

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:

5. Machinery to implement and enforce legislative and regulatory regimes

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5. Machinery to implement and enforce legislative and regulatory regimes

“Workers can apply for a job in Canada for free personally with the National Employment Service, but workers would not get a job 100% like with us.” UNLICENSED RECRUITERS ON FACEBOOK, CHARGING MEXICANS FOR FAKE JOBS IN CANADA, MARCH 2020.

Summary

The Ministry of Labor and Social Welfare (STPS) is the lead government agency on the recruitment of migrant workers seeking work overseas, working with the Ministry of External Relations (SRE) and others. The General Directorate of Federal Labour Inspections, within STPS, is empowered to carry out inspections of licensed recruitment agencies. However, officials told us that the inspectorate is mainly focused on employment standards within Mexico and that its staff are not properly trained to inspect the recruitment agents who deploy Mexican workers abroad. There is no evidence of a systematic inspection regime for recruitment agencies - civil society organisations report that STPS rarely inspects recruitment agencies, even on receipt of complaints and two recruitment agencies told us they had never been inspected. Victims of fraud by recruitment agencies have the right to report the crime to law enforcement authorities themselves, but the authorities have not invoked this provision to tackle the recruitment industry except in some rare large cases. The STPS is better resourced and empowered in relation to the SAWP, which it manages through its National Employment Service (SNE) offices around the country, in coordination with the SRE and its Embassy and consulates in Canada. There have been instances of corruption within the administration of the SAWP, with some SNE officials who control elements of the application process for the scheme charging workers for access. Officials acknowledged that such cases were “not rare”. Among the cases that have been investigated, dismissal appears to be the most serious penalty. We are unaware of cases in which SNE officials have been prosecuted for such practices.

Canada’s federal governance structure creates varying legal and enforcement regimes relating to

migrant workers’ recruitment, immigration and employment, depending on the province and sector in which they work. The result can be confusion over jurisdiction and responsibility, which has been brought into sharp focus during the Covid-19 pandemic. Employment and Social Development Canada (ESDC) has been mandated since 2015 to inspect whether employers are respecting the terms under which they are approved to hire migrant workers under the TFWP - this includes complying with relevant federal and provincial laws that regulate employment and recruitment, as well as the protection of the Canadian labour market. ESDC carries out around 2800 inspections per year, representing 13% of all TFWP employers. Inspectors can issue warnings, financial penalties, a ban from the TFWP, and/or revocations of valid Labour Market Impact Assessments, which are necessary to hire foreign workers. Companies that are found non-compliant are named on the IRCC website. The programme is designed to be “remedial, rather than adversarial”. According to available data and analysis by Marsden, Tucker and Vosko, inspectors found non-compliance with almost half of the employers they inspected in 2017/18, but the vast majority were resolved through “corrective measures” such as compensation to workers. Only about 3% of employers inspected were penalised, and only in a handful of those cases were employers fined more than CAD\$5,000 (US\$4,100), raising questions about whether the inspection programme adequately deters poor practices. Provincial authorities carry out inspections related to employment standards, workplace safety, and recruitment. Concerns have been raised that some provinces, including Ontario, Alberta and New Brunswick, focus mainly on responding to complaints by workers rather than on proactive inspections, which means that those who find complaining more difficult - including migrant

workers, whose legal status is tied to their jobs - may be covered less by the inspection programme. Legislation in Ontario, BC, Saskatchewan, Manitoba, Quebec, and Nova Scotia allows for employers to be held responsible for the actions of recruiters, which should in principle increase employer adherence to fair recruitment practices. In terms of law enforcement, prosecutions and convictions for fraud by immigration consultants and trafficking are relatively rare - an average of just under 5 per

year for immigration consulting fraud and 2-3 for trafficking. CBSA and RCMP officials, which have the respective federal leads on the two issues, acknowledge that investigations of the offences are time-intensive and victims are often unwilling to come forward, something experts argue is related to the closed work permit. Provincial criminal investigations of labour recruiters are also rare and time-intensive, with only a few successful prosecutions reported in recent years.

Recommendation to the Mexican government:

- Ensure that inspection of licensed recruitment agencies and investigation of complaints by workers against recruitment agencies is carried out by an effective and sufficiently resourced labour inspectorate.
- Hold accountable any STPS or SNE official accused of demanding or accepting illegal payments for access to government migration programmes, including through referring them to law enforcement agencies, and make information publicly available on the number and nature of such cases identified.

Recommendations to the government of Taiwan:

- Undertake a greater number of employer inspections each year, to increase the likelihood of being inspected; consider increasing employer compliance fees to fund additional inspections.
- Strengthen the legislative authorities for the federal government to require employers to compensate migrant workers (if possible, under the Constitutional authorities in (s. 92.10.(c)), and formally publish information on the number of cases where employers are required to take corrective measures, the amounts of money compensated to migrant workers, and what non-compliances these amounts relate to.

- Ensure that federal inspectors always interview migrant workers, without employers or supervisors present, during inspections, and provide channels for them to communicate any threats or retaliatory measures following inspections.
- Ensure that inspectors include questions related to worker payment of recruitment and related costs that are prohibited under the TFWP; and that they hold employers accountable when workers have been charged for these costs, including by third parties contracted by employers.
- Require employers to clearly display summary feedback from completed federal inspections in the workplace, so that migrant workers can view the conclusions and outcomes of inspections.
- Increase resourcing attached to the investigation and prosecution of immigration fraud, and labour trafficking, by CBSA and RCMP respectively.
- Use federal/provincial/territorial working groups to improve coordination and information sharing between federal and provincial inspection regimes

Recommendations to Canada's provinces and territories:

- Ensure that businesses in sectors of the economy with significant representation of migrant workers are subject to regular and sustained proactive employment standards inspections.

5.1 Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates?

Mexico

The key government institutions relevant to the recruitment of Mexican nationals for work abroad are the Ministry of Labor and Social Welfare (STPS) and the Ministry of External Relations (SRE). The Federal Labour Law charges the STPS to “intervene, in coordination with the Secretaries of the Interior, Economy and Foreign Relations, within the scope of their respective mandates, in the hiring of nationals who are going to provide their services abroad.”⁴⁵⁴ An agency of the STPS, the National Employment Service (SNE) has since 1978 delivered recruitment services for the SAWP and other bilateral migration programmes.⁴⁵⁵ A senior STPS official told us that, “the STPS is in charge of the recruitment and hiring of the migrant workers in Mexico. When the worker arrives in Canada, the SRE must be vigilant to provide consular protection.”⁴⁵⁶ The STPS is also responsible for the licensing of private labour recruiters, and the administrative inspections of private labour recruiters through the General Directorate of Federal Labour Inspections (DGIFT).⁴⁵⁷

Within the SRE sits the General Directorate for the Protection of Mexicans Overseas (DGPME), with a mandate to coordinate issues related to consular protections, human rights, labour protections, migration, and legal assistance for Mexican nationals working and/or living overseas. The DGPME’s “standards for the implementation of protection programs for Mexicans abroad” has a substantial focus on the protection of migrants’ human and labour rights, and states that consular protection is regulated by

international law, listing the international human rights conventions to which Mexico is a party.⁴⁵⁸

A Mexican consular official in Ottawa told us that cooperation between the STPS and the SRE was generally good with respect to the SAWP, and said that the two agencies were focused on ensuring that workers were aware that they could report abuse to both the SRE through the Embassy and consulates in Canada, and to the STPS through the worker’s annual end-of-season report.⁴⁵⁹ The involvement of the STPS is however considerably less with regard to workers migrating to the US or Canada through private channels. A senior STPS official told us that his department had participated with the SRE in awareness raising initiatives for workers going to the US, highlighting the risks they might face and the government programmes they could access. However he acknowledged that these initiatives were small in number.⁴⁶⁰ A civil society organisation told us that in their view, outside government-to-government programmes like the SAWP, “the Mexican government doesn’t have a policy with regard to the recruitment of migrant workers. It’s seen as a private relationship between the worker and the recruiter and employer.”⁴⁶¹ A Mexican Embassy official told us that it is currently a challenge for Mexico to regulate private recruitment companies that are recruiting workers into Canada, noting that, “in the few cases that we are aware of, we see many problems - recruiters double-charging employers and workers, employers recovering recruitment costs from workers, and workers taking on large debts.”⁴⁶²

Canada

At the federal level, the primary departments relevant to fair recruitment issues are the IRCC, which administers the IMP and is responsible for the policy and issuance of work permits to foreign nationals, and the ESDC which administers the TFWP, including the processing of employer applications to hire migrant workers through its Service Canada offices. ESDC and IRCC are also responsible for employer inspections under the TFWP and IMP respectively.⁴⁶³ The CBSA is

454. *Ley Federal del Trabajo*, Article 539, II, (d), 1 April 1970.

455. Servicio Nacional de Empleo, “*Subsecretaría de Empleo y Productividad Laboral*”, November 2017.

456. Interview with Director, Ministry of Labor and Social Welfare, Mexico City, 20 March 2020.

457. Ministry of Labour and Social Welfare, “*Reglamento de Agencias de Colocación de Trabajadores*”, Articles 7 and 30, (21 May 2014).

458. Ministry of Foreign Affairs, “*Normas para la ejecución del programa de protección consular a personas mexicanas en el exterior*”, (May 2017):5.

459. Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020.

460. Interview with Director, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

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

462. Gabriel Morales, Embassy of Mexico in Canada, interview, 3 March 2020.

463. Government of Canada, “*Temporary Foreign Worker*”

responsible for immigration enforcement, and for the issuance of work permits to foreign nationals at Ports of Entry, the latter responsibility performed under delegation on behalf of IRCC.⁴⁶⁴

While under Canada's Constitution the federal government shares jurisdiction over immigration (a "concurrent" power) with the provinces and territories,⁴⁶⁵ the federal government has historically led on policy and legal development, and enforcement, in this area. Meanwhile, provincial governments have jurisdiction over employment standards, labour relations, and labour recruitment, except in sectors of the economy that are designated as federally regulated - these include banks, telecommunications, air transport, ports and shipping.⁴⁶⁶

The Forum of Ministers Responsible for Immigration (FMRI) brings together federal authorities, provinces and territories - with Quebec having observer status.⁴⁶⁷ The Forum meets annually and has produced a "Federal-Provincial-Territorial Strategic Plan for Immigration 2020-2023", a one slide document with four principles, including "Canada protects vulnerable, displaced, and persecuted persons", but the published plan contains no detail of what this means in practice.⁴⁶⁸ Meanwhile, an ESDC official told us that the department also co-chairs a federal-provincial-territorial working group that coordinates issues related to migrant workers and working conditions (including labour recruitment) on a regular basis, and reports to the Federal-Provincial-Territorial Ministers of Labour.⁴⁶⁹ For example, IRCC announced in March 2021 that as part of the process to introduce upcoming regulations for immigration consultants, officials were discussing with provinces and territories the nexus between the federal College of Immigration and Citizenship Consultants Act and provincial legislation dealing with labour recruiters.⁴⁷⁰

The implication of Canada's federal governance structure for migrant workers is to create varying legal

and enforcement regimes relating to their recruitment, immigration and employment, depending on the province and sector in which they work. This can be bewilderingly complex even for experts. A 2020 IRCC research paper neatly summarises the issue:

"The sum of provincial regulatory approaches to international labour recruitment and employment is an intricate patchwork: uneven in protections and characterized by variance in scope, content, and sanctions. And this patchwork is further complicated by the way in which it irregularly layers with federal matters of immigration, including its laws and programs. From any perspective, be it from the view of a migrant worker, an employer, a recruiter, or a government, these laws are challenging to grasp at once. The consequence is markedly distinct coverage of migrant worker protections across Canada and inconsistency of rules for relevant players, including recruiters active in multiple jurisdictions."⁴⁷¹

A former Mexican consulate officer told us that the ability of consulates to support migrant workers depended on the provinces they were employed: she said that in Quebec, relatively well-resourced provincial government provincial officials were highly engaged in responding to and acting on enquiries from consulates, in contrast to some other smaller provinces.⁴⁷² A 2014 Metcalfe report recommends the design of legislation and practices that "ensure that the federal and provincial jurisdictions work together to use multidirectional oversight. The federal government's refusal to process LMIA's until an employer has secured provincial registration is one example of such collaboration".⁴⁷³ Ontario officials told us they had been improving information sharing with the federal government and this had allowed them to target inspections more precisely, based on information provided by ESDC.⁴⁷⁴

464. Government of Canada, "Instrument of Designation and Delegation", (26 January 2021):34-35

465. Government of Canada, "Federal-Provincial/Territorial Agreements"

466. Government of Canada, "List of federally regulated industries and workplaces"

467. Forum of Ministers Responsible for Immigration

468. Forum of Ministers Responsible for Immigration, "Federal-Provincial-Territorial Strategic Plan for Immigration 2020-2023"

469. ESDC official, Employment and Social Development Canada, remote interview, 8 April 2021.

470. Government of Canada, "Forward Regulatory Plan: 2021 to 2023 Governor in Council regulations to establish a new system of administrative penalties and consequences related to the provision of immigration representation and/or advice", (31 March 2021).

471. Leanne Dixon-Perera, "Regulatory approaches to international labour recruitment in Canada", (June 2020): 62.

472. Maria Fernanda Maxil Platas, former Consular Officer in Mexican Consulate in Montreal, Ministry of External Relations, interview, Ottawa, 3 March 2020.

473. Fay Faraday, "Profiting from the Precarious: How recruitment practices exploit migrant workers", Metcalfe Foundation, (April 2014):81.

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

The Covid-19 pandemic has brought into sharp focus the complexity of Canada’s governance of migrant labour, with an urgent need to address questions about housing conditions and social distancing, quarantine arrangements, sick pay and self-isolation pay, and how to conduct inspections without being physically present. The pandemic led to new coordinated federal/provincial initiatives on inspection (see section 5.2), but concerns were raised into 2021 about the tendency for migrant workers to effectively slip through the gaps. An Ontario MP told media with regard to quarantining procedures for workers arriving for the new season in early 2021: “this is a really challenging space because of the multiple jurisdictions and agencies that are involved at the federal, provincial and local level.” The Leamington Mayor meanwhile said, “no one knows who’s in charge”.⁴⁷⁵ A social worker who works with migrant workers in Ontario was frustrated by the impact that confusion of overlapping responsibilities had on workers:

“Migrant workers historically have lived in horrific accommodation like garages and with Covid that creates a whole new layer of risks. Nobody is really willing to take responsibility ... We have an ongoing dialogue with the federal and provincial government over who should take responsibility for conditions at the workplace, and who in the worker’s home. Who has jurisdiction? Very little progress has been made.”⁴⁷⁶

5.2 Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters?

Mexico

In Mexico, responsibilities over labour inspections fall under the authority of the General Directorate of Federal Labour Inspections (DGIFT), which operates under the Ministry of Labor and Social Welfare (STPS). In the context of international labour recruitment, the Federal Labour Law outlines requirements that employers must meet to hire Mexican nationals overseas, including the requirement for employment contracts, and establishes the requirement for labour recruiters to be licensed. For its part, the RACT sets more detailed requirements that labour recruiters must respect when recruiting Mexican nationals for jobs overseas. Both the Federal Labour Law and the RACT include authorities on sanctions and penalties that labour inspectors can impose.⁴⁷⁷

Labour inspectors are required to “monitor and promote, within their respective jurisdictions, compliance with labour legislation”,⁴⁷⁸ and they are authorised to carry out ordinary and extraordinary inspections, including of worker placement agencies.⁴⁷⁹ In the context of labour recruitment, labour inspectors are responsible for: ensuring that labour recruiters operating in Mexico have the necessary authorisation and licensing; verifying that recruitment services being provided are free for workers; requiring labour recruiters to compensate migrant workers for repatriation costs in the event that the workers have been deceived in relation to their working conditions overseas; and any other requirements outlined in the Federal Labour Law and the RACT.⁴⁸⁰ In the event of breaches by the employer or the labour recruiter, the Federal Labour Law and the RACT authorize inspectors to impose fines that range from 50 to 5,000 times the minimum wage, or the equivalent of US\$340 to US\$34,000 in 2021.⁴⁸¹

Individuals can complain about recruiters and request an inspection, by emailing or phoning STPS. In 2016, STPS labour inspectors conducted 438 inspections of worker placement agencies.⁴⁸² It is unclear how many of these inspections involved agencies recruiting for overseas jobs. Out of the 423 agencies authorized to

475. “‘No one knows who’s in charge:’ Poor quarantine coordination puts migrant worker health at risk”, *CBC*, (26 January 2021).

476. Shelley Gilbert, Legal Assistance of Windsor, interview, 2 February 2021.

477. *Ley Federal del Trabajo*, articles 25, 28, and 28B, 1 April 1970; *Reglamento de Agencias de Colocación de Trabajadores*, articles 9Bis and 10, 21 May 2014.

478. *Reglamento General de Inspección del Trabajo y Aplicación de Sanciones*, Article 8 VIII, IX, and X, 17 June 2014.

479. *Ibid*, Article 11.

480. Government of Mexico, *Reglamento General de Inspección del Trabajo y Aplicación de Sanciones*, Article 8 VIII, IX, and X, 17 June 2014; *Ley Federal del Trabajo*, Article 28-B, 1 April 1970; *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, 21 May 2014.

481. *Ley Federal del Trabajo*, title XVI, 1 April 1970; *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, article 33, 21 May 2014; Ministry of Labour and Social Welfare, “*Salarios mínimos 2021*”

482. Ministry of Labour and Social Welfare, “*Programa de Inspección 2016*”, (2016): 10.

provide worker placement services in December 2020, only 9 (2%) were listed as providing work placement services for migrant workers destined overseas.⁴⁸³ These inspections relate to licensed agencies. The STPS is able where it receives complaints from workers to carry out inspections of unlicensed agencies, but only if the workers can provide a legitimate permanent address for these agencies. They can also take action to close unlicensed agencies. In 2015, following worker complaints that were supported by a civil society organisation and municipal authorities, STPS closed down an agent in Cerritos, San Luis Potosi, who had been charging US\$4500 for visas to the United States.⁴⁸⁴ A senior official at the STPS told us that the inspectorate does not have sufficiently trained staff to conduct many inspections of labour recruiters of migrant workers destined overseas, and said that in general the inspectorate faces resource pressures.⁴⁸⁵ Another senior STPS official told us that “labour inspectors are there to inspect general labour rules, but not really the work that recruitment agencies do or the fraud in recruitment processes,” noting the logistical challenges of overseeing recruitment activity, which is often concentrated in rural areas, and which is often highly informal, with no written job offers or contracts. As a result, he said, the STPS focuses on preventive information campaigns to prevent migrant workers from being taken advantage of.⁴⁸⁶ A 2015 Solidarity Centre report noted that STPS “rarely if ever employed” their powers to inspect recruitment agencies on receipt of complaints.⁴⁸⁷ A Mexican recruitment agency which places workers in jobs overseas and has operated for several years told us they have never been inspected by STPS and did not know of other agencies which had been.⁴⁸⁸

Civil society organisations are heavily critical of these weaknesses in Mexico’s inspection regime, which one says contributes to “a system characterized by near-total impunity”.⁴⁸⁹ The few enforcement actions that do take place are heavily dependent on workers to complain. ProDESC told us that, “while workers can make

complaints, most of the time they are afraid. If they say something, they can’t return to the company again. All the incentives are against the worker.”⁴⁹⁰

During 2020 and 2021 the government has initiated a series of labour reforms, including phased legislative changes related to the resolution of labour conflicts, introducing new Labour Conciliation Centres to encourage the mediation and resolution of labour conflicts, and strengthening the authorities of Independent Labour Tribunals that have judicial powers.⁴⁹¹ The government states that it recovered 248 million pesos (US\$12.5M) for workers through conciliation, over a two month period.⁴⁹² It is as yet unclear if the resolution mechanisms can or will apply to labour recruitment cases that impact migrant workers.

Canada

The recruitment and employment of migrant workers in Canada is subject to a range of different inspection regimes, at federal and provincial level. Since 2015, the federal government has carried out inspections of employer compliance with the conditions placed on them when initially approved to hire migrant workers. Violations by employers of these conditions - which include requiring employers to comply with provincial labour standards and provide decent working conditions - are considered to constitute breaches of immigration law.⁴⁹³ Meanwhile, provincial labour inspectorates have responsibility for labour standards, workplace safety, labour relations, and labour recruitment. In some cases, federal and provincial labour inspectorates have operated in partnership to carry out joint inspections, particularly during the COVID pandemic, and federal and provincial governments have also established agreements to share information on the outcomes of inspections.⁴⁹⁴ Additionally, at the national level, the Immigration Consultants of Canada Regulatory Council (ICCRC) is a professional regulatory body that carries out inspections of licensed immigration consultants.

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

484. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 31-32

485. Interview with senior official, General Directorate of Federal Labour Inspections, Ministry of Labour and Social Welfare, Mexico City, 2 March 2020.

486. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

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

488. Representative from recruitment agency, interview, Mexico City, February 2020.

489. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 32

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

491. Government of Mexico, “LOS 3 EJES DE LA REFORMA AL SISTEMA DE JUSTICIA LABORAL Y NEGOCIACIÓN COLECTIVA”

492. Government of Mexico, “Recupera Centro Federal Laboral 248 millones de pesos a favor de los trabajadores, vía conciliación”, (26 January 2021).

493. *Immigration and Refugee Protection Regulations (SOR/2002-227)*, regulations 209.1 to 209.92, (2002).

494. “Protect migrant workers or face consequences, Ford and Trudeau warn farmers”, *the Canadian Press*, (22 June 2020); Government of Canada, “Temporary Foreign Worker”, (18 March 2021); and Government of Canada and Government of Ontario, “Temporary Foreign Worker Program Information Sharing Agreement”, 23 July 2014, obtained through Access to Information (ATI) request to ESDC A-2018-02770.

Federal inspection of employers

Until 2011, the federal government had only played a role in the initial approval for employers to hire migrant workers, but did not have mechanisms to monitor or enforce the employers' compliance after workers' arrival. Some observers have accused the government of having "shirked responsibility" in this respect.⁴⁹⁵ After much criticism, revisions to the *IRPA* and *IRPR* that came into force in 2015 mandated federal agencies to carry out onsite inspections to assess whether employers were among other things making "reasonable efforts to provide a workplace that is free of abuse".⁴⁹⁶ A 2017 Auditor General report was critical of the inspection programme, though the report's findings were weighted less towards worker protections and more towards failures to strictly implement the protectionist labour market policies of the TFWP, protecting jobs for Canadians and residents.⁴⁹⁷

ESDC and Service Canada - "ESDC/Service Canada inspectors" - are responsible for conducting inspections of employers' compliance. Inspections under the TFWP assess employer compliance with at least 22 different criteria. Six relate to the protection of migrant workers' rights, including one specific to the conditions of live-in caregivers, with the remainder focusing on whether employers are doing enough to provide jobs for Canadians and residents, and the quality of their record keeping. The six rights-related criteria assess whether employers:

- Comply with **federal and provincial laws** that regulate employment and recruitment.
- Provide workers with employment in the **same occupation** as stated in the offer of employment.
- Provide workers with **wages and working conditions** that are "substantially the same but not less favourable" than in the job offer.
- Make "reasonable efforts" to provide a **workplace**

free of abuse. Workplace abuse is defined as "physical abuse, including assault and forcible confinement; sexual abuse, including sexual contact without consent; psychological abuse, including threats and intimidation; [and] financial abuse, including fraud and extortion."⁴⁹⁸

- Provide **live-in caregivers** (not applicable to other sectors) with "adequate furnished and private accommodations in the household".⁴⁹⁹

As of January 2021, employers could be found "non-compliant" for 24 reasons, largely derived from the inspection criteria - covering worker protections, labour market protection, and employer cooperation and documentation - and including five reasons that relate directly to migrant rights regarding Covid-19, quarantine and isolation.⁵⁰⁰

According to ESDC public documents, there are approximately 22,000 employers employing migrant workers under the TFWP, and ESDC carries out around 2800 inspections per year, representing just less than 13% of all relevant employers.⁵⁰¹ Government data disclosed through ATI requests, providing information about TFWP inspections until 2018, shows:

- **Total number of inspections:** ESDC carried out 3,441 inspections in the 2015/16 financial year (1 April to 31 March), 3,549 inspections in 2016/17 and 2,888 in 2017/18.⁵⁰²
- **Inspection processing time:** Government data shows that completed cases under the SAWP took an average of 148 days in 2016/17, and 270 in 2017/18. Non-SAWP cases took an average of 156 days in 2016/17 and 213 days in 2017/18.⁵⁰³ The time taken to process inspections, particularly when workers make complaints, has been criticised, particularly as little information is provided to complainants during this period. This issue is explored further in section 7.

495. Sarah Marsden, Eric Tucker and Leah Vosko, "Federal Enforcement of Migrant Workers' Labour Rights in Canada", *SSRN*, (January 2020).

496. *Regulations Amending the Immigration and Refugee Protection Regulations Amendments*, Vol. 148, No. 1, 1 January 2014.

497. Office of the Auditor General of Canada, "Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada", (Spring 2017).

498. The question of what constitutes "reasonable efforts" in this context remains contested. According to an article in the *Canadian HR Reporter*, the Federal Court in *Obeid Farms v. Canada (Minister of Employment and Social Development)* 2017 found that "even though the employer did not have specific anti-abuse policies in place, that did not mean that an abuse situation existed on the farm. That finding constituted a reviewable error and was referred back to the Minister for redetermination. The court held that in so doing, it would provide the Minister with the opportunity to publish further guidelines for small employers as to what reasonable efforts regarding abuse situations are expected under the SAWP".

499. Government of Canada, "Temporary Foreign Worker Program compliance", (29 April 2021).

500. Government of Canada, "Employers who have been found non-compliant", (5 May 2021).

501. Government of Canada, "The Temporary Foreign Worker Program and compliance regime"

502. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

503. Employment and Social Development Canada (ESDC), "Processing Time of Completed Cases", (1 January 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of processing times of ESDC employer inspections under the Temporary Foreign Worker Program.

- Paper-based vs on-site inspections:** Most inspections were paper-based. A 2017 Auditor General report criticised the fact that the ESDC “conducted few on-site inspections and face-to-face interviews with employers or temporary foreign workers”.⁵⁰⁴ However, the number of on-site inspections gradually increased during this period, rising from just 4 in 2015/16, to 111 (3%) in 2016/17 and 851 (29%) in 2017/18.⁵⁰⁵ A 2020 study on federal enforcement suggests that the increase in onsite inspections explains why the overall number of inspections dropped during this period, as onsite visits would be expected to take longer. The study however notes that in the manual for inspections “although the regulations themselves allow for extensive onsite inspections, paper-based inspections remain implicitly framed as the norm, and onsite inspections the exception”.⁵⁰⁶ A union representative told us that the Auditor-General’s report had spurred on action, but “still each employer gets one inspection every 3 or even 5 years, at most. It’s not enough - they said they would do more.”⁵⁰⁷
 - Provinces:** Four provinces accounted for most federal inspections. About half of both paper-based and onsite inspections in 2016-17 and 2017-18 took place in Ontario and Alberta, while Quebec and British Columbia between them accounted for approximately a third.⁵⁰⁸
 - Industries:** between 2015-16 and 2017-18, the main sector inspected under the TFWP regime through paper-based reviews was accommodation and food services (around 25% over this period). In terms of onsite inspections, in the first half of 2017-2018 caregiving (30%) and agriculture (28%) dominated.⁵⁰⁹ In 2017-18, 336 inspections (more than 10% of all TFWP inspections) were for employers operating under the SAWP, with another 61 under the primary agriculture stream.
 - Triggers for inspections:** Inspections can be conducted as part of a random inspection programme (“random selection”), on receipt of a complaint (“reason to suspect”), or as a result of past employer non-compliance (“Known past non-compliance”).⁵¹⁰ The large majority of inspections are selected randomly (95% in 2016/17, 89% in 2017/18), with almost all other inspections during this period taking place because authorities had “reason to suspect”.⁵¹¹ The 2017 Auditor General report criticised the reliance on random inspections, arguing that a risk-based approach - focusing on specific sectors known to be problematic - would be more effective: “such an approach would also let the Department make the best use of its limited enforcement resources.” The ESDC accepted this recommendation, and in 2018 told Parliament that it had launched “a new risk-based predictive model to help identify who to inspect, prioritizing the highest-risk cases”, carrying out 1300 inspections using this model.⁵¹²
 - Announced / unannounced:** In 2017/18, 25 inspections out of 2888 (about 1%) were unannounced.⁵¹³ Unannounced inspections were not carried out before 2018 - the Auditor General’s 2017 report had specifically highlighted the fact that inspections were almost always declared to employers.⁵¹⁴ Unannounced inspections are “undertaken in situations where there is a high-risk of non-compliance and the safety of temporary foreign workers may be at risk”, according to ESDC.⁵¹⁵
- Inspectors can impose a series of measures on employers found to be non-compliant, including: warnings; administrative monetary penalties

504. Office of the Auditor General of Canada, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada](#)”, (Spring 2017).
 505. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
 506. Sarah Marsden, Eric Tucker and Leah Vosko, “[Federal Enforcement of Migrant Workers’ Labour Rights in Canada](#)”, SSRN, (January 2020):10.
 507. Elizabeth Kwan, Canadian Labour Congress, remote interview, 19 November 2020.
 508. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
 509. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
 510. Government of Canada, “[Temporary Foreign Worker Program compliance](#)”, (29 April 2021).
 511. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
 512. House of Commons, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada of the Spring 2017 Reports of the Auditor General of Canada](#)”, (December 2017).
 513. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.
 514. Office of the Auditor General of Canada, “[Report 5—Temporary Foreign Worker Program—Employment and Social Development Canada](#)”, (Spring 2017).
 515. Government of Canada, “[The Temporary Foreign Worker Program and compliance regime](#)”, (9 August 2018).

(AMP) ranging from CAD\$500 (US\$420) to CAD\$1M (US\$830,000); a ban from the TFWP and IMP (ranging from one year to permanent); their naming on the IRCC website with details of the violation/s; and the revocation or suspension of LMIAs. The precise measures are determined on a points-based system depending on factors such as past history and the type and severity of the violation.⁵¹⁶ Those gaining scores of 0 and 1 are given an opportunity to provide a justification and to carry out corrective actions.⁵¹⁷ Employers who carry out corrections adequately are termed “compliant with intervention”.⁵¹⁸ This is also sometimes termed “satisfactory with justification and compensation”, reflecting the fact that the corrective action often entails compensating migrant workers.⁵¹⁹

In 2017/18, of the 2,888 inspections completed for all employers under the TFWP, 1422 (49%) were found to be satisfactory i.e. compliant. A further 1317 (46%) were “compliant with intervention” i.e. non-compliances were identified, but effectively employers attained compliant status through corrections. Just 86 cases (2.9%) of definitive non-compliance were identified during the year, with 103 cases awaiting adjudication.⁵²⁰ The previous year had seen a similar pattern.

There is no specific data available about the main issues resolved through correction. In the first part of 2017-18, government data indicates with no further detail that employers made correction actions with respect to “wages, working [conditions and] document production”.⁵²¹ Within agriculture, ESDC reported that more than half of primary agriculture employers that took corrective actions made changes to accommodation. About a quarter required changes to wages paid, and the remaining quarter made changes to other working conditions and occupation.⁵²²

Where employers are found non-compliant (a score of 2 or more), their details - with information on which non-compliance/s were identified and what

penalty they received - are made available publicly online on a consolidated IMP/TFWP list. This causes, as the Canadian Bar Association notes with concern, “reputational damage” to these companies.⁵²³ Analysis of the public list as of January 2021 finds:⁵²⁴

- **Number of named companies, and when they were added to the list:** 273 companies were named on the database. 94 were added in 2017 and 2018 and 177 in 2019 and 2020, showing an increase since the system’s introduction. 56 of the total cases (including 6 in 2019) related to incidents that took place before December 2015, demonstrating the time lag between inspections and the naming of companies.
- **Provinces hosting companies:** 80% of the companies named as non-compliant under the federal inspection regime were from four provinces: Ontario (99), Alberta (44), Quebec (43) and British Columbia (36), which is broadly in line with the pattern of inspection activity. Five companies were located in the USA.
- **Reasons for being named as non-compliant:** the most common reason employers were named was for criteria 6 “the employer didn’t give the inspector the documents they asked for”. 95 companies were named solely for this reason and a further 35 were named for this reason alongside other issues. The other common reason related to worker conditions, with 52 companies named solely for criteria 9, offering pay, conditions, or work that didn’t match what was in the offer of employment, and a further 22 named for this alongside other issues. 17 employers received fines for not being involved in the business they had hired the worker for, which may reflect non-compliance with LMIA restrictions. 56 companies were named for unspecified reasons as their non-compliance was before December 2015. Just two employers were penalised for failing to provide a workplace free of abuse. It is unclear whether any employers were penalised in relation

516. Government of Canada, “Temporary Foreign Worker Program compliance”, (29 April 2021).

517. Sarah Marsden, Eric Tucker and Leah Vosko, “Federal Enforcement of Migrant Workers’ Labour Rights in Canada”, SSRN, (January 2020): 12.

518. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (26 April 2018): 5, obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

519. Sarah Marsden, Eric Tucker and Leah Vosko, “Federal Enforcement of Migrant Workers’ Labour Rights in Canada”, SSRN, (January 2020): 12.

520. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (31 January 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

521. Employment and Social Development Canada (ESDC), “Facts and Figures TFWP”, (26 April 2018), obtained through Access to Information (ATI) request to ESDC A-2018-00541, operational data and analysis of ESDC employer inspections under the Temporary Foreign Worker Program.

522. Ibid.

523. Canadian Bar Association, “Express Entry System and Temporary Foreign Worker Program”, (April 2016).

524. Government of Canada, “Employers who were found non-compliant”, (5 May 2021).

to the payment of recruitment fees, which would be most likely to fall under criteria 8 - breaking federal, provincial or territorial employment and recruitment laws.

- **Bans applied:** A total of 60 companies have been banned from employing migrant workers for various time periods since the introduction of the federal inspection regime, and named in the public list of non-compliant employers. Of those, 55 companies were named in relation to incidents that took place prior to December 2015 and received two year bans from the IMP or TFWP - there were no fines before then. Since December 2015, four employers have received one year bans alongside fines of more than CAD\$20,000 (US\$16,500).
- **Financial penalties applied:** the most common penalty was a fine of CAD\$1,000 (US\$830) or less,

which was applied to 43% of all companies on the list and almost all companies named for failing to provide documentation. For non-compliance only related to criteria 9 (giving workers pay, conditions, or work that didn't match their offer of employment), employers were fined on average CAD\$2,365 (US\$2,000). Out of 217 employers that received fines in this three year period, 190 paid less than CAD\$5,000 (US\$4,100). A smaller number of employers - almost all of whom were penalised for more than one reason - were fined more significant amounts. For example, a combination of criteria 4 (false declarations in the LMIA process) and 9 (pay and working conditions not in line with the contract) resulted in three employers being fined an average of CAD\$22,333 (US\$18,500).

Reason fine issued	No of fines 2017 - 20	Total value of fines (CAD \$)	Average fine (CAD \$)
1. Couldn't show that offer of employment was true	8	\$19,250	\$2,406
2. Didn't keep documents showing they met conditions of employing a temporary worker	1	\$500	\$500
4. Couldn't show that the job description on the LMIA application was true	1	\$1,000	\$1,000
5. Didn't show up for a meeting with the inspector	0	\$0	\$0
6. Not producing documents requested	95	\$98,500	\$1,037
8. Broke applicable laws on employment or recruitment of migrant workers	2	\$2,000	\$1,000
9. Pay, conditions, or work didn't match offer of employment	52	\$123,000	\$2,365
15. Employer not actively engaged in business that worker hired for	3	\$11,000	\$3,667
17. Failure to provide a workplace free of abuse	1	\$30,000	\$30,000
20. Failure to provide agreed wages when worker required to isolate or quarantine	3	\$21,000	\$7,000
Both 1 & 9	2	\$16,250	\$8,125
Both 4 & 9	3	\$67,000	\$22,333
Both 4 & 15	1	\$16,000	\$16,000
Both 6 & 15	9	\$123,500	\$13,722
Both 6 & 9	11	\$33,500	\$3,045
All of 5, 6 & 8	1	\$49,750	\$49,750
Other mixed criteria	24	\$73,750	\$3,073
Total / Average	217	\$686,000	\$3,161

Key takeaways from this snapshot of federal inspection activity are that:

- While onsite inspections have increased, the majority - until 2018 at least - were still paper-based.
- The vast majority were conducted according to a randomised programme, rather than being based on complaints, past behaviour or other risk factors.
- Processing of inspections took between six and nine months, depending on the sector.
- The vast majority of non-compliances are dealt with through corrective measures. While nearly half of employers were found non-compliant at the point of inspection, only 2.9% of employers who were inspected faced consequences for being non-compliant. Little information is publicly available about the large number of employers found “compliant with intervention” after taking corrective actions and/or compensating workers.
- Of the 217 companies who were fined for non-compliance between 2017 and 2020, using the federal government’s new powers to issue fines, more than half were fined CAD\$1,000 (US\$830) or less for issues with documentation. 87% were fined less than CAD\$5,000 (US\$4,100). 55 companies were banned from hiring migrants during this period.

2021 saw some much larger fines in the context of Covid-19, with two employers receiving fines of CA\$200,000 (US\$165,000) or higher, including for violations related to the revised Quarantine Act due to COVID-19.

Providing public information on the number and type of corrective actions, and the dollar amounts compensated to workers would provide a more complete picture of the effectiveness of the inspection regime, and the level of protections provided to migrant workers. However, based on available information, the overall picture is of an inspection regime that is still in development in terms of its capacity to carry out onsite investigations, and which seeks primarily to improve employers’ compliance through giving them warnings and opportunities to correct issues identified. Marsen, Tucker and Vosko call this a “compliance orientation”, noting that the ESDC inspection manual encourages inspectors to be “remedial, rather than adversarial:

work with employers during the inspection to educate them about their responsibilities under the IRPR and assist them to comply with TFWP conditions.”⁵²⁵ In the relatively rare cases where penalties are issued, fines are normally so low that they may not present a deterrent. Only in a handful of cases (27 in a four year period) were employers been fined more than CAD\$5,000 (US\$4,100). This is consistent with ESDC’s perspective on the inspection programme: “The Department’s goal is to work with employers to bring them into compliance so that everyone is on a level playing field. This means that investments in the Program’s compliance regime shouldn’t be considered punitive to employers who don’t follow the rules but as an investment in employers who do.”⁵²⁶

This cautious approach is a shift in tone from the previous government’s narrative, which in 2014 announced in its overhaul of the TFWP that it was introducing “stronger enforcement and tougher penalties”.⁵²⁷ This may reflect an attempt to respond to criticism from entities like the Canadian Bar Association, which in 2016 argued that “TFWP users now face virtually unrestrained powers of inspection, punitive compliance measures and potentially crippling financial penalties, all without due process or adequate recourse” - and called for the government to “move away from the ‘law and order’ enforcement approach”.⁵²⁸ Farming bodies have complained specifically about the behaviour of inspectors, which they say causes anxiety for farmers. The Western Agriculture Labour Initiative said in 2018: “It is a common complaint from farm operators that some [Service Canada] Integrity Services Division field workers are abrupt and discourteous. We feel this is mainly a result of sending untrained ESDC personnel to farms and a lack of leadership. Growers do not know what to expect of an audit...Many farm operators feel abused and mistreated by government officials, but fear to make a complaint because access to adequate labour through the SAWP program is critical to their business.”⁵²⁹

A Mexican consular official with responsibilities over the SAWP told us that in his view, while the increased number of federal inspections in recent years was a “positive step”, there were still many areas for improvement. In particular, he said, “the resources

525. Sarah Marsden, Eric Tucker and Leah Vosko, “Federal Enforcement of Migrant Workers’ Labour Rights in Canada”, SSRN, (January 2020): 10

526. Government of Canada, “The Temporary Foreign Worker Program and compliance regime”, (9 August 2018).

527. Government of Canada, “Overhauling the Temporary Foreign Worker Program”, *Employment and Social Development Canada* (2014).

528. Canadian Bar Association, “Express Entry System and Temporary Foreign Worker Program”, (April 2016).

529. WALI, “Issues and Solutions: The Seasonal Agricultural Worker Program”, (2 May 2018).

being allocated, like the number of inspectors, is not at the necessary level.”⁵³⁰ Mexican agricultural workers we spoke to had generally not experienced inspections by Canadian officials - despite coming to the country for many years - and mainly recounted experiences of visits by Mexican consular officials. The consulate in Toronto, responsible for Ontario, told us they carry out about 50 farm visits per year, out of a total of 855 farms participating in the SAWP.⁵³¹ A Mexican academic told us that inspections by Canadian federal and provincial governments are often “staged” by employers, since employers often know when inspections will take place, and workers will be asked, for example, to leave their rooms in the case of housing inspections.⁵³² One woman who had worked in Canada for more than 20 seasons said that she had never been at a farm visited by a Canadian inspector until the Covid-19 pandemic, when her employers had concealed her and her colleagues from Canadian officials for two hours, in order that the numbers of women sharing accommodation seemed acceptable: “do you know what they did to us? ... they locked us in the dining room ... there are 16 in the house where I live, 8 or 10 women have been taken there, it looked perfectly fine [to the inspectors].” It was not clear whether the officials in question were federal or provincial.⁵³³

During the pandemic, the federal government faced particular scrutiny over its actions to ensure the protection of migrant workers, in particular in the agricultural sector. Accommodation conditions - which in many cases may not adequately allow for social distancing or self-isolation - were a particular concern. In March 2020 inspections were halted entirely. In April 2020 ESDC introduced new requirements for employers to meet, and amended inspection requirements, reducing the timelines for employers to respond to questions from officials. At the same time it announced that all inspections would be conducted virtually.⁵³⁴ A government representative told the Senate that, “the employer provides live video of the premises showing different locations as directed by the inspector, and it enables the inspector to view all living and working environments and to interview

temporary workers on the spot for their input”.⁵³⁵ There are clearly serious questions about how an inspector can adequately carry out their role in such circumstances, in particular how migrant workers could be expected to speak openly about their conditions and concerns when their employer was holding the camera. A union representative told us that, “virtual inspection is not good enough, we’ve still had outbreaks and workers dying.”⁵³⁶ By June 2020, Mexico had stopped the migration of migrant workers to Canada, concerned at the rate of infections, in what an official said was a “a temporary pause in order to determine the circumstances surrounding the safety conditions on farms”.⁵³⁷ In July 2020 the federal government announced it would be “strengthening the employer inspections regime” with an investment of CAD\$16.5M (US\$13.6M), and in August ESDC resumed onsite inspections to deal with “serious allegations of worker mistreatment, or health and safety concerns”, but virtual inspections continued to be used for what were deemed as low-risk cases.⁵³⁸ In its Budget 2021 the federal government announced an additional CAD\$54.9M (US\$45.5M) over three years to increase inspections of employers of migrant workers.⁵³⁹

Provincial inspections of employment, workplace safety, and labour recruitment

Canada’s provinces conduct inspections to enforce compliance with provincial laws and standards on employment, labour recruitment, and workplace safety - including in relation to migrant workers. While these operate under a distinct legal framework from federal inspections, recent years have seen an increase in initiatives to coordinate provincial and federal efforts, including through joint inspections and information sharing. As the most populous province, host to the most migrant workers under the TFWP, Ontario offers an important example of how labour inspection is conducted at the provincial level. The province shares some data about its inspection activities.

In early 2020 the province employed 175 labour inspectors (“employment standards officers”), according

530. Interview with senior official, Embassy of Mexico in Canada, Ministry of External Relations, Ottawa, 3 March 2020.

531. Interview with Consular officers, Mexican Consulate in Toronto, Ministry of External Relations, Toronto, 4 March 2020.

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

533. Remote interview, 15 July 2020.

534. Government of Canada, “[Compliance inspections for Employers of the Temporary Foreign Worker Program during the COVID-19 pandemic](#)”, (24 April 2020).

535. Senate, “[Debates of the Senate](#)”, 1st session, (16 June 2020).

536. Santiago Escobar, United Food and Commercial Workers (UFCW) union, remote interview, 18 February 2021.

537. Paula Newton, “[Mexico temporarily forbids workers to go to Canada due to coronavirus](#)”, CNN, (16 June 2020).

538. Government of Canada, “[Inspections for the Temporary Foreign Worker Program during COVID-19](#)”, (29 October 2020).

539. Government of Canada, “[Minister Mendicino highlights immigration investments in Budget 2021 in support of Canada’s economic recovery](#)”, (12 May 2021).

to officials.⁵⁴⁰ This is a reduction on the numbers in 2018, which had stood at 271 after an effort by the previous Liberal administration to increase the province's inspection capacity.⁵⁴¹ Bill 148, passed early in 2018, planned to double the province's capacity of 175 to 350 with the aim of "stepping up enforcement";⁵⁴² in response to a 2016 independent review which concluded there was a "serious problem" with the enforcement of ESA provisions.⁵⁴³ The incoming Progressive Conservative administration, which won power in mid-2018, reversed the decision to hire more inspectors as part of budget cuts, with the Ministry of Labour telling media that "digital service delivery" would reduce employer non-compliance and "allow Ministry of Labour inspectors to focus on high-risk employers".⁵⁴⁴ However in March 2020, Ontario officials told us they were currently in the process of hiring 20 more inspectors, and jobs were being advertised, suggesting that policy on this issue was not settled.⁵⁴⁵ Officials told us that it takes approximately a year for inspection officers to become proficient at their roles, including obtaining the soft skills needed to operate effectively.⁵⁴⁶

In 2019/20, Ontario carried out a total of 18,965 "claim investigations", meaning that they responded to complaints made to the Ministry, and 2,490 "proactive inspections". 11 Inspectable Standards are evaluated during a workplace inspection: the Employment Standards Act Poster Requirement; Wage Statements; Unauthorized Deductions; Record Keeping; Hours of Work; Eating Periods; Overtime Pay; Minimum Wage; Public Holidays; Vacation with Pay; and Temporary help agencies charging employees fees and providing information.⁵⁴⁷ The top five violations found by officials were the same in both proactive and reactive inspections, with some variation in the order: wage payment; termination pay; vacation pay and time; public holidays and associated pay; and overtime pay.⁵⁴⁸ Proactive inspections are carried out as part

of focused initiatives (until 2018/19 termed "blitzes") lasting a discrete period of time, each concentrated on a particular group designated as vulnerable - for example young workers or migrant workers - or a higher risk industry such as construction or employment agencies. Both forms of inspection result in similar rates of non-compliance identification: between 75 - 80% of the time, according to the province's 2016 review.⁵⁴⁹

The fact that there are significantly fewer proactive inspections than claim investigations has been the subject of substantial critical focus. A 2016 review of the province's employment standards enforcement mechanisms noted: "It has long been a goal of the Ministry of Labour to continually increase the number of proactive inspections it conducts. That goal is, however, balanced with the need to limit wait times for claim investigations. More resources are currently allocated to reactive rather than proactive measures."⁵⁵⁰ Four years later, provincial officials told us that a key objective of the province remained maintaining complaint backlogs to a minimum and to conduct inspections promptly. The average claim inspection takes about 2 months to complete, they said.⁵⁵¹

Employee and labour advocates have called for higher numbers of proactive inspections, arguing that they are more effective in securing remedy for workers: a Freedom of Information request by the Star newspaper revealed that in the previous year, around one-third of unpaid or illegally deducted wages were recovered following claim investigations, in comparison to nearly 100% in proactive inspections.⁵⁵² The other reason analysts and advocates caution against a reliance on complaints is that so many workers may be reluctant to complain. The 2016 Ontario review noted that around 90% of complaints are made by people who have left their jobs voluntarily or after they have been terminated, suggesting that people in their jobs feel less able to

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

541. Global News, "Protect migrant workers or face consequences, Ford and Trudeau warn farmers", (22 June 2020)

542. Government of Ontario, "A plan for fair workplaces and better jobs (Bill 148)", (22 November 2017).

543. Government of Ontario, Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).

544. Sara Mojtehdzadeh, "Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals", *Toronto Star*, (10 June 2019).

545. Government of Ontario, Ministry of Labour, Training and Skills Development, "How to Apply: Employment Standards Officer", (December 2019).

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

547. Leah F. Vosko, Eric Tucker and Rebecca Casey, "Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability", *International Journal of Comparative Labour Law and Industrial Relations*, (2019).

548. Government of Ontario, Ministry of Labour, Training and Skills Development, "Claim and Inspection Statistics", (10 July 2020).

549. Government of Ontario, Ministry of Labour, Training and Skills Development, "Changing Workplaces Review Special Advisors' Interim Report", chapter 5.5, (27 July 2016).

550. Ibid.

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

552. Sara Mojtehdzadeh, "Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals", *Toronto Star*, (10 June 2019).

alert the authorities.⁵⁵³ Relying heavily on complaints is likely to skew enforcement efforts towards sectors of the economy and categories of worker where there is less reason to be fearful of employer reprisal - for example where workers are more likely to have permanent residence status. Migrant workers are in positions of enhanced vulnerability due to their immigration status and may be less likely to complain, as noted in sections 1.6 and 7. Ontario officials told us that fear of reprisal is “a real concern that stops many workers from filing complaints”, acknowledging that the fact that federal TFWP permits are closed is a “complicating factor” and welcoming the new open permit for workers in vulnerable situations.⁵⁵⁴ An IRCC report noted that in 2019-20, Ontario inspections under the Employment Protection for Foreign Nationals Act were mostly proactive, which may suggest that migrant workers are indeed reluctant to make claims and/or that officials are seeking to address this issue with increased proactive inspections, although no figures were provided.⁵⁵⁵

For employers found to have violated the Employment Standards Act - and/or, in relation to migrant workers, the Employment Protection for Foreign Nationals Act - the officer can issue a non-monetary compliance order, requiring an employer to stop contravening a provision and to take certain steps to comply. An officer can also issue an order to pay wages owing to the employee. If they do not comply with orders, companies can be issued “tickets”, which involve the payment of a fine, normally in the hundreds of dollars. Finally, companies may be prosecuted.⁵⁵⁶ However, in a large number of cases, non-compliances are settled through the repayment of wages to employees. For example, a 2018 four-month “blitz” on the construction sector saw officers use 1,463 compliance tools - including 1,324 compliance orders - against 695 companies, out of a total of 1266 companies they inspected. 93% of companies voluntarily complied, recovering CAD\$1.56M (US\$1.3M) for employees.⁵⁵⁷

The 2016 independent review commissioned by the province highlighted the concern that a combination of unwillingness to complain, and the low consequences of non-compliance for employers, may significantly undermine the enforcement system: “some employers are confident that because their employees will not complain, and the likelihood of government inspection is very low, non-compliance is a risk worth taking calculating that if they are caught, they can extract themselves from the legal consequences of non-compliance without much difficulty and with trivial costs.”⁵⁵⁸

Vosko, Tucker and Casey have also highlighted specific concerns about the rate of inspections within Ontario’s agricultural sector, finding in an analysis of data shared with their institution that in the four years between 2012/13 and 2015/16 only 172 agricultural workplaces were inspected, or on average forty-three a year. In 2016, 12,305 farms reported having hired labour, suggesting that “about one-third of a percent of these farms were inspected annually”.⁵⁵⁹ It is notable that none of Ontario’s proactive “blitz” initiatives since 2012-13 have focused on agriculture, despite the widely documented risks in the sector.⁵⁶⁰ Ontario provincial officials told us that in 2019 they had run a one-year pilot initiative where provincial Workplace Safety Insurance Board inspectors developed information sharing agreements with SAWP country of origin consulates and determined which farms to inspect based on this shared information. Officials said the information consulates provided was useful to help determine which farms were of higher risk, though the scheme did not have as much involvement from the consulates as the province would have liked.⁵⁶¹

In June 2020, responding to public concerns on the conditions of migrant agricultural workers, after the deaths of three workers from Covid-19, the federal and Ontario governments announced that they would conduct additional joint inspections of farms, with the Ontario Premier warning of “extreme” actions against farmers who did not cooperate with the authorities on health protocols.⁵⁶² The province said it would conduct

553. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Changing Workplaces Review Special Advisors’ Interim Report](#)”, chapter 5.5, (27 July 2016).

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

555. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):59

556. Ibid.

557. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Inspection initiative results: Construction](#)”, (4 November 2019).

558. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Changing Workplaces Review Special Advisors’ Interim Report](#)”, chapter 5.5, (27 July 2016).

559. Leah F. Vosko, Eric Tucker and Rebecca Casey, “[Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability](#)”, *International Journal of Comparative Labour Law and Industrial Relations*, (2019). h

560. Government of Ontario, Ministry of Labour, Training and Skills Development, “[Proactive Employment Standards Inspections](#)”, (July 2018).

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

562. Sara Mojtehdzadeh, “[Labour ministry to reduce number of inspectors probing workplace abuse, union memo reveals](#)”, Toronto Star, (10 June 2019).

more than 200 on-farm inspections, without specifying the time period.⁵⁶³ A November 2020 preventive strategy published by the Ministry of Agriculture, Food And Rural Affairs, designed to protect agricultural workers during the 2021 season, recommended that the government “collaborate on a streamlined approach to inspections of agriculture worker dwellings (e.g., ESDC, public health units) to ensure that a COVID-19 prevention and mitigation lens has been applied to address any gaps and that multiple, duplicative inspections are avoided.”⁵⁶⁴

Faraday has raised concerns with respect to the specific enforcement of the EPFNA - as distinct from the ESA - noting in her 2014 report that “when EPFNA was introduced [in 2010], no new positions were created within the Ministry’s Employment Standards Program to administer the new legislation”, and highlighting the small number of enforcement actions against recruiters, particularly in respect of illegal fee charging.⁵⁶⁵ A Toronto based lawyer also told us that in his experience the EPFNA is not well-known or applied.⁵⁶⁶ It is not clear that this situation has changed since 2014. In a nearly six month proactive compliance initiative in 2019 - 2020 which focused on “repeat violators, temporary help agencies and workplaces that employ temporary foreign workers”, the province found non-compliance in 277 out of 831 inspected employers (33%), recovering \$322,160 (US\$266,850) for employees. While the initiative had the enforcement of the EPFNA in its mandate, illegal fees and other specific recruitment-related concerns do not feature in the list of issues identified.⁵⁶⁷ Ontario officials told us they processed far fewer claims in relation to the EPFNA than the ESA.⁵⁶⁸

Inspections of immigration consultants by the Immigration Consultants of Canada Regulatory Council

The ICCRC, the industry’s self-regulatory body described in section 4, carries out “compliance audits and inspections (including financial inspections)” of licensed

immigration consultants. (Criminal investigations of licensed and unlicensed immigration consultants are the responsibility of the CBSA, as discussed in 5.3). The ICCRC’s audits are designed to assess whether members comply with the ICCRC’s Code of Professional Ethics. All members submit documents to the ICCRC once a year, which are subject to a “spot audit” - if there are any issues identified they must be corrected within 30 days.⁵⁶⁹

Beyond this, the ICCRC carries out “investigations” in response to complaints, 4551 of which have been received since the institution’s establishment (an average of 506 per year) - 3032 relating to registered consultants.⁵⁷⁰ Complaints are managed by the Complaints and Discipline department.⁵⁷¹ Concerns have repeatedly been raised about the lack of teeth of the ICCRC. The head of the ICCRC has acknowledged weakness in its capacity, telling media that “it’s fair to say that prior to 2018, the council did not have an efficient complaints and discipline process,” and arguing that the organization had been “set up to fail” by the government.⁵⁷² A parliamentary committee examining the regulation of immigration consultants heard cases where consultants who were under criminal investigation as a result of complaints were not suspended from the register of consultants and remained able to practice, because their guilt had not yet been proven in law.⁵⁷³ An immigration consultant told us: “There is a lack of resources and skills within the ICCRC to do [investigation]. They have never quite lived up to what they should have done.”⁵⁷⁴

As well as skills, the other concern that has been raised about the enforcement ability of the ICCRC relates to deficiencies in its authorities - for example to carry out investigations of unauthorised “ghost consultants”.⁵⁷⁵ Immigration consultants told us that some of the most egregious cases of exploitation involve unregistered consultants outside Canada charging fees to secure non-

563. Government of Ontario, “Ontario Moving Toronto and Peel Region into Stage 2”, (22 June 2020).

564. Government of Ontario, Ministry of Agriculture, Food and Rural Affairs, “Prevention, Control and Outbreak Support Strategy for COVID-19 in Ontario’s Farm Workers”

565. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, *Metcalf Foundation*, (April 2014): 62.

566. Toronto lawyer, remote interview, 20 January 2021.

567. Government of Ontario, Ministry of Labour, Training, and Skills Development, “Compliance initiative results: vulnerable workers”, (6 November 2020).

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

569. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

570. ICCRC, *Annual report 2020*.

571. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

572. Brian Hill and Jeff Semple, *Arrest of immigration consultant sparks questions about why regulator didn’t act sooner*, *Global News*, (25 February 2020).

573. House of Commons, *CIMM Committee Report, Starting again: improving government oversight of immigration consultants*, (4 October 2016).

574. Immigration consultant, remote interview, 4 December 2020.

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

existent jobs.⁵⁷⁶ An immigration consultants organisation also told us that, “the ICCRC can’t go into an office and ask for files. The College [of Immigration Consultants] will have that right. The ICCRC cannot act on news - the College will. The ICCRC cannot act on anonymous tips. The College will be able to.”⁵⁷⁷ The ICCRC told us they were confident that legislative amendments introduced by the government in 2019, creating the College of Immigration Consultants, will help address many of these issues.⁵⁷⁸ In introducing the Act, the government highlighted that the College would have both the “the ability to enter the premises of a consultant for investigations when it suspects wrongdoing and the ability to request court injunctions against unauthorized consultants.”⁵⁷⁹ The ICCRC was empowered to do all of these things under its governing statutes, which stated that investigators may “require the production of and examine any document or thing that is relevant to the investigation, including a client file”, and that they “may be instructed to investigate information [that] comes from ... [an] apparently reliable source [or] ... suggests that a non-Member or suspended Member or RISIA may be practising unlawfully as an immigration/citizenship consultant”.⁵⁸⁰ However the new regulator will have those powers established by federal law.

The outcomes of the ICCRC complaints process is addressed in more depth in section 7.

5.3 Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment?

Mexico

Between 2005 to 2018 the NGO CDM received about 6,500 reports from people who paid an average

recruitment fee of more than 9,000 pesos (US\$450) for a job that didn’t exist, which the organisation points out represents the equivalent of more than three months of a minimum wage Mexican salary.⁵⁸¹ CDM, which has a focus on Mexico-US labour migration, argues that these numbers “likely represent only a fraction of the Mexican population affected by fraud” and that “neither U.S. nor Mexican laws provide an efficient mechanism for workers to seek justice”.⁵⁸² The US State Department reported in 2020 that “[Mexican] authorities did not report efforts to inspect, regulate, or hold accountable delinquent labor recruiters.”⁵⁸³

Neither the RACT nor the Federal Labour Law explicitly criminalise fraudulent recruitment or spell out what would constitute such an offence, something that a senior STPS official told us was problematic, as it left STPS unable to play a role in enforcement of the crime.⁵⁸⁴ The RACT simply requires that if STPS finds “non-compliance with legal provisions related to the matter of placement of workers, whose application and monitoring is the responsibility of other parts of the Federal Public Administration”, it must notify those agencies within 5 business days, sending a copy of the respective inspection for legal purposes.⁵⁸⁵ Similarly, with respect to criminal activities, the RACT simply states that “if during the performance of monitoring or inspection activities, it is detected that there is the possible commission of a crime, the labour authorities will file a complaint of the facts with the responsible public ministry.”⁵⁸⁶ A registered recruiter told us about an unregistered operator that had cloned his agency’s website and Facebook page in order to sell fake jobs in Canada to workers: “There is no one to file complaints within the STPS on a case like this, so a complaint has to be filed with the Mexican Police.”⁵⁸⁷ While victims of fraud theoretically have the right to report the crime to law enforcement authorities themselves under Article 386 of Mexico’s penal code, CDM report that “even when victims report fraud to the Public Ministry, authorities very rarely investigate fraud when it occurs on a small scale.”⁵⁸⁸

576. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.

577. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.

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

579. Government of Canada, “Government changes will strengthen the regulation of immigration and citizenship consultants”

580. Immigration Consultants of Canada Regulatory Council, “By-Laws 2016-1”, (12 November 2016).

581. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019): 11.

582. Ibid, 4 and 8.

583. US Department of State, 2020 Trafficking in Persons Report: Mexico, (2020).

584. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

585. Ministry of Labour and Social Welfare, “Reglamento de Agencias de Colocación de Trabajadores”, Article 30, (3 March 2006).

586. Ministry of Labour and Social Welfare, “Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores”, Article 30 Bis, (21 March 2014).

587. Representative from recruitment agency, remote interview, 18 December 2020.

588. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019).

While most issues appear to arise among unregistered agencies, a STPS senior official told us about a registered agent he understood to be charging workers 70,000 Mexican pesos (US\$3500) for recruitment services, promising them details of the job in Canada after they paid, but never delivering jobs. He told us that the biggest problem with proving fraud against such agencies - whether registered or not - is that, “there is no documentation that the workers sign or any proof, and at the end it is the worker’s word against that of the recruiter. In other words, it is a form of fraud through an oral contract.”⁵⁸⁹ A registered recruiter told us that “what we need most is for the government to do something about scams and frauds.”⁵⁹⁰

There have been some efforts to prosecute recruiters for fraud. In 2013 ProDESC filed a collective criminal complaint with the Sinaloa Prosecutor’s Office on behalf of fifteen men, seeking - according to the Solidarity Center “what would be the first-ever fraud conviction of a Mexican labor recruitment agent.”⁵⁹¹ Updates provided to us by ProDESC in January 2021 detail protracted legal processes around the case, which was still ongoing when Mexican courts closed in 2020 due to Covid-19.⁵⁹² CDM also notes the case of the Chambamex agency, which defrauded more than 3,000 Mexican workers in 19 states out of 60 million pesos (US\$3M) between December 2012 and April 2013, with the promise of jobs in the United States and Canada.⁵⁹³ Despite the scale of the fraud, only one attorney general’s office in one of the affected states - Zacatecas - processed and investigated the complaints. In 2018, CDM concluded that “Mexican authorities systematically failed to investigate the complaints against Chambamex.”⁵⁹⁴

Canada

The CBSA is responsible for enforcing immigration offences related to “fraudulent documents, misrepresentation [and] counselling misrepresentation”

while investigations and prosecutions of human trafficking cases fall under the auspices of the RCMP. CBSA therefore has responsibility for actions by unauthorized or authorized immigration consultants which go beyond “unethical or unprofessional” behaviour, the purview of the ICCRC regulator, into the territory of criminal activities.⁵⁹⁵

CBSA representatives have previously stated to Parliament that convictions are published on the ICCRC website, though in January 2021 no such data was available on the site, as far as we could ascertain. Data provided to Parliament shows that between 2011-16, the CBSA opened 217 investigations of immigration consultant-related IRPA offences, with charges laid in 44 cases, with 29 consultants convicted - an average of just under 5 per year. In 2016, out of 6 convictions, two cases received prison sentences.⁵⁹⁶ In 2017 and 2018, according to the Globe and Mail newspaper, the CBSA received 554 leads, carrying out 73 investigations. The newspaper also found that between 1 January 2014 and 31 December 2018, only 11 convicted consultants served time in prison.⁵⁹⁷

A CBSA official told a 2017 parliamentary committee review that obtaining evidence of immigration consultant fraud was challenging.

“Individuals are very hesitant to come forward and provide evidence to us. Generally when they do come forward, it’s when their immigration application has failed. We have tried to discuss this with people when we look for witnesses with respect to a criminal investigation. They are generally very hesitant. They are afraid. They view any questioning by CBSA as a possibility of their being deported from the country.”⁵⁹⁸

While the CBSA states that such fears on the part of migrant workers are unwarranted, experts have expressed concern about cases where this has happened. A 2014 report by the Metcalfe Foundation found that “some migrant workers who have attempted

589. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

590. Representative from recruitment agency, remote interview, 18 December 2020.

591. Jennifer Gordon, “Roles for Workers and Unions in Regulating Labor Recruitment in Mexico”, *Solidarity Center*, (January 2015): 10.

592. Written updates from ProDESC, on file with FairSquare Projects.

593. Centro de los Derechos del Migrante, “Fake Jobs for Sale: Analyzing Fraud and Advancing Transparency in U.S. Labor Recruitment”, (April 2019).

594. Eugenia Jimenez Caliz, “Defraudados por Chambamex piden ayuda a la PGR”, *Milenio*, (26 August 2014); Opinion board, “ONG en EU denuncia estafas a migrantes mexicanos para obtener visa temporal H-2”, *Proceso*, (15 October 2018).

595. House of Commons, *CIMM Committee Meeting*, (6 March 2017).

596. House of Commons, *CIMM Committee Report, Starting again: improving government oversight of immigration consultants*, (4 October 2016).

597. Kathy Tomlison, “False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada”, *the Globe and Mail*, (5 April 2019).

598. House of Commons, *CIMM Committee Meeting*, (6 March 2017).

to use the criminal law to combat exploitative recruitment practices that left them without status in Canada have been deported upon coming forward to provide evidence to authorities while their exploiters continued to operate unpunished”.⁵⁹⁹ A social worker in Ontario also strongly challenged the assertion that deportation is not a real risk for migrant workers reporting abuse:

“I have had cases where people bring forward claims, and have report 44s [a report written under Section 44 of the IRPA, if an officer has reason to believe an individual is in violation of immigration law] against them, and get referred to CBSA. I’ve been able to intervene to prevent that. In one case, traffickers reported workers as “escaped”, and they had to report weekly to CBSA because deportation proceedings were started against them. How can that happen to a victim of violence whose trafficker reported them?”⁶⁰⁰

The CBSA has also acknowledged to parliament that resources to tackle the phenomenon of unauthorised “ghost consultants” are “finite”, given that CBSA has only 200 investigators to cover its entire enforcement mandate. It therefore prioritizes cases based on their risk profile: “Generally, we go after individuals, or investigate individuals, who are the organizers of, let’s say, mass misrepresentation or mass fraud, rather than the one-offs.” It takes two to five years to build a case against a consultant and obtain a court verdict - with about a 95% conviction rate once the Public Prosecutor takes up a case.⁶⁰¹ More recently, the federal government announced new funding for IRCC to conduct administrative inspections of immigration consultants under a new monetary penalties and consequence regime, as well as for the CBSA to conduct additional criminal investigations of immigration consultants as part of a CAD\$48.3M (US\$40M) investment over 4 years as part of the implementation of the new *College of Immigration and Citizenship Consultants Act*.⁶⁰²

Criminal convictions for recruitment-related abuse remain relatively rare at the provincial level. The Ontario Ministry of Labour and Training conviction database lists convictions, since 2018, of businesses under the Employment Standards Act and their penalties. Only one conviction featured on the database involved a prison sentence, a restaurant owner who was jailed for 90 days after failing to pay wages to her employees, who may have been migrant workers - “many of the claimants did not speak English as a first language and required the assistance of an interpreter and of a legal aid clinic to file their claims.”⁶⁰³ It is unclear whether there have been any convictions against recruiters or involving the payment of recruitment fees during this period - there is no published information regarding convictions under the EPFNA which deals specifically with these issues.⁶⁰⁴ For instance, in a nearly six month proactive compliance blitz in 2019 - 2020 which targeted “repeat violators, temporary help agencies and workplaces that employ temporary foreign workers”, Ontario found 277 cases of non-compliance and recovered CAD\$322,160 (US\$266,850) for employees, but it did not list illegal recruitment fees or other recruitment violations as part of its findings even though enforcement of the EPFNA was part of the mandate of this particular proactive blitz.⁶⁰⁵ Ontario officials also told us that enforcement actions under the EPFNA are much rarer than under the ESA.⁶⁰⁶ The Metcalfe Foundation report states that between 2010-2013 there were 28 claims filed against recruiters (around 9 a year), with a total of CAD\$12,100 (US\$10,000) in illegal fees recovered for employees.⁶⁰⁷ A rare high-profile Ontario prosecution took place in 2017 against a recruiter who charged Indonesian workers fees for jobs in greenhouses in Leamington. According to media reports of the trial, the recruiter would send two men “to collect cash payments from the workers each week”. Fearing that they would lose their jobs and status if they failed to pay, the workers complied. After striking a plea deal, he was given probation, fined CAD\$300 (US\$250) and was ordered to make restitution of CAD\$15,380 (US\$12,700) to the three workers he exploited.⁶⁰⁸

599. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalfe Foundation, (April 2014): 11.

600. Shelley Gilbert, Legal Assistance of Windsor, remote interview, 2 February 2021

601. House of Commons, *CIIMM Committee Meeting*, (6 March 2017).

602. Immigration, Refugees and Citizenship Canada, “Re: Fairsquare findings on fair recruitment of migrant workers”, response provided by IRCC to FairSquare on file with FairSquare, (13 May 2021).

603. Government of Ontario, “Director Faces Jail, Corporations Fined \$900,000 for Failing to comply with orders to pay”, (31 July 2018).

604. Government of Ontario, Ministry of Labour, Training and Skills Development, “Prosecution and Conviction Statistics”, (30 April 2021).

605. Government of Ontario, Ministry of Labour, Training, and Skills Development, “Compliance initiative results: vulnerable workers”, (6 November 2020).

606. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020; Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):59.

607. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalfe Foundation, (April 2014): 62.

608. Sarah Sacheli, “Thieving recruiter ordered to return illegal fees he charged migrant workers”, *Windsor Star*, (10 February 2017).

Human trafficking

Human trafficking is investigated at the federal and provincial levels, with the RCMP leading federal efforts - though the federal government states the “vast majority” of investigation and prosecution takes place in the provinces.⁶⁰⁹ The focus of law enforcement bodies is generally on sex trafficking rather than labour trafficking. According to Statistics Canada, reports of trafficking to police, which have increased in number over the past decade are “predominantly sex trafficking.”⁶¹⁰ According to information provided by the Canadian government to the ILO, there were 428 cases between 2005 and 2017 where specific charges related to human trafficking were laid: “The majority of 408 domestic trafficking cases were for sexual exploitation, while the 20 international trafficking cases were primarily related to labour exploitation.” The longest sentence for human trafficking for forced labour involved a guilty plea and resulted in imprisonment of nine years.⁶¹¹

A Statistics Canada expert reported to parliament that between 2005-06 and 2015-16 there were 84 completed adult criminal court cases where a human trafficking offence was the *most serious offence*, of which 30% resulted in a conviction.⁶¹² This suggests 25 convictions in a ten year period, around 2-3 per year. As with convictions for recruitment fraud, law enforcement officials suggest the small number is partly because victims find it difficult to come forward: “Prosecuting traffickers has proven very difficult ... most survivors have been manipulated and convinced to be distrustful of police.”⁶¹³ An Ontario social worker supporting workers with legal cases told us that there was also a problem in that cases did not meet the threshold for prosecution because there was a failure to recognise the threat of termination and repatriation as an instrument of coercion on the part of employers: “I like to think it’s getting better with the criminal justice system. But ... everybody who prosecutes looks like us [i.e. they are white] - they don’t register the implications of being fired and repatriated as legitimate fear.”⁶¹⁴

Lawyers representing migrant workers have held the TFWP’s closed work permit system responsible, arguing that law enforcement authorities in some cases criminalise workers who complain rather than those responsible for their exploitation: “When [workers] do speak up about abuse, they are often subject to arrest, detention and removal from Canada for not fulfilling the conditions of their temporary residence or for working without authorization. Too often, little or no action is taken by law enforcement officials against the trafficker.”⁶¹⁵ In its 2019 response to a parliamentary committee report on human trafficking, the federal government pointed to the December 2018 introduction of the open work permit for workers in vulnerable situations as evidence of its commitment to address this issue (see section 1.6 on job mobility).⁶¹⁶ Since 2007, the federal government has also issued Temporary Resident Permits for victims of human trafficking to allow victims to escape the influence of the traffickers, or for “any other purpose that is relevant to facilitate the protection of vulnerable foreign nationals who are victims of human trafficking.”⁶¹⁷ A Senior IRCC officer told a Parliamentary Committee that in 2016, IRCC issued 66 Temporary Resident Permits to victims of human trafficking.⁶¹⁸

5.4 Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector?

Mexico

It is estimated that between 5% and 9% of Mexican GDP is lost every year to corruption. A 2015 Gallup

609. Government of Canada, *Government response to the report of the Standing Committee on Justice and Human Rights “Moving Forward in the Fight against Human Trafficking in Canada”*

610. House of Commons, *JUST Committee Meeting, Number 88, 1st Session*, (27 February 2018).

611. ILO, “*Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018): Forced Labour Convention, 1930 (No. 29) - Canada (Ratification: 2011)*”

612. House of Commons, *JUST Committee Meeting, Number 88, 1st Session*, (27 February 2018).

613. Open Parliament, “*Sergeant Damien Laflamme (Human Trafficking Unit, Ottawa Police Service) at the Justice and Human Rights Committee*”, (27 March 2018).

614. Shelley Gilbert, Legal Assistance of Windsor, remote interview, 2 February 2021.

615. Embarkation Immigration Lawyers, “*Brief to the Standing Committee on Justice and Human Rights Study of Human Trafficking*”, (15 June 2018).

616. Government of Canada, *Government response to the report of the Standing Committee on Justice and Human Rights “Moving Forward in the Fight against Human Trafficking in Canada”*

617. Government of Canada, “*Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons*”, (5 May 2016).

618. House of Commons, “*Standing Committee on Citizenship and Immigration, number 88, 1st Session, 42nd Parliament: Evidence*”, section (1155), (27 February 2018):4.

survey found that 70% of Mexicans believed corruption to be widespread in government.⁶¹⁹ Corruption has gained in political significance in recent years, and President López Obrador “made combatting corruption a centerpiece of his campaign platform.”⁶²⁰ On winning power, the President said that he was “absolutely convinced that this evil is the main cause of social and economic inequality, and also that corruption is to blame for the violence in our country.”⁶²¹ There was some evidence of progress, with 2019 seeing a meaningful increase in the number of Mexicans believing corruption had decreased.⁶²² In 2020, more than 1000 immigration officials were removed from their jobs for corruption, reportedly accused of extorting Central American migrants among other practices.⁶²³ Critics have nevertheless been concerned by the President’s reluctance to hold corrupt officials accountable, citing his statement shortly after taking power that, “I don’t think it’s good for the country to get bogged down chasing those accused of corruption.”⁶²⁴ Civil society groups have called on the government to give more meaningful support to the National Anti-Corruption System (SNA), established by law in 2016 to play a coordinating role across government departments, and its Citizen Participation Committee.⁶²⁵

Within the STPS, which regulates recruitment agencies and manages bilateral recruitment programmes including the SAWP, and its subordinate agencies, there have been cases of corruption identified. In 2017, a prosecution was initiated against a group of officials from the Infonacot agency, the state credit fund for workers, who were accused of demanding kickbacks from workers in exchange for credit.⁶²⁶ In 2020 Reuters reported that corruption was widespread within the STPS labour inspectorate, with inspectors accepting bribes in order to give employers a clean bill of health.⁶²⁷ There are also cases of corruption within the administration of the SAWP, with some officials who control elements of the application process for the scheme charging workers for access. An official at the Mexican consulate in Toronto told us such cases were

“not rare”, partly due to the decentralized nature of the STPS/SNE with SNE local offices located in remote rural areas of Mexico.⁶²⁸ A Mexican academic with an extensive network of migrant worker contacts estimated that between 10 and 20 percent of migrant workers have to make illegal payments to officials in government recruitment schemes. He had been personally involved in a case where an SNE official charged workers for payments of approximately 40,000 pesos (US\$1,700) for access into the SAWP. The official was fired but the migrant workers who had made payments were also barred from the program, until he lobbied the STPS to reverse this decision.⁶²⁹

Several SAWP workers told us they knew of other workers being charged by government officials to first enter the programme, though none we spoke to said they had personally been subjected to this practice. While some interlocutors told us that they believed the scale and severity of such practices was less pronounced than the exploitative treatment workers were subjected to by private sector recruiters, others also stressed that this issue should not be played down.

For those cases which are investigated and where evidence is forthcoming, dismissal appears to be the most serious penalty, and it is not clear that SNE officials have been prosecuted for such practices. A senior STPS official told us of a case in which an officer responsible for selection in the SNE sub-office in Aguascalientes State was dismissed after telling multiple job seekers - who recorded their conversations - that they would not be placed into the SAWP unless they paid him 5,000 pesos (US\$250). In another instance, workers accused a Nayarit official of requesting extortionate payments simply to send documents to Mexico City for processing, but because the workers did not want to make a formal complaint, the official was transferred to a different position rather than dismissed: “if the affected potential migrant workers do not report cases, we cannot do anything. There must be a complaint in order to proceed with the dismissal of the abusive SNE

619. OECD, “OECD Integrity Review of Mexico: Taking a Stronger Stance Against Corruption”, *OECD Public Governance Reviews*, (2017): 5.

620. Gina Hinojosa and Maureen Meyer, “The Future of Mexico’s National Anti-Corruption System The anti-corruption fight under President López Obrador”, WOLA, (August 2019):2.

621. “Mexico election: López Obrador vows to fight corruption”, *BBC*, (2 July 2018).

622. Transparency International, “Latin America and the Caribbean”

623. “Mexican government forces out over 1,000 immigration officials accused of corruption”, *Reuters*, (15 August 2020).

624. David Agren, “Mexican president-elect’s new plan to fight crime looks like the old plan”, *Guardian*, (21 November 2018).

625. Gina Hinojosa, “What’s Happening with Mexico’s National Anti-Corruption System?”, WOLA, (28 October 2019).

626. María Del Pilar Martínez, “STPS cesa a funcionarios del Infonacot por corrupción”, *El Economista*, (10 April 2017).

627. Christine Murray, “Exclusive: Red tape, bad data and bribes endanger Mexico’s workers”, *Reuters*, (26 November 2020).

628. Interview with Consular officers, Mexican Consulate in Toronto, Ministry of External Relations, Toronto, 4 March 2020.

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

employee. The STPS cannot accuse one of its employees of fraud or abuse of authority without actual evidence. If we denounce them without enough proof, they could accuse us of defamation.”⁶³⁰ Given that places on the SAWP are highly sought after, it is unsurprising that many workers are reluctant to complain. The official believed that many workers do not report such cases as, “if they are asked to pay 40,000 pesos [US\$2,000] for access to the SAWP - with the prospect of earning 600,000 pesos [US\$30,000] - they may consider it more convenient to simply pay.”⁶³¹

Canada

The Criminal Code of Canada applies to any federal or provincial official who is appointed or elected to discharge a public duty. The Code specifies offences related to (s 119) Bribery of judicial officers, (s 120) Bribery of officers, (s 121) Frauds on the Government, (s 122) Breach of trust by a public officer, and (s123) municipal corruption.⁶³² Offences under the Canadian Criminal Code are prosecuted almost exclusively by provincial justice officials. The Immigration and Refugee Protection Act (IRPA) includes separate provisions and penalties with regard to specific provisions related to corruption by public sector officials related to accepting bribes in return for the issuance of false immigration documents or other benefits.⁶³³

Canada’s reputation for effective anti-corruption controls has in recent years been challenged, particularly with regard to foreign bribery, shell companies, and money laundering. That said, civil society groups note that petty corruption remains less prevalent in Canada than many other countries: “on a day to day level, Canadians do not face the same demands for bribes as so many citizens of countries that fare much worse on the [Corruption Perception Index]”.⁶³⁴ There have been some rare reported cases of labour inspectors found to have abused their powers. In 2014 an Ontario inspector was arrested after apparently demanding money to give a business a clean bill of health, having identified safety violations.⁶³⁵

A 2017 Auditor General report on Preventing Corruption in Immigration and Border Services found “examples of improper (though not necessarily corrupt) actions at [IRCC and CBSA] that were similar to known violations of code-of-conduct scenarios”, but concluded that there was “no evidence that the improper actions we observed were the result of corruption at either the Department or the Agency.”⁶³⁶ A 2020 BC Auditor General report into the province’s skills immigration scheme found that while the province had set up safeguards against corruption, they also identified “several gaps where good practice guidance recommends more comprehensive safeguards.”⁶³⁷

630. Interview with senior official, Ministry of Labor and Social Welfare, Mexico City, 10 March 2020.

631. Ibid.

632. *Criminal Code (R.S.C., 1985, c. C-46)*, section 119-122.

633. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, section 129, 2001.

634. “Canada Falls from its Anti-Corruption Perch”, *Transparency International Canada*, (23 January 2020).

635. Chelsea Rasmussen, “Canada: Ontario Ministry Of Labour Inspector Charged With Extortion”, *Mondaq*, (31 October 2014).

636. Office of the Auditor General of Canada, “Report 3—Preventing Corruption in Immigration and Border Services”, (Spring 2007).

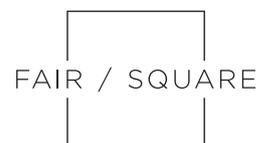
637. Auditor General of British Columbia, “Skills immigration stream of the British Columbia Provincial Nominee Program”, (June 2020).

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