

*Canada's Temporary Foreign Worker Program (TFWP)*

# **Model Program — or Mistake?**



This report was prepared by the Canadian  
Labour Congress and written by Karl Flecker,  
National Director of the Anti-Racism and  
Human Rights Department.

Photos provided by Vincenzo Pietropaolo.  
Layout by Judy Cerra, CLC.

April 2011

cope225

# Canada's Temporary Foreign Worker Program (TFWP) **Model Program – or Mistake?**

## **Introduction**

Teresa's name has been changed, but this is a real story that was documented by Justice for Migrant Workers, and published in the *Toronto Star* in 2009.

*Teresa picks apples in the summertime in Ontario. Her home is in Mexico.*

*While at work on a farm in Ontario, she fell off a tractor, which then ran over her legs.*

*When she woke up from her second surgery, a representative from the Mexican Consulate was in her hospital room. He blamed her for being clumsy and causing her injuries. He demanded that she sign a document confirming his version of the accident, and said she would be returned to her family in Mexico.*

*Outside her hospital room, the owner of the farm paced the hallway. He was angry and anxious to have Teresa sign the document.*

*Two members from a grassroots advocacy group, called Justice for Migrant Workers, were also at the hospital because they knew Teresa and many of her co-workers.*

*They knew Teresa had workplace rights. They knew she deserved full treatment for her workplace injuries, and ensured Teresa did not sign the release document that the farmer and representative from the Mexican Consulate were most interested in.*

*Getting Teresa's belongings from the farm was another matter, despite the employer's rants in the hospital. Because she worked on private property, Teresa's advocates knew they would need to have a police escort to help them gain*

*access to the farm, so they could collect her belongings. Two police officers were dispatched, and they accompanied Teresa's advocates to the farm gate where they found her belongings carelessly stuffed into a plastic bag and tossed near the ditch.*

*One police officer struck by this said, "Apples will never taste the same."*

Canada's Temporary Foreign Worker Program (TFWP) and its various streams, such as the Canadian Seasonal Agricultural Worker Program (SAWP), are rife with real stories of real abuse of workers.

Ironically, Canada's Seasonal Agricultural Worker Program, which allows employers to import migrant workers on a temporary basis, is touted internationally by some as a model temporary worker migration program.

But national policymakers considering emulating the Canadian program would be wise to take a closer look.

## **First, a bit of history**

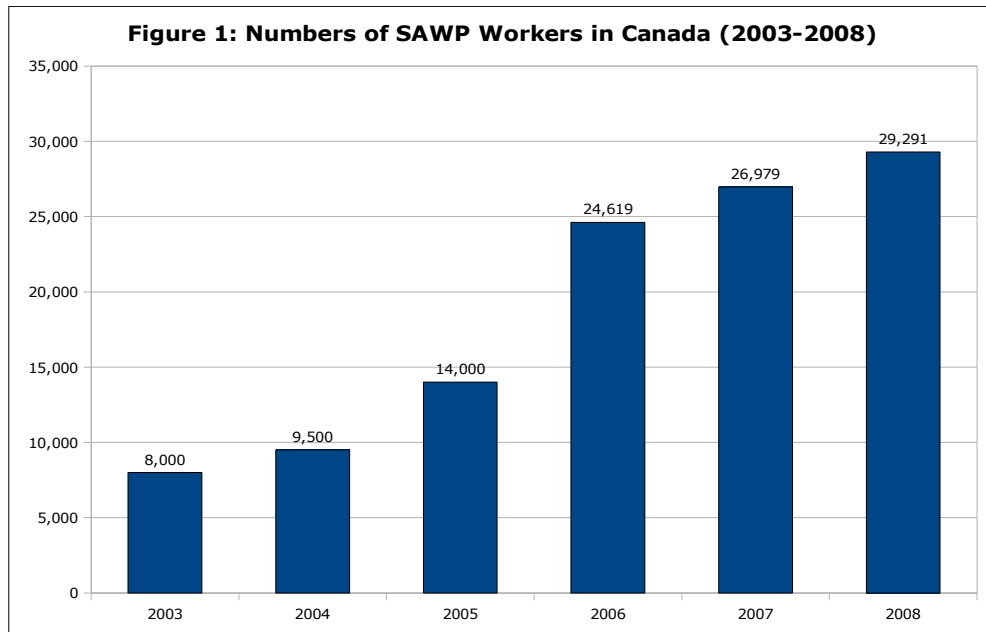
Canada's Seasonal Agricultural Worker Program (SAWP) has a long history. The Canadian government, in response to concerns from farmers who were finding it increasingly difficult to hire workers from Canada to harvest crops, established Memoranda of Understanding (MOUs) with select countries allowing workers to legally enter Canada for periods of six weeks to eight months in order to alleviate Canadian labour shortages within the agricultural sector.

The Seasonal Agricultural Worker Program started in 1966 in partnership with Jamaica, with just 264 workers.<sup>1</sup>

Trinidad, Tobago, and Barbados followed in 1967, while Mexico began in 1974. The Organization of Eastern Caribbean States (Grenada, Antigua,

Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Montserrat) came on board in 1976.<sup>2</sup>

While the influx of these workers was relatively small in the 1970s (around 4,000 workers), it has grown to about 30,000 agricultural workers as of 2008.



Source: Foreign Agricultural Resource Management Services (FARMS) Ontario; *Fondation des Entreprises en Recrutement de main-d'œuvre Agricole Étiangère, Québec*; CR Farms, Prairies; Western Agriculture Labour Initiative, British Columbia.

The program was originally managed by a department of the Canadian federal government — Human Resources and Development Canada (HRDC) — but administration of the program was privatized in 1987. Control of the program was then given to Foreign Agricultural Resource Management Services (FARMS), a non-profit organization controlled and funded by Canadian growers. Once producers took control of the program, the quota system, which previously limited the number of workers admitted to Canada, was dropped in favour of an employer-demand/country-supply approach. The rise in the number of migrant farm workers coincided with the decision to privatize the management of the SAWP.

Recruitment of farm workers is now administered by officials from countries of origin working with farmers. Noticeably absent from the process is any representative body of the workers themselves.

Proponents of Canada's temporary agricultural worker programs typically speak romantically about the personal connections that are built between migrant farm workers and farm operators. The idyllic, even charitable, characterization of the personal relationship between farmers and farm workers masks a fundamental power imbalance.

First of all, the image of the rural farm family welcoming strangers into their household provides a specious rationale for the "naming process" which dominates the selection cycle of migrant farm workers. This process — where farmers literally identify, by name, which workers they want to return — serves the farmers' interests. It was worth highlighting that approximately 70% of farm workers return as "named" participants. Workers typically return for several seasons, the average stay being seven years. Some participants have been involved in the program for over twenty years.<sup>3</sup> Simply put, a farmer can choose, very deliberately, to exclude certain workers from their employment with no rationale.

Under the SAWP rules, housing is to be provided by the employer, usually on site at the place of work. Costs for return airfare are to be paid for, in part, by both employer and employee. Migrant workers are to be covered under provincial health care programs, and though they pay into the national income tax, employment insurance, and the pension fund system through deductions on their pay cheques, this usually does not translate into adequate coverage or full access to the benefits which they have paid into.

Consider, as well, that in the case of Mexican agricultural workers, each worker must submit a sealed evaluation completed by the employer to Mexico's Ministry of Labour, in Mexico, in order to remain in the program.<sup>4</sup> The one-way evaluation system favours employers who claim it

reduces turnover and training costs. Its design also allows farm operators to distill specific workers from the labour pool, particularly those who might pursue their workplace rights or advocate for improved working conditions.

Wages for SAWP workers are negotiated annually between the Canadian government through the federal Ministry of Human Resources and Skills Development Canada (HRSDC), the sending countries, and the major employers in the agriculture industry. Migrant workers or association representatives are excluded from the process. There is no meaningful input invited from the workers, nor do they have anyone who represents them at the bargaining table.

The result is a system where employers are essentially unsupervised and unchecked when it comes to the treatment of workers. As for workers who do express concerns about health and safety issues or working and living conditions, too often they have found themselves repatriated at a moment's notice, at their own expense, or not being "named" for the subsequent season.

Promoters of Canada's TFWP don't talk about the lack of policy integrity where administration is in the hands of employers, nor do they speak about power imbalances inherently designed into a program that allows farm operators to pick their labourers of choice from a basket of economically dependent and potentially compliant workers, and unilaterally determine their housing, wages, working conditions, and level of access to social programs.

Is it any wonder that Teresa — the apple picker — fared so poorly under this system?

There are other inherent design flaws in the SAWP, namely:

- The SAWP repatriation provision allows employers to send sick or injured workers home. Migrant farm workers are subject to repatriation and an absence of a fair review process in the event of conflicts with their employer. Repatriation decisions can't be appealed. They serve as the employer's bluntest tool to suppress workers' rights.
- Some employers continue to withhold workers' passports, health insurance cards, and other personal documents as a means of control. In the past, this practice has also been condoned by some consular officials. This action, which is illegal and clearly unethical, points out how powerless most migrant workers remain under the SAWP.
- A report from the Canadian Agricultural Injury Surveillance Program (CAISP) finds that, after mining and logging, agriculture is the third most hazardous occupation in Canada. However, when it comes to workplace fatalities, agriculture tops the list. Despite nearly a decade of advocacy asking that the Canadian government require provinces to extend provincial health and safety legislation to migrant farm workers, many migrants go to work without this fundamental legislative protection. After a legal challenge initiated by UFCW, some provinces have conceded, as Ontario did in 2006. However, migrant workers are still at risk of repatriation if they attempt to refuse unsafe working conditions.<sup>5</sup>

## **Advocating for migrant agricultural workers**

For almost two decades, the United Food and Commercial Workers International Union (UFCW) has been the leading voice and advocate for migrant agricultural workers. Since 2002, UFCW Canada has also directly delivered support services, information, and health and safety



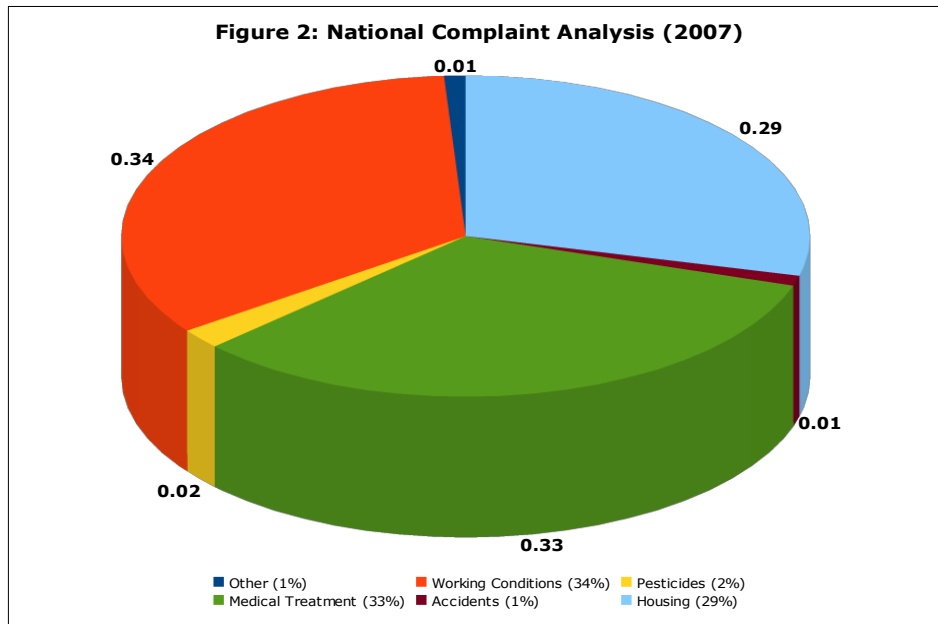
training to tens of thousands of migrant agricultural workers who come to Canada through Canada's Seasonal Agricultural Worker Program.

In 2002, UFCW opened its first Agricultural Workers Support Centre in Leamington, Ontario. Building on this success, a series of other centres were opened across Canada to meet the needs of agricultural workers. In 2008, that effort expanded to launch the Agriculture Workers Alliance (AWA) — the first, ever, Canadian national advocacy and support network for domestic as well as foreign workers in Canada engaged in the SAWP and other streams of the government's Temporary Foreign Worker Program.

The AWA, in association with UFCW Canada, now operates nine Agricultural Workers Support Centres across Canada in Leamington, Bradford, Simcoe, and Virgil, Ontario; Saint-Rémi, Québec; Portage la Prairie, Manitoba; and Surrey, Kelowna, and Abbotsford, British Columbia. Together they stand as Canada's most comprehensive resource of support and outreach to seasonal and temporary agricultural workers. Despite the availability of this tremendous on-the-ground resource, neither the federal government's, nor the employers' organization FARMS have attempted to involve the knowledge and experience of UFCW or AWA in any meaningful way to improve the program.

For the last eight years, UFCW has also published an annual report on the status of migrant farm workers in Canada. Each of these annual reports should be obligatory reading for any national policymaker looking to emulate Canada's migrant worker program.

The pie chart illustrates the type of complaints migrant farm workers registered with the UFCW in 2007.



Source: UFCW 2008-09 Report on the Status of Migrant Farm Workers in Canada.

In 2008, the AWA responded to more than 40,000 enquires received at their centres across Canada — these are principally complaints registered from migrant workers. This figure alone suggests that SAWP may not be the model program promoted by some.

UFCW and AWA staff assist agricultural workers with a number of issues: helping to file health insurance and prescription claims; intervening in cases of repatriation; submitting claims for parental benefits; assisting with the filing of income tax statements; submitting workers’ compensation claims, as well as claim entitlements for vacation pay; evaluating deductions for Canada Pension Plan and Employment Insurance; and submitting claims for parental benefits. These are just a few of the services provided.

The staff at these centres also advocate on behalf of migrant workers in dealing with delays in receiving provincial health cards, and subsequent difficulties receiving reimbursements after paying for medical care. They assist in cases where migrant agricultural workers are subjected to

inadequate or substandard accommodations. The centres help to address concerns about working conditions; hours of work; rest periods; transportation costs; food; overtime pay; inadequate training and knowledge; as well as a lack of proper equipment for dealing with machinery, chemicals, or pesticides.

Despite claims that migrant workers are afforded workplace rights and protections as well as access to health care and other social benefits, UFCW has demonstrated widespread problems persist with the SAWP.

Neither the federal government, nor FARMS provides any financial resources for this work.

## **Migrant workers and the role of the State**

Promoters of the SAWP repeatedly state that migrant workers are afforded the same rights and protections as Canadian workers and permanent residents, yet decades of advocacy work by UFCW has revealed a different reality. For example, entitlement to parental benefits was historically unknown to migrant agricultural workers, and until recently, was not promoted by the Canadian government.

It is only because UFCW and AWA have helped migrant workers file more than \$23 million in accumulated parental benefit claims for SAWP workers who qualified for this benefit, because they paid Employment Insurance premiums during their work terms in Canada that the Canadian government is now more explicit about this entitlement. Had it not been for the advocacy efforts of UFCW and AWA, the practice of “don’t tell” migrant workers about the entitlement would persist.

Live-In-Caregivers (LICs) also face systemic struggles. In most provinces and the territories, LICs do not have the right to unionize because provincial law does not recognize the domestic arena as a workplace. In British Columbia, the second largest destination of domestic workers, the

province's *Employment Standards Act* will consider these workers as “contractors” — an obstacle to unionization. Except for Québec, neither the federal, provincial, or territorial governments maintain an accessible registry of domestic workers, further impeding efforts to organize and support these workers.

In the case of housing, although farm operators are supposed to provide housing, in some cases they can also charge a fee. A Québec Labour Standards Board made an important finding early in 2010. They found Québec agricultural operations were deducting a housing charge from migrant farm workers’ pay cheques that was beyond the maximum allowable under that province’s labour regulation. The Board advised the Guatemalan Consulate as well as FERME (FARMS in English) that the \$45/week housing deduction from about 4,000 Guatemalan migrant farm workers was in violation of the \$20/week maximum allowable under Québec’s labour standards. The \$45-weekly charge had originally been negotiated between FERME, the Guatemala authorities, and approved by the Canadian federal government!

Andrea Galvez, coordinator of the AWA support centre in Saint-Rémi, Québec, noted workers “altogether were being overcharged more than \$100,000/week. And it has been like this since 2003.”<sup>6</sup>

That such a blatant abuse could take place, and for so long within the rules of the TFW Program, speaks volumes about whose interests are being served and whose are being silenced and exploited.

The International Organization for Migration (IOM) — an intergovernmental agency dedicated to “promoting humane and orderly migration for the benefit of all” — often promotes the Canadian/Guatemalan farm worker/FERME program as a model initiative.

Here are some of the conditions of the contract Guatemalan farm workers are required to sign in order to work on Canadian farms (emphasis added):

- During your stay in Canada, you should only do the activities you are assigned to and should not distract yourself with **any group or association**.
- Reasons to exclude you from the program that will force you to pay your plane ticket: alcoholism, theft, lack of respect, and **sexual relations**.
- Upon arrival at the farm, **the employer will keep your passport** for the duration of your stay in Canada.
- Use **deodorant** before the flight and every day you stay in Canada.
- Beware of **having relations with women**.
- In case you needed to go back to Guatemala before ending your contract, you will have to prove that you have a **good reason**. Even then, the employer **can choose** whether to hire you the next season.
- You should keep your **hair short** to avoid lice.

Guatemalan migrant workers seal the contract with a **\$400-(CDN)-deposit** — which is the equivalent to 17% of the average annual income for Guatemalans.<sup>7</sup>

The terms of this contract were drafted by the Canadian agribusiness employer group FERME and the IOM.

UFCW and AWA have exposed the dehumanizing reality of this “model program” and have put online numerous interviews with Guatemalan farm workers describing their working conditions.<sup>8</sup>

In August 2010, the UFCW Canada and the Agriculture Workers Alliance (AWA) successfully exposed what IOM and FERME were doing, forcing them to stop demanding this outrageous payment from Guatemalan migrants. The workers were relieved they would no longer be compelled to make the deposit, noting they almost always had to borrow from loan sharks who would take everything from them if they couldn't earn enough to keep up with the debt payments.<sup>9</sup>

## **Migrant workers confront racism**

Regrettably, abuses of the program, such as those faced by Guatemalan workers, are not unique.

Honduran migrants working in agricultural fields in Québec hold employment contracts they are forced to sign that clearly state Canada “has no power to intervene or ensure the contract is enforced.”<sup>10</sup>

In cases of dismissal, abuse, or exploitation, UFCW has reported the federal court has begun discussion with industrial agricultural lobbyists to “harmonize” the system, potentially allowing employers even less supervision, as well as passing housing and transportation costs now paid for by employers and onto workers.<sup>11</sup>

Consider the 100-plus farm workers who have annually toiled on Eugene Guinois Junior's commercial vegetable farm southwest of Montréal. Eugene's operation is one of Canada's largest such farms which has maintained a “blacks-only” cafeteria that lacked heat, running water, proper toilets, refrigeration, and many other amenities since 1998.

Astonishingly, it was not until 2005 that this racist practice was challenged by the migrant and day-labourers who filed a complaint with the Québec Human Rights Tribunal. According to their testimony, the black workers were regularly verbally and physically abused, and were the targets of graffiti reading “here are our monkeys” and “blacks are pigs.” Company supervisors admitted the facilities for black workers were sub-par.

In her defence testimony in front of Judge Pauzé, Jocelyne Guinois, the owner’s daughter, said the cafeteria didn’t have a sink, soap, or even running water, but had several hoses outside that the workers could use. She said the extra cafeteria was constructed specifically for these workers, partly because “white workers complained that their food smelled bad.”<sup>12</sup>

The judge who presided over the Guinois human rights case was “stunned, even scandalized” by the racism, neglect, and segregation that took place for so long at Mr. Guinois Junior’s 1,300-acre farm. That this practice persisted for so long speaks to the lack of safeguards for migrant workers.

In Canada, migrant workers disproportionately come from low income countries — in 2006, 63% of temporary migrant workers in Canada were from low income countries, and 62% were racialized workers.<sup>13</sup>

Policymakers need to consider how Canada’s TFW Program encourages employers to import predominantly racialized workers from low income countries. It is an inherently racist and “classist” policy that masquerades as a development paradigm.

Live-In Caregivers (LICs), also known as domestic workers who are primarily women and disproportionately come from the Philippines, are another group of workers who regularly face racism and sexism in their workplaces. In some cases, the abuse these women endure is horrific.

AFL-CIO's senior staff person Ana Avendano reported the following case she encountered:

*The live-in caregiver was held down by her employers, a husband and wife. They proceeded to insert over twenty hot needles into her legs. The needles were heated with an iron to pierce the skin more easily. Why? The caregiver had broken a glass in the kitchen.<sup>14</sup>*

A Human Watch Rights report from 2007, titled "Exported and Exposed," details workplace abuses for these workers, typically falling into categories such as:

- unpaid and underpaid wages;
- wage exploitation;
- physical and psychological abuse;
- heavy workload and excessively long work hours without rest;
- food deprivation and inadequate living conditions; and
- confiscation of passports and restricted communications.

Though this report detailed cases of Sri Lankan domestic workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates, the pattern repeats itself in Canada.

INTERCEDE, one of the longest standing agencies serving live-in caregivers in Canada, documented the following case:

*A caregiver from Peru suffered one year of abuse in the hands of an employer who was also abusive to his own wife and children. He would walk, unannounced, into her room and wake her up by pulling away her blanket. She was not given sufficient food. She was not allowed to go out, not even to*



*church. She was physically assaulted when she asked for time off. When it became obvious she was going to leave, the employer called the police on her, accusing her of theft.*

Reprisals from employers take various forms, such as withholding wages, and when subsequently facing claims filed by these workers under employment standards legislation, their response can take a vindictive turn.

In another case, when a live-in caregiver left her employer and made a well-documented employment standards claim for back wages overtime and vacation pay, her employer accused her of greed, theft, and of wrecking the coffee maker. The employer responded, threatening to report the matter to immigration authorities, and wrote to her, copying-in her new employer stating, “You have greatly abused a position of trust and the generosity of Canada in allowing you to stay here.”<sup>15</sup>

In another instance, INTERCEDE documented the case of a caregiver working in a small town near Toronto, employed by a “respectable” professional couple. All her important documents (passport, employment authorization, social insurance card, OHIP card) were held by the employer. She was never given or shown her work contract, and did not have knowledge of legal working hours or days off. She continuously did overtime work and had no days off during the three months she stayed with these employers. She was not allowed to talk with anyone who lived in Canada or to make any phone calls. Her employers hid the fact that she lived and worked in their home. They did not allow her to go outside the house at any time, nor gave her permission to open the door if anyone came to the house. Her salary, which was below minimum wage, was paid monthly in cash with no pay stubs.

Kerry Preibsch, an academic with Guelph University and a member of the International Migration Research Centre, also has documented instances where employers make extra efforts to conceal workers’ living-quarters so that the community will not complain. Sociologist Tanya

Basok, who has also studied migrant workers extensively, has concluded that “because of the isolation of the work environment and housing arrangements, migrant workers are excluded from the social world of the community in which they live and work.”<sup>16</sup>

Moreover, workers’ long hours and demanding physical tasks prevent them from exercising a social life. Not only do some contracts restrict workers’ human rights, but the minimum wages that workers actually receive make them less likely to spend money on socializing.

The result is this group of workers is regularly isolated and marginalized. Despite numerous cases being brought to light over the decades, there have been no significant changes made to the SAWP design to address these long-standing program shortcomings.

### **“Remittances and development” or “ruse and distortion” ?**

Proponents of temporary migration programs argue there is a pro-development aspect to temporary labour migration. Their argument is that migrant workers will invest their foreign earnings productively in local economies at home, which in turn will lead to economic development in their home communities.

In order for this theory to have merit, the economic benefits thought to co-exist within remittances and returning foreign earnings from migrant workers should be assessed within a rigorous cost and benefits framework. Considerable research has been done on the familial, community, and societal costs that are attached to migrant workers being separated from their families. Authors of a report, titled *Effects of International Migration on Families Left Behind*<sup>17</sup> and prepared for the 2010 Global Forum on Migration and Development, conducted a literature review of a number of studies of migrant worker families including, for example, Thailand, China, Bangladesh, Philippines,

Mexico, Sri Lanka, Indonesia, El Salvador, Guatemala, the Caribbean, Turkey, Malaysia, and Singapore.

These studies have all pointed to significant and costly consequences to family bonds, gender roles and relationships, impacts on children's physical health and psychological well-being, as well as elders who take on roles of the parent. Other researchers in Canada and the U.S. have found that children of reunited families suffer high dropout rates from school.<sup>18</sup> In addition, other studies have demonstrated poor health outcomes of migrant workers who are separated from their families as a result of temporary migrant programs.<sup>19</sup>

The aforementioned report also pointed to detailed studies that have catalogued costly effects, such as the strains of family separation; higher incidence of mental disorders among women and children; lower levels of school performance; and impeded social and psychological development among children. While some studies generally show remittances contribute to better nutrition and access to modern health care and child services for children left behind, the studies also revealed that children left behind have a higher vulnerability to the spread of HIV/AIDS; a higher rate of drug use and heroin addiction; and suffer high levels of emotional disruption, stress, and sadness.

Policymakers looking to emulate Canada's TFW Program, while believing there are positive development aspects, should consider the other very real costs that accompany the separation and exportation of family members abroad to earn a living.

Policymakers may be surprised to learn that Canada explicitly seeks to separate families. Canada has a *Memorandum of Understanding* with Mexico that states only individuals with spouses and children residing in Mexico may enter the SAW Program. The rationale for this condition is to reinforce the temporary nature of the program — as these workers are most likely to return upon completion of their contract.

An important human rights infringement exists with this design that Canadian policymakers don't appear to be concerned with. Under this system, employers are allowed to bypass Canada's national human rights and employment laws. Canadian legislation prohibits discrimination in employment, including hiring and recruitment.<sup>20</sup> Simply put, it is illegal to restrict employment opportunities for jobs on factors that have nothing to do with doing the work. If a Canadian employer were to advertise for married workers with dependents for the job of picking tobacco, they would be violating fundamental laws of this country. Yet the SAWP allows for, and explicitly encourages, this extraordinary violation of our human rights.

Most right-thinking policymakers would be hard-pressed to defend this policy as “good development practice.”

As for the idea that remittances bring economic gains, the economic outcome is more likely to be one of dependency rather than development.<sup>21</sup>

Research carried out in 2005–2007 funded by the International Development Research Centre found that the families of migrants spent most of the remittances on basic subsistence (food, potable water, clothing), followed by consumption of household goods (such as electricity, stoves, etc.), followed by improvements to communication, such as telephone lines or cellular phones, in order to co-ordinate remittance-sending, and keeping in touch with family members working in Canada. Many of these investments are essentially being used to make better migrants.

Jenna Hennebry, an Associate Director with the International Migration Research Centre, points out that researchers generally agree that development is more likely to occur if migrant workers invest their remittances in agricultural land, machinery, livestock, or businesses that have productive capacities. Yet research shows that is not how the

money is spent. Hennebry notes migrant workers are more likely to invest their earnings in productive capacities when the migrants come from rural communities, where higher quality land, better infrastructure, and greater access to markets are more likely. She notes that with respect to SAWP, few migrant workers fit this profile.<sup>22</sup>

It should not be a surprise that with the allure of near permanent, relatively high foreign wages, there would be little reason to attempt productive investment in local economies versus relying on foreign earnings. As a result, the program tends to spur economic dependency and not local development.

Consider the economic case of migrant farm workers from Mexico. Because of the familial criterion for eligibility, most participants in the SAWP are married men with children, and save an average of \$5,000 (CDN) per annual contract. Once household expenses have been deducted, there is little money left over to allow the migrants to invest in the local economy.<sup>23</sup> Many migrant workers do use their earnings to support secondary and post-secondary education of their children in the hopes this will secure better economic opportunities for them.

As made clear in the report *Effects of International Migration on Families Left Behind*, policymakers are advised to consider the very real costs of long-term and repeated separation of families.

In addition, a dangerously exploitative phenomenon is now emerging with remittances. The cash-flow from migrant workers abroad is now becoming the target of extortionists. Ultra-violent gangs with roots in Central America are targeting migrant workers and their families. These gangs abduct family members left behind. Meanwhile, migrant workers abroad receive demands to pay upwards of \$200 per month to the gangs to ensure their loved-ones back home stay alive. Failure to remit and submit means that a worker's aunt, uncle, niece, or nephew will be beaten to death with a bat.<sup>24</sup> The financial gains are enormous for gangs.

Do the math — targeting just 1% of the 250,000 or more migrant workers in Canada, times \$200/month, times 12 months — this equals a disturbing multi-million-dollar implication.

Although the SAWP began in 1966 — ostensibly to relieve a “short-term shortage” of agricultural workers — forty-four years later, there is ample evidence that policymakers and employers prefer to leave the program as it is. There is little evidence of comprehensive steps being taken to improve the wage and working conditions in the farming sector in order to appeal to the domestic labour force.

### **“Lower skills” and less protection**

The term “low or lower skills” is frequently used in Canada’s Temporary Foreign Worker documents and policies; this is an unfortunate term and often is wrongly read as “no ability.” There are many occupations that have devolved from once being high-paying jobs to becoming classified as being low skill and low wage jobs (i.e. meat-packing). Elder and child care jobs are another example of work that requires a diverse and complex skills set, yet migration schemes erroneously categorize these occupations as low skill jobs, and/or the migrant workers in these jobs are under-utilizing their training and skills due to economic necessity.

Despite this misnomer, in 2002, the Canadian government chose to expand the ways in which employers — including farm operators — could gain access to migrant labour. The Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training (TFWP) was created as a pilot program. Dubbed the “low skills” pilot program for short, employers were offered access to workers (mainly from South Asia and Central America) with even less protection and supervision than through the SAWP. The result has created a pool of competing migrant workers who are vulnerable, powerless, and form the backbone of the Canadian agriculture sector since 2002.

A review of the pilot program was conducted in 2006 for the Canadian government department (Human Resources and Social Development Canada) that oversees the TFW Program. Despite a skewed methodology that disproportionately sought out the employers' views of the pilot (66 out of 91 interviews were with employers, while only two interviews were done with representatives for migrant workers, which included Consulate workers). Even the government-initiated review noted, "As for safeguarding against exploitation of FWs, it would appear that the pilot lacks the 'teeth' required to ensure compliance with the regulations."<sup>25</sup>

Because the "low skills" pilot program provides even less protection and oversight than the SAWP, year-round, industrial agricultural facilities have turned to the "low skills" pilot as their program of choice. For workers, it is a choice that typically leaves them completely in the control of their employer.

A case in point: On December 6, 2008, a few weeks before the Christmas holiday, more than 70 Mexican and Jamaican agricultural workers at a mushroom grow house outside of Guelph, Ontario, were fired without notice. Rol-Land Farms, a multi-million-dollar a year, privately owned, industrial agricultural corporation had employed the workers under the Temporary Foreign Worker Program. The workers were also evicted from the housing rented to them by Rol-Land Farms without notice, although many of them had already paid their monthly housing charges via automatic deductions from their pay cheques. Many of the workers were repatriated the next day without having an opportunity to make any arrangements. The workers' Embassies were not notified of the terminations or repatriations.

Although the workers had signed contracts to work for the mushroom farm for 12 months, the majority had been in Canada only for short periods, ranging from three to seven months. For many, this was barely long enough to cover the cost of coming to Canada and paying rent to their employer.

The provincial and federal governments did nothing for these workers. Having faced no governmental sanctions for their first round of firings and terminations on December 23, 2008, Rol-Land Farms fired an additional 50 Guatemalan farm workers, the majority of whom were women. This time, the workers were given a few days notice before their scheduled eviction. They were repatriated between December 28 to 30. These women were contracted to work for a one-year period, but were facing repatriation to Guatemala after only two to four months in the country.<sup>26</sup>

Such experiences are not unique to the SAWP.

Unscrupulous employers, with government sanction, use the TFWP to serve their cost-cutting interests. In September 2006, Park Place Seniors Living Ltd., a long-term care home in Kelowna, British Columbia, operated with approximately 70 long-serving, unionized workers who provided care services for the residents. The home subcontracted its human resources management to a private labour contractor — Advo-Care Health Services Ltd. Advo-Care told the aide workers, who were primarily new Canadians, they would be offered a drastically reduced wage and benefit package, and well below the regional average wage for aide workers. The workers said “no” and were promptly laid off.

The company then claimed there was a “shortage” of care aides, and successfully submitted an application to hire temporary foreign workers. The company recruited its new workers from India, Philippines, Colombia, and South Korea.

This is a clear case of a company pleading on a Wednesday they have a “shortage of workers” when on the Monday beforehand, they dismissed an experienced pool of skilled and qualified employees unwilling to accept dramatically lower wages and benefits.<sup>27</sup>



The pattern of firings, replacement hirings, and repatriations illustrate just a few of the on-going policy design failures of Canada’s Temporary Foreign Worker Program.

## Model program, mistake, or myopia?

Admirers of Canada’s TFW Program are closing their eyes to egregious and extensive violations of workers’ rights as well as damaging implications to labour market planning and immigration policy.

In November 2009, Canada’s highly respected Auditor General conducted a review of the Temporary Foreign Worker Program. Her report made clear that reforms to the Canadian immigration system are increasingly shifting responsibilities and consequences to provinces and Canadian employers. She took direct aim at the TFWP, which brings in an increasing number of often low-skilled workers for jobs ranging from oil sands labourers to construction workers on Olympics facilities and live-in caregivers.

**Table 1: Total Entries of Migrant Workers by Skills Level, Canada (selected years)**

Occupational Skills Level	2002	2004	2006	2008
Level 0 - Managerial	4,605	5,193	6,006	7,287
Level A - Professional	39,337	30,678	35,359	33,115
Level B - Skilled and Technical	19,139	17,450	22,518	30,419
Level C - Intermediate and Clerical	28,029	30,336	36,905	48,926
Level D - Elemental and Labourers	1,105	1,523	4,618	16,875
Level not stated	18,699	27,372	33,695	55,890
<b>Total</b>	<b>110,915</b>	<b>112,553</b>	<b>139,103</b>	<b>192,519</b>

Source: CIC, *Facts and Figures*, reprinted from *Policy Options*, July-August 2010.<sup>28</sup>

Ms. Fraser said little is being done to catch the abuse occurring on all sides of the program. Workers are particularly vulnerable, she said, given that they often don’t speak English, and owe their status in Canada to their employer.<sup>29</sup>

Ms. Fraser was blunt. Her report states, “[T]here has been no systematic follow-up by either Citizenship and Immigration Canada (CIC) or Human Resources Skills Development Canada (HRSDC) to verify that employers are complying with the terms and conditions under which the LMO (Labour Market Opinion) application was approved, such as wages to be paid and accommodations to be provided.”<sup>30</sup>

The Auditor General of Canada pointed out in her report of the TFW Program that there is no shortage of major problems with the program.

Her report pointed to an absence of clear processes, no assurance that either of the two responsible federal departments (CIC or HRSDC) is doing the assessment to determine if job offers are genuine, and there is a lack of clarity and consistency in directives intended to ensure all factors are being met by employers.<sup>31</sup>

## **Special Advocate Project in Alberta**

In one province of Canada — Alberta — migrant workers’ numbers have been soaring. As a proportion of population, Alberta outstrips every other province in foreign worker density. Compared to the U.S., Alberta has twenty times higher usage of foreign workers as a proportion of the population. With this density of migrant workers, so too are their high rates of abuse and exploitation of migrant workers by employers and labour brokers.

The Alberta Federation of Labour (AFL) began a Special Advocate Project in 2006–07 in which lawyer Yessy Byl was contracted for one year to extend legal support to migrant workers facing workplace struggles. Within just the first six months, Byl logged more than 1,400 complaints from migrant workers, and opened more than 120 case files. Problems facing migrant workers typically fell into one or more of these six areas:

- Fraud perpetrated by labour brokers;

- Substandard wages and working conditions;
- Jobs disappearing without notice;
- Excessive rents charged by employers for substandard housing;
- Lack of enforcement of basic employment protections; and
- Long wait times for work permits.

Over the next two years, the AFL produced two reports on the status of migrant workers in the province: *Entrenched Exploitation and Temporary Foreign Workers – Alberta’s Disposable Workforce*.<sup>32</sup>

Thanks to the work of labour and migrant rights advocates, the provincial government has had to reconsider the program.

In the summer of 2010, Alberta’s Employment and Immigration Minister Thomas Lukaszuk has now concluded the program is no longer working for the province:

*It’s not working well now. It’s a temporary solution to a permanent problem. Why not consider some permanency (for) this workforce. I always joke the only group that really benefits from the current Temporary Foreign Worker Program is Air Canada, because they’re flying people in and out.*<sup>33</sup>

Starting in the fall of 2010, the Alberta provincial government will be leading a series of roundtable discussions throughout the provinces to reassess the federal TFW Program. Their findings will inform recommendations to change the program.

## Further examples of workplace abuse

The B.C. Building and Construction Trades Council, the B.C. Government and Employees Union, the Canadian Auto Workers, the Canadian Labour Congress, the United Food and Commercial Workers, faith groups, the Québec Human Rights Tribunal, and numerous advocacy groups supporting temporary workers routinely document many cases of employer fraud, human trafficking violations, workplace abuses, labour brokers, and/or employer exploitation, and workplace injuries and fatalities associated with this program.<sup>34</sup>

Tragically, workplace abuse of migrant workers continues to be widespread, and sometimes with deathly results. Here are few examples:

- In March of 2010, the Alberta Ministry of Employment and Immigration released its own inspection statistics of the 407 workplaces employing migrant workers. Their report showed that 74% of the employers had violated the *Employment Standards Act* regarding pay rates and record keeping.<sup>35</sup>
- On Christmas Eve 2009 in Toronto, five migrant workers fell 13 floors when the scaffolding they were working on failed. Four men, aged 20 to 30 years of age, died that night, and the fifth was taken to hospital in critical condition with extensive head injuries. Troubling questions remain unanswered. Were the workers provided proper safety harnesses and training? What was the role of the contractor, and will corporate accountability be pursued? The Ontario Federation of Labour (OFL) has called on the Attorney General to launch a criminal investigation into the incident.<sup>36</sup>
- Two years after three Abbotsford farm workers were killed while travelling in an overloaded work van, a Coroner's inquest finally began in December of 2009. The women workers were en route to their jobs at a Chilliwack greenhouse when the labour contractor

van they were travelling in collided with two commercial trucks before flipping onto the concrete median near the Sumas exit. The 15-passenger van was carrying 17 people, had only two seat-belts, and wooden benches had replaced the stock seats.<sup>37</sup> The overcrowded farm van flipped in the rain.

- In 2007 in Alberta, two temporary workers from China were killed on the job when a tank they were working on collapsed. Four other temporary labourers were injured. After nearly two years and just three days shy of the investigation deadline, 53 distinct charges were laid against the employer, including several counts of failing to ensure the health and safety of the workers. During the investigation, Alberta Employment and Immigration also determined that 132 Chinese temporary foreign workers were not paid from April to July 2007.<sup>38</sup>
- In the summer of 2007, a Burlington, Ontario-based labour broker was permitted to bring in skilled trades workers (plumbers and welders) from the Philippines who believed they would be plying their trade for wages of \$23/hour. The broker has acknowledged he did not have confirmed jobs for them. He claimed that, “It is better to have a ‘bank’ of workers ready to go than to waste a chance to profit from a government process that can be too slow.”<sup>39</sup> The process enabled him to obtain temporary work permits for these workers who had paid \$10,000 (US) in “fees” to a third-party recruiter. The workers were sent to do menial labour in a bottled water plant in Barrie, Ontario, where they were told they would be paid \$14/hour, but the employer paid them nothing for over two months. Starving and desperate, they complained, only to receive a mere \$800 each for two months’ work, with the bonus of a threat of deportation if they complained further.<sup>40</sup>
- Can-Mex Contractors case: Migrant workers were taken to a remote work location in western Canada and housed in a two-room

bunkhouse with no indoor bathroom and no laundry facilities. The workers are provided only two meals a day (at 10:00 am and 7:00 pm), and told on days when there was no work, there would be no pay. Workers who challenged the employer about the working conditions faced a violent reaction from the employer. Employers threatened the workers at knife point to accept their fate or face violence.<sup>41</sup>

- In the summer of 2006, the British Columbia Labour Relations Board heard complaints that approximately 40 construction workers brought to Canada by an international employer under the TFWP and Free Trade Agreement exemptions with offers of employment that were never honoured. The workers from South and Latin America had their visas confiscated by their employers upon entering Canada, and were paid as little as \$5/hour, while wages for a similarly qualified construction worker were in the range of \$25/hour.

Canadian construction unions provided the temporary workers support to challenge their situation, and pointed out the employer's claim that importing specialized temporary construction workers was dubious.<sup>42</sup> The employer responded by intimidating and attempting to coerce the temporary workers to accept their fate or return home. The case went to the B.C. Human Rights Tribunal, and in December 2008, a ruling was issued confirming the presence of systemic wage discrimination.<sup>43</sup> The employer is appealing the ruling and Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism, is on public record impugning the ruling inappropriately.<sup>44</sup>

- Cases are frequently reported to the Canadian Labour Congress (CLC) of employers posting job notices for positions like chambermaids and maintenance staff with the tacit and, at times, explicit understanding from the employer that posting the job ad is

merely an administrative requirement necessary to secure temporary workers. There is no intention to hire from the unemployed and available domestic workforce.<sup>45</sup>

## Going underground

As migrant workers realize their jobs and legal status in Canada are solely dependent upon the good will of their employer, workers often must choose between staying with a bad employment situation, losing their jobs and being deported, or attempting to slip into the underground economy working as an undocumented person. Canada's TFWP has neither a system to ensure the departure of migrant workers who have completed their work term, nor an effective tracking system of where exactly migrant workers are employed — the slide to undocumented status is relatively easy.<sup>46</sup>

Alberta's Employment Immigration and Industry Minister Iris Evans described the situation candidly when she admitted the province's situation, "We don't know how to protect them because we don't even know who they are."<sup>47</sup>

Unscrupulous employers have been quick to take advantage of such a system. UFCW has uncovered an underground system of job brokers tied into the farm industry which directs workers to work under the table after their visas expire. In March 2010, nine Thai workers were arrested near an agricultural operation in south-western Ontario near where they had been employed previously under the TFW Program.

Wayne Hanley, the president of UFCW, commented about this case saying, "What's really being violated here are the human rights of these workers. The federal government encourages farmers to import TFWs specifically because these workers are granted next-to-no status, and are under the radar when it comes to workplace protections. By deliberately shortchanging these workers of permanent status, what you have is a

TFW program that encourages human trafficking. What confirms it is, while dozens of migrant workers have been arrested and deported over the past year, not one agricultural operation or job broker has yet to be convicted of breaking the rules when it comes to hiring these workers and paying them under the table.”<sup>48</sup>

Perhaps, as a result of this critical observation from the UFCW labour president, the same month the federal government posted a *Just the Facts — Foreign Workers: a feature to help dispel myths and misconceptions as well as raise awareness about HRSDC program*. The government noted that two labour brokers in the Leamington area of Ontario have finally been found guilty of unlawfully supplying foreign workers to employers.<sup>49</sup> They did not post the fact that the government had attempted to deport a worker who was pivotal to the case against an employer. It was only because of the intervention of the union that this was prevented.

Rather than taking a serious look at fixing blatant problems with the program, Canada’s federal government has chosen another approach.

In 2007, the Canadian federal government Budget gave all of Canada’s employers the ability to have access to temporary foreign workers “for any legally recognized occupation from any country.”<sup>50</sup> Now employers can gain access to the TFWP for any of the over 30,000 job-titles covering more than 500 occupational groupings — in essence — any job in the Canadian labour force is open for temporary workers.

With nearly 1.5 million Canadians officially unemployed, and another three million in situations of precarious work (out of a total workforce of 17 million), it is alarming that rather than advancing policies to encourage parts of the domestic workforce to take up agricultural employment, instead, the Canadian government has deliberately chosen to accelerate the importation of migrant workers for every sector of the economy.



## Fixing the program, or favouring employers?

Canada's TFW Program has undergone a number of changes. The most dramatic changes began in 2006 when the current Conservative government came to power. Early in the Conservatives' tenure, then-Immigration Minister Monte Solberg made it clear that if employers needed labour in particular regions of the country, he was happy to accommodate them by fast-tracking the Temporary Foreign Worker Program. Solberg quipped, "It doesn't matter whether you're in Camrose or Calgary, Edson or Edmonton, 'Help Wanted' signs are everywhere. When it starts to affect our ability to go to Tim Hortons and get a double-double, it ceases to be a laughing matter."

Under the Conservatives, the changes that have been made to Canada's Temporary Foreign Worker Program focus on serving employers' demand for migrant workers as quickly as possible.

Here are a few examples:

- Employers seeking migrant labour were no longer required to advertise minimally for six weeks within Canada. The government amended this rule, and required employers advertise for just seven days before seeking a permit to hire workers from abroad. No verification of proof of advertising was required.
- Initially, the government established lists of "occupations under pressure" based simply on employers' claims that they could not find workers. No verification of the claims was required, nor were other stakeholders, such as unions, trades councils, or training colleges, consulted. Using these Occupations Under Pressure lists (sardonically known as OUP lists or *OOPS* list), employers could then apply for fast-tracking of work permits to import migrant labour.

- The government created a step-by-step guide in “employer-friendly language” on how to hire a foreign worker.
- Government staff were assigned to assist employers seeking to hire migrant workers in cases where a Labour Market Opinion is not required. New offices were opened in British Columbia and Alberta to further assist employers in fast-tracking applications for migrant workers.

The government’s 2007 budget allocated close to \$150 million (CDN), spread over five years, to federal departments with responsibilities for the TFWP, and \$35.5 million annually thereafter. The allocation was to improve the processing of employer applications for temporary workers, reduce delays, and respond effectively to regional labour shortages. Close to 80% of this funding went to HRSDC to service employers’ requests for temporary workers.<sup>51</sup>

It was not until the fall of 2009 that regulatory changes were attempted. While the government claimed their proposed changes would bring about fairness for migrant workers, the proposed changes revealed the opposite. A detailed critique of the proposals was submitted to the government by the Canadian Labour Congress.<sup>52</sup>

The Conservative government's regulatory changes came into effect April 1, 2011.<sup>53</sup>

In short, there is a lack of confidence in systems that can ensure migrant workers are really needed, or that the job-offers, terms, and working conditions are, in fact, genuine.

None of the federal level changes to Canada’s TFW Program, in place since 2006, provide comprehensive or strong compliance, monitoring, or enforcement mechanisms that ensure these workers safety or protection

from exploitation. The program is quite simply an employer-driven vehicle which the Canadian government services.

## Attractiveness of the program

There is little doubt about the attractiveness of the program to employers.

Before the global economic crisis swept across Canada in the fall of 2008, employers were rushing to take advantage of the TFWP. The table below illustrates how popular it had become.

**Table 2: Foreign Workers Present on December 1st by Top Ten Source Countries**

Source Countries	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Philippines	6,002	6,388	8,268	10,785	12,504	15,307	17,687	21,566	33,882	45,006
United States	20,267	21,354	21,041	20,205	21,012	21,943	23,658	25,278	26,779	28,754
Mexico	8,120	9,995	11,172	11,606	11,641	11,950	13,306	15,185	18,154	22,579
United Kingdom	5,720	6,526	7,031	7,041	7,482	9,433	10,713	11,138	12,623	14,530
Australia	4,031	4,577	5,441	6,254	6,897	8,269	8,606	9,063	9,842	13,222
France	2,888	3,368	3,778	4,033	4,400	5,968	7,481	9,085	10,023	11,788
India	1,536	1,879	1,898	2,174	2,689	3,710	5,087	6,344	8,671	11,114
Japan	7,155	6,568	6,493	7,828	8,281	8,608	8,841	8,428	7,871	9,316
China, People's Republic of	1,213	1,338	1,588	1,824	1,950	2,427	3,080	4,206	6,632	8,534
Germany	1,658	1,993	2,267	2,068	2,257	3,119	3,639	5,430	6,908	8,239
<b>Total (all Source Countries)</b>	<b>82,111</b>	<b>89,793</b>	<b>96,525</b>	<b>101,259</b>	<b>109,860</b>	<b>125,367</b>	<b>141,032</b>	<b>161,295</b>	<b>199,942</b>	<b>251,235</b>

Source: <http://www.cic.gc.ca/english/resources/statistics/facts2008/temporary/04.asp>

According to data from Citizenship and Immigration Canada, the number of temporary workers in Canada in 1999 was just over 80,000. In 2005, the number of temporary workers was slightly more than 140,000, and under the Conservative government, the number climbed to nearly 300,000 by 2009.<sup>54</sup>

It is worth noting the government's collection of data on temporary workers is contentious. Government numbers are sometimes different from other credible sources. Worse yet, in many categories where temporary workers are employed, information on what occupations they were requested to fill is unknown.<sup>55</sup> For example, in November 2009, Canada's Auditor General report of the TFWP found that almost 370,000

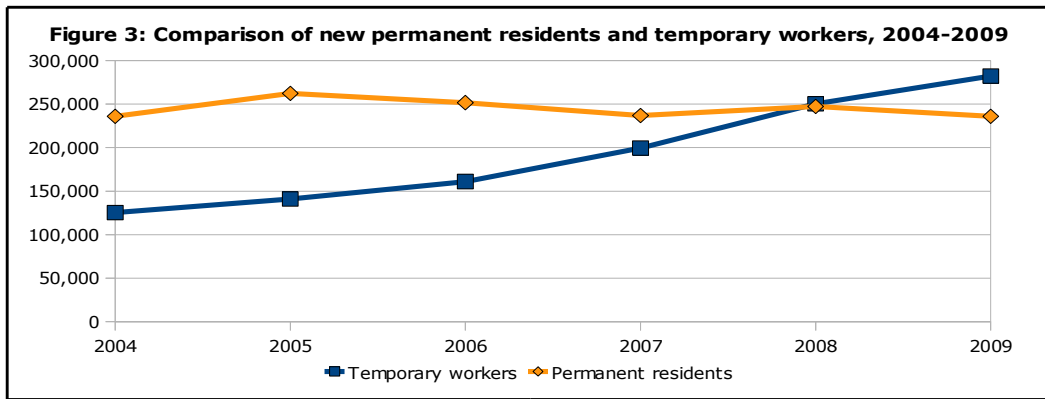
temporary workers were approved to fill a short-term need for labour in 2008.<sup>56</sup> Yet CIC reports just over a quarter million migrant workers were in Canada in 2008, such discrepancies should be a major concern for policymakers.

## **Long-term labour market planning**

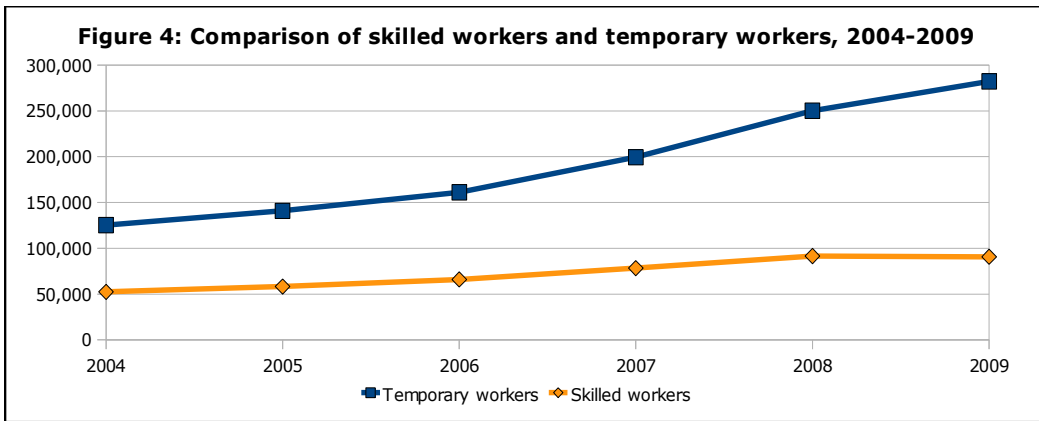
In addition to the problems already listed, it is a major concern that the growth in the number of temporary workers has been steadily outstripping the number of skilled workers in Canada. The implications for long-term labour market planning are obvious and worrisome. Canada, like many western nations, has an ageing population; eight million individuals will be within retirement age in less than 10 years.<sup>57</sup> With a workforce of 17 million, and given the demographic bulge (ageing population/declining birth rate), it is estimated that within 10 years, 70% of job vacancies will be associated with retirement.<sup>58</sup> At the same time, we have a declining birth rate. Permanent immigrants currently account for 80% of net labour force growth, and it is expected this cohort will account for 100% of net labour growth in less than 60 months.<sup>59</sup>

In just a few years, Canada's immigration policy had shifted to promote temporary migration rather than permanent migration. According to CIC data for December 2008, Canada was host to 252,235 temporary foreign workers compared to 242,243 individuals who had been granted permanent residency status.<sup>60</sup> (See graphs)

Growing a national workforce with migrant labour under temporary status is quite simply unwise labour market planning.



Source: Citizenship and Immigration Canada, *Facts and Figures 2008*.



Source: Citizenship and Immigration Canada, *Facts and Figures 2008*.

Finally, it is worth noting that the shift in Canada’s immigration policy, favouring temporary rather than permanent migration, did not happen in isolation. It is linked to a United Nations High Level Dialogue on International Migration and Development that took place in the fall of 2006.

The International Organization on Migration (IOM) proposed that UN member states enhance labour flexibility by integrating labour markets globally.<sup>61</sup> The International Trade Union Congress (ITUC) reported that by the end of 2007, many OECD member countries like France, Hungary, Romania, the U.K., Canada, Finland, Japan, Norway, Poland, and Portugal had taken heed of their urging and introduced either

substantial changes or new initiatives to their immigration policies to correspond with the shift.

Policymakers would be well-advised to exercise caution when viewing others' excitement in advocating for temporary rather than permanent migration policies. The Canadian experience demonstrates the consequences are far-reaching.

### **So what would better policy and practices look like?**

The Global Commission on International Migration — a 19-member commission created by the UN Secretary-General and a number of governments — concluded in their 2005 report that temporary worker programs can only be successful if the host nations provide strong protections for the rights of the workers.<sup>62</sup> This self-evident point is difficult to achieve.

Many governments simply do not have in place adequate legislation, policies, and structures to manage the complexities of both regular and irregular migration while also ensuring decent work for migrant workers. Today, some 200 million people live outside of their countries of birth or nationality, and nearly half of them estimated to be working somewhere in the world other than their home country.<sup>63</sup>

The dimensions of global migration are large — assuming the 200 million migrants came together as a country, they would represent the fifth most populous country in the world.

Of course, the reality is that migrants are globally dispersed. Foreign-born workers represent roughly 10% of the workforces in Western Europe, 15% in North America, and even higher proportions in some countries in Africa and the Middle East.<sup>64</sup>

One important step that can help advance national policies and protections for migrant workers would be the acceptance by states of an international framework for migrants' rights. Creating such a framework was undertaken in 1990 with the drafting of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW). The Convention constitutes the broadest framework rooted in international law, and provides guidance for countries on how to develop labour migration policies that respect the rights of migrants.

Many of the articles in the Convention restate and underscore rights that are already spelled out in *International Covenants on Civil and Political Rights; Economic, Social and Cultural Rights*, and other core human rights treaties.

*Highlights include:*

- Upholding basic rights and freedoms;
- Ensuring due process for all migrant workers and members of their families;
- Right of Consular Protection;
- Equality with nationals;
- Prohibition of confiscation of identity documents;
- Right to transfer of earnings;
- Right to information;
- Respect for cultural identity; and
- Obligation to comply with local laws.

However, as of December 2009, only 42 countries had ratified the ICRMW, and not a single G8 country has ratified the Convention.<sup>65</sup>

Canada is one of the countries that has steadfastly refused to sign the ICRMW, claiming that migrant workers already have sufficient protections under Canadian law and the provisions of their contracts.

Migrant workers see things very differently. For example, Teresa, the apple picker from Mexico; the thousands of Guatemalan farm workers who were wrongly overcharged for housing with the knowledge of the Canadian government and FERME; the hundreds of migrant restaurant and retail workers in Alberta and British Columbia who have not been fairly paid; the hundreds of individual cases documenting migrant worker abuse in just one six-month period, in one province; or the family members of the dead and injured construction and agricultural workers across the country can all say the Canadian government claims are without merit. Even the Auditor General of Canada indicated in her review of the TFW Program there are very serious shortcomings.

Clearly, national changes to migrant worker programs that are consistent with the standards of the ICRMW are urgently needed.

Fixing the Canadian system will require dramatic steps to end the TFWP in its current form and advance a comprehensive reform package. The complex nature of migration means a variety of policy and programmatic measures will be needed.

One of the most important policy remedies needed is the establishment of a national framework that obligates all provinces and territories within Canada to ensure that comprehensive compliance, monitoring, and enforcement systems are in place within all jurisdictions hosting migrant workers.



The current approach of relying on national and provincial labour standards is clearly inadequate.

Furthermore, subnational jurisdictions in Canada do not have an adequate number of labour inspectors available to monitor the work sites hosting migrant workers.<sup>66</sup> In addition, while the federal level of government, in effect, opens the door for migrant workers at the behest of employers — once a work visa has been processed, the federal government defers the employer's compliance to labour standard bodies to the subnational jurisdictions.

A related complication is the sharing of basic information between the federal and subnational governments. For example, Ontario receives the greatest number of migrant workers; almost 95,000 were present in December 2009.<sup>67</sup> However, both the provincial government and provincial labour bodies have had great difficulty obtaining basic information about the flows of migrant workers coming to their province, such as name of the employer and where the work sites will be.<sup>68</sup> Even the data released by Citizenship and Immigration Canada has revealed that sizable numbers of migrant workers are coming to work, but the “intended job is not known.”<sup>69</sup>

At the same time, most subnational jurisdictions in Canada exclude farm workers from employment standards legislative protections, and some prohibit workers such as live-in caregivers from unionizing — a mechanism that provides workers with workplace protections and a process to resolve workplace disputes.

Many provincial labour laws continue to exclude farm workers from many provisions governing hours of work, vacation pay, and overtime. In addition, current provincial legislation prohibits collective bargaining for all Ontario agricultural workers.<sup>70</sup> Outdoor agricultural workers in Alberta face the same violation of their Charter rights to form and join unions for the purpose of collective bargaining. Until recently, Manitoba's

*Employment Standards Act* provided the least provisions and protections for agricultural workers in Canada. The Act excluded agricultural workers from vacations, a weekly day of rest, lunch breaks, minimum wage, maternity and parental leave, and provisions regarding child employment.<sup>71</sup>

This discriminatory treatment toward these workers has been legally challenged by unions, particularly UFCW, which won a legislative amendment in Manitoba in 2008 that finally offered all agricultural workers across the province the same workplace protections and standards that have covered most other Manitoba workers since 1957.

Given that nearly 30,000 migrant workers are working nationally in the agricultural sector, policy measures are urgently needed that will allow these workers to unionize, engage in collective bargaining, and receive the same rights and protections of provincial labour standards extended to other workers.

## **Privatization versus government oversight of labour brokers**

As indicated earlier, initially Canadian migrant worker programs operated under the aegis of bilateral agreements between the origin and destination countries. At the outset, the government played a significant role in the recruitment of the workers, supervising the contracts and establishing wages and working conditions. Like most countries, this is no longer the case. Private recruitment agencies, sometimes referred to as labour brokers, have been taking on a greater role in labour migration, and charge fees for their services — fees that are almost always paid for by the workers.

Because of the absence of a regulatory environment, such agencies operate with unethical practices. The International Labour Organization (ILO) has documented that private recruitment agencies provide false

information about jobs, charge migrants excessive fees for services, and send migrants to countries where they find no jobs that actually exist.<sup>72</sup>

The situation in Canada is no different. Two reports by the Alberta Federation of Labour have documented persistent problems with labour brokers operating in Canada. These include:

- Payment of exorbitant and illegal fees to brokers for finding employment;
- Job descriptions, wages, and other working conditions not matching original promises;
- Substandard housing arrangements, often at excessive rental rates; and
- Misleading promises of possibility of permanent residency and citizenship.

Although Alberta has provincial legislation to regulate employment agencies, it is a complaint-driven system requiring the migrant worker to file a complaint against the broker. Given the skewed power imbalance that Canada's TWF Program is founded on, it is little surprise that since 2007 there were only 277 investigations made into broker activities, resulting in just seven orders being issued and just one prosecution, which, as of 2009, was still ongoing. Alberta was host to nearly 60,000 migrant workers. The provincial government has acknowledged that the bulk of their investigations result in no formal action, or are abandoned due to "lack of evidence" or inability to pursue the broker.<sup>73</sup>

A more promising approach to regulate brokers has been initiated by the provincial government of Manitoba. The *Worker Recruitment and Protection Act* (WRAPA) came into force April 2009 and replaced

Manitoba's *Employment Services Act* which governed the activities of third-party employment agencies.<sup>74</sup>

The Act requires employment service agencies to be licensed and registered with the provinces' Labour and Immigration Departments. It also contains strong enforcement provisions and penalties to ensure compliance by employers and recruiters.

To obtain a licence, recruiters must be a member of either the Canadian Society of Immigration Consultants, or a member of the Law Society of Canada/*Chambre des Notaires de Québec*. Additionally, they must provide an irrevocable letter of credit for \$10,000.

The province has also put in place measures that work in tandem with the federal program. This includes requirements for employers hiring migrant workers to also register with the Manitoba Labour and Immigration Department; they must demonstrate a good history of compliance with labour legislation in the province.

If an employer approaches the federal government for access to migrant workers without demonstrating they are first registered with the province, they are redirected to the province to become registered. Employers and brokers are unable to access the federal TFW Program without first providing proof of provincial registration.

WRAPA also has resources for proactive enforcement and investigations; it has been given the powers to recover any illegal fees charged to workers by an employer or recruiter; and it is able to provide improved information and support services to migrant workers.

While the legislation has been in place less than one year, the government has noted this approach has been effective in placing the province at the front-end of the recruitment process. Additional government staff have observed the following:

- Implementation of the Act requires a strong partnership and regular communication between all levels of government;
- Considerable investments for the administration, investigation, and enforcement components of the Act are necessary;
- Challenges persist in dealing with migrant workers being re-located across jurisdictions;
- Addressing infractions that occurred prior to WRAPA coming into force are problematic;
- Variances between employer/broker registration certificates and their applications to the federal level to access migrant workers are material; and
- The need for clear and concise information that is multilingual, and that associated support services for migrant workers is ongoing.<sup>75</sup>

The Province of Ontario, led by a Liberal government, has also put in place legislation to better protect some migrant workers. Following a high profile incident in which a federal Liberal Member of Parliament was allegedly involved in abusing a live-in caregiver,<sup>76</sup> the provincial Liberal government promptly took steps to pass the *Employment Protection for Foreign Nationals Act*.<sup>77</sup>

Ontario's legislative approach includes protective measures, such as establishing prohibitions on employers and labour brokers from charging fees to migrant workers; using cost-recovery vehicles; taking and retaining property or documents from migrant workers; and prohibiting reprisal actions against migrant workers. However, the Act does not establish a licensing regime, and puts the enforcement onus on the Director of the province's Employment Standards. In addition, at this

point, the Act is limited in scope to Live-In Caregivers, though there is the expectation it will be applied to all migrant workers with subsequent regulatory directives.

The Province of Nova Scotia is also examining Canada's TFW Program and considering developing provincial legislation as it relates to migrant workers coming to their province.<sup>78</sup> Nova Scotia is considering the measures taken to date by Ontario and Manitoba. And, as noted earlier, Alberta has initiated a review of the program with the objective of making recommendations for change to the national TFW Program.

While each of these developments is welcome news, they are being developed in an ad hoc manner without the benefit of a comprehensive national framework. The shortcomings in this policy approach are obvious. While it is the federal government that opens the international door for migrant workers to legally work in Canada, they have abdicated their responsibility to ensure that an effective compliance, monitoring, and enforcement regime is in place and operating across the country.

Developing a labour migration policy by knee-jerk response — particularly to unsubstantiated claims by some employers of the dearth of a national workforce — is simply flawed.

Consider that Ontario's EPFN, which was sparked by a singular controversy over live-in caregivers and one Member of Parliament, resulted in limited legislation affecting just one of the many streams of migrant workers. Furthermore, while enforcement powers for the Act are granted to the province's Director of Employment Standards, there is no evidence of additional resources being allocated to ensure effective application of the Act.

Contrast this approach with Manitoba's experience which has shown that regulatory policy changes must be bundled with the requisite human and budgetary resources to ensure a measure of success.

International policymakers looking at the Canadian experience will benefit from a closer study of these provincial efforts to stem some of the many gaffes with the federal TFW Program. It should be equally obvious that migrant workers, employers, and brokers must all be governed by a national policy framework, even though subnational jurisdictions will ultimately be the arbiters and regulators of the daily realities of the program.

### **Calling the federal Government to account:**

*there is nothing more permanent than a temporary migration program*

Other countries' experiences with migrant worker programs are also instructive for policymakers.

Europe's Gastarbeiter — guest worker program of the 1960s — created a permanent underclass of some five million guest and migrant workers who toil in the dirtiest of jobs, and who, to this day, in many respects, prop up the European economy through their low cost labour while social and economic prosperity remains out of reach for many of them.

On September 29, 1942, the first *Bracero* workers arrived by train from Mexico to work on U.S. farms. Over twenty years later, President John F. Kennedy persuaded the U.S. Congress to end the *Bracero* Program, agreeing with U.S. unions and churches that *braceros* in the fields slowed the upward mobility of Mexican-Americans, just as government-sanctioned discrimination had held back African-Americans.<sup>79</sup>

In the global context of ageing populations and declining birth rates in the west, and the right of all to freely travel and work, simply ending migrant worker programs is both unlikely and untenable. A better policy option is to dramatically improve the regulatory environment in which migrant workers, employers, and labour brokers co-exist.

Toward that end, the Canadian Labour Congress is calling for the establishment of a Migrant Worker Commission as an independent regulatory body that has enforcement powers.

Such a Commission must be independent and resourced with a high degree of political integrity and technical competencies. It must have the ability to manage and adjust policy and operating systems of the full suite of Canadian TFW Program categories, i.e., Live-In Caregiver Program; Seasonal Agricultural Program, “Low Skills” Pilot, Canadian Experience Class<sup>80</sup> Initiative, etc.

The Commission should be adequately staffed with demographers, economists, human rights and labour rights experts, migration / immigration and settlement policy experts.

The Commission should regularly draw on inputs from employers, (im-) migrant worker organizations, organized labour, migrant workers, and all relevant government representatives (federal, provincial/territorial, and municipal) via regular and structured forums.

The Commission’s mandate must include the responsibility to develop transparent, objective, analytical methods that can determine and verify the existence of occupationally specific shortages of nationally based workers.

This Commission must also be responsible to develop transparent methodologies for determining the prevailing wage and benefit rates for all classes of migrant workers.

This must be done in concert with current federal initiatives to improve Canada’s labour market information systems.

The Commission must have the power to oversee and regulate labour brokers/recruiters and employers using labour migration programs; to



liaise with countries of origin and destination on matters related to labour and social rights protections of migrant workers and their families, additional to regularly liaise with other branches of government that promote development assistance initiatives specifically with countries of origin and destination; and to serve as the national contact point for efforts to ratify and implement international instruments related to migrant workers and their families.

Because the admission of large numbers of migrant workers reduces pressure to upgrade and train the domestic workforce, such a Commission must also be able to contribute to policies connected to ensuring adequate workforce development, including education and training. The Commission would also need to work in concert with other governmental departments tasked with engaging the under- and unemployed of the labour force.

In addition, the Commission must be able to put in place program mechanisms to apply levies on employers using the migrant workers to ensure that:

- Employers have first fully exhausted efforts to employ workers who are present in the labour market;
- Employers utilize mechanization or restructure their operations, where possible, rather than relying on persistent use of migrant labour pools;
- The human replenishment costs facing sending-countries that have educated and trained workers who migrate is at least partially redressed; and
- Funding revenues for enforcement and integration mechanisms are borne by employers rather than governments.

Additionally, such commissions must be able to establish program levies paid for by employers, which contribute to labour enforcement measures and social/cultural integration mechanisms. The Commission must also be able to contribute to national workforce development, education, and training policies. The Commission would also need to work in concert with other governmental departments tasked with engaging the under- and unemployed members of the labour force.

Establishing a Migrant Worker Commission won't solve all the problems with Canada's migrant worker program, but it will address a major policy gap — particularly the vacuity of policies related to compliance, monitoring, and enforcement functions.

The CLC is also calling for the establishment of a national policy framework to regulate labour brokers and recruiters.

Historically, government played an active role in the recruitment of working migrants. However, currently in most countries, recruitment is in the hands of private recruitment agencies that charge fees that are often borne by the migrant workers, a practice that is prohibited under international law.<sup>81</sup>

Additionally, as noted earlier, the ILO has documented that private recruitment agencies too often provide false information about jobs, charge migrants excessive fees for services, and send migrants to countries where they find no jobs actually exist. Brokers have also been found culpable for arranging substandard housing arrangements, often at excessive rental rates and making misleading promises of the possibility of permanent residency and citizenship.<sup>82</sup>

The absence of strong regulatory regimes has allowed for the growth of unethical recruitment practices. This is a significant barrier to migrant workers and their families.

Governments must take notice of effective measures that regulate labour brokers and recruiters. With an estimate of more than 105 million migrant workers on the job in 2010, and roughly 33% migrating from the Global South to the North, it is apparent that easy profits can be made on this flow of human cargo.<sup>83</sup>

Previous Global Forum on Migration and Development/Civil Society Days (GFMD/CSD) reports have called for governments to regulate the recruitment industry by licensing, meaningful sanctions, and the prohibition of fees to migrant workers.<sup>84</sup>

Regulating labour brokers is often achieved by establishing specific agencies or mandating existing governments' departments, with the power and resources to ensure employers' and brokers' compliance with licensing regimes.

A variety of policy measures from different countries are currently being used to regulate labour brokers.<sup>85</sup> Some of the better practices include:

- Prohibitions by countries of origin on the recruitment of their nationals by persons or entities other than those licensed by the State;
- Requiring licensees to be resident nationals as well as being members of recognized associations of immigration consultants or members of the legal profession. This requirement allows for licensees to be held accountable for recruitment violations;
- Requiring licensees to put up significant financial guarantees for claims that may be brought before them;
- Requiring licensees to have a good record of compliance to national and subnational labour standards;

- Obligating recruiting agencies to bring job-seekers that have employment contracts to attend pre-departure orientations conducted by governments;
- Some countries, such as the Philippines, have made continuation of the license contingent on performance. In addition, awards are granted to the best performing agencies, recognizing their contribution to national development; and
- Enacting legislation that limits fees that can be legally charged to migrants. Generally, these fees are differentiated by class of worker, or the employer is obligated to pay the fees.

## **Unions have a role to play**

Unions have an important role to play in maximizing benefits for migrant workers and their families. This includes policy advocacy work, international union cooperation, and alliance-building between migrant advocacy groups and the governments of sending countries.

National labour federations in Argentina, Belgium, Canada, France, Germany, Ireland, Italy, Mauritius, Mexico, the Netherlands, Portugal, the Republic of Korea, Malaysia, South Africa, Spain, Sweden, the United Kingdom, and the United States, among others, are active in policy advocacy to advance protections for migrant workers and promote decent working conditions.<sup>86</sup>

Trade unions from Sri Lanka and their counterparts in Bahrain, Jordan, and Kuwait have established bilateral cooperation agreements between themselves, making commitments to pursue specific actions that promote migrant workers' rights.<sup>87</sup> The Kuwait Trade Union Federation (KTUF) for example, has campaigned successfully for legal reforms to protect migrant workers from forced labour. The KTUF has been calling for the abolition of an employer-based sponsorship system for recruiting

migrant workers which resulted in a recent announcement by the government pledging to end the system by February 2011.<sup>88</sup>

While a significant step, it remains unclear if the changes will also apply to domestic migrant workers. In addition, subsequent media reports reveal confusion about the original Kuwait Government announcement. Senior Ministry officials made contradictory statements within 24 hours — one saying the system would be scrapped, and another saying it won't be scrapped, rather, the system would be amended to allow for greater ease for migrant workers to move from one employer sponsor to another.<sup>89</sup> The flip-flopping reveals the on-going challenges in this work.

KTUF noted the system encourages trafficking and forced labour because it ties a worker's residency in Kuwait to a specified employer, making it impossible for workers to escape exploitation without losing their job. The KTUF is also pressing for labour laws to be amended so that they fully cover domestic workers and ensure that the Ministry of Labour — not the Ministry of Interior — has responsibility for protecting domestic workers' rights.

The Indonesian Migrant Workers Union cooperates closely with other trade unions and civil society organizations in Indonesia to deliver monthly pre-departure training in the community, and they also conduct case discussions with migrants.<sup>90</sup> Additionally, the Malaysian Trade Union Confederation meets regularly with migrant workers in their offices and through community outreach. The MTUC has invested in this work by hiring full-time officers and recruiting volunteers who troubleshoot on issues such as unlawful dismissals, conflict resolution, and provide legal assistance to migrant workers.<sup>91</sup>

United Steelworkers Union Canada formed a partnership with Migrant-Ontario, a grassroots advocacy group of diasporic members of the Filipino community supporting domestic workers/Live-In Caregivers. Though this cohort of predominantly migrant women workers are

prevented from joining a union due to provincial labour codes, USW and Migrant-Ontario established an Independent Workers Association (IWA) which lobbies for changes to Canada's Temporary Foreign Worker & Live-In Caregiver Programs. In addition, the IWA provides legal, dental, insurance, telecommunications services (to enable contact with family members), and a range of educational and leadership training services to its members.<sup>92</sup>

Unions such as the United Food and Commercial Workers (UFCW) in Canada operate migrant worker centres staffed with multilingual personnel. These centres provide workplace support services as well as educational courses, and health-and-safety training to tens of thousands of migrant agricultural workers. Recently, UFCW established a post-secondary scholarship award program for the children of migrant workers.<sup>93</sup>

A unique union-to-state level of government partnership agreement between the UFCW and the State of Michoacán is worth mentioning in closing.

Mexico is one of three fastest growing source countries for migrant workers coming to Canada.<sup>94</sup> Seasonal agricultural workers have given their labour to small- and medium-sized farms since 1974. Initially, the Mexico-Canada Temporary Agricultural Program began with just over 200 workers, and over the last five years, the number of registered workers has jumped to nearly 20,000.

Concerned about the welfare of Mexican migrant workers, the UFCW invited representatives from the Population, Borders and Migratory Affairs Commission of the Chamber of Deputies (House of Representatives) of the Mexican Congress to tour job sites in Ontario and Québec in order to better understand the working conditions on Canadian agricultural farms employing migrant workers.

The tour took place in June 2007, and in August of that year, an institutional agenda to better protect and serve Mexican migrant workers was established. By April 2008, the Government of the State of Michoacán and the UFCW signed a *Cooperation Agreement* to provide labour protection and security to Michoacán citizens working in agricultural fields in North America.<sup>95</sup>

This unique partnership agreement commits the parties to extend a range of support and services to migrant workers, including counselling, advocacy for labour rights, housing conditions, medical claims, pension matters, parental benefits, as well as providing workshops on health and safety matters, and workers' compensation; providing translation services, ESL; and assisting migrant workers with toll-free long distance calls between UFCW support centres in Canada and any location in the State of Michoacán. The agreement also recognizes the importance of the social nature of work, and offers support sporting competition and cultural significant holidays.

Involving stakeholders in both policy design and practical administration of migrant worker programs must involve all stakeholders — not just employers. The longstanding work of organized labour demonstrates there is a critical role for unions to support migrant workers, and to assist in their integration into Canadian communities.

Canada's Temporary Foreign Worker Program is far from being a model initiative. Given the experiences of the Canadian labour movement, it is abundantly clear that the program's design permits the exploitation of migrant workers. It operates to serve employers' interests with little meaningful regard for compliance, monitoring, or enforcement of national or subnational labour standards.

Better policy options and practices are possible beginning with an honest examination and critique of the shortcomings of the program as it currently operates.

Teresa, the apple picker, is just one of hundreds of thousands of migrant workers who can help point the way to better policy models and practices. ■

KF:jc:cope 225 / 2011-04-19  
File: 2-05-20503-09



- <sup>1</sup> Government of Jamaica, Ministry of Foreign Affairs and Foreign Trade, Jamaica Information Services:  
[http://www.jis.gov.jm/foreign\\_affairs/html/20060826t170000-0500\\_9854\\_jis\\_labour\\_minister\\_highlights\\_strong\\_partnership\\_between\\_jamaica\\_and\\_canada\\_in\\_farm\\_work\\_programme.asp](http://www.jis.gov.jm/foreign_affairs/html/20060826t170000-0500_9854_jis_labour_minister_highlights_strong_partnership_between_jamaica_and_canada_in_farm_work_programme.asp) date posted: Monday, August 28, 2006
- <sup>2</sup> Ronnie Shuker & Alexandra Stadnyk, *History of Canada's Seasonal Agricultural Workers Program*. Newmedia Journalism:  
<http://www.fims.uwo.ca/NewMedia2008/SAWP.aspx>
- <sup>3</sup> "The Seasonal Agricultural Worker Program: Considerations for the Future of Farming and the Implications of Managed Migration," Nelson Ferguson, Concordia University, *Our Diverse Cities: Rural Communities* (Volume 3, Summer 2007):  
[http://canada.metropolis.net/pdfs/Seasonal\\_Agr\\_Ferguson\\_e.pdf](http://canada.metropolis.net/pdfs/Seasonal_Agr_Ferguson_e.pdf)
- <sup>4</sup> *Reintegration and circular migration – effective development?* Ana Avendano, November 2009, GFMD Athens, Background paper for the Roundtable Migrant Integration: [http://gfmd.org/en/gfmd-documents-library/athens-gfmd-2009/cat\\_view/932-athens-gfmd-2009/972-roundtable-2-background-papers.html](http://gfmd.org/en/gfmd-documents-library/athens-gfmd-2009/cat_view/932-athens-gfmd-2009/972-roundtable-2-background-papers.html)
- <sup>5</sup> UFCW 2008-09. *The Status of Migrant Farm Workers in Canada* :  
<http://www.ufcw.ca/Theme/UFCW/files/PDF%202009/2009ReportEN.pdf>
- <sup>6</sup> UFCW media release: *AWA anti-discrimination campaign gains results*. March 25, 2010.
- <sup>7</sup> UFCW/AWA media release: *Public campaign denounces Canadian migrant worker program managed by IOM*. July 28, 2010. See also:  
<http://www.ufcw.ca/Default.aspx?SectionID=8d1f0a66-0e0a-45cb-89cd-2568fe57e9c9&LanguageId=1>
- <sup>8</sup> <http://www.ufcw.ca/Default.aspx?SectionID=8d1f0a66-0e0a-45cb-89cd-2568fe57e9c9&LanguageId=1>
- <sup>9</sup> UFCW Canada Press Release, Campaign Victory for Guatemalan Migrants, Vol. X, No. 32, August 16, 2010. [http://www.ufcw.ca/index.php?option=com\\_content&view=article&id=1787&catid=6%3Adirections-newsletter&Itemid=6&lang=en](http://www.ufcw.ca/index.php?option=com_content&view=article&id=1787&catid=6%3Adirections-newsletter&Itemid=6&lang=en)
- <sup>10</sup> UFCW Canada Press Release, Québec Agribusiness Ramps Up "Exploitation Express" with Honduras Migrants, Vol. X, No. 35, September 7, 2010.  
[http://www.ufcw.ca/index.php?option=com\\_multicategories&view=article&id=1827&Itemid=98&lang=en](http://www.ufcw.ca/index.php?option=com_multicategories&view=article&id=1827&Itemid=98&lang=en)
- <sup>11</sup> Ibid.
- <sup>12</sup> "Québec Farm Segregated Black Workers, Ruling Blasts Management for Discrimination Against Black Labourers," Martin Patriquin, *Globe and Mail*, Saturday, April 30, 2005.
- <sup>13</sup> *Foreign nationals working temporarily in Canada*, Derrick Thomas, June 8, 2010. Statistics Canada.
- <sup>14</sup> Correspondence with Ana Avendano, Assistant to the President and Director of Immigration and Community Action.
- <sup>15</sup> *Caregivers Break the Silence*. Toronto: INTERCEDE, 2001.

- 
- <sup>16</sup> *Reintegration and circular migration – effective development?* Ana Avendano, November 2009, GFMD Athens, Background paper for the Roundtable Migrant Integration: [http://gfmd.org/en/gfmd-documents-library/athens-gfmd-2009/cat\\_view/932-athens-gfmd-2009/972-roundtable-2-background-papers.html](http://gfmd.org/en/gfmd-documents-library/athens-gfmd-2009/cat_view/932-athens-gfmd-2009/972-roundtable-2-background-papers.html)
- <sup>17</sup> Brenda S.A. Yeoh, Theodora Lam and Lan Anh Hoang. *Effects of International Migration on Families Left Behind*. Background Paper for Civil Society Days Global Forum on Migration and Development 2010.
- <sup>18</sup> “The steep price of becoming a ‘dollar mommy,’” *Globe and Mail*. Published on Tuesday, October 16, 2007:  
<http://www.theglobeandmail.com/life/article788905.ece>  
See also:  
[http://www.metropolis2008.org/pdf/20081031/plenum/20081031\\_gender-dimensions-of\\_pratt-geraldine.pdf](http://www.metropolis2008.org/pdf/20081031/plenum/20081031_gender-dimensions-of_pratt-geraldine.pdf)
- <sup>19</sup> “Farmworkers at Risk: The Costs of Family Separation,” *Journal of Immigrant and Minority Health*, Louise S. Ward, 2008.
- <sup>20</sup> *Canadian Charter of Rights and Freedom*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (U.K.) 1982*, c. 11.
- <sup>21</sup> “The Seasonal Agricultural Worker Program: Considerations for the Future of Farming and the Implications of Managed Migration,” Nelson Ferguson, Concordia University, *Our Diverse Cities: Rural Communities* (Volume 3, Summer 2007):  
[http://canada.metropolis.net/pdfs/Seasonal\\_Agr\\_Ferguson\\_e.pdf](http://canada.metropolis.net/pdfs/Seasonal_Agr_Ferguson_e.pdf)
- <sup>22</sup> “Who has their eye on the ball? ‘Jurisdictional fútbol’ and Canada’s TFWP,” *Policy Options*. July/August 2010.
- <sup>23</sup> “The Seasonal Agricultural Worker Program: Considerations for the Future of Farming and the Implications of Managed Migration,” Nelson Ferguson, Concordia University, *Our Diverse Cities: Rural Communities* (Volume 3, Summer 2007):  
[http://canada.metropolis.net/pdfs/Seasonal\\_Agr\\_Ferguson\\_e.pdf](http://canada.metropolis.net/pdfs/Seasonal_Agr_Ferguson_e.pdf)
- <sup>24</sup> Migrant worker reports to Canadian unions.
- <sup>25</sup> *Review of the Foreign Worker Program Pilot Project for Workers Requiring Lower Levels of Formal Training*, Delta Partners, March 2007.
- <sup>26</sup> *The Status of Migrant Farm Workers in Canada 2008-2009*, UFCW:  
<http://www.ufcw.ca/Theme/UFCW/files/PDF%202009/2009ReportEN.pdf>
- <sup>27</sup> *Should I go or should I stay?* Karl Flecker, Presentation to Metropolis Seminar, March 12, 2008.
- <sup>28</sup> These figures represent the number of migrant workers who enter Canada annually, and are calculated based on the number of work permits issued at the port of entry. They do not include migrant workers already in Canada during this period (as work permits vary in duration, some are renewable, or have subsequent work permits). Table reprinted from “Who has their eye on the ball? ‘Jurisdictional fútbol’ and Canada’s TFWP,” *Policy Options*. July/August 2010.
- <sup>29</sup> *Globe and Mail*, “Auditor General sounds alarm on immigration policy.” November 3, 2009.

- 
- <sup>30</sup> *Report of the Auditor General of Canada to the House of Commons*. “Chapter 2: Selecting Foreign Workers Under the Immigration Program.” p. 33. Fall 2009.
- <sup>31</sup> Ibid.
- <sup>32</sup> *Alberta Federation of Labour Entrenched Exploitation*:  
<http://www.afl.org/upload/TFWReport2009.pdf>  
*Temporary Foreign Workers: Alberta’s disposable workforce*:  
<http://www.afl.org/index.php/View-document/19-Temporary-Foreign-Workers-Alberta-s-Disposable-Workforce.html>
- <sup>33</sup> “Foreign worker program reassessed,” by Trish Audette, *Edmonton Journal*, July 21, 2010:  
<http://www.edmontonjournal.com/news/Foreign+worker+program+reassessed/3303759/story.html#ixzz0uKvfttwM>
- <sup>34</sup> Ibid. See also: *Briarpatch Magazine*, “Manufacturing ‘The World’s Most Flexible Workforce’ The Harper government’s double-doubling of the Foreign Worker Program,” November 2007: [http://www.canadianlabour.ca/en/Migrant\\_workers;www.migrants.ca](http://www.canadianlabour.ca/en/Migrant_workers;www.migrants.ca); <http://www.kairoscanada.org/e/refugees/migrants/index.asp>
- <sup>35</sup> UFCW media release: *Alberta stats confirm frontline evidence of foreign workers exploitation*. March 18, 2010.
- <sup>36</sup> “Four migrant workers die in plunge from high rise,” *Toronto Star*, by Raveena Aulakh, December 25, 2009.
- <sup>37</sup> “They are treated as cattle,” by G. Dembicki, *The Tyee*, December 8, 2009:  
<http://thetyee.ca/News/2009/12/08/TreatedAsCattle/>
- <sup>38</sup> “53 charges for CNRL, Contractors in Deaths of Foreign Workers,” by Carol Christian, *Fort McMurray Today*.  
Original post: <http://www.fortmcmurraytoday.com/ArticleDisplay.aspx?e=1535612>  
Archive post: <http://oilsandstruth.org/53-charges-cnrl-contractors-deaths-foreign-workers>
- <sup>39</sup> Phone conversation with R. McAllister, ComFact (phone call recorded).
- <sup>40</sup> CLC Case files – TFW abuses, Karl Flecker, June 2007-08.
- <sup>41</sup> Ibid.
- <sup>42</sup> Correspondence with B.C. and Yukon Building and Construction Trade Council research staff.  
Excerpt: “The workers were not NOC A and B. They were labourers. The employer filled out the applications and put down bogus titles like ‘Supervisor of Segment Transport Beam’ .... That meant the worker operated a conveyor belt, it was a job that anyone could learn in two hours according to testimony at the BCHRT. The locomotive operator was similar ‘Supervisor of Rail Train.’  
“There was an interview at the Canadian consulate to approve the intercorporate transfer applications, but the Cdn. official didn’t verify the claims about the specialized skills that the workers had (by asking for certifications, letters of experience, precise questions about what the job entailed).”
- <sup>43</sup> [http://www.bchrt.bc.ca/decisions/2008/pdf/dec/436\\_CSWU\\_Local\\_1611\\_v\\_SELI\\_Can\\_ada\\_and\\_others\\_\(No\\_8\)\\_2008\\_BCHRT\\_436.pdf](http://www.bchrt.bc.ca/decisions/2008/pdf/dec/436_CSWU_Local_1611_v_SELI_Can_ada_and_others_(No_8)_2008_BCHRT_436.pdf)
-

- <sup>44</sup> CLC correspondence to Minister J. Kenney, January 2008.
- <sup>45</sup> CLC Human Rights & Anti-Racism Department on-going files.
- <sup>46</sup> E-mail correspondence with J. Sutherland, Director of the TFW Directorate, July 5, 2009.
- <sup>47</sup> Hon. Iris Evans, Alberta Legislative Assembly, *Hansard*, May 30, 2007.
- <sup>48</sup> UFCW media release: *Temp Foreign Workers take the fall again for farmers and government*. March 25, 2010.
- <sup>49</sup> HRSDC *Just the Facts — Foreign Workers, a feature to help dispel myths and misconceptions as well as raise awareness about HRSDC programs*.
- <sup>50</sup> Department of Finance Canada *Budget 2007: A stronger, safer, better Canada*, “Chapter 5: A Stronger Canada Through a Stronger Economy: Knowledge Advantage.”
- <sup>51</sup> *Report of the Auditor General of Canada* to the House of Commons. “Chapter 2: Selecting Foreign Workers Under the Immigration Program.” pg. 29, S.2.92. Fall 2009.
- <sup>52</sup> Flecker, K., *CLC Response to the IRPA Regulatory Changes Regarding Migrant Workers*. Canadian Labour Congress, January 2010:  
<http://www.canadianlabour.ca/sites/default/files/pdfs/IRPA-Changes-FW-EN.pdf>
- <sup>53</sup> <http://www.cic.gc.ca/english/departement/media/backgrounders/2011/2011-03-24a.asp>
- <sup>54</sup> Statistics Canada *Facts and Figures 2009*, Canada – Foreign workers present on December 1st by province or territory and urban area, 2005-2009:  
<http://www.cic.gc.ca/english/resources/statistics/facts2009/temporary/02.asp>
- <sup>55</sup> TFW numbers by province and NOC for 2008, for example, include significant totals of migrant workers employed in unknown sectors. For example, 2008 data tables for Ontario included nearly 11,000 migrant workers in “unstated job sectors” out of nearly 60,000 migrant workers in the province.
- <sup>56</sup> *Report of the Auditor General of Canada* to the House of Commons. “Chapter 2: Selecting Foreign Workers Under the Immigration Program.” pg. 7. Fall 2009.
- <sup>57</sup> *2006 Census Canada*.
- <sup>58</sup> *Looking-Ahead: A 10-Year Outlook for the Canadian Labour Market (2006-2015)*, Human Resources Skills Development Canada:  
[http://www.rhdcc-hrsdc.gc.ca/eng/publications\\_resources/research/categories/labour\\_market\\_e/sp\\_615\\_10\\_06/page00.shtml](http://www.rhdcc-hrsdc.gc.ca/eng/publications_resources/research/categories/labour_market_e/sp_615_10_06/page00.shtml)
- <sup>59</sup> CIC Report to Parliament. 2009.
- <sup>60</sup> <http://www.cic.gc.ca/english/resources/statistics/facts2008/permanent/01.asp>  
<http://www.cic.gc.ca/english/resources/statistics/facts2008/temporary/04.asp>
- <sup>61</sup> *Analysis, Solidarity, Action—a Workers’ Perspective on the Increasing Use of Migrant Labour in Canada*. <http://www.bcfed.com/files/AnalysisSolidarity.pdf>
- <sup>62</sup> *Immigration and Canada: Global and Transnational Perspectives*, Alan B. Simmons, p. 269.
- <sup>63</sup> “International labour migration: A rights-based approach,” Geneva, International Labour Office, 2010, ISBN 978-92-2-119120-9.
-

- <sup>64</sup> *Guide on Ratification: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Steering Committee for the Campaign for Ratification of the Migrant Rights Convention, December 2009.
- <sup>65</sup> Ibid. See pg. 35-6, Annex: Ratifications of International Instruments on Migration/Migrant Rights as of December 2009.
- <sup>66</sup> Workplace safety and labour standards compliance is generally a provincial responsibility. As of 2008, there were 128 Labour Affairs Officers (LAOs) who have responsibility for monitoring federally regulated workplaces across the country. *Success is No Accident: Declining Workplace Safety Among Federal Jurisdiction Employers*, D. Macdonald. April 2010:  
[http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20Is%20No%20Accident\\_0.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/Success%20Is%20No%20Accident_0.pdf)
- <sup>67</sup> Canada — Foreign workers present on December 1<sup>st</sup> by province or territory and urban area, 2005-2009. Citizenship and Immigration Canada, *Facts and Figures 2009*:  
<http://www.cic.gc.ca/english/resources/statistics/facts2009/temporary/10.asp>
- <sup>68</sup> Meeting with Ontario Minister of Labour, P. Fonseca, March 9, 2010.
- <sup>69</sup> Data tables for stock of migrant workers in the City of Toronto 2003-2007, Citizenship and Immigration Canada, RDM, *Facts and Figures 2007*.
- <sup>70</sup> The Supreme Court of Canada will soon rule on the case of *Fraser v. Ontario* concerning the freedom of association rights of agricultural workers in Ontario. This case has roots to the 2001 *Dunmore v. Ontario* case. Details can be found on these cases in the *CCPA Monitor* June 2010 issue. pp. 28-9.
- <sup>71</sup> UFCW, *The Status of Migrant Farm Workers in Canada, 2008-09*.  
<http://www.ufcw.ca/Theme/UFCW/files/PDF%202009/2009ReportEN.pdf>
- <sup>72</sup> Ibid.
- <sup>73</sup> *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate*, Alberta Federation of Labour, April 2009:  
<http://www.afl.org/index.php/View-document/123-Entrenching-Exploitation-Second-Rept-of-AFL-Temporary-Foreign-Worker-Advocate.html>
- <sup>74</sup> *Worker Recruitment and Protection Act*, 2nd Session, 39<sup>th</sup> Legislature, Manitoba. Assented June 12, 2008: <http://web2.gov.mb.ca/laws/statutes/2008/c02308e.php>
- <sup>75</sup> WRAPA PowerPoint file, K. Sharma, Assistant Director, Labour Market and Strategic Initiatives Branch, Manitoba Labour and Immigration, January 25, 2010.
- <sup>76</sup> *Ruby Dhalla scandal traps provincial Liberals in its web*, by S. Jenke, May 6, 2010:  
<http://network.nationalpost.com/np/blogs/fullcomment/archive/2009/05/06/stev-e-janke-ruby-dhalla-scandal-traps-provincial-liberals-in-its-web.aspx>
- <sup>77</sup> *Employment Protection for Foreign Nationals Act (Live-In Caregivers and Others)*, 2009.
- <sup>78</sup> Consultation paper issued by the Nova Scotia Labour and Workforce Development Office of Immigration, June 2010.
- <sup>79</sup> *Managing Labor Migration in the 21<sup>st</sup> Century*, P. Martin, M. Abello and C. Kuptsch, 2006.

- <sup>80</sup> CEC is a new pathway for some migrant workers to apply for permanent residency status in Canada. See this URL for details:  
<http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>
- <sup>81</sup> See ILO Convention 181.
- <sup>82</sup> Foster, 2007; Byl, 2009.
- <sup>83</sup> ILO, 2010.
- <sup>84</sup> GFMD 2007-2009 documents library.
- <sup>85</sup> Kuptsch, 2006; Leaksumrit, 2010.
- <sup>86</sup> Taran and Demaret, 2006.
- <sup>87</sup> ILO, 2010.
- <sup>88</sup> Human Rights Watch 2010.
- <sup>89</sup> Saleh, 2010.
- <sup>90</sup> Hadi-Azhar, 2010.
- <sup>91</sup> Rajasekran, 2010.
- <sup>92</sup> USW, 2008.
- <sup>93</sup> UFCW, 2008-9.
- <sup>94</sup> *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate*, Alberta Federation of Labour, April 2009:  
<http://www.afl.org/index.php/View-document/123-Entrenching-Exploitation-Second-Rept-of-AFL-Temporary-Foreign-Worker-Advocate.html>
- <sup>95</sup> UFCW and State of Michoacán *Cooperation Agreement* to support Michoacán workers in Canada, April 8, 2008.