Regulatory approaches to international labour recruitment in Canada

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TABLE OF CONTENTS

Abbreviations and acronyms **5**
Key terms **6**
Introduction **7**
Context **8**
International labour recruitment and unfair practices 8
Temporary labour migration to Canada 8
Legislative and jurisdictional landscape 11
Comparative discussion of regulatory approaches 17
1. Laws that apply to all **19**
Provincial overview 23
Alberta – Employment Agency Business Licensing Regulation *23*
Ontario – Employment Protection for Foreign Nationals Act *24*
Saskatchewan – Foreign Worker Recruitment and Immigration Services Act *25*
British Columbia – Temporary Foreign Worker Protection Act *26*
Nova Scotia – Labour Standards Code *26*
New Brunswick – Employment Standards Act *27*
Manitoba – Worker Recruitment and Protection Act *28*
Quebec – Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers *29*
2. No recruitment fees to workers **30**
What constitutes recruitment fees and related costs? 30
Prohibitions on charging recruitment fees 32
Prohibition on employer recovery of costs 35
3. Licensing and registration **37**
Recruiter licensing 37
Employer registration 43
4. Freedom of movement **47**
Right to identity documents 47
Prohibition against threatening deportation 49
5. Freedom from deception or coercion **50**
Prohibited and unfair practices 50
Consent through signed and written contract or agreement 52
6. Access to information **53**
Information on rights document 53
Disclosure and declaration document 54
7. Access to grievance mechanisms **55**
Barriers to accessing rights and recourse 55
What is the complaint process? 57
8. Effective enforcement **61**
Proactive and reactive inspections 61
Administrative consequences and penal sanctions 61
Operational challenges 63
Conclusion: An uneven patchwork of protections **64**
Appendix I: Work permit statistics **65**
Appendix II: Relevant international norms on fair recruitment **70**
Appendix III: Select provincial reference documents **76**

LIST OF TABLES

Table 1: Provincial regulation of employment/recruitment of migrant workers 15

Table 2: To whom does the relevant legislation apply? 19

Table 3: Which migrant workers are covered by relevant provincial legislation: how are they defined? 21

Table 4: Exemptions to employer registration requirements 22

Table 5: Exemptions to recruiter licensing requirements 22

Table 6: Comparison of licensing process for recruiters by province 42

Table 7: Comparison of licence characteristics by province 43

Table 8: Comparison of registration process for employers by province 46

Table 9: Complaint time limit by province 58

Table 10: Potential criminal sanctions 62

Table 11: Work permit holders* signed in 2018, by province, program** and work permit type*** 65

Table 12: Temporary Foreign Worker Program (TFWP) work permit holders signed in 2018, by province and NOC skill level 66

Table 13: International Mobility Program (IMP) employer-specific work permit holders signed in 2018, by province and NOC skill level 68

LIST OF FIGURES

Figure 1: Work permit holders signed by province and territory in 2018 10

Figure 2: Provinces with migrant worker employment and/or recruitment law 14

Figure 3: Timing of coming into force of relevant provincial regulation 14

Figure 4: Fair recruitment principles 18

Figure 5: Migrant worker population and provincial scope 20

Figure 6: Recruiter licensing map 37

Figure 7: Number of recruiter licenses listed online (as of February 2020) 40

Figure 8: Labour recruitment supply chain models 41

Figure 9: Employer registration map 44

Figure 10: Summary of barriers to accessing justice for migrant workers 56

Figure 11: Excerpt from Ontario’s EPFNA Claim Form – Claims again recruiter 57

Figure 12: Complaint time limits by province 58

Abbreviations and Acronyms

Alta.	Alberta
B.C.	British Columbia
CAQ	Certificat d'acceptation du Québec (*Quebec Acceptance Certificate*)
CNESST	Commission des normes, de l'équité, de la santé et de la sécurité du travail
EABLR	*Employment Agency Business Licensing Regulation* (Alberta)
ESDC	Employment and Social Development Canada
ESA	*Employment Standards Act* (New Brunswick)
LMIA	Labour Market Impact Assessment
EPFNA	*Employment Protection for Foreign Nationals Act* (Ontario)
F.A.R.M.S.	Foreign Agricultural Resource Management Services
F.E.R.M.E.	Fondation des Entreprises en Recrutement de Main-d'œuvre agricole Étrangère
FWRISA	*Foreign Worker Recruitment and Immigration Services Act* (Saskatchewan)
GCM	Global Compact for Safe, Orderly and Regular Migration
IOM	International Organization for Migration
IRPA	*Immigration and Refugee Protection Act*
IRPR	*Immigration and Refugee Protection Regulation*
ICCRC	Immigration Consultants of Canada Regulatory Council
IRCC	Immigration, Refugees and Citizenship Canada
ILO	International Labour Organization
IMP	International Mobility Program
LSC	*Labour Standards Code* (Nova Scotia)
Man.	Manitoba
NOC	National Occupational Classification
N.B.	New Brunswick
N.S.	Nova Scotia
Ont.	Ontario
PNP	Provincial Nominee Program
Que.	Quebec
Sask.	Saskatchewan
SAWP	Seasonal Agricultural Worker Program
TFWP	Temporary Foreign Worker Program
TFWPA	*Temporary Foreign Worker Protection Act* (British Columbia)
WRAPA	*Worker Recruitment and Protection Act* (Manitoba)

KEY TERMS

In this paper, the following definitions are employed:

Employer: a person or an entity that engages employees or workers, more specifically, migrant workers.

Foreign national: a person who is not a Canadian citizen or a permanent resident in Canada.

Labour recruiter: private employment agencies and all other third-party intermediaries that offer labour recruitment and placement services. Can be formal (operate within regulatory framework) and informal (unregulated). Other terms used to describe this group include recruitment agencies, consultants, brokers, and sub-agents.

Labour recruitment: involves the advertising, information dissemination, selection, transport, and placement of migrant workers into employment and return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship.

Migrant worker: any foreign national who migrates to Canada and is working or seeking employment in Canada. Terms such as foreign worker, temporary foreign worker, labour migrant, and migrant worker are generally used interchangeably in the Canadian context.

Temporary labour migration programs: the programs under which migrant workers are authorized to enter and work. In Canada, the two main programs are called the Temporary Foreign Worker Program and the International Mobility Program.

INTRODUCTION

Over the past decade, provincial governments in Canada have significantly changed the statutory landscape under which labour recruiters and employers of migrant workers operate. Regulatory approaches were developed largely in response to increased volumes of migrant workers and the reported recruitment-related abuse and exploitation that workers can be exposed to in order to come to Canada. In fact, nearly 500,000 work permits were issued nationwide in 2018, an increase of over 50 percent since 2008. The unethical conduct of labour recruiters, including charging migrant workers exorbitant fees to work in Canada has also been documented alongside this growth.

As such, this paper is intended to be a resource on the provincial statutory regulation of international labour recruitment and employment in Canada. In order to frame the comparative discussion, select international principles on fair recruitment are used as a thematic framework. The following questions guided the research:

- What are the provincial approaches to regulating international labour recruitment and employment of migrant workers in Canada? How do they compare against international fair recruitment norms?
- What is the coverage and application of these laws over migrant workers? How are migrant workers and their employers and labour recruiters defined?
- How are labour recruiters and employers regulated? Is licensing or registration required?
- What protective measures are in place for migrant workers at risk of exploitative or abusive recruitment or employment practices?
- Given the transnational nature of migrant labour recruitment and employment, how is federal immigration law and policy implicated in these provincial approaches?

With these questions in mind, an empirical review of relevant statutory regulation (i.e., the relevant laws enacted by legislative bodies and enforced by government) in eight Canadian provinces was undertaken. A desk-based review of pertinent statutes, regulations, and grey material, including interpretation manuals, guidelines, and forms, was conducted between August 2019 and January 2020. Immigration, Refugee and Citizenship Canada (IRCC) work permit data was examined for descriptive analysis and context. International standards and reports on labour migration, migrant worker protection, fair and ethical labour recruitment, and human trafficking were also reviewed in order to develop the overarching framework under which the relevant regulatory approaches are compared. Secondary research was supplemented with semi-structured interviews with provincial government administrators over the same time period, including both policy and operational officials to validate and clarify technical aspects of their respective regimes.[1]

This paper focuses on what relevant laws are in place and what they ought to do. No conclusions are drawn with respect to the effectiveness of enforcement of any regulatory framework (e.g., no enforcement gaps are identified) as it is outside of the scope of this review. In addition, non-regulatory provincial activities promoting ethical international labour recruitment are not explored.[2]

[1] In-person meetings with officials from each province were conducted, except Quebec's Commission des normes, de l'équité, de la santé et de la sécurité (CNESST) du travail due to timing of research schedule and CNESST final regulatory amendments. Technical questions were accordingly addressed electronically.

[2] Non-regulatory activities can include how provincial immigration or employment authorities conduct their own recruitment activities, by either facilitating or assisting employers to directly recruit migrant workers, or any provincial participation in international ethical recruitment initiatives like the International Organization for Migration's (IOM) International Recruitment Integrity System (IRIS).

CONTEXT

INTERNATIONAL LABOUR RECRUITMENT AND UNFAIR PRACTICES

The international labour recruitment landscape is complex. Private labour recruiters and employment agencies in countries of origin and destination operate as intermediaries between employers and migrant workers; relationships between them often span multiple jurisdictions and long periods of time. The basic business model of the recruitment industry is to actively seek out clients, both workers and employers, establish matches, and charge one or both parties for these services. Some recruiters may provide additional services for extra fees, such as arranging transportation and loans, providing orientation for workers before departure or after arrival, filling visa, work permit or immigration forms, or supplying language or technical training.

As such, labour recruiters, both formal (regulated) and informal (unregulated), play a critical role in matching local labour demand with international labour supply, leveraging global networks of brokers, sub-agents, and travel and immigration expertise. Prospective migrant workers may naturally come to depend on recruiters in order to navigate the process and ultimately enter and become employed in another country.

This dependence, however, can create abusive or exploitative conditions for workers if recruiters act unfairly or unethically with the intention of deceiving prospective migrant workers into fraudulent employment and/or immigration opportunities. For example, by misrepresenting working conditions in employment contracts, or coercing migrants into illegal or illegitimate work arrangements. International labour recruitment is a lucrative business: recruiters have many touchpoints to charge fees for multiple services that are sometimes unnecessary or excessive. Furthermore, unfair recruitment activity can put migrant workers at higher risk of being subjected to forced labour or human trafficking. If on a spectrum or continuum, fair and ethical recruitment practices would be at one end with forced labour and human trafficking at the other. The broad range of abusive and unfair recruitment practices fall in the somewhat grey area between them.

Unfair recruitment practices:

- Charging fees, often exorbitantly high fees, to workers
- Coercing worker into taking a contract with less generous conditions than what was originally signed (i.e., contract substitution)
- Advertising non-existent jobs
- Misrepresentation about terms and conditions of employment contract or immigration prospects
- Illegal wage recovery and financial abuse where agents or employers deduct recruitment fees or costs from wages once in destination country
- Threats and intimidation including psychological and verbal abuse
- Confiscation of passport, work permit or other identity documents

TEMPORARY LABOUR MIGRATION TO CANADA

In Canada, migrant workers play an important role in local society, culture, and the economy. Their contributions are diverse and significant: migrants are hired to do everything from harvesting fruits and vegetables, caring for children and the elderly, driving long-haul transport trucks, to working in software engineering, academia, and medicine.

In order to come to Canada, a migrant worker must be authorized to work under one of two temporary labour migration programs: the Temporary Foreign Worker Program (TFWP) or the

International Mobility Program (IMP). The main distinction between the TFWP and IMP is the employer requirement or exemption from a labour market test, called the Labour Market Impact Assessment (LMIA). The LMIA serves to verify a number of factors, primarily if a Canadian is available to do the job. All work authorizations under the TFWP require an LMIA and employers may be refused if the assessment finds a negative impact on the labour market. Migrant workers under the TFWP commonly include, but are not limited to, agricultural and domestic (caregiver) workers.

Under the IMP, employers are not required to seek an LMIA before issuing an offer of employment due to a recognition that in certain circumstances, broader benefits to Canada from hiring the worker may outweigh the requirement for the assessment, such as potential impacts on the labour market. Migrant workers under the IMP include workers covered under international trade agreements, youth taking part in working holiday exchanges, postgraduate international students, and charitable and religious workers, among many others.

All work authorizations under the TFWP are granted through the issuance of work permits conditional to one employer and employment offer, also called "employer-specific" or "closed" work permits. The IMP facilitates both employer-specific and open work permits, as well as work permit exemptions.[3] Open work permits allow migrant workers to change employers during the validity period prescribed on the work permit.

Program	LMIA	Work authorization type	Work permit type
TFWP	Required	Work permit	Employer-specific
IMP	Exempt	Work permit OR work permit exempt	Employer-specific OR open

Most work permits (~70%) issued in 2018 were under the IMP. Unauthorized or irregular work performed by migrants, by its very nature, is not readily captured by IRCC data.

Regionally, migrant workers are unevenly dispersed across Canada, the majority (~75%) are in the most populated provinces of Ontario, Quebec, and British Columbia. A detailed breakdown of provincial work permit data is captured in Appendix I.

In terms of how migrant workers are recruited to Canada, the contemporary landscape primarily involves the operation of private international labour recruiters and employment agencies. A notable exception is the recruitment of migrant farm workers under the Seasonal Agricultural Worker Program (SAWP) whereby labour departments in the country of origin (Mexico and the Commonwealth Caribbean) and non-profit agencies in Canada like Foreign Agricultural Resource Management Services (F.A.R.M.S.) or Fondation des Entreprises en Recrutement de Main-d'œuvre agricole étrangère (F.E.R.M.E.) which organize and administer formal recruitment activities.[4] The exact proportion of migrant workers seeking employment in Canada through a private labour recruiter is unknown. However, a small but growing body of relevant research has identified a proliferation of the private "migration industry", which has grown alongside migrant worker volumes under temporary labour migration streams in recent years.[5] Indeed, the last

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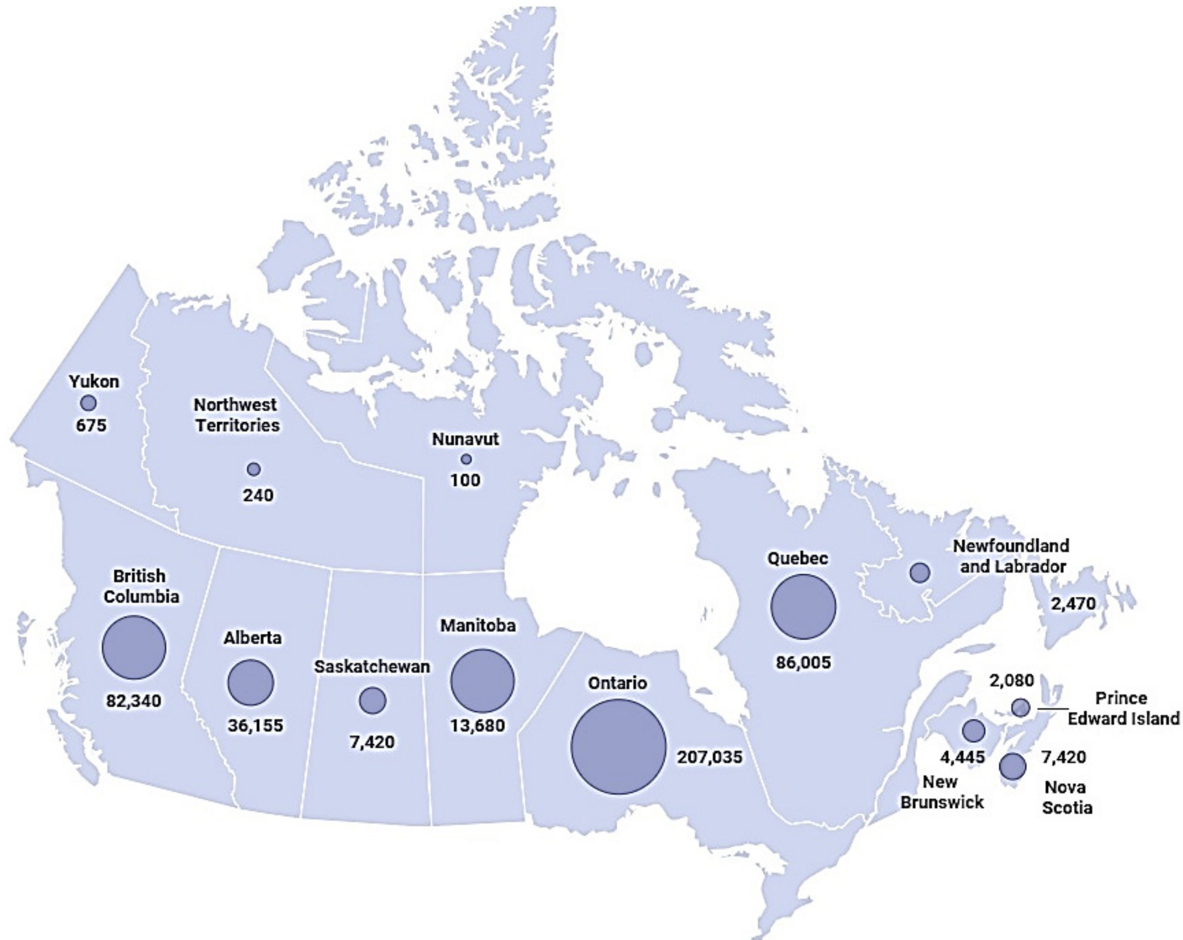
[3] Work authorizations without a work permit (work permit exemptions) are not captured by IRCC data; this includes work permit exemptions under section 186 of the IRPR for study permit holders, athletes, and clergy, among others.

[4] F.A.R.M.S. and F.E.R.M.E. both operate on behalf of groups of employers.

[5] See Zell, S. (2018). Outsourcing the border: recruiters and sovereign power in labour migration to Canada. (PhD Dissertation, University of British Columbia); Gesualdi-Fecteau, D., Thibault, A., Schivone, N., Dufour, C., Gouin, S., Monjean, N., & Moses, E. (2017) A story of debt and broken promises: The recruitment of Guatemalan migrant workers in Quebec. *Revue québécoise de droit international* 30, 95; Rodgers, A. E. (2016). Temporary foreign workers in British Columbia: Unfree labour and the rise of unscrupulous recruitment practices. (Master's Thesis, Simon Fraser University); Muir, G. (2015). Unmapping recruitment: An

decade has seen an increase of over 50 percent in work permit issuance: around 495,000 work permits were issued in 2018, while closer to 328,000 were issued in 2008. Relevant research has uncovered abusive recruitment practices, including illegal fee charging and the advertisement of non-existent jobs across Canada. During this period, public concerns have also been raised regarding the role of unscrupulous recruiters as it continues to be scrutinized in the media.[6]

Figure 1: Work permit holders signed by province and territory in 2018



Note: About 10% of all work permits issued in 2018 are not captured as they did list an intended location.

To deter and enforce consequences on unscrupulous international labour recruiters, a number of provinces in Canada have regulated the industry in their respective jurisdictions over the last ten years. In some cases, they have also placed additional requirements on employers of migrant workers, in tandem or separate from labour recruiter provisions. To position the analysis of these regulatory approaches, a brief discussion of the legal and jurisdictional landscape that oversees immigration, employment, and recruitment in Canada is provided below.

exploration of Canada's Temporary Foreign Worker Program in Guatemala. (Master's Thesis, Concordia University); Faraday, F. (2014). Profiting from the precarious: How recruitment practices exploit migrant workers: Toronto: Metcalf Foundation; Choudry, A., & Henaway, M. (2012). Agents of misfortune: Contextualizing migrant and immigrant workers' struggles against temporary labour recruitment agencies. Labour, Capital and Society, 36-65; Fudge, J. (2011). Global care chains, employment agencies, and the conundrum of jurisdiction: Decent work for domestic workers in Canada. *Canadian Journal of Women and the Law* 23:1, pp. 235–264; Parrott, D. (2011). The role and regulation of private, for-profit employment agencies in the British Columbia labour market and the recruitment of temporary foreign workers. (Master's Thesis, University of Victoria).

[6] Select media sources include: Tomlinson, Kathy. False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada. *The Globe and Mail*. 5 April 2019; Rankin, Jim. Unscrupulous recruiters keep migrant workers in 'debt bondage.' The Toronto Star, 8 October 2017.

LEGISLATIVE AND JURISDICTIONAL LANDSCAPE

Immigration-employment nexus

Conventional employment relationships in Canada are bilateral in nature: an employment contract results from the consent of the employer and employee. The rights and obligations of these parties is determined by labour or employment law which for the most part is under sub-national (provincial) jurisdiction. However, the relationship between a migrant worker employee and their employer is more complex. Labour laws coexist with national (federal) immigration laws which govern the administration of the temporary labour migration program under which migrant workers enter and are authorized to work in Canada. It is the nexus of these distinct regulatory frameworks, involving different rules and enforcement actors that creates a unique relationship between a migrant worker and their employer. What is more, an understanding of this relationship is incomplete without an appreciation of the mediating practices that facilitate and constrain it: the brokerage between migrant workers and employers. Capturing labour brokers, or recruiters, and if and how the recruitment business is regulated is thus crucial in discerning these unique employment relationships.

The linkage between these regulatory frameworks: immigration, employment and recruitment, is raised a number of times throughout this paper's discussion, and as such marked by a **mangrove tree** to signify the complex web of roots connecting them.

To position the landscape involved in this nexus, the following sections offer an overview of the somewhat complex national and sub-national regulatory activities that oversee migrant worker employment and recruitment in Canada.

National

The responsibilities of the federal and provincial governments are defined in the *Constitution Act*, 1867.[7] Canada and the provinces share jurisdiction over immigration, though the federal government alone administers temporary labour migration programs under the *Immigration and Refugee Protection Act* (IRPA) and its Regulations (IRPR).[8]

The IRPR facilitates the authorization of foreign nationals to enter and work in Canada. Sections 200 to 208 of the IRPR provide the regulatory authorities for which officers may issue work permits, and in so doing, they constitute the basis for the two temporary labour migration programs – the TFWP and IMP.[9] These programs are jointly administered by Immigration, Refugees and Citizenship Canada (IRCC), Employment and Social Development Canada (ESDC), and the Canada Border Services Agency.

The IRPR does not directly regulate international labour recruiters or employment agencies (i.e., the third-party recruitment process of migrant workers), but it does impose recruitment-related requirements indirectly on employers of migrant workers through compliance mechanisms, discussed below. That being said, labour recruiters are captured by section 91 of the IRPA if they also provide immigration services; it requires them to be members in good standing of a provincial law society or the Immigration Consultants of Canada Regulatory Council (ICCRC) in

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7 The *Constitution Act*, 1867, 30 & 31 Vict, c 3.

8 *Immigration and Refugee Protection Act*, SC 2001, c 27; *Immigration and Refugee Protection Regulations*, SOR/2002-227.

9 These regulatory authorities include labour market assessments (s. 203), international agreement or arrangements (s. 204), Canadian interests (s. 205), no other means of support (s. 206), applicants in Canada (s. 207), vulnerable workers (s. 207.1), and humanitarian reasons (s. 208).

order to provide immigration advice.[10] In addition, any activities of labour recruiters that constitute human trafficking are captured under section 118 of the IRPA which makes it a criminal offence to use abduction, fraud, deception or the use or threat of force or coercion to recruit and/or bring people to Canada. Under Ministerial Instructions pursuant to subsection 24(3) of the IRPA, officers may also issue temporary resident permits to foreign nationals who are victims of trafficking in persons.

Compliance mechanisms

The IRPR has both front-end and back-end compliance measures over employer-specific work permits. About 33 percent of the total work permit holders signed in 2018 were on employer-specific work permits and thus covered by these measures.

When an employer-specific work permit or LMIA application is being processed by IRCC or ESDC respectively, officers must assess the genuineness of the offer of employment, pursuant to factors listed in subsection 200(5) of the IRPR. This is a front-end compliance mechanism and a negative assessment of genuineness would result in a refusal. Factors to consider include whether:

- the offer is made by an employer actively engaged in the business for which the offer was made;
- the offer is consistent with the reasonable employment needs of the employer;
- the terms of the offer are terms that the employer is reasonably able to fulfil; and
- the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment or the recruiting of employees.

For example, if it became known during the processing of a work permit application for a job offer in Alberta that the applicant paid illegal recruitment fees, contrary to provincial legislation, this could constitute grounds for the work permit refusal (i.e., related to "past compliance of any person who recruited the foreign national").

In terms of back-end compliance measures, sections 209.1 to 209.997 of the IRPR impose conditions on employers who hire migrant workers on employer-specific work permits and provide authorities for employer inspections and administrative consequences in case of non-compliance (warning letters, monetary penalties, and/or bans on hiring migrant workers). These provisions constitute the TFWP and IMP employer compliance regimes administered by ESDC and IRCC respectively.

Regulatory conditions include, but are not limited to, requiring employers to be actively engaged in the business, provide the same wages, occupations and working conditions as set out in the job offer, and make reasonable efforts to provide an abuse-free workplace. Of significance to this paper's discussion, employers are also required to comply with federal or provincial employment and recruitment legislation. That could, for example, require compliance with a provincial employer prohibition against hiring unlicensed recruiters, as applicable. Employers found non-compliant with these conditions could then face consequences pursuant to the IRPR.

[10] Subsection 91(2) of the IRPA only permits (a) a lawyer who is a member in good standing of a law society of a province or a notary who is a member in good standing of the Chambre des notaires du Québec; (b) any other member in good standing of a law society of a province or the Chambre des notaires du Québec, including a paralegal; or (c) a member in good standing of the ICCRC to represent or advise a person for consideration in connection with a proceeding or application under the IRPA. A contravention of this is a criminal offence pursuant to subsection 91(9).

Sub-national

Jurisdiction over regulating workplaces and businesses, except for a small number of industries that fall under federal jurisdiction, rests with the provinces at the sub-national level.[11] Most matters of employment (labour standards, occupational health and safety, etc.) and the business of employment agencies and private labour recruiters are as such regulated by the province in which those actors operate. This includes minimum employment and labour standards for most workplaces in the country. Within this regulatory capacity, provinces can place obligations on employers hiring migrant workers, or they can stipulate if an international labour recruiter or employment agency is legally allowed to operate as a business, and if so, under which conditions.

In general, migrant workers are entitled to the same minimum labour standards as Canadian workers and are not legally excluded on the basis of their immigration status. In some jurisdictions however, employees (both domestic and foreign nationals) in certain sectors such as agriculture and domestic work do not have the same rights as workers in other sectors, for example the right to bargain collectively. Migrant workers tend to be more exposed to the consequences of these exemptions to some extent given that they tend to be disproportionately employed in these sectors.

A comprehensive review of the full range of employment and labour laws (e.g. employment standards, occupational health and safety, labour relations, human rights, etc.) for all workers in each jurisdiction in Canada is beyond the scope of this paper. This discussion rather focuses on the relevant provincial legal provisions, either incorporated into existing labour or employment standards statutes, or in stand-alone statutes, that are designed to explicitly address the unique realities of the international labour recruitment and/or employment of migrant workers. As the statutory regulation of migrant worker employers, labour recruiters, and/or employment agencies varies widely across Canada, this paper serves to consolidate their content and differences.

Eight out of ten provinces in Canada have some relevant legislation that regulates the employment and/or recruitment of migrant workers. Legislation involves a range of measures, from prohibiting charging recruitment fees to workers to recruiter licensing or employer registration requirements. Prince Edward Island, Newfoundland and Labrador, and the three territories, Yukon, the Northwest Territories, and Nunavut have no comparable statutory approach and are consequently not discussed in this paper. The active provinces, relevant legislation, and respective administrative bodies under review are captured in Table 1.

For the most part, the respective body overseeing the administration of these regimes is employment or labour standards bodies, the same authority responsible for enforcing minimum labour standards like minimum wage. The notable exception to this approach is in Alberta where the *Consumer Protection Act* and its *Employment Agency Business Licensing Regulation* oversee international employment agencies, effectively covering the recruitment process of migrant workers into the province.

[11] The labour rights and responsibilities of employees and employers of federally regulated businesses and industries fall under the Canada Labour Code; examples of such industries include banking, transportation (marine, air, railway), telecommunications, and radio and television.

Figure 2: **Provinces with migrant worker employment and/or recruitment law**

Figure 3: **Timing of coming into force of relevant provincial regulation**

Table 1: Provincial regulation of employment/recruitment of migrant workers

Province	Originating legislation	Associated regulations	Administered by	Timing
British Columbia (B.C.)	*Temporary Foreign Worker Protection Act (standalone)*	Temporary Foreign Worker Protection Regulation B.C. Reg. 158/2019	Employment Standards (Ministry of Labour)	Assented to in 2018, provisions staged into force over 2019–2020
Alberta (Alta.)	*Consumer Protection Act*	Designation of Trades and Businesses Regulation; Employment Agency Business Licensing Regulation; General Licensing and Security Regulation	Consumer Programs (Service Alberta)	Major relevant amendments in 2012 (framework in place since 1960s)
Saskatchewan (Sask.)	*Foreign Worker Recruitment and Immigration Services Act (standalone)*	Foreign Worker Recruitment and Immigration Regulations	Employment Standards (Ministry of Labour Relations and Workplace Safety)	Assented to and in force in 2013
Manitoba (Man.)	*Worker Recruitment and Protection Act (standalone)*	Worker Recruitment and Protection Regulation	Employment Standards (Manitoba Growth, Enterprise and Trade)	Assented to in 2008, in force 2009
Ontario (Ont.)	*Employment Protection for Foreign Nationals Act (standalone)*	Ontario Regulation 348/15; Ontario Regulation 47/10	Employment Standards (Ministry of Labour)	Initial Act (live-in caregivers) in force 2010; significant amendments and expanded coverage in 2015
Quebec (Que.)	*Act respecting Labour Standards*	Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers	Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)	Foreign worker provisions assented to in 2019, in force in 2020
New Brunswick (N.B.)	*Employment Standards Act*	General Regulation 85-179	Employment Standards (Department of Post-Secondary Education, Training and Labour)	Relevant foreign worker legislation assented to and in force in 2014
Nova Scotia (N.S.)	*Labour Standards Code*	General Labour Standards Code Regulations	Labour Standards (Department of Labour and Advanced Education)	Relevant foreign worker legislation assented to in 2011, in force 2013

International normative framework

In order to frame the comparative discussion on provincial statues regulating the recruitment and employment of migrant workers, select international principles are used as a comparative thematic framework. This section provides an overview of the international normative context on fair and ethical labour recruitment, from which the paper's framework is derived.

International human and labour rights norms that promote the protection of migrant workers and the fair governance of labour migration, including fair labour recruitment, are found in a number of legally binding treaties and non-binding instruments.

Some relevant binding instruments include:

- United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[12],
- ILO Forced Labour Convention, 1930 (No. 29) and its Protocol of 2014 to the Forced Labour Convention, 1930 (P029)[13],
- ILO Migration for Employment Convention, 1949 (No. 97)[14],
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)[15],
- ILO Private Employment Agencies Convention (No. 181)[16], and
- ILO Domestic Workers Convention (No. 201)[17].

Among these, Canada has only ratified the *ILO Forced Labour Convention* and its *Protocol*, the latter entered into force on June 17, 2020. The Forced Labour Protocol requires ratifying States to take appropriate steps to prevent forced labour, protect victims, and guarantee them access to effective remedies and compensation. Article 2 of the Protocol includes the following measure to be taken: "protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process".

In terms of relevant non-binding normative instruments, Canada voted in favour to adopt the United Nations *Global Compact for Safe, Orderly and Regular Migration* (GCM) in 2018. Objective 6 of the GCM is to "facilitate fair and ethical recruitment and safeguard conditions that ensure decent work" and includes action commitments to improve regulations on private recruitment agencies to align with international guidelines, prohibit recruiters and employers from charging recruitment fees or related costs to migrant workers, and establish mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry (see Appendix III for full text of objective).

Non-binding instruments published by the ILO include the Multilateral Framework on Labour Migration (2006)[18] and the General Principles and Operational Guidelines for Fair Recruitment (2016)[19], much of which are derived from relevant international labour standards. Regarding the latter, the General Principles are intended to orient implementation of fair recruitment at all levels, while the Operational Guidelines address responsibilities of specific actors in the recruitment process, namely governments, employers, and recruiters. Governments are addressed in their regulatory capacity as having the "ultimate responsibility for advancing fair recruitment…to reduce abuses practised against workers, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued."

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[12] UN, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, adopted by General Assembly resolution 45/158 of 18 December 1990.

[13] Convention 29, *Forced Labour Convention* (1930), adopted Geneva, 14th ILC session (28 Jun 1930); Protocol 29, *Protocol of 2014 to the Forced Labour Convention* (2014), adopted Geneva 103rd ILC session (11 Jun 2014).

[14] Convention 97, *Migration for Employment Convention (Revised)* (1949), adopted Geneva, 32nd ILC session (1 Jul 1949).

[15] Convention 143, *Migrant Workers (Supplementary Provisions) Convention* (1975), adopted Geneva, 60th ILC session (24 Jun 1975).

[16] Convention 181, *Private Employment Agencies Convention* (1997), adopted Geneva, 85th ILC session (19 Jun 1997).

[17] Convention 189, *Domestic Workers Convention* (2011), adopted 100th ILC session (16 June 2011).

[18] *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva: ILO, 2006) adopted by the Tripartite Meeting of Experts on the ILO Multilateral Framework on Labour Migration (Geneva, 31 October–2 November 2005).

[19] *ILO General Principles and Operational Guidelines for Fair Recruitment* (Geneva: ILO, 2016) adopted by the Tripartite Meeting of Experts on Fair Recruitment (Geneva, 5-7 September 2016).

COMPARATIVE DISCUSSION OF REGULATORY APPROACHES

With this normative context in mind, an adapted fair recruitment framework has been developed based on the ILO's *General Principles and Operational Guidelines for Fair Recruitment* to structure the comparative discussion of provincial regulatory approaches to recruitment and/or employment of migrant workers. Put simply, the remainder of this paper takes the provincial statutory regimes listed in Table 1 and compares them using the following eight thematic principles:

Fair recruitment thematic norms used in this paper:

(1) Laws that apply to all. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.

(2) No recruitment fees. No recruitment fees or related costs should be charged to, or otherwise be borne by, workers or jobseekers.

(3) Licensing and registration. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The use of standardized registration, licensing or certification systems should be highlighted.

(4) Freedom of movement. Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.

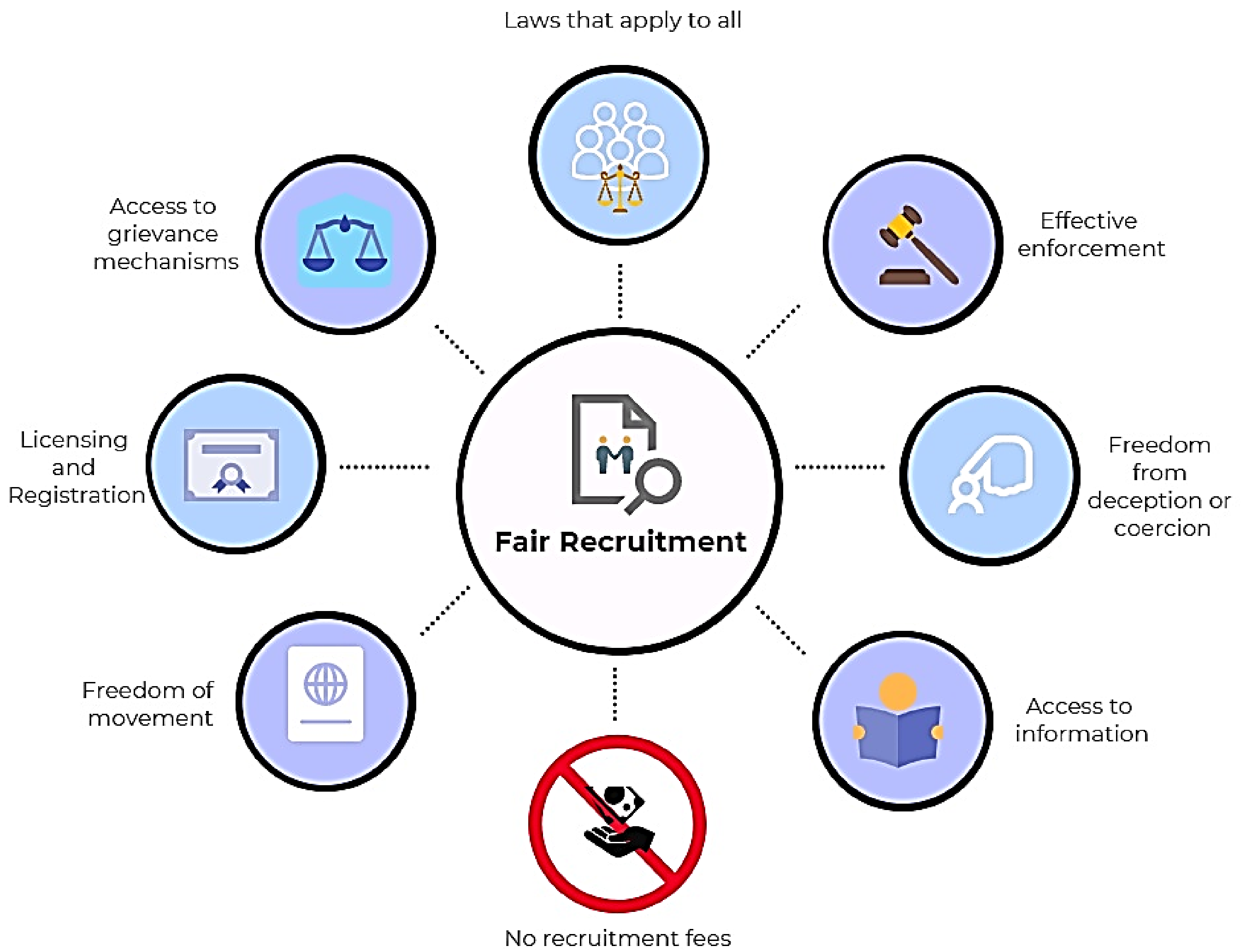
(5) Freedom from deception or coercion. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.

(6) Access to information. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

(7) Access to grievance mechanisms. Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

(8) Effective enforcement: Governments should effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law.

Figure 4: Fair recruitment principles



1. LAWS THAT APPLY TO ALL

Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.

Key questions: Which actors involved in migrant worker recruitment are covered by relevant legislation? How migrant workers are defined and are any groups excluded? Are certain employers or recruiters exempt from obligations in law or policy?

This principle maintains that appropriate legislation and policies on employment and recruitment should be universal in nature, that is, that rights and obligations should apply to all workers and all businesses, recruiters and employers alike. Universal application involves legal obligations and protections that cover everyone, without exception.

Given the restricted scope of the paper to only examine the statutes listed in Table 1, the following section strictly explores the application of coverage for migrant workers, their employers and recruiters in these statutes (i.e., not other existing employment standards law). Perhaps most interestingly, each province in Canada differs in scope and coverage, largely rooted in the way in which foundational definitions of migrant workers and their recruiters and employers are drafted and interpreted. Legal exemptions and policy exceptions uniquely restrict application of definitions and associated protections and obligations across jurisdictions.

To start, it is important to clarify that the provincial laws under review themselves do not all apply to the same actors involved in the migrant worker employment and recruitment process (e.g., employer, labour recruiter, employment agency, and immigration consultant). For most statutes examined here, employers and labour recruiters of migrant workers are captured, while in the case of New Brunswick's *Employment Standards Act*, only the employers of migrant workers have legal obligations. Alberta's *Consumer Protection Act* and its *Employment Agency Business Licensing Regulation* have relevant coverage for migrant worker recruitment through oversight of international employment agencies but not employers. Saskatchewan uniquely regulates employers, recruiters, and immigration consultants under its *Foreign Worker Recruitment and Immigration Services Act*.

Table 2: To whom does the relevant legislation apply?

Select Provincial Law under Review	Employer	Labour Recruiter	Employment Agency	Immigration Consultant
British Columbia *Temporary Foreign Worker Protection Act*	✓	✓	—	—
Alberta *Employment Agency Business Licensing Regulation*	—	—	✓	—
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	✓	✓	—	✓
Manitoba *Worker Recruitment and Protection Act*	✓	✓	—	—
Ontario *Employment Protection for Foreign Nationals Act*	✓	✓	—	—
Quebec *Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers*	✓	✓	—	—
New Brunswick *Employment Standards Act*	✓	—	—	—
Nova Scotia Labour Standards Code	✓	✓	—	—

Secondly, the way in which workers or migrant workers are defined in each legislation is also important to articulate as it determines the scope and potential exceptionality of the rules applied over their employers or recruiters. While generally the federal government (IRCC) understands migrant worker populations to be those foreign nationals already in Canada and usually holding a work permit or other work authorization (e.g., work permit exemption) under the TFWP or IMP, the provinces also include "job seekers" in their scope. This simply ensures that prospective migrant workers, not yet employed or authorized to work in Canada, are also captured given the international nature of their labour recruitment and need for protection at the employment-seeking stage of their migration.

Figure 5: Migrant worker population and provincial scope

Since Alberta's relevant legislation includes both international and national employment agencies, that is, it is broadly concerned with workers not limited to migrants, its definition is accordingly the broadest with no exceptions in law or policy. Ontario, New Brunswick, Saskatchewan and British Columbia consider any foreign national (i.e., not a Canadian citizen or permanent resident in Canada) working or seeking employment in the respective province to be a foreign worker for the purpose of their legislation. Similarly, Nova Scotia's definition is a foreign national who is recruited to become employed in Nova Scotia, regardless of whether the individual becomes so employed. However in policy, three groups are excluded from Nova Scotia's definition, generally limiting scope. Finally, Manitoba and Quebec have relatively narrow migrant worker definitions by prescribing exemptions in regulations, practically excluding any migrant worker that comes to the respective province without an LMIA.[20] This means that only migrant workers who come under the TFWP are covered by the respective legislation in these jurisdictions.

[20] Under the terms of article 22 of the Canada–Quebec Accord, Quebec's consent is required to grant entry to migrant workers who are subject to federal LMIA requirements, i.e., those who come under the TFWP. Migrant workers destined to Quebec must obtain the consent of the Minister of the Ministère de l'Immigration, Francisation et Intégration to enter Quebec and take temporary employment. This consent is granted through the issuance of a Quebec Acceptance Certificate (Certificat d'acceptation du Québec) (CAQ). Migrant workers who work in Quebec under the IMP (exempt from the LMIA) do not require a CAQ.

Table 3: Which migrant workers are covered by relevant provincial legislation: how are they defined?

Province and relevant law	Term used	Definition	Exclusions
Alberta *Employment Agency Business Licensing Regulation*	Person	Persons seeking employment or information respecting employers seeking employees (*no reference to foreign nationals).	N/A
Ontario *Employment Protection for Foreign Nationals Act*	Foreign national	Every foreign national who, pursuant to an immigration or foreign temporary employee program, is employed in Ontario or is attempting to find employment in Ontario.	N/A
New Brunswick *Employment Standards Act*	Foreign worker	A foreign national who is working or seeking employment in the Province.	N/A
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	Foreign worker	A foreign national working in or seeking employment in Saskatchewan	N/A
British Columbia *Temporary Foreign Worker Protection Act*	Foreign worker	A foreign national who is an employee, as defined in the Employment Standards Act, in British Columbia or seeking employment in British Columbia	N/A
Nova Scotia *Labour Standards Code*	Foreign worker	A foreign national who is recruited to become employed in the Province, regardless of whether the individual becomes so employed.	• International students • Specialized service providers • Independent contractors
Manitoba *Worker Recruitment and Protection Act and Regulation*	Foreign worker	A foreign national who, pursuant to an immigration or foreign temporary worker program, is recruited to become employed in Manitoba	A foreign national authorized to work under these IRPR provisions: (a) section 186 (no permit required); (b) section 204 (international agreements); (c) section 205 (Canadian interests); (d) section 206 (no other means of support); (e) section 207 (applicants in Canada), except clause 207(a); (f) section 208 (humanitarian reasons)
Quebec *Regulation respecting employment placement agencies and temporary foreign worker recruitment agencies*	Temporary foreign worker	A foreign national who is staying or wishes to stay temporarily in Québec to carry out work with an employer under the temporary foreign worker program provided for in Division II of Chapter II of the *Québec Immigration Regulation*.	Foreign nationals exempt from the LMIA, including open work permit holders and work permit-exempt individuals

Note: “foreign national” means an individual who is not a Canadian citizen or permanent resident in all cases.

Thirdly, the way in which recruiters, employment agencies, and employers are defined and exempted from key obligations is also worth noting. For example, if recruiters or agencies are required to obtain a license to recruit migrant workers (as discussed in detail in section 3), but exemptions apply to this requirement in law or policy, this accordingly restrains universal coverage. These exemptions can be based on the nature of the employer’s business (e.g., hiring as a government, educational institution) or recruiter identity (e.g., recruiting as an employer, family

member) or on the nature of job or stream under which the migrant worker is authorized to work (e.g., type of work permit, skill level of job).

Table 4: Exemptions to employer registration requirements

Who is exempt from employer registration?	B.C.*	Sask.	Man.	Que.	N.B.	N.S.
Employer-based						
Government/public entity	TBD	—	—	—	✓	✓
Foreign government (e.g., diplomatic post)	TBD	✓	—	—	—	—
Universities	TBD	—	—	—	—	✓
Worker/position-based						
If hiring NOC 0 and A skill level jobs	TBD	—	—	—	—	✓
If hiring independent contractors and specialized service providers	TBD	—	—	—	—	☑
If hiring open work permit holders	TBD	✓	—	☑	—	—
If hiring work-permit exempt migrant workers	TBD	✓	☑	☑	—	—
If hiring international students (also work-permit exempt)	TBD	✓	✓	☑	—	☑
If hiring IMP (LMIA-exempt) work permit holders	TBD	✓**	☑	☑	—	—

Note: Employer registration is not required under Ontario's EPFNA nor Alberta's EABLR.
* At time of writing, B.C. employer registration was not yet in force; details are To Be Determined (TBD).
** Employers hiring LMIA-exempt clergy and occupations under international agreements like NAFTA are not exempt.
✓ Exempt
☑ *de facto* exemption applies as migrant workers in the category are excluded from respective migrant worker definition and related legislation (i.e., employers would not be required to register when hiring these excluded categories).

Table 5: Exemptions to recruiter licensing requirements

Who is exempt from recruiter licensing?	B.C.	Alta.	Sask.	Man.	Que.	N.S.
Employer-based						
Employer and employee working on their behalf	✓	✓	✓	—	—	✓
Family member	✓	—	✓	—	—	✓
Government/public entities	✓	✓	✓	✓	✓	✓
Educational institution	✓	✓	✓	—	—	✓
Worker/position-based						
If recruiting NOC 0 or A position	—	—	—	—	—	✓
If recruiting high wage position	—	—	—	✓*	—	—
If recruiting IMP (LMIA-exempt) work permit holders	—	—	—	☑	☑	—
If recruiting work permit-exempt migrant workers	—	—	—	☑	☑	—
If recruiting international students for work	—	—	—	☑	—	☑
If recruiting on behalf of a union	—	✓	✓	—	—	—
If recruiting athletes or performing artists	—	✓	—	—	—	—
If recruiting specialized service providers or independent contractors	—	—	—	—	—	☑

Note: Recruiter licensing is not required under Ontario's EPFNA nor New Brunswick's ESA.
* Only exempt if respective employer has received written authorized to use unlicensed recruiter and the wage is twice the Manitoba average wage.
✓ Exempt
☑ *de facto* exemption applies as migrant workers in the category are excluded from respective migrant worker definition and related legislation (i.e., recruiters would not be required to license when recruiting these excluded categories).

PROVINCIAL OVERVIEW

Each provincial statutory framework is briefly discussed below, roughly starting with provinces with the broadest application/coverage of their migrant worker provisions to relatively more limited application, taken together. Specific obligations and protections are referenced at a high level here given that the subsequent sections explore these elements in further detail.

Alberta – *Employment Agency Business Licensing Regulation*

Alberta's legislation that addresses international labour recruitment is uniquely under the *Consumer Protection Act* (formerly called the *Fair Trading Act*) and its *Designation of Trades and Businesses Regulation* and *Employment Agency Business Licensing Regulation* (EABLR).[21] Combined, these instruments establish rules for employment agencies operating in Alberta, including any business trying to find people for work, find work for people, or evaluating or testing an individual for skills or knowledge required for work. Licensing is required and legal obligations are imposed, including the requirement to enter into agreements with job seekers and employers. The EABLR also prohibits employment agencies from engaging in unfair practices towards both parties.

This is the only jurisdiction reviewed that does not enforce international labour recruitment regulations by a labour or employment standards body but rather by the consumer protection body (Service Alberta). Accordingly, this set of legislation does not have direct obligations over employers of migrant worker employees.[22] Alberta's EABLR is reviewed here because it uniquely requires licensing of both national and international employment agencies.[23] The recruitment of migrant workers falls into the latter, as the distinction between national and international is based on where the job seekers are sourced for work. The EABLR was also amended significantly in 2012 in response to a significant increase in migrant workers recruited to Alberta and the range of associated labour recruitment issues that were consequently addressed.

Under the *Designation of Trades and Business Regulation*, employment agency business does not include the following list of activities, and thus employment agencies engaging in these activities do not require a licence under the EABLR:

- activities of a school with respect to employment for students or graduates (private vocational training, public post-secondary, publicly funded private post-secondary);
- activities of an organization funded by government;
- activities of an employer with respect to employment of employees;
- activities of an industry association, if minister designates and no fee, reward or other compensation is charged to employees;
- activities of a board or commission established under the *Marketing of Agricultural Products Act*;
- operation of a trade union; or
- securing employment for athletes or performing artists in their respective area of expertise.

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[21] *Consumer Protection Act*, RSA 2000, c C-26.3; *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999; *Employment Agency Business Licensing Regulation*, Alta. Reg. 45/2012.

[22] Employers in Alberta, including those who employ migrant workers, are otherwise covered by Alberta's Employment Standards (minimum wage, hours of work, overtime, rest periods, etc.); Occupational Health and Safety (workplace hazards, safety requirements), Human Rights (discrimination under protection grounds) and Workers' Compensation Board (workplace injuries). The Government of Alberta also administers a Temporary Foreign Worker Advisory Office with locations in Edmonton and Calgary to help migrant workers, international students with work authorization, and their employers understand their rights and responsibilities, including finding solutions to situations involve unfair, unsafe or unhealthy working conditions.

[23] Other provinces also regulate employment agencies but their respective legislation is excluded from comparative review in this paper as they are not designed to explicitly address international labour recruitment (i.e., migrant workers), unlike EABLR.

Finally, as discussed above, Alberta is also the only province compared in this paper where no specific definitions pertaining to "foreign nationals" or "migrant workers" apply. In this case, migrant workers fall under the definition of a "person seeking employment" as an individual for whom an employment agency secures or attempt to secure employment, or an individual who is evaluated or tested for skills or knowledge required for employment by an employer, where an employment agency carries out or arranged the evaluation or testing, and the individual or the employment is in Alberta. As such, these definitions provide a relatively broad application of obligations for recruiters and protections for migrant workers, regardless of their immigration status or type of work authorization.

Ontario – *Employment Protection for Foreign Nationals Act*

In Ontario, the *Employment Protection for Foreign Nationals Act* (EPFNA) applies to all foreign nationals who are employed or seeking employment in Ontario pursuant to an immigration or foreign temporary employee program.[24] This application is a significant amendment to the initial statute in Ontario which only applied to live-in caregivers (domestic workers).[25] As a result, one of the relatively broadest interpretation and coverage of law applies in this province.

The EPFNA is enforced by the Ministry of Labour, Training and Skills Development's Employment Standards division. Some of the key rights and obligations include prohibitions on recruiters from charging any fees to migrant workers, generally preventing employers from recovering costs from foreign nationals, prohibiting both employers and recruiters from taking a migrant worker's personal property, including their passport, and requiring recruiters (and in some cases, employers) to distribute information to migrant workers on their rights under the EPFNA and other relevant legislation.

With regard to application, the EPFNA applies to every foreign national who, pursuant to an immigration or a foreign temporary employee program, is employed in Ontario or is attempting to find employment in Ontario (migrant worker); every person who employs a foreign national in Ontario pursuant to an immigration or foreign temporary employee program (employer); every person who acts as a recruiter in connection with the employment of a foreign national in Ontario pursuant to an immigration or foreign temporary employee program (recruiter); and every person who acts on behalf of an employer or recruiter.

Generally, a migrant worker who has a work permit allowing them to work in Ontario is covered, while work permit-exempt foreign nationals working pursuant to an immigration program are assessed on a case-by-case basis. They are considered to be "attempting to find employment" if the individual possesses a work permit, has made an application for a work permit, or if there is evidence to demonstrate that the foreign national has communicated with a recruiter about finding employment in Canada. Practically, this does not limit the application of the EPFNA to any type of work permit holder (open or employer-specific, LMIA or LMIA-exempt, and so on) nor does it require the foreign national to necessarily hold legal immigration status in the case of one "attempting to find employment". It could be interpreted to extend, for example, to study permit holders (international students) who generally work in Canada without a work permit, or work permit holders who are on track to permanent residence through a provincial nominee program (PNP).

[24] *Employment Protection for Foreign Nationals Act* (Live-in Caregivers and Others), 2009, SO 2009, c 32.

[25] Bill 18, the *Stronger Workplaces for Stronger Economy Act*, 2014, amended the application of the *Employment Protection for Foreign Nationals Act* (Live-in Caregivers and Others), 2009 significantly. Formerly, the Act only covered foreign nationals employed as live-in caregivers. The amendments came into force on November 20, 2015.

With respect to the employer, in order for the EPFNA to apply, that employer must ultimately employ a migrant worker, as defined above. In other words, the obligations of an employer apply only with respect to migrant workers who are actually hired by the employer.

A person is considered to be acting as a recruiter if the person: finds, or attempts to find, an individual for employment; finds or attempts to find employment for an individual; assists another person in doing any of those things (described above); or refers an individual to another person to do those things. Guidance suggest a degree of limited applicability if the recruiter is a foreign government.[26]

It is important to note that while this coverage is broad, Ontario does not require any licensing or registration of its recruiters and employers respectively, as in some other jurisdictions (see section 3). This may explain some of the restrictions that follow below in provinces that prescribe such obligations.

Saskatchewan – *Foreign Worker Recruitment and Immigration Services Act*

Migrant workers recruited outside of Saskatchewan are protected under the *Foreign Worker Recruitment and Immigration Services Act* (FWRISA), a standalone statute, and its *Foreign Worker Recruitment and Immigration Services Regulations* that together regulate recruitment and immigration services provided by migrant worker recruiters, immigration consultants, and immigration lawyers.[27] The Ministry of Labour Relations and Workplace Safety is responsible for administering the FWRISA, including licensing of recruiters and consultants, registering employers who are hiring foreign workers, and handling complaints related to these actors where mistreatment under the FWRISA has occurred.[28]

FWRISA defines a migrant worker broadly as a foreign national working in or seeking employment in Saskatchewan, and they are called a “foreign worker”. A foreign worker recruiter is a person who, for a fee or compensation, provides recruitment services. Recruitment services are defined in the FWRISA as services that assist a foreign national or an employer to secure employment for a foreign national in Saskatchewan, including:

- finding or attempting to find employment in Saskatchewan for a foreign national;
- assisting or advising an employer in the hiring of a foreign national;
- assisting or advising another person in doing the things mentioned above;
- referring a foreign national to another person who does the things mentioned above; and
- providing or procuring settlement services (services to assist a foreign national in adapting to society/economy or obtaining access to social, economic, government or community program, networks and services).

Recruiters are required to obtain a licence, except for employers, family members, governments, educational institutions, and unions. Saskatchewan is the only province where immigration consultants are also regulated under the same statute as recruiters (also required to obtain a licence). Under the FWRISA, immigration consultants are defined as a person who, for a fee or compensation, provides immigration services. Exemptions from immigration consultant licensing

[26] Per the interpretation manual, the EPFNA, as provincial legislation, cannot generally be enforced against a foreign government because of the application of the federal *State Immunity Act*.

[27] The *Foreign Worker Recruitment and Immigration Services Act*, SS 2013, c F-18.1; *The Foreign Worker Recruitment and Immigration Services Regulations*, RRS c F-18.1 Reg 1.

[28] Prior to April 1, 2017, the FWRISA was administered by the provincial immigration ministry before being transferred to the provincial ministry of labour.

apply to lawyers, non-fee charging family members, and persons who represent a person who is the subject of Immigration and Refugee Board proceedings.

Employers of migrant workers must register if they directly or indirectly recruit a foreign national, though relatively broader legal exemptions apply than the exemptions to recruiter licensing. Employers do not have to register if they hire open work permit holders, work-permit exempt foreign nationals, and some LMIA-exempt occupations except clergy and those under international agreements such as NAFTA.

While the exemptions above apply to licensing and registration, it is important to note that foreign worker recruiters, immigration consultants, and employers are equally prohibited from a number of unfair practices (detailed in section 5), with no exemptions in place.

British Columbia – *Temporary Foreign Worker Protection Act*

In British Columbia, the standalone *Temporary Foreign Worker Protection Act* (TFWPA) and Regulation constitute the regulatory approach to license migrant worker recruiters, register employers, and protect migrant workers in the province.[29] In addition to licensing and registration, the TFWPA prescribes a number of prohibited practices to improve protection for migrant workers.

Migrant workers are captured by the definition of "foreign worker" in the TFWPA as a foreign national who is an employee, as defined in the *Employment Standards Act*, or seeking employment in British Columbia. A "foreign worker recruiter" is a person who, for a fee or compensation, received directly or indirectly, provides recruitment services. Recruitment services are services that assist a foreign national to secure employment in British Columbia or assist an employer to secure employment in British Columbia for a foreign national, including:

- finding or attempting to find employment in British Columbia for a foreign national,
- assisting or advising an employer in the hiring of a foreign national,
- assisting or advising another person in taking the actions described above, or
- referring a foreign national to another person who takes the actions above.

Exemptions to the requirement to hold a licence as a recruiter apply to employers, family members, educational institutions, and governments. At the time of writing, employer obligations to register are not yet in force, and if exemptions apply, they would be prescribed in regulation.

With respect to prohibited practices in place to protect workers (discussed further in section 5), all recruiters and employers are equally prohibited with no exemptions in place.

Nova Scotia – *Labour Standards Code*

In Nova Scotia, protective measures specific to migrant workers are provided for in the *Labour Standards Code* (LSC).[30] These include rules regarding charging and recovering recruitment fees or costs from a worker, holding a migrant worker's property, and requirements on migrant worker employers and recruiters to proactively register and license, respectively.

The LSC defines a migrant worker as a foreign national who is recruited to become employed in Nova Scotia, regardless of whether the individual becomes so employed, and they are called a "foreign worker". In policy, exceptions to this definition apply: international students (working in co-op placements, internships/on or off campus and hold a valid study permit), specialized

[29] *Temporary Foreign Worker Protection Act* [SBC 2018] c 45.
[30] *Labour Standards Code*, RSNS 1989, c 246.

service providers (employed by a foreign business to provide a specialized service over a short period of time), and independent contractors. These groups are not considered “foreign workers” and are not covered by the applicable protections or employer/recruiter obligations under the LSC that are specific to foreign workers. However, it is worth noting that the key prohibition against charging recruitment fees applies to any person, and thus includes any migrant worker beyond the LSC’s definition and its policy exclusion.

“Recruitment” is defined as the following activities, whether or not they are provided for a fee:

- finding or attempting to find an individual for employment,
- finding or attempting to find employment for an individual,
- assisting another person in attempting to do the things described above, or
- referring an individual to another person to do any of the things described above.

Recruiters are required to be licensed before they can recruit migrant workers, with exemptions prescribed in legislation and regulation. Exemptions include employers, family members, governments, universities and if they recruit a migrant worker for a NOC 0 (Management) or A (Professional) skill level position.

Foreign worker employers are defined as a person who proposes to employ a foreign worker. They are required to obtain an employer registration certificate and engage only licensed recruiters of foreign workers, unless they fall under a regulatory exemption as a government, universities, or any employer who recruits a migrant worker in a NOC O or A skill level position.

The National Occupational Classification (NOC) system uses five skill levels to categorize jobs:

NOC 0: management jobs

NOC A: professional jobs that usually call for a degree from a university, such as: doctors, dentists, architects

NOC B: technical jobs and skilled trades that usually call for a college diploma or training as an apprentice, such as: chefs, plumbers, electricians

NOC C: intermediate jobs that usually call for high school and/or job-specific training, such as: industrial butchers, long-haul truck drivers, food and beverage servers

NOC D: labour jobs that usually give on-the-job training, such as: fruit pickers cleaning staff, oil field workers

New Brunswick – *Employment Standards Act*

In New Brunswick, migrant workers have the same rights and obligations under the *Employment Standards Act* (ESA)[31] as all employees in Brunswick. However, employers have additional obligations under the ESA with respect to hiring migrant workers. Migrant workers are defined broadly and called a “foreign worker”: a person who is not a Canadian citizen or permanent resident of Canada and who is working in or seeking employment in New Brunswick.

The most significant requirement in the ESA is for employers to register with Employment Standards once they hire a migrant worker. There are also a number of prohibited employer practices; employers cannot require migrant workers to use and pay an immigration consultant, misrepresent employment opportunities, and recover ineligible recruitment costs from migrant workers, among other things. The only exemption from employer registration is applied to the

[31] *Employment Standards Act*, SNB 1982, c E-7.2.

government sector, i.e., the Crown in the right of the Province, or any Crown corporation or agency. However, no exemptions apply in the case of employer prohibitions.

Recruiters are not directly captured or regulated by the ESA. One might interpret the ESA, however, to indirectly capture some recruiters, for example as those identified in some provisions as a person who recruits foreign workers for employment on behalf of an employer.

Manitoba – *Worker Recruitment and Protection Act*

The *Worker Recruitment and Protection Act* (WRAPA) and its *Regulations* are standalone law that increase protections for migrant workers and others in Manitoba and provide the criteria and obligations that recruiters and employers must meet to be approved for a licence or registration, respectively.[32]

Under the WRAPA, a migrant worker, called a "foreign worker" is defined in legislation as a foreign national, who pursuant to an immigration or temporary foreign worker program, is recruited to become employed in Manitoba. Exemptions from the definition are prescribed in regulations as "foreign worker exclusions" and are directly tied to federal immigration law as follows: a foreign national who is authorized to work in Canada under one of the following provisions of the IRPR, is exempt from the definition "foreign worker":

(a) section 186 (no permit required);
(b) section 204 (international agreements);
(c) section 205 (Canadian interests);
(d) section 206 (no other means of support);
(e) section 207 (applicants in Canada), except clause 207(a)[33];
(f) section 208 (humanitarian reasons).

Practically, this exempts nearly all migrant workers with IMP (LMIA-exempt) work authorizations, including work permit-exempt individuals, from WRAPA protections and associated recruiter and employer obligations. This would include for example, the requirement to obtain a licence before recruiting a migrant worker that falls under one of the exclusions.

Recruiters are not defined as an entity, rather a definition for "foreign worker recruitment" is provided in the Act and means the following activities, whether or not they are provided for a fee:

- finding one or more foreign workers for employment in Manitoba; and
- finding employment in Manitoba for one or more foreign workers.

Foreign worker recruiters must be licensed unless they fall under an exemption as a government, employer, family member, or an individual recruiting on behalf of an employer who has obtained written authorization to recruit a foreign worker for a position that pays a wage at least two times higher than the Manitoba industrial average wage.

Employers are required to register prior to recruiting a migrant worker and no exemptions to registration apply. However, given that the WRAPA definition of a migrant worker is quite limited, this creates a significant de facto exemption from registration for a relatively large group of employers.

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32 The *Worker Recruitment and Protection Act*, CCSM c W197; Worker Recruitment and Protection Regulation, Man Reg 21/2009.

33 Paragraph 207(a) of the IRPR was repealed in 2017. This clause authorized the issuance of open work permits to live-in caregivers who had completed work experience requirements under the former Live-in Caregiver permanent residence class, but were waiting for the final processing of their permanent residence application. This permanent residence class was closed to new applicants in 2014.

Quebec – Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers

In Quebec, the *Act respecting labour standards* (*Loi sur les normes du travail*) and the *Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers* (*Règlement sur les agences de placement de personnel et les agences de recrutement de travailleurs étrangers temporaires*) require, among other things, recruiters of migrant workers to hold a licence to operate and migrant worker employers to retain the services of licensed recruiters.[34] It also provides protective measures for migrant workers, including the prohibition against taking their passport. The definitions of recruitment agency, employer (called a "client enterprise"), and migrant worker are set out in regulation.

A migrant worker is called a "temporary foreign worker" (travailleur étranger temporaire) and is defined as a foreign national who is staying or wishes to stay temporarily in Quebec to carry out work with an employer under the "temporary foreign worker program" provided for in the *Quebec Immigration Regulation*. The only migrant workers covered by this definition are those subject to the LMIA; LMIA-exempt workers such as those under the IMP, and their employers and recruiters, are excluded.

The recruiter is captured as a "recruitment agency for temporary foreign workers" (agence de recrutement de travailleurs étrangers temporaires) and means a person, partnership or other entity that has least one activity consisting in offering to a client enterprise services related to the recruitment of temporary foreign workers, as defined above. Services may include assisting workers in their efforts to obtain a work permit.

The "client enterprise" (entreprise cliente) is defined as a person, partnership or other entity that, to meet labour needs, retains the services of a recruitment agency. While directly positioned as a client of the recruitment agency, the client enterprise can be understood here as the employer.

Exemptions and exclusive protection

While obligations, prohibited practices, and protective measures relevant to migrant workers, their employers and recruiters are explored in further detail in the next sections, the preceding summary of how these entities are defined and when exemptions apply is of crucial importance.

The more narrowly these laws are applied, the more protective measures depend on the way in which a migrant worker is authorized to work in Canada. This can hinge on a range of factors for the migrant worker: who hired them, under which temporary labour migration program they entered, the type of work permit they hold, the skill level of their position, their employer's requirement to apply for a labour market test (LMIA), and even the wage offered.

This section then, and much of the discussion that follows below, is characterized by a theme of exceptions and exemptions, signifying excluded coverage for the overall population of migrant workers in Canada. Provincial work permit statistics (Appendix I) provide a sense of total volumes broken down by program and work permit type. Depending on the application of legal coverage, these statistics provide a glimpse into how migrant workers may or may not fall within scope by province.

[34] Act respecting labour standards, CQLR c N-1.1; Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers.

2. NO RECRUITMENT FEES TO WORKERS

No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.

Key questions: Are recruitment fees prohibited? Can employers recover costs? Are any recruitment-related costs permissible, such as costs for immigration services? If so, are the nature of permissible costs made transparent to those who pay them (e.g., mandatory disclosure/agreement)?

Migrant workers are frequently charged fees by their recruiters abroad and in Canada. Fees may include travel, arranging interviews and job matching, immigration-related costs (passport, visa, work permit), and service charges, among others. A wide range of monetary amounts have been reported by media and researchers in the Canadian context, from $1,000 to $50,000 Canadian dollars depending on a number of factors such as the country of origin, type of job, destined province, and prospective permanent immigration program.[35] These fees can amount to several months' wages for some workers and in some cases requiring loans at high interest rates, compounding the debt that migrant workers already undertake prior to arrival. Once employment begins in Canada, some employers or third parties also recover costs associated with recruitment and employment from wages or benefits. Indebtedness of this nature can effectively compel workers to stay in their employment situation regardless of their working conditions, creating an increased risk of debt bondage, forced labour, and human trafficking. Furthermore, when migrant workers are required to pay high fees, labour may be hired based on ability to pay rather than skills and merit. In view of these realities, the principle that no recruitment fees or related costs should be charged to, or borne by, workers or jobseekers is fundamental to fair recruitment frameworks.

WHAT CONSTITUTES RECRUITMENT FEES AND RELATED COSTS?

In 2018, the ILO Governing Body approved a definition to clarify the nature and characteristics of recruitment fees and related costs and to accompany its *General Principles and Operational Guidelines for Fair Recruitment*. According to the ILO definition, the terms "recruitment fees" or "related costs" refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. It reiterates that recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services and such fees should not be collected directly or indirectly (e.g., through deductions from wages or benefits).

Recruitment fees and related costs are defined separately. In brief, recruitment fees may cover payments for recruiting, referral and placement services such as advertising, disseminating information, arranging interviews, and placement into employment. Related costs are expenses integral to recruitment and placement such as medical, training, equipment and administrative costs, among others, when they are any of the following:

– initiated by an employer, labour recruiter or agent acting on their behalf;
– required to secure access to employment/placement; or
– imposed during the recruitment process.

[35] See Gesualdi-Fecteau, D., Thibault, A., Schivone, N., Dufour, C., Gouin, S., Monjean, N., & Moses, É. (2017). *Who, How and How Much? Recruitment of Guatemalan Migrant Workers to Quebec.* St. John's: On the Move Partnership; Wright, Teresa. "Concerns raised over high fees charged to temporary foreign workers." *National Post*, 28 May 2018; Dharssi, Alia. "The murky world of the agencies that recruit temporary foreign workers." Calgary Herald, 14 September 2016. Champagne, Sarah R. "Des travailleurs agricoles guatémaltèques disent avoir perdu des milliers de dollars", *Le Devoir*, 3 October 2017.

The latter provides a degree of flexibility when determining if costs are indeed "related" to the recruitment process and consequently prohibited. The definition of related costs also recognizes that exceptions may be made, with some conditions (e.g., that they must be in the interest of the workers concerned). An abbreviated version of the fees and related costs' definition is provided below (see Appendix II for full text):

ILO definition of recruitment fees and related costs (abbreviated)

Recruitment fees include:

(a) payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
(b) payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
(c) payments made in the case of direct recruitment by the employer; or
(d) payments required to recover recruitment fees from workers.

These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.

Related costs are expenses integral to recruitment and placement…It is recognized that the competent authority has flexibility to determine exceptions to their applicability…Such exceptions should be considered subject, but not limited, to the following conditions:

i. they are in the interest of the workers concerned; and
ii. they are limited to certain categories of workers and specified types of services; and
iii. the corresponding related costs are disclosed to the worker before the job is accepted.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process: medical costs; insurance costs; costs for skills and qualification tests; costs for training and orientation; equipment costs; travel and lodging costs; and administrative costs.

It is also worth noting that "illegitimate, unreasonable and undisclosed costs" are also addressed by the definition: extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Examples of these costs include bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees, and collaterals required by any actor in the recruitment chain.

Immigration-related services and costs in the recruitment process

Under the ILO definition of recruitment-related costs, "administrative costs" include application and service fees required for the sole purpose of fulfilling the recruitment process. These costs can include fees for representation and services aimed at preparing, obtaining or legalizing worker's immigration-related documents such as work and residence permits. Fees for immigration services and how they are regulated alongside more traditional recruitment services are a curious consideration in the Canadian immigration context.

In recent years, Canadian immigration policy has evolved to establish increased "two-step" (as opposed to one-step) immigration processes, which involve migrant workers arriving in Canada first to obtain required work experience or job offers before applying for permanent residence.[36] This has increased the role that employers play in selecting economic immigrants, where Canadian work experience or job offers are required for certain streams of provincial nominee programs (PNP), and some federal immigration programs, including the Canadian Experience Class and the Agri-Food Pilot.

[36] See Lu, Y., and Hou, F. 2017. *Transition from Temporary Foreign Workers to Permanent Residents, 1990 to 2014*. Analytical Studies Branch Research Paper Series, no. 389. Statistics Canada Catalogue no. 11F0019M. Ottawa: Statistics Canada; Nakache, D and Dixon-Perera, L. 2015. *Temporary or Transitional? Migrant Workers' Experiences with Permanent Residence in Canada*. IRPP Study 55. Montreal: Institute for Research on Public Policy; Valiani, S. 2013 The shifting landscape of contemporary Canadian immigration policy: the rise of temporary migration and employer-driven immigration. In L. Goldring and P. Landolt, eds. *Producing and negotiation non-citizenship: Precarious legal status in Canada*. Toronto: University of Toronto Press, 55-70.

The relationship between temporary labour migration programs and permanent immigration in Canada thus creates a natural connection between migrant worker recruitment and the provision of immigration services. With the increase in employer-driven immigration programs in Canada administered at both the provincial and federal level, recruiters are well-placed to play both sides: as "labour recruiters" matching migrant workers to employers and jobs that may provide access to various permanent residence pathways and as "immigration consultants" providing the associated immigration advice and representation to migrants.

If any prohibition against charging fees is strictly limited to costs related to recruitment services, recruiters may easily hide fees charged as "immigration-related" to evade consequences. What constitutes prohibited recruitment fees and related costs in different regulatory approaches in Canada is important to note, should it include or exclude immigration services.

The prohibition against charging recruitment fees and/or recovering fees to migrant workers is central to all provincial frameworks under review. Prohibitions on fee charging and employer cost recovery are explored separately below.

PROHIBITIONS ON CHARGING RECRUITMENT FEES

In general, the provinces prohibit either individuals or relevant entities involved in recruitment activities from charging either (1) any fees or (2) fees for strictly recruitment and/or employment-related services. In the latter case, some jurisdictions require disclosure of non-recruitment related fees (2a), for example in a separate agreement with the person being charged for services. Recruitment-related costs for immigration services are explicitly addressed by requiring some type of transparency to the parties involved in some cases. All provinces have relevant prohibitions against charging recruitment fees, except New Brunswick where only a prohibition over the employer against recruitment cost recovery is in place. The summary below provides an overview, accompanied by the relevant legal prohibitions by province for more precise reference.

(1) Any fees prohibited

Legislation in Ontario and Manitoba prohibit any individual or person engaged in recruitment activities from charging fees altogether. This means no exceptions apply and the provisions are drafted in such a way that as long as an individual or person is providing recruitment services, no fees of any kind can be charged to the migrant worker, i.e., no type of fee is permissible. This accordingly prohibits charging fees for immigration services.

Ontario's prohibition in the EPFNA is against directly or indirectly charging any fee for any service, good or benefit provided to the foreign national. Interpretation guidance states that this may include fees charged for both "optional" and "mandatory" services such as orientation sessions, assistance or instruction with respect to resume or job interview preparation, first aid training sessions, and others. Manitoba's WRAPA specifies that an individual engaged in foreign worker recruitment must not directly or indirectly charge or collect a fee from a foreign worker for finding or attempting to find employment for him or her. Guidance broadly interprets this provision, stating that one cannot charge a foreign worker for immigration assistance and be involved in the recruitment process, as it would contravene the WRAPA which prohibits recruiters against charging fees, either directly or indirectly from foreign workers. That is, if any part of the sum of services offered to a migrant worker includes finding a job for them, the worker cannot be charged any amount, at all.

(2) Recruitment fees prohibited

In Quebec and Nova Scotia, the prohibition on charging fees is strictly related to recruitment services (Quebec) or finding employment (Nova Scotia). By law, any other non-recruitment-related fees or costs are permissible. Nova Scotia's *Labour Standards Code* prohibits any person from directly or indirectly charging or collecting a fee from an individual for finding or attempting to find employment for the individual, or providing the individual with information about any employer seeking employees. Note that this applies to anyone being charged, not limited to the Code's definition of "foreign worker". While fees for immigration services are not prohibited, Nova Scotia's application form for recruiter licensing does ask for information about any immigration activities the recruiter is engaged in, including standard fees charged.

In Quebec, migrant workers cannot be charged fees for their recruitment, with the exception of fees authorized under a Canadian government (federal) program as per the *Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers*.[37] This leaves room for an exception if the federal government (IRCC or ESDC) ever authorized any fees to be charged by a recruiter.

(2a) Recruitment fees prohibited & disclosure of unrelated fees required

Alberta, British Columbia, and Saskatchewan also prohibit workers from being charged for recruitment services, but in the case of fees for non-recruitment services, some type of disclosure is required of the associated fees. Practically, this provides a degree of transparency and informed consent to the migrant worker about the nature of fees being charged. It also supports more effective enforcement for authorities as they are equipped with records detailing all distinct fees charged.

Among these jurisdictions, the regulatory prohibition on fee charging is the most detailed in Alberta's EABLR. Employment agencies in Alberta cannot directly or indirectly demand or collect fees related to employment agency business services. If non-employment agency business services are charged, it is allowed as long as a separate written agreement between the agency (recruiter) and person (migrant worker) being charged is provided, disclosing the fees for those services. In addition, employment agencies cannot make an individual pay for other services as a condition to help the person find work. The agency must ensure that the fee is reasonable and that the documented consent of the individual is obtained prior to the provision of services.

British Columbia's TFWPA and Saskatchewan's FWRISA specify that fees cannot be charged for recruitment or employment, and include requirements regarding disclosure of either "settlement services" (Saskatchewan) or "immigration services" (British Columbia). Unlike Alberta, where any services other than employment agency business (recruitment) services must be disclosed, British Columbia and Saskatchewan only require separate disclosure with regard to fees charged for services related to immigration or settlement, respectively. These provinces also assert an "employer pays" principle that recruitment fees cannot be charged to any person "other than an employer", placing the clearest responsibility on the employer to bear the cost of recruitment.

Similar to Alberta, both British Columbia and Saskatchewan require disclosure and consent in a separate agreement or contract. They stipulate that if a recruiter is providing immigration or settlement services to a migrant worker while providing recruitment services to their employer, the recruiter must disclose that fact to both parties and the nature of the services being provided. They must also obtain the written consent of both parties to provide those services in a signed contract.

[37] At the time of writing, there were no authorized recruitment fees permitted to be charged by a recruiter under a federal program.

Prohibitions on charging fees by province

Province	Relevant provisions on fees
British Columbia *Temporary Foreign Worker Protection Act*	**Fees and expenses for recruitment or employment** 21(1) A person must not, directly or indirectly, charge any person other than an employer a fee or expense for recruitment services. (2) A foreign worker recruiter or employer must not, directly or indirectly, charge a fee or expense to a foreign worker for employment.
Alberta *Employment Agency Business Licensing Regulation*	**Fee prohibition** 12(1) No employment agency business operator shall directly or indirectly demand or collect a fee, reward or other compensation (a) from an individual who is seeking employment or from another person on that individual's behalf, (b) from an individual who is seeking information respecting employers seeking employees or from another person on that individual's behalf, (c) from an individual for securing or attempting to secure employment for the individual or providing the individual with information respecting any employer seeking employees or from another person on that individual's behalf, or (d) from an individual to be evaluated or tested, for skills or knowledge required for employment where the individual or the employment is in Alberta, or from another person on that individual's behalf. (2) Nothing in subsection (1) prohibits an employment agency business operator from charging a fee for the provision of services to an individual that are not employment agency business services, including, without limitation, resume-writing services and job skills training services if (a) the employment agency business operator and the person to whom the fee is charged have entered into a written agreement for the provision of the services that (i) sets out the fee, and (ii) is separate from any agreement between the individual to whom the services are provided and the employment agency business operator for the provision of the employment agency business services to the individual, (b) the individual to whom the services are provided is not required to access the services in order to access the employment agency business operator's employment agency business services, and (c) the fee is reasonable.
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	**Recruitment fee** 23 (1) Subject to subsection (2), no person shall, directly or indirectly, charge any person other than an employer a fee or expense for recruitment services. (2) Subsection (1) does not apply with respect to any settlement services provided pursuant to a contract for immigration services. 23(5) No immigration consultant, foreign worker recruiter or employer shall, directly or indirectly, charge a fee or expense to a foreign worker for employment.
Manitoba *Worker Recruitment and Protection Act*	**Foreign worker must not be charged** 15(4) An individual who is engaged in foreign worker recruitment must not directly or indirectly charge or collect a fee from a foreign worker for finding or attempting to find employment for him or her.
Ontario *Employment Protection for Foreign Nationals Act*	**Prohibition against charging fees** 7(1) No person who acts as a recruiter in connection with the employment of a foreign national shall directly or indirectly charge the foreign national or such other persons as may be prescribed a fee for any service, good or benefit provided to the foreign national. **Prohibition against collecting fees** (3) No person acting on behalf of a recruiter shall collect a fee charged by the recruiter in contravention of subsection (1).

Province	Relevant provisions on fees
Quebec *Regulation respecting Personnel placement agencies and recruitment agencies for temporary foreign workers*	25(2) No temporary foreign worker recruitment licence holder may charge a temporary foreign worker, for the worker's recruitment, fees other than fees authorized under a Canadian government program
Nova Scotia *Labour Standards Code*	**No fee permitted** 89B (1) No person shall, directly or indirectly, charge or collect a fee from an individual for (a) finding or attempting to find employment in the Province for the individual; or (b) providing the individual with information about any employer who is seeking employees for employment in the Province. (2) No person shall assist another person to do any of things described in subsection (1).

PROHIBITION ON EMPLOYER RECOVERY OF COSTS

The prohibition on employers recovering recruitment costs through wages or benefits (e.g., wage deduction) is established in British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Nova Scotia. Alberta's relevant framework is limited to employment agencies, and therefore does not have direct requirements over employers in this respect.

Only three provincial regimes provide exceptions to employer cost recovery: Ontario, Quebec and Manitoba. Ontario's EPFNA and Quebec's Act respecting labour standards make reference to permissible costs under federal government programs, which Ontario prescribes precisely in its regulation to be the costs of air travel and work permits if the employer is permitted to deduct such costs under an employment contract made pursuant to the Government of Canada's SAWP program.[38] Quebec does not specify a particular federal program but rather provides a blanket exemption to any fees authorized under a Canadian government program. Those would also include the travel costs allowed to be recovered by the employer in some cases under the SAWP, for example.

Interestingly, a unique exception applies to Manitoba's WRAPA prohibition against employer cost recovery. WRAPA permits an employer to sue if a worker fails to report for work or has engaged in wilful misconduct, violence in the workplace, or dishonesty in the course of employment, or fails to complete substantially all of the terms of employment.

Prohibitions on employer cost recovery by province

Province	Relevant provisions on cost recovery
British Columbia *Temporary Foreign Worker Protection Act*	21(2) A foreign worker recruiter or employer must not, directly or indirectly, charge a fee or expense to a foreign worker for employment. 21 (5) An employer must not reduce the wages of a foreign worker, or vary, reduce or eliminate any other benefit or term or condition of a foreign worker's employment, in order to recover the expense of recruiting the foreign worker.
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	23(4) No employer shall reduce the wages of a foreign worker, or vary, reduce or eliminate any other benefit or term or condition of a foreign worker's employment in order to recover the cost of recruiting the foreign worker and any agreement by the foreign worker to a variation, reduction or elimination is void.

[38] For example, employers hiring under the SAWP must arrange and pay for the round-trip transportation of the migrant workers they hire (including travel to and from their place of work in Canada and their country of residence). Employers are allowed to recover some of these costs through payroll deductions in all provinces except British Columbia. The employment contract that is negotiated annually for the SAWP specifies the maximum amount that employers can deduct (see more detail in contracts negotiated for 2020: Mexico & Commonwealth Caribbean).

Province	Relevant provisions on cost recovery
Manitoba *Worker Recruitment and Protection Act*	**No recovery from foreign worker** 16(1) No employer shall directly or indirectly, recover from a foreign worker (a) subject to subsection (2), any cost incurred by the employer in recruiting the worker; or (b) any amount, except an amount in respect of the reasonable monetary value of a good, service or benefit that (i) was given to the worker by the employer, (ii) was to the direct benefit or advantage of the worker, and (iii) was not required to be obtained by the worker as a condition of being employed, or if it was, the worker was not required to obtain it from the employer. Exceptions 16(2) An employer may sue to recover the employer's reasonable costs of recruiting a foreign worker from that worker if he or she fails to report for work or, having reported, (a) acts in a manner that is not condoned by the employer and that, (i) constitutes wilful misconduct, disobedience or wilful neglect of duty, (ii) is violent in the workplace, or (iii) is dishonest in the course of employment, or (b) fails to complete substantially all of his or her term of employment with the employer. (a) from an individual who is seeking employment or from another person on that individual's behalf,
Ontario *Employment Protection for Foreign Nationals Act and Regulation*	**Prohibition against cost recovery by employers** 8(1) No employer shall directly or indirectly recover or attempt to recover from a foreign national or from such other persons as may be prescribed, (a) any cost incurred by the employer in the course of arranging to become or attempting to become an employer of the foreign national; or (b) any other cost that is prescribed. Regulation 348/15 **Exception to prohibition of cost recovery** 1. For the purposes of subsection 8(2) of the Act, the following are prescribed as costs that an employer may recover or attempt to recover from a foreign national or other prescribed persons. Costs of air travel and work permits, if the employer is permitted to deduct such costs under an employment contract made pursuant to the Government of Canada program known as the "Seasonal Agricultural Worker Program"
Quebec *Act respecting labour standards*	91.12 No employer may charge a temporary foreign worker fees related to his recruitment other than fees authorized under a Canadian government program.
New Brunswick *Employment Standards Act*	38.91(2) No employer shall, directly or indirectly, recover from a foreign worker any cost incurred by the employer in recruiting the foreign worker that is not allowed under the program under which the employer has recruited the foreign worker. 38.91(3) No employer shall reduce the rate of wages, reduce or eliminate any other benefit or change the terms and conditions of employment of a foreign worker that the employer undertook to provide to the foreign worker when the employer recruited the foreign worker for employment.
Nova Scotia *Labour Standards Code*	**No cost recovery from employee** 89E No employer shall, directly or indirectly, recover from an employee any cost incurred by the employer in recruiting the employee. **No wage reduction** 89F (1) No employer shall reduce the wages of a foreign worker employed by the employer, or reduce or eliminate any other benefit, term or condition of the foreign worker's employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker.

3. LICENSING AND REGISTRATION

Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The use of standardized registration, licensing or certification systems should be highlighted.

RECRUITER LICENSING

Key questions: Do recruitment activities require a licence? What is the eligibility criteria to apply and be issued a licence? What proportion of the labour supply chain is covered by licensing requirements?

Mandatory licensing of recruiters is a proactive way for governments to clearly authorize who can and cannot engage in the recruitment and placement of migrant workers. Authorities can pre-assess the character, financial history, and competence of an individual or business through a series of restrictions and requirements imposed at the front-end application stage. If satisfied, a recruiter licence may be issued to authorize the individual or entity to operate and do recruitment business. The licence validity is typically time-limited and requires renewal to continue recruitment activities beyond the initial licence expiration date. This enables ongoing oversight of activities as licenses may be refused at renewal, or suspended or cancelled throughout the validity period on grounds related to behaviour or violations with prescribed rules. An application fee is sometimes charged and in most cases a bond is required as security to be paid out in case of non-compliance to settle obligations (e.g., where prohibited fees were uncovered). Unlicensed individuals or entities are regarded as unauthorized and may be subject to administrative or penal consequences if they engage in recruitment without a licence. Furthermore, employers are held liable for recruiter contraventions if they hire unlicensed recruiters, creating a clear demand for authorized recruiters along the supply chain.

Figure 6: Recruiter licensing map

The following six provincial regimes have licensing requirements for individuals or businesses involved in the recruitment and placement of migrant workers: British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia. As discussed earlier, the requirement to licence is not universal, in general, most statutes exempt employers, family members, governments and educational institutions from licensing (Table 5). The common features of the recruiter licensing schemes are thematically discussed and a comparative provincial summary is captured in Tables 6 and 7.

Screening: Eligibility, application, fees, and securities

Some provinces restrict who can apply for a recruiter licence through exclusive eligibility criteria. For example, all regimes under review, except in Alberta and Quebec, require a licensee to be an individual, that is, not a business entity. However, Quebec's regime does require an individual to represent themselves on an application, and in that case they must be at least 18 years old.

In Manitoba and Nova Scotia, consideration for a recruitment licence is only given to lawyers, paralegals, Quebec notaries, and immigration consultants, all of whom must be in good standing of their respective professional regulatory bodies. This restricts the group of people who can be licensed in the same way that federal immigration law under section 91 of the IRPA limits who can provide immigration advice. Saskatchewan's model is discussed in further detail, where immigration consultants require a separate licence in order to provide immigration services in the province.

Regulation of immigration consultants in Saskatchewan

Saskatchewan's FWRISA is a unique regulatory approach to migrant worker recruitment in Canada because it not only governs the employers and recruiters of migrant workers, but also their immigration consultants. If a person provides immigration services to a foreign national, they are required to be licensed and adhere to applicable requirements under the FWRISA unless they are lawyers or family members, among other specific exemptions. To be eligible for a licence, the individual must already be a member in good standing of the ICCRC (a requirement under the IRPA unless a member in good standing of a law society), and provide a financial security of $20,000, to be used to reimburse foreign nationals if they incur fees or costs in violation of the FWRISA.

Under the FWRISA, an immigration consultant is a person who, for a fee or compensation provides "immigration services", defined as services that assist a foreign national in immigrating to Saskatchewan, including: researching and advising on immigration opportunities, laws or processes; preparing or assisting in the preparation, filing and presentation of applications and documents related to immigration (this includes application for temporary or permanent immigration classes); and representing a foreign national to or before immigration authorities. It also includes the provision or procurement of settlement services to assist a foreign national in adapting to Saskatchewan's society or economy or in obtaining access to social, economic, government or community programs, networks and services (e.g., short-term housing, English language training, obtaining a healthcare card).

Saskatchewan's model regulates and investigates recruitment and immigration activities together; an individual must hold both a foreign worker recruiter and immigration consultant licence if they are engaged in both activities. In this sense, the FWRSIA is the only statute in Canada that responds to the highly integrated nature of recruitment and immigration consulting services, by regulating them under one single regime.

Licences are only issued if prescribed conditions are met during the application process. Relevant information collected in an application form may range from basic contact and business information to extensive details relating to an applicant's criminal, tax or bankruptcy history, and the disclosure of relationships with all partners in their labour supply chain. Generally, applications are designed to gather substantial business detail and character background. Inquiries can then be made into the character, financial history, and competence of an individual or entity by the relevant authority. Alberta's application under the EABLR also requires that the applicant provide copies of two agreements: one between the employment agency (i.e., recruiter) and employer, and one between the agency and migrant worker (person seeking employment).

Unlike most provinces that charge an application or licence fee, the application itself is free in British Columbia and Saskatchewan. In Quebec, if the licence is issued, a sum of $1,780 is owed in two equal installments: $890 at issuance and $890 one year afterwards. Application fees are charged in Manitoba ($100), Nova Scotia ($100), and Alberta ($120 as a licensing fee).

A financial security or bond is required in all provinces except Quebec, which can be used to compensate or reimburse migrant workers who incur any financial loss as a result of any legal violation or contravention by a licensee. The range across jurisdictions is noteworthy: $5,000 in Nova Scotia to four times that rate in British Columbia and Saskatchewan ($20,000). Alberta has the highest at $25,000, however it is only required for international employment agencies recruiting NOC B, C, or D employees. Manitoba's security is at the lower end at $10,000.

Refusals, suspensions, and cancellation of licence

The conditions of issuance, renewal, and maintenance of the licence require ongoing compliance with the law. Administrators have a range of authorities to refuse the issuance or renewal of a licence, or amend, suspend or cancel a licence during its validity period. In addition, certain regimes ensure that terms and conditions can be imposed at any time. These tools enable continuous oversight and accountability over licensees and their activities and encourage compliance and fair conduct. Refusal grounds across licensing regimes include circumstances where the applicant has not complied with the relevant legislation or regulation, has provided incomplete, false, misleading or inaccurate information in their application, or there is evidence that the applicant will not act lawfully or with integrity based on past conduct. Suspensions or cancellations may be enforced on the same refusal grounds, or if the licensee fails to provide requested or required information to the respective authority, for example. In Quebec, a previous criminal or penal conviction related to recruitment, or a conviction for discrimination, psychological harassment or reprisals in the context of employment may lead to the refusal of a licence.

Knowledge and understanding of legal obligations

It is worth noting that no licensing regime requires applicants to formally demonstrate a sound understanding of the relevant laws with respect to rights of migrant workers or licensee obligations in advance of licence issuance; no training or exam to test their comprehension is required. That being said, all regimes provide material online or with the issued licence that outline core obligations and prohibited practices in plain language.

Some jurisdictions such as Nova Scotia, may impose terms and conditions as a means to apply safeguards in cases where the licensee seems to lack an understanding of relevant rules from the outset. This is imposed on a discretionary basis to compel licensees to check-in with Nova Scotia's Labour Standards periodically. For example, a condition may be imposed on the licensee to disclose certain activities to authorities every three months and to demonstrate that they have provided written contracts to workers or certain information about their rights. This affords a degree of education on legal requirements to ensure compliance.

Another measure to ensure that licensees understand their obligations is to require a statutory declaration at the application and renewal stage. This would require applicants to solemnly declare that they will comply with relevant legal obligations and maintain a high standard of conduct. Saskatchewan requires agreement to a standardized "Terms and Conditions" document, which outlines a range of obligations, offences and prohibitions.

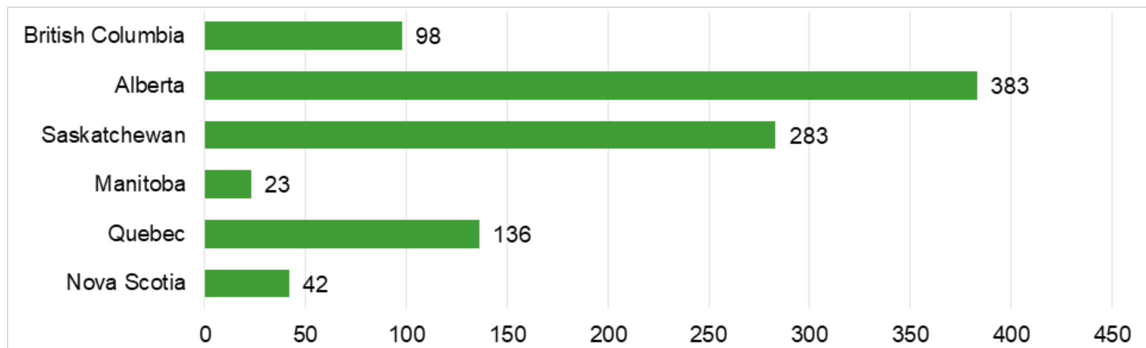
Licence characteristics

All recruiter licences across regimes are time-limited and non-transferable. The validity period of the licence, however, differs across provinces and some statutes provide the authority for the licence to be issued for a maximum number of years, allowing some discretion in policy for duration (e.g., one year issued in practice, but up to three years may be issued in law). Provinces range between 1-year (British Columbia, Manitoba); 2-year (Alberta, Saskatchewan, Quebec) and 3-year (Nova Scotia) licence durations.

Public access

Licensed recruiters in all provincial licensing schemes are identified in a public registry online.[39] This enables migrant workers and employers to proactively verify the legitimacy of the recruiter prior to any formal engagement. Employers have a clear incentive to hire only licensed recruiters as they may be held liable for contraventions if a violation occurs by an unlicensed recruiter. The list generally states in plain language that the listed recruiters are the only ones allowed to recruit migrant workers in that province. Public registries provide basic name and contact details, as well as the expiration date of the licence.

Figure 7: Number of recruiter licenses listed online (as of February 2020)



In Saskatchewan, a separate list of individuals who have been suspended from providing recruitment services or refused a licence is also posted. Quebec requires licensees to visibly post their licence in their head office and any other business establishments. In Nova Scotia, any terms and conditions that have been attached to the licence are also available publicly. British Columbia is obliged to maintain the most detailed public registry, including any terms, conditions, and amendments associated with a licence and if any licensees have been suspended or cancelled, and the respective dates.

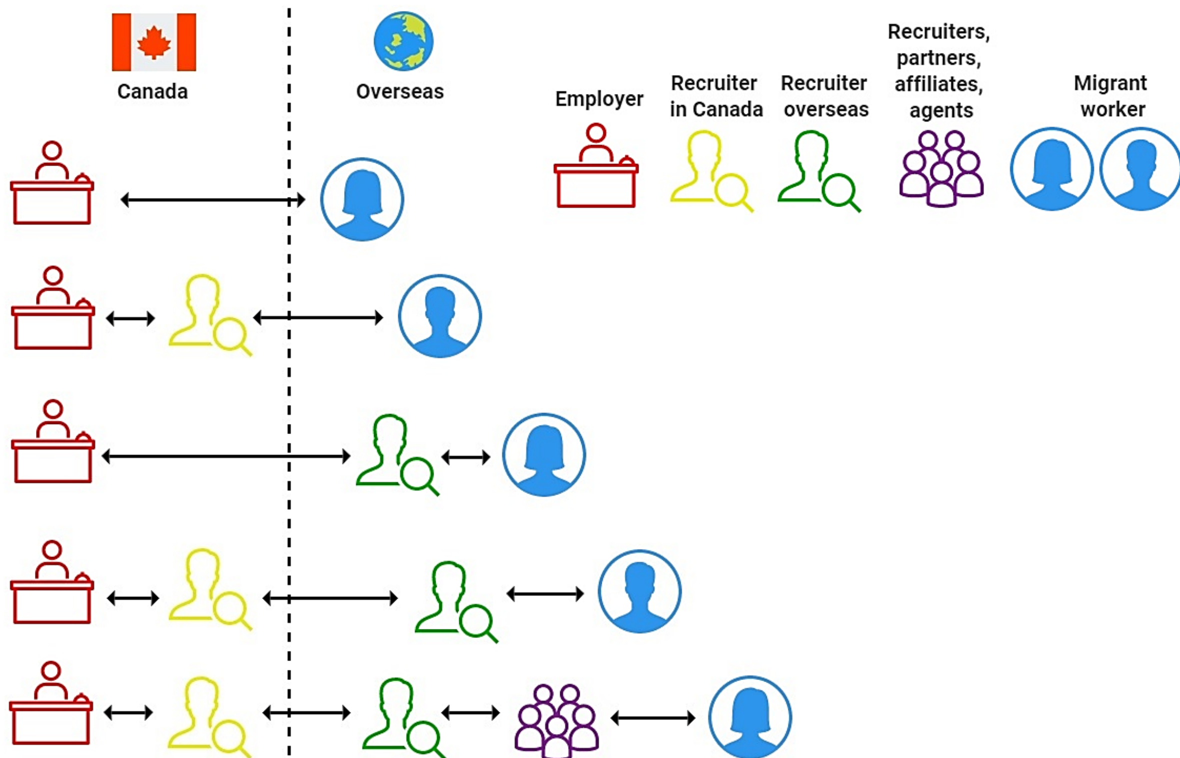
Labour supply chains and accountability

For ease of review, this paper employs a simplified portrayal of migrant worker relationships with recruiters by using the singular term “labour recruiter”. It is important to register however, that labour recruiters, including formal regulated licensees, are often connected to other formal and informal brokers or sub-agents in complex labour supply chains. Because networks of formal and informal recruiters and sub-agents are often leveraged to find prospective migrant workers and employers, adopting laws that enforce accountability along the full length of the employment and recruitment supply chain is important. A short description of these networks is provided below to contextualize how provinces have regulated in this area.

[39] Links to each public registry: British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia.

International labour recruitment operates through a variety of relationship structures, some more complex than others. The length of the supply chain also varies, on one end of the spectrum, an employer directly hiring a migrant worker would be the shortest, while an employer hiring a recruiter in Canada that relies on chain of recruiters (formal and informal) overseas would be much longer. Figure 8 provides a simplified visual representation of some recruitment relationship structures that exist adapted for the Canadian context.[40]

Figure 8: Labour recruitment supply chain models



Accordingly, certain provinces collect extensive information at the licence application stage to uncover the full extent and location of the recruiter's supply chain in the province and outside Canada. For example, Saskatchewan and British Columbia require that applicants disclose the names and addresses of all their partners, affiliates, or agents located or operating inside or outside of the respective province. British Columbia's TFWPA holds the licensee liable to ensure that their partners, affiliates or agents comply with relevant laws and Saskatchewan establishes liability through their *Code of Conduct*, discussed below. Nova Scotia also requires applicants to disclose comprehensive of details of their supply chain including the names of individuals with whom they or the employer intend to work, and a description of their legal relationship. Manitoba's application form requires applicants to submit an organizational chart showing the relationship between all parent, controlling, subsidiary, and affiliated companies. By exposing the licensee's supply chain through proactive disclosure, it can enable more effective enforcement with regard to holding the licensee liable for contraventions committed by their partner or affiliate.

[40] While Figure 8 captures some typical relationships, labour recruitment under the SAWP formally involves foreign governments (e.g., Government of Mexico and Governments of Commonwealth Caribbean states) and groups of employers (F.A.R.M.S. and F.E.R.M.E.) which are not presented here.

In addition, in provinces where both employers are registered and recruiters are licensed liability is placed on the employer in case of violations like illegal fee charging if they have engaged an unlicensed recruiter. Responsibility falls on the employer to only hire licensed recruiters; if not, illegally charged fees can be recovered from them. In Nova Scotia, it is an independent offence for employers to use unlicensed recruiters. Combined, these provisions make it in the employer's interest to ensure compliance in their labour supply chain, at minimum, that they only use legitimate and licensed recruiters in the province.

Recruiter Code of Conduct

Saskatchewan uniquely requires recruiter licensees to follow a *Code of Conduct for Foreign Worker Recruiters* (see Appendix III for full text), which establishes standards of professional conduct for licensed recruiters and guidance for their practice. The *Code of Conduct* prohibits recruiters from engaging in any unlawful activity; providing advice or creating false expectations that would lead a foreign national to divest assets, quit their job or relocate without certainty of the right to work in Canada; or representing, either expressly or by implication, that services provided by the recruiter are endorsed by the Government of Saskatchewan. It also establishes professional responsibilities related to providing fair, honest, open, timely, and competent assistance and services, and communicating punctually.

Table 6: Comparison of licensing process for recruiters by province

Screening	B.C.	Alta.	Sask.	Man.	Que.	N.S.
Eligibility						
Must be an individual	Yes	No	Yes	Yes	No*	Yes
Required qualification as lawyer or immigration consultant	No	No	No**	Yes	No***	Yes
Application						
Front-end requirement to disclose criminal history/record	No	Yes	Yes	Yes	Yes	Yes
Mandatory disclosure of labour supply chain (partners, affiliates, etc.)	Yes	Yes–	Yes	Yes	No	Yes
Financial						
Application or licence fee	$0	$120	$0	$100	$1,780^	$100
Security deposit amount	$20,000	$25,000 only for NOC B, C, D jobs	$20,000	$10,000	$0	$5,000

*However, licence applications must be made by a natural person mandated to act as a respondent (répondant). This person is responsible for communications with the CNESST, in particular to send and update required information.
**FWRISA requires separate immigration consultant licence if offering immigration services; requirement to be member of ICCRC does apply for this group (lawyers are exempt).
***Recruitment agencies must ensure that any employees who provide immigration advice are authorized per Que. law.
–Agents must be registered with Service Alberta to act on the employment agency's behalf.
^To be paid in 2 equal instalments: $890 on issuance & $890 one year after (two-year licence).

Table 7: Comparison of licence characteristics by province

Features	B.C.	Alta.	Sask.	Man.	Que.	N.S.
Licence characteristics						
Licence duration (years)	1*	2	2**	1	2	3
Non-transferable	Yes	Yes	Yes	Yes	Yes	Yes
Public registry	Yes	Yes	Yes	Yes	Yes	Yes
How many licences posted online as of Feb 17 2020	98	383	283	23	136***	42
Code of conduct	No	No	Yes	No	No	No
Issuance of licence						
Authority to refuse or deny	Yes	Yes	Yes	Yes	Yes	Yes
Authority to suspend or cancel	Yes	Yes	Yes	Yes	Yes	Yes
Can terms and conditions be imposed at any time?	Yes	Yes	Yes	Yes	No	Yes
Link to employer						
Associated employer registration regime in place	Yes	No	Yes	Yes	Yes	Yes
Employer liable if using unlicensed third party recruiter	Yes	No	Yes	Yes	Yes	Yes

*Legal authority for up to 3 years.
**Legal authority for up to 5 years.
***At the time of writing, Quebec's licensing requirements had been recently implemented (transitional provision gave recruitment agencies until February 14, 2020 to apply). As such, all licensees posted online (136 total) had applications in process according to the status listed: "demande en cours de traitement".

EMPLOYER REGISTRATION

Key questions: Are employers required to register in order to hire migrant workers? Can registration be refused, and based on what criteria? What incentives are in place to comply?

The requirement for employers to register with labour or employment standards to recruit and hire migrant workers enables proactive government oversight. In doing so, the act of hiring migrant workers is considered a privilege: employers must apply and be approved to obtain a certificate of registration on a continuous basis as long as they have migrant workers under their employ. Applicants can be refused based on past conduct or prescribed conditions, or if approved, they can have their registration cancelled or suspended for similar reasons, rendering them unauthorized to hire a migrant worker. Some provinces inform employers that they need to register in order to secure relevant and required immigration documents. For example, if the employer does not supply a valid certificate of registration, their LMIA application to the federal government or respective PNP application will be refused or referred back to the registration body.

Furthermore, if registration is enforced, authorities can leverage the information and data gathered through the process such as details on job positions, industry sectors, work locations and so on to better inform targeted inspections and resource allocations. This component of the regulatory approach is its most basic, but also extremely important: provinces with employer registration systems know where migrant workers are working. This enables inspectors to proactively target and check on working conditions of migrants to ensure compliance with employment standards and to some extent, allows them to block non-compliant employers from hiring any migrant workers.

This is particularly significant in the Canadian context where the federal government holds work permit and related employer data, that is, the information on where migrant workers are working.

Information sharing agreements between Canada and the province must be in place in order for that data to be shared by the federal government to the provincial government for the purpose of administering employment legislation. In the absence of such agreements, provincial employer registration is an effective mechanism to fill that gap and better understand employer hiring practices and compliance in the context of migrant labour in the province. Employer registration is generally limited to employers of migrant workers considered more "vulnerable" by regulators than others, and does not typically extend to employers of the broadest definition of a migrant worker.

Six out of the eight provinces under review: British Columbia[41], Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia, have some type of mandatory registration systems for employers who seek to hire migrant workers. Except for New Brunswick, these are all complementary to their recruiter licensing requirements. Table 4 captures exemptions to registration in each province. The discussion below captures key themes of these migrant worker employer registration systems. A summary of their differences is captured in Table 8.

Figure 9: Employer registration map

Declaration or registration after hiring migrant workers

To start, New Brunswick and Quebec's models only require employer registration or declaration of information on migrant workers after they have hired a migrant worker. This is different from a proactive model where an application to register is required prior to hiring workers, discussed below. In this sense, there are no criteria to refuse registration, only a requirement to provide up-front information upon hiring. New Brunswick requires the employer to register on an annual basis, while Quebec only requires updates to information in case of changes. There is no fee to do so in either jurisdiction.

[41] At the time of writing, British Columbia's employer registration requirements were not yet in force; certain details such as validity period of certificates are not available here and as such are marked "to be determined" (TBD).

Declaration of hiring temporary foreign workers in Quebec

Under Quebec's regulatory approach, any employer who hires a migrant worker must inform the CNESST by submitting a Declaration of Hiring Temporary Foreign Workers (*Déclaration d'embauche de travailleurs étrangers temporaires*) to the CNESST. The declaration must indicate:

- the business name and details;
- if they engaged a recruitment agency, and if so, their name;
- the name of migrant worker and type of work to be performed; and
- the start and expected end date of their contract with the worker.

The form may be submitted online or by mail, and any subsequent changes must be provided by a special amendment form.

Application for registration

In contrast, employers in British Columbia, Saskatchewan, Manitoba, and Nova Scotia who want to hire migrant workers must first register with the respective employment or labour standards body. There is no fee to register in any province. Employers are required to provide information on their business (name, address, industry, etc.) and the details with regard to the types of positions for which they intend to recruit migrant workers (e.g., location, wages, skill level, etc.). In some cases, they are required to provide the countries they anticipate hiring from and the temporary labour migration program they intend to use.

Manitoba and Nova Scotia require information at this stage about any third-party agencies and individuals involved in the recruitment process, if applicable. This is one way of establishing compliance with the requirement to only use licensed recruiters at the front end. For example, Manitoba and Nova Scotia could refuse the registration if the listed third-party recruiter was unlicensed.

Issuance or refusal of certificate

Following application, the relevant employment or labour standards body then ensures that the applicant has provided all required information and reviews the employer's past conduct to assess whether they will act lawfully and honestly while carrying out the business of hiring migrant workers. This is typically established based on previous compliance records in the province, or through documentation requested during the application process, such as financial statements, tax documents, business licenses, and so on. An employer would generally be refused based on previous non-compliance with relevant legislation such as employment standards or occupational health and safety, in case of misrepresentation, or if there were reasonable grounds to believe that they would not act honestly or lawfully.

British Columbia and Saskatchewan also have refusal grounds linked to the applicant's non-compliance with any terms, conditions, or undertakings set out in the federal government's immigration approval for them to hire migrant workers. This provides authority, for example, to refuse an applicant if it is known that the federal government (e.g., IRCC or ESDC) had found the employer non-compliant with program conditions in the IRPR.

If a certificate of registration is issued, it is time-limited and requires the employer to re-apply regularly. One-year certificates are issued in Manitoba and Nova Scotia, and a two-year validity period is issued in Saskatchewan. In contrast to recruiter licensing, no public registry is maintained of employers with valid registration.

During the validity of the certificate, provinces also have authorities to suspend or cancel the certificate, based on grounds similar to the refusal reasons, primarily in case of non-compliance with relevant legislation. British Columbia and Saskatchewan also have grounds to amend the certificate as needed.

Incentives to register and links to other administrative processes

Operationally, the registration process has been valuable for some jurisdictions as it creates an additional incentive or "hook" for employers to stay in compliance with other employment standards. That is, if employers do not stay in compliance with overtime or vacation rules for all employees, they could face refusal when applying to register to hire migrant workers. This would in turn inhibit their legal hiring of migrant labour, which for some, is crucial to the operation of their business. A benefit of this model is that it can reduce non-compliant behaviour of certain employers who may otherwise ignore orders to come into compliance with even minor labour standards contraventions more generally.

Furthermore, the established link between employer registration and other mandatory application processes further encourages an employer to register. For example, Manitoba and Nova Scotia inform their employers in communication products that if they do not register, their application for the LMIA at the federal level will be refused or returned. Although this depends on the federal government enforcing this step during the LMIA application, not the province, the employer still has good reason to ensure they can demonstrate a valid registration certificate in order to receive a positive or neutral LMIA. In the case of Saskatchewan and Nova Scotia, employers who wish to make use of the respective PNP must obtain a registration certificate first in order to proceed.

Table 8: Comparison of registration process for employers by province

Registration feature	B.C.	Sask.	M.B.	Que.	N.B.	N.S.
Must register prior to hiring migrant workers	Yes	Yes	Yes	No	No	Yes
Requirement to provide information on recruiter hired, if applicable	TBD	Yes	Yes	Yes	Yes	Yes
Requirement to provide information on migrant workers hired/to be hired and work to be performed	TBD	Yes	Yes	Yes	Yes	Upon request
Fee	$0	$0	$0	$0	$0	$0
Registration can be refused, suspended, or cancelled	Yes	Yes	Yes	No	No	Yes
Validity of registration	TBD*	2 years**	1 year	None***	1 year	1 year
Linked to LMIA approval	TBD	No	Yes	No	No	Yes
Linked to provincial immigration approval	TBD	Yes	No	No	No	Yes

*Legal authority to issue registration certificate up to 3 years.
**Legal authority to issue registration certificate up to 5 years.
***No validity period, however employers must update information in case of changes.

4. Freedom of movement

Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.

Key questions: Can an employer or recruiter take and keep a migrant worker's possessions, e.g., passport or work permit? Are these actions prohibited in law or discouraged in policy?

Respect for freedom of movement in and out of a foreign country necessitates that a migrant worker can retain their own identity documents, particularly their passport. Without a passport or immigration papers (e.g., work permit or visa), a migrant worker's safety may be jeopardized; they are at a higher risk of being trapped in their employment station, unable to leave, and may fear reporting any non-compliance to authorities in such circumstances. As such, taking and keeping a migrant workers' identity or travel documents can create conditions of forced labour and human trafficking.

Right to identity documents

The right to personal property is accordingly enshrined in law in six of the provincial jurisdictions under review: British Columbia, Saskatchewan, Ontario, Quebec, New Brunswick, and Nova Scotia.

The legal prohibition differs slightly across jurisdictions, that is, who exactly is prohibited against taking possession of worker property. Nova Scotia has the broadest prohibition applied to any person, and British Columbia, Ontario, and Quebec prohibit employers and recruiters from this act. As Saskatchewan also regulates immigration consultants, their rule applies to all three parties – employers, recruiters and consultants. New Brunswick prohibits the employer and any person recruiting on their behalf from taking or retaining migrant worker property.

Finally, it is worth noting that while Alberta's legal framework under review does not have a similar legal provision related to this matter, the province does discourage this behaviour in policy. Their online communication materials state that no employment agency or employer may force a foreign worker to hand over their passport, work permit or other legal documents. It is possible that Alberta could engage their broader licensing powers in the *Consumer Protection Act* to address this issue, by taking action against a licensee where they have failed to comply with any other legislation that may be applicable, as taking personal property like a passport can amount to a criminal act of theft.

Prohibitions against taking identity documents by province

Province	Relevant provision
British Columbia *Temporary Foreign Worker Protection Act*	**Prohibited practices** 20 Foreign worker recruiters and employers must not do any of the following: (b) take possession of or retain a foreign national's passport or other official documents.
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	**Prohibited practices** 22(b) No foreign worker recruiter, employer or immigration consultant shall take possession of or retain a foreign national's passport or other official documents or property.
Ontario *Employment Protection for Foreign Nationals Act*	**Prohibitions against taking, retaining property** **Employer** 9(1) No person who employs a foreign national, and no person acting on the employer's behalf shall take possession of, or retain, property that the foreign national is entitled to possess. **Recruiter** (2) No person acting as a recruiter in connection with the employment of a foreign national, and no person acting on the recruiter's behalf, shall take possession of, or retain, property that the foreign national is entitled to possess. Example: passports, etc. (3) For example and without limiting the generality of subsections (1) and (2), a person described in subsection (1) or (2) is not permitted to take possession of, or retain, a foreign national's passport or work permit.
Quebec *Act respecting labour standards and Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers*	92.11 No employer may require a temporary foreign worker to entrust custody of personal documents or property to the employer. R 25 No temporary foreign worker recruitment agency licence holder may (1) require a temporary foreign worker to entrust custody of personal documents or property to the licence holder.
New Brunswick *Employment Standards Act*	38.91 (6) No employer and no person who recruits foreign workers for employment on behalf of an employer shall take possession of or retain property that the foreign worker is entitled to possess, including the foreign worker's passport or work permit.
Nova Scotia Labour Standards Code	**Property foreign worker entitled to possess** 89G(1) In this section, "property that the foreign worker is entitled to possess" includes the foreign worker's passport and work permit. (2) No employer or recruiter, and no person on the employer's behalf, shall take possession of or retain, property that the foreign worker is entitled to possess. (3) No person shall assist another person to do any of the things described in subsection (2).

PROHIBITION AGAINST THREATENING DEPORTATION

Furthermore, migrant workers who hold valid work permits are entitled to remain in Canada for the full validity period of their work permit. As such, employers and recruiters cannot force migrant workers to return home if the work contract is terminated before the end of the work permit or if they decide to find another employer. In some cases, the threat of deportation coerces migrant workers into exploitative working conditions during this period. For that reason, the threat of deportation is explicitly prohibited in British Columbia, Saskatchewan, and New Brunswick.

Prohibitions against threatening deportation by province

Province	Relevant provision
British Columbia *Temporary Foreign Worker Protection Act*	**Prohibited practices** 20 Foreign worker recruiters and employer must not do any of the following: (d) Threaten deportation or other action for which there is no lawful cause.
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	**Prohibited practices** 22 (d) No foreign worker recruiter, employer or immigration consultant shall threaten deportation or other action for which there is no lawful cause.
New Brunswick *Employment Standards Act*	38.91(8) No employer and no person who recruits foreign workers for employment on behalf of an employer shall threaten a foreign worker with deportation or another action for which there is no lawful cause.

5. Freedom from deception or coercion

Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.

Key questions: What practices are prohibited to protect migrant workers from deception and coercion? How do recruiters or employers obtain voluntary consent and agreement from migrant workers to the terms and conditions of recruitment and employment?

Migrant workers' agreement to the terms and conditions of recruitment and employment should be voluntary; their consent should be informed, expressed, and free from deception or coercion. There are a range of regulatory approaches that are aimed at addressing this principle: from explicitly prohibiting deceptive and coercive behaviour in law, to stipulating how agreements or contracts for recruitment services should be drawn up in order to ensure informed consent from the migrant worker.

Prohibited and unfair practices

British Columbia, Alberta, Saskatchewan, and New Brunswick each have regulatory prohibitions against unfair practices stipulated in their respective legal frameworks. However, to whom these prohibitions apply differ: New Brunswick's *Employment Standards Act* limits to employer actions, while British Columbia and Saskatchewan prescribe prohibited practices against both recruiters and employers. Saskatchewan also covers the activity of immigration consultants. The *Consumer Protection Act* and its EABLR in Alberta are limited to prohibiting unfair practices of employment agencies (recruiters) and prohibitions protect a "consumer", which includes both persons seeking employment (migrant workers) and employers from unfair practices.

Consumer protection approach to unfair recruitment practices

Since Alberta's oversight of employment agencies (recruiters) is administered under consumer protection law, its very intent is to prevent businesses from engaging in fraud and unfair practices in order to mislead consumers. As such, the *Consumer Protection Act* and the EABLR consist of a long list of unfair practices. To list a few, employment agencies are prohibited from:

- exerting undue pressure on, threatening or harassing consumers;
- failing to enter into separate agreements with a person seeking employment for any non-job placement services that may be offered;
- taking advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;
- using exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
- entering a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services; and
- doing or saying anything that might reasonably deceive or mislead a consumer.

Given the breadth of prohibited unfair practices, a degree of flexibility is available to its administrators. For example, although only fees related to employment agency business services are prohibited (as discussed in Section 2), it is still possible to penalize a recruiter if they charged other fees in bad faith. In that case, if exorbitant immigration-related costs were charged but there is clear evidence that the migrant worker would have never been eligible to apply for permanent residence through the available immigration programs, the recruiter could face consequences under the broader consumer protection framework.

Prohibited unfair practices common to all provinces (British Columbia, Alberta, Saskatchewan, and New Brunswick) include:

- Giving, supplying, producing, or distributing false, misleading, or deceptive information
  - British Columbia's TFWPA specifies information relating to "recruitment services, immigration services, employment, housing for foreign workers or laws of British Columbia or Canada";
  - Alberta's EABLR specifies information relating to "employment positions, legal rights, immigration, or the general living or working conditions in Alberta"; and
  - New Brunswick specifies "false or misleading information about employer and employee rights and responsibilities".
- Misrepresenting employment opportunities
  - Respecting a position, duties, length of employment, wages and benefits or other terms of employment (British Columbia's TFWPA and Saskatchewan's FWRISA).
  - With respect to the position to be filled by a migrant worker, the duties of the position, the length of employment, the rate of wages, benefits and other terms and conditions of employment (New Brunswick's ESA).

In contrast to others, Saskatchewan's FWRISA exceptionally prohibits practices related to trust and contacting family members, including:

- Taking unfair advantage of a foreign national's trust or exploiting a foreign national's fear or lack of experience or knowledge; and,
- Contacting a foreign national or a foreign national's family or friends after being requested not do so by the foreign national.

CONSENT THROUGH SIGNED AND WRITTEN CONTRACT OR AGREEMENT

Another regulatory approach to ensure voluntary agreement to the terms and conditions of migrant worker recruitment and employment is to require that recruiters obtain consent before service provision through written agreements or contracts.

In Alberta, the EABLR stipulates that employment agencies must have an agreement in place before securing a worker for an employer, or, before securing employment for a person. Agreements must be in writing and signed by the parties to the agreement. They must set out the services to be provided; the respective responsibilities and obligations of the parties to the agreement; the contact information of the employment agency and any authorized agents; and feature a clear (not less than 12-point bold face type) statement regarding the fee prohibition set out in the regulations. A copy of the agreement must also be provided to the employer or worker. As discussed in section 2, if non-employment agency business services are also provided, a separate written agreement between the agency and consumer is required, disclosing the fee for those services.

In British Columbia and Saskatchewan, if a recruiter is providing recruitment services to an employer and immigration services to the migrant worker to be employed (occupying both immigration and recruitment roles), this arrangement must be disclosed in advance to both parties and their written consent must be obtained. Both the employer and migrant worker must sign separate contracts, each with an itemized list of services and fees. These contracts have prescribed requirements established in law: they must be in writing and in clear and unambiguous language. This measure ensures that migrant workers are clearly informed about the immigration services and their costs, ahead of receiving and paying for them.

In Saskatchewan, recruiters are required by law to take reasonable measures to ensure that foreign nationals whose first language is not the language of the contract understand the terms and conditions before they enter into it. Furthermore, if a contract for immigration services or recruitment services is unclear, ambiguous or incomplete, the interpretation least favourable to the recruiter prevails. The contract must also include a statement indicating the prohibition against charging recruitment fees, the payment schedule as applicable, and the contact information for the licensee and any other person acting on their behalf under the contract.

6. ACCESS TO INFORMATION

Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

Key questions: How are migrant workers' made aware of their rights? Who produces information resources and who is obliged to share them with workers? Are resources available in multiple languages?

For the most part, all public bodies administering regulatory regimes over recruiters and/or employers of migrant workers provide plain English and/or French language information on their websites regarding relevant legal protections and obligations. Typically communication materials are the medium; frequently asked questions and answers clarify basic processes and rules, for example, that workers should not be charged fees for recruitment services, or that their employer cannot confiscate their passport.

However, some regulatory provisions go further and place requirements on employers and/or recruiters to share essential information with migrant workers about the rights or conditions of their recruitment and employment. Provincial approaches are discussed below, grouped by requirements on recruiters or employers to provide either (1) published information documents or (2) ethical disclosure forms.

INFORMATION ON RIGHTS DOCUMENT

Ontario, Quebec, and British Columbia each require some type of government publication containing essential information on relevant rights to be distributed to migrant workers by their recruiter and/or employer.

In Ontario, as soon as a recruiter has contact with a migrant worker about employment, the recruiter must give the migrant worker copies of two information sheets: Your Rights under the *Employment Standards Act* and Your Rights under the *Employment Protection for Foreign Nationals Act*. If the employer does not use the services of a recruiter, the onus is on them to provide the migrant worker they hire with copies of these documents before the employment starts. The Director of Employment Standards in Ontario is obliged to prepare and publish the information sheets, and keep them up to date. If the information has been published in the language of the foreign national (other than English), the recruiter or employer must provide a copy of the suitable translation as well. At the time of writing, the products are published in 10 languages other than English and French, reflecting the most commonly spoken languages of migrant workers in Ontario: Arabic, Hindi, Portuguese, Punjabi, Spanish, Tagalog, Thai, Chinese (simplified & traditional) and Urdu.

The *Your Rights under the Employment Protection for Foreign Nationals Act* document provides a plain language summary of relevant rights under the EPFNA: highlighting that recruiters cannot charge any fees, employers are prohibited from charging hiring costs, recruiters/employers cannot take or hold a workers' property, workers cannot agree to give up their rights, and they cannot be punished for asking about or exercising their rights. It also provides basic information on how to contact the authorities with questions by phone and the complaint process if workers want to file a claim for their rights.

British Columbia's TFWPA requires both recruiters and employers to post or provide information on the rights of foreign nationals and foreign workers under the Act, expected to be available online in mid-2020. Although no translations are yet available, a multilingual phone line can be availed for interpretation services if needed in British Columbia. Finally in Quebec, at the time of recruitment, any migrant worker recruitment agency must give the worker an information document made available by the CNESST concerning worker labour rights and employers' obligations, related to health and safety, employment rights, and pay equity. The product is in French and provides the relevant webpages and phone number for further information.

Disclosure and Declaration Document

Quebec and Saskatchewan both place requirements on recruiters to provide some type of disclosure and declaration document to migrant workers, however they differ in content (ethical standards of service in Saskatchewan; working conditions in Quebec) and who is required to sign them.

In Saskatchewan, migrant worker recruiters and immigration consultants, must make sure that the foreign national they engage signs the "Ethical Conduct Disclosure and Declaration Form" (see Appendix III) before they receive recruitment and/or immigration services. The form states the ethical behaviour the migrant worker should expect from the recruiter, including the legal protections provided under the FWRISA; prohibited practices charging recruitment fees, taking passports, or threatening deportation; and the process to make and submit a complaint. The foreign national must sign that they have read and understood the protections described in the form. As per the terms and conditions of their licence, recruiters in Saskatchewan must abide by a "reasonable measures for language" provision, that is, they must take reasonable steps to ensure that migrant workers understand the content of the disclosure and declaration form before signing. Reasonable measures involve allowing the migrant worker enough time to get the documents translated into another language, or referring the worker to a translation. When applicable, they could alternatively translate the form verbally into the worker's first language.

In Quebec, the Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers requires licensed recruitment agencies to give migrant workers a document describing the employment position's working conditions, including the wage offered and the name and contact information of the client enterprise (employer) at the time of recruitment. The CNESST provides agencies with a template to follow that includes a section called "important information" (*informations importantes*) advising the worker that the recruitment agency and employer cannot take their personal documents nor charge them any recruitment fees, other than those authorized by the federal government. The template has a signature section for the person authorized by the recruitment agency to declare that all information contained in the document is true and complete.

As discussed in section 5, Alberta's EABLR requires agreements between employment agencies and workers and the recruitment fee prohibition must be featured clearly in this medium. In addition, if an employment agency is the entity communicating an offer of employment, they must provide it in writing with details including the job description, terms of employment, if known, and contact details of the employer.

7. ACCESS TO GRIEVANCE MECHANISMS

Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

Key questions: What are some of the barriers that migrant workers face in accessing their rights? What is the complaint process for migrant workers in case of rights violations? Are workers protected from reprisal if they report abuse?

This paper has explored the ways in which provinces have enshrined a range of protective measures for migrant workers and obligations on their employers and/or labour recruiters in law. However, it is crucial to draw attention to the numerous intersectional factors and barriers that migrant workers face to access these rights in practice. In fact, a key operational challenge raised by administrators of these regimes is the few (or complete lack of) complaints filed by migrant workers under their respective laws. This is of particular importance when inspections are complaint-driven processes, as opposed to proactive inspection models where inspections target random or higher-risk employment sites without the need for an initial complaint. And even in the case of proactive inspections, authorities may lack the evidence needed to apply consequences for non-compliance on employers or recruiters if migrant workers are not willing, able, or present to provide such evidence.

BARRIERS TO ACCESSING RIGHTS AND RECOURSE

To start, migrant workers may not know or understand their rights, or the process to file a claim for their rights. If they are aware, they may not have the resources or capacity to access related recourse mechanisms due to language or time constraints, and in more complex cases, lack of access to affordable legal assistance. Given the precariousness of their immigration status, notably for those on time-limited, employer-specific work permits, they may be fearful or unable to complain due to perceived risks of being terminated or deported. This is especially the case in exploitative conditions where threats of reprisal occur. In some cases, workers may have already left Canada: unwilling or unable to pursue recourse from abroad. For migrant workers who fall out of legal status while in Canada, irregularity deters them from becoming visible to authorities for fear of removal, detention, and other enforcement actions.

For migrant domestic workers, their work is typically done in the private home of their employer.[42] As such, labour inspections are insufficient tools to enforce standards due to relatively limited authorities to inspect private dwellings (i.e., warrants are required to enter if consent is not given by the employer). In the case of migrant workers whose housing and accommodation is provided by the employer, either in the same home (e.g., domestic work) or on the same premises (e.g., agriculture), workers may be more reluctant to report abuse as they risk losing their shelter in addition to their job and livelihood. Female migrant workers generally face increased risk of exploitation accordingly, including sexual and gender-based violence.

A summary of the challenges related to accessing complaint mechanisms is captured in Figure 10; although this visual was developed in the context of access to justice for migrant workers in South-East Asia, it has universal applicability, including in Canada. With these challenges in mind, a lack of migrant worker complaints on record does not necessarily suggest that employers

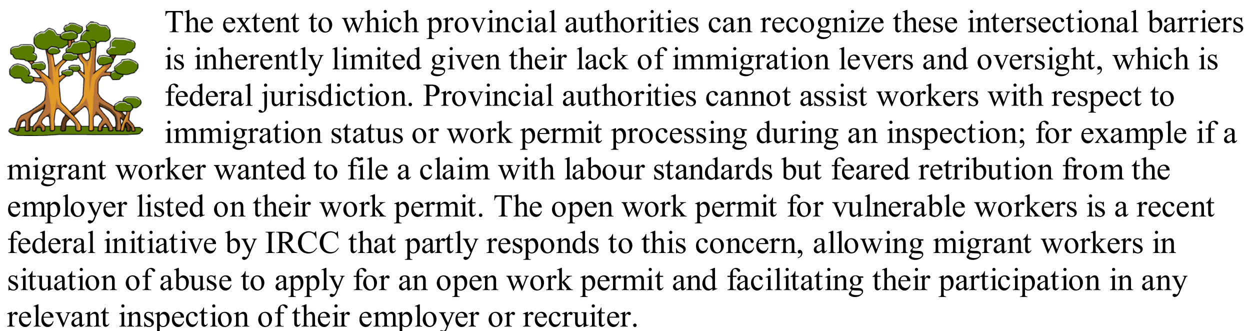
[42] Domestic workers are typically referred to as “caregivers” in the Canadian immigration framework.

and/or recruiters are in compliance with the law, but rather points to the structural barriers that migrant workers face with the complaint process itself.

Figure 10: Summary of barriers to accessing justice for migrant workers

Lack of written evidence
High cost of legal assistance
Slow legal processes
Fear of retaliation
Discriminatory attitudes
Unclear statutory responsibility
Language barriers
Irregular legal status
Employer-tied visas and work permits
Restriction of movement
Lack of coverage by labour law
Non-functional complaint mechanisms
Lack of information about rights

Source: Harkins, B and Åhlberg, M. 2017. Access to justice for migrant workers in South-East Asia. International Labour Organization. Bangkok.



The extent to which provincial authorities can recognize these intersectional barriers is inherently limited given their lack of immigration levers and oversight, which is federal jurisdiction. Provincial authorities cannot assist workers with respect to immigration status or work permit processing during an inspection; for example if a migrant worker wanted to file a claim with labour standards but feared retribution from the employer listed on their work permit. The open work permit for vulnerable workers is a recent federal initiative by IRCC that partly responds to this concern, allowing migrant workers in situation of abuse to apply for an open work permit and facilitating their participation in any relevant inspection of their employer or recruiter.

Open work permit for migrant workers in situations of abuse

In response to concerns raised regarding exploitative working conditions of migrant workers in Canada, namely related to the restrictive nature of the employer-specific work permit, IRCC introduced a new work permit program for migrant workers in situations of abuse in June 2019. Under the "open work permit for vulnerable workers" program, migrant workers in situations of abuse who hold valid employer-specific work permits may apply for an open work permit without the need for a new job offer. This enables migrant workers to quickly transition out of abusive situations and facilitates their participation in a relevant investigation of their employer or recruiter (e.g., filing a complaint and sharing evidence), though their willing participation is not an eligibility requirement. Applicants are encouraged to provide as much evidence as possible to support their application and work permits are processed on an expedited basis. If an open work permit is issued, a federal employer compliance inspection will be triggered on the respective employer. As of December 2019, 250 work permits were issued under this program.

WHAT IS THE COMPLAINT PROCESS?

All eight provincial regulatory regimes reviewed in this paper have a formal administrative complaint mechanism in place. The process commonly involves a written complaint form to be filled out and submitted to the relevant administrative office, at no monetary cost to the claimant. Depending on the province, complaints must be filed online or on paper by mail, fax, or in person. No jurisdiction prohibits individuals on the basis of their immigration status in Canada from filing, however as discussed above, having returned to one's home country or being out of legal status in Canada may structurally inhibit a migrant worker from accessing grievance mechanisms. In some cases, formal complaints provide the option for migrant workers to remain anonymous, though there are limits on what can be formally pursued when anonymity is protected.

Each form differs in content and detail requested, but for the most part, basic details on the employer and/or recruiter and the alleged contravention are required. Ontario's form is one example that guides the claimant to provide sufficient information with respect to all possible violations about employers and recruiters.

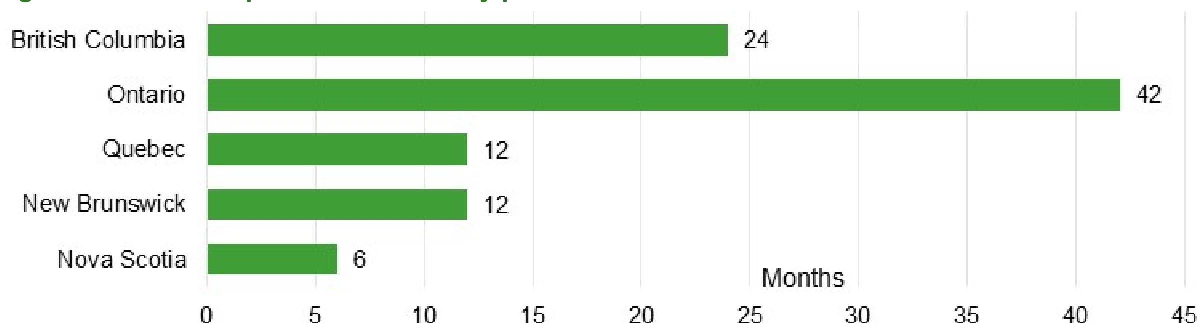
Figure 11: Excerpt from Ontario's EPFNA Claim Form – Claims again recruiter

Claims against Recruiter

Description	Estimated Amounts ($)
☐ The recruiter charged me a fee. In other words, you are claiming that the recruiter charged you money for a service, good or benefit provided, such as a fee for finding or attempting to find you an employer, orientation sessions, assistance with a resume or for job interview preparation, or first aid training sessions. These services, goods or benefits must be provided free of charge. Explain what you were charged for. What was the fee for? Please explain in the space provided below.	
☐ The recruiter took my property (e.g. passport or work permit). In other words, you are claiming that the recruiter took your property, with or without your consent. Property would include your passport or your work permit. Explain what property of yours was taken by the recruiter. What property was taken? Please explain in the space provided below.	

The complaint or claim time limit varies widely among provinces: claimants must file within six months to three and a half years of the alleged contravention or violation. Notably, Alberta, Saskatchewan, and Manitoba do not impose any time limit on complaints in law, however associated enforcement may not be actioned as is the case with all jurisdictions depending on nature of the complaint and circumstances.[43]

Figure 12: Complaint time limits by province



Considering the profile of migrant workers on employer-specific work permits who cannot work elsewhere until they have secured another work permit, workers are more likely to file a claim within relatively longer periods, for example once they have moved jobs or transitioned to permanent residence status. Another relevant scenario would be when migrant workers are not aware of prohibited practices and learn of their rights too late. For example, a migrant worker who is charged illegal fees six months prior to their arrival in Canada and only becomes aware of the fee prohibition six months after landing, would not be able to file a claim if the limitation period in the province of work was only one year.

Table 9: Complaint time limit by province

Province and respective law under which claims are filed	Complaint time limit since date of alleged violation
British Columbia *Temporary Foreign Worker Protection Act*	2 years
Alberta *Consumer Protection Act / Employment Agency Business Licensing Regulation*	None
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	None
Manitoba *Worker Recruitment and Protection Act*	*See note**
Ontario *Employment Protection for Foreign Nationals Act*	3.5 years
Quebec Act respecting labour standards	*See note***
New Brunswick *Employment Standards Act*	1 year
Nova Scotia *Labour Standards Code*	6 months

* No time limit is prescribed in WRAPA. However, in practice, complaints filed under WRAPA will generally follow consistent requirements under the associated Employment Standards legislation which has a six-month time limit on complaints regarding unpaid wages. That being said, discretion may be exercised to extend the limit beyond six months for WRAPA cases when the circumstances are deemed fit by authorities.

[43] Limitation period details with respect to enforcement in each jurisdiction are not explored here.

** Depending on the type of complaint, the time limits to file a complaint vary from 45 days to two years from the date of the event in question. A one-year time limit applies to claim an amount owing, which would apply in case of illegal wage recovery or charging of recruitment fees.

Complaints, including any associated statements, documentation or other evidence are then reviewed by the respective office for further action, which could look like different types of dispute resolution, including negotiation, mediation, investigation, or director orders to come into compliance, depending on the case and jurisdiction.

Whistleblower protection

Migrant workers should be able to present their grievances and obtain recourse without fearing retaliation from their employer or recruiter. At times, fear of reprisal or retribution is compounded by the requirement to proceed with a formal named (i.e., not anonymous) complaint in certain circumstances. Some provinces have anti-reprisal or "whistleblower" provisions in their legislation to address this matter. These are in place in the relevant statutes in British Columbia, Saskatchewan, Ontario, and Quebec. These laws prohibit either the employer, recruiter, or both from taking retributive actions against workers when they try to exercise their rights, including making a complaint, under the respective legislation.

In Quebec, the *Act respecting Labour Standards* provides that if, following an inquiry, the CNESST has grounds to be believe that one of the rights of a migrant worker under the Act or a regulation has been violated, the CNESST may exercise any recourse on behalf of the worker, even if no complaint is filed. Under the EPFNA in Ontario, the burden of proof is placed on the employer or recruiter in a proceeding involving an alleged reprisal, with some exceptions. The effect of this provision is to require the accused (e.g., recruiter or employer) to refute the claim of that the worker has been the subject of a reprisal. The person against whom the contravention is alleged must then establish, on a balance of probabilities, that they did not contravene the reprisal prohibition.

Prohibitions against reprisal by province

<table>
<tr><th>Province</th><th>Relevant Provision</th></tr>
<tr><td>British Columbia
Temporary Foreign Worker Protection Act</td><td>Prohibited practices
20 Foreign worker recruiters and employers must not do any of the following:
(e) take action against or threaten to take action against a person for participating in an investigation or proceeding by any government or law enforcement agency or for making a complaint or inquiry to any government or law enforcement agency.</td></tr>
<tr><td>Saskatchewan
Foreign Worker Recruitment and Immigration Services Act</td><td>Prohibited practices
22(f) No foreign worker recruiter, employer or immigration consultant shall take action against or threaten to take action against a person for participating in an investigation or proceeding by any government or law enforcement agency or for making a complaint to any government or law enforcement agency.</td></tr>
<tr><td>Ontario
Employment Protection for Foreign Nationals Act</td><td>Prohibitions against reprisal
Reprisal by employer
10(1) No person who employs a foreign national, and no person acting on the employer's behalf, shall intimidate or penalize or attempt to threaten to intimidate or penalize the foreign national because he or she,
(a) Asks any person to comply with this Act;
(b) Makes inquiries about his or her rights under this Act;
(c) Files a complaint with the Ministry under this Act;
(d) Exercises or attempts to exercise a right under this Act;
(e) Gives information to an employment standards officer; or
(f) Testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act.
Reprisal by recruiter
(2) No person acting a recruiter in connection with the employment of a foreign national, and no person acting on the recruiter's behalf, shall intimidate or penalize or attempt or threaten to intimidate or penalize the foreign national because he or she,
(a) asks any person to comply with this Act or the Employment Standards Act, 2000;
(b) makes inquiries about his or her rights under this Act or the Employment Standards Act, 2000;
(c) files a complaint with the Ministry under this Act or the Employment Standards Act, 2000;
(d) exercises or attempts to exercise a right under this Act or the Employment Standards Act, 2000;
(e) gives information to an employment standards officer; or
(f) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act or the Employment Standards Act, 2000.</td></tr>
<tr><td>Quebec
Act respecting labour standards</td><td>92.10. If, following an inquiry, the Commission has grounds to believe that one of the rights of a temporary foreign worker under this Act or a regulation has been violated, the Commission may, even if no complaint is filed and if no settlement is reached, exercise any recourse on behalf of the worker.
122. No employer or his agent may dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him, or impose any other sanction upon him
(1) on the ground that such employee has exercised one of his rights, other than the right contemplated in section 84.1, under this Act or a regulation;
(1.1) on the ground that an inquiry is being conducted by the Commission in an establishment of the employer;
(2) on the ground that such employee has given information to the Commission or one of its representatives on the application of the labour standards or that he has given evidence in a proceeding related thereto.</td></tr>
</table>

8. EFFECTIVE ENFORCEMENT

Governments should effectively enforce relevant laws and regulations, and require all relevant actors in the recruitment process to operate in accordance with the law.

Key questions: How are most inspections triggered – proactively or by complaints? What are the administrative or penal sanctions if employers or recruiters contravene relevant laws and regulations? What operational challenges exist for effective enforcement?

Governments should require that all relevant actors in the recruitment process operate in accordance with the law, through sufficiently resourced inspectorates. So far, this paper has provided an overview of the provincial legal frameworks under which labour recruiters and employers of migrant workers operate. This section draws attention to the importance of ensuring that these laws are effectively enforced. At the same time, it is outside scope to assert any findings with respect to genuine effectiveness of enforcement of the regulatory approaches under review. Identifying distinct gaps between law and enforcement requires much deeper insight into how inspection bodies are resourced and trained (well or at all), the number of inspections and non-compliance findings year after year, the extent to which violations occur without ensuing enforcement actions, among many other considerations. As such, this section will simply provide a brief summary of what is known: the way in which inspections are generally launched, the key administrative and penal sanctions in place and their potential deterrence value, and a few known operational challenges related to enforcement.

PROACTIVE AND REACTIVE INSPECTIONS

Proactive enforcement is generally considered best practice because it does not rely on complaints to trigger inspections or investigations, as is the case in reactive models. Proactive inspections rely instead on risk factors and compliance history to target certain sectors. Tips and media sources may also initiate an inspection without a complaint on file against a recruiter or employer. For regimes that rely entirely on complaints to initiate an audit, inspection, or investigation, the barriers that migrant workers face in filing complaints described in section 7 should be kept in mind.

The majority of inspections undertaken under Manitoba's WRAPA, Nova Scotia's LSC, and Saskatchewan's FWRISA are proactive; in fact, Manitoba is considered to have pioneered this model. Last year (2019-20), Ontario's inspections under EPFNA were mostly proactive as well. As British Columbia and Quebec only recently introduced legislation at the time of writing, their inspection regimes are not yet ready for discussion. New Brunswick and Alberta both operate mostly complaint-driven inspection models.

ADMINISTRATIVE CONSEQUENCES AND PENAL SANCTIONS

Enforcement involves a series of consequences and sanctions that serve as deterrents against contravening the law. If a contravention of relevant legislation or regulation during the course of an inspection or investigation is found, there are usually a range of administrative consequences and penal sanctions available. Beyond voluntary resolution or compliance, provinces have a number of administrative consequences to pursue. Consequences differ across jurisdictions and may include warnings, orders to repay fees (from recruiter) and costs (from employer), compensation orders, reinstatement, undertakings, and monetary penalties. As discussed in section 3, in provinces with recruiter licensing or employer registration requirements, additional levers exist to refuse applications or suspend, cancel, or apply terms and conditions to valid

licences or registration certificates. In case of refusal, suspension, cancellation, this means a loss of a recruiter's right to practice or an employer's ability to hire migrant workers, potentially impacting livelihood. The administrative enforcement action taken by authorities typically depends on a number of considerations regarding the nature of the contravention at hand, including whether it was deliberate or accidental, serious or minor, first time or repeated, and so on.

Persons or corporations that contravene the relevant legal obligations under review may also be found guilty of an offence, liable upon conviction of fines or imprisonment. At the time of writing, no contravention under any of the relevant legislation discussed in this paper had been escalated to prosecute with criminal sanctions. In terms of deterrence value, the prospect of large fines or prison time is significant, though the fact that these consequences are relatively improbable among the range of enforcement actions is worth noting.

Table 10: Potential criminal sanctions

Relevant Province and Legislation	Fine – Individual	Fine - Corporation	Imprisonment – Individual
British Columbia *Temporary Foreign Worker Protection Act*	$50,000	$100,000	1 year
Alberta *Employment Agency Business Licensing Regulation*	$300,000	$300,000	2 years
Saskatchewan *Foreign Worker Recruitment and Immigration Services Act*	$50,000	$100,000	1 year
Manitoba *Worker Recruitment and Protection Act*	$25,000	$50,000	None
Ontario *Employment Protection for Foreign Nationals Act*	$50,000	$100,000	1 year
Quebec *Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers*	$600-6,000; $1,200-$12,000 on subsequent offense	$600-6,000; $1,200-$12,000 on subsequent offense	None
New Brunswick *Employment Standards Act*	N/A	N/A	N/A
Nova Scotia *Labour Standards Code*	$5,000	$25,000	3 months (if subsequent offence)

OPERATIONAL CHALLENGES

The matter of recruiters operating outside of the respective province and Canada (i.e., overseas) can be considered a "jurisdictional conundrum" for regulators. As discussed in section 3, international labour recruitment often takes place over labour supply chains that often involve more than one agent outside Canada. Holding all actors accountable for exploitative or abusive recruitment practices can be challenging without levers and authorities that span outside of the province's legal jurisdiction.

In cases where recruiters are required to be licensed, it is generally accepted that unlicensed and informal recruiters continue to operate outside of the legal framework. Tracking down and bringing these informal actors into the fold can be resource intensive and difficult. This is especially the case when migrant workers are unwilling to come forward and provide sufficient evidence to undertake this degree of enforcement.

Lack of evidence and complaints from migrant workers experiencing unfair recruitment practices, like fee charging or passport confiscation is perhaps one of the most common operational challenge for inspectorates. Even if the enforcement model does not need a complaint to launch an inspection, without sufficient evidence from migrant workers, it may be impossible at times to prove that fees were charged, or that protective measures were contravened by their employer or recruiter. For example, a recruiter might argue all of the services offered and charged were immigration assistance to evade the prohibition against charging for recruitment services. Inspectorates need a willing party, that is, a migrant worker with a testimony and paper trail, to help differentiate fees in those circumstances.

The lack of comprehensive information sharing across jurisdictions, just within Canada (between the federal government and the provinces, and between the provinces themselves), is also a significant barrier to effective enforcement. Since labour recruiters tend to recruit migrant workers to multiple provinces in Canada, sharing knowledge of trends, including case-specific recruitment-related abuse, would serve an important goal to ensure cooperation among jurisdictions. With the notable exception of the recruitment of seasonal agricultural migrant workers under the SAWP, there is a general lack of formal cooperation between Canada/Canadian provinces and countries of origin with respect to fair international labour recruitment regulation (through bilateral agreements or memorandums of understanding). This can inhibit consistent rules and obligations for employers and recruiters across the international corridor, among other issues.

Only sticks, no carrots

As a final observation, the enforcement frameworks reviewed here are principally composed of a series of potential penalties to deter non-compliant behaviour. Administrative consequences, penal sanctions, and loss of licence or registration are in place to serve as "sticks" to bring about compliance. No clear rewards or "carrots" are provided to incentivize legal conduct. Rewarding trusted actors who demonstrate consistent compliance may be another enforcement route for provincial regulators and their federal immigration and labour partners to consider.

CONCLUSION: AN UNEVEN PATCHWORK OF PROTECTIONS

Taken together, the sum of provincial regulatory approaches to international labour recruitment and employment is an intricate patchwork: uneven in protections and characterized by variance in scope, content, and sanctions. And this patchwork is further complicated by the way in which it irregularly layers with federal matters of immigration, including its laws and programs. From any perspective, be it from the view of a migrant worker, an employer, a recruiter, or a government, these laws are challenging to grasp at once. The consequence is markedly distinct coverage of migrant worker protections across Canada and inconsistency of rules for relevant players, including recruiters active in multiple jurisdictions.

That being said, provincial regulators across Canada have undertaken important and complex work to put in place legal safeguards to ensure that the recruitment and employment of migrant workers is fair and safe. These efforts, much of which align with fair recruitment principles, are encouraging and commendable. But with so many different governmental and non-state actors involved in these layers and reports of recruitment-related abuse and exploitation persisting, it is fair to ask:

- How can regulatory efforts be made better in this context?
- How can provincial and federal governments work together to make sense of this patchwork and fill gaps where they exist?
- Is an endeavour to simplify or streamline these approaches viable, and if so, how?

Finally, coming back to the analogy of the mangrove and the intertwined nature of immigration, employment, and recruitment law in these unique employment relationships, how can the respective federal and provincial regulators strengthen each other's objectives, as tree roots do?

At the very least, this paper serves as a reference material and resource to kick-start the crucial and thoughtful research and policy work to come.

APPENDIX I: WORK PERMIT STATISTICS

Table 11: Work permit holders* signed in 2018, by province, program and work permit type*****

Province	Program	Work permit type	2018
Newfoundland and Labrador (2,470)	TFWP	Employer-specific	410
	IMP	Employer-specific	1,025
	IMP	Open	1,045
Prince Edward Island (2,080)	TFWP	Employer-specific	820
	IMP	Employer-specific	525
	IMP	Open	745
Nova Scotia (7,420)	TFWP	Employer-specific	2,035
	IMP	Employer-specific	1,640
	IMP	Open	3,755
New Brunswick (4,445)	TFWP	Employer-specific	1,320
	IMP	Employer-specific	1,170
	IMP	Open	2,000
Quebec (85,005)	TFWP	Employer-specific	17,665
	IMP	Employer-specific	15,590
	IMP	Open	52,060
Ontario (207,035)	TFWP	Employer-specific	31,805
	IMP	Employer-specific	30,515
	IMP	Open	145,190
Manitoba (13,680)	TFWP	Employer-specific	1,170
	IMP	Employer-specific	3,000
	IMP	Open	9,580
Alberta (36,155)	TFWP	Employer-specific	7,090
	IMP	Employer-specific	6,890
	IMP	Open	22,340
British Columbia (82,340)	TFWP	Employer-specific	20,445
	IMP	Employer-specific	14,420
	IMP	Open	47,815
Yukon (675)	TFWP	Employer-specific	95
	IMP	Employer-specific	385
	IMP	Open	205
Northwest Territories (240)	TFWP	Employer-specific	20
	IMP	Employer-specific	110
	IMP	Open	115
Nunavut (100)	TFWP	Employer-specific	55
	IMP	Employer-specific	25
	IMP	Open	15
Not stated (48,235)	TFWP	Employer-specific	570
	IMP	Employer-specific	1,925
	IMP	Open	45,745
Grand Total			**495,990**

*work permits issued for all purposes – **work permit classification: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) – ***work permit indicator: open and employer-specific
Note: Numbers may not total due to rounding.
Source: IRCC Temporary Residents, October 31st, 2019 data

Table 12: Temporary Foreign Worker Program (TFWP) work permit holders signed in 2018, by province and NOC skill level

Province	Skill Level	TFWP work permit holders
Newfoundland and Labrador	0 - Managerial	15
	A - Professionals	20
	B - Skilled and Technical	250
	C - Intermediate and Clerical	115
	D - Elemental and Labourers	—
Newfoundland and Labrador	**Total**	**410**
Prince Edward Island	0 - Managerial	5
	A - Professionals	—
	B - Skilled and Technical	15
	C - Intermediate and Clerical	785
	D - Elemental and Labourers	15
Prince Edward Island	**Total**	**820**
Nova Scotia	0 - Managerial	45
	A - Professionals	65
	B - Skilled and Technical	160
	C - Intermediate and Clerical	1,710
	D - Elemental and Labourers	55
Nova Scotia	**Total**	**2,035**
New Brunswick	0 - Managerial	—
	A - Professionals	15
	B - Skilled and Technical	100
	C - Intermediate and Clerical	1,175
	D - Elemental and Labourers	35
New Brunswick	**Total**	**1,320**
Quebec	0 - Managerial	140
	A - Professionals	1,140
	B - Skilled and Technical	1,490
	C - Intermediate and Clerical	13,575
	D - Elemental and Labourers	1,280
Quebec	**Total**	**17,665**
Ontario	0 - Managerial	425
	A - Professionals	1,105
	B - Skilled and Technical	2,730
	C - Intermediate and Clerical	26,030
	D - Elemental and Labourers	1,435
Ontario	**Total**	**31,805**
Manitoba	0 - Managerial	15
	A - Professionals	110
	B - Skilled and Technical	190
	C - Intermediate and Clerical	710
	D - Elemental and Labourers	15
Manitoba	**Total**	**1,170**

Province	Skill Level	TFWP work permit holders
Saskatchewan	0 - Managerial	10
	A - Professionals	30
	B - Skilled and Technical	240
	C - Intermediate and Clerical	505
	D - Elemental and Labourers	25
Saskatchewan	**Total**	**810**
Alberta	0 - Managerial	160
	A - Professionals	190
	B - Skilled and Technical	3,340
	C - Intermediate and Clerical	3,005
	D - Elemental and Labourers	265
	Not stated	50
Alberta	**Total**	**7,090**
British Columbia	0 - Managerial	415
	A - Professionals	925
	B - Skilled and Technical	5,545
	C - Intermediate and Clerical	12,815
	D - Elemental and Labourers	675
	Not stated	105
British Columbia	**Total**	**20,445**
Yukon	A - Professionals	50
	B - Skilled and Technical	35
	C - Intermediate and Clerical	10
	D - Elemental and Labourers	—
Yukon	**Total**	95
Northwest Territories	B - Skilled and Technical	5
	C - Intermediate and Clerical	10
Northwest Territories	**Total**	20
Nunavut	A - Professionals	—
	B - Skilled and Technical	30
	C - Intermediate and Clerical	20
	D - Elemental and Labourers	—
Nunavut	**Total**	**55**
Not stated	0 - Managerial	10
	A - Professionals	35
	B - Skilled and Technical	85
	C - Intermediate and Clerical	420
	D - Elemental and Labourers	10
Not stated	**Total**	570
Grand Total		**79,555**

Note: “Not stated” skill level represents total of New Workers, Others Non-Workers, and Not stated skill level
Note: “—“ replaces numbers below 5. Due to rounding, numbers may not total correctly.
Source: IRCC Temporary Residents, October 31st, 2019 data

Table 13: International Mobility Program (IMP) employer-specific work permit holders signed in 2018, by province and NOC skill level

Province	Skill Level	IMP work permit holders
Newfoundland and Labrador	0 - Managerial	115
	A - Professionals	280
	B - Skilled and Technical	550
	C - Intermediate and Clerical	45
	D - Elemental and Labourers	35
	Not stated	**10**
Newfoundland and Labrador	**Total**	**1,025**
Prince Edward Island	0 - Managerial	80
	A - Professionals	50
	B - Skilled and Technical	250
	C - Intermediate and Clerical	130
	D - Elemental and Labourers	15
Prince Edward Island	**Total**	**525**
Nova Scotia	0 - Managerial	155
	A - Professionals	600
	B - Skilled and Technical	670
	C - Intermediate and Clerical	190
	D - Elemental and Labourers	10
	Not stated	**15**
Nova Scotia	**Total**	**1,640**
New Brunswick	0 - Managerial	105
	A - Professionals	340
	B - Skilled and Technical	375
	C - Intermediate and Clerical	315
	D - Elemental and Labourers	20
	Not stated	**15**
New Brunswick	**Total**	**1,170**
Quebec	0 - Managerial	1,530
	A - Professionals	7,600
	B - Skilled and Technical	5,725
	C - Intermediate and Clerical	645
	D - Elemental and Labourers	45
	Not stated	**100**
Quebec	**Total**	**15,590**
Ontario	0 - Managerial	5,180
	A - Professionals	17,295
	B - Skilled and Technical	7,235
	C - Intermediate and Clerical	405
	D - Elemental and Labourers	125
	Not stated	**365**
Ontario	**Total**	**30,515**
Manitoba	0 - Managerial	190
	A - Professionals	820
	B - Skilled and Technical	1,020
	C - Intermediate and Clerical	795
	D - Elemental and Labourers	165
	Not stated	**20**
Manitoba	**Total**	**3,000**

Province	Skill Level	IMP work permit holders
Saskatchewan	0 - Managerial	345
	A - Professionals	556
	B - Skilled and Technical	1,710
	C - Intermediate and Clerical	310
	D - Elemental and Labourers	100
	Not stated	**15**
Saskatchewan	**Total**	**3,040**
Alberta	0 - Managerial	925
	A - Professionals	3,080
	B - Skilled and Technical	2,385
	C - Intermediate and Clerical	365
	D - Elemental and Labourers	45
	Not stated	**105**
Alberta	**Total**	**6,890**
British Columbia	0 - Managerial	1,930
	A - Professionals	5,640
	B - Skilled and Technical	5,475
	C - Intermediate and Clerical	550
	D - Elemental and Labourers	755
	Not stated	125
British Columbia	**Total**	**14,420**
Yukon	0 - Managerial	20
	A - Professionals	45
	B - Skilled and Technical	120
	C - Intermediate and Clerical	80
	D - Elemental and Labourers	120
Yukon	**Total**	**385**
Northwest Territories	0 - Managerial	15
	A - Professionals	20
	B - Skilled and Technical	50
	C - Intermediate and Clerical	10
	D - Elemental and Labourers	15
Northwest Territories	**Total**	**110**
Nunavut	0 - Managerial	—
	A - Professionals	10
	B - Skilled and Technical	10
	Not stated	—
Nunavut	**Total**	**25**
Not stated	0 - Managerial	385
	A - Professionals	810
	B - Skilled and Technical	580
	C - Intermediate and Clerical	70
	D - Elemental and Labourers	5
	Not stated	80
Not stated	Total	1,925
Grand Total		**79,555**

Note: "—" replace numbers below 5. Due to rounding, numbers may not total correctly.
Source: IRCC Temporary Residents, October 31st, 2019 data

Appendix II: Relevant international norms on fair recruitment

ILO general principles for fair recruitment

1. Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
2. Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
3. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
4. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
5. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
7. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
8. The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.
9. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.
10. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

11. Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.

12. Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.

13. Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

ILO MULTILATERAL FRAMEWORK ON LABOUR MIGRATION

Objective 13. Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188).

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

13.1. providing that recruitment and placement services operate in accordance with a standardized system of licensing or certification established in consultation with employers' and workers' organizations;
13.2. providing that recruitment and placement services respect migrant workers' fundamental principles and rights;
13.3. ensuring that migrant workers receive understandable and enforceable employment contracts;
13.4. providing arrangements to ensure that recruitment and placement services do not recruit, place or employ workers in jobs which involve unacceptable hazards or risks or abusive or discriminatory treatment of any kind and informing migrant workers in a language they understand of the nature of the position offered and the terms and conditions of employment;
13.5. working to implement legislation and policies containing effective enforcement mechanisms and sanctions to deter unethical practices, including provisions for the prohibition of private employment agencies engaging in unethical practices and the suspension or withdrawal of their licences in case of violation;
13.6. consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them;
13.7. providing that fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers;
13.8. providing incentives for recruitment and placement services that meet recognized criteria for good performance.

GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

Objective 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work

We commit to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination.

To realize this commitment, we will draw from the following actions:

1. Promote signature and ratification of, accession to and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour;
2. Build upon the work of existing bilateral, subregional and regional platforms that have overcome obstacles and identified best practices in labour mobility, by facilitating cross-regional dialogue to share this knowledge, and to promote full respect for the human and labour rights of migrant workers at all skills levels, including migrant domestic workers;
3. Improve regulations on public and private recruitment agencies in order to align them with international guidelines and best practices, and prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour, including by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry;
4. Establish partnerships with all relevant stakeholders, including employers, migrant workers' organizations and trade unions, to ensure that migrant workers are provided with written contracts and are made aware of the provisions therein, the regulations relating to international labour recruitment and employment in the country of destination, and their rights and obligations, as well as of how to access effective complaint and redress mechanisms, in a language they understand;
5. Enact and implement national laws that sanction human and labour rights violations, especially in cases of forced and child labour, and cooperate with the private sector, including employers, recruiters, subcontractors and suppliers, to build partnerships that promote conditions for decent work, prevent abuse and exploitation, and ensure that the roles and responsibilities within the recruitment and employment processes are clearly outlined, thereby enhancing supply chain transparency;
6. Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors, ensuring that international human rights and labour law is observed to prevent all forms of exploitation, slavery, servitude and forced, compulsory or child labour;
7. Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law;

8. Take measures that prohibit the confiscation or non-consensual retention of work contracts and travel or identity documents from migrants, in order to prevent abuse, all forms of exploitation, forced, compulsory and child labour, extortion and other situations of dependency, and to allow migrants to fully exercise their human rights;
9. Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions;
10. Ensure that migrants working in the informal economy have safe access to effective reporting, complaint and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace, in a manner that does not exacerbate vulnerabilities of migrants who denounce such incidents and allows them to participate in respective legal proceedings whether in the country of origin or the country of destination;
11. Review relevant national labour laws, employment policies and programmes to ensure that they include considerations of the specific needs and contributions of women migrant workers, especially in domestic work and lower-skilled occupations, and adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse, including sexual and gender-based violence, as a basis to promote gender-responsive labour mobility policies;
12. Develop and improve national policies and programmes relating to international labour mobility, including by taking into consideration relevant recommendations of the ILO General Principles and Operational Guidelines for Fair Recruitment, the United Nations Guiding Principles on Business and Human Rights and the International Organization for Migration (IOM) International Recruitment Integrity System (IRIS).

ILO DEFINITION OF RECRUITMENT FEES AND COSTS

The terms "recruitment fees" and "related costs" refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits. The recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who have the right to freedom of movement for the purpose of employment, within the framework of regional economic integration areas.

Recruitment fees include:

– payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
– payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
– payments made in the case of direct recruitment by the employer; or
– payments required to recover recruitment fees from workers.

These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, placement into employment.

Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment. These costs are listed below and may apply to both national and international recruitment. Depending on the recruitment process and the context, these cost categories could be further developed by the government and the social partners at the national level. It is recognized that the competent authority has flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:

– they are in the interest of the workers concerned; and
– they are limited to certain categories of workers and specified types of services; and
– the corresponding related costs are disclosed to the worker before the job is accepted.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:

- **Medical costs**: payments for medical examinations, tests or vaccinations;
- **Insurance costs**: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds;
- **Costs for skills and qualification tests**: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;

- **Costs for training and orientation**: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- **Equipment costs**: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively;
- **Travel and lodging costs**: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation;
- **Administrative costs**: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

Enumeration of related costs in this definition is generalized and not exhaustive. Other related costs required as a condition of recruitment could also be prohibited. These costs should be regulated in ways to respect the principle of equality of treatment for both national and migrant workers.

Illegitimate, unreasonable and undisclosed costs

Extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Anti-bribery and anti-corruption regulation should be complied with at all times and at any stage of the recruitment process. Examples of such illegitimate costs include: bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain.

APPENDIX III: SELECT PROVINCIAL REFERENCE DOCUMENTS

SASKATCHEWAN RECRUITER CODE OF CONDUCT

Code of Conduct for Foreign Worker Recruiters

[Appendix of Foreign Worker Recruitment and Immigration Services Regulations]

Interpretation

In this code:

- “Act” means The Foreign Worker Recruitment and Immigration Services Act;
- “affiliate” means, with respect to a foreign worker recruiter, a person other than an agent, partner or employee of the foreign worker recruiter who has a business relationship with the foreign worker recruiter to provide services to or for the foreign worker recruiter that are related to the recruitment of foreign workers or the provision of immigration services;
- “agent” means, with respect to a foreign worker recruiter, a person, other than an affiliate, partner or employee of the foreign worker recruiter, who is authorized by the foreign worker recruiter to act for the foreign worker recruiter on matters related to the recruitment of foreign workers or the provision of immigration services;
- “employer” means a person who hires or recruits a foreign national and includes an agency that represents a group of persons who hire or recruit foreign nationals;
- “partner” means, with respect to a foreign worker recruiter, a person other than an affiliate, agent or employee of the foreign worker recruiter who carries on the business of recruiting foreign workers in conjunction with the foreign worker recruiter with a view to profit;
- “unlawful activity” means an act or omission that, at the time of the occurrence, is contrary to the laws of Canada, of Saskatchewan, of another province or territory of Canada, of another country or of a state within that country.

This code is to be read subject to the Act and the regulations made pursuant to the Act.

Purpose of code

This code establishes standards of professional conduct for licensed foreign worker recruiters and provides guidance for their practice.

Application of code

This code applies to all licensed foreign worker recruiters.

Prohibitions

No licensed foreign worker recruiter shall:

a) engage in any unlawful activity;
b) provide advice or create false expectations that would lead a foreign national to divest assets, quit his or her job or relocate without certainty of the right to work in Canada;
c) represent, either expressly or by implication, that services provided by the foreign worker recruiter are endorsed by the Government of Saskatchewan.

Professional responsibilities

Every licensed foreign worker recruiter shall:

a) provide assistance and services in a fair, honest, open, timely and competent manner and only with respect to matters that the foreign worker recruiter is capable of handling;
b) forward all communications addressed to or from a foreign national or the foreign national’s potential employer without alteration or undue delay;
c) hold in strict confidence all information related to a foreign national’s job application, all other personal information related to the foreign national and all information respecting an employer’s recruitment activities and not divulge that information unless authorized by the foreign national or the employer or required by law;
d) provide truthful, accurate and complete information in all communication to a foreign national, his or her potential employer and any ministry or agency of the Government of Saskatchewan, any department or agency of the Government of Canada or department or agency of the government of another province or territory of Canada; and
e) ensure, to the best of his or her ability, the authenticity of the documents and the truthfulness of the information provided to the minister.

Report of breach

Subject to the duty of confidentiality in clause 5(c), a licensed foreign worker recruiter shall report to the director any conduct that the recruiter reasonably believes is a contravention of the Act, the regulations made pursuant to the Act or this code.

Competence

1) For the purposes of this code, “competence” means having adequate skill, ability and knowledge to engage in the practice of being a foreign worker recruiter.
2) A licensed foreign worker recruiter has a duty to be competent to perform any services undertaken for an employer in connection with recruiting a foreign national.
3) A licensed foreign worker recruiter shall at all times use best efforts to adapt to changing laws, requirements, and standards.

Response to illegality

If a licensed foreign worker recruiter is employed or retained by a person to act in a matter the licensed foreign worker recruiter knows is dishonest, fraudulent, criminal or illegal with respect to that matter, the licensed foreign worker recruiter shall:

a) advise the person that the proposed conduct would be dishonest or unlawful and should be stopped; and
b) if the person, despite the advice, intends to pursue the proposed course of conduct, withdraw from acting in the matter.

Required action on discovery of error or omission

If a licensed foreign worker recruiter discovers, in connection with a matter for which the licensed foreign worker recruiter was retained, an error or omission that is or may be damaging to the employer or the foreign national and that cannot be readily rectified, the licensed foreign worker recruiter shall:

a) promptly and fully inform the employer or foreign national of the error or omission, and, when so informing, make every reasonable effort to not prejudice any rights of indemnity that either of them may have under an insurance or clients’ protection or indemnity plan or otherwise;
b) recommend that the employer or foreign national obtain legal advice elsewhere concerning any rights the employer or foreign national may have arising from the error or omission; and
c) advise the employer or foreign national that in the circumstances, the licensed foreign worker recruiter may no longer be able to act for the employer or foreign national.

Supervision of partners, affiliates, agents and employees

A licensed foreign worker recruiter is fully responsible for all work entrusted to his or her employees, partners, affiliates and agents.

Maintenance of contact information

A licensed foreign worker recruiter shall immediately notify the ministry and the employers and foreign nationals to whom the licensed foreign worker recruiter is providing recruiting services or with whom the licensed foreign worker recruiter is dealing of any changes in contact information, including the licensed foreign worker recruiter’s home and business address, telephone number and email address.

Obligation to respond to ministry

A licensed foreign worker recruiter shall reply promptly to any communication from the director or the minister.

Saskatchewan ethical conduct disclosure and consent form

Foreign nationals must read and sign this Ethical Conduct Disclosure if they are:

- assisted by anyone with their immigration application; and/or
- recruited by a foreign worker recruiter for a Saskatchewan employer.
- anyone who is living in Canada and is not a Canadian citizen or a permanent resident is a foreign national.

This includes paid and unpaid assistance or recruitment unless it is provided by a family member or an organization or individual exempted under The Foreign Worker Recruitment and Immigration Service Act.

Foreign nationals coming to Saskatchewan through Immigration, Refugees and Citizenship Canada (IRCC), temporary resident classes or through the Saskatchewan Immigrant Nominee Program (SINP) are protected under The Foreign Worker Recruitment and Immigration Services Act (Saskatchewan) and The Immigrant and Refugee Protection Act (Canada).

Protections under The Foreign Worker Recruitment and Immigration Services Act, its regulations and Codes include:

1) No person can, directly or indirectly, charge any person other than an employer, a fee or expense for recruitment services. This means you cannot be charged a fee by a foreign worker recruiter, immigration consultant, employer or anyone else for finding you a job with a Saskatchewan employer or helping you find a job.
2) You can be charged fees for immigration services that is, for assistance in preparing an immigration application, representing you with immigration authorities or providing you or your family with settlement services. These services must be provided under a written contract signed by you that identifies the services and their cost. You do not have to pay charges that are not clearly identified in a signed contract.
3) Your immigration consultant, foreign worker recruiter, or employer cannot:
   a) produce or distribute false or misleading information;
   b) take possession of or retain your passport or other official documents or property;
   c) misrepresent employment opportunities, including misrepresentations respecting position, duties, length of employment, wages and benefits or other terms of employment;
   d) threaten deportation or other action for which there is no lawful cause;
   e) contact you or your family or friends after being requested not to do so by you;
   f) take action against or threatening to take action against you or anyone else for participating in an investigation or proceeding by any government or law enforcement agency or for making a complaint to any government or law enforcement agency; or
   g) take unfair advantage of your trust or exploit a foreign national's fear or lack of experience or knowledge.
4) A foreign worker recruiter or paid immigration representative must:
   a) provide assistance/services to you in a fair, honest, open, timely and competent manner and only with respect to matters that you are capable of handling;
   b) forward to you all communications addressed to or for you from the SINP or IRCC or your potential employer without alteration or undue delay;
   c) hold in strict confidence, all applicant information related to your immigration or job application or other personal information and not divulge such information unless authorized by you or required by law; and,
   d) provide truthful, accurate and complete information in all communication to you, SINP and IRCC officials and your potential employer at all times.
5) Your foreign worker recruiter or paid immigration representative must not:
   a) make any false or inaccurate statement, or present any falsified document, which may mislead provincial or federal immigration authorities about your identity, background, qualifications, experience, or any other relevant matter;
   b) encourage you to apply to a federal or provincial immigration program unless you have a reasonable chance of being eligible;
   c) engage in any unlawful activity in connection with your or any other immigration application to Canada and must not collaborate with anyone who is engaged in any unlawful activity;
   d) behave in an inappropriate manner towards immigration officials in an attempt to influence decisions regarding your application;
   e) knowingly submit or continue with your SINP application if they believe you do not intend to settle (live and work/be an entrepreneur) in Saskatchewan or to work for an employer in Saskatchewan as you have indicated in your application; and,
   f) f) provide advice or create false expectations which would lead you to divest assets, quit your job or relocate without certainty of legal residence and right to work in Canada.

Additionally, whether your immigration representative is paid or unpaid, you should understand that:

a) your representative is an independent agent and is not a representative of the Government of Saskatchewan or Canada or their ministries and agencies;
b) your representative does not receive additional or supplemental information on programs from the Government of Saskatchewan or Canada or their ministries and agencies which may expedite your application
c) using the services of a representative will not result in any special consideration or priority processing of your application to the SINP or IRCC;
d) the Governments of Saskatchewan and Canada do not require you to use the services of a representative in making an application;
e) you may contact the SINP or IRCC directly, even if you have authorized a representative to assist you and act as your representative;
f) SINP and IRCC immigration forms are available free of charge on the Government of Saskatchewan and Government of Canada website and you cannot be charged for those forms; and,
g) Your representative is personally accountable to you and federal and provincial immigration authorities respecting all aspects of your application.

Conflict of Interest

Your foreign worker recruiter or immigration consultant must, by law, deal with potential conflicts between your best interest and their interests as follows:

1) If they are acting as your immigration consultant and providing recruitment services to your employer or potential employer, they must:
   a) disclose to both you and the employer that he/she is acting for both parties and the nature of the services that they are providing to each party;
   b) obtain the written consent of you and the employer to provide those services to both parties; and,
   c) have signed, written contracts with you and the employer.
2) They must clearly disclose in writing to you if they receive any fee or compensation for referring you to another person.

Making a Complaint

If you believe your immigration representative, foreign worker recruiter or employer has contravened these rules and guidelines, you may:

- Cancel the appointment of your immigration representative at any time. If you do so, you should immediately advise the SINP and IRCC, as appropriate, of the cancellation.
- Make a complaint to the Program Integrity and Legislation Unit at (306) 798-1350. This is an agency of the Government of Saskatchewan that investigates complaints by foreign nationals coming to Saskatchewan.
- Submit a complaint with the Immigration Consultants of Canada Regulatory Council (ICCRC), in the case of an issue with your paid immigration representative.
- Make a complaint to the IRCC office dealing with your application.

I have read and understand the protections for foreign nationals described above.

Foreign National’s Signature

Date