FOREIGN WORKER RECRUITMENT AND PROTECTION

The Role of Manitoba's *Worker Recruitment and Protection Act*

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Immigration has become one of the major policy responses for population and labour force growth in Manitoba. In the third quarter of 2008, for example, Manitoba's population was estimated at 1,212,000 people, with the increase in growth attributed mainly to international immigration (Manitoba Bureau of Statistics 2008). From 2000 to 2008, Manitoba received a total of 68,036 immigrants. This record-high immigration level is significant beyond Manitoba. Nationally, Manitoba's 2008 immigration of 11,221 newcomers represented 4.6% of Canada's total immigration. This contrasts with the mid- to late 1990s when Manitoba received less than 2% of immigrants to Canada (see Table 1).

In addition to permanent residents, temporary residents are becoming a significant component of Manitoba's immigration and population mix as temporary foreign workers (TFWs) and students are eligible to apply for permanent residence through the Manitoba Provincial Nominee Program (MPNP) after having worked for six months or graduated from a post-secondary education program in Manitoba. For example, in 2007, Manitoba received 4,288 temporary residents compared to 3,626 in 2006, representing an increase of 7.8%.

The hiring of TFWs in particular has become quite significant as employers are increasingly using this option to address labour and skill needs. The increased flow of TFWs to the province, however, has also heightened the need to protect them from unscrupulous recruiters and employers. Manitoba policy priority is to strengthen ethical and planned recruitment initiatives of TFWs and through *Worker Recruitment and Protection Act*.[1] This article provides an overview of this legislation and how it seeks to assist in the recruitment and protection of foreign workers in Manitoba.

Policy and program context

Manitoba's immigration policy is rooted in the Manitoba government's Action Strategy for Economic Growth (Action Strategy). The Action Strategy established *Growing Through Immigration* as one of seven growth pillars for the province, and set a target of receiving 10,000 immigrants in 2006. This target was achieved and has subsequently been renewed to 20,000 newcomers annually by 2016. The Action Strategy also emphasizes enhanced settlement services and English as an Additional Language training programs, effective labour market integration strategies, and the importance of welcoming communities.[2]

Manitoba's most dynamic tool in its immigration program is the Manitoba Provincial Nominee Program. Established in 1998 through the Canada-Manitoba Immigration Agreement (CMIA), it defines the respective roles of the province and Canada.[3] Manitoba selects and nominates skilled worker applicants with the strongest potential to settle permanently and successfully in the province. Applicants must demonstrate strong connections to the province through employment, education, family and friends.[4] Manitoba also has the authority to design and deliver its own settlement programs to meet the changing needs of immigrants and refugees coming to the province.

As shown in Figure 1, the MPNP has been Manitoba's main tool for immigration, accounting for more than half of the province's annual total immigration since 2004. Provincial nominees accounted for 33% of Manitoba's overall immigration in 2002 and their numbers more than doubled by 2008, reaching 71%. Nationally, Manitoba received more 35% of all provincial nominees in 2008.

Going forward, Manitoba will continue to work in partnership with key stakeholders to increase immigration to the province to 20,000 annual arrivals by 2016, continue implementation of the province's dynamic settlement and welcoming communities' initiatives, improve recognition of international qualifications, expand regionalization efforts outside of Winnipeg, and enhance the recruitment and protection of foreign workers. The following sections of this article concentrate on Manitoba's innovative approach to enhance the recruitment and protection of foreign workers to the province through the *Worker Recruitment and Protection Act*.

Table 1
Manitoba immigration levels, 1999-2008

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Economic class	1,906	2,615	2,331	2,689	4,072	5,000	5,725	7,375	8,330	8,699
Family class	1,025	952	1,097	949	1,119	1,116	1,192	1,332	1,343	1,404
Refugees	771	1,017	1,160	983	1,235	1,252	1,094	1,241	1,170	972
Other	-	-	-	-	66	59	86	103	112	146
Manitoba – Total (% of Canada)	3,702 (1.9)	4,584 (2.0)	4,588 (1.8)	4,621 (2.0)	6,492 (2.9)	7,427 (3.1)	8,097 (3.0)	10,051 (4.0)	10,955 (4.6)	11,221 (4.5)
Canada – Total	**189,835**	**227,346**	**250,484**	**229,091**	**221,352**	**235,824**	**262,236**	**251,649**	**236,758**	**247,243**

Source: Citizenship and Immigration Canada (prepared by Manitoba Labour and Immigration).

Manitoba's temporary foreign worker flows

Over the past decade, TFW flows to Manitoba have continued to increase as a result of employers' need for off-shore workers. In 2008, TFW flows to Manitoba increased to 4,192 from 3,926 in 2007, representing an increase of 6.8%.

TFWs come to Manitoba through the federal government's Temporary Foreign Worker Program (TFWP), which is jointly managed by the departments of Human Resources and Skills Development Canada (HRSDC) Service Canada and Citizenship and Immigration Canada (CIC). Eligible foreign workers can work in Canada for an authorized period of time if employers can demonstrate that they are unable to find suitable Canadians or permanent residents to fill the jobs and that the entry of these workers will not have a negative impact on the Canadian labour market. Some of the factors considered before Service Canada issues a Labour Market Opinion include:

- The occupation in which the foreign worker will be employed;
- The wage and working conditions offered;
- The employer's advertisement and recruitment efforts;
- The labour market benefits related to the entry of the foreign worker; and
- Consultations, if any, with the appropriate union.[5]

The *Worker Recruitment and Protection Act* provides a framework for a positive, sustainable recruitment process that will provide businesses with access to reliable skilled temporary foreign labour as well as respond to issues of temporary foreign worker vulnerability.

Measures to address worker vulnerability

To maximize the economic and social benefits of TFW flows to the province, Manitoba has developed approaches to facilitate their retention. As noted before, TFWs can apply to the MPNP after working for six months and if they have a full-time job offer from their employer. While offering pathways to permanent immigration is one factor in a sustainable immigration strategy, Manitoba also recognizes that TFW movements are enhanced by offering greater protections to ensure their experiences in the province are positive.

As TFW movements increase in Manitoba, as well as across Canada, situations highlighting their vulnerability have been increasingly publicized by the media. Some of these situations include (Alberta Federation of Labour 2007, Standing Committee on Citizenship and Immigration 2009):

- Exorbitant fees being charged to TFWs for employment placement;
- Contract requirements not being upheld;
- Immigration status being used to coerce TFWs;
- Inaccurate information regarding the Provincial Nominee Program and eligibility for permanent status; and
- Inaccurate information regarding labour and workplace safety and health legislation.

These scenarios have made increasingly clear the importance of expanding labour legislation and, more importantly, of protecting all workers under this legislation.

To address these challenges, Manitoba passed the *Worker Recruitment and Protection Act* in April 2009 to regulate foreign worker recruitment activities, place the provincial government at the front-end of foreign worker recruitment and reaffirm the Province's commitment to ensuring that workers are not charged for finding employment.

Prior to the *Worker Recruitment and Protection Act*, the *Employment Services Act* had governed the activities of third-party placement agencies in Manitoba. The *Employment Services Act*, however, had not been reviewed or amended since 1987 and pre-dated the increase in numbers of talent, acting and modeling agencies recruiting women and children, the growth of the human trafficking industry, and the significant increase in off-shore recruitment activities by third-party representatives. Based on consultations with employers and other affected parties, Manitoba modernized the *Employment Services Act* to reflect the dramatic changes that have taken place in the worker recruitment business.

The *Worker Recruitment and Protection Act*: An overview

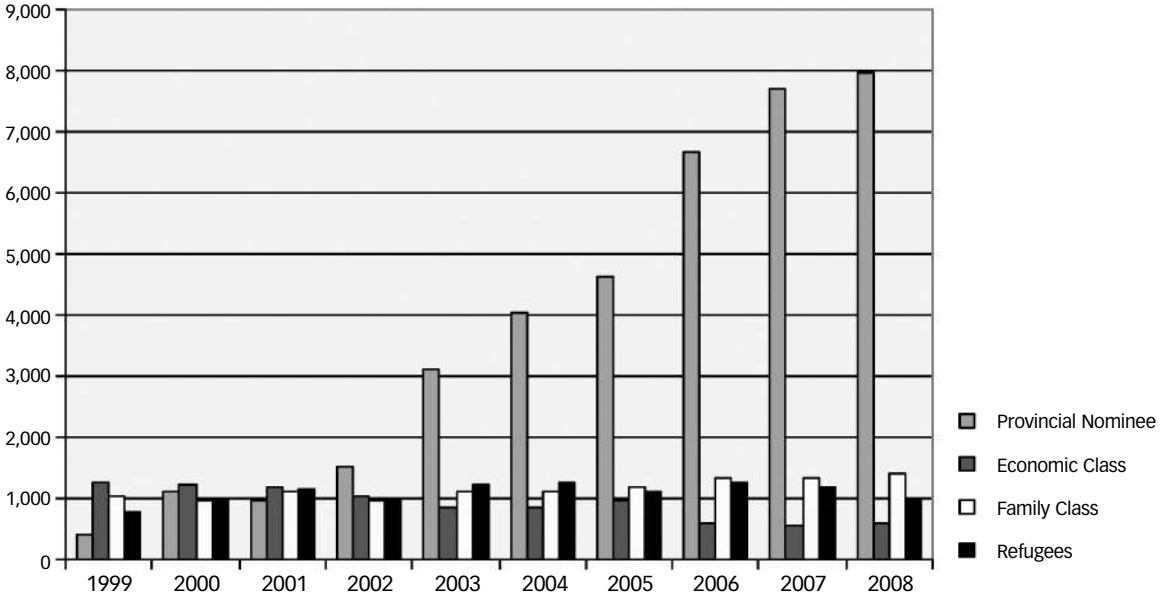
The *Worker Recruitment and Protection Act* (WRAPA) provides a framework for a positive and sustainable recruitment process that will provide businesses with access to reliable skilled temporary foreign labour and will respond to issues of TFW vulnerability.

The WRAPA expands employment standards coverage to encompass the protection of foreign workers from unscrupulous recruiters and employers. Under the WRAPA, all employers are required to register with the Province before the recruitment of foreign workers begins. The registration would ensure that employers are using a licensed recruiter and have a good history of compliance with labour legislation. Additionally, recruiters must be licensed and are prohibited from charging workers, directly or indirectly, any fee whatsoever for recruitment.

The objectives of the WRAPA are:

- To modernize the existing employment services legislation and clarify the fundamental concept that employers, not workers, are responsible for the costs of recruitment.
  - Improve the enforcement mechanisms to ensure a level playing field for employers who use employment agencies for their recruitment activities.
- To establish a clear role for the Province at the initial stages of the foreign worker recruitment process to ensure a simplified and sustainable process to meet the needs of both employers and foreign workers.
  - Employers bringing foreign workers to Manitoba will be required to register with the Province through a single-window access point for TFW and permanent immigrant recruitment.
  - To obtain a registration certificate, employers must have a good compliance history with provincial employment standards and with workplace safety and health requirements.
  - Employers contracting with a foreign worker recruiter must provide the name of the licensed recruiter as part of the registration process.
- To regulate the activities of recruiters of foreign workers.
  - Individuals and agencies recruiting foreign workers are required to hold a licence. To obtain a licence, a recruiter of foreign workers must be a member of the Canadian Society of Immigration Consultants or a law society of Canada and provide a $10,000 irrevocable letter of credit.
  - Any recruiter who is regulated through international agreements entered into with the Province of Manitoba would be exempt from the licensing requirements.
  - Recruiters of foreign workers will be prohibited from charging workers fees for recruitment. Canadian recruiters will be held liable for any fee or charge made to a foreign worker by the recruiter or anyone with whom the recruiter subcontracts.
- To expand compliance measures to protect workers from non-compliant employers and unscrupulous and unregulated employment agencies.
  - Manitoba's Employment Standards Division will have the authority to refuse or revoke a licence, to investigate, and to recover money, on behalf of the worker, from employers and recruiters who attempt to charge employees the costs of recruitment.

Figure 1
Manitoba immigration levels, 1999-2008



Source: Citizenship and Immigration Canada (prepared by Manitoba Labour and Immigration).

Table 2
Manitoba temporary foreign worker flows, 1998-2008

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Winnipeg	1,997	1,881	1,771	1,420	1,240	1,302	1,400	1,761	2,150	2,009
Other Manitoba	797	896	884	871	663	853	1,020	1,237	1,776	2,183
Total	**2,794**	**2,777**	**2,655**	**2,291**	**1,903**	**2,155**	**2,420**	**2,998**	**3,926**	**4,192**

Source: Citizenship and Immigration Canada (prepared by Manitoba Labour and Immigration).

– To protect foreign workers from changes to the promised job conditions, the terms of employment that were agreed upon as part of the foreign worker being allowed to enter Canada will become the minimum standard and enforced by the Employment Standards Division.

– If a foreign worker does not fulfill his or her contract and terminates employment without cause, the employer will be allowed to recover the costs of recruitment on a pro-rated basis.

Information exchange related to temporary foreign workers

While Manitoba anticipates that the WRAPA will address the problems encountered by TFWs following the introduction of necessary provisions related to licensing, registration and enforcement, one of the significant challenges the regulatory framework does not address is the lack of information Manitoba currently receives related to TFWs' movements into the province. To address this issue, Manitoba and Canada, in April 2008, announced the development of an agreement, through a Letter of Understanding (LOU), to exchange information and strengthen protections for TFWs. Under the terms of the LOU, where a direct link and purpose can be demonstrated to Manitoba's legislation, Canada and Manitoba will exchange information.

This information exchange regarding TFWs is critical to Manitoba's ability to provide protections to this vulnerable group of workers through the monitoring and enforcement of employment standards, workplace safety and health, construction industry wages and current employment services legislation. It will also aid Manitoba in undertaking education and awareness campaigns about labour and workplace safety, health rights and responsibilities for temporary residents and their employers.

In addition, Manitoba will be better able to assess applications from TFWs for the MPNP and to provide information to TFWs and their employers so that options for permanent residence are made clear. Manitoba will also provide information to Human Resources and Skills Development Canada about those employers and employment agencies that violate provincial laws for the purposes of accepting or rejecting an employer's Labour Market Opinion application.

Conclusion

TFWs are vulnerable to exploitation from third-party recruiters and placement agencies that take advantage of their desire to start a new life and career. Through the *Worker Recruitment and Protection Act*, Manitoba has taken steps to protect foreign workers who come to the province. The legislation will also create a positive, sustainable recruitment process that will provide business with access to skilled labour and respond to issues of worker vulnerability. Through co-ordination of services and legislation, the Province intends to increase overall compliance with employment standards and workplace safety and health legislation, raise the standards of professionalism and conduct among recruitment agencies, and provide a level playing field for legitimate recruitment agencies.

References

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Notes

[1] The content of the Act can be found at the following address: <web2.gov.mb.ca/bills/sess/b022f.php>.

[2] Manitoba's Action Strategy for Economic Growth: <www.gov.mb.ca/finance/budget07/economic_strategy/index.html?index.html>.

[3] Canada-Manitoba Immigration Agreement: <www.cic.gc.ca/english/department/laws-policy/agreements/manitoba/can-man-2003.asp>.

[4] Manitoba Provincial Nominee Program: <www2.immigratemanitoba.com/browse/howtoimmigrate/pnp>.

[5] For more information, see the Human Resources and Skills Development Canada Website: <www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/temp_assessment.shtml>.