Canada's policies binding (im)migrant workers to specific employers under judicial review: State violation of workers' right not to be held under slavery or servitude

MigrantWorkersRights/DroitsTravailleuses-rsMigrants-Canada

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A. Canada's temporary foreign workers under employer-dependent legal status

In addition to the employer-tied work permit regimes, employment-tied recognition of the right to unity with one's child(ren)/spouse/partner, employer-dependent access to permanent legal status (Provincial Nominee Programs) and employment-dependent access to permanent legal status (Canadian/Quebec Experience Class Programs), the Canadian federal regulations and guidelines currently incorporate 25 employer-tying policies compelling temporary foreign workers to remain with a specific employer.

Such Canadian employer-tying policies, which for example characterize the Seasonal Agricultural Worker Program (SAWP), constitute modern forms of past laws and government practices initially developed in particular within the British Empire and various states of the U.S.A. to bind ex-slaves to their specific employers.

(Canadian) employer-tying policies often fall into one of the following two categories: foreign worker 'acquisition' policies, and foreign worker 'removal' policies, as demonstrated in Table 1 and Table 2 (limited to Canadian employer-tying policies applicable to SAWP workers.) These two Tables are intended to demonstrate the large variety of forms in employer-tying policies currently enforced by the Canadian goverment. As such, the federal legalizes in various ways different forms of employer/recruiter/agent's legal claim over the employment of a specific worker. These measures are not unique to Canada; instead these policies also still enforced in 2016 by state authorities across the continents and in particular by the governments of Qatar, Bahrain, the United Arab Emirates, and Saudi Arabia.[1]

As seen in Table 1 below, there are many examples of how the 'acquisition' of a foreign worker by an employer or private labour broker may be legalized. Some are more straightforwardly restrictive on the immigrant worker by placing obligations on them directly, while others are more indirect by regulating employers instead, while still holding the negative consequence for the worker. For example, measures regulating employer's obligation-privilege to obtain the status of 'sponsor' to hire the foreign worker result in foreign workers' practical quasi-impossibility to legally change employers (see above Table 1, section 2.1.2.v.). In Canada, the normative framework of this policy is incorporated in the federal immigration act, which broadly allows the government to specify how "every person commits an offence who… employs a foreign national in a capacity in which the foreign national in not authorized under this Act to be employed."[2]

[1] See Depatie-Pelletier, E. (2016), Judicial Review and Temporary Labour Migration as "Modern Form Of Slavery": State Deprivation of (Im/Migrant) Workers' Right to Liberty and Security (Right Not to Be Held Under Slavery or Servitude) Resulting from Employer-Tying Policies, LL.D. Doctoral dissertation (final submission), Faculty of Law, University of Montreal

[2] *Canada, Immigration and Refugee Protection Act, S.C. 2001, c. 27 (last amended on July 1, 2015)*, 2016, at art. 124(1)(c) and 125 (a).

Table 1 – "Acquisition" employer-tying policies

Category of 'worker acquisition' employer-tying policy		Terms of incorporated into the SAWP framework/imposed contract
2.1. **'Worker importation/ sponsorship privilege'** policy	2.1.1. Worker's obligation to sign an 'integration contract' with an (employer/agent authorized) importer-sponsor of foreign worker(s)	i. Obligation to formalize relationship with an authorized sponsor
		ii. Worker's obligation to get into debt with the sponsor
		iii. Worker's exclusion from access to integration programs and social security benefits
	2.1.2. Agent/employer's obligation-privilege to be authorized to 'import-sponsor' foreign worker(s)	iv. Agent's obligation-privilege to obtain an 'importer' status
		v. Employer's obligation-privilege to obtain a 'sponsor' status
		vi. Employer's obligation-privilege to loan money and arrange travel
		vii. Employer's obligation-privilege to provide a place of residence
		viii. Employer's obligation-privilege to provide access to healthcare
2.2. **'Worker binding privilege'** policy	2.2.1. Employer-binding contracts policy	i x . Worker's obligation not to work in the country for another employer
		x. Worker's obligation to get into debt with employer if no work
	2.2.2. Recruiter/agent-binding contracts policy	xi. Worker's renunciation to work without the validation of recruiter
		xii. Worker's obligation to work only for employers authorized by the agent-importer
	2.2.3. Occupation-sector/region-binding contracts policy	xiii. Workers' obligation not to perform non-agricultural work
		xiv. Worker sponsorship-transfer possible "within the same region"

Source: Eugénie Depatie-Pelletier 2016

Such measures reproduces past policies. When slavery was legal, employers did in fact acted as legal 'guardians' for their workforce. When slavery became illegal, ex-masters were legally allowed by law to sue other employers who enticed the worker already under contractual employment[3] creating a general prohibition to hire workers, specifically indentured servants who were not released by his/her masters, and in fact employesr and labour brokers' 'enticement' towards a better job of a worker already under employment contract was typically criminalized by Southern states legislatures in the post-slavery U.S.A. [4]

There are also several forms of 'removal' employer-tying policies currently enforced by the federal agencies managing temporary foreign worker programs, as seen in Table 2 above.

For example, a 'removal' employer-tying policy may constitute the loss of legal status upon termination/non-renewal of the (authorized) work contract - see Table 2 section 2.4.1 xix). Such federal policy is applied to most temporary foreign workers working for a foreign national or a foreign company, but also to SAWP workers – which must also maintain a formal relationship with an employer-sponsor at all times in Canada, otherwise they lose their legal status and the associated right to earn a living in the country. Arguably, this Canadian policy constitutes a modern "anti-vagrancy law". The threat of being repatriated makes such workers' highly unlikely to quit an employer even in case of major rights violation. Such 'removal' employer-tying policies in particular furthermore implies the enforcement of an additional policy specifically excluding the (im)migrant worker's exclusion from all access to federal and provincial 'employer-sponsor emancipation' procedures[5] (see section 2.5.1 xxiii).

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[3] Smith at 5, 17, 25.

[4] Victor Satzewich, *Modes of Incorporation and Racialiazation: The Canadian Case* (Ph.D. Thesis, University of Glasgow Department of Sociology, 1988) [unpublished] at 99.

[5] Employment and Social Development Canada, *Hiring a temporary worker through the Seasonal Agricultural Worker Program*, 2016).

Table 2 – "Removal" employer-tying policies

Category of 'worker removal' employer-tying policy		Terms of incorporated into the SAWP framework/imposed contract
2.3. 'Worker **transfer' privilege** policy	2.3.1. Employer/recruiter's transfer privilege policy	xv. Employer's privilege to launch sponsorship-transfer process
		xvi. Recruiter's privilege to launch sponsorship-transfer process
	2.3.2. Agent/officer limitation of employer/recruiter's 'worker transfer' privilege	xvii. Placement agent's privilege to execute (or not) a transfer request
		xviii. Government agent's privilege to validate (or not) a transfer request
2.4. 'Worker **repatriation' privilege** policy	2.4.1. Government's repatriation privilege policy	xix. Worker's loss of freedom in the country if not under (authorized) contract
		xx. Government's privilege to launch repatriation for any breach of conditions
	2.4.2. Employer/agent/recruiter's repatriation privilege policy	xxi. Employer/agent's privilege to launch repatriation process
		xxii. Recruiter's privilege to launch repatriation process
2.5. 'Worker **blacklisting' privilege** policy	2.5.1. Government's blacklisting privilege policy	xxiii. Exclusion from 'sponsor' emancipation procedures
		xxiv. SAWP worker subject to annual group deportation by the state
	2.5.2. Employer/agent/recruiter's blacklisting privilege policy	xxv. Employer/recruiter/agent's privilege suspend or exclude from labour program
		xxvi. Employer/agent's privilege to blacklist all workers from a specific country

Source: Eugénie Depatie-Pelletier 2016

B. Employer-tying policies under judicial review (1772-2006)

B1. Recognition of the fundamental right to change employers

Employer-tied work permits

In 2006, the Supreme Court of Israel unanimously reached the following conclusion when reviewing the legality of employer-tied work permit systems:

> [E]mployer[s are] required to obtain a permit… from the Foreign Workers Department … The … worker … is prohibited from working for another employer … Is this arrangement lawful? … [H]uman dignity is not satisfied … The right to liberty, for its part, is violated… [T]he 'change of employer procedure' … cannot negate this violation… [W]e cannot avoid the conclusion – a painful and shameful conclusion – that the foreign worker has become his employer's serf … and that the restrictive arrangement has created a modern form of slavery.[6]

Indeed, they found that no 'change of employer procedure' could ever negate or significantly reduced the harm resulting from state restriction of workers' right to quit an employer:

> It does not appear that a procedure that allows a worker's request to change his employer to be rejected … takes sufficiently into account – if at all – the inherent right given to every person to terminate an employment contract that he made. … The change of employer procedure assumes, as a premise, the power to hold onto a worker… whereas the worker is entitled, only in certain circumstances, to be released lawfully from the employment contract with the employer [without facing sanctions]. ... A legal system that provides … protection to human rights cannot accept a normative premise that assumes the absence of basic rights as a fundamental rule. It is impossible to accept that in a legal system that has established human dignity as a protected … value the individual will be allowed to enforce his basic rights only in 'exceptional' cases. The change of employer procedure seeks to make basic rights that the individual — every individual —

[6] *Kav LaOved Worker's Hotline v. Government of Israel*, (2006) 1 IsrLR 260 at 263, 299, 301, 313-314.

> possesses into a mere 'administrative' matter that can be dealt with by officials. This is the essence of the matter. And since the procedure purports to do what cannot be done — at least, in a … legal system that exalts the rights of the individual — we must conclude that it cannot, contrary to the respondent's argument, negate the violation of basic rights caused by the restrictive employment arrangement.[7]

General employer prohibition to hire the worker (unless explicitly authorized)

Many Canadian temporary worker programs rely on the employer's obligation to be 'authorized' through a positive 'Labour Market Impact Assessment'. Such 'anti-enticement' policy is not 'modern'. For example, when the federal government forced the abolition of slavery upon the legislatures of the Southern American states, ex-slave government went creative and regulated the employers' behavior through 'anti-enticement' policies criminalizing the hiring of a worker already under work contract with another employer - in order to preserve workers' unfreedom within their territory:

> Frequently amended, the enticement statutes remained active law until World War II. Most of the changes occurred before 1910, but some came later. South Carolina and Mississippi brought the enticement of minors within the purview of their laws in 1913 and 1924, respectively. Alabama made attempted enticement a crime in 1920. Three years later Arkansas increased the maximum penalties for those convicted under her law, and in 1928 Mississippi weakened her statute by making it applicable only to willful violators. As was often the case, this change was the result of a restrictive court decision. (…) Mississippi made extensive use of her enticement law, and in 1917 when the constitutionality of that act came before the state supreme court, Assistant Attorney General Frank Roberson noted that the statute had been before the high court on at least twenty previous occasions. He went on to argue that such a law was an absolute necessity "in an agricultural state where long time contracts are made and manies necessarily advanced in anticipation of the fulfillment of a contract." Then he added: "This is without reference to the fact that incidentally the larger part of the labor may be negroes." Whether Roberson meant to say that race was irrelevant to the issue, or subtly to imply the opposite, is not known.[8]

State-imposed/induced debt to the employer/agent

The Federal government currently imposes, in particular through the exclusion from newcomer integration programs, to temporary foreign workers formal debt to the employer/placement agent (i.e. SAWP workers debt to the employer for the transportation and immigration fees) and/or informal debt to the employer/placement agent. Such policies have been found by the Supreme Court of the United States in 1905 to result in the establishment of slavery-like regimes:

> What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaremillo* v. *Romero,* 1 N. Max. 190, 194:

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[7] *Ibid* at 301-302.
[8] Cohen, at 36-37.

> "One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their masters' service. Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service … subject to an action for damages … can elect at anytime to break it, and no law or force compels performance or a continuance of the service. (…) [What] is contemplated by the statute is compulsory service to secure the payment of a debt. (…)"
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> This amendment denounces a status or condition, irrespective of the manner or authority by which it is created.[9]

State-imposition of contract under which the worker binds himself (i.e. SAWP)

In the landmark decision in *The Case of Mary Clark – A Woman of Color*, the Supreme Court of Indiana acknowledged in 1821 that state validation of 'binding' work arrangement [under which the worker waive her/his right to work for another employer in the country] amounts to the establishment of an implicit system of slaves employment: Covenants of servitude cannot be … coerced … because doing so would produce a state of degrading and demoralizing servitude which would constitute as a state of absolute slavery." [10] Employer-tying policies, like the ones in SAWP listed earlier, can evidently be classified as 'binding' work arrangements. Therefore, this is one case where the jurisprudence is clearly renouncing the use of such policies.

Also, in 1988 the Supreme Court of the United States acknowledged in particular that, similarly to (the threat of) imprisonment/forced labor, the (threat of) state deportation could be found to result in the facilitation of conditions restricting a worker's right not to be held under slavery or servitude.[11] Many of the 'removal' employer-tying policies used by SAWP fall under such descriptions and would be seen by these courts as restricting a worker's right not to be held under slavery or servitude.

In 1905, the Supreme Court of the United States negated the existence of a judicial distinction between voluntary and involuntary servitude:

> The constitutionality and scope of sections 1990 and 5526 present the first questions for our consideration. They prohibit peonage. What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaremillo* v. *Romero,* 1 N. Max. 190, 194:

[9] *Clyatt v. United States*, (1905) 197 US at para 216, 222-223.
[10] *The Case of Mary Clark, A Woman of Colour*, (1821) 1 Blackf. .
[11] https://law.resource.org/pub/us/case/reporter/US/405/405.US.156.70-5030.html at para 38-39.

> "One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their masters' service. Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service … subject to an action for damages … can elect at anytime to break it, and no law or force compels performance or a continuance of the service. (…) [What] is contemplated by the statute is compulsory service to secure the payment of a debt. (…)"
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> This amendment denounces a status or condition, irrespective of the manner or authority by which it is created.[12] [Emphasis added]

The right to quit an employer, found in particular by American courts as to be implied by the fundamental right not to be held under slavery or servitude, was explicitly recognized by the Supreme Court of Canada in 1934 in the *Dupré*[13] decision and was reformulated in hofeldian terms in a 1987 decision of the Nova Scotia Labour Arbitration Board: "It is clear that just as an employer has a right to discharge an employee so too does that employee have the right to sever his employment relationship by resigning or quitting. Since, then, in Hofeldian terms, an employee has a *right* to resign, it follows that the employer has a duty to permit that employee to do so. A right presupposes its correlative, the duty. In other words, the consent or other enabling conduct by the Employer is unnecessary. (…) [T]he act of terminating an employment relationship … [is] one which is so central to our existence and so significant to our economic and psychological well-being (…)."[14]

Linked to this, in 1944 the Supreme Court of the United States confirmed that the right to quit an employer associated with the right not to be held under slavery or servitude implied the right to *change* employers.[15] While not explicitly mentioned in the Supreme Court of Canada, arguably Canadian Justices implicitly acknowledge it in various occasions – such as in the 2000 *Dunmore* decision: "[I]t is possible to draw a distinction between groups who are "strong enough to look after [their] interests without collective bargaining legislation" and those "who have no recourse to protect their interests aside from the right to quit" (…).[16] This right to quit and right to change employers also implies a 'right to seek employment', also referred to as the fundamental right to earn a living. This further entails no unreasonable time-limit to the right to seek employment, no restriction of enticement - no employer blacklisting privilege policy, and/or no regulation of enticement – government transfer privilege policy. (*p349*) SAWP policies listed above clearly create obstacles to the

[12] *Clyatt v. United States*, (1905) 197 US at para 216, 222-223.
[13] Smith at 113-114, 117-118.
[14] *Re brookfield foods ltd., division of scotsburn co-operative services ltd. and Canadian brotherhood of railway, transport & general workers, local 503*, (1987) 31 L.A.C. (3d) 292 at para 8.
[15] See: *Pollock v. Williams*, at 4, 17-18.
[16] *Dunmore v. Ontario (Attorney General)*, (2001) 3 S.C.R. 1016 at para 41.

workers' implied fundamental rights to quit an employer, to change employers, and to seek employment.

Furthermore, in 1920 an American court also clarified for the first time that state validation of an employer-driven system of worker blacklisting (as used by SAWP, seen earlier) would constitute the illegal establishment of a system of worker servitude:

> [T]he Supreme Court of South Carolina confronted this issue in *Shaw v. Fisher*. A sharecropper named Carver breached his one-year employment contract with Shaw and took a job with Fisher. Shaw obtained an award of damages against Fisher for the tort of knowingly hiring a worker who had quit his previous employer in violation of a labor contract. The high court reversed. "If no one else could have employed Carver during the term of his contract with plaintiff," reasoned the court, "the result would have been to coerce him to perform the labor required by the contract; for he had to work or starve." Because this "compulsion would have been scarcely less effectual than if it had been induced by the fear of punishment under a criminal statute for breach of his contract," it violated the Thirteenth Amendment [the individual's fundamental right not to be held under involuntary servitude]. Although the Court posed the alternatives as *work* or starve, that language did not fully capture the gravamen of the violation. Stated more precisely, Carver's alternatives were to work *for his current employer* or to quit and starve.[17]

More generally, Canada's employer-tying policies constitute modern state restrictions on workers' right not to be held under slavery or servitude, implied individuals' fundamental right to liberty and security.

B2. Recognition of the fundamental right to social inclusion/citizenship

Employer-driven repatriation/deportation

Employers' 'worker repatriation privilege' state practices and policies have been found by courts incompatible with the respect of individuals' fundamental right to liberty in various contexts. In particular, in the landmark 1772 *Somerset* decision, the English Court of King's Bench concluded that the enforcement of such privilege would result in the legalization of slavery:

> The cause returned is … whereupon, by his master's orders, he was put on board the ship … to be carried out of the kingdom (…). (…) [T]he power of a master over his servant is different in all countries, more or less limited or extensive (…). The state of slavery is of such a nature, that it is incapable of now being introduced by Courts of Justice upon mere reasoning or inferences from any principles, natural or political; it must take its rise from positive law; (…) and in a case so odious (…) must be taken strictly (…); no master ever was allowed here to … [send] a slave … abroad because he had deserted from his service, or for any other reason whatever; we cannot say the cause set forth by this return is allowed or approved of by the laws of this kingdom, therefore the black must be discharged. [18]

Goverment's privilege to deprive individuals' from their right to earn a living

[17] James Gray Pope, "Contract, Race, and Freedom of Labor in the Constitutional Law of "Involutary Servitude"" (2010) 119:119 Yale L.J. at 1530.

[18] *Somerset v. Stewart*, (1772) 98 ER .

In the same vein, historical evidence confirms that government's privilege to deny to legal workers the preservation of their right to earn a living and the access to citizenship systematically result in the consolidation of slavery-like regimes. For example, the establishment of a policy of exclusion from access to a "employer-sponsor" emancipation procedure was some sort of a legal puzzle for English colonizers familiar with the Common Law. But where 'temporary slavery' was acceptable, it proved in the end easy to establish a 'permanent servitude' regime –applicable only to some (non-White) non-citizen workers:

> Unlike other New World settlers, the English had neither a law of slavery nor a tradition of slavery. The English, who arrived in Jamestown in 1607, came from a place where the legal institution of slavery was a relic of the past … [and they] had nothing in their legal structure that recognized slavery or property in human beings. Eventually England would make huge profits from the African trade and its sugar colonies (…). But in England slavery was never legal. Neither the monarchy nor Parliament would ever attempt to authorize the writing of a slave code for the colonies. (…) This would lead to a complicated legal structure for slavery in the colonies and later in an independent United States of America. In 1619, in what would later become part of the United States, Dutch traders sold about twenty Africans to Virginia authorities. At the time this was England's only New World colony. (…) The first Africans in Virginia were treated as indentured servants, held for a term of years, and then eligible for freedom. (…) The earliest legal records of Virginia illustrate a confusing process. (…) In 1640, [a black,] John Punch was famously sentenced to a lifetime servitude for running away while the same year, less famously, another African received no additional service for running away. By contrast, no European [white worker under indenture contract] was ever sentenced to lifetime servitude for running away. (…) A 1657 statute regulating runaways also illustrates the lack of any formal recognition of slavery before the 1660s. This law punished runaway servants, who were overwhelmingly European at this time, by extending their service and branding them. However, these statutes did not provide any particular rule for slaves. In the same legislative session the Burgesses regularized the length of service for servants 'brought into this collonie without indentures or covenants to testifie their agreements'. The law provided that anyone under sixteen years of age would serve until age twenty-one, and anyone sixteen and older would serve for just four years. This would have applied to almost all Africans brought into the colony, as well as many Europeans. The Burgesses clearly did not anticipate that they would soon be treating Africans as lifetime slaves, rather than short-term servants. In 1659–60, a Virginia law recognized slavery for the first time, although without defining it. The law provided 'That if the said Dutch or other forreigners shall import any negro slaves, They the said Dutch or others shall, for the tobacco really produced by the sale of the said negro, pay only the impost of two shillings per hogshead, the like being paid by our owne nation'. By this time slaves were seen as commodities being imported into the colony. (…) The standard punishment for runaway servants, as set out in the 1657 statute mentioned above, was whipping (and sometimes branding) followed by additional time of service beyond their indenture. (…) To discourage (…) interracial challenges to the regime, the law provided that Europeans would have to serve extra time for any slaves who ran away with them. The law helped divide European servants

> and African slaves, strengthened planter power, and more firmly attached the chains of lifetime bondage to Africans in the emerging system of slavery."[19]

Moreover, as under current Canadian immigration law, the criminalization of workers' 'vagrancy' or, in other words, the denial of (some) individuals' right to remain free in the country after the termination of a work contract, was also typically used in the past in particular to deny to non-white workers the right to settlement in their community of work:

> Reversing the Perkins decision, Justice Burnett, the author of the court's decision, ruled that … the antislavery clause … [in the] constitution was [not] inert, inoperative, or "merely directory." (…) Proslavery Democrats in the assembly denounced Lee's liberation as a conspiracy … to subvert … white racial dominance. (…) They drafted a bill … authorizing law enforcement officials to … hire out African American arrivals to white citizens. Migrants bound out in this fashion would labor for their new masters [temporarily and would] … pay for their transportation back to the eastern United States. (…) Pending senate approval, the legislature appeared poised to subject incoming African American migrants to a period of semi-slavery before expelling them from the state. (…) The support for the two measures … highlighted once again the fragility of free state status. Democratic legislators' proposal to establish a temporary system of African American servitude … demonstrated the malleability and ambiguity of the state's free constitution and the ease with which it could be reinterpreted to promote human bondage at the expense of human freedom.[20]

Moreover, as it is currently the case in under federal and provincial law for most temporary foreign workers employed in a 'skilled' occupation, past non-citizen workers could also 'buy out' their access to citizenship from their employer:

> Big Jim, Little Jim, Nat, and Jacob, the slaves of Robert McElrath, traveled to California under the supervision of their master's son-in-law, George Dodson, in 1851. According to one family memoir, McElrath provided an incentive to the black men to keep them faithful in California. If the men labored for McElrath and Dodson five days a week in the mines, they could keep any gold they dug on Saturday, probably to apply toward selfpurchase. (…) Indeed, records suggest that the McElrath slaves never earned enough money to purchase their freedom. When McElrath died in 1854, at least three of the four enslaved men who had made the journey to California had returned … in North Carolina and were listed in the property auctioned by his estate. (…) For the McElrath slaves, then, California earnings were insufficient to meet the … demands [to achieve freedom] and the journey to the gold fields ended in a return to slavery.[21] [Emphasis added]

C. Policy recommendations

1. Recognition of the fundamental right to change employers

1.1. Create open work permits for migrant workers: Most work permit holders in Canada are not on closed permits (e.g. IMP workers, PGWP holders, refugee work permit holders, etc); low-waged migrant workers should have the same access and mobility.

1.2. Allow workers to change jobs: No new permits are being issued in the food and retail sector in regions with unemployment greater than 6%. This moratorium has effectively

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[19] Paul Finkelman, ed, *Slavery in the United States: Persons or Property?*, 105-134 (Online: Oxford Scholardship, 2013) at 106-107, 109.

[20] Smith at 159-163.

[21] *Ibid* at 184-185.

locked workers already in Canada working in those industries into those jobs, greatly increasing the chances of exploitation and employer dependence.

1.3. Abolish the LMIA system – in particular $1,000 fee has been placed on Labour Market Impact Assessment (LMIA) applications that employers are downloading to workers. Migrant workers shouldn't have to pay to work.

2. Recognition of the fundamental right to family unity

2.1. Mechanisms must be developed to allow migrant workers' families to travel with them to Canada and be provided with open work permits, as is the case with other 'high skill' workers.

2.2. Employers must be mandated to provide paid vacation including return airfare to migrant workers (as is the norm in the Middle East, Hong Kong and other regions).

3. Recognition of the fundamental right to social inclusion/citizenship

3.0. Ensure coverage of all (im)migrant workers admitted under temporary work authorization under federal-funded newcomer integration and support programs.

3.1. Ensure access upon arrival permanent legal status for all migrant workers, and in parallel access to permanent RESIDENT status (associated with public services and access to citizenship), allowing re-entry in Canada.

3.2. Stop the private/goverment repatriation of migrant workers (denial of deportation procedures)

3.3. Make illegal private and government repatriation/deportation of (im)migrant workers based on medical grounds.

3.4. Restore Caregivers' guaranteed right to apply for permanent resident status. Currently, only a small quota of Caregivers can apply for permanent residency, and must meet very restrictive criteria even after working here for two years.

3.5. Expand the Provincial Nominee Program (PNP) in every province and territory to give guaranteed pathways to permanent residency to migrant workers deemed 'low-skilled'.

3.6. End the four-year limit on work permits (8-month limit for SAWP workers): Rather than value their contributions, current policy forces migrant workers to leave after four years. This uproots long-term workers who have built lives and relationships here and helped build local businesses.

3.7. End the Caps: Work sites with over 10 full time workers are subject to progressive "caps" on the percentage of migrant workers in their total workforce each year. It was intended to be 10% in July 2016. Migrant workers are being forced out of jobs they have held for years.

3.8. Restore portable EI benefits: Allow Seasonal Agricultural Workers and other migrant workers access to pensions, parental benefits, EI and supports after injuries even after they leave Canada.

D. Who were are.

MigrantWorkersRights-Canada is a non-profit organization operating as an open but coordinated network aiming for — through research, legal actions and legislative processes — the abolition of slavery's legacies embedded within current Canadian and similar administrative frameworks. MWR's mission is the respect, by national and international agencies, of the rights to liberty, to physical and psychological integrity, and to non-discrimination based on the country of origin — thus of the rights to freely change employers at all time, to receive study/work permits for children/spouse, and to access permanent legal status, of every human being admitted under the status of 'temporary foreign worker'. http://www.migrantworkersrights.net/en/canada/all

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