

A Consultation Paper on Foreign and Resident Employment Recruitment in Ontario

August 2009

A Discussion Paper Presented By:



The Association of Canadian Search, Employment & Staffing Services

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EXECUTIVE SUMMARY

ACSESS supports the government's commitment to ensure that temporary foreign workers including live-in caregivers are protected in Ontario. We fully support the adoption of a new licensing regime for employment agencies, provided that it is meaningful, effective, and addresses the shortcomings of the previous licensing regime. Our association has been working closely with both HRSDC and CIC at the federal level to recommend improvements to the Temporary Foreign Worker Program. Our objective is to set higher standards and accountability in the area of foreign recruitment.

Summary of ACSESS Recommendations in response to Issues Raised in Discussion Paper

Prohibition on fees charged to temporary foreign workers and job seekers

Incorporate a General Fee Prohibition in the *Employment Standards Act*. The fee prohibition must be sufficiently expansive to include all parties involved in recruiting workers for employment in Ontario. Effective enforcement mechanisms are key to ensuring compliance. Prohibited fees must be fully recoverable under the ESA.

No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the ESA.

Prohibition on employer recovery of recruitment costs

As a general principle, employers should be prohibited from recovering from an employee any costs that the employer may have incurred in recruiting the employee. Government **must create exemptions** from the prohibition on recovery of costs in certain situations, for example, if an employee fails to report to work without reasonable cause.

Prohibition on changes to terms and conditions of employment

Temporary Foreign Workers must be afforded specific legislative protection in the form of a prohibition on changes to wages and terms and conditions of employment. A penalty must also be assigned

to temporary foreign worker employers who reduce wages and working conditions provided in an employment contract, agreement, or statutory provision.

New Licensing Regime

ACSESS recommends that government **adopt Employment Agency Licensing** for all types of employment agencies with a specific class and additional legislative protections for Domestic and Agencies eligible to participate in TFW recruitment.

Enforcement - Review the existing enforcement process and penalties with a view to improve appropriateness of penalties, fines and ramifications for breaches or violation of existing statutes. ACSESS would fully support strict enforcement mechanisms.

Inspections – Continue to support and increase the presence of inspectors. Also, provide additional training to inspectors to improve the effectiveness and consistency of inspections and enforcement of existing and new statutes.

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ACSESS

The Association of Canadian Search, Employment & Staffing Services

ACSESS supports the government's commitment to ensure that temporary foreign workers including live-in caregivers are protected in Ontario. We fully support the adoption of a new licensing regime for employment agencies, provided that it is meaningful, effective, and addresses the shortcomings of the previous licensing regime. Our association has been working closely with both HRSDC and CIC at the federal level to recommend improvements to the Temporary Foreign Worker Program. Our objective is to set higher standards and accountability in the area of foreign recruitment. ACSESS has been very successful in improving industry practices and setting higher standards in several areas of our mandate including employment standards and health and safety prevention.

1. An Introduction to ACSESS

ACSESS is the single voice for the employment, recruitment and staffing services industry in Canada. ACSESS promotes Advancement & Growth of the Industry by:

- Providing services to, and communicating with, members of the employment, recruitment and staffing services industry;
- Assuming a leadership role in industry licensing and regulation;
- Coordinating educational programs and conferences, assisting in the development of required standards of professional performance;
- Promoting best business practices, and adherence to both the spirit and letter of all applicable employment legislation and regulations;
- Developing pertinent statistics for the purpose of identifying economic and socio-economic trends.

A primary objective of ACSESS is to actively represent the industry and our membership before governments by providing input on employment legislation and regulations at the national and provincial levels. At the same time, ACSESS assumes a leadership role in ensuring that industry members are aware of legislation and regulatory changes which may affect their businesses and responsibilities as employers.

Professional development and certification are core services delivered through ACSESS. ACSESS provides and administers the [CPC Certification Program](#). Practitioners must meet core requirements which include post-secondary education, length of service in the industry, compliance with the Code of Ethics, complete a series of specialty courses and then successfully complete CPC exams. On successful completion, these professionals may use the designation CPC (Certified Personnel Consultant).

ACSESS promotes regular educational events, including our annual conference, training and seminars, and district programs, which are held across Canada.

ACSESS member companies pledge to uphold the Associations [Code of Ethics & Standards](#). They are committed to an industry which gives clients the ability to respond to business realities and changing technologies; and to giving workers - at all levels - an ever-increasing range of employment opportunities.

2. ACSESS Supports Meaningful and Effective Regulation

The Association of Canadian Search, Employment and Staffing Services has always taken a leadership role in industry licensing and regulation.

The membership of the Canadian staffing industry will support any improvements to existing legislation, improved enforcement or any form of meaningful and effective new legislation or regulations that will:

- Promote the principles of integrity, professionalism and fair practice in dealing with clients, candidates, employees and all regulatory authorities;
- Protect and respect confidentiality of records in accordance with law and good business practices;
- Promote and enhance the effectiveness of all applicable human rights and employment laws and regulations including the abolishment of discriminatory ordering and hiring practices;
- Require any person or company (agent) to have express authorization of representation from a job seeker before the agent may represent their application for employment;
- Require any person or company (agent) to have express authorization of representation from a company or employer before the agent may advertise or make representation on behalf of the employer;
- Require all employers and agents to provide complete and accurate information prior to employment, regarding terms of employment, job descriptions and workplace conditions;
- Restrict any employer or Employer's Agent from making direct or indirect charges of fees to employment candidates or employees unless specified by a license;
- Promote free enterprise and restrict acts of unfair competition;
- Simplify or improve administrative compliance requirements to existing laws;
- Improve enforcement of laws;
- Impose appropriate fines penalties and restrictions upon those who violate existing laws.

3. Backgrounder: History of Employment Agency Licensing in Ontario

Employment agency licensing was originally introduced in Ontario prior to 1968. Over the years, the province made minor administrative amendments to the Act including the requirement for a financial bond in 1990. The Employment Agency Act of Ontario was repealed in its entirety in January, 2001.

The pre-existing Employment Agencies Act was intended to license companies that recruit full time workers of behalf of their clients. “Employment Agencies” provide this service as a middle party between the candidate and the employer. They do not hire or employ the candidates directly and they do not perform any administrative duties associated with pay to the workers. The “Employment Agency” augments a company’s hiring process by assisting their client in researching, discovering, attracting, assessing recommending and representing qualified candidates to their client.

The pre-existing Employment Agency Act was not intended to, nor did it ever apply to temporary staffing services. Temporary staffing services are recognized as the employer of record; they hire a workforce of their own, perform all administrative duties associated with payroll administration, conform to all relevant employment laws and send their workers to perform services at their client worksites.

The pre-existing Employment Agencies Act of Ontario was intended to accomplish the following limited objectives:

- Ensure that Agency owners had character references prior to qualifying for a license;
- Ensure that Agency owners could purchase a \$500 insurance bond (Financial);
- Regulations - Required Agencies to have a bone fide Job Order from a client before advertising a specific employment opportunity;
- Regulations - Required Agencies to have authorization from a candidate before the candidate is represented or presented to a client;
- Regulations through classifications of licenses ensured that candidates are not charged a fee in exchange for a job.

In 1999, over 1,200 Ontario Employment Agency licenses were issued. Licenses were never required by temporary staffing service companies unless they also engaged in the business of Employment Agency Recruitment.

Ineffectiveness of the Previous Employment Agencies Act

During the 30 year history of Ontario Employment Agency Licensing, never was a license revoked for infractions and never was the “Bond” or insurance provision called upon as a result of infractions. The absence of fines and revocations were due to several factors:

- Poorly worded legislation which did not clearly stipulate the specific objectives and violations of the Act;
- Few complaints that fell within the scope of the legislation;
- An inability of the Ontario Government to effectively monitor, investigate and enforce the legislative requirements;
- Difficulty verifying complaints;
- Inadequate provincial government funding.

Why the previous Employment Agencies Act (Licensing) was repealed

In 1999 and in years prior, ACSESS repeatedly expressed concerns to the Ontario Ministry of Labour about the ineffectiveness of the Ontario Employment Agency Licensing system. Unless it could be strengthened and effectively enforced, it was believed that the existence the Employment Agency Licensing Act was more misleading than meaningful. The existence of a government issued license misled individuals in believing that the government had verified that the business was financially viable, acting in accordance with all laws and had met a reasonable standard of conduct. In reality, there were no meaningful standards necessary to acquire or retain a license. Furthermore, the licensing system diminished the ability of credible operators to differentiate themselves from unscrupulous operators. The existence of a licensing system was misleading to both job seekers and employers.

During 1998 and 1999, ACSESS aggressively sought improvements in the Employment Agency Licensing system and also expressed great interest in government approval of a **mandatory Professional Self Regulatory System**. ACSESS has been very effective in dealing with complaints and violations of the industry association Code of Ethics and Standards and could be even more effective if the government would support the notions of mandatory membership, greater authority and increased government interaction with ACSESS concerning licensing and regulation.

4. Licensing and Protection of Foreign Workers - Legislative Protections in Other Provinces

Currently, three Canadian Provinces have adopted legislation aimed at protecting the rights of job seekers, temporary foreign workers, including live-in caregivers. Among other provisions, the respective legislations include a legal fee prohibition.

Alberta – *The Fair Trading Act* and *Employment Agency Licensing Regulation*

In Alberta, Part 10 of the *Fair Trading Act* (the Act) applies to employment-related businesses. The *Designation of Trades and Businesses Regulation* which falls under the *Fair Trading Act* stipulates that any person who is engaged in the activities of securing persons for employment in Alberta, securing employment for persons within Alberta or evaluating or testing persons for employers who are seeking employees where the individual or the position is in Alberta, is an employment agency for the purposes of the regulation.

The Alberta Government has enacted further regulation of employment and recruitment under the *Employment Agency Business Licensing Regulation*. All employment and recruitment-related agencies are required to be licensed, including those located out-of province and abroad, if they assist employers to find employees, help employees to find work in Alberta or evaluate or test potential employees for Alberta employers.

Under section 9(1) of the *Employment Agency Business Licensing Regulation* an employment or recruitment agency is prohibited from directly or indirectly demanding or charging a fee, reward or other compensation to a person seeking employment or information about any employer seeking employees. In addition, no fee, reward or other compensation can be demanded or collected for securing or endeavouring to secure employment for a person, or for providing information to the person about an employer seeking an employee.

Employment and recruitment agencies charge the employer a fee for recruiting the worker or workers. The cost of the service may not be recovered from the employee. Those employment and recruitment agencies that fail to comply with the Act may be subject to administrative action or prosecution that can result in fines of up to \$100,000, a jail term of two years or both.

Currently, section 4(3) of the *Designation of Trades and Businesses Regulation* provides an exemption for the recruitment of “domestic servants.” This exemption will be repealed to ensure that “domestic

servants” receive the same protection offered to other workers. The expected implementation date is September 1, 2009.

British Columbia

In British Columbia, Temporary Foreign Workers are covered under the *Employment Standards Act* (the Act) and *Employment Standards Regulations* (the Regulation). A foreign worker cannot be required to pay any costs incurred by an employer for the use of an employment agency or employment recruiter.

Under section 10(1) of the British Columbia *Employment Standards Act, 1996* “a person must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for:

- (a) employing or obtaining employment for the person seeking employment, or
- (b) providing information about employers seeking employees.

In addition, section 11(1) establishes that “an employment agency must not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone else.”

British Columbia has provided for the licensing of employment agencies under Part 2 of the Regulation. Once licensed, the employment agency must maintain detailed records concerning the employer and each individual directed to the employer, for a period of two years.

Section 15 of the Act establishes provisions for domestic workers including live-in caregivers. Employers are required to provide the Director of Employment Standards Branch with any information required to establish and maintain a register of employees working in private residences.

Domestics are defined under the Act to include any person who is employed and resides at an employer’s private residence to provide services including childcare and are required to be provided with a contract setting out their conditions of work.

Pursuant to section 4 of the Regulation, the Director of Employment Standards Branch may cancel or suspend an employment agency licence for misrepresentations in the application process and for contraventions of the Act and Regulation including operating an employment agency contrary to the best interests of employers and employment seekers.

Manitoba – The Worker Recruitment and Protection Act 2009

In 2009, *The Worker Recruitment and Protection Act* (the Act) came into force and effect in Manitoba to strengthen and expand the protection for foreign workers wanting to live and work in the province.

Under the Act, all persons who engage in foreign worker recruitment and those persons who engage in employment agency business must be licensed. The legislation prohibits an individual who is engaged in foreign worker recruitment from directly or indirectly charging or collecting a fee from a foreign worker for finding or attempting to find employment for him or her.

In accordance with the Act, employers must bear the cost of the recruitment, not the employees. Employers are required to register with the Employment Standards Branch, Business Registration Unit prior to engaging in any recruitment efforts. They are required to provide information about their company, the types of positions they are recruiting, and information about any third parties involved in the recruitment process. Any third party used to recruit must be licensed as a foreign worker recruiter by the Employment Standards Branch. To become licensed to engage in foreign recruitment, under the *Worker Recruitment and Protection Act Regulation* (the Regulation), an individual must satisfy the Director that he or she is a member in good standing of the Law Society of Manitoba a provincial bar, the Chambre des notaires du Québec or the Canadian Society of Immigration Consultants.

The names of all individuals and businesses holding a license are posted on the Employment Standards website. The offence of recruiting without a license is subject to fines from \$25,000 to \$50,000. If a licensed recruiter is found to have been involved in the charging of a fee to a foreign worker, the recruiter will be ordered to repay the fees, will have his or her license revoked and will be fined. If an employer is involved, the employer will be ordered to repay the fees and the recruitment registration will be cancelled.

5) ACSESS Response to Issues Raised in Discussion Paper

A) Prohibition on fees charged to temporary foreign workers and job seekers

ACSESS would fully support the adoption of a general fee prohibition in the *Employment Standards Act*. The fee prohibition must be sufficiently expansive to include all parties involved in recruiting workers for employment in Ontario. Effective enforcement mechanisms are key to ensuring compliance. Prohibited fees must be fully recoverable under the ESA.

No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the ESA.

In early 2008, as part of our mandate to work with government to improve employment legislation, ACSESS formally requested (in a March 24th letter to former Minister of Labour Duguid) an amendment

to the Employment Standards Act to include a General Fee Prohibition. ACSESS member companies pledge to uphold the Association’s Code of Ethics & Standards.

Our Code includes a "fee prohibition" which reads as follows: We will derive income only from clients and make no direct or indirect charges to candidates or employees". In the past, the Ministry, press and media reports have indicated that some employment agencies may be charging fees to individuals seeking employment. It is important to note that the new s.74.8 (1) of the ESA (*Temporary Help Agencies*) does not prohibit employment agencies from charging fees to candidates.

Note section 9 of *Alberta Fair Trading Act* and General Fee Prohibition below.

9(1) No business operator or person may directly or indirectly demand or collect a fee, reward or other compensation (a) from a person who is seeking:

- (i) employment, or
 - (ii) information respecting employers seeking employees,
- or (b) from a person

(i) for securing or endeavoring to secure employment for the person, or (ii) for providing the person with information respecting any employer seeking an employee.

What the Ministry of Labour wants to know:	ACSESS Response:
1) Are there any categories of individuals that should be exempt from any prohibition on fees?	No. The charging of fees should be prohibited for all workers whether the worker is hired under the TFWP or not.
2) Are there any categories of recruiters that should be exempt from any prohibition on fees?	Certain professions, such as Athletic and Artistic Agents, may require exemption to the general prohibition on fees, based on existing legitimate business practices.
3) Should a recruiter be allowed to charge other job seekers for help in finding employment?	No. It is important to note that the new s.74.8 (1) of the ESA (<i>Temporary Help Agencies</i>) does not prohibit employment agencies from charging fees to candidates. The government failed to extend the protection to workers being placed directly with employers.
4) Are there specific ways in which the government could impose a fee prohibition to make it more effective?	The fee prohibition must be general and sufficiently expansive to include all parties involved in recruiting workers for employment in Ontario. Effective enforcement mechanisms are key to ensuring compliance. Prohibited fees must be fully recoverable under the ESA. No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking

	employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the ESA.
5) Would a fee prohibition have an impact on the supply of temporary foreign workers coming to Ontario?	The provinces of Alberta, British Columbia and Manitoba have adopted legislation aimed at protecting the rights of job seekers, temporary foreign workers, including live-in caregivers, using their provincial legislation. Among other provisions, the respective legislations include a legal fee prohibition. Prohibiting fees charged to workers has not negatively impacted the flow of temporary foreign workers.
6) What would be the impact of a fee prohibition on the recruitment industry and Ontario's economy?	A legal fee prohibition will ensure the protection of job seekers and temporary foreign workers and will make it harder for unscrupulous agencies and employers to exploit workers. Our members in the provinces of BC, Alberta and Manitoba fully support the existing legal fee prohibitions, which reinforces our association Code of Ethics and members commitment to uphold the highest levels of professional practices.

B) Scope of Prohibition

What the Ministry of Labour wants to know:	ACCESS Response:
1) What would be the impact of prohibiting all fees charged to temporary foreign workers?	An absolute prohibition should exist against charging fees to temporary foreign workers. Too many cases have been reported where unscrupulous foreign worker recruiters have charged the employees excessive amounts for recruitment and employment services. Prohibiting all fees will serve to protect the interests of temporary foreign workers.
2) Should a recruiter be able to charge fees for other services such as resume writing to temporary foreign workers? Under what conditions?	No. Any placement fees charged for the recruitment and placement of any worker (including TFW) should be assumed by the employer.
3) Should a recruiter be able to charge fees for other services such as resume writing to other job seekers? Under what conditions?	In Alberta, employment agencies may charge a fee for services provided relating to the preparation of a resume, but the agency cannot require a person to purchase these services as a condition of the agency's job placement services. If an agency charges fees for a resume these must be clearly indicated and visible in their business premises and included in their contract with the client.

<p>4) Should the government set limits on or otherwise regulate the fees charged for services such as resume writing?</p>	<p>No. The government should not attempt to presume it has any knowledge, ability, insights or interest in the determination of fee amounts.</p>
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C) Prohibition on Employer Recovery of Recruitment Costs

<p>What the Ministry of Labour wants to know:</p>	<p>ACCESS Response:</p>
<p>1) Should an employer be prohibited from recovering from an employee any costs that the employer may have incurred in recruiting the employee?</p>	<p>As a general principle, employers should be prohibited from recovering from an employee any costs that the employer may have incurred in recruiting the employee. In British Columbia, Temporary Foreign Workers are covered under the <i>Employment Standards Act</i> (the Act) and <i>Employment Standards Regulations</i> (the Regulation). A foreign worker cannot be required to pay any costs incurred by an employer for the use of an employment agency or employment recruiter.</p>
<p>2) Should the government create exemptions from the prohibition on recovery of costs in certain situations, for example, if an employee fails to report to work without reasonable cause?</p>	<p>Yes. Government must create exemptions from the prohibition on recovery of costs in certain situations, for example, if an employee fails to report to work without reasonable cause. Employers must be able to recover legitimate costs from all workers who voluntarily leave their employment shortly after work commences or never report to work. For example, an employer may incur significant costs for bringing a highly skilled temporary foreign worker to work on a project in Ontario, but shortly after arriving in the province may opt to accept a more lucrative position with a competitor. Without the benefit of exemptions, a significant cost and financial hardship will be imposed on employers.</p> <p>The <i>Manitoba Worker and Protection Act</i> enables employers to recover costs of recruiting a foreign worker in certain situations where the worker does not act in any way condoned by the employer or fails to report for work, is deported or does not finish the term of the contract (section 16).</p>
<p>3) What would be the impact on employers of not having an exemption as described in question two?</p>	<p>Without the benefit of specific exemptions, a significant cost and financial hardship will be imposed on employers. Workers will have incentive and opportunity to dishonestly exploit agencies and employers to gain travel expenses, legal expenses, and access to Canada.</p>

<p>4) Should an employer be allowed to recover costs that are allowed under the federal TFWP such as airfare and accommodation?</p>	<p>Yes.</p>
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D) Changes to Terms or Conditions of Employment of Foreign Workers

What the Ministry of Labour wants to know:

<p>What the Ministry of Labour wants to know:</p>	<p>ACCESS Response:</p>
<p>1) Should employers be prohibited from changing the terms and conditions of employment?</p>	<p>Yes. Temporary Foreign Workers must be afforded specific legislative protection in the form of a prohibition on changes to wages and terms and conditions of employment. A penalty must also be assigned to employers who reduce wages and working conditions provided in an employment contract, agreement, or statutory provision. <u>Temporary foreign workers</u> are in the unique position of uprooting their lives and moving to another country to work in the reasonable expectation of receiving wages and working conditions that have been promised. A significant number of <u>temporary foreign workers</u> coming to Ontario have signed employment contracts with their employers, as part of the LMO and work permit application process. The LMO and the employment contract state that the terms and conditions of employment, including the salary or wages that the temporary foreign worker will receive. The wages must be comparable to wages paid to Canadian citizens or permanent resident employees in the same occupation based on various sources. ACCESS fully supports any provincial reinforcement of the federal protections afforded to TFW.</p> <p>There are currently well accepted principles in common law prohibiting unilateral changes in terms and conditions of employment, or misrepresentation. This risk falls on the employer and should be sufficient economic risk to an employer who wishes to change terms.</p> <p>ACCESS fully supports TFW program guidelines for obtaining a LMO. Employers cannot be permitted to modify the terms and conditions of established employment contracts.</p>

<p>2) What would be the impact of such prohibition on employers and employees?</p>	<p>The adoption of specific protections for TFW will serve to reinforce federal efforts to ensure fairness in the recruitment of temporary foreign workers.</p>
<p>3) Are there any circumstances that require exemptions from such a prohibition?</p>	<p>No.</p>

E) Licensing Regime for Recruiters

Employment agency licensing must be meaningful and effective and serve to accomplish specific objectives. Under the former EAA, the existence of a government issued license misled individuals to believe that the government had verified that the business was financially viable, acting in accordance with all laws and had met a reasonable standard of conduct. In reality, there were no meaningful standards necessary to acquire or retain a license. Furthermore, the licensing system diminished the ability of credible operators to differentiate themselves from unscrupulous operators. The existence of a licensing system was misleading to both job seekers and employers.

ACSESS Recommendations – Legislative Framework

General Fee Prohibition – Amendment to the *Employment Standards Act*

The fee prohibition must be sufficiently expansive to include all parties involved in recruiting workers for employment in Ontario. Effective enforcement mechanisms are key to ensuring compliance. Prohibited fees must be fully recoverable under the ESA.

No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the ESA.

The government must incorporate a general fee prohibition in the *Employment Standards Act*. A licensing scheme is not required to prohibit fee charging because all people and businesses in all industries would be prohibited from charging fees.

Proposed Structure of New Employment Agency Licensing Act

Specific Class/Protections for Temporary Foreign Workers	Specific Protections for Domestic Workers	Employment Agency Licensing
<p>ACSESS recommends that the Government of Ontario enhance its current efforts through the introduction of specific provisions aimed at regulating those who recruit and employ temporary foreign workers and live-in caregivers. There must be separate (additional legislative protections) in the form of specific prohibitions for employers of Temporary Foreign Workers. This section of the new Act should include an employer prohibition on the recovery of recruitment costs and changes to terms and conditions of employment for Temporary Foreign Workers.</p>	<p>ACSESS recommends that the new legislation include specific protections for domestic workers.</p> <p>British Columbia has provided for the licensing of employment agencies under Part 2 of the Regulation. Once licensed, the employment agency must maintain detailed records concerning the employer and each individual directed to the employer, for a period of two years.</p> <p>Section 15 of the Act establishes provisions for domestic workers including live-in caregivers. Employers are required to provide the Director of Employment Standards Branch with any information required to establish and maintain a register of employees working in private residences. Domestics are defined under the Act to include any person who is employed and resides at an employer’s private</p>	<p>A separate licensing Act for employment agency licensing must have clearly identifiable objectives. General requirements for employment agencies may include the following:</p> <ul style="list-style-type: none"> • Mandatory ACSESS Membership - Promote the principles of integrity, professionalism and fair practice in dealing with clients, candidates, employees and all regulatory authorities; • Protect and respect confidentiality of records in accordance with law and good business practices; • Proof of Commercial General Liability Insurance; • Obligation to provide 3 character references; • Proof of various registrations (GST, HST, business registration, WSIB Clearance certificate); • Attestation to the veracity of information provided (verify the identity of owners and principals); • Declaration of affiliates, associated companies and associated payrolls; • Surety Bond Requirements; • Require any person or company (agent) to have express authorization of representation from a job seeker before the agent may represent their application for employment; • Require any person or company (agent) to have express authorization of representation from a company or employer before the agent may advertise or make representation on behalf of the employer; • Record Keeping: Require all employers and agents to provide complete and accurate information prior to employment, regarding terms of employment, job descriptions and workplace conditions; • Restrict any employer or Employer’s Agent

residence to provide services including childcare and are required to be provided with a contract setting out their conditions of work.

Pursuant to section 4 of the Regulation, the Director of Employment Standards Branch may cancel or suspend an employment agency licence for misrepresentations in the application process and for contraventions of the Act and Regulation including operating an employment agency contrary to the best interests of employers and employment seekers.

- from making direct or indirect charges of fees to employment candidates or employees unless specified by a license;
- Promote free enterprise and restrict acts of unfair competition;
- Simplify or improve administrative compliance requirements to exiting laws;
- Improve enforcement related mechanisms;
- Impose appropriate fines penalties and restrictions upon those who violate existing laws;

All employment agencies must be required to register with the appropriate Business Registration Unit prior to engaging in any recruitment efforts. All employment agencies should be required to provide information about their company, the types of positions they are recruiting, and information about any third parties involved in the recruitment process.

The names of all businesses holding a license should be posted on the Ministry website. The offence of recruiting without a license should result in significant fines and penalties being imposed. . If a licensed employment agency is found to have been involved in the charging of a fee to a worker, the employment agency will be ordered to repay the fees, will have their license revoked and will be fined.

The Designation of Trades and Businesses Regulation which falls under the *Fair Trading Act* stipulates that any person who is engaged in the activities of securing persons for employment in Alberta, securing employment for persons within Alberta or evaluating or testing persons for employers who are seeking employees where the individual or the position is in Alberta, is an employment agency for the purposes of the regulation.

The Alberta Government has enacted further regulation of employment and recruitment under the *Employment Agency Business Licensing Regulation*. All employment and recruitment-related agencies are required to be licensed,

including those located out-of province and abroad, if they assist employers to find employees, help employees to find work in Alberta or evaluate or test potential employees for Alberta employers.

What the Ministry of Labour wants to know:	ACSESS Response:
<p>1) Should persons who provide recruitment-related services in respect of temporary foreign workers be licensed by the Ontario government? If so, what should be the elements of a potential licensing regime?</p>	<p>Yes. See above discussion <i>ACSESS Recommends that the new legislation include specific protections for Temporary Foreign Workers</i>. Under the new Act, all persons who engage in foreign worker recruitment and those persons who engage in employment agency business must be required to obtain a license. There must be separate (additional legislative protections) in the form of specific prohibitions for employers of Temporary Foreign Workers. This section of the new Act should include an employer prohibition on the recovery of recruitment costs and a prohibition to the changes to terms and conditions of employment.</p> <p>All TFW recruitment firms must be required to register with the appropriate Business Registration Unit prior to engaging in any recruitment efforts. Agencies should be required to provide information about their company, the types of positions they are recruiting, and information about any third parties involved in the recruitment process.</p> <p>The names of all businesses holding a license should be posted on the Ministry website. The offence of recruiting without a license should result in significant fines and penalties being imposed. . If a licensed recruitment firm is found to have been involved in the charging of a fee to a foreign worker, the agency will be ordered to repay the fees, will have his or her license revoked and will be fined.</p> <p>Before any party is licensed to recruit TFW, an irrevocable letter of credit, surety bond or deposit of at least \$25,000 should be provided to the Ministry of Labour. Proceeds of such securities shall be used by the Ministry of Labour to satisfy amounts recoverable under enforcement provisions.</p>

	Licenses should be renewed each year, and employers should register before each application for a Labour Market.
2) Should persons who provide recruitment-related services in respect of other job seekers be licensed? If so, what should be the elements of a potential licensing regime?	See above Discussion entitled <i>Employment Agency Licensing</i> .
3) Should any persons providing recruitment-related services be exempt from holding a license?	No.
4) What would be the impact of a licensing regime on other industries that rely on the recruitment industry?	The recruitment industry currently operates very well in provinces with licensing requirements. In Alberta, British Columbia and Alberta, ACSESS members fully support licensing requirements and must provide a copy of their license as a condition for membership in the association.
5) What would be the impact of a licensing regime on other industries that rely on recruitment agencies?	No significant impact.
6) Are there any actions the government could take to address the potential impact on industry?	See above.
7) What would be the impact of a licensing regime on temporary foreign workers and other job seekers?	<p>The fee prohibition (contained in ESA or appropriate licensing mechanism) would ensure that all parties seeking employment benefit from appropriate legislative protections.</p> <p>TFW must benefit from additional, specific protections – a Prohibition on Recovery of fees and Prohibition on Changes to Terms and Conditions of Employment. Enforcement mechanisms must be strengthened and strict penalties for non compliance imposed.</p>

Summary of Recommendations

- **Incorporate a General Fee Prohibition in the ESA**– ACSESS recommends that the Government of Ontario incorporate a legal fee prohibition in the ESA for all companies in every industry, including all types of agencies and all types of workers.
- **Adopt Employment Agency Licensing** for all types of employment agencies with a specific class and additional legislative requirements and protections in the area of TFW recruitment.
- **Enforcement** - Review the existing enforcement process and penalties with a view to improve appropriateness of penalties, fines and ramifications for breaches or violation of existing statutes. ACSESS would fully support strict enforcement mechanisms.
- **Inspections** – Continue to support and increase the presence of inspectors. Also, provide additional training to inspectors to improve the effectiveness and consistency of inspections and enforcement of existing and new statutes.