Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

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Via Email

September 6, 2024

Re: Temporary Foreign Worker Housing Must Protect Workers from Extreme Heat

Thank you for the opportunity to make a submission as part of the Employment and Social Development Canada (ESDC), Optional Temporary Foreign Workers (TFW) Program Input regarding Employer-Provided Accommodations. Migrant agricultural workers are facing unacceptable and serious health risks from exposure to heat, which will be made worse by climate change. In order to protect workers from the health impacts of extreme heat, the Canadian Environmental Law Association (CELA) recommends that ESDC introduce a maximum indoor temperature standard of 26ºC or a humidex of 30ºC in employer-provided accommodations.

(1) Background on Canadian Environmental Law Association

CELA is an Ontario legal aid clinic dedicated to environmental justice, equity and health. CELA provides free legal services to low-income individuals and vulnerable communities on a broad range of environmental cases and undertakes public legal education and law reform initiatives. CELA is concerned about the inequitable impacts of climate change on under-resourced communities, including migrant agricultural workers.

CELA has a law reform campaign focused on the inequitable impacts of climate change. The campaign focuses on identifying and advocating for legal reform to protect under-resourced and under-served communities from heat. CELA has produced reports with recommendations on better protecting migrant agricultural workers from heat.[1]

(2) Submission on Employment and Social Development Canada's Employer-Provided Accommodations Discussion Paper

CELA strongly recommends that ESDC address extreme heat in migrant agricultural worker accommodations. Current ESDC requirements for accommodations do not provide for any explicit standards to address indoor heat.

In an interview with one migrant agricultural worker living with extreme heat in on-farm accommodations in Ontario this summer, the worker informed CELA that his living conditions made him feel like he was being treated like an animal and not a human. Extreme heat in housing

[1] Canadian Environmental Law Association, "Report: CELA Assessment and Recommendations on Ontario's Proposed Workplace Heat Stress Regulation" (2024), online (pdf) <cdn.archive.celafoundation.ca/wp-content/uploads/2024/02/1560-CELA-Report-on-Heat-Stress-Regulation-Proposal.pdf>; Canadian Environmental Law Association, "Heat Exposure for Agricultural Workers" (14 March 2023), online (pdf): <cela.ca/wp-content/uploads/2023/03/1521-Heat-Exposure-for-Agricultural-Workers_14-March-2023.pdf> [*Heat Exposure for Agricultural Workers*].

and the very serious health impacts being imposed on migrant workers are simply unacceptable and must be addressed.

A. BACKGROUND ON CLIMATE CHANGE AND HEALTH RISKS OF EXTREME HEAT

1. Climate Change is Causing a Dangerous Increase in Extreme Heat

The Government of Canada's National Adaptation Strategy (Strategy) recognizes that extreme heat events are the deadliest weather-related events occurring in Canada.[2] Yet, heat-related mortality is readily preventable with suitable adaptive action, education, and information.[3] The Strategy sets a target of 2026 whereby 80% of health regions will have implemented evidence-based adaptation measures to protect health from extreme heat. The objective is to protect Canada's population from urgent climate-related health risks. The Strategy set a goal to eliminate all heat-related deaths by 2040.[4]

The climate crisis is causing an increase in the length, frequency and intensity of extreme heat events in Canada. Average mean temperature in Canada has risen by 1.7°C from 1948 to 2016 and is expected to increase between 1.8°C and 6.3°C by the end of the century.[5] This is a public health crisis. Various life-threatening conditions can occur when the body cannot maintain its core temperature of approximately 36.6°C due to excessive external heat.[6] These include dehydration, cramps, heat exhaustion, and heat stroke.[7]

2. Migrant Workers are At Risk During Their Workdays

Migrant agricultural workers are an indispensable part of Canada's workforce but are an especially vulnerable group.

Their working conditions often expose them to extreme heat and make cool home environments very important. In *Workers' Health and Productivity Under Occupational Heat Strain: a Systematic Review and Meta-Analysis*, the authors aggregated data from studies examining the

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[2] Environment and Climate Change Canada, "Canada's National Adaptation Strategy: Building Resilient Communities and a Strong Economy" (2023) at 6, online: <publications.gc.ca/collections/collection_2023/eccc/en4/En4-544-2023-eng.pdf> [*ECCC, Canada's Adaptation Strategy*].

[3] Joanna Eyquem & Blair Feltmate, "Irreversible Extreme Heat: Protecting Canadians and Communities from a Lethal Future" (2022) at 7, online (pdf): <intactcentreclimateadaptation.ca/wp-content/uploads/2022/06/UoW_ICCA_2022_04-Irreversible-Extreme-Heat.pdf>.

[4] *ECCC, Canada's Adaptation Strategy* at 23.

[5] Government of Canada, "Changes in Temperature" (9 April 2019), online: <canada.ca/en/environment-climate-change/services/climate-change/canadian-centre-climate-services/basics/trends-projections/changes-temperature.html>.

[6] Government of British Columbia, "Extreme Heat and Human Mortality: A Review of Heat-Related Deaths in B.C. in Summer 2021" (June 7, 2022), at 11, online (pdf): <www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/extreme_heat_death_review_panel_report.pdf>. [*Government of BC, Extreme Heat and Human Mortality*].

[7] *Government of BC, Extreme Heat and Human Mortality* at 11.

effects of occupational heat strain on workers' health or productivity outcomes.[8] The authors found that most of the 111 studies included in their review suggest that working in hot conditions increases the likelihood of experiencing occupational heat strain, with significant detrimental effects on health and productivity.[9] For instance, 15% of individuals who typically or frequently worked in heat stress conditions had kidney disease or acute kidney injury.[10] The study concludes that occupational heat strain is a public health issue and concerted international action is needed to mitigate the effects of occupational heat strain, particularly because of the impacts of climate change and the anticipated rise in environmental heat stress.[11]

In *Cumulative Effects of Successive Workdays in the Heat on Thermoregulatory Function in the Aging Worker*, the authors determined that strenuous work in the heat may compromise thermoregulatory function and elevate the risk of heat-related illness in older workers on the next workday, particularly during moderate-to-high intensity work.[12]

Ontario's *Harmonized Heat Warning and Information System of Ontario, 2023* identifies that people who work in the heat are a particularly vulnerable group.[13] A United States census data study found that agricultural workers experience occupational heat-related mortality at a rate 35 times above workers in other sectors.[14]

In a CELA report, *Heat Exposure for Agricultural Workers,* migrant workers reported abusive practices by some employers that exacerbate the risks of extreme heat. CELA spoke to migrant workers about their experiences working in extreme heat in greenhouses and outdoors. Shockingly, some workers reported that their employers did not allow them to bring water onto the fields or into greenhouse as they worked. This is a very dangerous practice which puts workers at extreme risk of the effects of heat and must be stopped immediately. Among other issues, workers also reported that there is a lack of shade, too few breaks, and clothing can exacerbate exposure to heat because it is also necessary to protect against exposures to pesticides.[15]

Peart v Ontario[16] was a tragic case about the death of Ned Peart, a migrant worker, who was injured and died on a Brant County farm. The Human Rights Tribunal of Ontario (Tribunal) acknowledged that migrant workers are an especially vulnerable set of workers. Some of the Tribunal's findings include:

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[8] Flouris et al., "Workers' Health and Productivity Under Occupational Heat Strain: a Systematic Review and Meta-Analysis*"* 2 Lancet Planet Health 201 at e524 [*Workers' Health and Productivity*].
[9] *Workers' Health and Productivity* at e527.
[10] *Workers' Health and Productivity* at e527.
[11] *Workers' Health and Productivity* at e528.
[12] Notley et al., "Cumulative Effects of Successive Workdays in the Heat on Thermoregulatory Function in the Aging Worker" (2018) 5(4) Temperature at 293.
[13] Ontario Ministry of Health, "Harmonized Heat Warning and Information System of Ontario, 2023" (28 May 2023) at 15, online (pdf): <https://files.ontario.ca/moh-harmonized-heat-warning-and-information-system-for-ontario-hwis-en-2023-05-29.pdf>.
[14] Diane M Gubernot, G Brooke Anderson & Katherine L Hunting, "Characterizing occupational heat-related mortality in the United States, 2000–2010: An analysis using the census of fatal occupational injuries database" (2015) 58(2) Am J Industrial Medicine 203 at 205.
[15] *Heat Exposure for Agricultural Workers* at 4.
[16] *Peart v Ontario (Community Safety and Correctional Services),* 2014 HRTO 611 (CanLII) [*Peart*].

- Migrant farm workers face heightened and unique vulnerabilities to health and safety risks, which can lead to increased levels of morbidity and mortality.[17]
- Workers in agriculture, an industry with numerous hazards, long and fluctuating hours, and changing environmental conditions, face compounded risks.[18]
- Many recent studies have documented that farm workers experience widespread and systematic health concerns, and that health and safety problems among farm workers are both more prevalent and occur with greater frequency than among other occupational groups.[19]
- Migrant crop workers have the highest rate of heat-related deaths in the United States, with a rate of death 20 times higher than that of the regular population.[20]

Some common health risks experienced by migrant workers include:

- Consecutive long days of strenuous work without adequate rest;
- Repetitive and stressful ergonomic positions;
- Exposure to intense sunlight, heat and other climatic extremes;
- Exposure to multiple hazards, including machines, tools, unsafe transportation, heavy loads, pesticides, gases and confined spaces;
- Inadequate facilities such as running water to wash off chemicals before eating;
- A lack of training in a language spoken by the workers and/or lack of understanding about safe work practices, rights and entitlements;
- Inadequate provision and use of personal protective equipment;
- Over-crowded, hot, and unsanitary living conditions, and;
- Multiple barriers to accessing health care.[21]

3. Migrant Worker Housing is Inadequate and Does Not Address Extreme Heat

Extreme heat in migrant worker housing is a serious health risk. A qualitative study in Canada noted that inadequate cooling or ventilation leads to heat stress.[22] The housing conditions of farm workers in the United States have been flagged as uneven to inadequate by researchers for some time.[23] In farm worker housing in North Carolina, researchers "recorded dangerous [>80F, 26.7C] heat in most rooms, regardless of time of day or air conditioning".[24]

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[17] *Peart* at para 98.
[18] *Peart* at para 99.
[19] *Peart* at para 99, based on a study in the United States of America.
[20] *Peart* at para 102.
[21] *Peart* at paras 110, 116.
[22] Caxaj CS, Anelyse M Weiler, Julia Martyniuk "Housing conditions and health implications for migrant agricultural workers in Canada: a scoping review" (2023) *Can J Nurs Res* 56(1):16-28. doi: 10.1177/08445621231203086. Epub 2023 Oct 16. 53 pp.
[23] Arcury TA, Weir MM, Summers P, et al., "Safety, security, hygiene and privacy in migrant farmworker housing" (2012) *New Solutions: A journal of environmental and occupational health policy* 22(2): 153-173. https://doi.org/10.2190/NS.22.2.d; See also Keim-Malpass J, Spears CR, Quandt SA, Thomas A. Arcury TA, "Perceptions of housing conditions among migrant farmworkers and their families: Implications for health, safety and social policy" (2015) *Rural Remote Health* 15: 3076.
[24] Quandt SA, Wiggins MF, Chen H, et al., "Heat Index in Migrant Farmworker Housing: Implications

A 2021 survey of temporary foreign workers in the Canadian agricultural sector found that approximately 43% have no access to air conditioning or active cooling.[25] The *Peart* decision highlights that extreme heat is a particular concern for migrant workers, due to long hours of work outdoors, often without adequate rest or hydration, and inadequate housing conditions.[26]

Indoor heat above 26°C risks serious health consequences. The British Columbia Centre for Disease Control found that people were most in danger during the 2021 extreme heat event when indoor temperatures remained above 26°C throughout the event.[27] A study in New York also found that humidity exposure and indoor heat above 26°C increased the proportion of emergency calls due to cardiovascular and respiratory distress.[28] A study by the American Journal of Alzheimer's Disease & Other Dementias found that the symptoms of dementia were significantly exacerbated when patients were exposed to temperatures above 26°C.[29] It is crucial that indoor temperatures remain under 26°C.

B. ESDC PROPOSAL ON TEMPORARY FOREIGN WORKER HOUSING

1. Proposal 2: Accommodation is Supplied With Sufficient Natural and/or Mechanical Ventilation that is in Working Condition to Maintain Proper Air Quality and Temperature

CELA supports the introduction of a requirement to provide appropriate air quality and temperature regulation in all temporary foreign worker housing. We recommend that this requirement explicitly incorporate adequate mechanical cooling and a demonstration that the housing does not exceed a maximum indoor temperature of 26ºC or a humidex[30] of 30ºC.

The current ESDC Schedule F, Housing Inspection Report, Seasonal Agricultural Worker Program and Agricultural Stream checklist requires confirmation of a permanent heating system that can maintain a temperature ranging between 20 and 23.5ºC.[31] A similar mandatory requirement for a cooling system and a maximum temperature standard is needed.

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for Rest and Recovery From Work-Related Heat Stress" (2013) *American Journal of Public Health* 103: e24-e26 https://doi.org/10.2105/AJPH.2012.301135.

[25] Canadian Climate Institute, "The Case for Adapting to Extreme Heat: Costs of the 2021 B.C. heat wave" (June 2023), online (pdf): <https://climateinstitute.ca/wp-content/uploads/2023/06/The-case-for-adapting-to-extreme-heat-costs-of-the-BC-heat-wave.pdf>.

[26] *Peart* at para 102; see also *Schuyler Farms Limited v Dr. Nesathurai*, 2020 ONSC 4711 at para 87.

[27] *Government of BC, Extreme Heat and Human Mortality* at 2.

[28] Uejio, C. K, et al., "Summer indoor heat exposure and respiratory and cardiovascular distress calls in New York City" (2016), NY, US. Indoor air, 26(4), at 594-604.

[29] Tartarini, F et al., "Indoor air temperature and agitation of nursing home residents with dementia" (2017) 32(5) Am J Alzheimer's Dis at 272-281.

[30] The heat index is what the temperature feels like to the human body when relative humidity is combined with the air temperature. See National Weather Service, "What is the heat index?" (last consulted 2 September 2024), online: <weather.gov/ama/heatindex>.

[31] Employment and Social Development Canada, "Schedule F, Housing Inspection Report, Seasonal Agricultural Worker Program and Agricultural Stream" (last visited 5 September 2024) at 3, online: <catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=EMP5598>.

2. Indoor Maximum Temperature Requirements Should Apply to All Temporary Migrant Worker Housing

CELA urges ESDC to take this opportunity to ensure that any housing provided to temporary foreign workers must meet a maximum indoor temperature standard of 26ºC or a humidex of 30ºC. As highlighted at page 22 of the Discussion Paper, many temporary foreign workers in the agricultural sector and the seasonal fish, seafood and primary fruit and vegetable processing sector face unique vulnerabilities such as low wages, restricted immigration status, rural/remote work, language/cultural barriers and heavy reliance on employers for housing.[32] Under all TFW immigration programs, accommodations must account for the serious health risks caused by extreme heat.

Temporary foreign workers in agricultural and other outdoor workplaces are particularly vulnerable to heat because they are exposed both during their working hours and often in their homes. New mandatory requirements for cooling indoors are critical to allow workers to recuperate.

3. Ongoing Inspections Are Needed to Ensure Compliance

A one-time inspection of migrant worker accommodations has proved to be insufficient to ensure that housing conditions are safe and adequate. Ongoing, surprise inspections would ensure employers comply with housing standards throughout the entire period of employment. ESDC should provide sufficient funding for provincial and territorial inspectors to conduct ongoing inspections and issue compliance orders throughout the summer months. Extreme heat is much worse during the hot summer months than at the outset of the agricultural season when many of the initial inspections are occurring. To prioritize this serious health issue, ESDC must dedicate funding for ongoing, surprise inspections.

4. Timelines for Compliance Are Too Long

A timeline for compliance of January 1, 2027 is too long. Workers are facing very serious health risks. We recommend that compliance with a maximum indoor temperature standard of 26ºC or a humidex of 30ºC be put in place before next summer. Temporary and portable cooling equipment is widely available and inexpensive. It can be used to cool temporary foreign worker housing while any long-term retrofits are being conducted.

C. CONCLUSION

CELA is encouraged by ESDC's efforts to improve living conditions for migrant workers in all immigration streams.

Extreme heat, made worse by climate change, is a health threat to migrant farmworkers in Canada during their workdays and in their accommodations. Recently, the Report of the Special

[32] Employment and Social Development Canada, "Temporary Foreign Worker (TFW) Program: Employer-Provided Accommodations Discussion Paper" (2024) at 22.

Rapporteur on contemporary forms of slavery, including its causes and consequences, highlights that workers in employer-provided accommodations have reported substandard housing conditions, which included a lack of climate control.[33]

Climate change is causing more frequent extreme heat days. Exposure to heat is a very serious health issue. Mandatory requirements for housing that ensure workers are not exposed to extreme heat and humidity in their homes are required.

CELA recommends introducing a maximum indoor temperature standard of 26ºC or a humidex of 30ºC in employer-provided accommodations. A clear standard would have a positive impact on the health and safety conditions of migrant workers and promote equity and justice for migrant workers across Canada.

Yours truly,

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[33] *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, UNGAOR, 57th Sess, UN Doc A/HRC/57/41Add.1 (22 July 2024), at 7.