MAKE IT RIGHT

Response by Migrant Workers Alliance for Change
to the Proposed *Fair Workplaces, Better Jobs Act* (Bill 148)

July 7, 2017

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A. Introduction

Carlos and José had been working for minimum wage at a mushroom farm for six months when they were approached by a recruiter offering them a better job with better pay and working conditions. They accepted and surrendered their passports to the recruiter, who promised to get them the new work permits they would need.

It wasn't long before their hopes for their new jobs evaporated. Not only was the recruiter taking a large cut of their wages, she did not fulfill her promise to get the necessary work permits. When their employer discovered they were not legally permitted to work, he immediately fired Carlos and José, leaving them homeless and with only two week's pay in their pockets. They did not receive notice, severance or vacation pay. They lived in a homeless shelter for a month before they had to return to their homes in Guatemala.

Carlos and José accepted temporary jobs in Canada so that they could lift themselves and their families out of poverty. They believed that Canada had fair laws that would prevent fraud and exploitation. Carlos' family went into debt to pay for his initial trip to Canada, and yet, less than a year after his arrival, he has been forced to return home with nothing. The recruiter who made empty promises and charged illegal recruitment fees has suffered no repercussions.

Migrant workers are the people that feed, care for and serve this province on a daily basis and they deserve nothing less than equality. Unfortunately, their experiences show that the opposite is true. Migrant workers like Carlos and José are amongst 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 only one employer, advocating for themselves 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. Any labour law reform in Ontario must account for the specific vulnerabilities of migrant workers.

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

[1] 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 Puwersa, 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 Clinic of Ontario , Students Against Migrant Exploitation, Social Planning Toronto, UFCS, UNIFOR, Workers Action Centre and Workers United.

MWAC understands that the proposed *Fair Workplaces, Better Jobs Act* offers a once in a generation opportunity to address the power imbalance between migrant workers and employers. The large gaps that characterize the current employment standards and labour relations regimes have allowed precarious work to flourish. The proposed *Act* takes some important steps to address migrant worker precarity, including a commitment to a $15 minimum wage embedded in legislation, progress on personal leaves, and equal pay for temporary and part-time workers. We celebrate these advances, which will make a real difference in the lives of migrant workers, while highlighting the areas in which more reforms are needed.

MWAC wholly endorses the submissions made by the Workers Action Centre and Parkdale Community Legal Services. In these submissions, MWAC highlights the areas of most benefit to migrant workers:

- **$15 minimum wage:** The proposed $15 minimum wage is a cornerstone of this legislation that is an important step towards lifting migrant workers out of poverty. A vocal employer lobby has argued that the minimum wage is bad for business. We urge the provincial government to preserve the $15 minimum wage, including yearly adjustments, a move that is not only good for workers but also for business. But in addition, reforms to the "piecework" pay provisions that apply to farmworkers will be needed to ensure no one falls below $15.

- **Personal Emergency Leave:** Migrant workers will benefit from the proposed extension of personal emergency leaves to all workplaces. For the first time, most migrant workers will have access to two paid sick days and the right to take time off for emergency leave. Employers will not be able to require medical notes when workers are off sick. MWAC welcomes this important development. MWAC urges Ontario to extend this even further to provide seven paid days of personal emergency leave.

- **Notice Required for Shift Cancellations:** The proposed *Act* would guarantee workers three hours of pay for cancellation of a work shift with less than two days' notice and the right to refuse a shift scheduled with less than four days' notice. This change will benefit many migrant workers.

- **Equal Pay for Equal Work:** Workers who are doing similar work should be paid the same. The proposed *Fair Workplaces, Better Jobs Act* would provide that part-time, contract, seasonal and casual workers would be entitled to the same pay as full-time employees if they do "substantially the same" work. MWAC supports this important change, which would reduce the incentive for employers to rely on precarious work. These amendments are a significant breakthrough for migrant workers, as well as women, Indigenous, racialized, and disabled workers, who predominate in part-time, temporary, seasonal and casual work.

These are important gains that must be protected. At the same time we urge the government of Ontario to take this opportunity to address the following areas:

- **End exemptions:** Only one quarter of workers in Ontario are completely covered by the minimum standards due to a complex web of exemptions. The proposed legislation does not address these exemptions, instead leaving the issue to a promised review in the fall. Many migrant workers fall within these exemptions. The *Employment Standards Act* sets the floor for the most basic workers' rights – all workers should enjoy these rights. In the alternative, the legislation should strictly define the circumstances in which an exemption will be available.

- **Stop illegal recruitment fees:** In 2009, the provincial government took an important step by prohibiting recruitment fees. However, there are ongoing reports of recruiters demanding exorbitant and illegal fees from migrant workers. Effective enforcement and mandatory registration for recruiters and employers is required to ensure that migrant workers can take home their pay.

- **Effective enforcement requires protection from repatriation for migrant workers:** The important gains in the proposed legislation will be illusory unless enforcement is strengthened. MWAC welcomes government announcements about significant increases to enforcement resources. We urge the government to consider the particular vulnerabilities faced by migrant workers, who face immediate repatriation by unscrupulous employers if they complain. Working with the federal government to issue open work permits when complaints are made and allowing anonymous complaints would alleviate some barriers to enforcement for migrant workers.

- **Caregivers and agricultural workers must have equal rights to unionize:** Unions are the most effective way to ensure fairness and democracy in workplaces. Yet agricultural workers and caregivers – two industries that are rife with abuse – are excluded from the *Labour Relations Act* and thus have no effective way to unionize. We urge government to accept the recommendations of the Special Advisors and end these unfair exemptions.

B. Background on Migrant Workers in Ontario

It is estimated that there are almost 92,000 people in the Ontario labour force on 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 the province with no immigration status.

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

Those in the Caregiver Program work inside the homes of their employers taking care of children, the elderly and people with disabilities. Farms across the province rely on the

labour of seasonal agricultural workers, many travelling to Ontario to work eight months of the year, some returning over the course of 20 years or longer. Low-waged workers in the Temporary Foreign Worker Program are engaged in agriculture, food processing and packaging, hospitality, food sector and manufacturing.

Work permits in these programs are tied to one employer, which means that:

- They are only allowed to work for a single employer who is listed on their permits.
- 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 downloaded to the workers.
- 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 – 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 have a difficult time finding employment and are vulnerable to coercion and abuse and live in fear of deportation when they speak out.

Thus, the structure of these immigration programs mean 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 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 fundamental minimum employment standards and labour rights.

C. MWAC strongly supports a $15 minimum wage for all workers

MWAC strongly endorses the move to a $15 minimum wage. Migrant workers are amongst the lowest paid workers in Ontario, not only because they often occupy the "low skilled" category of the program, but because their already low income is combined with a lack of enforcement of their rights around hours of work and overtime.

Their poverty in Canada is directly tied to poverty abroad. Migrant workers often come to Canada in an effort to improve the well-being of their families back home. Despite earning very low wages, a large portion of their pay cheques are sent back to their families, and another portion to recruiters (an issue addressed further below). Raising the minimum wage to $15 is an important step to lift migrant workers and their families out of poverty. Caregivers, for example, generally earn at or near the minimum wage. The $15 hourly wage will offer greater security and living conditions for workers and allow them to better support their families.

Contrary to the dire warnings of the business lobby, decades of evidence shows that higher minimum wages and better working condition create stronger economies and healthy communities for all of us. A growing number of small and modest sized businesses are telling their side of the story – that investing in their workforce makes good business sense.[2]

At the same time, some farmworkers paid at a piece rate may continue to be paid less than the minimum wage. That is because the *Employment Standards Act* provides that the piece work rate must be set so that the average rate of productivity will result in wages at least equivalent to the minimum wage. Workers who fall below that average rate can be paid less than the minimum wage, although the floor will now rise from $11.40 to $15.

> ***Recommendation 1: Bill 148 should be amended to guarantee at least a minimum wage to farmworkers who are paid by piece rate.***

[2] See the Better Way Alliance at betterwayalliance.ca.

D. Personal Emergency Leave and New Paid Leave

As the situation stands now, many migrant workers face a hard choice when illness or emergencies arise. They can take the time off they need to deal with the situation, which will likely lead to the loss of their job. Or they can simply carry on. MWAC strongly endorses the extension of 10 Personal Emergency Leave days to all workplaces. This is a move that is greatly needed to improve the lives and working conditions of migrant workers.

On the other hand, limiting the entitlement to leave with pay to only two days will offer limited assistance to migrant workers who may have to return to their home countries to deal with family emergencies. Paid leave has been shown to speed up recovery, deter further illness, and reduce health care costs. It enables workers to address health and family needs without putting their economic security at risk. MWAC supports two paid days as a start, but endorses the recommendation to increase to seven paid days made by Parkdale Community Legal Services/Workers Action Centre.

> ***Recommendation 2: Accept the establishment of paid Personal Emergency Leave days, but increase to 7 paid days. Amend subsections 50(5) of the* Employment Standards Act *to reflect the following:***
>
> ***(5) an employee is entitled to take a total of seven days of paid leave and three days of unpaid leave under this section in each calendar year.***

E. New Scheduling Rules

For many low wage migrant workers, unpredictable and unstable schedules have become the norm. It is common in many industries for workers to have little input into schedules and to receive their schedules at the last minute. The timing of their shifts can fluctuate from week-to-week, meaning that their wages rise and fall unpredictably and planning life outside of work is impossible.

Currently, employers are not required to provide advance notice of shift schedules, last minute changes in shifts or guaranteed minimum hours of work per week. The only requirement is the “3-hour rule.” When workers who normally work longer than three hours are given less than three hours of work, the employer must pay for three hours.

The proposed Bill introduced important new protections for workers on scheduling. The proposed *Act* would guarantee workers three hours of pay for cancellation of a work shift with less than two days’ notice and the right to refuse a shift scheduled with less than four days’ notice. This change will benefit many migrant workers.

Surprisingly, Bill 148 fails to require that schedules be provided in the first place. This undermines the purpose of the new scheduling protections which is to provide better certainty in scheduling. It will be hard for employees to enforce their new scheduling rights without the requirement for a schedule to base their case on. We endorse the

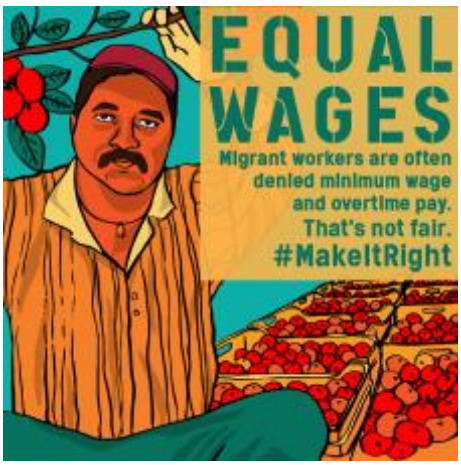
recommendation made by the Workers Action Centre and Parkdale Community Legal Services:

> ***Recommendation 3: An amendment should be made to require an employer to provide its employees with a least two weeks' notice of their work schedules***.

F. Equal Pay for Equal Work: Paying seasonal, temporary and part-time workers the same rate as permanent and full-time workers

Workers who are doing similar work should be paid the same. The proposed *Fair Workplaces, Better Jobs Act* finally recognizes this fundamental principle. The proposed amendments would provide that part-time, contract, seasonal and casual workers and temporary agency workers would be entitled to the same pay as full-time employees if they do "substantially the same" work.

If passed, the incentive for employers to rely on precarious work will be significantly reduced. These amendments are a significant breakthrough for migrant workers, as well as women, Indigenous, racialized, and disabled workers, who predominate in part-time, temporary, seasonal and casual work.



However, as noted by the Ontario Equal Pay Coalition, the strength of the proposed equal pay rights depends on clear direction about what is meant by "substantially the same" work, in order to avoid misapplication by employers trying to avoid their obligations. Many years of experience with the gender pay equity provisions have shown how ineffective such language is. For example, the requirement under s. 42 of the *Act* that a woman and a man must be "doing substantially the same" work has allowed employers to create minor differences between women's and men's jobs in order to evade the requirement for equal pay and maintain pay differences. More clarity is needed if the goal of equal pay is to be met.

It will also be essential to impose proactive obligations on employers to post wage rate information (so that workers can tell if they are being paid equally) and robust enforcement mechanisms.

MWAC endorses the specific amendments proposed by the Ontario Equal Pay Coalition:

Recommendation 4: Amend Bill 148 s. 42.1 to read as follows:

Difference in employment status
42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

> ***(a) they perform similar work in the same establishment;***
> ***(b) their performance requires similar skill, effort and responsibility; and***
> ***(c) their work is performed under similar working conditions.***
>
> ***(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.***

Exception
2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

> ***(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or***
> ***(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.***

NEW PROPOSED LANGUAGE Section 42.3
Section 42.3 Equal pay for Equal Work: Pay transparency
42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

(2) The employer's annual Pay Transparency Report in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

> ***(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,***
> ***(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,***
> ***(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,***
> ***(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,***

(e) the number of steps in a pay range by each classification and job status within the establishment,
(f) the rate of progression through a pay range by each classification and job status within the establishment.

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

(4) No employer or temporary help agency may do any of the following:
(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;
(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

(5) Section 74 applies to this Part with no exceptions.

G. End the exemptions that deny basic rights to migrant workers

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 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*

The *Employment Standards Act* contains more than 83 complex exemptions and special rules that permit some employers to not comply with minimum wage, vacation pay, public holiday pay, overtime and hours of work rules, severance and other provisions. Only 24% of Ontario employees are fully covered under the *Employment Standards Act*.[3] Many of the wide range of exemptions and special rules often followed from industry lobbying and were made without input from workers.

Migrant workers are deeply affected by exemptions. For example:

- Agricultural workers are subject to special rules and exemptions with respect to minimum wages, working time, vacations and leaves, and public holidays. A significant proportion of Ontario's food is grown, processed and packaged by

[3] Vosko, Leah F., Andrea M. Noack and Mark P. Thomas (2016), "How Far Does the *Employment Standards Act 2000* Extend, and What are the Gaps in Coverage? An Empirical Analysis of Archival and Statistical Data." Online: https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf.

racialized men and women from Latin America, the Caribbean and South-East Asia, many of whom are migrant workers. Agriculture-specific employment standards 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 *Employment Standards Act* has a number of special rules and exemptions for workers who provide homemaking/personal support services, occupational groups in which racialized women and migrant workers are found in large numbers. Employers can make deductions for room and board even though the federal Caregiver Program prohibits employers from charging room and board to live-in caregivers. Workers (depending on their classification under the *Act*) are subject to special rules for hours of work, daily rest periods, time off between shifts, rest periods, eating periods and overtime.

There can be no reason other than the intense power imbalance in the employment relationship for the existence of these exemptions and we urge the government to amend the *Employment Standards Act* to remove the above exemptions now.

> ***Recommendation 5: Amend the* Employment Standards Act *to remove exemptions that impact migrant workers in the agricultural and homemaker/domestic worker sectors. In the alternative, commit to prioritizing review these exemptions, along with all other exemptions remaining in the* Employment Standards Act*.***

Ontario announced on May 30, 2017, that it will start a review of *Employment Standards Act* exemptions and special rules in the fall of 2017. If Ontario chooses to proceed with such a review, rather than remove exemptions now, the legislation should be amended to define narrowly the kinds of circumstances that would justify exemptions. For that reason, we endorse the recommendation made by Parkdale Community Legal Services/Workers Action Centre:

> ***Recommendation 6: To retain or establish exemptions, exceptions and special rules for the* Employment Standards Act*, the following conditions shall be met,***
>
> > ***(a) The nature of work in the occupation or sector is such that it is impractical for a minimum standard to apply and would preclude work from being done at all or significantly alter its output. "Nature" of the work relates to the characteristics of the work itself. It does not relate to the quantity or cost of work produced by a given number of employees. Nor does it relate to the nature of the employer and how they have organized work.***

(b) Employers do not directly or indirectly control the working conditions that are relevant to the employment standard under consideration.

(c) The occupation or sector that would be receiving an exemption or special rule provides some benefit to society or the economy.

(d) The employee group to whom the exemption or special rule would apply be readily identifiable, to prevent confusion and misapplication of the exemption/special rule.

(e) The employees of the occupation or sector agree to the exemption.

(f) The employees to whom the exemption or special rule would apply are not historically disadvantaged or precariously situated in the labour market. That is, such exemption should no compound existing labour market disadvantage.

H. More enforcement tools are needed to prevent illegal recruitment fees

"I paid $1,500 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

While the *Fair Workplaces, Better Jobs Act* proposes to take steps to address the exploitation and unfairness resulting from the use of Temporary Help Agencies, so far it has done nothing to address another "triangular" employment relationship: the problem of recruiters.

No worker should have to pay fees to work. Yet, many migrant workers are indebted to the tune of two years' wages to unscrupulous recruiters who have charged them illegal fees. 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. Workers are afraid to complain about ill treatment. 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.

In 2009, migrant worker members of the Migrant Workers Alliance for Change succeeded in lobbying Ontario to pass the *Employment Protections for Foreign Nationals Act* that banned recruitment fees. In November 2014, the *Stronger*

Workplaces for a Stronger Economy Act extended those protections to all migrant workers, filling in a legislative gap.

However, recruiters continue to impose these illegal fees. Two-thirds of the caregivers surveyed by the Caregivers Action Centre after the *Act* came into force reported paying fees averaging $3,275. Between 2010 to 2013, only $12,100 in illegal fees were recovered. Years of experience have now shown that the *Act* is a weak tool to combat recruitment fees 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. She was sentenced to six years in prison with a restitution order of $1.5 million. However, as the sentencing judge noted, it is unlikely that the workers will ever be paid restitution: "it is a sad reality that in light of Ms. Saluma's gambling losses, it does not appear that she has any monies or assets to satisfy this debt."[4]

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. MWAC recommends the following specific measures to prevent and address illegal recruitment fees:

Recommendation 7:

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 paid by migrant workers overseas or in Ontario. As such,

[4] *R. v. Saluma*, 2015 ONCJ 754 (CanLII) at para. 51.

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. 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.[5]***
- ***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;***
- ***Make it an independent offence for an employer to engage the services of a recruiter who is not licensed under the legislation;***
- ***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, as prohibited under Saskatchewan Legislation (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); and***
- ***Provisions allowing for information sharing for cross jurisdictional enforcement against exploitative recruitment practices.***

This recruitment regulation system should fall within the authority of the Ministry of Labour, which 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] See: Fay Faraday (2014), "Profiting from the Precarious: How recruitment practices exploit migrant workers" (Metcalfe Foundation: Toronto) (Accessed June 30, 2017 at: http://metcalffoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf).

I. Migrant workers need protection from deportation as reprisal

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 Caregiver in Toronto

All of the positive steps that Ontario has taken to address precarious work will come to nothing without effective enforcement. The government's commitment to hire up to 175 new employment standards officers by 2020-21 is a good step. So, too, is its commitment to (by 2020-21) resolve all claims within 90 days and inspect 1 in 10 Ontario workplaces. The proposed *Fair Workplaces and Better Jobs Act* would eliminate the "self-help" requirement, which requires workers to try to resolve issues with their employer before making a complaint. MWAC supports this amendment, as well as the amendment that will remove the ability of government to refuse to assign an investigating officer on the basis of "insufficient information" from the employee.

However, more needs to be done to address the unique vulnerabilities that make the complaints process ineffective for migrant workers.

Migrant workers have very limited collective voice at work and cannot be realistically expected to complain about minimum employment standards in a context where more than 90% of Canadian workers complain *only after* being terminated or having secured new jobs. Given their closed, tied work permits and hopes to return in subsequent seasons or continue working towards permanent residency applications, migrant workers do not enjoy the limited luxury of complaining about basic employment standards. In short, migrant workers cannot "vote with their feet" when they experience workplace violations.

It is no surprise that recent blitzes by the Ministry of Labour found very high rates of employer non-compliance in workplaces with high numbers of temporary foreign workers.[6]

The Special Advisors recognized that reprisals are the essential barrier to enforcement for migrant workers, stating that:

> Both the Law Commission of Ontario and the Federal Labour Standards Review Commission have recommended that expeditious and fair processes be put in place for dealing with alleged reprisals against Temporary Foreign Workers, and for hearing cases that could result in repatriation, since the risk of repatriation is a significant deterrent to filing a complaint, and repatriation can have the effect of denying a worker any effective remedy.

[6] See "Blitz Results: Young Workers and Temporary Foreign Workers" (Sept. 30, 2016) for period from May 2 to June 30, 2016 (online: www.labour.gov.on.ca/english/es/topics/proactivein spections.php).

> In the case of temporary foreign workers, no termination of employment – whether for reprisal or for other alleged reasons – should be effective unless and until a neutral adjudicator makes an order permitting such termination. Given the federal and provincial jurisdictional issues involved, the Ministry should work with the federal government to establish an adjudication process that will protect TFWs against repatriation in cases of dismissal and prior to the expiry of a work permit. This may mean co-ordination and agreement with Immigration, Refugees and Citizenship Canada, Employment and Social Development Canada and the Canada Border Services Agency to ensure that there is an effective and efficient adjudication process recognized by both governments. [7]

MWAC endorses Recommendation 34 of the Special Advisors' final report, which states:

> ***Recommendation 8: The Ministry of Labour should work with the appropriate federal agencies and ministries to develop and implement an expeditious and accessible procedure, which is available to address cases of alleged reprisals that result in termination or unjust dismissal for temporary foreign workers prior to repatriation under the terms of their work permit.***

British Columbia has already adopted a similar approach through an immigration agreement with the federal government. Where there is a "real and substantial risk to a foreign worker as a result of an employer not complying with federal or provincial laws", the federal government will, "where appropriate", issue a new work permit. The federal government will even consider an open work permit.[8]

There is very similar language in the 2015 "Canada-Ontario Agreement on Foreign Workers",[9] but MWAC is not aware of a situation in which it has been put into practice. MWAC recommends the use of open work permits in all cases and strengthening the language in the agreement to protect all migrant workers who make complaints against employers and recruiters in order to prevent the threats and realities of deportation as reprisal.

> ***Recommendation 9: Ontario should amend its agreement on "foreign workers" with Canada to require mandatory issuance of an open work permit to workers in the Temporary Foreign Worker Program when they start an employment standards complaint.***

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[7] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 101 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).
[8] Canada-BC Immigration Agreement (April 2015), Annex B on 'Foreign Workers' at 9.4 (online: http://www.cic.gc.ca/english/department/laws-policy/agreements/bc/bc-2015-annex-b.asp)
[9] Canada-Ontario Agreement on Foreign Workers (June 2015) at 9.5 (online: http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/ont-foreign-workers.asp).

Anonymous complaints would provide an additional way of targeting inspections and bringing enforcement into workplaces where violations are taking place but the workers are extremely vulnerable to reprisal. The Special Advisor's Final Report noted that, while the facts of an alleged violation (including the name of employees adversely affected) must be disclosed to employers, the name of the individual complainant is a separate issue: "We see no reason why the identity of the employee complainant needs to be disclosed to an employer as long as the employer is in a position to respond to the complaint."[10]

MWAC endorses the Parkdale Community Legal Services/Workers Action Centre proposal for an anonymous complaints process.

> ***Recommendation 10: a new amendment to establish a formal anonymous complaints process that includes the following:***
>
> > ***Workers shall be able to file a claim confidentially (where the worker's name is known to the Ministry, but not to the employer).***
> >
> > ***Where it is only the individual facing violations, an investigation will commence. If it is necessary to reveal a complainant's name to the employer, in order to pursue an investigation, then the Ministry must seek the permission of the worker to do so.***
> >
> > ***Where complaints refer to violations that affect more than one employee, then the complaint shall be reviewed for inspection of the workplace (not individual claim).***
> >
> > ***The complainant must be informed of the outcomes of their claim.***

J. Caregivers and Agricultural Workers need robust protections for unionization and collective bargaining

Ultimately, enhancing the working conditions of migrant workers will require moving beyond individual employment standards and starting the process of reforming the *Labour Relations Act* to allow collective action, organizing, representation and bargaining led by migrant workers themselves. That means addressing the two key sectors dominated by migrant workers that are expressly excluded from the *Labour Relations Act*: domestic and agricultural work.

Some of the alleged reasons for these exclusions include the existence of an intimate social bond between domestic workers and their employers and the uniqueness of agricultural and horticultural work (seasonal, variable climates, perishable products,

[10] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 106-107 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).

need for continuous care). These supposedly unique characteristics have all been soundly debunked.[11]

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.

Workers are entitled to protections that ensure they can democratically choose their bargaining agent. They are entitled to 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."[12] That collective bargaining process must be attuned to and redress the power imbalance between employers and employees. The Charter also guarantees protection for the right to strike as an "indispensable component" and "essential part of a meaningful collective bargaining process." [13] Where the right to strike is limited, "it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations."[14]

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 and horticultural workers (many of whom are migrant workers) 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 rights to unionize are difficult to exercise in practice.

i. Agricultural and Horticultural Workers

The Special Advisors had harsh words for the *Agricultural Employees Protection Act* in their final report. The "defects" they identified can be summarized as follows:[15]

- The Act does not clearly state that agricultural workers have the right to join a trade union and participate in its lawful activities.
- The Act does not protect employee independence to the same degree as the *Labour Relations Act*.
- Protection against employer misconduct is insufficient.

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[11] Abigail Bakan & Daiva Stasiulis, eds., *Not One of the Family: Foreign domestic workers in Canada* (Toronto: University of Toronto Press, 1997); Fay Faraday, Judy Fudge & Eric Tucker, eds., *Constitutional Labour Rights in Canada: Farm workers and the Fraser case* (Toronto: Irwin Law, 2012).

[12] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at paras. 71-72.
[13] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 3.
[14] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at paras. 25, 60, 92-94.
[15] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at pp. 298-301 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).

- The Act contains no right to collective bargaining, no obligation on the parties to meet, engage in meaningful dialogue or make reasonable efforts to arrive at a collective agreement.
- There is no obligation on the employer to recognize the exclusive agency or bargaining authority of the union or employee association.
- The Act does not address the right to strike nor provide for any alternative dispute resolution if "discussions" actually take place but reach an impasse.
- The Act makes no distinction between the so-called "family farm" and agribusiness.
- There is no mandatory dispute resolution mechanism for enforcement of collective agreements, should they actually be achieved. "Any negotiated collective agreement negotiated pursuant to [the Act] would be difficult if not impossible to enforce."

It should come as no surprise, in light of these serious deficiencies, that no collective agreements have been signed in the agricultural sector since the legislation was passed. The Special Advisors concluded that:

> In conclusion, in our view, the [*Agricultural Employees Protection Act*] 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. At a practical level, the lack of any effective voice and protection for agricultural workers over the years, since the [*Agricultural Employees Protection Act*] was enacted, is proof of the ineffectiveness of the Act.

The Special Advisors, who were appointed specifically to advise Ontario on how to better protect precarious workers, concluded that the continued exclusion of agricultural workers from the *Labour Relations Act* is "unjustified" based on the following factors. To quote the report:[16]

> I. the particularly vulnerable and precarious nature of temporary migrant workers employed in the Ontario agricultural sector, including the dependence arising from their restricted immigration and work permits status, which ties them exclusively to their employer and which significantly exacerbates the power imbalance between employees and employers;

[16] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 303 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).

II. the racial basis of the migrant labour program, both in its origins and through to the present day;
III. the demanding – and even harsh, in many cases – nature of the work, long hours, rudimentary living conditions, commonly adverse health consequences, and close regulation of their private lives;
IV. the overbroad exclusion of enterprises, which are, for all intents and purposes, traditional manufacturing businesses and do not have a seasonal nature, or the sensitivity to climate or the need to protect animal and plant life;
V. the lack of any truly effective mechanism in the AEPA for agricultural workers to protect themselves and advance their interests, both at a theoretical and at a practical level;
VI. the fact that almost every other Canadian jurisdiction allows farm workers access to collective bargaining;
VII. the availability of fair and reasonable alternative dispute resolution mechanisms as alternatives to strikes and lockouts, which is one of the primary reasons in support of the exclusion; and
VIII. the values which underlie the *Charter* protection for collective bargaining, namely that it enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.

With respect to the related category of "horticultural employees," the Special Advisors noted that such workers are not excluded from labour relations regimes in any other Canadian jurisdiction and that "there is no valid policy reason to exclude this category of employees from [*Labour Relations Act*] coverage."[17]

For all of these reasons, MWAC urges Ontario to accept its Special Advisors' Recommendation 132:[18]

> ***Recommendation 11: As recommended by the Special Advisors, Agricultural and horticultural employees should be included in the* Labour Relations Act, 1995 *and be given the same rights and protections as other employees.***

ii. Domestic Workers

[17] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 304 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).
[18] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 304 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).

The *Labour Relations Act* does not apply to a domestic worker employed in a private home. These are caregivers who are directly employed by the families they work for to provide personal care to children, persons with disabilities and elderly persons.

As with agricultural and horticultural workers, the Special Advisors concluded that there is "no valid policy reason to deny this group of workers their constitutional rights to freedom of association" and noted the distinct characteristics that made their lack of protections so troubling:[19]

- They are a largely female and racialized workforce;
- They are in Canada on temporary work permits;
- Many live under the same roof as their employer, leading to social and work isolation and a high degree of dependency on their employer. They are under constant surveillance and lack personal privacy;
- Many experience language restrictions;
- They are politically invisible;
- They may have little knowledge to or access to information about their rights;
- Caregivers have only minimal input into negotiating the terms and conditions of their employment and are often reluctant to challenge an employer's decision that contravenes their contract;
- They have little effective recourse when violations occur;
- There is a trend to working longer hours than stipulated in their contracts or under employment standards legislation, with a persistent lack of boundaries between work and personal hours;

We urge Ontario to adopt Recommendation 130 from the Special Advisors' final report:

> ***Recommendation 12: As recommended by the Special Advisors, the domestic workers exclusion should be removed from the*** **Labour Relations Act, 1995.**

The practical reality is the possibility of unionization is very small under current labour relations regimes because many caregivers are the only persons employed in a private home. The Special Advisors recognized this structural problem and noted that "sector specific regulation under the [*Employment Standards Act*] is likely to become more necessary and important to ensure that working conditions meet the test of decency, and that certain issues contributing to vulnerability and precariousness are addressed."[20]

[19] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 286 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).
[20] C. Michael Mitchell & John C. Murray (May 2017), "The Changing Workplaces Review: An Agenda for Workplace Rights" at p. 148 (Accessed June 26, 2017 at: https://files.ontario.ca/books/mol_changing_workplace_report_eng_2_0.pdf).

In addition, caregivers need access to a sectoral platform for collective bargaining. Meaningful models of collective bargaining require the participation of migrant workers in their development. Without such participation, any broader-based bargaining models would lack both legitimacy and effectiveness. For workers who are geographically dispersed across different locations, the goal should be to enable workers to organize and bargain collectively from multiple locations with the same employer/franchisor. For sectoral bargaining, there must be a process for designating an employer entity that is the counterpart in bargaining and to recognize the triangular relationship involved in some employment relationships involving recruitment agencies and employment agencies.

If you would like to help improve the working conditions of migrant workers, please go to Migrant Worker Alliance for Change for resources and tool kits.

K. Summary of Recommendations

Minimum Wage

Recommendation 1: Bill 148 should be amended to guarantee at least a minimum wage to farmworkers who are paid by piece rate.

Personal Emergency Leave

Recommendation 2: Accept the establishment of paid Personal Emergency Leave days, but increase to 7 paid days. Amend subsections 50(5) of the Employment Standards Act to reflect the following:

(5) an employee is entitled to take a total of seven days of paid leave and three days of unpaid leave under this section in each calendar year.
Recommendation: An amendment should be made to require an employer to provide its employees with a least two weeks' notice of their work schedules.

Scheduling

Recommendation 3: An amendment should be made to require an employer to provide its employees with a least two weeks' notice of their work schedules.

Equal Pay

Recommendation 4: Amend Bill 148 s. 42.1 to read as follows:

Difference in employment status
42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform similar work in the same establishment;
(b) their performance requires similar skill, effort and responsibility; and
(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

Exception
2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or
(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does

not discriminate on the basis of sex or any other ground protected under the Human Rights Code.

NEW PROPOSED LANGUAGE Section 42.3
Section 42.3 Equal pay for Equal Work: Pay transparency
42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

(2) The employer's annual Pay Transparency Report in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,
(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,
(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,
(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,
(e) the number of steps in a pay range by each classification and job status within the establishment,
(f) the rate of progression through a pay range by each classification and job status within the establishment.

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

(4) No employer or temporary help agency may do any of the following:

(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;
(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

(5) Section 74 applies to this Part with no exceptions.
Recommendation: Amend the Employment Standards Act *to remove exemptions that impact migrant workers in the agricultural and homemaker/domestic worker sectors. In the alternative, commit to prioritizing review these exemptions, along with all other exemptions remaining in the* Employment Standards Act*.*

Exemptions

Recommendation 5: Amend the Employment Standards Act *to remove exemptions that impact migrant workers in the agricultural and*

homemaker/domestic worker sectors. In the alternative, commit to prioritizing review these exemptions, along with all other exemptions remaining in the Employment Standards Act*.*

Recommendation 6: To retain or establish exemptions, exceptions and special rules for the Employment Standards Act*, the following conditions shall be met,*

(a) The nature of work in the occupation or sector is such that it is impractical for a minimum standard to apply and would preclude work from being done at all or significantly alter its output. "Nature" of the work relates to the characteristics of the work itself. It does not relate to the quantity or cost of work produced by a given number of employees. Nor does it relate to the nature of the employer and how they have organized work.

(b) Employers do not directly or indirectly control the working conditions that are relevant to the employment standard under consideration.

(c) The occupation or sector that would be receiving an exemption or special rule provides some benefit to society or the economy.

(d) The employee group to whom the exemption or special rule would apply be readily identifiable, to prevent confusion and misapplication of the exemption/special rule.

(e) The employees of the occupation or sector agree to the exemption.

(f) The employees to whom the exemption or special rule would apply are not historically disadvantaged or precariously situated in the labour market. That is, such exemption should no compound existing labour market disadvantage.

Recruitment Fees

Recommendation 7:

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 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.*

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. 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.*[21]
- *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;*
- *Make it an independent offence for an employer to engage the services of a recruiter who is not licensed under the legislation;*
- *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, as prohibited under Saskatchewan Legislation (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); and*
- *Provisions allowing for information sharing for cross jurisdictional enforcement against exploitative recruitment practices.*

[21] See: Fay Faraday (2014), "Profiting from the Precarious: How recruitment practices exploit migrant workers" (Metcalfe Foundation: Toronto) (Accessed June 30, 2017 at: http://metcalffoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf).

Enforcement

Recommendation 8: The Ministry of Labour should work with the appropriate federal agencies and ministries to develop and implement an expeditious and accessible procedure, which is available to address cases of alleged reprisals that result in termination or unjust dismissal for temporary foreign workers prior to repatriation under the terms of their work permit.

Recommendation 9: Ontario should amend its agreement on "foreign workers" with Canada to require mandatory issuance of an open work permit to workers in the Temporary Foreign Worker Program when they start an employment standards complaint.

Recommendation 10: a new amendment to establish a formal anonymous complaints process that includes the following:

- *Workers shall be able to file a claim confidentially (where the worker's name is known to the Ministry, but not to the employer).*
- *Where it is only the individual facing violations, an investigation will commence. If it is necessary to reveal a complainant's name to the employer, in order to pursue an investigation, then the Ministry must seek the permission of the worker to do so.*
- *Where complaints refer to violations that affect more than one employee, then the complaint shall be reviewed for inspection of the workplace (not individual claim).*
- *The complainant must be informed of the outcomes of their claim.*

Unionization

Recommendation 11: As recommended by the Special Advisors, Agricultural and horticultural employees should be included in the Labour Relations Act, 1995 *and be given the same rights and protections as other employees.*

Recommendation 12: As recommended by the Special Advisors, the domestic workers exclusion should be removed from the Labour Relations Act, 1995.