



**MIGRANT WORKERS ALLIANCE FOR CHANGE  
&  
CAREGIVERS ACTION CENTRE**

**STRONGER TOGETHER:**  
DELIVERING ON THE CONSTITUTIONALLY PROTECTED  
RIGHT TO UNIONIZE FOR MIGRANT WORKERS

Bill 148 SUBMISSIONS ON  
**BROADER BASED BARGAINING**  
21 JULY 2017

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## A. Introduction

Migrant workers do the vitally necessary work without which other work in Ontario's economy would not be possible. They feed, care for and serve this province on a daily basis. But the majority of migrant workers in Ontario **by law** are denied the most fundamental labour rights – the constitutionally protected right to unionize, to bargain collectively and to exercise the right to strike (or have access to an effective dispute resolution process that is a substitute for the right to strike).

Migrant workers are among the most vulnerable workers, toiling in workplaces that are often hidden from sight and open to abuse. With work permits that tie their right to work to a single employer, advocating for themselves frequently brings immediate termination and also carries a serious risk of deportation, reprisal or workplace violence. The absence of legal protections for migrant workers means they are treated as a disposable workforce of predominantly Black workers or workers of colour, whose skills and lives are seen as having little value. Without union protection, rights abuses abound.

The two largest constituencies of low-wage migrant workers in Ontario – migrant caregivers and migrant farmworkers – are statutorily denied the right to unionize in Ontario. Bill 148 perpetuates this legal marginalization.

The *Changing Workplaces* Review, in Recommendations #130 and #132, strongly and directly advised that the *Labour Relations Act, 1995* be amended to give these workers labour rights as follows:

130. The domestic workers exclusion should be removed from the *Labour Relations Act, 1995*.
132. Agricultural and horticultural employees should be included in the *Labour Relations Act, 1995* and be given the same rights and protections as other employees.

But Bill 148 did not heed that advice. Instead, the *Labour Relations Act* continues to deny domestic workers and agricultural workers these fundamental rights.

The Migrant Workers Alliance for Change (MWAC) is a migrant workers' rights coalition headquartered in Ontario.<sup>1</sup> Established in 2007, MWAC is led by migrant

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<sup>1</sup> The Migrant Workers Alliance for Change includes individuals as well as Alliance for South Asian AIDS Prevention, Butterfly (Asian and Migrant Sex Workers Support), Caregiver Connections Education and Support Organization, Caregivers Action Centre, FCJ Refugee House, Fuerza Pwersa, GABRIELA Ontario, IAVGO Community Legal Clinic, Income Security Advocacy Centre, Justice for Migrant Workers, Migrante Ontario, No One is Illegal – Toronto, Northumberland Community Legal Centre, OHIP For All, Parkdale Community Legal Services, South Asian Legal

worker groups and supported by community, provincial and national organizations. Member organizations of MWAC work primarily with racialized and low-waged migrant workers doing organizing and advocacy work as well as providing legal, employment and health related services.

The Caregivers' Action Centre (CAC) is a grassroots organization based in Toronto, made up of current and former caregivers, newcomers and their supporters. Since 2007, CAC has been advocating and lobbying for fair employment, immigration status, and access to settlement services for caregivers through self-organizing, research, and education.

MWAC and CAC have filed separate submissions which address the broad range of reforms to the *Employment Standards Act* and *Labour Relations Act* that are proposed in Bill 148. These joint submissions focus exclusively on the right to unionize and the right broader based bargaining structures that would make migrant workers' rights to unionize and bargain collectively effective in practice. The focus of this submission is on migrant caregivers and farmworkers who at present are explicitly excluded from the right to unionize. However, the principles addressed here are relevant for other sectors in which migrant workers labour and in which broader based bargaining may be appropriate. For a profile of migrant workers in Ontario, see **Appendix A.**

Two distinct reforms are required at this time:

1. The exclusion of domestic workers, agricultural workers and horticultural workers from the *Labour Relations Act* must be repealed.
2. The *Labour Relations Act* must be reformed to enable broader based bargaining that is responsive to the sectors in which migrant workers are employed.

## **B. Context of Migrant Caregiving Labour**

The persistent failure of federal and provincial governments to adopt policies that support accessible and affordable public childcare, elder care and care for persons with disabilities has created and sustained an enduring reality in which significant socially necessary caregiving labour is performed in private homes.

For decades, this work has been performed by an overwhelmingly female, racialized workforce that is poorly paid, highly precarious, and often faces exploitative working conditions that fail to accord with minimum employment standards. Government

choices have also driven the growth of precarious home-based caregiving labour. Austerity measures over the past two decades have driven active changes in care policy and public funding that have shifted significant caregiving labour from public healthcare facilities into the private home, swelling the numbers of workers in this precarious sector. At the same time that this precarious workforce has been growing, the Auditor General noted that the acuity of care has risen as these caregivers are increasingly serving “a patient population with much more chronic and complex health issues.”<sup>2</sup>

Finally, expanded transnational labour migration policies<sup>3</sup> bring thousands of migrant caregivers into the province each year with precarious temporary immigration status, on work permits that tie them to specific employers. These migrant workers, almost exclusively racialized women from the global south, form a significant constituency of home-based caregivers and are the workers who face the most precarious and exploitative working conditions. For these workers, the baseline precariousness that confronts all workers in the sector is exacerbated by the precariousness that is constructed through the transnational recruitment process and rules of the Temporary Foreign Worker Program.<sup>4</sup>

Formal labour migration programs specifically designed to import trained caregivers to Canada with precarious temporary status have been in place for more than 60 years.<sup>5</sup> Prior to WWII, domestic workers from the United Kingdom provided much of this labour but, as British citizens, they arrived in Canada as citizens. Since WWII, however, Canada’s migrant caregivers have been predominantly racialized women who labour under restrictive conditions with temporary migration status.

Migrant caregivers work in their employer’s homes providing care for children, the elderly and people with disabilities. Migrant caregivers are overwhelmingly racialized women from the global south. Over 90% are from the Philippines alone.<sup>6</sup>

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<sup>2</sup> Office of the Auditor General of Ontario, Special Report on Community Care Access Centres – Financial Operations and Service Delivery (September 2015) at p. 14.

<sup>3</sup> While migrant caregivers have entered Canada under the Live-in Caregiver Program and its predecessors since the 1950s, in the past decade the scope of work that they perform has expanded from childcare to encompass care of the elderly and persons with disabilities in private homes. Further policy changes in 2014, under the reconfigured Caregiver Program, now also permit healthcare facilities outside the private home to hire migrant caregivers to provide care to persons with high medical needs.

<sup>4</sup> See Fay Faraday, *Made in Canada: How the Law Constructs Migrant Worker Insecurity* (Metcalf Foundation, 2012); Fay Faraday, *Profiting from the Precarious: How recruitment practices exploit migrant workers* (Metcalf Foundation, 2014); and Fay Faraday, *Canada’s Choice: Entrenched exploitation or decent work for Canada’s migrant workers* (Metcalf Foundation, 2016).

<sup>5</sup> See Faraday, *Made in Canada*; see also Audrey Macklin, “Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?” (1992), 37 McGill Law Journal 681

<sup>6</sup> Philip Kelly et al, *TIEDI Analytical Report 18: Profile of Live-in Caregiver Immigrants to Canada, 1993-2009* (Toronto, TIEDI, March 2011).

Nearly half of all migrant caregivers who come to Canada work in Ontario.<sup>7</sup> Most of these care workers have university degrees. Many are trained as nurses, midwives, other medical professionals and teachers. Yet despite their socially critical work, they are denied the right to unionize. They are typically paid at or near the minimum wage, and in practice many are paid even below the minimum wage.

Tied work permits restrict migrant caregivers to working for a single employer. Under predatory recruitment practices migrant caregivers are regularly charged thousands of dollars in illegal fees (typically up to two years' wages or more in their home currency) to secure the minimum wage jobs they do in Ontario. These practices create extremely exploitative work conditions in which migrant caregivers are often "released on arrival" and forced into undocumented status; work under conditions of debt bondage; are forced to work excess unpaid hours with little time off; are forced to perform duties outside their contracts; and/or are subject to sexual and racial harassment.<sup>8</sup> Demanding fair treatment and contract compliance typically results in termination. Yet despite the way in which current law predictable structures their work as highly precarious and exploitable, these migrant caregivers who are most in need of collective representation are denied the right to unionize.

Most caregivers working in private homes are not unionized because the work structure differs from the standard employment relationship for which our current labour relations laws were designed. While caregivers typically work one-on-one in private homes, bargaining units are workplace-specific and s. 9(1) of the *Labour Relations Act* prohibits single-member bargaining units. More fundamentally, s. 3(a) of the *Labour Relations Act, 1995* expressly states that "This Act does not apply to ... a domestic employed in a private home."

The lack of unionization in the sector, therefore, does not reflect workers' active choice to remain non-union; it reflects under-inclusive laws that fail to account for the structures of female-dominated care work. In fact, for decades migrant caregivers have organized through social/community networks and have been demanding the right to unionize. In particular, since at least 1993, migrant caregivers in Ontario have been demanding law reform to grant them access to the right to unionize through broader based bargaining structures.<sup>9</sup> Their continued exclusion raises serious concerns in light of the *Charter's* guarantees for freedom of association and equality.

It must also be emphasized that the ILO's Convention No. 189 and Recommendation 201 on the rights of domestic workers expressly state that

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<sup>7</sup> Figures from IRCC demonstrate that consistently 48-49% of migrant caregivers each year work in Ontario.

<sup>8</sup> See Faraday, *Profiting from the Precarious*.

<sup>9</sup> Ontario District Council of the ILGWU and Intercede, *Meeting the Needs to Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* (ILGWU/INTERCEDE, February 1993).

government must take positive steps to enact legislation and adopt policies to enable and facilitate caregivers' organizing and right to bargain collectively.<sup>10</sup>

### **C. The *Charter* protected right to unionize can no longer be denied**

The Supreme Court of Canada has clearly ruled that the right to unionize, the right to bargain collectively and the right to strike are fundamental constitutionally protected rights. They are all guaranteed as core elements of freedom of association under the *Canadian Charter of Rights and Freedoms*. Collective bargaining is recognized as “the most significant collective activity through which freedom of association is expressed in the labour context.”<sup>11</sup> The Court has recognized that “the right to strike is an essential part of a meaningful collective bargaining process”<sup>12</sup> and that where strike activity is limited, “it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations.”<sup>13</sup>

Critically, the SCC has recognized that the central purpose of freedom of association is to mitigate power imbalances in society. In particular, from the SCC's earliest s. 2(d) jurisprudence in 1987 it has recognized that

“Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer. Association ... has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.”<sup>14</sup>

In its most recent trilogy in 2015, the SCC confirmed that rectifying power imbalances is a central purpose of granting constitutional protection for freedom of association:

“... s. 2(d) functions to prevent individuals, who alone may be powerless, from being overwhelmed by more powerful entities, while also enhancing their strength through the exercise of collective power. Nowhere are these dual functions of s. 2(d) more pertinent than in labour relations. Individual

<sup>10</sup> ILO Convention 189: *Convention concerning decent work for domestic workers, 2011*, Article 3; ILO Recommendation 201: *Recommendation concerning decent work for domestic workers, 2011*, Article 2.

<sup>11</sup> *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 SCR 391, 2007 SCC 27, at para. 66 (“*BC Health Services*”)

<sup>12</sup> *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 3

<sup>13</sup> *Saskatchewan Federation of Labour*, *supra* at para. 25

<sup>14</sup> *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 per Dickson C.J.C. at pp. 365-366

employees typically lack the power to bargain and pursue workplace goals with their more powerful employers. Only by banding together in collective bargaining associations, thus strengthening their bargaining power with their employer, can they meaningfully pursue their workplace goals.”<sup>15</sup>

Beyond this, the SCC has recognized that absent legislative support workers generally are unable to unionize.<sup>16</sup> As a result, the Court has ruled that government has a positive obligation to take active steps to ensure that those who are vulnerable in fact have legislative support for effective and meaningful exercise of their rights to unionize and bargain collectively.<sup>17</sup> Instead, Ontario has explicitly denied those rights. Ontario’s law is out of synch with its constitutional obligations.

The Changing Workplaces Review recognized that the current law reform initiatives must take place with reference to these constitutional obligations and principles. The Special Advisors recognized both “the scope of the constitutional right of all employees in Ontario to freedom of association” and “a constitutional mandate to government to eliminate barriers to the exercise by employees of their constitutional rights”.<sup>18</sup>

It is from this appropriately constitutionally informed perspective and with explicit recognition of domestic workers’ and migrant farm workers’ marginalization in the labour market that the Special Advisors recommended that domestic workers and agricultural workers must be included in the *Labour Relations Act*.<sup>19</sup>

#### **D. Bill 148 continues to deny domestic workers’ rights**

By maintaining domestic workers’ exclusion from the *Labour Relations Act*, Bill 148 perpetuates the infringement of their rights to unionize, bargain collective and access an effective dispute resolution mechanism to advance and protect their workplace rights.

As the Court recognized in *Dunmore*, the very fact the law excludes them has a chilling effect and operates at an ideological level to treat caregivers’ organizing efforts as illegitimate. As the Court stated in 2001 with respect to the denial of farm workers’ right to unionize,

“By extending statutory protection to just about every class of worker in Ontario, the legislature has essentially discredited the organizing efforts of agricultural workers. This is especially true given the relative status of

<sup>15</sup> *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3, 2015 SCC 1 at para. 70

<sup>16</sup> *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 at para. 35-36

<sup>17</sup> *Dunmore*, *supra* at para. 20-22, 25-28, 40-48, 66-67; *BC Health Services*, *supra* at para. 34

<sup>18</sup> *Changing Workplaces Review Final Report* at p. 285 [emphasis added]

<sup>19</sup> *Changing Workplaces Review Final Report* at pp. 286-288

agricultural workers in Canadian society. ... it is hard to imagine a more discouraging legislative provision than s. 3(b) of the LRA. ... the effect of s. 3(b) of the LRA is not simply to perpetuate an existing inability to organize, but to exert [a] precise chilling effect ...

“... the didactic effects of labour relations legislation on employers must not be underestimated. It is widely accepted that labour relations laws function not only to provide a forum for airing specific grievances, but for fostering dialogue in an otherwise adversarial workplace. ... [T]he wholesale exclusion of agricultural workers from a labour relations regime can only be viewed as a stimulus to interfere with organizing activity. The exclusion suggests that workplace democracy has no place in the agricultural sector and, moreover, that agricultural workers’ efforts to associate are illegitimate. As surely as LRA protection would foster the “rule of law” in a unionized workplace, exclusion from that protection privileges the will of management over that of the worker.”<sup>20</sup>

The exact same logic applies to the exclusion of domestic workers from the *Labour Relations Act*. The exclusion from rights discredits caregivers’ actions to assert their rights and it emboldens exploitative behaviour by employers. Moreover, domestic workers’ exclusion also serves to reinforce the deeply racialized and gendered ideology of servitude that devalues caregivers’ labour as “not real work”. Their labour is devalued because it is work that has also been done and continues to be done by women on an unpaid and unrecognized basis. Furthermore, domestic workers’ exclusion from labour law reinforces privileged cultural norms of family, service and class which marginalize the reality and value of caregivers’ labour *as labour*, which mask employers’ power and responsibilities *as employers*;<sup>21</sup> and which obscure the fact that “the home” is in reality “a workplace”.<sup>22</sup>

This erasure from labour law exacerbates rather than rectifies the power imbalance between employers and caregivers. It ultimately facilitates the isolation and marginalization which have enabled exploitative working conditions to flourish for decades.

## **E. A Broader Based Bargaining Solution is Required**

The *Changing Workplaces Review* recognized that repealing s. 3(a) of the *Labour Relations Act* on its own does not provide sufficient protection. In the face of

<sup>20</sup> *Dunmore, supra* at para. 44-45. The corollary to s. 3(b) referred to in the *Dunmore* decision is now s. 3(b.1) in the current *Labour Relations Act*.

<sup>21</sup> In public discourse, they are typically referred to as “the family” that is receiving the care rather than “the employer” that is hiring a worker to provide caregiving labour.

<sup>22</sup> See Claire Hobden, *Domestic workers organize – but can they bargain?* (ILO, February 2015) at p. 2

s.9(1)'s prohibition of single worker bargaining units, further reform is needed to ensure that the right to unionize and bargain collectively is accessible in practice. Protecting real and effective rights requires creating a broader based bargaining framework – one that extends beyond an individual worksite (i.e. house).

The *Changing Workplaces Review* recommended sectoral standard setting for domestic workers.<sup>23</sup> However, two points are critical:

- (i) First, sectoral standard setting on its own does not engage or address the constitutionally guaranteed freedom of association. It does not provide a right to unionize, to collective representation, to collective bargaining and to dispute resolution mechanisms. The right to unionize, to collectively bargain, to engage in other forms of collective action are critical to giving caregivers a real and effective voice in the workplace, in enforcing their rights, and in the political forum to shape the terms and conditions of their work.
- (ii) Second, migrant caregivers' terms and conditions of work are already effectively subject to a sectoral standard setting that has depressed their terms and conditions of work. Migrant caregivers do not “negotiate” their contracts. They are typically presented with standard contracts to sign before they arrive in Canada with wages that are set at the “prevailing rate” (typically minimum wage).<sup>24</sup> As set out in *Make it Right* – MWAC's broader submission on Bill 148 – a strong floor of substantive rights is a necessary platform from which bargaining in the care sector must operate. *Make it Right* highlights which reforms in Bill 148 will assist migrant workers and what further reforms are needed to ensure that decent work is a reality. But reforms cannot be restricted to minimum standards.

What is ultimately needed is a broader based bargaining framework that is actually responsive to migrant caregivers' reality and that will allow real access to effective freedom of association. Unlike many workers, migrant caregivers face two points of power imbalance. They face a power imbalance relative to their immediate employer. They also face a power imbalance relative to the recruiters who place them with their immediate employer and who may continue to exert ongoing pressure through the extraction of unlawful fees and other coercive behaviour. An effective broader

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<sup>23</sup> *Changing Workplaces Review Final Report* at p. 288

<sup>24</sup> Faced with these standard contracts, the challenge then is for caregivers to enforce what rights they have been granted. Without collective representation and resources for enforcement, they regularly face demands to work excessive hours (60-70 hours per week with only 44 hours pay is not unusual). They also regularly face wage theft through unpaid hours, unpaid overtime, deduction of “recruitment fees” and LMIA processing fees and other rights infringements.

based bargaining framework must give migrant caregivers a strong collective voice to counter both of those sources of workplace exploitation.

Migrant caregiving already operates under a labour migration framework that is in effect sectoral. But while employers and recruiters have power in that sectoral system, workers do not. Establishing a broader based bargaining framework in this context is entirely feasible and is in fact necessary to rectify the profound power imbalance that exists.

The necessary elements of a broader based bargaining system would include:

- \* designation of the regions for bargaining (whether it is on a provincial basis or designated regions with the province);
- \* designation of an employer bargaining agent; and
- \* recognition of workers' bargaining agents, including the ability of migrant workers' unions to operate union hiring halls.

This is a sector in which there is the structural capacity to organize on a broader basis for bargaining.

Currently, employers who wish to hire a migrant caregiver must apply for a Labour Market Impact Assessment (LMIA) authorizing them to hire a migrant worker. In order to receive an LMIA, an employer must prove that they are unable to hire or train a local worker (i.e. that there is a sectoral shortage of labour). Again, as identified above, employers present workers with standard contracts which are common throughout the sector and which provide the "prevailing wage rate" in the province.

In provinces such as Manitoba, Saskatchewan and Nova Scotia, employers must register with and be approved by the provincial employment standards branch before they can apply for an LMIA and hire a migrant worker. Those provinces also have statutory requirements for recruiters to be licensed and registered. As set out in *Make it Right*, MWAC advocates for a robust system of provincial registration of employers of migrant workers and registration and licensing of recruiters.<sup>25</sup> That system is consistent with a sectoral bargaining framework.

In a system where employers must already apply for the authorization to hire migrant workers based on a sectoral labour shortage, and in which the global leading best practices require employers to be registered with the Ministry of Labour, requiring those employers to be part of a designated employer bargaining agency is not a difficult

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<sup>25</sup> See also, Faraday, *Profiting from the Precarious*.

step.<sup>26</sup>

Meanwhile, migrant caregivers have been organizing through social and community networks for decades, in organizations like the Caregivers Action Centre to provide each other with support, advice and advocacy. They are just denied the right to unionize.

Broader based bargaining would redress the sharp power imbalance in the sector. It would also bring accountability to employer and recruiter practices in the sector.

The *Changing Workplaces Review* has recognized that broader based bargaining is necessary in a context where current labour laws do not enable workers in small workplaces to organize. The Special Advisors recommended broader based bargaining in a variety of sectors, including publicly funded home care. The Special Advisors further stated that “the concept of broader based bargaining merits a wide and more focused discussion than was possible in this Review” and they recommended ongoing consultation specifically on broader based bargaining.

Migrant caregivers must play an active role in developing the broader based bargaining model that applies to their sector. They have already developed proposals for a model in the 1993 report on *Meeting the Needs of Vulnerable Workers*. Action is urgently needed to make caregivers’ constitutional rights to freedom of association a reality.

### **Recommendations for Caregivers Bargaining:**

1. Repeal s. 3(a) of the *Labour Relations Act, 1995* so that domestic workers are not formally excluded from the right to unionize.
2. Following active consultation with migrant caregivers, enact a model of broader based bargaining for migrant caregivers that includes:
  - a. designation of the region(s) for bargaining;
  - b. designation of an employer bargaining agent for the region(s); and
  - c. recognition of workers’ bargaining agents for the region(s), including the

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<sup>26</sup> Broader based bargaining models for caregivers exist around the world and have taken a variety of approaches that have successfully designated or engaged employer collective entities. France, Italy, Belgium, Germany, Sweden, Switzerland, Argentina, Uruguay, and South Africa and the United States (i.e. California, Oregon) are just some jurisdictions that have adopted sectoral approaches to bargaining for caregivers. See for example, Claire Hobden, *Improving Working Conditions for Domestic Workers: Organizing, Coordinated Action and Bargaining* (ILO, 2015)

ability of migrant workers' unions to operate union hiring halls.

## F. Farm Workers Collective Bargaining

MWAC and CAC also reiterate their earlier submissions that migrant agricultural workers and horticultural workers in Ontario must be included in the *Labour Relations Act* and be given the same rights and protections as other employees under the *LRA*.

Migrant farm workers have been fighting for decades to have their right to unionize recognized. Yet Ontario remains the only jurisdiction in Canada that wholly excludes farm workers from the right to unionize. The *Changing Workplaces Review* analyzed at length the multiple ways in which the exclusion of agricultural workers from the *Labour Relations Act* falls short of required labour norms. The constitutional principles outlined above underscore that the right to unionize and bargain collectively is a right that is protected for all employees. The Special Advisors emphasized that “the continued exclusion of agricultural workers from the LRA is unjustified.”<sup>27</sup> Moreover, the Special Advisors condemned the existing *Agricultural Employees Protection Act* as “defective”, citing nine different categories of serious shortcoming. They concluded that

“... in our view, the AEPA is defective as it contains barriers to the realization of by agricultural employees of their ability to advance their interests and to protect themselves. The AEPA creates an illusion that there is some potential effective voice and some protection for farm workers, whereas the reality in Ontario is that there is effectively neither of these.”<sup>28</sup>

and

“In conclusion, in our view, the AEPA does not provide an effective mechanism for employees to access collective bargaining and to improve their working conditions, leaving them powerless to deal with their employer or to influence their terms and conditions of employment.”<sup>29</sup>

It is noted as well, that through the existing labour migration programs, migrant farm labour is also regulated at a sectoral level in a way that excludes workers from collective representation in influencing the terms and conditions of work. Again

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<sup>27</sup> *Changing Workplaces Review Final Report* at p. 303

<sup>28</sup> *Changing Workplaces Review Final Report* at p. 298

<sup>29</sup> *Changing Workplaces Review Final Report* at p. 301

employers must apply for an LMIA to hire migrant workers on the basis of demonstrating a sectoral labour shortage. Under the Seasonal Agricultural Worker Program, standard contracts are issued each year for the province. These contracts are negotiated between Canada and government of the workers' origin country. While employer representatives are at that table, worker representatives have no right to participate in those negotiations. Workers are simply given the contract whose terms they must accept. Wages are set at a "prevailing rate" that reflects decades of this top-down wage-setting in the absence of workers' voice and collective representation. Migrant agricultural workers who are recruited from countries outside the SAWP are also presented with standard contracts that include the "prevailing wage" in the province, which is again typically at or near minimum wage that is set under the SAWP. So, like migrant caregivers, migrant farm workers are operating in a sector in which informal sectoral standard setting prevails in a manner that depresses terms and conditions of work and they are denied the rights of collective action that would allow them to have meaningful influence in setting and enforcing the terms of their work.

### **Recommendations for farm worker collective bargaining:**

1. Repeal s. 3(b.1) and s. 3(c) of the *Labour Relations Act, 1995* so that agricultural and horticultural workers are given the same rights and protections as other workers under the *LRA*.
2. Repeal the *Agricultural Employees Protection Act*.

## APPENDIX A

### Background on Migrant Workers in Ontario

Almost 92,000 people in Ontario perform labour on temporary work permits. Many of the 85,000 international students in the province and thousands of refugee claimants also have work permits. In addition, there are an estimated 200,000 workers in Ontario with no immigration status.

Migrant workers in the Temporary Foreign Worker Program fall into three categories.

**Migrant caregivers** work in their employer's homes providing care for children, the elderly and people with disabilities. Migrant caregivers are overwhelmingly racialized women from the global south, with over 90% originally migrating from the Philippines alone. Nearly half of all migrant caregivers who come to Canada work in Ontario.<sup>30</sup> Most of these care workers have university degrees. Many are trained as nurses, midwives, other medical professionals and teachers. Yet, they are denied the right to unionize in Ontario. They are typically paid at or near the minimum wage, and in practice many are paid even below the minimum wage.

Farms across the province rely on the labour of **seasonal agricultural workers**, many travelling to Ontario to work eight months of the year, with a significant number returning over the course of 20 years or longer, some for more than 40 years. Again, migrant farmworkers are overwhelming racialized workers from the global south, including Mexico, Jamaica, the Eastern Caribbean states, Guatemala, Thailand, Philippines, Indonesia and other nations. More than half of all migrant farm workers who come to Canada work in Ontario. Yet, they are denied the right to unionize. Ontario is the only province in Canada that excludes farm workers entirely from its labour relations statute.

Beyond caregiving and agricultural work, low-waged workers in the Temporary Foreign Worker Program are engaged in many other sectors, including food processing and packaging, hospitality, food services and manufacturing.

Work permits in these programs tie workers to one employer, which means that:

- \* They are only allowed to work for a single employer who is listed on their permits, doing the specific job listed on their work permit, at the location listed on their permit, for the time period listed on their permit.

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<sup>30</sup> Figures from IRCC demonstrate that consistently 48-49% of migrant caregivers each year work in Ontario.

- \* Their employers must apply for a Labour Market Impact Assessment to show that no other Canadian citizen or permanent resident can suitably do the job. The \$1,000 fee for this application is generally improperly downloaded to the workers.
- \* If they are terminated 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 – most workers have permits for 8 months to 1 year, which need to be renewed annually.
- \* A small quota of caregivers can obtain permanent residency provided they can maintain a working relationship with the employer for two years and meet high requirements. There is no pathway to permanent residency in the other programs.

Migrant workers in the International Mobility Program have time-limited work permits, usually for one year. These are, generally speaking, non-renewable. These work permits do not list an employer and as a result these workers have more workplace mobility. Many workers in these programs are working in agriculture, restaurants, janitorial services, construction, and, in limited cases, in manufacturing.

Open work permits are available for those with student visas and asylum seekers. Many 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 are vulnerable to coercion and abuse and live in fear of deportation when they speak out.

Thus, the structure of these immigration programs means that migrant workers face restrictions on labour mobility, profound difficulty enforcing contractual and workplace rights, and experience compromised health status, the psychological impact of family separation, linguistic and cultural barriers, a lack of access to settlement services, a heightened risk of abuse due to legal/economic vulnerability, and barriers to freedom of association and meaningful voice.

While the decision to issue migrants temporary work authorizations rather than permanent status lies with the federal government, the right to unionize and bargain collectively is governed at the provincial level. Ontario has the power to amend Bill 148 to ensure that migrant workers can access their constitutionally protected freedom of association in the province and live with basic dignity and labour rights