CREATING A GENUINE AND FAIR ONTARIO IMMIGRATION ACT

Migrant Workers Alliance for Change response to Bill 161

On February 19, 2013, the Ontario Liberals introduced the Ontario Immigration Act (Bill 161). Through Bill 161, the government is seeking control over immigration to Ontario. An important goal of the bill is to enable “immigrants to settle in Ontario and integrate quickly into and to participate fully in Ontario society.” As currently written, however, Bill 161 will not achieve this goal for the majority of migrant workers that come to this province. It is essential that key revisions be made to this Bill, otherwise new legislation will be necessary.

A genuine Ontario Immigration Act must include just access for migrant workers. This means:

- Inclusion: Full immigration status and access to benefits
- Accountability: regulating recruiters and employers
- Breaking down silos: Cooperation between governments
- Proactive enforcement

Bill 161 fails to do so.

In bringing forward much-needed policy and legislation on immigration and migrant workers in this province, the government has the opportunity to create a legislative framework of fairness; a framework grounded on the principle that workers that come to work and build this province should be allowed to stay if they chose and access the benefits of their labour. In short, Ontario’s immigration policy must support access to residency status to all workers and protection for temporary workers from recruiter and employer exploitation. The Bill fails to do this.

Unfortunately, Bill 161 appears to be focused on bringing Ontario in line with the federal government’s “Expression –of-Interest” model of immigration slated to come into effect next year. This new federal system will set up a system to allow governments and employers to select immigrants based on employment and labour market needs. Bill 161 would enable the Ontario government to create selection programs for permanent residents (for example, under the Provincial Nominee Program) or temporary workers (for example, under the temporary foreign worker program). The Bill would also allow the government to set up a registry of employers and recruiters to participate in selection programs.

The government is seeking to be more competitive with other jurisdictions in order to boost Ontario’s economic class immigrants from the current 52% to 70% of all immigrants to the province. It would do this through an increase in the number of immigrants that Ontario can select under the Provincial Nominee Program from the current 2,500 to 5,000 per year with a focus on economic class immigrants rather than workers that continue to build the province through temporary foreign workers programs (construction, caregiving, farming, hospitality services etc).

We are concerned that Bill 161 will give recruiters and employers more control over the immigration selection process and not civil society. There is nothing in the Bill to address the exorbitant fees that recruiters charge workers for employment under these programs. Nor is there anything in the bill to address substandard employment conditions that all too many migrant workers face that come through such selection programs. The Ontario Government is going in the opposite direction of the best practices established by Manitoba, Saskatchewan and Nova Scotia that have legislated proactive protection from exploitation by recruiters and employers.
(1) INCLUSION: FULL IMMIGRATION STATUS AND ACCESS TO BENEFITS

What an Ontario Immigration Act should do: All migrant and undocumented workers must be allowed to apply for permanent residency through the provincial nominee program (PNP). In Manitoba, all temporary foreign workers coming into the province have access to permanent resident status through a PNP that allows for ‘semi- and low’ skilled worker settlement. A genuine Ontario Immigration Act would also ensure that all migrant workers have effective protection against exploitation and access to provincial benefits for migrant workers.

What Bill 161 does: Bill 161 gives the Ontario government the power to create new permanent immigration selection programs and temporary foreign worker programs. The government wants to expand access to permanent status through the PNP for so-called high-skilled migrant workers but leaves out low-wage migrant workers. This will entrench vulnerable working conditions and denial of rights for low-wage migrant workers. Bill 161 gives the Minister the power to include or exclude any migrant workers from provisions of the Act, but does not detail who and on what grounds.

(2) ACCOUNTABILITY AND TRANSPARENCY: REGULATING RECRUITERS AND EMPLOYERS

What an Ontario Immigration Act should do: Ontario must enact a proactive enforcement program to protect migrant workers from exploitation by recruiters and employers that meets the best practices enacted by Manitoba’s Worker Recruitment and Protection Act and enhancements developed in Saskatchewan and Nova Scotia. This would involve employer registration, recruiter licensing (with mandatory financial bond posted), mandatory filing of information about recruitment and employment contracts. This information must be open and accessible to the public. This process is both accountable and transparent to workers and the government. A public registry ensures that workers can access better recruiters, and a bond ensures that migrant workers can be compensated when problems arise.

What Bill 161 does: Bill 161 gives the province the power to create registries for employers and recruiters for the new selection programs to be set up under the Act. The definition of recruiter is arbitrarily limited and excludes businesses, organizations, lawyers and immigration consultants. Current recruiters bringing in migrant workers under the federal TFW programs could be excluded – so too would employers of such migrant workers. Bill 161 also does not require a financial bond, making enforcement difficult. There is no requirement for recruiters and employers to comply with other legislation (like the Employment Protections for Foreign Nationals Act) and Employment Standards Act in order to qualify for registration.

(3) BREAK DOWN SILOS: COOPERATION BETWEEN MINISTRIES

What an Ontario Immigration Act should do: Legislation works when ministries and different levels of government cooperate. The Ministry of Labour, Ministry of Citizenship and Immigration and the Federal Government should work together to support vulnerable migrant workers. Comprehensive information-sharing processes between the ministries and federal and provincial government must be developed with the goal of protecting workers. A federal moratorium on repatriations and an open work permit program for migrant workers with pending Ministry of Labour complaints should be put in place to off-set threats of reprisals and repatriation.

What Bill 161 does: The undefined registries proposed by Bill 161 are housed in the Ministry for Citizenship and Immigration (MCI) rather than the Ministry of Labour (MoL), which is the Ministry responsible and capable of enforcing employment standards violations. This limits the ability of MoL to carry out targeted enforcement and expanding protections for migrant workers, and goes in the opposite direction from best practices adopted or being adopted in Nova Scotia, Saskatchewan and Manitoba. Bill
161 gives the province the power to collect personal information from migrant workers, and share it with federal immigration authorities without detailing how this information-sharing would keep workers safe.

(4) PROACTIVE ENFORCEMENT NOT REACTIVE MEASURES

**What an Ontario Immigration Act should do:** The province should not rely on a complaint-driven model but should develop a proactive enforcement model coupled with anti reprisal measures to support the province’s most vulnerable workers. To address the power imbalances that lead to coercive conditions at work, both the employer and recruiters in Canada and abroad should be held jointly responsible for abuses. The province must provide necessary resources to enforce any new provincial legislation.

**What Bill 161 does:** Bill 161 sets out an enforcement process for the selection programs and provisions for who can and cannot be on the employer and recruiter registries if developed.

**AMENDMENTS TO BILL 161 NECESSARY, OR NEW LEGISLATION NEEDED**

As it currently stands, Bill 161 is not a genuine immigration act for all Ontarians, including migrant workers. It is essential that key revisions be made to the Bill as outlined above, for without them Bill 161 is harmful to migrant workers, their families, and the communities they support in Ontario and beyond.