

# **Traffick Stop: Addressing Labour Exploitation of Migrant Workers in Canada**

**by  
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B.A. with Distinction (International Studies), Simon Fraser University, 2017

Project Submitted in Partial Fulfillment of the  
Requirements for the Degree of  
Master of Public Policy

in the  
School of Public Policy  
Faculty of Arts and Social Sciences

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Spring 2021**

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## **Abstract**

Policy efforts to reduce human trafficking in Canada have heavily focused on sex trafficking relative to labour trafficking. Partly as a result, victims of labour trafficking often lack effective protection from exploitation and coercion. This study looks at one important avenue through which labour trafficking can occur in Canada – the Temporary Foreign Worker Program. Many migrant workers in the program lack the legal standing and resources to escape exploitative and dangerous situations. This problem is compounded by inconsistent definitions and interpretations of labour trafficking, a lack of reliable data, and weak protective mechanisms in legislation. Through an analysis of the policy problem in Canada, this study proposes and evaluates four policy options to enhance the security and protection of victims and survivors of labour trafficking. The recommendations aim to improve migrant worker mobility in the labour market such as granting migrant workers the ability to change employers, and address data collection issues that have bedeviled existing efforts. A strategy for implementing these options is also considered to illustrate some of the trade-offs and challenges that exist.

**Keywords:** human trafficking; labour trafficking; temporary foreign workers; coercion; exploitation; precarious status

*To those who have sought and need to seek safe haven as a result of labour trafficking*

## **Acknowledgments**

This research was motivated and inspired by a large number of people who I would like to recognize and thank.

First and foremost, I would like to express my sincere gratitude to my supervisor, Josh Gordon, for challenging and pushing me to produce something I can be proud of. Thank you for your encouragement, humour, and constructive feedback. Thank you also to my external, Mohsen Javdani, for your thoughtful comments and unique perspective on this topic.

Thank you to Nancy Olewiler and the School of Public Policy for your commitment and dedication to the program and, more importantly, for providing the tools and knowledge for students who simply just want to make the world a better place. Thank you to my cohort and friends I've made along the way – you have genuinely become like a family to me and made the last few years so much more memorable.

I'd like to specifically thank Steffan, Elise, and Nyiri, who played a critical role in the initial stages of this research. Your dedication to this topic constantly inspired me and this study.

I'd like to thank my family for their continuous support and providing me the platform I needed to develop into the person I am today. Thank you for always being my greatest support mechanism in whatever I choose to do.

Finally, to Connor, for supporting my decision to pursue my Master's, lending an ear when I needed to talk through my research, and for always holding me in the highest regard.

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## List of Acronyms

ATIP	Access to Information and Privacy
CBSA	Canada Border Services Agency
CCC	Criminal Code of Canada
CCR	Canadian Council for Refugees
ESDC	Employment and Social Development Canada
ICCLR	International Centre for Criminal Law Reform
ILO	International Labour Organization
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
LCP	Live-in Caregiver Program
LMIA	Labour Market Impact Assessment
LMO	Labour Market Opinion
MSA	Modern Slavery Act
NGO	Non-governmental Organizations
NIJ	National Institute of Justice
NOC	National Occupation Classification
NRM	National Referral Mechanism
OPP	Ontario Provincial Police
PNP	Provincial Nominee Program
PR	Permanent Resident
RCMP	Royal Canadian Mounted Police
SAWP	Seasonal Agriculture Worker Program
SCA	Single Competent Authority
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
TRP	Temporary Resident Permit
TVPA	Trafficking Victims Protection Act
U.K.	United Kingdom
U.S.	United States
UCR	Uniform Crime Reporting
UN	United Nations

UNODC	United Nations Office on Drugs and Crime
USC	U.S. Code
WCDWA	West Coast Domestic Workers Association

## Executive Summary

Labour trafficking has not received the public and political attention it deserves. The international fight against human trafficking will not see progress if labour continues to remain absent from the narrative. Despite being one of the first countries to take a stance to combat human trafficking, Canada is falling short of its obligations under the *United Nations Trafficking Protocol*. As a result, victims of labour trafficking often lack effective protection from exploitative and coercive environments.

The Temporary Foreign Worker Program, specifically the low-wage stream, has been identified by the Government of Canada for being susceptible to labour trafficking practices, fueled by Canada's dependency on temporary foreign workers for meeting labour market shortages. Thus, migrant workers who come to Canada through legal channels are at risk of being exploited through coercion. Protective mechanisms in legislation are inadequate in ensuring migrant workers' rights are protected, and access to justice is rarely met. Weak incentives to report, a lack of reliable data, and ineffective accountability measures of employers create barriers in addressing the problem.

The methodologies used in this study include a literature review, a jurisdictional scan, and interviews with federal government representatives, academics, and non-governmental organizations. The findings suggest coordination challenges, definitional inconsistencies, and a lack of rigorous data contribute to weakness in legislative protection. The results also indicate the importance of engaging with groups most vulnerable to trafficking practices to understand how policies can improve and develop.

Four policy options were identified to address these challenges: a mandatory reporting system, employer bonds, occupation-specific work permits, and a pathway to permanent residency. These policy proposals were analyzed by assessing primary objectives: effectiveness in protection of trafficked victims and improving transparency of labour trafficking cases. In addition, other objectives considered were political feasibility, administrative complexity, and stakeholder acceptance. The recommendations aim to improve migrant worker mobility in the labour market, such as granting migrant workers the ability to change employers, and address data collection issues that have bedeviled existing efforts. A strategy for implementing these options is also considered to illustrate some of the trade-offs and challenges that exist.

# Chapter 1.

## Introduction

Internationally, estimates suggest 25 million people are victims of human trafficking for the purposes of forced labour (ILO, 2017). Consequently, the global community has committed to ending human trafficking and modern slavery by 2030 (ILO, 2017). To meet this objective, countries need to adopt effective policies and programs grounded in political will and address the issue through the systems and structures that enable trafficking to occur. While there has been significant attention on sex trafficking in research and policy development, minimal efforts are directed towards the existence of labour trafficking at large – and it is a subject that is often left out of the human trafficking narrative.

Labour trafficking in Canada has garnered more attention in recent years due to investigations centering on the mistreatment of migrant workers. This includes those who have entered Canada through legal channels and hold precarious status, specifically the low-wage stream of the Temporary Foreign Worker Program (TFWP). Research suggests most labour trafficking cases in Canada happen to migrant workers who legally enter the country and are then forced to work through coercive means (Sikka, 2013; Dandurand & Chin, 2014; Beatson et al., 2017). Victims and survivors of labour trafficking have few alternatives and face several barriers in accessing help or justice. Labour trafficking is an offence under the *Criminal Code of Canada* and the *Immigration and Refugee Protection Act* (IRPA). However, despite the increase in the number of identified cases, there have been few labour trafficking prosecutions to date (Millar & O’Doherty, 2020).

This study aims to address the policy problem: **the current provisions in the *Criminal Code of Canada* and the IRPA provide weak legislative protection to migrant workers who are trafficked for the purposes of labour exploitation through the TFWP in Canada.** While the TFWP is designed to support employers in meeting short-term labour market demands, the program creates precarious situations for workers who arrive in Canada and are subject to the possibility of labour trafficking. Additionally, temporary foreign workers (TFW) who are susceptible to trafficking practices have weak incentives to come forward and report cases. The lack of reliable data and protective

mechanisms allow the policy problem to persist. Thus, this study aims to propose and recommend policy options that can effectively address this issue.

The following chapters aim to meet three main objectives: (1) Address gaps in the literature on the lack of research surrounding labour trafficking and exploitation in the Canadian context; (2) Understand how policies can increase employer accountability and incentivize victims to report; and (3) Improve the challenges in data reporting and collection. Chapter 2 of this study provides background information on the Canadian context of human trafficking, with specific attention to labour trafficking, and Chapter 3 focuses on this application in the TFWP. Chapter 4 provides a breakdown of the methodologies used in this study, which includes a literature review, a jurisdictional scan, expert interviews, and limitations. Chapter 5 and 6 provide key findings from the jurisdictional scan and expert interviews, and policy options are generated from this research in Chapter 7. The proceeding chapters evaluate and analyze the proposed options and make a recommendation based on assessing if the options meet the primary criteria. The final chapters explore an implementation strategy and essential considerations for the future of anti-labour trafficking policies in Canada.

## Chapter 2.

# Human Trafficking: Definitions & Application

*“Last night, I went to bed a slave. This morning, I woke up a free man.”*

- Victim of forced labour case in Barrie, Ontario (The Canadian Press, 2019)

Human trafficking, or trafficking in persons, refers to the “recruitment, transportation or harbouring of persons for the purpose of exploitation, generally for sexual exploitation or forced labour” (Public Safety Canada, 2019). This chapter introduces human trafficking in the Canadian context, focusing on labour exploitation and forced labour. It will demonstrate Canada’s obligation to effectively combat the issue and what has been accomplished thus far. Definitions and fundamental concepts of labour trafficking will illustrate the complexities and challenges in identifying and defining the issue.

## 2.1. Human Trafficking in the Canadian Context

Canada is an identified “source, transit, and destination country for human trafficking” (U.S. Department of State, 2020a). Approximately 20 years ago, Canada took a stance on the international fight against human trafficking, one of the first countries to do so (McCrae, 2016). These actions were driven by the *United Nations Convention against Transnational Organized Crime* supported by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (i.e., Palermo Protocol). As a signatory of the *Palermo Protocol*, Canada is obligated to adopt legislation to establish the following in addressing human trafficking:

- ✓ Criminal offences (as per article 5)
- ✓ Provide for the physical safety of victims (as per article 6)
- ✓ Protect victims from revictimization (as per article 8)

While Parliament has sole responsibility for passing laws that address human trafficking in Canada, agencies should uphold and enforce those laws in accordance with international commitments. This framework is meant to protect victims and support investigations (Sikka, 2013).

### **2.1.1. Efforts to Date**

After signing the *UN Trafficking Protocol* in 2000, Canada took several key steps to meet its expected international commitments. Key anti-trafficking initiatives included: amending the *Criminal Code* and IRPA to include an offence of human trafficking; extending the Temporary Resident Permit (TRP) program to foreign trafficked persons; awareness campaigns; enhancing victim protection under the TFWP; creating a national action plan to combat human trafficking; and creating new partnerships and coordination methods (Public Safety Canada, 2012 & 2019). The first framework established in 2012 was built around four primary pillars (4Ps): the prevention of trafficking; the protection of victims; the prosecution of offenders; and working in partnership and collaboration with relative stakeholders (Public Safety Canada, 2012).

In 2019, Public Safety Canada released a five-year *National Strategy to Combat Human Trafficking* (i.e., National Strategy) plan to address crimes surrounding human trafficking and protect domestic and foreign victims. To strengthen Canada's position, \$75 million over six years was invested in the *National Strategy*, which has gone towards implementing a Canadian Human Trafficking Hotline and several other initiatives to enhance Canada's response. While aiming to uphold the 4Ps, it also acknowledges a new direction – empowerment – to strengthen victims' support (Public Safety Canada, 2019). The key difference between the two initiatives is that the most recent one is more holistic, is funded, and provides a victim-centred approach.

### **2.1.2. Applicable Legislation**

Human trafficking is an offence under both the *Criminal Code* and the IRPA. Both types of legislation are essential in the context of this study as they have specific policies and administrative mechanisms that pertain to situations of individuals who are trafficked for the purpose of exploitation. This not only includes criminal offences but available protective tools.

For this project's purposes, I will be using the definition of human trafficking as found in Canadian legislation, specifically the *Criminal Code of Canada*. However, my research indicates contention surrounding inconsistencies in definitions and how they are being applied to cases of trafficking. Although this will be discussed later on in more detail

as a critical barrier to addressing labour trafficking in Canada, this study will primarily refer to the Canadian definition.

Incorporated officially in 2005, the definition in the *Criminal Code* states:

*279.01(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence ...*

Additionally, section 279.02 criminalizes receiving material benefits to facilitate trafficking. Section 279.03 makes it a criminal offence to withhold or destroy a person's identity documents for the purpose of trafficking (Department of Justice, 2016).

To constitute as trafficking, the definition requires the victim to reasonably believe their *safety* was compromised, which is not included in the international definition<sup>1</sup> (Beatson et al., 2017). To expand:

*279.04(1) For the purpose of sections 279.01 to 279.03, a person exploits another person if they (a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that **their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service;***

*(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused: (a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority.*

According to the Department of Justice (2018), coercion in s. 279.04(2) is not limited to physical force and may extend to cases where a victim is constrained emotionally and

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<sup>1</sup> See Appendix D for further details on human trafficking in the international context.

psychologically.<sup>2,3</sup> When dissecting the definition further, “fear for safety” is not meant to prove that the victim feared for their safety, but to assess whether a reasonable person in the victim’s position would have had such fear. The judicial interpretation for “safety” has been understood to include mental, psychological, and emotional safety.<sup>4</sup> The use of coercion and tools of control are relevant to show a reasonable apprehension of fear.

The *Criminal Code* definition has been criticized in literature for being too narrow in interpretation, resulting in few trafficking prosecutions to date (Kaye & Hastie, 2015). An individual's safety may be threatened in less obvious ways, and the evidentiary threshold this creates makes it exceedingly difficult to prove in a court of law. As a result, other *Criminal Code* sections may be used instead to prosecute a trafficker (e.g., kidnapping, sexual assault, forcible confinement, etc.) (Beatson et al., 2017), which prohibits proper data collection of trafficking cases.

In 2002, the IRPA incorporated an offence for trafficking as per section 118 as the following:

*118(1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.*

*(2) For the purpose of subsection (1), “organize,” with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.*

Some of the complications surrounding human trafficking in Canada are the use and application of using two separate pieces of legislation in addressing the issue. To underline the differences, for an offence to fall under the IRPA, two elements must exist: (1) the act: to “organize,” (i.e., recruitment, transportation, receipt or harbouring of persons); and (2) the means: to “carry out” (i.e., abduction, fraud, deception or use or threat of force or coercion). This pertains to cases of trafficking persons into Canada and is typically

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<sup>2</sup> See *R. v. Stone and Beckford*, which demonstrates acts that emotionally and psychologically restrain a victim.

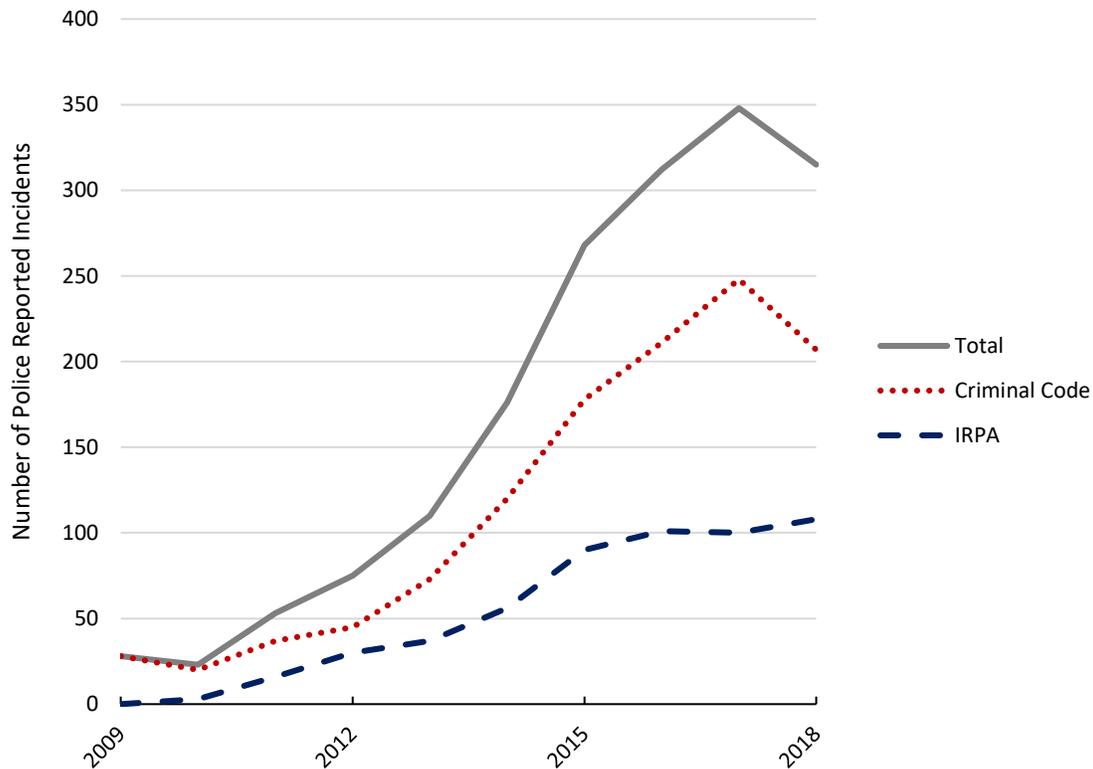
<sup>3</sup> In *R. v. Big M. Drug Mart*, the Court explained “coercion includes not only blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others”.

<sup>4</sup> See *R. v. Hau*; *R. v. Skoczylas*; *R. v. Lafreniere*; *R. v. Hertz*; and *R. v. Goodwin*.

affiliated with irregular migration (Beatson et al., 2017). Human trafficking in the *Criminal Code* is established by proving a person “exercises control, direction or influence over the movements of a person.” This suggests the trafficker is not required to move or transport victims to meet the standard of trafficking; they only need to *control* their movements.

**Table 1. The Elements of Trafficking: Criminal Code of Canada**

<b>ACTION</b>	<b>MEANS</b>	<b>PURPOSE</b>
<ul style="list-style-type: none"> <li>▪ Recruits</li> <li>▪ Transports</li> <li>▪ Transfers</li> <li>▪ Receives</li> <li>▪ Holds</li> <li>▪ Conceals</li> <li>▪ Harbours</li> <li>▪ Exercises control, direction, or influence over the movements of a person</li> </ul>	<ul style="list-style-type: none"> <li>▪ Use of force</li> <li>▪ Threat of force</li> <li>▪ Coercion</li> <li>▪ Deception</li> <li>▪ Abuse of a position of trust, power, or authority</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exploitation: causing a person to provide their labour or service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the person to believe their safety, or the safety of someone they know, would be threatened if they failed to provide their labour or service.</li> </ul>



**Figure 1. Police-reported Incidents of Human Trafficking, by Statute, Canada, 2009 - 2018**

As demonstrated in Figure 1, Canada has reported 1,708 incidents of human trafficking between 2009 and 2018 (Statistics Canada, 2020). The steady increase is likely due to an increase in identified victims and efforts made in better detection, investigation, and reporting by the police. The *Criminal Code* accounts for approximately 68% of all human trafficking cases, whereas the IRPA only accounts for one-third of these cases (Statistics Canada, 2020). This implies cross-border trafficking is less common than domestic instances of human trafficking in Canada, or that the *Criminal Code* offence is more easily pursued. However, it should be noted that there have only been approximately five labour trafficking prosecutions to date (Millar & O’Doherty, 2020). It is important to emphasize this does not suggest the existence of labour trafficking is minor in Canada – considering emerging evidence of labour trafficking cases in the last few years (Tomlinson, 2019) – but to highlight complexities involved in prosecutions and applying legislation to these cases.

## **2.2. Defining Labour Trafficking**

A review of literature demonstrates that the topic of labour trafficking is significantly understudied and has not received equitable attention relative to trafficking for the purposes of sexual exploitation (Ricard-Guay & Hanley, 2014; Beatson et al., 2017; Dandurand et al., 2017). However, research demonstrates that the prevalence of labour trafficking is likely far greater than currently recognized, which will be discussed in more detail in Chapter 3.

Labour trafficking refers to the exploitation of labour through coercive means, often affecting migrant workers in agriculture, hospitality, and construction. Trafficked persons are typically promised well-paying jobs and appealing opportunities; however, they are often forced to work in poor, exploitative conditions for little or no compensation upon arrival, or may be forced to pay back substantial (illegal) recruitment fees. Thus, traffickers may control victims through physical or psychological measures – abuse, threats, debt bondage, and documentation confiscation. Victims of labour trafficking in Canada include men, women, and children. However, vulnerable populations such as foreign nationals, LGBTQ2S+ persons, and homeless youth are more likely to be targeted (Canadian Centre to End Human Trafficking, 2020b).

A significant challenge for researchers and government bodies that focus on labour trafficking is to define where infringements of employment standards end, and labour trafficking begin. It is worth exploring a breakdown of key concepts that constitute labour trafficking to identify cases better and develop policies that can address such practices. To better define labour trafficking, exploitation and coercion will be discussed in the proceeding subsections.

### **2.2.1. The Spectrum of Labour Exploitation**

When studying labour trafficking, it is vital to understand the gradation of labour relations, which include decent work, labour exploitation, and labour trafficking in the context of migrant workers. Labour trafficking is the most severe form of labour exploitation and should be situated at the far end of the spectrum due to denial of autonomy and freedom (Skrivánková, 2010; Dandurand & Chin, 2014). Labour exploitation on its own is

not sufficient to constitute a form of trafficking. However, less severe exploitative methods can escalate to extreme cases of trafficking for forced labour (Dandurand et al., 2017).

Exploitation refers to practices that allow an employer to obtain profit through unfair methods that violate employment standards (e.g., altering the nature of the work counter to Canadian law). Typically, this can range from using deception as a tool to recruit workers to perform specific tasks that do not meet what was initially promised or a violation of health and safety standards. In some severe cases, this may result in cases where an employee's well-being seriously deteriorates, resulting in illness and, at times, even death (Beatson et al., 2017).

**Table 2. Examples of Exploitation in the Canadian Context**

<b>Range of Exploitation</b>	<b>Examples</b>
Deception	False information about employment tasks, working conditions, wages, benefits, location, employment terms, etc.
Violation of Labour Standards	Pay below the minimum wage, excessive hours, lack of vacation, lack of privacy, discrimination
Occupational Health and Safety Violations	Dangerous or unhealthy work conditions, exposure to physical or psychological violence in the workplace, sexual harassment, or sexual exploitation

Source: Beatson et al., 2017

### **2.2.2. Defining Coercion**

Coercion is an essential tool when identifying suspected cases of labour trafficking. The severity of coercion is not always clear-cut (Beatson et al., 2017). For example, traffickers can place victims in exploitative situations that prohibit them from leaving (i.e., freedom of movement). Such factors are fear from physical threats or abuse and range from debt bondage or threats of criminalization and deportation (Sikka, 2013). Thus, a level of dependency on the employer or trafficker becomes prevalent through coercive means (Dandurand & Chin, 2014). According to Beatson and colleagues (2017), coercion may either be direct (an action that directly forces or controls a victim) or systemic (legal or policy conditions that lead to a worker's compliance to remain). For example, traffickers may exercise control by withholding immigration documents to isolate victims physically (Gallagher & Skrivánková, 2015).

**Table 3. Examples of Coercion in the Canadian Context**

	Range of Coercion	Examples
<b>Direct</b>	Threats	Threats of reporting migrant workers to immigration or legal authorities; threats of violence; threats to their families
	Administrative control	Withholding information; keeping identity documents (e.g., passports, work permits)
	Financial control	Debt bondage; withholding wages; dependency for access to the means of subsistence
	Psychological control	Creating emotional dependency; encouraging feelings of shame and inadequacy; enforcement of social isolation
	Physical control	Locking into the workplace; geographic isolation without access to transportation; episodes of physical violence or sexual assault
<b>Systemic</b>	Immigration risk	Deportation; loss of work permit; being blocked from permanent residency access; inability to sponsor family members
	Criminalization	Charges related to drug cultivation or trafficking; document fraud

Source: Beatson et al., 2017

### 2.2.3. The Intersection of Exploitation and Coercion

A critical element in defining labour trafficking is the incorporation of labour exploitation and coercion – where coercion is used to facilitate labour exploitation.<sup>5</sup> As noted previously, other forms of labour relation issues, while problematic, fall outside the sphere of what composes labour trafficking. The combination of coercion and exploitation results in situations that prevent workers from leaving their environment (Sikka, 2013). It is also important to recognize that exploitative practices may escalate during the duration of employment, and power dynamics must be understood to effectively identify a case of trafficking (Beatson et al., 2017).

**Table 4. Intersecting Exploitation and Coercion<sup>6</sup>**

<b>Exploitation</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Coercion</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
	<b>Decent Work</b>	<b>Labour Violation</b>	<b>Labour Trafficking</b>

<sup>5</sup> See Appendix E for examples of high-profile labour trafficking cases in Canada.

<sup>6</sup> In the Canadian context as per the *Criminal Code*, this would require “fear for safety”.

## Chapter 3.

# Labour Trafficking and the Temporary Foreign Worker Program

*“We were treated like dogs on a short leash... To this day I don’t go out after dark because of all the threats. I have also received threats against my mother in Hungary.”*

- Victim Impact Statement (Hamilton forced labour case)  
(Public Safety Canada, 2012)

This chapter explores labour trafficking in Canada and how the focus has primarily been directed towards legal channels and recruitment practices – the TFWP and cases that pertain to migrant workers in Canada. Evidence and research focused on identifying labour trafficking in Canada is discussed, including examples of available tools for migrant workers subject to trafficking practices.

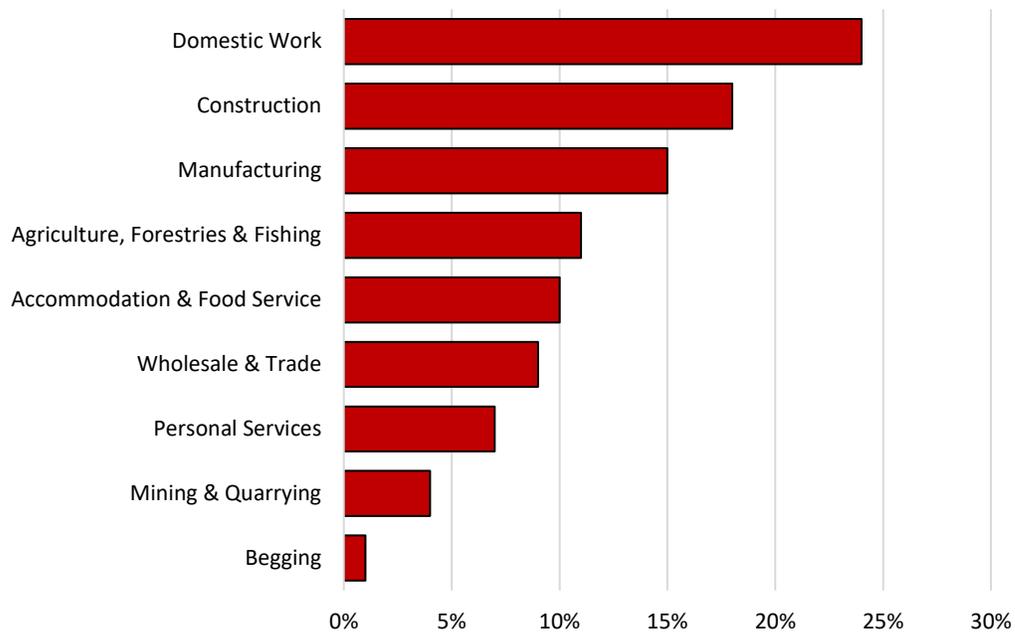
### 3.1. Evidence of Trafficking

Several reports document clear links between human trafficking and migration through legal channels, specifically the low-wage stream of the TFWP. According to a recent report conducted by the Standing Committee on Justice and Human Rights titled “Moving Forward in the Fight Against Trafficking in Canada,” labour trafficking primarily affects migrant workers who come in through the TFWP who are tied to a specific employer. However, the report states that any overhaul or changes to the program would negatively impact employers, and recommendations instead focused on ensuring migrant workers are aware of their rights. Further, the Royal Canadian Mounted Police (RCMP) (2010) estimates that most labour trafficking cases in Canada happen to migrant workers who enter the country legally and are then forced to work through coercive means. The RCMP reports that cases primarily entail illegal “third-party” recruiter involvement, which entices migrants to come to Canada who are then exploited. This is further noted by Dandurand and Chin (2014) and McCrae (2017)<sup>7</sup>, where deceitful and exploitative practices of recruiters and employers are an indicator of labour trafficking in Canada and a method to force a migrant worker into a situation of illegality. In addition, 32 cases of

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<sup>7</sup> McCrae (2017) notes illegal recruiter fees may fall within the \$2,000 to \$10,000 range.

forced labour investigations were reported by Employment and Social Development Canada (ESDC) in 2019, all in connection to the TFWP (U.S. Department of State, 2020a).



**Figure 2. Sectors of International Forced Labour Exploitation, 2016**

Source: 2017 Global Estimates of Modern Slavery

As noted previously, although trafficking data is challenging to obtain, some studies demonstrate a clear link to the TFWP and trafficking. A survey conducted between 2012 and 2014 of 33 Filipino live-in caregivers found evidence of employers withholding immigration documents and the threat of deportation, physical violence, psychological, moral, and sexual harassment, and various forms of threats (Galerand et al., 2015). The majority of workers who were interviewed reported they were recruited through an employment agency, which charged exorbitant fees for organizing their arrival to Canada. The increase in reported allegations, such as the results indicated above, led to the overhaul of the Live-In Caregiver Program (LCP) in 2014 (Galerand et al., 2015).



**Figure 3. Forms of Exploitation Among Detected Male Victims of Trafficking in Persons, 2016**

Source: UNODC elaboration of national data

A study conducted by Beatson et al. (2017) documented 243 victims of labour trafficking cases in Canada between 2001 and 2015.<sup>8</sup> Five broad sectors were identified – retail and hospitality services, domestic work, agriculture, skilled and technical work, and manual labour. Sectors that fell within the TFWP, specifically the Seasonal Agriculture Worker Program (SAWP) or another low-wage category, had the highest number of reported cases of labour trafficking. Their study further suggests that (1) precarious immigration status is vital in the context of labour trafficking; (2) trafficking is primarily conducted through legal channels and employment sectors; and (3) most of the victims affected by this sphere of trafficking are men. The third point illustrates an overlooked component of trafficking in Canada, where the media and available literature often portray the victim as young and female. Importantly, this should not negate the vulnerability of the structure of the former-LCP and the impact on women and other vulnerable groups, but to

<sup>8</sup> All cases in the study included an element of both coercion and exploitation.

understand various demographics impacted by labour trafficking practices in Canada – men, alongside women, are victims and survivors of labour trafficking.

## **3.2. Canada’s Temporary Foreign Worker Program**

As demonstrated in this chapter, there is growing awareness and concerns of the TFWP as a driver for human trafficking practices and its hidden nature (Standing Committee on Justice and Human Rights, 2018). To understand how the program is susceptible to labour trafficking, the structure of the TFWP and the different occupational streams should be reviewed.

### **3.2.1. Program Overview**

Since the 1960s, Canada has accepted foreign nationals to work temporary jobs to fulfil labour market needs and promote economic growth – primarily through low-wage and high-wage streams. Established in 1973, the TFWP is recognized as a useful tool to meet immediate skill requirements when Canadians and permanent residents (PRs) are not available (Molnar, 2018). Two federal departments administer the TFWP: ESDC, which authorizes employment and coordinates with the employer and the overall impact on the labour market; and Immigration, Refugees and Citizenship Canada (IRCC), which facilitates the immigration process and assessing the likelihood of the migrant workers adhering to the conditions of their work permit. Notably, the employer must demonstrate reasonable efforts in hiring Canadians and PRs (Fudge & MacPhail, 2009). Should an employer wish to hire a TFW, they are required to submit a Labour Market Impact Assessment (LMIA)<sup>9</sup> to demonstrate a labour market need and to show that there is no Canadian or PR available for that job (ESDC, 2020b).

Provisions that impact migrant workers, such as work permits, legal status, and access to permanent residency, are addressed in the IRPA and the *Immigration and Refugee Protection Regulations* (IRPR) (Immigration and Refugee Board of Canada, 2020). The TFWP has historically been criticized with employees being tied to their employer through their work permit (Dandurand & Chin, 2014). However, recent amendments have been made to transition to more options for vulnerable migrant

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<sup>9</sup> Formerly known as a Labour Market Opinion (LMO).

workers, as discussed in subsection 3.3.2. The federal government administers the TFWP, and worker protection falls under provincial legislation regarding occupational and employment standards, wage distribution, and health and safety issues. The implementation of each program varies provincially (Molnar, 2018).

### **3.2.2. Low-Wage Streams**

The low-wage streams of the TFWP are composed of the agricultural stream (which includes the SAWP), the Caregiver Program<sup>10</sup>, and the stream for other low-wage occupations.

First established in 1966, the SAWP is Canada's longest-running TFWP, hiring migrant workers to meet high labour demand in the agricultural sector. The SAWP holds bilateral agreements with Mexico and other Caribbean countries, where workers are hired for a maximum of eight months in a year and work 240 hours in six weeks or less. For non-seasonal hires, the agricultural stream allows workers to obtain permits for up to 24 months (ESDC, 2020d). Employers are required to provide accommodation for migrant workers, although the worker is not required to live on-site (ESDC, 2020c). Alternative options are limited considering the logistics of work location and the low-wage nature of the job. Additionally, workers are not eligible for PR status, so workers are required to reapply every year to return to Canada and may be requested by a specific employer should they receive positive feedback (Fudge & MacPhail, 2009). It is also worth mentioning migrant farmworkers are placed in a unique situation, isolated in remote locations, which further prohibits their access to services and protection (Dandurand & Chin, 2014).

The LCP was established in 1992 to provide affordable care to children, persons with disabilities, and the elderly by hiring TFWs. The employer is expected to cover transportation costs to and from Canada and, depending on the province, medical coverage until the migrant worker is eligible for provincial healthcare coverage (Atanackovic & Bourgeault, 2014). Until 2014, workers were expected to live with their employers. Of note, the LCP offered pathways to permanent residency (PR) once the

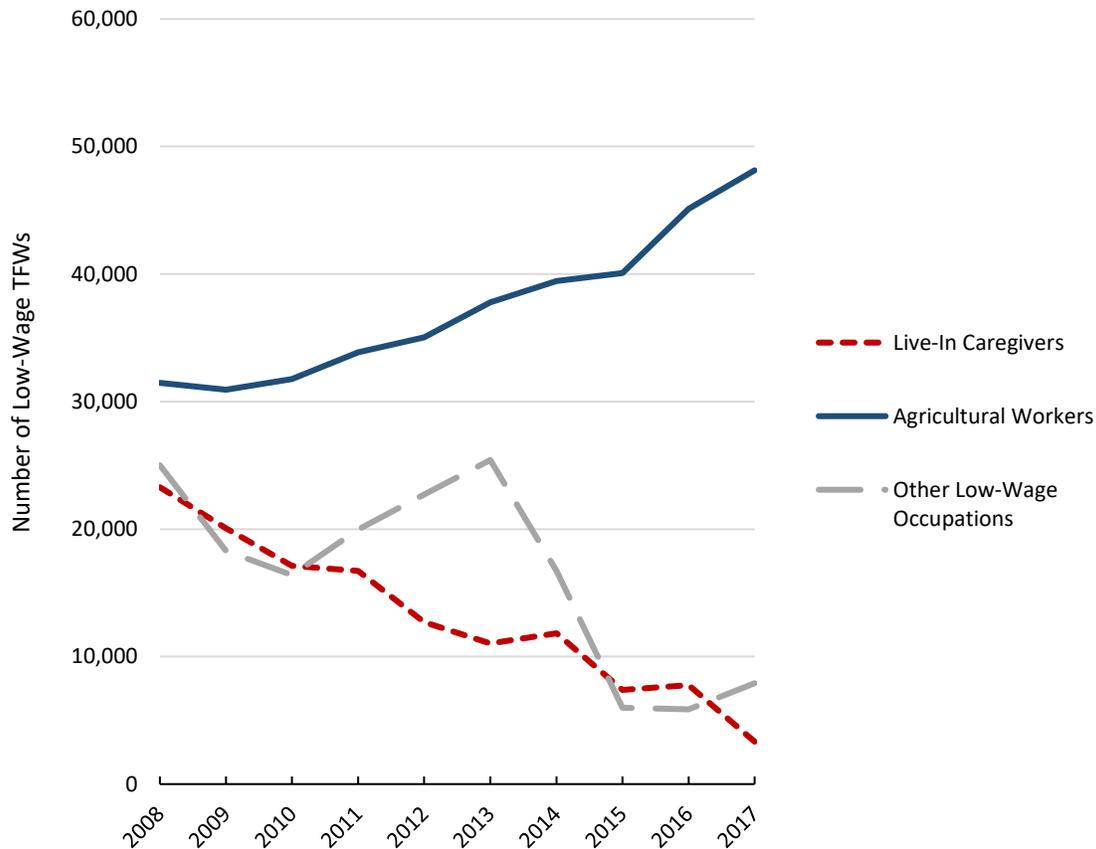
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<sup>10</sup> Formerly known as the Live-in Caregiver Program (LCP).

worker completed 24 months or 3,900 hours of work within four years – a unique feature of the program (Canadian Immigration Law Firm, 2017).

As of November 2014, IRCC refrained from issuing LCP work permits, illustrated in its steady decline in Figure 4. To address reports of exploitation and abuse, the program had also repealed the live-in requirement. Consequently, the employee would lose access to PR avenues under the program should they choose to move out. IRCC had identified a significant backlog in processing PR applications through the LCP. This resulted in the implementation of the *Caring for Children* and the *Caring for People with High Medical Needs* routes, which were prioritized programs to access PR status (Canadian Immigration Law Firm, 2017). As of 2019, the new Caregiver pilot program was launched and eliminated the employer-specific requirements and instead is now occupation-specific based. This means workers are free to work for any employer or location if they remain within the appropriate skill level (IRCC, 2020d).

Employers hire migrant workers who fall outside of the agriculture or Caregiver program through the stream for low-wage occupations, determined by labour market needs and authorized by ESDC. These jobs are typically clerical, sales, and service (Molnar, 2018). Like the agricultural stream, migrant workers under this program are not eligible for PR status unless it meets the criteria for the Provincial Nominee Program (PNP).



**Figure 4. Temporary Foreign Worker Program: Work Permit Holders by Program and Sign Year, 2008 – 2017**

Source: IRCC Facts and Figures, 2017

Further to the 2014 developments, the Government of Canada has attempted to limit its use of TFWs to ensure Canadians and PRs are prioritized in accessing the labour market (EI-Assal, 2016). As demonstrated in Figure 4, we indeed see a reflection of these actions in terms of the LCP and other low-wage occupations. However, there appears to be a notable increase of migrant workers in the agricultural sector.

### 3.2.3. Determining Job Classification

A tool used to determine the potential economic contribution of a migrant worker is the National Occupation Classification (NOC) matrix. The classification is conducted by determining the level of skills labelled 0, A, B (“high-skilled” positions, such as management and legislators), C and D (low-wage, such as hospitality, manufacturing, and general labourers) (ESDC, 2020a). Notably, many of the 0, A, and B categories have opportunities to access permanent residency. C and D categories are typically only eligible

for temporary labour programs. However, while some do have possible access to permanent residence, these processes are long and far more complex (WCDWA, 2014).

### **3.2.4. Provincial Nominee Program**

Nine provinces and two territories have negotiated agreements with the federal government, which allows them to nominate economic immigrants for PR status based on the labour market needs of the respective province or territory. Even though different agreement variations exist, applicants must demonstrate their potential in becoming economically established in Canada (IRCC, 2019). In some cases, applying for the PNP is employer dependent for C and D occupations, which places migrant workers in difficult situations if exploitation occurs (WCDWA, 2014). In BC, for example, the applicant must complete nine months of work. The employer must then apply with the employee for a nomination, pending that the worker is offered a full-time position if accepted into the program. The employee is also expected to continue working for the employer throughout the application process's duration (BCPNP, 2020).

## **3.3. Protection for Trafficked Victims**

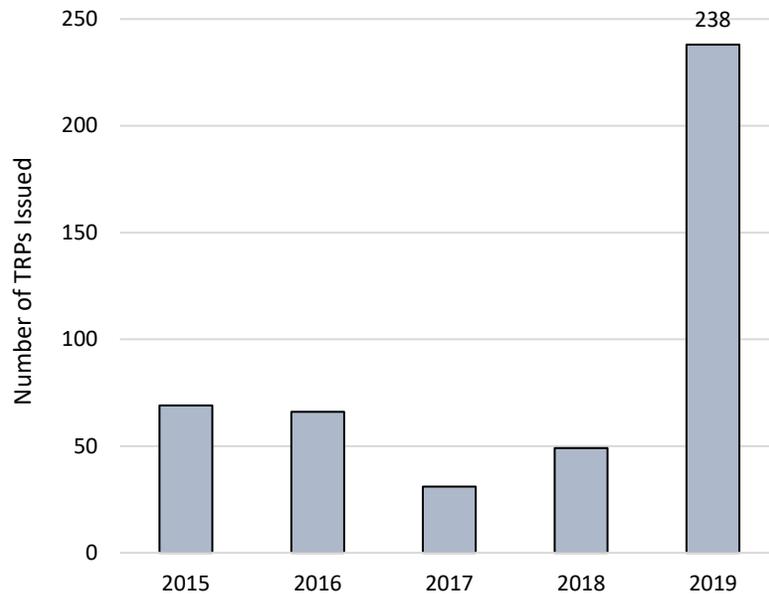
Protection is a primary pillar of combatting human trafficking as determined by Public Safety Canada (2012 & 2019). This section explores some tools available for victims of trafficking and consideration for barriers and shortcomings in their effectiveness in addressing the issue.

### **3.3.1. Temporary Resident Permits**

For victims of human trafficking, holding legal immigration status is vital to remaining in Canada and benefitting from victims' available support. In some cases, trafficked migrants may be subject to removal because they are inadmissible. They either do not hold proper authorization to enter Canada, or the appropriate documentation has expired. In 2006, the government implemented a program to allow foreign trafficked migrants to obtain a TRP for up to 180 days, at the IRCC officer's discretion. The TRPs grant access to healthcare services, the ability to apply for a fee-exempt work permit, access to local services, and provide time to process their situation moving forward (i.e.,

return to their country of origin voluntarily or to seek TRP renewal). Of note, TRPs may be renewed every three years, depending on the individual's case and the IRCC officer's discretion (Baglay, 2020). There are limitations in accessing TRPs due to individuals' difficulties meeting the definition of "trafficked" as provided in legislation (Public Safety Canada, 2018). Other barriers identified by advocacy groups are the length of time obtaining a permit; TRPs are not usually issued unless there is a police investigation or criminal prosecution taking place; or there is the risk of a removal order if the trafficked victim is out of status and no longer eligible (CCR, 2013).

The number of TRPs issued to trafficked migrants has been inconsistent in the last few years (IRCC, 2020b), but significantly increased in 2019, as noted in Figure 5, likely due to the rise of reported investigations such as the case in Barrie, Ontario (Jackson, 2019). While specific statistics on the number of trafficked migrants are unknown, the issuance of TRPs provide some insight on possible occurrences – although as noted by Public Safety Canada and the Canadian Council for Refugees (CCR), TRPs do not accurately represent the overall number of trafficked migrants due to barriers in accessing them or the victims' lack of knowledge that they exist. However, the significance of issuance in 2019 suggests more cases are being identified, reported, and investigated – a striking difference relative to previous years. Notably, of the 238 TRPs issued in 2019, approximately 86% came from primary source countries of the TFWP – Mexico, Jamaica, India, and the Philippines – and most of these cases were male victims (IRCC, 2020b; El-Assal, 2020). Although this research could not distinguish between sex and labour trafficking reports, this does provide some considerations for possible links to the TFWP.



**Figure 5. Number of Temporary Resident Permits Issued for Victims of Trafficking<sup>11,12</sup>**

### 3.3.2. Work Permit Options

There are currently two main types of work permits that TFWs may apply for: employer-specific work permits, and open-work permits for vulnerable workers. TFWs who hold an employer-specific work permit are theoretically tied to their employer; however, they may transition to a new job on the condition the new employer receives permission from the federal government to hire the TFW, and the foreign national applies for a new permit (IRCC, 2020a). IRCC notes few TFWs use this option considering the cost, time, and effort of the process (Canada Gazette, 2019). As of 2019, the government introduced open-work permits for vulnerable workers who hold employer-specific permits and are experiencing exploitation or abuse, or risk thereof.<sup>13</sup> The purpose of these permits is to grant autonomy to migrant workers to leave environments of abuse and find new employment in any occupation, on condition they provide evidence of abuse and appropriate documentation and their employer is listed as eligible under the TFWP. This

<sup>11</sup> Access to Information and Privacy (ATIP) request received July 16<sup>th</sup>, 2020. Data includes both sex and labour trafficking survivors. IRCC noted they were unable to separate data by sex and labour trafficking cases as those details are not available in their database.

<sup>12</sup> Includes TRPs issued to both victims of human trafficking and their dependants.

<sup>13</sup> Defined under section 196.2 of the *Immigration and Refugee Protection Regulations* (IRPR) as physical, sexual, psychological, or financial abuse.

also extends to family members who are in Canada (IRCC, 2020a). Additionally, IRCC and ESDC are exploring an occupation-specific work permit for TFWs working in the agriculture stream and low-wage stream of the TFWP without applying for a new work permit (Canada Gazette, 2019).

The Government of Canada recognizes “the power imbalance created by work permits tied to one employer favours the employer and can result in a migrant worker enduring a situation of misconduct, abuse or other forms of employer retribution” (Canada Gazette, 2019). Thus, the government has made efforts to address this inequity. Advocacy groups acknowledge these steps are critical to addressing exploitative situations and ensuring workers are provided independence to escape conditions that may not meet the threshold of trafficking under current legislation. However, there are still barriers in accessibility (e.g., SAWP workers and issues of isolation) and discretion in decision-making in determining what constitutes as “reasonable grounds to believe a migrant worker is experiencing or is at risk of experiencing abuse” (CCR, 2019).

### **3.3.3. Compensation & Advocacy**

Compensation refers to “financial reimbursement of the costs borne by the victim as a result of the offence such as medical and dental expenses, lost wages, and emotional distress” (Baglay, 2020). While there has been some improvement in accessing services for trafficked persons, victim compensation remains neglected as a protective tool. A study conducted by Baglay (2020) examined the challenges for victims and survivors of human trafficking in accessing available compensation mechanisms (e.g., restitution as a part of a criminal process, compensation from state victim funds, civil lawsuits for damages, and labour/human rights complaints).

The design of these compensation systems does not address the circumstances of trafficked persons. Of note, neither the 2012-2016 Action Plan nor the *National Strategy* mention any form of compensation for victims or survivors. In 2019, the government reported that some survivors did receive restitution, although the amount rewarded, and the number of recipients was not mentioned. In 2018, no victims or survivors of human trafficking received restitution (U.S. Department of State, 2020a).

It is worth mentioning that protection for victims, if they can access it, takes time. Securing immigration status through TRPs and obtaining employment and income support

is viewed as a barrier amongst stakeholders. According to research conducted by McCrae (2016), the timeline for obtaining sufficient support and services can be illustrated as the following:



**Figure 6. Needs of Labour Trafficking Survivors**

This raises certain considerations for policy design. Incorporating victim participation in the legal system and access to justice can be taxing and burdensome on a victim leaving a situation of trafficking. As demonstrated in Chapter 2, defining trafficking is complicated, especially for cases of labour trafficking in Canada – which rarely reach prosecution. Therefore, policy implementation may need to focus more on the structure of current systems that enable labour trafficking to occur and inevitably put victims in vulnerable situations.

## **Chapter 4.**

### **Methodology**

#### **4.1. Research Approach**

This study examined legislative barriers in the protection of trafficked migrant workers in Canada using a qualitative approach. Primary and secondary sources were used to outline the policy problem and determine options to address the issue. This research approach aimed to clarify a topic that has not received significant attention in literature and heighten its importance in Canada's political and social context.

##### **4.1.1. Literature Review**

Existing literature written about human trafficking in the Canadian context was critical for this research. Research and government reports, journal articles, and other academic works were reviewed to understand the topic internationally and domestically and why there has been a lack of progression in the realm of labour trafficking. A literature review further supported this research by detecting gaps and challenges in current legislation and suggestions for combatting the issue effectively. Finally, the literature review was essential to demonstrate who the victims of labour trafficking are, which has not traditionally garnered much media nor public awareness.

##### **4.1.2. Jurisdictional Scan**

A jurisdictional scan was used to analyze countries that have adopted different legislative approaches to combat labour trafficking. Preliminary research suggested that the United Kingdom (U.K.), the United States (U.S.), and Australia have made efforts to develop anti-trafficking policies and meet international obligations. A comparative analysis was conducted to review the language in legislation and how this compares to the number of prosecutions and reported cases. A review was undertaken to assess available protective tools for victims and accountability measures for traffickers.

### **4.1.3. Expert Interviews**

Seven semi-structured interviews were undertaken with experts in the field of human trafficking, with a specific understanding of labour trafficking. Interviewees were selected from three primary groups: federal government officials who specialize in human trafficking; academics who specialize in politics or policy and have written or spoken about labour trafficking in Canada; and non-governmental organizations (NGO) who advocate for migrant worker rights and labour interests. The goals of the interviews were to gather a range of perspectives and opinions on labour trafficking in Canada and current legislative provisions to identify potential policy alternatives to improve accountability measures of employers, provide a just system of fairness and protection for trafficked migrant workers in the future, and to highlight key mechanisms of an understudied topic.

## **4.2. Limitations**

### **4.2.1. Data**

As emphasized by research, human trafficking is notorious for lack of reputable and consistent data, and even more so for labour trafficking. There were several challenges in this research in accessing reliable data to quantify the policy problem. Additionally, reports on available data were inconsistently produced. It is difficult to quantify how many migrant workers in Canada are or have been trafficked. This is primarily due to cases that go unreported, the conflation of sex and labour trafficking in government databases, and the use of different provisions under relevant legislation to prosecute individuals who conduct trafficking practices because of difficulty obtaining viable evidence. However, the lack of data did not deter the feasibility or validity of this research. Still, it acted as an essential consideration when evaluating policy options and their impact on data transparency.

### **4.2.2. Ethical Considerations**

Victims of labour trafficking are not included as participants in this study, although they are the report's primary demographic. Their exclusion from this study is due to their precarious and legal status. Therefore, their personal and firsthand experiences are not directly included but are told through other information sources, such as reports that have

referred to their perspectives. Additionally, organizations with field experience with labour trafficking victims were able to provide and reflect on these issues.

## Chapter 5.

# Jurisdictional Scan: An Observation of International Efforts

*"I feel that I was tricked into coming to Canada. There is no protection for me here."*

- Natalie, SAWP employee (CCR, 2012)

According to the most recent Trafficking in Persons Report, Canada, the U.K., the U.S., and Australia are considered top tier countries in their efforts to combat human trafficking, meaning they meet the minimum standards of protection and eradication of the issue (U.S. Department of State, 2020b). Further, these countries all depend on temporary migrant workers to fulfill labour shortages. While the intention of the jurisdictional scan was to identify best practices for the adoption of anti-labour trafficking policies, this chapter demonstrates that labour trafficking policies are severely lacking internationally. However, there are observed trends that can help policymakers understand how labour trafficking exists: (1) precarious status is a significant indicator of a victim of labour trafficking, (2) data collection drives the narrative of human trafficking, (3) the definition and interpretation of human trafficking is inconsistent, and (4) the criminalization of human trafficking puts victims on ambiguous pathways to protection.

### 5.1. United States

While the U.S. has made efforts to tackle human trafficking through investigations, funding, and enhanced enforcement, the country lacks a thorough attempt to effectively address labour trafficking. However, the U.S. example demonstrates how policies risk becoming more of an immigration and criminal issue than a human rights concern. Arguably, this creates barriers in reducing trafficking practices and incentivizing victims to report cases or access any form of protection.

#### 5.1.1. Definitions in Legislation

Passed in 2000, the Trafficking Victims Protection Act (TVPA) criminalizes sex and labour trafficking. The TVPA defines labour trafficking as "the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use

of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery” (22 USC § 7102(11)). Of note, the U.S. separates sex and labour trafficking as two distinct definitions within its legislation. While coercion is incorporated as a “means” component in the definition of labour trafficking, the term includes means of force, the threat of force, physical restraint, and serious harm or threats thereof. Serious harm extends to both physical and non-physical forms of coercion – including psychological, financial, or reputational harm (18 USC § 1589(c)(2)).

### **5.1.2. Protective Mechanisms in Legislation**

One of the available protective mechanisms for victims of sex or labour trafficking is T nonimmigrant status (i.e., T visa). This is a temporary benefit provided to certain victims of human trafficking to remain in the U.S. for up to four years on the condition they will assist law enforcement with an investigation or prosecution, even if they are out of status (U.S. Citizenship and Immigration Services, 2018). To qualify for a T visa, an applicant must show (1) they are a victim of a severe form of trafficking (i.e., sex or labour); (2) they are physically present in the U.S.; (3) they are willing to comply with law enforcement and support investigations or prosecutions; (4) they would suffer extreme hardship being removed from the country. Victims are eligible for employment and certain state benefits and services, and it is also possible victims may qualify for PR status (U.S. Citizenship and Immigration Services, 2018).

In 2019, the U.S. saw a decrease in the number of victims granted a T visa. In total, 22 victims of labour trafficking were issued certifications. Advocates have noted increased obstacles for accessing visas, emphasizing weakness in these visas' structure, which further enables traffickers to use the threat of deportation as a very plausible tool of coercion and control (U.S. Department of State, 2020b). Considering how knowledge of the existence of labour trafficking in the U.S. context remains weak, the T visa and eligibility framework necessary to stay in the U.S. or access any form of immigration presents a significant barrier to victims of labour trafficking who wish to comply or assist with law enforcement.

In terms of data collection, the federal government collects human trafficking data through the Uniform Crime Reporting (UCR) Program<sup>14</sup>. However, not all states or agencies report data through the program – and it remains the only mechanism of collecting and tracking prosecutions at state and local levels (U.S. Department of State, 2020b).

### **5.1.3. Investigations and Prosecutions**

The U.S. documented 12 prosecutions and 21 convictions of labour trafficking in 2019 fiscal year, compared to 208 sex trafficking prosecutions (U.S. Department of State, 2020b). Advocacy groups highlight that of the labour trafficking cases they refer to law enforcement, very few are investigated – emphasizing a need for more training in this area to identify labour trafficking cases. There is a lack of understanding of how labour trafficking occurs in specific employment sectors, which dissuades law enforcement from increasing the number of cases to investigate (U.S. Department of State, 2020b).

According to the National Institute of Justice (NIJ), only 15% of trafficking cases that are reported by law enforcement involve labour trafficking; however, the NIJ further notes there are far more labour trafficking victims who seek support than sex trafficking victims, indicating labour trafficking victims, many of which are male, are harder to find and identify (McGough, 2013). For example, the National Human Trafficking Resource Centre has reported an estimated 3,929 possible labour trafficking cases since 2007. Labour trafficking is reported in agriculture, domestic work, manufacturing, cleaning, and construction (Labour Exploitation Accountability Hub, 2020a).

## **5.2. United Kingdom**

With the implementation of Brexit and eradication of free movement of workers from the European Union in 2021, the U.K. has announced its intention to restrict low-wage migrant workers substantially, with the exception of farmworkers and fruit pickers, where these recruitment numbers expanded from 2,500 to 10,000 positions (The Migration

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<sup>14</sup> The UCR collects information on investigations and prosecutions. It does not include referrals or reported cases of human trafficking.

Observatory, 2018; Castle, 2020). The design of anti-labour trafficking policies and noted trends can provide needed insight, especially regarding data reporting and retainment.

### **5.2.1. Definitions in Legislation**

In 2015, the Modern Slavery Act (MSA 2015), entered into force in England and Wales, which incorporated the term “modern slavery”, defined as a person holding another person in slavery or servitude. In addition, human trafficking is defined as “arranging or facilitating the *travel* of another person with a view to that person being exploited”, regardless of if they consented to that travel or not. This differs from the international definition, which does not require the element of “travel”. While the Northern Ireland law reflects a similar definition, the *Scottish Human Trafficking and Exploitation Act* does not require an element of movement or travel to constitute as trafficking.

### **5.2.2. Protective Mechanisms in Legislation**

All human trafficking referrals are handled by a single case management unit (the National Referral Mechanism (NRM)) to enhance comprehensive attention to victims and to make a “reasonable grounds” decision on whether an individual is being trafficked. The NRM is an online referral process generated by police, Border Force, local authorities, and specified NGOs. If “reasonable grounds” are met, the victims are provided a minimum 45-day reflection period with access to accommodation, healthcare, counselling, and time to decide whether they wish to assist in the trafficking investigation and prosecution of the perpetrator. During this time, the individual is further assessed if they meet the status of “victim”. If conclusive, they are provided an additional 45 days<sup>15</sup> for transitional support (U.S. Department of State, 2020c).

Migrants who are victims of trafficking and choose to assist in investigations are eligible for residency and seek compensation through a civil claim against the trafficker. Like Canada, migrant workers have a work-permit scheme where the employer provides sponsorship, and the workers are linked to specific jobs. However, overseas domestic workers can legally change employers during six months of their visa (U.S. Department of State, 2020c). As discussed previously, research suggests opportunities for labour

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<sup>15</sup> In many cases, the government has extended this deadline as the decisions may take more than a year. Scotland’s law provides a 90-day timeline.

exploitation and forced labour is more prevalent when an individual's work permit is tied to a specific employer (Skrivánková, 2014).

### **5.2.3. Investigations and Prosecutions**

In 2019, the government reported 1,090 trafficking investigations which resulted in 349 prosecutions and 251 convictions. However, it is unclear how many of these cases were trafficking for the purposes of forced labour or labour exploitation (U.S. Department of State, 2020c). In 2019, the NRM referred 10,627 potential victims of trafficking. The database collects detailed referrals, including information such as “the source of referral, nationality, jurisdiction, handling the referral, type of trafficking, and disposition of review”. Interestingly, this database demonstrates the majority of the victims were male (3,391 female, 7,224 male, one transgender person, 11 unknown). Additionally, labour trafficking was identified as more common than sex trafficking as a form of exploitation in adults. Forced labour in the U.K. primarily occurs in agriculture, construction, food processing, factories, domestic work, hospitality and food services, and fishing boats (U.S. Department of State, 2020c).

## **5.3. Australia**

While Australia has made efforts in increasing investigations of human trafficking, Australia provides an example of how the conflation of employment violations and labour trafficking can be harmful and counterproductive to the human trafficking narrative. Australia also emphasizes how collaboration and coordination between relevant stakeholders are critical. Further, like the U.S. example, the criminalization of human trafficking has put victims who hold precarious status in situations that may do more harm than good and have not shown success in policy design.

### **5.3.1. Definitions in Legislation**

Divisions 270 and 271 of the *Commonwealth Criminal Code* criminalizes sex and labour trafficking. The definition of “trafficking” under Division 271 requires the element of “movement”, similar to the U.K. definition. Further, Division 271 includes separate offences for debt bondage and harbouring a victim. In contrast, Division 270 criminalizes “slavery”, “servitude”, “forced labour”, “deceptive recruiting”, and “forced marriage” offences, and

does not require victim movement (U.S. Department of State, 2020d). Forced labour is defined within legislation by the use of coercion, threat, and deception to make someone work or provide labour services, where a rationale person in that position would not consider themselves to be free to leave or remove themselves from that environment (Labour Exploitation Accountability Hub, 2020c).

### **5.3.2. Protective Mechanisms in Legislation**

Reports emphasize that the success in identifying cases is mainly due to coordination and collaboration of “joint agencies, task forces, and cooperative action with foreign governments”. Notably, research states victims in Australia are often reluctant to report cases with law enforcement due to fear of deportation and their precarious status (U.S. Department of State, 2020d). However, temporary visas may be issued to identified and eligible victims. There are two possible visas that may be issued to a trafficked victim: Bridging F Visa and a Referred Stay (Permanent) Visa. The Bridging F visa is issued to “unlawful non-citizens” identified as a possible victim of human trafficking. The visa is valid for up to 90 days to “recover and reflect” and possibly obtain a long-term temporary stay visa if they assist in the prosecution process. The Referred Stay visa is issued to victims or witnesses of trafficking who have assisted with an investigation or prosecution of human trafficking and would not be able to return to their country of origin due to perceived danger (Australian Government, 2019).

One of Australia’s key initiatives was creating a Migrant Workers’ Taskforce in 2016 to identify migrant worker exploitation efficiently. The taskforce has been calling for a rigorous tracking system to track labour-hire operators and firms across Australia, particularly in horticulture, meat processing, security, and cleaning. The taskforce has also adopted an anonymous reporting tool for victims, similar to the Canadian Human Trafficking Hotline – although, in Australia, it is unclear how frequent migrant workers use the tool. However, the reporting tool has been significant for investigations and successful convictions (Stringer & Michailova, 2019).

### **5.3.3. Investigations and Prosecutions**

In 2019, there were 54 potential identified victims of sex and labour trafficking, and 30 cases where the type of exploitation was unclear. In total, there were 213 investigated

cases of human trafficking and prosecutions against nine defendants, an increase from previous years. In total, Australia reported one conviction of labour trafficking. Of note, it was reported that the legal system opted to pursue charges related to labour or employment violations rather than trafficking charges (U.S. Department of State, 2020d). This highlights a concern raised in Chapter 2, where labour trafficking is often clouded by understanding labour violations rather than recognizing the intersection of coercion.

## 5.4. Summary of Analysis

Although the U.S., the U.K., and Australia are all considered leaders in combatting human trafficking on an international scale, it is clear there are shortcomings in this application and noted drawbacks in effectiveness. One of the most noted inconsistencies is definitions and interpretations of human trafficking across various jurisdictions – despite all countries in the review having ratified the *Palermo Protocol*.<sup>16</sup> While Canada has adopted different terminology in their legislation relative to the international framework, it is not the only country to do so. This raises some consideration for issues with defining what human trafficking looks like from an enforcement perspective and suggests difficulties for migrant workers themselves to understand they are victims of trafficking. Further research is needed to understand these discrepancies and their impact on prosecutions.

Accessing the legal system is difficult across regions, whether it be prosecutions or accessing restitution and settlement services. As well, there is more attention on sex trafficking relative to labour trafficking in the criminal justice system. As demonstrated in Table 5, successful prosecutions or convictions of reported cases are seldom, if not rare. Although the U.K. has the most prosecutions and convictions in 2019 relative to its international partners, reports do not indicate how many of these cases are labour trafficking, so these numbers should not necessarily be interpreted as a successful indicator. Instead, the U.K. example shows how rigorous reporting and utilizing a national database can bring more cases to light, including the victims' demographics and makeup. Relative to other countries, reporting and the number of referred victims is significant and demonstrates the prevalence and existence of labour trafficking in a Western economy.

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<sup>16</sup> See Appendix D.

Cooperation with law enforcement is aided by incentivizing victims with promises of residency or more permanency, but these are not guarantees based on the system's structure. The design of these policies place conditions on victims with precarious status – and uses permanent residency and protection as leverage to push investigations forward. In addition, it shows that there is an understanding that PR status is a tool for protection, considering victims are typically those without status or bargaining power in low-wage sectors (agriculture, hospitality, domestic work, etc.). This, in turn, has the potential to harm victims who are not able to prove they are victims of labour trafficking, emphasized by inconsistent definitions and understanding the imagery of trafficking. This concern has been continuously raised by advocacy groups critical of law enforcement's understanding of what labour trafficking "looks like," which is only highlighted by the conflation of employment standard violations and trafficking.

The jurisdictional scan has provided two primary considerations in this study for the proposal of policy options: (1) internationally, access to justice for victims is rare – rather than enhanced enforcement, policies may need to focus on the root of the problem in legislation by addressing the structures that enable trafficking to persist; and (2) there needs to be more attention directed towards labour in the human trafficking narrative, and data collection may support this.

**Table 5. Summary of Jurisdictional Scan**

	Canada	United States	United Kingdom	Australia
<b>Legislation</b>	IRPA, Criminal Code	TVPA	MSA, Human Trafficking and Exploitation Act (Scotland) (Northern Ireland)	Commonwealth Criminal Code
<b>Notable Inconsistencies with International Law/Partners in Legislation</b>	The evidentiary threshold of “ <i>fear for safety</i> ” in the definition of exploitation in CCC; IRPA is meant for cross-border trafficking relative to domestic	Explicit definition for labour trafficking relative to sex; coercion refers to <i>threats of serious harm</i> ; does not include abduction, deception, abuse of power as a “means” element	Requires victim has <i>travelled</i> into exploitation, and the travel is arranged or facilitated by the perpetrator (MSA 2015); Scottish law does not require a “means” element	Division 271 requires the element of <i>movement</i> of a victim
<b>Federal Tools for Protection</b>	TRPs, Open Work Permits for Vulnerable Workers, Human Trafficking Hotline	T visas, UCR program, National Human Trafficking Hotline	Single case management unit, residency eligibility in participating in investigations, UK Modern Slavery Helpline	Bridging F visa, Referred Stay (Permanent) Visa, Anonymous Reporting Tool
<b>Identified Sectors</b>	Agriculture, domestic work, hospitality, manual labour	Agriculture, domestic work, hospitality, cleaning, manufacturing, construction	Agriculture, cannabis farms/factories, construction, domestic work, hospitality and food services, fishing boats	Agriculture, cleaning, construction, hospitality and tourism, meat processing, and domestic work
<b>Number of Reported/Referred LT Victims<sup>17</sup></b>	32 investigations (2019, reported by ESDC); 238 TRPs issued in 2019 for human trafficking	3,929 (since 2007, reported by National HT Hotline)	> 5000, estimated. (2019, reported by NRM)	Approx. 84 for both sex and labour trafficking (2019, reported by authorities)
<b>Number of LT Prosecutions<sup>18</sup></b>	Five labour (as of 2018); 97 approx. in 2019 for sex trafficking	12 prosecutions, 21 convictions for labour trafficking. 208 sex trafficking prosecutions (FY2019)	349 prosecutions and 251 convictions approx. in 2019 for both sex and labour trafficking	Nine for both sex and labour trafficking; one conviction for labour trafficking in 2019

<sup>17</sup> This data does not accurately capture the existence of labour trafficking. Cases are underreported and these numbers do not reflect the reality of the situation. Further, not all countries differentiate between the type of exploitation in their reports.

<sup>18</sup> The number of prosecutions is estimated based on a review of literature and data provided in the 2020 Trafficking in Persons Report.

## Chapter 6.

### Interview Findings

*“I felt trapped; I had no contact with the outside world. For weeks I was inside that apartment watching the street through the window but could not leave the house. I never, never thought this will happen to me when I signed the contract to work in Canada. My friends told me that Canada was the future for our families.”*

- Anne, Filipino domestic worker, Vancouver, BC (WCDWA, 2014)

To understand the existence of labour trafficking in Canada, and to evaluate strategies to mitigate the policy problem, seven semi-structured interviews were conducted with experts in the field of human trafficking with specific attention to labour. These interviews were critical to this research as they provided a range of perspectives and input on a significantly understudied topic. Participants’ backgrounds include academia, Canadian and international law, NGOs, and federal employees who work on human trafficking issues as per the *National Strategy*. These interviews clarified that labour trafficking, while lacking public attention, is acknowledged as a public policy problem from various types of stakeholders. Further, commonalities extracted from these interviews helped to identify broader considerations for policy implementation, as well as confirm findings from the literature review. This chapter discusses the primary themes that emerged from the interviews.

#### 6.1. Jurisdictional Issues

*“With the federal domain, we’re dealing with criminal law, immigration law, but the provinces regulate a lot related to businesses...so particularly talking about temporary foreign worker programs, WorkSafe BC, any kind of Employment Standards, those are provincial. If you don’t have your province working alongside the federal government, issues relating to labour exploitation simply can never move forward.”*

The interviews identified jurisdictional issues as one of the most prominent barriers when addressing labour trafficking in Canada. Anti-trafficking measures involve federal, provincial, and municipal jurisdictions, as some provinces and municipalities have developed their own anti-trafficking efforts. More specifically, provinces are fundamentally responsible for enforcing labour codes. Decentralization has made the anti-trafficking

regime complex in terms of coordination. For example, a trafficked individual may encounter several agencies: the RCMP; provincial or municipal police in criminal investigations; local agencies in accessing social services and relevant supports; NGOs in facilitating certain services; and federal departments such as IRCC (in the issuance of TRPs) and the Canada Border Services Agency (CBSA) (if immigration enforcement is applied) – who also have their own competing mandates. The number of stakeholders and jurisdictions involved may complicate access to adequate protection for a trafficked person. Limited coordination and collaboration amongst stakeholders allow for the continuance of trafficking and leads to weak protective efforts.

**Table 6. Stakeholders Involved in Responding to Labour Trafficking in Canada<sup>19</sup>**

Sector	Organization	Roles & Responsibilities
<b>Government (Federal)</b>	Immigration, Refugees and Citizenship Canada	<ul style="list-style-type: none"> <li>▪ Issue TRPs for victims of human trafficking</li> <li>▪ Assess work permit applications</li> </ul>
	Employment & Social Development Canada	<ul style="list-style-type: none"> <li>▪ LMIA's</li> <li>▪ Monitors the TFWP</li> </ul>
<b>Government (Provincial)<sup>20</sup></b>	Occupational Health and Safety	<ul style="list-style-type: none"> <li>▪ Enforces respective occupational health and safety standards related to legislation</li> </ul>
	Employment Standards Branch	<ul style="list-style-type: none"> <li>▪ Identifies and investigates potential violations</li> </ul>
<b>Law Enforcement<sup>21</sup></b>	Municipal Police	<ul style="list-style-type: none"> <li>▪ Investigates Criminal Code violation, enforce the law</li> </ul>
	Royal Canadian Mounted Police	<ul style="list-style-type: none"> <li>▪ Investigates Criminal Code violation, enforce the law</li> </ul>
	Canada Border Services Agency	<ul style="list-style-type: none"> <li>▪ Investigates IRPA violations, refers cases to the RCMP when sufficient evidence points towards trafficking</li> </ul>
<b>Legal</b>	Crown Prosecutors	<ul style="list-style-type: none"> <li>▪ Prosecutes labour trafficking cases under appropriate legislation</li> </ul>
	Civil, immigration, and criminal lawyers	<ul style="list-style-type: none"> <li>▪ Provides legal advice and advocacy</li> </ul>
<b>Community Support Services</b>	Nongovernmental services	<ul style="list-style-type: none"> <li>▪ Includes support such as immigration, advice and referrals, basic needs, mental health, and advocacy</li> </ul>
<b>For-profit</b>	Immigration consultants	<ul style="list-style-type: none"> <li>▪ Assist with immigration needs</li> </ul>
	Employment agencies	<ul style="list-style-type: none"> <li>▪ Assist with finding employment</li> </ul>

Source: McCrae, 2016

<sup>19</sup> This list is non-exhaustive.

<sup>20</sup> Provincial stakeholders will vary by province.

<sup>21</sup> The RCMP and the CBSA are also Government (Federal).

## 6.2. Justice for Victims

*“The problem with collecting data on labour trafficking cases is that you need the conviction. Getting a human trafficking conviction is extremely difficult. And because a lot of the human trafficking cases for labour exploitation in Canada are potentially linked to the temporary foreign worker program...a lot of the times when there is a complaint, and the foreign national is returning to their own country, the cases do not necessarily proceed”.*

The interviews highlighted the complexities of navigating the justice system when cases of labour trafficking are identified, which helped expand on some of the findings in the jurisdictional scan and literature review in terms of low prosecution rates in Canada and abroad. The legal system has several barriers for victims of trafficking; some examples include the length of time the cases take to process; the trauma experienced by victims and their willingness – or lack thereof – to cooperate; the evidentiary threshold of proving the three elements of intent, means and purpose exist; and the emphasis on prosecutors finding it more convenient to proceed with a labour standards offence when there is the belief the allegations may not amount to a trafficking case because it is exceedingly difficult to prove.

There was also discussion on more attention given to sex trafficking cases regarding the interpretation of psychological harm concerning coercion. In comparison, applying psychological harm is not being applied to labour trafficking cases with a similar lens. This shows that tools of coercion may not be recognized beyond physical harm in a court of law, limiting our understanding of labour trafficking and the multiple ways a victim can be controlled. According to a participant, “many of the law enforcement resources that go into human trafficking are focused on sex trafficking”, which further supports the notion that far more attention is given to sex trafficking cases than labour. The court system's challenges, and lack of prosecutions may deter more cases to come forward when justice is so rare.

*“We have invisible eyes on labour trafficking. We just had 43 people from Mexico who were recently identified as labour trafficking victims...where did that end up in the media? Imagine if it would have been 43 sex trafficking-related victims...international news...these individuals were literally living in terrible conditions. And our interest, our empathy is gone. And what happened to those 43 people?”*

### **6.3. Definitional Challenges**

*“...if something has taken 20 years for there to still be this level of dissent around what even the definition of [human trafficking] is... it tells me it doesn't really line up with people's experiences.”*

An observation from the jurisdictional scan was the inconsistency surrounding how human trafficking is being defined and applied. While generally similar, there were noted anomalies in wording and interpretation on a comparative scale. Interestingly, when asked to define human trafficking, some respondents favoured the international definition, others referenced Canadian legislation, and at times, some chose not to provide a definition due to the belief it does not accurately capture “lived experiences” of human trafficking – recognizing there is still a lot we do not know about the issue. Similar to other findings, there appears to be a lack of unanimous agreement on the definition of human trafficking, or at least recognition for the complications surrounding multiple definitions. For example, an element often debated is movement, and whether it is necessary for trafficking to occur. While Canada does have a definition within the criminal court, there are some shifting interpretations of that and how other offenses end up being interpreted with it. When considering sex trafficking, for example, judicial interpretations have made the standard extremely high – and it has become challenging for labour trafficking to fit a similar interpretation because there are still many misconceptions of what labour trafficking “looks like”. Nevertheless, as mentioned in Chapter 5, further research may be needed to understand some of these discrepancies and the impact they have on human trafficking obligations and prosecutions.

### **6.4. Susceptibilities of the TFWP**

*“In Canada, a lot of the cases are linked to the temporary foreign worker program, and it's a program run by the federal government. And it's almost like it has the stamp of approval of the government. It's not a focus of mistrust...”*

The interviews highlighted how the TFWP provides economic benefits for Canadians – filling labour market shortages, supporting employers in terms of higher profits, and keeping food prices down for Canadians. However, as an interview participant stated, “economics is our driver”, and with it comes intrinsic gaps in the TFWP that allow for trafficking to occur. There is an established employer dependency, especially when workers hold a work permit tied to an employer. Some employees work in isolated, rural

communities where their primary contact is their employer – so broader social safety nets, services and programs are not necessarily accessible or known about. Additionally, workers may be living in accommodations provided by their employer, which further puts them in a situation of vulnerability. The laws and regulations surrounding the TFWP are meant to ensure employers are held responsible for covering transportation or healthcare fees. While checks and balances exist that would help protect against labour trafficking, they are not adequately enforced. However, as expressed by one participant, “we should be careful about casting employers as the evil component of this...the structural issues are very important as well”. Thus, it is crucial to consider that targeting employers as the central issue in labour trafficking redirects the focus from the contributing systemic problems.

*“There are some major economic implications for addressing some of the inherent gaps in our temporary foreign worker system. By design, it's intended to fill the labour market in a way that is more affordable, both in terms of supporting farmers to achieve a higher profit margin, but it also helps keep food prices down. I won't say that that's because of trafficking that that happens, but it's the actual immigration instruments that are being used that go into supporting that industry generally.”*

## **6.5. Understanding Precarious Status**

*“A huge part of the issue is the fear of people experiencing labour trafficking to come forward to law enforcement. And so many labour trafficking survivors will be lied to and told that they will get in trouble, deported or worse if they speak up...”*

The interviews noted apprehension from victims to come forward and report their cases for a variety of reasons. Most prominently expressed was the precarity of a migrant workers' status as a tool for manipulation. Many victims are unaware of their rights and resources and are therefore reluctant to report their exploitative working conditions, especially considering there may be a language barrier. Migrant workers may also originate from countries where working conditions are comparably unacceptable, which puts them in a situation to accept working conditions that do not abide by Canadian law. Other key deterrence mechanisms in reporting cases are the fear of law enforcement and being deported, being affiliated with illegal activities, paying off their debts, diminishing their chance of obtaining permanent residency (a finding in the former LCP program), and the fear of retaliation against themselves or their family. Precarious status provides a lack of protection for migrant workers due to the criminal framework addressing irregular

migration, with little to no consequences for the trafficker. Further, migrant workers cannot negotiate their employment contract terms and conditions, establishing a significant power imbalance.

*“Most [migrant workers] hope to do a good job supporting the Canadian economy and have a shot at permanent residency, which isn’t possible for most streams...this creates leverage for employers, recruiters, and immigration consultants to coerce workers with false promises of residency if they do what they’re told...”*

## **6.6. Engagement**

*“How do you design a policy around something that doesn't line up with people's experiences? I think policymakers need to start paying attention to lived experiences, and what can we build in terms of policy from those experiences to remove some of the barriers people are facing that actually do cause the problems that we're claiming to try to fix.”*

An important takeaway from the interviews is how policy implementation strategies need to include voices of victims, survivors, and groups most vulnerable to exploitative practices. The current approach with addressing human trafficking was identified as being very “top-down”, rather than researching and learning from lived experiences. To move forward, some of the participants expressed how it is critical to allow people to speak about themselves and listen to their expertise and firsthand experience. Victims of trafficking are people who have navigated multiple systems and are “often incredibly resilient and strong”. Survivors or people who are susceptible to such practices should be included in consultation and engagement procedures. When it comes to labour trafficking specifically, there needs to be an understanding that the topic itself is understudied – meaning there is still a lot that remains to be learned from those directly impacted by the issue.

*“We tend to think of victims as these passive individuals...but it's the wrong perception. And I think, whatever we do moving forward, we have to make space for those individuals at our table”.*

## Chapter 7.

### Policy Options

As of 2019, the Government of Canada aims to redirect its focus on human trafficking with the added element of *empowerment* – enhancing victims' support. The policy options discussed in Chapter 7 aim to meet this objective in their application, offering options that illustrate a victim-centred approach to meet the Government of Canada priorities. The research provided important context in the proposal of these options. The findings showed inefficiencies and shortcomings in the justice system. They further highlighted the susceptibilities of temporary work programs and barriers and vulnerabilities for migrant workers in entering a situation of trafficking. This suggests there may need to be a more proactive rather than reactive approach in policy implementation. Based on the research conducted in this study, there are key objectives that should be met to address weak protection for victims effectively: (1) mitigate the risk of trafficking by enhancing security and autonomy for migrant workers and (2) improve transparency of labour trafficking as it currently exists in Canada, ensuring it is universally understood and identified by relevant stakeholders.

#### 7.1. Mandatory Reporting System

A significant challenge in accessing information on labour trafficking in Canada is the lack of reliable and readily available data. To date, we cannot determine how many victims and survivors there are of human trafficking in Canada. Further, as demonstrated by interviews, weakness in collaboration and cooperation between agencies, conflicting mandates, and jurisdictional issues only complicate this problem more.

This option proposes the establishment of a central database to report possible human trafficking cases in Canada. The goal is to increase the number of referrals (i.e., access to TRPs), to educate and improve training, and provide more transparency in recognizing the diversity of people who fall victim to human trafficking in Canada. Ideally, this should support investigations and much-needed knowledge on the existence of possible labour trafficking cases in Canada. Like the U.K. model (see Appendix G), the database would collect information such as the referral source, demographics as deemed

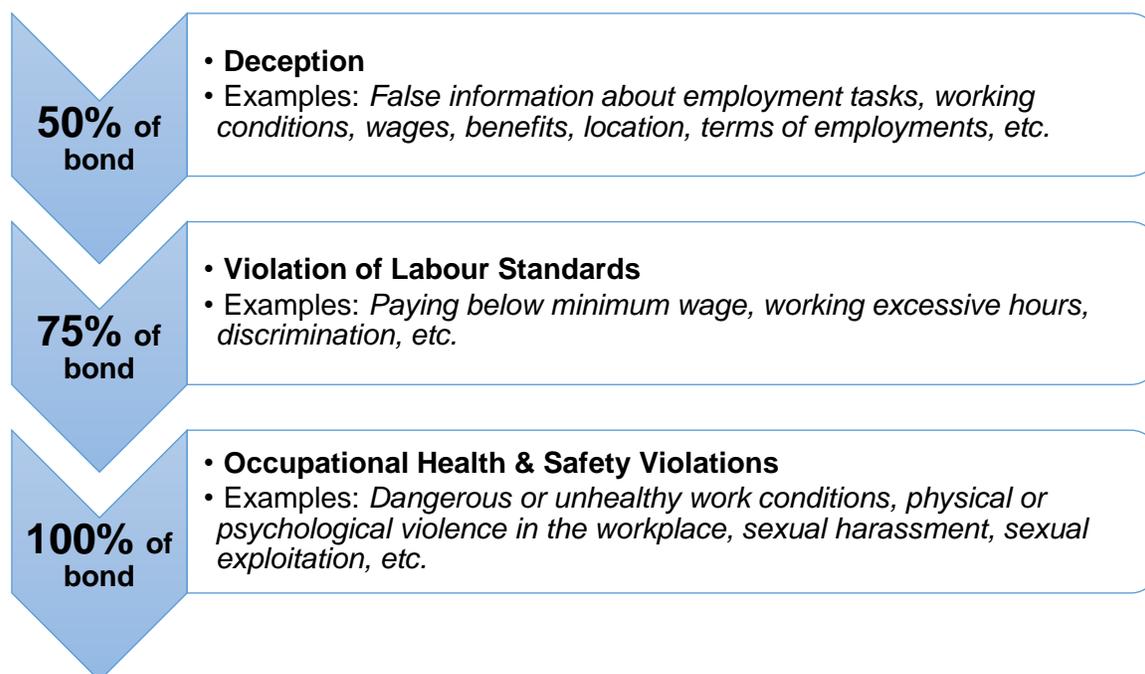
appropriate, identified jurisdiction, type of exploitation, and other relevant information. Adult victims and survivors of human trafficking must provide consent for identifying information to be included in the database and consulted on how their information will be processed. However, the respective bodies reporting will still be required to submit a referral with no identifying information if there is a suspected case, and no consent has been provided. The database would be accessed by relevant frontline responders such as law enforcement and other government organizations who may come in contact with victims of labour trafficking due to their expertise (i.e., IRCC, ESDC, select NGOs and advocacy groups). They would be required to report any suspecting cases of human trafficking in Canada. Similar to the U.K. model, a Single Competent Authority (SCA) would fully consider and assess all cases to determine if it meets the threshold of human trafficking. The SCA would be an independent body specialized in human trafficking, would review evidence and recommend TRP issuance (reasonable grounds decision), and initiate investigations. An annual report would be submitted to Public Safety Canada and Statistics Canada for publication and public awareness.

## **7.2. Employer Bonds**

Currently, employers who are subject to inspection and found non-compliant with conditions under the TFWP may receive either a monetary penalty or a ban from hiring temporary workers (typically for two years) (IRCC, 2020c). However, the current penalty framework does not necessarily deter labour trafficking practices. Current mechanisms provide little incentive for victims to report instances of exploitation – especially considering there are so few successful labour trafficking prosecutions in Canada (Millar & O’Doherty, 2020). While not perfect by any means, it is clear there has been more attention and a stronger awareness of labour violations and non-compliance of employment standards relative to the identification of labour trafficking of migrant workers through the TFWP. Therefore, while recognizing the challenges in identifying labour trafficking cases in Canada, this option proposes an *Employer Bond* system.

When hiring migrant workers, employers would be required to pay a bond determined by business size, the number of migrant workers employed, and anticipated risk. The bond would be enforced for the duration of employment. If a labour violation is identified, the migrant worker would receive compensation paid out by the bond,

determined by labour violation type and severity of the infraction (Figure 7). The design of this option would protect migrant workers from employers who exercise exploitative practices, and possibly elements of labour trafficking – even if it does not get identified as such. This would require an upfront commitment by employers, and increased incentive for victims to report exploitation conditions. The administration of the bonds would be managed by a third-party surety agency bonded to the provincial government. Eventually, this may be escalated to federal responsibility if there are “reasonable grounds” to suspect a labour trafficking case.



**Figure 7. Example of Framework for Employer Bonds**

### 7.3. Occupation-Specific Work Permits

The current framework of employer-specific work permits creates a relationship of dependency between migrant workers and their employer, further establishing increased vulnerability to exploitative conditions, potentially leading to trafficking. Additionally, the requirements of open-work permits for vulnerable workers puts the onus on migrant workers to provide evidence of abuse and appropriate documentation, especially meeting the evidentiary threshold of “reasonable grounds to believe a migrant worker is experiencing or is at risk of experiencing abuse” (CCR, 2019). This option explores the

adoption of occupation-specific work permits for TFWs working in agriculture and other low-wage occupations to reflect current trends of the program (Figure 4).

This policy option aims to provide more flexibility for migrant workers to leave their current employer. Still, it would not permit them to leave their designated occupation and role, continuing to meet labour market demands. All employers must be LMIA-approved and receive verification from the federal government to accept the TFW. However, this option would not require the employee to apply for a new work permit and eliminate an administrative process to relocate. This would enhance the mobility of migrant workers and provide more security against certain levels of threats and exploitative conditions of their work environment.

## **7.4. Pathway to Permanent Residency**

Precarious status is recognized as a critical indicator of identified victims of labour trafficking. Withholding documentation and the threat of deportation is frequently used as a tool of coercion and control in reported cases. Providing a pathway to permanent residency may eliminate the insecure nature of precarious work, and opportunities for exploitative practices, including distrust of law enforcement and fear of reporting cases. Current trends indicate an increase in demand for migrant workers, particularly in the agricultural field. Further, many migrant workers return to Canada each year, often for the same employer.

The framework of this option would provide eligibility to all TFWs occupying a low-wage position (i.e., NOC - C or D category). Eligibility would not be based on skill level but assessed on workers' qualifications, demonstratable skills, and training. Unlike the PNP, this option eliminates employer involvement in the application process, and returning to their respective employer would not be a condition of PR status for a migrant worker. With this option, TFWs would be eligible to apply for PR status after 24 months of working in Canada, or 3,900 hours of work within four years. A significant policy shift to PR access eliminates vulnerabilities encountered with precarious status and grants workers more rights in Canada overall.

## **Chapter 8.**

### **Evaluation Criteria**

The proposed policies discussed in Chapter 7 are evaluated and scored to determine the best course of action in mitigating the policy problem. Policies will be evaluated on their ability to address key objectives such as: (1) mitigate the risk of trafficking by enhancing security and autonomy for migrant workers and (2) improve transparency of labour trafficking as it currently exists in Canada, ensuring it is universally understood and identified by relevant stakeholders. Additional considerations will also be analyzed, specifically political feasibility, stakeholder acceptance and administrative complexity. The evaluation criteria are discussed in more detail within this chapter.

#### **8.1. Effectiveness**

This report's policy problem highlights weaknesses in legislation in protecting migrant workers who are trafficked for the purposes of labour exploitation through the TFWP. Further, the policy problem lacks attention in the human trafficking narrative. As previously mentioned, the objective for effectiveness is twofold: to mitigate the risk of labour trafficking and focus on strengthening legislative protection; and to improve transparency of labour trafficking cases in Canada.

In the context of the first criterion, protection of trafficked victims assesses options that reduce the risk of trafficking. This criterion is further aimed to empower victims by ensuring the impact on migrant worker autonomy is accounted for. The policy options' strength will be measured based on how the proposed option provides increased protection for migrant workers. Weak legislative protection implies minimal/inflexible protection, whereas strong legislative protection suggests a robust and effective solution where trafficking is eliminated.

In terms of the second criterion, the lack of transparency of labour trafficking prohibits a high-level analysis of policy development and a more effective response to the problem. There is a misguided depiction of victims of human trafficking – neglecting vulnerable and marginalized groups who may be most impacted and at risk, with minimal

incentive in coming forward due to their precarious status. The second criterion for effectiveness focuses on transparency, which aims to highlight the existence of labour trafficking cases, whether this be incentivising victims to report or for relevant stakeholders to bring more cases forward and define them as such. Considering labour trafficking cases are severely underreported, a significant improvement of transparency will be measured by a noticeable change that garners more public and government attention and an increase in knowledge of the issue. Without transparency of the policy problem, victim protection and empowerment will continue to face significant barriers.

## **8.2. Political Feasibility**

An absence of federal support will hinder any progress of moving anti-trafficking policies forward. The federal government holds the power to implement the policy options and includes key departmental stakeholders in the *National Strategy*. They also represent public support more formally. Political feasibility assesses the level of support of a policy option being implemented and supported by the Government of Canada, considering three main political parties that could have influence: The Conservative Party of Canada, the Liberal Party, and the New Democratic Party (NDP). Low levels of support suggest reservations and noted trade-offs in need of consideration or demonstrate differing values and priorities of federal party platforms and the public at large.

## **8.3. Administrative Complexity**

The complexity in implementing the proposed policy options is important in considering the feasibility of the options themselves. Some of the challenges include the number of stakeholders or organizations required, coordination and training strategies amongst multiple government bodies, the time needed to implement the options, and the extent to which changes in legislation and existing programs are required. This criterion captures considerations in administrative complexity for each policy option. It is measured by the required changes to existing legislation and additional inputs needed, categorizing the options as low, medium, or high complexity.

## **8.4. Stakeholder Acceptance**

There are a number of stakeholders that have a direct investment in potential amendments and are further impacted by policy changes to legislation or existing programs. The stakeholders included in this criterion are employers and advocacy groups. It is expected these stakeholders will range in their level of support for the proposed policy options. Employers are included as changes would have a direct impact on their relationship with migrant workers. It is important to recognize not all employers engage in exploitative or trafficking acts, yet the policy options will have a direct impact on all involved with the TFWP. Research indicates apprehension in implementing any rigorous change to the TFWP as it may have negative and economic consequences on businesses who employ temporary workers. This criterion will assess the proposed options' overall impact and how employers and businesses may respond to these changes. Finally, advocacy groups are considered as they campaign for migrant workers' rights and have the most ground-level understanding of the vulnerabilities migrant workers are subject to in absence of the potential policy options.

**Table 7. Evaluation Criteria and Measures for Policy Analysis**

<b>OBJECTIVE</b>	<b>CRITERIA</b>	<b>MEASURE</b>	<b>SCORING</b>
<b>Key Objectives</b>			
<b>Effectiveness</b> /15	Protection of trafficked victims (x3)	Perceived level of risk labour trafficking may occur	3 – Weak legislative protection 6 – Moderate legislative protection 9 – Strong legislative protection
	Transparency of labour trafficking cases (x2)	Projected improvement of the level of transparency and knowledge	2 – No change in transparency 4 – Minimal improvement of transparency 6 – Significant improvement of transparency
<b>Additional Considerations</b>			
<b>Political Feasibility</b> /3	Alignment with Government of Canada priorities	Number of main political parties in support	1 – Supported by one or no main political party 2 – Supported by two main political parties 3 – Supported by all main parties
<b>Administrative Complexity</b> /3	Ease of implementation and maintenance	Required amendments to existing legislation and additional inputs needed	1 – High complexity 2 – Medium complexity 3 – Low complexity
<b>Stakeholder Acceptance</b> /3	Impact on Employers	Regulatory burden on businesses that employ TFWs	1 – High impact 2 – Moderate impact 3 – Low impact
	Advocacy group support	Level of acceptance by advocacy groups	1 – No support 2 – Some support 3 – High support

## **Chapter 9.**

### **Policy Analysis**

The policy options were evaluated by analyzing each objective using the literature's findings, the jurisdictional scan, and interviews. Each option includes a summary of the results, including a final score measured out of 24. The last section in this chapter reviews the overall findings of the options in their entirety, including notable strengths, challenges, and considerations.

#### **9.1. Analysis: Mandatory Reporting System**

The findings from the jurisdictional scan demonstrate how a central reporting system can have the potential to generate thousands of reported cases relative to countries that do not have a similar system in place (U.S. Department of State, 2020c). Currently, in Canada, data for human trafficking primarily comes from TRP issuance numbers and police-reported cases of trafficking (Statistics Canada, 2020; Baglay, 2020). However, this data does not typically differentiate between exploitation type or where the referral source stems from. Further, as indicated by the interviews, lack of coordination and cooperation amongst stakeholders with competing mandates can deter adequate protection for labour trafficking survivors (Interview with Dandurand, O'Doherty, Participant B, and Participant C).

A mandatory reporting system would mitigate this issue as it would provide a platform where multiple relevant agencies and departments can share information that could lead to improved collaborative efforts. Long-term, we would likely see an improvement in the number of TRPs issued and enhanced awareness for investigative purposes of labour trafficking in the TFWP. However, because this option does not directly address the systemic issues that allow trafficking to occur in the first place (Dandurand & Chin, 2014; McCrae, 2017; Galerand et al., 2015), and because there are some privacy and security considerations pertaining to migrant workers and other marginalized groups, including the burden of proof falling on the victims themselves (Magee, 2021), security is ranked as weak in terms of protection.

**Table 8. Evaluation of a Mandatory Reporting System**

OBJECTIVE	RESULTS	SCORE
<i>Key Objectives</i>		
<b>Effectiveness:</b> Protection of trafficked victims	<ul style="list-style-type: none"> <li>✓ Due to the perceived improvement of identification and reporting, this option can support investigations centering on labour trafficking cases and how they may occur in the TFWP, leading to greater protection and awareness in future (<i>Jurisdictional Scan</i>)</li> <li>✓ Long-term, likely to increase the issuance of TRPs as more migrant workers are identified</li> <li>✗ May raise some security or privacy risks of migrant workers and other marginalized groups (<i>Interview findings</i>)</li> <li>✗ Does not directly address systemic issues pertaining to the TFWP</li> <li>✗ The NRM framework (U.K. model) can take a long time to reach its decisions; the burden of proof falls on the victim (Magee, 2021)</li> </ul>	<b>(3)</b>
<b>Effectiveness:</b> Transparency of labour trafficking cases	<ul style="list-style-type: none"> <li>✓ Countries that have adopted a central reporting system report higher numbers of labour trafficking cases (<i>Jurisdictional Scan</i>)</li> <li>✓ More access to data and information and what types of trafficking are emerging; leads to greater awareness in Canada</li> <li>✗ Increased reporting does not mean it is the “correct” information (i.e., labour violations vs labour trafficking, sex work vs sex trafficking) (<i>Interview findings, Literature review</i>)</li> <li>✗ Due to definitional and jurisdictional challenges, may not be applied consistently amongst relevant stakeholders. However, the data can provide needed insight into how it is being interpreted amongst various actors and identify areas in need of more attention (e.g., training) (<i>Interview findings</i>)</li> </ul>	<b>(5)</b>
<i>Additional Considerations</i>		
<b>Political Feasibility:</b> Alignment with Government of Canada priorities	<ul style="list-style-type: none"> <li>✓ Expected high support from the federal government; helps support the <i>National Strategy</i> to meet key objectives and obligations set out in the ILO Protocol of 2014</li> <li>✓ Supports <i>National Strategy 2019</i> (<i>Literature review</i>)</li> </ul>	<b>(3)</b>
<b>Administrative Complexity:</b> Ease of implementation and maintenance	<ul style="list-style-type: none"> <li>✗ Challenges in ensuring provinces prioritize this avenue and coordinate the implementation</li> <li>✗ A massive undertaking for a central agency/department; time-consuming</li> <li>✗ Requires additional training to both maintain the database and for relevant departments/stakeholders to utilize and adopt the system (<i>Interview findings</i>)</li> </ul>	<b>(1)</b>
<b>Stakeholder Acceptance:</b> Impact on employers	<ul style="list-style-type: none"> <li>✓ The perceived burden on employers is low; no direct impact on businesses</li> </ul>	<b>(3)</b>
<b>Stakeholder Acceptance:</b> Advocacy group support	<ul style="list-style-type: none"> <li>✓ Data could support better training and targeted programs</li> <li>✗ Risk of revictimization; burden of proof falls on the victim</li> </ul>	<b>(2)</b>
Stakeholder total /3		<b>2.5</b>
<b>TOTAL SCORE: 14.5/24</b>		

This option could bring more attention to the TFWP and exploitative practices that may occur. Similar to the results in the U.K., trafficking for purposes of forced labour is seen to be more prominent than sex trafficking, where most of the victims and survivors

are male. A mandatory reporting system certainly can change the narrative of trafficking as understood in Canada and redirect the focus to other issues that currently lack attention. However, a concern raised in the interviews suggested that increased reporting does not necessarily lead to accurate reporting. Importantly, data does not reflect the reality of human trafficking (Interview with Participant A and Drydyk). The research highlighted how the conflation of labour violations and labour trafficking is far too common<sup>22</sup>, especially in terms of enforcement (Sikka, 2013; Beatson et al., 2017; U.S. Department of State, 2020d; Interview with Participant C). Thus, the reporting system risks inaccurate information. However, any data could be seen as “useful data”, meaning it provides an opportunity to learn about how trafficking is being applied and understood amongst relevant stakeholders (Interview with Drydyk). Any anomaly in data can call for more resources and attention toward relevant actors in terms of training or implementing programs that can improve Canada's identification of human trafficking. Thus, transparency is ranked as minimal improvement to significant improvement.

In terms of political feasibility, it is very likely the government could eventually adopt and support this option. According to the International Labour Organization (ILO) Protocol of 2014, countries such as Canada are responsible for adopting measures on prevention, protection, and strategies to mitigate the occurrence of forced labour. More specifically, countries are required to obtain and report reliable statistics on trafficking for the purposes of forced labour (ILO, 2015). As such, this option would support Canada's obligation in meeting these principles, and further supports the *National Strategy* in efforts to uphold the 4Ps: the prevention of trafficking; the protection of victims; the prosecution of offenders; and working in partnership and collaboration (Public Safety Canada, 2012 & 2019). With the recent implementation of the Human Trafficking Hotline, this option would only be an extension of efforts directed towards improving Canada's reporting mechanism (Interview with Drydyk). Further, this option is expected to have a low impact directly on businesses that hire TFWs. Advocacy groups, however, may be concerned with the risk of revictimization and enforcement mechanism of this option (Interview with Participant A), but would likely still show some level of support for this option depending on execution (Interview with Drydyk and Juarez).

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<sup>22</sup> Outside the scope of this research, it is worth mentioning sex trafficking and sex work are often incorrectly conflated, which would need to be considered with this option as well.

Administratively, many provincial governments have already adopted unique strategies in addressing human trafficking, considering the framework is decentralized. This may result in challenges in ensuring provinces prioritize and implement this option as a holistic approach. Implementing this option would be a massive undertaking for a central agency to manage and maintain (Interview with Participant B and O'Doherty) and is expected to take a few years to be executed. Further, coordination is expected to be a significant barrier in ensuring the database would be adopted consistently (Interview with Participant B). Other considerations, such as the training needed across departments and additional resources required to manage the system and report such cases, specifically onboarding of the SCA. There are already challenges with issuing TRPs (CCR, 2013), and due to the likelihood that this option would increase the number of TRPs that are already issued (U.S. Department of State, 2020d), more resources would need to be dedicated to this. Due to the expected timeframe, anticipated challenges and maintenance considerations, this option is ranked as high complexity.

## 9.2. Analysis: Employer Bonds

**Table 9. Evaluation of Employer Bonds**

OBJECTIVE	RESULTS	SCORE
<i>Key Objectives</i>		
<b>Effectiveness:</b> Protection of trafficked victims	<ul style="list-style-type: none"> <li>✓ Increases accountability of employers due to upfront commitment</li> <li>✓ Challenges the current power dynamic of the relationship between employers and employees</li> <li>✓ Migrant workers are directly compensated for the infraction</li> <li>✗ Dependent on oversight and efforts pertaining to investigations and enforcement</li> <li>✗ Risk of financial bondage; the manipulation of debt by employers is found to impact a significant number of victims of forced labour (<i>Literature review, Interview findings</i>)</li> </ul>	<b>(6)</b>
<b>Effectiveness:</b> Transparency of labour trafficking cases	<ul style="list-style-type: none"> <li>✓ Provides a direct incentive for migrant workers to report instances of exploitation and possible trafficking</li> <li>✓ An increase in exploitative reports may lead to a rise in the number of labour trafficking investigations</li> <li>✓ Should cases move forward to labour trafficking investigations, this option can provide needed insight and evidence for the existence of labour trafficking in Canada</li> <li>✗ Direct attention towards labour exploitation relative to trafficking</li> <li>✗ Labour violations may be viewed as easier to process, and labour trafficking investigations may not move forward (<i>Literature review, Jurisdictional Scan</i>)</li> </ul>	<b>(4)</b>
<i>Additional Considerations</i>		
<b>Political Feasibility:</b> Alignment with Government of Canada priorities	<ul style="list-style-type: none"> <li>✗ Bonds may reduce the hiring of migrant workers</li> <li>✗ This would provide significant challenges hiring Canadians and PRs at a similar wage rate to meet labour market demands</li> </ul>	<b>(1)</b>
<b>Administrative Complexity:</b> Ease of implementation and maintenance	<ul style="list-style-type: none"> <li>✗ More resources required for oversight and settlement</li> <li>✗ Provincial coordination and implementation challenges</li> <li>✗ Coordination of existing penalty system and penalization framework; pilot program expected</li> </ul>	<b>(1)</b>
<b>Stakeholder Acceptance:</b> Impact on employers	<ul style="list-style-type: none"> <li>✗ Unlikely to support policies where there is additional cost</li> <li>✗ At a disadvantage for economic profit</li> <li>✗ Put in a position to find more domestic workers where there will be a low supply</li> <li>✗ Risk some employers will hire migrant workers illegally</li> </ul>	<b>(1)</b>
<b>Stakeholder Acceptance:</b> Advocacy group support	<ul style="list-style-type: none"> <li>✓ Support more accountability measures</li> </ul>	<b>(3)</b>
Stakeholder total /3		<b>2</b>
<b>TOTAL SCORE: 14/24</b>		

This option directly focuses on improving accountability measures of employers at the initial stages of hiring TFWs. Assertive in its approach, this option challenges existing relationships between employers and employees, where employers are immediately held accountable to abide by their contract and meet labour standard protocols. Further, the literature demonstrates how incorporating victim participation in the legal system and

access to justice can be taxing and onerous on an individual leaving a situation of trafficking (McCrae, 2016; Baglay, 2020). This option ensures migrant workers are directly compensated should a form of exploitation occur – foregoing existing protective mechanisms that are reputedly burdensome and time-consuming. However, this option is very dependent on oversight and enforcement, where investigations can prolong the time for a survivor of trafficking to be fully compensated for the infraction, especially when meeting the evidentiary threshold that exploitation did indeed occur (Interview with Participant C). Furthermore, this option does not address security around consequences of reporting – where migrant workers may face repercussions for reporting and are unable to prove exploitation occurred (Interview with Participant A).

Notably, the manipulation of debt by employers or recruiters impacts many victims of forced labour. The Global Estimates report (2017) shows a remarkably high prevalence of debt bondage as a tool for coercion in labour trafficking practices. The ILO estimates 50% of forced labour victims experienced debt bondage as imposed by the trafficker, meaning debt is used to obtain labour forcibly (Canadian Centre to End Human Trafficking, 2020b; Sikka, 2013; Hastie & Yule, 2014; Beatson et al., 2017; Interview with Juarez and Dandurand). In North America and other developed countries, migrant workers who are trafficked into jobs such as construction, domestic work, and agriculture are more likely to be controlled through debt bondage (ILO, 2017). Therefore, due to the perceived risk of utilizing this option as another tool for coercion and exploitation and considering this option does not mitigate risks of reporting exploitation, protection is ranked as moderate.

Migrant workers are provided with a direct financial incentive for reporting any indication of exploitation. Consequently, the number of reported cases for exploitation could increase the number of labour trafficking investigations should they escalate to the federal level. By implementing a direct incentive for migrant workers to report cases, it is expected there will be an increase in the number of reported cases should exploitation occur. However, this option is only likely to do so minimally. Although this option would bring more attention to the conditions of the TFWP that make it susceptible to trafficking practices, this option has specific attention towards labour exploitation relative to trafficking. Due to the justice system's challenges for prosecuting cases of labour trafficking (Interview with Participant B), the compensation mechanism may seem sufficient to process the claim as a labour violation, rather than escalating it to a labour

trafficking investigation, which is a similar pattern we see in the jurisdictional scan (U.S. Department of State, 2020b; U.S. Department of State, 2020d)

Employers would be very resistant to the increase of red tape on the program in terms of hiring (Interview with Participant A). It is also unlikely any party in the Canadian government would implement this option. Employer bonds have the risk of reducing the number of migrant workers hired due to the constraints they place on employers. The government would face significant barriers in filling vacant positions with Canadians and PRs, especially at a similar wage rate. However, according to Figure 4, the demand for agricultural workers has increased over the years, despite the Government of Canada's previous attempts to limit its use of TFWs to ensure Canadians and PRs are prioritized in accessing the labour market (El-Assal, 2016). The government could inevitably help employers hire domestic workers, if the supply is available, increasing the wage rate and providing more funds to support these programs, which could be a high cost to maintain (Interview with Participant A). Another important note of consideration is the risk of some employers hiring workers illegally for profit. Although there would likely be a decline of trafficking through legal channels, this option would not reduce labour trafficking through other means. Advocacy groups, however, are likely to support this option as they increase accountability measures of the program due to the upfront commitment required for this option.

Administratively, this option would be quite complicated. Due to the expectation of an increase in the number of reported cases, more resources would be required for oversight and investigations, including financial infrastructure and a settlement framework. As the provinces regulate the TFWP, it is expected there will be jurisdictional challenges – especially if the reported case is suspected to be labour trafficking. Moreover, because there is already a penalty mechanism within the TFWP, this option essentially creates an additional step in discipline administered by regulators. It is expected a pilot-program would need to be implemented to further assess this option and its overall impact on the program.

### 9.3. Analysis: Occupation-Specific Work Permits

**Table 10. Evaluation of Occupation-Specific Work Permits**

OBJECTIVE	RESULTS	SCORE
<i>Key Objectives</i>		
<b>Effectiveness:</b> Protection of trafficked victims	<ul style="list-style-type: none"> <li>✓ Mitigates the risk of control and manipulation of a worker due to more flexibility in working arrangements; can lead to higher wages</li> <li>✓ Eliminates the control of employers over the employees</li> <li>✓ May incentivize employers to treat migrant workers well, considering the added element of competition</li> <li>✓ Mitigates the risk of becoming out of status and thus inadmissible, which is often used against a migrant worker due to threat of deportation (<i>Literature review, Interview findings</i>)</li> <li>✗ Assumes migrant workers would be hired once they leave their original placement or will have the ability to identify employers with a valid LMIA</li> <li>✗ Employers can be “connected” and made aware of previous complaints, may lead to repercussions (<i>Interview findings</i>)</li> </ul>	<b>(7.5)</b>
<b>Effectiveness:</b> Transparency of labour trafficking cases	<ul style="list-style-type: none"> <li>✗ Does not alleviate the conditions that make it challenging for people to report exploitation</li> <li>✗ Migrant workers unlikely to report to ensure good standing with an employer and maintain future employment (<i>Literature review, Interview findings</i>)</li> </ul>	<b>(2)</b>
<i>Additional Considerations</i>		
<b>Political Feasibility:</b> Alignment with Government of Canada priorities	<ul style="list-style-type: none"> <li>✓ The federal government is currently exploring the option (<i>Literature review</i>)</li> <li>✓ The NDP and Liberal government most likely to support these amendments</li> </ul>	<b>(2)</b>
<b>Administrative Complexity:</b> Ease of implementation and maintenance	<ul style="list-style-type: none"> <li>✓ Caregiver program can provide an example for policy design</li> <li>✗ Considerations need to be made for employers who pay hiring and relocation costs and lose workers</li> </ul>	<b>(2)</b>
<b>Stakeholder Acceptance:</b> Impact on employers	<ul style="list-style-type: none"> <li>✓ Employers less likely to fear loss of employees should they be in compliance with regulations</li> <li>✗ According to the Standing Committee (2018), employers would not be in favour of this option due to the expenses required to obtain work permits and pay for travel, and the risk migrant workers may leave</li> </ul>	<b>(2)</b>
<b>Stakeholder Acceptance:</b> Advocacy group support	<ul style="list-style-type: none"> <li>✓ Advocacy groups support policies that eliminate employer-dependency and provide more freedom of movement for migrant workers</li> </ul>	<b>(3)</b>
Stakeholder total /3		<b>2.5</b>
<b>TOTAL SCORE: 16/24</b>		

An occupation-specific work permit would provide far more flexibility for migrant workers experiencing labour trafficking elements, mitigating the current power imbalance. This option eliminates employers' control over employees and offers more “freedom of movement” for workers to remove themselves from an exploitative environment. Thus, this option can directly address coercive tools and eliminate many elements of the “fear for

safety” component of the *Criminal Code* definition of trafficking for labour exploitation purposes. Further, the interviews highlighted how policies that incentivize employers to better comply with the program is essential for effectiveness (Interview with Participant C). This option creates an incentive for employers to treat workers well at risk they may lose them and are unable to fill needed positions. While this option does provide more labour mobility, the interviews highlight how it assumes migrant workers are guaranteed to be hired once they leave their original placement, especially considering this option requires the employer must be LMIA-approved. In theory, occupation-specific work permits allow for freedom of movement for migrant workers; however, given their lack of knowledge about the Canadian labour market, language barriers, and seasonality of some of the positions, in practice, there may be additional obstacles to take advantage of this option. The implementation of an occupation-specific work permit program would need to consider facilitation methods to ensure TFWs are aware and informed of the process to transfer and where they can transfer to. Also, it does not consider how other employers may be connected to and aware of previous complaints (Interview with O’Doherty and Participant A). Thus, the repercussions a migrant worker may face as a result will remain a risk. Therefore, this option is ranked as moderate to strong legislative protection, due to its ability to proactively mitigate the risk of trafficking and provide an additional tool of protection for TFWs in terms of autonomy. The option will not eliminate the risk of trafficking in its entirety and further scrutiny is required to improve its effectiveness.

In relevance to transparency, this option does not alleviate some of the barriers people may face in reporting exploitation or trafficking (e.g., language barriers, criminalization, debts, and fear of retaliation). Migrant workers are likely to be primarily concerned with maintaining a favourable rapport with their employers, especially considering many of them come back for several years (Interview with Juarez). Therefore, this criterion is ranked as no change in transparency.

This option is very likely to be supported by the federal government, specifically the Liberal Party and the NDP. IRCC and ESDC have been exploring an occupation-specific work permit for TFWs working in the agriculture stream of the TFWP, removing the requirement to apply for a new work permit (Canada Gazette, 2019). The current Government of Canada recognizes the power imbalance enabled by work permits tied strictly to employers, and how this can lead to extreme exploitation and misconduct (Canada Gazette, 2019).

In terms of administrative complexity, the new Caregiver pilot program eliminated employer-specific requirements (IRCC, 2020d). Not only does this demonstrate the federal government's willingness to explore such an option in other streams, but it also provides a potential framework for policy design. However, there are likely to be some challenges with maintenance, specifically considering employers who pay hiring fees and relocation costs and ultimately may lose some of their workers due to this option (Interview with Drydyk). Further administrative considerations include ensuring TFWs are advised about the program mechanisms and are supported with the right information should they wish to transfer. Thus, this criterion is ranked as medium complexity.

Despite this option addressing essential elements that often exist in labour trafficking cases, it is expected to burden businesses that employ TFWs to a moderate degree. For example, the Standing Committee (2018) found that employers were unlikely to favour this option because of the expenses and time required to obtain work permits and pay for travel. This option could create competition amongst employers, which was not the program's intention when it was first initiated. Due to these challenges, it is unlikely to be favoured or supported by employers. However, if employers are in compliance with regulations to mitigate the risk of losing their employees, this would not necessarily have a direct impact on their business. Thus, this criterion is ranked as moderate impact. In terms of advocacy groups, while open-work permits would likely be the favoured option more generally, there is strong support as demonstrated by the interviews and literature for this option (Interview with Dandurand, Drydyk, Juarez, and Participant B).

## 9.4. Analysis: Pathway to Permanent Residency

Table 11. Evaluation of Pathway to Permanent Residency

OBJECTIVE	RESULTS	SCORE
<i>Key Objectives</i>		
<b>Effectiveness:</b> Protection of trafficked victims	<ul style="list-style-type: none"> <li>✓ Precarious status was identified as a key indicator of a trafficked victim (<i>Literature review, Jurisdictional scan, Interview findings</i>)</li> <li>✓ Internationally, PR status is often used as a condition for victims to comply with investigations of trafficking, thus, viewed as effective for reducing the risk of revictimization (<i>Jurisdictional scan</i>)</li> <li>✗ Does not protect migrant workers who are seasonal, or intending to return home, or who do not fit the eligibility criteria</li> <li>✗ Pathway to PR status can be used as a tool of coercion short-term (<i>Literature review, Interview findings</i>)</li> <li>✗ Former LCP demonstrates the risks associated with using access to PR status as a tool for manipulation and control</li> </ul>	<b>(6)</b>
<b>Effectiveness:</b> Transparency of labour trafficking cases	<ul style="list-style-type: none"> <li>✗ Migrant workers unlikely to report cases if their access to PR status is in jeopardy (<i>Interview findings</i>)</li> </ul>	<b>(2)</b>
<i>Additional Considerations</i>		
<b>Political Feasibility:</b> Alignment with Government of Canada priorities	<ul style="list-style-type: none"> <li>✓ Ongoing pilot project for agricultural workers demonstrates this option is currently being considered by the federal government (CIC News, 2019)</li> <li>✗ The government would have to support the increase of intake numbers; dependent on results of the pilot program and party in power; Conservative Party unlikely to increase intake numbers</li> </ul>	<b>(2)</b>
<b>Administrative Complexity:</b> Ease of implementation and maintenance	<ul style="list-style-type: none"> <li>✓ Can reference other immigration streams that have a similar framework</li> <li>✗ Can be complicated in terms of policy design (i.e., number of PRs admitted, impact on other immigration plans and policies) (<i>Interview findings</i>)</li> <li>✗ Potential to see significant backlog in processing applications</li> </ul>	<b>(2)</b>
<b>Stakeholder Acceptance:</b> Impact on employers	<ul style="list-style-type: none"> <li>✓ Mitigates the administrative burden and cost for employers to bring workers back each season</li> <li>✓ Does not negatively impact the supply of labour; option to keep workers temporarily through the SAWP</li> <li>✗ Considering this option would not require employees to remain with their employer after accessing PR status, this could impact the business short-term until new workers are hired</li> </ul>	<b>(2)</b>
<b>Stakeholder Acceptance:</b> Advocacy group support	<ul style="list-style-type: none"> <li>✓ Strong support from advocacy groups</li> </ul>	<b>(3)</b>
Stakeholder total /3		<b>2.5</b>
<b>TOTAL SCORE: 14.5/24</b>		

A common theme that emerged from the literature review, the jurisdictional scan and interviews is how precarious status is a crucial indicator of labour trafficking in Canada. Further, the jurisdictional scan demonstrates how PR status is an incentive for victims to comply in investigations with law enforcement, essentially reducing the risk of

revictimization (U.S. Citizenship and Immigration Services, 2018; U.S. Department of State, 2020c). Thus, PR status should be considered a useful tool in ensuring victims' protection and reducing the risk of trafficking. However, this option is only a *pathway* to PR status, meaning status is not immediately obtained. The former LCP, for example, showed how introducing access to permanent residency can be used as a tool for coercion, increasing the risk of trafficking in some cases (Galerand et al., 2015; Interview with Dandurand). The intentions of this option demonstrate strong protection by providing migrant workers more rights and legislative protection long-term (e.g., benefits such as healthcare, access to education, protection under Canadian law). However, short-term, it risks becoming an additional tool a trafficker may use to exploit workers. This raises some important considerations in terms of policy design when developing avenues to PR status for temporary workers.

Additionally, this option does not address seasonal workers intending to return home at the end of their work contract with no intentions of permanently migrating to Canada. The only way to indeed amend this would be to grant migrant workers PR status upon their arrival to Canada – but this is outside the political narrative as of right now. Despite this option being an essential avenue for eradicating precarious status, there are considerations to be made for policy design and the risks that could make some cases worse short-term. Therefore, this option is ranked as moderate protection in legislation.

In terms of transparency, it is expected migrant workers would be unlikely to report exploitative or trafficking conditions if PR status is being threatened or in jeopardy (Interview with Dandurand and Participant C). The interviews provided a few examples of this in the former LCP, where many workers complied with exploitative conditions short-term. Thus, this criterion is ranked as low, with no improvement on transparency of labour trafficking.

As of 2020, Canada implemented a three-year permanent residence pilot program for eligible agri-food workers. 2,750 applicants are to be accepted each year, which could include approximately 16,500 new permanent residents to Canada when including family members (CIC News, 2019). According to the Parliamentary Secretary to Canada's Minister of Employment, Workforce Development and Labour, "temporary foreign workers who come to this country and work hard filling permanent jobs should have a fair and reasonable chance to become a Canadian regardless of the jobs they are

filling” (CIC News, 2019). There appears to be a lot of support currently from the federal government in exploring options for permanent residency for TFWs. However, the likelihood of its implementation will depend on results from the pilot project. The government in power would have to further support the increase of intake numbers of PRs to Canada – unlikely to be supported by the Conservative Party of Canada.

A pathway to PR status would mitigate the administrative burden and cost for employers to bring workers back each season (ESDC, 2020b). It also significantly addresses the supply of labour and potential shortages that some employers may face (Interview with Juarez). Yet, employers still have the option of hiring temporarily through programs such as the SAWP. However, this option specifically removes workers' requirement to remain with their employer once PR status is obtained. This would be an inconvenience for employers who need to find new workers to fill their labour needs. Additionally, employers would have to factor in tax deductions such as benefits and a pension plan, which may increase the cost of hiring migrant workers over time. Overall, the benefits would likely outweigh some of the trade-offs associated with this option, ranking it as a moderate impact on businesses who hire TFWs. Advocacy groups, however, have expressed strong support for more avenues to PR status for migrant workers (Interview with Drydyk, Juarez, O'Doherty, and Participant A).

The former-LCP and the current Agri-food pilot program would provide a possible framework this option could be built on. However, the overall implementation of this option could have complex elements, specifically in terms of design. For example, there is a potential that federal departments could face a significant backlog in processing applications, which was a previous issue identified by IRCC with the former LCP. This could put a constraint on immigration facilitation programs and overall processing times. Many factors would have to be considered in this regard, such as the number of PRs admitted, and eligibility criteria. Therefore, this option is ranked as medium complexity.

## 9.5. Summary of Analysis

**Table 12. Summary of Evaluation**

<b>OBJECTIVES &amp; CONSIDERATIONS</b>	<b>Mandatory Reporting System</b>	<b>Employer Bonds</b>	<b>Occupation-Specific Work Permits</b>	<b>Pathway to Permanent Residency</b>
<i>Key Objectives</i>				
<b>Effectiveness:</b> Protection of trafficked victims	Weak Protection (3)	Moderate Protection (6)	Moderate Protection – Strong Protection (7.5)	Moderate Protection (6)
<b>Effectiveness:</b> Transparency of labour trafficking cases	Minimal Improvement – Significant Improvement (5)	Minimal Improvement (4)	No Improvement (2)	No Improvement (2)
<i>Additional Considerations</i>				
<b>Political Feasibility:</b> Alignment with Government of Canada priorities	Supported by all parties (3)	Supported by one or no party (1)	Supported by two parties (2)	Supported by two parties (2)
<b>Administrative Complexity:</b> Ease of implementation and maintenance	High Complexity (1)	High Complexity (1)	Medium Complexity (2)	Medium Complexity (2)
<b>Stakeholder Acceptance:</b> Impact on employers	Low Impact (3)	High Impact (1)	Moderate Impact (2)	Moderate Impact (2)
<b>Stakeholder Acceptance:</b> Advocacy group support	Some Support (2)	High Support (3)	High Support (3)	High Support (3)
Stakeholder total /3	2.5	2	2.5	2.5
<b>Total Score:</b>	<b>14.5</b>	<b>14</b>	<b>16</b>	<b>14.5</b>

A mandatory reporting system has the potential to address several objectives and considerations relative to the other proposed options. The mandatory reporting system certainly stands out when evaluating several of the criteria, particularly improving transparency. However, the occupation-specific work permit option scored highest overall, particularly in terms of protection of trafficked victims, which was indicated as the primary

objective of the evaluation. In comparison, the employer bonds option and pathway to PR status score moderate in terms of protection.

While these policies may effectively enhance protection of victims and survivors of labour trafficking to a moderate degree, and generally score similarly overall, no option was considered significantly “strong” in legislative protection due to other limitations and considerations of policy design. The analysis demonstrates that implementing some options, specifically employer bonds and a pathway to permanent residency, could increase the risk of trafficking if not executed well. Financial bondage and utilizing PR status as a tool of control were evaluated as possible risks with these options, despite their potential to provide some form of security and protection. However, a pathway to permanent residency is the only option that would eradicate precarious status as understood in this study – a key indicator of a trafficked victim, but this would be a long-term solution and only impact some workers who choose that option. Of note, a mandatory reporting system scored similarly to a pathway to PR status, but it is important to highlight the latter would only be effective long-term regarding protection, whereas the former can heighten the effectiveness of transparency of labour trafficking cases and complement other protection-based policies in future.

Transparency of labour trafficking in Canada would likely improve with a mandatory reporting system relative to other options. This is likely due to the enforcement element of this option, which focuses more on identification and reporting rather than addressing direct systemic changes. On its own, however, this option would not provide needed protection to victims of trafficking, and it is important this option be supplemented with other policies that directly address systemic issues. Occupation-specific work permits have the potential to mitigate the risk of trafficking by removing employer dependency through a proactive approach and provide an additional tool for migrant workers should they face exploitation.

Addressing labour trafficking is complex, and each option's overall ranking only supports this in terms of ease of implementation and maintenance. Further, not all options will be accepted by the federal government or businesses that employ TFWs. This is often seen as a barrier for any form of rigorous policy changes within the TFWP, where the economic consequences can be substantial and a crucial reason for forgoing execution of a policy that could legitimately improve this problem in Canada.

## **Chapter 10.**

### **Recommendation**

As a practical first step, this study recommends implementing a mandatory reporting system and occupation-specific work permits at the national level. Although this policy problem is complex and requires a multi-approach to substantively resolve the issue, these policies would be an effective step in addressing labour trafficking in Canada. A mandatory reporting system would improve several challenges in data reporting and collection and be one method to improve some jurisdictional issues in terms of coordination when potential cases are identified, and victims needing immediate support. Increasing the number of reported cases through quantitative methodologies can help policymakers conduct rigorous analyses and support future anti-trafficking policies that strengthen legislation, such as exploring other avenues of PR status and increasing accountability measures in the TFWP. A mandatory reporting system has the potential to highlight the type of exploitation that is happening in Canada, where it is happening, and who it is happening to. Further, this data could provide the needed insight to understand how different agencies or departments define and report trafficking, which could improve human trafficking training and resource allocation.

Although they do not reduce the risk of exploitation and trafficking in their entirety, occupation-specific work permits remove a primary barrier that is often linked to trafficking cases – the freedom of movement. Eliminating the employer-specific work permit criteria of the TFWP would provide migrant workers with more security if they are in a situation of trafficking and need to remove themselves without the added administrative burden. Additionally, employers will face the risk of losing their workers and may be more likely to abide by the work contract, which increases accountability and compliance. Of note, in order for this option to truly be effective, a mechanism should be developed to connect TFWs to eligible employers and ensure government oversight is maintained. Research must also continue to focus on barriers for TFWs to find new employment when leaving an exploitative environment. This option, alongside a mandatory reporting system, can be beneficial to ensure an added layer of protection for migrant workers and ensures there is a way to assess cases that continue to be reported and identified.

The analysis presented in Chapter 9 highlighted the importance of policy design. While permanent residency would eliminate precarious status and the vulnerability portrayed in the TFWP, there is still a significant risk that short-term, migrant workers would still face labour trafficking practices and the policy would instead be used as a tool of coercion. Further, PR status as an effective tool for protection would have to be accessible for all migrant workers equitably. This is also apparent through a policy like employer bonds while aiming to increase accountability and provide a direct incentive for victims to report, also risks being used as a method for financial bondage – a prominent indicator of labour trafficking internationally. However, policies that improve precarity and uphold accountability measures should not be omitted when addressing labour trafficking. Long-term, a mandatory reporting system has the potential to help policymakers and decision-makers learn from trafficking as it exists in Canada and can strengthen the case for other policies that would have a direct impact on addressing the policy problem and strengthen legislation.

## **Chapter 11.**

### **Implementation Considerations**

It is important to acknowledge this study does not consider the recommendations proposed as significant in rectifying the policy problem but sees them as necessary steps. Several considerations need to be made in terms of implementation and moving forward with future research. This chapter will discuss three key elements that stand out in need of further discussion: coordination and engagement, training and education, and saliency.

#### **11.1. Coordination and Engagement**

As highlighted in the interviews, coordination amongst multiple stakeholders is challenging for several different reasons: competing mandates, consultation, and inconsistent interpretations of human trafficking or priority of sex trafficking relative to labour cases. Jurisdictional issues will continue to be a hurdle in implementing effective policies if they are not met with cooperation and engagement efforts. Considering each province regulates the TFWP in their own way, as well as how some provinces have developed their own anti-trafficking frameworks, more research is needed to understand these discrepancies and gaps, and how the implementation of a federal policy, such as an occupation-specific work permit, would impact these existing programs.

Another coordination factor is the issuance of TRPs. With the implementation of a mandatory reporting system, there will likely be an increase in the number of TRPs issued, but the TRP program certainly has its challenges. With the rise in the number of reported cases, relevant stakeholders must work collaboratively to ensure protection long-term. As discussed in previous chapters, prosecution rates of labour trafficking are exceptionally low and difficult to meet the evidentiary threshold. Long-term protection and justice will not be sufficiently met if stakeholders do not work collaboratively or with a central purpose. The interviews suggested any implementation strategy should include consultation with those directly impacted by vulnerable systems – in this case, migrant workers. Engaging with those affected by these programs and who have navigated exploitative systems would be positioned to provide needed insight and perspectives on how policies can be even more effective in future. In particular, other challenges or barriers with labour mobility

in terms of occupation-specific work permits, and how this can be mitigated moving forward.

## **11.2. Training and Education**

When it comes to human trafficking, existing frameworks and policies result in the burden of proof falling on the victim. This is a noted risk with the mandatory reporting system option. A victim is still put in a situation to provide information and evidence – which they do not always have – hence, risking revictimization. Thus, any implementation strategy needs to consider that it is not just about migrant workers identifying themselves as victims, but a consistent understanding of how trafficking exists in Canada by those responsible for combatting it. Definitional challenges and interpretations have been raised as an inconsistent approach in Canada and abroad. In the context of this study which uses the *Criminal Code* definition and the element of “fear for safety”, it is clear this is not always interpreted consistently when applying it to labour trafficking cases. The reality of how this is applied in Canada needs to be better addressed in literature and training and education programs. This approach, alongside coordination and engagement, can be useful.

The mandatory reporting framework relies heavily on an enforcement-based approach and depends on bodies to report, which also plays a significant role in criminalizing. It is imperative that departments and organizations continuously evaluate programs such as recruitment and training to ensure that any anti-trafficking policy's goal and objective should maintain a victim-centred approach – especially when it comes to *empowerment*. For example, the SCA should undergo rigorous training and have operational and field experience working directly with victims of human trafficking. Training in this area should always be re-evaluated, and a critical approach in analyzing the barriers and hurdles victims of trafficking are confronted with in accessing justice.

## **11.3. Saliency**

A key challenge in addressing labour trafficking is the lack of attention and awareness it is currently receiving relative to sex trafficking. Anti-labour trafficking policies will face significant barriers in justifying the dedication of time and resources to an area that does not garner a lot of attention. However, public opinion could be instrumental in

moving these policies forward. A recent poll conducted by Nanos Research suggests “Canadians overwhelmingly want temporary foreign workers who live [in Canada] to also be able to stay here as permanent residents and get workplace benefits” (Singer, 2021). While the existence of labour trafficking in Canada has not received significant attention – highlighting this issue more prominently could potentially make a difference in political discourse.

The COVID-19 pandemic of 2020 shaped the way the public thinks about migrant workers and the services they provide. This not only highlights how Canadians define essential workers, but how identified cases may shape anti-trafficking policies in the future. Canadians are far more aware of how labour shortages impact the economy. Many employers chose to continue to employ migrant workers during the pandemic, and the federal government supported this despite closing the Canadian border (Pazzano, 2020). The pandemic has also emphasized exploitative working conditions of the program, considering hundreds of workers nationally have been infected and, in some cases, have died (Harris, 2020). Current events and the Canadian public's support may be imperative to paving the path for more opportunities and reducing vulnerabilities for migrant workers in the future.

## **Chapter 12.**

### **Conclusion**

This study aimed to address the existence of labour trafficking through legal channels in Canada. The TFWP is susceptible to trafficking practices of migrant workers who come to Canada and are coerced into exploitative working conditions. The economic dependency on low-wage migrant workers and vulnerabilities of the program heightens its importance in the policy context. By conducting an extensive literature review, a jurisdictional scan of countries categorized as top tier in international reports, and expert interviews with those who work in and study the field of human trafficking, this study recognized key areas in need of attention: (1) precarious status is a primary indicator of a victim of labour trafficking and access to justice is problematic; (2) absence of data in Canada deters progress in highlighting labour trafficking as an issue in Canada, and lack of cooperation makes this even more challenging; and (3) definitions of human trafficking lack consistency in interpretation, potentially establishing further barriers for victims.

Four policy options were identified to analyze and address security and transparency as critical objectives for protecting trafficked migrant workers: a mandatory reporting system, occupation-specific work permits, employer bonds, and a pathway to permanent residency. Based on the analysis, it is clear there is not one policy instrument or intervention method that will address this issue in its entirety. While this study recommends a mandatory reporting system and occupation-specific work permit as a practical first step, significant research and work remain to be done.

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## Appendix A. Interview Participants

Table A.1. List of Interview Participants

Interview Participant	Professional Affiliation	Interview Date
<b>Academics</b>		
Yvon Dandurand	Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR); Faculty Advisor Emeritus, Department of Criminology and Criminal Justice, University of the Fraser Valley	October 20 <sup>th</sup> , 2020
Tamara O'Doherty	Professor, Department of Criminology, Simon Fraser University	November 12 <sup>th</sup> , 2020
Participant A	Confidential	November 20 <sup>th</sup> , 2020
<b>Federal Government</b>		
Participant B	Confidential	December 7 <sup>th</sup> , 2020
Participant C	Confidential	February 12 <sup>th</sup> , 2021
<b>NGOs/Advocacy Groups</b>		
Julia Drydyk	Executive Director, The Canadian Centre to End Human Trafficking	November 26 <sup>th</sup> , 2020
Dennis Juarez	Manager, MOSAIC, Migrant Workers HUB. Input provided by the Salvation Army Anti-Human Trafficking Programs	December 14 <sup>th</sup> , 2020

## Appendix B. Sample Interview Questions

1. How would you define human trafficking?
  - a. What are some common misconceptions surrounding human trafficking in Canada?
2. How would you define labour trafficking?
  - a. What are the key elements that differentiate labour violations and labour trafficking?
3. Is it important to make labour trafficking distinct from sex trafficking? If so, please explain.
4. What are some of the most significant challenges policymakers face in addressing labour trafficking?
5. What makes the Temporary Foreign Worker Program (TFWP) susceptible to labour trafficking practices?
6. In your experience, can you please provide examples of labour trafficking that took place in Canada?
  - a. Did this case result in a conviction under the Criminal Code or IRPA? If not, why do you think that is?
7. What is your department/organization currently doing to address labour trafficking?
8. Why has data collection on issues surrounding labour trafficking been so challenging?
  - a. How can the government improve on data collection?
9. What are some possible solutions to address concerns surrounding labour trafficking through legal channels?
  - a. What has been done so far?
  - b. How can legislation improve on protecting migrant workers who are victims of labour trafficking?
  - c. How can legislation improve on holding employers accountable for conducting labour trafficking practices?
10. Labour trafficking has garnered more attention in recent years due to an increase in identified cases. Where do you see this issue in the next 5 to 10 years?
  - a. Legislative amendments?
  - b. Public perception?

## Appendix C. TRP Issuance

**Table C.1. TRPs Issued to Human Trafficking Victims, Citizenship, 2015 - 2019**

Citizenship	2015	2016	2017	2018	2019
Barbados		1		1	1
Dominica				1	10
Dominican Republic				1	
Egypt	1	1			
Federal Republic of Cameroon					1
Federal Republic of Germany	1				
Ghana		2			
Grenada				2	1
Republic of Guinea	1				
Haiti					1
Hong Kong SAR				2	1
Hungary	11	7	4		2
India	1	2		5	3
Jamaica	10	4		2	1
Kenya		1		2	
Republic of Korea	1	1	2		6
Republic of Kosovo		8	4		
Malaysia				1	1
Mexico					179
Namibia				2	
Nepal				1	
Nigeria	7				
Pakistan	1	2			
People's Republic of China	1	3			2
Philippines	11	9	18	20	22
Portugal	1	1		2	1
Republic of Indonesia	2				
Republic of Ivory Coast				2	1
Senegal		2			
St. Lucia	1	1		2	1
Thailand	18	2			
Ukraine		18	2	1	1
United Republic of Tanzania	1				
United States of America				2	3
Zimbabwe		1	1		
<b>Total</b>	<b>69</b>	<b>66</b>	<b>31</b>	<b>49</b>	<b>238</b>

## Appendix D. Human Trafficking in the International Context

Despite international efforts, millions of children, women, and men continue to be trafficked in almost all regions of the world. Each year, countries are continuing to detect and report more victims (UNODC, 2018). The international approach has primarily been driven by the *United Nations Convention against Transnational Organized Crime* supported by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, adopted officially in 2000 (UN, 2000). As demonstrated in Table D.1 and reflected in the *UN Trafficking Protocol*, three components must exist for a situation to be considered trafficking: an action (what traffickers do); means (how traffickers do it); and purpose (why the trafficker does it) (Gallagher & Skrivánková, 2015).<sup>23</sup>

**Table D.1. The Elements of Trafficking: International Framework**

ACTION	MEANS	PURPOSE
<ul style="list-style-type: none"> <li>▪ Transfer</li> <li>▪ Transportation</li> <li>▪ Receipt</li> <li>▪ Harboring</li> <li>▪ Recruitment</li> </ul>	<ul style="list-style-type: none"> <li>▪ Threats</li> <li>▪ Coercion</li> <li>▪ Abduction</li> <li>▪ Force</li> <li>▪ Fraud/Deception</li> <li>▪ Abuse of Power</li> </ul>	<ul style="list-style-type: none"> <li>▪ Forced labour</li> <li>▪ Removal of Organs</li> <li>▪ Servitude</li> <li>▪ Sexual exploitation</li> <li>▪ Slavery</li> </ul>

The *Protocol* structure provides a framework of obligations for countries to meet international efforts in combatting the issue effectively. This is further supplemented by the UN's *Framework for Action* (2009), which provides general measures that can be taken to implement effective anti-trafficking policies. The framework and expectations for participating nations require respect for human rights and protection principles, specifically sensitivity towards gender and child issues. Operationally, the objective is to adopt appropriate legislation to prevent trafficking that falls in line with the *Protocol*.

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<sup>23</sup> Note: only “action” and “purpose” must be present to constitute as a situation of trafficking in children (persons under 18 years old).

In addition to the *Protocol*, international obligations are established in relevance to forced labour. The ILO *Forced Labour Convention, 1930 No. 29* defines forced labour<sup>24</sup> as “all work or services which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily.” Forced labour thus refers to cases where an individual is coerced to work through the use of violence or intimidation, or by other means such as debt bondage, withholding identity documents, or threats of deportation. It is worth mentioning specific exemptions, where article 2(2) of *Convention No. 29* states five conditions that are not included in the definition: compulsory military service; normal civic obligations; prison labour; work in emergency situations (such as war); and minor communal services (within the community) (ILO, 2020).

As per the ILO Protocol of 2014, States are required to adopt measures on prevention, protection, and remedies to mitigate the occurrence of forced labour. Recommendation No. 203 specifically requires countries to obtain reliable statistics on trafficking for the purposes of forced labour (ILO, 2015). Almost all countries have a legal obligation to meet ILO standards and view eliminating forced labour as a fundamental human right (ILO, 2020). The ILO identifies three main types of forced labour: (1) imposed by the State; (2) imposed by private agents for commercial sexual exploitation; and (3) imposed by private agents for economic exploitation (Barrett, 2011).

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<sup>24</sup> Forced labour and labour exploitation should not be used interchangeably. Labour exploitation assumes a benefit, monetary or otherwise which is obtained by an exploiter from a victim’s labour. Internationally, it is more common to use the term forced labour. This report recognizes solely focusing on trafficking for forced labour negates some of the structural and contextual elements of exploitation which make migrant workers vulnerable to labour trafficking practices in Canada.

**Table D.2. Key Obligations of Countries as per the UN Trafficking Protocol**

<b>The purposes of the Trafficking Protocol are:</b>	
To prevent and combat trafficking in persons, paying particular attention to women and children; To assist the victims of such trafficking, with full respect for their human rights; and To promote cooperation among States Parties in order to meet those objectives.	<b>Article 2</b>
<b>The key obligation of States Parties to the Trafficking Protocol are:</b>	
To criminalize 'trafficking in persons' as defined in the Protocol and to impose penalties which take into account the grave nature of that offence.	<b>Article 5</b>
To protect, to the extent possible under domestic law, the privacy and identity of victims of trafficking in persons and to consider the provision of a range of social services to enable their recovery from trauma caused by their experiences.	<b>Article 6</b>
To consider allowing victims to remain in their territory, whether permanently or temporarily, taking into account humanitarian and compassionate factors.	<b>Article 7</b>
To accept the return of any victims of trafficking who are their national, or who had permanent residence in their territory at the time of entry to the receiving State. When returning a victim, due regard must be taken of their safety, with the return preferably being voluntary	<b>Article 8</b>
To establish policies, programs, and other measures to prevent and combat trafficking and protect victims of trafficking from re-victimization.	<b>Article 9</b>
To provide and/or strengthen training for officials in the recognition and prevention of trafficking, including human rights awareness training.	<b>Article 10</b>
To strengthen such border controls as might be necessary to prevent trafficking, without prejudice to other international obligations allowing the free movements of people.	<b>Article 11</b>

Source: Framework for Action, 2009

## Appendix E. Examples of Labour Trafficking in Canada

Appendix E provides brief examples of high-profile labour trafficking cases in Canada. The stories presented within this section emphasize a few key points: (1) there is no clear-cut example of labour trafficking, but victims are all typically in precarious situations; (2) fear and control arise not only from physical fear but from debt bondage and other types of threats, specifically psychological control; (3) studies further indicate the existence of exploitation, such as dangerous or inadequate working conditions, poor housing, and lack of compensation for work; and (4) access to justice is seldom.

### Hamilton, Ontario

The Domotor-Kolompar case was known as the largest human trafficking operation identified in Canadian history and the first conviction under the *Criminal Code* involving labour trafficking in Canada (PACT-Ottawa, 2012). The 2011 case resulted in the recovery of approximately 19 trafficked victims and 22 accused traffickers<sup>25</sup>, although not all individuals were convicted of trafficking charges (Millar & O'Doherty, 2020). The victims, all men, were recruited from Hungary to work in Hamilton, Ontario, with the promise of a better quality of life. After the traffickers paid for their flights, the victims were forced to claim refugee status and sign up for income assistance. Any social support provided by the government was confiscated by the traffickers (PACT-Ottawa, 2012).

The Domotor case's components provide important features of labour trafficking: deceptive recruitment, debt bondage, fraudulent government applications and documentation, and violence. The victims were forced to work for the Domotor family's construction company without receiving pay, typically for thirteen to fourteen hours each day (Hastie & Yule, 2014). The RCMP noted the workers were starved, essentially provided table scraps with "bites taken out of their food" (Carter, 2014). The victims were held in unsanitary basements and subject to threats of violence against themselves and their families based in Hungary. The victims provided their identity documents and passports to their traffickers, unable to leave their environment. Additionally, some victims were forced to steal from Canada Post mailboxes to obtain cheques in the mail and deposit

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<sup>25</sup> Twenty of the accused were not Canadian citizens and as a result, were removed from Canada.

them into bank accounts. In total, “province-wide losses resulted in an estimated \$1,000,000” (Hastie & Yule, 2014).

### **Barrie/Wasaga, Ontario**

Recent media reports have released more information on recent labour trafficking occurrences in Canada. Some cases include the investigation by Barrie Police and the Ontario Provincial Police (OPP), where 43 victims of labour trafficking were recovered (mostly men between the ages of 20 and 46 from Mexico), where they were forced to work for a cleaning company in exploitative conditions (Jackson, 2019). A primary feature of this case was the control of wages and erroneous promises. The workers were made to pay 25 to 60,000 pesos to cover “recruitment fees” and their flights. Additionally, they paid \$400/month in rent and shared their living space with 28 other people per house (CCR, 2019). The victims came to Canada, deceived by a recruiter, under the facade of education or the promise of work visas and permanent residency access. They were transported to and from various work locations (Jackson, 2019). In this situation, the traffickers controlled their movements and threatened the victims with reporting them to the police and immigration authorities, considering they were undocumented (CCR, 2019).

Once freed, the victims gained access to temporary resident permits (TRP) and were provided housing. They were medically assessed and were given legal employment at a local resort (Jackson, 2019); however, restitution for the survivors remains unclear (CCR, 2019). The outcome of this case is yet to be determined; however, “charges include participating in a human trafficking criminal organization; illegally employing foreign nationals; recruiting, transporting, concealing, harbouring, or exercising control over the victims for the purpose of exploiting them, and fraud” (Barrie Advance, 2019).

### **St. Paul, Alberta**

As early as 2010, the RCMP highlighted Alberta as a province receiving many complaints related to labour trafficking. One of the most prominent cases found in literature is the 2012 case, which involved 63 migrant workers from Poland and the Ukraine who worked in St. Paul, Alberta for Kihew Energy Services Ltd. (Kaye & Hastie, 2015; McCrae, 2016). Kihew recruited workers by placing ads in Polish newspapers and websites. Once they arrived in Canada to work, the workers were told they could bring their families after

six months. They also signed contracts that stated they would be fined \$10,000 to \$25,000 and deported if they did not abide by the employer's rules.

Additionally, they were instructed not to discuss their wages or arrangements of how they arrived in Canada. The workers were underpaid and discovered their "work permits" were student visas, putting them in a situation where they worked illegally. The RCMP had charged three individuals with trafficking as it pertained to forced labour; however, the charges were dropped to lesser offences (McCrae, 2016). A few years after the case, interviews with the victims demonstrate that the trauma and level of fear experienced are still quite prevalent (Timoshkina, 2014).

While there has been an increase in evidence of labour trafficking in Canada, the criminal justice system claims there is noted apprehension in moving forward with labour trafficking charges, stating the *Criminal Code* legislation is difficult to apply and meet the evidentiary threshold. Thus, cases such as the one in Alberta opt for lesser charges to see some form of criminal justice and because the likelihood of convicting individuals for a trafficking charge is exceptionally low (Kaye & Hastie, 2015).

**Table E.1. Summary of Labour Trafficking Examples**

<b>Case</b>	<b>Hamilton, ON</b>	<b>Barrie/Wasaga, ON</b>	<b>St. Paul, AB</b>
<b>Victim(s) Country of Origin</b>	Hungary (19)	Mexico (43)	Poland (63)
<b>Type of Work</b>	Construction	Cleaning Company	Welders and machinists
<b>Type of Deception/ Coercion</b>	Promised work and better quality of life, threatened with violence against victims and families; passports and documents withheld; criminalization	The recruiter promised money and permanent residency, debt bondage of 25 to 60,000 pesos to cover recruitment fees, threatened with deportation	Workers did not receive promised schooling, threatened with a \$25,000 fine and deportation, told not to discuss wages or how they arrived in Canada
<b>Type of Exploitation</b>	Held in small spaces and restricted movements, starvation, excessive working hours, underpaid/no pay, forced to apply for refugee status and welfare	Inadequate living conditions, little to no compensation, were forced to pay rent	Underpaid work
<b>Charges Laid</b>	Human trafficking (Criminal Code)	Human trafficking (Criminal Code)	Initially charged as a human trafficking case - charges were withdrawn. The company pled guilty to lesser charges of human smuggling (s.117 IRPA)
<b>Legal Outcome</b>	20 traffickers served a jail sentence and were deported by the CBSA	N/A	Fine: \$215,000

## Appendix F. Coding for Qualitative Analysis

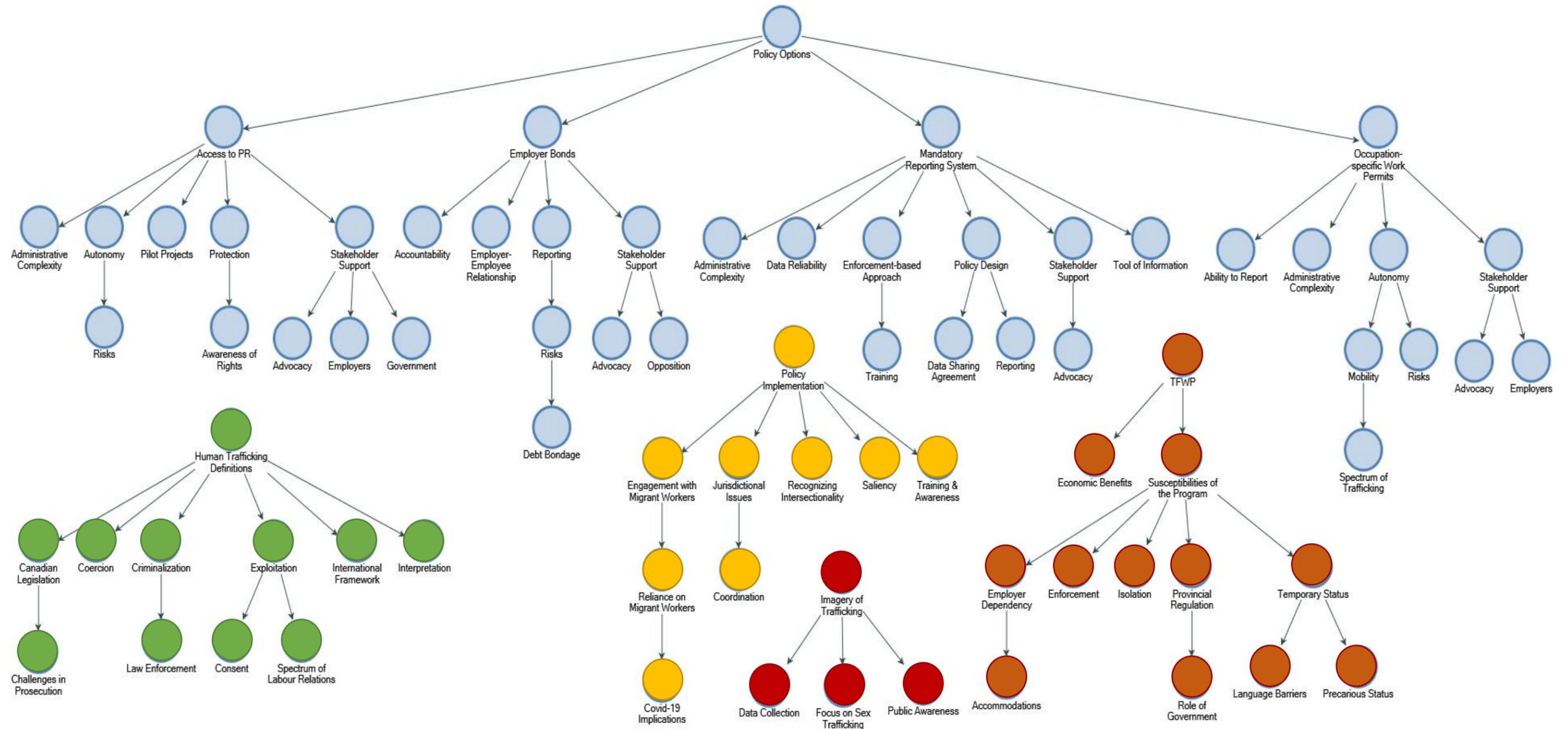
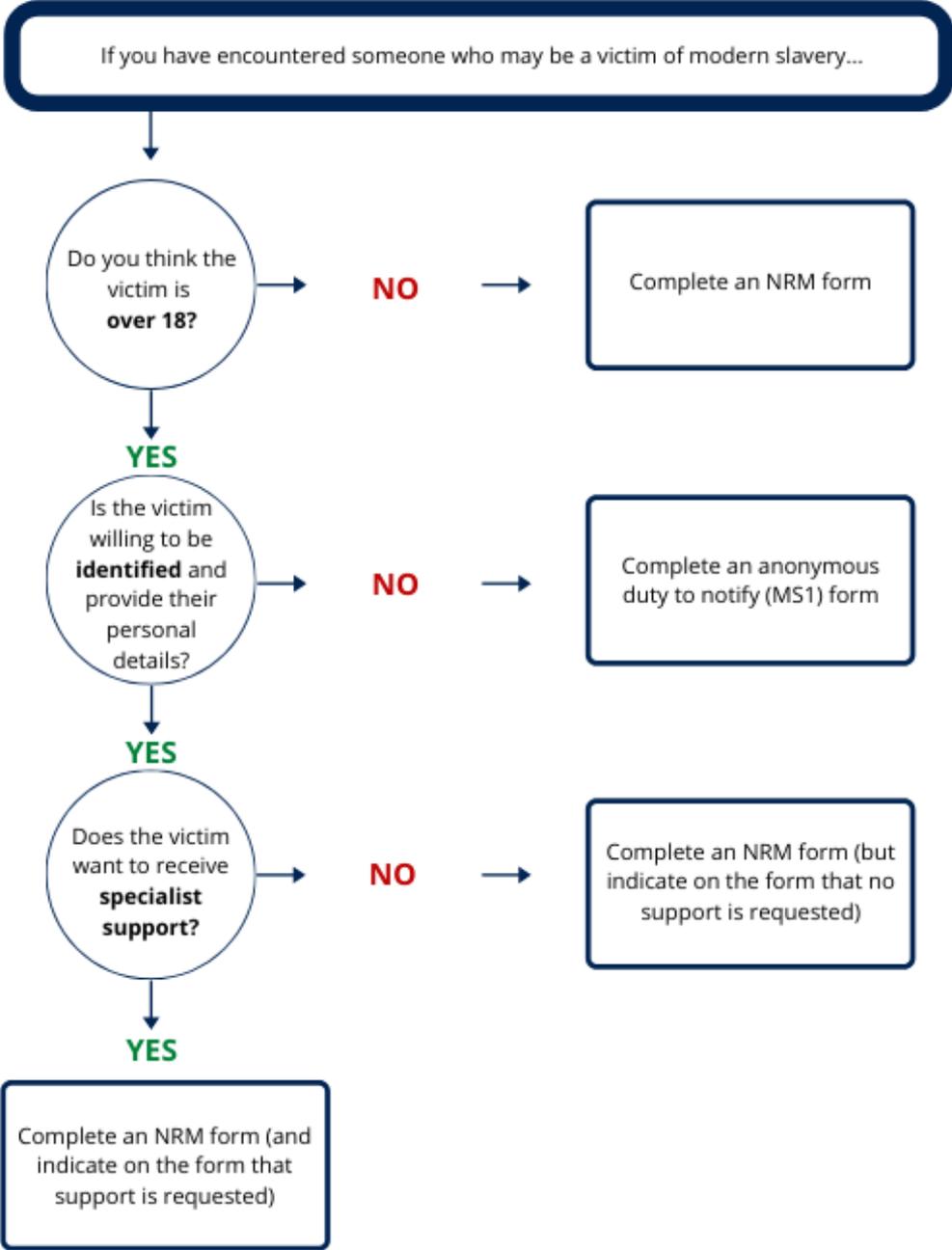


Figure F.1. NVIVO Coding Map

# Appendix G. Example of U.K. Reporting Framework



**Figure G.1. U.K. Human Trafficking Reporting Framework**  
Source: Duty to Notify Fact Sheet, U.K. Government