

Canada's Temporary Immigration System

By Kristyn Stevens

Report Considered:

Standing Committee on Citizenship and Immigration, [*Temporary Foreign Workers and Non-Status Workers*](#) (May 2009)

“If a person is good enough to work here, a person is good enough to stay here.” This was the sentiment expressed in the recently released Report of the Standing Committee on Citizenship and Immigration, entitled *Temporary Foreign Workers and Non-Status Workers* (40th Parl., 2nd Sess. (May 2009)). Canada's Temporary Foreign Worker's Program was established to meet short-term labour shortages in the Canadian economy. Despite this initial goal, it has actually become more of a long-term solution to labour shortages and for immigrants wishing to make Canada their home. Temporary Foreign Workers (TFWs) remain in Canada for longer than the intended period, but maintain their “temporary status” and the limited rights that go along with that.

Migration for the purposes of employment accounts for a large percentage of foreign migration, generally. Many countries, such as Canada, depend on foreign migrant workers to sustain the running of various sectors of their economies. The relationship between foreign migrant workers and their host countries can be beneficial. The supply of needed labour can help fill an employment void in the host countries, while migrants from less developed countries can find work in host countries and potentially make better lives for themselves and their families. However, in practice in Canada, there are many shortfalls with the temporary foreign workers program that has led to human rights abuses against the workers themselves.

Given the make up of the program, most foreign workers have a great difficulty in qualifying for more permanent residency in Canada. While countries have a right to regulate the influx of populations across their borders, are we prepared to accept a situation in which tens of thousands of foreign migrants are doing the jobs that Canadians do not want while we deny them a permanent status in our country?

In Alberta alone in December 2008, there were 57,843 temporary foreign workers. This was a 55% increase from the previous year, and the numbers have quadrupled over the last five years. There are twice as many temporary foreign workers in Alberta than permanent immigrants, and more than half are “low-skilled” workers. By 2007, the largest source country for Alberta was

the Philippines (Alberta Federation of Labour, [*Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate*](#) (April 2009) at p. 1).

Canada's temporary foreign workers programs are based on provisions set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-2007 (*Regulations*). Section 203, in particular, allows for an officer to accept the application of a foreign national for a work permit, if the Department of Human Resources Development provides an opinion that the offer for employment is genuine and that it will have a positive or neutral impact on the labour market in Canada.

Four main classes of temporary foreign workers have been created in Canada: the Seasonal Agricultural Worker Program (SAWP), the Live-in Caregiver Program (LCP), the new Project for Occupations Requiring Lower Levels of Formal Training (the PORLLFT), and the Temporary Foreign Workers Program (TFWP).

The SAWP is administered through bilateral Memoranda of Understanding (MOUs) between the government of Canada and the governments of Mexico and the Caribbean. Workers under the SAWP have no right to apply for permanent residency based on their Canadian work experience, even if they have accumulated several years of work in Canada. The conditions of employment are set out in the standard employment contracts issued by Human Resources and Development Canada, and include the condition that employers provide housing for employees (for links to the contracts see: HRSDC Canada, "[Temporary Foreign Worker Program: Application Forms and Contracts](#)").

Under the Live-in Caregiver Program, workers come to Canada to care for an employer's children, elderly family members or family members with disabilities. Applicants under this program may apply for a work permit that allows them to work for up to three years. Live-in Caregivers who live in their employer's private residence for at least 2 years of the 3-year period from when they enter Canada have a right to apply for permanent residency (*Regulations* at s. 113).

The PORLLFT is a work program primarily for low-skilled jobs. The maximum length of a permit under this program is 24 months and the permit is attached to a single employer. Similarly to SAWP, workers under PORLLFT do not have the right to apply for permanent residency through their time spent living and working in Canada.

The fourth program - the Temporary Foreign Worker Program (TFWP) - is a more general program than the other three programs. Under the TFWP, an employer who has obtained a positive Labour Market Opinion (as per s. 203 of the *Regulations*) may hire a worker who has obtained a work permit.

While each program varies, there are both similarities in the potential human rights abuses and distinct concerns for each program. Generally, there are five main problems with the temporary foreign workers programs that lead to human rights problems. First, the agreements that restrict

employee accommodations to those provided by employers lead to family separation and a potential for sub-standard living accommodations due to lack of monitoring. Second, permit restrictions that limit a worker to one employer make the worker vulnerable to exploitation and abuse. Workers are less likely to report abuses when they depend on that one employer to stay in Canada, especially given the wait time and difficulty to change employers once in Canada. Third, given the short term of their stay, some workers do not qualify for social benefits even though they are deducted from their wages. For example, although seasonal agricultural workers are technically eligible for Employment Insurance, and have premiums deducted from their wages, given the short duration of their stay and failure to meet the requirement of “eligible for employment” when unemployed, they usually do not qualify for such a benefit (*Fraser v. Canada (Attorney General)*, [2005] O.J. No. 5580). Fourth, recruitment agencies and fees are difficult to regulate outside of Canada. There are many stories of recruitment agencies charging potential immigrants enormous fees to process applications and find jobs, only for the workers to get to Canada and realize it was a scam. Unfortunately it is very difficult for both provincial and federal governments to regulate these agencies outside of Canada, and given the fact that it falls under provincial jurisdiction, there is little (or no) federal legislation or regulation in this area. The final problem with Canada’s foreign temporary workers program generally, is that there is a lack of legislation and monitoring services to catch abusive employers. Further, given the fact that the system is complaint driven and the disincentives discussed above for employees to file complaints, it is very difficult to bring to light the abuses and problems.

Given the rules and procedures of specific temporary foreign worker programs, other problems arise regarding human rights as well. Under the Live-In Caregiver Program, participants may apply for permanent residency if they work 24 months out of 36 consecutive months. While this may seem like a fair way for participants to gain permanent residency, problems can arise given the strict time constraints. Participants are less likely to complain about bad or exploitive employer practices at the risk of being fired and having to find another job within the time period.

Under the Seasonal Agricultural Workers Program, workers are particularly susceptible to exploitation by unscrupulous employers. Under the terms of the MOUs, workers from Mexico are given sealed written evaluations from their employers, which they must deliver to Mexican authorities upon arrival back in Mexico. If workers are given a bad review, it is very difficult for them to come back to Canada to work again, and so they are less likely to complain about bad working or living conditions. Secondly, it is stipulated under the employment contracts that workers may be fired with very little notice for breach of contract such as medical conditions, a refusal to work, or non-compliance. These terms, however, are not defined further and given the vulnerable position of these workers there is little they can do once an employer wants to get rid of them (“Temporary Foreign Workers: Application Forms and Contracts”, *supra*). If workers are fired they will likely be repatriated to their home countries immediately because their status in Canada depends on their employment with that one employer. Both of these characteristics of the program discourage workers from making complaints against abusive or exploitive employers.

The major difficulties faced by Canada's TFWs primarily stem from their temporary status in Canada. A large majority of TFWs are low skilled workers, making it difficult for them to qualify for permanent residency under the points-based immigration system. There are two other programs that workers may apply under - the Canada Experience Class Program (CEC) and the Provincial Nominee Program (PNP). The CEC primarily targets skilled labour and workers can apply under this program based on their work experience in Canada. However, as explained above, workers under SAWP and PORLLFT cannot apply their work experience to permanent residency. Under the PNP, employers may nominate workers. Like the CEC, it targets primarily skilled workers, which excludes most workers under TFW Programs. One province that has made attempts to address this shortcoming is Manitoba, which has opened up its PNP to workers in all skill levels. This has had the result of the majority of foreign workers becoming permanent residents within two years of their arrival in the province (*Entrenching Exploitation, supra* at p. 8).

The *Temporary Foreign Workers and Non-Status Workers* Report highlights many of the human rights issues discussed above and provides recommendations for the Temporary Foreign Worker Programs that would help to alleviate these issues. Some recommendations include making work permits sector specific rather than employer specific, creating better opportunities for permanent residency for workers who come to Canada under a TFW Program, extending the time for Live-in Caregivers to meet their 2 year employment criteria for permanent residency, and frequent unannounced monitoring of jobs sites and worker accommodations.

Despite these positive recommendations, hope for implementation is bleak. The Conservative Party Members of the Committee attached a Supplementary Opinion disagreeing with most of the Recommendations. Generally, they stated at p. 75 of the Report:

We do not support many of the recommendations in this report which we believe would undermine the nature of the temporary foreign worker program, create roles for the government which we do not believe that it would fulfill effectively, hinder the ability of reasonable firms to conduct their business, empower an undefined set of groups, or adversely affect the domestic labour market - particularly in a time of global economic uncertainty.

We normally look to the courts to protect the interests of vulnerable members of our society. However, there has been little case law relating to the human rights interests of TFWs, perhaps highlighting even further their lack of rights and access within Canadian society. A limited number of actions have been brought under s. 15 of the *Charter* but with little success (*Fraser, supra; Voluntad v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 174). The difficulty lies in what enumerated ground TFWs would fall under. National origin is an enumerated ground of discrimination under s. 15 and citizenship was recognized as an analogous ground after the Supreme Court of Canada's decision in *Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R. 143. However, discrimination against TFWs is not necessarily a result of their national origin or citizenship (though the racism they often face may be a result of this), but rather their status as temporary foreign workers. The case law on whether "immigration

status” is an analogous ground is conflicting. The main problem in finding that immigration status is an analogous ground is the fact that it may not be immutable, as required by the test for whether an analogous ground is recognized (*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203; *Fraser, supra* at paras. 74-76; see also *Irshad v. Ontario (Minister of Health)* (2001), 55 O.R. (3d) 43 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 218 (S.C.C.)). Immigration status can change.

Regardless of immigration status, all workers in Canada should be afforded the same rights. Or at the very least, workers should be protected against abuse from employers like that suffered by some TFWs. Recent reports issued by the Parliamentary Committee on Citizenship and Immigration and the Alberta Federation of Labour have highlighted the many stories of foreign workers who are trapped in a system where they work gruelling hours at sub-par pay, receive no medical attention or health care for their ailments, in some cases live in squalid conditions, are at the mercy of unscrupulous employers, and are separated from their families for years. These reports are not meant to paint all employers with the same brush, and certainly there are success stories. But the reality is that abuses are occurring, and there are very few protections within Canada’s Temporary Foreign Worker Program that workers can realistically employ to improve their situations. For a country that prides itself on its protection of minority interests, we seemed to have missed the boat on this one.

**This post is based on a report soon to be issued by the Alberta Civil Liberties Research Centre entitled Temporary Foreign Workers in Alberta: Human Rights Issues, researched and written by Mira Kunes, Denelle Lambert, Subodh Bharati, and Kristyn Stevens.*