A Promise of Protection?

An assessment of IRCC decision-making under the Vulnerable Worker Open Work Permit program

migrant workers centre

THE LAW FOUNDATION OF BRITISH COLUMBIA

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Executive Summary

In June 2019, the Minister of Immigration, Refugees and Citizenship Canada ("IRCC") introduced the Open Work Permit for Vulnerable Workers ("VWOWP") program by way of regulation, which recognized the conditions of the Temporary Foreign Worker Program ("TFWP") that often lead to abuse. The VWOWP provides a distinct authority for immigration officers ("officers") to issue open work permits to migrant workers in situations of potential or ongoing abuse in their workplace. An open work permit allows the holder to work for any employer in any occupation and in any location.

Under the TFWP, migrant workers receive work permits that are employer-specific or employer-restricted, limiting their labour market mobility and creating a significant power imbalance in relation to their employers. The VWOWP is intended to grant workers quick mobility if they are experiencing abuse and pressure to tolerate that abuse in order to avoid losing the right to work in Canada.

This report presents initial findings from the Migrant Workers Centre's ("MWC") research regarding the VWOWP program and explores the common issues and themes seen in VWOWP decisions by analyzing officers' written reasons for refusal and approval ("reasons") of applications. It also sets out recommendations for improvements to the VWOWP program in order to better protect migrant workers.

The reasons for decisions reveal a troubling narrative with respect to the unique vulnerabilities and complex legal issues faced by migrant workers, and the difficulty in accessing justice for workers who have experienced abuse in the context of their employment in Canada.

The majority of research participants experienced multiple forms of abuse, including financial abuse, psychological abuse, physical abuse and sexual abuse at the hands of their employers or their employer's agent, often an immigration consultant.

Immigration officers were more likely to accept financial abuse that occurred in the context of unpaid wages or reduced hours, whereas the collection of recruitment fees from workers and early termination from employment were not recognized as abusive. Gaps were observed in officers' interpretation of provincial and federal law with respect to employment and the contraventions of provincial and federal law as a form of abuse.

Experiences of psychological abuse were often not acknowledged in the reasons for decisions, despite evidence of abuse being presented in workers' statements and through interviews. Workers also experienced physical and sexual abuse by their employers, which was more likely to be accepted as abuse by officers.

Various procedural fairness issues were identified in the interview process, including workers being denied access to legal counsel during the interview and being asked to provide their own interpreters, who cannot be friends or family.

In many cases, extensive legal intervention was required in situations where work permits were initially refused, including applications to the Federal Court. These barriers limit access to justice.

A successful VWOWP application results in a work permit that allows a worker to seek new employment, but it does not provide any income assistance or resources for finding new work or surviving an unpredictable period of unemployment. Work permits are typically issued for 12 months, during which time, a worker is expected to find a new employer to support a new application for an employer-restricted work permit in order to remain in Canada. This task is not only difficult, but also can result in further abuse due to a worker's reliance on an employer for continued immigration status.

Although the VWOWP program has undoubtedly assisted many workers to flee abusive situations, without structural change to the TFWP, migrant workers will continue to face abusive situations in the context of their employment. Access to justice for migrant workers remains limited, and this report identifies key areas of recommendation for improvement to both the VWOWP and the TFWP.

Introduction

Canada relies heavily on migrant workers[1] to fill labour and skills shortages, many of whom obtain work permits through the Temporary Foreign Worker Program, which includes the Seasonal Agriculture Worker Program ("SAWP"). The prevalence of migrant workers performing essential work providing care for families[2], working in health care settings, sustaining Canada's agricultural sector and food supply chain[3], and supporting businesses in various industries, including restaurants and hospitality, trucking, and construction cannot be overstated. In 2021 alone, 103,830 work permits were issued to migrant workers under the TFWP across Canada.[4]

The closure of borders due to the COVID-19 pandemic in March 2020 highlighted the reliance of Canada's economy on migrant workers. Exceptions to border closures were quickly introduced for migrant agricultural workers with the acknowledgement of the crucial role these workers play in Canada's food supply chain.

However, despite the critical role of migrant workers, the structure of the TFWP renders migrant workers uniquely vulnerable to situations of abuse, control, and exploitation due to the threat of job loss and loss of immigration status in Canada. The COVID-19 pandemic has only exacerbated these vulnerabilities, as migrant workers have reported lack of access to support workers and community organizations, cramped and unsafe housing, and little or no access to personal protective equipment, along with increased restrictions on their freedom of movement by employers with instructions not to leave their place of employment to avoid exposure to COVID-19.[5]

Migrant workers who enter Canada under the TFWP are issued an employer-specific work permit, which is only valid for the position, employer, and job location named on the work permit. Work permits issued under the SAWP are sector-specific, theoretically allowing migrant workers to work for any employer in Canada that participates in SAWP[6]. There are inherent vulnerabilities in the TFWP, as employer-specific work permits

[1] For the purposes of this report, we define a migrant worker as any worker in Canada without permanent immigration status (meaning permanent residence or Canadian citizenship), including workers who hold work permits, study permits or who have no documentation at all.

[2] Prior to June 2019, work permits were issued to care workers under the TFWP. As of June 18, 2019, changes were made to an employer's ability to obtain authorization to hire an in-home care worker from outside of Canada, and work permits as of that date for care workers coming from outside to Canada are now issued under the IMP. These work permits are no longer employer-specific, and instead, sector-specific. In practice, however, many care workers apply for new work permits from inside of Canada, having already worked and lived in Canada for many years, which continue to be issued under the TFWP and are employer-specific.

[3] For example, in 2017, migrant workers accounted for 15.5% of employment in the agriculture, forestry, fishing, and hunting sector. Further statistics reveal that foreign workers accounted for over 30% of the agricultural workers in British Columbia in 2017. Migrant workers were also recorded as being over-represented in private household services at 9.8%, and made up 7.2% of workers in the accommodation and food services industry in Canada. See Statistics Canada, "The Distribution of Temporary Foreign Workers Across Industries in Canada," June 3, 2020, https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00028-eng.htm.

[4] Open Canada, "Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates - Canada - Temporary Foreign Worker Program work permit holders by gender, occupational skill level and year in which permit(s) became effective", online: <https://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TR_0008_E.xlsx>; Immigration, Refugees and Citizenship Canada, "2020 Annual Report to Parliament on Immigration" online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2020.html#trprograms>. The number of work permits issued under the International Mobility Program in 2021 was 341,745. See Open Canada, "Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates - Canada - International Mobility Program work permit holders by gender, occupational skill level and year in which permit(s) became effective", online: < https://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TR_0004_E.xlsx>

[5] Surveys and news stories revealed that migrant workers were increasingly exploited and unpaid, reported job losses and difficulty or the inability to access the Canada Emergency Response Benefit or Employment Insurance, among other things. See CBC News, "Exploitation of Migrant Care Workers Has Increased Since COVID-19 Struck, Report Says," CBC, October 28, 2020, https://www.cbc.ca/news/canada/report-migrant-care-workers-exploitation-pandemic-1.5779915. For migrant farmworkers, there was an increase in work load and occupational injuries and mass outbreaks of COVID-19 among workers due to poor living conditions, which aggravated the spread of the virus and caused the death of several migrant farmworkers due to COVID-19. See Vivianne Landry et al., "The Systemized Exploitation of Temporary Migrant Agricultural Workers in Canada: Exacerbation of Health Vulnerabilities During the COVID-19 Pandemic and Recommendations for the Future," Journal of Migration and Health 3 (2021): 100035, https://doi.org/10.1016/j.jmh.2021.100035.

[6] This change in employment is easier said than done, as workers face multiple barriers before they can effectively change employers. The SAWP operates according to bilateral agreements between Canada and the participating countries (Mexico, Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago). A worker must first be in contact with their country's Consulate or in-Canada liaison officer, who is involved in the decision-making process regarding workers' requests to change employers. Workers are instructed to bring workplace concerns to the in-Canada agents, and in some cases, workers are flagged as "troublemakers" if they request to be moved and are not invited to return to work the following season. Participating countries are responsible for recruiting and selecting the migrant workers in their country of origin.

create a power imbalance in favour of the employer and often give rise to conditions for worker abuse and exploitation[7]. Migrant workers may be reluctant or afraid to report abuse due to the risk of retaliation or termination by their employer, which could jeopardize their legal status in Canada. Reporting abuse may also jeopardize the continuity and reliability of their income, and the reluctance to initiate any action against their employer for fear of losing this income.

The structure of the TFWP contributes to the vulnerability of migrant workers, as employer-specific work permits restrict labour mobility. Since work permits are issued for a temporary period only, workers are also reliant on their employers to maintain immigration status[8]. Although migrant workers are technically allowed to change employers, the process is prohibitive for many workers in practice. The worker must prepare and submit a new work permit application after their employer has obtained and provided them with a positive Labour Market Impact Assessment ("LMIA"), job offer, and employment contract. This process requires paying a new application fee, which presents a genuine barrier for many migrant workers, and may take several months due to the processing times for LMIAs and work permit applications. During this time, workers cannot legally work for another employer, are not eligible for social assistance, and face barriers to accessing Employment Insurance benefits.[9]

In situations where a worker leaves their employer after experiencing abuse, there is a risk of their legal status in Canada being jeopardized if they engage in unauthorized work to support themselves while waiting to be issued a new employer-specific work permit. In response to many of these concerns, the Federal Government introduced the VWOWP program in June 2019.[10] Although the program was a welcome announcement and recognition of the abusive situations faced by migrant workers, MWC expressed concern with respect to the program's design, including the VWOWP's accessibility to migrant workers. More than two years after the program's implementation, many concerns remain with respect to the implementation of the program by individual officers deciding on applications.

This report presents MWC's findings in the decision-making process for the VWOWP program. Since the VWOWP program was introduced in June 2019, MWC has represented many workers applying for open work permits as a result of escaping an abusive work situation. This report outlines the common issues and themes seen in VWOWP decisions by analyzing the officers' written reasons for refusal and approval of client applications.

Research Questions and Methodology

This research project employed a qualitative documentary analysis approach, which involved an examination and analysis of the detailed written reasons for decisions, both positive and negative, for applications under the VWOWP program. The subject matter of the research project, an open work permit program for workers facing abuse in their workplaces, framed the research team's approach to data collection and analysis.

The following questions formed the basis of MWC's research:

- What are the common issues and themes seen in VWOWP applications filed by the MWC on behalf of its clients?
- What do the reasons reveal about what officers recognize to be financial, psychological, physical, and sexual abuse?

[7] Immigration, Refugees and Citizenship Canada, "Notice to interested parties – Introducing occupation-specific work permits under the Temporary Foreign Worker Program", 22 June 2019, Canada Gazette, Part 1, Volume 153, Number 25, online: <https://gazette.gc.ca/rp-pr/p1/2019/2019-06-22/html/notice-avis-eng.html#nc2>.

[8] Drolet, Natalie and Bethany Hastie, "The Potential of Human Rights Law to Address the Harms of Labour Exploitation and Human Trafficking" (2016) at 4.1.4, online: <https://mwcbc.ca/downloads/ThePotentialofHumanRightsLawtoAddresstheHarmsofLabourExploitationandHumanTrafficking.pdf>.

[9] Drolet, Natalie and Bethany Hastie, "The Potential of Human Rights Law to Address the Harms of Labour Exploitation and Human Trafficking" (2016) at 4.1.4 (footnote 8), online: <https://mwcbc.ca/downloads/ThePotentialofHumanRightsLawtoAddresstheHarmsofLabourExploitationandHumanTrafficking.pdf>.

[10] Immigration, Refugees and Citizenship Canada, "Open Work Permits for Vulnerable Workers [R207.1 – A72] – International Mobility Program," guidance, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html>.

- To what extent do officers rely on or how much weight do they give to the self-described experiences of the vulnerable workers?
- Is evidence of risk or abuse in statements of support by community/legal organizations an important factor in the assessment?
- How do officers look at previous violations of immigration law while deciding these applications?

MWC chose to analyze the officers' written reasons for decisions made on applications under the VWOWP program, as these could be requested under the *Privacy Act*[11] and *Access to Information Act*[12] with the participants' consent. The researchers obtained and analyzed the written reasons for 30 separate worker applicants. In addition, MWC analyzed the application documents submitted, along with any requests for reconsideration and applications for leave and judicial review in the Federal Court. Due to the risk of re-traumatization by asking the participants to recount details of the circumstances of abuse, the researchers did not request interviews or further information from the research participants.

In addition to analyzing the reasons for decisions and application documents, MWC researchers also analyzed the VWOWP Program Delivery Instructions ("PDIs") and their evolution since the introduction of the VWOWP program in 2019.

This report outlines the common issues and themes identified in the reasons for decisions to provide insight into the decision-making process for VWOWP applications. The aim is to gain a better understanding of how immigration officers are applying the policy's PDIs and to identify any gaps in the implementation of the program's objectives.

Selection of Participants

The participants in the research project are all migrant workers who are current or former MWC clients. MWC represented and advised these clients regarding their VWOWP applications[13]. In total, 30 migrant workers contributed to the data collection for the research project by providing consent for MWC to request the written reasons for the decision of their VWOWP applications. The participants' demographics are outlined further in the research findings section of the report.

Ensuring Confidentiality and Informed Consent

The research team ensured confidentiality and informed consent throughout the research project's design and implementation. The research project was designed to allow migrant workers to participate while protecting their safety and confidentiality.

The data is anonymized and the demographics of the participants (such as the category of work, country of origin, and gender) are aggregated to prevent their identities from being revealed through the research report.

Informed consent was obtained from all research participants by providing each participant with a consent form that they were required to read, fill out, and return to the research team. The consent form explained the objectives of the research project and provided information about how the data would be stored, used, and reported to ensure that the individual data of participants could not be identified.

The research participants were informed that they could withdraw from the research project at any time and for any reason.

[11] *Privacy Act* (R.S.C., 1985, c. P-21).

[12] *Access to Information Act* (R.S.C., 1985, c. A-1).

[13] Three of the workers submitted their initial applications by themselves and came to MWC for assistance with matters related to their VWOWP applications, such as filing for leave and judicial review of a refusal.

Background on the VWOWP Program

In June 2019, the VWOWP was introduced to formally empower immigration officers across Canada to issue an open work permit to migrant workers who were experiencing abuse or were at risk of abuse in the context of their employment in Canada. Section 196.2 of the Immigration and Refugee Protection Regulations ("IRPR")14 defines abuse as physical abuse (including assault and forcible confinement), sexual abuse (including sexual contact without consent), psychological abuse (including threats and intimidation), and financial abuse (including fraud and extortion).[15]

Prior to the introduction of the VWOWP, immigration officers did not have a distinct authority in law to issue such work permits to migrant workers. Two temporary provincial initiatives were previously in place in British Columbia and Alberta, which allowed officers to issue an open work permit to workers who experienced abuse or were at risk of abuse in their workplace, with the most recent being the BC Temporary Foreign Workers at Risk: British Columbia Process in place from 2016 to 2019.[16]

Without the option to obtain an open work permit, migrant workers faced significant risks if they reported abuse to authorities. If a migrant worker came forward to report a situation of abuse to IRCC or Employment and Social Development Canada ("ESDC"), a complaint could trigger an inspection of the employer. A negative determination arising from an employer compliance inspection can have serious consequences. The employer may be temporarily or permanently banned from hiring migrant workers, in which case the work permits of all migrant employees would be revoked. As migrant workers are issued employer-specific work permits under the TFWP, the employees would be required to find another employer and apply for a new work permit to maintain their legal status in Canada.

Due to these risks, migrant workers are often incentivized to hide abuse from authorities and to remain in abusive employment situations.[17] The introduction of the VWOWP program was meant to address the risks associated with reporting allegations of abuse and to facilitate a worker's exit from an abusive situation.[18]

In September 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) tabled a report on the TFWP, which outlined 21 recommendations "aimed at improving the TFW Program to better respond to Canadian labour market needs while emphasizing better protections for foreign workers in Canada."[19] The Minister of Immigration's February 2017 mandate letter outlined a commitment to act on the recommendations of the study.[20]

The VWOWP was implemented under the International Mobility Program, which allows workers the ability to apply for open work permits under very limited circumstances.[21]

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14 *Immigration and Refugee Protection Regulations* (SOR/2002-227).

15 A further discussion and explanation of the term "abuse" in the context of the VWOWP is contained in Appendix A of this report.

16 The BC Temporary Foreign Workers at Risk Program was in place from 2016 to 2019 and was a precursor to the VWOWP. In Alberta, a program was implemented from 2010 to 2015 where cases of abuse in the workplace were brought forward to IRCC by Alberta's Temporary Foreign Worker Offices.

17 Migrant workers continue to face risk even after the implementation of the VWOWP, including no guarantee of a work permit actually being approved, and difficulty finding an employer who will provide a new LMIA. A discussion of these continued risks is provided in Section V, Additional Considerations.

18 Government of Canada, "Canada Gazette, Part 1, Volume 152, Number 50: Regulations Amending the Immigration and Refugee Protection Regulations - Regulatory Impact Statement" (Government of Canada, Public Works and Government Services Canada, Integrated Services Branch, Canada Gazette, December 15, 2018), https://gazette.gc.ca/rp-pr/p1/2018/2018-12-15/html/reg1-eng.html.

19 Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Temporary Foreign Worker Program* (September 2016), online: <https://www.ourcommons.ca/Content/Committee/421/HUMA/Reports/RP8374415/humarp04/humarp04-e.pdf>; *Regulatory Impact Analysis Statement*, in Canada Gazette, Part II, Volume 153, Number 11 (22 May 2019), online: <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-29/html/sor-dors148-eng.html>.

20 Prime Minister's Office, *Minister of Immigration, Refugees and Citizenship Mandate Letter* (1 February 2017), online: <https://pm.gc.ca/en/mandate-letters/2017/02/01/archived-minister-immigration-refugees-and-citizenship-mandate-letter>

21 The International Mobility Program also allows workers to apply for employer-specific work permits through various public policies implemented by IRCC, through international or provincial agreements, and for work that is deemed to support "Canadian interests". As the majority of workers MWC has assisted with VWOWP applications have come to Canada under the TFWP or the SAWP, this report focuses on those programs.

BC Temporary Foreign Workers at Risk Program

In 2016, a BC-specific program to assist workers facing abuse in the workplace was implemented vis a vis the Canada-British Columbia Foreign Worker Annex under the Canada-British Columbia Immigration Agreement[22]. The Temporary Foreign Workers at Risk: British Columbia Process was implemented through an agreement between IRCC and BC to establish an open work permit program for workers at risk of abuse as a result of an employer not complying with federal or provincial laws. The work permits issued under this program were valid for up to 180 days.

This work permit process was a precursor to the VWOWP program. Workers were eligible for an open work permit upon recommendation from an approved settlement service provider, who had sole responsibility for providing written recommendations for open work permits or employer-specific work permits for migrant workers at risk in BC. To be eligible, workers were required to show they had filed an official complaint to the appropriate enforcement agency (such as the RCMP, local police, Employment Standards Branch or WorkSafe BC). The program was available to workers who held an employer-specific work permit or to those who were authorized to work without a work permit pursuant to the IRPR. The program was also available to workers whose work permit had expired but were still within their 90-day restoration period.[23]

Consultations and Advocacy Prior to the Creation of the VWOWP

In December 2018, the federal government published the proposed regulations creating the VWOWP in the Canada Gazette[24] and began consultations with stakeholders regarding various concerns in early 2019. The stakeholders included MWC and other migrant worker support organizations, employer groups, unions, industry associations, academic experts, and legal representatives. Though the program recognized the particular vulnerabilities of migrant workers, MWC raised concern that the program would not provide a long-term solution. Specifically, the program did not address the prevalence of employer-specific work permits, one of the primary structural issues that creates the opportunity for abusive workplace conditions.

In addition, MWC offered the following recommendations to the proposed regulations:

- Work permits should be issued for a length of 12 months to allow migrant workers with enough time to secure a new LMIA-based work permit (the work permits issued under the BC Temporary Foreign Workers at Risk program were valid for a maximum period of only six months);
- Legal aid should be provided to assist migrant workers with these work permit applications;
- Decisions needed to be made quickly by IRCC given the precarious status of workers who are facing abuse or have fled abusive situations and are out of work;
- Workers should not be required to file a complaint with law enforcement or any other provincial or federal body as a prerequisite to eligibility as this would create a barrier for workers;
- Eligibility should extend to migrant workers if they are within their 90-day restoration period; and
- The requirement to obtain a letter of recommendation from a settlement service provider as per the BC Temporary Foreign Workers at Risk program should be removed as it presented an additional barrier for workers to access the program.

[22] Canada-British Columbia Immigration Agreement, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial/british-columbia/canada-british-columbia-immigration-agreement-2021/annexb.html>

[23] With some exceptions, s.182 of the IRPR allows a temporary resident to apply to restore their status within 90 days of their temporary residence status expiring so long as they continue to meet the initial requirements of their stay in Canada.

[24] *Supra* note 18.

Description and Objectives of the VWOWP Program

The VWOWP program was implemented in June 2019 in accordance with amendments made to the IRPR.[25] These amendments introduced a new regulatory authority for immigration officers to issue open work permits to migrant workers with a valid employer-specific work permit, who demonstrate that they are experiencing abuse or are at risk of abuse in the context of their employment. The amendments to the IRPR also provided for applicants to be exempt from paying the $155 work permit processing fee and the open work permit fee of $100[26] and also allowed applicants to be issued an open work permit under this program if they have engaged in unauthorized work in Canada.[27] Under the VWOWP program, workers who meet the eligibility criteria are issued an open work permit that is exempt from the LMIA process. An LMIA-exempt open work permit authorizes workers to work in any position for any employer in Canada.

The objectives of the VWOWP program are outlined in the PDIs and are as follows:

- To provide migrant workers who are experiencing abuse, or who are at risk of abuse, with a distinct means to leave their employer.
  - This is done by opening the possibility of obtaining a work authorization for other employers.
- To mitigate the risk of migrant workers in Canada who are leaving their job and working irregularly (that is, without authorization) as a result of abusive situations.
- To facilitate the participation of migrant workers who are experiencing abuse, or who are at risk of abuse, in any relevant inspection of their former employer, recruiter or both.
- To help migrant workers in assisting authorities, if required (noting that this is not required for the issuance of the open work permit), by reducing the perceived risk and fear of work permit revocation and removal from Canada.[28]

Workers are required to make an application for a VWOWP online and officers are directed by the PDIs to use discretion to determine when an interview may be required. Interviews are to be used to address any gaps in the applicant's submissions or explanation, and may take place in person or by telephone. The PDIs note that officers should take into consideration the abuse a worker has suffered and its impacts on their participation in any interview with respect to memory and being able to provide a narrative of what occurred.

Officers are further instructed to process applications on an urgent basis, in five business days from the time the application is received at the responsible processing office. Although the PDIs note that officers have discretion in determining the duration of a VWOWP issued, officers are encouraged to consider a duration of 12 months. According to the PDIs, it may take approximately 12 months for a migrant worker to find new employment and obtain a new LMIA and work permit, if required. Spouses and children who are currently in Canada are also eligible for open work and study permits, issued for the same duration as the principal applicant.[29]

Overview of the Decision-Making Framework

Migrant workers who apply under the VWOWP program have few options upon refusal of their application. There is no right to appeal the decision, though, an applicant may file a request to the officer deciding their application to reconsider their refusal. In MWC's experience, this rarely results in an approval. Often a worker's only choice is to seek leave and judicial review at the Federal Court or submit a new application (for example,

[25] *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148, in Canada Gazette, Part II, Volume 153, Number 11 (22 May 2019), online: <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-29/html/sor-dors148-eng.html>.

[26] Pursuant to sections 299(2)(l) and 303.2(2)(a) of the IRPR.

[27] With certain exceptions, s.200(3)(e)(i) of IRPR prevents an officer from issuing a work permit to a foreign national for a period of six months after the end of the unauthorized work in Canada. Applications made under the VWOWP are exempt from this section; per s.200(3.1), s.200(3)(e) does not apply to migrant workers referred to in s.207.1(1), who have engaged in unauthorized work or failed to comply with a condition. In other words, officers who have reasonable grounds to believe the migrant worker is experiencing abuse or is at risk of abuse in the context of their employment in Canada should not refuse to issue the open work permit on the basis that the migrant worker has engaged in unauthorized work or has not complied with a condition; *supra* note 25.

[28] *Supra* note 25.

[29] *Supra* note 10.

if the applicant is able to submit new evidence). An application for leave and judicial review requires full representation by a lawyer, and involves significant time and resources.

The written reasons consist of officers' notes inputted into IRCC's Global Case Management System (GCMS), which stores the personal information for all immigration and citizenship applications. IRCC guidance on procedural fairness for decision-makers states that the reasons provided to the applicant should reflect the officer's assessment of the facts and evidence and the reasoning for the officer's decision.[30] However, the officer's written reasons are not provided to applicants automatically upon refusal. The applicant must submit a request under the *Privacy Act*[31] or the *Access to Information Act*[32] to obtain the reasons for the decision on their application, a request which is experiencing long processing times due to COVID-19.[33]

The issue of delays for requests under the *Privacy Act and Access to Information Act* presents an additional barrier for applicants whose initial applications are refused. Applicants have to wait until they obtain the detailed reasons for refusals to fully understand why their application was refused, in order to request a reconsideration or to submit a new application altogether. Within the context of widespread access to justice constraints in British Columbia, migrant workers have few avenues to seek legal advice and representation to file for judicial review of VWOWP refusal decisions.

Application Statistics

Prior to the introduction of the VWOWP program, IRCC estimated that approximately 500 applications would be submitted under the program each year.[34] Based on data received from IRCC[35], a total of 2,481 applications were received from June 2019 to July 31, 2021. Of those, 2,345 were processed by IRCC and the approval rate was 57.1%.[36] IRCC received 567 applications in 2019 (from the introduction of the program in June to December 31, 2019), 1,103 applications in 2020, and 811 applications were received in the first seven months of 2021 alone (until July 31, 2021).[37]

The number of applications received by IRCC has risen each year since implementation of the VWOWP. Despite MWC's request for a breakdown of applications received by province, the majority of the applications in IRCC's data set are listed as from an "unspecified" province.[38] This lack of data per province makes it difficult to know where abusive employment situations are the most rampant, impacting a province's ability to respond and implement provincial measures accordingly.

The data also indicates an increase in the approval rate of VWOWP applications in the first half of 2021 as compared to the previous two years, along with an increase in applications received. Interrogation of the potential shift in processing, including due to the COVID-19 pandemic, was beyond the scope of this research.

30 Immigration, Refugees and Citizenship Canada, "Procedural Fairness", https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html

31 *Supra* note 11.

32 *Supra* note 12.

33 Responses to requests for information made under the *Access to Information Act* or the *Privacy Act* are supposed to be answered by the relevant institution within 30 days.

34 *Regulatory Impact Analysis Statement*, *supra* note 25.

35 IRCC, Number of Work Permit Applications (including Extensions) Received by IRCC for Vulnerable Worker Special Program between June 2019 and July 2021 under Employment Exempt as A72 (in Persons), access to information request received by MWC, March 9, 2022. See Appendix B for the complete data set received from IRCC.

36 *Ibid.*

37 Data more recent than July 31, 2021 had not been publicly released at the time of publication of this report.

38 *Supra* note 35.

Snapshot of Demographics

The dataset for this report is composed of 30 MWC clients[39] who provided consent for the research team to request the written reasons for the decision on their VWOWP application. Every client that MWC assisted with a VWOWP was invited to participate. The research participants included workers from twelve countries: Barbados, China, Guatemala, India, Jamaica, Japan, Malta, Mexico, the Philippines, Tunisia, Turkey, and the United Kingdom. Of the research participants, 13 are female and 17 are male. VWOWP applications for the 30 clients were submitted between July 2019 and October 2021.

Twenty-five of the 30 applicants worked in one of three industries: agriculture, in-home care work, and restaurant/food service. The following table shows the participants' occupations and National Occupational Code[40] as per their work permit:

Industry	NOC Code	Job Title
Office Administration	NOC 1241	Administrative Assistant
Care work	NOC 4411	Childcare Provider
	NOC 4412	In-Home Caregiver
Restaurant/Food Service	NOC 0631	Restaurant Manager
	NOC 6311	Restaurant/Food Service Supervisor
	NOC 6322	Cook
	NOC 6513	Restaurant Server
Construction	NOC 7271	Carpenter
	NOC 7294	Construction Painter
Transportation	NOC 7321	Truck and Transport Mechanic
	NOC 7511	Long Haul Truck Driver
Agriculture	NOC 8431	General Farm Worker
		Poultry Farm Worker
	NOC 8432	Greenhouse Worker

Approvals and Refusals

Of the 30 research participants whose applications are included in this report, 21 applications were approved at first instance and nine were initially refused (in one of the refusals, MWC did not assist with the initial application). After requests for reconsideration, re-submission and applications for leave and judicial review in the Federal Court, four additional approvals were issued. In total, 25 of the participants were ultimately issued a work permit under the VWOWP program.

Of the nine initial refusals:

- MWC filed requests for reconsideration for **two** of the refused decisions, and one of the reconsideration requests resulted in an approval.
- Of the eight remaining refusals, MWC filed applications for leave and judicial review, and **two** of the applications in Federal Court were not granted leave and t**hree** others were discontinued by the applicant for a variety of reasons.
- Of the three remaining applications for which MWC sought leave and judicial review, **two** applications were re-opened and sent back for re-determination, and ultimately approved after settlement out of Federal Court.
- The remaining application with an initial refusal was re-submitted with new evidence, and approved, and the applicant discontinued their application for leave and judicial review in Federal Court.

[39] The research team analyzed 33 sets of reasons for 30 clients, as the research team obtained additional reasons for three clients who submitted a new application or filed a request for reconsideration of a refusal.

[40] The National Occupational Classification (NOC) is a classification structure developed by the Government of Canada that categorizes all occupational activity in Canada, available online at: <https://noc.esdc.gc.ca/Home/Welcome/4d655901c5a8499d8af705bb2a3aee03?GoCTemplateCulture=en-CA>

Findings and Analysis

The VWOWP applications and reasons analyzed for this report show that all of the workers faced multiple types of abuse in their workplace. For the purposes of determining whether a migrant worker is experiencing abuse or is at risk of experiencing abuse in the workplace, section 196.2 of the IRPR defines abuse to include physical, sexual, psychological, and financial abuse.[41] Abuse in the context of employment is not limited to abusive conduct by the employer on record[42] and includes abusive conduct by agents during the recruitment process.

Almost all of the research participants experienced financial abuse: 29 of the 30 applicants (or 96.7%) reported financial abuse, including unpaid wages, unpaid overtime and excessive work hours, payment of a wage less than the wage listed on their employment contract and/or the LMIA, and the payment of recruitment fees.[43] A large majority of the research participants also reported having experienced some form of psychological abuse: 21 of the applicants (or 70.0%) reported incidents including verbal insults, threats, and discriminatory comments. In addition, nine of the participants (or 30.0%) experienced physical abuse, and three of the participants (10.0%) reported sexual abuse by their employer.

Research Findings: Forms of Abuse

As outlined, in the 30 applications analyzed by MWC, workers experienced many types of abuse perpetrated by employers and their agents. The various forms of abuse experienced are outlined below.

Forms of Financial Abuse	Number of Participants Impacted	Total (expressed as % of 30 participants)
Excessive work hours (work of more than 40 hours per week, working without breaks)	16	53.3%
Unpaid wages (regular, overtime, vacation pay, statutory holiday pay, termination pay)	14	46.7%
Payment of a recruitment fee	11	36.7%
Forced to work in contravention of work permit conditions (sent to work at other locations and/or for other employers, assigned tasks outside of their listed occupation or job duties)	8	26.7%
Wrongful or early termination	5	16.7%
Forced to repay a portion of wages to their employer	5	16.7%
Paid at a lower wage than the rate listed on their LMIA or employment contract	4	13.3%
Paid for the LMIA and was not reimbursed by their employer	3	10.0%
Employer did not provide pay statement or issued fraudulent paystubs	3	10.0%
Employer breached terms of the employment contract (providing only part-time work, not paying for medical insurance)	3	10.0%
Not paid on a regular pay period schedule	2	6.7%
Collusion between the employer and the immigration consultant (the applicant was not permitted to work because the employer stated that the consultant did not pay a fee to the employer)	1	3.3%
Forced by the employer to falsely record their hours	1	3.3%
Employer controlled the worker's wages by sending remittance payments directly to their family overseas	1	3.3%

[41] See Appendix A for definitions of abuse as they appear in the Program Delivery Instructions for the VWOWP.

[42] *Supra* at note 10.

[43] A "recruitment fee" is defined in this report as a fee charged to a worker by an employer or a third-party agent, including an immigration consultant who may be acting for both the employer and worker in assisting the worker to obtain a work permit, for the provision of employment. The Temporary Foreign Worker Program requires an employer to pay the application fee for a Labour Market Impact Assessment and prohibits this cost from being recouped from the employee. Section 10 of the BC *Employment Standards Act,* [RSBC 1996], c 113, and s.21(2) of the *Temporary Foreign Worker Protection Act*, SBC 2018, c 45, also explicitly prohibit any person from charging a fee for providing employment.

Forms of Psychological Abuse	Number of Participants Impacted	Total (expressed as % of 30 participants)
Verbal abuse (insults, yelling, taunts, racist and/or discriminatory comments, hostility after applicant asked about contract and/or work conditions)	15	50.0%
Threats of termination and deportation	7	23.3%
Coercion and/or pressure to get the applicant to do something against their will (to pay money to the employer, to make false statements to health and safety inspectors, to sign a document ending the worker's WorkSafeBC compensation)	5	16.7%
Employer restricted the worker's movement and activities after work (imposed a curfew or punishment for leaving; restricted movement due to COVID-19, not in accordance with public health orders)	5	16.7%
Retaliation by employer or threats of not being hired back after submitting complaints against the employer	3	10.0%
Employer required the worker to live with them but did not provide a private and safe living space	3	10.0%
Intimidation by employer upon termination (including accusing the worker of theft)	3	10.0%
Threats against the worker's family	2	6.7%
Threats of physical violence	2	6.7%
Employer threatened the worker for filing a WorkSafeBC claim for a workplace injury	2	6.7%
Employer demoted and eventually terminated the worker after reporting a workplace injury	1	3.3%
Employer holding the worker's passport and immigration documents upon arrival to Canada and after termination	1	3.3%
Gender discrimination: employer failed to provide accessible washroom facilities for female workers; sexual harassment and unwanted romantic advances from a contractor working for the employer	1	3.3%

Forms of Physical Abuse	Number of Participants Impacted	Total (expressed as % of 30 participants)
Physical violence by the employer	5	16.7%
Exposure to chemical pesticides without personal protection equipment (caused discomfort and respiratory distress)	2	6.7%
Forced to perform physically-demanding work while injured in contravention of medical advice (employer refused to follow the worker's WorkSafeBC Return to Work plan)	2	6.7%
Unsanitary and dirty employer-provided accommodations	1	3.3%

Forms of Sexual Abuse	Number of Participants Impacted	Total (expressed as % of 30 participants)
Forced or coerced to perform sexual acts	2	6.7%
Repeated sexual assault by the employer	1	3.3%
Forced to send pictures of a sexual nature by text message to employer	1	3.3%

Analysis

The reasons analyzed show a disconnect between the PDIs regarding the necessary evidentiary burden and the assessment of evidence in individual applications. The PDIs state that the "reasonable grounds to believe" standard requires something more than mere suspicion but less than the standard applicable in civil matters of proof on the balance of probabilities.[44] However, the written reasons show that there is a great deal of inconsistency and confusion around what constitutes evidence of abuse or risk of abuse, and that officers did not consider the evidence put forward in a flexible or sensitive manner. Looking at the reasons for decisions reached by officers, MWC observed that despite the prevalence of various forms of financial abuse, officers took a narrow view of what constitutes financial abuse. Psychological abuse was accepted only in cases where significant evidence was presented to support the allegation. The applications alleging physical and/or sexual abuse were all accepted by officers, and in these cases, applicants had significant evidence in the form of text messages, hospital or police records.

The most significant themes in the reasons analyzed are as follows.

Gaps in Understanding of Abuse

The reasons analyzed showed a gap in understanding of what constitutes abuse in officer reasoning, including acknowledgment of abusive actions by employers that are contrary to provincial or federal law and that should be characterized as financial abuse. Contravention of provincial employment standards was often cited as evidence of abuse in a workplace by applicants, but was rarely acknowledged as such or relied upon by officers when approving work permits. This includes contraventions of employment contracts such as not being provided the hours or work promised, not being provided breaks, wrongful termination, being paid less than what is stated in the employment contract, and being assigned work that is contrary to the conditions of a worker's work permit and employment contract (for example, at another place of employment entirely). In applications that were refused, contravention of provincial or federal law was often overlooked or ignored as evidence of abuse in the workplace.

Despite the prevalence of financial abuse among the reasons analyzed, officers had difficulty characterizing many of the situations faced by workers as abuse. Cases where a worker reported unpaid overtime and excessive work hours or unpaid wages were often accepted as constituting financial abuse by an officer, whereas the collection of recruitment fees in order to secure employment was not.

Unpaid Wages or Excessive Work Hours

Thirteen of the applicants analyzed reported unpaid overtime and excessive work hours. In some cases, clients reported working more than 60 hours per week while being paid for only 40 hours or working 12 hour shifts without breaks. In one case, a worker reported working up to 18 hours continuously without proper periods of rest. In the cases where these allegations were accepted, the officers considered the allegations of excessive work hours to be financial abuse. However, not all experiences of excessive work hours were accepted by officers, including in cases where workers put forward evidence of their own hour logs or employment records.

One applicant alleged financial abuse based on not receiving full-time work hours, as promised in their employment contract. In this case, the applicant had been provided only 256 hours of work over a four-month period (instead of the 640 hours of full-time work promised). Despite accepting that the evidence demonstrated that the applicant did not receive 40 hours of work per week, the officer concluded that "not receiving the hours of work promised does not equate to abuse as defined in R196.2". This conclusion ignores section 8 of the *Employment Standards Act* [45] which forbids an employer from misrepresenting the conditions of work and the availability of a position.

Excessive work hours or unpaid wages were more often accepted as forms of abuse where a worker had proof of work schedules and pay stubs issued by an employer, as opposed to the workers' own records. The

[44] *Supra* note 10.

[45] *Employment Standards Act,* RSBC 1996, c 113, s. 8.

employer failing to provide pay statements was also seen as a failure to comply with provincial employment law and as result, a form of financial abuse.

Type of Work Contrary to Work Permit Conditions

Seven of the applicants reported they were directed by their employers to complete work that was contrary to the conditions of their work permit and their employment contracts. This included being sent to different employers and locations to work, often with very poor working conditions. For example, one worker authorized to work as a home support worker caring for a senior was sent to work in a shop owned by the same employer, and another worker authorized to work on a farm was sent to work to clean private homes and also perform accounting work for their employer, in addition to their farm work. Out of fear of losing their employment, workers often felt they had no choice but to do what was asked of them by their employers, even if this meant working in contravention of their work permit conditions. This forced employment, contrary to their work permit, was often not considered or acknowledged as a type of abuse by officers in the reasons for decision, despite the assignment of such work clearly being in contravention of section 8 of the Employment Standards Act46 and in contravention of the requirements of the TFWP.[47] In most cases, the forced employment contrary to a worker's contract and work permit was not mentioned by an officer in the reasons and the consideration of the application. Only in one case, where an applicant was able to provide pay stubs from a different employer not listed on their work permit was this considered financial abuse, as the applicant was able to substantiate the forced work contrary to the conditions of their work permit. This suggested need for corroborating evidence in such a circumstance does not consider the vulnerability and power imbalance of migrant workers tied to their employer.

Recruitment Fees

Employers and their agents are prohibited from charging fees to foreign nationals for recruitment or employment in BC.[48] In cases where a worker paid a recruitment fee, officers rejected allegations of financial abuse despite accepting that a worker had in fact paid a recruitment fee. For instance, in several cases, despite finding that the worker had been charged recruitment fees, the officer rejected this as evidence of abuse because the payment was made "voluntarily" and not "coerced" and the applicant was not "forced" to pay the fee.

Officer reasons on the issue of recruitment fees included troubling language and conclusions. In one circumstance of a worker having been found to have paid a recruitment fee of almost $7,000, an officer concluded that the applicant had "willingly paid the fee" and that because there was "no indication that he was coerced into paying the fee", there was no financial abuse present. In another case, the officer noted that not only was the worker not forced to pay the fee, the worker "was given a choice and he agreed to pay a fee" – characterizing the applicant's payment of a recruitment fee as a choice, despite the clear evidence of vulnerability and the power imbalance between the worker and the immigration consultant.

In another case, an applicant paid $40,000 in recruitment fees to an immigration consultant, acting on behalf of the employer for a job. Upon the worker's arrival to Canada, the employer named on their work permit denied any work was available due to not yet having been "paid" by the immigration consultant. The payment of this fee was accepted by the deciding officer, but not seen as problematic. Instead, the officer found the applicant "willingly paid" the fee, and therefore no abuse existed – despite no job being available to the worker on arrival, which clearly indicated fraud. The officer went on to conclude that "a lack of work in and of itself does not constitute financial abuse," and that the payment of the recruitment fee was not "in the context of their employment in Canada" despite the PDIs clearly intending to capture abuse in the recruitment process.[49]

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[46] *Supra* note 45.

[47] Section 209.3(1) of the IRPR outlines the conditions for employers when hiring a worker.

[48] *Employment Standards Act,* RSBC 1996, c 113, s. 10; *Temporary Foreign Worker Protection Act*, SBC 2018, c 45, s. 21(2).

[49] The PDIs contemplate the charging of a recruitment fee as a form of financial abuse, specifically noting: "The employer, a third party or both have abused the migrant worker by charging them job placement or recruitment fees based on false promises or misleading information (fraud), or are otherwise threatening, controlling or exploiting the worker." This wording is problematic, however, in its lack of recognition that recruitment fees are illegal, period. See *supra* note 10.

This collusion between the employer and immigration consultant to defraud the worker was eventually accepted by a different officer after the applicant filed for leave and judicial review in the Federal Court, and the matter was settled and remitted back for a new decision by a different officer. The second officer accepted that the applicant had paid the immigration consultant an "exorbitant fee", but still made note that the applicant was "not coerced into paying this fee". Despite this later finding, the officer found there was evidence of financial abuse, and acknowledged that the "employer retaliated against the applicant by not providing [the worker] with work as a result of the consultant not paying the employer a portion of the $40,000 that was paid by the applicant". In all of the reasons and applications analyzed, this was the only case where this payment/collection of recruitment fees was accepted by an officer as financial abuse. In all other cases where a recruitment fee was collected from the applicant, the officer found that the applicant willingly paid the fee or ignored it as a factor completely in dismissing any presence of financial abuse.

This reasoning with respect to recruitment fees is of particular concern considering the vulnerability of workers and prevalence of third-party agents, both inside Canada and overseas, participating in fraud and operating with impunity, promising to connect potential workers with employers and a work permit and eventual permanent residence in Canada. Of the applications MWC analyzed, recruitment fees ranged from $3,000 to $40,000 and recruitment fees were found to be paid by 11 applicants.

The predominant analysis by IRCC officers failed to recognize that the charging of recruitment fees to workers is not only prohibited by domestic law, but also by international law.[50] A study by the International Labour Organization (ILO) found that the prohibition on the charging of recruitment fees was a widespread policy applicable in 59 of the 90 countries involved in the study.[51] This global stance against charging recruitment fees to workers is due to the potential for exploitation and that a worker's "willingness" to pay is often vitiated by fraud by recruiters and consultants, and a worker's lack of knowledge of their rights.[52]

The United Nations Office on Drugs and Crime has also pointed out that there is a link between charging recruitment fees and human trafficking.[53] They explain that charging recruitment fees often involves some form of fraud and deception about the nature of the job, including the conditions of work. Many migrant workers borrow funds to cover this fee. When they discover, however, that the job was not what they expected, they are unable to leave the employment – no matter how abusive – because they have incurred substantial debt in order to pay the usually exorbitant recruitment fees.[54] Workers can thereby be forced to remain in unacceptable employment situations for many years.

By virtue of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Trafficking in Persons Protocol),[55] the charging of fees by recruiters amounts to human trafficking considering that it is often

[50] Article 7, paragraph 1 of the ILO Private Employment Agencies Convention (No. 181) of 1997, prohibits private employment agencies from charging recruitment fees or costs to workers.

[51] "A Global Comparative Study on Defining Recruitment Fees and Related Costs: Interregional Research on Law, Policy and Practice," Report (International Labour Organization, November 27, 2020), http://www.ilo.org/global/topics/labour-migration/publications/WCMS_761729/lang--en/index.htm.

[52] This is a widespread challenge despite the fact that a variety of legal and policy documents expressly prohibit charging recruitment fees. See Temporary Foreign Worker Protection Act, SBC 2018, c 45, s. 21(2); Employment Standards Act, s. 10 RSBC 1996, c 113, s. 10. See also Leanne Dixon-Perera, "Regulatory Approaches to International Labour Recruitment in Canada" (Immigration, Refugees and Citizenship Canada, 2020), http://www.deslibris.ca/ID/10106825. See also British Columbia, Official Report of Debates of the Legislative Assembly (Hansard), 41st Parl, 3rd Sess, Vol 9, No 2 (5 November 2018) at 6179 (Hon M. Elmore). Here, Hon. Elmore reports "systemic violations of illegal recruitment fees being charged."

[53] "The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons" (Vienna: United Nations Office on Drugs and Crime, 2015), https://migrationnetwork.un.org/resources/role-recruitment-fees-and-abusive-and-fraudulent-recruitment-practices-recruitment.

[54] See Sarah Marsden et al., "Silence Means Yes Here in Canada," *Canadian Labour and Employment Law Journal* 18, no. 1 (2014), where the authors discuss specific cases of live-in caregivers working in BC from the Phillipines and China, having to pay sums ranging from $10,000 to $20,000 to recruiters or middlepersons, which they thought was necessary in order to obtain a work permit. For these people, refusing to pay back the debt incurred in order to pay these fees was not an option because of the fear that enforcement actions (be it formal or informal) would be taken against their loved ones in their home country.

[55] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, available online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

accompanied by elements of fraud and deception, and used to trick workers into abusive situations. Scholars have also contributed to this discussion by adding that workers having to continue with such employment for increasingly lengthy hours to pay back the debt they incurred as a result of the recruitment fees amounts to "bonded labour, a form of slavery."[56]

With respect to officers' findings that workers "willingly" pay recruitment fees, an empirical study conducted on the recruitment of Guatemalan agricultural workers in Quebec revealed that some workers strongly believed that "the involvement of a "middle person" is inevitable, perhaps even mandatory."[57] The study casts doubt on the idea that workers willingly pay these fees as it is obvious that in some cases, workers have been made to believe that paying recruitment fees is the only way to secure employment in Canada. The illegality of charging recruitment fees has been specifically addressed and recognized in BC with the enactment of new legislation in 2018 prohibiting the direct or indirect charging of recruitment fees, precisely because the practice is so widespread.[58] Similar legislation has also been enacted in other provinces across Canada.

Payment of LMIA Fees

In addition to the payment of recruitment fees, workers were often required to pay the government processing fees associated with the employer's LMIA application.[59] Though the TFWP prohibits employers from recouping this fee from employees, and explicitly requires that employers themselves pay this processing fee, that workers were instead required to pay these fees was not identified as financial abuse by officers in any of the reasons analyzed. Of the 30 applications analyzed, three of the workers stated that they were required to pay the cost of obtaining the LMIA or required to pay the employer back the cost, and this contravention of provincial law and the TFWP was not acknowledged in any of the reasons. Although only three applicants stated that they were forced to pay the employer's LMIA fee, the real number of applicants this affected is likely much larger as the charging and payment of recruitment fees may have also included the cost of the LMIA processing fee.

Termination

Early termination from employment shortly after a worker arrived in Canada was found in four of the applications analyzed, including in one situation where the worker was terminated after only three months of work, and others where the worker was terminated after only one or two weeks of work.[60] In the situation where the worker was terminated after three months, the officer found this did not constitute financial abuse, indicating that the employer was not "obligated" to continue to employ the worker, despite the presence of other allegations of abuse. In the situation involving one of the workers terminated after less than one week, the officer noted this fact in the reasons for approval, but did not go so far to indicate that the early termination constituted financial abuse. In this case, the worker had arrived during the COVID-19 pandemic, completed a 14-day quarantine period and was permitted to work for four days before being terminated and told that they were being sent back to their country of origin, despite having been issued a work permit valid for two years.

In all cases, early termination caused excessive hardship on workers due to the employer-specific work permit, and a worker's inability to work for any other employer than that who terminated them.

Termination as retribution for complaining about working conditions was also experienced by several workers and put forward as financial abuse. This kind of termination after a worker attempted to bring concerns to their

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[56] Geneviève Lafond, "Dignity at Work : Why Is International Law Fit for the Job?," *Revue Québécoise de Droit International* 24, no. 2 (2011): 113 at 145.

[57] Dalia Gesualdi-Fecteau et al., "A Story of Debt and Broken Promises? The Recruitment of Guatemalan Migrant Workers in Quebec," *Revue Québécoise de Droit International* 30, no. 2 (2017): 95.

[58] *Temporary Foreign Worker Protection Act*, SBC 2018, c 45, s.20.

[59] This fee is currently set at $1,000 per s.315.2(1) of the IRPR.

[60] Although each case is different and can depend on the length of time authorized in an LMIA, the majority of work permits issued under the TFWP are issued for a period of two years. Most workers coming under this program believe their contract will be for a two-year period, and have planned their financial affairs accordingly. Work permits issued under the SAWP are normally issued for a shorter period of time, and can only be issued to a maximum of eight months between January 1 and December 15 of each year, to correspond with the seasonal nature of the work. In 2022, the SAWP eight-month maximum duration was extended to a nine-month maximum period.

employer's attention was not necessarily seen as a form of financial abuse in the cases it was alleged, with the exception of two cases where the termination was considered with other egregious examples of abuse, such as physical violence or lack of payment of wages or where a worker was terminated after suffering a work-related injury. However, even in the cases where termination was listed as part of the reasons for approval of a VWOWP, the officer stopped short of characterizing the termination as financial abuse.

Lack of Consideration or Incorrect Consideration of Evidence, High Evidentiary Burdens

In many circumstances, officers made conclusions that workers were not at risk without any analysis of the evidence of abuse provided by the applicant, making it impossible to understand the officer's reasoning. Although the Federal Court has commented that immigration officers are not required to explicitly list each piece of evidence and its consideration in their decisions, the PDIs explicitly require officers to assess each case based on the totality of the evidence before them.[61]

The reasons reveal that in both approvals and refusals, officers often do not acknowledge many of the allegations being put forward. In reasons accompanying approvals, officers often ignored allegations of significant psychological abuse, and instead focused on other allegations put forward. For example, in cases where the employer held a worker's passport or where there was clear evidence of unpaid wages backed with evidence of a complaint filed to the Employment Standards Branch and/or Service Canada, officers based their reasoning on these violations and did not engage with the evidence of psychological abuse put forward.

The consideration of a worker's first-hand statement was not consistent, with some officers assigning little weight to a worker's statement that took the form of an affidavit, and in particular, when a lawyer assisted with the drafting. Similarly, where allegations were supported by letters from support workers or community organizations, consideration of this evidence was sometimes ignored, and other times assisted with a positive determination approving a VWOWP. In many of the refusals observed, too high an evidentiary burden was being placed on a worker to substantiate the allegations of abuse, for example, evidence of discriminatory comments. Rather than considering the evidence as a whole, officers often took an inflexible approach to the lack of evidence, refusing applications without requesting additional information from workers.

High or Incorrect Evidentiary Threshold

The reasons showed decisions that are confusing or contradictory to the PDIs with respect to the evidentiary burden. Grounds for refusal included that workers did not provide evidence of an official complaint being filed against their employer to the Employment Standards Branch, WorkSafeBC, or to the police alleging abuse, or that their complaint was filed "late". In one case, an applicant's first application for a VWOWP was refused and they filed a second application after continuing to face abuse in the workplace. Between the two applications, the worker filed a complaint with the Employment Standards Branch after having been terminated by the abusive employer. The consideration of this complaint was given "little weight" by the officer as it had not been filed prior to the worker's first application, despite the worker putting forward an explanation of their fear of retribution as a consequence of complaining in both applications. In other cases, where an applicant had filed a complaint with the Employer Standards Branch or with Service Canada, these complaints were always listed as a part of the evidence in support of the worker's application, indicating that its existence in most cases was important.

This is contrary to the PDIs which state that it is not a requirement that an applicant file a complaint. There are many reasons why an applicant would not want to file an official complaint against their employer. These include but are not limited to cultural, literacy or linguistic barriers, geographic or social isolation, economic dependency, fear of retribution, fear of not being believed, lack of trust in authorities, and lack of knowledge of how to report abuse. In cases where applicants did file a police report or complaint with the relevant authorities, this evidence was often given more weight than personal statements of the applicant.

[61] The PDIs outline the Standard of Proof as "reasonable grounds to believe" and note that "Officers have to assess on the totality of the evidence in each case." See *supra* note 10.

In many cases, officers failed to engage with the evidence before them or assigned too high an evidentiary burden on the applicant. In one situation of an applicant working as a live-in home support worker, the worker submitted copies of contemporaneously made journal entries of their hours of work demonstrating that they were required to work for at least 12 hours most days and an additional four to six hours while working the night shift. Included with their application was a list of duties the employer expected of the worker to perform from morning to night. This applicant was also interviewed and confirmed the hours they were required to work during the interview. Despite all of this, and without any clear credibility findings, the officer concluded that the worker "had not provided any proof" of overtime hours worked, and failed to engage with the contravention of provincial employment standards with respect to the worker's right to have time free from work.[62]

The same application included a letter of support from a community organization that had been supporting the worker after they left their employment, describing the organization's observations of the symptoms of trauma the worker was exhibiting. This letter of support was similarly ignored by the officer, and the worker's application was refused. This reasoning is in direct contrast to another case where a letter from the settlement organization assisting a worker was listed as a positive factor in the approval of a work permit.

The reasons show a failure of officers to meaningfully grapple with all the evidence before them, or to discount evidence before them without providing any reasons why. The result is an inconsistent expectation of significant corroborating evidence in some cases, and approvals with little supporting evidence outside of a worker's statement in others. In some cases, officers were presented with evidence that supported the opposite of their conclusion and there was no reference as to why the evidence provided was not considered or why the officer did not believe the evidence before them.

Similarly, two applications analyzed presented similar experiences of abuse from two different workers at the same place of employment. The VWOWP applications were submitted only five days apart. One application was approved, while the other was initially refused (and eventually approved after a reconsideration request and an application for leave and judicial review in the Federal Court). The inconsistent consideration of evidence in the two applications raises concerns regarding the inconsistent evidentiary burden imposed on applicants and the assessment of evidence varying to a such a large degree between officers.

In many cases, evidence that included recordings of conversations between a worker and the employer, or a transcription of such recordings were assigned little weight by a deciding officer. In one case, the officer did not accept a worker's allegation that they were asked to pay back a portion of their wages, despite corroborating evidence in a recorded conversation between the employer and the worker. In the reasons for their decision, the officer noted that the transcript had not been certified or done under oath and assigned it "little to no weight". Requiring documents to be certified or made under oath in order to assign them with relevant weight sets an evidentiary burden that is too high for many workers who will not be able to access or pay for certified translation or notarization of statements.

Lack of Flexible Approach to Perceived Gaps in Evidence

The reasons showed a lack of flexibility in perceived gaps in evidence in some applications, and officers refusing applications due to a lack of evidence rather than being facilitative in their approach, and requesting additional information. In one of the applications, a worker applied for a VWOWP three times before being approved. This worker had broken his foot in an accident at work, and was required to undergo an operation. The reasons reveal that the first application was refused "due to dark/blurry evidence submitted" without any request for additional information or an interview. The worker's second application was also refused with the reasons showing that the officer did not believe the worker's narrative of what happened to him, alleging inconsistencies with the worker's documents after a microscopic review, and again without a request for an interview or for additional clarifying information. The worker re-submitted their application a third time and it was approved.

[62] Part 4, Section 36 of the *Employment Standards Act* requires an employee to have at least eight hours off between shifts, and at least 32 hours in a row free from work each week.

In another case, an officer found that the applicant had not provided enough evidence to support their allegations of abuse, having "only" provided "a personal statement, cover letter from counsel, and a support letter from a contact", and had not provided any evidence of having filed a complaint with any provincial or federal agency. This applicant was not provided the opportunity for an interview or invited to provide any additional evidence that may have been required. In contrast, other applications were accepted with a similar set of supporting evidence.

Assessment of Psychological Abuse

Seventy percent of applications analyzed included an element of psychological abuse; in some cases, severe abuse from the employer. Despite the prevalence of psychological abuse in the applications, the reasons almost never acknowledged the psychological impact and harm that workers were alleging. In one case, the officer noted that allegations of psychological abuse "were not assessed" due to the lack of supporting evidence, without requesting an interview or seeking additional information from the applicant.

Applicants noted psychological abuse both with respect to their work duties and, for those workers who also lived at their place of employment such as care workers or farm workers, outside of working hours. One applicant reported having been the target of racist comments from their employer, an experience that was mentioned in the reasons for refusal, but not accepted by the officer deciding their case because the applicant had "provided no evidence to support that this comment was made," placing an unreasonable evidentiary burden on the applicant.

In other cases, the psychological abuse and bullying experienced was almost always excluded from the reasons. On one occasion, an applicant reported the harsh and excessive discipline they received from the employer, including the employer suggesting that the applicant must have "something wrong" with them and that they should see a doctor. The applicant noted feeling singled out and ashamed, but this experience was not considered abusive enough for the issuance of a work permit. In another case, the worker was called "sh**" and an "evil" and "toxic" person by their employer, and was similarly refused their VWOWP application. In another case, the applicant was subject to sexual harassment at the hands of their employer's contractor, and made a complaint to the BC Human Rights Tribunal on the basis of sex discrimination. This worker's application was ultimately refused, and the reasons did not acknowledge the psychological abuse alleged.

Only in cases where the psychological abuse was well documented in the form of text messages or emails was it accepted as part of the abuse faced by an applicant. In one case, an officer accepted that an applicant had experienced psychological abuse by means of intimidation after the employer handed a termination letter to the worker after only two weeks of work explaining that the worker was not permitted to work for any other employer, and also indicating that the employer had purchased a plane ticket for the worker to return to the country they were residing in before coming to Canada (and where they no longer held any status) that same evening. The employer also assigned a security guard to escort the worker off the employer's property, to the bank to close their bank account, and to the airport, despite the worker having valid status in Canada for an additional 23 months at the time of termination. Of note, this worker was terminated after not being permitted to return to work after a two-day absence for medical reasons, which was not discussed in the officer's reasons for approval. In another application, a worker was found to have experienced psychological abuse after her employer made sexual advances and threatened that he would kill himself after the worker rejected his advances. This worker was also sexually assaulted by the employer.

A lack of acknowledgement of the psychological abuse faced by workers applying to the program indicates officers are less concerned with this kind of abuse, despite how traumatizing it can be for workers to share the personal details of what they have been through.

Procedural Fairness and Credibility Assessments

The decisions analyzed showed a lack of procedural fairness offered to some applicants, with negative credibility assessments of workers' statements and/or supporting evidence being done without interviews or an opportunity for the worker to provide a response to any credibility concerns.[63] Applications were refused without an interview on the basis of perceived gaps in evidence, despite the PDIs indicating that any gaps or contradictions in an applicant's submission should be addressed during an interview.[64]

Interviews

In the cases analyzed, where applicants were provided with the opportunity for an interview, all were prevented from having their counsel present during the interview. Interview notes prepared by officers and included in the reasons also showed questions that were not trauma-informed, and decisions showed conclusions that were insensitive to the workers and the trauma they experienced. In one case, the officer made a negative credibility finding because the applicant mentioned that their lawyer had assisted them in calculating how much money they were owed by the employer in their complaint put forward to the Employment Standards Branch, and the officer found that the applicant alone "should be able to provide an explanation of the monies owed." This interview lasted for two hours and the worker identified feeling stressed and intimidated throughout the process, and not able to fully comprehend all of the questions asked.

In other cases, workers were not provided an opportunity to address any of the officer's concerns with their application by way of interview before refusal. On three occasions, applicants who had received refusals on their applications without the opportunity for an interview to address any perceived contradictions or gaps were subsequently granted work permits after applications to the Federal Court for review.

Extrinsic Evidence and No Opportunity to Respond

In multiple cases, officers relied on extrinsic evidence that was not disclosed to the applicant, and which formed part of the reasons for refusal of their application. Relying on the external evidence that was not known to the applicant meant that the applicant was not provided any opportunity to respond to or address the evidence before an officer.

In one case, the officer had conducted an employment validation search and discovered that the worker's new proposed employer had not applied for an LMIA, despite the employer having told the worker that they had, and used this finding as a negative credibility factor without informing the applicant or providing them with an opportunity to respond. This finding was particularly concerning since the applicant had alleged financial abuse at the hands of their last employer, and was at risk of similar financial abuse by their new employer. In this case, the reasons for refusal explicitly noted that the applicant had not tried to seek new work, despite the worker stating the opposite in the interview.

In another application, an officer made a negative credibility finding against an applicant while noting that the worker's employer had called Service Canada to complain about the worker. The reasons stated that the employer had called Service Canada to inform them that she believes "her foreign worker just used them to come to Canada and obtain permanent residency. She would like to dismiss him." In this situation, the worker had alleged termination as retribution for speaking up about poor working conditions, including asking the employer for a regular work schedule to alleviate the excessive working hours of up to 18 hours some days, and having to be on call during "night shifts" that required the worker to keep a doorbell unit in his room overnight and respond to the bell any time his employer would ring it. This would normally be three to four times per night over a time period of four to six hours, causing the worker not to be able to sleep after also having worked all day. The worker reported that the employer became very cold after the worker raised concerns, making racist

[63] A credibility assessment refers to the process wherein an Immigration officer examines relevant information or evidence provided by the VWOWP applicant with a view to determining if such information or evidence is genuine. These assessments form the basis of determinations on VWOWP applications and other immigration applications.

[64] The PDIs note that officers have three interview options, including in-person, by telephone or waiving the interview and a paper review only. The instructions are explicit that interviews should also take into consideration the trauma and violence the applicant may have faced, and how this might impact their ability to recall traumatic details of what they experienced.

comments about the worker's country of origin and derogatory comments about their temporary immigration status in Canada.

Instead of considering the employer's statement to Service Canada as corroboration of the applicant's allegations that their employment was improperly terminated by the employer as retribution, the officer instead found the employer's statement to be a reason to support refusal as the applicant had admitted in their interview that they wanted to stay in Canada and it was their dream to bring their family here. The officer never put the employer's statement to the worker during their interview, and thereby did not allow the worker an opportunity to respond to it.

Consideration of Previous Immigration History

Previous immigration history was considered by officers in several cases analyzed and was found as a factor and justification against the issuance of a work permit. For example, in one case, a worker's previous immigration history was used as grounds for a negative credibility finding and work permit refusal. Specifically, the officer had concerns about the applicant's "purpose for applying to come to Canada" prior to their employer-specific work permit application and believed the applicant had misled IRCC on their temporary resident visa application about how long they would be in Canada, and on the stated purpose of their visit (tourism). This applicant was interviewed, and counsel was not permitted to attend the interview. During the interview, the applicant confirmed that the purpose of coming to Canada was tourism and also to complete a yoga teacher training. That the yoga teacher training was not explicitly listed on their visitor visa application form was found to be fatal to the worker's credibility and VWOWP application.

Concerningly, the officer in this circumstance paid little attention to the abuse the applicant suffered in the context of their employment, and instead fixated on immigration history, some of which formed part of the basis of abuse faced by the worker. The worker was the victim of fraud at the hands of an immigration consultant, who attempted to charge $40,000 in fees to assist the worker with finding employment in Canada. After paying an initial $7,000 of the fees to the immigration consultant, and with no movement on any work permit application, the immigration consultant introduced the applicant to an employer, who indicated they would help the worker to obtain a work permit if the worker accepted a job as a home support worker in the meantime (that is, coercing the worker to perform unauthorized work in order to receive the employer's support to obtain an LMIA and ultimately, a work permit). Despite the evidence of financial abuse in the context of recruitment fees and a desperate situation caused by the immigration consultant's inaction after the payment of $7,000 in fees, the unauthorized work was considered by the officer as a reason for refusal of the VWOWP application, with a note in the reasons that the applicant "has shown little regard for Canadian laws and appears to continue to do so."

This kind of reasoning ignores the inherent vulnerability of migrant workers in Canada, and in particular, those who have been the unfortunate victim of an unscrupulous immigration consultant. The way that a worker entered the country, and their past immigration history appeared to frame those that were vulnerable against those that were not, with officers having an easier time concluding a worker was vulnerable if they had arrived in Canada with a work permit instead of obtaining a work permit after arrival as a visitor.

Issuance of Work Permits for a Period of Less than 12 Months

Although the VWOWP program does not set a specific duration for how long work permits should be issued for, the PDIs make reference to the fact that at their own discretion, officers may consider a duration of twelve months. The PDIs further suggest that it may take a worker approximately twelve months to find new employment and a new work permit and LMIA if required. A duration of twelve months also acknowledges that workers fleeing situations of abuse may have difficulty in finding new employment right away for a number of reasons, including recovering from the trauma of the abusive situation they endured, and hesitation in being tied to an employer after what they have been through.

Despite the PDIs advising that work permits should generally be issued for 12 months, two of the applicants received a work permit for only six months without any justification noted by the officer as to why the work

permit was issued for a shorter time period. In one of the applications, the worker had only worked with their employer for four days before being terminated and being told they were being sent back to their country of origin. The officer did not give any reason why this VWOWP was only issued for six months duration, considering the worker's employer-specific work permit was still valid for 23 months after their termination.

In the other application, the worker had requested reconsideration of the short duration of their work permit, but did not ever receive a response from IRCC.

Enforcement Action as a Consequence of Application

Despite the purpose of the program to assist workers escaping abuse and exploitative circumstances, applicants have also faced enforcement action as a consequence of submitting a VWOWP application.[65] The potential for enforcement action creates a disincentive for workers to seek help in a situation of abuse. The applications analyzed showed troubling examples of workers who have come forward to disclose abuse or non-compliance by employers and/or immigration consultants only to have that information used against them in enforcement proceedings which could and has resulted in a removal order being made against the worker.

In one circumstance, an applicant was issued a section 44 report in response to an application for a VWOWP.[66] In addition to finding that the applicant was not experiencing abuse or at risk of abuse in the context of their employment, the officer alleged the worker was inadmissible to Canada for financial reasons – being unable or unwilling to support themselves – contrary to section 39 of IRPA. The report was issued based on the facts presented by the applicant in their VWOWP application, including the fact that the applicant's employment had been terminated shortly after arriving in Canada, and that because of this and their inability to work for any other employer due to their employer-specific work permit, they had sought assistance from a shelter, and later, an interim housing facility. Despite evidence to the contrary, the allegations of inadmissibility also suggested that the applicant had not proactively sought employment and/or other means of financial support and income since having been terminated, without mention of their employer-specific work permit. In contrast to this finding, the applicant had attempted to find a new employer to help them in obtaining a new work permit shortly after they were terminated from their employment, by paying another recruitment fee to a new potential employer, and being told by the new employer that they were in the process of obtaining authorization to hire the worker.

The issuance of such a report lacked consideration of the unique and often vulnerable situation of migrant workers and was an unreasonable result stemming from the worker's application. In this situation, the officer considered it a negative factor that the worker had not sought financial assistance from their family or their Consulate, without any consideration of the vulnerability of the worker's situation.

In this case, the officer interviewing the applicant also did not provide any notice that they were considering writing a report alleging that the applicant was inadmissible to Canada. This took away any opportunity for the applicant to respond to the officer's concerns, which led to a report based on incorrect conclusions.

This example highlights the lack of consideration of the applicant's vulnerability, as someone who had suffered abuse in the context of their employment. It also shows lack of consideration of the purposes of the VWOWP, which include protecting migrant workers from abuse in employment and eliminating disincentives for workers to report non-compliance and abuse by their employers.

[65] Enforcement action refers to the investigation, detention, monitoring and/or removal of inadmissible persons from Canada. A person can be found inadmissible to Canada for having engaged in unauthorized work or for omitting to declare unauthorized work previously performed on a work permit application. Sections 34 to 41 of IRPA outline the various ways a person can be found inadmissible to Canada.

[66] A section 44 report refers to a report prepared by an immigration officer, where the officer is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible. The report contains the allegations as to why the officer believes the person to be inadmissible, and if the report is determined to be well-founded, can result in a removal order being issued against the person concerned. See IRPA, section 44(1).

In several other examples, applicants received requests from officers to confirm their departure from Canada after their VWOWP application was refused.[67] In at least one case, the same officer who refused the client's application mailed a section 44 report for non-compliance to MWC's office without any notice to the client, alleging that the person concerned had remained in Canada beyond their authorized period of temporary residence. By that point, the client had in fact already left Canada and therefore the officer had no jurisdiction to issue the section 44 report. In this situation, the worker could have faced a removal order being made against them in absentia which would bar them from returning to Canada for one year had MWC not intervened and notified IRCC that the worker had already left Canada.

Finally, in one of the cases, a worker was issued a section 44 report for misrepresentation for failing to disclose unauthorized work in Canada at the time of their employer-specific work permit application. Like in many situations observed by MWC, the worker had entrusted an immigration consultant to assist them with obtaining work authorization in Canada. The worker began work prior to obtaining their work authorization, as they were advised by their immigration consultant that this would be the only way for the employer to "sponsor" them for a work permit, and the worker had already paid recruitment fees to the immigration consultant in order to obtain work. Having applied for their work permit at the Canadian land border, and pursuant to the instructions of their immigration consultant, the worker did not disclose the unauthorized work they had been doing until they applied for a VWOWP. Despite explaining the circumstances of the unauthorized work, including the bad advice received from the immigration consultant, the exorbitant recruitment fees collected, and the difficult financial situation of the worker due to the large recruitment fee paid, the worker was convened for an admissibility hearing before the Immigration and Refugee Board of Canada and issued a removal order for misrepresentation, and barred from returning to Canada for a period of five years.

These cases are troubling given that the purpose of the VWOWP is to eliminate disincentives to reporting abuse. It is not uncommon for workers who have experienced abuse to have some kind of non-compliance or admissibility concern arising from the abuse, for instance unauthorized work or misrepresentation of unauthorized work prior to the issuance of an employer-specific work permit. Initiating removal proceedings against workers based on issues that are a direct result of abuse disclosed in the course of a VWOWP application creates an enormous disincentive to reporting abuse and is contrary to the intention of the VWOWP program objectives. In particular, the risk of facing removal proceedings for workers who have relied on social supports sets a troubling precedent, particularly for women. Accessing safe and secure housing is critical to avoiding re-victimization and could place workers at risk of particular forms of violence and exploitation if they are unable to access supports due to fear of removal. Similarly, the risk of being found inadmissible for unauthorized work and/or for not disclosing the unauthorized work is a heavy-handed approach for a program which is meant to protect vulnerable workers who have experienced abuse, particularly when the unauthorized work or lack of disclosure form part of the pattern of abuse faced by the worker, most often at the advice of an immigration consultant or employer.

Need for Significant Legal Intervention for Refused Applications

All of the refusals that were analyzed involved a significant amount of legal intervention in order to assist a worker to eventually obtain an VWOWP. In four of the cases, the legal intervention eventually led to the issuance of work permits after initial refusals, often many months after the worker's first application and their experience of abuse. The legal interventions included requests to an officer to reconsider the refused decision, and more often, applications for leave and judicial review in the Federal Court. MWC requested reconsideration of a VWOWP refusal in two of the application analyzed, and the request was successful in having one of the refusals re-opened, and eventually approved. In all cases where a work permit was subsequently issued following an application for leave and judicial review, the matter was settled out of Federal Court before it went to a hearing. After settlement, additional submissions were often required to respond to requests for additional information from the local IRCC office reviewing the initial refusal.

[67] These requests normally come when a worker is out of status and no longer holds a valid work permit due to the refusal of their VWOWP, and in some instances, when a worker is still within the 90-day period after their status has expired during which they may still apply to restore their status in Canada. Although there is no legal requirement for a person to confirm their departure from Canada in such a way, IRCC officers problematically use these letters as a means of trying to ensure compliance that a worker will not continue to remain in Canada without status, causing stress to the worker concerned after having experienced an abusive workplace situation and confusion about their ability to apply for restoration of their status.

The need for this kind of legal intervention is contrary to the PDIs and objectives of the VWOWP program, and specifically, to quickly facilitate a worker experiencing abuse or at risk of abuse with a means to leave their abusive employer, and to mitigate the risk of workers who have left an abusive situation from working without authorization. In addition, the significant legal involvement puts workers without legal representation at a disadvantage, unable to challenge unreasonable or unfair refusals. Although work permit applications under the VWOWP are exempt from any fees, applications for leave and judicial review in the Federal Court require the payment of a filing fee[68] and often payment to a lawyer to assist with the application for judicial review in Federal Court. In British Columbia, a worker is not able to get a lawyer through legal aid to assist with an initial VWOWP application or any subsequent challenges to a VWOWP refusal.

Failure to Apply Concept of Vulnerability to all Applicants

The conclusions in some of the reasons analyzed exposed a judgmental and paternalistic view as to what an officer considered to be a vulnerable worker. It was noted that in cases where workers presented as more educated or with more work experience, officers had difficulty accepting the credibility of the allegations of abuse being put forward, often insinuating that it was not possible for a worker with that kind of background to experience abuse in the context of their employment.

In two cases involving male home support workers caring for seniors, and who had experienced psychological and physical abuse at the hands of their employers, the reasons for refusal showed an accusatory and blaming tone along with a disbelief that these workers could have in fact suffered any abuse or trauma. In one case, a worker reported calling the police after feeling threatened by the employer upon being terminated, including feeling physically threatened by the employer's son. This same worker had experienced racist comments from the employer. The fact that the worker called the police was dismissed in the reasons based on the officer's belief that the age of the employer could not pose a risk to the safety of the worker.

In another case, condescending language was used throughout the reasons for refusal, with assumptions made and judgement laid as to how the worker should have been able to avoid any abuse they faced. In this case, the worker had paid an immigration consultant to assist with finding employment and work authorization in Canada. In dismissing any concern about the recruitment fee paid, and the worker's lack of knowledge that it was illegal to charge for a job in Canada, the officer commented on the applicant's education in rejecting the evidence of financial abuse stating: "since the applicant had done his post-secondary studies and research for his studies in the USA and in the English language, it would have been reasonable to expect that he would have wanted to research the information and the requirements on working in Canada." This case also involved significant evidence of financial abuse put forward, including complaints filed with the Employer Standards Branch and the Immigration Consultants of Canada Regulatory Council,[69] along with pages of handwritten notes listing excessive hours worked and the worker's schedule which were given little value by the officer as they "may have been written/prepared at a later date."

These decisions expose a troubling narrative of what an officer considers to be a vulnerable worker, contrary to the VWOWP program objectives. Rather than considering whether a worker experienced abuse at work or was at risk of experiencing abuse at work, some of the decisions showed officers focusing instead on the applicant's education and work experience, and previous immigration history, in assessing whether the allegations brought forward could be considered abuse. This analysis lacks an understanding of the inherent vulnerabilities of the TFWP that lead to abuse in the workplace; vulnerabilities that have been recognized through the creation of the VWOWP.

Of note, the PDIs contain very little direction with respect to the concept of vulnerability, and the inherent structure of the TFWP that makes migrant workers more vulnerable to abuse in the workplace. The guidelines provide an overview as to why a migrant worker may not disclose abuse, encouraging officers to consider that

[68] Federal Court filing fees as of the date of writing are $50 CAD.

[69] The predecessor of the regulatory body for immigration consultants, now known as the College of Citizenship and Immigration Consultants.

a worker may endure abuse for a long time before seeking support.[70] In considering the timing of an application, officers are encouraged to consider that workers may keep their abuse secret due to literacy and language or cultural barriers, geographic or social isolation, dependency on their employer or person perpetuating abuse, and lack of trust in the authorities, among other reasons. However, the listed reasons in the PDIs as to why a worker may have difficulty accessing the VWOWP program are relevant to the entire decision-making process, including how an officer understands vulnerability in the context of the VWOWP program. This framing does not appear to be applied in the broader consideration of what officers recognize as abuse and in the assessment of evidence.

[70] *Supra* note 10.

Additional Considerations

In addition to the reasons analyzed, MWC has observed several additional barriers and concerns for workers applying for a VWOWP.

Structural Issues with the TFWP Remain

Despite many workers having successfully obtained open work permits through the VWOWP, structural barriers that prevent a worker from coming forward and making an application persist. For example, there is no guarantee of a VWOWP actually being approved or a worker finding a new employer who will go through the LMIA process and assist a worker in obtaining a new employer-specific work permit if a worker is able to secure an open work permit. Unscrupulous immigration consultants continue to operate with impunity,[71] charging exorbitant recruitment fees and targeting migrant workers who present as the most vulnerable. The VWOWP does nothing to assist workers recoup recruitment fees, and migrant workers have few options to do so outside of filing a lawsuit to try to recover the fees paid. Without structural changes to the way work permits are issued in Canada, the VWOWP provides only a temporary and inadequate solution to the framework of the TFWP that creates the circumstances for situations of abuse in the first place.

There remain very few pathways to permanent residence for workers that are employed in occupations that Canada deems "low-skill", including many of the occupations of the workers who participated in this research project. The VWOWP does not address a worker's lack of access to permanent residence, and many workers are left in a precarious position after the expiry of their VWOWP if they are not able to obtain new employment and a new employer-specific work permit. Even if a worker is able to obtain a new employer-specific work permit, they remain subject to the inherent vulnerabilities and abuse that are systemic to the TFWP.

Lack of Legal Support and Legal Aid Funding

There is currently no option for a worker to obtain legal aid funding in British Columbia to assist with an application for a VWOWP. This significantly impacts a worker's access to justice and access to the VWOWP program. It has been MWC's observation that workers who do not get legal assistance when applying for a VWOWP are often at a disadvantage and their applications refused due to insufficient evidence of abuse provided.

Applications must also be submitted online, which creates an additional barrier for workers who do not have access to a computer or Wi-Fi at their place of work. Many workers come to Canada with only a cell phone, and there is no way to submit an application for a VWOWP if using a smart phone due to the application forms required by IRCC.

In addition, the applications with which MWC assisted have been labour intensive, in consideration of the evidence needed to corroborate a worker's story. In some cases, applications can take from 16 to 20 hours to prepare, taking into consideration the need to build trust with a worker and fully understand their circumstances and what happened to them in the course of their employment. Without support, it is difficult for workers to make their case to an officer and ensure that they are including corroborating evidence and framing the abuse they suffered at work to fit with the indicia of abuse considered by the VWOWP program. The lack of access to legal support creates a major barrier for workers to be able to quickly and easily access the program and obtain a work permit to leave an abusive situation.

[71] It is important to note that the regulatory body governing immigration consultants has twice come under attack for failing to ensure that only licensed immigration consultants are providing immigration services, and for fraud, labour law violations, human rights violations, and other abuses perpetuated by their members. See House of Commons Report of the Standing Committee on Citizenship and Immigration, "Starting Again: Improving Government Oversight of Immigration Consultants", June 2017, online <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/report-11/>. The Federal Government attempted to create oversight for immigration consultants in order to prevent further abuse, the most recent being the creation of the College of Immigration and Citizenship Consultants in 2021. The impacts of this new body on a person's ability to access justice after being ill-advised by an immigration consultant are yet to be seen.

The Risk from Previous Non-Compliance is a Barrier to Access

As described in the previous section, workers have faced enforcement action as a consequence of submitting a VWOWP application, despite the IRPR specifically precluding an officer from penalizing a worker who has engaged in unauthorized work, and allowing the issuance of work permits in these cases even when six months has not passed since the unauthorized work has ceased. MWC has instead observed a reliance on section 40 of IRPA which finds a foreign national has contravened immigration law and is inadmissible to Canada for failing to disclose unauthorized work in a previous application for an employer-specific work permit.

As observed, the failure to disclose unauthorized work is often due to ineffective or fraudulent representation by an immigration consultant or employer. In situations where a migrant worker has disclosed unauthorized work as a part of the pattern of abuse they faced prior to being issued an employer-specific work permit, MWC has found it difficult to advise a worker to apply for a VWOWP as the risk is high that the worker may be found to have misrepresented themself, and issued a removal order for not disclosing the initial unauthorized work. In these situations, a worker has little to no recourse, and may have often already spent thousands of dollars on recruitment fees in an attempt to get the proper authorization to work in Canada. This level of enforcement is contrary to the objectives of the VWOWP program, which recognizes that a worker may experience abuse at the hands of an employer, an employer's agent, or both, and that abuse can include charging the worker recruitment fees based on false promises, misleading information or fraud.

No Option for those Out of Status

The exclusion of workers who no longer hold a valid work permit from the VWOWP program fails to consider abuse experienced by workers in the context of employers promising renewals of work permits, and/or fraud by immigration consultants who have charged a worker fees and promised to renew their status, only to never deliver on the promise of renewal. This circumstance of abuse is commonly seen by MWC, and leaves workers in a precarious state, unable to fix their immigration status and/or qualify for a VWOWP despite the financial abuse and fraud they faced in the context of their employment.

Processing Delays

The PDIs note that applications under the VWOWP should be processed on an urgent basis and within five business days from the time the application is received at the local IRCC office responsible for processing. Despite this guidance, it has instead been MWC's experience that applications typically take between six to eight weeks to be processed, and during the start of the COVID-19 pandemic in 2020, application processing more often took around twelve weeks. In some cases, however, MWC has observed it can be even longer. For example, in one case, where an application was refused and MWC submitted a reconsideration request, the reconsideration request took more than seven months to confirm refusal. In this case, the worker filed an application for leave and judicial review of the subsequent refusal in the Federal Court and was eventually issued a work permit after the matter was settled out of Court more than eleven months after first submitting their application.

Interviews – in Person and by Phone

The fairness concerns MWC has observed stemming from the use of interview practices that are not trauma-informed are compounded by the fact that certain IRCC offices have made a practice of barring counsel from attending interviews with clients. MWC has made numerous requests to attend interviews with workers, almost all of which have been denied (and all of which were denied for the research participants of this report). For clients who have experienced trauma and abuse, having counsel present is often an essential support for the worker to be able to fully present their case. All of the workers that MWC has supported have reported to us that they wanted to have counsel present during their interview.

We also note that fairness is undermined by IRCC's refusal to provide interpreters to workers where required. Workers who require an interpreter have been instructed by IRCC to bring an interpreter who is not a family member or friend at their own expense. For most migrant workers who have experienced job loss or who

are being financially abused, this is impossible. It is unfair to place the financial and administrative burden of arranging for interpretation on workers who have experienced abuse and the organizations supporting them. This problem is amplified by the fact that interviews are routinely scheduled on a few days' notice which makes it extremely difficult to coordinate interpretation and ensure the worker is able to participate from a safe place and obtain time off in situations where the worker is still working. The VWOWP PDIs state that the officer in charge of an application must determine whether an interview could have a significant impact on the client and whether an accredited interpreter is necessary. A VWOWP, which has the potential to allow a client to exit a situation of abuse and work lawfully, has an obvious significant impact on the worker.

Extension of VWOWP

Extensions under the VWOWP are generally not possible, except where the original conditions of issuance of the initial work permit still exist. Workers are only eligible for a renewal if their previous employer-specific work permit is still valid and they must also continue to meet the other requirements of the VWOWP.

The expectation that workers who have suffered abuse in the context of their employment can easily find a new employer to support a new employer-specific work permit application in 12 months (or less) is not realistic for many workers. It suggests that a worker is in control of securing a new LMIA and puts the responsibility on a worker to convince an employer to help them when it is unequivocally an employer who directs and controls the LMIA process. MWC has observed that an initial 12-month period is often not enough time for a worker to find a new employer and apply for a new work permit. The short time period also creates a situation where workers feel pressure to locate a new employer to support them with a new work permit, instead of focusing on healing from the trauma they may have experienced in the context of their previous employment situation. This can lead to further abuse, with workers being charged new recruitment fees and being put in precarious situations in exchange for the promise of continued temporary status in Canada. Even after being issued a VWOWP, migrant workers are still vulnerable to all of the abuses inherent to the TFWP.

Non-Existent Consequences to Employers and Agents

In all of the applications analyzed for this report, MWC is not aware of any enforcement or inspection that occurred in relation to an employer or an unscrupulous immigration consultant, including in cases where a VWOWP was granted. In many cases, work permits are sought for various workers from the same place of employment, at different periods of time, indicating that workers continue to suffer from abusive working situations despite IRCC being aware of the situation at the place of employment. For example, work permit applications were submitted eight months apart for two different workers at the same place of employment, and on similar grounds. In another example, a worker was sexually assaulted by an employer known to have "ongoing relationships with workers on many farms in the area", and who would solicit workers for sex or for photos of their genitals in favour of better working conditions, and send obscene pictures to workers. Although this worker was granted a VWOWP, the employer continues to employ migrant workers, and workers continue to allege abuse and severe mistreatment at the place of employment. The lack of consequences for employers who abuse workers in such a manner and for recruiters who charge exorbitant recruitment fees is a systemic issue that must be addressed in the context of the VWOWP program.

The Regulatory Impact Analysis Statement proposing the VWOWP in December 2018 noted explicitly that "as part of the ongoing performance measurement strategies for the TFW Program and IMP compliance regimes, the number of outcomes of compliance inspections that are triggered as a result of information obtained from reports of abuse, or potential abuse, will be tracked."[72] The progress and impact of this tracking system is yet to be felt.

[72] *Supra* note 18.

Participation in Complaint Proceedings

In many of the applications analyzed, workers reported having filed complaints with provincial authorities, including with the Employment Standards Branch, WorkSafeBC, and the Human Rights Tribunal. Throughout the reasons, officers often noted that workers were not required to remain in Canada while their complaints were proceeding.

While it is true that complaints will continue to be processed even if a worker is no longer in Canada, one of the objectives of the VWOWP program is to facilitate the participation of migrant workers who are experiencing abuse or who are at risk of abuse in any relevant inspection of their former employer, recruiter, or both. Not recognizing the importance of a worker's desire to remain in Canada until their complaint is finalized can risk leaving a worker feeling like they have not received any justice for the abuse they have endured in Canada. It also risks workers becoming disenfranchised in the complaints process, with no choice but to abandon complaints upon being forced to return to their country of origin. More so, workers may need time to acquire funds in order to travel back home or pay debts associated with the payment of recruitment fees, or need to remain in Canada to meaningfully participate in presenting their complaints to the relevant authorities and work with and instruct counsel when needed.

Recommendations

Address the Systemic Issues as the Cause of Abuse

In addition to specific recommendations for improvement to the VWOWP, this research has identified the regulatory framework of the TFWP as a contributing factor to decreased access to justice for migrant workers. The regulatory constraints of the TFWP position migrant workers as uniquely vulnerable to abuse and exploitation, and without measures to address systemic issues, the need for programs such as the VWOWP will remain. Although the VWOWP provides a helpful mechanism for many workers to quickly flee abusive situations, the need for broader systemic change and the political will to address the structural causes in Canada's immigration system that perpetuate abuse of migrant workers could not be clearer.

As earlier discussed, prior to the VWOWP program becoming operational, IRCC estimated approximately 500 applications under the program may be received every year.[73] Statistics obtained from IRCC, however, reveal that a total of 2,481 applications were received from June 2019 to July 31, 2021, which is more than quadruple the estimate.[74] These statistics indicate that the government underestimates the extent of the crises faced by migrant workers in Canada. It is even more concerning to consider that only 57.1% of the applications filed within this period were approved and that the total sum of 2,481 applications is nowhere near indicative of the extent of the problem, as many migrant workers who find themselves in abusive employment situations do not apply for a VWOWP and instead remain in exploitative and dangerous situations. IRCC can no longer ignore this challenge.

The structure of the TFWP itself increases the vulnerability of migrant workers to a variety of abuses during their employment in BC. This includes, for example, the regime of employer-specific work permits and workers' temporary immigration status. When these aspects of the TFWP are coupled with the serious lack of information provided to migrant workers about their legal rights and obligations under the TFWP at all stages of migration, as well as the lack of proactive enforcement of their rights, migrant workers face serious challenges to seeking meaningful justice.

With the above in mind, and in addition to changes needed to the VWOWP, MWC recommends:

1. **Permanent status on arrival:** to avoid the power imbalance between migrant workers and employers, migrant workers should arrive in Canada with permanent status. This will ensure workers can migrate safely and access their full labour and employment rights. Migrant workers in the lowest-wage streams arrive to Canada with temporary immigration status and work permits which tie the worker to a single employer. Having temporary immigration status means that the worker's ability to live and work in Canada, the services they can access, and their long-term prospects in Canada, if any, are uncertain and dependent on the continuation of the employment relationship.

2. **End the use of employer-specific work permits altogether:** without permanent status on arrival for all migrant workers, IRCC should phase out the use of permits which tie workers to a specific employer, in favour of open work permits.

3. **New pathways to permanent residence for workers in Canada are necessary:** most workers in the lowest-wage streams, including agricultural workers in the SAWP and most low-wage workers in the TFWP, do not have the ability to apply for permanent residence, no matter how long they live and work here. Those workers who work in occupations that are the subject of pilot programs, including home child care providers, home support workers and agricultural workers, still have to meet high eligibility criteria to qualify, and these programs are subject to low quotas. Workers without status have even fewer options to regularize their status.

[73] *Supra* note 25.

[74] IRCC, Number of Work Permit Applications (including Extensions) Received by IRCC for Vulnerable Worker Special Program between June 2019 and July 2021 under Employment Exempt as A72 (in Persons), access to information request received by MWC, March 9, 2022. See Appendix B.

Increasing Access to Justice through the VWOWP

While addressing the structural causes that create the opportunity for abuse in the workplace, this research identified a number of key areas and issues that would improve access to justice for migrant workers who have experienced abuse at work.

Recommendation 1: Recognize the power imbalance between workers and employers and their agents

Workers should not be penalized for the actions of dishonest employers and their agents, who are often immigration consultants. IRCC must recognize the dual role that some immigration consultants play as both employment agents and immigration representatives, charging migrant workers exorbitant recruitment fees in exchange for the opportunity to obtain work and promised permanent residence in Canada. Applicants are counselled to work without authorization or are left in desperate situations of needing to work to recoup the recruitment fees paid. The need to seek an employer-specific work permit leaves migrant workers with little choice but to pay third-party employment agents to find work in Canada. The VWOWP must formally recognize that abuse can occur before a migrant worker has obtained a work permit, including during the application process. Workers applying for a VWOWP should not be penalized for unauthorized work performed prior to the issuance of an employer-specific work permit.

Recommendation 2: Assign specialized officers and provide training on concepts and evidence of abuse

Consistent and flexible application of the policy guidelines will maintain fairness and build confidence and trust in the immigration system, thereby encouraging workers to come forward and improve program integrity as abusive employers and recruiters are investigated. Specially trained immigration officers should be assigned to adjudicate VWOWP applications, who are trained on issues of abuse, trauma, incidences of fraud, and vulnerability in the workforce experienced by migrant workers.

Training must also be provided to officers on interpreting and applying the PDIs in a sensitive manner and IRCC should consider providing additional guidance to officers to ensure a coherent approach to interpreting evidence of abuse. MWC's research showed a gap in IRCC officer understanding of what constitutes abuse, and in particular, in the context of contraventions of provincial and federal law and the payment of recruitment fees.

IRCC should amend the PDIs to provide clearer examples of abuse and provide training to officers on assessing evidence of abuse in a flexible and sensitive manner – using a trauma-informed approach. This training should be done in conjunction with organizations supporting workers and experts in these areas.

Recommendation 3: Enforcement should not be a consequence of application

MWC urges officers to adopt a contextual approach to understanding instances of unauthorized work or misrepresentation not as grounds for inadmissibility but rather as evidence of abuse that the worker has experienced. Officers have discretion, under IRPA and in accordance with departmental policy, not to prepare a section 44 report in certain circumstances. Discretion should be exercised positively given the intention of the VWOWP program.

IRCC should amend the PDIs to specify that officers should exercise discretion not to begin removal proceedings against workers who may be inadmissible due to allegations of abuse disclosed in their VWOWP application.

Recommendation 4: Allow counsel to attend interviews

Guidelines for the VWOWP should be amended to affirm that counsel be permitted to attend interviews in light of the special circumstances relating to victims of abuse unless there is a compelling reason the officer considers that counsel should be excluded. IRCC should also be required to provide an accredited interpreter for any interviews conducted, as they do for applications for Temporary Resident Permits for Victims of Trafficking in Persons (VTIP-TRP).

IRCC should provide clear guidance to officers in the PDIs to improve fairness of the interview process, including guidance regarding counsel's attendance and providing interpreters for VWOWP applicants.

Recommendation 5: Ensure a trauma-informed approach at interviews

When conducted, interviews with IRCC can re-traumatize a worker who has to recount their story of abuse. Officers should be required to follow the trauma-informed interview procedures outlined in the PDIs, and not only be "encouraged to consult" them. Training should be provided to officers on using a trauma-informed approach, and this process should be clearly articulated and transparent in the PDIs. Training should be provided by external experts who have experience working with survivors of abuse.

Recommendation 6: Introduce requirements for greater transparency in officers' written reasons for their decisions

Workers should receive the full reasons in situations where their application has been refused. As it now stands, when a worker receives a refusal on the VWOWP, they do not receive the detailed reasons for refusal, and instead receive a generic letter indicating that the officer looking at their application was not satisfied that they had experienced abuse. A worker can request the full reasons for refusal through an access to information or privacy request, but obtaining a response takes a minimum of 30 days, and often can take many months. Reasons for refusal should be provided automatically to applicants to allow them to understand the reasons for refusal as this information is important in determining whether to submit a new application or not.

Recommendation 7: Reduce processing time

The PDIs for the VWOWP state that the processing time should be five business days. MWC often sees much longer processing times. Given the situations that are the subject of these applications, processing times need to be as short as possible, and IRCC must commit to the five-day processing as stated.

Recommendation 8: Access for workers who are out of status

Migrant workers who have lost status and are currently in Canada without a valid work permit should have access to the VWOWP. In some cases, workers may have experienced abuse in their workplace and promised renewals of their status by their abusive employers. At a minimum, migrant workers who are within their 90-day restoration period should be eligible to apply for a VWOWP, as was the case with the BC Temporary Foreign Workers at Risk: British Columbia Process. In addition, IRCC should explore regulatory amendments to provide access to the VWOWP outside of the 90-day period to ensure that workers who experience abuse and exploitation have access to the program, regardless of status.

Recommendation 9: Introduce a mandatory 12 months for work permits issued under the program

As a matter of policy, a VWOWP should be issued for a minimum of 12 months in duration. In cases where a worker has come to Canada and a job does not exist, or where they have experienced abuse early on in their employment, officers should be encouraged to issue work permits for 24 months. VWOWP should never be issued for less than 12 months, considering the time it takes to find a new employer and to process the experiences a worker may have faced while fleeing their employment.

Recommendation 10: Make renewals possible

The PDIs should be amended to allow for renewals of a VWOWP without the need for a worker's initial employer-specific work permit to still be valid. At present, renewals are only permitted if a worker's underlying employer-specific work permit is still valid, which means that in practice, a VWOWP is often not renewable. Officers should be empowered to consider renewals where it is deemed necessary, recognizing that in some circumstances, twelve months is not enough time for a worker to find new employment while also recovering from the trauma experienced from their abusive employment situation. In addition, a worker's access to health care is tied to the validity of their work permit, which is a pressing issue considering the need for both mental and physical health services for a migrant worker depending on the kind of abuse faced in their workplace.

Recommendation 11: Develop a review process outside of the Federal Court

A worker who has received a refusal has few options outside of requesting leave and judicial review in the Federal Court. A process for reconsideration requests should be formalized, and a review or appeals process should be developed that is accessible to workers without significant legal intervention and cost. Forcing a worker to make an application for leave and judicial review at the Federal Court is time consuming and labour-intensive, and most workers would not have access to legal assistance to help with such an application.

Recommendation 12: Follow-up with employers who have been found to have abused a worker

Employers who have been found to have been non-compliant with their obligations as an employer should be investigated and prevented from employing new migrant workers. Where a workplace has been found to be non-compliant, IRCC should issue open work permits to all of the migrant workers who are working for the same employer as a matter of practice.

Recommendation 13: Follow-up with immigration consultants who have been found to have participated in the abuse of a worker

MWC has observed that in many circumstances, immigration consultants acting as the employer's agent participate in the abuse perpetrated against a migrant worker, without consequences. Immigration consultants who have been found to have participated in the abuse faced by a migrant worker should be investigated, and IRCC should be encouraged to report the abuse to the College of Immigration and Citizenship Consultants, the regulatory body for immigration consultants. Immigration consultants should also be prevented from representing both employers and migrant workers jointly to prevent the abuse often seen in the form of recruitment fees.

Recommendation 14: More funding for legal aid/access to lawyers to assist with VWOWP applications

Migrant workers fleeing abuse have little access to legal counsel to assist with VWOWP applications. Legal Aid BC does not fund VWOWP applications, and workers are often left without legal representation when submitting applications. Given the risks and complexities involved with VWOWP applications, access to legal counsel is paramount in increasing access to justice and to the VWOWP program. The federal government should increase funding for legal aid to ensure workers have access to legal counsel when making these applications. Provincial legal aid bodies should ensure workers applying for a VWOWP receive legal assistance.

Recommendation 15: Pathway to permanent residence for workers who have faced abuse

IRCC should implement a new pathway to permanent residence for workers who have been issued a VWOWP in recognition of the abuse and exploitation they have faced while working in Canada. At present, there are few pathways to permanent status for migrant workers. IRCC should implement a new pathway for trafficked and vulnerable persons who have experience abuse and exploitation in Canada, with the right to seek both temporary and permanent status in Canada. A re-imagining of Canada's immigration system is needed in terms of how protection is offered to survivors of abuse, exploitation and trafficking.

Recommendation 16: Simplify the application process

The application process for a VWOWP should be simplified, and IRCC should explore the use of online fillable forms or email applications. Size limits on file uploads and IRCC forms that cannot be opened on a worker's phone present additional and unnecessary barriers to workers trying to access the VWOWP program. In addition, information about the VWOWP program and application materials should be available in languages other than English or French, as language remains a barrier in accessing the program.

Appendix A: Types of Abuse

For the purposes of determining whether a migrant worker is experiencing (or is at risk of experiencing) abuse in the workplace, "abuse" is defined in section R196.2 of the Immigration and Refugee Protection Regulations as any of the following:

a. physical abuse, including assault and forcible confinement

b. sexual abuse, including sexual contact without consent

c. psychological abuse, including threats and intimidation

d. financial abuse, including fraud and extortion

IRCC's Program Delivery Instructions[75] provide further guidance and examples of each type of abuse in the IRPR as below.

Type of Abuse	Description	Examples
Physical abuse	Physical abuse generally involves physical contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or bodily harm, but it can also include conditions harmful to physical health.	• hitting, beating, slapping, punching, choking, burning, pushing or shoving a worker in a way that results or could result in injury • confining a worker (habitual residence or other) • living conditions in employer-provided accommodations that are unsafe or unsanitary or pose a risk to the worker's health • forcing or pressuring a worker to work under conditions that are unsafe or pose a risk to their health • forcing a worker to engage in drug or alcohol use or illegal behaviour against their will and possibly creating dependencies
Sexual abuse	Sexual abuse generally encompasses any situation in which force or a threat is used to obtain participation in unwanted sexual activity as well as coercing a person to engage in sex against their will.	• forcing or manipulating a worker into having sex or performing sexual acts • forcing a worker to perform unsafe or degrading sexual acts • using physical force to compel a worker to engage in a sexual act against their will • using physical force, weapons or objects in non-consensual sexual acts • involving other people in non-consensual sexual acts • exposing, suggesting, attempting or completing a sexual act involving a worker who is unable to understand the nature or condition of the act, unable to decline participation or unable to communicate unwillingness to engage in the sexual act (for example, because of illness, disability, the influence of alcohol or other drugs, intimidation, or pressure)

[75] Modified 11 June 2021 and accessed online February 12, 2022: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#definition

Type of Abuse	Description	Examples
Psychological abuse	Generally, psychological abuse is a pattern of coercive or controlling behaviour, iterated threats or both.	• insulting, intimidating, humiliating, harassing, threatening (including with respect to immigration status or deportation), name-calling, yelling at, blaming, shaming, ridiculing, disrespecting or criticizing a worker • controlling what a worker can and cannot do • threatening a worker with murder • intimidating, threatening or harming a worker with a knife, gun, or other object or weapon • using religious or spiritual beliefs to manipulate, dominate or control a worker
Financial abuse	Financial abuse is described as a form of abuse where one person has control over the victim's access to economic resources.	• failing to pay wages owed to the worker (excluding cases of clear pay errors that have been rectified by the employer) • stealing or taking a worker's money, salary, or cheques or coercing them into giving these things up • controlling or limiting the worker's financial resources • withholding money or credit cards • exploiting a worker's financial resources • requiring a worker to deposit money into their bank account for fraudulent purposes • closely monitoring how a worker spends money • destroying a worker's property • spending a worker's money without their consent • charging a worker fees for a job that doesn't exist

In response to the COVID-19 pandemic, IRCC added additional indicia of abuse as below:

Guidance on abuse in the context of COVID-19

In the context of the COVID-19 pandemic and the resulting changes to the requirements for workers and employers, as well as federal and provincial standards for working conditions, the following may be considered examples of abuse or risk of abuse, recognizing that a violation of these requirements and conditions would put a worker's health (and, in some cases, public health) at risk:

Working conditions

- The employer willfully does not provide wages owed during the mandatory quarantine or isolation period upon entry to Canada (that is, as is required of employers under the Temporary Foreign Worker Program and International Mobility Program), or otherwise tries to recuperate those wages from the worker.
- The migrant worker is forced or pressured to perform work that violates the conditions of a mandatory quarantine or isolation period, under federal or provincial jurisdiction.
- The migrant worker is forced or pressured to work when showing symptoms of COVID-19.
- The migrant worker is forced or pressured to work with co-workers who should be in quarantine or who are symptomatic.
- The migrant worker is prevented from seeking medical assistance.

- The worker is not provided with adequate tools and working conditions to implement public health and social distancing protocols as instructed by the Chief Public Health Officer or the provincial health authorities.
- Retributive action is taken against a worker (including but not limited to termination) for taking sick leave or refusing to work in unsafe working conditions.
- The employer limits migrant workers' movement, including
  - threatening or intimidating a worker to not leave the location where they live or work
  - imposing policies or agreements—whether oral or written, coerced or mandated by the employer—that restrict a worker's ability to leave their housing or work location (including situations where a worker may feel compelled to agree to or abide by a policy or request out of fear of reprisal)
  - physically confining a worker to their housing or worksite without a legal authority (such as government- or court-issued order)

Note: An employer does not enforce quarantine or isolation. Rather, the conditions require that they do not do anything to prevent a migrant worker from complying with these orders (for example, they should facilitate grocery shopping). If a migrant worker is breaking mandatory quarantine or isolation, the employer should report the breach to the relevant authorities, but an employer cannot restrict their workers' movement.

Living conditions in cases where employers are required to provide accommodations (such as the Seasonal Agricultural Worker Program [SAWP])

- The employer does not provide appropriate and adequate accommodations for quarantining, self-isolation or the prevention of virus spread. This includes
  - not providing separate accommodations for workers who are subject to quarantine and workers who are not
  - failing to provide accommodations that allow workers quarantined together to respect requirements of the quarantine period, including maintaining appropriate distance from other persons and avoiding contact with vulnerable populations
  - failing to provide accommodations that allow for isolation in the event that a worker becomes symptomatic (including a private bedroom and bathroom)
  - failing to provide workers with cleaning products to prevent the spread in shared accommodations
- The employer prevents the worker from obtaining essential items during the quarantine or isolation period (for example, groceries, medication) or fails to provide adequate alternate arrangements (for example, assisting with pick-up or delivery).

Appendix B: IRCC Data on Applications, 2019 to 2021

Number of Work Permit Applications (including Extensions) Received by IRCC for Vulnerable Worker Special Program between June 2019 and July 2021 under Employment Exempt as A72 (in Persons), obtained through an access to information request received by MWC, March 9, 2022

Number of Work Permit Applications (including Extensions) Received by IRCC for Vulnerable Worker Special Program between June 2019 and July 2021 under Employment Exempt as A72 (in Persons)

Province	2019 (June - December)	2020	2021 (January - July)	Grand Total
Alberta	20	40	23	83
British Columbia	61	98	27	186
Manitoba	9	21	7	37
New Brunswick	3	5	8	16
Nova Scotia	4	2	1	7
Ontario	43	90	37	170
Prince Edward Island	1	1	2	4
Quebec	38	84	48	170
Saskatchewan	5	8	4	17
Unspecified	383	754	654	1,791
Grand Total	**567**	**1,103**	**811**	**2,481**

Number of Work Permit (including Extensions) Applications Processed by IRCC for Vulnerable Worker Special Program between June 2019 and July 2021 under Employment Exempt as A72 (in Persons)

Province	2019 (June - December)			2020			2021 (January - July)			Grand Total
	Approved	Refused	2019 (June - December) Total	Approved	Refused	2020 Total	Approved	Refused	2021 (January - July) Total	
Alberta	4	13	17	15	25	40	8	15	23	80
British Columbia	13	28	41	34	71	105	8	22	30	176
Manitoba	2	5	7	7	16	23	2	5	7	37
New Brunswick	2	1	3	3	2	5	1	6	7	15
Nova Scotia		4	4		2	2		1	1	7
Ontario	18	22	40	48	35	83	21	17	38	161
Prince Edward Island	1		1	1		1		2	2	4
Quebec	9	23	32	34	50	84	23	26	49	165
Saskatchewan		5	5	2	5	7	2	2	4	16
Unspecified	191	131	322	450	280	730	451	201	652	1,704
Grand Total	**240**	**232**	**472**	**594**	**486**	**1,080**	**516**	**297**	**813**	**2,365**

Requestor: CDO Statistics
Data source: COGNOS (MBR) extracted as of September 20, 2021
Data compiled by: OPP-DART-2021-13773
Please note that data more recent than July 31, 2021 have not been publicly released.

Appendix C: IRCC Data on Applications, 2019 to 2021

Number of Work Permit and Extension Applications under Vulnerable Workers Program (Exemption Code A72) Received and Processed since June 2019 to January 31, 2021, by National Occupation Classification, obtained through an access to information request received by MWC, March 15, 2021

Number of Work Permit and Extension Applications under Vulnerable Workers Program (Exemption Code A72) Received and Processed since June 1, 2019 (Program Start Date) to January 31, 2021, by Application Type, National Occupation Classification (NOC) Associated to the Valid Work Permit at the Time the A72 Application was Received*, Quebec or other Destination Province and Final Decision

Application Type / NOC Occupation	Quebec Region				Rest of Canada					Grand Total
	Approved	Refused	On Inventory	Total	Approved	Refused	Withdrawn	On Inventory	Total	
Grand Total	**46**	**78**	**2**	**126**	**878**	**705**	**20**	**72**	**1,675**	**1,801**
Work Permit		**1**		**1**	**3**	**3**			**6**	**7**
5254000-Program Leaders & Instructors					1				1	1
7511000-Transport Truck Drivers						2			2	2
8431000-General Farm Workers						2			2	2
Not Available		1		1	2	1			3	4
Work Permit - Extensions	**46**	**77**	**2**	**125**	**875**	**702**	**20**	**72**	**1,669**	**1,794**
0001000-Investor					1				1	1
0014000-Senior Mgrs-health Education					1			1	2	2
0015000-Senior Mgrs-trade Broadcasting					1				1	1
0016000-Senior Mgrs-goods Production					1				1	1
0124000-Advertising, Marketing And Public Relations Managers					2				2	2
0125000-Other Business Services Managers						1			1	1
0311000-Managers In Health Care					1				1	1
0423000-Managers In Social, Community And Correctional Services					1				1	1
0601000-Corporate Sales Managers						2	1		3	3
0621000-Retail Trade Managers		1		1	1	1			2	3
0631000-Restaurant and Food Services	1			1	11	4		1	16	17
0632000-Accommodation Service Managers					2				2	2
0711000-Construction Managers	1			1	1				1	2
0714000-Facility Operation And Maintenance Managers					1				1	1
0731000-Managers In Transportation						1			1	1
0822000-Managers In Horticulture					1				1	1
1111000-Financial Auditors	1	1		2	1				1	3
1121000-Specialists In Human Resources								1	1	1
1122000-Prof Occupations In Business					1	1			2	2
1215000-Supervisors, Recording					1	1			2	2
1221000-Administrative Officers					1	3		1	5	5
1223000-Personnel and Recruitment		2		2						2
1226000-Conference and Event Planners					1	1			2	2
1241000-Secretaries						2			2	2
1242000-Legal Secretaries					1	1			2	2
1252000-Heath Information Management Occupations					1				1	1
1311000-Accounting Technicians And Bookkeepers		1		1	4	2		1	7	8
1525000-Dispatchers					1	1			2	2
2112000-Chemists								1	1	1
2121000-Biologists & Related Scien						1			1	1
2132000-Mechanical Engineers					1				1	1
2133000-Electrical & Electronics						2			2	2
2141000-Industrial and Manufacturing						2			2	2
2144000-Geological Engineers		2		2						2
2151000-Architects					1				1	1

2171000-Computer analysts and consultants		1		1	3	5			8	9
2174000-Interactive media programmers and developers		1		1	4	4			8	9
2175000-Web designers and developers					2	1			3	3
2221000-Biological Technologists								1	1	1
2224000-Conservation and Fishery					1				1	1
2231000-Civil Engineering Technologist					1				1	1
2232000-Mechanical Engineering						5			5	5
2233000-Industrial Engineering					1				1	1
2242000-Electronic Service Technicians					2				2	2
2244000-Aircraft Instrument Electrical	2	1		3						3
2251000-Architectural Technologists	1			1						1
2252000-Industrial Designers					1				1	1
2253000-Drafting Technologists					2	1			3	3
2271000-Air Pilots, Flight Engineers					1				1	1
2281000-Computer equip optrs, netwk optrs & Web techns						1			1	1
2283000-Software and computer systems evaluators					3	1			4	4
3012000-Registered nurses and registered psychiatric nurses					2			1	3	3
3113000-Dentists					2				2	2
3213000-Animal Health Technologists					1	1			2	2
3236000-Massage Therapists						1			1	1
3237000-Other Technical Occupations In Therapy And Assessment					1				1	1
3413000-Nurse Aides and Orderlies		1		1	6				6	7
3414000-Other Aides and Assistants					1				1	1
4011000-University Professors And Lecturers					3	2			5	5
4012000-Post-Secondary Teaching And Research Assistants						1			1	1
4154000-Ministers of Religion						2		1	3	3
4166000-Education Policy Researchers					2				2	2
4169000-Oth Prof Occ In Social Science						2			2	2
4212000-Community and Social Service					1	4		1	6	6
4217000-Other Religious Occupations					1	3		1	5	5
4411000-Home Child Care Providers	1			1	61	23		2	86	87
4412000-Home Support Workers, Housekeepers And Related Occupations					28	9			37	37
5122000-Editors					1				1	1
5131000-Producers, Dir, Choreographers						1			1	1
5134000-Dancers					1				1	1
5241000-Graphic Designers					3	6			9	9
5242000-Interior Designers					3				3	3
5252000-Coaches					2	3			5	5
5254000-Program Leaders & Instructors					4			1	5	5
6211000-Retail Trade Supervisors		1		1	15	9		3	27	28
6212000-Food Service Supervisors						1			1	1
6221000-Technical Sales Specialists	2	1		3	2	1			3	6
6311000-Food Service Supervisors	2	1		3	56	35	1	1	93	96
6312000-Executive Housekeepers					1				1	1
6313000-Accomodation, Travel, Tourism And Related Services Supervisors	1			1	3				3	4
6315000-Cleaning Supervisors					10	2		1	13	13
6316000-Other Services Supervisors					3				3	3
6321000-Chefs		1		1	8	4			12	13

6322000-Cooks	1	2		3	56	41	1	7	105	108
6331000-Butchers, Meat Cutters And Fishmongers - Retail And Wholesale						2			2	2
6332000-Bakers		1		1	11	3	1		15	16
6341000-Hairstylists Ahnd Barbers					2	3	1		6	6
6342000-Tailors, Dressmakers, Furriers And Milliners		1		1	1	2			3	4
6344000-Jewellers, Jewellery And Watch Repairers And Related Occupations					1				1	1
6345000-Upholsterers					1				1	1
6421000-Retail Salesperson					2				2	2
6431000-Travel Counsellors						1			1	1
6512000-Barmans/Barmaids						1			1	1
6513000-Food And Beverage Servers					2	1			3	3
6531000-Tour And Travel Guides					1				1	1
6552000-Other Customer And Information Services Representatives						1			1	1
6562000-Estheticians Electrologists And Related Occupations					1	1			2	2
6611000-Cashiers					1				1	1
6711000-Food Counter Attendants, Kitchen Helpers And Related Support Occupations					1	5			6	6
6722000-Operators And Attendants In Amusement, Recreation And Sport					2				2	2
6731000-Light Duty Cleaners					2	4			6	6
7201000-Contractors And Supervisors, Machining					1				1	1
7204000-Contractors and supervisors, carpentry trades					1				1	1
7205000-Contractors And Supervisors, Other Contruction Trades, Installers					1				1	1
7231000-Machinists & Machining & Tool	6	5		11	6	3			9	20
7236000-Ironworkers					1				1	1
7237000-Welders and related machine operators		11	1	12	20	15		1	36	48
7241000-Electricians					1	1		2	4	4
7246000-Telecommunication Installation					1				1	1
7251000-Plumbers					1	2			3	3
7271000-Carpenters					15	13			28	28
7272000-Cabinetmakers					1	1			2	2
7281000-Bricklayers					2			1	3	3
7282000-Cement Finishers					6	4			10	10
7283000-Tilesetters					2	1			3	3
7284000-Plasterers, Drywall Installers					12	9	1	2	24	24
7291000-Roofers and Shinglers					4	2			6	6
7294000-Painters and Decorators					3	1			4	4
7295000-Floor Covering Installers						3			3	3
7301000-Contractors and supervisors, mechanic trades					1				1	1
7303000-Supervisors, Printing And Related Occupations						1			1	1
7305000-Supervisors, Motor Transport And Other Ground Transit Operators					4	2			6	6
7311000-Construction Millwrights		1		1	2	2			4	5
7312000-Heavy-duty Equipment Mechanics		3		3	1	5			6	9
7313000-Refrigeration & Air Condition						1			1	1
7315000-Aircraft Mechanics	4	5		9		1			1	10
7321000-Motor Vehicle Mechanics		1		1	4	2			6	7
7322000-Motor Vehicle Body Repairers	3			3	4	2			6	9
7332000-Electric Appliance Servicers					1	1			2	2
7333000-Electrical Mechanics					2	1			3	3
7334000-Motorcycle and Other					1				1	1

7384000-Other Trades And Related Occupations, N.E.C						1			1	1
7411000-Truck Drivers					1	3			4	4
7441000-Residential & Commercial						1			1	1
7452000-Material Handlers						1			1	1
7511000-Transport Truck Drivers	6	7		13	151	94	8	7	260	273
7514000-Delivery And Courier Service Drivers	1			1	3	1			4	5
7521000-Heavy Equipment Operators (Except Crane)					1				1	1
7535000-Other Automotive Mechanical Installers And Servicers						1			1	1
7611000-Construction Trades Helpers	1			1		2			2	3
8252000-Agricultural & Related Service					11	9		1	21	21
8255000-Lanscaping & Ground Maint.					1	2			3	3
8431000-General Farm Workers	2	1		3	105	99	1	12	217	220
8432000-Nursery & Greenhouse					53	22		4	79	79
8611000-Harvesting Labourers					5	4		2	11	11
9226000-Supervisors, Other Mechanical					1				1	1
9227000-Supervisors, Other Products					1				1	1
9462000-Industrial Butchers					4	3			7	7
9463000-Fish Plant Workers					4	1		1	6	6
9533000-Other Wood Products Assemblers And Inspectors						1			1	1
9536000-Industrial Painters, Coaters And Metal Finishing Process Operators						1			1	1
9614000-Labourer In Wood, Pulp & Paper						1			1	1
9617000-Labourers In Food, Beverage	1	3		4	1				1	5
Not Available	9	21	1	31	89	176	5	15	285	316

*As an applicant can hold more than one work permit with different NOCs at the time of when the vulnerable workers program work permit / work permit extension application (exemption code A72) is received, the total NOCs may not sum to the total number of applications processed, received or in the inventory.

Requestor: Media
Data source: COGNOS (MBR) extracted as of March 15, 2021
Data compiled by: OPP-DART-2021-11930

Please note that data more recent than January 31, 2021 have not been publicly released.