RESTRICTIONS ON RIGHTS AND FREEDOMS OF LOW-SKILLED TEMPORARY FOREIGN WORKERS

Policy Alternatives Deserving Consideration

ABSTRACT

A portion of the temporary foreign workers admitted for work in low-skilled occupations in Canada are subjected to major restrictions to Charter-based rights and freedoms. This administrative condition has been associated by researchers, community groups, etc. to systemic human and labour rights abuses, which points to the fact that a specific combination of alternatives policies should be given serious consideration by policy-makers.

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Temporary foreign workers and restrictions on rights and freedoms

Some workers admitted under temporary work authorizations to work in a low-skilled occupation in Canada are subjected to a unique combination of obligations: they are not allowed to seek employment elsewhere, must live on-site in housing that is provided by the employer, and are not allowed to apply for permanent resident status (CIC 2008a). These restrictions may all be applicable if workers, depending on the program that brings them in to Canada, are admitted under one of the five followings categories: LS-1, domestic worker of a representative or employee of a foreign government; LS-2, low-skilled worker employed by a foreign company; LS-5, Mexican or Caribbean worker under the Seasonal Agricultural Worker Program (SAWP); LS-6, worker under the Live-in Caregiver Program (LCP); or LS-7, worker in other low-skilled occupations (see Table 1). These workers can therefore be considered under "servile status" according to the terms of the 1957 *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Depatie-Pelletier 2008a).

Temporary work programs and Charter-based rights and freedoms

These administrative restrictions constitute obstacles to exercising rights and freedoms considered to be fundamental for all residents under the *Canadian Charter of Rights and Freedoms*. Specifically, these are namely the rights to *liberty and security of the person* (Arat-Koc and Villasin 1990, Bals 1998, Basok 1999, Langevine and Belleau 2000, Alternatives 2001, etc.), to *freedom of association* (UFCW 2002-2007, NSI 2005, Kairos et al. 2006, etc.), and to *equal protection and benefit of the law without discrimination based on sex* (Macklin 1992, Bakan and Stasiulis 1997, Stasiulis and Bakan 2002, NAPWC 2008, etc.) *and/or national origin* (Satzewich 1989, Ng 1992, Cohen 1994, Schecter 1998, Sharma 2006, Depatie-Pelletier 2008a, etc.).

Increasingly documented human and labour rights abuses

Since 2002, preference for the admission of foreign workers within the Canadian labour market has increasingly been given to temporary work authorization (see Figure 1).

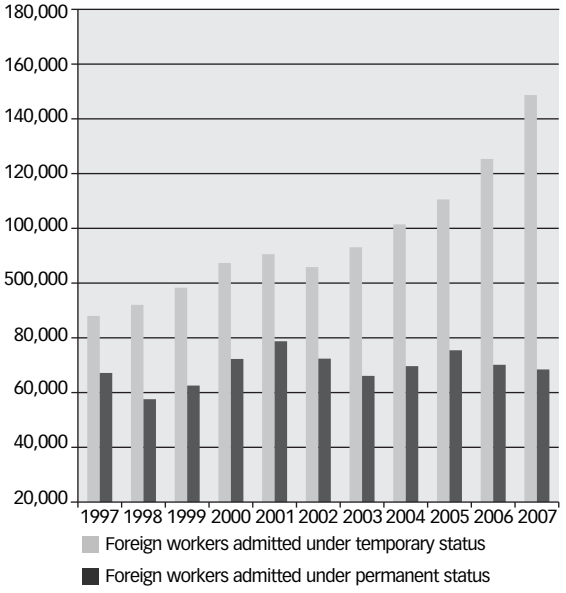
The Canadian labour force being more educated and organized then ever, and foreign workers without professional skills being virtually ineligible for admission in Canada under permanent status since 1996 (Beach et al. 2005), the number of foreign workers with no specific skills (under the open work permit) admitted annually in the Canadian labour market has been on the rise since 2002. Human Resources and Social Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC) have furthermore successfully simplified, publicized and prioritized procedures for hiring foreigners under the three main temporary work schemes for "low-skilled" occupations associated with the imposition of a "servile status" (CIC 2007a/2008a, HRSDC 2007/2008) (see Figure 2).

Table 1
Restrictions on rights and freedoms, by category of foreign workers holding valid temporary work authorizations as of December 1, 2006

	Workers admitted without validation of the job offer by HRSDC (see CIC 2008a)						Workers admitted under a work permit tied to a specific HRSDC pre-authorized employer			
	Authorized by law to work without permit			Open work permit		Quasi-open work permit				
	(S-1) Selection of skilled workers	If working for a foreign employer		(LS-3) Workers admitted with no specific skills	(LS-4) Selection of temporary residents	(S-2) Selection of skilled workers	(S-4) Other skilled workers	If working for a Canadian employer		
		(LS-1) Domestic workers	(LS-2) Other low-skilled workers					(LS-5) SAWP	(LS-6) LCP	(LS-7) Other low-skilled
Thousands of workers in Canada	Not included in official statistics			34	155	41		37		
Prohibited to change employer		X	X				X	X	X	X
Forced to live in employer accommodations		X	X[a]				X[a]	X	X	X[a]
Unable to change status freely		X	X[b]	X[b]	[c]			X	X	X[b]
No access to work/study permits for spouse and children		X	X	X	X[c]			X	X	X

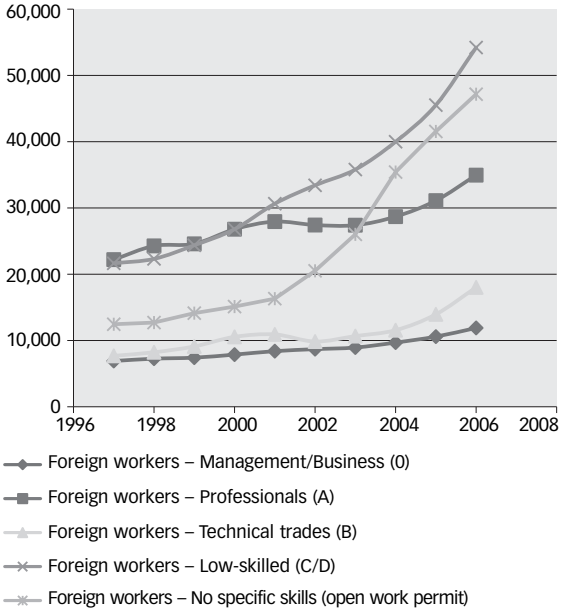
[a] If included by the employer within the initial work contract.
[b] Exceptions apply to workers in Quebec who have skills that are valued under the immigration grid.
[c] Exceptions apply to Study Permit holders.
Source: CIC 2008a and Depatie-Pelletier 2007, 2008a, 2008b.

Figure 1
Annual admissions of foreign workers registered in Canada



Source: *Facts and Figures 2007*, Citizenship and Immigration Canada.

Figure 2
Admissions in Canada of foreign workers under temporary work permit, by skill level (1997-2006)



Source: *Facts and Figures 2007*, Citizenship and Immigration Canada.

The rise in workers under restrictive work permit has resulted not only in easier access to "legally captive" labour for Canadian employers – including Canadian families with no access to public care services for children and elderly (Darenzer 1993, Stasiulis and Bakan 2002, Sharma 2006, Laliberté 2007, etc.), but also in an increase of documented abuses of foreign workers' human rights by employers and placement agencies (J4MW 2003, Oxman-Martinez, Hanley and Cheung 2004, Pinay 2006, Amnistie Internationale/SCF 2007, Osmani 2008, etc.) and their labour rights (UFCW 2005-2007, CLC 2007, AFL 2007, etc.). In this context, it would be safe to conclude that current administrative restrictions can no longer be considered to be *demonstrably*

justified in a free and democratic society – as required for administrative restrictions on fundamental rights to be constitutional in Canada.

Towards the protection of migrant workers rights: A multi-level policy

If the human rights of all (im)migrant workers under temporary status are to be protected in Canada, a multi-level reform needs to be implemented by the federal and provincial governments. In particular, the following alternative policies should simultaneously be given serious consideration: 1) work permits valid for *all* employers authorized to hire foreign workers in a specific occupation, economic sector or province; 2) removal of *any* legal obligation to live with one's employer; 3) hiring authorizations only for provincial sectors where workers are allowed to bargain collectively are fully covered by health and safety legislation, and have their employer fully co-responsible in case of abuse by a placement agency; 4) access to work/study permit for spouse/children of *any* worker admitted under temporary work authorization and the right for them to leave Canada temporarily at any time during the work permit's validity period; 5) access to government-funded community integration programs for newcomers, and not only contribution but also full access to provincial public programs and employment insurance (EI); and, finally, 6) autonomous access, upon arrival if admitted for work in a specific sector (such as domestic work or the agro-food industry) affected by recurring, permanent or increasing labour shortages, otherwise *anytime* after a maximum of 24 months of work experience in Canada (Kairos and al. 2006, UFCW 2007, (I)MWR and al. 2007, AFL 2007, CLC 2007, AAFQ 2008, etc.).

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