

SUBMISSIONS FOR THE CHANGING WORKPLACES REVIEW **September 18, 2015**

INTRODUCTION

The South Asian Legal Clinic of Ontario (SALCO) is a not-for-profit legal aid clinic whose mandate is to provide access to justice to low-income South Asian communities in the Greater Toronto Area. Established in 1999, SALCO is at the forefront of advocacy and law reform in various areas of poverty law including employment law, immigration, human rights, and income security.

SALCO has no shortage of clients who need assistance asserting their employment rights. Although Ontario's *Employment Standards Act, 2000* purports to establish minimum standards for most employees working in the province, in practice it is clear that many are without protection. In SALCO's extensive experience, those left behind are disproportionately comprised of racialized, immigrant, migrant, and non-status/undocumented workers.¹

The Changing Workplaces Review (the "Review") is a crucial opportunity to develop an anti-racist, inclusive and holistic plan of action that supports decent wages and working conditions for Ontario's most vulnerable workers. While there may be some room to negotiate a balance between workers rights and the evolving economy, there are fundamental protections needed for workers that should not be up for debate.

As an ethno-specific legal clinic servicing the South-Asian community (which includes clients from Bangladesh, India, Pakistan, Sri Lanka, the African continent, Indo-Caribbean, and North America), SALCO will focus its submissions on the issues that impact our constituency – racialized workers, who are overrepresented in precarious employment settings.

SEEKING THE RIGHT BALANCE

Ontario's existing regime is not aligned with the reality of contemporary employment relationships. The ESA had more relevance when full-time, permanent, single employer arrangements were prevalent. However, significant structural changes in Ontario's labour market since 2000 has resulted in the rapid growth of precarious work, i.e.: part-time, temporary, and contractual labor that is characterized by low wages, limited job security and no benefits - a trend that shows no signs of slowing down. In the face of such changes, the ESA cannot fulfill the promise to provide a floor of protection for Ontario workers, to the extent that it ever did. Instead, precariously employed workers are routinely denied basic employment rights, finding themselves at the mercy of the ESA's many exemptions, special rules, exclusions, major gaps in regulation, and with little to no recourse

¹In this paper, reference to racialized persons is limited to the experience of non-Indigenous people. While Indigenous communities share many of the experiences under discussion, the particular experience of Indigenous peoples is rooted in their historical claim to first nationhood in Canada and is therefore deserving of separate and special attention. This report also acknowledges that there are distinct challenges faced by persons with disabilities and older adults, but focuses comments broader segment of Ontario's racialized population.

due to poor enforcement mechanisms. As SALCO and several other workers rights advocates observe, much of the ESA is simply inaccessible to those who need it most because of barriers in understanding employee rights, accessing recourse mechanisms (either directly through the Ministry of Labour or outside of it) or fear of consequences for enforcing their rights.

The goal to strike balance between the economic performance of Ontario and fair standards for workers must include explicit recognition of the barriers faced by Ontario's most vulnerable workers. This begins with moving the conversation about 'vulnerable workers' from abstract to concrete terms by asking: (1) Who are the vulnerable workers? (2) Which occupations and sectors create conditions of vulnerability? (3) How can the ESA build in tailored protections for workers who are most prone to exploitation?

(1) Who are the vulnerable workers?

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

The numbers are noteworthy²; in the most recent census period, 2006-2011,

- Racialized persons represented 19.1% (nearly 6,264,800, people), of the total population in Canada,
 - This number is up from the 16.2% reported in 2006. Immigration from non-European countries was (again) cited as the primary reason for the increase;
 - 65.1% of all racialized persons were foreign-born, while 30.9% were born in Canada.
- The share of racialized persons among recent immigrants also grew dramatically in recent decades; in 2011 racialized persons accounted for 78% of all immigrants, up from 76.7% in 2006, 74.8% in 1990, and a significant jump from 12.4% before 1971;
- In Ontario, 3.2 million people identify as racialized - more than half (52.3%) of the total racialized population in Canada. Statistics Canada estimates that by 2031, 1/3 of Canada's population will be comprised of racialized groups.

South Asians represent the largest and fastest growing racialized group in Canada according to the 2006 Census and the 2011 National Household Survey:

- In 2011, 1.6 million people self-identified as South Asian, accounting for one quarter of the racialized population and 4.8% of Canada's total population. The second and third largest racialized groups were Chinese and Blacks respectively. Together the three groups accounted for 61.3% of the racialized population.
- Although the majority of South Asians are immigrants, approximately 30.7% are Canadian-born. Recent figures also indicate that Toronto, Ontario is home to slightly over one-half the total South Asian population (53.2%). By 2031, Statistics Canada estimates 1/4 people in Toronto will be of South Asian background, bringing the city's total South Asian population to an estimated 2.1 million.³

² All statistics in this section are obtained from the following census report unless indicated otherwise: "Immigration and Ethnocultural Diversity in Canada" National Household Survey, 2011, Catalogue no. 99-010-X2011001. Available at www.statscan.gc.ca.

³ Marcus Gee, "South Asian immigrants are transforming Toronto", *The Globe and Mail* (3 July 2011) online: <www.theglobeandmail.com>.

The relationship between the steadily rising flow of - mostly racialized - immigrants and the continued creation of more precarious work warrants close attention. Since SALCO's inception as a permanent legal clinic in 2007 to the present, we have seen:

- An increase in intake (calls for assistance) regarding unpaid wages, overtime pay, and/or termination and severance pay of 56%;
- Approximately 65% of SALCO's clients encountered loss of job (termination) when trying to assert employment rights;
- 37% of SALCO clients with precarious immigration status revealed intersecting employment rights violations;
- 41% of clients who contacted SALCO about ESA violations chose not to pursue their employment rights for fear of reprisal.

As well, these consequences are not restricted to immigrants or "newcomers" but experienced across racial groups who have lived at length in Canada, or were born in the country. Data show that even as racialized groups become demographically more significant in size and in their contributions to the workforce, their experience is fraught with barriers and limitations to their access and mobility in employment.⁴

Despite being well educated, South Asians continue to be overrepresented in semi-skilled and low-skilled occupations, have a higher unemployment rate and generally earn less than the non-racialized population on average. In 2006, 25% of South Asian workers were employed in sales and service occupations and 16% were semi-skilled and manual workers. In total 54% of South Asians worked in semi-skilled and non-skilled occupations compared to 44% of their non-racialized workers. Conversely, only 8% of South Asians worked in managerial occupations and 21% in skilled occupations, while the rates were 10% and 31% respectively for their non-racialized counterparts.⁵

Even from a purely economic standpoint, Canada cannot afford to overlook this reality. As aptly noted by Galabuzi, "[t]he contribution of Canada's racialized groups to Canada's gross domestic product is already disproportionately higher than that of other Canadians, making their economic performance an issue of survival for Canada."⁶

(2) Which occupations and sectors create conditions of vulnerability?

(a) Canada's "Colour Coded" Labour Market

In general, racialized workers are most likely to be employed in insecure, temporary, and low-paying, low-status jobs, as compared to non-racialized workers. This means they are also more likely to face exemptions for minimum wage, overtime, or emergency leave standards.

A report prepared by the Canadian Centre for Policy Alternatives and the Wellesley Institute found that the disparate outcomes between these two segments of Canada's workforce is evidence of a

⁴ Sheila Block and Grace-Edward Galabuzi, "Canada's Colour Coded Labour Market: The gap for racialized workers" *Canadian Centre for Policy Alternatives* (11 March 2011), online: Canadian Centre for Policy Alternatives <www.policyalternatives.ca> [*Colour Coded*].

⁵ Ibid.

⁶ Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars' Press, 2006) at xiii [*Galabuzi*].

“colour code” that is still at work in Canada’s labour market.⁷ To illustrate the point, the authors discuss certain notable trends by occupation and industry. For example, both racialized men and women are overrepresented in traditionally low-paid business services. Available jobs in this industry range from call centers, to security services to janitorial services. Racialized men are also over-represented in Canada’s manufacturing sector; so too are non-racialized men, however, it is important to note that racialized men tend to end up with lower paying processing and manufacturing occupations than their non-racialized counterparts.⁸

(b) South Asians in the Workforce

South Asians represent a sizeable portion of the racialized workforce. In 2006, 699,000 South Asians were in the workforce, representing one quarter of the total racialized workforce, or four percent of the total workforce in Canada. Ontario and British Columbia share the largest majority of South Asian labour force participants at 82%; Toronto and Vancouver alone accounted for 70% of South Asian workers.⁹

Workers who enlist the support of SALCO are often recent immigrants, temporary workers (with precarious immigration status), and undocumented workers who are vulnerable because of their lack of knowledge of employment rights in Ontario and / or their need to work.

Many of them find their first jobs in Canada through a temporary employment agency assignment, and are too often deprived of basic employment rights without a fear of reprisal from the agency or the client company. Employees of these agencies are characteristically paid less than workers hired directly by a traditional employer, subject to erratic scheduling, multiple short periods of employment, and often misclassified as “independent contractors” which allows employers to avoid compliance with the ESA.

SALCO has found in its work that labelling employees as “independent contractors” is a common problem for workers in the trucking and transportation industry. A typical scenario finds people, mostly recently immigrated South Asian males, completing several driving assignments and then refused payment of their wages by the employer. These workers often are not provided with paperwork to support the hours they have worked or any contracts / letters of employment. As a result some companies have outright denied that the person has ever completed any work for them. In the rare case that a worker makes a claim under the ESA, they are routinely denied because they are deemed not to be an ‘employee’ based on the word of the employer. At this stage the options are to appeal, send a demand letter or file a claim in a court. All three of these courses require a level of sophistication and understanding of the legal system, time and financial resources. A person left in dire need of money from unpaid wages realistically cannot afford to pursue any of these options which carry outward and/or hidden costs. The usual result is that the pursuit for wages is dropped and the person moves on to any other employment they can find.

⁷ *Colour Coded*, supra note 4.

⁸ *Colour Coded*, supra note 4 at 10.

⁹ Labour Program, *2006 Employment Equity Data Report: Members of Visible Minorities in Canada*, (Ottawa: Labour Program, 21 August, 2013) [*Employment Equity Data Report, 2006*].

In 2011 1,204,900 South Asians were in the Canadian workforce – still accounting for one-quarter of the total VM workforce, or 4 percent of the total workforce; Same stats for provinces and CMAs.

SALCO recommends that the definitions of an employee and independent contractor be widely defined in order to prevent employers from abusing the labels and allowing workers to have easier access to their rights. SALCO also recommends that employers who employ these tactics as a way to get out of paying wages be penalized in successful cases.

Employer tactics to evade ESA obligations are made possible through the lack of oversight for their actions. In one case, an employer in avoided termination pay by hiring a person for 3 months under his own name, then 3 months under his wife's name. SALCO also meets with several clients who are hired to work for cash, which makes access to rights or recourse even more difficult. Workers agree to these circumstances out of necessity and are left in limbo indefinitely. On the other end, some businesses are thriving because they are able to treat people as disposable, profiting from the loss of workers' confidence and dignity.

Another regular issue seen with SALCO's clients is an employer's refusal to pay overtime, despite the fact that the current overtime rules favour the employer. In Ontario, an employee has to work over 44 hours in a single week to qualify for overtime, but even then the employee may still not be entitled to overtime if the employee has agreed, and the Ministry of Labour has approved, to average hours over a given number weeks. If, for example, the agreement stipulates a three week averaging period, the employee could work as many as 91 hours in a single week without receiving overtime as long as the sum total of hours over the three week period did not exceed 132.¹⁰ This is usually observed with employees who are general labourers and perform shift work. It is our recommendation that the overtime and exemption stipulations be reviewed and regular audits performed of those employers who have overtime agreements.

(c) Migrant Workers

The impact of precarious employment and working conditions is intensely felt by migrant workers in Canada. Migrant workers who are admitted through the "lower-skill" occupation streams of the Temporary Foreign Workers Program (TFW) face added layers of insecurity resulting primarily from their temporary immigration status. This arrangement enforces a climate of fear for employees who may face deportation or reprisals if they speak up against mistreatment in the workplace. This is true even for live-in-caregivers, who live with the perils of temporary employment status for lengthy period of time, which have been made longer with the changes denying universal access to permanent residence after two years. Additional vulnerabilities unique to migrant workers include a lack of information about their rights, subjection to exploitative recruitment fees and practices, and closed permits that tie workers to a one employer. These and other elements of the TFW program that lead to abuse of ESA standards have been well documented in past government inquiries and most recently in a detailed report prepared by the Metcalf foundation.¹¹

Migrant workers are overrepresented in sectors such as caregiving, agriculture, accommodation and food services, construction and tourism. However, as noted by fellow workers' rights advocates, migrant workers face specific realities of unpaid wages, uncompensated overtime hours, and reprisal, and thus require targeted remedies.

¹⁰ Daniel Tucker-Simmons, "Open for Business, Closed for Workers: Employment Standards, the Enforcement Deficit, and Vulnerable Workers in Canada" (2013).

¹¹ Fay Faraday "Profiting from the Precarious: How recruitment practices exploit migrant workers." *Metcalf Foundation* (March 2014), online: Metcalf Foundation <www.metcalffoundation.com>.

As a member of the Migrant Workers Alliance for Change (MWAC), SALCO joins the call for Ontario to enact legal protections that afford basic dignity and access to rights for migrant workers in the province. By 2010, low skilled workers comprised 30% of all migrant workers in Canada, with Ontario importing the largest share. A closer look also reveals that many of these workers are racialized and predominantly from the global south. In 2012, Mexico, Jamaica and the Philippines were the top three source countries for which TFW permits were granted; India ranked 5th, representing just over 2500 of approved permits.¹²

(d) Triple intersecting barriers: race, gender, immigration status

Racialized immigrant women face “triple intersecting barriers and inequalities” based on gender, race and migration/immigration as they search for good jobs and negotiate a balance between their personal life, work, and caregiving.

In a recent study by Dr. Stephanie Premji at McMaster University and others at Access Alliance interviewed 30 racialized immigrant women in Toronto from South Asia (Bangladesh, Nepal, and Pakistan), China and South East Asia (Burma and Philippines). The results revealed that most participants who were university-educated with experience relevant to their field, still had no choice but to settle for jobs that were low-paying, unstable and unrelated to their education / experience. Many of these women, pressed to supplement their income, were also involved in informal income generating activities. Unsurprisingly, their informal work was highly gendered, i.e. usually involving very low-paying (\$5/hour in some cases) babysitting and cooking jobs.¹³

A study by Srabani Maitra of the University of Toronto documented similar results for highly educated South Asian immigrant women in Toronto. It focused on women who, unable to find decent employment, wound up as “home-based entrepreneurs”, i.e. own-account / self-employed workers as technically defined in the ESA. Common services offered by women working from home include sewing, catering or babysitting/daycare; these home based businesses were small, low-income, with no paid employees and arguably leave women in an even more precarious position than self-employed employers.¹⁴

While such part-time or entrepreneurial work may offer some flexibility, the choice is often illusory and many workers end up forfeiting key benefits and protections available to most full-time, permanent employees, like emergency leave or unpaid sick leave protection. The overrepresentation of racialized women in part-time or contract work also means they may not have access to termination pay, severance pay, and ineligibility for employment insurance.

It is also important to recognize the impact of precarious employment and related labour market disadvantages in contributing to women’s vulnerability to intimate partner violence. In research about the prevalence of domestic violence in Toronto’s South Asian communities, South Asian activists and practitioners re-iterate that gender based violence was not a “cultural issue” or limited to patriarchy, but also grounded in the structural and institutional oppressions, such as barriers to decent employment that shape the immigrant experience. Poor socioeconomic circumstances and

¹² Ontario Federation of Labour, “OFL Calls for a Migrant Workers’ Bill of Rights to End Exploitation.” *Ontario Federation of Labour* (16 December 2014), online: <www.ofl.ca>.

¹³ Stephanie Premji et. al., “Precarious work experience of Racialized immigrant Women in Toronto: A Community-Based Study” (2014) 22 *A Canadian Journal of Work and Society* 122 at 129.

¹⁴ Srabani Maitra, *Redefining “Enterprising Selves”: Exploring the “Negotiation” of South Asian Immigrant Women Working as Home-Based Enclave Entrepreneurs* (PhD Thesis, University of Toronto, 2011) [unpublished].

working arrangements (i.e. both partners forced into survival jobs) lead to unprecedented family dynamics and pressures where women bear the brunt of it all: poverty, racism and violence.¹⁵

(3) How can the ESA build in tailored protections for workers who are most prone to exploitation?

Employment Standards legislation in Ontario has a crucial role to play in rectifying the disproportionate degree of hardship that racialized workers endure in the labour market. The challenges faced by racialized workers are not new, but have certainly been made worse by laws that operate to create an ever more precarious, conditional and disposable workforce. The following are specific recommendations based on SALCO's frontline experience that will help to improve the economic security and overall livelihood of Ontario's most vulnerable workers.

(a) Proactive enforcement

The onus to promote and uphold workers' rights should fall squarely with employers. Presently, far too much is expected from workers to protect themselves. This approach ignores the power imbalance inherent to the employer / employee relationship.

The Auditor General of Ontario reported that proactive inspections turn up a violation rate for employees of 40% to 90%¹⁶. In fiscal 2008-2009, 2,135 proactive inspections in Ontario generated 2,883 compliance orders amounting to \$1.9 million dollars in unpaid wages from a pool of 60,000 employees affected by the inspections. Given that so few employees complain while still employed, it is likely that the preponderance of these violations would never have been discovered but for the proactive inspections.¹⁷

It has also been found that a majority of Employment Standards complaints come from after the employee-employer relationship has been terminated, suggesting that employment standards enforcement mechanisms fail to protect people while they are employed.¹⁸

Self-reporting or self-enforcement has been failing employees as "reaction-based complaints processes such as those that dominate the employment standards enforcement regimes across Canada provide remedies for individual complaints, but they cannot resolve systemic non-compliance."¹⁹ The power imbalance between the employer and employee is a significant barrier to self-enforcement; when a racialized person, who as the statistics above show will likely be in a precarious form of employment, is faced with mistreatment in the workplace, the likelihood of their reporting the infraction is minimal. As discussed by Daniel Tucker-Simmons (2013), "[a]pproaching such employers about unpaid wages is a risk for vulnerable employees as they could be reprimanded in covert, difficult to document ways such as losing hours or being assigned difficult tasks. Or they could be laid off altogether. These are risks that vulnerable employees are least likely to be in a position to take." All it takes is one employee to be made an "example" of and others will be dissuaded from following suit.

¹⁵ Purnima George and Mariam Rashidi, "Domestic Violence in South Asian Communities in the GTA: Critical Perspectives of Community Activists and Service Providers" (2014) 1 *The Journal of Critical Anti-Oppressive Social Inquiry* 67 at 74.

¹⁶ Law Commission of Ontario, "Vulnerable Workers and Precarious Work" (2012). Toronto.

¹⁷ Daniel Tucker-Simmons, *supra*.

¹⁸ *Ibid*.

¹⁹ Paul Leonard Gallina, "New Compliance Strategies: 'Hard Law' Approach," (2005). Lennoxville: Human Resources and Skills Development Canada. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550632>

In the instances where a racialized employee is ready to make a complaint, they have to complete numerous forms, gather evidence, interpret legal rules, and may have to engage in mediation /settlement discussions through an Employment Standards Officer. As SALCO has observed, this raises several issues with a majority of racialized employees as there are frequently linguistic barriers and a socio-economic disparity, where employees are tempted to take a settlement offer, which may be unfair, in order to get some fraction of their earnings that they are overdue.

SALCO echoes the call of fellow workers rights advocates to expand proactive investigations for workplace violations and create stiffer / concrete penalties for employers who are not compliant with ESA minimum standards. An “audit” model should replace the current claim-based enforcement model. The practical implications of the 2015 amendment to the ESA requiring employers to conduct a self-audit are untested. However, there are several concerns over this self-audit method. The amendment specifically targets wage violations and only upon receiving written notice by an Employment Standards Officer is an employer required to report on ESA compliance of proper payment of wages. While this is a positive change from the previous law where officers could previously only “request” and not “require” information, it further removes the officer from the more vulnerable employee. It puts the employer in the role of the inspector and raises questions about the accuracy of reports submitted back to the Officer about violations. The employer would become responsible for disclosing self-incriminating evidence to the government, and it is improbable that it would do so.

Permitting randomized spot audits on employers in various industries (i.e. not limited to those employers/industries which are often subject to complaint) without prior warning will assist in deterring employers from non-compliance with the ESA as opposed to the current system of “proactive inspections” which give employers advance notice and focuses on future voluntary compliance.

(b) Improve anti-reprisal protections

While workers are technically protected from reprisals under the ESA, existing standards function more like an empty promise. First, most low-income, racialized, immigrant and migrant workers do not have the knowledge, resources, or support necessary to assert their rights to begin with. Many of the workers that SALCO represents also have linguistic and cultural barriers that impair their ability to exert employment rights.

Second, many express anxiety and fear of speaking out against employers for mistreatment (even when told it is their right), for worry they will lose their job, or in the case of migrant workers, be repatriated. While under the current Employment Standards rules, an employee is not required to contact their employer about their issue if there is fear, for some, the fear arises from witnessing coworkers face the consequences of complaining, while others are discouraged by routine employer violations that go undetected. In all cases workers do not feel confident approaching employers about their workplace rights, which suggests stronger protections are needed.

A comprehensive (including linguistic sensitivity), anonymous and third party complaint program is crucial for workers who are rightfully afraid of approaching their employer in the first place. Presently, workers are not afforded anti-reprisal protections or a right to appeal a decision, if they choose to submit a complaint anonymously. While workers can anonymously report potential violations by calling the general information centre, they are given no indication whether an inspection will be conducted.

The Ministry of Labour should establish a formal anonymous complaint system that initiates inspections once a complaint is filed. As pointed out by the Workers Action Centre, an inspection should aim to detect monetary and non-monetary violations, remedy violations and ensure employers are prepared for future compliance. This system should be complemented with substantial fines against employers found to retaliate against employees for asserting their rights.

(c) Misclassification

As mentioned in this paper, SALCO has encountered several workers who, misclassified as “independent contractors”, were denied access to protections under the ESA. This practice has become commonplace for employers as another cost-cutting and liability shifting strategy that has severe impacts for vulnerable workers who are often unaware of the implications.

To address misclassification, SALCO submits that definitional distinctions should be removed and ESA standards should be extended to all workers. Alternatively, if there is concern among that certain ESA standards may not necessarily benefit independent contractors or self-employed workers, the Ministry of Labour should consider developing a separate set of regulations, in consultation with this group of workers, which afford access to at least some basic employment protections.

(d) Sick leave / Vacation

Job-protected, paid sick days and personal emergency days should be available to every employee. The current rule, which only offers such protection to workplaces with 50 employees or more, impacts vulnerable workers the most. SALCO sees firsthand the hardship endured by non-unionized immigrant workers in small business settings who are forced to worry about losing their job if they need to take time off to care for themselves, young children, and elders they often look after. In addition to ensuring that workers have the right to take time off work when sick, they should also qualify for paid sick leave.

For the low-income, racialized and immigrant workers who seek assistance at SALCO, unpaid time off work is not an option they can afford. A guaranteed number of job-protected, paid days for sick leave would help to ameliorate their existing disadvantaged status.

(e) Termination

The ESA must be revised to require employers to provide employees with documented reason(s), for their termination. Without such a requirement, anti-reprisal protections are meaningless. Employers have been known to intimidate, bully, and terminate workers who attempt to inquire about or assert their employment rights, despite what the ESA states. Requiring employers to provide reasons for termination, along with documented evidence should contribute to deterrence from non-compliance with the ESA and better protect workers from being wrongfully dismissed.

(f) Re-design the Complaints Process

As discussed in this paper, the current self-enforcement approach places an undue burden on employees. Institutionalized forms of racist, gendered, and ableist discrimination should be actively

removed from the complaints process²⁰ and employees should not be required to approach their employers before initiating a complaint. Complaints should be taken over the phone and an interpreter available to those who require it and the option of anonymity offered to the complainant. Further, while mediation is acknowledged to be a tool that helps to ease the backlog of complaints and resolve matters sooner, it is our recommendation that it should play a lesser role in the resolution of claims so that this benefit does not outweigh the importance of the employee receiving fair compensation for hours worked.

(g) Fines and Penalties should be applied more consistently

The data discussed herein demonstrates that employers are not afraid of violating employment standards, likely because the chance of being caught is low and the penalties are not regularly applied. The legislation should require ESOs to apply penalties consistently²¹ along with providing employers with policy direction²² so as to make it unprofitable for employers to violate the law and allow employees to gain some standing in the power imbalance.

(h) Public Legal Education and Outreach

Making a claim under the ESA is a complicated and inaccessible process for most low-income, immigrant workers. Despite the Ministry of Labour's efforts to provide information and other resources online to assist workers, many find the process difficult to navigate. There is little recognition of the language barriers and/or lack of access to a computer in this methodology.

A crucial part of improved public education and outreach must therefore include services to assist employees who want to make a claim; namely, interpretation services for those whom English is a second language and guidance through the process in general.

CONCLUSION

The Employment Standards Act is a crucial platform to implement and protect rights for racialized, immigrant and migrant communities who are already struggling to navigate systems from marginalized and disadvantaged social locations. In asking the question of how the ESA can better protect "vulnerable workers" it is crucial that the special advisors clearly identify who these workers are.

As noted in SALCO's submissions racialized, immigrant and migrant communities are overrepresented in precarious work settings. The statistics are significant, and call into question Ontario and Canada's commitment to fair and equitable treatment for all people. Where work is crucial to livelihood, Ontario's most vulnerable workers need special protections to ensure that they are also given an opportunity to lead full and meaningful lives.

²⁰ Daniel Tucker-Simmons, *supra*.

²¹ *Ibid*.

²² Law Commission of Ontario (2012), *supra*.