriated" (deported) from Canada "for non-compliance, refusal to work, or any other sufficient reason";

b. Employer has the right to terminate the contract and so cause the worker to be repatriated from Canada for "medical reasons";

c. Employee has the obligation to work during the term of employment at the direction of the Employer and to perform the duties of agricultural work;

d. Employee has the obligation to "work and reside at the place of employment" or at such other place as the Employer, with the approval of the Government Agent, may require;

e. Employee has the obligation to "not work for any other person" without the approval of Canada, the Government Agent and the Employer; and

f. Employee has the obligation to "return promptly" to the sending country upon completion of the authorized work period.

56. Over the history of the program, thousands of workers have been repatriated from Canada following the mid-contract termination of their employment by their employers. These workers lack meaningful recourse in the event of arbitrary or wrongful dismissal and consequent repatriation. The ever-present threat of termination – which, for Class Members, also amounts to a threat of repatriation and expulsion from the Canadian agricultural sector – significantly exacerbates the position of extreme vulnerability faced by Class Members vis-à-vis their employers.

(iii) Tied Employment in the TFWP – Agricultural Stream

57. The TFWP-Agricultural Stream is a second stream, in addition to the SAWP, under which Canadian agricultural employers may obtain temporary labour. It grew out of a Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D), created by Canada in 2002, which was opened to agricultural workers in 2011. As in the SAWP, employers must obtain

a favourable LMIA to secure work permits. In contrast to the SAWP, the Agricultural Stream is not based on bilateral agreements between Canada and sending countries.

58. Also unlike the SAWP, the Agricultural Stream provides work permits up to a maximum of 24 months, and workers from any country can participate. While Guatemala is the top source country for the Agricultural Stream, participation of workers from Mexico, India, and Jamaica rose substantially in the late 2010s.

59. Work permits issued to migrant workers under the Agricultural Stream are, as in the SAWP, tied to specific employers. Before submitting an LMIA, employers must complete and submit an employment contract; either the sample employment contract provided by Canada or another contract that includes all the same terms and conditions. Although workers are not subject to contracts directly imposed by Canada (as in the SAWP), Canada imposes mandatory terms that must be reflected in the contracts between the workers and their employer. The mandatory terms of contract imposed by Canada include a termination clause detailed below.

60. As in the SAWP, tied employment in the Agricultural Stream gives the employer effective control over not only the employment relationship, but also the worker's status in Canada and their ability to participate in the Canadian agricultural sector. Because of tied employment imposed by Canada, the threat of termination by the employer is therefore also a *de facto* threat of repatriation and expulsion from Canadian agricultural work.

(iv) Denial of Employment Insurance

61. As is the case for most workers in Canada, workers in the SAWP and the Agricultural Stream are charged mandatory deductions for unemployment insurance under the *EIA.* They are therefore statutorily entitled to benefits. The *EIA* provides for two kinds of benefits. The first, "regular benefits", provide income replacement during a period of unemployment. The second, "special benefits", entitle workers to payments for maternity leave, parental leave, sickness and compassionate care.

62. In order to receive either regular or special benefits, a worker is required to satisfy certain conditions. First, the employment must fall within the statutory definition of "insurable employment" (s. 5), and therefore be subject to deductions for premiums. Second, the worker must

work a pre-determined number of hours. Third, in order to receive *regular benefits*, the worker must be both "capable of and available for work" (s. 18) and be physically located within Canada (s. 37). Special benefits for sickness are subject to the residency requirement, but do not require the recipient to be "capable and available for work."

63. Through the imposition of tied employment, Canada necessarily deprives Class Members in the SAWP and the TFWP-Agricultural Stream of the ability to ever receive regular benefits under the *EIA*. Canada, however, benefits from the collection of EI premiums from Class Members.

64. The structure of the SAWP and the TFWP-Agricultural Stream is such that any participant is authorized to work in Canada and permitted to be present in Canada *only* for the temporary period during which they are employed at a specific employer. Even if a worker were to remain in Canada after the termination of employment, the worker would be prohibited by the terms of their visa from accepting work from a different employer. The worker would not, therefore, be considered "capable and available for work" within the meaning of the *EIA*. In the result, Class Members are required to pay EI premiums, and by virtue of the mandatory tied employment provision, are necessarily precluded from ever receiving regular benefits.

65. The employment conditions imposed by Canada have the automatic and necessary effect of excluding Class Members from the ability to access regular EI benefits at the very moment their employment is terminated (i.e. the moment when they would otherwise become eligible to receive benefits under the *EIA*). Special benefits for sickness are available, in principle, for those who become sick and are unable to work and are not yet repatriated. Sickness benefits are in practice unavailable because sick workers are typically repatriated once they are injured or fall ill.

66. Although special benefits for maternity leave, parental leave and compassionate care do not require a worker to be "capable of and available for work" or physically located within Canada, migrant agricultural workers employed under the SAWP nevertheless face challenges accessing these benefits. In 2013, section 55(4) of the *Employment Insurance Regulations* was amended to restrict access to special benefits to only those who have a valid and unexpired Social Insurance Number (SIN), which has the effect of excluding Class Members from accessing such benefits

because the validity of their SIN is connected to the validity of their work permit, and their work permit is contingent on continued employment at the employer.

67. The Plaintiffs estimate that the Government of Canada has collected more than $472 million in EI premiums from Class Members and their employers since 2008, while necessarily excluding Class Members from the statutory benefit of such premiums. The following chart is based on publicly available Statistics Canada data on the annual number of foreign workers in agriculture, the annual earnings of temporary foreign workers in agriculture, and the average earnings per worker. For the years 2019-2022, annual earnings of Class Members are estimated using the average earnings figure from 2018 (this likely underestimates the actual earnings during these years). Employee premiums are then calculated by multiplying total earnings by the annual EI rate. Employer premiums are 1.4 times employee premiums:

TABLE 1: EI PREMIUMS COLLECTED FROM CLASS MEMBERS

Year	Number of foreign workers in agriculture	Total earnings	Average earnings per worker	EI rate	Employee premiums (EI rate x earnings)	Employer premiums (EE premiums x 1.4)
2008	25,200	$376M	$14,911	1.73%	$6,500,786	$9,101,101
2009	27,100	$436M	$16,104	1.73%	$7,550,031	$10,570,044
2010	28,900	$484M	$25,627	1.73%	$8,379,134	$11,730,787
2011	31,200	$517M	$16,561	1.78%	$9,197,491	$12,876,488
2012	33,800	$573M	$16,940	1.83%	$10,478,232	$14,669,525
2013	26,700	$640M	$23,965	1.88%	$12,029,575	$16,841,405
2014	39,300	$696M	$17,718	1.88%	$13,090,910	$18,327,274
2015	41,400	$733M	$17,717	1.88%	$13,789,198	$19,304,878
2016	46,100	$829M	$17,982	1.88%	$15,584,993	$21,818,990
2017	50,800	$911M	$17,939	1.63%	$14,854,402	$20,796,163
2018	56,919	$1,018M	$17,900	1.66%	$16,912,912	$23,678,076
2019	53,605	$960M	$17,900	1.62%	$15,544,378	$21,762,129
2020	55,171	$988M	$17,900	1.58%	$15,603,462	$21,844,847
2021	60,992	$1,092M	$17,900	1.58%	$17,249,757	$24,149,660
2022	70,65	$1,260M	$17,900	1.58%	$19,900,629	$27,860,881
Total					**$196,665,892**	**$275,332,249**

68. Tied employment is the mechanism through which Canada excludes Class Members from accessing regular or sickness benefits under the *EIA.* The tied employment requirement was itself

motivated by racist and discriminatory policy objectives, detailed below. Canada has thus enriched itself in the amount of more than $472 million (since 2008 alone) on the backs of racialized Class Members, in furtherance of policy objectives that are themselves racist and discriminatory.

F. Context and Purpose – Intentional Denial of Freedom on Racial Grounds

69. Tied employment in the agricultural sector was implemented as a means to restrict the freedom of Black and Indo Caribbean farmworkers on racial grounds. It was motivated by racist beliefs and stereotypes held by Canadian policy-makers, detailed below. These racist concerns and objectives are embedded in the structure of the SAWP and the TFWP-Agricultural Stream, and are reinforced by the continued imposition of tied employment in both programs.

70. In promulgating the SAWP in 1966, Canada imposed coercive conditions of employment including tied employment and forcing workers to reside at their employer's premises. These coercive conditions of employment intentionally furthered racist policy objectives, including to ensure segregation between "Negro" farmworkers and neighbouring communities, and to prevent "racial problems" that would purportedly arise if such workers were allowed to integrate into Canadian communities.

71. Similar coercive conditions were not imposed on immigrant farmworkers of European descent. To the contrary, Canada expressly rejected proposals to enforce tied employment on European farmworkers on the grounds that doing so would be contrary to Canadian freedom. The imposition of such restrictions on Black and Indo Caribbean farmworkers (and later Mexican and other racialized farmworkers) was predicated on the discriminatory denial of a recognized freedom based on the race and nationality of the workers.

72. The statements of relevant Ministers and departmental officials disclose the following racist beliefs, assumptions and stereotypes that underpinned the imposition of tied employment in 1966:

a. the belief that people of white European ancestry are predisposed to freedom (in contrast to racialized people of non-European ancestry);

b. the belief that Black people from the Caribbean are not "assimilable" to Canada;

c. the belief that Black people from the Caribbean cannot adapt to the "climatic conditions" of Canada, also referred to as "climate racism";

d. the belief that Black people from the Caribbean are predisposed to "stoop labour";

e. the belief that excessive numbers of Black people in Canadian communities would result in "social problems" or "racial problems" that should be avoided; and

f. the belief that Black men are predatorial and should not be employed in workplaces where they might interact with white women workers.

73. All of these racist beliefs and stereotypes are rooted in, and perpetuate, the legacy of slavery in North America. They were articulated by the relevant Canadian Ministers and departmental officials in the years leading up to, and following, the creation of the SAWP, as detailed below. Tied employment and forced housing segregation were imposed by Canada in furtherance of specific racist policy objectives, including:

a. to prevent the integration of racialized farmworkers in Canadian society and thereby prevent so-called "racial problems";

b. to segregate racialized farmworkers in rural communities through forced residency at the farms where they were employed;

c. to confine the predominantly Black male farmworkers in the program to workplaces where they would have limited interaction with white workers generally and female white workers in particular; and

d. to relieve pressure to increase racialized immigration from the Caribbean.

74. The Plaintiffs plead that the *specific purpose* of tied employment in the SAWP was to restrict the freedom of racialized workers based on their race, in furtherance of the above racist objectives. This is in contrast to the *general purpose* of the SAWP, which was to fill agricultural labour shortages, and did not depend on the imposition of tied employment.

75. Tied employment continues to further its original, intended purpose of restricting the freedom of racialized workers based on their race, in both the SAWP and the TFWP-Agricultural Stream. The Plaintiffs plead the following facts and particulars in support of the government purpose that motivates the imposition of tied employment in both programs.

(i) Racist Objective of Preventing Integration of "Natives from the West Indies"

76. In the years preceding 1966, Canada subscribed to a policy of limiting immigration of "natives from the West Indies" (i.e. Black and Indo Caribbean people) and resisted pressure from Canadian farm employers to authorize the immigration of Caribbean farmworkers to fill labour shortages. This policy was justified based on racist beliefs and stereotypes, including "climate racism", as expressed in the statements of various Ministers and departmental officials:

a. March 1947 Letter from Director of Immigration Branch to Deputy Minister of Labour:

> The admission to Canada of natives of the West Indies has always been a problem with this Service and we are continually being asked to make provision for the admission of these people. <u>They are, of course, not assimilable and, generally speaking, the climatic conditions of Canada are not favourable for them.</u>

b. March 1952 Statement by Minister of Citizenship and Immigration:

> <u>In light of experience it would be unrealistic to say that immigrants who have spent the greater part of their life in tropical countries become readily adapted to the Canadian mode of life which, to no small extent, is determined by climatic conditions.</u> It is a matter of record that natives of such countries are more apt to break down in health than immigrants from countries where the climate is more akin to that of Canada. It is equally true that, generally speaking, persons from tropical countries or sub-tropical countries find it more difficult to succeed in the highly competitive Canadian economy.

c. January 1955 Memo from Director of Immigration Branch to Deputy Minister of Citizenship and Immigration:

> <u>It is not by accident that coloured British Subjects other than negligible numbers from the United Kingdom are excluded from Canada… They do not assimilate readily and pretty much vegetate to</u>

> a low standard of living. Despite what has been said to the contrary, many cannot adapt themselves to our climatic conditions.

d. March 1958 Memo from Director of Immigration Branch to Deputy Minister of Citizenship and Immigration:

> It has been our long-standing practice to deal favourably with British subjects of the white race from the British West Indies […]. On the other hand, apart from a limited domestic movement, no encouragement is given to persons of coloured race unless they have close relatives in Canada or their cases have exceptional merit, such as graduate nurses, qualified stenographers, etc.

e. October 1960 Memo from Deputy Minister of Citizenship and Immigration to Assistant Deputy Minister:

> We do not want these people to remain in Canada: we do not want to get involved in the difficulty or embarrassment forcing them out.

77. The promulgation of the SAWP in 1966 was a reversal of Canada's policy of barring migration of Caribbean farmworkers. However, the same racist policy objectives that previously justified the outright exclusion of Caribbean farmworkers from Canada instead informed the conditions of employment that were imposed on such farmworkers as part of the SAWP. The conditions of employment imposed in furtherance of these racist policy objectives include tied employment, which remains a core feature of the program and is the subject of this claim.

(ii) Discriminatory Denial of Farmworkers' Freedom to Leave Employers

78. During the postwar years, Canada filled agricultural labour shortages through immigration of mostly white agricultural workers from various European countries, including the Netherlands, Germany, England and Poland. European workers were preferred by Canada on racial grounds. While some of the European agricultural workers who immigrated to Canada in the postwar years were required to work at a specific farm for an initial period of time, this requirement was not enforced through threat of deportation. European workers and their families were given access to permanent residence and later citizenship. Generations of European immigrants arrived as agricultural workers and were then incorporated into the Canadian nation.

79. Proposals to deport European agricultural workers who did not complete their period of service on the farm were rejected on the grounds that Canada was a "free country". Successive Ministers of Citizenship and Immigration – including the Hon. Walter Harris (1950-1954) and the Hon. John Pickersgill (1954-1957) – explained on several occasions that in their view it would be inconsistent with the principles of a free Canadian society to force anyone to work for a particular employer against his will, and this position was met with general support from all political parties.

80. In July 1952, the Hon. Walter Harris, Minister of Citizenship and Immigration, said the following in rejecting proposals to impose tied employment for immigrant farmworkers:

> It would, of course, be possible to take steps which would ensure that the man who says he is coming to Canada as a farm worker remains a farm worker. We could even hold the possibility of deportation over his head, as indeed is done in some countries. However, it is my opinion that the Canadian people would be entirely opposed to any such practice. <u>It would be contrary to the whole Canadian belief in freedom of the individual.</u>

81. The "freedom" of immigrant farmworkers to circulate in the labour market was predicated on their race and nationality. In some instances, the Canadian government even acknowledged that it was affirming the "freedom" of white European farmworkers *because* of their race and nationality. For example, in April 1952, Canada rejected proposals to compel Dutch immigrant farmworkers to work on the farm citing racist stereotypes about Dutch predisposition to freedom. The Director of the Immigration Branch said Dutch workers could not be "directed" to specific jobs because of:

> …the well known responsibility of these people, <u>their urge to a free initiative</u>, their close-knit family ties and <u>their spiritual and moral characteristics</u> would doom any movement to failure if regarded as merely a mass movement to meet labour deficiencies.

82. Canada's affirmation of the freedom of white European farmworkers to leave their employers continued even after 1966 when Canada began to import Black and Indo Caribbean farmworkers on an 'unfree' basis in the SAWP. In June 1966, during a debate about the shortage of farm labour and the difficulty of ensuring that immigrant farmworkers do not leave the farms shortly after arriving in Canada, the Minister of Manpower and Immigration, the Hon. Jean Marchand, rejected the idea of imposing a "formal agreement that they will stay on the farms for a while." He said:

> I am not very enthusiastic about having formal agreements in order to compel a free citizen to stay in a certain job for years if he does not like it, or can find a better job somewhere else.

83. In November 1966, the Minister again rejected a proposal to compel immigrant workers to work at specific employers on the basis that "[w]e cannot enslave them". He said that despite shortages in some areas of labour:

> I am not prepared to enslave immigrant workers who have come to Canada. Even if you hire unskilled labour abroad for the mining industry, where there is a shortage right now, there is nothing that can assure us they are going to stay there, because they will not. If the working conditions are poor, or the wages too low, they will move to Toronto or Montreal and then we will have the problem. <u>We cannot enslave them. I am opposed to this form of contract.</u>

84. Minister Marchand made these comments rejecting tied employment (for European farmworkers) as a "form of contract" that amounts to "enslavement" in the very same year that he promulgated the SAWP that subjected a group of Jamaican farmworkers to precisely this "form of contract".

85. Canadian officials did not view the denial of freedom to Black and Indo Caribbean farmworkers (and later Mexican and other racialized farmworkers) while affirming that very same freedom for European farmworkers as contradictory, because the denial was itself motivated by an underlying racial logic. The premise of the imposition of tied employment on racialized farmworkers in the SAWP was the racist belief, rooted in the legacy of slavery, that such racialized farmworkers were not full persons deserving of rights.

86. Exemplifying this racial logic, Canada could decry the imposition of tied employment on white European workers as being tantamount to "enslavement" while, at the same time, imposing those very same conditions on Black and Indo Caribbean workers. The imposition of tied employment in the SAWP was, from the outset, predicated on racism.

(iii) Racist Objectives of Policy-Makers Promulgating the SAWP

87. The imposition of tied employment on Black and Indo Caribbean farmworkers in the SAWP furthered the same racist policy objectives that previously justified the outright exclusion of Black and Indo Caribbean farmworkers from Canada.

88. With the promulgation of the SAWP in 1966, Black and Indo Caribbean farmworkers from the Caribbean were finally allowed to come to Canada, but under strict conditions – including tied employment, forced housing segregation, and the denial of their families accompanying them – that were designed to accommodate and address the racist concerns held by policy-makers. The Plaintiffs plead the following facts and particulars in support of these government objectives.

89. In January 1965, while growers were lobbying for access to Caribbean farm labour, the Assistant Deputy Minister of Immigration noted that accepting Caribbean farmworkers on a seasonal basis would have a "very real side effect of value" being to *reduce* pressure to increase racialized immigration:

> Such a measure would not only meet the need of Canadian employers but it might also have a very real side effect of value to this Department. By admitting West Indian workers on a seasonal basis, it might be possible to greatly reduce the pressure on Canada to accept unskilled workers from the West Indies as immigrants. Moreover, seasonal farm workers would not have the privilege of sponsoring innumerable close relatives [to come and settle in the country].

90. In January 1966, months before the promulgation of the SAWP, the Assistant Deputy Minister of Citizenship and Immigration cautioned against the "long range wisdom of a substantial increase in negro immigration to Canada":

> It should also be mentioned here that one of the policy factors was a concern over the long range wisdom of a substantial increase in negro immigration to Canada. The racial problems of Britain and the United States undoubtedly influenced this concern which of course still exists today.

91. The official concern about "racial problems" caused by excessive "negro" immigration was also expressed in a "Briefing Paper on Immigration from the West Indies" prepared by the Department of Citizenship and Immigration in the same period:

> In recent years some Canadians who in normal [?] circumstances would not have any prejudice in respect to race, colour or creed, have shown concern that through rapid increases in the intake of under-educated and un-skilled immigrants, especially if multi-racial, we could end up with situations (race riots) similar to those in the United Kingdom.

92. The SAWP was designed by Canada as a means to address the twofold objectives of admitting racialized workers to fill agricultural labour shortages while still preventing the integration of "Negro" farmworkers into Canadian communities.

93. In March 1966, the Minister of Manpower and Immigration, the Hon. Jean Marchand, submitted a proposal to Cabinet which resulted in the creation of the SAWP. In his proposal, the Minister emphasized the importance of imposing "strictly controlled conditions" on the workers and to avoid "large scale social problems":

> The growers have… made strong representations to be allowed to bring in workers from outside of Canada. I believe that, in the situation this year, it would be very unwise to maintain a blanket refusal to such requests. On the other hand, it is most important that any importation of labour should be under strictly controlled conditions, that it should be kept to numbers which are unlikely to create any large scale social problems… The most suitable source of such labour is in the West Indies, where there is a good supply of experienced stoop labour which is most required, and governmental agencies have long experience with controlled seasonal movements.

94. The Minister's statement again discloses both the *general purpose* of the program, being to fill agricultural labour shortages through admittance of Caribbean workers, and the *specific purpose* of tied employment (as well as forced housing segregation), being to restrict the freedom of racialized workers in furtherance of racist objectives, including to prevent "social problems" associated with Black immigration and racial integration.

95. Cabinet approved the above recommendations from the Minister which resulted in the creation of the SAWP and the arrival of the first group of Jamaican workers in 1966.

96. In May 1966, after the SAWP was approved for agricultural employers, the Ministry received proposals from other sectors – including food processing – who were similarly experiencing labour shortages. These proposals were rejected on racist grounds that Black and Indo Caribbean workers in the program would have to mix with white workers, particularly white women workers in food processing. The Deputy Minister of Manpower and Immigration said:

> There are some obvious and very difficult problems involved in this proposition. Perhaps the most serious are the social difficulties that might develop when groups of Negroes are working among, and far outnumbered by, Canadian female workers.

97. In contrast to food processing, which was rejected to prevent racial integration, the SAWP segregated "groups of Negroes" to rural farms where racial integration could be avoided. This government objective was expressed even more explicitly in an assessment of the Regional Employment Officer of the Department of Manpower and Immigration, whose assessment the Deputy Minister approved:

> [T]hese operations [processing] require a high content of female labour and to introduce Jamaican males into the plants and provide accommodation adjacent to that used by domestic female labour could create social difficulties. Moreover, the Jamaican male is adapted to field rather than factory work and while the processers felt that they could train them to the latter, it does not seem they could hope to staff plants entirely with this labour. <u>These factors are not present in field employment. The Jamaicans are adapted to the work, the work units are smaller and there need not be a male-female, or even a Jamaican-domestic mix of male labour on any one operation.</u>

98. The foregoing Ministerial statements document the racist and discriminatory purpose that motivated the imposition of tied employment. Canada imposed coercive conditions of employment on workers in the SAWP, including tied employment and forced housing segregation, for the purpose of ensuring racial segregation, preventing "racial problems" arising from racial integration, and related racist and discriminatory objectives.

99. The continued imposition of tied employment in the SAWP furthers these same racist and discriminatory objectives and outcomes, even if the racist beliefs underpinning them are no longer held by policy-makers.

(iv) Reinforcing and Perpetuating Legacy of Slavery and Coerced Labour

100. By imposing conditions of coerced labour on a group of Black and racialized farmworkers, tied employment reinforces the history of forced labour experienced by these racial groups.

101. The specific history of tied employment in the SAWP not only *reinforces* this history of forced labour, the policy was modeled after the H-2 visa program in the United States which itself *replaced* and *reproduced* conditions of actual forced labour of Black workers at Florida sugar cane plantations. There is, therefore, a direct historical connection between Canada's imposition of tied employment in the SAWP – a practice that continues to this day – and the practice of slavery and involuntary servitude in North America.

102. The H-2 visa program in the United States began during World War II as a result of pressure from Florida sugar cane growers, particularly the United States Sugar Corporation ("U.S. Sugar"), to access temporary labour from what was then the West Indies. Plantations in Florida faced decreased labour supply as a result of large numbers of African American workers migrating to the North.

103. Prior to World War II, U.S. Sugar engaged in brutal practices of forced labour, recruiting Black workers from Southern states such as Mississippi and Louisiana on fraudulent pretenses, then holding them in debt bondage and forcing them to work. In 1940, following an FBI investigation, U.S. Sugar was charged with conspiracy to violate the Thirteenth Amendment, the constitutional prohibition against slavery and involuntary servitude. Around this time, the company shifted its labour strategy and turned to temporary foreign labour from the Caribbean as a new source of coerced labour.

104. For U.S. Sugar and other growers, the H-2 guestworker program offered a new form of coerced labour: replacing the *illegal* threat of violence and debt peonage with the *legal* threat of deportation. The H-2 program created a unique and formidable form of management power that sugar cane producers could exert over their workforce. Any worker that was unsatisfactory could be "breached" [i.e. fired and deported] under the terms of the contract, and replaced with a new worker. Fred Sykes of U.S. Sugar said:

> If I had a remedy comparable to breaching [i.e. firing and deporting] an unsatisfactory worker which I could apply to the American worker, they'd work harder too.

105. This statement by Fred Sykes of U.S. Sugar encapsulates the transformative impact that tied employment has on the employer-employee relationship. For Florida sugar cane plantations, tied employment offered compliant labour to replace prior modes of forced labour. The SAWP, in turn, was directly modeled on the U.S. scheme and continues it to this day.

106. In the years leading up to the creation of the SAWP in 1966, Canadian growers lobbied for the right to bring in Caribbean agricultural workers on a seasonal basis. One prominent lobbyist, John Sandham of the Ontario Fresh Fruit Marketing Board, travelled to Florida in 1964 to observe Jamaican workers in cane harvest. Sandham reported back on his trip, in a letter that was forwarded

to the Departments of Labour and Citizenship and Immigration, that he interviewed two "prominent" growers including "Fred Sykes of the U.S. Sugar Corporation and secretary of the British West Indies Employers Association." Sandham reported that he was "impressed with the moral and general attitude" of the Jamaican workers and said the "accommodations I saw were no better than what we could now offer."

107. The SAWP reproduced the essential ingredient of the H-2 program that made it so appealing to Florida sugar cane growers and other employers: tied employment.

108. Tied employment such as it exists in the SAWP therefore not only *reinforces* the history of forced labour experienced by racialized people; for Southern plantation owners it *replaced* and *replicated* conditions of coercion they previously achieved through the actual forced labour of Black farmworkers. As Irving Andre (now the Honourable Justice Irving Andre) wrote in his 1990 article "The Persistence of the Commonwealth Caribbean Seasonal Agricultural Workers Program in Canada": "the [SAWP] approximates much of the control (although not the brutality) inherent in slave labour but avoids the universal opprobrium attached to that system of labour."

109. The SAWP's perpetuation of slavery has been recognized by the United Nations' Special Rapporteur on contemporary forms of slavery. In 2023 Special Rapporteur Tomoya Obokata issued statement following his 14-year visit to Canada, where he observed that "Employer-specific work permit regimes including certain Temporary Foreign Worker Programmes, make migrant workers vulnerable to contemporary forms of slavery, as they cannot report abuses without fear of deportation."

(v) Expansion of Tied Employment to Other Racialized Farmworkers

110. In 1974, the SAWP was expanded to include Mexican workers following negotiations between Canada and Mexico. One of the reasons behind the expansion was to increase the supply of migrant agricultural workers and to provide agricultural employers with leverage to dampen pressures coming from Caribbean governments to improve wages and working conditions for their nationals. The expansion was intended to undermine the bargaining power of Caribbean governments by introducing more competition between countries that supplied seasonal agricultural workers for Canada.

111. The expansion subjected Mexican agricultural workers to the deprivation of freedom that was previously limited to Black and Indo Caribbean agricultural workers. The plaintiffs plead that the extension of tied employment to Mexican agricultural workers was informed by, and furthered, the same discriminatory purposes that motivated its original imposition in the SAWP eight years earlier.

112. In 2011, Canada established the TFWP-Agricultural Stream, which is a second program, in addition to the SAWP, through which migrant agricultural workers are issued employer-specific work permits to work in Canadian agriculture. Unlike the SAWP, the TFWP-Agricultural Stream is not formally exclusive to certain nationalities (and ethnicities); in practice, however, the program "targets" workers from certain national (and ethnic) groups. Guatemala is the largest source country in the TFWP-Agricultural Stream. In every year since 2011, more than half of the workers in the program have been Guatemalan; as of August 2020, 9,690 out of 15,310 workers in the program (63%) were Guatemalan. Other source countries include Mexico, India, Jamaica, Thailand, the Philippines, Honduras, Nicaragua, Vietnam and Ukraine. The overwhelming majority of participants are racialized.

113. The TFWP-Agricultural Stream, by expanding the pool of precarious racialized migrant workers for agricultural employers to recruit from, enabled a phenomenon known as "country surfing" whereby employers pit foreign workers against each other in an endeavour to find the most flexible and obedient labour source. The expansion has reinforced and furthered the racially motivated policy objectives underlying tied employment, both by limiting the bargaining power of SAWP countries and workers, and by subjecting new groups of racialized migrant farmworkers to conditions of coercion and unfree labour originally imposed as part of the SAWP.

G. *Charter* Breaches

(i) Preliminary – Section 7 and Section 15

114. The Plaintiffs claim that the imposition of tied employment on Class Members amounts to a deprivation of liberty and security of the person in breach of section 7. They further claim that this is discriminatory in violation of section 15. While these are separate *Charter* breaches, each breach also informs, compounds and exacerbates the other, such that the *Charter* claims cannot be viewed in isolation.

115. Under section 7, the question of whether the deprivation of liberty and security of the person accords with the principles of fundamental justice must be assessed in relation to the racist objectives that motivated the impugned state action, and must take into account the discriminatory nature of the deprivation. Under section 15, the question of whether tied employment is discriminatory on its face or in its effects must be assessed in the context of the grave impacts on liberty and security of the person.

116. The Plaintiffs' claims under section 7 and section 15, respectively, are not alternative claims for relief. Rather, both infringements contribute to the breach of the Plaintiffs' rights and the Plaintiffs seek remedies that further the purposes of compensation, vindication and deterrence in respect of both infringements.

(ii) Section 7 – Liberty and Security of the Person

117. The imposition of tied employment in the SAWP and the TFWP-Agricultural Stream deprives Class Members of their liberty and security of the person in a manner not in accordance with the principles of fundamental justice.

(a) Deprivation of Liberty

118. The right to liberty includes an inalienable right of autonomy over an irreducible core of one's labour. The freedom of agricultural workers to leave their employer and to pursue employment elsewhere is a fundamental life choice and an exercise of freedom. This was recognized by successive Canadian governments in decades prior to the advent of the *Charter.*

119. In the context of white European farmworkers, the Canadian government recognized that tied employment was "contrary to the whole Canadian belief in freedom of the individual." The very Minister who promulgated the SAWP in 1966 dismissed tied employment, in the context of non-racialized workers, as tantamount to "enslavement" and said he "opposed this form of contract" – while imposing precisely that form of contract on racialized farmworkers in the SAWP.

120. Since 1982, this well-established Canadian freedom – the freedom of immigrant farmworkers to change employers – has been protected as part of the right to liberty

constitutionalized under section 7 of the *Charter.* Importantly, section 7 applies to "everyone" in Canada, not just citizens.

121. The Canadian government selectively affirmed the freedom to change employers for farmworkers on racial and national grounds, when it recognized the freedom for European immigrant farmworkers but denied it to racialized farmworkers in the SAWP. Since then, the *Charter* conferred the right to liberty to "everyone" in Canada (section 7 of the *Charter*) and effectively prohibited discrimination for "every individual" in Canada (section 15 of the *Charter*). The enactment of the *Charter* had the effect of extending the same rights previously conferred only to European immigrant farmworkers, to all farmworkers, including racialized farmworkers in the SAWP and later the TFWP-Agricultural Stream.

(b) Deprivation of Security of the Person

122. Tied employment contributes to increased risks of danger and abuse for Class Members and interferes with the ability of Class Members to protect themselves against such risks.

123. Agricultural workers are among the most vulnerable workers in Canadian society. They perform dangerous work for little pay. They lack individual bargaining power in relation to their employers. They lack collective bargaining power because they are expressly excluded from collective bargaining legislation (including the *Labour Relations Act, 1995* in Ontario). They are also excluded from most employment standards protections, including (in Ontario) the minimum wage, hours of work, daily rest periods, overtime pay, public holidays and vacation pay, among others.

124. In the context of the inherent vulnerability of farmworkers, the freedom to leave one's employer and pursue employment elsewhere is an essential measure of self-protection against risks of danger and abuse. This was explicitly recognized by the Supreme Court of Canada in *Dunmore v. Ontario (Attorney General),* 2001 SCC 94, finding that farmworkers "have no recourse to protect their interests aside from the right to quit."

125. The imposition of tied employment effectively denies Class Members the right to quit. For vulnerable migrant agricultural workers, the so-called "choice" to resign from one's employer and therefore be expelled from the Canadian agricultural sector is no choice at all. In effectively

denying Class Members the right to quit, Canada deprives them of the only recourse they have to protect themselves against situations of danger and abuse. It augments the existing risks Class Members face and it creates new risks by conferring to private agricultural employers coercive control over the lives and autonomy of their workers.

126. The Plaintiffs do not allege that section 7 guarantees a freestanding right to change employers for all workers. Rather, in the context of the specific risks, vulnerabilities and constrained choice experienced by migrant farmworkers, state action that contributes to increased risks and deprives the workers of the ability to protect themselves against those risks engages the right to liberty and security of the person under section 7.

127. The risks, vulnerabilities and constrained choice experienced by Class Members include:

a. Class Members are engaged in precarious and dangerous work for low pay. Agricultural work is one of the most dangerous occupations in the country with high rates of workplace injury and fatality;

b. Class Members are excluded from most statutory labour and employment protections, including collective bargaining legislation and most protections in provincial employment standards legislation;

c. Class Members make great personal and financial sacrifice to travel for work such that voluntarily quitting is not a realistic choice available to them knowing the consequences repatriation would have on the livelihood of them and their families;

d. Class Members are subject to lengthy family separation and related stresses as a result of their spouses and children being denied the opportunity to travel to Canada with them;

e. Class Members are kept “permanently temporary” as a result of being denied any pathway to permanent residency, even if they have dedicated decades of their working lives to maintaining Canada’s agriculture industry;

f. Class Members are socially isolated in rural areas, due in part to conditions of employment imposed by the Defendant. In the SAWP, Class Members are also

required to live where they work and in Ontario are excluded from the protection provided by the *Residential Tenancies Act*;

g. Class Members do not have their own form of transportation if they wish to leave their rural workplace to, among other things, seek legal or social support;

h. Class Members are 'othered' as racialized persons living on the margins of rural, predominantly white communities, and contend with systemic discrimination from the citizenry, police and municipal government when they enter those communities;

i. Class Members who are women face unique and heightened challenges accessing adequate health care. The precarity of their status in Canada also impedes their ability to safeguard themselves against gender discrimination, sexual harassment and sexual assault in the workplace;

j. Class Members' ability to self-advocate, organize and seek assistance are hindered by their time-limited stay in Canada, the threat of termination, and their physical segregation at rural farms;

k. Class Members face the risk of 'blacklisting' by agricultural employers and employer groups if they are seen as troublesome because they have advocated for their self-interest and safety or complained to authorities about working conditions; and

l. Class Members are often provided with no information about their legal rights in Canada. Many also face language and literacy barriers in accessing the minimal employment protections available to them or otherwise trying to protect their interests in the workplace.

128. In the specific context of the above risks and vulnerabilities faced by migrant farmworkers, including heightened risks of injury and fatality, the right to change employers – a fundamental freedom all workers enjoy – rises to the level of a constitutionally necessary freedom in order to safeguard the liberty and security of the person of Class Members. By imposing tied employment, Canada strips Class Members of their ability to protect themselves and contributes both to

heightened risks of physical and psychological harm, and physical and psychological harm experienced by Class Members.

129. The risk to Class Members' security of the person caused by tied employment was recently recognized by Ontario's Deputy Chief Coroner, who recommended ending tied employment as a means to protect agricultural workers following its review of COVID-19 related deaths of temporary foreign agricultural workers in 2020. The Plaintiffs plead that the imposition of tied employment by Canada is sufficiently connected to harms to the liberty and security of the person of Class Members to engage the protection of section 7 of the *Charter.*

(c) Admissions of Harm by Canada

130. The Canadian government has repeatedly acknowledged the risks to Class Members caused by tied employment and the need to end tied employment as a means to protect workers, or more precisely, to allow workers to protect themselves.

131. In September 2016, the House of Commons Standing Committee tasked with reviewing the Temporary Foreign Worker Program recognized that "employer-specific work permits tying workers to one employer lead to a power imbalance that is conducive to abuse." The Standing Committee stated Canada should "take immediate steps to eliminate the requirement for an employer-specific work permit."

132. This followed similar findings by another Parliamentary Standing Committee in May 2009, recommending that Canada "discontinue making work permits of temporary foreign workers employer-specific."

133. In a Mandate Letter in February 2017, the Prime Minister directed the Minister of Immigration, Refugees and Citizenship to work with the Minister of Employment, Workforce Development and Labour to, *inter alia:* "act on the recommendations of the House of Commons Standing Committee on Human Resources, Skills and Development and the Status of Persons with Disabilities' study of the temporary foreign worker program."

134. Despite the explicit findings and recommendations by multiple Parliamentary Standing Committees and the Prime Minister's direction to implement the recommendations, Canada has still not ended employer-specific work permits for Class Members.

135. In December 2018, Canada issued a Regulatory Impact Analysis Statement in respect of new regulations creating an application procedure for migrant workers who experience abuse to apply for authorization to leave their employer and work elsewhere. In the context of this Regulatory Impact Analysis Statement, the Defendant made the following further admissions about the risks of abuse caused by the imposition of tied employment:

a. "the power imbalance created by this dynamic [i.e. employer-specific work permits] favours the employer and can result in a migrant worker enduring situations of misconduct, abuse or other forms of employer retribution";

b. employer-specific work permits "[create] some conditions under which risks of abuse could be higher";

c. risks of abuse include "the structure and financial barriers to mobility for migrant workers experiencing abuse, or at risk of abuse, related to their employment";

d. "[m]igrant workers also fear reprisal from their employers or recruiters if they give voice to their experiences of abuse, which intensifies their propensity to stay in poor or abusive working conditions";

e. the risks faced by migrant workers if they report their abuse "present a compelling incentive for migrant workers to hide their abuse from authorities";

f. "[t]he power imbalance that is somewhat inherent in all employment relationships is intensified for migrant workers as a result of their temporary status in Canada, and in the case of employer-specific work permit holders, the conditional nature of their authorization to only work for one employer";

g. the power imbalance "can be further exacerbated by factors such as low language and skill levels, lack of knowledge of their rights, misinformation";

h. "[g]ender and intersectional factors (e.g. age, race, low skill level, low wage level, and/or low language level) may further exacerbate workplace abuse";

i. the experience of migrant workers in Canada as "'vulnerable', 'exploited,' 'precarious' and at risk of abuse by their employers has been clearly documented and well-established in the academic literature over the past two decades, in particular those in working agricultural and caregiving occupations"; and

j. "[m]igrant workers on employer-specific permits are known to fear reprisals or deportation if they speak out against their employer, and many cannot bear the financial consequences of leaving an employer."

136. Despite admitting the risks of abuse and harm caused by tied employment – a condition imposed by the Defendant – the Defendant still did not act on the Parliamentary Committee's recommendation to end employer-specific work permits for Class Members. Instead, the Defendant maintained employer-specific work permits, and promulgated an inadequate and ineffective 'failsafe' measure permitting migrant workers who experience workplace abuse to submit an application for authorization to leave their employer, but only *after* the abuse or risk of abuse has occurred in each case. Rather than safeguarding the freedom of Class Members to protect themselves against risks of future abuse, Canada has made proving past abuse the precondition for the exercise of freedom in each case.

(d) Inadequate Failsafe

137. The Open Work Permit for Vulnerable Workers ("OWP-V") was promulgated through amendments to the *Immigration and Refugee Protection Regulations* in December 2018, and was implemented in June 2019. Prior to June 2019, there was no failsafe whatsoever to mitigate against the devastating harms tied employment has inflicted on Class Members.

138. Beginning in June 2019, section 207.1 of the *Regulations* authorized foreign nationals on employer-specific work permits to apply for an open work permit if, *inter alia,* "there are reasonable grounds to believe that a foreign national in Canada is experiencing or is at risk of experiencing abuse in the context of their employment in Canada."

139. Section 196.2 defined "abuse" to mean physical, sexual, psychological and financial abuse. If issued, the open work permit is valid for 12 months, after which point the worker must typically secure another tied employment relationship.

140. The OWP-V policy has not prevented abuse or risk of abuse experienced by Class Members, nor has it alleviated the deprivations of liberty or security of the person set out above. There are numerous reasons for its failure in this regard:

a. The OWP-V policy does not prevent or alleviate the risk of abuse created by tied employment. Class Members are still tied to their employer, and are thereby put at heightened risk of physical and psychological abuse. Class Members are still prohibited from exercising their freedom to protect themselves by leaving their employer;

b. The OWP-V policy requires Class Members experiencing abuse or risk of abuse to prepare an application, with supporting evidence, as a precondition to exercising their freedom to leave their employer. Well-documented and longstanding access to justice issues facing migrant agricultural workers make this impractical, if not impossible. Furthermore, Class Members who submit applications are legally compelled to stay in situations of abuse or risk of abuse pending the determination of their applications, which take an average of 40 days and in some cases three to four months;

c. Class Members are disincentivized from participating in the OWP-V program. As acknowledged by the Defendant, migrant workers fear reprisals from their employer if they submit complaints to authorities. If an application through the OWP-V program is unsuccessful, but triggers workplace inspections, an employer may infer that a complaint was made and punish the worker. Class Members have been terminated by their employer, without recourse, in the case of unsuccessful applications through the OWP-V program;

d. Class Members in the SAWP also face a risk of "blacklisting" even if their applications are successful. After the OWP-V was promulgated, foreign

government representatives in both Leamington, Ontario and Vancouver, British Columbia warned Class Members not to apply for an open work permit in the case of abuse by their employer if they wanted to avoid jeopardizing their access to future work permit renewals; and

e. Class Members face the following additional barriers to accessing the program:

(i) limited proficiency in English or French, which is necessary to prepare the application, with detailed information about the program only available in those languages;

(ii) complicated online application process, with many Class Members being dependent on their employers to access computers and the Internet;

(iii) lack of assistance in preparing applications, which typically require 15 to 30 hours of assistance from legal or social support workers, in the rare cases where Class Members are able to access support;

(iv) social isolation on the farm that prevents access to community support, compounded by the fact that many Class Members are dependent on their employer for transportation to and from the workplace;

(v) dependency on their employer to get time off work to prepare the application, including meeting with any community support;

(vi) insufficient legal knowledge to identify the way their experiences would make them eligible for the OWP-V permit and adequately prepare their case; and

(vii) inability to get time off work to conduct the interviews as part of the application process, which are scheduled by Canadian officials on short notice.

141. Rather than ending tied employment and allowing Class Members to protect themselves by exercising the freedom to leave their employers – which was the specific recommendation of

two Parliamentary Standing Committees and the Ontario's Deputy Chief Coroner – the Defendant instead created an administrative procedure whereby Class Members can apply for authorization to exercise their freedom only *after* they have experienced *Charter*-prohibited harms.

142. Section 7 protects individuals against state action that contributes to an increased risk of physical and psychological harm. The OWP-V policy, by maintaining tied employment which is the cause of the deprivation of liberty and security of the person, fails to cure or alleviate the breach.

(e) Forced Residency Exacerbates the Section 7 Breach

143. The Defendant imposes mandatory contractual conditions on Class Members in the SAWP requiring them to reside at the premises of their employer. This requirement constitutes an additional breach of section 7 and exacerbates the deprivations set out above.

144. In *Godbout v. Longueuil (City),* [1997] 3 SCR 844*,* Chief Justice Lamer held that a state-imposed requirement to reside in the municipality of one's employer engages the liberty interest of workers under section 7. The Defendant goes much further in this case by requiring the worker to reside at the specific premises of the employer. This requirement, in addition to engaging the workers' liberty interest, exacerbates the breach of security of the person by further impairing the ability of the worker to protect themselves against risks of abuse. Forced residency at the employer's premises increases worker vulnerability, eliminates personal space or autonomy, limits the ability of workers to participate in the OWP-V program, and more generally, puts Class Members at an even greater disadvantage when seeking to protect themselves against the risks created by the imposition of tied employment. It also reinforces the historical disadvantage and oppression in relationships between employers and migrant agricultural workers by effectively treating the latter more as property than as people.

(f) Principles of Fundamental Justice

145. The deprivations of liberty and security of the person caused by tied employment are not in accordance with the principles of fundamental justice. The principles of fundamental justice, including arbitrariness, gross disproportionality, and overbreadth, are assessed in relation to the government objective that motivated the specific impugned provision, not the general scheme. The

relevant objective is *not* the one that motivated the SAWP and TFWP-Agricultural Scheme generally, but rather the one that motivated the specific impugned provision of tied employment.

146. Whereas the SAWP was promulgated to fill agricultural labour shortages, tied employment was imposed by Canada as a feature of the SAWP in furtherance of specific racist and discriminatory objectives set out above, including to prevent racial integration, to avoid so-called "racial problems", and to otherwise limit the freedom of Black workers on racial grounds.

147. The Plaintiffs' primary position is that the deprivation of freedom and security of the person of racialized workers in furtherance of a racist and discriminatory objective is not, and cannot be, in accordance with the principles of fundamental justice. State action that deprives individuals of liberty or security of the person *because of their race* is not in accordance with fundamental justice.

148. Alternatively, if the Court construes the objective of tied employment more generally – for example, as seeking to fill agricultural labour shortages – then it offends the following principles of fundamental justice:

a. *Arbitrariness* – Tied employment is arbitrary in relation to the objective of filling agricultural labour shortages because the objective can be achieved without the imposition of tied employment, indeed the Canadian government has historically filled agricultural labour shortages without imposing tied employment. By depriving Class Members of protections and freedoms generally available to other agricultural workers in Canada, tied employment is also arbitrary in relation to the stated "guiding principle" of ensuring treatment equal to that received by Canadian workers performing the same type of work;

b. *Gross disproportionality* – The deprivations of liberty and security of the person caused by tied employment – including harms to the health and safety of workers and to their inherent dignity as rights holders – are grossly disproportionate to any benefit tied employment may generate in addressing agricultural labour shortages; and

c. *Overbreadth* – The deprivations of liberty and security of the person are overbroad. To the extent that tied employment represents an important measure to address labour shortages generally, the application of tied employment to migrant agricultural workers specifically is overbroad and cannot be justified given their heightened vulnerabilities and risks of abuse.

149. The Regulatory Impact Analysis Statement that accompanied the promulgation of the OWP-V policy included an additional purported rationale for maintaining tied employment: to "hold employers accountable by requiring them to abide by program conditions (e.g. wages, working conditions)." The Plaintiffs deny that tied employment was motivated by a desire to protect workers. In the alternative, if this objective is accepted by the Court, then the imposition of tied employment on Class Members is arbitrary in relation to the objective of protecting workers, because it imposes and contributes to the very risks of abuse from which Class Members need protection. Tied employment is also grossly disproportionate and overbroad in relation to this stated objective.

150. Prior to the implementation of the OWP-V policy in June 2019, the Defendant imposed tied employment without any possibility of failsafe or relief from the risks of abuse it created. The imposition of tied employment without any failsafe whatsoever – which was the case at all material times prior to June 2019 – plainly offends the principles of arbitrariness, gross disproportionality and overbreadth.

151. Following June 2019, the imposition of tied employment continued to offend the principles of arbitrariness, gross disproportionality and overbreadth because of the inadequacy and deficiency of the failsafe, as detailed above. Among other things, the purported failsafe only applies to Class Members *after* they experienced abuse or risk of abuse. Class Members face innumerable barriers when accessing the failsafe, they are forced to continue to endure conditions of abuse pending their applications, and they face potential reprisal and "blacklisting" even in the event of successful applications. Given that the OWP-V does not alleviate the risks faced by Class Members as a result of tied employment, the continued imposition of tied employment still does not accord with fundamental justice.

(iii) Section 15 – Equality Rights

152. The Plaintiffs claim that tied employment infringes their equality rights based on race, nationality and ethnicity, and citizenship:

a. Race and national and ethnic origin are enumerated s. 15 grounds. The SAWP distinguishes based on race and national and ethnic origin as only workers of particular nationalities, from countries with majority racialized populations, are eligible to participate in the SAWP. The majority of workers participating in the TFWP-Agricultural Stream are also racialized.

b. Citizenship is a recognized, analogous ground. The SAWP and TFWP-Agricultural Stream create a distinction based on citizenship by imposing a condition, tied employment, on Class Members as non-citizens that cannot be, and is not, imposed on Canadian citizens.

153. The imposition of tied employment on Class Members is discriminatory on its face and in its impact. The discriminatory effects of tied employment include the denial of the freedom to change employers, and the associated harms that result from this denial. The Plaintiffs also claim effects-based discrimination on the basis of their exclusion from regular and sickness EI benefits as a result of the imposition of tied employment.

154. The imposition of tied employment on Class Members perpetuates stereotype and prejudice and has a disproportionate impact that exacerbates the disadvantages that Class Members already face based on their race, ethnicity and nationality, and status as non-citizens.

(a) Discrimination – Restriction of Freedom

155. By imposing tied employment on Black and Indo Caribbean (and later Mexican) farmworkers in the SAWP, but not on farmworkers of European descent, Canada's actions were discriminatory on their face and in their impact. The intended outcome was to deny rights and entitlements and impose deprivations for a group of people based on their race, ethnicity or nationality, or citizenship.

156. The racial discrimination was intentional. The purpose that motivated the imposition of tied employment on Black and Indo Caribbean workers was rooted in racist stereotypes. Canada's objectives in imposing coercive conditions of employment on farmworkers in the SAWP, but not other farmworkers, included ensuring racial segregation and preventing so-called "racial problems".

157. Prior to the imposition of tied employment, the Defendant subscribed to a policy of prohibiting the admittance of Black farmworkers from the Caribbean in furtherance of racist policy objectives. With the promulgation of the SAWP, farmworkers who were previously barred from entry on racist grounds were finally admitted. However, tied employment – by imposing coercive conditions of employment on Caribbean farmworkers who were previously barred from entry – was the means by which Canada furthered the same racist policy objectives that previously justified the outright exclusion of such workers.

158. Tied employment reinforced, and continues to reinforce, racist stereotypes about Class Members. It perpetuates the very same racist stereotypes that motivated the imposition of tied employment in the first place, including stereotypes that Black people are not predisposed to freedom and that racial integration would cause "social problems" or "racial problems".

159. Tied employment was imposed without regard for the personal circumstances, needs and inherent dignity of workers in the program. Canada specifically rejected the imposition of tied employment for European farmworkers, out of an explicit recognition of their dignity and freedom, underlining the relative lack of regard Canada showed for the dignity and freedom of Class Members.

160. The continued imposition of tied employment on Class Members, decades after its inception, serves to further marginalize, prejudice and stereotype Black, Indo Caribbean and Mexican farmworkers in Canada. Tied employment amplifies the historical disadvantage faced by these groups.

161. The imposition of tied employment on Class Members also reinforces the historical disadvantage of racialized, non-citizen workers in Canada, including farmworkers, more generally:

a. The state-imposed denial of liberty for a subset of predominantly Black and racialized farmworkers, and the creation of conditions of heightened employer coercion for these workers, perpetuates the legacy of slavery and indentured servitude in Canada;

b. The state-imposed restriction of Class Members' freedom to resign from their employment and change employers reinforces the historical and continuing legacy of racial discrimination in employment in Canada;

c. The state-imposed requirement to reside at the agricultural employer's premises, and the corresponding denial of the freedom to live in the community of the worker's choosing, reinforces the legacy of racial segregation in Canada. It exacerbates the disadvantage faced by racialized farmworkers who are unable to meaningfully exercise their rights or participate as full members of their community as a result of forced housing segregation and resulting social isolation imposed by the program; and

d. The continued imposition of tied employment on racialized farmworkers in the SAWP and the TFWP-Agricultural Stream exacerbates the historical disadvantage racialized farmworkers face as compared to European immigrant farmworkers, who were not subjected to the onerous conditions of employment imposed by Canada out of a recognition of their freedom.

162. The discriminatory denial of freedom for racialized farmworkers in the SAWP, compared to European farmworkers, did not cease to be discriminatory simply because the number of European farmworkers admitted to Canada diminished over time. The opposite is true. The continued deprivation of freedom for racialized farmworkers in the SAWP decades after the promulgation of the policy, reinforces and perpetuates the disadvantage created by the earlier discrimination. The result is a group of racialized workers in Canada who continue to experience the generational effects of a racist and discriminatory policy, first promulgated in 1966 in furtherance of racist objectives, and continued to this day.

(b) Discrimination – Denial of EI

163. Besides the harms to Class Members' liberty and security of the person, Canada has also enriched itself by hundreds of millions of dollars because of the imposition of tied employment. Tied employment has the effect of excluding Class Members from accessing regular and sickness EI benefits, despite paying EI premiums. This infringes the equality rights of Class Members under the *Charter.*

164. Canada collects tens of millions of dollars in EI premiums from Class Members per year, while imposing conditions of employment that make it impossible for them to access the benefits of the premiums they are required to pay. Over the 15-year class period Canada was unjustly enriched by more than $472 million. This claim seeks damages based on a breach of section 15 of the *Charter,* as well as unjust enrichment.

165. Through the imposition of tied employment, Canada deprives Class Members in the SAWP and the TFWP-Agricultural Stream of the ability to ever receive regular benefits under the *EIA*.

166. The structure of the SAWP and the TFWP-Agricultural Stream is such that any participant is authorized to work in Canada and be present in Canada *only* for the temporary period during which he or she is employed *at a specific employer*. Even if a worker were to remain in Canada after the termination of employment, the worker would be prohibited by the terms of their visa from accepting work from a different employer. The worker would not, therefore, be considered "capable and available for work" within the meaning of the *EIA*. In the result, Class Members are required to pay EI premiums without the possibility of ever receiving regular benefits.

167. The employment conditions imposed by Canada have the automatic effect of excluding Class Members from the ability to access regular EI benefits at the very moment of the termination of their employment i.e. the moment when they would otherwise become eligible to receive regular EI benefits under the *EIA*.

168. The same government department, Employment and Social Development Canada ("ESDC"), oversees both the EI scheme (which collects EI premiums from Class Members) and the SAWP and TFWP-Agricultural Stream schemes (which impose conditions making it impossible for Class Members to receive EI benefits). Accordingly:

a. ESDC collects EI premiums paid on behalf of SAWP and TFWP-Agricultural Stream workers, knowing that it will be impossible for such workers to collect regular EI benefits following the termination of their employment because they will be neither physically present in Canada nor "capable and available for work";

b. ESDC oversees the Labour Market Impact Assessment process that authorizes agricultural employers to employ migrant agricultural workers on a temporary contractual basis;

c. ESDC imposes terms and conditions of employment on SAWP and TFWP-Agricultural Stream workers, including through mandatory terms of contract as well as tied work permits issued by Immigration, Refugees and Citizenship Canada ("IRCC"), that have the effect of excluding the workers from ever accessing regular benefits in the event of termination; and

d. Until recently, the termination clause imposed by ESDC on all SAWP workers specifically authorized the employer "to terminate the WORKER's employment hereunder *and so cause the WORKER to be repatriated*." This express contractual term imposed by ESDC excluded Class Members from ever accessing EI benefits. The same condition of employment continues to be imposed, with simply a change in language requiring the worker to "return promptly" to the sending country in the event that the employer terminates their employment.

169. Whereas the statutory scheme of unemployment insurance is intended to protect workers following the termination of their employment, Canada has imposed terms and conditions of employment on migrant farmworkers that necessarily disentitle them from unemployment insurance following their termination.

170. By virtue of the terms and conditions of employment imposed by Canada, termination of employment, which is the triggering event for *entitlement* to EI benefits under the *EIA*, is transformed into the basis for *disentitlement* for Class Members.

171. Special benefits for sickness are available, in principle, for those who become sick and are unable to work. Sickness benefits are in practice unavailable because sick workers are typically

repatriated once they are injured or fall ill. ESDC exercises a dual role in respect of sickness benefits as well:

a. ESDC collects EI premiums paid on behalf of SAWP and Agricultural Stream workers, knowing that such workers will only be able to access sickness benefits if they are physically present in Canada following the onset of illness or injury; and

b. ESDC imposes terms and conditions of employment that authorize employers to terminate the employment and thereby repatriate the worker for "medical reasons", rendering them ineligible from accessing sickness benefits.

172. The denial of EI benefits for Class Members, while still requiring them to pay EI premiums, offends substantive equality under the *Charter.* It reinforces, perpetuates and exacerbates the historical disadvantage of a group of racialized, non-citizen workers in Canada.

173. Going back to the promulgation of the SAWP, Class Members collectively have been deprived of billions of dollars in wrongfully collected EI premiums and/or wrongfully denied EI benefits because of Canada's discriminatory conduct. Canada, in turn, has enriched itself in the amount of billions of dollars on the backs of racialized workers who are denied benefits available to all other workers because of the imposition of tied employment.

(iv) Section 1 – Not Demonstrably Justified

174. The deprivation of the right to liberty and security of the person and/or the equality rights of Class Members cannot be demonstrably justified in a free and democratic society under section 1 of the *Charter.*

175. The objective of the measure must be assessed at the time the measure was adopted. Tied employment was adopted as part of the SAWP in 1966. The purpose of the measure at the time it was adopted was itself discriminatory. Tied employment was imposed on Black and Indo Caribbean farmworkers, and not European farmworkers, *because* of their race and nationality. It was imposed as a means to obtain the labour of racialized workers while subjecting such workers to more coercive conditions of employment, segregating them from Canadian communities,

preventing their integration into Canadian society, and preventing so-called "social problems" that would arise from such integration.

(a) No Pressing and Substantial Objective

176. An objective that is itself discriminatory or unconstitutional is not a pressing and substantial objective to justify the infringement of a constitutional right. The deprivations of sections 7 and 15 in this case cannot be justified by a purpose that is itself informed by racist beliefs and stereotypes.

177. A shift in purpose is not permissible. Canada cannot avoid the burden of defending its policy based on the racist policy objectives that motivated it, by arguing that *current* policy-makers are no longer motivated by those same racist policy objectives. Even if current policy-makers no longer hold the same racist beliefs and stereotypes as their predecessors and are no longer motivated by an overtly discriminatory purpose, the continued imposition of tied employment – both in the SAWP and the TFWP-Agricultural Stream – nevertheless furthers the racist policy objectives that motivated its imposition.

178. In the alternative, even if the government's policy purpose can shift in some circumstances, it has not shifted in this case, because the discriminatory impact of tied employment today is the same discriminatory impact that was intended at the program's inception.

(b) Proportionality

179. In the further alternative, if the objective of tied employment is construed more broadly – for instance, to fill agricultural labour shortages – and is thereby found to be pressing and substantial, then the policy fails at the proportionality stage of the *Oakes* test.

180. The imposition of tied employment is not minimally impairing of Class Members' rights. The objective of filling agricultural labour shortages can be achieved without impairing Class Members' rights, or without impairing them to the same degree. For instance, Canada has historically achieved this very objective through the immigration of European farmworkers without subjecting them to similar deprivations of freedom. It was only when Canada shifted its labour strategy to racialized farmworkers from the Caribbean (and later Mexico) that it adopted

the impugned rights-infringing policy. Tied employment is neither necessary nor minimally impairing to achieve Canada's objectives with respect to agricultural labour shortages.

181. The promulgation of the OWP-V policy in 2019 constitutes an effective admission by Canada that, prior to 2019, the imposition of tied employment failed the minimal impairment test.

182. Even after 2019, the imposition of tied employment continues to fail the minimal impairment test because the OWP-V does not alleviate the rights violations. A minimally impairing alternative that would still accomplish the objective of filling agricultural labour shortages would be to eliminate employer-specific work permits for Class Members, consistent with the recommendations of two Parliamentary Standing Committees and Ontario's Deputy Chief Coroner.

183. The harms caused by the imposition of tied employment, including harms to the inherent rights and dignity of Class Members *and* financial losses through the effective denial of EI benefits, outweigh any salutary benefits associated with the imposition of tied employment.

(v) Section 27 – Interpretative Clause

184. In support of their claims under sections 7 and 15 of the *Charter*, the Plaintiffs also plead and rely on section 27 of the *Charter*: "This *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

185. The right to liberty and security of the person of Class Members under section 7, and their right to equality under section 15, must be interpreted in accordance with section 27. The question of government justification under section 1 must also be informed by section 27.

186. The impugned government conduct was motivated by overt anti-Black policy objectives, including to preserve racial segregation and prevent the assimilation of Black and Indo Caribbean farmworkers into Canadian society. Such objectives are antithetical to the preservation and enhancement of multiculturalism in section 27 of the *Charter*. They are therefore not pressing and substantial objectives for the purposes of justifying the infringement of a *Charter* right.

(vi) International Law

187. The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (the "Convention") was adopted in December 1990, and entered into force in July 2003. As of November 2022, 58 states are members to the Convention, and an additional 11 are signatories.

188. Although Canada has thus far refused to ratify the Convention, the Convention nevertheless embodies international norms concerning the rights of migrant workers and is relevant to the interpretation and application of domestic laws concerning such workers, including provisions of the *Charter*.

189. Article 7 of the Convention requires State parties to protect the rights of migrant workers and their families regardless of "sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status."

190. The provisions below specifically prohibit the very type of conduct that Canada has engaged in.

191. Article 25 of the Convention states that:

> 1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
>
> > (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
> > (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment.
>
> 2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
>
> 3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or

contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

192. Article 27 of the Convention states that:

> 1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
>
> 2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

193. Article 54 of the Convention states that:

> Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
>
> (a) Protection against dismissal;
> (b) Unemployment benefits;
> (c) Access to public work schemes intended to combat unemployment;
> (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

194. Canada, as a country that benefits from the labour of migrant agricultural workers, has not ratified the Convention. The Convention is nevertheless contextually relevant to understanding the standards developed by the international community for the protection of these most vulnerable of workers. That Canada's denial of unemployment benefits is inconsistent with these standards is reflective of the fundamentally oppressive and exploitative nature of the SAWP and TFWP-Agricultural Stream. The Plaintiffs plead that sections 7 and 15 of the *Charter* must be interpreted in accordance with the international norms set out above. The Plaintiffs further plead that such norms are relevant to the interpretation of section 1 of the *Charter* and the question of whether any limits on the *Charter* rights of Class Members can be demonstrably justified. The fact that less rights-infringing alternatives are in fact mandated by the Convention informs the question of whether the impugned government policy is demonstrably justified in this case.

H. *Charter* Damages

195. To remedy the breach of their section 7 and section 15 rights, the Plaintiffs claim *Charter* damages under section 24(1) of the *Charter*. Damages are necessary to achieve the threefold objectives compensation, vindication and deterrence.

(i) Compensation

196. The Plaintiffs claim *Charter* damages to compensate Class Members for the physical and psychological harms they experienced as a result of the imposition of tied employment.

197. The Plaintiffs also claim *Charter* damages as a result of their exclusion from EI benefits. Even workers whose employment was never terminated suffered damages because they paid EI premiums while being denied any insurance protection or peace of mind from those premiums. Class Members paid approximately $472 million in premiums to the Defendant during the Class Period while being excluded from accessing the insurance benefit of the premiums on discriminatory grounds, because of tied employment.

198. The Plaintiffs seek *Charter* damages on the basis of compensation, restitution and/or disgorgement arising from the wrongfully collected premiums. For Class Members whose employment was terminated mid-contract, the Plaintiffs also seek compensation for lost EI benefits as a result of the Defendant's discriminatory conduct.

(ii) Vindication

199. *Charter* damages are necessary to vindicate the breach of the right to liberty and security of the person and the equality rights of all Class Members.

200. Vindication gains heightened importance in the context of deliberate or knowing violation of *Charter* rights by the government – especially where the violations impact the most marginalized and vulnerable. In this case, the rights violations were deliberate from the outset, in the sense that Canada imposed tied employment as a means to restrict the freedom of racialized workers in furtherance of racist objectives. The relevant Ministers acknowledged that tied employment was anathema to Canadian freedom and even amounted to "enslavement", but nevertheless imposed it on Class Members because of their race and nationality.

201. Such deliberate rights infringements, violating the inherent liberty interests of Class Members and doing so on discriminatory grounds, cry out for vindication.

(iii) Deterrence

202. *Charter* damages are necessary to deter similar discriminatory state action in the future.

203. Canada was repeatedly put on notice of the rights violations and continued its unconstitutional conduct in the face of knowledge, or recklessness or wilful blindness, of the harms. Canada's conduct in the face of knowledge of harm amounted to bad faith:

a. In 2009, a Parliamentary Standing Committee recommended the end of employer-specific work permits;

b. In 2016, another Parliamentary Standing Committee again recommended the end of employer-specific work permits, specifically recognizing that they "lead to a power imbalance that is conducive to abuse";

c. In 2018-2019, the Defendant specifically admitted the harms and risks of abuse caused by tied employment, and made a conscious decision to maintain tied employment in the face of those harms and despite the recommendations of its own Parliamentary Standing Committees.

204. Canada was also repeatedly put on notice of the discriminatory denial of EI benefits throughout the Class Period:

a. In December 2005, in *Fraser v. Canada (Attorney General),* 2005 CanLII 47783 (ON SC), the Superior Court of Justice dismissed Canada's motion to strike out a claim that challenged provisions of the *EIA* on similar grounds. Although this claim was not pursued by the applicants, it put Canada on notice of the discriminatory effects its policies were causing to migrant agricultural workers. Canada has had actual knowledge of the discriminatory denial of access to EI benefits for Class Members for more than 20 years;

b. In March 2014, Canada was again put on notice of the discriminatory harm to Class Members in subsequent years, in a public report that disclosed that Canada collected approximately $21.5 million dollars per year in EI premiums from migrant agricultural workers, while excluding them from accessing regular EI benefits. Canada was aware of this report and responded to it;

c. In July 2021, Canada was again put on notice of the discriminatory harm in a research report published by the ESDC that, among other things, accepted the "historical racist genesis" of the SAWP, accepted that the SAWP was "unequivocally" rooted in racism and discrimination, and described its continuing discriminatory impacts. On the issue of the collection of EI premiums from Class Members, the ESDC publication noted:

> Adding insult to injury, migrant workers who pay millions into employment insurance contributions, cannot collect benefits given that, as temporary workers, they have to leave Canada once unemployed.

Canada's continued failure to remedy the discriminatory conduct of its own agencies and departments, in the face of knowledge of ongoing discriminatory harms, amounted to bad faith.

205. In this way, the Defendant showed reckless disregard for the inherent dignity and rights of all Class Members, warranting elevated damages to vindicate the rights violations and deter similar conduct in the future.

(iv) No Countervailing Concerns

206. There are no countervailing concerns, such as good governance or the availability of alternative remedies, that militate against an award of *Charter* damages.

207. The *Charter* breaches identified herein did not result from legislation. In any event, Canada's conduct in causing these *Charter* breaches was clearly wrong, in bad faith or an abuse of power.

208. Damages constitute an appropriate and just remedy under section 24(1) for reasons set out above.

I. Unjust Enrichment

209. Over the past 15 years, Canada has enriched itself by more than $472 million in EI premiums collected from migrant agricultural workers, who are structurally excluded from accessing regular or sickness benefits, and from their employers. In addition to claiming *Charter* damages based on their discriminatory exclusion from EI benefits, the Plaintiffs also claim damages, restitution and/or disgorgement of said amounts in unjust enrichment. The unjust enrichment was done on the backs of one of the most vulnerable segments of the Canadian workforce – migrant agricultural workers.

(i) No Juristic Reason – Tied Employment

210. Canada, including ESDC, was enriched by the mandatory payment of EI premiums by Class Members, while being relieved of the obligation to provide any such benefits to Class Members. The enrichment was the result of tied employment, which was imposed on Class Members in furtherance of racist and discriminatory policy objectives.

211. Class Members suffered a corresponding deprivation, including the loss of the value of premiums, the denial of the insurance benefit of their premiums, and, in the case of Class Members whose employment was terminated mid-contract, the loss of regular or sickness EI benefits.

212. There was no juristic reason for the deprivation to Class Members or the benefit to Canada, since Canada's imposition of tied employment – which caused the enrichment and the deprivation – was unconstitutional and discriminatory.

213. It is "against all conscience" for Canada to retain the hundreds of millions of dollars that it compelled Class Members to provide. The Class seeks restitution and/or disgorgement in respect of EI premiums collected by Canada from Class Members and their employers.

(ii) No Juristic Reason – Unconstitutional *EIA*

214. In the alternative, if the Court finds that there was a juristic reason for the deprivation, being provisions of the *EIA,* then the Plaintiffs claim that the relevant provisions of the *EIA* themselves infringe section 15 of the *Charter* based on their discriminatory effects.

215. The necessary effect of sections 5, 18 and 37 of the *EIA* is to compel Class Members to pay EI premiums while excluding them from the possibility of ever accessing regular or sickness benefits, because of their race and nationality as participants in the SAWP and TFWP-Agricultural Stream programs. This amounts to a discriminatory denial of a benefit based on prohibited grounds under section 15. It reinforces, exacerbates and perpetuates the disadvantage faced by specific racial and national groups in Canada.

216. The Defendant continued the discriminatory denial of EI benefits to Class Members, through the combined effects of legislation (provisions of the *EIA*) and conduct (imposition of tied employment to exclude Class Members from benefits under the *EIA*), years after being put on notice of the oppressive effects of this policy.

J. Punitive Damages

217. Canada's conduct toward Class Members has been flagrant, calculated, and rooted in racist and discriminatory policy objectives.

218. Canada did, at all material times during the Class Period, facilitate employment relationships characterized by unlawful conditions and practices which exploited Class Members' vulnerability and jeopardized their ability to improve their circumstances in the workplace. Canada has engaged in this conduct with full knowledge that the terms and conditions of the SAWP and the TFWP-Agricultural Stream intensify the power imbalance between employers and migrant agricultural workers, with nearly all power being held by employers.

219. That Canada would deprive workers of the freedom to protect themselves from abuse, and collect EI premiums while denying access to regular benefits is unconscionable on its own. That Canada would reap hundreds of millions of dollars by doing this to highly vulnerable and precariously situated migrant agricultural workers, unlawfully taking the most from those who have the least, requires denunciation in the strongest possible terms.

220. Canada's prolonged collection of EI premiums from Class Members – impoverished workers from the global south – while systemically undermining their ability to access regular and sickness benefits, was a scheme that enriched it at the expense of those who needed those benefits the most. It has irreparably harmed the lives of Class Members, putting them at a demonstrably disadvantaged position in comparison to those who have the freedom to access benefits for which they pay premiums.

221. Compensatory damages alone cannot adequately achieve the objectives of retribution, deterrence, and condemnation. Canada's conduct was so oppressive and high-handed that it offends this Court's sense of decency.

222. Punitive damages are required to adequately convey society's strong condemnation of the egregious discrimination that has characterized the treatment of migrant agricultural workers under the SAWP and the TFWP-Agricultural Stream.

223. Full particulars respecting the operation of the SAWP and the TFWP-Agricultural Stream, including contract development, repatriation types and frequency, and the precise sum of EI premiums collected from Class Members, are within Canada's knowledge, possession and control.

K. Legislation

224. The Plaintiffs plead and rely on provisions of the following statutes and regulations:

a. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982;

b. *Courts of Justice Act*, R.S.O. 1990, c. C. 43;

c. *Crown Liability and Proceedings Act,* R.S.C., 1985, c. C-50;

d. *Employment Insurance Act*, S.C. 1996, c. 23;

e. *Immigration and Refugee Protection Act,* S.C. 2001, c. 27; and

f. *Immigration and Refugee Protection Regulations*, S.O.R./2002-227.

225. The Plaintiffs request that this action be tried in Toronto.

December 6, 2023

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