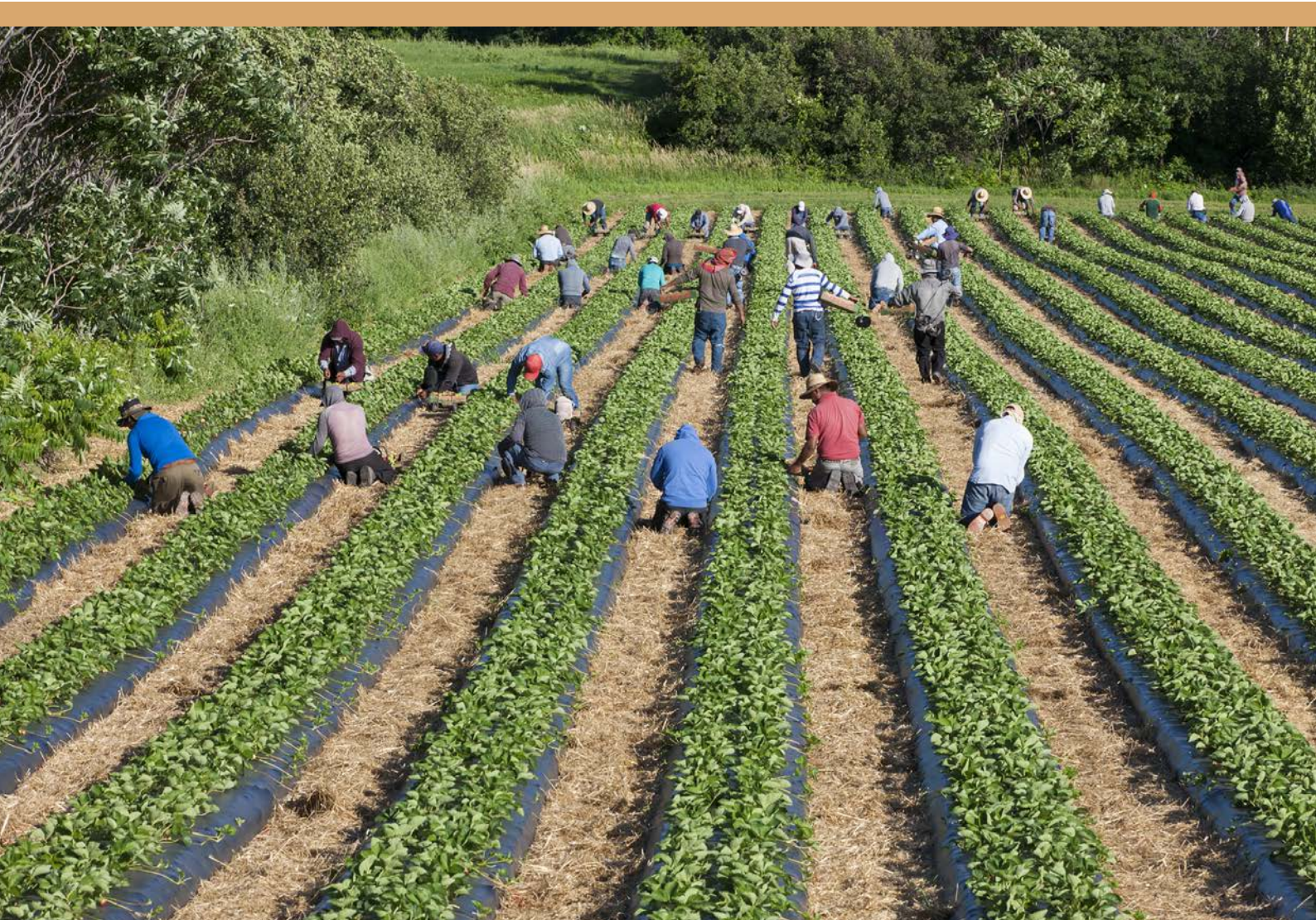


THE FIVE CORRIDORS PROJECT - **CORRIDOR 5**

Mexico to Canada: **Fair recruitment in review**

JULY 2021



ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Cover photograph: Mexican migrant workers picking strawberries, Quebec, July, 2020. © Pierre Desrosiers / Getty Images

Assessment against the Five Corridors indicators:

4. Licensing, registration and certification schemes

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4. Licensing, registration and certification schemes

“Recruitment in Mexico is a highly decentralized and unregulated system” CENTRO DE LOS DERECHOS DEL MIGRANTE, 2020.

Summary

The Regulation of Worker Placement Agencies (RACT) provides Mexico’s framework for the licensing of recruitment agents. All for-profit employment agencies must register with the STPS (the labour ministry) and obtain authorisation before providing domestic or international recruitment services, with additional requirements for recruiters placing migrant workers overseas. Recruitment agencies are banned from charging jobseekers any kind of fees; agreeing with employers to deduct any fees from workers’ salaries; offering illegal or non-existent employment; and/or misleading applicants. Recruiting for jobs overseas without a licence is prohibited, punishable by fines ranging between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000. However, in practice, the registered agencies are vastly outnumbered by the informal, unregistered recruiters who carry out the bulk of recruitment in Mexico. The agency licensing regime does not currently play a meaningful role in promoting or ensuring fair recruitment. As of August 2020 there were only nine registered agencies licensed to recruit Mexican workers for jobs overseas, despite the fact that hundreds of thousands of workers are recruited every year for work in North America, reflecting what one NGO calls “a highly decentralized and unregulated system.” The government maintains a public register of agencies but this contains only basic information - it does not for example provide any detail about any recruitment agencies that may have been penalized and/or had their licenses revoked. There is no data about inspections and their outcomes. At present, there are few disincentives for unethical or unlicensed recruiters. The failure to curb the activities of unlicensed recruiters is an important factor in explaining why so few recruiters opt to formally register.

Canada’s federal government has jurisdiction over the licensing of immigration consultants, who are authorized to provide assistance with immigration applications, including work permits.

There is a national registry of licensed immigration consultants, and the outcomes of disciplinary proceedings, including in relation to fraudulent recruitment and fee charging, are posted online by the regulator. However, the federal government established a new regulator in 2021 in response to repeated concerns about the weakness of the two previous self-regulatory regimes set up in 2004 and 2011 respectively. The inability of regulators and the federal government to deal effectively with unregulated representatives or “ghost consultants” was particularly highlighted in a 2017 parliamentary review. Provincial governments have jurisdiction over the licensing of labour recruiters. Provincial practices vary, with the first comprehensive legal framework for the regulation of labour recruitment of migrant workers introduced by the province of Manitoba in 2009. Six provinces - most of those that host large numbers of migrant workers - require labour recruiters to be licensed in order to operate, with some also requiring employers to register in order to hire migrant workers. Quebec and Saskatchewan have taken the additional step of requiring immigration consultants to be registered both federally and provincially in order to operate. However, the province which hosts the most migrant workers, Ontario (along with six other provinces and territories) does not require labour recruiters to register in order to operate, a policy that unions and recruitment agencies have called to be reversed. Experts argue that this discrepancy between provinces allows unscrupulous labour recruiters to focus their activities in provinces where regulations and monitoring are weakest. The oversight of recruitment activities outside Canada also remains a significant challenge, and some provinces, including British Columbia and Saskatchewan, require licensed recruiters to provide information on their international partners. British Columbia has taken the additional step of making licensed recruiters liable for the actions of their overseas partners.

Recommendations to the Mexican government:

- Consider changes to the Federal Labour Law and the RACT to license individuals, instead of, or in addition to the current system that provides licenses to agencies that can re-incorporate in order to avoid sanctions.
- Revise the Federal Labour Law and the RACT to clarify the penalties against unlicensed labour recruiters and intermediaries offering services to migrant workers and job seekers; to make licensed labour recruiters liable for actions of any unlicensed partners and intermediaries; and to authorize and fund the STPS to implement and enforce penalties for unlicensed labour recruiters and intermediaries both as companies and as natural persons.
- Institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Publish information on labour recruitment agencies that are inspected and penalized to allow migrant workers and job seekers to avoid these agencies.

Recommendations to Canada's federal government

- Require licensed immigration consultants to provide information on all their Canadian and overseas partners and make them liable for the actions of their overseas partners, similar to recent changes introduced by the province of British Columbia for licensed recruiters and their partners.
- Promote the importance of licensing labour recruiters with provinces and territories that do not currently have licensing regimes, and

allow provinces to share best practices on labour recruitment.

- Communicate proactively to employers about relevant legislation that requires them to use licensed labour recruiters and immigration consultants in Canada.

Recommendations to Canada's provinces and territories:

- Implement licensing systems for any individual engaged in the recruitment of migrant workers, where these are not already in place;
- Institute an ethical recruitment framework into provincial licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third-party; require employers to register with the province in order to be involved in the hiring of migrant workers, in line with regulations adopted by BC, Saskatchewan, Manitoba, Quebec, New Brunswick, and Nova Scotia;
- Amend legislation to hold employers and recruiters liable for the actions by any Canadian and overseas partners in the recruitment process, similar to recent changes introduced by the province of British Columbia;
- Provide increased transparency about licensed recruiters, indicating on provincial public registers where recruiters have been inspected and the key outcomes of these inspections.

4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work?

Mexico

The 2006 Regulation of Worker Placement Agencies (RACT) - amended in 2014 - establishes the overall

framework for recruitment agents. Under the Federal Labour Law and the RACT, all for-profit employment agencies must register with the STPS and obtain authorization in advance prior to providing domestic or international recruitment services, with additional requirements for recruiters involved in the placement of Mexican migrant workers overseas. For non-profit recruitment agencies, it is sufficient to “inform the STPS about their operations, for the purposes of registration and oversight”.³⁸¹ Non-profit recruitment agencies mostly include municipal governments, universities, industry associations, but also include recruitment agencies like CIERTO Global, which conducts international recruitment as a core activity on a non-profit basis.³⁸² In the event of an inspection, the law states that “in the absence of information or registration before the [STPS], it will be assumed that the recruiter is a for profit recruiter unless proof to the contrary is provided [by the recruiter]”.³⁸³ Under Article 28-B of the Federal Labour Law, recruiting for jobs overseas without a licence is prohibited, something the RACT indicates is a grave infraction, punishable by fines ranging between 50 to 5000 times the minimum wage, or the equivalent of between US\$340 to US\$34,000.³⁸⁴ The RACT also lists activities prohibited for recruitment agencies, including: charging jobseekers any kind of fees; agreeing with employers to deduct any fees from workers’ salaries; offering illegal or non-existent employment, and/or generally misleading the work applicant.³⁸⁵

As of August 2020 there were only 9 registered agencies licensed to recruit Mexican workers for jobs overseas.³⁸⁶ This small number, when compared to the hundreds of thousands of workers recruited every year by the private sector, reflects the reality of what the Centro de los Derechos del Migrante calls “a highly decentralized and unregulated system”, in which “hundreds of recruiters operate in Mexico seeking workers on behalf of employers in the U.S.”³⁸⁷ A Solidarity Center report describes how “employers subcontract recruitment to agencies that in turn deal with brokers in remote

communities, creating a labor supply system that allows each actor to plausibly deny any knowledge or legal responsibility for abuses that take place further down the chain.”³⁸⁸ A senior STPS official acknowledged that the RACT’s exclusive focus on licensed recruiters was a significant concern, calling this a “legal gap”, as the RACT “does not mention or classify offences committed by unregistered agencies”, which are often responsible for exploitation of migrant workers. “It is also necessary to regulate not only legal entities but also the intermediaries, that is, the natural persons who play the role of a recruitment agency”.³⁸⁹

Canada

The regulation of labour recruitment in Canada falls under provincial authority, with requirements differing depending on the location of the recruitment, while the provision of immigration advice and consultancy - closely linked to recruitment services, with many businesses operating as both immigration consultants and recruiters - is regulated at the federal level.

IRCC defines immigration consultants as someone providing Canadian immigration or citizenship advice or representation for a fee or other consideration, and who are not an immigration lawyer, paralegal, or (in Quebec) a notary.³⁹⁰ Immigration consultants have been regulated in some form since 2004, following a 2003 expert report which found that “Canadian laws have not been adequate to address the problem of unscrupulous or incompetent [consultants].” Issues of concern noted in the report overlap considerably with abusive recruitment practices: “We know that some immigration consultants abuse their client’s trust by promising the impossible and failing to deliver. We know that some immigration consultants charge exorbitant fees for their services.”³⁹¹ In 2004 the Canadian Society of Immigration Consultants (CSIC) was established by the federal government as an “independent and self-regulating

381. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 4, (3 March 2006).

382. Ministry of Labour and Social Welfare, “Registro central de agencias de colocación de trabajadores con y sin fines de lucro”, (1 March 2021)

383. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 31, (21 May 2014).

384. Ibid, Articles 32 and 33.

385. Ibid, Article 10.

386. Contratados, “Learn how the placement agencies of registered workers in Mexico should operate”, (1 December 2020).

387. Centro de los Derechos del Migrante, Inc., “Ripe for Reform”, (April 2020):20.

388. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Solidarity Center*, (January 2015): 21.

389. Interview with Director, Ministry of Labour and Social Welfare, Mexico City, 10 March 2020.

390. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, Section 91(2), 2001.

391. Minister of Citizenship and Immigration, “Report of the Advisory Committee on Regulating Immigration Consultants”, *Minister of Public Works and Government Services Canada*, (May 2003).

body” which officials said would “provide protection to vulnerable applicants, while enhancing public confidence in the Canadian immigration program”.³⁹² Nevertheless, a 2008 Parliamentary report found that “despite the establishment of CSIC, complaints from the public and from within the profession about unacceptable practices by immigration consultants have continued” and said that the CSIC was not ensuring that “immigration consultants are being adequately regulated in the public interest.”³⁹³

In 2011, new legislation - the “Cracking Down on Crooked Consultants Act” - was passed, amending the IRPA, to make it an offence (punishable with fines, imprisonment, or both) for anyone other than an authorized representative to provide immigration advice or represent clients on immigration matters and receive direct or indirect compensation for it.³⁹⁴ The ICCRC was selected as the new regulator in 2011,³⁹⁵ its role entailing establishing specific educational and professional requirements, investigating and adjudicating complaints; and administering sanctions.³⁹⁶ Individual consultants (rather than businesses) must register with the ICCRC. The CBSA is responsible for enforcement of the law with regard to both unlicensed and licensed consultants. Beyond making referrals to the CBSA criminal proceedings, the ICCRC lacks authority over unlicensed consultants. During a 2017 Parliamentary review of the regulation of immigration consultants, “the inability of ICCRC and federal partners to deal effectively with unregulated representatives or “ghost consultants” was raised by witnesses repeatedly.”³⁹⁷ There are no clear estimates on the number of such ghost consultants operating, inside and outside Canada. In its 2019 Annual Report, the ICCRC reported that out of 4085 complaints it received between 2011 and 2019, 35% were against unlicensed consultants.³⁹⁸

The 2017 Parliamentary review also heard evidence about a number of shortcomings relating to the ICCRC’s governance and its ability to discharge its function,

ultimately finding that it was “unable to serve its purpose”, and recommending that the government “create, by statute, an independent public-interest body empowered to regulate and govern the profession of immigration consultants”. The committee recommended that the new body be empowered to investigate and prosecute unlicensed consultants.³⁹⁹

Following this, in 2019 the government passed the *College of Immigration and Citizenship Consultants Act*, establishing a new regulator it described as “an arms-length institution mandated to regulate the profession in the public interest”. The College’s powers would include the ability to “request court injunctions to address unlicensed actors providing immigration advice without authorization”, and to enter the premises of a consultant in order to carry out investigations.⁴⁰⁰ The law also saw maximum penalties for unauthorized consultants doubled, and the creation of an administrative monetary penalties and consequences regime to be administered by IRCC. The new College - the third regulator of consultants since 2004 - is expected to open in 2021, replacing the ICCRC. The Executive Director of CAPIC, an immigration consultants organisation, described the development of regulation as an “evolution 40-50 years in the making” and said that it was similar to the development of regulation of other professions, such as lawyers, which had taken place over a longer period.⁴⁰¹

Provincial licensing of recruiters

A 2020 federal government report notes that mandatory licensing of recruiters is “a proactive way for governments to clearly authorize who can and cannot engage in the recruitment and placement of migrant workers”.⁴⁰² As noted in section 2.2, most provinces that host large numbers of migrant workers, require recruiters to register with the province, with variations in requirements and processes. These provinces are British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia. The significant exception is Ontario - host to the most temporary foreign workers - which does

392. Government of Canada, “Government announces creation of a self-regulating body for immigration consultants”, (31 October 2003).

393. House of Commons, “Regulating immigration consultants”, (June 2008).

394. Immigration and Refugee Protection Act (S.C. 2001, c. 27), Section 91, 2001.

395. Government of Canada, “Evaluation of the Immigration Consultants of Canada Regulatory Council”

396. ICCRC, *Annual Report 2019*, (2019):6

397. House of Commons, “Starting again: Improving government oversight of immigration consultants”, (June 2017).

398. ICCRC, *Annual Report 2019*, (2019):16

399. House of Commons, “Starting again: improving government oversight of immigration consultants”, (June 2017).

400. “Minister Mendicino announces the coming into force of the *College of Immigration and Citizenship Consultants Act*”, *Government of Canada* (26 November 2020).

401. Dory Jade, Canadian Association of Professional Immigration Consultants, 16 December 2020.

402. Leanne Dixon-Perera, “Regulatory approaches to international labour recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020): 28.

not require recruiters of migrant workers to be licensed. Quebec only recently introduced a licensing system, in early 2020.⁴⁰³

British Columbia's licensing framework is relatively typical of the provinces that require recruiters to obtain licences: its *Temporary Foreign Worker Protection Act (TFWPA)* prohibits anyone from "provid[ing] recruitment services or act[ing] as or purport[ing] to be a foreign worker recruiter unless the person holds a licence".⁴⁰⁴ Applicants have to: provide information related to his/her licensing as a federally registered immigration consultant or as a provincial immigration lawyer; provide a list of partners, agents, or affiliates in Canada and overseas, noting that a licensed recruiter is liable for actions taken by its partners in the event of a breach of the TFWPA;⁴⁰⁵ and provide a financial security bond upfront of CAD\$20,000 (US\$16,600) that can be used "to reimburse foreign workers who incur fees or costs in violation of the TFWPA, or to cover fines imposed on the recruiter if found to be in violation with the Act."⁴⁰⁶

Uniquely, Quebec and Saskatchewan additionally require immigration consultants to register at the provincial level - the only two provinces whose regulatory systems respond to what an IRCC research report calls "the highly integrated nature of recruitment and immigration consulting services", by regulating them together. The fact that immigration consultants must register with the province - after registering with the IRCC at the federal level - means that the province is able to monitor and investigate consultants alongside recruitment activity.⁴⁰⁷

Several provinces go further than requiring recruiters to register, expecting employers themselves to register in order to hire migrant workers. Requirements of this kind are in place in British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, and Nova Scotia.⁴⁰⁸ A federal report notes that since provinces do not hold information related to visa and work permit applications

(which sit at federal level), licensing allows provinces to have a better understanding of which employers are hiring migrant workers and to link this information up with their own data regarding employer compliance with employment and other relevant standards. The requirement to register is "generally limited to employers of migrant workers considered more "vulnerable" by regulators than others".⁴⁰⁹

Ontario, Canada's biggest province by population and host to the most migrant workers, has specific legislation in place relating to migrant workers, but overall takes a less stringent approach to the regulation of labour recruiters. Under the 2009 *Employment Protection for Foreign Nationals Act*, a labour recruiter is defined simply as someone who "finds, or attempts to find, an individual for employment" or "finds, or attempts to find, employment for an individual", or who helps someone else, or suggests someone to help with either of these tasks.⁴¹⁰ There is no licensing required before acting as a recruiter, in effect. Until 2001, when the *Employment Agencies Act* was repealed, Ontario had a licensing regime for temporary employment agencies, but officials told us that "in our experience, this became partly a rubber-stamping exercise as third party agencies that were penalized could quickly reincorporate as a different business to avoid bans." The province's approach, officials said, is instead to focus on monitoring and enforcement of any agency that is undertaking labour recruitment.⁴¹¹ There is indeed some evidence that the prior licensing regime was not effective: according to a national association representing recruiters, which dubbed the programme a "tin badge" at the time of its repeal,⁴¹² no licences were ever revoked in 30 years of its operation. However the same association has since called on the province to reverse this decision and reinstate a licensing system that is "meaningful, effective, and addresses the shortcomings of the previous licensing regime", noting that the recruitment industry operates effectively in other provinces that have licensing systems.⁴¹³ Unions

403. Government of Quebec, "[Agences de placement de personnel](#)"

404. *Temporary Foreign Worker Protection Act [SBC 2018] Chapter 45*, section 3, 2018.

405. Government of British Columbia, "[Obligations for Partners, Affiliates, and Agents of Recruiters Licensed in BC](#)",

406. Government of British Columbia, "[Apply for a foreign worker recruiter's licence](#)"

407. Leanne Dixon-Perera, "[Regulatory approaches to international labour recruitment in Canada](#)", Immigration, Refugees and Citizenship Canada, (June 2020): 28.

408. Leanne Dixon-Perera, "[Regulatory approaches to international labour recruitment in Canada](#)", Immigration, Refugees and Citizenship Canada, (June 2020): 42.

409. *Ibid.*, 41.

410. *Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32*, Section 2, 2017.

411. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.

412. [Ontario staffing agencies no longer regulated](#), *HR News*, (16 July 2001).

413. Association of Canadian Search, Employment & Staffing Services (ACSESS), "[Ministry of Labour, Training, and Skills Development Consultation Improving compliance with the Employment Standards Act, 2000 in the Temporary Help Sector. Submission of the Association of Canadian Search, Employment & Staffing Services \(ACSESS\)](#)", 25 January 2021.

have made the same call on Ontario,⁴¹⁴ while the Migrant Workers Alliance argued in a 2015 submission to the province: “Currently anyone can recruit migrant workers in Canada or abroad, charge them large fees, and either put them in contact with a Canadian employer or walk away without actually providing the job they promised. To counter the abuses inherent in this system, all recruiters in Ontario must be licensed, the list of licensed recruiters should be easily accessible online to migrant workers around the world, and the licensing should include a financial bond.”⁴¹⁵

Other provinces and territories that do not require labour recruiters to be licensed in order to operate are New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nunavut, Yukon, and the Northwest Territories.⁴¹⁶

Some experts have argued that the differences in approach to regulation between different provinces and territories have material impact for the abuse of migrant workers. A 2014 study by Fay Faraday cites the case of a Filipino worker who reported that the recruiter who placed them in their job in Canada charged “[CA]\$7,000 for a job in Alberta, [CA]\$5,800 for a job in Ontario, but charged no fees at all for a job in Manitoba because the proactive licensing and registration regime in that province prevented the recruiter from charging fees.”⁴¹⁷

4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers?

Mexico

A regularly updated register of licensed recruitment agencies is publicly available online, including the agencies’ names, registration number, date of authorisation, their status as a profit or non-profit

agency, the number of offices, address and contact details. However the register of agencies contains only basic information - it does not for example provide any detail about any recruitment agencies that may have been penalized and/or had their licenses revoked. There is no data about inspections and their outcomes.⁴¹⁸ The civil society organisation CDM has called on the Mexican government to “maintain databases on authorized labour recruiters that are public, updated in real time, and accessible to migrant workers” and that this should include “the names of all the agents involved in the recruitment process, the names of the employers for whom migrant workers are hired, the number of people recruited and their sociodemographic characteristics.”⁴¹⁹

Out of the 423 agencies authorized to provide worker placement services in Mexico in December 2020, only nine were listed as providing work placement services for migrant workers destined overseas.⁴²⁰ Given the large permanent, temporary, and irregular migration of Mexican nationals to work overseas, particularly to the United States, and the large number of intermediaries involved, it is clear that in reality only a small number of recruiters placing workers internationally are covered by the licensing system.

Canada

The ICCRC operates a registry search function, allowing the public to check whether immigration consultants are licenced in Canada. The registry specifies which consultants are active and which have resigned, deceased or on a leave of absence. It provides company and contact details as well as each consultant’s registration number. The registry includes immigration consultants whose licences have been revoked or suspended, specifying whether this is for administrative or disciplinary reasons. It is also specified when consultants who have resigned have done so while under investigation. In some cases of administrative revocation and suspension some additional information is provided on the registry, such as specifying that the cause was “Failure to complete Compliance Audit Requirements”, “Failure to Pay Membership Dues” or “Failure to complete PME [practice

414. See for example: Ontario Federation of Labour and the Canadian Labour Congress, “[Submission to The Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario](#)”, (21 August 2009).

415. The Migrant Workers Alliance for Change, “[Ontario Immigration Act \(Bill 49\): Submission by Migrant Workers Alliance for Change to Standing Committee on Justice Policy of the Legislative Assembly of Ontario](#)”, (16 April 2015).

416. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, Immigration, Refugees and Citizenship Canada, (June 2020): 34.

417. Fay Faraday, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, *Metcalf Foundation*, (2014):69.

418. Ministry of Labour and Social Welfare, “[Registro central de agencias de colocación de trabajadores con y sin fines de lucro](#)”, (1 March 2021).

419. Centro de los Derechos del Migrante, Inc., “[Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment](#)”, (April 2019): 35-36.

420. Ministry of Labour and Social Welfare, “[Registro central de agencias de colocación de trabajadores con y sin fines de lucro](#)”, (1 March 2021).

management education] course” and the date of the revocation.⁴²¹

The causes of disciplinary revocations are not specified on the general registry. However, details of disciplinary revocations and suspensions, and limitations on consultants’ licences are provided separately. This includes detailed reports of allegations against licensed consultants, proceedings of the ICCRC’s tribunal processes (including representations made by the consultant), and the decisions taken against consultants found to have violated the Code of Professional Ethics. Where relevant, details of separate criminal proceedings are included.⁴²² The ICCRC does not maintain a single consolidated list of individuals who have acted as immigrant consultants without a licence.

Lists of recognized lawyers (who are permitted to provide immigration advice and assistance) are available online from and from the respective provincial/territorial law societies.⁴²³ As a rule, these directories also include details of hearings or cases against lawyers, as well as in some cases directories of unauthorized practitioners.

Provincial information related to licensed labour recruiters

In provinces that have mandatory licensing regimes for labour recruiters that recruit migrant workers, information is made available on licence holders. However, this generally entails basic contact information and details of the issue and expiry dates of licences. None of the provinces appear to maintain public lists with information relating to recruiters whose licences have been suspended or revoked. Only Nova Scotia appears to provide information on additional conditions that have been placed on select recruiters, and recommends that workers and other users consult the list of licensed recruiters often, given the province’s authority to suspend or revoke licenses if appropriate.⁴²⁴ Lists of valid licensed labour recruiters are available for:

- British Columbia: a list of all registered recruiters authorized to recruit foreign workers is provided. Licences can be viewed.⁴²⁵
- Alberta: a list of all licensed employment agencies is available.⁴²⁶
- Saskatchewan: separate lists of all registered recruiters authorized to recruit foreign workers and provincially authorized immigration consultants are provided.⁴²⁷
- Manitoba: a list of all registered recruiters authorized to recruit foreign workers is provided.⁴²⁸
- Quebec: separate lists of all registered recruiters authorized to recruit foreign workers and provincially authorized immigration consultants are provided.⁴²⁹
- Nova Scotia: a list of all registered recruiters authorized to recruit foreign workers is provided, with specific notes where particular conditions have been attached by the province to recruiters’ licences.⁴³⁰

4.3 Are worker and recruiter organizations consulted on the design and implementation of these schemes?

Mexico

Two academic researchers focusing on migrant worker protections and recruitment, told us that there was generally a lack of avenues for civil society and worker organizations to contribute to the setting of legislation and policy relevant to recruitment.⁴³¹ ProDESC told us that opportunities to engage with the government on issues of policy, including in relation to agency licensing, were sporadic and not consistent or sustained.⁴³² One recruitment agency registered to place workers in jobs abroad told us that they had never been invited to provide input into the design or implementation of agency licensing schemes, while another said that they have found some opportunities to raise some concerns with the STPS about the RACT’s application to cases of fraud by unlicensed labour recruiters.⁴³³

421. Immigration Consultants Regulatory Council of Canada, “[Registry of Regulated Canadian Immigration Consultants](#)”

422. ICCRC, “[Revocations, suspensions and restrictions](#)”

423. Government of Canada, “[Find out if your representative is authorized](#)”, (5 March 2021)

424. Government of Nova Scotia, “[List of Licensed Recruiters](#)”

425. Government of British Columbia, “[Licensed Foreign Worker Recruiters](#)”

426. Government of Alberta, “[Find if a business is licenced](#)”

427. Government of Saskatchewan, “[Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities](#)”

428. Government of Manitoba, “[The Worker Recruitment and Protection Act C.C.S.M. c.W197 VALID LICENCE HOLDERS](#)”

429. Government of Quebec, “[Trouver un titulaire de permis](#)”; Government of Quebec, “[Réglementation sur les consultants en immigration](#)”

430. Government of Nova Scotia, “[List of Licensed Recruiters](#)”

431. Dr. Aaraón Díaz Mendiburo, Universidad Nacional Autónoma de México, remote interview, 27 June 2020.

432. Paulina Montes de Oca and Eduardo Villareal, ProDESC, remote interview, 15 December 2020.

433. Representatives from recruitment agencies, remote interviews, February 2020, and December 18, 2020

Canada

There is a significant degree of interaction between worker organizations, immigration consulting and recruitment organizations, and the various layers of Canadian government in the development of policy. At the federal level, the most formal consultation processes have occurred through a 2016 Parliamentary report on the Temporary Foreign Worker Program,⁴³⁴ a 2017 Parliamentary report on the oversight of immigration consultants,⁴³⁵ and consultations for the drafting of the *College of Immigration and Citizenship Consultants Act* in 2018/19, and provincially through equivalent exercises to introduce changes related to employment standards, labour recruitment, and/or labour relations. Unions and civil society organizations in British Columbia have for example engaged closely with legislative and regulatory changes on the licensing of labour recruiters of foreign workers.⁴³⁶ As noted in section 4.2, worker and recruiter organisations have also called for Ontario to re-introduce a licensing scheme for recruiters. Recruiter and immigration consultancy organisations have also engaged significantly in these discussions. In general immigration consultants and their representative associations have asked the federal government to strengthen licensing processes and to increase regulators' authorities to investigate unauthorized consultants.⁴³⁷

4.4 Does the government put in place measures to incentivise ethical recruitment practices?

Mexico

According to a 2019 IOM report, the Mexican government “expressed its interest and commitment to align its operations with the International Organization for Migration’s International Recruitment Integrity System

(IRIS), to improve the [private] recruitment system in Mexico.” The IRIS programme, developed by the IOM, is “a social compliance system designed to promote international ethical recruitment for companies, governments and workers”.⁴³⁸ One of the aims of IRIS is to provide certification to recruiters that can demonstrate their ethical conduct, providing a high level of assurance to both workers and businesses.

Beyond this, it is unclear whether the Mexican authorities have any specific strategies to encourage ethical recruitment. The RACT should in theory act as a deterrent to unethical recruitment. It requires recruitment agencies that provide services to migrant workers to be licensed, with a violation of this considered a grave infraction.⁴³⁹ Fines for the more serious offences under the RACT can be up to 5,000 times the minimum wage, or the equivalent of US\$34,000.⁴⁴⁰ However in reality, as discussed in section 5, enforcement of the RACT regime is weak. At present, there are few disincentives for unethical or unlicensed recruiters. This may explain why so few agencies are licensed to recruit for overseas jobs.

Canada

With regard to immigration consultants, interlocutors told us that weaknesses in enforcement of the laws - detailed in section 5 - continue to incentivise unethical and illegal practices, in particular relating to charging workers extortionate fees for standard processes and services that in reality entail recruitment. One consultant told us, “we need to enforce the law better. Because ultimately at the moment selling jobs is where the money is to be made. My colleague saw someone was charging [CA]\$25,000 for an LMIA. This is an extreme example but it illustrates the point.”⁴⁴¹

A representative of the ICCRC regulator told us that one of the key constraints on the organization was

434. House of Commons, “[Report 4 - Temporary Foreign Worker Program](#)”, (19 September 2016).

435. House of Commons, “[Starting Again: Improving Government Oversight of Immigration Consultants](#)”, (June 2017): 43-49

436. “[UFCW welcomes new TFWP regulations in BC, calls for further reforms](#)”, *UFCW*, (31 October 2018); “[Licensing recruiters to protect foreign workers](#)”, *Government of British Columbia*, (29 July 2019).

437. See for example: House of Commons, “[Submission for Standing Committee on Citizenship and Immigration, studying Division 15 of the Bill C-97](#)”; House of Commons, “[Standing Committee on Citizenship and Immigration](#)”, (1 May 2017); The Canadian Association of Professional Immigration Consultants (CAPIC), “[Review of Bill C-97’s College of Immigration and Citizenship Consultants Act](#)” (3 May 2019).

438. “[Mexico Moves Towards Ethical Recruitment of Migrant Workers](#)”, *IOM*, (17 May 2019).

439. Ministry of Labour and Social Welfare, “[Reglamento de Agencias de Colocación de Trabajadores](#)”, Article 33, (21 May 2014).

440. *Ibid*, Article 33, (21 May 2014).

441. Licensed immigration consultant, remote interview, 4 December 2020.

that “although we currently can inspect and fine non-compliant immigration consultants, we cannot currently force them to pay fines or compensate workers, and our main ‘threat’ is to suspend the licence of the non-compliant consultant”.⁴⁴² The director of CAPIC, the immigration consultants’ association, was hopeful that the 2019 reforms, creating the College of Immigration and Citizenship Consultants - which will enjoy stronger enforcement powers than the ICCRC - would help: “Once the College is in action, and we see some information in the media about some enforcement actions, including prison terms, those things might make people think twice. At the moment, people think ‘well I’m making enough to risk the penalties’. I’ll do it till they catch me.”⁴⁴³

Beyond immigration consultants, the fact that labour recruitment is regulated at the provincial level - with some significant variation between tightly regulated provinces such as British Columbia and Ontario, which favours a loosely regulated approach - hinders the ability of the federal government to create strategic incentives for ethical recruitment firms. Nevertheless some provinces have put in place innovative measures to encourage ethical recruitment practices. A 2014 report for the Metcalfe foundation notes a practice by Nova Scotia and Saskatchewan that incentivise employers to ensure they are using ethical recruiters: under both provinces’ laws, illegal recruitment fees paid by workers can be recovered from the recruiter who charged it, or from the employer when an unlicensed recruiter has been used: “this provides real incentive to employers to ensure that they are dealing with legitimate recruiters. It brings the employer’s self-interest to bear in enforcing compliance with fair recruitment practices.”⁴⁴⁴

In 2018 the IOM launched an pilot of the IRIS programme between the provincial governments of Saskatchewan and Alberta in Canada and the government of the Philippines, the aim being to “create a framework to promote ethical recruitment in the labour migration corridor between the Philippines and the two Canadian provinces”. Two Canadian recruitment agencies were participating in the pilot.⁴⁴⁵

4.5 Are employers and recruiters jointly-liable/accountable for respecting workers’ rights in the legislative and regulatory regime governing recruitment?

Mexico

In the event that an overseas employer does not comply with the terms of a worker’s contract, the RACT makes registered labour recruiters responsible for the costs associated with the repatriation of the migrant worker.⁴⁴⁶ There are no further references to joint liability in the legislation.

Canada

Canada’s federal immigration system holds employers who require a Labour Market Impact Assessment (LMIA) responsible for the actions of any third party they have used to recruit migrant workers.⁴⁴⁷ The LMIA specifically prohibits employers from recovering costs of hiring the temporary foreign worker and specifies that “this also applies to any third parties used.”⁴⁴⁸

Some provinces also hold employers and recruiters jointly liable. In Ontario, the Employment Protection for Foreign Nationals Act (EPFNA) has since 2018 explicitly made employers and labour recruiters jointly and severally liable “for any contravention of this Act and for any amounts owing to a foreign national by any of them for the contravention”.⁴⁴⁹ This followed calls from groups such as the Migrant Workers Alliance for Change to follow the pioneering example of Manitoba, which introduced this provision first and was followed by Nova Scotia and Saskatchewan: “this practice... ensures that responsibility for violations is not passed to recruiters abroad. Instead, employers should be held accountable for working with appropriate recruiters (who should be licensed in Ontario) to ensure that migrant workers do not face abuse. This practice ensures predictability and certainty for employers, recruiters and migrant workers.”⁴⁵⁰ A 2017 amendment to the EPFNA removed the limiting caveat

442. Michael Huynh, ICCRC, interview, Burlington, 23 January 2020.

443. Dory Jade, CAPIC, remote interview, 16 December 2020.

444. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, *Metcalfe Foundation*, (2014):76.

445. IRIS, “Philippines to Canada IRIS Pilot Project”

446. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, Article 9 Bis, V., 21 May 2014.

447. Employment and Social Development Canada, “Labour market impact assessment application: Low-wage positions”, (March 2021): 14.

448. *Ibid*, 12.

449. *Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32*, section 4, 2009.

450. Migrant Workers Alliance for Change, “Ontario Immigration Act (Bill 49): Submission by Migrant Workers Alliance for Change to Standing Committee on Justice Policy of the Legislative Assembly of Ontario”, (16 April 2015).

that employers and recruiters were only jointly liable for actions that had the intent or effect of “defeating” the purpose of the law.⁴⁵¹ Under British Columbia’s 2018 Temporary Foreign Worker Protection Act, meanwhile, labour recruiters are held liable for the actions of partners, affiliates, or agents.⁴⁵²

Faraday argues that in Manitoba, the effect of such arrangements, combined with employers being required to register in order to recruit foreign nationals, and proactive inspection regimes, has been to reduce exploitative recruitment practices.⁴⁵³

451. Government of Ontario, [Employment Standards Act Policy and Interpretation Manual](#), Section 4, (2000).

452. [Temporary Foreign Worker Protection Act \[SBC 2018\] Chapter 45](#), part 5, 2018.

453. Fay Faraday, “[Profiting from the Precarious: How recruitment practices exploit migrant workers](#)”, *Metcalfe Foundation*, (April 2014): 6.

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