TEMPORARY FOREIGN WORKERS IN CANADA: A DISPOSABLE WORKFORCE?

ABSTRACT

In November 2007, the Temporary Foreign Worker Advocate Office, funded by the Alberta Federation of Labour, published its report titled Temporary Foreign Workers – Alberta's Disposable Workforce. This article provides a summary of some of the issues dealt with in that report as well providing some additional up to date information on temporary foreign workers.

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In 2006, for the first time in history, more temporary foreign workers (TFWs) entered Alberta than did permanent immigrants. There were 22,392 TFWs working in Alberta but only 20,717 immigrants were granted permanent residency in 2006. The number of TFWs in Alberta had doubled between 2003 and 2006. These statistics, coupled with many stories of abuse of TFWs, led the Alberta Federation of Labour to initiate a project in April 2007 designed to assist TFWs. They hired labour lawyer Yessy Byl to act as the Temporary Foreign Worker Advocate. The TFW Advocate's report, co-written with Jason Foster of the Alberta Federation of Labour, was published in November 2007 and, despite some changes in government policies and services since that time, still presents a relevant review of the issues involving TFWs in Alberta and across Canada.

The rise in the number of TFWs since 2006 is even more astonishing. According to Citizenship and Immigration Canada (CIC) numbers, as of December 2007 there were 37,257 TFWs in Alberta, up from 11,462 in 2003 and 22,392 in 2006. Overall, the number of TFWs in Canada almost doubled from 110,476 in 2003, to reach 201,057 in 2007. (These numbers CIC's "stock statistics" and represent the number of temporary residents present in the CIC system on December 1st of each year.) It is worth pointing out that in 2007, Canada admitted only 131,248 people as permanent residents under the Economic Class.

These numbers indicate a clear shift in government policy, which has occurred without public debate, without a clear analysis of TFW programs or the outcomes of such programs. Canada has acquired a guest worker program that rivals those of the United States and Europe and it appears that most Canadians are completely unaware of this fundamental change in how we deal with people wishing to come to Canada.

The dramatic rise in TFW numbers is attributable to two main factors. First, the federal government changed its TFW Program to allow for low-skilled workers to come to Canada as TFWs. Second, the TFW Program became the "program of choice" for employers in dealing with pressing labour shortages both in the skilled and unskilled workforce. While the numbers of TFWs certainly increased in the booming provinces of Alberta and British Columbia, there were also substantial increases in Ontario, which is suffering from a decline in the manufacturing sector.

As documented in the TFW Advocate's report, the rapid expansion of the TFW Program has resulted in a great deal of exploitation and abuse of TFWs. While low-skilled workers are generally more vulnerable, exploitation and abuse has extended into the skilled occupations category as well. Basically, the federal government programs allowing employers to bring TFWs to Canada have so few safeguards and protections for such workers that it is very easy for unscrupulous employers and recruiters to take advantage of them.

TFW status

The TFW has a very lowly status in Canada. He or she is considered to be "temporary residents." Their right to be in Canada is defined by the issuance of a Canada Immigration work permit, which strictly controls where the person may work, for whom and in what type of job. The TFW cannot change employers, jobs or location of the job without first obtaining a new work permit. Any work performed outside of the conditions stipulated by the work permit is a violation of the *Immigration Act* (even when the work in question is imposed by an employer) and can result in the deportation of the TFW. Until very recently,

TFWs were routinely denied employment insurance (EI) benefits on the basis that they were not "available for work" because of the terms of their work permits, despite being required to pay EI premiums. EI has apparently clarified its policy but most employers and TFWs still believe that TFWs are not eligible. Often employers do not even issue records of employment to TFWs.

TFWs routinely have problems with provincial health insurance plans, and are often cut off from benefits upon being laid off or terminated. They are ineligible for many provincial (e.g. daycare) and federal programs (e.g. ESL training). They truly are considered "second class."

There is, overall, very little legislation governing TFWs. Most of the "rules" are policy, subject to change and hard to pin down. (The relevant legislation is found in Part 9, Sections 179 to 187, of the "Immigration and Refugee Protection Regulations" of the *Immigration Act*.)

The irony in this program is that according to the *Immigration Act* regulations, an Immigration Officer must be satisfied that the person applying for temporary residency will "leave Canada by the end of the period authorized for their stay." The reality is that the vast majority of TFWs are coming to Canada because they want to *immigrate* to Canada, not because they want to work temporarily. Canada has not had a reputation for being a country of guest workers; our reputation was one of a welcoming country for *immigrants*. This desire for permanent immigration is common across all skill levels and nationalities of people contacting the TFW Advocate. Perhaps it is this desire that truly makes TFWs so vulnerable – they will put up with a great deal in order to achieve their goal to stay in Canada permanently.

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Low-skilled workers

Prior to 2002, low-skilled workers were allowed to work temporarily in Canada under only two programs: the Live-in Caregiver Program and the Seasonal Agricultural Worker Program. The former program requires educational or experience pre-requisites, outlines contract provisions to be complied with and provides the true "carrot at the end of the stick": domestic live-in caregivers are entitled to apply for a fast-tracked permanent residency program (which takes about six months) once they have completed two years of work. The Seasonal Agricultural Worker Program is a highly regulated temporary work program that requires international agreements, which include such provisions as a ban on recruitment fees, maximum stays of eight months, etc. The TFW Advocate project did not deal with workers under these two programs.

The only other workers who were eligible to apply for temporary resident status as TFWs, prior to 2002, were skilled workers, people trained and hired into occupations categorized as management levels or skill levels A and B under the National Occupation Classification (NOC).[2] Generally, these people were from Europe or the United States; they were hired for short-term trades projects, and were visiting academics at universities, professional staff moved to Canada by companies for a limited time, etc. In other words, these workers were seen as not needing any protection under the TFW Program, so there were no protective structures or requirements. It is this program that was expanded to include low-skilled workers (NOC C and D). The only "protections" that were put in place were that the employer had to provide a contract of employment, whereby he or she agreed to abide by provincial employment standards, to provide return airfare, to arrange for housing at a "reasonable" cost and to provide health insurance. As of January 2009, some additional protective clauses were required to be included in this contract of employment.

The difficulty with this limited protection of requiring employment contracts is that if an employer fails to comply with any those terms, there was absolutely no enforcement or policing process in place within the federal government. The TFW Advocate Office routinely saw low-skilled workers who had to pay their own airfare, who were placed in costly, sub-standard housing (often at a substantially higher price than Canadians were paying for similar housing), who were not provided with health care and who were not paid in compliance with employment standards and the rate of pay stated in the contract. While complaints were made to Service Canada, the department issuing Labour Market Opinions (LMOs, the official government "permissions" issued to employers enabling them to hire TFWs) had no mandate or ability to deny subsequent requests for LMOs to those employers found guilty of breaching the contracts, let alone enforce those contracts or obtain any remedy for TFWs whose employment contracts were not being upheld. All enforcement work was left to the provincial governments' employment standards departments. A number of protective clauses in the employment contracts have been ruled as unenforceable by some of the employment standards departments. For example, if a TFW is provided with less hours of work, they have no remedy. They could, one supposes, sue for "constructive dismissal," but that is obviously not a practically available remedy.

Recruiters

With the rapid expansion of the skilled TFW Program and the sudden demand for TFWs by employers, many greedy people saw a golden opportunity to make a great deal of money playing upon people's desperate hopes to immigrate to Canada. People from countries that are notoriously slow or even known as being "uneven-handed" in the Canadian immigration system were the most desperate for any opportunity to come to Canada and were anxious to engage any help they could find to reach Canada.

Basically, the use of recruiters to bring TFWs to Canada is totally unregulated by the federal government. Indeed, only two provinces (Alberta and British Columbia) prohibited recruitment fees. (Quebec does have some regulations dealing with recruitment fees.)

Skilled workers, ranging from cooks to welders, were charged outrageous fees, ranging from $5,000 to $15,000, for jobs in Canada. Many low-skilled workers paid recruitment fees as well. They were often promised that they would be able to immigrate to Canada. As well, these people typically paid for all of their own expenses. In many cases, they came to Canada only to find that there were no jobs and absolutely no support system for them, resulting in some TFWs being caught in the nightmare of having to work illegally simply to survive. Some were deported as a result. People often spent their life savings to get to Canada. Some borrowed money to pay the recruiters and needed to repay those recruiters and lending institutions money, even in cases where they were laid off upon arrival in Canada. It should be pointed out that in some countries, people can still go to jail for civil debts, and the Government of Canada failed to do anything to assist these people and to eliminate the abuse. Even in Alberta, where such recruitment fees were prohibited, many recruiters quickly changed their tactics and ensured that they collected the money "up front" outside of Canada, got additional security such as mortgages on family properties and threatened workers that they would never work again in Canada if they told people they paid a recruitment fee. The Government of Alberta has been largely unsuccessful in trying to rectify many of these situations since they are unable to act outside of Canada and because, quite simply, the responsible department has not been provided with sufficient resources to deal with this problem on any comprehensive basis.

The Government of Manitoba has proposed interesting legislation that may provide some measure of security in this area. In addition to legislation that would prohibit recruitment fees, they propose to require recruiters and employers who employ TFWs to post bonds in order to ensure compliance. This bill is scheduled to come into effect on April 1, 2009, pending completion of the necessary regulations.

While the TFW Advocate Office saw the issue of recruiters come up more often in relation to skilled workers, many low-skilled workers were also required to pay recruitment fees. There were a number of incidences of people being required to make cash disbursements on payday, simply for the privilege of earning approximately $10 per hour.

The Alberta experience

The Province of Alberta has taken a great deal of initiative in establishing programs to assist TFWs. It has established a Temporary Foreign Worker Advisory Office, with office locations in the two main cities of Edmonton and Calgary, a TFW hotline, a team of Employment Standards officers mandated to conduct reviews of employers who employ TFWs (without a complaint pre-requisite), and they have provided some funding, on a pilot- project basis, for settlement services offered to TFWs. These initiatives have ensured some progress in addressing certain issues facing TFWs. Yet, quite frankly, the overwhelming amount of problems make even these initiatives seem somewhat inadequate.

Recommendations for the future

The TFW Advocate's report concludes by finding that: "The TFW Program must be judged on its capacity to protect TFWs. Using this criteria the program is an abject failure. It is the view of the Advocate that the TFW Program as it currently exists must come to an end. The contortion of its initial purposes must cease, and Canadians need to find another solution to whatever labour market challenges we face."

Fundamentally, the position is that if Canada requires workers, then Canada should bring people in as permanent residents, a status that affords them equal civil rights. The report also proposes a number of short-term solutions to deal with issues facing TFWs already in Canada. Some of those recommendations have been adopted since the report was published. For example, in December 2008, CIC implemented "dedicated processing functions to… process changes to work permits to allow for TFWs to leave abusive or unsatisfactory work situations," shortening the processing time for new work permits with new employers from ten to three weeks. The Province of Alberta has also implemented some of the measures proposed in the report. The recommendations provide a useful tool for evaluating how other provinces are dealing with the issues involving TFWs.

As this article is being written, the irony is that the failing economy may achieve the primary recommendation – shutting down of the Temporary Foreign Worker Program, as expanded in 2002 and after that. However, what will continue is the challenge of ensuring that the rights of the thousands of TFWs who remain in Canada are protected and that we cease treating them as "disposable workers."

Notes

[1] This report can be found at <www.afl.org/campaigns-issues/>.

[2] <www5.hrsdc.gc.ca/NOC/>.

Since this article was written in early 2009, the economy has worsened and is now just showing signs of recovery. Unfortunately the government chose to severely limit the TFW program by first of all eliminating the "renewal" process for Labour Market Opinions (despite an all-party recommendation of the Parliamentary committee report on TFWs that renewals of LMOs be made much easier) and making it virtually impossible for employers to obtain LMOs. While the policy was understandable in terms of preventing more TFWs from entering Canada, the policy has created widespread hardship…and destitution…..amongst TFWs who are working in Canada. The policy not only makes it impossible for TFWs to find a new job once they are laid off, but it has resulted in employers being forced to fire TFW employees regardless of the worker's seniority and ability and regardless of whether the employer needs to reduce staff.

This policy has not only resulted in severe hardship but also in a steep rise of the numbers of undocumented workers. We have now successfully created a very large "subclass" of underground workers.

The other subsequent news of note is the release of the 2008 CIC statistics. In 2008 we saw the astonishing development of there being more TFWs counted in the December 1 census than there were permanent residents admitted in that year. Indeed, what is now clear is that permanent resident numbers have been, in essence, stable over the past 5 years (235,824 in 2004 to 247,202 in 2008) while TFW numbers across Canada have doubled (again Dec. 1 "stock" figures: 126,026 in 2004 to 252,196 in 2008).