

December 30, 2023

To: Standing Committee on Citizenship and Immigration

Re: Study on Closed Work Permits and Temporary Foreign Workers

Submitted by: Alliance for Gender Justice in Migration (AGJM)

Att: Keelan Buck, Clerk of the Committee, CIMM@parl.gc.ca

Introduction

The conditions behind gendered experiences of violence are maintained by dynamics marked by power differentials, resulting in various forms of Gender-based Violence that are physical, emotional, psychological, sexual, economic etc. (Canadian Women's Foundation, n.d.; UNHCR, n.d.; UN Women, n.d.).

Various investigations, including those conducted by the UN Special Rapporteur on contemporary forms of slavery, as well as Amnesty International have found that closed work permits create a breeding ground for gendered forms of violence (Amnesty International, 2016; OHCHR, 2023). While options may exist on paper, realistic and timely exit routes from such abusive employment situations are inadequate and ineffective band-aid solutions, due to immigration policies, bureaucracy, a lack of culturally sensitive and trauma-informed approaches, as well as language and financial barriers etc. Not only do women and gender-diverse individuals with precarious immigration status suffer from violence but they also experience entrapment. Thus, not only are they cornered, but they find their back against the wall, no matter where they turn.

It is imperative that systemic root issues are addressed so that women and gender-diverse migrants, the very same people who ensure we have food in our grocery stores, and take care of the children and elderly in our neighbourhoods, are protected from harms that have long-lasting negative effects for them but also for the communities they are embedded in. This includes women and gender-diverse people who have been trafficked, who are in Canada on a temporary work permit and are employed in low-paid, precarious jobs, who are refugee claimants, international students, or migrant sex workers, and those who have been exploited by unscrupulous recruiters and immigration practitioners.

Comprised of members across Canada, the Alliance for Justice in Migration (a coalition led by The Vancouver-based Migrant Workers Centre) centres the voices of such women and gender-diverse individuals. We identify trends and promote policy solutions aimed at ending discrimination and violence against women and gender-diverse migrants in Canada. We are a network of people with lived experience, academics, advocates, and service providers who conduct research, develop policy solutions, raise public awareness, and advocate for change by centering the voices of those with lived experience. We are calling for the end of the use of employer-specific work permits in favour of open work permits to reduce the immense power imbalance between employers and women and gender-diverse migrant workers who, otherwise, are left vulnerable to gendered experiences of violence.



Recommendations:

1. End the use of closed work permits in favour of open work permits to increase labour market mobility and reduce the power imbalance between employers and women and gender-diverse individuals with precarious status.
2. Create new pathways to permanent residency for all workers, including for undocumented workers.
3. Modify Provincial Employment Standards to include protection for workers with a major focus on care work and farm work sectors.
4. Provide accessible legal aid services for workers experiencing GBV so they can seek a path forward for leaving their current situation, while being informed and empowered about their next steps.
5. Ensure there are real consequences for recruiters and employers who abuse workers. Increase deterrent value of repercussions to larger fines and more serious sentences. Implement a proactive rather than complaint-driven system where unannounced proactive inspections and investigations are the norm, rather than the exception.
6. The Vulnerable Worker Open Work Permit Program is a band-aid solution that does not address the systemic issues that allow the conditions for rampant exploitation to occur. We advocate for open work permits first and foremost. In the meantime, simplify the process of applying to the VWOWP and ensure the process is not retraumatizing to victims. Provide more comprehensive culturally sensitive and trauma-informed support to victims of work/employer abuse within the process.

The Closed Work Permit: Breeding Ground for Gender-Based Violence

Migrants and especially women and gender-diverse migrant workers, are heavily concentrated within certain sectors in Canada (e.g., domestic and care work, hospitality sector etc.) producing not just a migrant division of labour but a gendered migrant division of labour (Wills et al., 2010).

Gender inequities, stereotypes and discrimination are perpetuated throughout the migration cycle, which can lead to women and gender-diverse people being concentrated in low-paid work and in the informal economy—places where greater violence and exploitation can occur (International Labour Organization, 2023). While filling these occupations (e.g., child or elderly care work roles) is crucial to maintaining the lifestyle of Canadians, women, and gender-diverse migrants' work and contributions are often devalued. In many provinces, workers with precarious status are disproportionately working in occupations excluded from protections under provincial Employment Standards, most notably care work and farm work (Gesualdi-Fecteau & Nakache, 2017). Furthermore, these exclusions from guaranteed labour rights disproportionately affect racialized migrant workers who predominantly serve in sectors excluded. For example, over 90% of care workers in Canada are women, most of whom are from the Philippines, but also from African, Latin American, and Asian countries (Hanley et al., 2017).

Women and gender-diverse individuals in 'low-skilled' streams, such as under the Temporary Foreign Worker Program (TFWP) are especially vulnerable to abusive practices by employers and recruiters, as they receive tied work permits associated with one single employer. They are taken advantage of due to

their structural vulnerability maintained by closed work permits that tie their immigration status to working for a single employer, while, often, having dependents who rely on their income, and having the knowledge that they are legally vulnerable due to immigration laws (Beatson et al., 2017). A significant number of workers who find themselves in low-wage jobs after coming to Canada have experienced exploitation at the hands of recruiters, including demands for exorbitant and illegal recruitment fees (up to \$50,000) and threats and intimidation for not paying fees (Dixon- Perera, 2020; Faraday, 2016).

Indebtedness of this nature can force women and gender-diverse workers to stay in employment situations that are unfair and abusive, increasing the likelihood of forced labour, trafficking and violence (Dixon-Perera, 2020). Issues arising from the charging of recruitment fees and misinformation about the intended employment are often further amplified by employer abuses (Hastie, 2021).

The combination of tied work permits and recruitment fees/abuses place women and gender-diverse workers with precarious status in an extremely vulnerable position which employers often exploit economically through wage theft, extremely long hours, excessive work demands etc. (Migrant Workers Alliance for Change, 2020). Thus, these women and gender-diverse migrants can remain trapped in employment contexts that are sexually, physically, and psychologically abusive due to the existent financial burden placed on them amongst other factors (e.g., desire to obtain permanent residency).

Dynamics maintained and exacerbated by the closed work permit are uniquely dangerous to women and gender-diverse individuals with precarious status. They experience additional layers of harassment in the workplace not experienced by their male counterparts (Faraday, 2015; Noakes, 2015). Research shows that women migrant workers have higher levels of depression, stress, obesity, and hypertension compared to their male counterparts (Edmunds et al., 2011). Poorer working conditions (e.g., long hours, little time off), low pay, harassment etc. are, generally, more likely to be experienced by them than by their male counterparts (ibid.). In addition, women and gender-diverse workers are far more likely than men to suffer certain forms of violence at work, such as those sexual in nature (UN General Assembly, 2019).

Their intersecting social positions, together with a lack of protection and access to justice often leave women and gender-diverse individuals with precarious status vulnerable to sexual harassment, pregnancy discrimination, physical and psychological abuse, as well as economic exploitation by employers and recruiters.

Regardless of the different subprograms under the TFWP, the fundamental features of the program, that workers are tied to employers to have a legal right to remain and work in Canada, creates situations of unfree labour relations (Strauss & McGrath, 2017) and this is what encourages migrants to acquiesce to employers demands and accept unsafe and unfair working conditions.

Strauss and McGrath (2017) argue that the very design of temporary foreign worker programs creates the conditions under which trafficking, unfreedom, and coercion is possible. Living on-site or with an employer exacerbates this unequal power dynamics even further and puts women and gender-diverse migrants in positions of intense vulnerability and exploitation at work. These individuals are particularly at risk of abuse and exploitation due to the invisibility of their labour, which is performed in private settings for employers who are poorly regulated (Wadehra, 2021).

Although there is no live-in requirement under the new caregiver programs, employers may require care workers to remain living in the home to take care of children and/or the elderly. Many care workers

continue to live in their employer's home due to high housing costs and low wages (Bhuyan et al., 2018). In such circumstances, personal and professional boundaries become enmeshed such that migrant care workers lose their privacy and autonomy (ibid.).

They often work long hours without overtime pay. Even during their days off, they may be required to help their employer. Women migrant care workers report that their work responsibilities, long work hours, living-in arrangements, and separation from their families negatively impact their health (Carlos & Wilson, 2018). The psychological impact of these living and working conditions cannot be overstated. This was especially exacerbated during the pandemic as restrictions tightened (Banta & Pratt, 2022).

For example, women and gender-diverse migrant workers during the pandemic were barred from leaving the house, taking public transit, buying groceries, or visiting the doctor (Wadehra, 2021). The overtly racist and patriarchal undertone to these restrictions related to leaving the house or having privacy reflects how racialized women and gender-diverse workers' bodies are treated as property by their employers that they are tied to. Although currently, work permits issued to care workers coming from outside of Canada are no longer employer-specific, migrant care workers who are already inside of the country are still being issued these closed work permits (Aziz, 2022). For many, therefore, the reality of being tied to a single employer who sees them as property affects their everyday working and living conditions.

Much like migrant care workers, many women and gender-diverse individuals of precarious status in the agricultural industry who hold a closed work permit cannot protest the substandard living and working conditions they are exposed to. Speaking up can result in being fired, without the possibility of finding new employment, and can lead to deportation and/or not being hired in the next season. This jeopardizes their ability to support their children and families back home. Restrictions are also placed on women and gender-diverse workers in the agricultural industry where their bodies are seen as property, with instances where they have been deported for leaving the farm without permission from their employers, for attending social events, for receiving male visitors, or for being pregnant (Encalada Grez, 2018).

Some women migrant farm workers face chronic sexual harassment at work, which includes unwanted physical contact, sexual demands, degrading words or gestures, and unwanted kissing or touching of a sexual nature (Ontario Women's Justice Network, 2014). In a more 'masculine' environment they can be seen as 'sexually available' by their male employers and co-workers (Noakes, 2015). However, they often will not report due to fears of not being hired next season and losing valuable income. Other gender-based discrimination includes pregnancy discrimination (Ontario Women's Justice Network, 2014). Having to go through their employer to access sexual and reproductive health services prevents them from accessing the care they need.

For women agricultural migrant workers, another barrier is lack of access to health and reproductive rights. Accessing reproductive or sexual health services, such as birth control and/or abortion, is particularly challenging. This is in part due to the remote locations of farms on which they work, but the gendered stereotyping of women's sexual and reproductive needs, and the dependence on their employers for health information and access, make it ever more difficult. Research indicates that employers view women temporary agricultural workers who arrive pregnant, or become pregnant during their employment period, as 'problematic' (Edmunds et al., 2011). This attitude results in increased monitoring and surveillance of these women. In some instances, pregnant migrant agricultural workers have been fired and have faced difficulties securing a new job due to their closed work permit (Hanley, et al., 2020; Larios, 2023). As we know, for example from BC-based research, female migrant agricultural workers are

often explicitly told not to engage in sexual activities by officials in their home countries for this reason (Cohen & Caxaj, 2018). Given these various factors, women temporary agricultural workers are reluctant to seek assistance, which results in “unmet needs and increased health risks” (Edmunds et al., 2011).

Canadian laws are very clear that pregnancy discrimination is gender discrimination. The purposes of our human rights and Charter laws are to prohibit the impact of regulations that allow gender discrimination to operate.

Although labour protections that protect pregnant workers and parents from workplace discrimination are generally applied to all workers, workers on employer-specific work permits that periodically expire may have employers who refuse to renew them if the worker is pregnant or takes a maternity or parental leave (Larios, 2023). These conditions may be exacerbated for people without formal immigration status due their reliance on informal work, which, generally, lacks protection. Workers may also choose to not take leave as they may be trying to accumulate Canadian work experience or education to eventually apply for permanent residency and do not want to prolong the precarity and family separation often associated with temporary work in Canada (Hanley et al., 2020). These circumstances are compounded by the trauma of separation from their children and families (Pratt, 2012), the stress of ensuring they maintain their occupations so that they are able to send money home to their families, and the pressure to get permanent status.

When the work environment becomes untenable or unsafe, women and gender-diverse migrant workers often feel unable to speak up or seek justice due to fear of losing an important financial resource and/or delaying being able to apply for permanent residence. They often have to endure sexual, physical, psychological gendered forms of violence and, often, minimize what has happened to them (Robillard et al., 2018).

Thus, for many racialized women and gender-diverse migrants, Gender-Based Violence at work is prolonged and ongoing due to the closed work permit, which essentially holds them at the mercy of their abuser—a situation from which many cannot escape from, due to a combination of legal, economic, and social barriers. Employers and those in leadership positions are well aware of the vulnerability of women and gender-diverse individuals with precarious status and utilize this, as well as their financial insecurities, to coerce and control them. This is exacerbated by the fact that policies against recruitment abuses are not rigorously enforced (Faraday, 2019), resulting in women and gender-diverse migrants having to pay back thousands, and sometimes tens of thousands, of dollars charged by recruiters while working minimum wage jobs in Canada.

While on paper, it appears possible to change employers, the reality paints a different picture, as the process can be lengthy and one where women and gender-diverse migrants are left without income. Even if a migrant care worker leaves their job due to unsafe working conditions, the process of finding another employer may be lengthy and would not count towards the length of time needed for qualifying Canadian work experience for permanent residency. Therefore, closed work permits not only enable Gender-Based Violence to occur due to the power imbalance created, but they also have the potential to prolong the length of time during which violence is experienced.

The Path Forward: Beyond Band-Aid Solutions

Migrant workers have been calling for open work permits for years to end these exploitative practices (Barbra Schlifer Commemorative Clinic, 2018). The Special Rapporteur on contemporary forms of slavery has expressed deep concerns specifically with regards to closed work permits that serve as a ‘breeding ground’ for abuses (OHCHR, 2023), such as forms of Gender-Based Violence, some of which we have discussed above. In Canada, lax administration of provisions and the often nominal fines imposed on employers for often-gross breaches suggest that protections for migrant workers exist primarily on paper (Stasiulis et al., 2020). Thus, regardless of the rights that women and gender-diverse workers with precarious immigration status may be entitled to on paper, the systemic barriers that prevent them from accessing their rights leave them exposed to exploitation and Gender-Based Violence.

Initiatives such as the The Vulnerable Worker Open Work Permit Program (VWOWP) offered to migrant workers who have endured abuse are also problematic. Significant issues have been found, such as gaps in understanding of what constitutes abuse by immigration officers, a lack of consideration or incorrect consideration of evidence, high evidentiary burdens, lack of procedural fairness, and enforcement action as a consequence of application (Aziz, 2022).

Several myths related to what constitutes a ‘genuine’ victim of Gender-Based Violence based on westernized and biased notions obstruct access to justice, for instance, misguided beliefs that a ‘genuine victim’ would have reported the incident immediately and would have left an abusive situation (IRBC, 2022). The expectation to simply exit an abusive employment situation under a closed work permit is unrealistic due to the multitude of factors mentioned. The onus is placed on the victim. Thus, the process related to seeking justice when devoid of trauma-informed and culturally sensitive approaches can, often, be retraumatizing in itself.

Gender-Based Violence can be maintained by lack of institutional response and protection. In that sense, the law itself (or lack thereof) becomes legal violence, defined by Menjívar and Abrego (2012) as ‘violence enacted or facilitated through the law’. It exerts its influence and control through various aspects of immigrants’ lives, resulting in immediate social suffering but also results in long-term consequences (ibid.). A lack of institutional protection leaves women and gender-diverse migrants exposed and vulnerable to receiving harms interpersonally from employers (Freedman book, Canadian chapter). The complicity of the federal government by way of their immigration laws and policies allows employers to act with impunity, thereby protecting them from prosecution instead of protecting migrant workers from exploitation and abuse while exacerbating systemic vulnerabilities for migrant women. Meaning, “formal rights have limited meaning if [...] workers are not able to experience the real protection of those rights and are not able to access effective enforcement of those rights” (Faraday, 2012). So, while temporary foreign workers, in theory, have access to the same labour protections and formal rights as citizens and permanent residents, their capacity to exercise their rights and enjoy the protection of the law is hindered by employer-tying federal measures.

The sectoral permit system, often seen as an alternative, has also failed to create labour mobility or improve the rights of migrant workers. Employers are reluctant to hire migrant workers who leave an unsafe and abusive conditions, fearing these workers will be critical of poor working practices in general. Work authorizations with any kind of restrictions (e.g., sector or occupation-specific permits) impose conditions on women and gender-diverse migrants’ ability to earn a living free of fear of abuse and retaliation. Sector-specific permits still empower groups of employers to maintain substandard conditions, to identify whistleblowers as ‘troublemakers’ and to essentially boycott them. In addition, having

meaningful labour mobility is uniquely important for injured migrant workers. Migrant workers who become seriously sick or injured as a result of their labour in Canada usually cannot sustain their occupation because of their work-related disabilities. This includes psychological injuries, such as trauma from Gender-Based Violence, caused within a certain occupation (e.g., care work). Such individuals should be free to change occupations and regions to heal and move forward without their personal decision-making around safety being restricted.

Given the demonstrated failures of the closed and sectoral work permit systems, we maintain that open work permits are the necessary solution. The laws that organize women and gender-diverse migrants' lives produce or allow instances of physical, sexual, economic, and emotional violence to occur (Menjívar & Abrego, 2012). The state does not necessarily have to be a 'direct agent of violence' in order to facilitate through its laws, the violence perpetrated by other actors (Abrego & Menjívar, 2011).

The Canadian government has recognized GBV as a major factor contributing to the marginalisation of women in Canada. They have responded with initiatives such as *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence* in 2017 (Government of Canada, n.d. a) and the National Action Plan to End GBV in 2022 with the aim of creating a coordinated response to addressing the root causes of gender-based violence in Canada (Government of Canada, n.d. b)

With the current focus on GBV, the Alliance for Gender Justice in Migration aims to highlight the particular ways that women and gender-diverse migrants with precarious status experience GBV in Canada. One major way through which they can experience such violence is through closed work permits. We believe that all women and gender-diverse individuals, regardless of immigration status deserve to live a life free of Gender-Based Violence at work and in the community at large. We hope that the Government of Canada shares this belief. For as long as immigration policies and closed work permits facilitate conditions in which Gender-Based Violence can occur for women and gender-diverse migrants, we cannot pride ourselves in being fully committed to women's and gender-diverse communities' rights.



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