

May 29, 2024

**Attn: Mary Walsh, Executive Director**

BC Employment Standards Branch

#250-4600 Jacombs Rd.

Richmond, BC V6V 3B1

[Mary.Walsh@gov.bc.ca](mailto:Mary.Walsh@gov.bc.ca)

**cc. Hon. Harry Bains, Minister of Labour**

Parliament Buildings

Victoria, BC V8V 1X4

[LBR.Minister@gov.bc.ca](mailto:LBR.Minister@gov.bc.ca)

**cc. Trevor Hughes, Deputy Minister, Labour**

PO Box 9594,

Stn Prov Govt

Victoria BC, V8W 9K4

[LBR.Deputy@gov.bc.ca](mailto:LBR.Deputy@gov.bc.ca)

**cc. Kasari Govender, BC Human Rights Commissioner,**

Head Office – BC’s Office of the Human Rights Commissioner

#536, 999 Canada Place

Vancouver, BC, V6C 3E1

[info@bchumanrights.ca](mailto:info@bchumanrights.ca)

Dear Mary Walsh,

**Re: Interpretation Services for Employment Standards Branch Complaints**

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I am writing to underscore the critical importance of providing comprehensive language interpretation services to temporary foreign workers who find themselves in vulnerable situations while working in Canada. As a province that prides itself on inclusivity and fairness, it is the legislature’s duty to ensure that all individuals, regardless of their language proficiency, have equitable access to essential services and support. Currently, temporary foreign workers who do not speak English fluently are facing significant difficulties in receiving the protections guaranteed in the *Employment Standards Act* (“*ESA*”) and *Temporary Foreign Worker Protection Act* (“*TFWPA*”), resulting from the Employment Standards Branch (“*ESB*”) decision to not provide interpretation services to complainants.

By way of background, on November 8, 2018, the Province enacted the *TFWPA*. The *TFWPA*’s purpose is to protect temporary foreign workers from the systemic abuses that many are subject to

by virtue of their vulnerable status. This point was emphasized by the Honourable Harry Bains when he introduced the enacting bill and stated that the *TFWPA* “will pave the way to better protect vulnerable temporary foreign workers who come to B.C. to work [...] Workers who come to work in B.C. want to feel safe, confident, that their rights are protected and that abusive recruiters and employers will be held accountable. The legislation will better protect temporary foreign workers.”<sup>1</sup>

Currently, the ESB does not provide interpretation services to complainants under the *ESA* or *TFWPA*. Especially for the *TFWPA*, this restriction makes it difficult to fulfill its legislative purpose. Without meaningful access to interpretation services, vulnerable foreign workers, many who have a limited proficiency in English, are not able to access the protections that the *TFWPA* is supposed to impart and may thus be deprived of a fair process.

The process for making a complaint under the *TFWPA* is set out in Part 7 - Investigations, Complaints and Determinations. Under Part 7, temporary foreign workers can file complaints against recruiters and employers to the Director of Employment Standards. These complaints are investigated by the ESB and, if adjudicated in a complainant’s favour, can provide complainants with significant remedies. The process for making a complaint under the *ESA* is similar.

During an ESB investigation, a complainant is interviewed by a member of the ESB to gather evidence for an investigation report. The investigation report often forms the sole basis of the decisionmaker’s adjudication of the complaint. Without interpretation services, temporary foreign workers who are not proficient in English often have difficulty understanding the questions they are being asked and have difficulty communicating their answers. The ESB interview is often the only time that a complainant may provide oral evidence, so if the complainant is unable to properly communicate their story, their ability to seek a remedy may be limited.

It is well established that a complainant’s ability to understand the process before them is a critical element of procedural fairness. The right to an interpreter has been enshrined in the common law for well over a century and is now codified in section 14 of the *Canadian Charter of Rights and Freedoms*. The issues that arise when there are language barriers in a proceeding are well documented. For example, in *X (Re)*, 2020 CanLII 124453 (CA IRB), a translation error led to a negative credibility finding. This finding was a key factor in the reviewing tribunal then overturning the underlying decision.

Similarly, in *Caron v. Alberta (Human Rights and Citizenship Commission)*, 2007 ABQB 525, the Court confirmed that, at least before a court proceeding, a party is entitled to a paid interpreter at the taxpayer’s expense. The Court emphasized that the right to an interpreter is as fundamental, if not more so, than the right to a lawyer:

As emphasized in the earliest cases dealing with the right to an interpreter, that right is essential to the right to be present at a court process. The right of an individual to be present at a court proceeding so that the individual can represent himself/herself is, therefore, an even more fundamental right than the right to have one's position advanced by an expert in law. That is why it is appropriate to treat

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<sup>1</sup> “Bill 48, Temporary Foreign Worker Protection Act”, Legislative Assembly, Official Report of Debates (Hansard), 3rd sess, 41st Parl, No 165 (23 October 2013) at 10:10AM (Hon Harry Bains).

the right to an interpreter more like the right to have an impartial judge than the right to have a taxpayer provided lawyer.

While this decision was made in the context of a request for a paid French interpreter, which is an official language, the principles nonetheless apply to any proceeding. A proceeding cannot be fair if a party is not able to understand the questions asked of them and advance their position due to a language barrier.

The Legislative Assembly was alive to the language barriers that temporary foreign workers face. In the Hansard, the Honourable Harry Bains affirmed that “it’s our ministry’s job to make sure that... when [temporary foreign workers] feel their rights are being undermined, that they have a place to go, they know where to go and **the language services are provided to them as well**”<sup>2</sup> (emphasis added). The Honourable Andrew Weaver then commented that “[t]emporary foreign workers can be amongst some of the most vulnerable in our society. In a new country, many will face a language barrier. They may be unfamiliar with their rights and our laws, and they are at risk for exploitation and abuse.”<sup>3</sup> Based on these comments, it is clear that the Legislative Assembly understood that the provision of interpretation services is necessary to ensure that the *TFWPA* fulfills its legislative purpose of protecting temporary foreign workers. The Branch also clearly understands the difficulties faced by those with language barriers. When filing a complaint under the *TFWPA* or the *ESA*, workers are asked if they have any accessibility needs, and “Trouble Understanding English” is listed as one of them.

While a complainant can currently cover the costs of interpretation during an ESB interview, most temporary foreign workers simply lack the resources to hire their own interpreter. Placing additional burdens and costs on these workers limits their ability to access remedies. Given the importance that courts and tribunals have placed on the principle of access to justice,<sup>4</sup> it is important that administrative tribunals do not impose additional barriers on complainants that may limit their ability to participate in their processes. Requiring complainants filing with the ESB to pay for their own interpreters creates just such a barrier.

Other administrative entities, especially those regularly serving individuals with limited proficiency in an official language, recognize this issue and provide on-request interpretation services to participants. The BC Human Rights Tribunal has provided interpretation services for participants, outside of hearings, since July 15, 2014.<sup>5</sup> Other administrative bodies that provide interpretation services during proceedings include: all immigration Tribunals, including the Immigration Division,<sup>6</sup> Immigration Appeal Division,<sup>7</sup> Refugee Protection Division<sup>8</sup>, and Refugee Appeal Division<sup>9</sup>, WorkSafe BC Review Division<sup>10</sup>, the Workers’ Compensation Appeal Tribunal,<sup>11</sup> the Social Security Tribunal<sup>12</sup>, etc.

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<sup>2</sup> Bill 48, *supra* note 1 at 6403 (Hon Harry Bains).

<sup>3</sup> *Ibid.*

<sup>4</sup> See, for example, *Hryniak v. Mauldin*, 2014 SCC 7.

<sup>5</sup> <https://www.bchrt.bc.ca/app/uploads/sites/876/2023/03/2014RulesOfPracticeAndProcedure.pdf>

<sup>6</sup> Canada, *Immigration Division Rules*, SOR/2002-229, r 17.

<sup>7</sup> Canada, *Immigration Appeal Division Rules*, SOR/2022-277, r 53.

<sup>8</sup> Canada, *Refugee Protection Division Rules*, SOR/2012-256, r 19.

<sup>9</sup> Canada, *Refugee Appeal Division Rules*, SOR/2012-257, r 59.

<sup>10</sup> BC, WorkSafe BC Review Division, A3.4.7

<sup>11</sup> BC, Workers’ Compensation Appeal Tribunal, *Manual of Practice and Procedure*, ch 14.4.3.

<sup>12</sup> Canada, *Social Security Tribunal Rules of Procedure*, SOR/2022-256, r 32.

In enacting the *TFWPA*, the Legislative Assembly made it clear that all workers in British Columbia deserve to be treated fairly and with respect. This promise has not held true for our temporary foreign workers. The enactment of the *TFWPA* was a step in the right direction but to give this statute its full and intended effect, complainants must be able to access its protections in the language of their choice. We request that the ESB ensure that temporary foreign workers have access to these protections by providing interpretation services to complainants during the *TFWPA* complaint process. Because many temporary foreign workers must also file complaints under the *ESA* to fully access their rights, we request that interpretation be available during that complaint process as well.

Sincerely,  
MIGRANT WORKERS CENTRE  
Per:



Jonathon Braun  
Legal Director

**List of Supporters:**

BC Employment Standards Coalition  
Vancouver & District Labour Council  
Vancouver Committee for Domestic Workers and Caregiver Rights  
West Coast LEAF  
Dignidad Migrante  
Workers Solidarity Network  
Joe Barrett, BC Building Trades Council (retired)  
DIVERSEcity Community Resources Society  
Cowichan Intercultural Society  
Squamish Welcome Centre – Migrant Worker Support Program  
Shuswap Immigrant Services Society  
Watari Counselling & Support Services  
St. Mary’s Migrant Ministry  
Radical Action with Migrants in Agriculture (RAMA)  
Archway Community Services  
Progressive Intercultural Community Services Society (PICS)  
MOSAIC Settlement and Employment Services for Newcomers