Equality Rights for Temporary Migrant Labourers Under Section 15 of the *Charter*
Guiding questions

How do temporary foreign worker programs in Canada perpetuate discrimination and abuse against migrant laborers?

How do employer-tying work policies violate migrant workers’ section 15 Charter equality rights?

What are the main challenges in using section 15 to combat discrimination in temporary foreign worker programs?
Presentation structure

MIGRANT LABOUR IN CANADA
Temporary foreign worker programs
Employer-tied visa policy

SECTION 15 AND MIGRANT LABOUR
Charter rights for temporary migrant labourers
Administrative actors and Charter litigation

SECTION 15 AND EMPLOYER-TIED VISAS
Discrimination and equality analysis
Section 1 considerations
Migrant labour in Canada
History of migrant labour in Canada

Mid-19th century
- Immigration laws based on racial hierarchy, heavily excluding non-European groups

Late-19th century
- Chinese Immigration Act of 1885 heavily restricted Chinese immigration and exploited Chinese labor for the Canada Pacific Railway.

Early-20th century
- Canadian immigration policy established a four-tier preference system with restrictive measures against Asians and Africans.

Late-20th century
- Non-Immigrant Employment Authorization Program (NIEAP) established in 1973

Present
- Temporary Foreign Worker Program (TFWP) in force, with revisions in 2002, 2006, 2013
Migrant labour in Canada

- Border imperialism
- Agriculture and domestic work sectors
- Demonization of marginalized groups
- Maintain cheap labor in Global North
- Capitalism
- Globalization

Globalization

Maintain cheap labor in Global North

Capitalism

Demonization of marginalized groups

Agriculture and domestic work sectors

Border imperialism
Temporary Foreign Worker Programs

- International Mobility Program
- Temporary Foreign Worker Program
  - High-wage
  - Low-wage
  - Seasonal Agricultural Workers Program
  - Caregivers Program
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<th>Abusive employers in TFWP</th>
<th>TFW quits abusive employer</th>
<th>Waiting to obtain new work permit</th>
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<td>Labour exploitation</td>
<td>Work permit automatically cancelled</td>
<td>Administrative delays</td>
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<td>Wage theft</td>
<td>Cannot work for new employer before obtaining new work permit</td>
<td>Precarious financial and housing conditions</td>
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<td>Sexual and gender-based violence</td>
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<td>Forced repatriation</td>
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<td>Privacy violations</td>
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<td>Denied access to justice</td>
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<td>Physical and social isolation, threats</td>
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<td>Unsafe work conditions</td>
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<td>Unsanitary, indecent, precarious housing</td>
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Protections in place

Penalties for non-compliant employers
- Fines
- Public registry
- Ineligibility for participation

Emergency open work permits for abuse victims
- Rarely issued
- Inaccessible
Section 15 and Migrant Labourers
"Rather than disallow equality-based challenges to our immigration laws, we should welcome litigation that seeks to prove the suspicions that our immigration laws may have been shaped by the influence of xenophobic ideologies which may, in turn, have been fertilized autopoeitically by government laws and policies. Even where oppressive immigration laws are applicable to all non-citizens and differentiate them as a class from citizens, we should welcome a forum for review in which we scrutinize their full impact on non-citizens so that we can appraise accurately the actual harms and benefits and consider government reasons for imposing such rules under section 1 of the Charter."

Donald Galloway, “Immigration, Xenophobia and Equality Rights”
<table>
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<th>Legislated discrimination against agricultural workers</th>
<th>Race</th>
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<td>Family status</td>
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Charter application to private employers

- Tigchelaar Berry Farms
  - Employers administering authority pursuant to SAWP statutory framework
  - Question still unanswered
Charter application to deputized regulatory bodies

- *Tigchelaar Berry Farms*
  - litigating against F.A.R.M.S.?
  - Charter can be exercised over non-governmental entities if:
    - (1) it is found to be “government” because of its very nature or because the government exercises substantial control over it; or
    - (2) it is not itself a government body but nevertheless performs “governmental activities”
  - Power of repatriation
Section 15 and Employer-Tied Visa Policy
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<th><strong>Fraser test:</strong> adverse effects</th>
<th>Substantive equality framework, not formal equality</th>
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<td>Fraser test: existing disadvantage</td>
<td>Intersecting protected grounds</td>
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<td>History of discrimination within Canadian migrant labour programs</td>
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<td>Perpetuating stereotypes</td>
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*Fraser test: existing disadvantage*
Recommendations
1. Strengthen Labor Protections:

Abolish employer-tied visas. Protection for fair wages, safe working conditions, and adequate housing. Increase regulatory oversight. Guarantee labourer access to internet and legal resources.

2. Improve Recruitment and Hiring Practices:

Transparent job postings and recruitment processes. Prevent exploitative recruiter fees.

3. Enhance Monitoring and Enforcement:

Establish robust monitoring and enforcement mechanism to ensure compliance with program requirements throughout the employment period. Comprehensive inspections of workplaces, record-keeping requirements. Collaboration between labor authorities and other relevant agencies to detect and respond to violations.

4. Facilitate Integration and Pathways to Permanent Residency:

Pathways for TFW to obtain permanent residency. Review the existing eligibility criteria for permanent residency.