

**Submission to the Ministry of Labour
Consultation on Foreign and Resident Employment
Recruitment in Ontario**

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Background

Caregivers' Action Centre

The Caregivers' Action Centre (CAC) is an organization of current and former workers under the Live-in Caregiver Program. The CAC is committed to improving the lives and working conditions of caregivers who work under the federal Temporary Foreign Worker Program and improve policies and legislation governing temporary foreign workers.

Workers' Action Centre

The Workers' Action Centre (WAC) is a worker-based organization that strives to improve wages, working conditions and labour legislation for people in low-wage and precarious work. WAC works with thousands of workers a year that are predominantly recent immigrants, racialized workers and women workers in precarious jobs that face problems at work. The Workers' Action Centre provides information about workplace rights, and strategies to enforce those rights.

Parkdale Community Legal Services

Parkdale Community Legal Services (PCLS) is a poverty law clinic providing assistance and legal representation concerning employment standards, employment insurance, human rights, and occupational health and safety matters. In addition, PCLS works with communities in low-wage and precarious work to improve labour standards.

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Executive Summary

The number of temporary foreign workers (TFW) in Ontario has increased by 55 percent in the past five years.¹ At the same time, the growing gap in protection for these workers has become all too evident. Regulating recruitment practices and employment of foreign workers is essential. However, there are many other issues that need to be addressed to reduce the barriers that foreign temporary workers face in accessing their employment standards rights. To accomplish the government's goals of protecting these workers in vulnerable employment, a comprehensive approach is necessary.

Prohibition on Fees Charged to Workers and Scope of Prohibition

Workers need an expansive prohibition on direct and indirect fees to prevent agencies and employers from shifting fee charging practices beyond the reach of revised regulatory protections. The *Employment Standards Act (ESA)* must be amended to clearly prohibit fees.

Include all parties:

Any new protection must include all parties (in Ontario or abroad) involved in placing workers in employment in Ontario (employer, agency, etc). No party should be able to request, charge or receive -- directly or indirectly -- from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the *ESA*.

Joint and Several Liability:

Employers and agencies must be jointly liable for any prohibited direct or indirect fee charged to workers regardless of where and how the fee was levied. With a prohibition of charging workers' fees in Ontario, agencies and employers will move the practice outside of Ontario. Joint and several liability is essential in ensuring that fees paid outside of Ontario can be recovered.

Include all practices:

A prohibition on fees must be sufficiently expansive to include all practices.

Include all TFW and resident job-seekers:

The charging of fees should be prohibited for all workers – whether the worker is hired under the Temporary Foreign Worker Program (TFWP) or not. All who work or seek work in Ontario should be protected from fees for recruitment and employment, as is the case in most other jurisdictions in Canada.

Prohibition on Employer Recovery of Recruitment Costs

There must be a clear prohibition of employer recovery of recruitment costs and there should be no exemptions to such a prohibition. Ontario should not follow the example of the Manitoba

¹ Citizenship and Immigration Canada, "Canada – December 1 stock of temporary foreign workers by province or territory and urban area, 2004-2008" www.cic.gc.ca/english/resources/statistics/facts2009/temporary/02.asp

Worker Recruitment and Protection Act that enables employers to recover costs of recruiting workers in certain situations. An exemption would constrain workers ability to leave substandard employment conditions and would create substantial loopholes to enable employers to bypass the intent of the legislation.

Prohibition on Changes to Conditions of Employment

While TFW come to Ontario under programs which provide employment contracts, many employers reduce wages, benefits and working conditions once the worker arrives. Because of their lack of labour market mobility, TFW do not have the same option to quit their jobs when there is a substantial change in wages and working conditions.. As such, TFW require special protection under the *ESA* in the form of a prohibition on changes to wages and terms and conditions of employment. A penalty must also be assigned to employers who reduce wages and working conditions provided in an employment contract, agreement, or statutory provision.

Enforcement

To make any new protections a reality, a comprehensive enforcement framework is needed. These measures must address the specific barriers TFW face in enforcing *ESA* rights.

Update limitations and caps:

Bring the *ESA* limitation periods and amount of wages recoverable in line with Ontario's small claims court. Extend the monetary limit on monies that can be recovered to \$25,000. Extend the time limit for filing an *ESA* claim to two years and allow workers to recover wages and entitlements owing under the *ESA* for the two years prior to filing a claim.

Improve anti-reprisals:

Employers are able to immediately "repatriate" (deport) seasonal agricultural and TFW who are trying to enforce employment standards. This creates substantial barriers to enforcing employment standards. The government should develop an expedited process for investigating claims for temporary foreign workers. The anti-reprisal provisions of the *ESA* should explicitly prohibit an employer or other party from forcing "repatriation" on an employee who has filed an employment standards claim.

Information to Workers:

Employers should be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP. Expand the Ministry of Labour's hotline dedicated to caregivers to include all temporary foreign workers and provide services at times and in languages required by these groups of workers.

Ensuring compliance by employers

- The Ontario government must commit to providing resources for proactive enforcement. A targeted proactive inspection plan should include annual inspections

- of at least 10 percent of all employers of TFW. Temporary foreign workers should be able to make anonymous complaints that will trigger workplace inspections.
- Employers and recruiters should be penalized if they charge illegal fees to workers.
 - Employers who hire individuals under the TFWP should be required to undergo government -provided education on employer responsibilities under the *ESA*.
 - All parties found in violation of the prohibition of fees should be subject to the publication of their violation by the Ministry of Labour.

Licensing Regime for Recruiters and Employers of Foreign Workers

Ontario job seekers and foreign temporary workers need a comprehensive approach to protecting workers in these precarious situations. Licensing may play a role in such an approach but cannot be used to replace a comprehensive framework.

Registration of employers of foreign workers:

Ontario should require employers of foreign workers to register with the Ministry of Labour. Registration should include provision of information about the employer, the position to be filled by the foreign worker, contact information for individuals who will be directly or indirectly involved in recruiting foreign workers for the employer among other matters. Employers should be refused the right to register to hire TFW if the employer has provided false information, has previously violated the *ESA* directly or indirectly, or there is reasonable grounds to believe the employer will not act in accordance with the law.

Security from employers of TFW:

Before an employer is registered by the Ministry of Labour to hire a foreign worker, the employer must provide an irrevocable letter of credit or deposit of at least \$25,000.

Licensing:

In defining who must have a license, the government must ensure an expansive approach to capture all the parties that are directly and indirectly involved in recruiting workers (resident or temporary foreign workers). Before any party is licensed to recruit TFW, an irrevocable letter of credit or deposit of at least \$25,000 should be provided to the Ministry of Labour.

Enforcement of licensing regime:

- The government must allocate adequate resources for review of licensed agencies and registered employers.
- Licenses should be renewed each year, and employer should register before each application for a Labour Market Opinion.
- Licenses and registration shall only be renewed if it is verified that all Ontario labour laws and regulations have been complied with (for example, verification by previous workers).
- ER and Recruiters should be listed in a License / Employer registry accessible to the public.

Further Legislative Change

Updating employment standards is just one step in the process of protecting temporary foreign workers. Having the right to collective representation and real access to human rights, health and safety protection, and workers' compensation must also be addressed.

The TFWP needs fundamental reforms to address workers' precarious immigration status and permit workers to access basic rights and entitlements. Changes that are needed include permanent status for TFW on arrival, an end to employer-specific work permits, a right to equal access to social programs and a fair appeals process for repatriations. The Ministry of Labour should work with the federal government to recommend changes to the TFWP that would address the barriers workers face in accessing employment rights.

1) Introduction

Maria², a worker under the Live-in Caregiver Program

Maria was told that she would have to pay an agency a fee of \$3,000 (CDN) in order to be placed in a job under the Canadian Live-in Caregiver Program. She paid the equivalent of \$2,000 (CDN) to a person working on behalf of an Ontario agency in her home country. When she landed in Toronto, the agency told her there was no job lined up, but that she would still have to pay \$1,000 when she did get a job.

Maria obtained a caregiver job looking after an elderly woman that was approved under the Live-in Caregiver program. The woman's son was the employer. He only paid Maria half the wages that were promised on the employment contract, telling her that this was the cost of being provided with a job that would allow her to apply for permanent residency after two years. Not only did half of Maria's wages go unpaid; she was also owed unpaid overtime, vacation and statutory holiday pay and termination pay. After 2 years of this work, she was owed over \$21,000 in unpaid wages and entitlements.

Hiten and Suresh work under the Temporary Foreign Worker program

Hiten and Suresh were offered jobs in Ontario, working for a caterer who supplied food to a temple and other clients. The workers were told that they would be given standard working conditions with a 40-hour workweek and living quarters. The employer would pay the worker's families in India the equivalent of \$350 CDN per month and \$67 per month to each worker (about \$2.60 an hour).

When Hiten and Suresh arrived in Toronto, their passports and work permits were seized and held by the employer. Hiten and Suresh joined other workers sleeping 8 to a room and working over 70 hours a week. After working long days in the kitchen, workers returned to the sleeping room only to find packages of food that had to be labelled for the employer's store. Hiten's and Suresh's families in India received only two payments of \$350 each. These workers were owed well over the \$10,000 maximum amount recoverable under the Employment Standards Act (ESA).

We commend the Ontario government for committing to take steps to “protect vulnerable temporary foreign workers and other job seekers in Ontario.”³ The number of temporary foreign workers (TFW) in Ontario has increased by 55% in the past five years.⁴ At the same time, the growing gap in protection for these workers has become all too evident.

² All the workers names in this paper are pseudonyms. The vulnerability created by federal immigration provisions and provincial labour laws makes pseudonyms necessary to protect the workers involved.

³ Ontario Ministry of Labour, “A Consultation Paper on Foreign and Resident Employment Recruitment in Ontario,” July, 2009.

⁴ Citizenship and Immigration Canada, “Canada – December 1 stock of temporary foreign workers by province or territory and urban area, 2004-2008” www.cic.gc.ca/english/resources/statistics/facts2009/temporary/02.asp

The Ontario government recognizes that agencies and employers are able to exploit gaps in employment standards to exploit foreign temp workers and job seekers. But as the experiences of Maria, Hiten, Suresh and countless other people that we work with demonstrate, regulating fees and the recruitment process will address only some of the serious issues facing foreign temp workers and job seekers in Ontario. To accomplish the government's goals of protecting workers in vulnerable employment, a more comprehensive approach is necessary.

First, the consultation paper focuses primarily on changes being considered to protect temporary foreign workers and job seekers. The paper narrows the issues being addressed to regulating the recruitment process and employment of foreign workers. While we agree that regulating recruitment practices is essential, there are many other issues that need to be addressed to reduce the barriers that foreign temporary workers face in accessing their employment standards rights.

Second, updating employment standards is just one step in the process of protecting temporary foreign workers. Having the right to collective representation and real access to human rights, health and safety protection and workers' compensation also must be addressed.

We will briefly touch upon these wider themes before addressing the issues raised in the Consultation paper.

2) Ontario's Legislative Framework – gaps not addressed in the Consultation Paper

The Ministry of Labour is seeking input on how best to protect vulnerable temporary foreign workers and other job seekers in Ontario. The Consultation Paper focuses on regulating recruitment of Temporary Foreign Workers (TFW). However, the paper rightly recognizes that "Ontario may need to consider other initiatives to enhance protections for these employees."

2 (a) Employment Standards

The federally administered Temporary Foreign Worker Program (TFWP) imposes specific conditions on the employment relationships of foreign temporary workers. Often these conditions structure the work relationship in ways that create barriers to workers' access to employment rights.

Both seasonal agricultural workers and foreign temporary workers have work permits that are for individual employers, not sectors of employment. That means that an individual can only work for the employer who has been approved under the respective program to hire him or her. These workers are "repatriated", that is returned to their country by the employer, when the contract has been completed or the employment relationship terminated. Seasonal agricultural workers have work permits that are generally for less than one year and must reapply each year. For foreign temporary workers, the permit is for a maximum two-year period. Caregivers must work 24 months in a 36 month period for an employer that has been approved under the Live-in Caregiver Program (LCP).

Accommodation requirements under the various work programs present another systemic barrier to accessing workplace rights. Agricultural workers live on the employer's farm. Caregivers are required to live in the employer's home. Caregivers cannot make applications for landed status

until after they complete the LCP – other TFW cannot even apply for landed status and face repatriation upon completion or severance of the work contract.

Workers are generally provided with an employment contract that sets out wages, hours of work and other matters. The reality is that many TFW contribute countless hours of unpaid labour in their jobs caring for children and elderly parents, or working in kitchens, hotels, factories and agricultural fields. In our experience with TFW who face such violations, these workers are owed well over the \$10,000 cap that the *ESA* places on recovery of unpaid wages and entitlements. Moreover, the *ESA* only allows workers to recover wages owing in the 6 months prior to the claim being filed (or a year in some cases), but live-in caregivers and foreign temp workers can only really file claims after meeting TFWP requirements, so all too many wages go unrecoverable. Seasonal agricultural workers will not risk filing an employment standards claim until they find out whether they will be recalled or able to work under the SAWP for fear of being denied work after the employer is notified of their claim. One way to address these issues is to bring the *ESA* into conformity with the new limits under the small claims process.

Clearly, changes need to be made to the federal TFWP. The Caregivers Action Centre, Workers' Action Centre and PCLS have joined with TFW and labour and community advocates to call for fundamental reforms to the program including permanent status for TFW on arrival, an end to employer-specific permits, a right to equal access to social programs, and a fair appeals process for repatriations. However, until those changes take place, there is a decisive role for the provincial government to play by updating the *ESA* to enable workers under the TFWP to access basic employment rights while employed in Ontario.

Recommendation

Update limitations and caps

Bring the *ESA* limitation periods and amount of wages recoverable in line with Ontario's small claims court. Extend the monetary limit on wages that can be recovered to \$25,000. Extend the time limit for filing an *ESA* claim to two years and allow workers to go back two years in determining amount of wages and entitlements owing.

Improve anti-reprisals

Employers are able to immediately “repatriate” (deport) seasonal agricultural and TFW who are trying to enforce employment standards. This creates substantial barriers to enforcing employment standards.

- The government should develop an expedited process for investigating claims for temporary foreign workers.
- The anti-reprisals provision of the *ESA* should explicitly prohibit an employer or other party from forcing “repatriation” on an employee who has filed an employment standards claim.

Agencies and employers should only be entitled to worker's information pertaining to employment and recruitment, and should not be not allowed to seize or withhold passports or other employee documents.

Enforcement

- Employers who hire individuals under the TFWP should be required to undergo government-administered education on employer responsibilities under the *ESA*.
- Employers should be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP.
- Additional enforcement proposals are made throughout this submission.

2 (b) Collective Representation

Experience demonstrates that the most effective enforcement of human rights, health and safety and employment standards occur when workers are part of a union and are able to exercise their rights through a collective agreement and the grievance and arbitration process. However, people in precarious work, including those working through the TFWP, face substantial barriers in exercising their right to unionize.

Despite ongoing efforts from agricultural workers to access the same rights to collective representation that other workers benefit from⁵, most agricultural workers are still prevented from unionizing under the *Ontario Labour Relations Act*.⁶ Live-in Caregivers are also exempted from unionizing.

Recommendations

Agricultural workers and live-in caregivers must have the same rights to unionize as other Ontario workers.

The Ontario government must commit to updating the Labour Relations Act to address specific barriers to unionizing workers under the Foreign Temporary Workers Program.

The Ontario government must also commit to updating the Labour Relations Act to address new forms of work organization in order to remove barriers to workers' collective rights.

2 (c) Occupational Health and Safety

The Consultation Paper states that the *Occupational Health and Safety Act* (OHSA) applies equally to resident workers and temporary foreign workers. While this statement is technically true, it is far from the reality for TFW.

Workers in the LCP program are completely excluded from coverage by the OHSA because they work in private residences. As a result, even when there is a fatality in a private home serving as a workplace, our understanding is that there is no automatic Ministry of Labour investigation. In

⁵ *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94, and *Fraser v. Ontario (Attorney General)*, 2008 ONCA 760

⁶ *Labour Relations Act*, S.O. 1995, Section 3.

addition, there are no regular health and safety investigations of the working conditions in these homes.

Foreign temporary workers are unable to risk reporting health and safety violations to the Ministry of Labour for fear of repercussions. Justicia for Migrant Workers has met with over 1,000 seasonal agricultural workers. Many of these workers reported serious health and safety concerns to Justicia but not one of these workers reported having filed a report to the Ministry of Labour⁷.

Recommendations

Eliminate exclusion of domestic workers from the *OHSA*. The legislative exclusion, in addition to compromising the health and safety of a significant percentage of the Ontario workforce, is discriminatory and has an adverse effect on workers in the LCP program, most of whom are racialized women. Work with TFW and their advocates to develop sectoral regulations.

Commit to working with foreign temporary workers and their advocates to improve Ministry oversight of health and safety in the workplaces of temporary foreign workers, including regular random inspections of all workers under the TFWP.

2 (d) Workers' Compensation

Although migrant workers are covered by WSIB, their actual entitlements and ability to access the compensation to which they are entitled are severely limited.

Seasonal agricultural workers and foreign temporary workers cannot risk filing claims when they are injured on the job because employers often deport/ repatriate such workers back to their home countries immediately after they report an injury. There are currently no effective sanctions against employers for such conduct, or mechanisms to prevent it. Similarly, people working under the LCP fear reporting injuries as an employer reprisal would likely affect their ability to attain landed status in Canada.

A further barrier to workers' compensation is that the *Workplace Safety & Insurance Act* ("WSIA") imposes time limits for reporting injuries and for appealing negative decisions. Even in the few instances where migrant workers do successfully claim for workers' compensation, their entitlements are seriously limited.⁸ Many permanently injured migrant workers are unable

⁷ Personal Communication, Jessica Ponting, Justicia for Migrant Workers, July 10, 2009.

⁸ For example, where workers have a permanent injury and are unable to continue working in the pre-injury job, they are most often repatriated to their home countries. When this happens, rather than receiving ongoing loss of earnings (LOE) benefits if the worker loses pay because of the injury, as would any other worker in Ontario, migrant workers' benefits are almost always terminated. This is because the WSIB "deems" workers as if they are able to find other suitable work in Ontario even when they are living in another country and legally prohibited from working another job in Ontario. Thus, a minimum wage farmworker from Trinidad is told that he could be making minimum wage as a parking lot attendant in Ontario and so he is "deemed" to have no ongoing wage loss. This bizarre refusal to recognize the reality facing migrant workers means that they receive no ongoing benefits to compensate them for their loss of pay due to workplace illness or injury.

to find gainful employment following repatriation, yet they receive inadequate compensation from the WSIB.

In addition, migrant workers have no ability to benefit from the retraining programs that are available to all other workers in Ontario.

Recommendations

The government must commit to working with TFW and their advocates to determine how best to update the Workplace Safety and Insurance Act to provide fair access and appropriate Loss of Earnings benefits for TFW.

Provide TFW with adequate access to re-training programs to allow them a chance to find gainful employment.

2 (e) Inter-jurisdictional Coordination

We commend the Ministry of Labour for taking steps within its purview to provide increased protection to TFW in Ontario. However, TFW may be posted in different provinces year to year. Therefore the Ministry of Labour has a role to play in coordinating with their provincial counterparts and with Citizenship and Immigration Canada (CIC) and Human Resources and Skills Development Canada (HRSDC) at the federal level.

Recommendations

The Ministry of Labour should work with the federal government to recommend changes to the various TFWP that would address workers' precarious immigration status and permit workers to access their labour rights. Examples of these changes are permanent status for TFW on arrival, an end to employer-specific permits, a right to equal access to social programs and a fair appeals process for repatriations.

The Ministry of Labour should work with the federal government to ensure that there are no repatriations of TFW who have filed *ESA* claims with the Ministry of Labour.

The Ministry of Labour should encourage provincial counterparts to adopt similar legislation protecting TFW to harmonize the current patchwork of regulations.

3) Questions addressed in the Consultation Paper

The consultation paper poses a series of questions regarding the potential regulation of the recruitment process of TFW and other job-seekers and regulation of employment of foreign workers.

3) (a) Prohibition on fees charged to workers

Prior to the repeal of Ontario's *Employment Agencies Act* in 2000, employment and staffing agencies could not charge any fees to workers for permanent or temporary work. Without a statutory bar on fees, the practice of charging workers fees for permanent and temporary placement has become commonplace. The Ontario provincial government has recently taken steps to address the legislative gap through passage of the *Temporary Help Agencies Act* (Bill 139) passed in May 2009. However, Bill 139 only prohibited fees charged to temporary agency workers for temporary assignment. The Ontario government missed the opportunity to prohibit agencies and employers from charging fees for recruitment and placement in jobs where workers are hired directly by a company or employer (other than the agency).

Ontario's employment and staffing industry generates 28 percent of its revenue from recruitment and placement services.⁹ An absence of clear regulatory standards in conjunction with the repeal of Ontario's *Employment Agencies Act*, has created, in the words of one caregiver recruitment agency, a "wild west" environment.¹⁰ Deregulation of the employment and staffing agency industry has opened up the space for fly-by-night operators and agencies that take advantage of the legislative silence to exploit workers.

Workers who are employed under a TFWP may be subject to both direct and indirect fees for work. Practices are quite variable. Below are just some of the ways in which TFW are being charged fees for work:

- A TFW paid an agency \$10,000 to be placed in a food production factory.
- One agency charges caregivers \$5,000 for placement in employment under the LCP. Another agency charges \$3,000 for similar promises of placement in LCP employment. In both these cases, employment does not materialize when workers arrive under the LCP, but workers are still charged the fee. In one case, the agency is taking caregivers to small claims court to recover the fees for a job that was never there.
- An employer charged a worker almost \$4,000 to work under the TWP in his restaurant in Toronto. The worker was also charged an indirect fee: despite being required to provide airfare under the TFWP, the employer made him pay for airfare. The promise of accommodation provided by the employer turned out to be five workers sharing a small one-bedroom apartment near the restaurant.

Workers who are not under the TFWP also face fees charged directly and indirectly for recruitment and job placement:

⁹ Statistics Canada, "Employment services industry" *The Daily*, Wednesday May 7 2008.

¹⁰ Robert Cribb and Dale Brazao, "Nanny 'blacklist proposed'" **Toronto Star** March 22, 2009 A1

Workers are charged fees by agencies promising to place them in permanent work that rarely materializes. One company charged workers \$250 for training that it told workers was a prerequisite to placement in a security job. After undergoing the job training, workers never hear back from the agency. This has become a widespread practice in the security industry. We have heard similar complaints of at least 8 companies that charge worker's fees with the promise of finding worker's security jobs, with little concrete results. This practice is also common in the cleaning industry. One company told workers they would have to pay \$750 for training to get assignments cleaning.

Workers need an expansive prohibition on direct and indirect fees

Clear and expansive legislative intervention is necessary. Without comprehensive regulation, companies will continue to develop largely unpredictable practices of charging fees to workers..

1. The *Employment Standards Act* must be amended to clearly prohibit fees. No party (employer, agency, etc) should be able to request, charge or receive -- directly or indirectly -- from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees.
2. One method to curtail the spread of agencies that lure unsuspecting workers into disguised employment scams is through a prohibition of false representations of availability of work and conditions of work. Ontario can follow British Columbia's *Employment Standards Act* which states that an employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following: a) the availability of a position; (b) the type of work; (c) the wages; (d) the conditions of employment. (Section 8).

Most other jurisdictions in Canada prohibit any fees for all individuals for recruitment and placement in employment (e.g., Nova Scotia, Manitoba, Saskatchewan, Alberta, British Columbia, Northwest Territories, Nunavut, and Yukon).¹¹

Ministry of Labour asks:	
1) Are there any categories of individuals that should be exempt from any prohibitions on fees?	<p>No. The charging of fees should be prohibited for <i>all</i> workers – whether the worker is hired under one of the federal Temporary Foreign Worker programs or not. All who work or seek work in Ontario should be protected from fees for recruitment and employment.</p> <p>Further, where recruitment agencies fail to meet their obligations to recruit and place workers in employment as outlined in paragraph 2 above (e.g., live-in caregiver arrives and employer on work permit does not exist or will not</p>

¹¹ The *Worker Recruitment and Protection Act*, C.C.S.M., c.W197, *Employment Services Act*, C.C.S.M. c. E100, *Employment Agencies Act*, R.S.Y. 2002, c.71, *Employment Standards Act*, S.N.W.T. 2007, c.13, *Employment Agencies Act*, R.S.N.S. 1989, c.146, *Fair Trading Act*, R.S.A. 2000, c. F-2

	<p>employ worker), then the recruitment agency should be held responsible for all monetary losses incurred by the worker.</p> <ul style="list-style-type: none">• The <i>ESA</i> does not allow employers who hire workers directly to charge workers a fee for being hired.¹² The costs of recruiting workers (job ad, interview, reference check etc.) are costs of doing business. When these costs of doing business are externalized to an agency, it is in the public interest to maintain the remedial purpose of the <i>ESA</i> and ensure that these costs are not subsequently transferred to employees (fees charged by agency or employer for placement).• Ontario needs an expansive prohibition on direct and indirect fees for all workers to avoid creating unintentional loopholes that allow companies to bypass the intent of prohibiting fees for work. For example, an employment agency licensed in Alberta to recruit foreign workers recently contracted an agency in Singapore to recruit workers. The Singapore agency charged workers fees on behalf of the Alberta agency. Under provisions of the <i>Fair Trading Act</i>, the Director ordered the Alberta agency to reimburse forty-four TFW for \$34,000 for illegal fees and other prohibited costs such as airfare paid by the workers.¹³• Restoring regulatory prohibition of fees for all recruitment and employment placement services would reduce inequalities that workers in Ontario face in comparison to most other Canadian jurisdictions, where such fees are prohibited.
<p>2) Are there any categories of recruiters that should be exempt from any prohibition on fees?</p>	<p>No. Recruiting workers for permanent placement with an employer is a service provided to the client of the agency and the client should pay any fees associated with this service not the worker.</p> <ul style="list-style-type: none">• It is in the public interest to ensure that all recruiters (foreign and resident workers) and employers are equally prohibited from charging fees for work. This creates a level playing field for employers and reduces discrimination against workers because of their form of employment (e.g., temporary foreign worker).• Exemptions would create loopholes for agencies to

¹² This would be an illegal deduction from wages under the *ESA* 2000 S. 13.

¹³ Further the agency was charged \$2,000 for a portion of the costs associated with investigating the matter. Undertaking made pursuant to Section 152 of the *Fair Trading Act* by: Alberta Manforce Network and Thankarani Arul and the Director of Fair Trading.

	<p>bypass the remedial purpose of prohibiting fees.</p>
<p>3) Should a recruiter be allowed to charge other job seekers for help in finding employment?</p>	<p>No. As discussed above, there is no public interest served in protecting certain categories of workers (for e.g., temporary foreign workers) and not others (resident workers charged fees for employment scams or job placement).</p> <ul style="list-style-type: none"> • Close the gap left by the recent passage of Bill 139, <i>Temporary Help Agencies</i>. The Ontario Government took important steps to help protect workers from direct fees who are hired indirectly on temporary assignments through employment and staffing agencies. But Bill 139 failed to extend this protection to workers being placed directly with employers. • In our experience, fees are generally applied to lower-wage workers with limited labour market mobility. Higher paid workers that are sought after in the labour market do not face fees. Rather the traditional “head hunter” model is followed in which the client pays the agency a fee for recruiting an employee for the client. As such prohibiting fees is consistent with the remedial purposes of the <i>ESA</i> to protect workers and create a level playing field for workers and employers.
<p>5) Are there specific ways in which the government could impose a fee prohibition to make it more effective?</p>	<p>Yes. Experience shows that effective enforcement tools are essential to ensure agency and employer compliance. For example in Alberta, where recruitment fees are prohibited, worker advocates have found that TFW still pay “exorbitant and illegal fees to brokers for finding employment”¹⁴. Alberta agencies have “shifted their strategy and are now often demanding payment in the originating country before the worker ever gets to Canada.”¹⁵ The conditions of the TFWP that limit or deny access to landed immigration status and remove labour market mobility by tying workers to one employer create substantial barriers to workers’ accessing <i>ESA</i> rights and any new prohibition on fees.</p> <p>Update the <i>ESA</i> time limits: Terms of the TFWP prevent most TFW from filing claims for unpaid wages much less prohibited fees until well after the 6 month time limit on filing a claim has passed. To give TFW a real opportunity to recover prohibited fees, workers should be entitled to recover fees, wages and entitlements for all violations which</p>

¹⁴ Alberta Federation of Labour, “Entrenching Exploitation” April 2009: 12

¹⁵ Ibid 13

	<p>occurred in the 2 year period before the claim was filed (as is the current limit on filing a small claims case). Further, because the fee will have been paid, or prohibited costs for recruitment have been deducted from wages at the beginning of the employment contract, TFW need a longer time to identify and submit claims than is currently provided. The <i>ESA</i> time limit for filing a claim should be extended to two years and workers should be able to recover entitlements for the two years prior to the claim being filed. A two year limit would bring the <i>ESA</i> in line with Ontario's Small Claims Court.</p> <p>Update the <i>ESA</i> maximum amount recoverable: Some TFW face illegal fees of \$10,000 at the outset of their employment. But \$10,000 is the current maximum amount recoverable under the <i>ESA</i>. Unless the maximum amount recoverable is increased, expanding protections in one area (e.g., recovering prohibited fees) will make it impossible to recover entitlements in another area (e.g., unpaid wages). The maximum recoverable under the <i>ESA</i> should be expanded to \$25,000 (as will soon be the maximum under the Small Claims process).</p> <p>Joint and Several Liability: Employers and agencies must be jointly liable for any prohibited direct or indirect fee charged to a worker. In this way, employers will have to compel agencies to comply with the prohibition of fees charged to workers as a condition of their arrangement.</p> <p>Penalty: It is not sufficient to prohibit agencies from charging fees. Experience shows that some employers and agencies either do not comply or move non-compliance beyond the jurisdictional reach of government. Rather than simply prohibiting fees, penalties should be established for violating any prohibition on fees.¹⁶</p> <ul style="list-style-type: none">• For example, an automatic fine of \$1,000 can be levied for each worker that has been charged a fee in violation of the prohibition on fees. The fine would escalate for any subsequent violation of the fee prohibition.
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¹⁶ *ESA* enforcement largely relies on individual workers' to file complaints against employers and agencies. Workers under the TFWP are even less likely file a complaint because of fears of how it will affect immigration status, fear of reprisals etc. Additional resources will be necessary to assist the Ministry of Labour to proactively enforce new regulatory prohibitions and penalties. One strategy could be to entitle workers to 50% of any fine levied against an agency or employer to encourage exposure of violations and compensate workers for the costs they bear in making employment standards complaints.

	<ul style="list-style-type: none"> • All parties found in violation of the prohibition of fees should be made public by the Ministry of Labour. <p>Fees Recoverable: Prohibited fees must be recoverable by order under the <i>ESA</i>.</p> <p>Enforcement</p> <ul style="list-style-type: none"> • The government must allocate adequate resources for proactive enforcement of recruiters and employers. • Recruiters and employers must undergo training, provided by the Ministry of Labour, on their legal responsibilities. • Employers should be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP.
<p>5) Would a fee prohibition have an impact on the supply of temporary foreign workers coming to Ontario?</p>	<p>No. Prohibition of fees would protect workers from facing fees that are not contemplated under the <i>ESA</i> for any other form of employment.</p> <ul style="list-style-type: none"> • It would ensure that the costs of doing business are paid by the entities benefiting, namely the agency and the employer. • Prohibiting fees does not seem to be a barrier to the flow of workers under the TFWP as evidenced by Alberta. There agencies cannot charge workers fees under Alberta's <i>Fair Trading Act</i>¹⁷ yet Alberta experienced a 55% increase in the number of temporary foreign workers coming to that province in one year and a quadrupling of the program in five years.¹⁸ Similarly, British Columbia, which bans the charging of fees to workers through the <i>Employment Standards Act</i>, has seen high levels of take up of the temporary foreign worker recruitment plan.
<p>6) What would be the impact of a fee prohibition on the recruitment industry and Ontario's economy?</p>	<p>Improve practices in the industry</p> <ul style="list-style-type: none"> • Deregulation of Ontario's employment and staffing services industry in 2000 has opened the door to unscrupulous agencies that charge workers fees of \$5,000 to \$10,000 for promises of jobs under the Live-in Caregiver and Temporary Foreign Worker programs.

¹⁷ A. Reg. 189/99, *Fair Trading Act*, Employment Agency Business Licensing Regulation.

¹⁸ Alberta Federation of Labour, "Entrenching Exploitation" April 2009: 1

	<p>Prohibiting fees will make it harder for unscrupulous agencies and employers from exploiting workers under these programs.</p> <ul style="list-style-type: none">• For other resident job seekers, prohibition of fees will reduce employment scams and agencies that exploit workers who are desperate for employment.
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3 (b) Scope of Prohibition

The government seeks feedback on how expansive a prohibition of fees charged to workers should be. As we discussed in Section 3(a) above, we believe that workers need an expansive prohibition on fees with no exemptions.

Ministry of Labour asks:	
<p>1) What would be the impact of prohibiting all fees charged to temporary foreign workers?</p>	<p>Fairness</p> <ul style="list-style-type: none"> • Prohibition of fees would protect workers from facing fees that are not contemplated under the <i>ESA</i> for any other form of employment. • It would ensure that the costs of doing business are paid by the entities that benefit, namely the company and agency. • It would protect workers under the TFWP who earn low wages, face little job security and little protection against violations of their rights because of the nature of the employment relationship and their precarious immigration status. • Re-regulating the role of recruitment agencies in the temporary employment relationship in general and prohibiting fees in particular are necessary steps to updating the <i>ESA</i> to protect workers in new forms of work.
<p>2) Should a recruiter be able to charge fees for other services, such as resume writing, to temporary foreign workers? Under what conditions?</p>	<p>No. Any fees involved in the recruitment and placement of TFW should not be paid by the worker.</p> <ul style="list-style-type: none"> • Employers get approved to hire an individual or fill a position under the various programs of the TFWP. Employers then enter into a contract of service with a recruitment agency to recruit and place an employee (essentially externalizing employer's human resource function). Whatever agencies require in fulfilling that recruitment function become part of the service that is charged to the employer. <p>Provisions, such as section 15(5) of Manitoba's <i>Worker Recruitment and Protection Act</i>, that provide exemptions from the prohibition on fees when paying for a service that is not required create loopholes and should not be considered in Ontario.</p> <ul style="list-style-type: none"> • There are specific power relations in the employment process of recruiting workers for jobs under the TFWP. Agencies are not providing services to workers with mobility in an open labour market. Rather agencies are contracting with employers to recruit workers to fill approved TFW jobs. Any exemptions to a prohibition of fees in this form of employment creates loopholes for indirect fees on workers. As the experience of many workers we have been contacted by demonstrates, it is exceedingly difficult to prove reprisals when a worker is

	<p>penalized for refusing to pay for a so-called optional service.</p> <ul style="list-style-type: none"> • If resumes or job preparation are required by the agency or employer these costs must be born by the agency or employer. These business costs must not be passed on to workers in the form of exempted fees.
<p>3) Should a recruiter be able to charge fees for other services, such as resume writing, to other job seekers? Under what conditions?</p>	<p>No. If employers hire workers indirectly through a recruitment agency, the employer, not the worker, must bear the costs of recruitment and hiring in the fee paid to the agency. Agencies, should not be able to package part of it's recruitment process of workers for its client as "optional service for workers". Whether it is upgrading word processing skills, updating resumes or preparing a worker for interviews, these are all things the agency does to present a suitable candidate to the client. The agency should not be allowed to double dip by calling such functions a 'service to the worker'.</p> <ul style="list-style-type: none"> • In our experience, fees for resume writing or job preparation become an indirect fee on the hiring process that is paid by the worker. One WAC member was told he "could" pay a \$250 fee for resume writing by the employment and staffing agency that he was registered with for permanent and temporary assignments. When he refused to pay the fee, it was made clear to him that he would not be placed by this agency. • Higher-paid workers with greater labour market mobility that are "head-hunted" through the employment and staffing industry do not face such fees. Agencies have taken advantage of deregulation of fees to begin a practice of charging fees to people in low-wage and precarious work who are the very people the <i>ESA</i> is supposed to protect from such practices. • Ontario has a publicly funded system to support job seekers that should be supported in remedial legislation not undercut.
<p>4) Should the government set limits on or otherwise regulate the fees charged for services such as resume writing?</p>	<p>No exemptions to a prohibition on fees.</p> <ul style="list-style-type: none"> • The past ten years of deregulation of agencies have taught us that exemptions on fees cannot be contemplated under the <i>ESA</i>. Exemptions will only create loopholes for agencies to shift practices to bypass regulatory prohibitions on fees. • Agencies contract with employers to provide on a fee-for-service basis the employers' recruitment and hiring functions. The <i>ESA</i> cannot enable the costs of these employer functions to be born by workers hired directly or indirectly.

3 (c) Prohibition on Employer Recovery of Recruitment Costs

Raj was hired as a head cook to work in a Toronto restaurant under the TFW program. Before coming to Canada, Raj was interviewed by his employer in India. At that time, Raj was promised an annual salary of \$36,000 for a 40 hour work week, accommodation and air fare paid by the employer. The employer told Raj that he would have to pay almost \$4,000 as a recruitment fee if he wanted a job. Raj took out a loan to pay the fee in the hopes that the job would be good.

Raj was required to pay for the plane ticket and was never reimbursed. When he arrived in Canada, his employer took and held his passport. Raj was told he would get paid \$15,000 less than promised. He started working a 14 hour day, six days per week schedule. He shared a one-bedroom apartment with four others from the restaurant. Each of the workers had been hired from rural areas in India and had acquired huge debts to pay the employer's recruitment fees. They were under a lot of pressure to keep quiet.

When Raj asked if he was going to be paid overtime, he was told he was not brought to work to ask questions about the law. When Raj received a serious cut to his finger he was not given medial care and was told to keep working. With his injury impeding his work, the employer threatened him, telling him to "speed up" or be sent back to India.¹⁹

Ministry of Labour asks:	
<p>1) Should an employer be prohibited from recovering from an employee any costs that the employer may have incurred in recruiting the employee?</p>	<p>Yes. The <i>ESA</i> does not allow employers who hire workers directly to charge workers a fee for being hired. This would be an illegal deduction from wages under the <i>ESA</i> s.13. The costs of recruiting workers (job ad, interview, reference check etc..) are costs of doing business.</p> <p>Most workers hired under the TFWP would not know that employers should not charge them costs incurred in hiring them. Dimensions of the TFWP create conditions of vulnerability that are ripe for violation of the <i>ESA</i>. That is why it is important for the <i>ESA</i> to clearly prohibit the practice of fees being charged by all individuals or entities, including employers, agencies and their designates. This must be done in such a way that foreign agents may not be utilized to bypass any fee prohibition introduced in Ontario.</p> <p>There should no exemption for recovering recruitment costs. Section 16(1) of Manitoba's <i>Worker Recruitment and Protection Act (WRPA)</i> provides an exemption to the prohibition of employer's recovering recruitment costs in situations where a good, service or benefit was given to a worker that benefits the</p>

¹⁹ This worker obtained another job under the TFWP and is pursuing an employment standards claim against the restaurant at the Ministry of Labour.

	<p>worker and is not required as a condition of employment. In Given the vulnerabilities discussed above, it is obviously it is difficult for TFW to prove that a good service or benefit was not “given freely” by the employer to employee. For example, caregivers have reported to the WAC that their employer pays for upgrading driving skills and obtaining Ontario drivers licenses. However, this is no “gift”; rather, it is to ensure the caregivers can drive children or elderly parents to school and doctors appointments. Ontario should not consider any exemptions such as the <i>WRPA</i> Section 16(1) as it would open the door for employers, particularly when the employment relationship breaks down, to go after TFW to recover costs that the worker may have been pressured into assuming. TFW will face substantial barriers to protecting themselves against frivolous and vexatious use of such an exemption.</p>
<p>2) Should the government create exemptions from the prohibition on recovery of costs in certain situations, for example, if an employee fails to report to work without reasonable cause?</p>	<p>No Exemptions.</p> <ul style="list-style-type: none"> • Contemplating recruitment cost exemptions for employers runs contrary to the remedial purposes of the <i>ESA</i>. In our experience, higher income earners that are ‘head hunted’ receive ample and direct incentives from employers while low-income workers recruited under the TFWP face direct and indirect fees for such work. Any exemptions then would discriminate against those the Act is designed to protect. • Workers only real power, albeit a power that is mediated through labour market position, in employment relationships is his or her ability to leave the job. To set limits on that right, by an exemption on a prohibition of costs of recruitment, runs contrary to the remedial purposes of the <i>ESA</i>. Further, it creates barriers to labour market mobility of people in low-wage and precarious work. <p>Ontario should not follow the example of the Manitoba <i>Worker Recruitment and Protection Act</i> that enables employers to recover costs of recruiting a foreign worker in certain situations where the worker does not act in a way condoned by the employer or fails to report for work, is deported or does not finish the term of contract. (see 16(2)).²⁰ Manitoba’s provision does not conform to the purpose of the <i>ESA</i>, that is to protect workers in vulnerable situations. Section 16(2) of the <i>WRPA</i> constrains workers ability to leave substandard employment conditions and creates substantial loopholes to enable employers to bypass the intent of the legislation.</p>

²⁰ *The Worker Recruitment and Protection Act* C.C.S.M. c. W197

<p>3) What would be the impact on employers of not having an exemption as described in question two?</p>	<ul style="list-style-type: none">• Establishing a comprehensive prohibition on fees and recovery of recruitment costs encourages a positive regulatory framework that will encourage employers to attract and keep employees by providing at least minimum employment standards and competitive wage rates.
<p>4) Should an employer be allowed to recover costs that are allowed under the federal TFWP, such as airfare and accommodation?</p>	<p>No.</p> <ul style="list-style-type: none">• The current patchwork of guidelines relating to recovery of recruitment costs and employer costs under the TFWP and provincial regulation of accommodation is confusing for all parties involved in the process.²¹ As Raj's experience demonstrates, even where recovery of airfare is prohibited, employers still pass these costs on to workers.• It is our position that workers should never be required to live in their employer's establishment or limit a workers' ability to move from one employer to another. These conditions give rise to vulnerability of workers and exploitation by employers. Until the federal TFWP regulations are changed, however, we believe that workers should not be required to pay the costs of accommodation when they are required to live in their employers' establishment. Airfare should be deemed part of the recruitment costs for TFW paid by the employer. Employers should be prohibited from recovering these costs from employees.

²¹ For example, employers of workers under the Seasonal Agricultural Workers Program and Foreign Temporary Worker program must cover travel costs and employers of LCP and SAWP workers must provide accommodation. Provincial statutes contribute to the patchwork of regulation on how accommodation is regulated. Justicia for Migrant Workers has documented many complaints from migrant workers in the SAWP program on sub-standard and dangerous housing conditions. Justice for Migrant Workers has called for improved regulation and more proactive enforcement of housing conditions.

3 (d) Prohibition on Changes to Wages or Terms and Conditions of Employment

The *ESA* provides that in cases where a greater benefit is negotiated in an employment contract or found in a statutory right, the greater benefit prevails over the minimum standard (section 5 (2)). In Raj's case, the *ESA* would require his employer to follow the wages and working conditions set out in the original employment contract. As the government rightly notes in the discussion paper, most foreign temporary workers come to work in Ontario under programs which provide employment contracts setting out greater benefits than the *ESA* minimum. However, as in Raj's case, many employers reduce wages, benefits and working conditions once the worker arrives in Ontario.

- Caregivers and foreign temporary workers routinely work more than the standard 40-hour workweek set out in their employment contract without pay much less overtime premium pay.
- In some cases like Raj's, hourly wage rates are reduced once the worker arrives in Canada.
- Other TFW report drastic cuts in hours promised in their contract once they begin work in Canada.
- Some foreign temporary workers pay their own airfare, even though the federal program requires that employers pay this cost of recruitment.
- Caregivers sign employment contracts that say their airfare is paid by the employer only to have the price of airfare deducted from weekly pay checks once they arrive in Ontario.

While the *ESA* is supposed to protect the statutory right to greater wages and benefits, the provisions of the federal Temporary Foreign Worker Programs and the Ontario *ESA* make it virtually impossible for workers to enforce those rights.

Both seasonal agricultural workers and foreign temporary workers have work permits that effectively tie workers to their employers. As in Raj's case, when workers attempt to enforce their employment rights they are threatened with deportation. Because some employers often seize workers' passports and identification papers and employers pay for return tickets, workers can be deported within days of attempting to enforce their rights. Further, when an employment relationship breaks down, workers only have a work permit with their former employer. These workers face deportation under immigration policies if they are found working without regularized status.

The LCP program requires caregivers to work 24 months within 36 months under the program. When workers face wages and working conditions that are less than their employment contract or LCP program requirements, it is the worker's participation in the LCP program that is put in jeopardy, not the employers. Workers fear trying to enforce their rights before the two year period has been completed. The current federal programs effectively set up systems of indentured labour where workers are prevented from enforcing their rights until their immigration status has become regularized

Ministry of Labour asks:	
<p>1) Should employers be prohibited from changing the terms and conditions of employment?</p>	<p>Yes. The <i>ESA</i> currently says that workers are entitled to higher wages and benefits than the statutory minimums in the <i>ESA</i> where provided in an employment contract or other statutory right. Adjudicators treat non-payment of wages or substantial reduction in wages and conditions as constructive dismissal. However, workers under TFWP are not in the same position as other workers to leave when “constructively dismissed.” As such, a prohibition would strengthen TFW right to higher wage and benefits by explicitly requiring employers to adhere to those higher wages and benefits that were agreed to when employment was agreed to.</p> <ul style="list-style-type: none"> • Employees should be able to recover the amount by which the wages were decreased <u>and</u> the monetary value of loss of benefits or other conditions of employment that were decreased. • A penalty must be assigned to employers who reduce wages and working conditions provided in an employment contract or other statutory provisions.²²
<p>2) What would be the impact of such prohibition on employers and employees?</p>	<p>Fairness</p> <ul style="list-style-type: none"> • An explicit prohibition and penalty assigned to employers who fail to provide a greater contractual or statutory right will bring fairness to temporary foreign workers by assisting these workers in accessing the same rights that other Ontario workers have. • Temporary foreign workers are in the unique position of uprooting their lives and moving to another country to work in the reasonable expectation of receiving wages and working conditions that have been promised. The <i>ESA</i> must be updated to ensure that these classes of workers can realize that right.
<p>3) Are there any circumstances that require exemptions from such a prohibition?</p>	<p>No</p>

²² Currently Employment standards officers can only issue fines for violation of the Act if the specific offence is listed in regulations.

3 (e) Licensing Regime for Recruiters

Ontario's experience with employment agency licensing demonstrates that it is the substantive standards, regulatory framework, and the enforcement of those standards that are most important for workers. The previous government repealed the *Employment Agencies Act (EAA)*²³ in 2000 because it argued that there were few complaints against agencies²⁴ and that the advent of the internet to assist in job searches eliminated the need for the *EAA*.²⁵

Repeal of the *EAA* removed any prohibition on fees being charged to workers for employment services relating to direct employment and indirect employment through temporary assignment of agency workers in client companies. It sent the message that foreign temporary workers and Ontario workers in low-wage, temporary and precarious work were open to exploitation by unscrupulous companies. It enabled less reputable companies to set up employment scams for foreign and resident recruitment where workers were charged fees for jobs that never materialized among other practices. Selective Personnel president Hanna Havlicek says that the "minute they did away with licensing all hell broke loose. Everybody decided to do what they wanted to do. We used to be able to call and complain about illegalities but then, suddenly, there was nobody to call. It has definitely killed the good agencies... It's like a wild west here now."²⁶

As we have argued throughout this submission, both employers and agencies are responsible for levying unjust fees for work directly and indirectly. Therefore, any approach to regulating such practices must be able to get at both employers and agencies. Further, in some cases employers and agencies charge workers' fees outside of Ontario and any regulatory approach must capture these practices and all parties involved. Immigration rules under the TFWP create conditions of vulnerability ripe for the exploitation of workers. What Ontario job seekers and foreign temporary workers need is a comprehensive approach to protecting workers in these precarious situations. Licensing may play a role in such an approach but should not be used to replace a comprehensive regulatory and enforcement framework.

Embed protections for job seekers and foreign workers and regulation of recruiters and employers in the Employment Standards Act

Such a comprehensive framework to protect job seekers and temporary foreign workers should be embedded in the *ESA* and not contained in a separate Act. As we experienced with the repeal of Ontario's *EAA* after 2000, it is easier for the government to dispose of an apparent licensing act than *ESA* provisions for substantive entitlements and protections. Further, embedding changes to protect foreign workers in the *ESA* integrates such protections into the ongoing administration and enforcement of employment standards in the province.

²³ *Employment Agencies Act*, R.S.O. 1990 repealed in 2000.

²⁴ As we have addressed elsewhere in this submission, there are substantial barriers to individual workers filing complaints and it is the barriers to the complaints and lack of proactive enforcement rather than the lack of agency and employer violation that explain the low number of complaints. See also, **Working on the Edge**, Workers Action Centre, 2007

²⁵ Gillian Barnett, "Employment Standards for Non-Standard Employment: A Legislative Framework for Agency Work in Canada" *Appeal: Review of Current Law and Law Reform* 13 (2008) 74-89.

²⁶ Robert Cribb and Dale Brazao, "Nanny 'blacklist' proposed", **Toronto Star** March 22, 2009 A1

<p>Ministry of Labour asks:</p> <p>1) Should persons who provide recruitment-related services in respect of temporary foreign workers be licensed by the Ontario government?</p> <p>If no, why not?</p> <p>If yes, why and what should be the elements of a potential licensing regime?</p> <p>Should all recruiters of temporary foreign workers be required to be members of an association such as the Law Society of Upper Canada or Canadian Society of Immigration Consultants before they could apply for a licence?</p>	<p>Licensing should only be used as one part of a comprehensive regulatory and enforcement framework</p> <p>Registration of employers of foreign workers.</p> <ul style="list-style-type: none"> • Ontario should require employers of temporary foreign workers to register with the Ministry of Labour just as Manitoba's <i>Worker Recruitment and Protection Act</i>²⁷ does. Employers are required to provide information about the employer, position to be filled by the foreign worker, contact information for individuals who will directly or indirectly be involved in recruiting foreign workers for the employer among other matters. Requiring this kind of information would assist workers and the Ministry of Labour in improving compliance with the <i>ESA</i>. • Employers should be refused the right to register to hire TFW if the employer has provided false information, has previously violated the <i>ESA</i> directly or indirectly, or if there is reasonable grounds to believe the employer will not act in accordance with the law. <p>Security from employers of TFW</p> <ul style="list-style-type: none"> • Before an employer is registered by the Ministry of Labour to hire a foreign worker, the employer shall provide an irrevocable letter of credit or deposit of at least \$25,000 for an individual employee. • Some TFW face immediate repatriation upon completion of the contract with the employer or termination of employment under some programs. Such securities improve workers chances of recovering unpaid wages and entitlements. • Some TFW are owed well over \$10,000 in unpaid wages after having paid fees of \$5,000 to \$10,000 in recruitment fees. Most TFW cannot try to recover wages and monies owing under the <i>ESA</i> until after employment is terminated. Employer securities will assist in recovering <i>ESA</i> entitlements. <p>Licensing of recruitment practices and parties</p> <ul style="list-style-type: none"> • In defining who must have a license, the government must
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²⁷ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W197.

	<p>ensure an expansive approach to capture all the parties that are directly and indirectly involved in recruiting workers (resident or temporary foreign workers).</p> <ul style="list-style-type: none">• Before any party is licensed to recruit TFW, an irrevocable letter of credit or deposit of at least \$25,000 should be provided to the Ministry of Labour.• Proceeds of such securities shall be used by the Ministry of Labour to satisfy amounts recoverable under enforcement provisions. <p>Enforcement</p> <ul style="list-style-type: none">• The Ministry of Labour's new "hotline" for caregivers should be expanded to include all TFW. Specially trained staff that could provide first language support to TFW should be available (especially late evenings and weekends) to provide confidential information on <i>ESA</i> rights.• Employees such as TFW should be able to make anonymous complaints of violations that will be investigated by the Employment Practices Branch.²⁸ During the investigation process, employers must be informed of anti-reprisals provisions of the <i>ESA</i>.• The Ministry of Labour should conduct proactive (surprise) inspections of individuals or agencies involved in recruitment and employers of TFW. This requires the authority to inspect all workplaces including employers of live-in caregivers.• The government of Ontario must allocate adequate resources to the Employment Practices Branch for review and enforcement of licensed agencies and registered employers.• Licenses should be renewed each year, and employers should register before each application for a Labour Market Opinion.• Licenses and registration shall only be renewed if it is verified that all Ontario labour laws and regulations have been complied with (for example, verification by previous workers).• To receive a license or registration, agencies and employers must undergo training on legal responsibilities under the
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²⁸ Obviously workers in small workplaces will have to assess the likelihood of the employer determining who made the complaint. One way to mitigate this is to publicize targeted inspections of sectors where TFW work.

	<p><i>ESA, OHS, WSIB, OLRA and Human Rights Code</i>, provided by the Ministry of Labour.</p> <ul style="list-style-type: none"> • Employers and recruiters should be required to provide foreign workers with written information about employment standards rights and how to enforce those rights. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP. • Recruiters granted licenses should be listed in a Licence Registry accessible to the public on the Ministry of Labour website, as is done in Manitoba. <p>Require membership in Associations?</p> <p>Any requirement that recruiters of temporary foreign workers be members of an association such as the Law Society of Upper Canada or Canadian Society of Immigration Consultants should only be viewed as an addition to the above-noted enforcement measures. Employment standards enforcement or other protections for foreign workers should not rely on self-regulatory bodies.</p>
<p>2) Should persons who provide recruitment-related services in respect of other job seekers be licensed? If so, what should be the elements of a potential licensing regime?</p>	<p>Yes.</p> <p>Close the gap left by the recent passage of Bill 139. Fees for any recruitment and placement services must be prohibited to fully close the gap left when the <i>EAA</i> was repealed in 2000 and to protect job seekers that are vulnerable to agencies and individuals who charge fees. If a licensing scheme is developed in Ontario, then fees for job seekers should be prohibited and any individual or employment agency providing recruitment services to job seekers should be licensed.</p>
<p>3) Should any persons providing recruitment-related services be exempt from holding a licence?</p>	<p>No</p>
<p>4) What would be the impact of a licensing regime on the recruitment industry?</p>	<p>Minimal: The recruitment industry is experienced in operating under provincial licensing schemes.</p> <ul style="list-style-type: none"> • The Association of Canadian Association of Canadian Search, Employment & Staffing Services (ACSESS), the recruitment industry lobby group, reports that the 20 largest employment agencies generate 38% of the industry's revenues. These large agencies operate in other provincial

	jurisdictions where the recruitment industry is licensed and fees on workers are prohibited. ²⁹ Agencies licensed in Alberta and British Columbia posted double-digit increases in operating revenues in 2006. ³⁰
5) What would be the impact of a licensing regime on other industries that rely on recruitment agencies?	See discussion above.
6) Are there any actions the government could take to address the potential impact on industry?	See discussion above.
7) What would be the impact of a licensing regime on temporary foreign workers and other job seekers?	Fairness As long as licensing employment agencies and registering of employers is developed within a comprehensive enforcement framework and regulatory changes (as addressed in previous sections) then a licensing regime could help protect people in vulnerable work from exploitative fees and conditions.

²⁹ ACSESS "Statistics Canada 2007 Employment Services Report validates temporary staffing industry as a significant economic indicator" Press Release, June 26, 2009

³⁰ Employment services industry **The Daily**, Wednesday May 7, 2008.