

SUMMARY REPORT

Profiting from the Precarious

APRIL 2014

How recruitment practices exploit migrant workers

by Fay Faraday



Metcalf Foundation

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CONTENTS

PART I

INTRODUCTION.....	5
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PART II

OVERVIEW OF CANADA'S TEMPORARY LABOUR MIGRATION

PROGRAMS.....	11
Live-in Caregiver Program.....	13
Stream for Lower-skilled Occupations.....	13
Agricultural Stream.....	14
Seasonal Agricultural Worker Program.....	14

PART III

MAPPING MIGRANT WORKERS' EXPERIENCES OF RECRUITMENT 17

1. Transnational context: Where the migration cycle starts.....	17
2. How recruitment relationships are structured.....	19
3. Paying to work.....	21
i. Recruitment fees.....	21
ii. Recruitment debts.....	24
4. How recruitment practices exacerbate insecurity created by the temporary labour migration programs.....	25
5. Interprovincial recruitment.....	28
6. Seasonal Agricultural Worker Program.....	28

PART IV

A RIGHTS-BASED FRAMEWORK FOR REGULATING RECRUITMENT 31

PART V

PROTECTING MIGRANT WORKERS FROM EXPLOITATION

IN RECRUITMENT..... 34

- A. Reflections on federal provisions on recruitment..... 34
- B. Ontario's Employment Protection for Foreign Nationals Act 35
 - 1. A complaint-based law cannot provide migrant workers with effective protection because it relies on the most vulnerable actor in the system to police compliance. 37
 - 2. A complaint-based model does not close the information gap that leads workers into exploitative recruitment arrangements in the first place..... 37
 - 3. The *Act* does not relieve recruitment debt..... 38
 - 4. The *Act* places the burden on workers to prove their rights have been violated..... 38
 - 5. The tension between protecting individual worker rights and serving the collective needs of a worker's extended family prevents migrant workers from asserting their legal rights. 38
- C. Proactive enforcement: The Manitoba model and its evolution 38
 - 1. Meeting international best practices 39
 - 2. Other models for cross-jurisdictional cooperation 44

PART VI

CONCLUDING ANALYSIS AND RECOMMENDATIONS 47

Recommendations 50

ENDNOTES..... 52

PART I

INTRODUCTION

Over the past decade, Canadian employers have increasingly demanded access to a “flexible” workforce of transnational migrant workers. Canadian laws and policies have responded, speeding the flow of workers to Canada with precarious temporary immigration status.¹ Since 2000, the population of temporary migrant workers in Canada has more than tripled to 338,213 in 2012. Their population has more than doubled since 2006 alone.² Despite the recession that began in 2008, the number of migrant workers in Canada has increased every year throughout this period, significantly outstripping the number of permanent economic immigrants admitted to Canada. The sharpest increase has been among workers brought to work in “lower-skilled” jobs — a temporary migration stream that has increased by 2,221% since it began as a pilot project in 2002. Overall, a quarter of migrant workers, primarily from the global south, are employed in low-wage jobs deemed “lower skilled,” such as caregiving, agriculture, food processing, restaurants, fast-food service, hospitality, cleaning, tourism, and retail.³

As temporary labour migration has exploded, an industry of third-party, for-profit labour recruiters has emerged to match migrant workers with employers in Canada and to help workers navigate the complex process of moving across national borders for authorized work. This report examines low-wage migrant workers’ experience of recruitment and analyzes whether the law can adequately protect low-wage migrant workers from exploitation.

It is true that “reputable recruiters [can] provide a valuable service helping to place foreign workers with companies, legitimately earning their fee from the employers.”⁴ But, widespread abuse of low-wage migrant workers at the hands of disreputable recruiters has been documented by academic and community-based researchers for years. Significant numbers of migrant workers are brought to Canada by recruiters who charge oppressive “recruitment fees,” including fees for jobs that do not exist and jobs that are different than promised. These abuses continue to be documented on an ongoing

Migrant Workers Present in Canada

2000: **89,746**

2006: **160,740**

2012: **338,213**

Migrant Workers Outnumber Economic Immigrants

In 2012, Canada admitted:

160,819

economic immigrants as permanent residents

213,573

temporary migrant workers

Lower Skilled Migrant Workers Present in Canada

2000: **24,139**

2012: **75,606**

basis.⁵ Government reports have similarly raised the alarm about exploitation by such recruiters.⁶

Yet, Canadian governments have only recently developed laws to target this problem. And Ontario's existing law has been singularly unable to stop the abuse.

In 2009, in response to a high-profile *Toronto Star* investigative series documenting widespread exploitation of live-in caregivers by recruiters in the province, Ontario enacted the *Employment Protection for Foreign Nationals Act*⁷ (EPFNA). The law applies only to live-in caregivers. It prohibits recruiters from charging fees to employees, prohibits employers from recouping recruitment costs from workers, and prohibits recruiters and employers from seizing workers' passports or other documents.⁸

But, these same practices continue unabated in Ontario among live-in caregivers to whom the *Act* applies and among other low-wage migrant workers who fall outside the law's protection.

Documents obtained through a Freedom of Information request in October 2013 reveal that, since Ontario's *Act* took effect in March 2010, a mere \$12,100 in illegal fees has been recovered from recruiters and only eight investigations are ongoing. Meanwhile, the Caregivers' Action Centre reports that *since* the law was enacted, two-thirds of its members have been charged illegal recruitment fees.

As this report details, low-wage migrant workers in Ontario continue on a routine and systemic basis to be charged thousands of dollars in recruitment fees to be placed in low-wage jobs in Ontario — fees that can equal as much as two years' wages in their home currency. And the fees continue to rise. In order to pay these recruitment fees, migrant workers continue to borrow money from recruiters and informal money lenders, they continue to sign over the deeds to their homes to secure these loans, and they continue to be charged oppressive interest rates on these loans. These actions effectively place workers in debt bondage to their recruiters and employers. Migrant workers continue to be recruited to Ontario only to discover that the jobs they were promised do not exist, forcing them to work without status to pay off the debts they incurred to arrive here. And migrant workers continue to have their passports and travel documents seized, trapping them in abusive employment relationships.

All of these separate actions are exploitative in themselves. However, their cumulative effect is even more toxic. The failure to guard against exploitative recruitment practices sets the stage for recruiters and employers to subject workers to even deeper erosion of their contractual and legal rights in Canada and raises insurmountable barriers for workers to enforce their rights to decent work.

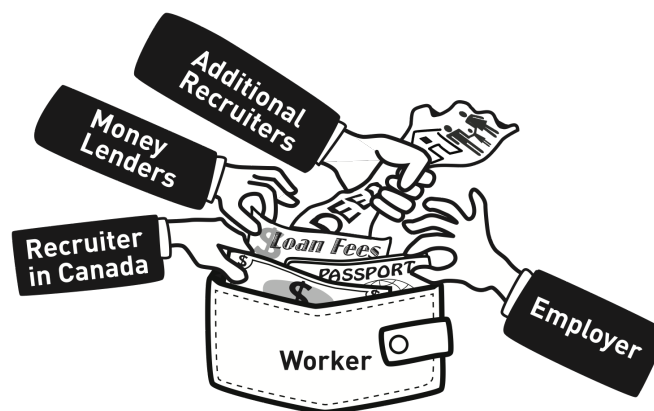
The gap between the Ontario law's promise of protection and the reality of ongoing exploitation is vast. As abusive practices persist in the face of the law, it is important to ask why the law is falling short and what can be done to build meaningful protection for migrant workers.

Migrant workers are not inherently or inevitably vulnerable or precarious. Their disempowerment and marginalization are the products of active choices governments have made in building the laws and policies that govern transnational labour migration. A government's choice of whether to enact a law and its choice of how a law is designed

determine which relationships and interactions are encouraged and facilitated and which are discouraged. How a law operates on its own terms and how it operates as part of a system of other laws will determine whether it responds appropriately to a social problem or, alternatively, whether it creates conditions that allow known exploitation to flourish. Those choices will determine whether our laws provide real protection to workers or allow predatory practices to continue **profiting from the precarious**.

To move forward, it is necessary to acknowledge the depth and pervasiveness of what the International Labor Recruitment Working Group has called the "disturbingly common patterns of recruitment abuse."⁹ It is necessary to design an appropriately rigorous legal response that can provide meaningful, accessible, and effective protection for the human rights of those who migrate for work. To that end, this report addresses the following themes:

1. Exploitative recruitment practices are not unique to live-in caregivers. **The practices are systemic and affect low-wage migrant workers in all sectors who are subject to private recruitment.** To be effective, any legal response must protect all low-wage migrant workers from predatory practices.
2. The exploitation that arises through the recruitment process does not start and end with the payment of illegal fees. **Structural inequalities that drive transnational labour migration and specific conditions created and imposed by the federal temporary labour migration programs produce discrete points of insecurity that recruiters effectively leverage for profit. Understanding how these systems interact reveals how abuse in recruitment resonates to undermine workers' ability to enforce their rights to decent work under provincial law long after they begin work in Ontario.** An appropriate response to recruitment abuse must be keenly attuned to how



distinct federal and provincial laws and policies operate together as a system.

3. Both internationally and within Canada, **best-practices models for regulating migrant worker recruitment have been moving away from individual complaint–driven laws like Ontario’s in favour of increasingly comprehensive, proactive regulatory regimes.**

This proactive approach, pioneered in Manitoba and adopted in Nova Scotia and Saskatchewan, aims to **empower workers to avoid exploitative relationships, enhance public accountability of recruiters and employers, and ensure effective enforcement of the law by an entity with the power and resources to do so.**

The Metcalf Foundation’s 2012 report *Made in Canada* identified a six-stage labour migration cycle that migrant workers experience.¹⁰ It analyzed how legal and policy choices by federal and provincial governments interact to create insecurity for workers at each stage in the labour migration cycle. In making recommendations for reform, *Made in Canada* emphasized the need to connect specific short-, medium-, and long-term reforms to a broader vision of building sustainable and secure communities. The report urged that

a much broader, critical and urgent public discussion must be engaged about the role of temporary labour migration if the goal is to build a sustainable economy and sustainable community. This debate must fully integrate both the labour and immigration dimension of the issue and ensure that workers’ perspective is central. This debate must critically address why particular work and particular workers are, through law, constructed as “temporary.” [...] It must also critically address the fundamental question of why broad classes of workers — workers who have historically played a significant role in building Canada — are now, in law, generally ineligible for pathways to permanent residence and citizenship.¹¹

This report builds on the framework and analysis of *Made in Canada*. As a next step in the research, it focuses on recruitment because that is the stage where the power imbalance between workers and recruiters/employers is greatest, and yet it is the stage with the least effective legal oversight. This research aims to move beyond the now well-worn phrases of “unscrupulous recruiters” and “exorbitant fees” to build a more nuanced understanding of how low-wage migrant workers experience transnational recruitment. It examines the choices workers make (and are forced to make) in seeking work abroad; how recruiters exercise leverage over migrant workers, their families, and communities; why recruitment fees are oppressive; and how a recruitment

relationship can undermine workers' security and their legal rights long after they arrive in Canada.

It is necessary to understand fully the nature of the social problem presented by recruitment in order to design a law that responds appropriately to the social harm. If the depth and nature of the problem is not fully known, the law cannot fully respond. The fact that recruitment is *transnational* — that part of the recruitment transaction occurs outside of Canada — is often raised as an impediment to regulation. This report challenges that stance of impotence. It examines tools that are available to build security from within Canada and that can resonate back along the transnational recruitment pipeline.

Ultimately, this report stresses the importance of connecting the regulation of recruitment to the larger legal and policy debate. It does not suggest that reducing exploitative recruitment practices is an endpoint in the debate. The objective is not simply to polish up the recruitment supply chain. Instead, understanding recruitment can bring to light the depth and complexity of structural power imbalances that produce and sustain transnational migration. It can inform reflection on how Canadian temporary labour migration policies profit from that imbalance. It can promote discussion about the values and priorities that should shape Canadian legal responses.

While supporting the fundamental recommendation from *Made in Canada* — that workers of all skill levels must have access to immigrate to Canada with permanent status — this report recognizes that as long as Canada and Ontario rely on temporary labour migration, they have an obligation to ensure that the laws and policies that facilitate migration provide real security for migrant workers.

Part II outlines how federal and provincial laws shape the field in which migrant worker recruitment operates. **Part III** draws on in-depth interviews with low-wage migrant workers in the Greater Toronto Area and southern Ontario, community organizers in Canada, and organizers working in migrant workers' countries of origin overseas to map low-wage migrant workers' experiences of recruitment. **Part IV** outlines the rights-based framework of principles and standards by which we can assess whether Ontario's laws support migrant worker security and rights to decent work. **Part V** provides a detailed analysis of Ontario's existing law in light of these guiding norms and compares it with models of proactive licensing and registration that have been adopted elsewhere in Canada. **Part VI** provides concluding analysis and outlines options for systemic reform.

“Recruitment” or “Human Trafficking”?

Some of the patterns that emerge in this report may well be consistent with findings of forced labour and human trafficking. Canada has ratified both of the key international conventions condemning human trafficking: the *UN Convention against Transnational Organized Crime* and the *Palermo Protocol*.¹² Human trafficking is also prohibited under both the *Immigration and Refugee Protection Act (IRPA)* and the *Criminal Code*. Moreover, there are recent cases in which recruiters and employers in Canada have been convicted of human trafficking.

This report, however, examines the legal response to transnational recruitment through the regulatory models enacted in immigration and employment laws rather than under the criminal law. This approach is deliberate. It in no way intends to downplay the gravity of the abuse. Instead, this approach aims to highlight how the law has allowed such abusive practices to be normalized and made invisible. It is important to stress that the patterns of exploitation that are revealed as being systemic and routine are occurring not within the illegal channels of human smuggling and trafficking, but within the regular, entirely legal channels that the Canadian government has created for temporary labour migration.

The criminal law may provide tools to combat particularly abusive practices in some cases.¹³ However, using human trafficking as the analytical frame — and thinking about this as an exclusively criminal law problem — obscures the extent to which these practices are not aberrant but are in fact core to the business model that some recruiters adopt while operating within legal migration streams.

Many migrant workers and migrant worker organizations themselves analyze and critique labour recruitment through the lens of trafficking. They also characterize their own governments that have adopted aggressive labour export policies as trafficking in their own citizens.¹⁴

This tension about how to frame the analysis — legally and politically — is an important reminder that any examination of recruitment laws must also be firmly anchored in a critical examination of the larger legal and economic policy framework that constructs conditions of insecurity for migrant workers in Canada.

PART II

OVERVIEW OF CANADA'S TEMPORARY LABOUR MIGRATION PROGRAMS

In Canada, both federal and provincial laws are engaged in regulating labour migration. Migrant workers' authorizations to enter, work, and remain in Canada are governed by federal immigration law and policy, but their employment and social rights while in Canada are governed primarily by provincial law and policy. Provinces have jurisdiction to regulate migrant worker recruitment. However, the effectiveness of the provincial law is deeply influenced by how it interacts with the terms and conditions imposed by the federal immigration laws and policies. That is why we outline over the next few pages the federal framework governing temporary labour migration. Ontario's laws regulating recruiters will be addressed in detail in Part IV.

Under Canada's Temporary Foreign Worker Program, employers can apply to hire transnational migrant workers into any lawful occupation in Canada. Transnational temporary migrant workers can be hired into occupations of all "skill levels." The National Occupational Classification (NOC) matrix assigns codes to jobs based on whether they are

- managerial (level o),
- professional (level A),
- skilled trades (level B),
- require up to two years of training or apprenticeship (level C), or
- can be performed with on-the-job training (level D).

Citizenship and Immigration Canada (CIC) operates separate permanent and temporary migration streams that set different eligibility requirements and confer different entitlements for NOC levels o, A, and B positions, which are labelled "high skilled" (managerial, professional, skilled trades), and NOC levels C and D positions, which are labelled "lower skilled."

This report focuses on how recruitment practices affect migrant workers with temporary status who are working in low-wage jobs classified at NOC levels C and D. These workers make up nearly one quarter of all migrant workers in Canada. Every year since 2006, between 60% and 67% of all Labour Market Opinions authorizing Ontario employers to hire migrant workers have been for workers in these low-wage jobs.¹⁵

Number of migrant worker positions authorized on positive LMOs in Ontario in 2012

49,770

How many of these were at the NOC C and D level?

30,215

Percent of LMO authorized positions in Ontario in 2012 for NOC C and D level jobs

60.1%

Number of migrant worker positions authorized on positive LMOs in Toronto in 2012

20,980

Number of unique employers in Ontario who applied for an LMO in 2012

17,120

Canada operates four programs through which migrant workers with temporary immigration status are delivered to fill jobs in NOC levels C and D occupations:

1. Live-in Caregiver Program (LCP)
2. Stream for Lower-skilled Occupations
3. Agricultural Stream
4. Seasonal Agricultural Worker Program (SAWP)

In general, before a migrant worker can be hired to work in Canada, three separate authorizations must be granted.¹⁶

First, to hire a migrant worker, an employer must apply for a **Labour Market Opinion** (LMO) from Employment and Social Development Canada (ESDC). To receive an LMO, the employer must demonstrate that (a) they have made reasonable efforts but have been unable to either hire or train Canadian citizens or permanent residents and (b) hiring a migrant worker will have either a positive or neutral impact on the Canadian labour market.

Second, after a positive or neutral LMO is granted, the migrant worker must apply to CIC for a **work permit**. Migrant workers entering lower-skill occupations are employed on **tied work permits**. This means that the work permit contains explicit conditions that restrict the employee to performing a specific kind of work for a specific employer in a specific location and for a specific time period — all of which are stated on the permit. Failure to comply with any of these conditions places an employee out of authorized status.

Third, the Canada Border Services Agency (CBSA) screens the worker for compliance with general criteria for admissibility to Canada, including security requirements. While CIC approves the work permit, the worker receives the permit from CBSA at the port of entry.

When an employer applies for an LMO and when an employee applies for a work permit, they must submit a **signed employment contract** with their respective applications. Migrant workers under the SAWP must sign a standard contract that is negotiated between the Canadian government and the government of the worker's origin country. For the other streams of low-wage migrant labour, ESDC provides program-specific template employment contracts. Each template contract sets out fill-in-the-blank provisions covering the basic terms and conditions of employment. Each of the sample contracts contains two provisions that relate specifically to recruitment:

1. First, each template contract provides that the employer shall not recoup any costs incurred in recruiting the worker. The template contract for workers arriving under the LCP further provides that if a recruiter charged a worker recruitment fees, the employer must reimburse those fees upon proof by the employee.
2. Second, each template contract provides that the employer shall pay for the employee's transportation to their destination in Canada. If the worker is not currently in Canada, the employer must cover round-trip travel from the worker's country of permanent residence. If the worker is already in Canada, the employer must pay for transportation from the employee's current location in Canada and one-way travel to their country of permanent residence.

Each of the four programs imposes additional requirements that are unique to the specific program stream.

Percent growth in
Stream for Lower-
Skilled Occupations
since 2002

2221%

Workers Present in
Canada under the
Stream for Lower-
Skilled Occupations

2002: **1,304**

2012: **30,267**

Live-in Caregiver Program

Under the LCP, migrant workers provide live-in care for children, persons with disabilities, and the elderly in private homes. This is the only program for lower-skilled occupations that allows migrant workers in Ontario to apply for permanent residence.¹⁷ A work permit under the LCP can be granted for up to four years and three months. To be eligible to apply for permanent residence, a migrant worker must, within four years, complete two years of full-time work or 3900 hours of caregiving work while living in the employer's home. Accordingly, a mandatory requirement of the LCP is that the worker must live in the employer's private home. The worker pays up to \$85.25 per week for room and board.

Stream for Lower-skilled Occupations

Workers in this migration stream can be employed in any legal lower-skilled occupations in the province. In Ontario, workers under this stream do not have access to apply for permanent residence. They can be granted a work permit for up to 24 months, which can be renewed for an additional 24 months. After working with temporary status for four years, the migrant worker must leave Canada and must remain out of the country for a further four years¹⁸ (the "four-year in/four-year out rule"). This program stream does not require that workers live on the property of the employer but, in practice,

many of these workers do live in employer-provided housing. Many live in bunk houses built on the employer's property or in accommodations owned and/or arranged by the employer for which they pay rent.

Agricultural Stream

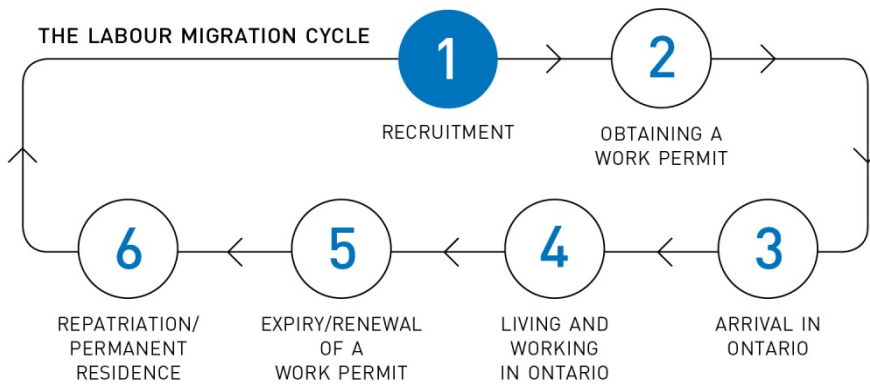
Workers in the Agricultural Stream are also hired on permits of up to 24 months, renewable for an additional 24 months. They are also subject to the four-year in/four-year out rule. They do not have access to apply for permanent residence. Employers under the Agricultural Stream are required to provide housing for workers for which they can charge \$30 per week, which is recouped through payroll deductions.

Seasonal Agricultural Worker Program

The SAWP is unique among the four temporary migration streams for lower-skill occupations. Unlike the other programs, which are created through regulations and policy, the SAWP is created through bilateral Memoranda of Understanding between Canada and each of the countries participating in the program.¹⁹ The Mexican and Caribbean governments recruit, select, and document the workers and maintain a pool of workers who are available to depart to Canada when requests are made by Canadian employers. In Ontario, a private sector-run, not-for-profit organization — the Foreign Agricultural Resource Management Services (FARMS) — governed and funded by the agricultural commodity groups that participate in the SAWP, coordinates processing of employers' applications to hire workers.

Workers under the SAWP can work in Canada for a maximum of eight months in any calendar year. There is no limit on how many years a SAWP worker can return to Canada. On average, workers under the SAWP return to Canada for seven to nine years. One quarter of SAWP workers return to Canada for more than 10 years, many of them returning for 25 years or more.²⁰

Many of the features of the federal immigration streams create conditions that produce real insecurity for migrant workers. It is necessary to examine how the legal regulation of temporary labour migration operates as an integrated *system* whose parts interact and reinforce conditions of insecurity. As detailed in *Made in Canada*, legal regulation at each of the six stages of migrant workers' labour migration cycle operates in a systemic and cumulative way. That regulation can be designed and coordinated to build security throughout the labour migration cycle, or it can be designed in a way that exacerbates precariousness.



While this report examines migrant workers' experience of law through the lens of recruitment, the regulation of recruitment cannot be examined in isolation. Workers' experience of recruitment is intertwined with their temporary status, tied work permits, tied housing, and limited window of time to work in Canada. Each of these conditions created by the federal temporary labour migration programs produce significant points of insecurity that recruiters can effectively leverage for profit.

Worker Profiles

Although this report draws on survey data and interviews relating to nearly 200 migrant workers, no individual migrant worker profiles are included. This is deliberate. It has been done to protect the workers' security.

None of the workers interviewed was willing to be publicly identified or profiled. All workers who were interviewed spoke only on the condition of anonymity.

Composite profiles have also not been developed. The exploitation by recruiters that was reported tracked very similar patterns, even when workers came from different continents and worked in completely different industries and communities in Ontario. As a result, even with a composite profile, individual workers would be able to recognize their own stories and would fear that their anonymity had been compromised.

All workers expressed extreme fear that speaking publicly about recruiters' practices would result in them losing their jobs, being denied work permit renewal, being denied permanent residence, or being deported.

Workers also expressed real fear that speaking publicly about abuses by recruiters would subject their families at home to reprisals, including violence. They expressed fear that speaking publicly about recruiters would drive recruitment practices further underground, creating even greater risk for workers.

PART III

MAPPING MIGRANT WORKERS' EXPERIENCES OF RECRUITMENT

Part III of the report examines migrant workers' experiences of recruitment in relation to

- the transnational context from which labour migration originates,
- how recruitment relationships are structured,
- recruitment fees,
- conduct that exacerbates precariousness after a worker arrives in Canada, and
- interprovincial recruiting.

The experience and patterns that are recorded in this report are based on consultations with groups of migrant workers, in-depth interviews with individual migrant workers, interviews with community-based organizations supporting migrant workers in Toronto and southern Ontario,²¹ and interviews with and data provided by community-based organizers from workers' origin countries. Unless otherwise indicated, the consultations and interviews were conducted between March 2013 and November 2013. All migrant workers who participated in this research did so voluntarily. All are in Canada with precarious temporary status. All participated in the research on the condition of anonymity and on the condition that where they provided documents to substantiate their experiences, these would not be disclosed.

This report focuses on the experiences of migrant workers who have come to Canada under the Live-in Caregiver Program, the Stream for Lower-skilled Occupations and the Agricultural Stream. Government-run recruitment under the Seasonal Agricultural Worker Program eliminates the opportunity for abuse by private recruiters. Nevertheless, distinct recruitment problems arise under that program, which are addressed separately at the end of this section.

1. Transnational context: Where the migration cycle starts

Transnational labour migration programs depend upon and are sustained by the persistent and growing structural and income inequalities between developing and developed economies. Underdevelopment, unemployment, underemployment, violence, environmental devastation, and restrictions on individual freedoms are primary drivers that lead most migrant workers to seek

employment outside their countries of origin. To ensure the law does not facilitate exploitation, it must be attuned to how this power imbalance resonates for an individual worker throughout the labour migration cycle.

Low-wage migrant workers who come to Canada often arrive from relatively impoverished communities — particularly impoverished rural communities — with limited economic opportunities. The workers and their local communities depend heavily upon the income earned through migrant labour and the remittances that workers send home. For example, the largest group of migrant workers in Canada comes from the Philippines.²² Since 1974, the Philippines has pursued an aggressive labour-export policy, which currently sees more than 4,000 Filipinos per day leave the country for work overseas.²³ Remittances from overseas Filipino workers worldwide account for roughly 10% of the annual GNP of the Philippines²⁴ and “it is estimated that one-third to one-half of the Philippines’ population is directly dependent on remittances from family members working overseas.”²⁵

In this context, for many workers, “temporary” labour migration is not temporary. Economic options that would allow them to *choose not to migrate* are not available.

Many of the workers interviewed for this report had already been working outside their home countries for as many as ten years before coming to Canada. For some, their spouses also work abroad — often in a country other than Canada — while their children are raised by grandparents or other relatives.

Canada’s new four-year in/four-year out rule contributes to ensuring migrant workers in Canada remain “permanently temporary.” The first restricted four-year work terms will expire in 2015, requiring thousands of workers under the Agricultural Stream and Stream for Lower-skilled Occupations to leave Canada. Without pathways that allow them to immigrate with permanent status, despite their extended service in Canada — and the continued need for their labour — these workers will be forced to continue migrating internationally for work.

This underlying economic and power imbalance colours migrant workers’ experience through every stage of the labour migration cycle. It provides the advantage that allows recruiters to extract profit from the workers’ precariousness, particularly when workers are led to believe they are being offered a chance to secure permanent residence.

In this context of severely constrained options, an individual, often collectively with his or her family, makes the decision to migrate for work. The family assesses which member has the best potential to secure work transnationally due to skills and training, English-language skills, adaptability, and other capabilities of that family member, or because of the gendered options that are available.²⁶ In turn, the migrant worker’s remittances support an extended family network. As a result, any action a migrant worker takes to resist

exploitative treatment in Canada — and thereby risking continued employment — directly affects the worker and the extended family that depends on the worker's continued employment. The weight of this collective obligation — exacerbated by the precariousness of temporary immigration status — presents an almost insurmountable obstacle to enforcing individual workplace rights.

Any failure to take this reality seriously in designing the regulation of migrant worker recruitment will yield a law that remains inert in practice and that fails to provide any meaningful protection for the worker's security and minimum standards of decent work.

2. How recruitment relationships are structured

Labour recruiters can leverage the precariousness outlined above to their profit because they typically enjoy significant advantages in terms of

- contacts with employers and information on how to access jobs abroad,
- information on how to navigate the complex immigration/migration procedures,
- English-language capacity,
- mobility within the country of origin, and
- familiarity with Canadian society.

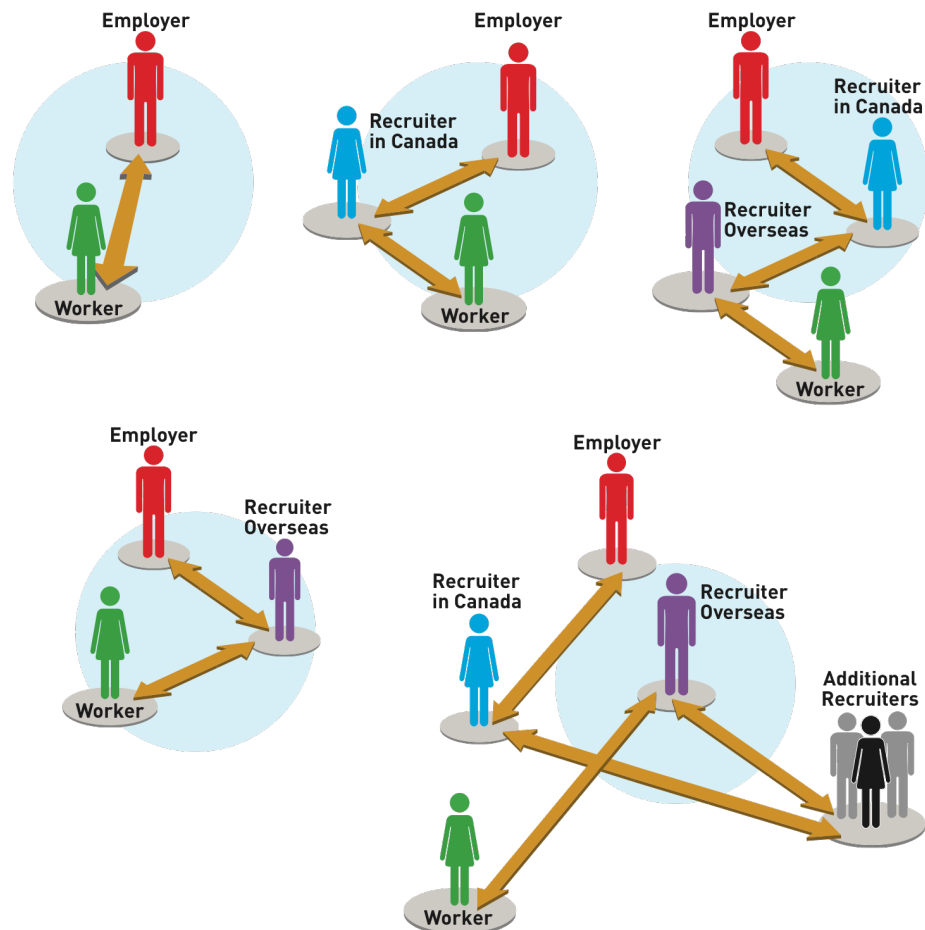
Recruiters hold these advantages relative to an individual migrant worker and relative to a broader community. Workers from impoverished rural communities reported that large numbers of workers from a single community are recruited, with the result that remittances become critical to the stability of the community as a whole. Recruiters use this community dependence on overseas jobs to discipline workers who resist unfair treatment. Workers from both Asia and Latin America, working in different communities and different industries in Ontario, described a very similar practice in which the recruiter deliberately cuts off the pipeline to overseas work for the whole community as a reprisal when an individual worker complains. The recruiter simply shifts to recruiting workers from another community down the road.

Transnational recruitment can operate through a variety of structures. Some recruitment agencies are large multinational corporations with offices in Canada and abroad. Some recruiters operate small, informal businesses that draw on personal connections in Canada and the origin country. Many fall along the spectrum in between.

The length of the recruiter supply chain can also vary considerably. In the shortest chain, an employer hires a worker directly. More frequently, an employer contracts with a Canadian-based recruiter or a recruiter based overseas to locate workers abroad. In many cases, the primary recruiter, whether based in Canada or overseas, has various partners, affiliates, agents, or “helpers” located in Canada and/or overseas who help identify and recruit workers. The

Centro de los Derechos del Migrante, a transnational migrant workers' rights organization operating in the United States and Mexico, diagrammed the supply chain structures in USA-Mexico recruitment in five broad models.²⁷ Adapting those five models to the Canadian context, they can be illustrated as follows:

Recruiter Supply Chain Models



In transnational migration, one end of the pipeline is inevitably in the origin country. **But, one end of the pipeline is always in Canada.** Thinking critically about the nature, shape, and location of the pipeline identifies the opportunities to build accountability and security for workers into that system. It also reveals whether a regulatory model facilitates a “chain of deniability” in which a Canadian-based recruiter or employer can disavow responsibility for the actions of its “helpers.”

3. Paying to work

As is detailed in Part IV, a longstanding international consensus roundly condemns the practice of charging workers — and in particular migrant workers — for access to jobs. Recruitment is a normal part of running a business. International labour and human rights norms, therefore, recognize that employers alone should bear recruitment costs.

Nevertheless, recruiters (and employers) continue to charge migrant workers fees to get a job. Even though these practices have been documented and condemned in Canada, they persist and remain systemic. While comprehensive data is not available, interviews with live-in caregivers and workers in other low-wage sectors — including agriculture, food processing, warehouses, and restaurants — confirm that the practice is widespread, even routine.

i. Recruitment fees

The fees that recruiters charge vary significantly depending on the origin country and the type of work into which the worker is placed. Expressed in Canadian dollars, fees can start at around \$1,000 but most frequently range between \$4,000 and \$10,000. Some workers, however, have paid \$12,000 to as much as \$15,000 for jobs in Ontario that pay at or near minimum wage.

Workers are typically charged a lump sum to “process an application,” with no breakdown of what the charges are for. Some recruiters demand an initial fee to begin the application process, a second instalment when the LMO is approved, and a third instalment in order to receive the work permit. Some workers’ recruitment fees are classified as payment for “training” or preparation of resumes, even though no training is requested or provided and no resumes are required.

In some cases, workers are paying the recruitment fees directly to an individual or a company or bank account located in Canada. In other cases, they pay the fee to the recruiter agent located overseas. In some cases, they pay one or more initial instalments to a recruiter agent overseas and one or more instalments to a Canadian-based agent after they have arrived in Canada.

Some workers are provided with documents and receipts upon payment of the fees, including documents showing that fees are transferred to individuals in Canada. More frequently, recruiters

Typical Range of Recruitment Fees for Minimum Wage or Near Minimum Wage Jobs in Ontario

\$4,000
to
\$10,000

Recruitment Fees are on the Rise

Fees charged to Filipino workers in food processing in Ontario:

2008: **\$3,750**

2013: **\$7,000**

refuse to provide any receipts or provide receipts that inaccurately describe their purpose. Workers report that recruiters routinely warn them not to disclose that they have paid fees and to deny that they have done so if asked. Recruiters also routinely warn them to stay away from unions and community organizations. As a result, the workers who were interviewed expressed very high levels of fear about discussing recruitment practices and expressed fear of repercussions for both themselves and their families back home.

While recruitment fees of \$4,000 to \$10,000 are remarkable enough in Canadian currency, their true impact only becomes apparent when the fees are converted into the workers' home currency. In reality, **these fees typically represent between six months to two years' earnings in the workers' home currency and, in some cases, considerably more.** The examples outlined below are representative of the impact of fees that workers are being charged for work in various sectors.

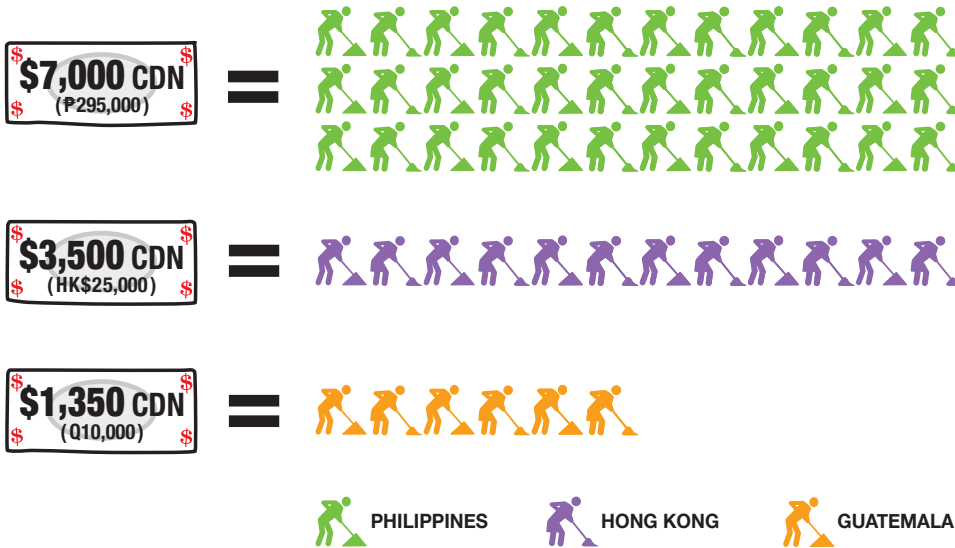
Live-in caregivers typically reported paying fees of \$3,500 to \$5,000 *plus airfare* for work in Ontario. Some caregivers reported paying fees of \$7,000 to \$9,000. The highest fee reported by a live-in caregiver was \$12,000. Recalling that \$3,500 is at the *lowest* end of the fee scale charged to caregivers, **for workers coming from Hong Kong, this was equivalent to their entire salary earned over 8 to 12 months. On top of the recruitment fee, these workers paid thousands of dollars more in Canadian currency for their flights to Canada, despite the fact the LCP mandates that employers pay these costs.**

Guatemalan workers reported paying recruitment fees of between \$1,350 and \$2,500 for work in the agricultural sector. Expressed in Guatemalan quetzals, their fees ranged from Q10,000 to Q20,000. Again, noting that Q10,000 is at the *lowest* end of the fee scale, the workers reported that this represents their **entire earnings over six months at a good job.** Those "good jobs" were not in fact available in the rural communities from which the workers migrated.

Filipino workers being brought to work in food processing jobs in Ontario are charged fees of \$7,000, up from \$3,750 to \$5,000 five years ago. Converted into Philippine pesos, this is equivalent to nearly ₱295,000. The workers who paid these fees earned only ₱300 to ₱350 *per day* in the Philippines. **Their recruitment fees equalled their entire earnings over two to three full years.**

Typical Lower-end Recruitment Fees

Salary Equivalence in Months of Work Needed at Home to Match Recruitment Fees



The fees reported by workers in this research are consistent with recruitment fees that have been publicly reported across Canada for years. In 2007, the Alberta Federation of Labour (AFL) reported that, in over 70% of cases handled by its Temporary Foreign Worker Advocate, labour brokers demanded fees of \$3,000 to \$10,000 from migrant workers in addition to fees they had charged the employer.²⁸ Two years later, the AFL reported the situation had “actually gotten much worse” as recruiters shifted their practices to demand payment in the worker’s home country before arriving in Canada, and “brokers based in the home country frequently use threats of violence against the worker or their family to coerce full payment of the fees or to ensure the worker does not complain to authorities about the illegal charges.”²⁹

In Ontario, as early as 2009, the Caregivers’ Action Centre, Workers Action Centre, and Parkdale Community Legal Services reported to the Ontario government that migrant workers were being charged \$500 to \$10,000 for jobs in Ontario.³⁰ That year, the House of Commons Standing Committee on Citizenship and Immigration heard evidence that recruiters were charging from \$2,000 to \$25,000 for jobs in Canada.³¹ In 2011, the United Food and Commercial Workers Union Canada (UFCW Canada) reported that, in the agricultural sector, “fees to employment brokers... can equal half the worker’s annual pay or more.”³² In 2011, the Law Commission of Ontario reported that migrant workers in minimum wage jobs in Ontario had paid \$5,000 to \$12,000 in recruitment fees.³³

Very few legal claims have proceeded against recruiters in Canada. Where workers have come forward, their legal claims identify similar recruitment fees,

including \$4,000 paid by live-in caregivers in B.C.³⁴ and \$6,000 to \$7,000, plus \$1,000 for airfare, charged to restaurant workers.³⁵

ii. *Recruitment debts*

Because the recruitment fees are so disproportionate to the workers' earnings in their home countries, most workers need to borrow money to pay the recruiters.

Workers in the most advantageous position have relatives already working as migrants in Canada, the United States, or Europe. After paying off their own recruitment fees, those relatives save money earned in the foreign currency to cover the next family member's recruitment fee.

In some cases, extended families pool their savings to pay the fees to send one family member abroad, leaving the extended family dependent on the one migrant worker for ongoing support.

In many cases, migrant workers must borrow money to pay recruiters. Again, because the fees are so disproportionate to the workers' earnings, banks will not lend them the money they need. So, workers are forced to borrow from informal money lenders. Often, the recruiter facilitates the connection with the money lender. Sometimes, the recruiter lends the money to the worker. In all cases, workers who have borrowed money report paying oppressive compound interest rates ranging from 3% to 8% *per month*. Workers from various countries reported that they were required to sign over the deeds to their family homes or lands, or give the money lender a share of a family business. If they are unable to repay the loan, the family property is lost.³⁶

As a result, low-wage migrant workers are arriving in Ontario under a significant debt burden. What must be remembered is that **these recruitment fees are being paid to secure minimum-wage jobs in the province.**

Most of the workers interviewed were being paid the hourly minimum wage of \$10.25. Some workers were paid *below* minimum wage. The highest-paid worker interviewed earned \$11.05. Under the LCP, the minimum rate set for live-in caregivers in 2013 was \$10.77 per hour. However, all the caregivers interviewed reported being paid a flat monthly wage ranging from \$1,000 to \$1,300, regardless of how many hours they worked. In reality, most routinely worked 60 hours or more per week.

It is from these low wages that workers must repay their recruitment fees and mounting interest. Some workers whose fees converted more favourably to Canadian currency paid back their recruitment debt in their first six months. More typically, workers reported that it took one to two years to repay the recruitment debt. Many workers said that the first two years of their contract would be needed to pay off the fee and the second two years are when they hoped to earn enough to make the transnational migration worthwhile. In the meantime, the fees bind them tightly to both the recruiter and the employer who brought them to Canada.

The workers in the worst position were those whose contracts in Canada were terminated earlier than promised, sometimes after only a few months, when they had been promised two years of work. These workers returned to their home countries owing almost their full recruitment fees but without the Canadian income stream that would enable them to pay off the debt. Instead, they had to promptly borrow even more money, this time at even higher interest rates, in order to pay the recruitment fees to secure a second overseas placement that would allow them to pay off their initial recruitment debt.

4. How recruitment practices exacerbate insecurity created by the temporary labour migration programs

A recruiter's influence does not end when a worker is placed in a job in Ontario. Instead, an abusive recruiter can extract further profit by exacerbating insecurities created by the conditions imposed by Canada's temporary labour migration programs. It is important to understand how these different legal conditions intersect to create the space within which exploitative recruitment flourishes.

Tied work permits are a prime source of insecurity that recruiters and employers exploit. As outlined in Part II, on a tied permit a migrant worker is restricted to working only for the specific employer named on the permit, in the particular job, in the particular location, and for the particular period stated on the permit. If the migrant worker performs work inconsistent with those restrictions, the worker is working "without status," contrary to the *Immigration and Refugee Protection Act*. Internationally, the United Nations recognizes that "tying migrants to specific employers encourages labour exploitation."³⁷

Some workers explained that, after arriving in Ontario, their employer gave them an "interest-free loan" to repay the debt to their

"Many migrants, in particular low-skilled workers or migrants in a temporary or irregular situation, are vulnerable to exploitation and abuse in the context of employment. ... Tying migrants to specific employers encourages labour exploitation, prevents migrants from finding better opportunities and is therefore both undesirable from a rights-based perspective and economically inefficient."

— United Nations, Report of the Secretary General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants* (August 2013)

UFCW Canada's annual report on the status of migrant workers describes exploitative practices by offshore and Canadian-based recruiters in the agricultural sector:

"The workers they deliver essentially arrive as indentured labour whose income in Canada largely returns in fees to the recruiters.

"Sometimes TFW's [temporary foreign workers] discover when they arrive that the jobs they were recruited for don't exist; or the year of employment they expected turns into only months and they are terminated. Meanwhile, the debt they owe forces them into an illegal, under-the-table contractor system that feeds them back at a lower rate, sometimes to the same employers who let them go."

— UFCW Canada, *Status of Migrant Workers in Canada 2010–2011*

recruiter or money lender. The employer then recouped this loan through deductions from the worker's paycheque, effectively placing the worker in debt bondage. Even if the employer provides such a loan with no ill intent, it imposes on the worker a financial tie and sense of moral obligation to the employer that reinforce the pre-existing dependence created by the tied permit. This allows an employer to make increased demands on the worker and very effectively prevents the worker from complaining about mistreatment.

More frequently, the tied work permit gives the recruiter enormous power to immediately deprive the migrant worker of authorized status by placing them in a job that fails to match the conditions on the permit. Many workers arrive in Canada to find that the job they were promised does not exist, that it is significantly different from what they were promised, that it is different from what appears on their work permit, or that it is for a much shorter period than promised. Having been deliberately forced out of status by the recruiter, the worker is isolated from a support system, without the funds to support themselves or return home, and yet subject to a debt that they must immediately start repaying. The Canadian-based recruiter or agent leverages the worker's now irregular status to place the worker in employment with even more oppressive conditions.

This practice is so common among live-in caregivers, it has its own name: "**Release on Arrival.**" Data from the Caregivers' Action Centre indicate that at least 19% of its members surveyed arrived in Ontario to find the jobs they were promised were false.³⁸

Release on Arrival typically follows this pattern: On arrival in Canada, a caregiver is picked up at the airport by the Canadian-based recruiter. The recruiter immediately tells the caregiver that her employer is no longer available or has gone away on vacation, or immediately hands the caregiver a termination letter from her "employer." The so-called employer may be either a fictitious person or a real person who never had any intention of hiring a caregiver, but who receives money from the recruiter to allow their name to be used on the LMO application.

This toxic interaction between tied work permits and recruiter debt is exacerbated by requirements for **tied housing** that are also imposed by the temporary migration programs.

Under the LCP, caregivers must live in their employer's homes. When Released on Arrival, these workers are not only jobless and out of status, they are also homeless. The recruiter uses this as further

leverage for exploitation. The recruiter typically takes the caregiver to the recruiter's home and promises to find them another employer. The caregiver may be without work and without pay for weeks or months, during which time the pressure of their recruitment debt mounts. The recruiter then sends the caregiver out to do a range of unauthorized and undocumented work in exceedingly precarious circumstances.

Even if the recruiter subsequently places the caregiver in a legitimate caregiving position, it can take up to six months for a new employer to apply for and receive an LMO and for the worker to apply for and receive a new work permit. Throughout this period, the caregiver is forced to work without status at rates well below the mandatory prevailing wages. Because the work is performed out of status, it is undocumented and cannot be counted towards the 24 months that a caregiver must complete to be eligible to apply for permanent resident status.

Tied housing also affects workers in the Agricultural Stream who must live in employer-provided housing and workers in the Stream for Lower-skilled Occupations who, in practice, often live in employer-provided housing. Some workers in these programs reported that the recruiters who placed them in their jobs also manage housing arrangements for the employers. In these cases, recruiters extract money from the workers not only through recruitment fees but also through rent. This increases the incentive for a recruiter to maximize the number of workers in each house. Workers commonly reported having 8 to 10 workers in a two-bedroom house or 16 workers in a four-bedroom house paying rents that collectively far exceed market rent.

Some recruiters also charge fees to workers when they need to **renew their work permits**. Work permits can in fact be renewed online by workers directly for \$150. However, workers do not always have this knowledge, access to the Internet, or the English literacy skills to do these renewals on their own. Workers whose initial contract has finished and who are seeking a new employer often lack the information to connect directly with employers who want to hire migrant workers. This information gap can be worse for workers in rural communities.

Ontario-based recruiters have charged as much as \$1,500 to renew work permits. Workers have also been charged to have their names included on LMO renewal applications. Workers, particularly those whose first language is not English, reported that they needed to maintain good personal relationships with Canadian-based recruiters who do speak their language. Where workers were compliant with employer demands, paid their recruitment fees, and did not complain about treatment, the recruiter would put their relatives' names forward for future contracts (upon payment of a further recruitment fee). Where

workers complained, the recruiter denied the workers' own permit renewals and cut off their relatives from access to jobs in Canada.

Finally, the burden of recruitment fees combines with the impact of the four-year in/four-year out rule to effectively undermine leadership within the migrant worker community. Abusive recruitment practices effectively silence workers and prevent them from asserting their rights. It is only after workers have been in Canada for a few years that they are free of their debt burden, have extracted themselves from initial placements that were abusive, have learned what their rights are, and have developed the community connections to support their efforts to enforce their rights. It is typically only then that they begin to speak out about ill treatment. Just as they are reaching this point, the four-year rule forces them to leave the country. Workers who have spoken out during their first two-year permit have been denied permit renewals or transfers to other jobs and, as a result, some have been forced to leave Canada.

5. Interprovincial recruitment

Exploitation also occurs as migrant workers are moved or transfer across provincial borders. Two scenarios are significant.

The first is a variation on contract substitution. Some workers who have paid fees for work in one province are instead, on arrival, taken by their recruiters to employers in a different community or even a different province,³⁹ once again placing them out of status and forcing them into extremely precarious circumstances. In these cases, recruiters take advantage of differences in provincial regulation. Workers may be brought into a province with less strict scrutiny over recruiters and then moved across borders. For this reason, rigorous standards that are consistent across provinces and that establish interprovincial agreements on information sharing are necessary to prevent exploitation.

The second is a variation on permit renewal. Workers seeking permit renewals may be charged as much as \$2,000 to \$3,000 for jobs in another province. In some cases, these fees are paid to transfer to provinces whose provincial nominee programs offer some, albeit slim, opportunities for low-wage workers to apply for permanent residence. In some cases, recruiters charge fees to workers whose initial placements were in the Agricultural Stream or Stream for Lower-skilled Occupations so they can transfer into the LCP to access a job with an opportunity to apply for permanent status.

6. Seasonal Agricultural Worker Program

While the SAWP's bilateral agreements are considered a best-practice model because they provide for organized migration without exploitation by private

recruiters, the specifics of how they are implemented do not wholly eliminate the insecurity and possibility of unfair treatment in recruitment. Three areas of concern are repeatedly raised by workers.

First, contrary to the international labour and human rights norms prohibiting recruitment fees, SAWP workers from the Caribbean pay a portion of their earnings in fees that cover their recruitment. Caribbean workers are subject to a **25% holdback** on each payroll, which is submitted to the government agent of their home country. A portion of the holdback pays for the government's "administrative costs" of the SAWP, while the remainder effectively operates as a deposit that the worker can only recoup after completing the contract. This operates as a disincentive to raising concerns about poor working or housing conditions.

Second, workers in Ontario under the SAWP face a cycle of **perpetual recruitment**. They have no job security from year to year. They depend on the goodwill of their employers who have the power to "name" them to return the following year. While naming can provide a degree of job security and allow a worker's return to Canada to be processed more quickly, the power to name is exercised at the employer's discretion. It is not a right to recall based on seniority. It has been repeatedly reported that this dependence on their employers to name them makes workers under the SAWP reluctant to criticize working or living conditions or complain about rights violations.⁴⁰

The precariousness created by this perpetual recruitment is exacerbated by the institutionalized competition between Mexico and the Caribbean countries that is built into the structure of the SAWP. Employers can, and at times do, strategically change the source countries from which they recruit workers. This dampens workers' resistance to poor treatment and dampens pressure from sending countries to improve conditions. This competition has intensified over the past decade with the introduction of the Agricultural Stream.⁴¹ Workers from countries beyond the SAWP participants — such as Guatemala, Honduras, Thailand, Peru, and the Philippines — are increasingly being brought in to work in Ontario agriculture. This substitution of SAWP workers with workers under the Agricultural Stream also serves to undermine the leadership that has grown among long-term SAWP workers.

Third, perpetual recruitment leaves a worker vulnerable to being **blacklisted** from the SAWP if their conduct fails to meet the employer's or government's demand for a "compliant" workforce. Community organizers and SAWP workers in Ontario report that when workers who have been in the program for a number of years begin to assert leadership in the migrant worker community, an employer may decide not to name them. These worker leaders are either transferred to another province or excluded from the SAWP altogether. Similarly, when groups of migrant workers who have worked together for several

years begin to collectively assert their rights and raise concerns about mistreatment or act as advocates and leaders within the migrant worker community, the group may be dispersed over different farms and across different provinces.

In British Columbia, migrant workers under the SAWP have unionized in bargaining units represented by UFCW Canada. However, following lengthy litigation, the B.C. Labour Relations Board confirmed that Mexican authorities responsible for administering the SAWP had a policy to identify SAWP workers who were Union supporters or who had even contacted the Union and to block them from returning to Canada by claiming their visas had been blocked by Canada. The Board found that Mexican authorities in fact blocked Union supporters from returning to Canada in just this way and altered an employee's files after the fact in an attempt to conceal this. The Board found that part of Mexico's motivation in blacklisting the Union supporters was their fear that, if Mexican workers unionized, the employers would replace them with workers from Guatemala.⁴² The insecurity created through perpetual recruitment, then, is a direct impediment to workers' capacity to exercise their fundamental human rights, including their freedom of association.

While problems faced by workers under the SAWP are structurally different from those faced by workers subject to private recruitment, the recruitment dynamics create a similar experience of precariousness. This leaves workers hesitant to speak out against unfair and illegal treatment for fear that doing so will jeopardize their opportunities to work and stay in Canada.

PART IV

A RIGHTS-BASED FRAMEWORK FOR REGULATING RECRUITMENT

Laws and policies safeguarding migrant workers from recruitment abuse cannot be developed in a legal vacuum. They must be developed in compliance with the strong and well-established, rights-based framework that is anchored in both Canadian and international law.

Although migrant workers have temporary immigration status in Canada, they are entitled to full protection under the *Canadian Charter of Rights and Freedoms*, the *Human Rights Code* and labour and employment standards laws.

All the laws, policies, and government practices that shape Canada's temporary labour migration programs must protect fundamental *Charter* rights, including freedom of expression, freedom of assembly, and freedom of association, which encompass the right to unionize and bargain collectively. Under the *Charter*, government laws, policies, and actions must also conform with the rights to life, liberty, and security of the person and the right to equality, including protection against discrimination based on race, national, or ethnic origin and citizenship, or combinations of those grounds.

Under Ontario's *Human Rights Code*, government, employers, and recruiters must ensure that in providing services, employment, and housing they do not discriminate against migrant workers, including on grounds of race, place of origin, ethnic origin, citizenship, or distinct disadvantages that arise when these grounds intersect.⁴³

Governments, employers, and recruiters who hold duties to uphold human rights under the *Charter* or *Code* are not permitted to ignore or exploit the precarious status of the people who will be subject to their laws, policies, or business practices. The *Charter* requires government to take into account and accommodate the systemic disadvantage and marginalization of those who will be subject to the law and requires government to design laws and policies so that they secure effective protection of fundamental rights.⁴⁴ Meanwhile, employers and service providers — including recruiters — have a proactive legal obligation to acknowledge and accommodate these systemic disadvantages to ensure that their practices effectively protect human rights.⁴⁵

“A human rights-based approach to the design and implementation of migration policies means that States are obliged to formulate and scrutinize all such policies by measuring against human rights standards and benchmarks, and to strive to ensure that they are responsive to the human rights of all migrants, with a particular focus on the most vulnerable.”

— United Nations, Report of the Secretary General, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants (August 2013)*

Meanwhile, at the international level, in 2013, the United Nations confirmed that transnational labour migration must be governed by a rights-based framework and be in accordance with the global agenda for decent work.⁴⁶

Canada has not ratified the specific UN and ILO *Conventions* that set out detailed rights for migrant workers. Nevertheless, these instruments, along with ILO policy documents such as the *Multilateral Framework on Labour Migration*, provide important policy guidance. They identify well-known systemic abuses to which migrant workers are subject and identify the international tripartite consensus on concrete practices to eliminate those abuses.⁴⁷ Because they represent a broad, considered, global consensus on fundamental human rights norms, Canadian courts also rely on these international instruments as persuasive sources for interpreting the scope and meaning of rights under the *Charter* and human rights statutes.

Seven key principles to govern transnational migration can be distilled from these international instruments:



1. No Recruitment Fees:

Employers must bear the cost of recruitment. Migrant workers must not, directly or indirectly, be charged or bear the cost of recruitment.



2. Recruiters Must Be Licensed and Regulated:

Governments must proactively regulate migrant worker recruitment. This includes

- restricting who may act as a recruiter,
- implementing a standardized licensing system,
- requiring recruiters to provide security deposits so funds are available to compensate migrant workers for recruiters' improper conduct,
- adopting laws to enforce accountability along the full length of the recruitment supply chain, and
- ensuring migrant workers have access to public employment services free of charge.



3. Security of Workers' Property:

Migrant workers' property, including identity, immigration, and work documents — such as passports, work permits, and visas — must not be confiscated or destroyed.



4. Security From Exploitation:

Migrant workers must be protected from misinformation, fraudulent practices, forced labour, debt bondage, and human trafficking.



5. Employer Registration and Proactive Supervision:

Migrant worker contracts should be registered with the government, and labour inspections must be extended to all workplaces where migrant workers are employed to monitor working conditions and supervise contract compliance. Necessary resources and training should be devoted to proactive supervision.



6. Bilateral Agreements:

Where a significant number of migrant workers moves from one state to another, bilateral agreements should govern migration.



7. Multilateral Cooperation:

Multilateral cooperation involving state-to-state cooperation, government cooperation with and support of civil society partners, information sharing, and support for transnational networking among workers' organizations are needed to protect migrant workers throughout all stages of transnational labour migration.

All these elements should work together to reinforce protection for migrant workers through their migration experience. In choosing whether and how to regulate labour recruitment, Canada and Ontario are not starting from scratch. Comprehensive principled and practical guidance, benchmarks, and best practices are readily available to build a system aimed at eliminating known patterns of abuse and at securing human rights and decent work for all migrant workers.

PART V

PROTECTING MIGRANT WORKERS FROM EXPLOITATION IN RECRUITMENT

This part of the report examines Ontario’s recruitment law — the *Employment Protection for Foreign Nationals Act* — and compares it with proactive best practices models adopted in other provinces. But, first, some observations about the federal recruitment provisions are warranted.

A. Reflections on federal provisions on recruitment

As set out in Part II, the template contracts under each of the federal migration streams for lower-waged workers prohibit *an employer* from recouping *from a migrant worker* the recruitment costs that the *employer has paid*. In addition, the LCP template contract requires an employer to reimburse a migrant worker for fees paid to a third-party recruiter *where an employee has proof* that they have paid those fees. While these provisions signal what appropriate employer conduct should be, they fail to provide effective protection for three reasons:

1. The contract language fails to touch the most common practice, in which workers pay recruitment fees directly to private recruiters — not employers — and often pay before departing their home country.
2. Increasingly, private recruiters refuse to provide documentation of payments or they provide documents that do not accurately describe the nature of the service provided, leaving workers without proof of improper payment.
3. While these terms appear in the template contracts, the federal government plays no role in contract enforcement.

As a result, the regulatory system still primarily depends on individual migrant workers initiating legal proceedings at the provincial level to address any breaches of their rights under these contracts.

The federal government’s instructions for completing the contracts under the Stream for Lower-Skilled Occupations and the Agricultural Stream explicitly state that the government will play no role in enforcing contract compliance:

“The Government of Canada is not a party to the contract. Human Resources and Skills Development Canada (HRSDC)/Service Canada has no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of employment. It is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and to look after their own interests.”

B. Ontario's Employment Protection for Foreign Nationals Act

Ontario's *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009* (EPFNA), came into effect on 22 March 2010. It applies *only* to live-in caregivers.⁴⁸

The law prohibits recruiters from charging any direct or indirect fees to caregivers. It also bars employers from recovering any recruitment-related costs from caregivers, either directly or indirectly.

The law also prohibits recruiters and employers from taking possession of a caregiver's property, including their passport or work permit.

The law requires employers or recruiters to provide caregivers with a copy of documents prepared by the Director of Employment Standards that set out workers' rights and the obligations of employers and recruiters under the *Act*.

The *Act* provides that caregivers are protected from reprisals by either employers or recruiters.

Under the *Act*, employers must keep records regarding the caregivers they hire and recruiters must keep records of the caregivers they recruit, the employers for whom they are recruited, and the fees paid by the employer. These records must be produced for inspection if requested by an employment standards officer.

The law is enforced by Ministry of Labour employment standards officers who can, among other remedies, order recruiters to repay illegal fees, order employers to repay illegally recouped costs, order compensation to the caregivers for any loss incurred due to a breach of the *Act*, order a caregivers' reinstatement, and issue penalties from \$250 to \$1,000. Individuals who violate the *Act* can be liable upon conviction for fines up to \$50,000 or 12 months' imprisonment, and corporations can be liable for fines up to \$100,000.

While these provisions appear relatively comprehensive on paper, their promise has not been met in practice.

In response to a Freedom of Information request, in October 2013, the Ministry of Labour provided information on the *Act's* enforcement. When EPFNA was introduced, no new positions were created within the Ministry's Employment Standards Program to administer the new legislation. Ten existing employment standards officers around the province were trained to respond to claims and to carry out proactive investigations.⁴⁹

Proportion of live-in caregivers who have paid recruitment fees since 2010

2/3

Most common recruitment fees paid by live-in caregivers

\$3,500

to

\$5,000

Higher range of recruitment fees paid by live-in caregivers

\$7,000

to

\$9,000

Highest recruitment fee paid by a live-in caregiver

\$12,000

Total of illegal recruitment fees recovered from recruiters under Ontario law from 2010 to 2013

\$12,100

Since the *Act* took effect on 22 March 2010, there have been a total of only **28 claims filed against recruiters and a total of only \$12,100 in illegal fees have been recovered for employees**. There are only eight ongoing investigations against recruiters under the legislation.⁵⁰ The data are set out in the chart below.

Summary of EPFNA Claims against Recruiters March 2010 to October 2013

	2010–2011	2011–2012	2012–2013	Total
Number of Claims against Recruiters	8	11	9	28
Amount of Fees Claimed against Recruiters	\$38,400.00	\$23,359.80	\$26,300.00	\$88,659.80
Amount of Fees Assessed as Owing	-	\$10,559.80	\$14,300.00	\$24,859.80
Amount of Fees Recovered for Live-in Caregivers	-	\$7,300.00	\$4,800.00	\$12,100.00

Since 22 March 2010, there have been a total of 59 claims filed against employers, although the nature of the claims was not disclosed. In total, **only three claims were filed against employers for recouping recruitment costs and only \$800 has been recovered for employees**. No information was provided by the Ministry about how much the employees claimed from their employers.⁵¹ The data regarding employers that were provided through the Freedom of Information request are set out in the chart below.

Summary of EPFNA Claims against Employers March 2010 to October 2013

	2010–2011	2011–2012	2012–2013	Total
Number of Claims against Employers (nature of claims unidentified)	21	24	14	59
Number of Claims Filed against Employers Attempting to Recover Employer (Prohibited) Costs under the <i>Act</i> from Caregivers	0	1	2	3
Amount Assessed for Employer Costs	-	-	\$800.00	\$800.00
Amount Recovered for Employer Costs	-	-	\$800.00	\$800.00

Accordingly, after three-and-a-half years, the total recovery to live-in caregivers under EPFNA from recruiters and employers combined is less than \$13,000. And yet, the practice of charging and/or recouping illegal recruitment fees continues to be very widespread even among the caregivers to whom the *Act* applies. As noted above, the Caregivers' Action Centre reports that two thirds of its members have been charged fees since the *Act* was introduced.⁵²

Live-in caregivers' concerns about the *Act* fall into five broad categories:

1. A complaint-based law cannot provide migrant workers with effective protection because it relies on the most vulnerable actor in the system to police compliance.

While the *Act* allows for proactive enforcement, it does not in fact *enable* it. There is a significant information gap created by split jurisdiction over migration. LMOs are granted by the federal government, not the province. EPFNA does not create a database of Ontario employers that have LMOs to hire migrant workers. While employers and recruiters must keep records under the *Act*, they are not required to proactively file this information with the Ministry. Without knowing who recruits and who hires migrant workers, proactive enforcement is not possible. As a result, in practice, the *Act*'s enforcement depends on complaints filed by caregivers.

All caregivers who were interviewed identified their temporary immigration status; tied work permits; the fact they lived in their employers homes; their recruitment debt; and fear of reprisal by employers, recruiters, and money lenders as insurmountable barriers to legal filing claims. Some caregivers also specifically identified that without a union they felt even more exposed should they bring a claim forward.

Employers and recruiters routinely use the threat of deportation to enforce workers' silence and compliance. Caregivers uniformly expressed fear that filing a legal claim would result in them losing their jobs, leaving them unable to complete the 24 months' work needed within the time limit to apply for permanent residence.

2. A complaint-based model does not close the information gap that leads workers into exploitative recruitment arrangements in the first place.

Federal government websites warn migrant workers to beware of recruitment fraud. But neither the federal labour migration programs nor the Ontario law empower workers to know in advance whether the recruiter and employer they are dealing with are legitimate or have a history of bad practices. The legal model and government practices also fail to give workers information about and

connections to groups that can help them when they arrive in Ontario. And the sections in EPFNA that require employers and recruiters to provide workers with information about their rights depend on good faith compliance by the very actors against whom the law would be enforced. As a result, EPFNA only comes into play for workers *after* they have already been subjected to unlawful treatment.

3. The Act does not relieve recruitment debt.

Workers stressed that even if they file a complaint about a recruiter, they must still pay off their debt to the money lender. Workers cannot take any actions that may put them at risk of losing their jobs because they need to continue earning in order to pay off their debts. The failure to repay their debts not only puts them at risk, but it puts their families at risk, including, in some cases, the risk of violence.

4. The Act places the burden on workers to prove their rights have been violated.

This becomes increasingly difficult as recruiters refuse to provide documentation of recruitment fees, provide inaccurate documentation, or require workers to pay the fees in another jurisdiction before entering Ontario. The Caregivers' Action Centre reports that even where they have helped caregivers file complaints under the *Act*, many of these claims were dismissed because the fees were paid outside of Canada.

5. The tension between protecting individual worker rights and serving the collective needs of a worker's extended family prevents migrant workers from asserting their legal rights.

Migrant workers feel unable to pursue legal remedies because it puts their jobs at risk. They must continue earning to support their families, which is the very reason they sought work overseas. They repeatedly sacrifice their own rights to protect their families and cannot justify taking individual actions that put that collective interest at risk. While lacking security to assert their own rights, many workers interviewed wanted reforms to protect other workers from the experiences they had faced. Some workers expressed concerns that increased legal scrutiny on recruiters would drive recruitment practices underground where they could be even more abusive.

C. Proactive enforcement: The Manitoba model and its evolution

Given the gulf between the promise of Ontario's law and its practical effect, the question arises: Can other models provide more meaningful and effective

protection for migrant workers? The most significant shift must come from leveraging the federal and provincial governments' power to pursue proactive regulation and supervision of recruiters and employers. The goal should be to eradicate exploitative practices pre-emptively so that a worker *begins* an employment relationship in a position of security.

In the Canadian context, Manitoba pioneered the best-practices model that makes this shift to worker security in 2008. Built on a platform of proactive licensing of recruiters, proactive registration of employers, mandatory financial security provided in advance by recruiters, and proactive investigation and enforcement by the provincial employment standards branch, it adopts many of the best practices identified in the international human rights–based framework. The Manitoba model has since been adopted and expanded upon in Nova Scotia and Saskatchewan.⁵³

Strong provincial legislation can change recruitment practices on the ground. The legal model that is chosen makes a difference. As one Filipino worker reported to an Ontario legal clinic, the recruiter who placed them in their job in Canada charged \$8,500 for a job in Alberta and \$7,000 for a job in Ontario, but charged *no fees at all* for a job in Manitoba because Manitoba's proactive licensing regime prevented it.⁵⁴

1. Meeting international best practices

Manitoba's *Worker Recruitment and Protection Act* (WRAPA) provides greater protection because it applies to all migrant workers — not just live-in caregivers — puts the onus on employers and recruiters to be accountable at the front end, and involves federal and provincial governments in proactive oversight along with professional regulatory bodies. Nova Scotia and Saskatchewan adopted the Manitoba model in 2013 and also introduced innovations that build on Manitoba's platform. Nova Scotia's proactive model forms part of the provincial *Labour Standards Code*,⁵⁵ while Saskatchewan's is enacted in the *Foreign Worker Recruitment and Immigration Services Act* (FWRISA).⁵⁶ An in-depth examination of the provincial models is provided in the full report.



International best practice #1: No recruitment fees

Manitoba, Nova Scotia, and Saskatchewan prohibit recruiters from charging fees to migrant workers, either directly or indirectly.

Employers are also banned from recovering recruitment costs from workers. Nova Scotia and Saskatchewan provide enhanced protection because an illegal recruitment fee can be recovered either from the licensed recruiter who charged it or *from the employer* if an unlicensed recruiter was used.



International best practice #2: Recruiter licensing and regulation

Manitoba, Nova Scotia, and Saskatchewan's laws also meet several key elements of the international best practices on recruiter licensing:

1. They all require **mandatory licensing of recruiters** and include the power to investigate a recruiter's character, history, and key business relationships. A recruiter's licence is personal, non-transferrable, and valid for one to five years, ensuring ongoing monitoring.
2. Manitoba and Nova Scotia restrict the pool of potential recruiters. Only lawyers, paralegals, Quebec notaries, and immigration consultants who are in good standing with their professional regulatory bodies can apply to become licensed recruiters of migrant workers. To focus enforcement on the workers most likely to be subject to exploitation, Nova Scotia only requires recruiters to be licensed if they recruit migrant workers to jobs at NOC levels B (skilled trades), C (semi-skilled), and D (lower skilled). **Restricting the pool of potential recruiters** adds multidimensional oversight because improper action can also leave recruiters liable to professional discipline.
3. Nova Scotia and Saskatchewan require recruiter applicants to disclose detailed information about all businesses, partners, affiliates, agents, or others who are involved in the recruiter's supply chain inside Canada or abroad. Fully disclosing the recruiter's supply chain ensures that the licensed recruiter or employer can be held accountable for all actions in breach of the law at all stages along that supply chain. It ensures that a worker can have effective remedies for breaches all along the recruitment pipeline.
4. Nova Scotia makes it an independent offence for an employer to use a recruiter who does not hold a valid licence.
5. All licensed recruiters are identified in a **public register posted on the government website**. Making this information publicly and readily accessible empowers workers to identify whether a recruiter is legitimate.
6. Recruiters must provide an **irrevocable security deposit** before being licensed. The deposit is used to reimburse migrant workers if a recruiter contravenes the law. Nova Scotia requires a security deposit of \$5,000, Manitoba \$10,000, and Saskatchewan \$20,000.
7. Recruiters are required to keep **detailed records** of every agreement entered into to recruit a migrant worker and of every migrant worker recruited.
8. Saskatchewan has also adopted a detailed *Code of Conduct for Foreign Worker Recruiters*, which aims to establish standards of professional conduct for licensed recruiters.⁵⁷ The *Code* specifically mandates that “a

licensed foreign worker recruiter is fully responsible for all work entrusted to his or her employees, partners, affiliates and agents.”⁵⁸

Both the Manager of Manitoba’s Special Investigations Unit, which enforces WRAPA, and labour organizers in Manitoba confirm that proactive recruiter licensing has virtually eliminated exploitative recruiters from operating in the province.⁵⁹ Nearly 75% of recruiters who initially applied for licensing dropped out before completing the licensing process.⁶⁰



International best practice #3: Security of workers' property and documents

Like Ontario, Nova Scotia and Saskatchewan both prohibit an employer or recruiter from taking possession of or retaining a migrant worker’s property, including their passport and work permit.



International best practice #4: Security from exploitation

Saskatchewan explicitly prohibits a much broader range of exploitative conduct than the other provinces’ legislation. Section 22 of the Saskatchewan *Act* prohibits recruiters, employers, and immigration consultants from

- producing or distributing false information;
- misrepresenting employment opportunities (including position, duties, length of employment, wages, benefits, or other terms of employment);
- threatening deportation;
- contacting the migrant worker’s family or friends;
- reprisals or threats of reprisals for participating in an investigation or proceeding by a government or law enforcement agency or for making a complaint to any government or law enforcement agency; or
- taking unfair advantage of the migrant worker’s trust or exploiting the migrant worker’s lack of experience or knowledge.

In combination with the *Code of Conduct*, which aims to reduce fraud and other illegal activities, Saskatchewan’s model most directly addresses the international best practices of eradicating conduct that preys on migrant workers’ vulnerabilities in Canada and in the origin countries. It directly aims to transform the predatory culture.



International best practice #5: Employer registration and proactive supervision

Manitoba, Nova Scotia, and Saskatchewan also meet several international best practices concerning employer registration and proactive enforcement:

1. Manitoba, Nova Scotia, and Saskatchewan require mandatory registration of employers who seek to hire migrant workers, although Nova Scotia's registration again only applies to employers who hire workers at NOC levels B, C, and D. Employers must register before seeking an LMO from the federal government. The registration is time limited, again ensuring ongoing supervision of the employer's conduct and need to recruit migrant labour. **No employer can use a recruiter who is not licensed under the Act.**

Mandatory registration ensures employer compliance with existing laws. For example, when an employer seeks to register, Manitoba uses its database on employment standards claims, payroll audits, and additional investigation to determine whether the employer has any unresolved employment standards violations or a history of violations. The employer is required to bring its existing employment practices into full compliance with the law before it can be registered to hire any migrant workers.

2. Saskatchewan publicly posts information regarding both licensed recruiters and registered employers. This enhances a worker's capacity to ensure that their prospective employer is legitimate or that a job promised by a recruiter is with a legitimate employer. It also allows for broader public accountability around the hiring of migrant labour.
3. Upon hiring a migrant worker, employers must file detailed information with the enforcement branch regarding their employment of migrant workers and can be required to file employment contracts and recruitment contracts. The mandatory registration and mandatory filings provide the database that allows the enforcement branch to conduct effective proactive enforcement.
4. Manitoba's law is enforced on a model of **proactive government enforcement**. It is effective because the province provides **dedicated staff and resources** specifically for proactive enforcement. In addition to investigating individual employers, enforcement is conducted through "Projects" that simultaneously audit all or a significant percentage of employers in particular sectors or regions where concerns have been raised.⁶¹

While individual complaints are possible under WRAPA, in practice, *all* of the enforcement that has occurred has been as a result of proactive investigation.⁶²

5. Unlike the other provinces, Saskatchewan's licensing and registration system falls within the mandate of the provincial immigration ministry rather than the provincial ministry of labour. However, the legislation expressly provides for information sharing with the Director of Labour

Standards and for **joint enforcement through joint inspections, examinations, audits, and investigations** under FWRISA and the *Labour Standards Act*.⁶³



International best practice #7: Multilateral cooperation

In practice, Manitoba, Nova Scotia, and Saskatchewan's models provide multiple examples of multilateral cooperation:

1. Manitoba and Saskatchewan expressly allow for **information sharing** with other provincial or federal bodies.⁶⁴ Saskatchewan's law also expressly allows for **information sharing** with foreign governments, police, or bodies (i.e., professional regulatory bodies) that regulate recruiters or immigration consultants.

These provisions recognize that cross-jurisdictional cooperation is necessary to ensure that the entire migration pathway is secure for workers, whether they are arriving from abroad or moving across provincial borders after they arrive.

2. The federal government will not process an employer's application for an LMO from these provinces unless and until the employer receives provincial registration. In addition, the LMO will only be processed if the LMO requested is consistent with the employer's provincial certificate of registration. This is an example of how the **federal and provincial systems can work together to reinforce worker security**.
3. In practice, Manitoba's Special Investigations Unit's **proactive investigations depend heavily on connections and collaboration with community organizers, settlement offices, and advocacy groups that provide services and support directly to migrant workers**. Half of the proactive investigations in any year are conducted in response to tips received from these community-level networks, and violations are found in 80% of the cases.⁶⁵
4. Saskatchewan's immigration and labour ministries have joint authority to conduct inspections, examinations, audits, investigations, and enforcement regarding recruiter and employer compliance with the FWRISA and the *Labour Standards Act*.

Overall, these three provinces' models enhance protection for migrant workers by giving migrant workers information they can use to protect themselves proactively. They increase public accountability of both employers and recruiters. They allow for more communication and coordination between the federal immigration system and the provincial employment standards system. And, most importantly, they place responsibility for supervising legal compliance with the government agency that has the capacity and resources to conduct proactive investigation and enforcement. This builds a culture of public

responsibility for the treatment of migrant workers, a culture in which there is an expectation of compliance with standards of decent work and a reality in which workers receive fair treatment and effective remedies in the event of a breach.

2. Other models for cross-jurisdictional cooperation

It is possible to design laws and practices to ensure that the federal and provincial jurisdictions work together, using multidirectional oversight to enhance protection for migrant workers. The federal government's refusal to process LMOs until an employer has secured provincial registration is one example of such collaboration. Other formal models can also incorporate participation by governments and agencies in workers' origin countries and can involve civil society.

As illustrated by the SAWP, bilateral state-to-state agreements can provide protection against exploitation by private recruiters. Greater transparency and accountability about how these bilateral agreements operate is needed. Workers also need collective representation and participation in how these agreements and the associated contracts are developed.

Even where strong provincial legislation exists, supplementary bilateral agreements with origin states may further protect workers at both ends of the recruitment pipeline. British Columbia, Alberta, Saskatchewan, and Manitoba have all signed bilateral Memoranda of Understanding (MOU) with the Philippines Department of Labor and Employment, providing for government oversight of recruiter licensing, selection of employers, recruitment and selection of workers, and information exchange, and cooperation to protect workers' welfare and address human resource development and training in the Philippines. These MOU expressly prohibit recruitment fees. It is beyond the scope of this paper to analyze how these MOU are implemented, and grave concern is noted to the extent that such agreements appear to institutionalize permanent programs of temporary migration. This is, however, another model that can supplement collaborative enforcement across the length of the migration chain.

Finally, unions and non-governmental organizations have for years played a leading and innovative role in advancing rights of transnational migrant workers. The international rights-based framework specifically encourages such transnational networking of worker organizations. UFCW Canada has signed numerous bilateral mutual cooperation agreements with state governments in Mexico to increase protection for migrant farm workers before, during, and after the workers' stay in Canada. Through a further transnational mutual cooperation agreement with the National Farm Workers Confederation (CNC) in Mexico, UFCW Canada and the CNC are "developing a comprehensive database

and analytical reports on the conditions facing migrant agriculture workers in Mexico, United States and Canada.”⁶⁶ Similarly, the Canadian Labour Congress has been developing transnational cooperation agreements with unions and community organizations across Asia, which enable labour organizations to monitor recruitment practices, provide information to workers before they depart the origin country, and ensure that they have union contacts when they arrive in Canada.⁶⁷

Trade unions and a wide range of civil society organizations are also developing international collaborations to monitor and map transnational recruitment practices, identify exploitative recruiters, and provide protection to migrant workers globally.⁶⁸ And there are other international and transnational collaborations that are working to develop an international migrant workers’ bill of rights.⁶⁹

Comparison of Provincial Legislation

	Ontario	Manitoba	Nova Scotia	Saskatchewan
Recruitment Fees				
• no recruitment fees	✓	✓	✓	✓
• no fees for other settlement services	✓			
• employer prohibited from recovering recruitment cost from employee	✓	✓ (some exceptions)	✓	✓
• employer liable for fees charged by unlicensed recruiter			✓	✓
Security of Personal Documents	✓		✓	✓
Prohibition on Exploitative Practices				✓
Proactive Recruiter Licensing		✓	✓	✓
• restricted pool of persons eligible to act as recruiters		✓	✓	
• mandatory recruiter licensing		✓	✓ (NOC B, C and D jobs only)	✓
• time-limited license		✓	✓	✓
• public recruiter registry		✓	✓	✓
• security deposit		✓	✓	✓

	Ontario	Manitoba	Nova Scotia	Saskatchewan
• mandatory reporting of information about recruiter supply chain in Canada			✓	✓
• mandatory reporting of information about recruiter supply chain outside Canada			✓	✓
• recruiter liable for actions of actors in the recruiter's supply chain				✓
• mandatory reporting of recruiter's financial information inside and outside Canada			✓	
• mandatory record keeping re migrant workers recruiter and employers for whom recruited	✓	✓	✓	✓
• Recruiter Code of Conduct				✓
• Directors' liability for improper fees	✓			
Proactive Employer Registration		✓	✓	✓
• mandatory employer registration		✓	✓ (employment exclusively in NOC B, C and D jobs)	✓
• time-limited registration		✓	✓	✓
• public employer registry				✓
• employer liable if uses unlicensed recruiter		✓	✓	✓
• mandatory filing of information on migrant workers hired and work to be performed		✓	✓	
• mandatory record keeping re migrant worker contracts		✓	✓	✓
• mandatory record keeping re use of recruiters	✓	✓	✓	✓
• Directors' liability for improper cost recovery or fees	✓			
Proactive Focus on Enforcement		✓	✓	✓
• cross jurisdictional information sharing		✓		✓
• information sharing with recruiter's professional regulatory body		✓		✓
• cross-jurisdiction cooperation				✓

PART VI

CONCLUDING ANALYSIS AND RECOMMENDATIONS

Ultimately, it is important to keep migrant workers' experience at the forefront. Does the law actually recognize and respond to migrant workers' lived experience? Does the law recognize and address the power imbalances that infuse the entire labour migration dynamic or does it exacerbate those insecurities? Does the law seize opportunities to build security for workers on a rights-based framework or does it facilitate a commodification of labour and a degradation of human security? These concluding comments address six themes that arise from migrant workers' lived experience.

First, low-wage workers from vastly disparate parts of the globe, working in very different industries, in very different communities across southern Ontario, told recruitment stories that were achingly similar. Regardless of whether they arrived under the LCP, the Agricultural Stream, or the Stream for Lower-skilled Workers, recruiters were able to exploit the same vulnerabilities to extract profit from the workers' precariousness. For this reason, **any law that regulates transnational recruitment must protect all migrant workers — particularly low-wage migrant workers — regardless of the temporary migration stream through which they arrive.**

Second, Canada's temporary labour migration programs are fed by and profit from deep structural and income inequalities between Canada and the economies from which workers migrate. A rights-based framework must squarely confront this reality and how it exacerbates the power imbalance between recruiter/employer and worker. A complaint-driven regulatory model that depends on the most disempowered actor in the system to police compliance of the most powerful actors utterly fails on this account. Moreover, it exacerbates the inequality by forcing a worker who is already precarious to risk everything — job, housing, capacity to remain in Canada, retribution by money lenders — to secure decent treatment that was their entitlement from the outset. For this reason, a **proactive regulatory model that is enforced by the employment standards branch and that builds in federal/provincial multidirectional oversight is both necessary and a best practice.**

Third, in accordance with a rights-based framework, an effective and meaningful law must aim to proactively eliminate exploitative recruitment

practices from arising. As has long been recognized and advocated at the international level, eliminating exploitation from the recruitment process **must involve proactive licensing of recruiters, registration of employers, and significant security deposits to ensure that funds are available to compensate workers whose rights have been violated.**

The details of proactive licensing and registration must aim to rectify conditions that create workers' actual disempowerment. In this respect, proactive licensing and registration must **address the significant information gap** that recruiters and employers exploit. Registries with meaningful information about recruiters, recruiters' supply chains, and employers must be publicly available and easily accessible. **Information empowers workers.** Publicly identifying all recruiters who are licensed to operate in a province — and publicly listing all the partners, affiliates, agents, and sub-agents in their recruitment chain both in Canada and in the origin country — empowers workers to verify whether the recruiter or employer they are dealing with is legitimate. **Information also empowers enforcement agencies.** Proactive licensing and registration creates the database that makes proactive enforcement possible. Creating a public registry of both recruiters and employers, as is done in Saskatchewan, also provides **greater public accountability** and **empowers community and labour organizations to better support migrant workers and assist in monitoring compliance at a community level.** Another significant option for closing the information gap would be to follow international best practices to provide **public employment services** to facilitate the matching of employers seeking LMOs with migrant workers both abroad and in Canada.

The details of a proactive enforcement system must address the full range of exploitation that workers face. It must prohibit the charging and recovery of recruitment fees and the seizing of personal documents, as EPFNA already does. It must also protect workers through all stages of the labour migration cycle to prevent recruiter abuse in the initial placement, in subsequent placements, renewals, or transfers, and ultimately provide support for workers who are able to apply for permanent residence. Saskatchewan's prohibition of other abusive conduct (providing false information, threatening deportation, contacting workers' families) is a worthy enhancement because it targets behaviour that is abusive in itself, that is widespread, and that significantly undermines workers' capacity to enforce their rights to decent work.

At the same time, a proactive system must be designed in a way that recognizes government's opportunities for leverage. Any pipeline that brings transnational migrant workers into the province has two ends, one of which — whether recruiter or employer — is *always* located in the province. The Ontario-based recruiter or employer is readily subject to provincial jurisdiction

and should be made accountable for all actions that occur within the labour recruitment chain. Enhancements to the Manitoba model adopted in Saskatchewan and Nova Scotia are very important to the extent that they (1) require a recruiter to publicly identify every partner, affiliate, agent, or entity that may be involved in the recruitment chain both in Canada and in the origin country; (2) explicitly hold the recruiter liable for any conduct by any individual in the recruitment chain; (3) make it an independent offence for an employer to use an unlicensed recruiter; and (4) make employers jointly and severally liable for unlicensed recruiters' violations of the law.

Fourth, **a rights-based framework must acknowledge the ways in which laws that regulate different stages of the labour migration cycle interact with each other to exacerbate insecurities.** As set out above, the mandatory tied work permits, tied housing, and lack of access to permanent status all create distinct opportunities for exploitation by recruiters that heighten workers' insecurity.

Fifth, because labour migration is inherently transjurisdictional, **rigorous domestic law must be supplemented by transnational agreements and collaboration** to enforce best practices and rights at all points along the route from departure, through transit, and to arrival at destination. The details of these bilateral or multilateral agreements, however, must themselves ensure that workers have collective representation in the process that develops and governs these frameworks, and that the terms of any agreements are informed by the rights-based framework and meet best-practice standards. In this respect, elements of the SAWP agreements that fall below these best-practice standards must be rectified.

Finally, the entire process of transnational labour recruitment must be examined critically for the role that it plays in supporting and sustaining Canada's temporary labour migration programs. Indecent profiteering is not restricted to unscrupulous recruiters. As indicated at the outset, the most fundamental question that must be asked is: Who profits from the precariousness that is created and sustained by the larger economic system built on temporary migration? A system of laws and policies that continues to construct particular work and particular workers as "temporary," "foreign," and "unskilled" fails to acknowledge and respect the work they do in permanent jobs that are core to the economy and critical to the functioning of our communities. It perpetuates a profound precariousness that undermines the security not only of the migrant workers themselves but of the broader communities of which they are a part — in Canada and abroad. An economy built on the labour of a perpetually revolving working class of low-wage workers with no capacity to enforce their rights to decent work, no security of status, and no right to participate democratically in shaping the laws that govern them is unsustainable

and destabilizing. It tears at the social fabric domestically and internationally. Fundamentally, a critical examination of the economic policies that demand transnational migration must inform the broader debate about the evolution of Canada's immigration policy, the need to provide secure and safe avenues for workers of all skill levels to apply for permanent residence, and strong multidimensional protection for the right to decent work.

This report makes the following specific recommendations for building security into the recruitment phase of the labour migration cycle.

Recommendations

1. Legislation must be extended to ensure that *all* migrant workers have effective protection against exploitation by migrant worker recruiters.
2. Legislation to protect migrant workers from exploitation by recruiters and employers must be designed on a proactive platform that meets international best practices and domestic best practices represented by the Manitoba's *Worker Recruitment and Protection Act* and the enhancements developed in Saskatchewan and Nova Scotia.
3. Ontario should adopt a proactive system of employer registration, recruiter licensing (including the mandatory provision of an irrevocable letter of credit or deposit), mandatory filing of information about recruitment and employment contracts, and proactive government inspection and investigation in line with the best-practices model adopted in Manitoba's *Worker Recruitment and Protection Act* and the enhancements developed in Saskatchewan and Nova Scotia.
4. Specific enhancements to the Manitoba model that should be adopted in Ontario include:
 - (a) Mandatory reporting of all individuals and entities that participate in the recruiter's supply chain in Canada and abroad
 - (b) Mandatory reporting of detailed information regarding a recruiter's business and financial information in Canada and abroad as developed in Nova Scotia's legislation
 - (c) Explicit provisions that make a licensed recruiter liable for any actions by any individual or entity in the recruiter's supply chain that are inconsistent with the Ontario law prohibiting exploitative recruitment practices
 - (d) Public registries of both licensed recruiters and registered employers
 - (e) Explicit provision that makes it an independent offence for an employer to engage the services of a recruiter who is not licensed under the legislation
 - (f) Explicit provisions that make an employer and recruiter jointly and severally liable for violations of the law and employment contract

- (g) Protections against the broader range of exploitative conduct that is prohibited under s. 22 of FWRISA in Saskatchewan (i.e., distributing false or misleading information, misrepresenting employment opportunities, threatening deportation, contacting a migrant worker's family without consent, threatening a migrant worker's family, etc.)
 - (h) Provisions allowing for information sharing that enhances cross-jurisdictional enforcement of protections against exploitative recruitment practices, including information sharing with other ministries or agencies of the provincial government, with departments or agencies of the federal government, with departments or agencies of another province or territory, or with another country or state within that country, as developed in Saskatchewan's legislation
5. Legislative and policy amendments must be made at the federal level to eliminate restrictive terms and conditions on labour migration that are exacerbating factors in recruitment exploitation. This would include replacing tied work permits with open, provincial, or sectoral permits; eliminating mandatory tied housing; eliminating the four-year in/four-year out rule; and providing pathways to permanent residence for workers at all skill levels.
 6. The federal government must pursue specific amendments to the SAWP to eliminate the 25% holdback under the contract for Caribbean workers and to ensure workers under the SAWP are entitled to job security, including seniority and right to recall.
 7. The Ontario government should consider supplementary bilateral agreements with origin countries to pursue monitoring and transnational protection against exploitative recruitment practices along the full length of the recruitment supply chain.
 8. Ontario should implement a comprehensive migrant worker bill of rights. Ontario's initiatives to build protection for migrant workers must provide support for migrant worker organizations and community-based organizations that provide advocacy and support for migrant workers.

ENDNOTES

¹ For a detailed analysis of the legal systems that regulate migrant labour in Canada, see Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Toronto: Metcalf Foundation, 2012), available online at www.metcalffoundation.com.

² These patterns are replicated at the provincial level in Ontario and at the municipal level in Toronto, where most Ontario-based migrant workers are employed. The number of migrant workers present in Toronto has increased by 237% between 2006 and 2012.

³ Citizenship and Immigration Canada, *Facts and Figures 2012: Immigration Overview Permanent and Temporary Residents* (Ottawa: CIC, 2012) at pp. 4–5 (Canada — Permanent residents by gender and category, 1988–2012), pp. 52–53 (Canada — Temporary residents by yearly status, 1988–2012), and pp. 58–59 (Canada — Temporary residents present on December 1st by gender and yearly status, 1988–2012); pp. 75–76 (Canada — Total entries of foreign workers by province or territory and urban area), and p. 77 (Canada — Foreign workers present on December 1st by province or territory and urban area). Also, the corresponding tables from *Facts and Figures 2009*. For a list of major sectors in which migrant workers are employed, see Employment and Social Development Canada, "Labour Market Opinions — Annual statistics," online at http://www.esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/index.shtml.

⁴ Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers* (Ottawa: House of Commons, 2009) at p. 30.

⁵ For a sample of these studies, see Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce* (Edmonton: Alberta Federation of Labour, November 2007); Alberta Federation of Labour, *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate* (Edmonton: Alberta Federation of Labour, April 2009); UFCW Canada, *Report on the Status of Migrant Workers in Canada 2011*; UFCW Canada, *The Status of Migrant Farm Workers in Canada 2010–2011*; Canadian Labour Congress, *Model Program — or Mistake?* (Ottawa: Canadian Labour Congress, 2011); West Coast Domestic Workers' Association, *Access to Justice for Migrant Workers in British Columbia* (Vancouver: West Coast Domestic Workers Association, 2013); Ontario Federation of Labour, *Labour Without Borders: Towards a Migrant Worker Bill of Rights* (Toronto: Ontario Federation of Labour, August 2013); *Legislated Inequality: Temporary Labour Migration in Canada*, Patti Tamara Lenard and Christine Straehle, eds. (Montreal and Kingston: McGill-Queens University Press, 2012); Judy Fudge, "Global care chains, employment agencies, and the conundrum of jurisdiction: Decent work for domestic workers in Canada," *Canadian Journal of Women and the Law* (2011) 23:1, pp. 235–264; Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-skilled workers as an extreme form of flexible labour," *Comparative Labor Law and Policy Journal* (2009) 31:5, pp. 5–45; Delphine Nakache and Paula J. Kinoshita, *The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?* (May 2010), IRPP Study, No. 5.

⁶ Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers*, above note 4 at pp. 30–36; Auditor General of Canada, *2009 Report of the Auditor General of Canada, Chapter 2: Selecting Foreign Workers Under the Immigration Program* (Ottawa: Office of the Auditor General of Canada, 2009) at pp. 32–34 re. concerns about "the genuineness of both employers and jobs offered to temporary foreign workers."

⁷ *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, 2009, S.O. 2009, c. 32. The legislation came into effect on 22 March 2010.

⁸ In December 2013, the Ontario government introduced Bill 146 — the *Stronger Workplaces for a Stronger Economy Act* — for First Reading, and at the time of writing it has been debated briefly at Second Reading. If passed, Bill 146 will extend EPFNA beyond live-in caregivers to cover "every foreign national who, pursuant to an immigration or foreign temporary employee program, is employed in Ontario or is attempting to find employment in Ontario." However, no other substantive changes to EPFNA are proposed, so the description of Ontario's legislative model in this report remains current even in light of Bill 146.

⁹ The International Labor Recruitment Working Group, *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse* (February 2013) at p. 5.

¹⁰ Faraday, *Made in Canada*, above note 1. The six stages of the labour migration cycle are (1) recruitment, (2) obtaining a work permit, (3) information on arrival in Ontario, (4) living and working in Ontario, (5) expiry/renewal of a work permit, and (6) repatriation/permanent residence.

¹¹ Faraday, *Made in Canada*, above note 1 at pp. 15–16.

¹² *United Nations Convention against Transnational Organized Crime*, UN General Assembly Resolution 55/252000, ratified by Canada May 2002; Annex II, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Palermo Protocol), ratified by Canada May 2002. While this *Convention* and the Palermo Protocol are most frequently used to combat human trafficking for purposes of prostitution, they apply to human trafficking of migrant workers generally.

¹³ However, the burden of proof is higher in criminal law (proof beyond a reasonable doubt) compared to civil and administrative proceedings (balance of probabilities), and so criminal convictions are more difficult to secure. Moreover, some migrant workers who have attempted to use the criminal law to combat exploitative recruitment practices that left them without status in Canada have been deported upon coming forward to provide evidence to authorities. Meanwhile, their exploiters continued to operate unpunished: interview with Cathy Kolar, Immigration Specialist, Legal Assistance of Windsor (November 2013).

¹⁴ See, for example, Migrante International, "On Int'l Day against Trafficking: Labor export policy is state-sponsored human trafficking" (12 December 2013), online at <http://migranteinternational.org/?p=3400> (accessed 4 January 2014). The International Assembly of Migrants and Refugees 4 also focuses on the role of labour export policies in impoverishing and commodifying workers and depriving them of their right to live and work in a system of sustainable development within their home countries: see the *Declaration of the Fourth International Assembly of Migrants and Refugees* (New York: 4 October 2013) ("IAMR4 Declaration 2013"), online at <http://ima2008.wordpress.com/2013/11/04/declaration-of-the-4th-international-assembly-of-migrants-and-refugees-iamr4/>. See also Robyn M. Rodriguez, "Migrant heroes: Nationalism, citizenship and the politics of Filipino migrant labor," *Citizenship Studies* (2002) 6:3, pp. 341–356; Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World* (Minneapolis: University of Minnesota Press, 2010).

¹⁵ CIC, *Facts and Figures 2012*, above note 3 at p. 64; CIC, *Facts and Figures 2009*, above note 3 at p. 64 (Canada — Temporary residents present on December 1st by yearly sub-status); ESDC, "Labour Market Opinions — Annual statistics," online at http://www.esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/annual-skill-level.shtml (accessed 5 February 2014).

¹⁶ Under the IRPA, not all temporary labour migration follows this framework. Some workers require additional authorizations such as a temporary resident visa. Other workers may need fewer authorizations. For example, a Labour Market Opinion is not needed for various categories of temporary labour migration involving higher-skilled jobs, such as employment under international trade agreements, intra-company transfers, exchange programs, academic placements, religious/charitable work, or provincial nominee programs.

¹⁷ Pilot projects or provisions under Provincial Nominee Programs in other provinces have at different times allowed a limited number of migrant workers in specific NOC levels C and D occupations to apply for permanent residence.

¹⁸ *IRP Regulations*, s. 200(3)(g).

¹⁹ The countries that have signed agreements with Canada are Jamaica, Barbados, Trinidad and Tobago, Mexico, and the Organization of Eastern Caribbean States (Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Christopher-Nevis, Saint Lucia, and Saint Vincent and the Grenadines).

²⁰ Jenna Hennebry, *Permanently Temporary? Agricultural Workers and Their Integration in Canada* (February 2012), IRPP Study, No. 26 at p. 13.

²¹ Community-based organizations that have been interviewed in connection with this research include the Caregivers' Action Centre, Migrant Workers Alliance for Change, Workers' Action Centre, Justicia for Migrant Workers, Migrante Ontario, Parkdale Community Legal Services, and Legal Assistance of Windsor.

²² In 2012, 47,470 migrant workers from the Philippines were working in Canada: CIC, *Facts and Figures 2012*, above note 3 at p. 72 (Canada — Foreign workers present on December 1st by source country).

²³ Asia Pacific Mission for Migrants, *Global Migration 2012: Trends, Patterns and Conditions of Migration* (Hong Kong: Asia Pacific Mission for Migrants, January 2013) at p. 27.

²⁴ Philip F. Kelly, Mila Astorga-Garcia, Enrico F. Esguerra, and the Community Alliance for Social Justice, *Explaining the Deprofessionalized Filipino: Why Filipino Immigrants Get Low-Paying Jobs in Toronto* (Toronto: CERIS – The Ontario Metropolis Centre, October 2009), CERIS Working Paper No. 75 at p. 14.

²⁵ Jenna Hennebry, “Who has their eye on the ball? ‘Jurisdictional fútbol’ and Canada’s Temporary Foreign Worker Program,” *Policy Options* (July–August 2010) 62 at p. 63.

²⁶ For example, thousands of Filipina women migrate each year as live-in caregivers, even though this is deeply disruptive to cultural and community norms. By contrast, women workers from Latin America who were interviewed expressed how difficult it was for them to obtain work in the SAWP and in the Agricultural Stream, where the overwhelming majority of workers selected are men (97% in the SAWP). It is important to highlight that unregulated practices of private recruitment are producing deeply gendered and racialized constructions of particular jobs in the Canadian labour market.

²⁷ Centro de los Derechos del Migrante, Inc., *Recruitment Revealed* (January 2013) at pp. 11–12, available online at www.cdmigrante.org.

²⁸ AFL, *Temporary Foreign Workers*, above note 5 at p. 11.

²⁹ AFL, *Entrenching Exploitation*, above note 5 at p. 13.

³⁰ Caregivers’ Action Centre, Workers’ Action Centre, and Parkdale Community Legal Services, *Proposed Amendments to Bill 210, An Act to protect foreign nationals employed as live-in caregivers and in other prescribed employment* (30 November 2009) at pp. 6–7.

³¹ Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers*, above note 4 at p. 30, fn. 74.

³² UFCW Canada, *The Status of Migrant Farm Workers in Canada 2010–2011* above note 5 at p. 11.

³³ Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final Report* (Toronto: December 2012) at p. 85.

³⁴ *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2010 BCSC 883.

³⁵ *Dominguez v. Northland Properties Corporation*, 2012 BCSC 328.

³⁶ See also Centro de los Derechos del Migrantes, *Recruitment Revealed*, above note 27 at p. 18.

³⁷ United Nations, “Report of the Secretary-General on the promotion and protection of human rights, including ways and means to promote the human rights of migrants” (9 August 2013), United Nations General Assembly, A/68/292 at p. 14.

³⁸ Data provided by Caregivers’ Action Centre. One quarter of members surveyed did not answer the question about Release on Arrival. Of the members who did answer the question, 26% were Released on Arrival.

³⁹ Interviews with Justicia for Migrant Workers.

⁴⁰ See, for example, North-South Institute Policy Brief, *Migrant Workers in Canada: A Review of the Canadian Seasonal Agricultural Workers Program* (Ottawa: North-South Institute, 2007) at p. 4.

⁴¹ See Kerry Preibisch, “Development as remittances or development as freedom?” *Constitutional Labour Rights in Canada: Farm Workers and the Fraser Case*, Fay Faraday, Judy Fudge, and Eric Tucker, eds. (Toronto: Irwin Law, 2012) at pp. 98–99. See also the evidence of Mexican consular employees in *Certain Employees of Sidhu & Sons Nursery Ltd., Sidhu & Sons Nursery Ltd. v. United Food and Commercial Workers International Union Local 1518*, B.C. LRB B56/2014 (20 March 2014).

⁴² *Sidhu & Sons Nursery Ltd. v. UFCW Canada Local 1518*, above note 41. For detailed information about the case, including copies of the complaints filed at the labour board, evidence, legal submissions, and media reports, see UFCW Canada, “Stop the Blacklisting of Migrant Workers,” online at http://www.ufcw.ca/index.php?option=com_content&view=article&id=2564&Itemid=342&lang=en.

⁴³ See also Marie Carpentier and Carole Fiset, *Systemic Discrimination Towards Migrant Workers* (Québec: Commission des droits de la personne et des droits de la jeunesse, December 2011).

⁴⁴ See, for example, *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016.

⁴⁵ *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 ("Meiorin"); *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ("Grismer").

⁴⁶ See, for example, UN, "Report of the Secretary-General on the promotion and protection of human rights," above note 37; United Nations System Task Team on the Post-2015 UN Development Agenda, *Realizing the Future We Want for All: Report to the Secretary-General* (New York: June 2010) at p. 23; UN Secretary-General, "Announcing ambitious eight-point agenda, Secretary-General urges international community to 'make migration work' for all" (3 October 2013), SG/SM/15367, GA/11435, DEV/3046; UN General Assembly, *Declaration of the High-level Dialogue on International Migration and Development* (1 October 2013), A/68/L.5. See also, United Nations, Office of the High Commissioner for Human Rights, *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration* (Geneva: UN OHCHR, 2013). See also, Civil Society, "5 years, 8 priorities, collaboration, action," *The Five Year Action Plan* (2013), online at <http://hldcivilsociety.org/download-5-year-action-plan>.

⁴⁷ See, for example, United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the UN General Assembly resolution 45/158 of 18 December 1990; ILO Convention 97, *Migration for Employment Convention (Revised)* (1949); ILO Convention 143, *Migrant Workers (Supplementary Provisions) Convention* (1975); ILO Convention 189, *Domestic Workers Convention* (2011); ILO Recommendation 201, *Domestic Workers Recommendation* (2011); ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report no. VI at the International Labour Conference, 92nd Session, 2004, Sixth item on the agenda (ILO: Geneva, 2004); *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva: ILO, 2006) adopted by the Tripartite Meeting of Experts on the *ILO Multilateral Framework on Labour Migration* (Geneva, 31 October–2 November 2005); *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference, 97th Session, Geneva (10 June 2008).

⁴⁸ See endnote 8 above for a discussion of Bill 146.

⁴⁹ Ontario Ministry of Labour, Response to Freedom of Information request (13 October 2013).

⁵⁰ Ministry of Labour, Response to FOI request, above note 49.

⁵¹ Ministry of Labour, Response to FOI request, above note 49.

⁵² In interviews conducted for this research, other organizers and community groups working with live-in caregivers reported that recruitment fees were also common among the groups with which they worked.

⁵³ A variation is also currently being considered in New Brunswick: see Bill 22, *An Act to amend the Employment Standards Act*, 4th Session, 57th Legislature, New Brunswick, 62–63 Elizabeth II, 2013–2014, First Reading (3 December 2013), Second Reading (6 December 2013). Ontario has also made a tentative overture in this direction: see Bill 161, *An Act with respect to immigration to Ontario and a related amendment to the Regulated Health Professions Act, 1991*, First Reading (19 February 2014). At the time of writing, there have been three days of Second Reading debate. If passed, Bill 161 would give Cabinet discretion to create registries of certain prescribed employers who hire migrant workers and some individual recruiters of migrant workers. Cabinet is not required to create these registries. If it chooses to do so, under the Bill, all details about the registries are left to be developed in regulations.

⁵⁴ Interview with Cathy Kolar, Legal Assistance of Windsor (November 2013).

⁵⁵ *Labour Standards Code*, R.S.N.S. 1989, c. 249.

⁵⁶ *Foreign Worker Recruitment and Immigration Services Act*, S.S. 2013, c. F-18.1.

⁵⁷ FWRISA, s. 55(1)(j); *FWRIS Regulations*, s. 11. The *Code of Conduct for Foreign Worker Recruiters (Recruiters Code of Conduct)* is set out in the Appendix to the *FWRIS Regulations*.

⁵⁸ *Recruiters Code of Conduct*, s. 10.

⁵⁹ Interview with Jay Short, Manager, Special Investigations Labour Program — Employment Standards, Winnipeg (July 2013); Interview with Cindy Murdoch, Canadian Labour Congress (Manitoba), Winnipeg (July 2013).

⁶⁰ Interview with Jay Short (July 2013).

⁶¹ Interview with Jay Short (July 2013). For results of recent Projects, see Manitoba, Employment Standards, Special Investigations Unit, *Worker Recruitment and Protection Act/Foreign Workers*, online at http://www.gov.mb.ca/labour/standards/siu_worker_recruitment.html.

⁶² Interview with Jay Short (July 2013).

⁶³ FWRISA, s. 34, s. 35 and Division 2.

⁶⁴ WRAPA, s. 23(1).

⁶⁵ Interview with Jay Short (July 2013).

⁶⁶ See, for example, "UFCW Canada and CNC sign historic agreement" (13 April 2013), "Oaxaca's government and UFCW Canada sign agreement to protect Mexican migrant workers in Canada," both online at www.ufcw.ca.

⁶⁷ Interview with Karl Flecker, Canadian Labour Congress (October 2013).

⁶⁸ See, for example, International Labor Recruitment Working Group, www.fairlaborrecruitment.org.

⁶⁹ See, for example, International Migrants Bill of Rights Initiative, Georgetown University, online at <http://www.law.georgetown.edu/academics/centers-institutes/isim/imbr/> (accessed 11 December 2013). See also Jennifer Gordon, "Towards transnational labor citizenship: Restructuring labor migration to reinforce workers' rights," *A Preliminary Report on Emerging Experiments* (New York: Fordham Law School, 2009).

SUMMARY REPORT

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