

Joint Response to the Trafficking in Persons Questionnaire

Association pour la Défense des Droits du Personnel Domestique de maison et de ferme (ADDPD)
Services Étoile Filante (SEF)

Introduction

As part of Canada's 2019 National Strategy to Combat Human Trafficking, the CBSA's Trafficking in Persons Analyst Group has sought the input of NGOs in order to produce a baseline national assessment of the scope of trafficking in persons as it relates to the Agency's mandate. For this purpose they have produced a questionnaire. The stated goal of the Trafficking in Persons Analyst Group is to "identify if, where, and how people are being trafficked into Canada and how we can be better positioned to prevent it."

The ADDPD and SEF are not direct individual service providers, as such we cannot speak directly to the questions as they pertain to specific human trafficking incidents. However, the mandate of the ADDPD and the SEF requires that our organizations have an in-depth understanding about how the trafficking of migrant workers occurs in Quebec, and more particularly, how the law contributes to the trafficking of these individuals. This submission provides a step-by-step overview of how traffickers leverage the employer-specific work permit to facilitate the exploitation of migrant workers. This overview is accompanied by a summary of a recent Quebec case that aptly illustrates how the trafficking of migrant workers happens through the Temporary Foreign Worker Program.

Scope of labour trafficking in Quebec

In 2019, Quebec employers sponsored a total of 45 900 migrant workers, who were admitted into Quebec on employer-specific work permits. Of those workers, 42.2% were brought in for intermediate or manual occupations (19 350 individuals). Our organizations consider that a high risk of labour trafficking exists whenever an individual is issued an employer-specific work permit, particularly when it is for jobs that fall in the "low-wage" and/or agricultural category. As this submission hopes to demonstrate, the trafficking of persons in Canada does not require a sophisticated or complex network, as the employer-specific work permit creates conditions in which traffickers can manipulate, control, and exploit individuals with great ease and little effort.

Employer-specific work permits and the trafficking of migrant workers

In 2006, the Supreme Court of Israel found that employer-specific work permits caused major harm to workers by greatly increasing the chance that these workers became irregular - for reasons beyond

their control and often without their knowledge.¹ In subsequent years, Canadian researchers have also confirmed that the employer-specific work permit cultivates conditions in which workers' risk of experiencing human trafficking is greatly increased.²

It is important to note that migrant workers in authorized employment situations may and often do experience coercion and exploitation at levels that satisfy the Palermo Protocol's definition of labour trafficking.³ The employer-specific work permit gives rise to a financial dependency and power imbalance that lends itself easily to abuse and control for the purposes of financial profit. As a recent example, migrant workers have reported that employers were using Covid-19 as an excuse to force them to sign agreements that forfeited the workers' right to leave the employers' property. These agreements also included clauses wherein the workers agreed to "allow" their employer to purchase and provide food for them, which would be deducted from the workers' wages. Due to the structure of the temporary foreign worker program, workers believed they had little choice but to sign the agreements. Workers who were able to reach out reported that they were being overcharged for food and that the food provided was insufficient. Control over movements, control over food, and involuntary indebtedness (here in the form of inflated wage deductions) are forms of coercion often present in situations of labour trafficking. **The fact that these types of coercion so casually and frequently occur within the legal and government-authorized use of Canada's temporary foreign worker programs is no coincidence.** Authorities need to be aware that forced labour exists within, and is facilitated by, the legal structure of Canada's temporary foreign worker programs.

As mentioned above, the employer-specific work permit grants an extremely precarious immigration status. Generally speaking,⁴ workers who quit or who are terminated cannot legally earn a livelihood in the country until a new work permit is issued, which can take months. Workers rely on private recruiters to secure them a new employer and a new work permit. This usually means that the worker becomes deeply indebted to the recruiter due to exorbitant recruitment fees. As one study stated 'recruitment agencies not only exploit financial need but exacerbate it'.⁵

Migrant workers who escape abusive employers often find themselves going from the frying pan into the fire. The debt owed by the worker to the recruiter increases the need to continue working, even if a new work permit has not been secured. This debt diminishes their capacity to resist the demands of

¹ *Kav LaOved Worker's Hotline v. Government of Israel* (2006), 1 IsrLR 4542/02; HCJ 4542/02 (Supreme Court of Israel) at 296-299. [*Kav LaOved*]

² Jesse Beatson et al, "The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking" (2017) 26:1 *Journal of Law and Social Policy* at 142 [Beatson et al].

³ The Palermo Protocol sets out the internationally accepted definition for human trafficking. It has been noted that the definition set out in the Canadian Criminal Code sets out a stricter standard than that of the Palermo Protocol due to the 'fear for safety' component.

⁴ The federal government introduced the *Open work permit for vulnerable workers* program in June 2019. This permit is supposed to provide migrant workers experiencing abuse in their employment situation an open work permit so that they may find other employment. The accessibility and effectiveness of this policy is yet to be established.

⁵ Lindsey Larios et al. "Recruiting Migrant Careworkers: The exploitation of financial need, immigration precarity, and relationship" Draft Paper presented to Centre for Immigration Policy Evaluation (CIPE/CEPI) Workshop Series on October 11, 2018 (Concordia University) (Unpublished) at 14 [Larios].

either the recruiter or the new employer.⁶ The engagement in irregular work makes the worker vulnerable to threats of arrest and deportation, such threats having been recognized as constituting a 'menace of penalty'⁷ or a threatened use of legal coercion.⁸ As the Court recognized in the Israeli case, early deportation before debts are paid off 'is an action that deals a mortal blow to the worker and his dependents'.⁹ This is especially true when workers have mortgaged their own property or that of their family back home to finance their transportation and recruitment costs.¹⁰

At this point, the conditions for labour trafficking are optimal. Workers' dependency on recruiters and employers leads not only to labour exploitation, but also financial exploitation. Workers see their documents confiscated, movements restricted and monitored, and also have their earnings controlled, or completely withheld to satisfy their debt, and are coerced into signing abusive contracts with either the recruiter or employer for housing,¹¹ loans, processing of immigration papers, job placement services, etc.

Violence, or threats of violence, might, and often do accompany these other coercive methods.¹² Threats of punitive actions from immigration officials and police are used not only to extract labour from them, but also serve to keep them from seeking assistance and/or resisting increasing amounts of coercion. Financial exploitation, indebtedness, physical and social isolation, fear of arrest and deportation are tools used by traffickers to close off avenues of exit for the victim.¹³ Fraud and deception about steps taken to regularize immigration status may be used to keep the worker in a situation of irregularity or to cause it to lapse completely. This strategy maintains and intensifies the precarious position of the worker and keeps them dependent. Sometimes the worker might not even be aware that they are without status until they are arrested and deported by border authorities. **Consequently, the effects of the employer-specific work permit are doubly egregious, these permits place workers at a higher risk of trafficking, and the enforcement of the permit's conditions punishes those who have been victimized.**

⁶ *Ibid* at 13-14.

⁷ *Siliadin v France* [2006] 43 EHRR 16, 73316/01, [2005] ECHR 545, [2005] 20 BHRC 654 at para 183.

⁸ *United States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008).

⁹ *Kav LaOved supra* note 1 at 289.

¹⁰ Centro de los Derechos del Migrante, Inc., *Recruitment Revealed* (January 2013) at 18, available online at www.cdmigrante.org.

¹¹ *Larios supra* note 5 at 18: Of the 18 case files in which workers described not having employment on arrival, despite paying fees and signing a contract, ten of these workers, who found themselves with no place to live due to these unexpected circumstances, lived in accommodations provided by a single agency. Seven of these case files describe migrant workers sleeping on the floors of the agency offices for a number of weeks, and in one case nine workers living in these conditions for five months. Workers had to share pillows and blankets and were instructed not to leave or talk to each other. During this time, they were instructed to clean the agency buildings without compensation. In each case, the workers were then pressured to sign a long-term lease for an apartment in a building owned by the agency. Some case files indicate that workers were not given time to read the lease, did not fully understand what the document meant, and were refused a copy of the lease when they requested it. Living conditions in these apartments were poor and overcrowding was the most common complaint, with several case files indicating up to 30 women living in an apartment at a given time.

¹² *Beatson et al, supra* note 2 at 155.

¹³ For example, see *PN v. FR and another (No. 2)*, 2015 BCHRT 60 [PN].

The role of the employer-specific work permit in creating opportunities for exploitation and coercion cannot be understated. One study on labour trafficking in Canada noted that none of the cases studied involved Canadian or permanent residents. This was not because the research was limited to migrant workers but was rather '[...] a clear indication of the degree to which precarious status makes people vulnerable.'¹⁴

Case study - Prado Paredes et Entreprise de placement Les Progrès inc., 2019 QCTAT 4593

This 2019 case is a **textbook example** of how the employer-specific work permit enables the trafficking of migrant workers in Quebec. These workers came from Guatemala to work as chicken catchers. Within their authorized employment they experienced difficult work conditions (low salary, intense work pace, no breaks for food or water). They were approached by a recruiter who offered them a better salary and assistance with the work permit modification. The workers left their authorized employment and agreed to pay an immigration consultant referred to them by the recruiter. This payment was arranged through a loan organized by the recruiter that would be reimbursed through the workers' wages. During their meeting with the immigration consultant, workers were asked to provide personal information about their family members (name and date of birth of father, mother, sister, father, spouse and addresses in Guatemala).

At this point the recruiter insisted that the workers begin working immediately in order to reimburse the debt. The recruiter told the workers that they would be given \$300 a week, regardless of hours worked. The rest of their wages would be used to reimburse the debt. The recruiter also charged them for lodging, internet and transportation. Workers testified that the lodgings were overcrowded and inadequately heated. At one point, 10 to 15 workers stayed in a basement that comprised of two rooms and one bed. The workers slept on inflated mattresses placed on the cold basement floor. Some workers were required to pay \$100 a week for food that would be purchased and prepared by the recruiter's wife. They were prohibited from buying their own food even if the food they were provided was insufficient given the physical intensity of their work.

They had no privacy and were subject to demeaning comments and threats of being reported to immigration authorities. A list of rules was imposed by the recruiter and his wife. Any transgression would result in a financial penalty (between \$5 to \$20). The rules were clearly designed to isolate the workers and cement the recruiter's control over them (no visitors, no social media).

The recruiter took the workers' passports, work permits and social insurance cards. They had no control over their schedules or working conditions; some workers testified that they worked 24 hours consecutively. The recruiter and his wife inspected their lodgings on a consistent basis and excessively monitored the workers. The workers were subject to behaviour and comments meant to denigrate and humiliate them. Financial penalties were imposed for the tiniest infractions, clawing back the already low salary paid to the workers. **Threats of deportation were used to exploit labour from the**

¹⁴ Beatson et al. *supra* note 2 at 154.



workers. Workers who inquired about the progress made on their work permit transfer were also met with threats of deportation. Vague but frightening threats were made towards the family members of the workers. The workers had reason to fear these threats since the recruiter had been provided with the personal information of the family members during the meeting with the immigration consultant.

The workers were eventually arrested and taken away in handcuffs by border services officers. The workers were then detained for several weeks. The lawyer they retained testified that during their incarceration she witnessed the degradation of their physical and mental state. They were dirty, unshaven, and smelled bad, since they had neither soap nor money. The workers were eventually released and their lawyer was able to secure their temporary status, to allow them to stay and participate in legal proceedings. It was discovered during the labour board hearing that very little had been done to modify the workers' work permits. In 2019 the labour board awarded each of the workers \$5,000 in punitive damages 'by reason of the seriousness and high reprehensible nature of the acts committed by the employer', as well as \$20,000 to \$30,000 in moral damages depending on the experience of each plaintiff. However, the recruiter's placement agency went out of business during the hearings, leaving the workers unable to collect.

ABOUT US

The Association for the Rights of Household & Farm Workers

The Association for the Rights of Household & Farm Workers (ADDPD/ARHW) is a non-profit community organization founded in 1975 and based in Montreal. Our mission is to advance the rights of those who work at their employer's place of residence, many of whom are subject to employer-tied work permits imposed through Canada's immigration law. Through its legal action project BREAK THE CHAINS, associated research and education/advocacy activities, the ARHW currently fights for the abolition of state obstacles to migrant household and farm workers' fundamental right to freely change employers.



Services Étoile Filante



Services Étoile Filante is a charity organization created in 1993 in order 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.

CONTACT

For more information about this document, please contact:

Hannah Deegan, lawyer
ARHW/ADDPD
Legal Project Coordinator
hannah.deegan@arhw-addpd.org
(514) 379-1262