Via email only: CWR.SpecialAdvisors@ontario.ca

C. Michael Mitchell and The Honourable John C. Murray
Changing Workplaces Review
Employment Labour and Corporate Policy Branch,
Ministry of Labour
400 University Ave., 12th Floor
Toronto, ON M7A 1T7

September 18, 2015

Dear C. Michael Mitchell and The Honourable John C. Murray,

Please find below submissions on behalf of the Migrant Workers Alliance for Change in regards to the Changing Workplaces Review that you are leading.

This document outlines migrant worker needs and recommendations for change compiled through dozens of meetings directly with migrant workers, where hundreds of workers have put forth their ideas for how their work life in Ontario can be improved.

Please do not hesitate to contact me if you have any questions on the matter,

Best wishes,

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1. Introduction

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

Member organizations of MWAC work primarily with racialized and low-waged migrant workers providing legal, employment and health related services, as well as doing advocacy work.

2. Migrant Workers in Ontario

In 2013, 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.

Migrant workers in the Temporary Foreign Workers Program are in three categories: Caregiver Program (LP) (formerly the Live-In Caregiver Program (LCP)), Seasonal Agricultural Workers Program (SAWP) and the Temporary Foreign Workers Program (TFWP).

Ontario residents in the LCP work largely inside the home of their employers taking care of children, the elderly and people with disabilities, the new CP started in November 2014, which has removed the live-in requirement - it is unclear how many workers are actually living out. Ontarians in SAWP work on farms across the province. Low-waged residents in the TFWP are engaged in agriculture, food processing and packaging, hospitality, food sector and manufacturing.

These migrants are on **tied work permits**, which means:

- Their employers must apply for a Labour Market Impact Assessment (LMIA) which costs them $1,000 to show that no other Canadian citizen or permanent resident can suitably do the job. These costs are generally downloaded to the workers.
- They are only allowed to work for a single employer who is listed on their permits.
- If they are laid off and work in the agriculture sector, they are almost immediately deported.
- If they are in another sector, they have 90 days to find a new employer willing to pay a $1,000 processing fee and have the government process their papers. Most can't do so.
- Work authorization permits are time-limited, anywhere from a few weeks to four years - most workers have permits for 8 months to 1 year, which need to be renewed annually.
- Workers in the LCP/CP are able to apply for permanent residency provided they can maintain a working relationship with the employer for two years, meet high requirements and be part of a small quota. Low-waged workers in the other two programs cannot apply for permanent residency federally. While some provincial programs for permanent residency exist in other provinces, Ontario bars low-waged workers
- High waged earners in the TFWP (paid ~$21/hour) may be able to apply for permanent residency through the Ontario Provincial Nominee Program or the Federal Express Entry Program provided they can meet high requirements, and in the case of Federal programs if they have an employment offer.

Migrant workers on open permits, in the International Mobility Program (IMP), have time-limited work authorization permits, usually for 1 year. These are generally speaking non-renewable. Employers for workers in the IMP do not have to apply for LMIA. Work permits in the IMP also do not list an employer, this means that workers have more workplace mobility, and that it is harder to identify industries they are in. Low-waged and racialized workers that our member organizations have come in contact with through these programs are working in agriculture, restaurants, janitorial services, construction, and, in limited cases, in manufacturing. These workers face similar occupational exclusions from the Employment Standards Act (ESA) as other workers. As they are in Ontario for only one year, and have limited access to workplace rights or immigration information, these workers are just as unwilling to speak out about employers breaking labour law as migrant workers on closed permits. Most workers on these permits cannot apply for permanent residency status, and where it is possible, access to permanent residency is limited and employer dependent.

Migrant workers on open work permits who are on student visas or asylum seekers are often low-waged and racialized. In many cases, the students are in Ontario to attend a one-year English as a Second Language (ESL) program, and are working in industries similar to workers in the International

Mobility Program. Many asylum seekers and Ontarians working and on study permits are not granted permanent residency, and are in essence short-term workers in the province.

Finally migrant workers with no immigration status or undocumented workers make up a significant part of Ontario's low-waged, racialized, and part-time work force. With no immigration status, workers have a difficult time finding employment, and are similarly vulnerable to coercion and abuse and live in fear of deportation when they speak out.

Comprehensive academic studies have shown that migrant workers in these programs have restrictions on labour mobility (Nakache, 2013), profound difficulty enforcing contracts and workplace rights (Faraday, 2012 and 2014), compromised health status (McLaughlin and Henneby, 2013, etc), psychological impacts (Saad, 2013) including from family separation, linguistic and cultural barriers (Nakache & Kinoshita 2010), lack of access to settlement services (ibid), heightened risk of abuse due to legal/economic vulnerability (Fraser 2009), and barriers to freedom of association and meaningful voice (Faraday, Fudge, & Tucker 2012; Fudge, 1997).

3. 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 is 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.

The first section of these recommendations emphasizes changes that need to take place within the context of the *Changing Workplaces Review,* while the second section highlights some directions for an overall review of all Ontario laws with a view to ending exclusions of Ontarians without permanent residency from basic protections.

In light of the vast numbers of migrants on temporary permits, a comprehensive review of Ontario's laws and regulations is urgent and necessary, especially dealing with labour, WSIB, housing, healthcare, social assistance, post-secondary education and other provincial programs. Building on the policies enacted by municipalities in Toronto and Hamilton, it is important that Ontario seriously consider becoming a Sanctuary Province, where all services and rights are accessible to migrants without full immigration status.

4. Recommendations for Changing Workplaces Review

Migrant worker members that MWAC works with have identified *three key issues* that determine their work-life in Ontario. These are:

- **Fewer Rights:** Exemptions from protections on the basis of occupation disproportionately impact migrant workers. Migrant workers generally experience a lower floor of basic rights and entitlements as a result of their particular vulnerability to deportation and abuse.
- **Fear:** Being tied to a single employer who may control housing, ability to return to work in Canada, and/or ability to apply for permanent resident status, makes it extremely difficult to assert rights in a complaints-based framework. Specific changes are required to ensure that migrant workers can assert their rights and receive support when their rights are violated.
- **Forced to pay for work:** Migrant workers pay thousands of dollars to recruiters to come work in Ontario. To do so, many arrive in Canada with great debt that serves as a coercive and silencing force on migrant workers' ability to assert rights. A comprehensive recruiter regulation program is needed, with proactive provincial enforcement and a pan-Canadian system to avoid any gaps.

4.1. From fewer rights to full protections

> "The government should encourage that workers are not scared. They should say whatever the problem, come right away to us. Because as an employee I am scared of the government, and I am scared that if I complain, I will get deported."
> - Maria, a Filipina Live-In Caregiver, in Toronto.

a) No ESA exemptions for migrant workers

A significant proportion of Ontario's food is grown, processed and packaged by racialized men and women from Latin America, the Caribbean and South-East Asia, many of whom are migrant workers. Agriculture specific ESA exemptions mean that many migrant workers are working long hours, without breaks, public holidays and weekends. Migrants in agriculture are forced to speed up their work at various stages in the production cycle, without adequate remuneration.

- The ESA exemptions for agricultural workers (including Farm Employees, Harvesters, Flower Growers, and those engaged in processing, packing or distribution of fresh fruit or vegetables) should be removed. These exemptions result in a confusing patchwork of rights and entitlements

and a lack of protection for migrant agricultural workers under basic ESA standards. This contravenes the purpose of the ESA to establish a floor of minimum standards for *all* workers.
- Agricultural workers should be entitled to all of the following ESA provisions: minimum wage, overtime, vacation and holiday pay, hours of work, daily and weekly/bi-weekly rest periods, eating periods and, time off between shifts.

b) Access to termination and severance pay for seasonal agricultural workers

Many agricultural workers return year after year to work for the same employer, often for contracts of 6-8 months. In the event of a termination, these seasonal workers face barriers accessing termination and severance pay that acknowledges their actual years of employment, as the break in employment between contracts may be longer than 13 weeks.

- The ESA should be amended so that seasonal migrant workers can access termination and severance pay that recognizes their years of service and the continuity of an employment relationship with the same employer.
- Migrant workers should be considered to be on a temporary lay-off between their yearly contracts with the same employer, up to a period of 35 weeks.
- The ESA should recognize the service seasonal agricultural workers provide to Ontario. Should a migrant worker change employers, the ESA should require that the new employer recognize the time the migrant worker worked for previous employers, similar to existing provisions for continuity of employment when there is a change in building service providers under Section 10 of the ESA.

c) Prohibition of changes that lower wages or terms and conditions of employment

While migrant workers come to Ontario under programs that provide employment contracts, many employers reduce wages, benefits and working conditions once the worker arrives. Some agricultural workers for example, are switched between hourly wages, or paid by piece work numerous times during the length of a contract. Caregivers often find themselves being loaned' out to other families by their employers, or being asked to do cooking and cleaning work not outlined in the terms of the contract. Being on tied work permits, many migrant workers lack labour market mobility and do not have the same option to quit their jobs or even get a second job when there is a substantial change in wages and working conditions. This lack of remedies for constructive or unfair dismissal requires specific changes including:

- A prohibition on changes that lower wages and working conditions of employment.
- Amend the ESA to prohibit piece rate wage regime in agriculture
- Workers should be entitled to *the greater of* the number of hours actually worked per week, or the number of hours specified in the contract. Where a worker has fewer hours than those promised in the contract, workers should be able to claim the difference in salary through an employment standards complaint.
- Employers who reduce wages and working conditions provided in an employment contract or agreement must also be assigned a penalty.

d) Model contracts

In order to ensure that migrant workers in Ontario are receiving fair working conditions that are consistent with the ESA and other legislation (such as the Convention Concerning Decent Work for Domestic Workers), the Ministry of Labour should provide comprehensive standard contracts for migrant workers under each stream in the Temporary Foreign Worker Program. These contracts should be executed in Ontario and registered by employers, along with any contracts signed during the immigration process, with the Employment Practices Branch. A copy of all employment contracts must be provided to the signatory migrant worker.

e) Industry specific regulations for agriculture

There is an urgent need for industry-specific regulations for agriculture to ensure migrant agricultural workers have access to bathrooms in the fields, clean drinking water, and regular breaks. Not doing so means that these basic requirements for decent work are missing from migrant worker workplaces. In addition, agriculture-specific hazards such as confined spaces, prolonged exposure to pesticides and exposure to extreme heat and weather must be addressed in regulations targeted to agricultural work[1].

f) Decent Income

Migrant workers in the homes of their employers, or working in factories and farms, are often working 60 to 70 hour weeks while getting a fixed monthly cheque in the range of $1,200. Working away from families, in physically strenuous conditions, and lack of adequate wages

[1] All agriculture related deaths must be followed by a mandatory Coroner's Inquest.

to properly feed and nourish themselves makes migrant workers far more susceptible to mental and physiological ill health. More needs to be done to ensure that Ontario workers on work permits can get basic hours and wages protections. This includes:

- The ESA should provide for an eight-hour day and a 40-hour workweek. Employees should have the right to refuse work beyond 40 hours. Overtime at time and a half should be paid (or taken as paid time off in lieu) after 40 hours. No overtime exemptions or special rules. Right to refuse should be connected to issue of reprisals, immigration status, and reverse onus in complaints of reprisals by migrant workers.
- Repeal overtime exemptions and special rules.
- Bring the ESA in line with the federal caregiver program and prohibit deductions for room and board for live-in caregivers.
- Repeal overtime averaging provisions in the ESA.
- Permits for overtime in excess of 48 hours per week must be reviewed.
- In addition to an unpaid, half-hour lunch break, two paid breaks, such as a coffee break, should be provided by the employer.
- Increase paid vacation entitlement to three weeks per year. After five years of service, increase vacation to four weeks of paid vacation per year.
- Repeal exemptions from public holidays and public holiday pay.
- All workers should receive a written contract on the first day of employment setting out terms and conditions, including expected hours of work.
- All employees shall accrue a minimum of one hour of paid sick time for every 35 hours worked. Employees will not accrue more than 52 hours of paid sick time in a calendar year, unless the employer selects a higher limit. For a full-time 35-hour per week employee, this works out to approximately seven paid sick days per year.
- Raise the minimum wage to $15 per hour in 2015.

4.2. From Fear to Fairness

> "You as a farm worker you do like 60 hours a week. What it comes down to it, you are doing overtime, you don't get overtime. You are doing all of the stuff because there is no rule or there is no law there for we to get that. You don't have no holiday, no time off, no day off. You have to do it. That is what is the system is set up for we and it's not right."
> - Chris, a Jamaican farmworker under the Seasonal Agricultural Workers Program, in Leamington.

a) Increase proactive enforcement

Resources should be devoted to emphasize proactive enforcement of employment standards and health and safety in sectors and workplaces employing migrant workers.

- The Ministry of Labour should work with workers' advocates and community organizations to identify where violations are occurring and identify what investigative strategies will best uncover employer tactics to evade or disguise violations and to build trust with workers and avoid reprisals.
- Establish a formal anonymous and third party complaint system. To make employment standards enforcement and legal remedies accessible to current employees, inspection initiated after a formal anonymous or third party complaint is filed should aim to detect and assess monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.,) and non-monetary violations (e.g,. hours of work, breaks, agreements etc.,), remedy violations with orders to pay for all current employees, and bring the employer into compliance for the future. Institute an appeal process if a proactive inspection is not conducted. Make the report of the proactive inspection available to all employees. The officer's decisions could be appealed either by employees or the employer.
- Provide anti-reprisals protection to those workers whose workplace is subject to proactive inspection.
- A complaint brought forward by a third party (for example a worker advocate or community stakeholder) should automatically trigger an inspection.
- The inspection team should collaborate with the worker advocate or third party in determining investigative strategies. Reporting tools to third-party complainants should also be developed.
- When migrant workers, worker advocates, and community organizations bring forward individual ESA (or Occupational Health and Safety Act, OHSA) complaints and there are confirmed violations, the Ministry of Labour should expand investigations to the entire workplace and carry out ongoing follow-up to ensure compliance. This expanded investigation should be accompanied with anti-reprisals and transitional protections if the workplace is shut down.

b) Publicize employers with confirmed violations

Employers or recruiters found in violation of ESA and related legislation should be clearly identified on the Ministry of Labour website and other relevant provincial and federal websites (e.g. ESDC; CIC; consulates). This will serve as a disincentive to employers and an education tool for workers. A bi-annual report on enforcement activities should also be issued by the Ministry of Labour.

c) Strengthening anti-reprisal protection for migrant workers

Employers are able to immediately deport seasonal agricultural workers who try to enforce workplace rights. We have heard many reports of employers threatening other migrant workers with deportation or contacting immigration authorities, even when they do not have the authority. This intimidation and very real ability to repatriate workers leads to substantial barriers to enforcing employment standards. To address these barriers, we recommend that the Ministry of Labour should institute the following:

- Expedited process: Develop an expedited process for investigating ESA (and OHSA) claims for all migrant workers.
- Protections from repatriations: The ESA must be strengthened to ensure that workers rights are protected against repatriations or when repatriations take place.
- The anti-reprisals provisions of the ESA (and OHSA) should explicitly prohibit an employer from forcing "repatriation" on an employee who has filed an ESA (or OHSA) complaint. Where there is a finding of reprisal, provisions would be made for transfer to another employer or where appropriate reinstatement.
- Open-work permits: Create an open work permit program for migrant workers with workers' rights complaints against employers and recruiters to off-set reprisals and repatriation threats. The now discontinued *Alberta Open Work Permit Pilot Project, Agreement for Canada-Alberta Cooperation on Immigration (Annex B, 2009)* was such a pathway. However, the Alberta TFW Advisory Office had to make recommendations for the issuing of work permits. This is a barrier to access for workers at risk of reprisals. Open work permits for workers should instead be streamlined, and worker complainants at the Ministry of Labour should have immediate access to open work permits. If the permit is made discretionary, expedited mechanisms for appeals should be instituted. This program would require active cooperation and advocacy between Ontario and the federal government.

d) Extend time limitations for filing an ESA claim.

Migrant workers on tied work permits may be living in housing provided by the employer, which may in fact be required by the conditions of their permits. Given the specific realities facing migrant workers, and the difficulty of speaking out, the time limitation on filing an ESA claim for migrant workers should be extended to 5 years.

e) Expanding voices for migrant workers

Experience demonstrates that the most effective enforcement of human rights, health and safety and employment standards occurs when workers are part of a union and are able to exercise their rights through a collective agreement and the grievance and arbitration process. However, migrant workers face substantial barriers in exercising their right to collectively bargain and unionize.

The Ontario Labour Relations Act, 1995, S.O. 1995, c. 1, Sch. A, by operation of s. 3(a) and (b.1) does not apply to either:

1. "a domestic employed in a private home" or
2. "an employee within the meaning of the Agricultural Employees Protection Act, 2002.".

The first restriction effectively bars Caregivers, most of whom are migrants, from being able to unionize in Ontario.

As such, it is important that the OLRA be revised to:

- Ensure that live-in caregivers must have the same rights to collectively bargain and unionize as other Ontario workers.
- Grant Agricultural workers the same rights to collectively bargain and unionize as other Ontario workers (including repealing the AEPA – more on that below).
- Address the specific barriers to collective bargaining and unionizing under migrant worker programs, and to address the newer and older forms of labour organization, such as sectoral bargaining, in order to remove barriers to workers' collective rights (including consultation with community stakeholders).
- Include adequate information and accountability processes to end the practice where employers insist that their migrant worker employees are not able to unionize.

Access to collective bargaining for migrant workers

In 2015, the Supreme Court of Canada confirmed that the *Charter of Rights and Freedoms* guarantees protection for effective and meaningful collective bargaining for all workers in Canada. Those entitlements and guarantees apply to all individuals working in Canada, regardless of their immigration status.

Under the *Charter*'s protection for freedom of association, workers are entitled to protections that ensure they can democratically choose their bargaining agent.[2] They are entitled to legislative support and protection for a collective bargaining process that allows them "to exert meaningful influence over working conditions through a process of collective bargaining conducted in accordance with the duty to bargain in good faith".[3] That collective bargaining process must be attuned to and redress the power imbalance between employers and employees.[4] The *Charter* also guarantees protection for the right to strike as an "indispensable component" and "essential part of a meaningful collective bargaining process."[5] Where the right to strike is limited, "it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations."[6]

Migrant workers lack adequate, constitutionally-compliant protection for the right to bargain collectively. In fact, two of the largest groups of migrant workers in the province are explicitly excluded from the right to unionize under the *Labour Relations Act*. Migrant caregivers are entirely excluded from legislative protection for the right to bargain collectively. Agricultural workers are subject to the entirely inadequate *Agricultural Employees Protection Act*. And many other migrant workers are employed in sectors where the power imbalance between employers and workers is very great and so rights to unionize are difficult to exercise in practice.

Repeal the *Agricultural Employees Protection Act* and give agricultural workers protection for real and robust collective bargaining rights

The *AEPA* fails to give agricultural workers meaningful and effective protection for the right to bargain collectively. The legislation provides that agricultural workers can form an employees' association and can have a "reasonable opportunity" to make representations to employers, which employers must either listen to or read, and which the Supreme Court has said employers must "consider" in good faith.[7] But despite being in place for more than a decade, there is no record of any employee associations in the province that have succeeded in negotiating any agreements with employers under this legislation.

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[2] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1
[3] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 71-72
[4] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 71-72, 80
[5] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 3
[6] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 25, 60, 92-94
[7] *Ontario (Attorney General) v. Fraser*, 2011 SCC 20.

In light of the Supreme Court of Canada's 2015 trilogy, the *AEPA* would very likely fail to comply with the new constitutional standard for protection for freedom of association.[8] In particular:

- The *AEPA* fails to protect workers' choice of their union representative. There is no protected process by which workers can democratically choose their representative and no mechanism to ensure that an association legitimately holds (and over time continues to hold) a mandate to represent the workers. Instead the *AEPA* enables employers to subvert workers' democratic choice of representative by recognizing multiple employee associations – a tactic that since the 1930s has been known to facilitate employer influence over employee associations and foster company unions at the expense of independent unions. The *AEPA* also requires associations to identify the specific employees who are its supporters, leaving those workers extremely vulnerable to intimidation and dismissal.
- The *AEPA* fails to protect a meaningful and effective process of collective bargaining. Stated at its highest, the *AEPA* only provides a truncated opportunity for employees to present submissions that an employer must "consider". Even the making of these submissions is constrained by the legislation. The *AEPA* restricts when employees can make representations to employers, based on criteria which are meant to preserve employer convenience, power and privilege. To this end, s. 5(3) of the *AEPA* states that the following "considerations are relevant" to determine whether employees have had a "reasonable opportunity" to make submissions:
    - The timing of the representations relative to planting and harvesting times.
    - The timing of the representations relative to concerns that may arise in running an agricultural operation, including, but not limited to, weather, animal health and safety and plant health.
    - Frequency and repetitiveness of the representations.
- Further, the *AEPA* fails to protect meaningful and effective collective bargaining because there is no obligation to bargain and make best efforts to reach an agreement. There are none of the supports that are available to other workers to support collective bargaining (i.e. conciliation, first contract arbitration). There is no protection for an enforceable collective agreement and no grievance procedure. There is no protection for union security. Agricultural workers are denied access to a tribunal with labour relations expertise and labour-management representation to enforce their labour rights. Instead the *AEPA* is enforced by the Agriculture Food and Rural Affairs Tribunal that has no history of labour relations engagement and expertise.

[8] The 2015 trilogy has extended *Charter* protection for collective bargaining well beyond the 2011 *Fraser* case which reviewed the *AEPA* and the 2015 trilogy has also expressly departed from some of its statements in *Fraser*.

- Finally, the *AEPA* fails entirely to provide any protection for the right to strike or other meaningful dispute resolution mechanism commonly used in labour relations in Canada.

To be clear, the objective at this point is not to rehabilitate the *AEPA*. It is simply flawed legislation that cannot be retrofitted to support real collective bargaining rights. The *AEPA* must be repealed and agricultural workers must be given robust, meaningful rights of collective bargaining like other Ontario workers covered by the *Labour Relations Act*.

Other migrant workers need access to sectoral bargaining

Caregivers are expressly excluded from the *Labour Relations Act*. Further, because they are typically employed singly in individual employers' homes, they cannot access the *LRA*'s standard model of organizing which is based on bargaining units with multiple employees. These workers need access to a sectoral platform for collective bargaining. Recommendations for such a model of sectoral bargaining were made in the 1993 report by Intercede (an organization of live-in caregivers) and the International Ladies Garment Workers' Union: *Meeting the Needs of Vulnerable Workers: Proposals for Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* and remain relevant today. Importantly, the model for broader based bargaining that would provide real protection for these workers must recognize their isolation. It cannot be dependent upon workers first accessing a bargaining unit under the existing *LRA* as such a model would continue to leave these workers unprotected.

Other migrant workers – and workers with secure immigration status – who are employed in highly precarious sectors would also benefit significantly from broader based bargaining models and this is a principle the Special Advisors should endorse.

4.3. Recruitment: From 'forced to pay' to 'work without fees'

> "I paid $1500 in Honduras to come work here in Canada. Here I worked in an unsafe job at a mushroom farm for a year to be able to pay back that debt. On top of that, my employer regularly stole my wages and I couldn't file a claim with the Ministry or I would have been fired and sent back home."
> - Juan Miguel, a Honduran Temporary Foreign Worker in Southern Ontario

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 as they were promised or agreed to.

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.

In 2009, migrant worker members of the Migrant Workers Alliance for Change succeeded in lobbying the provincial government to pass the Employment Protections for Foreign Nationals Act (EPFNA) that banned charging recruitment fees, and the seizure of documents from caregivers. In November 2014, the Stronger Workplaces for a Stronger Economy Act extended EPFNA protections to *all* migrant workers, filling in part of the legislative gap. This protection comes into effect this November.

However, two-thirds of the caregivers surveyed by the Caregivers Action Centre after EPFNA came into force reported paying fees averaging $3,275. Between 2010 to 2013, only $12,100 in illegal fees was recovered under EPFNA. EPFNA is a weak legislative tool because it relies heavily on worker complaints rather than proactive enforcement.

In May 2015, it was revealed that Imelda "Mel" Fronda Saluma, 46, was behind a massive scam in Ontario that bilked more than $2.3 million from 600 prospective Filipino migrants. While charges have been laid against this recruiter, no money has been recovered for the workers who paid her and, in fact, many of them have been banned by Immigration Canada from applying for new permits.

Protecting Ontario workers without full immigration status 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:

a) 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, specifically recruiters of low-waged migrant workers, in Ontario must be licensed.
- The list of licensed recruiters should be easily accessible online to migrant workers around the world.
- Licensing should include a financial bond.
- Penalties should be put into place for unlicensed recruiters and recovered monies should be directed to workers who are misled by them.

b) 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 made 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.

c) 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.

- Employers should be held accountable for working with appropriate recruiters (who should be licensed in Ontario) to ensure that migrant workers do not face fees. This practice ensures predictability and certainty for employers, recruiters and migrant workers.

Legislation to protect migrant workers from exploitation by recruiters and employers must be proactive and meet international and domestic best practices represented by Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

We support these recommendations in the Metcalf Foundation report, *Profiting from the Precarious*, including that other specific enhancements to the Manitoba model be adopted in Ontario:

- mandatory reporting of all individuals and entities that participate in the recruiter's supply chain in Canada and abroad;
- mandatory reporting of detailed information regarding a recruiter's business and financial information in Canada and abroad as developed in Nova Scotia's legislation;
- 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;
- 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;
- explicit provisions that make an employer and recruiter jointly and severally liable for violations of the law and employment contract;
- protections against the broader range of exploitative conduct prohibited 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, at s. 22 of FWRISA); and
- 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.

5. Lifting the floor.

More needs to be done to improve labour laws for all Ontario workers, with or without full immigration status. We need decent, permanent, well-paid work for all. This mean a $15 minimum wage, paid sick days, vacation days and overtime pay. It means equal rights for temporary agency and other precarious workers.

To this end, we endorse all the recommendations from our member organization Workers Action Centre's report *Still Working on the Edge, 2015*, attached as an addendum to this submission.

6. Towards comprehensive reforms for migrant workers

6.1. Strengthening Health and Safety protections

a) Industry specific regulations for agriculture

There is an urgent need for industry-specific regulations for agriculture to ensure migrant agricultural workers have access to bathrooms in the fields, clean drinking water, and regular breaks. In addition, agriculture-specific hazards such as confined spaces, prolonged exposure to pesticides and exposure to extreme heat and weather must be addressed in regulations targeted to agricultural work. All agriculture related deaths must be followed by a mandatory Coroner's Inquest.

b) Eliminate the exclusion of domestic workers from Occupational Health and Safety Act (OHSA)

This exclusion, in addition to compromising the health and safety of a significant percentage of the Ontario workforce, is discriminatory and has an adverse effect on workers in the Live-In Caregiver or Caregiver program, many of whom are racialized women. This is even more important in the current work environment where many Caregivers are involved in elderly care, and responsible for lifting and moving their employers.

c) Broader review of OHSA in regards to migrant work

With migrant workers now entering many different arenas of work, regulations must be modernized with a view to protecting vulnerable workers in those industries, including consultations from workers and community organizations.

6.2. Workplace Safety and Insurance Board (WSIB)

a) Provide fair access to Loss of Earning benefits for migrant workers

Under 'deeming' practices, migrant workers are deemed 'fit to work' at jobs in Ontario (such as gas station attendant) and taken off WSIB after they have been repatriated to home countries where no

such jobs exist. Deeming practices for workers abroad must be stopped. The government should commit to working with migrant workers and their advocates to determine how best to update the Workplace Safety and Insurance Act (WSIA) to provide fair and appropriate Loss of Earning benefits for migrant workers. Migrant workers must also be able to access retraining programs that are available to other Ontario workers. These changes should be part of a broader effort to ensure portable social benefits for all migrant workers with precarious or permanently temporary status.

6.3. Access to health services

Migrant workers' employers are meant to be responsible for providing healthcare for the first three months.

a) Eliminate the three-month waiting period that serves as a key barrier to ensuring public health standards are met for migrant workers.

b) Migrant workers are facing unreasonable delays in getting their applications for health status processed even after the three-month period, sometimes waiting the entire length of their contract to receive healthcare. Regulations to ensure consistent and timely access, i.e. immediate access to health care, must be developed.

c) Migrant workers, particularly those that are forced to leave abusive employers, fall out of status, or are in between work permits or employers for months at a time. Though federal law does not deny healthcare on the basis of immigration status, provincial legislation does. Workers are able to access life-saving and emergency services at cost, but can't access preventative care, leading to greater financial burden on public services and public health concerns. Migrant workers should be granted access to health services regardless of their immigration status.

6.4. Changes in the Canada-Ontario Immigration Agreement (COIA)

The temporary foreign worker program needs fundamental reforms to address workers' precarious immigration status and permit workers to access basic employment rights. The Ministry of Labour should work with the federal government to develop changes that would address the barriers workers face in accessing employment rights.

a) Expand the Provincial Nominee Program (PNP) to give pathways to permanent residency to migrant workers deemed 'low-skilled'. Workers living without precarity are more likely to establish

community ties, and invest in their workplaces and communities resulting in overall improvement of public life. This also creates a reliable workforce and reduces continuous training costs that employers must incur as a result of a transitional workforce.

b) Create an open work permit program for migrant workers with workers' rights complaints against employers and recruiters to off-set reprisals and repatriation threats. The discontinued *Alberta Open Work Permit Pilot Project, Agreement for Canada-Alberta Cooperation on Immigration (Annex B, 2009)* was such a pathway. However, the Alberta TFW Advisory Office had to make recommendations for the issuing of work permits. This was a barrier to access for workers at risk of reprisals. Open work permits for workers should instead be streamlined, and worker complainants at the Ministry of Labour should have immediate access to open work permits. If the permit is made discretionary, expedited mechanisms for appeals should be instituted.

c) Establish a moratorium on repatriations of migrant workers with ongoing workers' rights complaints.

d) Develop comprehensive information-sharing processes between the federal and provincial government to ensure protections for migrant workers (like Manitoba has with Canada) in consultation with community organizations. Community advocates must have the right to know and access the information on employers and workers shared between the federal and provincial governments. The overriding priority of such information-sharing processes should be the protection of workers and the enforcement of labour, employment, and human rights laws, including the guarantee of anti-reprisal and transitional protections for workers. The information sharing agreement should specifically bar sharing of worker immigration status or other identifying information from the province to the Federal government.

6.5 Access to safe and decent housing

Ontario regulates allowable room and board to be deducted for Live-in Caregivers but is silent on regulations to ensure adequacy of such provisions. Further, the ESA is silent on other workers under the TFWP that are often required to live in their employer's accommodation and have rents and other housing fees deducted from their wages. Many migrant workers' housing (including farm workers) is currently excluded from the Ontario Residential Tenancies Act. These gaps in protection result in unsafe, crowded and unsanitary living conditions for many migrant workers. Housing guidelines are inadequate and outdated and enforcement is not consistent or effective.

a) Regulate migrant housing and develop comprehensive enforcement of regulations

The Ministry of Labour should explore the possibility for regulations on migrant worker housing to be developed under the ESA given the provision of housing by employers and the close proximity to migrant workers' job sites. At a minimum, existing housing guidelines for agricultural workers must be replaced with updated and enforceable regulations in consultation with migrant workers and community stakeholders and with the relevant Ontario ministries. Housing regulations for migrant workers in other streams must also be developed.

b) Proactive Enforcement Strategy

A proactive enforcement strategy must reflect the realities facing migrant workers and their fears of reprisal for speaking out about housing conditions. . Fines for violations, damages for workers in substandard housing, multiple inspections per year and anonymous complaints are key components of a proactive enforcement strategy.

c) Provide access to rent geared to income housing for migrant workers

Currently, the Ontario Housing Services Act restricts rent geared to income housing to citizens, refugees and permanent residents. Removing immigration status as a barrier to accessing social housing will strengthen the ability of workers in coercive employment arrangements to seek support, and assert rights without fear.

6.6. Ontario Works (OW) and Ontario Disability Support Program (ODSP)

a) Many workers that are unable to access WSIB because of deeming or other regulatory issues turn to ODSP for support. However, OW and ODSP are based on residency in Ontario, which effectively bars migrant workers after they have been repatriated. As with WSIB and EI, inclusion under OW and ODSP should be a priority to ensure that migrant workers receive the full social wage and portable social benefits even after leaving Canada. Immigration status as a barrier to accessing OW and ODSP should be removed.