



# Ontario Immigration Act (Bill 49)

## Submission by Migrant Workers Alliance for Change to Standing Committee on Justice Policy of the Legislative Assembly of Ontario

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### Introduction

The Migrant Workers Alliance for Change (MWAC) is Canada and Ontario's largest migrant workers rights coalition. Established in 2007, MWAC is led by migrant worker groups and supported by community, provincial and national organizations. The Migrant Workers Alliance for Change includes Alliance of South Asian Aid Prevention, Asian Community Aids Services, Caregivers Action Centre, Industrial Accident Victims' Group of Ontario, Justicia for Migrant Workers, KAIROS, Legal Assistance of Windsor, Migrant Ontario, No One Is Illegal – Toronto, Parkdale Community Legal Services, Social Planning Toronto, Unifor, United Food and Commercial Workers, Workers United and the Workers' Action Centre.

### Migrant Workers in Ontario

The Ontario Immigration Act is designed to facilitate the recruitment of immigrants through Ontario's Provincial Nominee Program. In 2013, Ontario nominated only 1,300 people through its provincial nominee program (PNP). Though exact numbers for all these categories are not available for 2014, the total number of foreign workers has increased, while the PNP was at about 2,500 nominations in 2014.

In that same year, there were 91, 697 people in the Ontario labour force on work permits in 2013 (39, 526 in the Temporary Foreign Workers Program and 52, 171 on the International Mobility Program). In addition, many of the 84, 804 international students in the province, and thousands of refugee claimants were also on work permits while an estimated 200,000 workers in the province had no immigration status.

As these numbers show, the immigration landscape in Ontario is far greater than the provincial nominee program and it is essential that an 'Ontario's Immigration Act' respond to the needs and concerns of temporary migrants in the province, especially those on tied work permits in the low-waged Temporary Foreign Workers Program, the Seasonal Agricultural Workers Program and the Live-In Caregiver Program.

Comprehensive academic studies have shown that migrant workers in these programs have restrictions on labour mobility, compromised health status, psychological impacts including from family separation,

linguistic and cultural barriers, lack of access to settlement services, heightened risk of abuse due to legal/economic vulnerability, and barriers to freedom of association and meaningful voice.

### **Ontario has a critical role to play**

While the decision to issue these migrants temporary work authorizations rather than permanent status lies with the federal government, the restrictions on access to social entitlements and protections are a result of provincial laws and regulations. Ontario has the power to enact laws and regulations that will ensure that migrant workers in the province live with basic dignity and access to rights.

In light of the vast numbers of migrants on temporary permits, a comprehensive review of Ontario's laws and regulations is urgent and will require changing labour, WSIB, housing, health care, social assistance, and other provincial programs.

Provinces like Manitoba, Nova Scotia and Alberta have all passed laws and regulations that protect and support migrants on temporary work authorizations in their provinces. It is time for Ontario to follow suit.

### **The Ontario Immigration Act, and Recruitment**

Migrant workers in low-waged jobs on temporary work authorization are paying up to an equivalent of two years' salaries in fees in their home countries to unscrupulous recruiters and agencies to work in Ontario. To pay these fees, entire families go into debt. Often when workers arrive here, work conditions and wages are not what they agreed to or were promised.

With families back home in debt, workers are afraid to complain about ill treatment by bad bosses here. In some cases when workers complained about recruitment fees, they faced abuse and deportation. Recruiters have been known to punish entire communities by blacklisting their ability to come to Canada.

Employers pass the buck to recruiters in Canada, who in turn claim that recruiters in sending countries are the real culprits. Ontario needs effective enforcement tools to hold recruiters and employers accountable.

The provincial nominee program allows employers to nominate high-waged employees that have been working for them in Ontario on temporary permits for permanent immigration. The PNP also allows for international students with graduate degrees (Masters and PhDs) to apply for faster permanent immigration in the Federal program. Thus almost all the participants in the Provincial Nominee Program are already residing in Ontario.

Despite this, a significant part of the Ontario Immigration Act proposes mechanisms that apply to recruitment of immigrants from outside Canada.

Specifically, if passed the Ontario Immigration Act would:

- Give Ontario the power to create a registry of employers that hire within these new Ontario-determined programs. The registries are not compulsory.
- Give Ontario the power to create a registry of recruiters who refer migrants to employment in these Ontario-determined programs. This registry would not be compulsory and would not include immigration consultants who are often recruiters.
- Give Ontario the power to create an inspections and investigations department that will have powers two years from the date this Act comes into force. These investigators have entry, search, seizure and fine levying powers to ensure that:
  - Unregistered recruiters do not recruit migrant workers to Ontario's programs;
  - Unauthorized immigration representatives do not work in Ontario; and
  - Recruiters and representatives follow required protocols if and when they are registered.
- Allow Ontario to share information about employers and recruiters with other provincial and federal agencies, provided that registries are created.

This decision creates two key areas of concern:

1. The recruitment regulatory measures as laid out in the Ontario Immigration Act go against established best practices in Manitoba, Nova Scotia and Alberta to the point of being ineffective.
2. The Ontario Immigration Act is not designed with the protection of migrant workers in mind; rather it is designed to facilitate the provincial nominee program. By adding vague recruitment specific measures whose details are forthcoming in regulatory announcements, this Bill creates legislative confusion. Across Canada, and until the proposal of this Bill, recruiter regulation was legislated by the Ministry of Labour that has the tools to rein-in abusive recruitment practices; or in the case of Saskatchewan, the recruiter licensing and employer registration system falls within the mandate of the provincial Immigration Ministry but gives the Labour and Immigration Ministries joint authority for enforcement through joint inspections, examinations, audits and investigations. The Ontario Immigration Act creates these powers in the Citizenship and Immigration Ministry whose officers are not trained appropriately in Employment Standards or Health and Safety policies.

### **Recommendations towards an effective recruiter regulation system in Ontario**

A comprehensive recruiter regulation system in Ontario requires legislation that is designed with a view to ending the practice of migrant workers paying fees to work in Ontario. Specific measures to this end include:

1. Require compulsory licensing of all recruiters working in Ontario with a financial bond:

Currently anyone can recruit migrant workers in Canada or abroad, charge them large fees, and either put them in contact with a Canadian employer or walk away without actually providing the job they promised. To counter the abuses inherent in this system, all recruiters in Ontario must be licensed, the list of licensed recruiters should be easily accessible online to migrant workers around the world, and the licensing should include a financial bond.

2. Require compulsory registration of all migrant worker employers in Ontario:

Employers choose which recruiters they work with, and are often aware of the fees being paid by migrant workers overseas or in Ontario. As such, an effective recruitment regulation process requires knowing which employers hire migrant workers in the province. Currently, Ontario depends on the federal government's willingness to share information about employers that hire migrant workers. A compulsory and robust employer registration system is required for effective recruiter regulation.

3. Hold recruiters and employers jointly financially liable for violating labour protections:

This practice is already the law in Manitoba and other provinces and ensures that responsibility for violations is not passed to recruiters abroad. Instead, employers should be held accountable for working with appropriate recruiters (who should be licensed in Ontario) to ensure that migrant workers do not face abuse. This practice ensures predictability and certainty for employers, recruiters and migrant workers.

The Metcalf Foundation in its report on recruitment practices in Ontario, *Profiting from the Precarious*, recommends that such 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 Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

We support the recommendations by the Metcalf Foundation that 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) 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;

- (e) explicit provisions that make an employer and recruiter jointly and severally liable for violations of the law and employment contract;
- (f) 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.); and
- (g) provisions allowing for information sharing that enhance cross-jurisdictional enforcement of protections against exploitative recruitment practices, including information sharing with other ministries or agencies of the provincial government, department or agencies of the federal government, departments or agencies of another province or territory or another country or state within the country as developed in Saskatchewan's legislation.

This recruitment regulation system should sit within the Ministry of Labour that has the expertise and the legal status to enforce employment standards, ensuring that migrant workers are not charged fees, and that their rates of pay and conditions of work meet Ontario's minimum standards and what they were promised.

### **Permanent Residency for low-wage workers under the provincial nominee program**

The Ontario Immigration Act should also include access to Permanent Residency for low-wage workers: Ontario is one of the few provinces where the provincial immigration nominee program explicitly excludes low-waged workers. A fair Ontario Immigration Act would provide provincial access to permanent residency to workers of all skill levels, including low-wage, often deskilled & de-professionalized migrant workers.

### **Further changes to Ontario's laws**

The current legislative framework in Ontario is a web of exclusions that prevents migrant workers from accessing equal wages, decent housing, healthy jobs, protection from abusive recruiters and employers and the ability to enforce their rights. It is time for a comprehensive look at all provincial legislations that impact the lives and working conditions of migrant workers. It is time for comprehensive legislation that:

1. Prioritizes the right to immigration status on landing for migrant workers:  
Ontario should push for permanent immigration status for all migrant workers who build, feed, and care for Ontario.
2. Ensure that labour standards including health and safety and anti-reprisals protections; housing and other social entitlements are equally accessible:

Migrant workers are excluded from many of Ontario's rights and protections. Some migrant workers are not paid minimum wage because of their occupations; some are not covered by health and safety protections or receive adequate compensation when injured; employer-provided housing for migrant workers is often not regulated; and Ontario's anti-reprisals protections do not adequately respond to migrant worker vulnerabilities. Many other social entitlements are unavailable.

Comprehensive legislation is needed to ensure migrant workers have equal access to all social rights and protections.