

# Canada's temporary foreign worker programme: A discussion of human rights issues\*

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## Abstract

Canada, like many other developed countries, has implemented a temporary foreign workers' programme, ostensibly to address temporary labour shortages within its domestic labour market. However, there is growing evidence of the programme being used to meet longer-term labour demands, with low-skilled migrant workers being marginalized into low paying service industry jobs and manual labour in the construction and manufacturing industries. Furthermore, there is evidence of these marginalized workers suffering human rights abuses and economic exploitation. This paper discusses some of these problems and presents a case for legislative reform.

**Keywords:** Canada, migrant workers, human rights violations.

## Introduction

Economic demand in developed countries and unstable socio-economic conditions in lesser developed countries, are contributing factors behind an international labour market in which temporary (or migrant) workers are becoming as common in Canada as they are in member-states of the European Union. Canada's Temporary Foreign Worker Program (TFWP) is designed to meet temporary labour shortages. However, the evidence suggests the programme is being used instead to meet long-term labour needs, particularly in occupations requiring lower levels of education and training. In the Canadian provinces of Alberta and Manitoba, for example, lower-skilled workers are being nominated for permanent residency to meet long-term labour needs, yet the federal government has no permanent residency pathways for such workers.

Though migration is not a new phenomenon in Canada, the rapid growth in temporary migration of lower-skilled labour is. Historically, Canada's immigration policy encouraged permanent residency for newcomers with higher levels of education and language proficiency on the basis of their greater likelihood for adaption to the culture of their new homeland. This recent shift

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toward encouraging temporary migration of lower-skilled labour has unfortunately come at a cost; i.e. human rights abuses and significant challenges for temporary foreign workers (TFWs) in Canada. With a focus on the western Canadian province of Alberta, this paper will discuss some of the human rights issues regarding management of temporary migration and identify areas where reform is needed.

Recent statistics show that Canadian employers are increasingly reliant on migrant workers. A recent report released by the federal *Parliamentary Standing Committee on Citizenship and Immigration* found that in December 2007 there were 201,057 temporary foreign workers in Canada; 115,470 of whom entered that year (*Parliamentary Report on Temporary Foreign Workers*, 2009).<sup>1</sup> Furthermore, lower-skilled workers accounted for over half of all temporary foreign workers in Canada (*Auditor General's Report*, 2009).<sup>2</sup> The increase in migrant labour was greatest in Alberta where the number has more than tripled since 2003 (*Parliamentary Report on Temporary Foreign Workers*, 2009).<sup>3</sup> In December 2008 there were 57,843 temporary foreign workers in Alberta, which was a 55% increase in one year. In fact, in 2006 the number of temporary foreign workers in Alberta surpassed the number of permanent immigrants arriving in the province (22,114 temporary foreign workers as opposed to 20,716 permanent immigrants) (*LabourBytes*, 2009).<sup>4</sup> This trend continued in 2007 and 2008. The greatest increase thus far in temporary foreign workers in Alberta was in 2007 when there was a 69% increase in this type of worker entering the province over the previous year (Foster, 2009).<sup>5</sup>

There has also been a marked downshift in the skill levels of workers coming to the province under the Temporary Foreign Worker Program.<sup>6</sup> In 2003 highly skilled occupations (e.g. scientists, nurses, and senior managers) accounted for 48% of workers in the programme, while lower-skilled occupations (e.g. labourers and sales clerks) made up only 2%. The remaining half was made up of skilled tradespersons and technicians (Foster, 2009).<sup>7</sup> Howev-

<sup>1</sup> Report of the Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers*, 40<sup>th</sup> Parl, 2<sup>nd</sup> Sess (May 2009), online: House of Commons Committees <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3866154&Language=E&Mode=1&Parl=40&Ses=2>> at 1 [hereinafter *Parliamentary Report on TFWs*].

<sup>2</sup> Fall 2009 Report of the Auditor General of Canada to the House of Commons Chapter 2 Selecting Foreign Workers Under the Immigration Program, online: <[http://www.oag-bvg.gc.ca/internet/docs/parl\\_oag\\_200911\\_02\\_e.pdf](http://www.oag-bvg.gc.ca/internet/docs/parl_oag_200911_02_e.pdf)> [hereinafter *Auditor General's 2009 Report*].

<sup>3</sup> *Parliamentary Report on TFWs* at 1.

<sup>4</sup> Alberta Federation of Labour, *LabourBytes* Newsletter (11 March 2009), online: AFL <[www.afl.org](http://www.afl.org)> [hereinafter *LabourBytes*].

<sup>5</sup> Jason Foster, "Tempville: Alberta's 10<sup>th</sup> Largest City" in *Union: Insight & Analysis* (Winter 2009) at 14, online: Alberta Federation of Labour <<http://www.afl.org/upload/UnionWinter2009.pdf>> [hereinafter Foster].

<sup>6</sup> The TFW Program is only one of four temporary foreign worker programs in Canada. The other three are: the Live-in Caregiver Program, the Seasonal Agricultural Workers Program, and the Project for Occupations Requiring Lower Levels of Formal Training (PROLIFT).

<sup>7</sup> Foster at 14.

er, by 2007 these proportions had shifted significantly; the number of TFWs in the higher-skilled occupations decreasing to 25% and the number in the lower-skilled occupations increasing to 21% (Foster, 2009).<sup>8</sup> The increase in the latter category resulted from primarily two sources: workers for basic sales and service occupations (e.g. fast-food service and gas station attendants) and unskilled labourers (Foster, 2009).<sup>9</sup> This trend is consistent across Canada, where from 1998 to 2007, the percentage of temporary foreign workers admitted in lower-skilled levels as a share of the total rose from 14% to 30% for males and from 30% to 63% for females (Fudge and MacPhail, 2009).<sup>10</sup>

These lower-skilled workers, many of whom lack proficiency in either of Canada's official languages, are particularly vulnerable to abuse and exploitation. Although the following list is not exhaustive, it is a fairly representative summary of major areas where temporary foreign workers experience challenges, particularly those who are lower-skilled:

1. Inaccurate information prior to departure;
  2. Illegal recruitment fees;
  3. Work permits and job mobility restrictions;
  4. Employment standards;
  5. Integration and discrimination – language, housing and basic services;
- and
6. Family separation.

### **Inaccurate information prior to departure**

Resources dedicated to ensuring that workers have an understanding of their rights and what to expect in Canada prior to departure are important in reducing vulnerability to abuse. There are some resources already in place to provide potential workers with information about what to expect in Canada, but these resources have been criticized as being biased or misleading. According to a policy brief released by The North-South Institute in 2006:

Workers in several participating countries told researchers that information given to them at pre-departure workshops about the program and what to expect in Canada was inadequate. They complained that they were not always told about the different types of farm work available in Canada, or about their rights under Canadian law, including, for example, the Ontario Human Rights Code.<sup>11</sup>

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<sup>8</sup> Foster at 14.

<sup>9</sup> Foster at 15.

<sup>10</sup> Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour" (October 2009) 31 *Comparative Labor Law and Policy Journal* 101 at 19 [hereinafter Fudge and MacPhail].

<sup>11</sup> "Review of Canadian Seasonal Agricultural Worker's Program" at 6.

There is significant need and opportunity for Canada and Alberta to continue efforts to meet the challenge of accurate pre-departure information for temporary foreign workers, particularly in the lower-skilled occupations.

### Illegal recruitment fees

Another area of concern is reports of unscrupulous immigration consultants or employment brokers charging recruitment fees to migrant workers. A 2008 Canadian Broadcasting Corporation interview with one migrant worker in Edmonton, Alberta, revealed that he and six friends, all from the Philippines, were charged fees of six thousand dollars each for their Canadian employment contracts.<sup>12</sup> One migrant rights organization refers to another situation where eighty Mexican workers were tricked into coming to Canada after paying labour broker fees and then were deported by Canadian immigration officials. The group was reportedly illegally charged \$4,500 per person for work and travel arrangements by unscrupulous labour brokers in Mexico (Sandborn, 2008).<sup>13</sup>

Recruitment fees are often deducted from the wages of the workers once they start working, thus dramatically lowering a worker's wages. Recruitment fees are difficult to address in a coherent manner nationally because they fall under the jurisdiction of the provinces and territories, not the federal government which oversees the various temporary foreign worker programmes. Recruitment fees have been characterized as employment standards or fair trade issues, both of which fall under the jurisdiction of provinces and territories.

The regulations created under Alberta's *Fair Trading Act, RSA 2000, c F-2* make it illegal to charge workers for job placement or "recruitment" services.<sup>14</sup> However, despite these legislative provisions, "the vast majority of investigations undertaken by the authorities result in no formal action or are abandoned due to "lack of evidence" or inability to pursue the broker" (Nakache and Kinoshita, 2010).<sup>15</sup> Unfortunately many recruitment agencies operate outside Canada so are not subject to Canadian law. While Canadian embassies abroad do try to provide the Canadian government with infor-

<sup>12</sup> "Foreign workers paid recruitment fees for Alberta jobs" (16 June 2008) *CBC*, online: CBC Radio Edmonton <[http://www.cbc.ca/edmonton/features/disposableworkers/MT/2008/06/foreign\\_workers\\_paid\\_recruitme.html](http://www.cbc.ca/edmonton/features/disposableworkers/MT/2008/06/foreign_workers_paid_recruitme.html)> [hereinafter "Foreigner workers paid recruitment fees"].

<sup>13</sup> Tom Sandborn, "Eighty Jailed and Sent Home Mexicans Seeking Work, Tricked, Detained and Deported" (25 June 2008) *The Tjee*, online: Justicia for Migrant Workers <<http://www.justicia4migrantworkers.org/bc/news.html>> [hereinafter Sandborn].

<sup>14</sup> Section 9 of the *Alberta Employment Agency Business Licensing Regulations*, Alta. Reg. 189/99, prohibits the charging of recruitment fees.

<sup>15</sup> Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program – Do Short-Term Economic Needs Prevail over Human Rights Concerns?" (May 2010) The Institute for Research on Public Policy (IRPP) at 14, online: <<http://www.irpp.org/indexe.htm>> citing Alberta Federation of Labour, "Entrenching Exploitation" [hereinafter Nakache and Kinoshita].

mation on unscrupulous foreign recruiters, the federal government is limited in what it can do to stop illegal recruitment practices (CBC Radio, 2008).<sup>16</sup>

Currently, the Alberta government is exploring potential changes under its *Fair Trading Act*. This legislation makes charging TFWs recruitment fees illegal. Historically, there has not been much success in prosecuting recruitment agencies under this Act and the Alberta government in April 2010 accepted submissions on how this legislation might be improved with respect to illegal fees and regulating recruitment agencies (Government of Alberta, 2010).<sup>17</sup>

### Work permits and job mobility restrictions

One of the key issues arising under work permits is the lack of job mobility. There are two categories of temporary foreign worker permit: “open” and “employer restricted”. Employer specific work permits dictate which employer the worker is legally entitled to work for in Canada. If a worker holds an employer specific work permit and wishes to change jobs, he or she must apply for a change of conditions on their work permit, a difficult and time consuming process that can take several months (BC Building Trades, 2008).<sup>18</sup>

In addition to finding a new employer, the worker must also wait for the new employer to apply for and receive a positive Labour Market Opinion (LMO), which can take up to five months (BC Building Trades, 2008).<sup>19</sup> The cumbersome requirements for acquiring a new work permit can deter migrant workers from leaving their jobs, even in situations where there is abuse and exploitation. Fearing a loss of or disruption in income, many workers will stay in unhealthy and sometimes deplorable work environments for extended periods of time. Further, some TFWs report that they have experienced threats of deportation by their employer and fear losing the possibility of eventual permanent residency.

### Employment standards

All workers in Canada, regardless of their status as citizens, permanent residents, or temporary residents, have certain rights and obligations when work-

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<sup>16</sup> Interview of Minister Monte Solberg by Ron Wilson (24 January 2008) as part of the *Alberta's Disposable Workers Series*, CBC Radio, Edmonton, online: CBC Radio <<http://www.cbc.ca/edmonton/features/disposableworkers/>> [hereinafter *CBC Radio Interview*]. The rules governing the area of recruitment can be found in the *Alberta Employment Agency Business Licensing Regulations* established under the *Fair Trading Act*.

<sup>17</sup> “Input Invited on regulations for employment agencies,” (March 22, 2010), *Government of Alberta News Release*, online: <<http://alberta.ca/acn/201003/28026863666C0-E64C-2326-EA25DD443709F170.html>>.

<sup>18</sup> BC Building Trades, “Submission to Citizenship & Immigration Canada: Canada Experience Class (ECE) Economic Immigrant” (21 January 2008), online: BC Building Trades <<http://www.bcbuildingtrades.org/pdf/Submissions/08-01-10%20Experience%20Class%20Feedback.pdf>> [hereinafter BC Building Trades “Submissions”].

<sup>19</sup> BC Building Trades “Submissions”.

ing in Canada. The minimum standards of employment are set out in provincial and territorial employment standards acts. Provincial and territorial employment standards legislation contains provisions relating to things such as: the maximum number of hours that an employee can be asked to work, breaks, overtime pay, days off, general holidays, vacation and sick leave, as well as provisions regulating how an employee can leave their place of employment, and how an employer can terminate a worker's employment. However, there are many exceptions to the standards particularly when it comes to hours of work and overtime pay. Human Resources and Social Development Canada notes that:

The lists of exclusions from hours of work and overtime pay provisions are usually quite extensive. The most common exclusions are students and members of designated professions, ambulance drivers and attendants, domestics, fishermen, farm workers, construction workers, and managerial staff.<sup>20</sup>

In short, many of the occupations in which migrant workers typically work, such as caregivers or farm workers, are exempt from some basic employment standards. In Alberta, farm workers face a particularly large number of exclusions from employment standards. They are not protected by the rules about minimum wage, hours of work, breaks, overtime and overtime pay, vacation pay, and general holiday pay (Barneston, 2009).<sup>21</sup> Both Canadian and foreign agricultural workers face the same exclusions.

Employment Standards officers are responsible for investigating complaints about employers. Between December 1, 2007 and August 31, 2008, Employment Standards Alberta made 290 worksite visits and received 246 complaints from TFWs (Fudge and MacPhail, 2009).<sup>22</sup> Recent Alberta reports also show that Employment Standards officers are investigating businesses that employ TFWs and almost three-quarters of these businesses in 2009 violated employment standards, particularly in failing to pay over-time and vacation pay (CBC News, 2010).<sup>23</sup>

Enforcement and oversight mechanisms are necessary for temporary foreign workers to ensure that her/his right to a safe and healthy work environment is respected. While migrant workers are covered by the same employment laws and standards as Canadian workers, it is the employee who must bring a breach by an employer to the attention of the appropriate authorities

<sup>20</sup> HRSDC, "Hours of Work, Overtime, Meal and Other Breaks", online: Human Resources and Skills Development Canada <[http://www.hrsdc.gc.ca/en/lp/spila/cli/eslc/21Hours\\_Work\\_Overtime\\_Meal.shtml](http://www.hrsdc.gc.ca/en/lp/spila/cli/eslc/21Hours_Work_Overtime_Meal.shtml)>.

<sup>21</sup> *Employment Standards Code*, RSA 2000, c E-9 at s. 2; Bob Barneston, "The Regulatory Exclusion of Agricultural Workers in Alberta" (Winter 2009) *Union* at 11, online: Alberta Federation of Labour <<http://www.afl.org/upload/UnionWinter2009.pdf>> [hereinafter Barneston].

<sup>22</sup> Fudge and MacPhail at 32.

<sup>23</sup> "Temporary foreign workers treated poorly, NDP charges," (March 17, 2010), *CBC News*, online: <<http://www.cbc.ca/canada/edmonton/story/2010/03/17/edmonton-temporary-foreign-workers-ndp-reports.html>>.

(e.g., Worker's Compensation Board, Alberta Employment Standards, etc.). However, this complaint-driven system tends to be ineffective for lower-skilled TFWs for several reasons, including:

- the desire on the part of the worker to maintain a “successful” relationship with the Canadian employer;<sup>24</sup>
- language barriers; and
- the general requirement in employment standards laws that the worker try to resolve the issue with the employer prior to making a formal complaint.<sup>25</sup>

As previously mentioned, lower-skilled TFWs may only work for an employer that has a LMO. The TFW Programme is an employer-driven programme. A TFW relies on the employer not only to secure a job and livelihood, but also to legally remain in Canada. If the work permit expires before the TFW is able to find a new employer with a LMO and obtain a new work permit, he/she must leave Canada. Tying a TFW's immigration status to his/her relationship with an employer further exacerbates the general power differential that exists between an employer and employee. In these kinds of situations, a TFW's fear of losing legal status in Canada may significantly reduce a TFW's position vis-à-vis an employer in employment related complaints.

### **Integration and discrimination – language, housing and basic services**

In addition to the increase in the number of lower-skilled TFWs in Alberta, there has also been a shift toward recruiting workers from less developed countries. For example, the fastest growing source countries for TFWs in Alberta are the Philippines, Mexico and India. In 2007, the Philippines passed the United States as the number one source country for TFWs in Alberta (Byl, 2009).<sup>26</sup> Along with increasing diversity of TFWs in Alberta, there have been increased reports from TFWs of discrimination based on race (Byl, 2009).<sup>27</sup> Other concerns for lower-skilled TFWs include language barriers, inadequate housing, higher costs of living and difficulty accessing basic services such as health care and day-to-day activities (i.e., banking and grocery shopping).

<sup>24</sup> The North-South Institute, “Migrant Workers in Canada: A Review of the Canadian Seasonal Agricultural Worker's Program” (2006) at 4, online: CERIS <[http://www.ceris.metropolis.net/Virtual%20Library/EResources/Maxwell2006\\_MigrantWorkers.pdf](http://www.ceris.metropolis.net/Virtual%20Library/EResources/Maxwell2006_MigrantWorkers.pdf)> [hereinafter “Review of Canadian Seasonal Agricultural Worker's Program”].

<sup>25</sup> Building and Construction Trades Council, “Temporary Foreign Workers Advocacy Proposal” (15 January 2008), online: BC Building Trades Council <<http://www.bcbuildingtrades.org/pdf/Submissions/08-01-15%20Meeting%20with%20Hon%20%20Olga%20Illich2.pdf>> [hereinafter “TFW Advocacy Proposal”].

<sup>26</sup> Yessy Byl (Alberta Federation of Labour), “Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate” April 2009, at 11.

<sup>27</sup> Byl, 2009 at 12.

There is, of course, no requirement for lower-skilled TFWs to have formal English or French language proficiency levels since the menial labour jobs they are being hired for will not typically involve any verbal interaction with the general public. However, practically speaking, the lack of proficiency in either of Canada's official languages can be a significant barrier. For one thing, information about goods and services is not typically offered in other languages, except in Canada's larger, more ethnically diverse cities. Furthermore, the language barrier restricts these TFWs to socializing only with people who speak the same language, thus severely limiting their experience of Canadian culture. The workers are also disadvantaged in terms of understanding workplace expectations, their rights and obligations, and health and safety.<sup>28</sup>

Issues have also arisen regarding adequate housing for lower-skilled workers. Employer-provided housing may be substandard, overcrowded, lacking in basic cleanliness and overpriced. (Parliamentary Report on Temporary Foreign Workers, 2009)<sup>29</sup> Under the Live-in Caregiver Programme and the Seasonal Agricultural Worker Programme (SAWP), employers are required to provide accommodations to TFWs. TFWs under these two programmes are required to live in employer-provided housing. Employers of lower-skilled workers under the general TFW Programme are not required to provide housing, but some employers choose to become landlords and in effect oblige TFWs to rent accommodations from their employer. New TFWs may also face higher costs of living with respect to rent and food, as compared to their country of origin. Cultural differences in communication and learning may also be a challenge to understanding legal rights and responsibilities in Canada. For example, some TFWs have a general distrust or fear of government and are reluctant to approach government offices for assistance or questions related to their rights. In general, TFWs in Canada may experience exclusion from social and cultural activities and full participation in the economy.<sup>30</sup> Finally, many TFWs come to Canada without their families and experience loneliness and isolation as a result.

### Family separation

According to the federal *Immigration and Refugee Protection Act (IRPA)*, migrant workers may bring spouses and children with them when they come to Canada.<sup>31</sup> Despite this legal right, many migrant workers -- particularly those in lower-skilled occupations -- are effectively barred from bringing family mem-

<sup>28</sup> Elgersma, Sandra "Temporary Foreign Workers," September 7, 2007, *Library of Parliament of Canada, Political and Social Affairs* Division <<http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0711-e.htm>>.

<sup>29</sup> *Standing Committee on Citizenship and Immigration, Temporary Foreign Workers and Non-Status Workers*, 40<sup>th</sup> Parl, 2<sup>nd</sup> Sess (May 2009) at 45, online: House of Commons Committees <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3866154&Language=E&Mode=1&Parl=40&Ses=2>> [hereinafter *Parliamentary Report on TFWs*].

<sup>30</sup> Elgersma, 2007, at e 8.

<sup>31</sup> "FAQs Working Temporarily in Canada," [www.cic.gc.ca](http://www.cic.gc.ca).



bers with them because of restrictions in their work permits requiring them to live in accommodations provided by their employers. The employer is only obligated to provide housing for the worker, not other family members. Consequently, spouses and children usually end up remaining in their home countries. Furthermore, spouses of lower-skilled TFWs are ineligible for open work permits and require an LMO if applying for a work permit. On the other hand, spouses of higher-skilled TFWs are entitled to enter Canada with an open work permit, with no restrictions as to the employer.

The extent of family separation and its effects on migrant workers and their families have only recently been the subject of monitoring. Information collected from workers' rights organizations indicate, for example, that caregivers who come to Canada spend on average five years apart from their spouses and children.<sup>32</sup> Farm workers, many of whom return to Canada on a yearly basis and remain in Canada for a greater part of the year (up to eight months), spend more time away from their families than they do with them.

### **What measures are in place to help TFWs?**

The Alberta government has addressed some of the challenges TFWs experience with a pilot project that started in June 2008. This project saw the provincial government provide funding to nine immigrant servicing agencies across the province to provide settlement support services specifically to temporary foreign workers. Unfortunately, there was no formal announcement or public launch of this funding so many TFWs did not know of the programme's existence initially (Gilbert, 2009).<sup>33</sup> The idea was that the additional money would allow these organizations to provide services to temporary foreign workers related to non-employment issues (Gilbert, 2009).<sup>34</sup> In particular, these organizations could now provide daily living orientation, which includes information on how to take the bus, how to dress in cold weather, banking, and buying groceries. They can also now provide referrals for housing, education, legal services, interpretive services, and job application assistance.

The funding was extended until June 2010 for these projects. Since then the Alberta government has committed the same amount of funding, but this funding has been distributed to fewer agencies across Alberta. These services are an essential piece of promoting integration and inclusion of TFWs in Alberta, which benefits all stakeholders. For example, the Calgary Catholic Immigration Society (CCIS) received continued funding for its TFW program

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<sup>32</sup> KAIROS, "Family Reunification" <<http://www.kairosCanada.org/en/solidarity/refugees/reunification/>>

<sup>33</sup> Richard Gilbert, "Alberta beefs up support for temporary foreign workers" (30 July 2008) *Daily Commercial News*, online: Daily Commercial News and Construction Record <[http://www.dcnonl.com/article/id29534?search\\_term=Alberta beefs up support for temporary foreign workers](http://www.dcnonl.com/article/id29534?search_term=Alberta%20beefs%20up%20support%20for%20temporary%20foreign%20workers)> [hereinafter "Alberta beefs up support for TFWs"]. This pilot project is funded by Alberta Employment & Immigration and is slated for a two-year period [Source: Red Deer Advocate (January 16, 2009) "Pilot project begins helping temporary foreign workers"]

<sup>34</sup> "Alberta beefs up support for TFWs".

and describes its focus as “retention through integration.” Assistance at CCIS for TFWs is available in areas such as Employee Rights and Labour Standards, Law and documentation, English language classes, and Housing.<sup>35</sup>

The Alberta government has also funded two Temporary Foreign Worker Advisory Offices (one in Calgary and one in Edmonton) and has created a Helpline where TFWs may anonymously ask questions related to their employment concerns. The Helpline receives between 400 and 500 calls a month, usually relating to employment complaints (Fudge and MacPhail, 2009).<sup>36</sup> Services provided by the Advisory Offices include completing forms, assistance in submitting complaints, providing current information on federal and provincial programs, and making referrals to immigrant service agencies. Furthermore, the TFW Advisory Offices refer all complaints from TFWs to the appropriate investigators.<sup>37</sup> Between December 2007 and June 2009, the Edmonton and Calgary Advisory Offices together received about 800 visits from TFWs (Nakache and Kinoshita, 2010).<sup>38</sup> At these offices a Guide for TFW Employees is available in 13 languages, covering information ranging from employment standards to landlord/tenant law. A Guide for Employers is also available.

In 2007, the Alberta Federation of Labour (AFL) instituted a free advocacy programme for temporary foreign workers in the province (the “Office of the Temporary Foreign Worker Advocate”). This programme was based in Edmonton. The president of the AFL stated that the union was motivated to use its donations to create a position for an advocate because it had “...heard too many stories of exploitation, neglect and unfair treatment...” (AFL Sets up TFW Advocate Office, 2007).<sup>39</sup> The Advocate’s duties included assisting workers in filing employment and workplace health and safety standards complaints, helping workers navigate complex federal and provincial laws and bureaucracies, and more generally to helping workers understand their rights (AFL Sets up TFW Advocate Office, 2007).<sup>40</sup>

In the Advocate’s first report to the AFL, six months after the Office was opened, she stated that she had “taken inquiries from over 1,400 people and

<sup>35</sup> For more information, please visit Calgary Catholic Immigration Society’s website: <[http://www.ccis-calgary.ab.ca/index.php?option=com\\_content&view=article&id=74&Itemid=81](http://www.ccis-calgary.ab.ca/index.php?option=com_content&view=article&id=74&Itemid=81)>.

<sup>36</sup> Fudge and MacPhail at 32.

<sup>37</sup> Government of Alberta, Temporary Foreign Workers - A Guide for Employees, March 2010, available in hard copy and online: <<http://employment.alberta.ca/documents/WIA/WIA-IM-tfw-employee.pdf>>.

<sup>38</sup> Nakache and Kinoshita at 29 citing Fudge and MacPhail at 19.

<sup>39</sup> Alberta Federation of Labour, “AFL Sets up Temporary Foreign Worker Advocate Office” (4 May 2007) *AFL News*, online: Alberta Federation of Labour <<http://www.afl.org/news/default.cfm?newsId=437>> [hereinafter “AFL Sets up TFW Advocate Office”].

<sup>40</sup> “AFL Sets up TFW Advocate Office”.

opened case files for 123 TFWs in need of assistance (Byl, 2007)".<sup>41</sup> In many cases, temporary foreign workers contacting the Office did not want the Advocate to take any action on their behalf; rather they simply wanted advice or information (Byl, 2007).<sup>42</sup> Most of the case files that were opened (93 of the 123) involved workers trying to find different employment or any employment (Byl, 2007).<sup>43</sup> The Advocate found "disturbing and common occurrences of abuse and mistreatment" with respect to wages, illegal recruitment fees, housing, misrepresentations and breach of contracts by employers (Byl, 2007).<sup>44</sup> In the spring of 2008, the AFL worked out an agreement with the Edmonton Legal Community Clinic (ECLC), a non-profit organization offering legal services to vulnerable populations, to transfer the Advocate's caseload to ECLC (Byl, 2009).<sup>45</sup> The Advocate now serves as a volunteer lawyer and advisor to the ECLC program for TFWs. Another non-profit organization helping TFWs is the Calgary Workers Resource Centre, which provides assistance for TFWs in filing Employment Insurance and disability insurance applications, claims, complaints and/or appeals.<sup>46</sup>

### **Conclusion: Challenges and areas for reform**

Notwithstanding early attempts to assist TFWs in Canada, there remain five systemic issues from a human rights perspective that simply cannot be ignored. First, work permit restrictions that require workers to live in accommodations provided by the employer under the Live-in Caregiver and SAWP Programmes and employers who choose to oblige TFWs to rent employer-owned housing leads to family separation and may lead to substandard housing. Second, permit restrictions that limit a worker to a particular employer can make them particularly vulnerable to exploitation and abuse. Third, temporary foreign workers are legally entitled to the same rights and privileges as Canadian workers under employment standards legislation, but they tend to work in occupations that have traditionally been exempted from such standards. Also, lower-skilled TFWs may not have the resources to initiate an action against an employer. Furthermore, a lower-skilled TFW may not seek redress for employment standard violations because her/his prospects for future employment are dependent on a relationship with a current employer. Fourth, while Canadian laws prohibit an agency from charging recruitment fees to the worker, these laws are unenforceable outside of Canada thus creating a situation where workers may be charged recruitment fees amounting to thousands of dollars. Finally, a lack of legislation requiring governments to

<sup>41</sup> Byl, Yessy, *Temporary Foreign Workers – Alberta's Disposable Workforce: The Six-Month Report of the Alberta Federation of Labour's Temporary Foreign Worker Advocate (November, 2007)* Alberta Federation of Labour at 1.

<sup>42</sup> Byl, 2007 at 9.

<sup>43</sup> Byl, 2007 at 9.

<sup>44</sup> Byl, 2007 at 2.

<sup>45</sup> Byl, 2009 at 2.

<sup>46</sup> Calgary Workers Resource Centre, online: <<http://www.calgaryworkers.org/?id=services>>.

monitor the working conditions provided by employers who hire TFWs make it easier for employers to ignore employment standards and occupational health and safety legislation.

In addition to transparency and accountability challenges, there are legislative problems that the Government of Canada is currently seeking to address, namely, the absence of provisions that mandate the oversight or monitoring of employers who hire migrant workers. Challenges are evident in two respects. First, there is a need to ensure that employment conditions and employer-provided accommodations (if any) meet the requisite provincial and territorial employment and safety standards *prior* to granting a positive LMO that would permit the employer to hire TFWs in the first place. Second, once employers have migrant workers in their work force, there is a need for adequate legal protection to ensure that employers adhere to *relevant* health, safety, and human rights legislation. Where such laws are not adhered to, penalties for non-compliance should be effective enough to deter similar future actions.

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