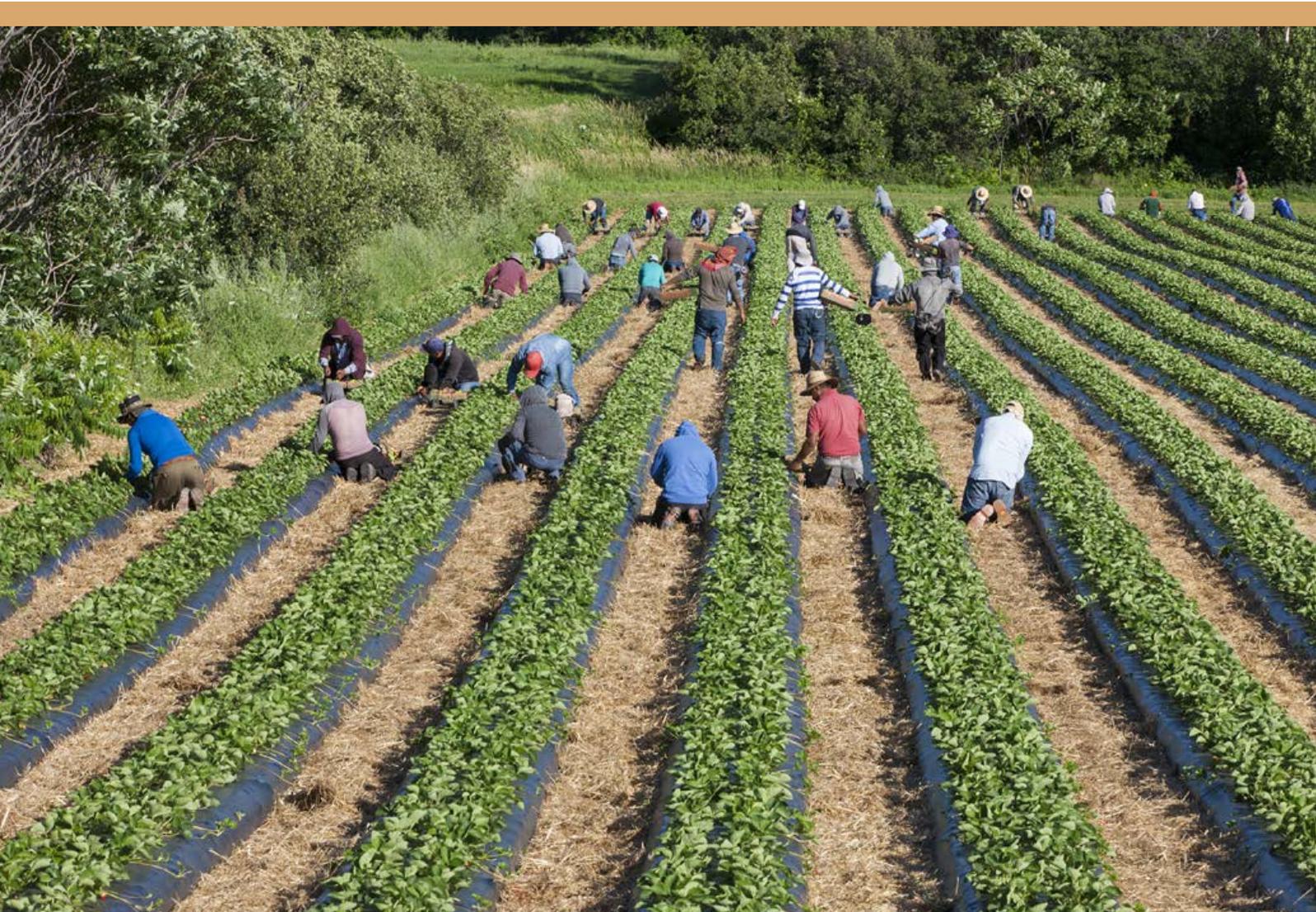


THE FIVE CORRIDORS PROJECT - CORRIDOR 5

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.

fairsq.org

Design by www.NickPurserDesign.com

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



Overview

An **overview** of fair recruitment in the Mexico-Canada labour migration corridor

Mexico has traditionally been a country of emigration. In 2020, Mexicans living abroad sent back approximately US\$40 billion in remittances, representing nearly 4% of Mexico's GDP. Ninety-five percent of this sum was sent from the United States, which is home to a Mexican diaspora of many millions. In recent decades Mexican migration to Canada has steadily risen, as Canada has increased the number of migrant workers in its labour force.

Every year, Canada issues more than 30,000 temporary work permits to Mexican nationals, who comprise approximately 10 % of Canada's migrant workforce. The majority are agricultural workers recruited through the Seasonal Agricultural Worker Program (SAWP) - called the PTAT in Mexico - that has been in place for nearly half a century. These workers, 96% of whom are men, travel to and from Canada each year as part of the popular scheme that the Mexican government administers with Canadian employers. Salaries for SAWP workers, which

are slightly above the Canadian minimum wage, are considerably higher than the minimum wage for Mexican migrant workers.

In recent years, the Mexican government has focused more on its policies on inward and transit migration than emigration. SAWP, a government-managed programme that provides consistent remittances, is a slight exception, and the government devotes attention to its administration and to the annual review meeting with Canada. This investment stands in stark contrast to its efforts in regulating recruitment to the United States, where - despite Mexican lobbying - there is no bilateral programme for labour migration, and informal Mexican private recruiters operate in a loosely regulated space, placing workers at risk of serious abuse in the migration process.

In Canada, the SAWP is notable in the sense that it is based on a bilateral programme with Mexico (and similar

agreements with some Caribbean countries) rather than solely on employer demand. Outside this programme, Canadian employers can hire migrant workers from any country as long as they and the workers meet the various immigration requirements. The numbers of foreign workers arriving in Canada under the main temporary programmes, the International Mobility Program (IMP) and the Temporary Foreign Workers Program (TFWP), have nearly tripled in the last decade. Various sectors of the economy now depend to some extent on temporary foreign workers - foreign workers made up 26% of the crop production workforce in 2017.

Canada's increasing reliance on migrant labour, particularly in low-wage jobs, has created some political tension in the context of the government commitments to provide jobs to Canadians. As a result, businesses have to complete what they see as a burdensome and costly Labour Market Impact Assessment (LMIA) each time they want to recruit a non-national, demonstrating that it is not possible to hire Canadian residents for the position (this requirement applies to most low-wage jobs). In this context, employers have pushed back against increasing pressure from civil society organisations and others to abolish the employer-specific (or "closed") work permit that ties temporary foreign workers to a single employer. Canada has an active and engaged civil society, and trade unions, activists and experts argue that migrant workers' rights are not adequately protected, particularly under the TFWP, which includes Mexican and Caribbean workers hired under the SAWP. They point to persistent complaints by migrant workers across multiple sectors of poor working and living conditions, salary irregularities, and more serious forms of exploitation.

Canada's legal and regulatory framework applying to migrant workers and labour recruitment cuts across its federalised governance structures, with the federal government taking primary responsibility for immigration, and provincial authorities responsible for workplace safety and employment standards, including the regulation of labour recruitment. This creates a multitude of legal and enforcement regimes and the result can be confusion over jurisdiction and responsibility, which has been brought into sharp focus during the Covid-19 pandemic. In 2021 the federal government announced that it would expand the Migrant Worker Support Network, a collaborative

outreach initiative to provide workers with information about their rights, to all provinces, after its pilot in British Columbia.

Covid-19 placed a renewed focus on the conditions of migrant workers in Canada, particularly those in the agriculture sector. In many cases, migrant workers were unable to socially distance properly in cramped accommodation and faced various difficulties observing quarantine requirements. The pandemic intensified the national debate about the country's reliance on its migrant workforce, categorised as "temporary" though many workers have worked in Canada for decades, and amplified calls to improve access for low-wage migrant workers to permanent residency and citizenship.

The following addresses the key recruitment-related issues driving positive and negative worker outcomes for Mexican workers in Canada.

Loosely regulated private recruitment in Mexico

Recruiters in Mexico engage in widespread fraudulent and abusive practices, and government efforts to address them have to date proven inadequate. While charging workers for jobs is banned under the country's Constitution, it is in reality commonplace and enforcement of the legal prohibition is extremely rare. Surveys suggest that up to 58% of workers going to the US may be charged illegal fees, amounting on average to four months of the Mexican minimum wage. Informal, unlicensed recruiters are particularly likely to charge fees to workers, but the practice exists among the small number of 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. Canadian media investigations have documented Mexican workers paying as much as CA\$40,000 (US\$33,200) for jobs, being promised wages far in excess of the wages they were eventually paid. In many cases, recruiters charge workers fees to secure jobs that do not actually exist. Mexican recruiters on Facebook offered us fake jobs in Canada for 2500 pesos (US\$120). Experts told us that Mexican workers sometimes pay fees, buy themselves tickets, and get as far as airports in Canada, only to find there is no-one waiting for them.

The government is supposed to verify each overseas contract for Mexican workers, but 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. 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. Furthermore, registered agencies are vastly outnumbered by the informal, unregistered recruiters who carry out the bulk of recruitment in Mexico. Only nine agencies are licensed to deploy workers overseas. The Regulation of Worker Placement Agencies (RACT) regulates the role of licensed recruitment agencies, but has limited application in regard to unregistered recruiters and intermediaries, a situation described by a senior official as a “legal gap” that impacts the ability of STPS to tackle these actors or take forward worker complaints about them. Victims of fraud by recruitment agencies have the right to report the crime to law enforcement authorities themselves, but with some rare exceptions, the authorities have generally not invoked this provision to tackle the recruitment industry.

SAWP as a model for managed labour migration?

In stark contrast to other models of outward migration, the SAWP is strictly controlled by the Mexican authorities and allows workers a relatively “safe” migration journey to Canada. Under the SAWP, Canadian employers apply, typically via recognised employer organisations, to the federal government to hire agricultural workers. When applications are approved by the Canadian government, the Mexican government - through the SNE (National Employment Service) - recruits the workers and coordinates logistics in order for migrant workers

to travel to Canada. This reduces the instances of fee charging and other exploitation on the Mexican side of the migration journey. Workers who migrated through the SAWP told us there was a significant difference between using private recruiters and migrating to North America through the STPS: “I’ve heard about people paying and I actually know people who recruit workers in exchange for 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. Because the SAWP removes the Mexican private sector from the equation, illegal charging of fees to workers appears to be restricted to cases of corruption among officials (which while not rare are not endemic). In addition, workers receive and sign contracts in Spanish, and undergo pre-departure orientation.

From the Mexican perspective, when compared to the loosely regulated and abusive private recruitment route to North America, the SAWP is a programme with significant benefits for migrant workers. One NGO told us that the SAWP “has a good reputation in comparison to private recruiters - the issue is that its impact in terms of numbers is small in comparison to the number of workers going to the US with informal recruiters.” Mexican experts and civil society groups we spoke to generally support the government’s aspirations to do more recruitment itself, through bilateral partnerships with other governments, rather than through the private sector, arguing that the SAWP demonstrated how the state’s involvement could give workers more certainty and reduce the likelihood of fraud and abuse, in the context of widespread abuse and exploitation by private sector recruiters. It is a measure of the relative merits of the SAWP that some experts also expressed concerns that swingeing spending cuts announced by the President in 2020, including to the SNE, might affect the administration of the SAWP.

In part because of its efficient administration and the fact that workers generally do not pay for jobs, the SAWP has been hailed as a “model” for labour migration. For a Mexican agriculture worker, the SAWP may present a more attractive and reliable proposition than paying unlicensed recruiters in the hope of getting a place on the US H-2A programme, or migrating across the border irregularly. This explains why there is a waiting list of 13,500 pre-screened job seekers for places on the

programme. SAWP workers told us they saved between CAD\$3,000 (US\$2,500) and CAD\$13,000 (US\$11,000) annually depending on the length of the season, putting the money they earned towards their children's education, buying land, building houses, or starting businesses.

However, there are a number of aspects of the SAWP that call into question whether it should be considered a model. Firstly, while workers should not, and generally do not, pay recruitment fees, they are required every year to pay for some travel and administrative costs related to recruitment. These charges appear to be out of step with ILO standards on the prohibition of recruitment fees and related costs. Since workers have to go through these processes each year, this can result in workers contributing many thousands of dollars to the programme over the course of their time on the SAWP.

The most serious concerns about the SAWP have been raised in the employment phase in Canada. A Mexican NGO told us that “the problems of the SAWP are in the employment part of the programme, not so much in recruitment.” A social worker in Ontario said that while abuse and fraud in the recruitment process was not common, “when workers get here, there is a whole range of forms of exploitation.” Complaints raised by workers include being asked to carry out different forms of work than they were hired for, as well as underpayment, illegitimate pay deductions, excessive and sometimes extreme working hours, and crowded, unhygienic accommodation. The most common violations identified by Ontario officials in the agricultural sector between 2011/12 and 2014/15 related to unpaid wages and termination pay, while other common violations included public holiday pay and illegal deductions from wages.¹ A senior Mexican official, speaking prior to the Covid-19 pandemic, said the main issue that they had raised with the Canadian government in recent years related to farms failing to provide adequate accommodation for the number of workers they had hired. The issue of housing conditions came to the fore during the Covid-19 pandemic, given the need for workers to socially distance themselves. A woman working in Alberta told us that during the pandemic her employers had concealed her and her colleagues from Canadian inspectors: “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].”

A representative of the Canadian Farmers' Association said to us that the scale of abuses was sometimes inflated by critics but also acknowledged that instances of bad practices could not be categorised as outliers. In 2017/2018, Employment and Social Development Canada (ESDC) carried out 402 inspections in primary agriculture (at least 336 of which were of SAWP employers), and found 127 employers (32%) needed to correct non-compliances. The main corrections required related to accommodation and wages. There is some evidence that Canada's agricultural sector is under-inspected. That same year 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.

There are two key underlying factors that undermine the agency of migrant agricultural workers in Canada and the claims of SAWP to be a model: provincial prohibitions on worker organising in the agricultural sector; and the coercive effects of workers' inability to freely transfer employers.

Agricultural workers and labour rights in Canada

There are structural factors that appear to drive abuses in the agricultural sector. According to the terms of the Memorandum of Understanding that set up the Mexico-Canada SAWP, Mexican workers must receive “treatment equal to that received by Canadian workers performing the same type of agricultural work, in accordance with Canadian laws.” Canadian employment law is set at provincial level, and agricultural workers are exempted from key worker protections in many parts of the country. Agricultural employer organisations say this is justified: “most if not all of our worker protection legislation had their origins rooted in the industrial and manufacturing industries. The nature of work in the manufacturing setting is very different to the nature of work in farming”. This has been termed “farm worker exceptionalism”.²

-
1. Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘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): 243.
 2. See for example, Vosko, Leah F.; Tucker, Eric & Casey, Rebecca. ‘Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability’.

In Ontario, which hosts more Mexican migrant workers than any other province, agricultural workers cannot establish or join unions under the 1995 Labour Relations Act and the 2002 Agriculture Employees Protection Act, which stresses “the unique characteristics of agriculture”. This exclusion was upheld by Canada’s Supreme Court in 2011, invoking public criticism from the International Labour Organization (ILO). A 2015 Solidarity Center report details how outcomes for Mexican migrant agricultural workers in the US have been improved by the involvement of unions in the recruitment and employment process. The UFCW union, which represents agricultural workers and brought the case against Ontario, told us that, “once they are in Canada, these workers are totally voiceless.” Because most SAWP workers are not able to unionise, unions are also excluded from the annual review process, meaning there is a lack of worker representation in discussions relating to their conditions and the contents of the standardised contract.

Agricultural workers in Ontario are not only unable to unionise - Regulation 285/01 has the effect that no agricultural workers are entitled to receive: daily and weekly limits on hours of work, daily rest periods, time off between shifts, weekly/bi-weekly rest periods, or overtime pay. With few exceptions, agricultural workers are not entitled to eating periods, public holidays or public holiday pay. Unions argue that this means that workers can be coerced into working exceptionally long hours in circumstances that technically are within the law, and told us they have assisted migrants who have worked for several months without a day-off. Fishers and most farm workers also have no right to the minimum wage, the “three hour rule”, or vacation pay.

Ontario is not the only Canadian province that restricts agricultural workers’ labour rights and protections in this way. Alberta’s Bill 26 of 2019, which the provincial government said would “restore balance, fairness and common sense regulations” by reversing a 2015 law, removed the right of agricultural workers to unionise (by no longer classifying them as “employees”), and exempted any farm with five or fewer employees (defined as someone working for more than six months consecutively, ruling out many seasonal workers) from the requirement to carry workplace insurance and from

the provisions of the Employment Standards Code. It also expanded the definition of agricultural worker, increasing the number of people covered by these exclusionary provisions.

In raising concerns about the persistent exemption of agricultural workers from labour laws, the ILO has noted that this may explain why such jobs are often unpopular among citizens, and in the context of Covid-19, has highlighted the discrepancy between societies’ acknowledgement of the importance of agricultural workers for the food chain,

and their lack of labour protection: “recognizing these workers as essential implies the need to address their exemption from labour laws.”³

Temporary status and the employer-specific work permit

In addition to agricultural workers’ exclusion from labour protections and their inability to unionise in some large provinces, another significant structural issue that seriously undermines worker outcomes is the restricted job mobility for migrant workers in Canada.

For most migrant workers employed under the TFWP, their work permit is “employer-specific”, sometimes referred to as “closed”. Migrant workers who want to change employers within Canada first need a job offer from an employer with approval from Employment and Social Development Canada (ESDC) to hire migrant workers, and then they must apply to obtain a new work permit. As advocacy groups have highlighted, there are long waiting times associated with this process, during which time migrants are unable to work. A temporary work permit application inside Canada took 126 days in early 2021. Increased job mobility for migrant workers has been one of the principal demands of advocates and activists in Canada, who argue that closed work permits are central to driving human rights abuse. The fear of losing employment and having to return home deters migrant workers from lodging grievances with the authorities or even with the employer themselves, making it difficult for them to refuse dangerous work or excessively long hours. A representative of an

3. ILO, ‘Seasonal Migrant Workers’ Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19’, May 2020: 6

immigration consultants organisation told us that, “the main threat to the worker is that the employer puts him out of the country.”

SAWP workers are in a slightly different situation, in that they do not need a new work permit to change employers but must go through a specific transfer process to move employers mid-season: transfers need the agreement of the worker, the previous and new employers, and both the Canadian and Mexican governments. Employers must have obtained LMIA's demonstrating that no Canadian residents are available for the positions. Workers do change employers during the season - about 15% of SAWP workers in 2014 - often at the instigation of employers who don't have work for them, though Mexican officials told us that in recent years transfers have become more complex. However this rate of transfers cannot disguise the most salient characteristic of the system, which is that no transfer can take place without the agreement of the employer and in this regard the system places workers in a similarly vulnerable position to those under the employer-specific permit. One Mexican agricultural worker told us the transfer system “gives the employer the ability to impose everything he can over the worker, then the worker cannot even say ‘you know what, I’m going to look for work elsewhere.’” The transfer system is exacerbated by the SAWP's employer ‘naming’ system, under which employers can identify specific workers they want to hire in subsequent seasons, disincentivising workers from making complaints. A 2016 ILO report comments that, “workers who want to be named by their employer to return next season are unlikely to complain.”

The precarity created by such structures, sometimes termed “deportability”,⁴ is particularly problematic given that the main mechanisms for enforcing rights and obtaining remedies in Canada are complaints-driven, meaning that according to the Migrant Workers Centre British Columbia, “if a migrant worker does not complain, he or she has no practical access to enforcing his or her rights.” This can have particularly profound effects for the small proportion of women who take part in the SAWP. Several workers told us of cases of harassment and abuse by employers against women who were scared to complain, because of the risk of losing their jobs and being excluded from the SAWP.

In a case that reveals the power imbalance between employers and their workers, one woman told us that when she rejected inappropriate advances from her supervisor, he subjected her to bullying and harrasing the following year, using his authority to give her excessively heavy work and screaming at her in front of colleagues. She told us was not asked back on the program by the farm: “he [the supervisor] must have told [the employer] that I was not fit for work or, I don't know what he told him.”

There has been increased public focus on job mobility for migrant workers in recent years, with proposals to create an occupation-specific or sector-specific work permit as a less restrictive alternative to the status quo. In 2016 a House of Commons committee review of the TFWP recommended that the federal government “take immediate steps to eliminate the requirement for an employer-specific work permit”, but in 2017 a separate committee looking at trafficking took a different view, raising concerns that “sector-specific permits would then allow a competing employer to offer a higher wage and steal the employee with no compensation to the initial employer for the [recruitment] expenses they had incurred”.

A 2019 government consultation on the employer-specific work permit did not result in any reforms to the system, with employers opposing proposals to create an occupation specific permit. However, in a separate attempt to respond to concerns about the employer-specific work permit, the government introduced the Open Work Permit for Vulnerable Workers in 2019, “to provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer”. In the first 18 months of the scheme's introduction, approximately 800 open work permits for workers in situations of abuse were issued, at a rate of roughly 10 per week. Union representatives and worker organizations generally welcome the existence of such a mechanism, but continue to push for broader systemic change that would allow migrant workers the unconditional right to change employers, with one expert on migrant workers in Canada calling the scheme a “bandaid on a system that is broken”. Those supporting workers in accessing the permit have also expressed concerns about the complexity of the

4. See Vosko LF. ‘Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining among Participants in Canada’s Seasonal Agricultural Workers Program’. ILR Review. 2018;71(4):882-907.

application process, which creates barriers and likely reduces the number of applications. The 2021 federal budget allocated CAD\$6.3M (US\$5.2M) over three years to support faster processing and improved service delivery for open work permits for vulnerable workers.

SAWP workers are the least likely of any category of migrant workers to obtain permanent residency in Canada despite in many cases having worked in the country for decades. Civil society and worker organisations maintain that the pathways for migrant workers in low wage roles to gain Canadian residency are too limited and remain too onerous, and question the “temporary foreign worker” terminology. The Migrant Workers Alliance argued in 2019 that “the sectors where migrant workers labour are clearly not peripheral - our society could not function without the food, care, and service that they provide. Similarly, the labour that they perform is not temporary”. During the Covid-19 pandemic there have been intensified calls for migrant workers to be given “status on arrival” to appropriately recognise their contribution to society and remove their dependence on employers that the employer-specific work permit provides. We spoke to workers, immigration consultants, employers and unions who, in different ways, supported increasing low-wage migrant workers’ access to residency and citizenship. The 2021 budget saw a pledge by the federal government to introduce temporary pathways to permanent residence for over 90,000 essential workers (including migrant workers in low-wage occupations) and international graduates who are “actively contributing to Canada’s economy”.

Mexican consulates

The terms of the Memorandum of Understanding that set up the SAWP assign Mexican consular officials in Canada a special role in the implementation and monitoring of the programme. The six Mexican consulates conduct site visits to farms - the Toronto consulate visits about 50 per season - and play a direct role in managing complaints they receive from workers. They are generally the first point of contact for workers in the event that they have a grievance. Mexican officials told us they attempt to mediate problems between workers and employers, and that only in cases that are more difficult to solve, or where they identify a potential

breach of Canadian federal or provincial law, do they refer those cases to the Canadian authorities. A former Mexican Consular official estimated that they only refer approximately 20% of cases to Canadian federal or provincial officials.

Consulates have considerably more resources and authorities available to support SAWP workers than are available for other Mexican workers in Canada. Nonetheless, the large number of workers and the remote locations of farms in Canada places their resources under considerable pressure. Consular officials told us that officials have to respond to a large number of worker calls, as well as carrying out visits to farms, and that there have been cases where they were unable to assist some groups of workers due to the volume of requests. An academic who specializes in the SAWP told us that consulates did not have sufficient staff, that they were located too far from farms, and that officials were not adequately trained to deal with employer-employee relations. Workers told us they often did not get responses when they called the consulate asking for help.

Workers also told us of instances where officials sided with employers during the mediation process and critics of the SAWP have frequently accused consular officials of being too close to employers and under their sway. In one notorious case, the British Columbia Labour Relations Board confirmed in 2014 that the Mexican consulate in Vancouver had identified SAWP workers who were in contact with unions with a view to blocking them from returning to Canada. One former consular official, by then employed by a Canadian union, testified that the consulate was “terrified” of challenging employers and that “the priority was to keep employers happy so they continue to request Mexicans.”

These serious concerns notwithstanding, unions and others working with migrant workers told us the provision of consular support by Mexico was considerably better than other countries who were not part of the SAWP, and also praised the efforts of some of the Mexican consulates in Canada, noting that the quality of provision depends on the individual officials present at specific missions. For all its documented faults, the authority that the SAWP delegates to origin state officials improves workers’ abilities to raise complaints, as compared to workers outside the SAWP from countries such as Guatemala, El Salvador, Honduras, and Thailand.

Canada’s “remedial, rather than adversarial” federal enforcement regime

Provincial inspection and enforcement regimes vary significantly. Since 2015, however, ESDC has been federally mandated to inspect employers’ adherence to 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, which corresponds to 13% of all TFWP employers. A Mexican consular official told us that while the increased number of federal inspections in recent years was a positive development, the resources being allocated were still “not at the necessary level”. Mexican workers we spoke to generally recalled visits by their consulate but not inspections by Canadian officials. During the Covid-19 pandemic, the inspection programme was halted and was subsequently replaced with virtual inspections. In 2021, the federal budget allocated an additional CAD\$54.9M (US\$45.5M) over three years to increase inspections of employers of migrant workers.

Inspectors can issue warnings, fines, a ban from the TFWP, and/or revocations of valid LMIAs, which are necessary to hire foreign workers. Offending companies can also be named on the IRCC website. Importantly, the programme is designed to be “remedial, rather than adversarial”, as Marsden, Tucker and Vosko put it. According to available data inspectors found non-compliance at almost half of the employers they inspected in 2017/18, but the vast majority of issues 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 CA\$5000. Authorities have levied more significant fines in relation to the protection of workers during the Covid-19 pandemic. Nevertheless, questions remain about whether the ESDC’s administrative penalties adequately deter poor practices. The RCMP has the mandate to carry out criminal investigations into human trafficking, but sex trafficking is prioritised above labour trafficking and successful prosecutions are anyway very rare, averaging about 2 or 3 per year.

The tapestry of Canadian private recruitment regulation

Canada’s federal governance structure creates varying legal regimes relating to migrant workers’ recruitment, immigration and employment, depending on the province and sector in which they work. An IRCC research paper notes that “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.” This can cause confusion even for SAWP workers who, although recruited as part of a federally negotiated bilateral programme, are subject to differing levels of protection depending on the province where they work. But it is particularly stark for Mexican and other migrant workers recruited privately through labour recruiters and / or immigration consultants. Those who assist migrant workers in taking forward grievances describe a complex tapestry of regulation and a proliferation of different, often disconnected routes that workers have to navigate if they are seeking a remedy.

Provincial governments have jurisdiction over the regulation of labour recruitment. Practices vary by province, and there are good examples of well-designed systems that take account of and seek to mitigate the risks of abuse in the recruitment process. Six provinces - most of those that host large numbers of migrant workers - require labour recruiters to be licensed in order to operate, with some also requiring employers to register in order to hire migrant workers. To provide greater oversight of recruitment activities outside Canada, provinces like British Columbia require licensed recruiters to provide information on their international partners, and makes the licensed recruiter in BC liable for the actions of their international partners. Legislation in Ontario, British Columbia, Saskatchewan, Manitoba, Quebec, and Nova Scotia allows for employers to be held responsible for the actions of recruiters, to increase employer adherence to fair recruitment practices. However, the province which hosts the most migrant workers, Ontario (along with six other provinces and territories) does not require labour recruiters to register in order to operate, a policy which unions and recruitment agencies have called to be reversed. Ontario officials told us that the previous licensing scheme that was abolished in 2001 had become a “rubber-stamping

exercise”, and the focus of their efforts is on enforcement rather than licensing. However, experts argue that this discrepancy between provinces allows unscrupulous labour recruiters to focus their activities in provinces where regulations and monitoring are weakest.

Federal immigration law reinforces provincial prohibitions on fee charging, but also permits registered immigration consultants to charge workers for their services, a vexed issue that cuts across provincial regulation. As consultants may simultaneously operate as recruiters, this dual role opens up a grey area that has been exploited with relative ease by unscrupulous operators, who sell jobs to migrant workers - sometimes

for exorbitant sums - and bill them for “immigration advice”. One consultant, who never charges workers for any services, 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. The federal government established a new regulator in 2021, with additional powers, in response to repeated concerns about the weakness of the two previous self-regulatory regimes set up in 2004 and 2011 respectively.

Priority recommendations to strengthen efforts to ensure fair recruitment.

The Mexican authorities should:

- **Revise** the Federal Labour Law and the RACT to provide the STPS with explicit authorities to investigate and penalize unlicensed labour recruiters and intermediaries.
- **Substantially increase** investments in the monitoring and inspection of licensed recruiters, and establish accessible and effective grievance mechanisms for workers subjected to abuse and fraud.
- **Publish** information on the outcomes of inspections of labour recruitment agencies, including where penalties are issued.
- **Increase** resources for consulates in Canada, and explicitly instruct officials that their priority consideration must be the safety and dignity of workers.

Canadian federal authorities should:

- **Provide** increased job mobility, in particular by removing the employer-specific work permit, and expand access to residency to low-wage migrant workers.
- **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.

- **Provide** federal funding for legal aid to assist migrant workers, in particular to help with the filing of federal and provincial complaints and related processes, including obtaining open work permits in situations of abuse.
- **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 such payments in the case of workers applying to the TFWP and other programmes where work permits are linked to specific employers.
- **Require** licensed immigration consultants to provide information to federal authorities on all their overseas partners and make them liable for the actions of their overseas partners; ensure the new regulator has a focus on enforcement; and expand CBSA investigations into unlicensed consultants.
- **Give** increased political importance to federal/provincial/territorial coordination over legislation and enforcement regarding recruitment and employment of migrant workers.

Canadian provincial authorities should:

- **Remove** restrictions on freedom of association that prevent migrant or other workers from exercising

their legitimate right to form or join trade unions.

- **Remove** blanket exemptions from employment standards legislation that leave migrant or other workers without basic legal protections, with respect to their working conditions, for example working hours, breaks, and wages.
- **Implement** licensing systems for any individual or company engaged in the recruitment of migrant workers, where these are not already in place; require employers as well as recruiters to register with the province; and hold employers and recruiters liable for the actions for third parties in the recruitment process.

With respect to management of the SAWP, the Mexican and Canadian authorities should jointly:

- **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.
- **Allow** worker representation and participation at SAWP annual meetings, in line with ILO guidance on bilateral agreements.
- **Significantly ease** the ability of SAWP workers to transfer employers, removing the role of the current employer in the transfer process.

Methodology

Project Aims

The aim of this research was to test the performance of the governments of Mexico and Canada against a set of 44 indicators that cover nine areas of government policy. The indicators examine laws, policies and government practices in relation to recruitment and to evaluate their effect on outcomes for migrant workers:

1. National migration policy (7 indicators)
2. Legal and regulatory framework (5 indicators)
3. Bilateral arrangements (5 indicators)
4. Licensing, registration and certification schemes (5 indicators)
5. Machinery to implement and enforce regulation (4 indicators)
6. Measures to prevent fraudulent and abusive recruitment (5 indicators)
7. Enforcement, access to grievance mechanisms and remedies (6 indicators)
8. Measures to provide accurate information to workers (5 indicators)
9. Freedom of association (2 indicators)

The indicators are anchored in existing international standards, in particular the ILO General Principles and Operational Guidelines on Fair Recruitment. Full details of each indicator, and how they are derived from ILO and other standards, is provided in the Five Corridors methodology.

The corridor research team comprised of Jorge Aceytuno, James Lynch, Dr. Aaraón Díaz Mendiburo, Margarita Maura Pascual, Ariadna Tovar Ramirez, and Amira El-Sayed. Researchers were tasked to take account of the following considerations, in addition to relevant laws and formal policies:

- **The object and purpose of laws and policies:** What stated and unstated goal/s does the government have with regard to this intervention? Goals could include economic development, increasing remittances, migration management, protection of human rights, national security, immigration control etc.
- **The implementation of laws and policies:** What does the government do in practical terms to implement this measure? For example: financial

and personnel commitment made to the policy; levels of professionalism and responsiveness of state institutions; whether key institutions have the appropriate mandate and authority; whether independent institutions scrutinise and report on performance; and whether there is transparency in the way the government carries out this measure.

- **The effects and outcomes of laws and policies:** What is the effect of the government's intervention on migrant workers? In particular, to what degree does it ensure fair recruitment?

Sources of Information

In order to assess laws, policies and practices in Mexico and Canada against the indicators, we conducted a thorough review of secondary source material, and sought information and perspectives from a wide range of individuals directly involved in, affected by or knowledgeable about the regulation of migration and recruitment in these corridors. In total we carried out interviews with 22 such experts. In addition, we held eight meetings with government officials in Mexico and Canada, and interviewed 29 Mexican migrant workers.

Legal and policy frameworks, and secondary sources:

We conducted a thorough review of secondary sources, including books, NGO reports, peer-reviewed academic journals, and newspaper articles and a full analysis of relevant laws and policies in Mexico and Canada.

Key stakeholders and experts in migration processes:

We interviewed a wide range of stakeholders and experts either remotely or in person, including NGOs working on migrant workers' rights, trade union representatives, academics, think-tanks, journalists, lawyers, recruitment agencies, and representatives of intergovernmental organisations such as the IOM. We explained to interviewees our preference of attributing all comments to named individuals, but offered them the option of withholding their names. The organisations we consulted included the National Network of Agricultural Workers (CECIG), the Centro de los Derechos de Migrante (CDM), the Union of

Telephone Operators of the Mexican Republic (STRM), ProDESC, the Immigration Consultants of Canada Regulatory Council (ICCRC), the Canadian Federation of Agriculture, Maple Leaf Foods, the Canadian Labour Congress (CLC), the United Food and Commercial Workers (UFCW), the Migrants Resource Center Canada (MRCC), the Migrant Workers Centre BC (MWCBC), the Canadian Association of Professional Immigration Consultants (CAPIC), Legal Assistance of Windsor (LAW), and the Immigration Consultants of Canada Regulatory Council (ICCRC). The individuals we consulted included academics Dr. María Antonieta Barrón Pérez, Dr. Karla Valenzuela, Rosa María Vánegas García, Dr. Ethel Tungohan, Professor Leah Vosko, Professor Jennifer Gordon, and individuals involved in the recruitment industry in Mexico and Canada, including recruitment agencies and immigration consultants. We also attended AMSSA regional meetings between October 2020 and January 2021, hearing presentations from a wide range of speakers, including federal and provincial officials, civil society organisations, trade unions, employers, employer organizations, and immigration lawyers, and asking research questions during participatory sessions.

Governments: In Mexico we met two senior officials at the Ministry of Labour and Social Security (STPS), and Mexican consular officials in Ottawa and Toronto. We also met former officials from both the STPS and the SRE. In Canada we met Directors and officials from Employment and Social Development Canada's (ESDC) Temporary Foreign Worker Program (TFWP) Directorate, including their groups responsible for Integrity (employer inspections), the Seasonal Agricultural Worker Program (SAWP), and the Migrant Worker Support Network (MWSN). We also met Directors and officials from Immigration, Refugees and Citizenship Canada's (IRCC) Temporary Resident Policy and Program division, Permanent Resident Policy and Program division, and Research and Evaluation. At the provincial level, we met with officials from Ontario's Ministry of Labour, Training and Skills Development responsible for employment standards, labour recruitment, and inspections.

We wrote to STPS and SRE in Mexico, and to ESDC and IRCC in Canada in April 2021 outlining the report's draft key findings and recommendations for Mexico and Canada. IRCC provided a written response to this letter, and provided us with an opportunity to present our report's recommendations to officials from both ESDC and IRCC, including their groups responsible for the Seasonal Agricultural Worker Program and immigration consultants.

Migrant workers: We spoke to migrant workers to help us understand better recruitment and migration processes from workers' perspectives, and to provide us with insights into how particular measures work in practice. Our interviews with migrant workers were not designed to provide representative samples, and we did not attempt to carry out large-scale quantitative surveys of migrant workers. We intended to interview workers in person, in a mixture of group and individual interviews, envisaging that this would take place both in Mexico and in Canada. The Covid-19 pandemic largely prevented us from carrying out interviews in this way, apart from a small number conducted before restrictions took force. As a result we elected to carry out remote interviews. We interviewed 29 Mexican migrant workers in the course of this research, 25 one-to-one interviews and one group interview of four workers. We spoke to 7 workers at the STPS in Mexico, as they were going through their recruitment process for the SAWP. Connections through academics and civil society organizations in Canada and Mexico linked us to 16 workers, while a private recruiter in Mexico introduced us to two workers. The group interview we conducted was arranged with the assistance of the Legal Assistance of Windsor (LAW). The interviewees were drawn from the agricultural sector.

We used interview questionnaires structured around the recruitment process, including questions on the experiences of workers with regard to:

- Their decision to migrate;
- Introduction to and interaction with officials and recruitment agents;
- Payment of fees and exposure to debt, where applicable;
- Pre-departure experience, including contract processes and any orientation programmes;
- Arrival and working in the destination country;
- Getting support if something goes wrong; and
- Returning home after migration.

We explained the purpose of the interview and the wider project in advance and secured the express consent of all of the individuals we spoke to to use the information they provided to us for the purpose of the project. Where we have cited worker comments directly, we have opted to withhold workers' names, generally referencing only their age, gender, agricultural produce they worked with, and the province in which they were employed in Canada.



Migrant agricultural workers from Mexico arriving at Trudeau Airport in Montreal, April 2020. © Canadian Press / Shutterstock

Recruitment pathways: How Canadian employers hire Mexican migrant workers

This is a brief description and analysis of the most prevalent recruitment pathways in this migration corridor, which is dominated by the government-run recruitment Seasonal Agricultural Worker Program (SAWP), which sits under Canada's Temporary Foreign Worker Program (TFWP). Private recruitment pathways also exist under the TFWP, and these are also described below. Any employer looking to hire a foreign worker through these routes must obtain a Labour Market Impact Assessment (LMIA) in order to demonstrate that no Canadian citizen or resident could be found for the role.⁵

Government recruitment under the SAWP and LMM

In 2019, the government of Mexico recruited 26,407 migrant workers under the SAWP, and approximately 700

migrant workers under the Labour Mobility Mechanism (LMM). Collectively, this represents approximately 87% of the 30,960 Mexican migrant workers who entered Canada under the TFWP. Under the SAWP, Canadian employers apply to the federal government to hire agricultural workers, with most using the services of officially recognized employer organizations to support them with the application process. When applications are approved by the Canadian government, the Mexican government then recruits the workers and coordinates logistics with the recognized employer organization in order for migrant workers to travel to Canada.

The Seasonal Agricultural Worker Program

An agricultural employer who wants to hire foreign workers under the SAWP must first apply for a LMIA from the department of Employment and Social Development Canada (ESDC). Under the provisions of the SAWP MoU, recognized employer organizations (FARMS, FERME, and

5. The International Mobility Program (IMP) is Canada's other main temporary labour migration programme. 4,845 Mexican workers entered Canada in 2019 under the IMP. Unlike the TFWP, employers generally do not require LMIA's to hire under the IMP. The majority of workers entered under professional occupations and intra-company transfers through the Canada-US-Mexico Trade Agreement (CUSMA), a work scheme for graduates from Canadian post-secondary institutions, and a smaller movement of young workers under the International Experience Canada programs between Mexico and Canada. These processes are not described in detail as they are not the main focus areas of this report.

WALI) are authorized to provide assistance to Canadian employers with the LMIA application process and with logistics related to the workers' travel between Mexico and Canada. These organizations play a major role in administering the programme on the Canadian side.

If the employer's application is approved by ESDC, the government of Mexico nominates candidates who have been recruited through its Ministry of Labour and Social Security (STPS). Job seekers apply for participation in the SAWP through the local offices of the National Employment Service (SNE), an agency of the STPS, and are screened through a standardized test that requires, amongst other things, for applicants to be agricultural workers in Mexico, reside in a rural area, and have agricultural work experience in select agricultural crops. In reality, many workers return to Canada every season for several years and even decades. The matching process is often straightforward - employers "name" workers they would like to hire again the following year. The programme is heavily oversubscribed, and there is currently a waiting list of more than 13,500.

Once a migrant worker is selected, the STPS/SNE helps the worker to apply for a work permit at the Canadian Embassy, organizing medical tests, biometrics, and other requirements. The STPS/SNE also helps workers register to receive public health care and supplementary private insurance in Canada (paid by the worker), and coordinates details of the workers' travel to Canada with the appropriate recognized employer organization. The STPS also provides migrant workers with a pre-departure orientation session that explains the employer-employee agreement, and provides contact information for the Mexican Embassy and consulates, as well as information related to workers' rights in Canada.

The longest possible contract for SAWP workers in Canada is eight months per year. As a result all these recruitment processes, with associated costs, are repeated every season for each employer and worker, regardless of whether a worker is returning to a previous employer.

The main elements of the **fee structure** are as follows:

- Neither the worker nor the employer pay recruitment fees. Advertising, screening and selection of workers is delivered by the Mexican state as part of the SAWP MOU.

- Mexican workers must pay for the costs of medical tests, biometric tests, and work permit application fees required by the Canadian government. They must also pay for the internal transport costs within Mexico to attend these processes. In most provinces they pay up to half the cost of the airfare through salary deductions (see below). After arrival in Canada, workers also pay for supplemental health and life insurance that covers workers over-and-above Canadian public health plans in the event of an emergency. Employers can also make deductions from workers' salaries for utilities up to provincial limits.
- The Canadian employer pays a nominal fee to the recognized employer organizations for the services that they render, and pays several costs associated with the recruitment of workers to Canada, including transport from airport to job sites, and registration of workers into Worker Compensation Plans. In British Columbia, employers pay the full return airfare for the worker, while in other provinces employers can recuperate up to half of the workers' airfare from workers. Employers must also provide workers with free housing that has been inspected by government inspectors - the exception is again British Columbia, where they can recuperate an agreed amount for housing.

The fee structure is generally respected under the relatively tightly controlled SAWP, though there are some cases of corruption in Mexico, where workers are charged by officials to enter the programme, and of pay deductions by Canadian employers which go beyond what is permitted under the SAWP contract. Mexican consulates in Canada have authorities to visit farms and to resolve disputes between workers and employers, and the STPS takes a "report of return" from each worker at the end of the season, which is designed to identify any breaches of the SAWP contract. The most common worker complaints relate to housing, pay and other working conditions.

The Labour Mobility Mechanism

The Mexico-Canada LMM is designed to provide opportunities for Mexican workers beyond the SAWP. It is a small programme and recruited only 700 workers in 2019. The process of recruitment is similar to the SAWP on the Mexican side, and the fee structure is similar. The main differences are on the Canadian side, where

employers deal directly with the Mexican government as there are no recognized employer associations to coordinate the programme, and where Mexican consulates have no special authorities to oversee the implementation of contracts. Additionally, the STPS only provides LMM applicants with information about the Canadian work permit application, meaning they get much less assistance than workers going through the SAWP. Given that completing a work permit application can be complex and must be done in English or French, workers may as a result need assistance from employers or from an immigration consultant to complete the work permit application process.

Private recruitment between Mexico and Canada

Recruitment outside bilateral programmes, which typically involves private recruitment agencies and/or immigration consultants, represents a considerably smaller share of the Mexican migrant workers hired in Canada than the SAWP. In 2019 about 4,000 Mexican migrant workers who entered Canada under the TFWP did so outside the government-administered SAWP and LMM schemes.

Once a Canadian employer has obtained a Labour Market Impact Assessment from ESDC, they can proceed to recruit the migrant worker. There are multiple ways in which this recruitment might legally take place:

- **Some employers advertise and hire directly** without the involvement of third parties. In some provinces, employers must register to be able to hire any migrant workers, in addition to the federal LMIA process.
- Employers in some cases directly engage the services of **Mexican recruitment agents**, which are required under Mexican law to be registered, to screen and select applicants.
- Some employers hire **agencies based in Canada** to carry out the recruitment. These Canadian agencies may in some cases themselves hire Mexican agencies. If the employer is hiring in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan, which require private recruiters to be licensed, the employer must

only contract recruiters who are licensed in that province. In other provinces, there are no licensing requirements restricting who can act as a recruiter.

Under Mexican law, all contracts for migrant workers in foreign countries are supposed to be verified and approved by the government. In practice this is not a requirement that Mexican authorities enforce, and so there is no meaningful involvement of the government in private recruitment processes. All significant formal processes take place on the Canadian side. Once a worker has been selected by one of the means above, they must apply for their Canadian work permit, a process which includes medical tests and biometrics. Employers may use the services of **immigration consultants**, both to help secure LMIA's and to ensure workers are successful in obtaining Canadian work permits. Many immigration consultants work within recruitment agencies, and provide both recruitment services and immigration advice.

The **fee structure** for this model is supposed to work as follows:

- The Canadian employer pays all recruitment fees charged by agents, as well as costs associated with the recruitment of workers to Canada, including return airfares, transport from airport to job sites, and registration of workers into Worker Compensation Plans. Employers must also assist workers in finding quality affordable housing, but housing is paid by workers.
- Under both countries' laws, Mexican workers should not pay any recruitment fees to licensed labour recruiters in either Mexico or Canada. However under Canada's Immigration and Refugee Protection Regulations, workers must pay for the costs of medical tests, biometric tests, and work permit application fees required by the Canadian government. Workers also pay for associated travel in Mexico in order to complete the work permit process.
- Licensed immigration consultants are permitted under Canadian law to charge either employers or workers for immigration advisory services.

In practice

Employers, recruitment agents and immigration consultants in some cases take great care to respect

and protect the rights of workers through the migration process, in line with the principles above. However, a description of the legal pathways alone does not capture several important features of migration from Mexico and to Canada.

Firstly, despite requirements in law, the Mexican recruitment industry is highly informal, and the vast majority of recruitment for jobs in North America is carried out by unlicensed agents who pay little heed to regulations. In many cases workers are recruited by members of their rural communities who connect them directly to employers or to larger unlicensed agencies in cities who are offering jobs in North America. Much recruitment happens through Facebook, making it difficult to identify recruiters. There are only nine agencies formally licensed to recruit for jobs abroad, and even these are not subject to a regular inspection programme. In this context, fee charging is very common in Mexico, with one 2013 study finding workers paid on average US\$591 for jobs in the US.

Secondly, recruiters may charge workers for jobs in Canada where employers have not obtained LMIA and associated approval to hire migrant workers. In these cases, Mexican recruiters advise workers not to obtain work permits but to travel to Canada directly as visitors,

under the Electronic Travel Authorization (ETA) scheme. Workers can arrive in Canada to find there are no jobs for them, or that the positions, terms and conditions differ significantly from those promised.

Unscrupulous recruiters in Canada develop relationships with employers and recruiters in origin countries including Mexico, and deliver workers to employers either free of charge or at low cost, passing the cost of recruitment onto the workers, from whom they may charge fees upfront or deduct fees from their salaries throughout their contract. Fees vary significantly depending on workers' country of origin and other factors, but can amount to many thousands of Canadian dollars.

Finally, the role of licenced Canadian immigration consultants adds a further layer of complexity to the fee charging model, as it is permitted for consultants to charge workers for immigration services but not recruitment services. These services are so closely linked that it may be unclear to workers what they are being charged for, and unscrupulous consultants deliberately blur the lines in order to charge for jobs. Unregistered or "ghost" immigration consultants, who charge extortionate fees for jobs that may not exist, are a persistent problem.

A simplified impression of a typical recruitment process for a Mexican agricultural worker employed in Canada under the “SAWP”



Supported by Open Society Foundations, Humanity United and Porticus

Produced by FairSquare

**OPEN SOCIETY
FOUNDATIONS**



fairsq.org