BUILDING A DISPOSABLE WORKFORCE THROUGH TEMPORARY MIGRATION POLICY

ABSTRACT

This article outlines how federal policies under the Conservative government have supported a tremendous increase in temporary workers and left them subject to significant abuse and exploitation in the workplace. Meanwhile unions and migrant rights advocates have had to step in, as have some employers, developing innovative practices designed to address policy shortcomings. The dramatic rise in the numbers of temporary workers is in contrast with a decline in permanent resident migration. This ideological policy shift has serious implications for the labour force and social cohesion.

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For many countries, importing temporary labour remains a big show. How big? About 2.5 million temporary workers entered OECD countries in 2006 (OECD 2008). That is roughly three times the number of workers who entered on a permanent basis.

The influx of temporary migrant workers to Canada versus the number acquiring permanent residency has followed this global pattern for the last decade. However, the number of temporary workers has increased dramatically since the Conservative government came to power in 2006.

Early on in the government's first term in office, Monte Solberg, then Minister for Human Resources and Social Development (HRSDC), made it clear that if employers needed labour in particular regions of the country, he would accommodate them by making changes to Canada's four-decade-old Temporary Foreign Worker Program (TFWP).[1]

Initially this included establishing lists of specific occupations deemed to be short in supply of interested or adequately skilled workers. Tagged as "Occupations under Pressure" (OUP) lists, the measure omitted defining what actually constituted an occupation that was under pressure… other than an employer saying they could not find anyone. Once an occupation was placed on the OUP list, employers could take advantage of faster access to the TFWP.

Previously, employers were obligated to advertise domestically for at least 6 weeks, but with the introduction of the OUP lists, employers' needed only claim they had advertised for 7 days. No measures were introduced to ensure that such advertising had indeed taken place.

HRSDC also created a step-by-step guide to "employer-friendly language," explaining how to hire temporary migrant workers.

In addition, federal funds were allocated to establish pilot offices in British Colombia and Alberta, with dedicated staff to help "fast-track" employer applications for temporary workers. This pilot was dubbed the Expedited Labour Market Opinion pilot (ELMO); when coupled with the OUP lists, the program provided a pair of comic acronyms, and employers saw 85% of their applications positively processed within just 3-5 days.

In 2006, the Conservative government declared its intention "to create the best educated, most skilled, and most *flexible* workforce in the world." Temporary workers are an important piece of the federal conservative government's efforts to create this "flexible" workforce. In their 2007 budget, close to $150 million were provided over five years to federal departments having responsibilities related to the TFWP, with an additional $35.5 million annually thereafter. The allocation was designed to improve the processing of employer applications for temporary workers, reduce delays and respond effectively to regional labour shortages. Close to 80% of this funding went to HRSDC, to service employer requests for temporary workers (OAG 2009).

The 2007 Conservative Budget gave all Canadian employers the ability to access temporary foreign workers "for any legally recognized occupation from any country" (Finance 2007). No longer are OUP lists required; employers can now access the TFWP for 30,000 job titles that cover over 500 occupational groupings. In essence, any job in the Canadian labour force is open to temporary workers.

Table 1
Foreign workers present on December 1st by top ten source countries, 1999-2008

Source countries	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Philippines	6,002	6,388	8,268	10,785	12,504	15,307	17,687	21,566	33,882	45,006
United States	20,267	21,354	21,041	20,205	21,012	21,943	23,658	25,278	26,779	28,754
Mexico	8,120	9,995	11,172	11,606	11,641	11,950	13,306	15,185	18,154	22,579
United Kingdom	5,720	6,526	7,031	7,041	7,482	9,433	10,713	11,138	12,623	14,530
Australia	4,031	4,577	5,441	6,254	6,897	8,269	8,606	9,063	9,842	13,222
France	2,888	3,368	3,778	4,033	4,400	5,968	7,481	9,085	10,023	11,788
India	1,536	1,879	1,898	2,174	2,689	3,710	5,087	6,344	8,671	11,114
Japan	7,155	6,568	6,493	7,828	8,281	8,608	8,841	8,428	7,871	9,316
China, People's Republic of	1,213	1,338	1,588	1,824	1,950	2,427	3,080	4,206	6,632	8,534
Germany	1,658	1,993	2,267	2,068	2,257	3,119	3,639	5,430	6,908	8,239
All Countries	**82,111**	**89,793**	**96,525**	**101,259**	**109,860**	**125,367**	**141,032**	**161,295**	**199,942**	**251,235**

Source: <www.cic.gc.ca/english/resources/statistics/facts2008/temporary/04.asp>.

None of the federal level administrative changes put in place between 2006 and 2009 provide comprehensive nor strong compliance, monitoring or enforcement mechanisms that protect these workers' safety or protection from exploitation. The program is quite simply an employer-driven vehicle, serviced by the Canadian government.

Before the global economic crisis swept across Canada in the fall of 2008, employers were rushing to take advantage of the TFWP. Table 1 illustrates how popular it had become.

According to Citizenship and Immigration Canada's data, the number of temporary foreign workers in Canada in 1999 was just over 80,000. In 2005, the number of temporary workers was slightly more than 140,000, and in the ensuing years, with the Conservative government, this number climbed to over 250,000 in 2008.

It is worth noting that the government's collection of data on temporary workers is contentious. Government numbers are sometimes different from other credible sources or categories where temporary workers are employed are unknown.[2] For example, in November 2009, Canada's Auditor General Sheila Fraser released a critical report of the TFWP. According to the Auditor General, Canada allowed almost 370,000 temporary foreign workers to fill a short-term need for labour in 2008 (OAG 2009: 7).

The Auditor General's report made clear that decisions in the Canadian immigration system are increasingly being shifted to provinces and Canadian employers without any follow-up to address fraud and abuse. She took direct aim at the TFWP, which brings in an increasing number of often low-skilled workers for jobs ranging from oil sands labourers to construction workers on Olympics facilities and live-in caregivers. Ms. Fraser said little is being done to catch the abuse occurring on all sides of the program. Workers are particularly vulnerable, she said, given that they often don't speak English, and owe their status in Canada to their employer (*Globe and Mail* 2009).

Fraser's report to Parliament made it clear that Ottawa is bringing in big changes with little understanding of the potential consequences these changes might have.

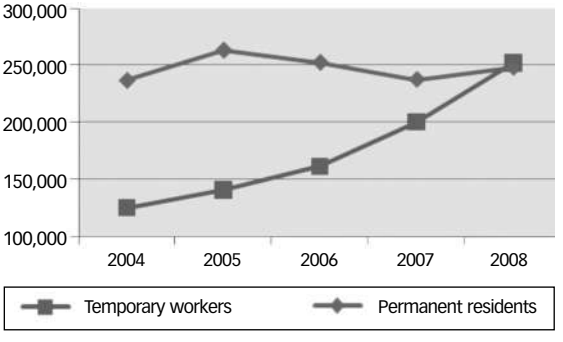
In just a few years, Canada's immigration policy had shifted, increasingly promoting temporary rather than permanent migration. According to CIC data, for December 2008, Canada was host to 251,235 temporary foreign workers, compared to 242,243 individuals who had been granted permanent residency status (CIC 2008a, CIC 2008b), as illustrated in Figure 1.

In addition, the increasing number of temporary workers is outstripping the number of skilled workers in Canada (Figure 1). This shift in Canada's immigration policy, favouring temporary over permanent migration, is linked to a United Nations High Level Dialogue on International Migration and Development that took place in the fall of 2006. A group called the International Organization on Migration (IOM) presented a well-received set of proposals to attending UN Member States, advocating for greater integration of labour markets globally and for state policies designed to enhance labour flexibility (CLC Analysis).

By the end of 2007, many OECD member countries like France, Hungary, Romania, the U.K., Canada, Finland, Japan, Norway, Poland and Portugal had taken heed and introduced either substantial changes or new initiatives to their immigration policies, to correspond with this shift.

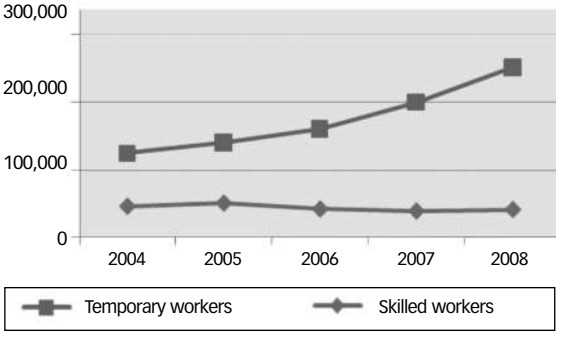
The most recent ten-year Outlook for the Canadian Labour Market report prepared by HRSDC offers an interesting perspective. That report stated, "No widespread labour shortages are expected to emerge over the next ten years" (HRSDC 2006).

Figure 1
Comparison of new permanent residents and temporary workers, 2004-2008



Source: *Facts and Figures 2008*, Citizenship and Immigration Canada.

Figure 2
Comparison of temporary workers (as of December 1st) and skilled workers (principal applicants), 2004-2008



Source: *Facts and Figures 2008* Citizenship and Immigration Canada.

Although some shortages of skilled workers at a detailed occupational level are expected, the authors forecast neither a generalized problem nor a shortage of lower-skilled workers, despite the pending retirement of baby-boomers. Furthermore, the report anticipates the entry of highly educated young Canadians and permanent immigrants entering the workforce to be more than sufficient to meet our needs for highly skilled workers.

The report also notes that in recent years, "the strong rise in demand within high-skilled occupations has been adequately met by a rising supply of qualified workers." The report states, "real wages by broad skill level relative to the economy-wide average have been fairly constant since 1997 [suggesting] the absence of significant imbalances between the skills demanded by employers and the availability of qualified labour" (*Ibid.*: 4).

The report also found some increase in the unemployment rate of university-educated workers compared to those with lower qualifications, and some slippage in their relative earnings in recent years. "An increasing proportion of individuals with postsecondary education can be found in low-skilled occupations….The proportion of university-educated individuals in low-skilled occupations [rose] from 12% in 1990 to about 17% in 2005, providing some evidence that there may be an over-supply of university graduates" (*Ibid.*: 27).

The labour movement has been steadily questioning the integrity of Canada's TFWP, including the manner in which tight labour markets are determined. As pointed out, the method for identifying an "occupation under pressure" and accessing temporary workers has been lenient. More rigorous methods do exist. For example, the U.S. Bureau of Labor Statistics uses a three-part methodology to determine whether an occupational sector is under pressure. Their approach looks at employment growth, the unemployment rate, and wage growth factors. To be truly considered an occupation under pressure, occupation-specific employment growth must be at least 50% greater than average; the unemployment rate must be at or near historically low levels, and wage growth must be at least 30% greater than average.

Most economists would find this a reasonable methodology to help assess validity of labour shortages, but such an approach is not used by Canada's TFWP.

The defects in the program subject temporary workers to risk of death, injury, exploitation and abuse, and the domestic labour force experiences negative labour market distortions.

Here are a few examples:

- In 2007 in Alberta, two temporary workers from China were killed on the job when a tank they were working on collapsed. Four other temporary labourers were injured. After nearly two years and just 3 days shy of the deadline, 53 distinct charges were laid against the employer, including several counts of failing to ensure the health and safety of the workers. During the investigation, Alberta Employment and Immigration also determined that 132 Chinese temporary foreign workers were not paid from April to July 2007 (Christian, n.d.).
- In the summer of 2006, the B.C. Labour Relations Board heard complaints that approximately 40 construction workers were brought to Canada by an international employer under the TFWP and FTA exemptions with offers of employment that were never honoured. The workers from South and Latin America had their visas confiscated by their employers upon entering Canada, and were paid as little as $5/hr, while wages for a similarly qualified construction worker were in the range $25/hour. Canadian construction unions provided the temporary workers support to challenge their situation, and pointed out the employer's claim that importing specialized temporary construction workers was dubious.[3] The employer responded by intimidating and attempting to coerce the temporary workers to accept their fate or return home. The case went to the B.C. Human Rights Tribunal, and in December 2008 a ruling was issued confirming the presence of systemic of wage discrimination (BCHRT 2008). The employer is appealing the ruling and Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism is on public record for inappropriately impugning the ruling (CLC Correspondence 2008).
- In September 2006, Park Place Seniors Living Ltd, a long-term care home in Kelowna, operated with approximately 70 long-serving unionized workers who provided care services for its residents. The home subcontracted its human resources management to a private labour contractor – AdvoCare Health Services Ltd. AdvoCare told the aide workers they would be offering a drastically reduced wage and benefits package, well below the regional average being paid to aide workers. Refusal to accept meant a layoff. The company then claimed there was a shortage of care aides and successfully submitted an application to hire temporary foreign workers. The company recruited its new workers from India, the Philippines, Colombia and South Korea. This is a clear case of a company pleading on a Wednesday they have a "shortage of workers" when on the Monday beforehand, they had dismissed an experienced pool of skilled and qualified employees unwilling to accept dramatically lower wages and benefits (Flecker 2008).

- Cases are regularly filed with the CLC of employers posting job notices for positions like chambermaids, and maintenance staff with the tacit – and at times explicit – understanding from the employer that posting the job ad is merely an administrative requirement necessary to secure temporary workers. There is no intention to hire from the unemployed and available domestic workforce (CLC Human rights files).
- The Alberta Federation of Labour documented over 100 cases and fielded over 700 other allegations of workplace abuses and exploitation involving labour brokers in a short 6-month period (AFL 2007). Alberta's own Employment standards department reported that 60% of restaurant and hospitality employers with temporary workers were found to be contravening the Employment Standards Code.[4] These reports illustrate how fundamentally flawed and exploitive the TFWP is, in reality.
- The B.C. Building and Construction Trades Council, the BC Government and Employees Union, the Canadian Labour Congress, the United Food and Commercial Workers, faith groups, the Quebec Human Rights Tribunal, and numerous advocacy groups supporting temporary workers, to name just a few, have also documented numerous cases of employer fraud, human trafficking violations, workplace abuses, labour brokers and employer exploitation, as well as workplace injuries and fatalities associated with this program (*Ibid.*)[5]

The labour movement recognizes the demographic imperative to build our labour force via migration, and more importantly advocates that immigration policy must meaningfully provide temporary workers with the same rights and protections as it does the domestic workforce. As the campaign adage puts it – "good enough to work here, good enough for citizenship." It is the labour movement and migrant rights advocates who are advancing positive measures to support temporary workers.

For example, United Food and Commercial Workers Union has for decades established temporary worker centres that provide agricultural workers with first-language services, skills training, and advocate for better wage and working conditions. Locals such as UFCW 1118, representing workers in a meat-packing plant in Red Deer, Alberta, negotiated with their employer to provide workplace ESL training, housing, transportation and community integration supports, as well as a pathway to permanent residency status via collective agreement negotiations – despite layoffs of domestic workers in the sector (*Briarpatch* 2007).

In Nova Scotia, the International Brotherhood of Electrical Workers (IBEW) secured clauses in their collective agreements to ensure that temporary workers in their locals are sponsored by the employer to obtain permanent residency status.[6]

United Steel Workers, working with Migrante Ontario, established the first Independent Homeworkers Association for the mostly female temporary workers who arrive under the Live-in Caregiver's stream of the TFWP. The association provides subsidized access to dental care and financial and telecom services that help connect these women workers with their families back home (USW). This alliance between USW, Migrante Ontario and the Association advocates for changes to be brought to our immigration policy and to the TFWP, which discriminates against these women workers.

The Canadian Labour Congress has established a national network of advocates that researches and documents abuses related to the TFWP, and lobbies for sweeping reforms to a program that is, at its heart, exploitative, discriminatory and anti-worker.[7]

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Against the backdrop of a globally deteriorating economy, devastating job prospects for domestic workers, and a ramped-up TFWP that has shunned the introduction of any meaningful compliance, monitoring and enforcement mechanisms, one would think policy-makers would heed labour and migrant rights advocates' calls to apply the brakes to this program. However, this government remains disinterested in developing comprehensive policy changes that can truly protect temporary workers.

Although the Conservative government announced plans to introduce regulatory changes to the TFWP in October 2009, their changes fall far short of expectations, and offer few remedies to the numerous and well-known flaws of the program. The CLC provided a detailed critique of the proposed changes, which can be viewed at <www.canadianlabour.org>.

The shortcomings are numerous and include:

- failure to adopt measures that take responsibility for the explosive growth and subsequent exploitation and abuse many temporary workers face under the TFWP;
- failure to fulfill the duty of fairness to temporary workers;
- favouring employers while penalizing newcomers;
- enabling a systemic and gender-specific discriminatory impact for some temporary workers seeking permanent residency status;
- failure to reflect meaningful evaluations, recommendations or audits of the TFWP;

- failure to present a rigorous benefits and costs methodology or accurate estimate of the number of temporary workers at risk;
- failure to candidly portray the inputs received by labour as part of the "engagement strategy."

In addition, the proposed regulatory amendments do little to provide meaningful protections for vulnerable temporary workers who are already in Canada.

The amendments fall short of establishing a national regulatory framework enabling provinces and territories to deliver effective compliance, monitoring and enforcement mechanisms consistent with their jurisdictional labour standards. They do not put in place the comprehensive regulatory measures that are needed to ensure that employers are comprehensively recruiting and retaining unemployed and underemployed workers from the domestic labour force. Finally, they fail to ensure that employers are seeking temporary workers to fill legitimate and proven temporary labour/skills shortages.

Much is wrong with the TFWP, including the fact that at its core, it is an exploitative, employer-centric initiative. As many countries have pointed out, there is nothing more permanent than a temporary foreign worker program – changing this maxim must be the objective of progressive policy-makers in Canada.

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Notes

[1] For additional information, see the Association of Canadian Studies ' Spring 2006 issue of *Canadian Issues / Thèmes canadiens*.

[2] TFW numbers by province, and NOC for 2008, for example, include significant totals of migrant workers employed in unknown sectors. For example, 2008 data tables for Ontario included nearly 11,000 migrant workers in "unstated job sectors" out of nearly 60,000 migrant workers in the province.

[3] Correspondence with BC & Yukon Building Trade Council research staff. "The workers were not NOC A and B. They were labourers. The employer filled out the applications and put down bogus titles like 'Supervisor of Segment Transport Beam. 'That meant the worker operated a conveyor belt, it was a job that anyone could learn in two hours according to testimony at the BCHRT. The locomotive operator was similarly 'Supervisor of Rail Train. 'There was an interview at the Canadian consulate to approve the incorporate transfer applications, but the Canadian official didn't verify the claims about the specialized skills the workers had (by asking for certifications, letters of experience, precise questions about what the job entailed)."

4 CLC submission to Citizenship and Immigration Canada on changes to Immigration and Refugee Regulations, December 2009.

5 See also *Briarpatch Magazine*, Manufacturing 'The World's Most Flexible Workforce' *The Harper Government's Double-doubling of the Foreign Worker Program*, November 2007; www.canadianlabour.ca/en/Migrant_workers; <www.migrants.ca; www.kairoscanada.org/e/refugees/migrants/index. asp>.

6 Letter of Understanding between FA Tucker and IBEW Local 1928, October 2007.

7 See CLC response to regulatory changes to IRPA as it affects TFWs.