

Migrant workers: precarious and unsupported

Provincial Report: Ontario

Executive Summary

Ontario receives the highest number of migrant workers in all of Canada. While the Province funds settlement services for which migrant workers are eligible, these services are not widely available or present in all communities, and many migrant workers do not have access. Union-led and volunteer efforts provide support and services to agricultural workers in some rural areas, and some organizations have found funding to serve migrant workers from non-governmental sources. Survey respondents felt that there is a serious service gap for migrant workers. Migrant workers have no access to permanent residence in Ontario.

Ontario has passed legislation aimed at protecting migrant workers, but has yet to proactively enforce it: enforcement is largely complaints-based at present, and thus ineffective. Ontario is also one of two provinces that restricts the right of agricultural workers to collectively bargain.

Principal recommendations for Ontario are:

1. Provide access to settlement and other services for all migrant workers, regardless of skill level or program.
2. Improve permanent residence outcomes for migrant workers in the low-skilled categories.
3. Improve access to basic rights and entitlements.

A note on terminology

For the purposes of this study, “migrant workers” refers to workers participating in the Temporary Foreign Worker Program (TFWP), the Seasonal Agricultural Worker Program (SAWP) or the Caregiver Program. TFWs (Temporary Foreign Workers) is used to talk about workers in the TFWP. The survey used “TFWs” to encapsulate all workers in the low-skilled streams, so respondents used this term in their responses. In writing the reports it was felt that “migrant workers” is more accurate and inclusive.

Workers with higher skill/wage levels participating in the International Mobility Program (formerly part of the Temporary Foreign Worker Program) are not included in this study.



Conseil canadien pour les réfugiés
Canadian Council for Refugees

OCASI
Ontario Council of Agencies Serving Immigrants

AMSSA
Strengthening Diversity In BC

aaisa

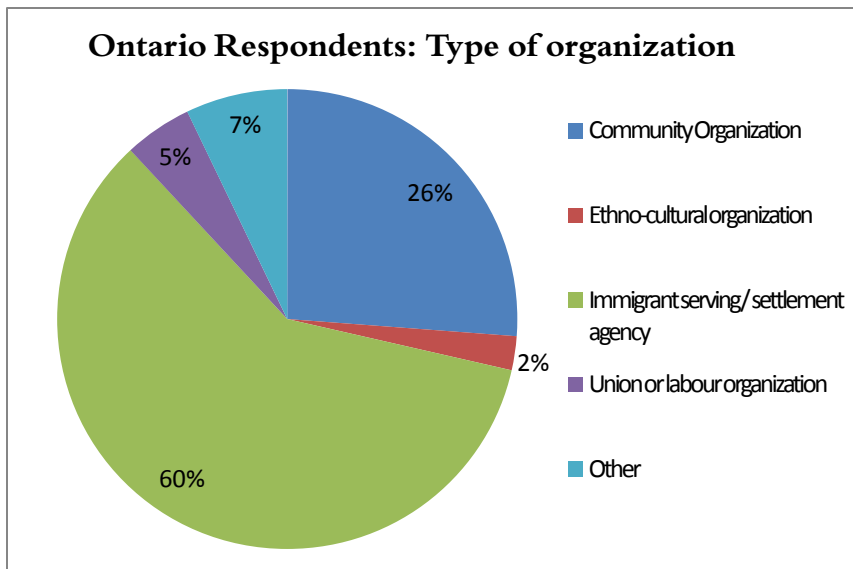
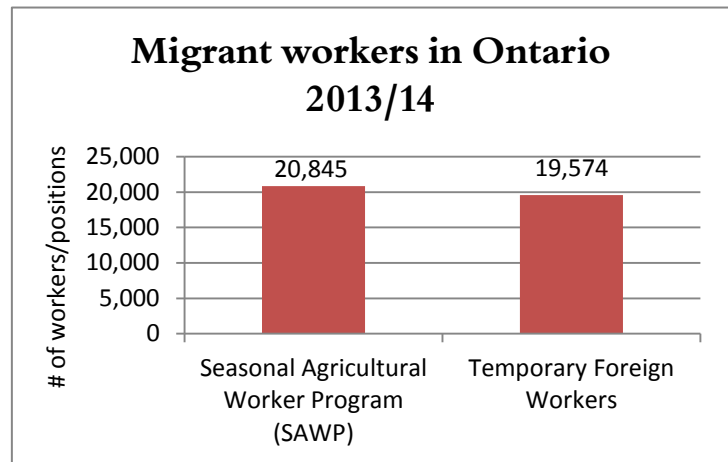
Background

Ontario receives the second highest number of TFWs under the TFWP after Alberta, with 19,574 workers destined to the province in 2014. The province’s use of the SAWP is the highest in the country: 20,845 Seasonal Agricultural Worker positions were filled in Ontario in 2013 (numbers for 2014 are not publicly available). Ontario’s combined use of migrant workers in the two programs is thus the highest of any province.

Survey Respondents

Forty-two (42) unique responses to the survey on access to services for migrant workers were received from Ontario organizations. The majority of respondents (36) reported they are urban, while six reported that they serve a rural area.

Seventeen respondents are located in Toronto, with one of these reporting it is a national organization (as opposed to local). Seven reported they are in the Greater Toronto Area, including Mississauga and Peel. Of the remainder, twelve organizations are located in South and South-Western Ontario (Hamilton, Guelph, London, St. Catharines, Leamington, Niagara, Virgil, Windsor), three organizations are located in Northern Ontario (North Bay, Thunder Bay, Kenora), and three in Eastern Ontario (Belleville, Ottawa).



Twenty-five respondents identified as immigrant-serving/settlement agencies. Eleven identified as community organizations, two union/labour organizations, one ethno-cultural organization, one employment service, one legal clinic, and one identifying as a “refugee agency”.

The majority of respondents reported being aware of migrant workers in their community, or that their organization has provided services to

migrant workers. Four did not know, and two responded ‘no’ to the question. Four others said that TFWs had never interacted with their organization or required services. Of these organizations that were less aware of TFWs, five did not provide further feedback on the survey questions, and the following summary is therefore based on the other 37 respondents. The five respondents without experience of interacting with TFWs include two respondents from Toronto, two from South-Western Ontario and one from Northern Ontario.

Provincial Legislation

Ontario has enacted several different laws in recent years intended to introduce and increase legislative protections for migrant workers. In 2009, the province adopted the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)* (EPFNA), which prohibits recruiters from charging fees to workers, employers from recouping recruitment costs from workers, and recruiters or employers from holding workers' passports or other personal documents. The *Stronger Workplaces for a Stronger Economy Act*, adopted in 2014, expanded the protections granted to live-in caregivers by the EPFNA to all migrant workers, and introduced anti-reprisal protection for all migrant workers. However the provisions only apply to violations that occurred after November 20, 2015. The Act requires employers to give each worker a copy of the Ministry of Labour Employment Standards poster, which contains information about workers' minimum employment rights, and is available in several different languages. The Act also increased the time limit to file a claim for unpaid wages, and indexed the minimum wage. However, Ontario's *Employment Standards Act* excludes workers in certain occupations and sectors, including agricultural workers, from the basic protection of minimum wage. Significantly, Ontario is also one of only two provinces that puts restrictions on agricultural workers' freedom of association.

Despite the enactment of these two laws, caregivers and other migrant workers are routinely charged thousands of dollars in fees by recruiters. Recruiters and employers also routinely charge migrant workers several hundred dollars for work permit renewals over and above the actual government fee, and illegally pass on to the worker the cost of the Labour Market Impact Assessment (LMIA). The province has yet to vigorously enforce these provisions. Enforcement of the Act is left largely to a complaints-based system which places the onus on the worker. Since many Ontario workers, in particular migrant workers, are vulnerable to threats of job loss and other employer reprisals – despite the enactment of anti-reprisal measures – this complaints-based approach is not effective.

The most recent relevant legislation, the *Ontario Immigration Act* (2015), contains provisions to create a mandatory employer and recruiter registry, and gives power to inspect their premises without a warrant or court order. Such a registry would be an important tool to connect migrant workers with necessary information and support, and to facilitate enforcement of legislation. Implementation of the legislation is in its early stages and its impact is still unknown.

Access to services for Migrant Workers

Migrant workers in Ontario are eligible for services under the provincially-funded Newcomer Settlement Program, and certain other provincially-funded resources such as self-service employment centres (online information and resources, information sessions, job bank). However, provincial settlement funding, while comprehensive, is limited and these services are not present in all communities and are not as widely available as federally-funded settlement services, for which SAWP workers and most TFWs are not eligible. Organizations must use the limited resources provided by the province to serve a broad range of residents who do not meet federal eligibility criteria, including refugee claimants and those without immigration status, as well as migrant workers.

Until recently migrant workers could access federally-funded settlement services delivered at sites hosted by public institutions such as school boards and libraries since service data reporting at these sites was not tied to

immigration status. However, reporting requirements were recently changed, leading to migrant workers, with the exception of Caregivers, being unable to access these.

Agricultural migrant workers in certain regions can access union-funded support centres (of which there are three), and some migrant workers can access support provided by volunteer-run, grassroots groups.

Survey responses

Six respondents reported providing specific services for migrant workers: two settlement agencies, two volunteer-run community groups, and two union-funded worker support centres. These organizations offer a variety of services including employment, counselling, training and information on rights and entitlements, help with paperwork, volunteer-led language training, legal and medical support, transportation, and community events. The union-run worker support centres and the community groups are located in rural areas, offering some of the only support services that exist for migrant agricultural workers.

Twenty-seven respondents reported they serve TFWs in the context of their overall work. Six of these serve only caregivers. Sixteen others offer a variety of settlement services such as information and orientation, employment services, and help to renew work permits and to fill out forms (often either unfunded or with provincial funding). Some receive federal funding to serve caregivers, but wouldn't turn away other migrant workers. One only serves clients from a particular source country. Five offer more specialized services such as legal support and legal information, access to health clinics, sexual health workshops, and information and help with access to labour rights.

Seven respondents reported they do outreach to TFWs to make them aware of services and ten reported they respond to crisis situations for migrant workers.

Three respondents did not answer the question, and two said they do not serve any migrant workers.

Funding

More than half of all respondents (21) are funded for services that are not migrant worker-specific, but can be accessed by migrant workers. These services include health education, prevention and support; employment services; legal services; women's group; education programs; and settlement services. The services are funded primarily by the provincial government, and in a few cases through a small grant from a private foundation.

Nine respondents reported that they receive funding specifically to provide services to TFWs. Of these, four were referring to federal government funding to provide services to Caregivers only. Two are union-funded support centres for agricultural workers. Another was funded by the municipality to organize a community event. One is funded to serve all TFWs from a particular country of origin (it should be noted however that the majority of TFWs from this country are in the high-skilled International Mobility Program). One does not currently receive funding but reported having received significant grants in the past to provide legal support.

Four respondents said they do not receive any funding to provide services for migrant workers, yet each of these provide some services to migrant workers, on a volunteer basis.

Innovative solutions

Some respondents had suggestions for mitigating the challenges faced by migrant workers, and some are already implementing innovative solutions in the face of service gaps.

One organization has created an online community as a vehicle to connect with Live-in Caregivers and to create a social community. This organization has also developed evening and weekend programs since these are the only times they can be accessed by the workers. Another highlighted the importance of making linkages with grassroots groups so that migrant workers receive referrals for information and services on workers' rights and human rights matters.

One of the union-run centres serving agricultural workers has developed a partnership with students at a nearby university to provide free language classes to the workers.

One urban settlement agency secured funding from a foundation in order to be able to provide settlement services to newcomers regardless of their immigration status, thus allowing them to serve migrant workers.

NGO Perspectives

Significantly, when asked about the biggest challenges facing migrant workers in their community, barriers to accessing services was the most frequently cited concern by respondents (70%). Language barriers (65%) and lack of access to permanent resident status (62%) were the next two highest cited concerns. The table below shows the range of responses.

Challenge	# of respondents	% of respondents
Barriers to accessing services	26	70%
Language barriers	24	65%
Lack of access to permanent residence	23	62%
Isolation	22	60%
Lack of access to information on rights	21	57%
Access to healthcare	21	57%
Difficulty changing jobs	19	51%
Lack of job security	18	49%
Violation of workers' rights	16	43%
Financial problems	14	38%
Unsafe working conditions	13	35%
Unsafe/inadequate housing	12	35%
Racism	12	35%
Recruitment fee debt	5	14%

More than half the respondents identified isolation and lack of access to information about rights as challenges. The fact that these two challenges are prominent even in large urban centres (the majority of respondents) shows that more work must be done in all regions to connect migrant workers with information and services and reduce their isolation. Abuse and violation of rights was cited by several respondents as a concern.

One respondent from a GTA employment services organization stated:

“Many TFWs are unaware of their rights as employees and the Employment Standards Act; most of them are exposed to being abused by their landlords and finding adequate housing [is a challenge], and all of them face dramatic challenges finding meaningful employment.”

A grassroots community group in South Western Ontario said: “They have NO legal protection and their employment will be terminated if any violations of their rights or safety are reported.”

One respondent commented that clients preferred not to reveal their status in Canada, and mainly had questions about workplace rights. One respondent said, “We have temporary foreign workers who come to us seeking help with employment issues such as not being paid or being paid incorrectly. They also come to us with human rights issues.”

The recent change (mentioned above) that requires organizations that deliver federally-funded settlement services at off-site locations such as schools and public libraries to collect and report client immigration status has resulted in dismay, since the services offered at their sites are meant to be universally accessible.

A Toronto settlement agency was unequivocal about the role NGOs should play in serving migrant workers: “TFWs need social and healthcare services. They need to be supported by NGOs and settlement service providers to support their precarious conditions.”

The respondent from a rural labour-run support centre echoed this, stating: “I believe [it] is crucial that community organizations get the funding from Provincial and Federal governments so we can continue to provide services to vulnerable workers such as the migrant workers and TFWs.”

Unmet Needs and Policy Gaps

Several respondents mentioned service eligibility as a significant gap, and noted that all migrant workers need access to federally-funded settlement services. Some respondents pointed out that while Caregivers are eligible for settlement services, they do not have access to federally-funded language training classes. The need for free language training for all migrant workers, offered at times and locations that are accessible was identified by several respondents. One respondent noted that even if TFWs can access basic information, they cannot be referred to services since eligibility is a barrier.

Although some organizations may provide minimal services to migrant workers with provincial or other funding (or without any funding to do so), concern was raised by a Toronto settlement agency respondent about how migrant workers may be overlooked: “As these clients are ineligible by CIC, they are not staff priority to serve and as such this could impede services and resource access that would assist them in their settlement process.”

A Toronto community organization elaborated on perceived gaps in service provision:

“Many TFWs are not eligible [for] services, yet they are in need of them. Services such as job search support, language skills upgrading, mentoring and community connections are just a few examples. Many of the TFWs then settle in Canada and receive permanent status, yet cannot access services at the beginning... when they need them most.”

At least two respondents commented on the great need for migrant worker-specific legal services that would include legal information on rights and support for individual advocacy. Other respondents identified the need for basic information about housing, healthcare, employment and available services, need for employment services and for better education among frontline workers about the services available to migrant workers.

More information and awareness about the challenges faced within the migrant workers community and resources available to support them are needed within organizations that do not traditionally serve migrant workers. This will ensure proper referrals when needed.

The long wait for permanent residence faced by Caregivers, and the high language requirements were also identified as problematic policy issues. One respondent commented that there should be a ‘safety net’ for migrant workers in jobs that need a Labour Market Impact Assessment (LMIA) who are laid-off, given the difficulties that many face, particularly those that have dependent family in Canada.

The lack of labour mobility for SAWP workers was highlighted by an urban settlement agency respondent: “TFWs in the Seasonal Agricultural Workers Program (SAWP) are not able to find employment elsewhere even if they have experienced abuse in the workplace.”

An urban legal clinic respondent highlighted the uncertainty faced by injured migrant workers, the short-term implications for their continued residence in Canada and long-term consequences for their ability to return.

We are very concerned about TFWs who become injured in their job. Our experience is that their employers terminate them fairly soon after an injury and, in some way cause their deportation (either through termination without a new employer or through employer repatriation in the case of the SAWP). Workers with serious or permanent injuries are then deported to a life of poverty, injury inhibiting their employment prospects and high medical bills because of their labour in Canada. For SAWP workers, once injured (even if only temporarily)... our experience is that they are banned from ever participating in the program again by their home governments.

A grassroots community group was clear about what the government should do to address the issues:

Government needs to recognize and acknowledge that we have indentured workers in Canada and not only address these systemic issues but also provide funding to assist all community services to make their services available to this population.

Access to permanent residence

As mentioned above, 62% of survey respondents cited access to permanent residence as one of the biggest challenges facing migrant workers. Several noted that this barrier makes migrant workers vulnerable to abuse. Some stated that they would ideally wish to be funded to offer migrant workers support in accessing permanent residence. At the federal level, migrant workers in the TFWP and SAWP are not entitled to access permanent residence, with the exception of Caregivers. Provincial Nominee Programs are the one mechanism the provinces have to select newcomers themselves, and in some provinces migrant workers are eligible to apply.

The Ontario Immigrant Nominee Program (ONIP) is targeted to workers in managerial, professional or skilled trade occupations, international students with a job offer and International Masters and PhD graduates, and is closed to migrant workers in the lower-skilled streams, leaving them with no pathway to permanent residence.

Recommendations for the province

In each province, challenges and gaps created by the national TFWP and SAWP manifest with regional complexities. The following recommendations are based on the issues identified and recommendations made by survey respondents, and are further developed by the authors who draw on their knowledge regarding dynamics of temporary labour migration programs in Canada at the provincial and federal levels.

To facilitate the protection of migrant workers' rights, the Ontario government should:

1. Provide access to services for all migrant workers, regardless of skill level or program
 - a) Increase the resources allocated to the Newcomer Settlement Program to improve access to settlement services for migrant workers, including language training.
 - b) Provide all migrant workers with access to employment services beyond the self-service employment resource centres and including individual employment counselling, training programs and employment mentorship and placement. This access is especially important for TFWs who were laid off of the job for which they have an LMIA.
 - c) Require employers of SAWP workers to ensure their employees have their provincial health card and are able to avail themselves of healthcare services.
 - d) Explore opportunities to provide pre-arrival information to migrant workers on rights, services and entitlements.
 - e) Advocate to the federal government to expand eligibility for federally-funded settlement and language instruction for all migrant workers.
2. Improve permanent residence outcomes for migrant workers in the low-skilled categories
 - a) Open ONIP to workers of all skill levels, giving low-skilled migrant workers in the TFWP and SAWP a pathway to permanent residence.
 - b) Make free language training classes available to migrant workers to meet language requirements for permanent residence.
 - c) Advocate with the federal government to create more pathways to permanent residence for migrant workers, and to ultimately expand Canada's economic immigration program to reflect the needs of the Canadian labour market by including workers of all skill levels.
3. Improve access to basic rights and entitlements
 - a) Establish the mandatory TFW employer and recruiter registry together with a financial bond, as has been done in Manitoba and Saskatchewan.
 - b) Undertake periodic inspection of workplaces that employ migrant workers.
 - c) Implement a TFW helpline and a TFW Advisory office as has been done in Alberta, to help support and protect the rights of migrant workers.
 - d) Prohibit the WSIB from applying the practice of 'deeming' with respect to migrant workers.