



Band-aid on a bullet wound: Open work permits for employer-tied migrant workers facing workplace abuse

Empirical evaluation of the Canadian *Open work permit for vulnerable workers* policy

September 2021

Association for the Rights of Household and
Farm Workers (ADDPD/ARHW)



Services Étoile Filante (SEF)



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Through research, education, and legal advocacy, the ARHW works to advance the fundamental rights of migrant household and farm workers in Canada, particularly their right to freely change employers, to live with one's partner/children, and to access permanent legal status.

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Services Étoile Filante is a charity organization created in 1993 to offer free education and training services on the rights of immigrant and migrant women workers facing high risks of abuse by employers, agencies, and/or landlords in Canada. In addition to organizing education and training activities (including collective activities such as workshops, symposiums, forums, and conferences), Services Étoile Filante also organizes fundraising activities to allow the completion of its mission.

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TABLE OF CONTENTS

Executive summary _____	2
Introduction _____	4
The Open work permit for vulnerable workers policy _____	4
Research objectives _____	5
Part 1: Methodology _____	7
Part 2: Findings _____	9
Barriers to accessibility _____	9
Deficiencies related to program delivery _____	16
Shortcomings in the employer compliance aspect of the OWP-V policy _____	20
Part 3: Discussion _____	23
Recommendations _____	25
Achieving the OWP-V policy goals: Necessary policy reforms _____	25
In the interim: Improving access to the OWP-V policy and program delivery _____	27
Increasing the effectiveness and impact of the OWP-V policy: Important gaps _____	30
References _____	32

EXECUTIVE SUMMARY

The employer-specific work permits issued to migrant workers¹ in Canada make it inherently difficult to change jobs, producing a power imbalance that favours employers and results in workers enduring situations of abuse. Migrant workers and their allies have long demanded that the government abolish the employer restriction on work permits and issue open work permits to every admitted migrant worker – regardless of national origin or occupation.² Increasingly, evidence shows, both globally and in Canada, that employer-specific work permits are a central factor in the structural vulnerability of migrant workers that results in forced labour and the violation of fundamental rights. Even so, the federal government maintains the use of employer-specific work permits and has instead associated it to the *Open work permit for vulnerable workers* policy (OWP-V) - a measure which, allegedly, negates the harm caused by binding migrant workers to a specific employer or group of employers.

Implemented in June 2019, the policy allows immigration officers to issue open work permits to migrant workers on an employer-specific work permit who can demonstrate reasonable grounds to believe that they are experiencing abuse or are at risk of abuse in the context of their employment in Canada. By providing workers with formal access to an open work permit, the policy is supposed to temper the three main negative effects of the employer-specific work permit: worker unfreedom within the labour market, the high proportion of unauthorized employment, and the widespread impunity of employers and recruiters who abuse migrant workers.

Launched one year after the measure came into force, this research project sought to assess the policy's potential to act as a remedy capable of negating the problematic large-scale effects of the employer-specific work permit and whether it had been implemented efficiently from a client-experience perspective. Ten semi-structured interviews were conducted with organizations and individuals that provide direct legal and social support to migrant workers in

¹ The term “migrant worker” refers to workers in Canada without permanent resident status, which can include workers that are undocumented. Because our research focuses on workers that are issued employer-specific work permits, the term as it is used in this report has a more limited meaning and refers to workers entering Canada through the Temporary Foreign Worker Program or International Mobility Program.

² In fact, the federal government does issue open work authorizations to some groups of foreign workers, thus violating the other foreign workers' right to not be discriminated against in the country on the basis of national origin. See the current list of ‘select’ countries of origin, favoured by the federal government:

https://www.cic.gc.ca/english/work/iec/eligibility.asp?country=all&cat=NA&#country_category_name_cont .

Canada. Data collected from these interviews helped identify the main barriers and difficulties that vulnerable³ workers face when applying for the permit. Direct data requests were also submitted to Immigration, Refugees and Citizenship Canada (IRCC) to assess how the OWP-V policy was operating within the framework of IRCC's employer compliance regime.

The research confirmed that the policy leaves unaffected the structural obstacles that prevent workers from being able to legally change employers. Recurring issues in the policy's delivery have also been identified, explaining why it has been so difficult for workers to apply for the OWP-V permit and be approved. Recommendations on how to reach the goals associated with the policy are provided. While it is possible to improve access to the policy and expand its coverage to allow for the protection of all employer-tied migrant workers, this report concludes that the policy, even if perfectly and more broadly implemented, could not be expected to counteract the high risk of abuse imposed on workers through employer-tying measures, and more specifically, the employer-specific work permit. More extensive reforms that would allow migrant workers to freely circulate in the labour market, and thus have a minimal capacity to exercise their rights in the country, are necessary to fulfill Canada's commitment to respect the labour rights and the fundamental freedoms of all migrant workers.

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³ The use of the term "vulnerable" in the context of the OWP-V policy to refer to migrant workers who are being abused or at risk of abuse is something of a misnomer since it implies that the vulnerability of the workers eligible for the permit arise from an experience with a specific employer rather than from the employer-tying measures that place these workers at a high risk of abuse upon arrival in Canada. By defining only workers able to provide sufficient evidence of abuse as vulnerable and deserving of protection, it disregards and obscures the state vulnerabilization and structural vulnerability of all employer-tied migrant workers in Canada.

INTRODUCTION

The *Open work permit for vulnerable workers* (OWP-V) policy was implemented by the federal government in June 2019, pursuant to amendments made to the *Immigration and Refugee Protection Regulations*.ⁱ These amendments provide immigration officers with the authority to issue open work permits to migrant workers with an employer-specific work permit who demonstrate that they are experiencing abuse or are at risk of abuse by their employer.

This research project started in July 2020, just over a year after the implementation of the policy. At that time, Immigration, Refugees and Citizenship Canada (IRCC) had circulated a program update which indicated that the department had received over 1,070 applications and 490 of them had been approved.ⁱⁱ

While IRCC's update stated that the 490 approvals demonstrated "that the program is responding to an important need," it announced it was planning to make improvements to the program, specifically citing concerns over lengthy processing delays and a challenging application process.ⁱⁱⁱ Critics (workers' rights organizations, legal clinics, and unions), on the other hand, maintained that reforming the scheme would not be enough to address the dynamics facilitating abuse in the first place - tied-work permit schemes.^{iv}

This research project was launched in response to these concerns. Its goal was to evaluate the policy according to the government's stated objectives, as well as provide a greater understanding about

areas in urgent need of improvement in the coverage and delivery of the policy.

The Open work permit for vulnerable workers policy

The adoption of the OWP-V policy was in part a response to the report on the Temporary Foreign Worker Program (TFWP) tabled in 2016 by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. The report recommended that Employment and Social Development Canada eliminate the employer-specific work permit requirement.^v This recommendation reflected the testimony presented to the committee that employer-specific work permits "often lead to a power imbalance that is conducive to abuse."^{vi} The committee was not the first to call for the end of the employer-specific work permit. Migrant workers and their allies have long demanded that the government end its practice of issuing employer-specific work permits and implement open work permits. Despite extensive documentation that the employer-specific work permit is a driving factor in the structural vulnerability of migrant workers that leads to abuse and forced labour,^{vii} the government decided to maintain the employer-specific work permit and instead implement a harm reduction measure: the OWP-V policy.

By implementing the OWP-V policy, the government has acknowledged that the employer-specific work permit creates structural conditions which increases the risks of abuse, unauthorized employment, and undetected abusive employers.^{viii} Indeed, migrant workers with employer-specific work permits who quit or are fired

may fail to find in time (before the expiration of their resident status) another employer-sponsor to access a new work permit. Additionally, there is no guarantee that such an employer will be granted by the government the validation necessary to sponsor and employ the worker. Moreover, even when successful, the procedure for obtaining a new work permit takes considerable time, often several months, during which workers are prohibited from earning a livelihood in the country. Thus, workers who quit or are fired have no choice but to work without authorization in order to support themselves until the new work permit is delivered, which further increases their vulnerability to abuse and labour trafficking.^{ix} In this context, in order to avoid jeopardizing their precarious right to work in the country, migrant workers systematically endure abuse and refrain from quitting or taking any step that could result in them being fired - such as reporting abusive employers or participating in state inspections of their employers' practices.

The OWP-V policy is supposed to address these problems by allowing workers who are experiencing abuse or have been fired by an abusive employer to maintain their right to earn a livelihood through a streamlined and rapid issuance (five business days processing) of a work authorization for any employer (subject to the general restrictions imposed on all work permits^x).

Research objectives

The objectives of the research are two-fold. The first is to evaluate whether the OWP-V policy has been designed in a manner that supports the government's stated goals,^{xi} which are as follows:

1. to provide migrant workers experiencing abuse, or at risk of abuse, with a distinct means to leave their employer (i.e., by opening the possibility of obtaining a work authorization for other employers);
2. to mitigate the risk of migrant workers in Canada leaving their job and working irregularly (i.e., without authorization) as a result of abusive situations; and
3. to facilitate the participation of migrant workers experiencing abuse, or at risk of abuse, in any relevant inspection of their former employer and/or recruiter, or otherwise assisting authorities (noting that this would not be required) by reducing the perceived risk and fear of work permit revocation and removal from Canada.

As such, this research assesses whether the OWP-V policy has the potential to serve as a remedial policy capable of negating the problematic effects of the employer-specific work permit, in particular the increased risks of abuse and forced labour, increased risk of unauthorized employment, and the widespread impunity of employers and recruiters who abuse migrant workers.

The second objective of the research is to evaluate whether, regardless of any limitations in the measure's large-scale impact, the OWP-V policy has been implemented efficiently from a client-experience perspective, in accordance with the government's acknowledgement that the administrative procedure is addressing the urgent needs of vulnerable individuals.

This report contains four sections. Part 1 sets out an overview of the research methodology. The findings of the research are presented in Part 2 and Part 3 contains a discussion thereof. The report concludes with a set of recommendations for the

improvement of the OWP-V policy, as well as policy reforms necessary to protect the rights of migrant workers in Canada while also supporting the labour market objectives of Canada's temporary foreign worker programs.

PART 1: METHODOLOGY

Two different research methods were used to collect data for this evaluation. The first involved ten semi-structured interviews with organizations and individuals that provide direct legal and social support to migrant workers in Canada. The interviews were conducted over a period of approximately seven months (August 2020 to February 2021). Participants were located in Quebec, Ontario and British Columbia. The second method consisted of direct data requests submitted to IRCC in order to assess how the OWP-V policy was operating within the framework of IRCC's employer compliance regime.

We recognize that the number of interviews is not representative, particularly of all provinces in Canada, but the interviews helped identify key barriers and challenges that workers face when applying for the permit and, as such, contribute a valuable source of information on this new and understudied topic.

The organizations and individuals interviewed provide direct support services to migrant workers. The representatives of organizations were employed in legal clinics, workers' rights organizations and a union. Individual participants were independent lawyers and grassroots community organizers. The majority of participants had assisted with multiple applications, making them well-placed to identify the limits and recurring issues with the policy.

At the time that the research was launched, approximately one year after the policy's implementation, 1,070 applications for the OWP-V had been submitted.^{xii} The physical isolation experienced by migrant workers, which in normal times poses a challenge for research on this population, was further exacerbated due to the Covid-19 pandemic. Furthermore, any research that directly involves migrant workers must be designed and undertaken with particular attention to the specific vulnerabilities of the population, and the project did not have the resources necessary to properly recruit migrant workers and facilitate their participation. For all these reasons, this research project does not include the direct inputs of migrant workers themselves, although they would have undoubtedly contributed valuable data on many aspects of the evaluation. We also recognize that despite the important insights that individuals and organizations who support migrant workers can provide, those perspectives are not a substitute for the lived experiences of those who are directly impacted by the OWP-V policy. Thus, future research on the policy that would integrate the perspectives of migrant workers themselves is urgently needed.

We directly contacted organizations that provide direct support services to migrant workers and had provided assistance to workers applying for the OWP-V permit. Additionally, a general call for participation was sent out through various migrant worker rights networks to raise awareness about the project. The organizations that agreed to participate selected their representative for the interview. Snowballing was used to identify other groups and individuals who would be interested in participating in this research.

The consent forms detailed how the research would ensure the participant's confidentiality and the protection of their information. In addition to providing participants with details of how the data would be stored, used, and reported, the consent forms also enabled participants to select whether the interview could be recorded and transcribed, and whether they requested anonymity in the reporting of data.

Most participants selected anonymity. Given the small sample size and the risk of identification through a process of elimination (if some participants were identified and others not), it was decided that all data would be presented anonymously.

The ten semi-structured interviews were conducted over the phone. A questionnaire of mostly open-ended questions was developed specifically for this research and was used during interviews with some degree of flexibility in order to allow interview participants to focus on their areas of expertise. In some cases, a summary of topics was sent beforehand so that participants could verify certain information before the interview, which was particularly useful with organizations that have more than one person that assists with these types of applications.

In order to establish which potential barriers and issues with the policy had already been identified, the questionnaire was developed by reviewing the submissions to IRCC made by various migrant rights advocacy groups in the lead-up to the creation of the OWP-V program. After analyzing the submissions, we formulated questions that would generate information on these possible barriers and challenges. Questions were formulated to be as open-ended as possible in order to allow participants to discuss issues with the policy that had not been specifically identified during the pre-implementation consultation process conducted by IRCC.

The interviews were transcribed and then analyzed to identify the recurring themes. Prevalent themes that emerged included various obstacles to the accessibility of the policy, issues with the processing of applications, limitations regarding the benefits of the policy, and the type and extent of assistance provided to workers trying to access the policy. The direct data collected from IRCC was analyzed in an attempt to establish to what extent approved OWP-V applications led to inspections of employers and what resulted from those inspections.

PART 2: FINDINGS

At the time of their interview (between August 2020 and February 2021) the ten participants in our study indicated that, in total, they had assisted or intervened in approximately 192 individual applications for an open work permit.⁴

The type of assistance provided to migrant workers by the participants was generally divided into two categories. Seven of the participants provided help completing the application while two of the participants were involved in providing psycho-social support to applicants either during the application process or after the permit had been delivered. One participant's intervention included both direct assistance with completing the application and the provision of psycho-social support to workers.

Participants were asked to describe what services or forms of support they offered to applicants. The answers reveal to what extent these applications are time, labour, and knowledge intensive. The participants involved with the administrative procedure indicated that they provided at least one of the following to workers when assisting with an OWP-V application:

- Translation services
- Plain language explanations for the policy and relevant legislation
- Assistance with ancillary complaints (to labour boards, police, etc.)
- Referrals to other organizations for support letters, drafting of the affidavit
- Instructions as to collection and presentation of evidence
- Interview preparation
- Assistance with the uploading of documentation and the submission of the application online

Our study confirms that applying for the permit is a time-intensive process, a strong application takes between 15 and 30 hours of assistance to be completed. For reasons that are discussed below, most of the participants explicitly stated that they believed their assistance or support of a worker facing abusive conditions translated into a higher probability of these workers accessing the open work permit. However, they identified (1) various barriers that prevent migrant workers from benefiting from this protective policy and (2) issues with policy delivery that made it very difficult to go through for a vulnerable worker. Finally, the information provided by IRCC allowed us to pinpoint (3) important shortcomings in the employer compliance aspect of the policy.

Barriers to accessibility

Participants were asked to identify recurring factors that prevented or made it difficult for workers experiencing abuse or at risk of abuse to successfully apply for the OWP-V permit and what strategies they used to overcome those barriers.

⁴ During the interviews it was revealed that there is a considerable amount of collaboration between organizations when assisting with an OWP-V application, and it is very possible that multiple participants intervened or assisted with the same application. We did not confirm which applications received assistance from more than one participant/organization. As such, the actual number of workers that had benefited from the assistance of the participants at the time of our study is less than 192.

Employer-dependent legal status

Canada's temporary foreign worker programs make workers' legal status in the country dependent on employers in many ways,^{xiii} and workers that disclose abuse risk facing reprisals from their employers. The potential negative consequences of coming forward with a complaint on both a worker's current and future legal status in the country are indisputably grave. Participants noted that some workers do not want to apply for the permit because they are worried about what impact the application might have on their status in the country, particularly if they are refused. Given the recent data from IRCC that indicates that just under half of all OWP-V applications are refused, the risk is very real.^{xiv} Workers' legitimate concerns about safeguarding their legal status was repeatedly flagged by participants as undermining the efficacy of the exceptional issuance of an open work permit to address employer-tied worker abuse.

Participants mentioned that a fear of reprisals by employers made workers hesitant to apply for the permit. If the worker is still employed with the employer, they are concerned that the employer will find out about the application. As one participant explained, "they're also of course very fearful of immigration, of their employer finding out that they need an application. I've seen examples of someone making an application that was not successful, and then Service Canada visited their work site and was asking questions and the employer put two and two together and terminated the employee, leaving them in an even worse position than they started."

Workers with a permit that is near expiration might be concerned that by disclosing their situation to immigration authorities they may trigger deportation proceedings (before having secured another employer-sponsor) if their application is refused. This concern, said one participant, is "a big psychological burden for the workers." In the case of agricultural workers, the structure of the Seasonal Agricultural Worker Program (SAWP) requires that workers return to their country of origin every year and are allowed back only if sponsored once again by a member of a coalition of agricultural employers. It is well-documented that there is "a real risk of not being retained or recalled to work in subsequent seasons, otherwise known as "blacklisting (...)"^{xv} Participants confirmed that migrant farmworkers were often reluctant to apply for the permit because they did not want to jeopardize future renewals of their Canadian work permit by employers. As one participant explained, "workers fear that if they take this step that they will face blacklisting, and it is important to maintain access to the program because it is an important source of income for them and their families." Participants also shared that workers admitted under the parallel Primary Agriculture stream also voiced concerns that applying for the OWP-V permit would mean decreased chances of securing a renewal of their Canadian agricultural work permit in the future. Indeed, one Ontario researcher confirmed, during the period of this evaluation, that SAWP workers employed in the agricultural sectors located in Leamington and Vancouver had been warned by their foreign government representatives to not apply for the open work permit in case of abuse by their Canadian employer if they wanted to avoid

jeopardizing their access to future work permit renewals.⁵

Finally, participants noted that some workers do not want to apply for the permit because they are worried about what impact the application might have on future permanent immigration procedures. As one participant explained, in the case of migrant caregivers, “it's just that if you say something wrong, it can lead to the wrong result. And they're aware of that.... They're aware that anything that they say, such as having worked for another employer in the country, could be used against them in the future for their permanent residency.”

Too restrictive: the valid work permit requirement

In order to be eligible for the OWP-V permit, a worker must hold a valid work permit or have implied status, which means they must have submitted a work permit extension application for the same employer and be awaiting a decision.^{xvi} Many of the participants discussed how this requirement prevented some workers who had experienced abuse from being able to benefit from the policy. One participant stated that, “We've had clients whose work permits had already expired by the time that they reached us, and we had to advise them that they were not eligible for this particular program.” Participants also indicated that the requirement was a significant problem when workers experience abuse near the end of their work permit.

“She was fired with a work permit that was just going to expire in a

few days. She came looking for support, and we were able to help her with her health and well-being because she was distressed. But she wasn't able to get the OWP-V permit even if she had a lot of evidence about the abuse.”

Importantly, one form of abuse often experienced by migrant workers is fraud and deception by employers/recruiters regarding the steps taken to renew their immigration status.^{xvii} However those workers are unable to access the policy even though the fraud and deception may have been accompanied by other forms of abuse. In these cases, participants explained it was difficult to find a solution that would allow the worker to stay in Canada and continue working legally. Participants indicated that they might try to assist workers with applying for a temporary resident permit for victims of human trafficking (VTIP TRP), but that approach could not be considered a feasible solution in most cases. As one participant explained, “The threshold for getting a resident permit for victims of trafficking is very high and there's going to be lots of people who experienced abuse, but it may be challenging for the officer to see a link to the definition of human trafficking based on the facts, so I do think that there are definitely people that fall through the cracks.”

Gaps in officers' knowledge of the law and the conditions faced by migrant workers

Some participants indicated that their assistance involved ensuring that certain information is included in the application to

⁵ Conversation with Prof. Jenna Henneby, Communication Studies & Balsillie School of International Affairs, Wilfrid Laurier University, February 2021.

address the gaps in immigration officers' knowledge of provincial employment, health and safety, and human rights legislation, as well as the conditions of the Temporary Foreign Worker Program.

“What we have learned is that we have to name the clause, name the policy to say for instance according to the contract, clause 4.3 says this and that, and we have to attach that to their statement. And also, we have to include in our support letter that this violates conditions under the TFWP or under the human rights code or labour standards.”

One participant noted that they had seen immigration officers dismiss evidence that showed the payment of recruitment fees as proof of financial abuse on the basis that the fees were paid “willingly” by the worker, disregarding the fact that charging fees is prohibited by provincial law and that recruitment fees have been recognized as a major factor facilitating the abuse of migrant workers. This issue is particularly concerning since it means that a worker must not only convince an immigration officer that they did in fact experience abusive treatment, but they must also have the legal knowledge necessary to persuade the officer that said treatment is prohibited and would justify the issuance of an OWP-V permit. More simply put, participants assisted workers not just in establishing the factual grounds that would lead to the issue of an OWP-V permit, but also with the legal grounds as well. One participant explained the high rate of approvals for applications they assisted with in the following terms: “One of the reasons we have been

successful is because we have been bringing the cases to the immigration officers and explaining why it constitutes abuse.”

Excessive evidentiary burden (to prove abuse)

In order to be issued the OWP-V permit, workers must establish that there are reasonable grounds to believe that they are experiencing abuse or are at risk of abuse in the context of their employment in Canada. Many participants indicated that meeting the evidentiary requirement was often difficult for the worker. The requirement prevented some workers from being able to successfully apply and contributed to delays in both submitting the application and its processing. One participant felt that “quite significant proof is often required for the applicant to meet their burden.”

Discussions regarding the existence (or more often non-existence) of sufficient evidence were featured in most of the interviews. As one participant remarked, workers do not necessarily know “that they should be keeping proof of all of their circumstances as they go along.” Similarly, some participants stated that evidence can be difficult to collect when the worker has been terminated and removed from the workplace/housing or that certain types of abuse are less easy to document, such as psychological harassment. As one participant remarked, “If you don't have physical proof of the abuse that you were suffering, how do you convince the officer that you were at risk?” Another participant described the problem in the following terms: “It is extremely difficult especially when workers are isolated, like live-in caregivers or agricultural workers on small

farms with two to three employees. It is difficult to find proof since there are no witnesses to testify about the violence that that worker experienced.” Furthermore, a worker’s capacity to document and record things is dependent on them having sufficient legal knowledge to recognize, as it is happening, that their rights are being violated.

“If they have basic knowledge of their rights then, they can prepare their proof. For example, in the case of the farmworkers that our organization meets at the airport, in the following year they were prepared to write down the proof whenever there’s a certain violation, and they know to take photos, etc. But in most cases, they don’t know to do that kind of preparation.”

Many participants discussed how they were able to use their repeated experiences with the policy to advise workers on how to collect evidence of the abuse. Importantly, participants were often essential in either connecting workers with organizations that could provide support letters or directing workers towards professionals who could perform psycho-social assessments, which could then be used to support their applications.

Two participants voiced concerns over requests by IRCC for further documentation. One participant noted that there were times when they received a request for documentation that had already been submitted, was impossible or difficult to provide and needed to be submitted on an extremely short delay, which they felt

could dissuade a worker from continuing an application. Another participant related that the processing of applications had been considerably delayed by requests for further documentation, even though extensive evidence had already been submitted in support of the application.

No funding for legal education and assistance

Throughout the research, it was revealed how much time, support, and assistance goes into a successful OWP-V application. It was apparent that participants played a very important role in ensuring that workers can navigate the policy and secure the OWP-V permit.

However, at the present moment there is no public funding provided that would directly support participants’ interventions in these applications. A few participants briefly discussed how their organizations had to find creative ways to redirect existing resources towards supporting these applications. In some cases, participants assisted with these applications on a pro bono or volunteer basis, which places limits on the amount of assistance that participants can realistically provide. As one participant explained, “I just don’t have the capacity to take on as many as are coming in, and even then, unfortunately, I can only assist the ones that have some sort of infrastructure in place like a support network”.

The majority of the participants explicitly stated that they felt it would be very difficult for a worker to successfully apply for the permit with absolutely no assistance. As an illustration of this point, two participants shared how their organization was able to

assist a group of workers in successfully re-applying after the applications that the workers had submitted independently were refused. In one of those examples, the participant explained how the workers had originally been refused because they did not know how to properly frame and present their experiences, an issue the participant's organization was able to rectify on the second application. This lack of "legal know-how" was a recurring theme in many of the interviews and presents a significant barrier, among many others, to the policy.

Importantly, participants felt that workers do not always have the legal knowledge necessary to identify the way their experiences would make them eligible for the OWP-V permit or to properly prepare and present their case. Participants' assistance therefore often involved identifying which elements should be included in the affidavit in order to present the strongest case possible.

"Often when workers describe their living conditions it clearly constitutes abuse, however the baseline of expectations for workers of what to expect in terms of treatment is so low. A lot of times they don't recognize that the treatment is abusive because it is so normalized".

A similar issue was that the workers they assisted had no or little awareness of their rights and specifically of their right to apply for an open work permit; a worker often approached the participants for support with other issues, and it was the participants that informed the worker about the possibility of applying for an OWP-V permit. Multiple

participants indicated that when workers were aware of the policy, often they had heard about it through other workers. Other times, participants stated that workers may have had limited awareness that the OWP-V permit existed but did not know the procedure for submitting an application.

Furthermore, many participants indicated that language and/or literacy levels made it difficult for workers to apply for the OWP-V permit. Detailed information on the policy is only available in English and French. Many participants indicated that their assistance involved explaining the policy in the language spoken by the worker and then translating the worker's experience into English or French for the purposes of drafting an affidavit and filling out the form. Participants that assisted workers who spoke English or French stated that those workers still required assistance understanding the information provided on IRCC's website about the policy, as well as with drafting the affidavit and filling out the form.

No community support for independent access to transportation and communication technologies

The majority of participants discussed barriers that stemmed from migrant workers' geographical and/or social isolation from support services, particularly in the cases of agricultural workers that live on the farm or caregivers that live with their employer. Workers may not receive support by a community organization and thus may be completely dependent on their employer for access to a computer and/or transportation, which can be a problem if the worker wants to seek out assistance from a government officer.

“They’re not going to ask their employer to drive them to a center to do an open work permit application. ... they often have to make up reasons as to why they have to leave the property”.

It was also pointed out that even workers living in urban areas can be isolated, especially if they live with their employer and/or in a more affluent neighbourhood where there is a lack of resources in the form of legal clinics, shelters, food banks, etc. In these cases, it might be difficult for a worker to find, without help from an officially mandated community organization, the support necessary to navigate the OWP-V application process.

More than half of participants indicated that workers’ lack of computer access made applying for the OWP-V difficult. Two participants indicated that part of the support they provide to workers was access to computers at the community organization’s physical office. Another participant described how they would drive out to meet workers and bring their laptop with them.

“Many workers are completely dependent on their employers for access to the internet, or even access to a computer. Some workers are not able to open the application form on their phone for example because the forms are only available with a PDF reader to open them”.

Red tape to quit an abusive condition: added psychological harm

Workers may also refrain from applying because they do not want to identify as a victim. As one participant explained, “To be able to self-identify as somebody who is facing abuse is an incredibly complex and emotionally fraught exercise. I mean I’ve witnessed some workers who know that what is happening to them is wrong, but they don’t want to place blame, for example, on the employer, or they don’t want to identify or characterize it in that way because of the complex relationship between workers and their employer”.

Some participants indicated that a desire to avoid retraumatization could be a barrier to accessing the policy. It was pointed out by multiple participants that preparing an application requires the worker to recount painful and distressing experiences or events, which can trigger or exacerbate symptoms of psychological trauma. Thus, many participants emphasized the importance of building trust and adopting a trauma-informed approach when assisting a worker with their application.

“It is incredibly traumatizing for clients to go through this process of having to relive, discuss and recount traumas that they’ve experienced in the process of preparing the application as well as in the interview if one is held”.

One participant discussed how applying for the permit was at odds with a coping strategy for some workers: “they’ve been able to cope with their trauma by minimizing it or saying that it’s nothing”. Another participant expressed concern that the

application process was psychologically distressing for workers, stating, “there is definitely a sort of re-victimization”.

Deficiencies related to program delivery

Participants were asked to discuss any issues that arose during the processing of applications that compromised the objectives of the OWP-V policy and the impact those issues had on workers and their experience with the policy.

Complicated online portal

Six participants indicated that the online portal and access to the actual application presented a certain level of technical difficulty. One participant described the online portal as “crude and confusing even for professionals”. Another participant noted that even accessing the appropriate form was difficult, “You have to fill out a survey before you even have access to the online portal. The questions that they ask are not easy to go through. For example, there's one question where you have to identify yourself as a worker and if you don't classify yourself correctly it takes you to this whole other train of questions and this whole set of different forms”. Other participants indicated that workers relied on them to upload supporting documentation or that workers struggled to find someplace where they could scan their documents.

Excessive delays

The operational guidelines stipulate that officers should process an OWP-V application on an urgent basis (within five business days). This reflects the fact that workers applying for the permit are in

situations of distress, either because they are victims of abuse in their workplace or have left because of the abuse and cannot legally earn a livelihood until the permit is delivered.

IRCC's one-year update revealed that average processing times were closer to 40 days. Delays were cited as a serious issue by almost every participant. Some participants had assisted with applications with delays of 3 to 4 months. One participant noted that sometimes the OWP-V application was slower than the normal procedure for changing employers, stating that: “This happened in a couple of instances, where we applied for the open work permit for vulnerable workers and in the waiting months, the person actually just ended up finding a job offer somewhere else with a Labour market impact assessment (LMIA) and applying for an employer-specific permit. And that actually came through faster than the OWP-V or roughly on the same timeline”.

A common theme was that delays have significant negative consequences for the worker. Participants reported that workers exhibited signs of psychological distress, anxiety and hopelessness in the face of prolonged delays.

“Most of the workers that we assist are no longer employed by their employer, so they're waiting for many, many months and without any source of income”.

Some participants pointed out that in the case of workers that are still with their employer, every day they must wait prolongs their exposure to harm. For

workers that must leave at the end of the SAWP season, delays are a huge source of stress, as one participant stated: “There is a lot of anxiety because the worker knows that they have given up their re-entrance into the program the following year. Now they are unable to work, and the processing times cause the worker to lose faith, especially when money starts to run out”. Long delays also undermine one of the objectives of the OWP-V policy, which is to mitigate the risk that people will engage in unauthorized employment. As one participant pointed out, “You’re not achieving that goal when you’re taking four months to process an application, people need to work to support themselves”.

Burdensome interview - scheduling and obstacles to accompaniment

When considering an application, an immigration officer can request either an in-person interview or a telephone interview with the worker. The immigration officer can also waive the interview entirely and elect to do a paper review of the application. Certain participants reported that the scheduling of interviews posed a serious problem for workers. Workers who are still with their employer have very little free time or flexibility with their work schedule and interviews are scheduled during regular business hours, which means that workers must find a way to take time off to attend the interview and as a result risk facing sanctions and/or being fired. This is just not feasible for many workers.

“They have to actually get out of the house and for some workers that’s not possible when they’re actually being required to work the entire day without break,

which is [the case for] many of our clients”.

This problem is compounded by the fact that interviews are often scheduled at a very short notice and with no consultation with the worker. If the worker is not located close to the interview location, they will have to incur costs to attend the interview. Even when a telephone interview is held, rather than an in-person interview, workers might not have the privacy or liberty to properly participate. As one participant recounted “This worker when she was called by the officer, she could not leave the farm. The officer was very concerned that someone would approach and ask ‘hey, who are you talking to’ and it was very windy, it was challenging.”

Many participants also expressed concern that there was no official policy regarding the right of a worker to be accompanied during an interview. Information disclosed during the interview can have an impact on whether the OWP-V permit is granted. Accordingly, participants felt that workers would greatly benefit from having a support person present in the interview as they could help clarify questions. This is especially important given the high risk of confusion due to linguistic barriers, even when translation is provided. Similarly, a couple of participants felt that the interview process could be very intimidating for workers and that workers' vulnerability could make it difficult for them to properly communicate to the immigration officer what they have experienced, to the detriment of their application.

“I’ve seen examples where, because of the client’s vulnerability, they had difficulty expressing how and what they were experiencing, so even though they met the test for abuse the officer basically ignored the documentary evidence that we prepared and based their decision on things said in the interview”.

Another participant pointed out that in other contexts, support organizations are generally allowed to accompany the worker and intervene on their behalf: “[At] the labour board, where we have a certain right to be engaged, but it’s not the case for the IRCC. So, the official way of intervention and accompanying by our organization is limited”.

Refusals

The way refusals are decided, and the fact that there is no specific review process by which a worker can automatically challenge a refusal, was cited as highly problematic by participants.

Concerns were raised about the way officers are making their findings and the conclusions they are drawing from the evidence presented. As an example, one participant described how they had received the reasons for refusal when they filed for judicial review and had discovered that the officer had based their decision on extrinsic evidence to which the worker had not been given the opportunity to respond. Whether immigration officers are deciding applications with due regard to the principles of procedural fairness is beyond the scope of this research, but certain

comments made by the participants indicate that this may be an important area for further research.

A refusal of an OWP-V application has serious and grave consequences for the worker. If they are still employed with their authorized employer, it means they must remain in a situation where they are experiencing abuse. For a worker that has left their employment or has been fired, a refusal means they cannot legally earn a livelihood while they try to secure another employer-sponsor, which is still required for a work permit renewal. Participants noted that there was no simple and accessible way for a worker to challenge a refusal, even if the refusal was egregious and obviously incorrect.

In these instances, it was explained that workers had three options to try and challenge the refusal: to reapply, to submit a request for reconsideration or to apply for judicial review. However, participants felt that none of these three possible pathways to challenge an open work permit refusal were truly adequate. According to one participant, re-applying offers a low chance of success since “making an unsuccessful application initially seems to be quite fatal, even if additional evidence and submissions are provided to refute some of the adverse findings that were made in the previous application”. On the other hand, judicial review can be a lengthy, costly, and complex process that realistically requires legal representation. Additionally, by the time the application for judicial review is resolved, the worker’s work permit may have expired, rendering them ineligible for the OWP-V permit. Finally, with regard to requests for reconsideration, there is no

guarantee that the request will even be granted, and most workers might not even be aware of that option.

Loss of healthcare and no accompanying support services

One participant that provided psycho-social support to workers pointed out that workers who move from an employer-specific work permit to an OWP-V lose their access to public healthcare. The participant felt it was counterintuitive to create a policy that is supposed to help workers that have experienced abuse but not ensure that those workers would have continued access to healthcare if they are issued the permit. Similarly, multiple participants pointed out that while the OWP-V permit provided workers with greater labour mobility, workers that have experienced abuse need more than just the ability to find another employer.

“It’s very problematic that you have to show the government that you are experiencing abuses, all kinds of harms, psychological, physical, then you know it’s like ok we give you this band-aid, one-year open work permit and do whatever you need to do over there. It’s very, very problematic. It’s not a solution. But it’s better than nothing if you are experiencing abuse, but it’s not much better.”

Many of the participants mentioned that workers were often dealing with the loss of housing and were relying on shelters. Similarly, workers on temporary status cannot access social assistance programs, which they often desperately need since a

common form of abuse is financial, meaning workers that escape abusive employers often have little or no financial resources to support themselves. As one participant observed, “The policy only takes care of one minimal part of someone’s life, it doesn’t give them access to anything else. What are you supposed to do when you’re looking for an employer, even though you have an open work permit, if you have no money, no address, and no place to stay?”

Return to employer-specific work permit: added psychological harm

Participants reported that the workers they assisted were issued OWP-V permits that were valid for 12 months. The OWP-V permit is designed as a transitional measure and is generally not renewable, unless the worker meets a very specific criteria established by the operational guidelines (to the best of our knowledge, no renewal has ever been granted). To remain in Canada after its expiration, workers must find an employer with a valid LMIA and apply for another employer-specific work permit. Half of the participants pointed out that this requirement caused various problems for workers.

Some participants indicated that 12 months was not long enough to allow the worker to stabilize their situation (emotionally and financially). As well, it was not always possible for the worker to find an employer who would be willing to apply for an LMIA so that the worker could access an employer-specific worker permit before the 12 months was finished. Additionally, even if the worker was able to find an employer, the return to the employer-specific work permit placed them back in a situation where they were vulnerable to abuse.

“The tied-work permit is the problem because there is a power dynamic between the worker and the employer because the worker cannot move jobs. Employers can basically exploit them, and the worker cannot move. So, what is the logic of having a policy that allows them to leave an exploitative situation but then requires them to return to another one”.

This concern that workers are being forced back into a situation where they are vulnerable to abuse is not theoretical, as one participant recounted: “I had one circumstance in which a worker was on an open work permit, and then was recruited onto a closed work permit maybe 6 months into the open work permit. Then there was abuse on this second closed work permit, so now we have to reapply for the open work permit again”. Participants also indicated that workers were still relying on recruiters in order to find employers who could hire them on an employer-specific work permit, meaning that workers are incurring debt in order to return to the program.

Finally, the requirement that a worker return to the employer-specific work permit can be distressing for workers who are dealing with trauma due to the abuse and realize they

must put themselves back in a position where they will once again be extremely vulnerable. One participant, who provided psycho-social support to a worker whose employer had sexually assaulted her, explained, “The idea of going back onto a closed work permit is just horrifying for her because she sees that it's an exploitative system, and she sees... the power that the employer has over (the workers) in the system”.

Shortcomings in the employer compliance aspect of the OWP-V policy

The OWP-V policy was implemented to address the negative impact of the employer-specific work permit on migrant workers' propensity to report abusive employers and to facilitate their participation in inspections and/or investigations of their employer by state authorities.⁶ Thus, the policy is supposed to support “the worker protection objectives of existing employer compliance programs” by helping increase the identification of non-compliant/abusive employers and the imposition of consequences on such employers.⁷ In fact, when an OWP-V application is approved, a summary of the allegations (an OWP-V inspection referral) is sent by the processing IRCC officer to the branches responsible for inspections and employer compliance.

⁶ Currently, when a migrant worker on an employer-specific work permit under either program is experiencing abuse or is at risk of abuse, they can report it to the relevant authorities. However, should they wish to leave their employer, they must find another employer who is willing to hire them. That employer must obtain a LMIA (if applicable), and the migrant worker must apply for a new work permit. This process can be lengthy and costly, which can serve as a clear disincentive to report abuse. In some circumstances, migrant workers may be compelled to work elsewhere without authorization, rather than endure or report abuse. See *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.

⁷ Improved propensity to report abuse to relevant authorities will also benefit and strengthen the worker protection objectives of existing employer compliance programs. This is because migrant workers may be more willing to come forward to report abuse and share information about their situation with authorities, thereby increasing the integrity of compliance decisions and findings. Without these reports, it is possible the cases or risk of abuse would never come to IRCC's attention. See *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.

In order to evaluate whether the OWP-V policy did in fact lead to better law enforcement against non-compliant/abusive employers, a data request was sent to IRCC in September 2020, regarding the following:

1. The number of times an inspection was triggered as a result of an OWP-V permit being issued.
2. How those inspections were conducted (remotely, scheduled, etc.).
3. The number of employers that had been found non-compliant as a result of an inspection that had been triggered by the issuance of an OWP-V permit.
4. The penalties or consequences, if any, imposed on those employers.
5. In cases where an employer was found non-compliant and had their authorization to employ a temporary foreign worker revoked, the protocol for the workers that had been still in the employ of that employer. More precisely, would they be issued an OWP-V automatically.

IRCC provided a response to these questions on October 23rd, 2020, which contained two sets of data regarding OWP-V inspection referrals and outcomes. This is because Service Canada carries out inspections of employers of workers under the TFWP, while IRCC administers those under the International Mobility Program (IMP). Unfortunately, for reasons discussed below, Service Canada's data on inspections triggered by OWP-V referrals and their outcomes was incomplete.

Number of inspections conducted as a result of an OWP-V referral

According to IRCC, an OWP-V inspection referral may not always trigger an inspection since it is possible that the employer in question is already under inspection, or that multiple referrals might be made with respect to the same employer. As such, there is a discrepancy between the number of OWP-V inspection referrals sent out and the number of inspections conducted. It was reported that between June 2019 and September 3rd, 2020, IRCC received 94 inspection referrals, launched 28 inspections, had 5 inspections pending and was still reviewing and assessing 4 referrals. Another 4 of those referrals involved an employer that was already under inspection. The remaining 54 referrals resulted in "other actions" such as being forwarded to Service Canada, since the OWP-V permit had been issued to a worker in the TFWP. During roughly the same reporting period, 364 OWP-V inspection referrals were received by Service Canada and 118 inspections were launched as a result.

Conduct of inspections

According to IRCC, routine inspections of employers are usually "desk-based", which means employers must submit documentary evidence to demonstrate compliance with regulatory requirements. IRCC also indicated that "due to the potentially egregious nature of the allegations which often result in OWP-V referrals", inspections triggered by OWP-V referrals are typically conducted on-site. However, as a result of the Covid-19 pandemic, all inspections conducted by Service Canada were done virtually starting

on April 24, 2020. On-site inspections by Service Canada only resumed on August 17, 2020. Even then, only the most egregious allegations led to on-site inspections and said inspections were scheduled, meaning the employer was given advance notice of the visit.

Unknown inspection outcomes

Unfortunately, it was not possible to systematically link inspection outcomes to the allegation/tip that initiated the inspection. The Regulatory Impact Analysis Statement published at the launch of the OWP-V program stated that the number of compliance inspections and their outcomes triggered by OWP-V inspection referrals would be tracked as part of the ongoing performance measurement strategies for the TFWP and IMP. However, at the time that the data was requested, Service Canada did not have a tracking system to link inspection outcomes with the specific trigger (such as a complaint, anonymous tip, or OWP-V referral). Since the data provided by IRCC show that the bulk of OWP-V referrals end up being handled by Service Canada, the department's failure to systematically track the outcomes of inspections triggered by OWP-V referrals makes it difficult to assess whether the OWP-V policy has a positive impact on the efficacy of the TFWP's compliance regime. In terms of the 28 inspections conducted by IRCC as a result of an OWP-V referral, three employers were found compliant, two were found compliant with justification and 23 employers were still being inspected (as of October 23rd, 2020). In conclusion, at the time of this evaluation there was not one employer that had been found non-compliant by IRCC based on a complaint of abuse submitted by a migrant worker.

No automatic OWP-V permits for workers employed by non-compliant employers

It is important to note that when an employer is temporarily banned from hiring a migrant worker, as a result of non-compliance, all migrant workers working for that employer may see their work permit revoked,^{xviii} leaving them without the authorization to be legally employed in Canada. The possibility of having one's work permit revoked is a compelling incentive for migrant workers to hide abuse, and thus, shield their abusive employer from authorities. Furthermore, workers that do cooperate with federal (or provincial) inspectors and disclose abuse often experience reprisals from their employers in the form of termination, which greatly discourages other workers from coming forward during inspections. Workers' legitimate concerns about safeguarding their capacity to legally reside in the country and earn a living has repeatedly been flagged by researchers as something that undermines the efficacy of inspections to uncover migrant worker abuse. However, according to IRCC, there is no protocol in place that would allow the workers of an employer who is found non-compliant to be issued an OWP-V permit automatically. Those workers would still have to independently apply for an OWP-V permit and have their application assessed according to the program's requirements. Although, IRCC did state that a finding of non-compliance would be considered supporting evidence for an OWP-V application and could constitute compelling grounds justifying the issuance of an OWP-V permit.

PART 3: DISCUSSION

Employer-specific work permits cause considerable harm to migrant workers by negating their right to freely quit their employment without serious consequences for their immediate ability to earn a living in the country and for their immigration status in Canada in the future.

The adoption of the OWP-V policy reflects that other attempts⁸ to address the abuse epidemic within Canada's temporary foreign worker programs have largely failed to overcome the negative impacts of the tied-work permit schemes.^{xix}

Importantly, the employer-specific work permit does not just negatively impact the individual worker, who must remain in an abusive workplace and forgo enforcing their rights, but also contributes to a labour market where abusive employers (and recruiters) operate with considerable impunity (and where citizen workers are pressured to accept abusive conditions or leave the job to be filled by a tied-migrant worker).^{xx} In fact, IRCC's description of the policy characterizes the OWP-V permit as not only for the benefit of individual migrant workers facing abuse but also as a measure that could positively impact the employment conditions for all workers in sectors where migrant workers are concentrated:

By providing a mechanism for migrant workers to leave workplaces characterized by abuse, including detrimental

health and safety conditions, the proposed amendments are anticipated to improve the well-being of migrant workers in Canada. Employers would have a further incentive to comply with Program conditions and to not mistreat or abuse migrant workers. Since work sites are rarely composed of only migrant workers, this could have positive spillover benefits to Canadian workers, namely more respectful and healthy workplaces.^{xxi}

The findings of our research project identified a wide range of problems with the policy that prevent it from being an effective remedy for migrant workers facing abuse in the workplace, as well as from being an effective remedy to prevent unauthorized employment and stay for abused tied workers⁹ and from being an effective incentive for employers to avoid workplace abuse.

Various barriers exist that make it difficult, if not impossible, for migrant workers to even apply for the permit, and those that do manage to apply must overcome considerable challenges in order to have their application approved. In any case, while the permit may offer some temporary relief for those workers who are able to obtain it, the permit does not fundamentally alter the conditions that lead to the workers' vulnerability to abuse and forced labour in the first place - their dependency on employers for legal status in the country.

⁸ Attempts include but are not limited to the following: formalization of migrant workers' legal rights, dissemination of legal rights information, increased employer oversight, increased cooperation with provincial agencies and state-funded community support initiatives.

⁹ Almost half of applications are refused, and many workers cannot apply in time. Workers that could not access the policy are left with the choice to remain and work unauthorized or return home.

As a result of Service Canada’s failure to systematically track the outcomes of inspections that were triggered by an approved OWP-V application, the data gathered from the government cannot show to what extent the OWP-V policy has increased the likelihood that abusive conduct will be detected and penalized. However, even if every approved OWP-V application led to a finding of non-compliance and the imposition of a penalty, and even if every approved open work permit issued helped identify a new and different abusive employer, the proportion of foreign worker employers affected by the policy would be insignificant. As a matter of fact, the number of OWP-V permits issued in 12 months¹⁰ relative to the annual number of Canadian employers that receive authorizations to hire under one of the tied-worker schemes¹¹ is minuscule (approximately 0,016%). In this context, any “threat” for Canadian employers that a migrant worker in their employ may be able to obtain the OWP-V permit that would lead to the imposition of a penalty is ultimately very remote. As such, the limited case-by-case issuance of an open work permit as an exceptional measure cannot be expected to counteract the deeply entrenched structural impunity of abusive employers that has been established by the employer-specific work permit (and workers’ precarious immigration status more generally).

In other words, even if the OWP-V policy would be improved to the point where all the workers who needed the policy could access it and be approved, even without external assistance, it would not alter the initial power imbalance between employers and migrant workers nor reduce their risks of experiencing rights violations while in Canada. It is only an individual remedy that becomes available only once abuse has already occurred – it does not prevent or minimize the initial risk of abuse.

While this report does set out recommendations to improve the policy for the individual workers trying to access it, more extensive and far-reaching reforms to Canada’s temporary foreign worker programs are necessary if Canada’s commitment to respect the fundamental and labour rights of all migrant workers is to be fulfilled.

¹⁰ Between June 2019 and August 2020, 630 applications were approved, a monthly average of 42 open work permits issued to workers as a result of employer abuse (630/15). See Immigration Refugees and Citizenship Canada, “Open Work Permit for Vulnerable Workers: Multilingual Video and Program Update 1 Year Later” (17 July 2020), online: *Email*.

¹¹ During the ‘low’ year of 2020 (due to pandemic obstacles), 31 424 Canadian employers still managed to be issued by the Federal government authorizations to hire under one of the tied-worker schemes. See the statistics provided by the Department of Employment and Social Development Canada: [https://open.canada.ca/data/en/dataset/e8745429-21e7-4a73-b3f5-90a779b78d1e/resource/bc60c7dc-0ea5-4d68-ba37-8c5bf8edb3fd?inner span=True](https://open.canada.ca/data/en/dataset/e8745429-21e7-4a73-b3f5-90a779b78d1e/resource/bc60c7dc-0ea5-4d68-ba37-8c5bf8edb3fd?inner_span=True) .

RECOMMENDATIONS

The data produced through this research project point towards specific areas for improvement in the design and implementation of the policy. The following nineteen recommendations either were explicitly formulated by participants or directly respond to issues that were repeatedly flagged through the interview process. Some of these recommendations are similar to those made by migrant worker organizations and allies during the consultations held before the adoption of the policy.^{xxii}

The first four recommendations highlight the complementary policies necessary to reach the OWP-V policy goals, while also facilitating the labour market objectives of Canada's temporary foreign worker programs. While these four policy recommendations would address major factors driving the abuse and exploitation of migrant workers, it is only by granting these workers permanent legal status on arrival that access to justice in the country, and more generally equal treatment and protection under the law, can be achieved.

The following eleven recommendations are aimed at improving the policy from a client-experience perspective, specifically in terms of accessibility and application process expediency. Finally, the last four recommendations address important gaps in the OWP-V policy that undermine the effectiveness of the policy as a protective measure.

Achieving the OWP-V policy goals: Necessary policy reforms

The OWP-V policy was implemented to mitigate the “higher risks of abuse” caused by the “structural barriers to mobility” inherent to employer-specific work permits and, at the same time, to facilitate the participation of migrant workers in the employer monitoring process and other law enforcement efforts.^{xxiii} The policy was thus enacted as a reflection of the Canadian government's commitment to making sure migrant workers do not experience mistreatment, abuse, or unsafe working conditions during their time in Canada. While participants indicated that the OWP-V policy goals are of fundamental importance, all participants were adamant that additional measures and further reforms are absolutely necessary to achieve such goals (the protection of migrant workers' rights and the improved efficiency of law enforcement efforts against abusive employers in the country).

Recommendation 1 - Replace employer-specific with open work permits.

The employer-specific work permit interferes with workers' capacity to exercise their rights and undermines the capacity of state authorities to act against non-compliant/abusive employers and recruiters. All migrant workers in Canada¹² should be issued open work permits (or multi-region work permits) that only prohibit work for a list of problematic employers with a confirmed track record of violating workers' rights (including the rights of Canadian and permanent resident workers). *These work permits would be issued based*

¹² This includes temporary foreign workers in Canada that are employed by a foreign national, company or government.

*on annual national skill quotas (determined by combining skill level-based regional labour market impact assessments instead of employer-specific ones) and would be accompanied by labour market reintegration programs for underemployed Canadians and permanent residents that are available to all employers. This last approach would be more efficient than the current obligation to conduct *pro forma* recruitment efforts that only applies to employers who have already invested time and money in a migrant worker sponsorship procedure (and as such have little incentive to make real efforts to recruit Canadians and permanent residents).*^{xxiv}

Recommendation 2 - Create a national registry of recruiters, agents and employers.

A federal registry of migrant worker recruiters, placement agents, and employers should be created to facilitate the monitoring of migrant worker conditions and compliance with recruitment, job placement, housing, and employment legal standards. *Updates to the registry would be submitted by migrant workers and by government-funded community-based non-profit organizations serving migrant workers.* This registry would be accessible not only to federal monitoring bodies, municipal and non-profit non-governmental organizations offering social integration services, but also to provincial and foreign government agencies responsible for the application of laws and regulations relating to labour standards. This approach would fix the problem of the current reliance on employer-specific work permits and case-by-case issuance of OWP-V permits for inspections and imposition of penalties against

recruiters, agents, and employers that prey on newcomers.

Recommendation 3 - Replace employers' control over the admission of migrant workers into the country with government sponsorship.

The groundwork for the abuse of migrant workers admitted into Canada starts outside the country, during the admission process, as work permit applications require foreign nationals to secure a job offer with an employer-sponsor in order to apply. This current job offer requirement gives Canadian employers' control over workers' access to work permits. This leads to migrant workers being compelled to take on exorbitant pre-departure debts to become the highest bidder in order to "buy" from a Canadian employer - technically a job offer but is in fact an admission into the country. Any debt taken from a biased private third party, including to cover the cost of international travel, makes it nearly impossible upon arrival to refuse unsafe work or avoid conditions of debt bondage. Furthermore, the control over migrant worker sponsorship by private employers allows them to pick and choose, or even to dismiss collectively, workers on the basis of their country of origin. This constitutes discrimination and is used by employers as a way to pressure foreign government representatives to actively suppress the rights of their citizens who are working in Canada (since employers can legitimately threaten to cease sponsorship of the country's workers and consequently halt the flow of remittances).^{xxv} *The annual skills quotas to meet Canada's labour market needs should instead be filled through an unbiased "migration lottery" recruitment process accessible to foreign candidates*

and implemented in collaboration with foreign governments under standardized bilateral recruitment and micro-loans programs.

Recommendation 4 - Replace recruiters', agents' and employers' control over the placement of migrant workers in employment with government services.

The Canadian government agencies' absence within the migrant worker job placement industry forces migrant workers to rely on biased private third parties, if not formally on a specific employer or employers' coalitions, for job placement services. Employers' and private agents' control over access to job offers and placement services undermine migrant workers' capacity to exercise their rights within the Canadian labour market. *Instead, placement in employment should be ensured through direct federal services accessible, both abroad and in Canada, to migrant workers admitted for labour market integration, as well as through dedicated government-funded community support services for underemployed and unemployed migrant workers.*

In the interim: Improving access to the OWP-V policy and program delivery

This research identified important barriers that prevented workers from accessing the policy and revealed certain critical areas that negatively impacted the quality of the program delivery.

Recommendation 5 - Remove the "valid" work permit requirement.

In acknowledgement that some forms of abuse can prevent workers from successfully renewing their work permit or accessing permanent status procedures, the valid work permit requirement should be removed, since it prevents certain groups of workers, despite being victims of abuse, from being able to access the OWP-V permit. A common form of abuse is misrepresentation or fraud by an employer, a placement agent, or an immigration consultant about the steps that have been taken to renew the worker's work permit or the possibility of obtaining permanent status. This form of abuse results in the worker becoming undocumented through no fault of their own. Furthermore, workers that are abused near the expiration date of their work permit and not in a position to secure a new work permit through regular channels might not have enough time to apply for an exceptional extension of their work permit under the OWP-V procedure. *The policy should ensure a fast-track access to an open work permit specifically for migrant workers with expired work permits since no other policy exists that allows for an exit from the vulnerable conditions that these workers have been put in by an abusive agent, employer and/or immigration consultant.*¹³

¹³ Victims of human trafficking are eligible for a Temporary Resident Permit for Victims of Trafficking in Persons (TRP VTIP), however advocates for victims of human trafficking have repeatedly raised concerns regarding the difficulty of obtaining such a permit, even for individuals that have been identified by law enforcement as victims of trafficking. See Canadian Council for Refugees, "Temporary resident permits: Limits to protection for trafficked persons" (June 2013), online: [Canadian Council for Refugees <https://ccrweb.ca/en/trafficking/temporary-resident-permit-report>](https://ccrweb.ca/en/trafficking/temporary-resident-permit-report).

Recommendation 6 - Reaffirm that the policy is a protective measure and that IRCC officers should assess applications presuming that every migrant worker's call for government assistance is genuine.

In the case of an application where the officer is unsure whether the worker has met the burden of proof, officers should be instructed to err on the side of caution and approve the application. Furthermore, immigration officers should be instructed to not take into consideration the lack of supporting evidence when evaluating the credibility of the applicant. The negative impacts of a refusal on a worker who is experiencing abuse or is at risk of abuse far outweigh any negative consequences that could be associated with the approval of a false claim.¹⁴

Recommendation 7 - Engage with stakeholders to create a training program for immigration officers on how coercion and abuse occur within the context of temporary foreign worker programs.

Many participants felt that an important part of their intervention with these applications involved providing explanations on why certain conduct by employers or recruiters constituted abuse. There was a concern that immigration officers are not always aware that certain conduct by employers or recruiters constituted abusive treatment which would justify the issuance of the OWP-V permit. *IRCC should partner with migrant worker support organizations to create a comprehensive training program for immigration officers to increase awareness about and sensitivity to the types of abuse and rights' violations that migrant*

workers systematically experience in Canada.

Recommendation 8 - Reduce processing times.

Workers who apply for the OWP-V permit are often in situations of extreme distress, and delays in the processing of applications aggravate the psychological and financial stress experienced by the applicant. When the applicant is experiencing detrimental health and safety conditions, delays can mean increased risks of permanent damage to their physical and mental health, if not increased risks of death. Furthermore, applicants may be subject to coercive removal strategies by the employer, which makes these applications extremely time sensitive. *IRCC should put in place the personnel and resources necessary to process applications on an urgent basis. Furthermore, requests for an interview or additional documentation should be allowed only in extraordinary circumstances.*

Recommendation 9 - Limit (phone) interviews to exceptional cases.

Applicants who remain employed while they wait for a decision on their application are often still in abusive conditions and may not have the capacity to participate in an interview without risking additional serious reprisals from their employer. Additionally, many vulnerable workers are located at a great distance from IRCC offices and may rely on their employer for transportation. *In this context, in-person interviews should never be required, and phone interviews should only be scheduled when absolutely necessary. Interviews should be scheduled*

¹⁴ Importantly, IRCC's regulatory impact analysis statement accompanying the regulatory amendments describes the risk of false claims as minor. See *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.

in a manner that considers the likely incapacity of workers to take time off work during the day both on weekdays and weekends.

Recommendation 10 - Provide interpretation services if an interview is required.

Applicants are often in a situation of financial hardship and/or may not know where to find an interpreter, even when they are in contact with a support organization. Having to provide one's own interpreter can be an insurmountable barrier for a vulnerable worker. *The government should provide interpretation services whenever needed to assist with a worker's application.*

Recommendation 11 - Establish an official policy regarding the right to be accompanied and assisted during every step of the procedure by legal counsel and a chosen support person.

Workers who apply for the permit have often experienced violence or trauma and administrative procedures, specifically interviews, can be painful, intimidating, and stressful for these individuals. Workers may also have difficulty understanding the interview questions due to a wide variety of factors which can impact the answers they provide - with negative consequences for their application. Given the profound importance of the decision for the worker and their personal well-being and safety, *a policy should be formally adopted to guarantee both the right to be accompanied and assisted during every step of the procedure by legal counsel and a chosen support person/organization.*

Recommendation 12 - Provide dedicated funding to organizations to assist with OWP-V applications.

The interviews revealed that participants dedicated considerable time and resources to assisting workers with these applications. Presently, there is no dedicated funding to support these organizations with such interventions. Given the essential role of community organizations in facilitating access to the OWP-V policy, *funding should be made available for organizations to assist vulnerable migrant workers with their applications.*

Recommendation 13 - Simplify the online platform and make it mobile-friendly.

The online portal is difficult to navigate (just accessing the application form is not intuitive) even for experienced legal professionals. Access to the application form itself should not require the correct answering of multiple questions. Similarly, using the form that is already associated with routine work permit changes is confusing: instead, a specific and clearly identified form for this procedure should be created. Most importantly, evidence and supporting documentation should not have to be uploaded in only one file. Finally, *the entire application process (including the uploading of supporting documentation) should be simplified and completely mobile-friendly, since most migrant workers in Canada do not have access to a computer.*

Recommendation 14 - Establish an expedited and accessible review process and provide workers with full access to reasons for refusals.

The refusal of an application has serious and grave consequences for a worker. *It is*

essential that the full reasons for refusal be provided and explained, and that the worker be given an opportunity to respond under a fast and accessible review process. Judicial review is a costly, lengthy, and complex legal process that is difficult to navigate even with free legal representation. An expedited administrative review process should be put in place to allow for the possibility of a fast and easily accessible reconsideration by a different decision-maker, allowing the worker to respond.

Increasing the effectiveness and impact of the OWP-V policy: Important gaps

While the OWP-V policy provides a mechanism for migrant workers to leave an abusive workplace, participants noted that the issuance of an OWP-V permit may also produce negative outcomes for workers in terms of their access to healthcare and on their future authorization to reside and work in the country. This not only is counterproductive to the purpose of the policy, but it also actively prevents some workers in abusive conditions from accessing the policy for fear of jeopardizing their access to health care and/or chance of long-term economic and social integration.

Recommendation 15 - Ensure continued access to healthcare for OWP-V permit holders.

Workers' access to healthcare is systematically dependent on either the validity of their employer-specific work permit for provincial services, or on their continued employment with their authorized employer for coverage by a specific private insurance. Depending on the province, they may lose their access to the provincial

health insurance plan once they are issued the open work permit. Individuals that are issued a Temporary Resident Permit as a victim of human trafficking are provided with access to the Interim Federal Health program - as protected persons in Canada. This should be the case for all migrant workers abused while employed through a Canadian temporary labour migration program, whether they fit the criminal criteria for victims of human trafficking or not. *The federal government should ensure that workers who experience abuse as a result of their participation in Canada's temporary foreign worker programs are not left without access to the medical care and treatment they may now require as a result of that abuse.* The submissions made by Migrant Workers Alliance for Change (MWAC) dated January 31, 2019 and submitted during the consultations for the OWP-V policy put forward a feasible solution to this issue that should be implemented.^{xxvi}

Recommendation 16 - Make access to the OWP-V permit renewable.

The expiration of the OWP-V permit with no clear possibility to renew is problematic, since some workers will not be able to secure in time (before the expiration of their OWP-V permit) the issuance of another work permit through the Temporary Foreign Worker Program or International Mobility Program. In these cases, the requirement that the worker leave Canada upon the expiration of the OWP-V permit may disrupt any legal proceedings or complaints the worker may have brought against their abusive employer, placement agent, immigration consultant or recruiter. Many participants noted that the average 12-month duration of the OWP-V permit of 12

months-did not provide sufficient time for the worker to stabilize their employment situation and immigration status after leaving the abusive employment. Furthermore, the pressure to quickly secure a new work permit through the TFWP or IMP can cause workers to rely on predatory recruiters and/on fraudulent immigration consultants.

Recommendation 17 - Automatic issuance of the OWP-V permit to workers employed by an employer that has been banned for non-compliance.

When an employer is banned from the program for non-compliance, all migrant workers working for that employer may see their work permit revoked, leaving them without authorization to work and stay in Canada. Workers' legitimate concerns about safeguarding their legal status has repeatedly been flagged as something that undermines the efficacy of inspections to uncover exploitation and abuse. Presently, when an employer is banned for non-compliance, workers still must independently apply for an OWP-V permit and have their application assessed according to the program's requirements. This research project has demonstrated that there are a multitude of reasons a worker might have difficulty applying for and securing an OWP-V permit. *IRCC should automatically issue an OWP-V permit to any worker whose employer is banned from the program for non-compliance.*

Recommendation 18 - Establish an official firewall policy around OWP-V applications.

Our research confirms that some workers in abusive work conditions refrained from

applying for the OWP-V permit because they were concerned that the information disclosed during the application or interview could have negative consequences in their future dealings with immigration authorities. *An official firewall policy should be enacted to ensure that information disclosed while applying for the OWP-V permit will not be used for immigration enforcement purposes or, without the consent of the worker or their representative, in the processing of a work permit renewal or permanent residence application.*

Recommendation 19 - Make the issuance of an OWP-V permit default evidence of legitimate cause for permanent legal status on the basis of humanitarian and compassionate grounds.

The violation of a worker's rights by a Canadian recruiter, employer, placement agent or immigration consultant will likely negate their capacity to secure through general procedures a work permit renewal and/or permanent status. As a result, many migrant workers in abusive conditions in Canada will likely forgo applying for the OWP-V permit simply because they have valid concerns about safeguarding their limited access to migrant job placement services and work permit renewals procedures or not jeopardizing their chance to secure permanent resident status. *Workers who are issued an OWP-V permit and who, as a result, may subsequently face blacklisting from a regional employer coalition or loss of access to permanent status through normal channels should be eligible for permanent residence on the basis of humanitarian and compassionate grounds.*

REFERENCES

- ⁱ *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.
- ⁱⁱ Immigration, Refugees and Citizenship Canada, “Open Work Permit for Vulnerable Workers: Multilingual Video and Program Update 1 Year Later” (17 July 2020), online: *Email*.
- ⁱⁱⁱ *Ibid.*
- ^{iv} Sara Mojtehdzadeh, “Open work permits for exploited migrant workers a ‘Band-Aid solution’ critics say”, *Toronto Star* (17 July 2020), online.
- ^v House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Temporary Foreign Worker Program*, 1-55, No 4 (September 2016) (Bryan May) at 31.
- ^{vi} *Ibid* at 17-18.
- ^{vii} Eugénie Depatie-Pelletier, *Labour Migration Program Declared a “Modern Form of Slavery” under Constitutional Review: Employer-Tying Measure’s Impact vs Mythical “Harm Reduction” Policies* (PhD Dissertation, Université de Montréal, 2018) [unpublished].
- ^{viii} *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.
- ^{ix} Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers” (2014) at 37- 41, online (pdf): *Metcalf Foundation* <<https://metcalffoundation.com/site/uploads/2014/04/Profiting-from-the-Precarious.pdf>>.
- ^x *Immigration and Refugee Protection Regulations*, CRC, c 11, s 183 (1) (2020).
- ^{xi} *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.
- ^{xii} See Immigration Refugees and Citizenship Canada, “Open Work Permit for Vulnerable Workers: Multilingual Video and Program Update 1 Year Later” (17 July 2020), online: *Email*.
- ^{xiii} Eugénie Depatie-Pelletier, *Labour Migration Program Declared a “Modern Form of Slavery” under Constitutional Review : Employer-Tying Measure’s Impact vs Mythical “Harm Reduction” Policies* (PhD Dissertation, Université de Montréal, 2018) [unpublished].
- ^{xiv} Immigration Refugees and Citizenship Canada, “OWP-V Permit Data” (20 May 2021), online: *Email*.
- ^{xv} Sarah Marsden, “Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap” (2019) 42:1 DLJ 123 at 168.
- ^{xvi} *Immigration and Refugee Protection Regulations*, CRC, c 11, s 207.1 (1) (2020).
- ^{xvii} Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers” (2014) at 68, online (pdf): *Metcalf Foundation* <<https://metcalffoundation.com/site/uploads/2014/04/Profiting-from-the-Precarious.pdf>> .
- ^{xviii} *Immigration and Refugee Protection Regulations*, CRC, c 11, s 30 (1.21) (2020); John McCallum, Canada, *Ministerial Instructions Respecting the Revocation of Work Permits, 2016*, Government Notices, No 19 (20 April 2016) at MI11.
- ^{xix} See generally Sarah Marsden, “Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap” (2019) 42:1 DLJ 123; Sarah Marsden, Eric Tucker & Leah Vosko, “Federal Enforcement of Migrant Workers’ Labour Rights in Canada: A Research Report”. (2020) online (pdf): *Articles and Book Chapters*. 2795. https://digitalcommons.osgoode.yorku.ca/scholarly_works/2795; Andrew Stevens, *Safe Passage: Migrant Worker Rights in Saskatchewan*, (Regina: Canadian Centre for Policy Alternatives, 2019).
- ^{xx} See Christine Knott, “Contentious mobilities and Cheap(er) Labour: Temporary Foreign Workers in a New Brunswick Seafood Processing Community” (2016), online (pdf): *Canadian Journal of Sociology* <<https://journals.library.ualberta.ca/cjs/index.php/CJS/article/view/28256>>. See also Jason Foster & Bob Barnetson, “Who’s on Secondary?: The Impact of Temporary Foreign Workers on Alberta

Construction Employment Patterns” (2017), online: *Journal of Canadian Labour Studies* <<http://www.iltjournal.ca/index.php/ilt/article/view/5867>> .

^{xxi} *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.

^{xxii} See Migrant Workers Alliance for Change (MWAC), “Updated Submissions re Canada Gazette, Part I, Volume 152, Number 50: Regulations Amending the Immigration and Refugee Protection Regulations” (31 January 2019) at 3, online (pdf): *Migrant Workers Alliance for Change (MWAC)* <https://migrantworkersalliance.org/wp-content/uploads/2019/02/MWAC-Response_Open-Work-Permit-Risk-of-Abuse-Regs-Final.pdf>. See also Ontario Council of Agencies Serving Immigrants (OCASI), “OCASI Comments on Open Work Permit” (4 January 2019), online (PDF): *Ontario Council of Agencies Serving Immigrants* <<https://ocasi.org/ocasi-comments-open-work-permit>>.

^{xxiii} *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148.

^{xxiv} Pierre Brochu, Till Gross & Christopher Worswick, “Temporary Foreign Workers and Firms: Theory and Canadian Evidence” (2020), online (pdf): *Canadian Labour Economics Forum* <<https://clef.uwaterloo.ca/wp-content/uploads/2016/11/CLEF-006-2016-Fall-Brochu-Gross-Worswick.pdf>>.

^{xxv} Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers” (2014) at 43, online (pdf): *Metcalf Foundation* <<https://metcalffoundation.com/site/uploads/2014/04/Profiting-from-the-Precarious.pdf>> .

^{xxvi} Migrant Workers Alliance for Change (MWAC), “Updated Submissions re Canada Gazette, Part I, Volume 152, Number 50: Regulations Amending the Immigration and Refugee Protection Regulations” (31 January 2019) at 3, online (pdf): *Migrant Workers Alliance for Change (MWAC)*.