



Law Commission of Ontario  
Interim Report  
Vulnerable Workers and Precarious Work

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Submitted by: The Ontario Bar Association,  
Civil Liberties and Human Rights Section



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## Introduction

The Ontario Bar Association (OBA) appreciates the opportunity to provide input on the Law Commission of Ontario's interim report: *Vulnerable Workers and Precarious Work* (the "Report").

The OBA commends the work of the Law Commission of Ontario (LCO) on this important subject and appreciates the effort and expertise that went into its comprehensive list of recommendations to improve the working conditions of vulnerable workers. The focus of the OBA's submission is to provide consideration of additional materials or approaches to enhance or strengthen the final report and recommendations.

### The OBA

As the largest voluntary legal organization in the province, the OBA represents approximately 17,500 lawyers, judges, law professors and students in Ontario. OBA members are on the frontlines of our justice system in no fewer than 37 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission was formulated by the OBA Civil Liberties and Human Rights section (the "Section"). The members of this section represent applicants and respondents in human rights and employment, labour and employment matters and act as third-party neutrals who deal with employee related claims. They would count among their clients employers and employees, including those considered "vulnerable."

## Specific Recommendations

### Approach

The Section supports the LCO's multi-dimensional approach to building effective protection for vulnerable workers which includes:

- a) strong pro-active government oversight;
- b) meaningful protection for the effective exercise of fundamental rights, including collective representation;
- c) substantive workplace rights that are responsive to vulnerable workers;
- d) effective and accessible mechanisms for enforcing rights;



- e) active involvement of community organizations to support the voice of vulnerable workers; and
- f) identification of best practices through on-going stakeholder involvement.

## **Canadian Government and Temporary Foreign Workers**

Canadian government programs, such as the Temporary Foreign Workers Program (TFWP) have led to the creation of two-tiered workers: one with complete employment standards and bargaining power and another with limited rights and minimal access to resources. Prior to the TFWP, new immigrants who arrived in Canada were provided the same rights as other workers. This has gradually been eroded to such a point that there are fewer "workers" coming through the immigration application process and more through programs such as the TFWP.

In this regard, the Section recommends reviewing the recent recommendations found in the Metcalf Foundation Report, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*.

## **International Guidelines and Frameworks**

The OBA Section also supports the consideration and inclusion of various international instruments. There are detailed guidelines provided in the United Nations Convention on the Protection of All Migrant Workers and Members of Their Families. The International Labour Organization's Multilateral Framework on Labour Migration and numerous associated Conventions provide valuable insight into ways in which legal regulation impacts the work relationship. Regulations can create conditions of support and security.

### ***Employment Standards Act, 2000***

Migrant workers experience several problems that make reporting violations and enforcement of protections particularly difficult. To take one example, quite often workers arrive with a visa which allows them to only work for their contracted employer. Therefore, raising a complaint regarding working conditions could often result in the individual losing their position and in some cases their lodging. Often promises are not adhered to regarding pay and employment structure. In addition, the migrant nature of the work means that, in some cases, employees are not available when their matters come up for hearing.

The OBA Section supports extending recommendation 22 in the Report (which amends the *Employment Standards Act, 2000*) beyond complaints of reprisal to ensure that all issues concerning the terms of migrant workers contracts can be heard and determined by a clearly identified single expert administrative body before repatriation.



As well, the OBA Section supports further amendments to the *Employment Standards Act, 2000* and related labour legislation to allow claims hearings for repatriated employees to be conducted using alternative forms of evidence – such as affidavit or videotaped evidence - and alternative arrangements for cross-examination.

## **Workplace Harassment and Violence**

An additional issue that needs to be addressed is a significant gap in vulnerable worker protections for those who experience workplace harassment and violence (non *Human Rights Code* related), particularly when the employee does not belong to a union. Despite the protections afforded to workers under the provisions of *Bill 168* (Section 32 of the Ontario *Occupational Health and Safety Act*), recent decisions by the Ontario Labour Relations Board have concluded that the Board has no jurisdiction to hear workplace harassment and violence claims. This leaves the non-unionized employee without any recourse should s/he experience harassment or violence in the workplace and where the employer refuses to appropriately address, or take reprisal against the worker after s/he reports the harassment or violence. See for example, *Culp v. Blue Line Transportation Ltd.*, 2012 CanLII 39197.

## **Senior Workers**

The OBA Section recommends considering the vulnerabilities of older workers either in this report or in future projects. The mandatory retirement exemption was removed from the age discrimination provisions of the *Human Rights Code* in 2006. With older people remaining in the workforce due to the elimination of mandatory retirement and increased economic pressures of the aging population this presents an emerging category of vulnerable workers that is worthy of further consideration.

## **Conclusion**

The OBA congratulates the Law Commission of Ontario on its comprehensive draft report and recommendations . The suggestions made in this submission are designed to enhance the final report with additional material. Please do not hesitate to contact us if you have any questions or if we can be of further assistance.