



October 20, 2023

## **Brief to the Senate Standing Committee on Social Affairs, Science and Technology (SOCI)**

Subject: Study of Canada's Temporary and Migrant Labour Force

Submitted by the Association for the Rights of Household and Farm Workers (DTMF-RHFV)

### **Topic: Open work permits are a necessity, not a luxury**

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#### **Summary**

- On September 6, 2023, the UN Special Rapporteur denounced employer-specific work permits for placing (im)migrant workers in Canada at risk of contemporary forms of slavery, once again underscoring the urgent need to abolish closed work permits once and for all.
- For Canada's temporary foreign worker programs to align with fundamental rights, all workers must be granted open work authorizations. Permits limited to particular sectors, occupations, regions, or placement agencies **are not an acceptable alternative**, as they will have a similarly detrimental effect on rights and working conditions as employer-specific work permits, and in some respects, may even be more problematic.
- Restrictive work authorizations in any form entail significant risks, including rights violations, adverse working conditions, non-compliance with employment standards, underemployment and debt bondage, undocumented work, and would lead to unjustified economic inefficiencies and detrimental social impacts.
- Historically, restrictive work authorizations have been developed within racist institutional cultures and have allowed for the maintenance of a wide range of discriminatory outcomes, such as ethnic and/or racial segregation within the labour market and, more broadly, the socio-political underintegration of certain individuals within society.

#### **Recommendations**

- To prevent stagnation or deterioration of working conditions for all, (im)migrant workers must be admitted with open work permits without exception and discrimination towards specific groups. (Im)migrant workers must have the ability to move freely within the labour market, and as such be empowered to negotiate the respect of their human and labour rights.
- The participation/responsibility of employers in the selection and sponsorship of (im)migrant workers must be ended and Canada must return to worker admission policies based on annual quotas by type of eligible skills from abroad starting at the selection phase - as well as provide

permits for spouses/children, and establish bilateral government programs for micro-credit and placement.

- The aforementioned policy reforms must be accompanied by unconditional access to selection for permanent status upon arrival. Permanent status determines access to a wide range of rights, and most importantly, **the ability to exercise them**. In particular, meaningful access to justice and redress in the event of rights violations requires the economic, psychological, and family stability associated with obtaining permanent status.

## Introduction

This brief is submitted by the Association for the Rights of Household and Farm Workers (DTMF-RHFW). Through research, education, advocacy and legal action initiatives, our organization promotes and defends the fundamental rights of workers employed in private households and on farms, particularly those with precarious immigration status.

The need for the immediate abolition of closed work permits cannot be overstated. Following his 14-day visit to Canada this year, the UN Special Rapporteur on contemporary forms of slavery strongly criticized employer-specific work permits for making migrant workers susceptible to various forms of modern slavery, and described Canada's temporary foreign worker programmes as "a breeding ground for contemporary forms of slavery"<sup>1</sup>.

In order for Canada's temporary foreign worker programs to be compatible with fundamental rights, all (im)workers must be granted open work authorization. Permits limited to particular sectors, occupations, regions, or placement agencies **are not an acceptable alternative**. These types of permits have a similarly detrimental effect on rights and collective bargaining as employer-specific work permits, and in some respects, are even more problematic.

## High risks of rights violations and detrimental impact on working conditions

Permits tied to a specific sector or region, or any other form that authorizes cartels of employers to "import" a pool of captive workers, pose a high risk of rights violations, both for (im)migrant workers and the unionized and non-unionized Canadians working alongside them.

Any work authorization that makes the right to earn a living dependent on maintaining a relationship with a specific employer or group of employers places a worker in a condition of servitude. Sector-specific work permits, or any other type of tied work permit, would only ensure the continued consolidation of a class of unfree workers in Canada, as well as employers' preference for such a workforce and their dependence on it. Restrictive permits such as sectoral or regional permits would continue the negative impact on job opportunities, wages, and working conditions that occurs when specific sectors,

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<sup>1</sup> UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata. "Canada: Anchor the fight against contemporary forms of slavery in human rights." End of Mission Statement. 6 September 2023. Online: <https://www.ohchr.org/en/press-releases/2023/09/canada-anchor-fight-against-contemporary-forms-slavery-human-rights-un>.

occupations, regions, and/or employment arrangements are controlled by an international placement agency - for all workers, including Canadian citizens and unionized workers.

Within a framework of sectoral, regional, or equivalent permits, employers not only can, but are also compelled to, cooperate more extensively and systematically with each other. Consequently, these types of permits create conditions where workers now confront a consortium or “cartel” of employers, who become more efficient in boycotting and expelling foreign workers from legal employment who have become ‘undesirable’, due to attempts to exercise rights, occupational illnesses, workplace accidents, inconvenient parenthood, etc.

Practical experience has shown that sector-specific work permits do not provide better protection for workers' rights. Agricultural workers from Mexico coming to Canada through the Seasonal Agricultural Workers Program (SAWP) already hold permits that some qualify as "sectoral." More specifically, they have permits linked to a list of employers officially associated with a specific employment sector - the agricultural sector. Nonetheless, these workers holding "sectoral" permits are not exempt from the risks of modern slavery in Canada, as highlighted by the UN rapporteur in early September. It is well documented that if these workers insist on compliance with their contracts or employment standards, they face identical risks as those on closed work permits: a potential temporary loss of the right to work and a high likelihood of non-renewal of their legal status in the country.

In some respects, when dealing with the employer cartel that employs them, agricultural workers from Mexico with sectoral permits are forced to accept more concessions in terms of their rights in the country. Unlike, for example, agricultural workers from Guatemala with employer-specific work permits, SAWP workers sign an [employment contract](#) in which they commit to leaving Canada if the initial employer refuses or is unable to facilitate their transfer to another member of the employer group.

As [documented by the organization Human Rights Watch](#), sectoral permits create an employment system that effectively restricts the worker's ability to exercise their rights and negotiate improvements to working conditions.

Furthermore, work permits that are restricted to specific sectors, occupations, or regions do not, in practical terms, result in increased labour mobility for workers. These types of permits are often implemented through the authorization of a monopoly or a cartel of recruitment/placement agencies, who are granted exclusive authority over access to hiring and work permits, as well as the placement of (im)migrant workers with individual employers. Although this arrangement may appear, on its face, to grant workers a minimal right to change employers, in practice, workers often find themselves simply bound to a new specific employer, the agency itself. When work permits tied to an agency or group of employers were introduced in Israel's construction sector as an alternative to employer-specific work permits, it did not result in a significant reduction in reported cases of workers' rights violations, as documented by Freedom Inc. in their report "[Binding Migrant Workers to Manpower Corporations in Israel](#)."

### **Facilitates non-compliance with employment standards and neutralizes collective bargaining**

As sectoral work permits or any permit restricted to a cartel of employers provides employers with access to a captive workforce, certain occupations, sectors, or regions will be able to offer and easily maintain archaic working conditions, which are detrimental to health and family unity compared to other sectors of the economy. For this reason, among others, restricting workers' freedom in the labour market, and thus competition among employers across the labour market, goes against the spirit of Canada's anti-trust laws.

### **Harmful for physical and/or psychological integrity**

A worker who sustains an injury or falls ill in a manner that prevents them from fulfilling the requirements of a specific occupation or sector will experience a violation of their physical integrity. Unable to accept a different, more suitable job, they will have no choice but to continue to work despite significant harm to physical or psychological health in order to avoid losing their right to earn a livelihood and the risks of non-renewal of their legal status when their work permit expires.

Restricting workers to specific sectors, occupations, or regions also limits workers' autonomy and control over their career paths, which imposes significant psychological stress. For instance, a worker who has undergone trauma within a specific occupation or location, or a worker who requires a change in residence to access necessary medical care, or who has to change their region or occupation to ensure the well-being of a child or spouse, would see their capacity to make fundamental personal decisions constrained by restricted work permits.

### **High risks of underemployment and debt bondage**

A real risk with sector-specific work permits is that more permits than necessary may be requested in order to create a pool of surplus workers from which employers can pick and choose. This leads to a risk of underemployment for workers holding sector-specific work permits and acts as an effective mechanism of discipline: one of the most common methods used by employers to punish a foreign worker deemed 'too demanding' is the reduction of working hours. Sector-specific work permits also pose a risk of underemployment for a worker who arrives too early at the start of their employment, as it can be challenging to find temporary or occasional work in their designated sector, especially in sectors that do not offer many opportunities for temporary or short-term employment. Similarly, these types of permits render workers vulnerable to a dramatic loss of income when sectors experience a downturn - given the barriers to transferring to another sector. Underemployment and unemployment directly impact the worker's income, making it difficult to cover basic living expenses. To make ends meet, workers may resort to borrowing money, often from their employers or recruitment agencies, leading to a situation where workers are highly indebted to the employer or agency.

### **Risks of undocumented (uninsured) and unauthorized employment (stress of deportation).**

All forms of restrictive work permits (sector-specific, occupation-specific, region-specific, agency-specific) create a regulatory framework in which the worker is unable to refuse directives from their employer due to the high risks of non-renewal of the permit following dismissal. As a result, they are

at risk of being compelled to perform tasks outside of their designated sector (e.g., agricultural workers being forced to perform domestic work or clean the private residence of the employer), outside of their designated occupation (e.g., being tasked with managerial and supervisory duties on a farm when only authorized as agricultural labourer), outside of the employers authorized by the agency (e.g., conducting tractor repairs for the employer's sister), and outside of the authorized region (e.g., making a delivery of goods outside of the region associated with the work permit).

### **Unjustified economic inefficiency and detrimental social impacts**

Restricting workers' freedom within the labour market in any way leads to blatant economic inefficiencies for the labour market and, more broadly, the Canadian economy. This is because the law prevents employers or sectors in need of workers from hiring from an existing and sometimes underutilized labour pool, during natural disasters, as well as whenever there is a rapid or regional change in labour demands.

### **Racist origins and discriminatory outcomes of restricted work authorizations**

Historically, restrictive work authorizations have been developed within racist institutional cultures and have allowed for the maintenance of a wide range of discriminatory outcomes, such as ethnic or racial segregation within the labour market and, more broadly, the socio-political underintegration of certain individuals within society.

It has been repeatedly shown throughout history that preventing workers from freely moving throughout the entire labour market perpetuates processes of labour market segmentation, leading to racialized and gendered segregation within the labour market.

#### *Work authorizations restricted to a specific agency*

In Canada, policies binding (im)migrant workers to a specific agency within the labour market have a long history, notably associated with the integration of Chinese workers who worked on the construction of the Canadian railways:

Chinese labourers were specifically recruited for ... the contractor for the five western-most sections of the railroad. Under the terms of the contracts, the wages of the labourers were paid directly to a representative of the Six Companies (...). ... [The] workers were recruited specifically for the construction of the Canadian Pacific Railway. ... Thus, even though there was a wage element involved in the social relations under which they were employed, it was not the primary mechanism by which the workers were retained by employers. Ultimate control over the labourer's circulation in the market was exercised via the ... representatives of the Six Companies of Kwangtung or other labour contracting companies.<sup>2</sup>

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<sup>2</sup> Satzewich, V. (1988), *Modes of Incorporation and Racialization: The Canadian Case*, Ph.D. Thesis, University of Glasgow Department of Sociology, at 116, 119, 313-314.

### *Region-restricted work authorizations*

Restrictions on workers' geographic mobility have historically aimed at ensuring the control of specific employers over a workforce. This type of policy was particularly favoured following the abolition of slavery:

White planters concerned about maintaining a stable work force saw enticement as a threat to their labor system, and they took the same view of the "emigrant agents" who made a living as interstate labor brokers. ... Mississippi ... provided especially harsh penalties for those who enticed laborers to leave the state. ... Tennessee (1917), Virginia (1924), and Texas (1929) joined the list of states having emigrant-agent laws, and Florida, Georgia, and Alabama drastically increased the severity of their statutes. ... In addition, Georgia broadened the definition of an agent to include virtually anyone who sought to take labor out of the state. ... Implicit in the sanctions against emigrant agents ... was a widely held proprietary attitude toward blacks, which had its roots in the property relations of slavery. If whites sometimes thought of themselves as the guardians of childlike Negroes, they more often responded to the presence of ... labor agents as though they thought their goods were about to be stolen.<sup>3</sup>

Regional restrictions on workers' geographic mobility were particularly central to the regime of unfree South African labour during Apartheid<sup>4</sup>, and also constituted, through the reserves and the 'pass system' to work outside of them, a key policy of colonial oppression of First Nations in Canada.<sup>5</sup> Once established, frameworks that restricted workers to specific regions persisted for decades - and every affected society, without exception, still bears the disastrous social consequences today.

### *Occupation-restricted work authorizations*

Compelling a worker to be employed in a specific occupation is not a new idea and cannot be seen as an improvement over closed work permits in terms of workers' ability to exercise their fundamental rights in Canada. In fact, this type of policy is historically associated with state efforts to preserve an efficient system of unfree labour. For example, after the abolition of slavery in the United States, the introduction of restrictions on workers' right to change occupations was at the heart of government efforts to maintain a system of employment akin to slavery:

The end of slavery as a result of the war did not yield commitment to black freedom (...). ... Mississippi and South Carolina preceded Louisiana, however, in passing legislation intended to control black labour by enacting the first of what came to be known as "Black

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<sup>3</sup> Cohen, W. (1976), Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis, *The Journal of Southern History* 42:1, at 38-39, 42.

<sup>4</sup> Coniglio, R. (2012), Methods of Judicial Decision-Making and the Rule of Law: The Case of Apartheid South Africa, *Boston University International Law Journal* 30, at 498, 507, 510-511.

<sup>5</sup> Cram, S. (2016), Dark history of Canada's First Nations pass system uncovered in documentary, *CBC News*, 29 February.

Codes” in the fall of 1865. ... South Carolina law barred blacks from any occupation other than farmer or servant except by paying a large fee.<sup>6</sup>

The restriction of certain individuals to specific occupations during the post-slavery era was also enforced through criminal law and the threat of state sanctions (equivalent to the loss of the right to work and deportation):

South Carolina was in no mood to abandon her system of involuntary servitude, and the complex and tortuous path of her contract legislation was the direct result of her attempt to maintain this system against court assaults. Four laws adopted between 1907 and 1918 testify to the state's determination. In 1907 ... South Carolina enacted a statute making it a misdemeanor for anyone unjustifiably to "leave, desert, or quit" land which had been leased or was being worked under the terms of a written contract. ... More than for any other category of legislation, the use of these laws reflected the continuing belief of whites that they had the right to appropriate Negro labor whenever "the good of society" demanded it.<sup>7</sup>

### **Necessary reforms: open work permits, family unity, government sponsorship, and permanent status**

A profound and substantial overhaul of Canada's temporary foreign worker programs is long overdue. These reforms must be anchored in a steadfast commitment to upholding the fundamental rights of (im)migrant workers. Only then will these programs be able to foster equitable treatment, fairness, and respect for individual dignity.

Restrictive work authorizations must be abolished; (im)workers should be issued open work permits. By making a worker's right to earn a living contingent on maintaining a relationship with an employer or a specific group of employers, the government upholds a system of unfree labour, which reproduces key aspects of historical legal frameworks of slavery and conditional (temporary) servitude.

To prevent stagnation or deterioration of working conditions for all, (im)migrant workers must be admitted with open work permits, have the ability to move freely within the labour market, and thereby be empowered to negotiate the respect of their human and labour rights. Otherwise, employer groups will increasingly resort to sectoral or otherwise restrictive permits because they will have the right to do so, much like they would pay people below the minimum wage if they could.

Furthermore, the initial involvement, responsibility, and investment of specific employers or groups of employers in the selection and sponsorship of (im)migrant workers excessively tilts the power balance within employment relationships, radically weakening (im)migrants' ability to assert their rights against their employer-sponsor. As such, it is necessary to end any employer participation and responsibility in

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<sup>6</sup> Howard, J.R. (1999), *The Shifting Wind: The Supreme Court and Civil Rights from Reconstruction to Brown*, Albany: State University of New York Press, at 42, 49, 51-52.

<sup>7</sup> Cohen, W. (1976), note 3, at 46-47, 49-50.

this regard (issuance and renewal of work permits) and to limit employer intervention to requests for the expedited processing of open work permits for specific individuals. It is time to return to worker admission policies based on annual quotas by type of eligible skills from abroad starting at the selection phase - and to provide permits for spouses/children and bilateral government programs for micro-credit and placement.

The aforementioned policy reforms must be accompanied by unconditional access to selection for permanent status upon arrival. Permanent status determines access to a wide range of rights, and most importantly, the ability to exercise them. In particular, genuine access to justice and redress in case of rights violations requires the economic, psychological, and family stability associated with permanent status.

For most workers, gaining access to permanent status translates to the ability to negotiate with their employer on an equal legal footing rather than from a position of legal precariousness and psychological uncertainty. It means no longer living in fear of being expelled from the country and losing access to necessary medical treatment and rehabilitation services due to a work-related injury or illness.<sup>8</sup> With permanent status, workers would be able to temporarily leave the country to visit family members abroad without risking their right to reside and work in Canada.

Given that the processing of permanent status applications can take months or even years, workers should not be subjected to additional delays in the form of employment duration requirements. In practice, this amounts to making eligibility for permanent status contingent on employers' approval/confirmation - in other words, it turns Canada's selection process into a carrot for (im)migrants that employers all too often abuse.<sup>9</sup>

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<sup>8</sup> Orkin AM, Lay M, McLaughlin J, Schwandt M, Cole D. Medical repatriation of migrant farm workers in Ontario: a descriptive analysis. *CMAJ Open*. 2014 Jul 22;2(3):E192-8. doi: 10.9778/cmajo.20140014. PMID: 25295239; PMCID: PMC4183168.

<sup>9</sup> Tomlinson, K. (2019), Employers taking cash from foreign workers seeking permanent resident status in Canada", *The Globe and Mail*, 31 May, <https://www.theglobeandmail.com/canada/article-employers-taking-cash-from-foreign-workers-seeking-permanent-resident/>.