

Analysis, Solidarity, Action—a Workers' Perspective on the Increasing Use of Migrant Labour in Canada

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Canada's Part in the Global Integration of Labour Markets

At the September 2006, United Nations High-Level Dialogue on International Migration and Development, the International Organization for Migration (IOM) made a proposal for a set of measures to integrate labour markets around the world, and ultimately make them yet more flexible.

The 'International Migration and Development Initiative' emerged from discussions between the IOM— an inter-governmental organization established in 1951— the private sector, the World Bank, and some governments. Moving beyond the weakening of collective agreements, and of unions in general, witnessed over the past twenty-five years, the IMDI argues:

Evidence shows that existing gaps between the supply and demand for labour are set to increase in coming years, with aging and declining populations in much of the industrialised world, and growing populations in much of the developing world.

A hands-on approach is therefore needed to facilitate the mobility of labour, which until now has not benefitted from the same level of liberalization as capital and goods. A new approach, one which aims to facilitate the matching of labour demand and supply, should address the needs of all types of economic migrants, the skilled and less skilled, in sectors from health care to hotels, restaurants and construction, IT and education on both a temporary and permanent basis.¹

Shifting from *immigration* - which has assured full legal protections and citizenship rights (at least in formal terms) to economic migrants in most developed countries over the past 50 years - the IMDI puts an emphasis on the *temporary migration of workers*, with which comes a highly precarious situation in terms of rights and protections. More specifically, the legal status of migrants entering countries solely for the purpose of

fulfilling limited periods of employment tends to be tied to particular employers. This creates an extremely imbalanced relationship in which workers are dependent on employers to maintain their legal status, and employers can disregard their responsibilities toward workers whom they ultimately have the power to deport if called to account.

Without making any mention of labour unions, the IOM proposal underlines the importance of private sector participation in various areas of labour force planning and policy making, to be directed by the IMDI. These include the creation of a globally-centralized information source on regional and national migration regulations, “capacity building” in the formulation of national labour policies and collection of statistics on nationals working abroad, and globally-centralized research on “migration opportunities and practices”.

Though there are a range of already existing international treaties dealing with the protection of migrants, the IMDI does not refer to any of them. They are:

- ILO Convention No. 97 concerning Migration for Employment (1949).
- ILO Convention No. 143 concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and the Treatment of Migrant Workers (1975).
- the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990).
- the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

It is within this context that the Conservative government’s recent announcements of changes to the Temporary Foreign Worker Program (TFWP), and the corporate call for “accelerated efforts to import temporary Mexican oil workers” as part of the Security and Prosperity Partnership must be understood.²

Further to the government’s “policy commitment” in its economic plan, **Advantage Canada**, to make “improvements to the Temporary Foreign Worker Program to respond to employer needs”³, the official TFWP website states that the new process is aimed at assisting employers “who are experiencing difficulty filling job vacancies”.⁴ Rather than having to advertise jobs openings in “occupations under pressure” within Canada

for six weeks, most employers have only to advertise for seven days before seeking permission to hire workers from abroad.⁵ Under the redesigned TFWP, employers can be granted permission to employ temporary migrant workers for up to three years.⁶

Among other outreach activities, an official, step-by-step guide, in “employer-friendly language”, has been made available explaining how to hire migrant workers. The departments of Human Resources and Social Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC) are also conducting information sessions for employers in Canada as well as foreign government delegations.

To date, the Conservative government has not included in the redesign of the TFWP any monitoring, compliance and enforcement mechanisms to assure that Canadian employers respect the rights of the guest workers they invite into the country. This is despite the numerous abuses documented and presented to government by the United Food and Commercial Workers Canada, INTERCEDE, and other organizations which have long been advocating for the rights of migrant workers having entered Canada under the Seasonal Agricultural Workers and Live-In Caregivers Programs.⁷ Not unrelated, Canada is currently one of eleven countries for which United Nations special rapporteur, Jorge Bustamante, has formally requested permission to visit in response to a flood of migrant worker complaints around rights violations—abusive working conditions, non-payment of wages, gender violence, and restrictions of the freedom of movement, to mention a few.

The identification of ‘occupations under pressure’ is another controversial aspect of the redesigned TFWP. In each province and territory, ‘working groups’ of federal and regional officials have been set-up to compile lists of occupations for which there are labour shortages.⁸ While employers are being consulted by the working groups to determine areas of labour shortages and responses, labour unions have not had any engagement in this determination. Additionally, though HRSDC is obligated by law to consult with unions in workplaces where employers have requested permission to hire migrant workers, consultation with unions has been limited and inconsistent since 2003, when the Low-skilled Pilot Project was put in place under the Temporary Foreign Worker Program.

More specifically, in formulating the Labour Market Opinion (LMO) – a process to determine whether the hiring of temporary migrant workers will be of overall benefit to Canadians – HRSDC is mandated to consult with unions to assess whether an ongoing or imminent labour dispute is at the root of an employer’s application to hire migrant workers. Where unions have been consulted, the definition of ‘ongoing or imminent labour dispute’ has been exceedingly narrow, referring mainly to a strike in the workplace. In cases where negotiations for a new collective agreement are underway, HRSDC issues a positive LMO (i.e. granting the employer permission to hire migrant workers), and alerts “Citizenship and Immigration Canada officers to verify if a labour dispute is in progress when the temporary foreign worker applies for the work permit.”⁹

Not only is there a lack of tracking as to whether CIC officers actually follow through on this verification before issuing work permits, from the perspective of workers, the assessment of a labour disputes require far more complex criteria. Similarly, though HRSDC is mandated to confirm, on a case-by-case basis, that employers are not offering migrant workers wage levels and working conditions below those of workers already in Canada, it is unclear that this is being properly assessed. A recent experience of the British Columbia General Employees Union (BCGEU) exemplifies the complexities involved.¹⁰

In September 2006, Park Place Seniors Living Ltd. laid-off some seventy long-serving BCGEU care aides in Kelowna earning a wage of just over \$20/hour. The private seniors care facility then hired a private labour contractor, AdvoCare, to provide care services for the 149 residents of the facility. AdvoCare posted the positions at \$14-\$15/hour, and when the former BCGEU employees refused to accept the reduced wage rate, AdvoCare cited a ‘labour shortage’ in its application to hire migrant workers under the TFWP. In addition to reduced wages, AdvoCare offered a significantly reduced benefits package, eliminating the sick leave, long term disability, paid vacation and pension benefits previously held by BCGEU workers. Despite all this, HRSDC issued a positive LMO and AdvoCare proceeded to hire migrant workers to fill the care aide positions.

Subsequently in late November, as the BCGEU was in the process of applying for union certification for the new care aides at the Kelowna seniors facility, AdvoCare submitted a second application to hire more migrant workers under the TFWP. As of late November, when the BCGEU wrote a detailed letter to the regional office of the TFWP, officials of

neither federal nor regional HRSDC departments had consulted with the union about AdvoCare's applications under the TFWP.

Root causes of high employer demand for migrant workers

From a workers' perspective, it is useful to make a distinction between *labour shortages* and *skills shortages*.

Labour shortages

As in the BCGEU Kelowna case above, *labour shortages* tend to be claimed by employers aiming to provide sub-standard wages, benefits and working conditions in a given sector. To cite another example, in Manitoba, trucking firms have been using the TFWP to hire migrant workers for an industry in which, as manager of the Manitoba Trucking Association, Bob Dolyniuk admits "changes in workers' attitudes have contributed to the ultra-competitive climate for drivers." Dolyniuk goes on to explain:

The drivers who don't mind being on the road for long periods of time are retiring. There are a lot of family breakups, divorces. Drivers today don't want to be away from home for long periods of time. Immigrants are part of the solution.¹¹

Instead of improving working conditions in response to the demands for work-life balance made by workers in Manitoba, trucking employers are electing to transfer work-life imbalances (with the accompanying family breakups and divorces) to migrant workers. This is likely the case in other parts of Canada. Truck drivers (NOC code 7411) are also included, for instance, in the Alberta list of "Occupations under Pressure".

This example brings out the fallacy of the commonly-quoted notion that 'foreign workers drive down wages because they are willing to work for less'. In reality, employers like those represented by the Manitoba Trucking Association see the hiring of new workers from abroad as an alternative to assuring decent work and wages because of the precarious terms under which they enter Canada as workers.

Under the various components of the Temporary Foreign Worker Program (i.e. Seasonal Agricultural Workers, Live-In Caregivers, and Low-Skilled Pilot Programs), migrant workers are covered by provincial and federal labour standards, according to Citizenship and Immigration Canada.¹² Apart from some “intergovernmental efforts to provide information on labour and employment laws for migrant workers”, however, workplaces are not inspected by labour inspectors, employers are not monitored to assure contract compliance, and migrant workers are not offered measures through which to report rights abuses and have them investigated. Additionally, some of the sectors in which migrant workers are employed are formally excluded from provincial labour standards, including the right to collective bargaining. The lack of monitoring, compliance, and enforcement mechanisms ultimately translates into permission to employers to exploit migrant workers more than they exploit workers already in Canada, hence the driving down of wages and working conditions for all.

The fact that migrant workers in Canada, under the various components of the TFWP, are predominantly racialized workers (i.e. from countries of the non-European, global South) must be highlighted here. Compounding their precarious status, racism has figured in the Canadian experiences of migrant workers of various sectors. Since the 1970s, for example, women entering Canada in response to demand for domestic workers—the majority of whom have been from the Caribbean and the Philippines—have only been granted temporary status. This differs from the permanent status granted to European women entering Canada as domestic workers in the first half of the twentieth century.¹³ In the agricultural sector, racialized migrant workers in Southwestern Ontario have been subject to racist insults and deliberately raised food prices within the context of communities angered by the loss of agricultural jobs.

Skills Shortages

Differing from so-called *labour shortages*, *skills shortages* in certain sectors and regions actually exist in Canada due in large part to inadequate labour force development by employers and governments over the past decade. The poor record of investment in apprenticeship and skills training is national in scope and embarrassing on the world stage. The Organisation for Economic Cooperation and Development and the Innocenti Research Centre in Florence have concluded that despite

Canada being among the twenty wealthy industrialized nations, Canada is one of the lowest spenders on skills training and other labour supports.

In the Alberta construction sector, for example, according to the Alberta Federation of Labour, only 11,000 of the 20,000 trades' employers belonging to the Alberta Construction Owners Association have taken-on apprentices despite high demand for construction skills. Across the country, the devolution of training from the federal government to provinces and territories has weakened the Interprovincial Standards Red Seal Program, an apprenticeship system which is all the more needed today given great demand for trades workers and the severely uneven development unfolding in different regions.

In the health care sector, despite the expected development of aging populations, governments in Canada and other Northern countries failed to plan for the training of adequate numbers of health workers. Consequently today – in addition to because of deteriorating working conditions – some twenty three health care occupations are listed in the “Occupations under Pressure” list for Ontario, Alberta and British Columbia.¹⁴

In increasing its use of health workers from abroad, Canada will intensify the absorption of health workers by rich countries from the global South, where inequality, and in turn illness, are on the rise. From the continent of Africa alone, 20,000 health workers migrate to North America and Europe each year - though African health workers represent only 3 per cent of the world's health care labour force. Meanwhile, one quarter of the world's deaths due to illness occur in Africa.¹⁵

Action

UN special rapporteur, Jorge Bustamante, has urged the Canadian government to ratify the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Among other rights, the Convention assures migrant workers the right to unionize, bargain collectively, and elect their own representatives. The Canadian Labour Congress (CLC) echoes this call for ratification of the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and urges Canada to ratify the related ILO Conventions No. 97 and No. 143 (cited on page 2).

Additionally, in order to fully resolve the issues analyzed above, the CLC calls for policy change in four key areas: immigration, the Temporary Foreign Workers Program, labour force development, and the recruitment of international health workers. The CLC will work with affiliated unions, community organizations, and other social partners to effect the changes elaborated below.

Immigration, Not Second-Class Citizens

1. Rather than accelerating the temporary migration of workers under the Temporary Foreign Worker Program, the CLC sees immigration policy reform as the principle means of averting skills shortages. Given that the points system of Citizenship and Immigration Canada is biased toward ‘economic class’ immigration applicants with university education, the points system should be adjusted to recognize prior learning or/and work experience in a range of occupations. This would allow for workers of various skill levels to immigrate to Canada, and therefore for a range of skills shortages to be averted.
2. Given the evidence of successful integration of immigrants entering Canada under family reunification measures, mechanisms should be put in place to increase the proportion of ‘family class’ immigrants from the current 24% of immigration cases.
3. More comprehensively, the CLC calls for the formulation of a national framework to integrate the planning and implementation of immigration and labour market entry policy at the national, provincial, and local levels. This framework would resolve the current situation of discrete and separate policy directions at the national, provincial and local levels, while allowing for regional flexibility to address the unique situations of each province. In addition to addressing the labour market integration and settlement needs of new immigrants, including adequate federal funding, this framework would include addressing the labour market integration of under-employed, internationally-trained immigrants already in Canada. Government representatives of the national, provincial and municipal levels, non-governmental organizations involved in advocacy and service delivery for immigrants and refugees, unions, and employer organizations should be included in the formulation of this national framework.¹⁶

The Temporary Foreign Worker Program - Sweeping Reforms Needed

The CLC calls for a moratorium on the creation and/or expansion of regional “Occupations under Pressure” lists until the following changes have been applied to all streams of the TFWP (i.e. the Seasonal Agricultural Workers, Live-In Caregivers, and Low-Skilled Pilot Programs).

1. In line with the market-based rules of orthodox economics and depending on the sector, employers should be required to advertise job openings at 5 per cent or more above market wages before claiming a labour shortage and seeking a Labour Market Opinion (LMO) to hire temporary migrant workers.
2. The labour movement must be fully engaged in the implementation of the TFWP. More specifically:
 - the labour movement should be involved at the regional and sectoral levels in order to help determine which occupations are actually ‘under pressure’, and the most appropriate method of solving labour or skills shortages. Depending on the sector, this could include an examination of employer practices which may be affecting labour retention, or the matching of available workers in one area with available jobs in a nearby area;
 - where the need to hire temporary migrant workers - rather than alternatives such as improved working conditions or mobility assistance - has been identified, labour should be involved at the regional and sectoral levels in the determination of ‘prevailing wage rates’ (i.e. the salary package to be offered to the temporary migrant workers). Calculation of the prevailing wage rate in various sectors must include average wages, benefits, and overtime rates’;
 - once an employer has applied for an LMO, HRSDC should ensure that all unions of the worksite have a) been notified, and b) have confirmed that the employment of migrant workers will not affect an ongoing or imminent labour dispute between the employer and union(s). Clearly, ‘labour dispute’ can be defined in a variety of ways given the range of

workplace situations, and the perspective of the particular union(s) in question should be part of HRSDC's consideration;

- at regular intervals, HRSDC and CIC should make publically available an updated database of all LMOs sought and all work permits granted under various components of the TFWP. This information should be detailed by region, NOC occupation category¹⁷, wage/benefit level, and place of employment. Data on contract termination and the repatriation of workers should also be made publically available.
3. In order to counter discrimination and the super-exploitation of temporary migrant workers, we call on the federal government to
- provide a transparent, impartial appeal process and dispute resolution mechanism, available to all temporary migrant workers prior to the deportation or repatriation of workers;
 - remove mobility restrictions and allow temporary migrant workers to live in accommodation of their choosing in Canada;
 - eliminate requirements for temporary migrant workers to live on their employer's property and allow workers to change employers;
 - remove residency requirements and assure full access to social benefits for temporary migrant workers, including EI, maternity leave and healthcare;
 - assure that all employment agreements under the various streams of the TFWP specify that a) wages will be equal to those of locally recruited workers, b) workers will receive rest and meal breaks, and weekly rest periods, c) workers will be protected from unauthorized pay deductions, d) in the event of dismissal, workers will have access to the impartial appeal process and dispute resolution mechanism, and e) where dismissal is deemed unjust, workers will have the opportunity to change employers;

- initiate agreements between federal and provincial governments to ensure that an adequate number of provincial labour inspectors are able to inspect workplaces of temporary migrant workers and report to HRSDC any employer violations of employment agreements and provincial labour standards;
 - authorize an adequate number of federal labour program inspectors to inspect workplaces of temporary migrant workers and report to HRSDC any employer violations of employment agreements where provinces decline to enter into the above-described agreements;
 - apply a set of strict, upwardly graduated penalties on employers who violate employment agreements and provincial labour standards, the maximum penalty of which would be denial of access to temporary migrant workers via the TFWP;
 - provide funding and implementation mechanisms to ensure provision of services and coordination between federal, provincial, municipal and voluntary agencies required to protect and support temporary migrant workers. This includes costs of the monitoring and enforcement of employment contracts detailed above, the provision of linguistically accessible information about public benefit programs and services, and training programs including English or French as a Second Language.
3. Through collaboration with community groups and unions, the federal government's Racism Free Workplace Strategy must be worked-into the expanded TFWP. That the source countries for migrant workers targeted by Canadian employers and governments tend to be countries of the non-European, global South further demonstrates the need for anti-racism efforts.
 4. While employers are the key source of abuse of migrant workers, labour contractors and recruitment agencies have been noted internationally for exploitative practices, including the charging of excessive fees to migrant workers. Given that the federal government allows third party recruiters to represent Canadian employers in the LMO process, the federal government should

require Canadian employers to report details of all recruitment arrangements handled by third and fourth party labour contractors or/and recruitment agencies (i.e. those based in both Canada and in sending countries) to a national monitoring body consisting of labour and government representatives.

5. In the spirit of the live-in caregivers campaign demand, ‘Good enough to work, good enough to stay’, the CLC advocates for the right of all migrant workers entering Canada (i.e. under the various components of the TFWP) to apply for permanent residency upon arrival.

This is in contradistinction to various calls for the TFWP to be used as the first step to granting immigration rights to workers deemed “suitable” by employers. The National Citizenship and Immigration Law Section of the Canadian Bar Association, for example, is proposing that the Immigrant and Refugee Protection Act be amended to allow temporary workers entering Canada under the Low Skills Pilot Project to apply for permanent residence upon contract completion, *where employers support their applications*.¹⁸ Not only would this compound the likelihood of abuse of workers by employers, it would remove decision making around immigration – a crucial aspect of building the social collective in Canada – from bodies which are accountable to the public.

National Labour Force Development – Failure to Deliver

1. In November 2005, the federal government committed \$3.5 billion over six years for Labour Market Partnership Agreements (LMPAs) with all provinces and territories. The LMPA monies were aimed at expanding apprenticeship programs, literacy and essential skills programs, workplace skills development, and improving labour market integration of recent immigrants, Aboriginal peoples and marginalized groups. This \$3.5 billion commitment has not been respected by the current government. The CLC calls for LMPAs to be promptly finalized with all provinces and territories. Along with provincial and federal officials, unions and community organizations should be integral in designing plans for the usage of these funds. The federal government should play a coordinating role to assure that training projects are combined with

complimentary, people-oriented development projects throughout the country.

2. In Budget 2006, \$18 million were promised for a long overdue, international credential recognition process, the parameters of which have still not been made public. This process must be one element of a national labour force development plan, especially allowing for the labour market integration of internationally trained workers who are already residents of Canada. Also in Budget 2006, funding supports were promised to provinces for immigration and settlement services. The CLC calls for these funds to be allocated in a timely manner, and linked to community-based initiatives which are currently severely under-funded.

Ethical Recruitment of Health Workers

The CLC is aware that at least two provincial governments are in discussion with the Ministry of Health in Barbados around Reciprocal Agreements to bring Barbadian health workers to Canada on a temporary basis. Similarly, as in the Kelowna senior care facility case elaborated above, private labour contractors are seeking international health workers for temporary employment in Canada.

Given Canada's international development commitments, including to the Millennium Development Goals, we join Public Service International in calling on Canada, and other developed country governments to adopt ethical recruitment guidelines for the public and private recruitment of international health workers, as per the Commonwealth Code of Practice for International Recruitment of Health Workers.¹⁹ Public and private employers in the health care sector should not be granted permission to hire workers under the TFWP unless these guidelines are followed.

In closing, the CLC challenges all political parties to address the recommendations made above in the inter-related areas of immigration, the TFWP, national labour force development planning, and the recruitment of health workers.

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NOTES:

1. International Organization for Migration (IOM), “Global Labour Mobility: A Catalyst for Development”, **Policy Focus September 2006**, <http://www.iom.int/jahia/Jahia/cache/offonce/pid/1336?entryId=10903>
2. Stephen Chase, “More Mexican labour needed in oil patch, executives say”, Globe and Mail, 23 February, 2007. For more information about the Security and Prosperity Partnership see Teresa Healy, “Deep Integration in North America: Security and Prosperity for Whom?”, CLC Research Paper #42, 20 February, 2007.
3. Department of Finance Canada, **Advantage Canada - Building a Strong Economy for Canadians**, November 2006, p. 50.
4. Government of Canada, http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/fw.shtml
5. In some cases, employers will have to demonstrate they have established ongoing recruitment mechanisms via professional associations, corporate websites, professional journals or unions.
6. Information relayed by HRSDC and CIC civil servants, to the CLC, during a meeting on the TFWP, Ottawa, January 23, 2007.
7. See for example, United Food and Commercial Workers Canada, “United Food and Commercial Workers Report on the Seasonal Agricultural Workers Program”, 2005; INTERCEDE, “Improving the Ontario Employment Standards Act to Protect Domestic Workers”, and “National Migrant Justice Gathering - Building Solidarity, Taking Action”, Final Report of a national meeting held June 10-11, 2006, Toronto (joint initiative of KAIROS, National Alliance of Philippine Women in Canada, Status Campaign, UFCW Canada).
8. So far, such lists have been issued for Alberta, British Columbia and Ontario. According to information received by the CLC, lists for other provinces and territories will be issued in the near future. For “Regional Occupations under Pressure” lists, see http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/fw.shtml
9. HRSDC and CIC, “Foreign Worker Program - PowerPoint presentation for the Canadian Labour Congress”, Ottawa, November 16, 2006.
10. Details of this case are taken from a BCGEU letter addressed to Greg Anstruther, Regional Consultant to the Temporary Foreign Worker Program, Vancouver B.C., 21 November 2006.
11. Kathleen Martens, “Desperate measures: shortage of truck drivers forces companies to seek help abroad”, The Winnipeg Sun, January 19, 2006.
12. CIC, “Entry of Temporary Foreign Workers into Canada - Presentation to Ministers of Labour of the Organization of American States”, Ottawa, November 28-29, 2006.

13. Louise Langevine and Marie-Claire Belleau, **Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides**, Status of Women Canada, October 2000, http://www.swc-cfc.gc.ca/pubs/pubspr/066231252X/200010_066231252X_e.pdf
14. For more information on the connections between the worldwide deterioration of working conditions, labour and skills shortages, and migration in the health sector, see Public Service International's "Women and International Migration in the Health Sector", June 2004, , www.world.psi.org/migration
15. Karl Blanchet and Regina Keith, "L'Afrique tente de retenir ses medecins", Le Monde Diplomatique, December 2006, p. 13.
16. For a far-reaching analysis of the current situation of immigration and settlement in Canada, including case studies of effective, locally-based, bridging, mentoring and internship programs for internationally trained workers, see "Integrating immigrants in Canada: Addressing skills diversity", by B. Birrell and E. McIssac, Chapter 2, **From Immigration to Integration - Local Solutions to a Global Challenge**, OECD 2006.
17. For full information about the National Occupational Classification system, see <http://www23.hrdc-drhc.gc.ca/> Currently, all LMOs being processed by HRSDC are classified by NOC category.
18. Submission of the Citizenship and Immigration Law Section of the Canadian Bar Association to HRSDC regarding the review of the Low Skilled Worker Pilot Project, May 2006.
19. For more information, see Public Service International's campaign on women and international migration in the health sector, www.world.psi.org/migration