

**Made in Canada:
How the Law Constructs Migrant Workers' Insecurity**

Backgrounder Questions & Answers

Question #1: How many migrant workers are there in Canada?

Answer: Since 2000, the number of migrant workers in Canada has more than tripled. Figures released annually by Citizenship and Immigration Canada track how many migrant workers are present in Canada on 1 December of each year. On 1 December 2000, there were 89,746 migrant workers present in Canada. On 1 December 2011, there were 300,111. These global figures encompass migrant workers filling jobs at all skill levels (professional, managerial, skilled work, lower skilled work). See **Question #2** below for the figures specifically on low-wage migrant workers.

Since 2006 a new trend has emerged in which the number of migrant workers with temporary status who enter Canada each year exceeds the number of economic immigrants who are granted permanent resident status. In 2011, Canada admitted 156,077 economic immigrants as permanent residents and 190,769 migrant workers with temporary status.

Question #2: The report specifically addresses migrant workers in Canada's temporary labour migration programs for lower-skilled workers. How many migrant workers are there in Canada under these programs?

Answer: The *Made in Canada* report focuses on migrant workers who enter Canada to work in lower-skilled jobs under the Live-in Caregiver Program, the Seasonal Agricultural Worker Program, and the general and agricultural streams of the Pilot Project for Occupations Requiring Lower Levels of Formal Training (National Occupational Classification C & D) ("NOC C & D Pilot Project"). These workers account for over 30% of all migrant workers who are present in Canada. The number of migrant workers in Canada under these programs has more than tripled in the past decade. In 2000, there were 24,139 migrant workers present in Canada working in lower-skilled jobs. By 2010, there were 87,866. Figures for 2011 are not yet available.

While the Live-in Caregiver Program and Seasonal Agricultural Worker Program have been in operation for decades, the NOC C & D Pilot Project began in 2002. The figures showing how many lower-skilled migrant workers are present under each of the programs are set out in the chart on the following page.

Lower-skilled migrant workers present in Canada

Program	2000	2010
Live-in Caregiver Program	7,451	35,006
Seasonal Agricultural Worker Program	16,688	23,930
NOC C & D Pilot Project (began in 2002)	0	28,930
TOTAL	24,139	87,866

Question #3: Why does the *Made in Canada* report focus on this group of lower-skilled migrant workers?

Answer: The report focuses on migrant workers in lower-skilled jobs because these are the low-wage workers who face the greatest insecurity in Canada.

There are a wide range of professional, managerial and skilled workers who enter Canada with temporary status to work on time-limited permits under a variety of arrangements such as under free trade agreements, reciprocal employment agreements, research programs and so on. Immigration law and policy regulates these “skilled” workers differently. Unlike low-wage migrant workers, professional, managerial and skilled migrant workers are eligible for multiple pathways to permanent residence. Migrant workers in professional, managerial and skilled jobs may be eligible to apply for permanent residence under the Canadian Experience Class and through Provincial Nominee Programs. While working with temporary status, workers at these skill levels can bring their spouses and dependents to Canada with them and their spouses can hold open work permits for the same duration as the principal worker’s authorization. Finally, professional, managerial and skilled workers may also be eligible to apply to immigrate directly (without first working with temporary status) under the Federal Skilled Worker Program or under Provincial Nominee Programs.

By contrast, apart from live-in caregivers, low-skill migrant workers in Ontario have no pathways to permanent residence. They are only eligible for temporary migrant status and they are unable to bring their spouses with them unless their spouses also independently qualify for and receive a separate work permit. While live-in caregivers can eventually earn the right to apply for permanent residence (after completing 2 years or 3900 hours of live-in care work within 4 years of their arrival), during the years that they work with precarious temporary status they experience many of the same abuses shared by other lower skilled migrant workers who are permanently temporary.

Question #4: Aren’t most migrant workers in Alberta? Why is this an issue for Ontario?

Answer: Alberta does take in the largest number of workers under the NOC C & D Pilot Project. But overall Ontario is the province that imports the largest number of low-wage migrant workers in Canada. Nearly 60% of all live-in caregivers who come to Canada each year work in Ontario. More than two-thirds of all farm workers who come to Canada each year under the Seasonal Agricultural Worker Program are employed on Ontario farms.

Question #5: What does it mean to say that workers experience “insecurity”?

Answer: “Insecurity” can best be contrasted with the conditions of “security” that characterize sustainable work and community relations. Security for migrant workers operates in at least three dimensions:

- (a) First, security requires **a real, robust, practical experience of workplace rights** (i.e. a worker would in practice experience the rights that they are guaranteed by law);
- (b) Second, security requires the **capacity to enforce rights** when they are violated. This requires a knowledge of rights, knowledge of enforcement mechanisms, real access to enforcement mechanisms that are effective and responsive to the problem, collective voice and access to representation and advocacy;
- (c) Third, security requires **social integration/social inclusion**. This inclusion in community encompasses, for example, the effective exercise of fundamental rights and freedoms, freedom from discrimination, the ability to engage in social institutions like education and recreation, being united with family and social networks of support, and having pathways to permanent residence.

Insecurity is characterized by the erosion or absence of these conditions of security.

Question #6: What is significant about the timing of this report?

Answer: The expansion of migrant labour in Canada has happened rapidly over the past decade. While it is still called a “Pilot Project,” there has now been a full decade of experience under the Pilot Project for Occupations Requiring Lower Levels of Formal Training (National Occupational Classification C & D). The report’s timing is significant because Canada has now had enough experience to identify patterns that have emerged and that operate under the current laws and policies.

The timing of the report is also significant because in 2012 both Canada and Ontario have embarked on re-examinations of their respective immigration and labour migration policies. In its Economic Action Plan 2012, the federal government announced and has begun to act on various changes in the field of immigration. Meanwhile, Ontario has established an expert roundtable on immigration to help develop Ontario’s immigration strategy. In addition, last month the Law Commission of Ontario released its Interim Report on Vulnerable Workers and Precarious Work. There is, then, an opportunity to have meaningful public discussion about the treatment of migrant workers to which this report can contribute.

Question #7: Some of the recommendations in the report have been made before. What is different now? What is new with this report?

Answer: The report brings a new perspective to the discussion of migrant workers’ treatment in four ways:

- (a) First, *Made in Canada* examines all four temporary labour migration programs for lower skill occupations together and does so building on consultations with migrant workers and community organizations supporting migrant workers. By taking this integrated approach,

the research revealed that migrant workers under all four programs share very similar experiences of insecurity and exploitation and that these experiences have common roots. These common concerns and experiences can provide a focus for sustainable reform for all migrant workers.

- (b) Second, *Made in Canada* examines immigration and employment law and policy together. Immigration and employment law and policy are often developed separately by different levels of government and studied in isolation. The report maps these complex areas of law in a concise and accessible way to show how the two systems interact to create unique forms of precariousness for low-wage migrant workers.
- (c) Third, *Made in Canada* provides a new framework – the **labour migration cycle** – for understanding migrant workers’ experience of the immigration and employment systems. Tracking how the law operates at each stage in the labour migration cycle reveals how laws individually and cumulatively either actively create conditions of insecurity or fail to address or alleviate known insecurity.
- (d) Fourth, *Made in Canada* examines the role of law in creating migrant workers’ insecurity and it provides a rights-based framework for assessing migrant worker protection.

The report sets out concrete recommendations for reform. While some of the recommendations have been made previously, *Made in Canada* sets out a systemic framework for understanding the recommendations. Examining the operation of the legal system *as a system*, the report reveals how reforms at one point in the labour migration cycle can have positive impacts that resonate and build security throughout the cycle and throughout the system.

Question #8: Doesn’t Ontario already have a law that prohibits recruiters and employers from charging recruitment fees? Why is this still a problem in Ontario?

Answer: In 2009, Ontario passed the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*. This legislation, commonly referred to as *Bill 210*, does prohibit recruiters from charging fees to live-in caregivers and prohibits employers from recovering recruitment costs from live-in caregivers. While there is much to commend about *Bill 210*, the law applies only to live-in caregivers. Meanwhile, abuse in the recruitment phase exists in other sectors. *Bill 210* provides that its protection can be extended by regulation but this has not been done. In addition, *Bill 210* relies primarily on complaints by migrant workers for enforcement, rather than on proactive investigation and inspection to ensure compliance. The report contrasts *Bill 210* with the best practices model that exists under Manitoba’s *Worker Recruitment and Protection Act*. The Manitoba model is built on mandatory registration of employers who hire migrant workers, mandatory licensing of recruiters, enhanced communication and information sharing between federal and provincial governments, and proactive investigation and enforcement which builds more comprehensive protection for migrant workers.

Question #9: If employers don't comply with the contracts they have signed with migrant workers, aren't they prohibited from hiring migrant workers?

Answer: Under the federal immigration regulations, if an employer has failed to provide wages, working conditions or employment substantially the same as those that were offered to a migrant worker, the employer is given an opportunity to justify that failure. The failure can be justified if it resulted from a change in federal or provincial law; a change to provisions of a collective agreement; a dramatic change in economic conditions that directly affected the employer's business provided that the measures are not disproportionately directed at migrant workers; or errors made in good faith if compensation was subsequently provided to all migrant workers who suffered a disadvantage. An employer who cannot meet this justification is placed on a list of non-compliant employers and prohibited from hiring migrant workers for a period of two years. As of the date of writing, not a single employer is listed on the non-compliant employer's list.

The non-compliant employer's list provides only limited protection. First, while it could prohibit an employer from hiring *future* workers, it provides no protection or remedy to current workers. Second, while labour market opinions which authorize employers to hire migrant workers are granted by the federal government, enforcement of terms and conditions of work happens at the provincial level. Extensive communication and information sharing between federal and provincial governments is needed to ensure the enforcement agencies know where migrant workers are employed, can conduct proactive investigations and inspections to ensure compliance, and can identify non-compliant employers. Third, if workers lack the capacity to enforce their rights, rights violations cannot be publicly identified and recorded.

Question #10: Aren't the problems that low-wage migrant workers face similar to problems that all low-wage workers face?

Answer: Some of the problems that low-wage migrant workers face are similar to problems that all low-wage workers face. And some reforms that would help low-wage migrant workers would also help build security and protection for all low-wage workers. But this is not the complete picture.

There are also particular forms of disempowerment that are unique for migrant workers and that require targeted remedies. The fundamental source of insecurity for migrant workers is their temporary status in Canada which makes them vulnerable to threats of deportation if they complain about their working conditions. Relative to low-wage workers who have permanent status in Canada, migrant workers also face unique disempowerment as a result of exploitative recruitment fees and practices, work permits that tie them to a single employer, lack of information about their rights, migration programs which require most of them (live-in caregivers and agricultural workers) to live in their employer's homes or in housing provided by their employer, and lengthy separation from their families and social networks of support. The recommendations for reform address these specific practices and others that contribute to migrant workers' experiences of insecurity.