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**Brief to the Standing Committee on Justice and Human Rights
Study of Human Trafficking
June 15, 2018**

Introduction

We are immigration lawyers practicing in Vancouver, British Columbia. Our submission focuses on the ways in which Canadian immigration laws facilitate labour trafficking of low-wage migrant workers. We also make recommendations for changes to immigration law and policy that would reduce the vulnerability of these workers to exploitation and trafficking in Canada.

Background – vulnerabilities to trafficking created by Canadian immigration laws

Despite receiving an overhaul in 2012, the Temporary Foreign Worker Program (“TFWP”) is prone to abuse by employers and recruiters, who prey on vulnerable workers unable to enforce their labour rights in Canada. In our work, we regularly see migrant workers in low-wage occupations who have been badly exploited by recruiters and employers. Many workers have paid thousands or tens of thousands of dollars to recruiters for the promise of a better life in Canada only to discover on arrival that the jobs they were promised did not exist or were grossly misrepresented to them. They may discover that they lack proper work authorization and encounter exploitative working conditions. This can mean being forced to work without proper pay or authorization, being forced to work in unsafe conditions, and being subjected to racial and sexual harassment or assault in their workplaces. Migrant workers often find themselves unable to complain or leave exploitative workplaces as a result of restricted labour mobility, recruitment debt, and fear of removal from Canada.

The combination of fraudulent recruitment and coercion leading to exploitation by employers in Canada must be understood as a form of labour trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability...for the purpose of exploitation.” Recruiters may operate concurrently as immigration consultants, charging workers illegal recruitment fees under the guise of “immigration and settlement services” and misleading them about the conditions and nature of jobs in Canada.

Canadian courts and human rights tribunals have recognized migrant workers in low-wage occupations to be “uniquely” and “especially vulnerable” to abuse and

exploitation, resulting in work that is “unfree”.¹ This vulnerability is a direct result of the structure of immigration laws that restrict the ability of workers to change jobs, even when they face poor working conditions. In general, migrant workers in low-wage occupations arrive in Canada with temporary immigration status and “closed” work permits which tie the worker to a single employer. As a result, the worker’s ability to live and work in Canada, the services they can access, and their future in Canada are often uncertain and dependent on the continuation of the employment relationship. These conditions place migrant workers in a relationship of extreme dependence in relation to their employers and allow exploitation and trafficking to occur.

Steps can be taken to significantly reduce the vulnerabilities which allow for exploitation and trafficking of migrant workers in Canada. These include, primarily, eliminating closed work permits which restrict the labour mobility of migrant workers. In addition, effective enforcement and supports for survivors of trafficking are needed to allow workers to access justice and heal from the experience of being trafficked. These recommendations are further discussed below.

Recommendation: eliminate closed work permits for low-wage occupations

Eliminating employer-specific, or “closed” work permits would significantly reduce the potential for trafficking of migrant workers. Closed work permits are a feature of the TFWP and other temporary labour migration programs which allow employers and recruiters to exploit workers.

Closed work permits should be eliminated and all low-wage migrant workers should, at a minimum, be issued open or sectoral work permits. In its study of the Temporary Foreign Worker Program in 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities recognized that “employer-specific work permits can place migrant workers in a vulnerable position with negative implications for their physical and mental well-being” and recommended that “immediate action” be taken to “eliminate the requirement for an employer-specific work permit” with appropriate measures in place, such as geographic or sector restrictions.²

To date, this recommendation has not been implemented.

Granting open or sectoral work permits would greatly reduce the vulnerability of migrant workers by allowing them to move more freely in the labour market. This would allow migrant workers greater freedom to voice concerns about working conditions, leave

¹ See, i.e. *Peart v Ontario (Community Safety and Correctional Services)*, 2014 HRTO 611, at paras 145-146, and 148; *Milay v Athwal*, 2005 BCHRT 2 at para 7; *Mustaji v Tjin*, [1995] BCJ No 39, at para 27; *Dominguez v Northland Properties Corp (cob Denny’s Restaurants)*, 2012 BCSC 328 at para 263.

² Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on the Temporary Foreign Worker Program, September 2016, 42nd Parliament, 1st Session, p. 31.

abusive employment relationships and enforce legal rights. It would also reduce the potential for labour trafficking to occur as workers would not experience the same kind of vulnerability and dependency on their employers as they do while subject to employer-specific work permits. They would be able to leave abusive situations more easily for better working conditions at a different employer, instead of becoming trapped with no option but to stay in order to pay off debts and support themselves and their families.

Open work permits are not a complete answer to the vulnerabilities experienced by low-wage migrant workers. Eliminating closed work permits would go a long way towards addressing some of the most critical vulnerabilities that allow for labour trafficking to occur. However, we also urge the Committee to recognize the negative impact of the precariousness associated with all forms of temporary immigration status and recommend providing pathways for permanent residency to migrant workers in low-wage occupations, as high-wage workers currently enjoy.

Recommendation: offer effective supports for trafficked persons

Migrant workers already face tremendous barriers to enforcing their legal rights. When they do speak up about abuse, they are often subject to arrest, detention and removal from Canada for not fulfilling the conditions of their temporary residence or for working without authorization. Too often, little or no action is taken by law enforcement officials against the trafficker. Survivors of labour trafficking should not be re-victimized when they seek assistance. Law enforcement officials, including the Canada Border Services Agency and police agencies, must reevaluate their practices to better support survivors and investigate and prosecute offenders.

Federal agencies including Service Canada and Immigration, Refugees and Citizenship Canada must improve their oversight and regulation of both employers and recruiters, who play a critical role in facilitating labour trafficking. This includes effectively regulating recruiters who operate concurrently as immigration consultants. Any regulatory framework should provide for proactive investigations together with anonymous and third-party complaints, since workers face significant barriers to complaining about unlawful recruitment practices or poor working conditions.

Workers whose employers are under investigation or who have made complaints must be protected from retaliation and should receive supports to allow them to recover. Workers should be able to regularize their immigration status, access open work permits and social services, and should benefit from a deferral of removal. Although in theory survivors can apply for special Temporary Resident Permits for Victims of Trafficking in Persons, in our experience immigration officers apply an extremely limited definition of “trafficking” which is inconsistent with the Trafficking Protocol and departmental policy. As a result, this remedy is rarely granted in practice. Survivors must have meaningful access to remedies that will allow them to leave situations of

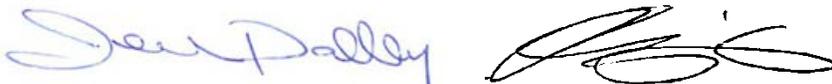
exploitation and trafficking and recover from their ordeals without experiencing re-victimization. The federal government should also adequately fund agencies that support migrant workers, including those who have experienced exploitation and trafficking.

Finally, workers who have experienced trafficking should have a pathway to permanent residence that recognizes the exploitation and abuse they have suffered. This could include new eligibility to apply for permanent residence for holders of Temporary Resident Permits for Victims of Trafficking.

Conclusion

Human trafficking violates dignity and inherent human rights, yet Canada's immigration laws create the conditions that allow trafficking to occur. Immediate action must be taken to reduce the potential for trafficking of migrant workers to occur. We urge the committee to consider recommending the elimination of employer-specific work permits, increased oversight and regulation of recruiters and employers, and improvement of remedies for survivors, which must be practically available. Finally, we urge the committee to recommend the creation of pathways to permanent residency for low-wage migrant workers, including those who have been trafficked.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of June 2018.

The image shows two handwritten signatures in blue ink. The signature on the left is 'Juliana Dalley' and the signature on the right is 'Amanda Aziz'. Both signatures are cursive and fluid.

Juliana Dalley and Amanda Aziz
On behalf of Embarkation Law Corporation