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Barbara Moran
Director General, Labour
Employment and Social Development Canada

Via email: NC-MLS_NTM-GD@labour-travail.gc.ca

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Dear Barbara Moran,

These submissions are being made by the Migrant Workers Alliance for Change (MWAC) – Canada's largest migrant worker rights coalition to assist in modernizing the federal labour code.

It is our primary recommendation that:

- Employment and Social Development Canada, including departments focused on the federal labour code, work closely with migrant worker organizations to develop legislation and policy that is alive to the well-being of migrant workers in Canada as they fall under federal and provincial jurisdiction; and
- That the federal labour code explicitly ban recruitment fees, and develop a process for licensing and regulating recruiters, including joint and several financial liability between employers and recruiters.

MWAC members organize and work with migrant workers under the TFWP, including those working in the Caregiver Program (formerly Live-in Caregiver Program), the Seasonal Agricultural Workers Program (SAWP), the Agricultural Stream, and the Stream for Low-wage Positions. Unless otherwise specified, we are referring to these workers when using the term 'migrant workers' in this brief.

Migrant workers are employed in various sectors of the economy, including as caregivers, farmworkers, greenhouse workers, and in food and retail services, with many classified as 'lower-skilled' (with high-school education or less, under the National Occupation Classifications C and D (NOC C & D)).

These migrant workers include those working in the Caregiver Program (formerly Live-in Caregiver Program, and comprised largely of Filipina, but also Indonesian and Latin American women); the Seasonal Agricultural Workers Program (SAWP, which is comprised largely of Black and Brown men from Mexico and the Caribbean), and the TFWP Stream for Low-wage Positions (workers from countries in the Global South) – and includes marine workers that are regulated by the federal labour code.

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For the most part, workers deemed 'low-skilled' are racialized, and it is often women's care work and domestic work that is being deemed 'low-skilled'. The devaluation of racialized and gendered work performed by poorer people is central to the ways in which migrant worker programs operate.

In contrast to 'high-skilled' workers who are recruited for permanent residence on arrival, or allowed to apply for permanent residency after living and working here, 'lower-skilled' migrant workers are required to leave the country when their permits expire.

The sectors where migrant workers labour are clearly not peripheral - our society could not function without the food, care, and service that they provide. Similarly, the labour that they perform is not temporary**:**

- the agricultural worker program is in its 50th year (with some workers, and now their children, in the program for decades),
- the domestic worker or caregiver program has been around in one form or another since the late 1800s (with no sign of a universal child and elder care program in sight),
- the so-called low-skill (now low-wage) program has remained in high demand in some form since the late 1880s when Chinese railroad workers first arrived in Canada.

Since so-called 'low skill' migrant workers cannot apply to enter as permanent residents, they must come to live and work in Canada on work permits. Migrant workers we organize are forced into further precarity by being placed on closed or tied work permits.

Only migrant workers working on ships and other marine related industries are currently covered under the federal labour code. However, Employment and Social Development mediates migrant workers labour conditions in Canada federally, through the Labour Market Impact Assessment (LMIA) process, and Immigration, Refugees and Citizenship Canada (IRCC) through work permits. Migrant workers also fall under the purview of provincial labour authorities but their ability to assert rights through those mechanisms is determined in part by federal laws. Therefore it is critical that the federal labour code is alive to the intersection of various provincial and federal laws and work to increase migrant worker rights.

One of the key reasons for migrant worker exploitation are closed work permits which are regulated federally. Closed work permits that are tied to a single employer are a modern form of indentured labour where migrant workers are not free to circulate in the labour market like other workers. Closed work permits, coupled with inadequate monitoring and enforcement of labour standards, create the conditions that allow unscrupulous employers and recruiters to abuse migrant workers with impunity. Closed work permits facilitate employer control and exploitation of workers including working excessive hours without payment for overtime, unpaid hours of work and often less than minimum wage pay. The process and costs for workers to change employers are prohibitively long and expensive. While waiting for a new Labour Market Impact Assessment and work permit, migrant workers may spend six to ten months unemployed and with no source of income. Such a process might compel workers to either continue working under abusive conditions or engage in unauthorized work in order to earn money while waiting. Caps on new permits has further intensified the conditions for abuse since migrant workers already here in certain sectors can no longer access work permits to change employers. This lack of mobility in the workplace is only made worse when combined with the fact that many migrant workers live in employer-provided or

controlled housing, for example on ships. In these conditions, there is often no clear boundary between being 'on-duty' and 'off-duty'.

Canadian citizen workers have workplace mobility and, through employment insurance and social assistance supports, have the ability to retrain for jobs or access basic income in between employment. This mobility and security gives workers the choice to leave jobs that are discriminatory, abusive or are making them sick.

Closed work permits create a layer of workers that do not have this choice; as a result, wages and working conditions for these workers can be reduced. This result impacts wages and working conditions in the entire sector and reduces public health and decent work for all. This should be of concern in the federal labour code.

Equally importantly, most migrant workers come to Canada without their families. These lengthy periods of separation have severe impacts on migrant workers and their families, both for those who are kept temporary as much as for those who are able to remain here and eventually reunite with loved ones in Canada.

As long as there is a separation between temporary and permanent status – with criteria created to allow a limited group of migrants to transition from temporary to permanent status – employers, immigration consultants, and recruitment agencies will generate exploitative practices to take advantage of migrants' needs and dreams by creating competition between workers for the 'prize' of status.

Migrant workers also suffer reprisals due to their federal immigration status that would otherwise be illegal under provincial labour and employment law. Even if the anti-reprisals protections were enhanced through federal-provincial cooperation, there would still be the problem of seeking justice through an individual, complaints-based employment standards mechanism. Migrant workers require proactive enforcement, without which they would be left to fend for themselves if they were brave enough to bring forward their claims.

Generally speaking, the protection of labour and employment laws is difficult for migrant workers to access. These obstacles come up in several ways, including the combination of government reliance on a complaints-based system with the closed work permits that strictly tie 'low skill' workers to specific employers, types of work, and workplaces while in Canada. Workers asserting rights face deportation or long periods of unemployment.

Labour laws do not enhance migrant workers' already stifled voices in employment matters. Migrant workers lack adequate, constitutionally compliant protection for the right to bargain collectively. In fact, two of the largest groups of migrant workers in Ontario are explicitly excluded from the right to unionize under the *Ontario Labour Relations Act*. Migrant caregivers are entirely excluded from legislative protection for the right to bargain collectively. Agricultural workers are subject to the entirely inadequate *Agricultural Employees Protection Act*. And many other migrant workers are employed in sectors where the power imbalance between employers and workers is very great and unionizing is difficult in practice.

Workers have little incentive to make labour and employment complaints where doing so might jeopardize their status in the country and ability to earn money to remit back home to families and pay off exorbitant fees, loans, or debts paid during their journey to Canada or after their arrival. Although there have been some reforms in the context of recruiter fees, including the best practices of Manitoba, they remain ad hoc across Canada and do not adequately address concerns about complaints and tied work permits.

While many of these issues related to living and working conditions are provincial matters, it is important for the federal government to recognize that migrant workers, like all other people in Canada, will have employment issues, as well as periods of injury and illness and, like all others in Canada, should be entitled to their rights, their health, and their benefits. This recognition is important because of the role that federal jurisdiction and immigration law play at the provincial level.

A comprehensive overhaul of the labour code would include a clear statement that a single tier labour market is the only way to ensure robust protections. **All migrant workers must be able to immigrate to Canada immediately, independently and permanently without depending or relying on the sponsorship or good will of their employers or third party agencies.** Such a program should not exclude on the basis of 'skill level', particularly as 'skill level' is often a euphemism for discrimination and devaluing certain work and contributions on the grounds of race, class, and gender that should otherwise be illegal.

This recommendation is distinctly separate from a provision of 'pathway to permanent residency'. A 'pathway' is a two-step process that Caregivers already have, and has been shown to have the same forms of abuse and vulnerability that are founds in other parts of the program.

The current review as designed cannot include migrant worker voices. It remains imperative that ESDC, and the Ministers responsible for the various portfolios dealing with migrant work (such as Immigration, Refugees, Citizenship Canada) actively seek out and centre the experiences of migrant workers and their families before making any substantive changes to these programs. This review should lead to a meaningful, multi-Ministerial, intergovernmental review that provides safe spaces to seek out the voices and lived experiences of migrant workers and their families. All future legislative, regulatory or policy changes about migrant workers must centre the voices of migrant workers.

Recruitment

Migrant workers are paying up to an equivalent of two years' salaries in fees in their home countries to unscrupulous recruiters and agencies to work in Canada. 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. Sometimes the jobs don't even exist.

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

Employers pass the buck to recruiters in Canada, who in turn claim that its recruiters in sending countries that are the real culprits. Canada does not have effective enforcement tools to hold recruiters and employers accountable.

Currently existing provincial and federal laws rely heavily on worker complaints rather than proactive enforcement, where if legislation exists, it is a weak tool. Two-thirds of the caregivers the Caregivers Action Centre surveyed after the current Employment Protections for Foreign Nations Act (EPFNA) in Ontario came into force paid fees averaging $3,275. From 2010 to 2013, only $12,100 in illegal fees was recovered under EPFNA. More needs to be done.

Register and license employers and recruiters: The Federal should work with provincial authorities to keep track of recruiters. By regulating recruiters, provinces would have the ability to carry out targeted enforcement, release a list of accredited recruiters that employers and workers can access and be able to track recruiters that break the law without having to rely solely on workers' speaking out.

Joint and several liability: Manitoba, Saskatchewan and other provinces are moving towards asking for lines of credit or bonds put up by recruiters and employers and holding employers and recruiters jointly responsible for fees charged all the way down the recruitment pipeline. As a result recruiters have begun to act across provincial lines, recruiting in Alberta for example, and placing in Ontario. Canada must encourage this by developing model legislation that provinces can enact. By holding all parties equally financially responsible, provinces would be able to enforce a ban on recruitment fees and ensure that workers charged fees are able to recover them. This works hand in hand with recruiter licensing as employers are able to work with approved recruiters and avoid worker abuse.

Anti-reprisals mechanisms: Migrant workers must be able to make complaints about lost fees after their contracts are complete (up to four years) so that they don't have to choose between keeping their jobs and recovering fees paid in Canada or abroad. Community members must be able to make complaints about unfair recruiters and employers and provisions must be in place to give access to temporary resident permits to migrant workers while they have complaints pending so they do not get deported while waiting for a decision.

Inter-provincial and bilateral agreements with other states must be established to ensure that recruiters do not skip provinces after charging monies and stop offering fake jobs in Canada that don't exist.

Thank you for your support and interest. Please contact me with any questions or comments.

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