

Submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

Review of the Temporary Foreign Worker Program (TFWP)

INTRODUCTION

The BC Federation of Labour (BCFED) represents over 500,000 union members in the province of British Columbia, representing workers in every sector of the economy. The BCFED has been aware of many instances over the years where workers in BC under the Temporary Foreign Worker Program have experienced some form of exploitation by their employer. Simply put, the way the program is currently structured disadvantages workers, makes them vulnerable to abuse, and undermines their basic rights. The BCFED hopes to draw the committee’s attention to some of these challenges throughout this document as illustrations of how the program falls short of protecting workers and their families.

The BCFED is pleased to submit the following to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) with respect to the review of the Temporary Foreign Worker Program.



ADDRESSING EMPLOYER DEPENDENCE ON A TEMPORARY MIGRANT LABOUR FORCE

In 2014 the Temporary Foreign Worker Program was split into two separate program streams: the Temporary Foreign Worker Program (TFWP) which includes mostly low skilled work (including the Seasonal Agricultural Workers Program and the Caregiver program), and the International Mobility Program (IMP) which is made up of mostly higher skilled work in trades, retail management, culinary arts, and film.

The Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP) are both often improperly used in Canada by employers. This culture of over-use and under-enforcement was created by the previous federal government and continues today by virtue of unchallenged practices that are not consistent with original intent of the Temporary Foreign Worker Program.

The TFWP was meant to provide an avenue to address labour shortages created by an absence of Canadian workers with required skills in certain sectors. These were often in areas where unique skills were required, or where truly temporary work engagements were being offered. In most cases, when an employer looked to access the TFWP, the positions they looked to fill had to be advertised and regulated by the Labour Market Impact Assessment (LMIA) process.

The LMIA is a labour market test to ensure that employers seek Canadians or permanent residents to fill positions first, and only if none are available, then provide a mechanism for seeking labour from out of country.

The two-year-term given to each LMIA has become an issue for sectors that change at a rate more rapidly than a two-year cycle. In certain geographical areas in BC workers are looking for work in their sector after finishing a one-year or a six-month project. These workers are then disadvantaged when seeking their next contract, as other potential positions have been filled using the TFWP or the IMP under a LMIA that still has a year or more to complete.

In the construction industry in particular, employers often do not advertise for jobs. Instead they contact a union directly and hire from the union's hiring hall. This means that the system currently in place of checking advertisements for jobs and calculating industry averages for wages based on those advertisements presents an inaccurate view of the work happening at any given time. A more thorough system, taking into account jobs filled through union hiring halls, is needed to correctly analyze the labour market impact of hiring TFW's in these sectors.

With the introduction of the IMP, changes were also made to the requirement for employers to apply for a LMIA, making it even easier for employers to not have to prove that a labour shortage exists in certain sectors. The fact that employers are no longer required to provide proof of labour shortage in high-skill sectors means that unemployed Canadian workers are potentially being left out of decent paying jobs due to those jobs already being filled under the IMP.

In general terms, most IMP workers are high-skilled and most TFWP are low-skilled. Depending on the stream they access, some IMP workers do not require a work permit, or have a non-employer specific or open work permit. In contrast, TFWP workers are limited to an employer specific work permit.

Since 2010, the IMP entries have been outpacing the TFWP entries. By 2015, there were four IMP workers for every one TFWP worker in Canada.

A further difficulty of the TFWP and IMP is the use of "Industry average rates". The requirement of employers to advertise jobs at an industry standard wage is not regulated by province, meaning that jobs are often advertised at a rate ten or fifteen dollars below what the workers are being paid for the same work in the geographical area. The lower posted wage rate acts as a disincentive for existing workers to apply, leading to a false perception of a labour shortage in the area.

THE ISSUE WITH EMPLOYER-SPECIFIC WORK PERMITS

All workers granted permits under the TFWP are tied to one employer. These employer-specific work permits mean that workers who are not treated properly by their employers cannot leave, and if they do, they risk their legal status in the country.

There have been multiple cases in which the BCFED has helped workers struggling under an unscrupulous employer taking advantage of the weak rules governing the program. These cases include workers not being paid their full wages as stated in the LMIA; workers being forced to work more hours or days than what is cited in the LMIA; workers not being paid overtime and /or vacation pay. There have also been very disturbing reports of employers who have abused workers, physically and sexually.

In a recent example, TFWP workers employed in Fort McMurray in restaurants, hotels, and as caregivers were among the evacuees from the recent wildfire that swept through the city. These workers showed up in their work uniforms in shelters, many of them lost (or were forced to leave behind) any documentation they had and had little to no savings to draw from. Faced with possible return home due to circumstances not in their control, the TFWs in Fort McMurray are still waiting for immigration officials to decide whether they can stay or will have to leave Canada. Had their work permits been sector specific rather than employer specific, they would have the chance to seek the same type of work with another employer and remain here in Canada if they chose.

The very structure of the TFWP creates a high degree of precarity for migrant workers, often leaving them fearful and compliant. Among the most vulnerable in the TFWP are lower skilled workers who often have limited options to seek permanent residency, may have language barriers, work in isolation and may even be in debt bondage to recruiters.

CUMULATIVE DURATION (FOUR-IN, FOUR-OUT RULE)

The Cumulative Duration Regulation of the TFWP - or the “four-in, four-out rule” - was enacted April 1, 2011. Under this rule, a low-skill TFWP worker can work in Canada up to a maximum of four years, but then must be outside the country or not working in the country for the next four years before qualifying to work in Canada again. The four-year total of a TFWP worker includes volunteer or unpaid work. Currently, the Seasonal Agricultural Workers Program (SAWP) is the only stream of the TFWP that is exempt from this regulation.

Upon implementation of the first deadline for the “four-in, four-out rule” on April 1, 2015, thousands of TFWs were forced to leave the country. The problematic regulation meant a change in the culture of the TFW program, creating a second elite tier of migrant worker and effectively barring low skilled TFWs from gaining a true pathway to citizenship.

CAREGIVER PROGRAM

The Caregiver Program (formerly the Live-in Caregiver Program) was changed significantly in 2014, dividing the program in two distinct sections: caregiving for children and caregiving for people with high medical needs.

The Caregiver Program no longer requires migrant caregivers to live in the home of their employer – an important step toward removing the risk of abuse. However, because many migrant caregivers work in isolation, they are often subjected to conditions of work that violate labour and employment standards.

Many caregivers are interested in the caregiver program because it offers a pathway to permanent residency. In 2014, the caregiver program placed a limit on the number of caregivers who are able to apply for permanent residency each year. Previously there was no limit on the number of applications. Under the new cap 2,750 caregivers for children and 2,750 caregivers for those with high medical needs are able to make an application for permanent residency each year. Caregivers are still required to work full-time for two years before achieving eligibility. With the added complication of the “four-in, four-out” rule, the limit on permanent residency applications each year makes it more difficult for many caregivers to build a life in Canada.


SEASONAL AGRICULTURAL WORKER PROGRAM (SAWP)

Migrant workers who are employed under the Seasonal Agricultural Worker Program are often subject to sub-standard living conditions that are provided by the employer. We have heard far too many stories of migrant farm workers who are subject to human rights abuses, denied of medical care, experience egregious occupational health and safety hazards and suffer abusive treatment at the hands of their employers.

The SAWP is based on mutual agreement between the Canadian government and the twelve countries that participate in the program (these include Mexico and 11 Caribbean countries). Under this program, the government of the country providing the worker specifically names each migrant worker that they will send each season to work on farms in Canada. This protocol drastically reduces the ability for migrant workers to speak out about the abuses they face while on Canadian soil. The government needs to put a system in place to protect these workers that involves regular and random site visits to ensure employers are following regulations.

The agricultural industry is one of the highest risk industries in Canada with respect to workplace health and safety. SAWP program workers are especially vulnerable in this regard as they are susceptible to being sent home and/or blacklisted if they report a health and safety hazard or if they apply for workers' compensation.

Another major issue is that migrant workers under the SAWP do not have rights to EI benefits, even though they pay EI premiums. The migrant workers under the SAWP are not entitled to regular and special Employment Insurance (EI) benefits.



The structure of the SAWP prohibits migrant farm workers from claiming EI benefits under the Employment Insurance Act, subsection 18 (1) (a) which reads:

“A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day, the claimant was (a) Capable of and available for work and unable to obtain suitable employment”

The rules of the SAWP indicate that a migrant worker can work in Canada each year for a maximum of eight months, and further state that after a period of eight months, the worker has until the 15th of December to return to their country of origin. When migrant farm workers are no longer physically in Canada they cannot claim EI, making them ineligible for the EI program they have paid into.

Further, at the end of 2012 changes to the EI regulations subsection 55.01(3) disqualified SAWP workers from EI special benefits entitlements by requiring a valid Social Insurance Number – this is an item that workers are unable to produce if not on Canadian soil.

RECRUITERS (LABOUR BROKERS)

There is an underground market of recruiters both in Canada and internationally who exploit hopeful TFWP applicants by charging them very high fees, often upwards of a thousand dollars, in order to apply on their behalf. These recruiters create two problems: 1.) They often charge TFWs far more than what they can afford for their services, forcing them to take out loans from lenders that further exploit their situation, and 2.) They often do not accurately portray the nature of the work, details about the employer, or the number of jobs available in Canada.

Under the rules of the TFWP, an employer who chooses to use a paid recruiter is supposed to be responsible for paying the recruitment fees, but often the TFW ends up paying the fee, as they are not aware of this rule.

There have been efforts on the part of federal and provincial governments to discourage the exploitation of TFWs by agencies, but there are still loopholes that exist that agencies and recruiters take advantage of.

CONCLUSION:

The BCFED will continue to work with the CLC, affiliates, human rights and community groups to demand full rights for migrant workers.

In order to truly protect workers in Canada under the TFWP, the federal government needs to issue open work permits with permanent residency so that workers can choose whether or not to build a life in Canada.

The BC Federation of Labour thanks the committee for the opportunity to provide input on the review of the Temporary Foreign Worker Program. We hope that the committee sees fit to implement the recommendations contained within this submission.

IRENE LANZINGER

President, BC Federation of Labour




SUMMARY OF RECOMMENDATIONS

WITH RESPECT TO ALL MIGRANT WORKERS UNDER THE TFWP AND THE IMP

1. The BCFED supports the demand of the Coalition for Migrant Worker Rights Canada's (CMWRC) call for permanent residency upon arrival for all migrant workers if they choose to make use of it. This is a crucial aspect that addresses many of the concerns with the TFW program, including some of the recommendations that are to follow.
2. Return to a robust federal immigration regime that increases annual immigration numbers, including the creation of rights to permanent residency for all lower-skill migrant workers including those in the Seasonal Agricultural Worker Program (SAWP) and the Caregiver Program (formerly the Live-in Caregiver Program).
3. Provide tools to enhance employers' recruitment of Canadians and permanent residents, including the under-represented workers such as immigrants, persons living with disabilities, Indigenous Peoples, racialized individuals, women, LGBT and youth.
4. Provide greater protections for migrant workers through enhanced monitoring and stronger enforcement of employer compliance in particular by substantially increasing on-site inspections without warrants.
5. Increase inspection officers and the Employer Compliance Review process to ensure strict enforcement of employers' compliance with the conditions set out in Section 209 of the Immigration and Refugee Protection Regulations, including good employment record keeping. Alternatively, implement a mandatory compliance reporting process that is reviewed prior to the issuances of further work permits.

WITH RESPECT TO LOW-SKILL TEMPORARY FOREIGN WORKERS

6. Transition towards eliminating employers' access to temporary migrant workers on tied work permits in the NOC C and NOC D categories of the TFWP, excluding the SAWP and the Caregiver Program.
7. Replace the employer-specific work permits with open work permits - in conjunction with rights to permanent residency - for lower-wage TFWP workers, including SAWP workers and migrant caregivers.
8. Repeal the cumulative duration or the "four-in, four-out" regulation.

- 
9. Remove the caps on the number of applications for permanent residency for both the caregivers for children and caregivers for people with high medical needs.
 10. Qualify SAWP workers to receive EI special benefit entitlements by repealing EI regulations subsection 55.01(3).
 11. Provide greater protections for migrant workers through enhanced monitoring and stronger enforcement of employer compliance in particular by substantially increasing on-site inspections without warrants.
 12. The BCFED supports the call of the Canadian Labour Congress (CLC) urging that strict new eligibility requirements be put in place for employers seeking temporary work permits, including more robust economic needs tests.
 13. The BCFED encourages Employment and Social Development Canada (ESDC) to collaborate with the Canadian Labour Congress (CLC) and the government to enhance labour market data collection that is timely and regional for responsive evidence-informed implementation of the TFWP. The BCFED recommends that this be done for both high skilled and low skill TFWs.
 14. Maintain and gather data on all of the TFWs employed at all time within their province or territory and make that information easily accessible to the public. This should be done for both high-skilled and low TFWs.
 15. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
 16. Ratify the International Labour Organization's Convention 189 for Decent Work for Domestic Workers.

WITH RESPECT TO HIGH-SKILL TEMPORARY FOREIGN WORKERS, AND INTERNATIONAL MOBILITY PROGRAM POSITIONS

17. Work with employers to provide training and skills upgrading to Canadians and permanent residents. Participation of employers in sponsoring apprentices, and making a commitment to twenty-five percent apprentice positions on projects in skilled trades should be a requirement prior to gaining access to TFWs.
18. Seek out First Nations, local, Canadian, US, and then outside of the US and Canada for skilled trades.
19. Implement a policy that requires any employer who makes an application to hire a TFW to consult with the specific union that performs the work. This will ensure Canadians are given the first priority for job opportunities.

20. Implement clear and expanded requirements for employers to advertise locally and across Canada on the Government of Canada's Job Bank, as well as provincial or territorial counterpart, before hiring TFW's and provide definitive evidence that the period of work for the LMIA is warranted.
21. Implement new regulations that require TFWs to possess the same qualifications required of Canadian workers, such as the Red Seal Standard.
22. Commit that the Labour Market Impact Assessment (LMIA) exemption under the BC Annex of April 2015 will not be accepted or applied.
23. Do not use the provincial median wage rate. The prevailing wage rate used for LMIA's needs to be the "Craft" (Building Trade) package, which would include wage, holiday pay and benefits for industrial work. There should be no government discretion to add other terms of employment to reach or exceed these rates.
24. Work with the Employment and Social Development Canada and Statistics Canada, as well as the CLC to set up a program to collect adequate data on the demand for trades in specific geographic locations in order to properly monitor and enforce the TFWP.
25. Create policy that ensures employers who employ TFWs cannot lay off pre-existing Canadian workers who do substantially the same work as TFWs in the workplace.



#200 - 5118 Joyce Street
Vancouver, BC
Canada, V5R 4H1
604.430.1421
bcfed@bcfed.ca

The British Columbia Federation of Labour represents over 500,000 members working in every corner of the province, and in every sector of the economy.

The BCFED has a long and proud history of fighting for the rights of all working people.

The goals of the BCFED are best exemplified by its slogan:
"What we desire for ourselves, we wish for all."

www.bcfed.ca