

## Schedule A

### **Parties**

1. The Applicant, Luis Gabriel Flores Flores ("Mr. Flores") is a Mexican national who came to Ontario through the Season Agricultural Worker Program ("SAWP").
2. The Respondent, Scotlynn Sweetpac Growers Inc. ("Scotlynn"), operates an asparagus farm located at 1150 Vittoria Road, Norfolk County, in the Province of Ontario.

### **Background**

3. On April 18, 2020, Mr. Flores arrived in Canada to work for Scotlynn as a farm worker.
4. Mr. Flores possesses a restrictive work permit that severely limited his ability to work in Canada.
5. According to his employment contract, Mr. Flores' employment assignment was to end on November 30, 2020.
6. Upon his arrival to Canada, Mr. Flores quarantined for 14 days at the Travel Lodge Hotel in Simcoe, Ontario. The 14-day quarantine was mandated by the Government of Canada to minimize the spread of COVID-19.
7. After the quarantine, Mr. Flores moved into one of six workers' bunkhouses on Scotlynn's property. Mr. Flores understands that 221 migrant farm workers lived in the six bunkhouses.
8. Specifically, Mr. Flores lived in a bunkhouse that housed approximately 50 to 60 migrant farm workers. Within this bunkhouse, Mr. Flores lived in an apartment unit with approximately 13 other migrant farm workers.
9. The kitchen and the bathrooms in the bunkhouse were shared by multiple apartment units.
10. One of the approximately 13 migrant farm workers who lived with Mr. Flores was a worker named Juan Lopez Chaparro ("Mr. Lopez Chaparro").

### **COVID-19 Infections**

11. Due to the cramped nature of the living quarters, it was not possible for the migrant farm workers employed at Scotlynn to socially distance from one another. Social distancing is a safety measure that reduces the spread of COVID-19.
12. In May 2020, several workers started showing COVID-19 symptoms, with some workers experiencing severe symptoms and falling significantly ill. Mr. Flores, for example, observed Mr. Lopez Chaparro with symptoms.
13. Mr. Flores and other migrant farm workers asked three of their Scotlynn supervisors, i.e. Carmelo, Leobardo, and Cuauhtémoc (last names unknown), for assistance for Mr. Lopez Chaparro.

14. The Scotlynn supervisors told the workers they would let Andres (last name unknown), a senior Scotlynn supervisor, know about Mr. Lopez Chaparro. Mr. Flores does not know to what extent, if any, Scotlynn assisted Mr. Lopez Chaparro.
15. Finally, on or about May 29, 2020, but only after a number of workers, including Mr. Lopez Chaparro, were already hospitalized, all migrant farm workers on the Scotlynn farm receive testing for COVID-19.
16. Mr. Flores understands that 199 of 221 migrant farm workers tested positive for COVID-19.
17. Mr. Flores was one of the unfortunate 199 migrant farm workers who tested positive for COVID-19.
18. On or about June 2, 2020, Mr. Flores and the other workers were sent to quarantine for 14 days at a hotel in Brantford, Ontario.
19. On or about June 16, 2020, Mr. Flores moved back into his bunkhouse and returned to work on Scotlynn's farm.

#### **Death of Juan Lopez Chaparro and June 20, 2020 meeting**

20. At approximately 11:00 pm on June 20, 2020, Mr. Flores and other workers in his bunkhouse were asked to gather outside for an announcement from Dr. Shanker Nesathurai ("Dr. Nesathurai"), the Medical Officer of Health for the Haldimand-Norfolk Health Unit, and Peter Ciallella ("Father Ciallella"), a Roman Catholic priest from Burford, Ontario. Andres was also present and assisted with English to Spanish translation.
21. Dr. Nesathurai and Rev. Ciallella informed the workers that one Mr. Chaparro had died due to COVID-19.
22. After delivering the news about the death of their fellow worker, Dr. Nesathurai asked the workers if they had any questions.
23. Mr. Flores asked Dr. Nesathurai if there was a treatment for COVID-19. Scotlynn supervisor Andres translated the question.
24. Dr. Nesathurai explained, as translated by Scotlynn supervisor Andres, that there was currently no treatment for COVID-19, and that the workers can only take protective measures and inform their supervisor if they show symptoms.
25. Mr. Flores then asked Dr. Nesathurai as to how long the virus lasts in the body and whether there was any risk of reinfection. Scotlynn supervisor Andres translated the question.
26. Dr. Nesathurai informed the workers, as translated by Scotlynn supervisor Andres, that now that they had recovered, they were not at risk of becoming reinfected.
27. After some workers returned to their bunkhouse, Andres asked the remaining workers if anyone else had additional questions or comments.

28. Speaking in Spanish to Andres, Mr. Flores expressed his belief that Scotlynn should take better care of its workers' health and safety, specifically with respect to the COVID-19 virus.
29. Mr. Flores further expressed that Scotlynn should take responsibility for what happened to Mr. Chaparro. Mr. Flores commented that had Scotlynn taken health and safety actions sooner, then it may have been able to prevent the death of Mr. Chaparro.
30. Mr. Flores then asked Andres if he could tell "el patrón", i.e. the boss, to provide an explanation for what had happened. Mr. Flores was referring to Robert Biddle Jr. ("Mr. Biddle Jr."), although Mr. Flores did not know his name at the time.
31. Andres replied that the boss was planning to come to speak to all the workers the following day (June 21, 2020), but did not specify a time.
32. Mr. Flores commented to Andres that he wished to take the next day off from work to grieve. Andres gave him permission to do so.

### **The Termination of Mr. Flores' Employment**

33. At approximately 11:00 a.m. on June 21, 2020, Mr. Biddle Jr. arrived at Mr. Flores' bunkhouse apartment unit. Mr. Flores was with one other roommate at the time of Mr. Biddle Jr.'s arrival.
34. Mr. Biddle Jr. angrily spoke to Mr. Flores in English. Mr. Biddle Jr. held up a smartphone which contained a video image of an anonymous Scotlynn farm worker speaking about the workplace safety conditions on the farm. The video had been circulating online and in Canadian media.
35. Mr. Flores recognized the video image as he had previously watched the video.
36. Mr. Flores understood that Mr. Biddle Jr. was accusing him of being the worker in the video. Mr. Flores also understood that Mr. Biddle Jr. was telling him that he was being fired and was to return to Mexico.
37. Contrary to Mr. Biddle Jr.'s suspicion, Mr. Flores was not the anonymous Scotlynn farm worker in the video. Mr. Flores, however, did speak to the print media, i.e. Globe & Mail on June 10, 2020 and Toronto Star on June 13, 2020.
38. During this conversation, Andres arrived at the bunkhouse.
39. The conversation with Mr. Biddle Jr. was less than 5 minutes in duration. Before leaving, Biddle Jr. communicated in English to Andres.
40. Following this exchange, Andres asked to speak to Mr. Flores in private, outside of the bunkhouse.
41. Andres informed Mr. Flores, in Spanish, that Scotlynn did not want Mr. Flores at the farm and that they were going to put Mr. Flores on the first flight back to Mexico the following morning.

42. Mr. Flores asked Andres if he was being fired because Mr. Biddle Jr. believed he spoke in the video, or if he was being fired because of his comments the previous night, when he stated that Scotlynn should be taking better care of their migrant workers.
43. Andres merely replied that it was "el patrón's" decision and that it had already been decided that Mr. Flores would be sent home to Mexico.
44. Andres did confirm that Mr. Biddle Jr. believed that the identity of the worker in the video was Mr. Flores. Andres stated that he himself did not think Mr. Flores was the person in the video because the worker in the video had a rounder face than Mr. Flores.
45. Without being specific, Andres also stated that there were other workers who did not agree with Mr. Flores' opinion that the farm should have taken better care of the workers.
46. Andres also commented that Scotlynn knew that there were other workers who spoke to the media and that Scotlyn suspected three other workers.
47. Neither Mr. Biddle Jr. nor any other Scotlynn representative gave Mr. Flores a termination letter or a plane ticket. Andres told Mr. Flores that he would be given some paperwork later in the day to fill out.
48. Mr. Flores asked Andres if he could have help resolving an issue with wire transferring money back home to his family, before he returned to Mexico.
49. Andres called another supervisor from Scotlynn's packing plant to assist Ms. Flores who drove Mr. Flores to make the wire transfer.
50. While driving Mr. Flores, the packing plant supervisor made a tasteless joke that he was in actuality driving Mr. Flores to the hospital where he too could die from COVID-19 virus.
51. After the sudden news about his dismissal from his employment and impending repatriation, Mr. Flores did not know what to do. He subsequently decided to contact an individual from outside the farm for support. This individual contacted the Migrant Workers Alliance for Change, who helped arrange for Mr. Flores to be picked up from the farm later that day.

### **Occupational Health and Safety Act Reprisal**

52. Section 50(1) of the *Occupational Health and Safety Act* ("OHSA") prohibits employers from imposing penalties on workers for acting in compliance with or seeking enforcement of the OHSA.
53. Scotlynn terminated Mr. Flores' employment the day after Mr. Flores raised concerns about health and safety at Scotlynn to his supervisor.
54. Scotlynn informed Mr. Flores that his employment was being terminated because they believed he spoke publicly about worker safety concerns.
55. Whether Scotlynn terminated Mr. Flores' employment due to him raising concerns at the June 20, 2020 meeting, due to the video, or due to both incidents, Mr. Flores submits that

the dismissal constituted unlawful reprisal contrary to section 50 of the *OHSA*. Therefore, he is entitled to reprisal damages.

### ***Occupational Health and Safety Act Reprisal Damages***

#### *Direct Earnings Loss*

56. As a result of the reprisal, Mr. Flores was not paid for the 36.5 hours he worked from June 18, 2020 to June 20, 2020.

57. Mr. Flores is thus owed \$538.27 in wages, which is calculated as 36.5 hours x \$14.18 per hour x 1.04 vacation pay rate.

#### *Loss of Future Earnings*

58. But for the reprisal, Mr. Flores would have worked until November 30, 2020. Assuming a 81 hours work week (13.5 hours per day x 6 days per week), Mr. Flores is owed \$27,474.03 in damages for the loss of future earning, which is calculated as \$1,148.58 per week x 23 weeks x 1.04 vacation pay rate.

#### *Loss of Reasonable Expectation of Continued Employment or Loss of Inherent Value of Being Employed*

59. Mr. Flores is also entitled to be compensated for loss of reasonable expectation of continued employment, which is also known as loss of inherent value of being employed.

60. Mr. Flores thus seeks damages equivalent to two weeks' pay, which is \$2,389.05 or \$1,148.58 per week x 2 weeks x 1.04 vacation pay rate.

#### *Emotional Pain and Suffering*

61. Mr. Flores is a worker with a restrictive work permit, working and living in a foreign country. He was wholly dependent on Scotlynn for his income and shelter in Canada.

62. Scotlynn also terminated Mr. Flores' employment in the midst of a COVID-19 pandemic within one day of his co-worker dying from the same disease.

63. Due to the great emotional pain and stress that Scotlynn inflicted on Mr. Flores, Mr. Flores seeks \$10,000.00 for pain and suffering.

### **Conclusion**

64. Therefore, for the unlawful reprisal, Mr. Flores pleads that he is entitled to a total of \$40,401.35.

65. In the alternative, if the Board finds that Scotlynn did not engage in reprisal but did terminate Mr. Flores' employment without just cause, then Mr. Flores submits that he is entitled to 23 weeks' pay as common law pay in lieu of notice, pursuant to section 50(7) of the *Occupational Health and Safety Act*.



# ONTARIO LABOUR RELATIONS BOARD

## NOTICE TO RESPONDING PARTY AND/OR AFFECTED PARTY OF APPLICATION OR REFERRAL UNDER SECTION 50 OF THE ACT (UNLAWFUL REPRISAL)

*Occupational Health and Safety Act*

Form C-26

**Between:**

Luis Gabriel Flores Flores

**Applicant(s)**

- and -

Scotlynn Sweetpac Growers Inc.

**Responding Party(ies)**

- All forms, Notices, Information Bulletins, the Filing Guide and the Rules of Procedure may be obtained from the Ontario Labour Relations Board's website at (<http://www.olrb.gov.on.ca>) or the Board's offices, 505 University Ave., 2<sup>nd</sup> floor, Toronto, Ontario (Tel. 416-326-7500).
- Periods of time referred to in this Notice, other Board forms and Notices and the Board's Rules of Procedure do not include weekends, statutory holidays or any other day that the Board is closed.

1. The Applicant has initiated an application with, or consented to a referral to, the Ontario Labour Relations Board ("the Board") alleging that the employer has contravened Section 50 of the *Occupational Health and Safety Act* ("the application"). A copy of the application is enclosed.
2. This notice is being sent to you because you are a Responding Party to the application or because you have been identified as a person who may be affected by the application.
3. **An application before the Labour Relations Board is a legal proceeding and may affect your legal rights and obligations. You may wish to seek legal advice immediately.**
4. You should carefully read the Board's Information Bulletin No. 14 - "Unlawful Reprisal Applications and Referrals under Section 50 of the Occupational Health and Safety Act", and the Board's Rules of Procedure, which describe how a response/intervention must be delivered and filed with the Board, what information must be provided and the time limits that apply.
5. **IF YOU ARE THE RESPONDING PARTY:**
  - (a) Your response (**Form A-54** available at <http://www.olrb.gov.on.ca/> or at the Board's offices) must be filed with the Board no later than **10 days** after the application was delivered to you.
  - (b) **Before** filing your response with the Board, you must deliver a copy of it (including all documents you are filing

with it) to each Applicant, Responding Party and Affected Party named in Part A of the application and to each Affected Party named in Part A of a response/intervention filed by another party. If you are naming any additional Affected Party in your response, you must provide them with a copy of the application (including all documents filed with it), your response (including all documents you are filing with it) and this notice.

Your response may be delivered to the other parties in accordance with Rule 6.4 of the Board's Rules of Procedure.

(c) You may **then file your response with the Board** by any method, except fax, e-mail or registered mail.

**6. IF YOU HAVE BEEN NAMED AS A PARTY WHO MAY BE AFFECTED BY THE APPLICATION, and if you choose to participate in this proceeding:**

(a) Your intervention (**Form A-54** available at <http://www.olrb.gov.on.ca/> or at the Board's offices) must be filed with the Board no later than **10 days** after the application was delivered to you.

(b) **Before** filing your intervention with the Board, you must deliver a copy of it (including all documents you are filing with it) to each Applicant, Responding Party and Affected Party named in Part A of the application and to each Affected Party named in Part A of a response/intervention filed by another party. If you are naming any additional Affected Party in your intervention, you must provide them with a copy of the application (including all documents filed with it), your intervention (including all documents you are filing with it) and this notice.

Your intervention may be delivered to the other parties in accordance with Rule 6.4 of the Board's Rules of Procedure.

(c) You may **then file your intervention with the Board** by any method, except fax, e-mail or registered mail.

**7. If you do not file your response/intervention and other required documentation in the way required by the Board's Rules of Procedure, the Board may not process your response/intervention and documents, and may decide the application without further notice to you. Furthermore, you may be deemed to have accepted all the facts stated in the application.**

8. Once the application is filed, the Board sends a Confirmation of Filing to all the parties with a Board file number and information about the appointment of a Mediator.

9. If you do not receive a Confirmation of Filing from the Board within seven days after you receive the application, you may wish to contact the Board.

**Dated:**

**Catherine Gilbert**

The Registrar  
Ontario Labour Relations Board

**NOTE:** All communications should be addressed to:  
The Registrar  
Ontario Labour Relations Board  
505 University Avenue, 2nd Floor  
Toronto, Ontario M5G 2P1  
Tel (416) 326-7500  
Fax (416) 326-7531

## IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website <http://www.olrb.gov.on.ca> or by calling 416-326-7500 or toll-free at 1-877-339-3335.

### FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

### CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

### ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

### COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the *Tribunal Adjudicative Records Act, 2019* requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The *Freedom of Information and Protection of Privacy Act* may also address the treatment of personal information. More information is available on the Board's website [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca). If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2<sup>nd</sup> floor, Toronto, ON M5G 2P1.

### E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. Forms and submissions may be filed with the Board by a variety of methods including the Board's e-filing system, but not by e-mail. Note that the e-filing system is not encrypted and e-filing is optional. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

### HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and [www.canlii.org](http://www.canlii.org). Some summaries and decisions may be found on the Board's website.