

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:

## 6. Measures to prevent fraudulent and abusive recruitment

- 6.1** Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers? \_\_\_\_\_ 104
- 6.2** Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them? \_\_\_\_\_ 111
- 6.3** Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker's language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements? Do they use IT to assist in this? \_\_\_\_\_ 112
- 6.4** Are there effective measures to prevent contract substitution? \_\_\_\_\_ 114
- 6.5** Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts? \_\_\_\_\_ 118



Mexican workers under quarantine Covid-19 in a Manitoba farm, April 2020. © REUTERS/Shannon VanRaes/Alamy

## 6. Measures to prevent fraudulent and abusive recruitment

*“The trouble is that selling jobs is where the money is to be made.”* LICENSED CANADIAN IMMIGRATION CONSULTANT, 2021.

### Summary

Private recruiters and intermediaries in Mexico engage in widespread fraudulent and abusive practices, and government efforts to address them have to date proven inadequate. The Mexican Constitution bans the charging of recruitment fees for migrant workers, but in practice fee charging is common amongst private recruiters and enforcement of the legal prohibition is extremely rare. Surveys suggest that up to 58% of workers going to the US - where there is no government-facilitated recruitment - may be charged illegal fees amounting to four months (or more) of the Mexican minimum wage. Many workers take out loans to pay the recruitment fee. Informal, unlicensed recruiters

are particularly likely to charge fees to workers, but the practice exists among licensed operators as well. It is common for workers to find that terms and conditions they were promised in Mexico do not materialise on arrival. A 2020 Centro de los Derechos del Migrante survey of Mexican H-2A workers in the US found that 44% were not paid the wages they were promised. In many cases, recruiters charge workers fees to secure jobs that do not actually exist. While the government is supposed to verify each overseas contract for Mexican workers, this does not happen in practice, and enforcement efforts against unlicensed recruiters - who often have ties to the largely rural communities in which they recruit - fall between the cracks of the STPS and the police. Illegal charging of fees to

SAWP migrant workers, who are recruited by the government, is less common and appears to be restricted to cases of corruption among officials. However, workers migrating through the SAWP are required every year to pay for some travel and administrative costs related to recruitment, charges that are in tension with international standards on recruitment fees. SAWP workers, consulates and worker organisations also report that it is not uncommon for farms to not respect the terms of the standard contract, particularly in relation to housing and pay.

All of Canada's provinces prohibit the charging of recruitment fees to workers, with many explicitly extending the prohibition beyond labour recruiters to include employers. Federal immigration law reinforces provincial legislation on fee charging, and TFWP visas and work permits cannot be approved unless workers have a signed employment contract. Nevertheless, fee charging and associated fraudulent practices continue to be documented, and experts say they remain a significant problem. The amount workers pay varies significantly depending on their sector of employment, country of origin, and ability to borrow, but sums of between CAD\$5,000 (US\$4,100) and CAD\$15,000 (US\$12,400) are typical. Such sums may amount to many months or even years of salary in workers' home countries. Workers may be falsely promised the prospect of permanent residency to secure their agreement

to pay. Investigations have uncovered abusive temporary labour agencies operating as both recruiter and employer, providing services to major brand names. The Mexican consulate told us of cases where employers recover recruitment costs they have paid to agencies by making deductions from the salaries of workers - who may have already paid fees themselves to the recruiter. Provincial officials noted the difficulty in pursuing recruitment-related abuse, as recruiters - who may be outside Canada - often leave minimal evidence, asking for payment in cash and not signing contracts. Workers routinely pay for jobs that don't exist, and sometimes only discover this deception upon their arrival in Canada. The role of immigration consultants in illegal fee charging is notably problematic. Unlike recruiters, registered consultants are permitted to accept fees from prospective migrant workers to assist with immigration processes. As consultants may also operate as recruiters, this dual role opens up a grey area that has been exploited with relative ease. One consultant told us that, "the trouble is that selling jobs is where the money is to be made". Saskatchewan and Manitoba have tried to tackle this conflict of interest in their legislation. There are also widely documented problems associated with "ghost" immigration consultants, who are unlicensed, in some cases operate from outside Canada, and often charge workers without providing any services.

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## Recommendations to the Mexican government:

- Proactively investigate unlicensed recruitment agencies and intermediaries and hold accountable those who subject to migrant workers to fraud and abuse.
- Work with Canada to align SAWP programme requirements with ILO standards on recruitment fees and related costs, to ensure that workers do not pay for costs related to their recruitment into the programme. In particular, migrant workers should not pay for the medical, travel, transport

and work permit costs that are required to secure access to their employment.

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## Recommendations to the Canadian federal government

- Carry out and publish a review of whether the policy of allowing immigration consultants to charge foreign nationals applying for temporary work permits is fully consistent with the ILO definition of recruitment fees and related costs, adopted in 2019, with a view to prohibiting the policy in the case of workers applying to the TFWP and other programmes where work permits are linked to specific employers.

- **Require employers to reimburse workers the costs associated with low-wage temporary workers' work permits, in line with ILO guidelines.**
- **Ensure that the new immigration consultants regulator has sufficient resources to ensure that it can effectively enforce the law and proactively investigate cases of exploitation, among both licensed and unlicensed consultants.**
- **Increase the number of proactive CBSA investigations into fraudulent activities by immigration consultants, including unlicensed operators.**

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## Recommendations to Canada's federal and provincial governments

- **Prohibit immigration consultants from being involved in the recruitment process for the same worker, in line with legislation adopted by the province of Manitoba, or at a minimum, ensure that immigration consultants inform both workers and employers if they are providing services to both, and require that both parties consent.**

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### 6.1 Does government prohibit the charging of recruitment fees and related costs to workers and jobseekers, and take measures to enforce its policy on fees?

#### Mexico

Mexican law prohibits the charging of recruitment and placement fees for all migrant workers whether recruitment services are provided by the government or by private recruiters. In reality, it is a widespread practice amongst private recruiters - some of whom charge fees without then offering any job at all. Illegal charging of fees to SAWP migrant workers, who are recruited by the government, appears to be limited to some cases of

corruption among officials. Workers migrating through the SAWP, however, pay for some of the costs associated with recruitment themselves, including travel costs, seemingly in tension with international standards.

The Mexican Constitution states that, "employment services shall be free for workers, whether the service is performed by a municipal office, an employment agency or any other public or private institution".<sup>638</sup> The RACT further clarifies that the "provision of the job placement service shall be free for workers in all cases" and emphasises that it is "prohibited to charge job applicants any amount for any reason".<sup>639</sup> The RACT imposes fines of between 5 and 5,000 times the minimum wage for agencies that breach conditions outlined in the regulations, including the charging of fees.<sup>640</sup> This is equivalent to fines of between US\$34 to US\$34,000.

Despite these provisions, CDM, which has carried out surveys among migrant workers, finds that "it remains standard practice in Mexico for recruiters to charge workers for their services". In a 2013 survey with Mexican workers destined for the United States on H-2 visas, the organization found that 58% of workers reported paying a recruitment fee to their recruiter. The average recruitment fee charged was US\$591.<sup>641</sup> This is the equivalent of almost four months salary at the Mexican minimum wage. CDM notes in a 2019 report that "expecting to earn higher salaries in the United States, Mexican workers often use up their savings or obtain a loan in order to pay their recruiters."<sup>642</sup> A subsequent CDM study of 100 H2A workers published in 2020 found that 26% of workers paid recruitment fees - as high as US\$4500 in some cases - for their jobs, and that 62% took out loans to fund the costs associated with recruitment such as travel costs and visas.<sup>643</sup>

Representatives of ProDESC, a civil society group working on migrant rights told us that workers expected to pay fees: "workers think it's part of the process to pay for a good job. There is a lot of corruption in Mexico, so it seems normal to pay if there is a job at the end of it. It's seen as an investment. When we tell workers the law says you shouldn't pay for your job, people don't

638. *Constitución Política de los Estados Unidos Mexicanos*, Article 123 A XXV, 5 February 1917.

639. *Reglamento de Agencias de Colocación de Trabajadores*, Article 5, 3 March 2006.

640. *Reglamento de Agencias de Colocación de Trabajadores*, Article 33 I c, 21 May 2014.

641. Centro de los Derechos del Migrante, "Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change", (2013): 16.

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

643. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

believe us.”<sup>644</sup> A study by INEDIM found that “workers find themselves in a vulnerable situation due to their need for employment, and their willingness to accept an unfavorable bargain in order to get the job.”<sup>645</sup> Workers told CDM that they were specifically told by recruiters to lie to consular officers about recruitment fees at the time they applied for H-2A visas: “If they did not, they risked not even obtaining the visas for the jobs for which they had paid such high fees.”<sup>646</sup>

ProDESC told us that in their experience, fees may vary between 3000 and 10,000 pesos (US\$150 to US\$500), depending on the context; for example, sometimes workers will pay less if going through the same recruiter for a second time, to incentivise workers not to complain about their first placement. Most fee charging is driven by informal unregulated recruiters, they told us: “It is very often someone with a relationship already to someone in the US. It’s a very grey area. Most of the time the recruiters are part of the communities. That is why it’s so complicated. Workers don’t want to expose this person, maybe they are relatives.”<sup>647</sup> A senior STPS official described the difficulties in tackling such cases: “there are many intermediaries who charge large amounts of money to workers, violating their labour and human rights, during the recruitment process. However many of the affected communities are in very remote villages. It is hard for us to monitor these activities, as we lack the capacity.”<sup>648</sup>

However these issues are not unique to the informal unregistered sector. INEDIM’s 2013 report describes two typical recruiters of migrant workers for jobs in North America: a family connection, with links to an employer, or a more formalised “Mexican contractor who charges a commission fee both to the company and to the workers themselves”. This outsourcing of recruitment by employers to private recruiters “limits employers’ responsibility and increases migrant workers’ risk of being exposed to abuse.”<sup>649</sup> A recruiter told us he knew

of a case at another registered agency where workers were being charged 5,000 and 10,000 pesos (US\$250 to US\$500) for jobs in the US and Canada, but the STPS had not closed the agency despite reports against the agency.<sup>650</sup> Some workers pay considerably more than these amounts. A Globe and Mail investigation in 2019 spoke to Mexican workers who paid US\$1,700 for jobs in Canada, on the false promise that they would be paid twice that amount monthly.<sup>651</sup>

Some recruiters who charge for jobs have no real jobs to offer in the US or Canada: “having collected payment, recruiters often disappear and become unresponsive”.<sup>652</sup> A senior STPS official told us that he knew of a case where job seekers were charged up to 70,000 Mexican pesos (US\$3,500) for fake offers with no job available.<sup>653</sup> In March 2020 we exchanged messages with a Mexican recruiter that migrant workers had informed us was charging for fake jobs. The unregistered agent - who provided an address we were able to confirm to be fake - offered our researcher a choice of jobs in Canada’s horticulture, agriculture and construction sectors, 2,500 pesos (US\$125) for people holding passports, 3,000 pesos (US\$150) for those without passports. The recruiter claimed that “payment is requested to guarantee that workers will show up on the day of departure.”<sup>654</sup> This issue is explored further in section 6.4 under contract substitution.

Workers may go into debt in order to cover the costs of recruitment fees for the jobs they are promised. 47% of workers surveyed by CDM in 2013 said they took out a loan to cover pre-employment expenses. CDM notes that since most individuals giving out loans “are not regulated by the government or anyone else, they can charge whatever they want, often resulting in abuse.”<sup>655</sup> A 2014 criminal complaint brought by victims of abuse, with ProDESC and the Coalition of Sinaloenses Workers and Temporary Workers, describes how in January 2012, representatives of a recruitment agency called a meeting

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

645. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, INEDIM, (February 2013).

646. Centro de los Derechos del Migrante, “Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program”, (2020).

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

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

649. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, INEDIM, (February 2013).

650. Representative of recruitment agency, remote interview, 18 December 2020.

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

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

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

654. Email exchange on file with FairSquare, March 2020.

655. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

in Topolobampo, Sinaloa and “informed the people that, to secure their employment [on the US H-2 programme], it was necessary to make a deposit of US\$200 dollars... Approximately 36 people made deposits... most of the people, in order to get the money to secure employment, applied for loans with very high interest rates through friends, family or companies that engage in this type of activity.”<sup>656</sup> No jobs materialised.

### *Mexico / Canada: SAWP*

Migrant workers told us the charging of fees was common practice, but those who migrated through the SAWP said there was a big difference between using private recruiters and migrating through the STPS: “I’ve heard about people paying and I actually know people who recruit workers in exchange of large quantities for money, but I have never paid for anything,” a 39 year old woman from Oaxaca state, about to begin her seventh season in British Columbia’s SAWP, told us.<sup>657</sup> The SAWP, like other government-run recruitment programmes, removes the Mexican private sector from the equation. Under the SAWP, the Mexican government - through STPS / SNE - carries out recruitment and matches workers with Canadian employers. On the Canadian side, employers normally recruit workers through one of three recognized private sector SAWP administrators which work with the Mexican government to coordinate the matching process: for example, FARMS in Ontario.

Ontario officials said because recruitment is tightly regulated under the SAWP through the countries of origin, they had never heard of workers being charged illegal recruitment fees.<sup>658</sup> Interviews with civil society organisations and academic experts in both countries, as well as with SAWP workers we spoke to, broadly support the assessment that illegal fee payments are rare in the SAWP. It is however clear that there are cases where SNE officials have demanded cash from workers in order to admit them into the SAWP. As is further detailed in section 5.4 regarding corruption, Mexican officials acknowledged this was a problem in the programme.

While only a minority of SAWP workers appear to be affected, these cases are nonetheless certainly not rare and the penalties for offending officials are light. One man who had worked six seasons in Ontario told us that he had been given information about this practice by officials in Mexico City and was told to report any officials who asked for money or threatened not to admit them into the programme if they didn’t pay: “they told us in Mexico City that in [the SNE office in] Yucatán they were doing that, and someone had complained.”<sup>659</sup>

Migrating through the SAWP is however not free for workers, as they pay a variety of legal costs for various elements of their participation, many of which - under the ILO’s 2019 definition - are associated with recruitment, and would ordinarily be expected to be covered by employers.

#### **Work permits, biometrics and medical test**

The cost of applying for work permits to the Canadian Embassy fall to SAWP workers (as for workers under other streams) and cost US\$130.<sup>660</sup> In Ontario, a specific exception to provincial law is in place to allow for this.<sup>661</sup> Before departing Mexico each season, workers are expected to pay the costs of medical tests, which are required for workers to obtain their Canadian work permit. While the costs of medical examinations vary, tests must be done with clinics approved by the Canadian authorities.<sup>662</sup> Workers reported paying between 600 and 3,000 pesos (US\$30 to US\$150) for medical tests depending if they had to do tests at private clinics, and how quickly they needed tests done in order to return to Canada. Some workers, not all, said they could have the tests done for free if doing them at authorized Mexican public hospitals or clinics. Workers are also expected to pay the costs for biometric tests, which are valid for 10 years, and cost US\$70.<sup>663</sup>

#### **Mexico in-country transport and accommodation costs**

There are 160 medical clinics located across Mexico authorised to deliver the medical test for SAWP workers.<sup>664</sup> Biometrics can only be taken at the Canada Visa Application Centre in Mexico City, and all SAWP

656. “Caso: Fraude en el reclutamiento de trabajadores migrantes temporales, Sinaloenses. Jesús Ramón Mercado Márquez alias el “Machurro””. On file with FairSquare.

657. Interview, Mexico City, March 2020.

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

659. Remote interview, 19 July 2020.

660. Government of Canada, “[What are the fees for visa applications](#)”, (28 April 2021).

661. [Employment Protection for Foreign Nationals Act, 2009](#), Ontario Regulation 348/15, Regulation 1, 26 November 2015.

662. Government of Canada, “[How can I find a doctor to do my immigration medical exam?](#)”

663. VFS Global, “[Service and service charge schedule](#)”

664. Government of Mexico, “[Programa de Trabajadores Agrícolas Temporales Mexico-Canada \(PTAT\)](#)”, 15 December 2015, Mexican workers going to Canada in other streams have a choice of only 10 clinics, 5 of which are in the capital.



workers must travel to Mexico City in order to receive their pre-departure package at the STPS including flight tickets and employment contracts. Traditionally, most SAWP workers came from central states near to the capital, because of the need to travel to Mexico City for these procedures.<sup>665</sup> However, in recent years, as the SAWP has grown in size, workers have been recruited from as far away as Oaxaca and Yucatan, driving up their transport costs for these processes and requiring that they make overnight stays. A round trip bus journey from Yucatan to Mexico City may cost 2000 to 3000 pesos (US\$100 to US\$150).<sup>666</sup> Many workers told us that the requirement to travel long distances within Mexico, incurring costs for this, was one of the aspects of the SAWP that needed to be reviewed. A 2013 INEDIM report also notes that applicants must cover transportation costs “without any guarantee of eventually being contracted.”<sup>667</sup>

Workers we spoke to told us that they generally spent between 1,100 and 6,000 pesos (between US\$55 and US\$300) on the costs of domestic transport costs and accommodation, depending on how far away they lived from Mexico City and from other cities where they must conduct tests, and depending on whether they needed to stay overnight to complete these processes.<sup>668</sup>

### Airfare

Who bears the travel costs of SAWP workers differs according to the Canadian province workers travel to. In all participating SAWP provinces, with the exception of British Columbia, employers can recover up to 50% of airfare costs from the worker, through payroll deductions.<sup>669</sup> In Ontario, this is covered by a specific exception in provincial legislation, to allow for employers recruiting through SAWP to recover travel costs, unlike other employers recruiting under the TFWP.<sup>670</sup> In Manitoba employers can recover up to US\$620, while in Ontario the maximum is US\$460 or US\$470 depending on the airport. All of these maximum amounts are reviewed annually. In British Columbia,

employers must cover all the costs of airfare, consistent with the province’s Employment Standards Act.<sup>671</sup>

A former Canadian government official told us that the requirement for workers to pay a portion of airfare costs dates back to the early years of the SAWP and despite government efforts to remove the provision, employer associations have lobbied for it to remain in the programme.<sup>672</sup> The requirement for workers to pay for part of their airfare is not consistent with Canadian government requirements on agricultural employers recruiting migrant workers outside the SAWP, which require employers to pay for full return airfare. However, employers outside the SAWP are allowed to charge workers up to US\$25 per week for accommodation. SAWP employers cannot charge for accommodation,<sup>673</sup> though they charge workers for utility costs - US\$2.12 is the daily maximum in Ontario.<sup>674</sup>

In British Columbia, where SAWP employers cannot charge for airfare, they are permitted to recover accommodation costs from workers up to a maximum of US\$684 per season.<sup>675</sup> The situation of SAWP workers in British Columbia is broadly consistent in this respect with that of other TFWP agricultural stream workers.

### ILO definition of “related costs”

The requirement that SAWP workers to pay for costs related to obtaining the work permit, the internal transport within Mexico required for this, and part of their airfare - which could in some cases amount to a total of over US\$1,000 per worker per year - is arguably in tension with international standards. The ILO’s 2019 definition of recruitment fees and associated costs, makes clear that such costs are related to the recruitment process, which means they should be borne by employers and not workers:

*“When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or*

665. Dr. Marie-Hélène Budworth, Mr. Andrew Rose and Dr. Sara Mann, “Report on the Seasonal Agricultural Worker Program”, *Inter-American Institute for Cooperation on Agriculture Delegation in Canada*, (March 2017).

666. Prices checked at [ADO](#), 5 February 2021.

667. Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, “Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare”, *INEDIM*, (February 2013).

668. Interviews with migrant workers, multiple dates.

669. Government of Canada, “Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021”, VII Travel and reception arrangements, 15 January 2021.

670. [O. Reg. 348/15: Employer recovery of costs](#), (26 November 2015).

671. Government of Canada, “Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021”

672. Former ESDC government official, email exchange on file with FairSquare, 4 February 2021.

673. Government of Canada, “[Hire a temporary foreign worker through the Agricultural Stream: Program requirements](#)”

674. F.A.R.M.S., “[SAWP/Agricultural Stream Comparison](#)”

675. Government of Canada, “[Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021](#)”, section 2.2.

placement; or imposed during the recruitment process, **the following costs should be considered related to the recruitment process:** *i. Medical costs:* payments for medical examinations, tests or vaccinations;... *vi. Travel and lodging costs:* expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation; *vii. Administrative costs:* application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits<sup>676</sup> [Emphasis added]

The ILO definition allows for some governments to allow such costs to be borne by the worker in exceptional circumstances “after consulting the most representative organizations of workers and employers”. The definition argues that in any such cases, these exceptional costs should be “in the interest of the workers concerned; **and** ... limited to certain categories of workers and specified types of services; **and** ... disclosed to the worker before the job is accepted.”<sup>677</sup> [emphasis added] It is not clear whether Mexico and Canada believe that the SAWP meets all of these criteria, and whether relevant worker and employer organizations have been consulted. While SAWP workers we spoke to expected to pay these costs, many nevertheless commented on the fact that these add up to substantial sums each year.

The upshot of the current position is that over the course of their involvement with the programme, which for some people can be as long as 20 years or more, migrant workers pay many thousands of dollars in costs associated with their recruitment.

## Canada

All provinces prohibit the charging of recruitment fees to workers and job seekers in their employment standards legislation and/or in legislation specific to the protection of migrant workers. A federal government report observes that, “in general, the provinces prohibit either individuals or relevant entities involved in recruitment activities from charging either (1) any fees or (2) fees for strictly recruitment and/or employment-related services”.<sup>678</sup> Federal immigration law reinforces provincial legislation in this regard: employers applying to hire migrant workers are prohibited from “recovering costs of hiring the temporary foreign worker(s) such as the LMIA fee, recruitment, etc. This also applies to any third parties used.”<sup>679</sup>

Nevertheless, the illegal payment of recruitment fees continues to be documented, and while firm data is difficult to obtain, our research indicates it is not unusual and remains a substantial problem. The Migrant Workers Alliance for Change has said workers can often pay “an equivalent of two years’ salaries in fees in their home countries”.<sup>680</sup> The Migrant Rights Resource Centre told us that they often see cases where the workers have been charged fees overseas before they come to Canada, including through on-line payments to recruiters: “we have seen cases where individuals have been charged up to [US]\$16,500.”<sup>681</sup> An Ontario social worker said fees workers paid varied depending on their country of origin and ability to borrow, but could range from US\$4,100 up to US\$12,400. In some cases, workers’ repayments to recruiters could absorb the majority of their monthly paycheck.<sup>682</sup> Ontario officials cited cases where Filipino caregivers had been charged US\$2,900-\$4,100 by recruiters overseas to gain access to the job offers.<sup>683</sup> The Caregivers Alliance found in a 2011 survey of 132 caregivers in Ontario that 65% had paid recruitment fees, at an average of US\$2,700.<sup>684</sup> In her 2014 report for the Metcalfe Foundation, Faraday find the normal range is between US\$3,300 and US\$8,300, though amounts between US\$830 and US\$12,500 are also not uncommon.<sup>685</sup> As noted above, within the SAWP, the

676. ILO, “General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs”, (2019).

677. Ibid.

678. Leanne Dixon-Perera, “Regulatory Approaches to International Labour Recruitment in Canada”, Immigration, Refugees and Citizenship Canada, (June 2020):28

679. Employment and Social Development Canada, “Labour Market Impact Assessment application - Low-wage positions”, (2021): 12.

680. Migrant Worker’s Alliance for Change, “Ending migrant worker exploitation by recruiters”, (16 December 2013).

681. Jesson Reyes and Mithi Esguerra, Migrant Resources Centre Canada (MRCC), interview, Toronto, 4 March 2020.

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

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

684. Caregivers’ Action Centre, “Submission by the Caregivers’ Action Centre Ontario’s Changing Workplaces Review Consultation Process”, (18 September 2015).

685. Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers”, Metcalf Foundation, (April 2014):32.

payment of illegal recruitment fees appears to be rare, apart from some cases of bribe payments to Mexican officials.

False promises are often used by recruiters to persuade workers to hand over money, with many taking on large loans to fund the fees, in some cases becoming indebted to the recruiters. According to the Canadian Council of Refugees, “recruiters often give false information to lure workers into paying high fees, for example promising access to permanent residence where there is none, or higher wages and better working conditions than those that are actually available”.<sup>686</sup> A number of interlocutors mentioned that the draw of long-term visas offering permanent residence, whether true or not, was used by recruiters to inflate fees.<sup>687</sup>

An official from the Mexican Embassy in Ottawa told that in his experience, the private recruitment process of Mexican workers starts in Canada with employers hiring Canadian lawyers, immigration consultants, and labour recruiters to recruit foreign workers, and then those actors subcontracting to agencies in Mexico: “in the few cases that we are aware of, we see many problems, with recruiters double-charging employers and workers, employers recovering recruitment costs from workers, and workers taking on large debts.”<sup>688</sup> The degree to which employers are involved in or aware of the charging of recruitment fees is not always clear. A social worker in Ontario who provides legal and welfare support to migrant agricultural workers told us:

*“Many employers choose to ignore recruitment risks, and they work with Canada-based recruiters who extort workers. Farmers say to me, ‘that’s not my business, that’s between the worker and the recruiter’. Yes, some growers have come to me and said, ‘I don’t like this guy, he’s a dodgy recruiter’. But many others will continue to use people that are widely known to have been demanding monthly payments from workers for their recruitment.”<sup>689</sup>*

An immigration consultant told us that some employers will actively insist on not paying recruitment fees:

“dodgy employers will try to get the foreign worker to pay the fees.”<sup>690</sup> An academic specialising in migrant labour told us about instances of employers in Alberta not charging fees upfront, but clawing back the costs they have incurred for recruitment by placing workers into their accommodation and charging above-market rents to the workers.<sup>691</sup> In British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Nova Scotia, employers are prohibited from recovering recruitment fees from workers through wages or benefits, while in Alberta the legal framework is “limited to employment agencies, and therefore does not have direct requirements over employers in this respect”. Ontario, Quebec and Manitoba allow employers to recover some costs from workers when this is permitted by federal programmes such as the SAWP (see above).<sup>692</sup>

Some employers with labour needs hire through temporary agencies, which also act as recruiters of workers, charging them fees. This saves the employer the transaction costs of going through immigration procedures and places responsibility, and legal liability, for the migrant worker on someone else. A Toronto lawyer representing Filipino agricultural workers who had hundreds of dollars of illegal recruitment fees deducted from their paychecks - resulting in them earning almost nothing for their labour - told us that the farm they worked on was arguing that it was not responsible because the recruiter was technically their employer and carried out the salary deductions.<sup>693</sup> A major 2019 investigation by the Globe and Mail detailed the cases of migrant workers from Mexico and Philippines whose recruiters put them to work as temporary labour in major fast-food and hotel chains, deducting most of their salaries from their paychecks in supposed fee repayments. Most of the ultimate employers, including well-known brands, did not respond to the newspapers’ requests for comment.<sup>694</sup>

Ontario officials told us that in their experience, fees are often charged by recruiters abroad before the workers travel to Canada, and that fraudulent recruiters often

686. Canadian Council for Refugees, “Temporary Foreign Worker Program”, (May 2016).

687. See for example Natalie Drollet here: House of Commons, “Standing Committee on Citizenship and Immigration, number 56, 1st Session, 42nd Parliament: Evidence”, section (1545), (10 April 2017).

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

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

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

691. Dr. Ethel Tungohan, York University, interview, Toronto, 5 March 2020.

692. Leanne Dixon-Perera, “Regulatory approaches to international labour recruitment in Canada”, IRCC, (June 2020).

693. Louis Century, lawyer, remote interview, 20 January 2021.

694. 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).

leave minimal evidence, asking for payment in cash and not signing contracts with workers. This made recruitment cases harder to investigate, they said.<sup>695</sup> Several interviewees noted the problem of pursuing cases where payments were made to recruiters overseas, and legislative gaps may to some degree be responsible for this. The Canadian Council of Refugees told parliament in a 2016 submission that “provincial legislation is not effective for addressing the problem of recruitment fees in the source country.”<sup>696</sup> A 2017 On the Move Partnership report on the recruitment experience of Guatemalan workers in Quebec also argued that “one of the main obstacles [temporary foreign workers] will face when seeking the protection of provincial regulations is the territorial limitations of national legislation.”<sup>697</sup> Some provinces have sought to address this through joint liability and bonds. For example in British Columbia, licensed labour recruiters pay a US\$16,500 financial security bond as part of their licensing application, which can be drawn upon to repay victims of abuse, and are liable for the actions of all their overseas partners and associates.<sup>698</sup>

The role of Canada’s immigration consultants in illegal fee charging has gained particular prominence in discussions over fee charging. A representative of CAPIC, an organisation that represents immigration consultants, told us that, in his view, most illegitimate fee charging is carried out by unlicensed or fake consultants: “this is widespread. In some instances, there are massive abuses.”<sup>699</sup> As in Mexico, there is a major problem with “ghost” consultants who charge workers for fake jobs. This is explored further in section 6.4. However, registered immigration consultants have also been associated with illegal fee charging. In its study on the regulation of labour recruitment, the IRCC notes that “fees for immigration services and how they are regulated alongside more traditional recruitment services are a curious consideration in the Canadian immigration context.”<sup>700</sup>

Unlike recruiters, registered immigration consultants are permitted to accept fees from prospective migrant workers - to provide paid assistance with the completion and filing of any immigration application to the federal government, including work permits. In most provinces, immigration consultants are permitted to carry out recruitment as well, including for the same worker, provided that they don’t charge the worker for the recruitment services. A representative of CAPIC explained how situations that overlap labour recruitment and immigration consultancy typically work if immigration consultants act legitimately and legally: “the employer may ask an immigration consultant to recruit employees for them. So the immigration consultant does the recruitment, then says to the worker, ‘if you want to sort the visa, you can pay me.’”<sup>701</sup> This dual role opens up a grey area that has been exploited with relative ease by those seeking to charge workers recruitment fees. As an IRCC research paper puts it, “if any prohibition against charging fees is strictly limited to costs related to recruitment services, recruiters may easily hide fees charged as ‘immigration-related’ to evade consequences.”<sup>702</sup> The ICCRC, the immigration consultants regulator, says in its 2020 annual report that it “continues to receive serious complaints” with regard to registered consultants “promising a job or accepting fees for jobs.”<sup>703</sup> A registered immigration consultant, who told us she recommends that workers get their employers to pay all consulting fees, explained what she knows of how this works in practice:

*“It’s Illegal for us to charge for assistance in a job search, that is selling jobs. But that doesn’t mean that it doesn’t happen. People say to the worker ‘we’re not charging you for finding a job’; and then they inflate the price for their consultancy services to include recruitment costs. The trouble is that selling jobs is where the money is to be made. My colleague saw someone was charging a worker US\$20,700 to get a job that had a LMA. That’s an extreme example, but we know*

695. Interview with Government of Ontario officials, Ministry of Labour, Training, and Skills Development, group interview, Toronto, 5 March 2020.  
 696. Canadian Council for Refugees, “[Temporary Foreign Worker Program: A submission by the Canadian Council for Refugees to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities](#)”, (May 2016).  
 697. Dalia Gesualdi-Fecteau, Andréanne Thibault, Nan Schivone, Caroline Dufour, Sarah Gouin, Nina Monjean, Éloïse Moses, “[Who, how and how much? Recruitment of Guatemalan migrant workers to Quebec](#)”, *On the Move Partnership*, (June 2017).  
 698. Government of British Columbia, “[Temporary Foreign Worker Protection Unit: Guide for Clarifying Roles of Recruiters, and their Affiliates, Agents, and Partners](#)”, (2019).  
 699. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.  
 700. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, *IRCC*, (June 2020).  
 701. Dory Jade, Canadian Association of Professional Immigration Consultants, remote interview, 16 December 2020.  
 702. Leanne Dixon-Perera, “[Regulatory approaches to international labour recruitment in Canada](#)”, *IRCC*, (June 2020).  
 703. ICRCR, “[Annual Report 2020](#)”

*that when people are desperate they will take desperate measures.*<sup>704</sup>

A judgement by the British Columbia Court of Appeal in 2016 found against an immigration consultant who had bundled together recruitment fees and immigration services in the way described above. The consultant argued to the court that the province's prohibition on the charging of recruitment fees to workers was in effect preventing it from carrying out its role as an immigrant consultant in line with federal law (as the provision of recruitment services and immigration advice are closely tied), an argument the court rejected.<sup>705</sup>

To attempt to address this blending of these two linked roles, some provinces have introduced provisions that either prohibit licensed labour recruiters from simultaneously charging for immigration consultancy services for migrant workers destined to their province (e.g., Manitoba),<sup>706</sup> or require the licensed immigration consultant to disclose if it is providing labour recruitment services paid by an employer, and immigration services to the migrant worker (e.g., Saskatchewan, British Columbia).<sup>707</sup> Saskatchewan also requires that consent be obtained from both the migrant worker and the employer for these types of arrangements, and prohibits a licensed recruiter from requiring that a migrant worker purchase other services, such as immigration consulting.<sup>708</sup>

The regulator of immigration consultants, the ICRC, received 4551 complaints against its members between 2011 and 2020, an average of about 500 a year or 10 a week. However, only 39 consultants had their licence revoked or suspended during this period.<sup>709</sup> As noted in Section 4, such statistics have raised questions about whether issues such as fee charging were being adequately addressed, one of the factors leading to the 2019 College of Immigration Act which established a new regulator. An immigration consultant told us that complaints lodged with the regulator were dealt with “ridiculously slowly”.<sup>710</sup>

In this context, some Canadian lawyers have argued that the mixing of recruitment and immigration services, and associated abuse, is sufficiently rife to justify the abolition of licensed immigration consultants, so that only registered lawyers can advise on immigration matters for a fee.<sup>711</sup> Those who represent immigration consultants argue that the payment of fees by migrant workers to immigrant consultants for advice is essential for their ability to have control over their immigration status, and that better enforcement is needed, rather than a prohibition: “the right of representation is paramount. The worker loses the right of representation if someone else, for example the employer or the government, pays.”<sup>712</sup>

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## 6.2 Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them?

### Mexico

The Regulation of Worker Placement Agencies (RACT) stipulates that it is forbidden to “charge workers requesting employment, whether in money, services or kind, directly or indirectly, including expenses for the dissemination and advertising of their job applications, the cost of training courses”, and that it is furthermore forbidden to “[a]gree directly or indirectly with the employers to whom they provide the service, that their fees be deducted partially or totally from the wages of the workers placed”.<sup>713</sup> The RACT also requires private labour recruiters to provide the STPS with a copy of a model contract where it is clear to workers that recruitment services for migrant workers are to be provided free of charge, and to disclose to the STPS how much they charge to employers.<sup>714</sup> However there is no requirement in law to provide a breakdown of recruitment costs to employers.

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

705. Court of Appeal for British Columbia, “*Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457 (CanLII)”, (18 November 2016).

706. Government of Manitoba, “*Foreign Worker Recruitment Licence Information*”, (14 April 2020).

707. Government of Saskatchewan, “*Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities*”; Government of British Columbia, “*Apply for a Foreign Worker Recruiters' License*”.

708. Government of Saskatchewan, “*Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities*”.

709. ICRC, “*Annual Report 2020*”.

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

711. The Canadian Bar Association, “*Immigration Consultants*”, (March 2017).

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

713. *Reglamento de Agencias de Colocación de Trabajadores*, Article 10 I., II, 3 March 2006.

714. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*, Article 23 V-VI, 21 May 2014.

## Mexico-Canada SAWP

The permitted allocation of costs through the recruitment and employment process is transparent to both workers and employers, as it is specified in the annually negotiated SAWP employer-employee contract. This contract breaks down the costs for airfare, a portion of which can be recovered from the workers in most provinces; the provision (in most provinces) of free housing by the employer; the requirement for the employer to register workers into provincial public health plans and worker compensation plans; the requirement to register workers for additional private health insurance plans (paid by the worker); and other detailed deductions (e.g. meals).<sup>715</sup> As noted in 6.1, there are question marks about whether workers are being asked to bear costs which relate to recruitment - in particular airfare. However this is a question of policy substance rather than one of transparency.

## Canada

Requirements on recruiters are set at provincial level and vary as a result. As noted in section 6.1, one of the potential routes for recruiters to exploit migrant workers is through inflation of costs for immigration services (if they or someone within their firm also act as immigration consultants), to disguise recruitment-related costs.

As a result, certain provinces have specific regulations in place that require recruitment agencies to disclose to workers and employers what they are paying for, in particular, distinguishing between payment for recruitment services and other services such as immigration advice. The province of British Columbia requires, for example, that recruiters conclude contracts with employers and workers, that “in the case of recruitment services provided to an employer, describes the fees and expenses to be charged to the employer and the services for each fee and expense charged [and] ... in the case of immigration services provided to a foreign national, describes the fees and

expenses to be charged to the foreign national and the services for each fee and expense charged”.<sup>716</sup> Saskatchewan also requires transparency of this kind.<sup>717</sup> Alberta requires that agencies can only provide non-recruitment services to individuals seeking jobs if a signed agreement is concluded making clear what these services are, with reasonable fees set out.<sup>718</sup> Alberta also requires all agreements with workers to carry out a specified wording on the prohibition of fee charging for recruitment services.

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### 6.3 Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker’s language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements?

## Mexico

The Federal Labour Law requires that contracts within Mexico specify the nature of the job, establishing wages and working conditions.<sup>719</sup> Additional provisions must be included in contracts for Mexican migrant workers overseas, including confirmation that the employer will fund the worker’s repatriation at the end of the contract, details of living conditions, health provision, and information about Mexican consular and diplomatic authorities in the destination state.<sup>720</sup> The law states contracts should be reviewed and approved by the Federal Conciliation and Arbitration Board, though this does not generally happen in practice for private recruitment to North America - the US and Canada manage unilateral labour migration systems (the H-2 and TFWP/IMP programmes respectively) and as Inedim put it, “the Mexican government does not participate in this system, despite the fact that it is bound by law to verify recruitment and contracting conditions for Mexican workers to work abroad”.<sup>721</sup> Perhaps reflecting this fact, a 2012 amendment to the law places the onus

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715. Government of Canada, “[Contract for the employment in Canada of seasonal agricultural workers from Mexico – 2021](#)”

716. [Temporary Foreign Worker Protection Act \[SBC 2018\] Chapter 45, section 27.](#)

717. Government of Saskatchewan, “[Protection for Immigrants and Foreign Workers](#)”, Article 27 (1)(d).

718. [Consumer Protection Act: Employment Agency Business Licensing Regulation](#), Alberta Regulation 45/2012, Article 12(2), 2012.

719. [Ley Federal del Trabajo](#), Article 25, 1 April 1970.

720. *Ibid*, Article 28.

721. Alejandra Constanza, Ancheita Pagaza and Gisele Lisa Bonnici, “[Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare](#)”, *INEDIM*, (February 2013).

on licensed Mexican agencies to ensure the veracity of the terms and conditions promised by employers, and they are responsible for the costs of repatriation in cases where workers have been deceived.<sup>722</sup> The RACT also requires private labour recruiters to provide the STPS with a copy of a model contract for workers, which should inform job seekers about the nature of the work, service or services.<sup>723</sup> There is no requirement that workers are provided a contract in their first language, whether that be Spanish or another language.

In practice the experience of migrant workers in this regard depends to a significant extent on the specific employer and recruiter they deal with. Inedim's assessment is that "little of what is established by law is complied with in practice, as contractors disregard regulations and the Mexican government is not involved in the contracting process."<sup>724</sup> A 2013 CDM survey found 52% of Mexican workers recruited for the US were never shown a written contract.<sup>725</sup> Even when workers do get contracts, they may not get the opportunity to give genuine informed consent. A 2020 CDM report relates numerous case studies of workers given contracts only in English and/or being presented with contracts just ahead of migrating, with no chance to review or check them.<sup>726</sup> One man who was recruited privately into Canada's agricultural sector in 2019 told us that he didn't see his contract until he got to the airport. The key terms and conditions were briefly explained verbally at that point: "they showed us the contract ... well, they gave me the boss's name, the name of the farm, the place, pay, like how many hours, hourly payment, and the deductions that would be made."<sup>727</sup>

Additionally CDM notes it is almost unheard of for indigenous Mexican migrant workers - who increasingly make up a significant proportion of migrant workers to the United States - to receive a contract in their own language: "some of the indigenous speakers interviewed for the report stated that they did not understand or understood very little what the contracts stated".<sup>728</sup>

For workers recruited through the SAWP, the Mexican government effectively acts as recruiter and there are detailed provisions relating to contracts. Workers all sign a standard employment agreement which is publicly available in Spanish as well as English, and French.<sup>729</sup> The standard agreement, which is amended each year following discussions between the two governments and Canadian employers, includes all relevant terms and conditions, as well as workers' rights and their responsibilities. Migrant workers recruited through the SAWP told us they had received employment contracts in Spanish prior to migrating. Some felt confident with the content of contracts, particularly workers who have been through the programme many times: "on your paper it's stipulated where you're going, which employer, how long you're going for, how much you'll be paid."<sup>730</sup> Nevertheless, workers said it was not unusual for colleagues not to scrutinise some documents properly. One worker told us: "what happens is they give us an envelope of papers and that's where they include your rights and obligations. But there are many people who have not read them... They say, 'what paper?'"<sup>731</sup> Other workers told us that in their pre-departure orientation (see section 8) such issues were discussed, but more effort may be needed by the STPS to talk workers through the key provisions of their contracts.

Some workers expressed frustration that they had no ability to negotiate alterations to the contract, which is set by the governments and employers and cannot be individualised. One worker noted the fact that worker organisations were not at the table in determining this contract (explored further in section 9), which he argued was not like a contract in the normal sense:

*"It's not really a contract, it's a deal that has a memorandum of understanding... we are not allowed to organize ourselves to make demands."*<sup>732</sup>

The standardised SAWP contract lacks clarity on a number of issues, which cannot be standardised due to the differing provincial labour standards. The contract

722. [Ley Federal del Trabajo](#), Article 28-B, 1 April 1970.

723. [Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores](#). Article 23 VI, 21 May 2014.

724. Alejandra Constanza, Ancheita Pagaza and Gisele Lisa Bonnici, "Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Welfare", INEDIM, (February 2013).

725. Centro de los Derechos del Migrante, "Recruitment Revealed: Fundamental Flaws in the H-2A Temporary Worker Program and Recommendations for Change", (2013):5.

726. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

727. Remote interview, 2 July 2020.

728. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

729. Government of Canada, "Contrato de trabajo para trabajadores agrícolas temporales Mexicanos en Canadá - 2020", (7 February 2020).

730. Remote interview, 16 July 2020.

731. Remote interview, 29 July 2020.

732. Remote interview, 9 August 2020.

does not contain any reference to collective agreements, as agricultural workers in Ontario and Alberta are not able to join trade unions, as noted in sections 2 and 9. Language in the contract regarding hours of work and overtime is broad and non-prescriptive. The Canadian Agricultural Human Resource Council details the provinces that currently exempt agricultural workers in almost all agricultural sub-sectors from coverage under key provisions of their respective employment standards legislation, including hours of work, rest days, overtime, and vacation days.<sup>733</sup> The variation between provinces and the exclusion of agricultural workers from key provincial standards undermines the role that the standardised SAWP contract plays in terms of spelling out workers' specific rights and entitlements ahead of their decision to migrate - and leaves them dependent on their relationship with their employers for key elements of their treatment.

## Canada

For employers hiring through the TFWP but outside the SAWP, there is a requirement for employers to provide a copy of the employment contract - signed by both the worker and employer - to Service Canada, as part of the process to obtain a LMIA.<sup>734</sup> A model contract is provided for employers to use as a basis, which includes explicit reference to employers' responsibility to cover airfare costs and that no recruitment costs will be recovered by the employer. The aims of the contract, according to Service Canada, include to "articulate the employer's responsibilities and the worker's rights" and to "help ensure that the worker gets fair working arrangements."<sup>735</sup> Employers are also required to provide migrant workers a printout of the approved LMIA that covers the terms and conditions of their employment in Canada, and workers must submit this document as part of the process to apply for a work permit.<sup>736</sup> There is however no federal requirement that the contract be made available in the worker's language. One Mexican worker recruited

by a private recruiter for a job in Quebec told us his employment contract was only provided in French: "If I wanted to check anything in it, I would have scanned it and translated it online."<sup>737</sup> Within the SAWP, contracts must be provided in Spanish as well as either English or French.<sup>738</sup>

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## 6.4 Are there effective measures to prevent contract substitution?

### Mexico

Under the Federal Labour Law, recruitment agencies are responsible for ensuring the "veracity of the general working conditions offered, as well as those relating to housing, Social Welfare and repatriation to which workers will be subject." Where workers are deceived about their working conditions, the law holds labour recruiters responsible for covering the costs of repatriation.<sup>739</sup> The RACT includes financial penalties if provisions in the law or the regulation are violated.<sup>740</sup>

In practice it is not uncommon for workers to find that terms and conditions they were promised in Mexico do not materialise on arrival. A 2020 CDM survey of Mexican H-2A workers in the US found that 44% were not paid the wages they were promised: "many find that when they arrive in the U.S. conditions are far different from those promised."<sup>741</sup> Recruitment agents are incentivised to make false promises about wages and other conditions (accommodation, the type of work), in order to persuade workers to pay them fees and to deliver the workers that employers want. As SPLC notes, promises may extend to immigration status: "recruiters often exploit workers' desperate economic situation by deceptively promising them lucrative job opportunities and even green cards or visa extensions."<sup>742</sup> Media reports have also highlighted the practice among recruiters of falsely promising pathways to permanent residency to Mexican migrants seeking jobs in Canada.<sup>743</sup>

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733. The Canadian Agricultural Human Resource Council (CAHRC), "Canadian Agriculture and Agri-Food Workforce Action Plan Labour Task Force and the Alberta AGCoalition, Agriculture Workforce Management Comparison of Provincial Agriculture Regulations for Labour Relations Employment Standards including Regulated Agricultural Wage Rates Occupational Health and Safety Workers' Compensation", (June 2016).

734. Government of Canada, "Hire a temporary foreign worker in a low-wage position" (25 February 2021).

735. Government of Canada, "Temporary Foreign Worker Program: Annex 2: Instruction Sheet to Accompany Employment Contract"

736. Government of Canada, "Hire a temporary foreign worker in a high-wage or low-wage position - After you apply" (19 November 2020).

737. Remote interview, 14 August 2020.

738. Government of Canada, "Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements"

739. *Ley Federal del Trabajo*, Article 28-B, 1 April 1970.

740. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores*. Article 33, 21 May 2014.

741. Centro de los Derechos del Migrante, "Ripe for Freedom: Abuses of Agricultural Workers in the H-2A Visa Program", (2020).

742. Southern Poverty Law Center (SPLC), "Close to Slavery: Guestworker Programs in the United States", (19 February 2013).

743. Kathy Tomlinson, "False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada", *The Globe and Mail*, (5 April 2019).



There are many concrete examples of such practices when workers seek to find employment in the US, the main destination for Mexican migrant workers. To participate in the H-2 program, “migrants may negotiate with recruiters that employers have contracted to fill their H-2 allotment; however, recruiters do not provide contracts and may promise high wages ... employers may pay them a lower rate than promised”. Once workers are in this situation, it is very difficult to challenge the situation without risking deportation, as “employers threaten to call U.S. Immigration and Customs Enforcement (ICE) to report that temporary workers ‘abandoned’ their work (making them unauthorized workers)”.<sup>744</sup>

As noted in section 6.1, many recruiters sell fake jobs. Officials at the Mexican consulate in Toronto said that some private recruiters “promise workers false jobs, charge fees, and then take advantage of Mexican nationals after they arrive in Canada”.<sup>745</sup> A Canadian social worker, working with migrant workers in Ontario, said it was not uncommon for Mexican workers to arrive at Toronto airport and not meet the recruiter who was supposed to be there; only at this point did they realise they had been tricked into paying for non-existent jobs. She said that workers often seek support from other migrant workers in this situation.<sup>746</sup>

The Contratados initiative, developed by CDM, allows migrant workers from Mexico to post reviews, with a star system, of recruiters and recruitment agencies, whether licensed or not. Contratados told us the site receives 29,000 visits a month, with the majority being workers searching for information on employers and recruiters. A review of the database in some cases shows cause for serious concern with regard to deceptive practices in respect of certain recruiters.<sup>747</sup> One recruiter, for example, was accused of fraud by the majority of the 16 workers who posted reviews over a two year time period, between 2019 and 2021, alleging that the individual charged between 4000 and 8500 pesos (US\$200 to US\$425) for jobs in the United States, only in many cases to then transport them across the border without documentation and abandon them. One worker reports:

“We want to report this person, we don’t know how to notify the American consulate, they charged us 4,000 pesos [US\$200] for passing over the bridge only”.<sup>748</sup>

CDM’s 2013 report found that one in ten workers paid for non-existent jobs.<sup>749</sup> The Chambamex case presented a rare case of the defrauding of migrant workers attracting attention at a national level in Mexico, due to its scale. The agency defrauded more than 3,000 Mexican workers in 19 states out of 60 million pesos (approximately US\$3M) between December 2012 and April 2013 with the promise of jobs in the United States and Canada. A researcher at the National Network of Agricultural workers told us that, “Chambamex was the first time that a case with these characteristics came to light in Mexico. Previously there had never been anything like this in the press or the media, on false recruitment or fraudulent recruitment.”<sup>750</sup>

A senior STPS official told us that previously, when workers received overseas offers from private recruitment agencies, they could send the information to the STPS to review the veracity of such offers, either through embassies or other networks. In many cases, the STPS would advise workers it could not verify these offers, since they appeared on social networks and there was no identifiable recruitment agency in Mexico, Canada or the USA. However, such programmes had been stopped in 2019 due to austerity measures.<sup>751</sup> It is clear that such practices take place in licensed recruiters as well as unlicensed ones. Licensed agencies may advertise genuine jobs in the US or Canada, but charge many more workers than they have jobs available. A Mexican migration expert told The Guardian in 2019 that, “a recruiter can advertise 500 jobs and really only have 100 vacancies. Some will get a job, others will pay a fee and get no job”.<sup>752</sup> STPS officials told us that they were aware of licensed agencies selling fake jobs.

### *Mexico-Canada SAWP*

Mexican workers who migrate through the SAWP, which is monitored by the Mexican government both countries,

744. Lauren A. Apgar., “Authorized Status, Limited Returns: The Labor Market Outcomes of Temporary Mexican Workers”, Economic Policy Institute, (21 May 2015): 4.

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

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

747. Andrea Gálvez, Centro de los Derechos del Migrante, interview, Mexico City, 4 December 2019.

748. Contratados, “Search reviews”

749. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

750. Mayela Blanco, National Network of Agricultural Workers (CECIG), interview, Mexico City, February 2020.

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

752. Milli Legrain, “‘Be very careful’: the dangers for Mexicans working legally on US farms”, *the Guardian*, (16 May 2019).

and overseen by private Canadian administrators, may not in most cases experience the kinds of fully-fledged contract substitution or deception that some Mexican workers who migrate through private recruiters are subjected to. For example, workers are in the vast majority of cases employed at the farms specified in their contracts. Nevertheless, within this overall framework, there are routinely complaints about employers failing to deliver on the full terms outlined in workers' contracts. Rosa María Vanegas García, author of a major study on the SAWP between 1974 and 2014, told us that, "while better employers do respect the contracts, others do not."<sup>753</sup> A social worker working with migrant workers in Ontario argued that while blatant fraud in the recruitment process was not common in the SAWP, that did not mean workers' experience was free of abuse: "I think it's accurate that SAWP workers from Mexico typically are not experiencing that type of violation involving fraudulent recruiters and fee payment. But when they get here, there is a whole range of forms of exploitation."<sup>754</sup> A Mexican NGO also told us that, "the problems of the SAWP are in the employment part of the programme, not so much in the recruitment."<sup>755</sup> Complaints raised by workers include being asked to carry out different forms of agricultural work than they were hired for, as well as underpayment, excessive working hours, illegitimate pay deductions, and provision of inadequate accommodation. A woman employed in Saskatchewan told us that she was hired to work in a greenhouse, where she worked from 0430 through until 2100 at night. After two months she was subsequently moved to working in the fields: "they sent me to the field, though I was never hired to work in the field... there they took out the potatoes with a tractor, and we had to walk on our knees gathering it." The hours she worked in the field were irregular and she told us that the employer had underpaid workers for these hours.<sup>756</sup>

Other SAWP workers told us their conditions were broadly in line with their contractual expectations. There is limited available data about the precise prevalence of such concerns among SAWP workers. In Ontario, between 2011/12 and 2014/15, the most common

violations validated by Employment Standards Officers among agricultural workers (which include but are not limited to SAWP workers) were for unpaid wages and termination pay, while other common violations included public holiday pay and illegal deductions from wages. A 2019 study analysing these figures and comparing them against other industries finds that, "although the number of employees in agriculture that complain is quite low, those that file complaints are often found to be owed large sums of money" - raising concerns about the number of workers who may not be raising complaints out of fear of the potential reprisals (see section 1.6 and 7).<sup>757</sup> In 2017/2018, ESDC completed 402 inspections in primary agriculture (at least 336 of which were of SAWP employers), identifying 127 employers (32%) which needed to address issues. About half of employers had to make changes to accommodation, about a quarter had to correct wages, and the remaining quarter had to correct other working conditions and questions related to workers' occupations. Notably, ESDC reported that 40% of the "workable tips and allegations" it received nationally were in the agriculture sector, but the sector only made up 14% of the national inspection programme that year, suggesting it was relatively under-inspected given its risk profile.<sup>758</sup>

A representative of the Canadian Farmers' Association said:

*"I think the programme has got better, and I'm sure there were issues in the past that would not happen now. There can be very blanket statements made about the scale of problems. I don't think abuse is endemic. That said I won't say it's just a few bad apples - we shouldn't just dismiss this issue. We continue to work incrementally on these concerns. The main issues that we tend to hear about most frequently involve housing conditions and issues with pay."<sup>759</sup>*

A senior Mexican official, speaking prior to Covid-19, said the main issue that they had raised with the Canadian government in recent years was farms failing

753. Rosa María Vanegas García, interview, Mexico City, 4 December 2019.

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

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

756. Remote interview, 24 July 2020.

757. 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*, 35, no. 2 (2019).

758. Employment and Social Development Canada (ESDC), "Facts and Figures TFWP", (26 April 2018): 11. 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.

759. Scott Ross, Canadian Federation of Agriculture, remote interview, 19 January 2021.

to provide adequate accommodation for the number of workers they had hired. Housing conditions rose to the fore during the Covid-19 pandemic, given the need for workers to socially distance from each other and the difficulty of doing so in cramped living spaces on many farms. Several workers told us of accommodation that does not meet the “clean, adequate” requirement set out in the SAWP contract. One commented of his accommodation in a British Columbia farm: “I have my little house in Mexico, but there I do not have rats grunting at me, where I am even afraid that they are eating my food.”<sup>760</sup> A man from Jalisco returning for his second season in Ontario told us that, “we reported to the consulate that there are too many workers sleeping in the same house. The conditions are not right for so many people. We are 20 people in a single house, with only 2 stoves.”<sup>761</sup>

## Canada

As noted in section 6.3, there is a requirement for employers to provide a copy of the employment contract - signed by both the worker and employer - to Service Canada, as part of the process to obtain a LMIA.<sup>762</sup> Immigration officers are required to assess the genuineness of a job offer before approving work permit applications.<sup>763</sup> Once workers have arrived in Canada, employers can change the terms and conditions offered to workers and outlined in the LMIA and are not required to inform IRCC of these changes. However, they must provide evidence of an “acceptable justification” for any such changes - they can be found non-compliant if inspectors find they have made changes that affect workers “negatively” (for example reducing hours worked or salary), and they have not applied for a new work permit with a new job offer.<sup>764</sup> Beyond financial penalties for non-compliance, the IRPA also classifies recruitment into Canada by means of “fraud or deception” as an offence of trafficking.<sup>765</sup> This is punishable by life imprisonment and/or a fine not exceeding US\$830,000.<sup>766</sup> Separately, under the Criminal Code’s definition of trafficking, the question of

whether an accused person uses deception is one of the determinants of whether they have exploited someone, and thus whether the case amounts to trafficking.<sup>767</sup>

In 2017/2018, ESDC noted that at least some employers were found non-compliant for reasons related to “genuineness” of the job offer.<sup>768</sup> Data available on companies that have been penalised under the ESDC inspection programme indicates that between 2015 and 2020, 53 companies were penalised solely because “pay, conditions, or work didn’t match offer of employment”, with average fines at US\$2,000. Eight companies were penalised because they “couldn’t show that offer of employment was true”, with an average fine of US\$2,000. For issues that suggest more a more serious divergence from the worker’s contract, fines are heavier and there have been fewer penalised companies: three companies were penalised both because they “couldn’t show that the job description on the LMIA application was true” and because “pay, conditions, or work didn’t match offer of employment”, and were fined an average of US\$18,500. Nine companies were fined for not being “actively engaged in [the] business that [the] worker [was] hired for” and not producing documents on request, with an average fine of US\$11,400.

According to a 2014 Metcalf Foundation report, deception over terms and conditions is a significant problem: “many workers ... arrive in Canada to find that the job they were promised does not exist, that it is significantly different from what they were promised, that it is different from what appears on their work permit, or that it is for a much shorter period than promised. The worker does not learn of this contract substitution until after they are physically in Canada.” This has the effect, the report says, of forcing them “out of status” and placing them in a position of reliance on their recruiter.<sup>769</sup> Workers interviewed for a 2014 study of labour trafficking in British Columbia, which was supported by the province, reported that “they were lured to Canada with offers of false jobs and were tied to exploitative work because of illegal recruitment fees charged by third party recruiters. Recruiters could

760. Remote interview, 6 July 2020.

761. Interview, Mexico City, March 2020.

762. Government of Canada, “[Hire a temporary foreign worker in a low-wage position](#)”

763. Government of Canada, “[Assessing the genuineness of the offer of employment on a work permit application](#)”

764. Government of Canada, “[Employer compliance inspections](#)”

765. [Immigration and Refugee Protection Act \(S.C. 2001, c. 27\)](#), section 118, 2001.

766. [Immigration and Refugee Protection Act \(S.C. 2001, c. 27\)](#), section 120, 2001.

767. [Criminal Code \(R.S.C., 1985, c. C-46\)](#), part VIII, section 279.04(1), 1985.

768. Employment and Social Development Canada (ESDC), “[Facts and Figures TFWP](#)”, (26 April 2018): 13. 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.

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

easily control newly arrived workers through a mix of tactics including threats of deportation and promises of regularization of immigration status”. WCDWA, who led research for the report, said the prevalence of such practices was increasing.<sup>770</sup> The issue of migrant workers being forced out of status by arriving to find that promised jobs are non-existent has been a particular problem for caregivers. According to Caregivers Action Centre data cited by the Metcalf foundation, at least 19% of members surveyed arrived in Ontario to find the job they were promised was false.<sup>771</sup> The Association for the Rights of Household Workers submitted to a parliamentary review in 2018 that “workers arrive in Canada and discover that the job they were promised no longer exists, either because the employer’s need for the worker legitimately expired during the delay between the job offer and the arrival of the worker, or because the job offer was fraudulent (known as ‘release upon arrival’).”<sup>772</sup> Advocates argue that the closed work permit that most low-wage migrant workers are bound by - combined with the debt they have taken on to fund their migration - leaves them in a precarious position in such eventualities, and in order to remain in Canada they take on new work as undocumented workers, placing them at heightened risk of exploitation.

As noted in section 6.1, the Globe and Mail’s 2019 investigation featured exploitative immigration consultants who promised migrant workers from several countries well-paid jobs with the prospect of permanent residence, in return for exorbitant fee payments. As noted in section 5.3, prosecution by the CBSA of immigration consultants for fraud is quite rare and between 1 January 2014 and 31 December 2018, only 11 convicted consultants served time in prison for such offences.<sup>773</sup> Prosecution of human trafficking for labour exploitation in Canada is also not common - as noted in section 5.3, there are about 2-3 convictions a year. A social worker supporting migrant workers in Ontario told us a significant problem in the state’s response to cases of fraudulent recruitment was that if cases didn’t reach the criminal code’s threshold of trafficking - i.e. if deception over work visas was not clearly linked to an intent to exploit the individuals in question - they tended not to be pursued by law enforcement:

*“People from Mexico routinely arrive at Toronto airport, the job that was promised for them does not materialise and their recruiters disappear. Would I consider that trafficking if there is no exploitation at the end? I’ve tried to get RCMP to deal with this, but it’s not going anywhere from a criminal justice perspective if it doesn’t meet the threshold of trafficking. Crown prosecutors must understand immigration law as well as trafficking law.”<sup>774</sup>*

## 6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

### Mexico

The Federal Labour Law requires that employers hiring migrant workers for overseas work provide them with an employment contract and job offer information in writing,<sup>775</sup> and not providing a written contract would in itself represent a breach and would legally result in penalties outlined in the law.<sup>776</sup>

Recruiters regularly take workers’ money without giving them any form of written contract or job offer. More than half of workers surveyed by CDM for their 2013 report did not receive a copy of their job contract.<sup>777</sup> This is particularly likely to happen when such jobs are illusory. A senior STPS official told that “there is no document that the workers sign, it’s an oral contract. At the end it is the worker’s word against that of the recruiter.” The practice makes it even less likely that workers are able to challenge fraudulent recruiters by complaining to the government. The official told us of a specific case he was aware of, a recruiter who had been named by a series of workers for charging for jobs and then cheating workers: “the problem is to prove the facts. The problem is that the evidence is minimal, since the workers have no way to prove the facts, it is all verbal and in cash.”<sup>778</sup>

770. West Coast Domestic Workers’ Association (WCDWA), “Labour Trafficking and Migrant Workers in British Columbia”, (May 2014).

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

772. The Association for the Rights of Household Workers (ARHW), “Migrant Caregivers, Canadian Immigration Policies and Human Trafficking: Written submission to the Standing Committee on Justice and Human Rights (JUST) - Study on Human Trafficking in Canada”, (15 June 2018).

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

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

775. Ley Federal del Trabajo, Article 25, 1 April 1970.

776. Ibid, Title 16.

777. Centro de los Derechos del Migrante, “Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change”, (2013).

778. Senior official, Ministry of Labor and Social Welfare, interview, Mexico City, 20 March 2020.

## Canada

Canadian courts have indicated that oral employment contracts are protected and can be enforced. For example, a 2019 Ontario Divisional Court judgement reinforced the principle that “settlements are enforced so long as the parties have agreed on the ‘essential terms’”.<sup>779</sup>

For migrant workers, under immigration law, there should be no instance under which they do not have contracts. As noted in sections 6.3 and 6.4, migrant workers in low-wage occupations in Canada must have a written contract as part of the process to receive a work permit authorizing them to work and enter Canada. Federal immigration law does not, in effect, allow for migrant workers without contracts - a migrant worker

without a written contract is therefore highly likely to be an undocumented worker, who has been forced “out of status”. Experts have told us of cases of Mexican migrants who arrive in the country, having travelled on the ETA scheme as visitors, with no contract but under the impression - conveyed verbally by recruiters - that a job exists for them. In many cases such workers are simply left to fend for themselves, while in other instances recruiters may pressure them to work in a different job from the one they were promised.

Despite the potential protection for oral contracts under the law, any migrant worker seeking to claim rights arising from a verbal agreement would by definition be out of status and at risk of repatriation. As discussed in section 7.4, undocumented workers may therefore be reluctant to seek to uphold the terms of their oral contract.

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779. Ontario Superior Court of Justice Divisional Court, “*Chete, Lada, and Chung v. Bombardier Inc.*, 2019 ONSC 4083 (CanLII)”

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