

Labour Exploitation and Barriers to Accessing Justice for Migrant Workers

Canadian Institute for the Administration of Justice

2023 Annual conference *The Law of Borders*

Panel *Migrants and Workers*

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About Migrant Workers Centre

- Established in 1986, Migrant Workers Centre is a non-profit organization that is dedicated to legal advocacy for migrant workers in BC.
- MWC facilitates access to justice for migrant workers by providing free legal education, advice and full representation. We help with many kinds of issues, including:
 - Work permit applications
 - Permanent residency applications
 - Employment law violations
- MWC also works to advance fair immigration policy and improved labour standards through law and policy reform and test case litigation.



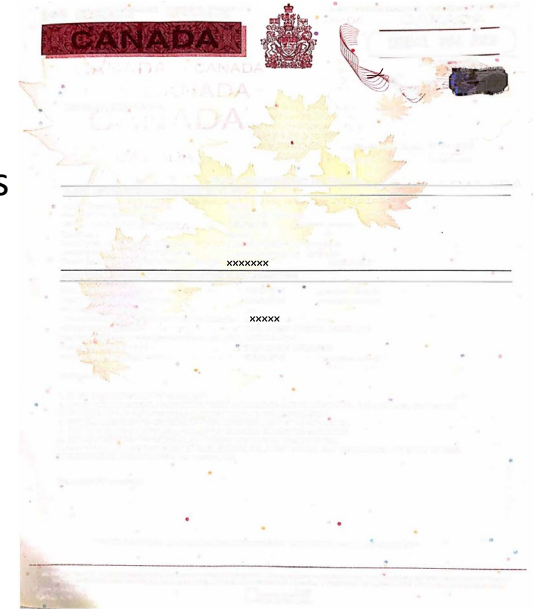
Low Wage Migrant Workers

Majority of low-wage migrant workers in Canada are tied to their employers through employer-specific work permits

- Heightened employer control over workers
- Heightened risk of termination from employment/loss of status
- Difficulty changing employers/maintaining status

Difficulty in enforcing rights and accessing remedies due to delays and fear of retribution.

Exploitation of migrant workers in Canada persists.



Tiered System of Rights

- Migrant Workers rely on their employer for their ability to earn an income and for the renewal of status
- Unionization rates are low
- Legal representation is difficult to obtain
- Lack of enforcement and compliance on employers
 - enforcement instead focuses on workers
- Undocumented workers fear of deportation
- Recruitment processes result in debt bondage

Abuse Starts in Recruitment

- Employers/Agents charge illegal recruitment fees abroad (or in Canada)
- Recruitment fees are rampant and often not recognized as an such in Canada
- Workers arrive in debt bondage, wages being withheld
- Registry systems & provincial regulations important, but still not preventing recruitment fraud

State Acknowledgement

House of Commons Standing Committee:

- Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) (2016)
- Standing Committee on Citizenship and Immigration (2021)

Case Examples:

- *Kasagoni v J Singh Enterprises*, 2023 BCHRT 65
- *Bayongan v Shimmura and another*, 2023 BCHRT 27
- *Logan v Ontario (OPP)*, 2022 HRTO 1004
- *Ortiz v. Shokar*, 2018 BCPC 305
- *O.P.T. v Presteve Foods Ltd.*, 2015 HRTO 675

State Response

- (SAWP – occupation specific/multiple employers work permit)
- Care Workers – sector/occupation specific work permit (2019)
- Temporary Resident Permit for Victims of Trafficking (undocumented workers) (2007)
- Vulnerable Worker Open Work Permit (workers with valid work permits) (2019)

Open Work Permit for Vulnerable Workers

- Introduced in June 2019 – R207.1



The screenshot shows the top navigation bar of the IRCC website. On the left is the Government of Canada logo with the text 'Government of Canada' and 'Gouvernement du Canada'. On the right is a search bar labeled 'Search IRCC' and a 'Français' link. Below the navigation bar is a 'MENU' dropdown. The breadcrumb trail reads: 'Canada.ca > Immigration, Refugees and Citizenship Canada > Newsroom'. The main heading is 'Canada introduces new measures for vulnerable individuals', followed by 'From: Immigration, Refugees and Citizenship Canada'. The section is titled 'News release' and 'Protecting people from abuse and violence & reuniting families'. The date is 'May 31, 2019—Winnipeg, MB'. The text states: 'Canada is taking action to help protect vulnerable workers, newcomers who face family abuse, and help newcomers sponsor family members that they didn't initially declare. Every worker in Canada is entitled to a safe and healthy work environment where their rights are respected. Some migrant workers with employer-specific work permits end up enduring mistreatment, fearful of workplace punishment, as well as fear of losing their job.'

Objectives

- To provide migrant workers with a distinct means to leave their employer
- To mitigate risk of migrant workers in Canada working irregularly
- To facilitate participation of migrant workers in relevant inspection of their former employer or recruiter
- To help migrant workers assist authorities by reducing perceived risk and fear of removal from Canada

Definition of Abuse (R196.2)

- **Financial Abuse:** a form of abuse where one person has control over the victim's access to economic resources.
- **Physical Abuse:** physical contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or bodily harm, but it can also include conditions harmful to physical health.
- **Sexual Abuse:** any situation in which force or a threat is used to obtain participation in unwanted sexual activity as well as coercing a person to engage in sex against their will.
- **Psychological Abuse:** a pattern of coercive or controlling behaviour, iterated threats or both.
- **Reprisals:** any measure that adversely affects employment or working conditions including a disciplinary measure, a demotion, a dismissal, any threat of the above

Report Findings

- Financial Abuse: 29 out of 30 workers (96.7%)
 - Excessive work hours (53.3%)
 - Unpaid wages (46.7%)
 - **Payment of a recruitment fee (36.7%)**
 - Forced to work contrary to contract/work permit (26.7%)
 - Wrongful/early termination (16.7%)
 - Forced to pay a portion of wages to employer (16.7%)
 - Paid a lower wage than listed on contract/LMIA (13.3%)

Report Findings

- Psychological Abuse: 21 out of 30 workers (70%)
 - Verbal abuse (insults, yelling, racist/discriminatory comments) (50%)
 - Threats of termination & deportation (23.3%)
 - Coercion to have worker do something (16.7%)
 - Employer restricted worker's movements and activities (16.7%)

Report Findings

- Physical Abuse: 9 out of 30 workers (30%)
 - Physical violence by employer (16.7%)
 - Exposure to chemical pesticides w/out PPE (6.7%)
 - Forced to work after injury (6.7%)
- Sexual Abuse: 3 out of 30 workers (10%)

Further Reading

A Promise of Protection? An assessment of IRCC decision-making under the Vulnerable Worker Open Work Permit (March 2022)

- Analysis and information on the decision-making process, common issues and background on the VWOWP program
- Dataset of 30 MWC clients

<https://mwcbc.ca/wp-content/uploads/2022/03/A-Promise-of-Protection-An-assessment-of-IRCC-decision-making-under-the-VWOWP-program.pdf>

A Promise of Protection?

An assessment of IRCC decision-making under the Vulnerable Worker Open Work Permit program





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