

Attachment to Form 1E

Section E1 – What Happened?

Background

1. The Complainants each entered Canada under the Temporary Foreign Worker Program “TFWP”) in 2012. Each Complainant is a citizen of Mexico.
2. All of the Complainants were hired by the Respondent employer 525571 BC Ltd doing business as Tim Hortons (“Dawson Creek Tim Hortons” or the “Employer”) to work as food service counter attendants in Dawson Creek, British Columbia. The Respondent Tony Van Den Bosch (“Tony”) is the franchisee at two Tim Hortons locations in Dawson Creek. The Respondents Tim Hortons Inc. (“THI”) and TDL Group Corp (“TDL”) are the franchisors based in Oakville, Ontario and Calgary, Alberta respectively. Further details about the franchisors’ role in this complaint are discussed below.
3. As set out in further detail below, each of the Complainants were coerced into living in one of two houses owned by the Respondent Tony which were overcrowded, overpriced, and offered little privacy.
4. As set out in further detail below, each of the Complainants worked at one of two Tim Hortons locations in Dawson Creek and were subjected to different treatment than non-Mexican workers.
5. As set out in further detail below, each of the Complainants witnessed or were subjected to derogatory and racist comments about Mexicans and Mexico.

Arrival in Dawson Creek

6. The Complainant Rodolfo Durán Lara (“Rodolfo”) is 43 years old. Rodolfo supports his wife and three children and has previously worked in the fast food industry in the USA for six years, including working as a manager.
7. Rodolfo commenced his application for the TFWP in 2009. He was interviewed by two separate Tim Hortons franchises located in Alberta in or around August of 2011. In or around October, 2011, Rodolfo was hired by the Respondent Tony to work at the Dawson Creek Tim Hortons. Rodolfo arrived in Dawson Creek on January 13, 2012.
8. Edxon González Chein (“Edxon”) is 35 years old. Edxon supports his school-age siblings and his parents, and has previously worked in the fast food industry in the USA for 14 years, including working as a manager.
9. Edxon commenced his TFWP application around February 2011. In or around August 2011 he had an interview with a Tim Hortons franchise located in Quebec. In or around the first week of January, 2012, Edxon had an interview with the Respondent Tony to

work at the Respondent Dawson Creek Tim Hortons. One week after the interview, Edxon was informed that he had one week to prepare to leave for Canada. He arrived in Dawson Creek on or around January 19, 2012.

10. Eric Dessens Dessens (“Eric”) is 33 years old. He supports his mother and has previously worked in the restaurant and bar industry.
11. Eric commenced his TFWP application in or around June 2011. In or around November 2011, he had a series of interviews with a Tim Hortons franchise located in White City, Saskatchewan. Eric was told to hold on for a position. In or around January 2012, he had an interview with the manager of the Respondent Dawson Creek Tim Hortons, (named Donna) in which he was hired. Eric arrived in Dawson Creek on March 3, 2012.
12. Rubén Omar Varela Ramírez (“Rubén”) is 28 years old. He supports his mother, his sister and a cousin and has previously worked in the food service industry.
13. Rubén commenced his TFWP application in or around May 2011. In or around early December, 2011, he was interviewed for a position at the Respondent Dawson Creek Tim Hortons and signed the employment contract on December 15, 2011. Rubén arrived in Dawson Creek on March 2, 2012.

Housing Situation

14. Although the employment contract stated that the Employer would not be providing the Complainants with housing, Tony coerced each of the Complainants to live in one of two houses that he owned. All of the Complainants lived in a house located on 9117 8th Street, Dawson Creek, BC.
15. On arrival in Dawson Creek, each of the Complainants was taken to the 8th Street house, without any discussion by the Respondent Tony. Each occupant of both houses was a Temporary Foreign Worker from Mexico. At the 8th Street house, up to ten adults shared five bedrooms and two bathrooms.
16. The Complainants understand that ten Mexican Temporary Foreign Workers were also living in the other house, in similar conditions. Each room housed two workers.
17. The Complainants felt extremely vulnerable having their employer as their landlord. The Complainants’ work lives and home lives were completely intertwined; this placed them in a position of relative powerlessness right from the start of their stay in Dawson Creek.
18. The 8th Street house was a 40 minute walk to the Alaska Ave Tim Hortons. It was about a 30 minute walk from the 8th Ave Tim Hortons. None of the Complainants or other Mexican Workers had a car.

19. Tony required each of the workers living in the houses to sign a document stating that their rent was \$200; however, each was required to pay an additional \$200 in cash for rent on the 15th of each month, which the Respondent Tony called a 'tip.' In total, each worker was paying \$400 in rent to share a room.
20. The Complainants felt that \$400 in rent was too high, considering the number of people living in the houses. When they told Tony this, he told them that they would not find anywhere better to live than his houses.
21. Although the Complainants had initially assumed that Tony's houses were temporary accommodation until they were able to find their own housing in Dawson Creek, Tony actively discouraged them from living elsewhere.
22. The Complainants believed they would be fired if they did not live in these houses. Armando, another Mexican temporary foreign worker, told Eric that if they tried to find alternative accommodations, Tony would send them back to Mexico.
23. The overcrowding in the houses was problematic for basic sanitation. There was only one kitchen in each house, and Tony told those living in the basement bedrooms to wash their dishes in the bathroom sink.
24. Tony told the Mexican workers not to discuss their rent or wages with other Tim Hortons workers.
25. Rodolfo was the first to arrive at the 8th St house, on January 13, 2012. Tony did not tell him how many people would be moving into the house.
26. When Edxon arrived in Dawson Creek on or around January 19, 2012, Tony brought him to the 8th St house as well, and told him there would be "a few more Mexicans arriving." He did not tell him that there would be 9 additional occupants in the house.
27. Tony repeatedly violated the Complainants' privacy in the house. On multiple occasions, he entered the house unannounced, sometimes accompanied by friends or other people. He entered the workers' rooms without notice.
28. Tony entered the house several times per week, sometimes twice in one day. He would not give notice as to when he was coming; he would enter the house using his own keys.
29. On one occasion, Rodolfo came home to find Tony and his wife eating dinner in the Complainants' kitchen.
30. When Eric arrived in Dawson Creek on March 3, 2012, Tony took him straight into the 8th St house without knocking or calling. Tony opened the door to a bedroom that clearly

already had one occupant (Armando), and said “this is where you’re going to sleep.” He threw half of the clothes that were already in the closet onto the floor.

31. On one occasion, Eric witnessed Tony enter Rubén’s bedroom while Rubén was in the shower. Tony also entered the bathroom while Rubén was in the shower to talk to him.
32. Tony opened the door to Edxon’s room without knocking on several occasions, sometimes when he was completely naked after taking a shower.
33. When the workers told Tony that they were not comfortable with him entering their rooms, especially when they were not home, he said that he was entitled to go into the rooms because it was his house.
34. The Complainants often believed their personal belongings had been interfered with. Eric had a notebook with important information and documents go missing from his room in March 2012.

Work Conditions

35. The Respondents Tony and Dawson Creek Tim Hortons operate two locations in the city of Dawson Creek: one at 1308 Alaska Avenue (“Alaska Ave. Tim Hortons”) and another at 11608 8th Avenue (“8th Ave Tim Hortons”).
36. Rodolfo, Edxon and Eric worked at the Alaska Avenue Tim Hortons location; Rubén worked at the 8th Avenue location.
37. The Complainants’ temporary work permits were tied specifically to their employment with the Respondent Employer. This arrangement placed the workers in a vulnerable position from the outset, as they could not leave their positions and seek employment elsewhere, regardless of the working conditions
38. The Employer required workers employed through the Temporary Foreign Worker Program to perform different work on different terms than local employees.
39. During their first days of employment, the Complainants received training ranging from 45 minutes to 2 hours. They were then left to work on their own. Rubén’s training solely involved watching a series of videos. Despite the paucity of the Complainants’ training, the general managers and supervisors berated them when they made mistakes.
40. Eric was belittled by managers while he was on till to the point that customers periodically came to his defense, and asked that the managers not talk to him in that manner.

41. Mexican workers were required to sweep and mop the restaurant. None of the Complainants recall Canadian or Filipino workers being asked to sweep or mop during shifts in which Mexican workers were working.
42. Several of the Mexican workers were required to work in the bakery, even though their employment contracts specifically stated that each had been hired as a "Food Counter Attendant." The Complainants did not witness Canadian or Filipino Food Counter Attendants working in the bakery.
43. The Mexican workers were prohibited from speaking in Spanish in the workplace, even on their breaks, and were reprimanded for doing so. The Filipino workers were permitted to speak Tagalog. This was especially frustrating for the Mexican workers because some were not very proficient in English, and this policy prevented other Mexican workers from explaining the tasks in Spanish, or otherwise supporting their learning.
44. The Mexican workers were also chastised and given additional work to do if they stopped working to talk to each other. The Canadian and Filipino workers were permitted to socialize at work.
45. Mexican workers were scheduled in a different manner than local employees. The Mexican workers were not given a fixed schedule of shifts. They were often scheduled to close the restaurant (i.e. shift ending as late as 12:00AM), and would be required to open the restaurant the following day at 5:00 or 6:00AM. As the workers' houses were located 40 minutes away from the restaurant by foot, this meant that the Complainants would only get a few hours of sleep on these occasions. In contrast, the Complainants understand that Canadian and Filipino workers were given regular schedules, consistently working either morning or afternoon shifts.
46. Changes were made to the Complainants' schedules without their consent, and with only one or two days' notice. Sometimes changes were even made on the same day. In the Complainants' experience, when Canadian workers requested changes to their schedule to accommodate their needs, these requests were granted; this was not the case for the Mexican workers.
47. The Complainants were not informed about medical coverage or workplace safety insurance, and the Respondent Tony coerced the Complainants to work even if their health conditions made it inappropriate to do so.
48. When a Mexican worker called in sick to work, the Respondent Tony would personally go to the worker's home to verify the story. To the Complainants' knowledge, this was not Tony's practice with the Canadian or Filipino workers. At one point, Rodolfo had the flu and a bad fever, and commented to Tony that he needed to see a physician; Tony told Rodolfo he would just get him some medication, and did not give him any time off of work.

49. On another occasion, Eric injured his knee at work after slipping on a wet floor at work. He was barely able to climb stairs the next day; however, Tony took him to the pharmacist for painkillers and bandages, and brought him to work that afternoon. He worked in pain for several days, and never saw a physician.
50. Eric also developed a rash from a chemical reaction to the sanitizer used to clean tables in the restaurant. His hand was red and itchy, and slightly swollen; this was noticeable to the point that customers commented on the rash, and he subsequently wore a glove to cover it. The redness lasted for approximately 3 weeks; however, no one assisted him with this, and supervisors made fun of him.
51. Tony did not repay the Complainants for their work visas and related charges (approximately C\$150) contrary to the employment contract.

Derogatory and Racist Comments and Conduct

52. On several occasions throughout the duration of the Complainants' employment, the Respondent Tony made derogatory and racist comments about Mexico and Mexican people, both in the workplace, and in the workers' homes.
53. The Complainants were very upset by Tony's comments and language, but were afraid to say anything for fear of losing their jobs and being sent home.
54. The Respondent Tony told the Complainants that they came from a poor country, and that they should be grateful that he brought them to Canada.
55. Tony made the following comments directly to Edxon during his time in Dawson Creek:
- "You know, your country doesn't even have food to eat";
 - "I bet there aren't even cars there"; and
 - "In your country, all women have a lot of children and put them to work."
56. Tony called Mexicans "drug traffickers," and made frequent reference to cartels. On one occasion when he was with Rubén and another worker in a grocery store, Tony picked up a DVD about Mexican cartels and drug trade and pointed at it and laughed at them.
57. Tony also made frequent comments that devalued the Complainants in relation to their locally hired coworkers. Rodolfo asked Tony why other workers were not being rotated into the bakery so that he would not be there all the time—particularly as his employment contract stated he had been hired as a food counter attendant. Tony replied: "Canadians aren't made to work in bakeries. That's why I spent so much money to bring Mexicans here."

58. During the conversation, Tony also said: "You're only here thanks to me. I'm doing you a favour."
59. Tony frequently referred to Mexican workers as lazy. During an argument with Edxon and Rodolfo, Tony said: "Fucking Mexicans are lazy. I see them resting under a tree with a sombrero."
60. Tony referred to Mexican workers as "Indians" and called them "Mexican idiots" on numerous occasions.
61. When Eric asked Tony why so many of the temporary foreign workers were quitting, Tony's reply was that "Mexicans don't have balls."
62. The Respondent Tony consistently emphasized his desire for unquestioning compliance from the temporary foreign workers. He manipulated the Mexican workers by telling them he would give them residency status if they did as they were told. Tony told Eric that he could have a 2 year contract if he kept quiet and did not complain.
63. The Respondent Tony told Rodolfo that he was the "owner of their lives." He told the Mexican workers to pretend that they were in a jail made of gold; Tony said that when the workers' one-year contracts were over, he could open the "cage" and the workers could do whatever they wanted. Rodolfo found this analogy humiliating and degrading.
64. When the Complainants raised any concerns about their working or living conditions, Tony threatened to "send [them] back to Mexico." Two of the Complainants (Rodolfo and Edxon) were fired and sent back to Mexico in April 2012 after questioning their working conditions (details below).
65. The Respondent Tony frequently asked Mexican workers to sign blank sheets of paper. The workers often refused, but did acquiesce on a few occasions when Tony was being insistent. The Complainants are not aware of other workers being required to sign blank sheets of paper.
66. The Respondent Tony regularly asked the Complainants and other Mexican workers for their passports and would hold them for periods of time. The Complainants do not know what Tony was doing with their passports, but felt vulnerable without them. The Complainants are not aware of Tony holding any of the non-Mexican workers' passports or identification.
67. The constant threat of losing their employment if the Complainants were not unconditionally cooperative with the Respondent was psychologically oppressive.

Circumstances Surrounding the Complainants' Departures

Rodolfo- March 29, 2012

68. On March 29, 2012, Rodolfo spoke to the manager Donna about being constantly scheduled in the bakery rather than at the front counter; Donna related this conversation to Tony. Tony told Rodolfo that he should not tell them the manager how to do her job, and that he was simply an employee.
69. During this conversation, Tony started insulting Rodolfo and told him to get out of the restaurant. Tony said that he had invested a lot of money in the temporary foreign workers, and could do whatever he wanted with them.
70. Rodolfo said that he would not consent to Tony doing whatever he wanted with him, and if he was going to be treated that way, Tony should just pay him his outstanding wages. Tony responded that he would only pay the wages owed if he decided he really wanted to.
71. Rodolfo told Tony that he was breaking their agreement, and Tony replied he could break it whenever he wanted. Rodolfo said that he would report Tony to the Mexican Consulate; Tony said the Mexican Consulate was “full of shit” and could not do anything about it.
72. Tony called Rodolfo an “asshole” and said that it was only because of him that Rodolfo’s family was eating. Tony threatened to hit Rodolfo; Edxon stepped between the two to prevent this.
73. Tony told Rodolfo that he would buy him a ticket and send him back to Mexico before he contaminated other workers’ perceptions of their working conditions.
74. Rodolfo went to the Dawson Creek Employment Standards Branch that same day, and was told that they could not intervene because of his immigration status.
75. By that afternoon, Tony had arranged a flight back to Mexico for Rodolfo for April 1, 2012.

Edxon – (early April, 2012)

76. Shortly after Rodolfo’s dismissal, Tony told Edxon that he would be working in the bakery, and had two weeks to think about it. He said “If you aren’t working in the bakery, you’re going back to Mexico. I paid too much money for you.”
77. After 2 weeks had passed, Tony asked Edxon where he had decided to work. Edxon responded that he would work in the bakery, but wanted to know how much he would be paid for that work. Tony did not respond, and left angrily.

78. After Rodolfo was fired, Tony began to question Edxon as to whether he was planning to stay in Dawson Creek or go back to Mexico.
79. Tony began threatening to fire the Mexican workers if they would not work in the bakery.
80. Several days later, Tony asked Edxon again what he had decided. Edxon replied: "I will work at the bakery, but how much will you pay me?" Tony replied that he would buy him a ticket back to Mexico for the following day.
81. Edxon flew back to Mexico on the following day in early April, 2012.

Eric & Rubén – May 20, 2012

82. Eric and Rubén had conversations about quitting their positions at Tim Hortons because of the treatment they were receiving. They contacted a worker at the Mexican Consulate, who said they could quit and should also talk to the RCMP.
83. Both Eric and Rubén were uncomfortable talking to the authorities while they were still in Dawson Creek; they wanted to deal with it after leaving town because landlord and employer were the same person.
84. On May 20, 2012, Eric and Rubén left Dawson Creek without notice, and took a Greyhound bus to Vancouver.
85. None of the Complainants are currently employed by the Respondents.

Tim Hortons Inc. and TDL Group Corp

86. Tim Hortons Inc. ("THI") and TDL Group Corp. ("TDL") (together "the Company") have contributed to the above noted discrimination by promoting the expansion of the Temporary Foreign Worker Program ("TFWP"); by adopting business practices that promote the use of temporary foreign workers; and by failing to adopt business practices that would adequately protect the same workers.
87. The Company was active in expanding the scope of the TFWP for lower-skilled occupations. THI lobbyists working for the Tim Hortons Advertising & Promotion Fund (Canada) met with multiple government agencies about the expansion of the TFWP.
88. TDL's Labour Strategies Manager, Mr. Chris Thomas was a witness at the Standing Committee on Citizenship and Immigration about the TFWP on April 2, 2008 on behalf of 2,700 Tim Hortons locations across Canada.
89. The Standing Committee on Citizenship and Immigration released a report on Temporary Foreign Workers and Non-Status Workers in May of 2009 noting the vulnerability of temporary foreign workers and making a number of recommendations.

90. TDL encouraged and assisted its franchises across the country in hiring workers through the TFWP. For example, TDL is listed as a third party on the Labour Market Opinion (LMO) under which the Complainants were hired, and Mr. Thomas was copied on that correspondence.
91. Mr. Thomas has also made numerous presentations at food and beverage industry conferences about how to use the TFWP.
92. Use of the TFWP has become part of the Company's business model. Since 2007, over 14,000 positive Labour Market Opinions have been secured by Tim Hortons franchises across Canada.
93. TDL exercises a great deal of control on its franchises through a number of franchise related documents including, but not limited to:
 - a. Franchise Agreement;
 - b. Operating Agreement;
 - c. License Agreement;
 - d. Policy Manual;
 - e. Franchise bulletins;
 - f. The Franchise Advisory Board; and
 - g. National and Regional franchise meetings.
94. TDL's tight grasp on franchisees places it in a similar position of having a great deal of control in the environment created when a franchise is opened.
95. The Company plays an active role in the recruitment of temporary foreign workers for various franchise locations; for example, it promotes the Company on behalf of its franchises at job fairs in Mexico.
96. Three of the Complainants were interviewed by multiple Tim Hortons franchises during the course of their TFWP application process.
97. Given its active role in expanding and engaging in the low-skilled stream of the TFWP, the Company knew or ought to have known that it was placing workers in inevitably vulnerable positions and that the exploitation of that vulnerability by its franchisees was possible and indeed likely.
98. The systemic power imbalances inherent in the low-skilled stream of the TFWP are widely recognized and documented. An abundance of government reports, including that of the Standing Committee on Citizenship and Immigration, academic literature and media coverage have identified the vulnerabilities and mistreatment of temporary foreign workers.

99. Despite their role in expanding the TFWP and in engaging its franchises in the TFWP, the Company failed to implement adequate safeguards in its operations to prevent worker mistreatment by its franchisees as other companies have done. Specifically, The Company failed to implement obvious, reasonable protections for workers, including:

- a. Policies around the hiring, training, and treatment of temporary foreign workers;
- b. Cultural sensitivity training for Canadian employees about the norms and cultures of the countries from which the workers come, as well as a published policy forbidding discrimination and harassment;
- c. An internal mechanism for temporary foreign worker complaints about mistreatment by (franchisee) employers;
- d. An internal mechanism to promptly and comprehensively investigate any allegations of human rights infringements;
- e. Procedures to ensure any company-provided accommodation for temporary foreign workers is 'adequate' as defined by international standards;
- f. Policies prohibiting restrictions on foreign workers that amount to discriminatory treatment and compromise the voluntariness of the workers' labour, including the withholding of passports and other travel documents; and
- g. Policies to facilitate workers' settlement in their new communities (e.g. language training supports where necessary).

100. As the first contact for the temporary foreign workers during recruitment, the Company must be held accountable to provide supports for workers once they are employed by its franchises.

101. By building the TFWP into its business model for franchises and encouraging franchisees to use the program, the Company has created an environment that is highly likely to be toxic for temporary foreign workers. As the party responsible for the formula creating that environment, it must bear responsibility for taking measures to guard against further exploitation.