



Submissions to Ontario’s Workforce Recover Advisory Committee

South Asian Legal Clinic of Ontario (SALCO) OCASI – Ontario Council of Agencies Serving Immigrants The Chinese and South East Asian Legal Clinic (CSALC)

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We are pleased to provide these submissions and recommendations as the OWRAC recommendations reviews the future of work in Ontario, with a focus on economic recovery, strengthening Ontario’s competitive position, and Supporting workers.

1. Introduction

The South Asian Legal Clinic of Ontario (SALCO) is a community legal clinic mandated to provide free legal services to low-income South Asian communities in Ontario. SALCO also engages in systemic advocacy on the issues that impact low-income South Asians and other disadvantaged communities in Canada including employment / labour market outcomes, poverty, systemic racism, immigration reform, faith-based discrimination, and gender-based violence.

OCASI - Ontario Council of Agencies Serving Immigrants is the umbrella organization for immigrant and refugee-serving organizations in Ontario, and now has 240 member agencies across the province. As the collective voice of the immigrant and refugee-serving sector in the province OCASI is an important advocate for access and equity for refugees, refugee claimants, immigrants, migrants and people with precarious immigration status.

The Chinese and Southeast Asian Legal Clinic (CSALC) is a community based legal clinic which provides free legal services to low income Chinese, Vietnamese, Cambodian and Laotian communities in Ontario. Established in 1987, CSALC has become an important advocate for many immigrant workers and workers from racialized communities who find

themselves ghettoized in low waged, non-unionized jobs, and who face exploitation by employers who have little regard for their rights.

SALCO, OCASI, and CSALC are steering committee members of Colour of Poverty - Colour of Change (COP-COC), a province-wide community initiative to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities (both Indigenous Peoples and peoples of colour) across Ontario.

Our organizations work with or are connected regularly to clients who need assistance asserting their employment rights. Although Ontario's *Employment Standards Act, 2000* ("ESA") purports to establish minimum standards for most employees working in the province, in practice it is clear that many are without protection. This is due to many different factors including the lack of education available to empower workers with knowledge of their rights and how to assert them, a lack of proactive administration and enforcement of employers' obligations under the *ESA*, and the *Occupational Health and Safety Act* ("OHSA"), a lack of legal supports for low-income workers, and a continuing erosion of employment rights for non-unionized workers in Ontario. In our collective and extensive experience, those left behind are disproportionately comprised of racialized, immigrant, migrant, and non-status/undocumented workers.

We will focus our submission on the issues that impact our constituency, i.e. racialized and refugee and immigrant workers who are overrepresented in precarious employment settings.

2. Overview of Challenges Facing Racialized Workers

Racialized workers in Ontario are among those most likely to fall through the cracks of the *ESA* - a stark reality for one of the fastest growing groups in Canada. Racialized population growth, which stems in large part from Canada's reliance on immigration to fill labour-shortages, significantly outpaces the rest of the Canadian population.

For many racialized workers, employment standards violations are the norm, rather than the exception. Whether it is lack of overtime pay, excessively long working hours, or racial discrimination / harassment in the workplace, racialized workers often feel powerless when they are faced with employers who openly flaunt the law without recourse.

As many studies have confirmed, certain groups, such as women and members of racialized communities, are over-represented in precarious and low-wage jobs and in

unemployment. In addition, members of racialized communities are more likely than non-racialized group members to face discrimination in hiring, promotion, and retention in labour markets, and in getting paid fair wages.

The numbers are noteworthy:

- The 2016 census confirms that 29.3% of Ontario population are “visible minorities” (i.e. persons of colour) (nearly 3,885,585).
- According to Statistics Canada racialized residents are overrepresented in low-income statistics. Peoples of colour have a low-income rate of 21.3% in 2016 compared to 11.5% for non-racialized Ontario residents.
- Statistics Canada’s November 2020 Labour Force Survey found the unemployment rate for racialized women was 10.5% compared with 10.0% for racialized men, and compared with 6.2% for white women.
- Indigenous women and racialized women are also among the last to return to jobs lost during COVID, and the impacts are different for different groups. The unemployment rate for Black women was the highest at 13.4%. East Asian women are the furthest from pre-pandemic employment with a 10.2% unemployment rate. The unemployment rate for Indigenous women was approximately 16.8%.
- Racialized people and immigrants are over-represented in part-time and precarious employment characterized by lower wages, absence of benefits, and job insecurity.
- Migrant Workers: The number of temporary migrant workers in Canada has more than quadrupled since 2000. As of 2018 there were 429,340 temporary status workers in the country. Workers in low-wage streams of temporary migration – disproportionately workers of colour from the global South – are exceptionally susceptible to exploitation and abuse.
- The average hourly wage of full time workers (\$17.34) was much higher than the average hourly wage for part-time workers (\$13.02).
- Wage gaps increase for Indigenous women, women of colour, and immigrant women with university degrees. Indigenous women with a university degree earn 24% less than Indigenous men with a university degree, and 33% less than non-Indigenous men with a university degree. A 2016 report concludes that “discriminatory hiring and wage setting practices are undermining the benefits of education for these groups.”

Racialized workers, including immigrants and newcomers face significant barriers to fair labour market outcomes in Ontario including:

- systemic racism and other forms of discrimination;
- precarious and/or low-wage work including the care economy, food service and the gig economy;
- larger rates of temporary immigration status (eg: migrant workers);
- lack adequate understanding of the labour protection laws in Ontario;
- significant and numerous barriers to credentials recognition for internationally-skilled professionals and tradespeople, and significant barriers to getting employment consistent with their credentials once they are accredited;
- additional barriers legal supports; and
- little to no protection for job loss in situations where they try to assert employment rights.

Significant changes to employment legislation and policy across all job sectors is critical and urgently needed to redress employment inequalities faced by racialized residents. Race/ethnicity, gender and immigration status, as well as factors such as disability, have a profound impact on income and economic well-being. Fair labour market outcomes cannot be achieved solely through employment and labour law reform but must be combined with other legislative and policy tools to ensure that racialized communities, the most disadvantaged by the pandemic, are front and centre in the province's policies around recovery for the labour market workforce.

3. Ontario's Workforce Recovery Advisory Committee

Ontario's Workforce Recovery Advisory Committee (the "Committee") has a crucial opportunity to develop an inclusive and holistic plan of action for the future of work. While the Committee has plenty of representation for employers, law, and academia, it is lacking a voice for working people. For a Committee looking at "the future of work" that is a serious problem. There is no doubt that the COVID-19 pandemic exposed long-standing problems facing far too many working people today: the lack of reliable full-time jobs, absence of workplace protections like paid sick days, contracting out by employment agencies, lack of enforcement of employment standards, and the move by employers to label more and more employees as "independent contractors" to get out of employment law obligations.

A power imbalance exists between employers and employees. In the case of racialized workers it is exacerbated by systemic racism and racial discrimination that is often further compounded by gender, gender identity, (dis)ability, and precarious immigration status. Recognizing that power imbalance should serve as the critical starting point for any

Committee which aims to provide recommendations to shape the future of work. It is crucial that the voice of precarious workers is adequately represented and included, to ensure that the Committee does not replicate and reinforce the existing power imbalance.

More and more working people find themselves working multiple part-time jobs without benefits or protections just to make ends meet. An Advisory Committee that is shaping “the future of work” should concentrate on the impact of workplace inequities on the most disadvantaged populations, including racialized workers in low-wage and/or precarious employment.

Recommendation:

- *Ensure significant representation on the Committee from Indigenous, racialized, migrant and low-wage individuals and organizations that work specifically with non-unionized workers Include labour representation on the Committee.*

4. Employment Equity in Ontario

The 1984 Equality in Employment: A Royal Commission Report - General Summary, chaired by Supreme Court of Canada Justice Rosalie Abella, stated that:

Employment equity is a strategy designed to obliterate the effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a "special blend of what is necessary, what is fair and what is workable" ... "What is needed to achieve equality in employment is a massive policy response to systemic discrimination. This requires taking steps to bring each group to a point of fair competition. It means making the workplace respond by eliminating barriers that interfere unreasonably with employment options.... It is both intolerable and insensitive if we simply wait and hope that the barriers will disappear with time. Equality in employment will not happen unless we make it happen.

The diversity of Ontario is commonly touted as a strength, however since the 1984 report was released little has changed to address systemic discrimination in the labour market. The 2016 census noted that 30% of Ontarians identified as racialized (including Indigenous peoples and people of colour) with indications that this number will continue to rise. With few exceptions, most recent immigrants experienced higher unemployment rates and lower employment rates than their Canadian-born counterparts, including those who had postsecondary education.

Any review of the future of work in Ontario must consider the need to bring back employment equity. Direct and systemic discrimination has allowed racialized workers to be denied employment opportunities, and be subject to wage discrimination, and occupational discrimination.

The report “Canada’s Colour Coded Labour Market: The gap for racialized workers” found that a “colour code” exists in the labour market which operates to keep racialized people from acquiring good jobs in the Canadian labour market. The report also states that such a colour code persisted for second-generation Canadians with similar education and age, though the gap narrowed slightly. It further details race and race-gender wage gaps that persist over time and across generations.

The evidence drawn from studies and experiences support the conclusion that legislated and mandatory employment equity is necessary in Ontario to provide equitable labour market access for racialized workers.

Recommendation:

- *The government of Ontario should introduce mandatory employment equity legislation equity across all job sectors redress employment inequalities, including racism, gender-based discrimination, and disability-based discrimination. Race/ethnicity, gender and immigration status, as well as factors such as disability, have a profound impact on income and economic well-being. Fair labour market outcomes cannot be achieved solely through a Committee; other legislative tools such as mandatory employment equity must also be implemented to address structural and systemic racism and discrimination in the workforce.*

5. Enhancing Employment Standards / Protecting Vulnerable Workers in Precarious Employment

Precarious employment has been on the rise across Canada for more than a decade. “Precarious work” is a broad term and means work for remuneration characterized by uncertainty, low income, limited social benefits and statutory entitlements, and minimal control over working conditions. Precarious work may be contract, part-time, self-employment, temporary or gig work. During the pandemic in particular we have seen a significant increase in gig workers, particularly in home delivery, ride sharing and similar services. These workers are typically misclassified as independent contractors and denied their basic rights under employment law.

The *ESA* and *OHSA* standard of an employment relationship based on full-time, continuous employment, where the worker has access to good wages and benefits, is no

longer predominant, or representative of the Ontario labour market, if it ever was. Today more work is precarious, with less job security, few if any benefits and minimal control over working conditions. Women, racialized persons and recent immigrants are more likely to be engaged in precarious work, and thus over-represented among those most vulnerable to exploitation and abuse. These conditions are well documented, including in Statistics Canada's recent Labour Force Surveys that reports on the impact of the pandemic. As mentioned earlier, Indigenous, racialized and immigrant workers were the most affected by the pandemic, and will likely take the longest to regain lost ground. The Law Commission of Ontario's Vulnerable Workers/Precarious Work Project reports extensively on the gaps in protection in precarious employment.

Ontario's plans for workforce and economic recovery must include the experience of precarious workers. The Committee will be more representative of Ontario, and its work will be strengthened by including the participation and voice of precarious workers, particularly in the consideration of 'the future of work'. Combined with the recommendations above, stronger and more expansive employment standards legislation will serve to support recovery for these disadvantaged populations and solidify a strong and equitable future for work in Ontario.

In Ontario, many solo self-employed workers are excluded from protection because of their employment status, that is, they are either treated as dependent or independent contractors unlike in the province's *Occupational Health and Safety Act* which extends protection to the many self-employed workers in precarious jobs by defining a worker as "a person who is paid to perform work or supply service" and thus covers more workers dependent on their capacity to work. Similarly, workers in different types of temporary employment lack full coverage under the *Employment Standards Act* (e.g., seasonal workers, especially in agriculture and workers with insufficient job tenure do not benefit fully from termination and severance provisions and provisions for joint and several liability required by temporary agency workers are limited) yet there is no principled reason why the *ESA* could not be modified to apply fully to these workers, nor is their justification for tying other statutory and employer social benefits to tenure in a single employee-employer relationship. Finally, part-time workers do not benefit from provisions for equal treatment with workers in other forms of employment doing similar work, an omission that could be rectified by drawing on provisions contained in parallel legislation in Quebec.

The reality of a complaint-driven enforcement system is that employees will always have a fear of reprisal which presents a significant barrier to initiating complaints. A previous provincial workplace review reported that approximately 90% of complaints each year are made by employees who have already left their jobs. As such, the report suggested that

even if there are anti-reprisal provisions available on the books, economically vulnerable workers are still likely to view them as insufficient. For example, if even there is a possibility of reinstatement, for low-income families, an extended period of unemployment while waiting for a MOL decision is very disruptive and problematic.

Meanwhile, employers have no incentive to obey the law as the only “penalty” for their lack of compliance is a 10% administrative fee payable to the Ministry of Labour - if their employee files a claim with the Ministry and if the Ministry issues an order to pay. Employers can also hide behind the corporate veil by shutting down the business to avoid payment altogether. While the Ministry of Labour can issue an Order to Pay against the directors of the corporation, these orders will only be made upon a special request by an employee, and do not cover termination and severance pay.

The following are but a few ways in which the scope of Employment Standards should be reformulated to enhance coverage for all workers in Ontario;

Recommendations:

- *Definition of “Employee”:* Expand the definition of “employee” in employment standards legislation to include workers in precarious work like the gig economy and tighten loopholes that allow employers to re-classify workers as “independent contractors” to contract out of ESA obligations. *Part Time Worker:* Extend protection of equal pay provision to all part time workers;
- *Paid Sick Days:* legislate at least ten paid sick days for workers in Ontario. This recommendation has broad support among Ontarians, particularly given the recent experience of the pandemic. Paid sick days are necessary to ensure healthy and productive workplaces and communities;
- *Minimum Wage:* Increase the minimum wage immediately to at least \$15 an hour, and create a modernized fair wage policy across all job sectors;
- *Enforcement:* Increase resources and enhance enforcement mechanism within the Ministry of Labour to ensure that successful ESA claims are enforced in a timely and effective manner. In the case of Employment Standards there continues to be a backlog in complaints, insufficient numbers of labour inspectors, an overly conservative approach to workplace inspection, and limitations in the governance of penalties for violators and collections processes. This, coupled with the larger problems with a complaint-based Employment Standards system, especially during an economic downturn (i.e., workers are reluctant to complain for fear of job loss, with little certainty that they will obtain sufficient representation, and/or without any

guarantee they will receive the compensation they deserve) renders the current enforcement mechanism ineffective.

- *Employee Wage Protection Program: Reinstate the Employee Wage Protection Program (EWPP) and make it available to all workers who have been cheated out of their owed wages, termination and severance pay by their employers, once their claims are validated by the Ministry of Labour through an order to pay;*
- *Expand Director's Liability: Amend the Business Act to expand Director's liability to cover all unpaid wages including termination and severance pay ordered by the Ministry of Labour;*
- *Enhancing Litigation: Currently, the Ministry does not defend most of the decisions made by the ESOs, but instead leaves it to the employee to do so. This contributes to the power imbalance between an employer and an employee. The Ministry be more active in participating in OLRB proceedings in order to defend ESO decisions;*
- *Protecting Employees from Reprisals: Expedite the process for investigating and determining reprisal complaints; and implement an administrative penalty of up to \$100,000 per infraction if there are reasonable grounds to believe reprisal has occurred;*
- *Input on Precarious Work: The Ministry of Labour should convene an Innovative Solutions for Precarious Work Advisory Council of representatives of relevant ministries, experts, and labour and employer organizations to obtain advice and to develop initiatives for improved and expedited ESA compliance and enforcement with a view to recommending best practices for responding to the existing and emerging needs of vulnerable employees/precarious work in the changing workplace*
- *Systemic Approach: Build upon the principles of the Poverty Reduction Strategy to develop and implement a multi-sectoral/cross-ministerial employment strategy coordinated by an identified lead Ministry with the objective of improving support to vulnerable workers and reducing employment precarity among the most disproportionately affected and measure initiatives on the basis of whether programs create or enable participants to engage in secure and sustainable work;*
- *Immigration Status: Advocate with the federal government for permanent resident status for all temporary workers to end worker precarity caused by precarious immigration status.*

- *Data collection: The Ministry of Labour should revise the claim form to allow claimants to input their sociodemographic including disaggregated race based data, in order for the Ministry to collect and analyse data associated with the background of the workers who experience rights violations, as well as the effectiveness of the enforcement mechanism as it pertain to workers of diverse background.*

6. Inequitable Access to Education

A discussion of the future of work in Ontario must also turn its mind to equity in education as the pipeline to fairer labour market outcomes for racialized communities.

Having equitable access to education greatly improves a person's job opportunities, income potential, health status, learning outcomes and general quality of life. In turn, living in poverty makes it less likely for individuals to complete school or to be able to access higher education. Children of families with the lowest income levels are less likely than those in the top income levels to attend post-secondary studies. Many racialized students experience discrimination and alienation in elementary and secondary schools as well as in colleges and universities. Schools with high drop-out – or “push-out” – rates are those with the highest numbers of racialized students. Reports have also shown that the majority of students who are being pushed out are from certain racialized groups.

Experts are concerned that the pandemic has exacerbated the disparities in learning outcome, with many racialized students being left behind in the world of online learning. There is a fear that many students - most notably marginalized students - have dropped out of high school and will not return to school even after the lockdown is lifted.

The Ontario Government launched an Equity and Inclusive Education Strategy and Implementation Plan on April 6, 2009. Parallel and linked to this is a comprehensive Aboriginal Education Framework. Yet, little has happened to ensure that school boards across the province can effectively deliver on the various components and provisions of the Strategy.

Recommendation:

- *The Ontario government reinvigorate and re-invest in the Equity and Inclusive Education Strategy and Implementation Plan.*

7. International Credentials Recognition

An RBC Economics study concluded in 2019 that failure to recognize international credentials and work experience of immigrants was costing Canada \$50 billion every year. This is especially worrying for Ontario, which continues to be the top immigration destination in Canada. In considering the future of work, the Committee must also consider how Ontario can dismantle barriers to credentials recognition and employment consistent with work experience for new Canadians. Ontario's Fairness Commissioner can play an important role in this work, but must be empowered through legislation that mandates equity in the recognition of foreign credentials, and disaggregated data collection and reporting by regulated professions.

Recommendation:

- *Enact legislation to mandate equity provisions in the recognition and granting of credentials, disaggregated data collection and reporting by regulated professions.*

Conclusion

In establishing a new Workforce Recovery Advisory Committee, the Government should be guided by values of equality, equity, and fairness. More needs to be done to break down all barriers to success for all Ontarians.

The Committee, tasked with leading the future of work in Ontario has zero representation from labour, workers, or labour and employment law experts. It has been given a tight timeline to complete its so-called consultation process. The Committee's makeup and consultation process are flawed. Working people deserve to have their voices and concerns heard and to have meaningful input into the decisions that will shape their futures. We urge the committee to review these submissions and develop a more comprehensive review of the future of work in Ontario that centres our most vulnerable workers as its priority in recovery and beyond.