



Access to Justice for Migrant Workers in British Columbia





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Building better communities, one grant at a time.

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Acronyms

AWA	Agricultural Workers Alliance
BC	British Columbia
BCGEU	BC Government and Service Employees Union
BC ESA	<i>British Columbia Employment Standards Act</i>
ESB	Employment Standards Branch
CBSA	Canada Border Service Agency
CIC	Citizenship and Immigration Canada
HRSDC	Human Resources and Skills Development Canada
IRPA	<i>Immigration and Refugee Protection Act</i>
IRPR	<i>Immigration and Refugee Protection Regulations</i>
LCP	Live-in Caregiver Program
LMO	Labour Market Opinion
MOU	Memorandum of Understanding
NOC	National Occupation Classification
NIEAP	Non-Immigration Employment Authorization Program
OECD	Organization for Economic Cooperation and Development
PNP	Provincial Nominee Program
PR	Permanent Residence
SAWP	Seasonal Agricultural Worker Program
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
TRP	Temporary Resident Permit
UFCW	United Food and Commercial Workers (Union)
WCDWA	West Coast Domestic Workers' Association
WRPA	<i>Worker Recruitment and Protection Act (Manitoba)</i>



Introduction

West Coast Domestic Workers' Association (WCDWA) is a non-profit association in its 27th year of operation. The organization facilitates access to justice for migrant workers who enter Canada through the Live-in Caregiver Program (LCP) by offering legal assistance, legal information and advocacy to current and former live-in caregivers. Each year the organization handles over 3000 legal matters for live-in caregivers. WCDWA's legal advocates and staff lawyer provide assistance for issues ranging from loss of immigration status to employment standards complaints before various tribunals and decision making bodies such as Employment Standards Branch, Federal Court and Citizenship and Immigration Canada (CIC).

In recent years, the organization has experienced a sharp increase in requests for legal assistance from other migrant workers, often referred to as Temporary Foreign Workers (TFWs), who enter Canada through CIC's Temporary Foreign Worker Program (TFWP). With few exceptions, migrant workers that enter Canada through the TFWP do not have a pathway to permanent residence.

Migrant workers are an integral component of the BC workforce and economy. However, despite their contributions to BC society, they are uniquely vulnerable to exploitation and abuse, largely stemming from the temporary nature of their migrant worker status. Many 'semi' and 'lower-skilled' workers earning minimum wage are not able to afford legal representation when they encounter legal difficulties.¹ Temporary foreign workers typically do not have access to provincial settlement services and programs because they are not immigrants.

Research Project

Given the growing demand for legal access in migrant worker communities, WCDWA engaged in a research project to document the types of problems 'semi-skilled' temporary foreign workers encounter with the aim of promoting greater understanding about access to justice issues within migrant worker communities.

The research report is intended to provide guidance to WCDWA and other stakeholders about how to better serve the needs of migrant workers under the TFWP. The report aims to provide a first-hand perspective of the successes and flaws of the TFWP within the British Columbian context.

¹ CIC characterizes some professions as semi-skilled and low skilled and for ease of reference, CIC's categories will be used in this report. However, it is WCDWA's position that all the jobs listed in CIC's National Occupations List are skilled jobs.

Data Collection

The researchers collected data through a variety of methods. An analysis of current research and reporting about the TFWP was conducted to help construct a framework for the research and to allow for the triangulation of WCDWA's findings with other sources. Three focus groups were held with temporary foreign workers with a researcher introducing the various topics for discussion then allowing the participants to discuss issues broadly within the framework and to contribute personal examples and testimony. A second researcher was present at the focus groups to aid in note taking. The research groups were conducted in collaboration with the Agricultural Workers Alliance of Abbotsford and Migrant BC. A number of semi-structured interviews were conducted, either by phone or face-to-face, with current and former live-in caregivers, seasonal agricultural workers and immigrants in the stream for 'lower-skilled' workers. Additionally WCDWA used data collected for cases that it has dealt with in recent years that contribute to the general body of evidence. All research participants voluntarily took part in the research process and gave permission for their testimony and experiences to be used in this report. All research participants were promised that their participation in the research would be anonymous. Pseudonyms have been used in the report to conceal the identity of those concerned.

Report Outline

This report consists of four parts: Part One sets the scene by first situating the TFWP within the global context and within the legal framework of Canada's immigration system. It briefly describes the different immigration streams relevant to the research participants and WCDWA's clients, provides a brief analysis of BC specific context, and discusses the Provincial Nominee Program (PNP) as a potential avenue to permanent residence. This section highlights the temporary nature of the status of migrant workers in the 'lower-skilled' immigration categories and the limited options available for accessing permanent status for individuals entering Canada in these categories. It also highlights that those who are eligible to change their status from temporary to permanent are very much reliant on their employers to maintain their eligibility.

Part Two addresses the problems that occur as a result of the government's usage of the TFWP as a way to manage so-called labor shortages through a review of current research and literature. Part Two argues that the precarious nature of the immigration status of temporary foreign workers, the employer driven focus of the system and the power imbalance between employers and employees creates a work environment filled with fear and uncertainty. Part Two also briefly looks at new legislation and government policies introduced in the last two years and assesses how these may impact the employment and immigration situation for temporary foreign workers.



Part Three links the research findings to problems identified in Part Two. This section discusses the common problems migrant workers in the TFWP encounter including immigration issues, employment standards and workers' rights issues, the impact on family life, and access to service challenges. The personal stories of temporary migrant workers under the program are included to support research findings.

In Part Four we present our research conclusions and argue for a series of measures and changes to legislation and employment standards enforcement to enhance protections for migrant workers. In particular, we recommend that BC adopt similar standards to Manitoba to regulate recruitment agencies and that employment standards monitoring and enforcement should be strengthened. We also argue that the tied work permit system for 'lower skilled' workers and the lack of access to, or length of time waiting for, permanent residence for people in certain migration streams exacerbate vulnerability and leads to employment abuse, and as such should be replaced with a system that promotes equal access to permanent status. Better access to information should also be available for migrant workers to ensure they are aware of their employment and immigration rights. The government should also protect workers' rights to association and unionization. The common theme running through the recommendations is the need of the federal and provincial authorities as well as employers to recognize the significant contribution these workers make to the Canadian economy and that the work they provide is not 'low/lower skilled' but in fact often requires important skills and experience.

PART ONE

The Global Shift Toward Temporary Foreign Workers

Since the turn of the century, Canada has moved increasingly to an immigration model that prioritizes the import of temporary foreign workers. In doing so, it is mirroring the trend that has developed globally.² Many countries are heavily dependent on the import of temporary labour. Indeed, there has been a dramatic growth in temporary worker programs globally, particularly in Organization for Economic Co-operation and Development (OECD) countries.³ About 2.5 million temporary workers entered OECD countries in 2006, which was roughly three times the number of workers who entered on a permanent basis.⁴ Temporary migration of foreign workers, into OECD countries, has increased by 4% to 5% per year since 2000.⁵ Related to this trend has been a shift toward migration policy driven by employer requests or job offers as opposed to government macro-policy. Derrick Thomas, editor of a 2010 Statistics Canada report, has noted the appeal of temporary migrant worker programs to governments. Such programs give governments the flexibility and allow them to minimize costs. As Thomas states,

“Temporary worker programs are attractive because they enable countries to quickly address labour market needs in an expanding economy without the increased costs associated with maintaining unemployed workers during a downturn - the costs associated with social and economic integration are also reduced.”⁶

Canada’s migration trends have mirrored the global phenomenon highlighted by the OECD’s figures. The influx of temporary foreign workers entering Canada has increased dramatically since 2006.⁷ Government policy clearly outlines this approach through the 2007 budget document which stated, “it is our government’s intention to create the best

² Karl Flecker, “Building a Disposable Workforce Through Temporary Migration Policy,” Canadian Issues Spring (2010): 101, <http://search.proquest.com.ezproxy.library.ubc.ca/docview/610780614?accountid=14656>.

³ OECD members: Australia, Austria, Belgium, Canada, Chile Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

⁴ Karl Flecker, “Building a Disposable Workforce Through Temporary Migration Policy,” Canadian Issues Spring (2010): 101, <http://search.proquest.com.ezproxy.library.ubc.ca/docview/610780614?accountid=14656>.

⁵ Manolo Abella, “Policies and Best Practices for Management of Temporary Migration,” Population Division, Department of Economic and Social Affairs, United Nations Secretariat. (2006): 8 [http://cronus.uwindsor.ca/units/socialjustice/main.nsf/982f0e5f06b5c9a285256d6e006cff78/a9fee0f9ae7e1026852573d40063d1e5/\\$FILE/TempMigration.pdf](http://cronus.uwindsor.ca/units/socialjustice/main.nsf/982f0e5f06b5c9a285256d6e006cff78/a9fee0f9ae7e1026852573d40063d1e5/$FILE/TempMigration.pdf).

⁶ Canada. Statistics Canada. Foreign Nationals Working Temporarily in Canada. Edited by Derrick Thomas. (Ottawa, Ont.), 2010. Modified 2010.06.08 <http://www.statcan.gc.ca/pub/11-008-x/2010002/article/11166-eng.htm>.

⁷ Karl Flecker, “Building a Disposable Workforce Through Temporary Migration Policy,” Canadian Issues Spring (2010): 101, <http://search.proquest.com.ezproxy.library.ubc.ca/docview/610780614?accountid=14656>.



educated, most skilled and most flexible workforce in the world.”⁸ The TFWP has been the key to that flexibility. The same budget eliminated the previous limitation to occupations with recognized labour shortages and allowed Canadian employers to recruit temporary foreign workers “for any legally recognized occupation from any country.”⁹ Five years later, under the 2012 budget, the government is still committed to “building a fast and flexible economic immigration system” under which it is working to “better align the Temporary Foreign Worker Program with labour market demands.”¹⁰

Temporary Migration of Workers

Canada’s immigration system categorizes professions into 4 different levels of skill and 5 categories on the National Occupation Classification (NOC) matrix.¹¹ Work such as agricultural work and live-in caregiving is categorized in the C and D categories, along with other occupations that the Canadian Government has deemed to be ‘lower-skilled.’ In contrast, NOC categories O, A and B are associated with managerial, professional and skilled work occupations, and designated by Canada’s immigration system as ‘skilled work’. For the most part, migrants entering to work in C and D category professions do not have the opportunity to apply for permanent residence. Even for applicants in occupations categorized as ‘lower-skilled’ that do have a pathway to permanent residence, the procedural route to obtain permanent status is long and complicated.¹²

Prior to the 1960s, migrants admitted to the Canadian labour market arrived as permanent residents.¹³ The temporary foreign worker program that exists today is descended from the changes made to Canadian immigration law beginning in the 1960s. In 1966 the Canadian government introduced the Seasonal Agricultural Worker Program (SAWP) which marked a change from previous policy in that it admitted a class of migrant workers who did not have the opportunity to participate freely in the employment market.

⁸ Canada. Department of Finance. *The Budget Plan 2007, Aspire to a stronger, safer, better Canada*. (Ottawa, Ont.), 2007: 149, <http://www.budget.gc.ca/2007/pdf/bp2007e.pdf>.

⁹ Canada. Department of Finance. *The Budget Plan 2007, Aspire to a stronger, safer, better Canada*. (Ottawa, Ont.), 2007: 217, <http://www.budget.gc.ca/2007/pdf/bp2007e.pdf>.

¹⁰ Canada. Department of Finance. *Economic Action Plan 2012: Job, Growth and Long-term Prosperity*. (Ottawa, Ont.), 2012: 136, <http://www.budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf>.

¹¹ For more information about the NOC matrix see HRSDC About the NOC 2011. Online, <http://www5.hrsdc.gc.ca/NOC/English/Noc/2011/AboutNOC.aspx>, and Canada. Statistics Canada. National Occupation Classification (NOC) 2011. Statistics Canada Catalogue no.12-583-X. (Ottawa, Ont.), 2011, <http://www.statcan.gc.ca/pub/12-538-x/12-538-x2011001-eng.pdf>.

¹² Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers’ Insecurity*, (Metcalf Foundation, 2012), 20, <http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>.

¹³ Malcolm Sargeant and Eric Tucker, “Layers of Vulnerability in Occupational Health and Safety for Migrant Workers: Case Studies from Canada and the United Kingdom,” *Policy and Practice in Occupational Health and Safety*, Vol. 7, No. 2, (2010): 9; CLPE Research Paper No. 8/2009, <http://ssrn.com/abstract=1415371>.

This was the first of a series of programs to admit migrant workers to Canada for fixed periods of time and with restrictions on how they could operate in the labour market.

A more general program to permit migrant workers into Canada on a temporary basis was developed in 1973 through the Non-Immigrant Employment Authorization Program (NIEAP), a precursor to today's Temporary Foreign Worker Program (TFWP). The NIEAP created a system of permitting temporary workers entry into the labor market for non-permanent employment. Through the NIEAP, migrant workers were granted a more limited set of rights than permanent residents. This distinction remains a key element of today's TFWP.¹⁴

The *Immigration and Refugee Protection Act* (IRPA) introduced the current TFWP in 2002.¹⁵ The TFWP operates in parallel to Canada's standard immigration programs and is designed to bring foreign nationals to work in Canada for a limited period of time. In most cases, the migrant worker's status in Canada is tied to a specific employer. The TFWP was intended to respond to temporary labour market shortages in particular sectors and it is largely employer-driven. According to Human Resources and Skills Development Canada (HRSDC), the program "enables employers to hire foreign workers on a temporary basis to fill immediate skills and labour shortages, when Canadian citizens and permanent residents are not available to do the job."¹⁶

CIC and HRSDC share responsibility for the design and implementation of the Temporary Foreign Worker Program. There are generally two stages to the TFWP process. A prospective employer must apply to HRSDC for a labour market opinion (LMO), unless exempted by the IRPA and the *Immigration and Refugee Protection Regulations* (IRPR). HRSDC will determine whether there is need to hire a migrant worker for the job in the specific labour market.

The employer must demonstrate that the job offer is genuine and that a Canadian citizen or permanent resident cannot readily fill the position. If a positive or neutral LMO is issued, the potential employee may apply to CIC for a work permit who will determine, on the basis of the opinion provided by Service Canada, if the job offer is genuine.

In conducting the research for this report, WCDWA gathered data from two main sources, live-in caregivers and agricultural workers. Additionally WCDWA spoke with workers from other professions, such as butchers and fast food workers. To gain a clear

¹⁴ Jason Foster, "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program," *Just Labour: A Canadian Journal of Work and Society*, Vol.19 Autumn (2012): 24, http://www.justlabour.yorku.ca/volume19/pdfs/02_foster_press.pdf.

¹⁵ *Immigration and Refugee Protection Act (IRPA)*, S.C. 2001, c 27. <http://laws-lois.justice.gc.ca/eng/acts/i-2.5/>.

¹⁶ "Hiring Live-in Caregivers and Nannies," Human Resources and Skills Development Canada, last modified June 05, 2013, accessed June 15, 2013, http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml.



understanding of the research findings, it is necessary to look at the immigration streams available to individuals working in these professions:

Live-in Caregiver Program

The current Live-in Caregiver Program (LCP) was established in 1992 and allows Canadians to recruit caregivers to live in their accommodation and provide care for children, persons with disabilities or elderly persons. BC is second largest destination of LCP workers, after Ontario.¹⁷ Women comprise an overwhelming majority (95%) of live-in caregivers, most of who are from the Philippines.¹⁸ The program rules stipulate that live-in caregivers must provide care on a full time, live-in basis. An employer wishing to hire a foreign caregiver under the LCP must meet a set of eligibility requirements including proving they have sufficient income to pay the caregiver, providing acceptable in-home accommodation, making a job offer that lists child, elderly or disabled care as the primary duty, and submitting an LMO application with HRSDC. The prospective caregiver must then make an application a work permit at a Canadian visa office abroad.¹⁹ ²⁰ Legislation requires applicants to have the ability to speak, read and understand English or French at a level sufficient to communicate effectively in an unsupervised setting, have completed a course of study equivalent to Canadian secondary school, and have either completed at least six months of full time classroom training or, alternately, one year full time employment in a relevant field within the three years prior applying to the program.²¹

A contract between employer and caregiver, outlining the terms of employment, is a legal requirement of the LCP and HRSDC provides a template employment contract.²² The contract must demonstrate that program requirements are met by including a description of mandatory employer-paid benefits. The employer is legally required to pay for the transportation costs to Canada, provide private medical insurance for the three months prior to provincial coverage, pay all recruitment fees, and ensure that the caregiver is covered by workplace safety insurance. The contract is required to outline job duties,

¹⁷ Salimah Valiani "The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program" (2009): 16, <http://www.ccsf.carleton.ca/~dana/TempPermLCPFINAL.pdf>.

¹⁸ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, (Metcalf Foundation, 2012), 36, <http://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>.

¹⁹ OP 14 *Processing Applicants for the Live-in Caregiver Program*, October 2010: s.5.1, <http://www.cic.gc.ca/english/resources/manuals/op/op14-eng.pdf>.

²⁰ IRPR s.112 (a)(b)(c)(d),(e).

²¹ IRPA s.112 (c)(i) or (ii).

²² "Employment contract template – Live-in caregivers/nannies," Citizenship and Immigration Canada, last modified February 05, 2013, accessed April 12, 2013, <http://www.cic.gc.ca/english/work/caregiver/sample-contract.asp>

accommodation arrangements, hours of work, wages, termination and resignation terms, and holiday and sick leave entitlements.²³

It is worth noting that the LCP differs from the other migration schemes highlighted in this report in that it offers participants a pathway to permanent residence. To be eligible to apply for permanent residence, a caregiver must, within the fourth year anniversary of his or her initial entry into the program, complete two years of full time authorized work or, alternatively, 3,900 hours of full time authorized work within a minimum of twenty-two months.^{24 25}

Agricultural Workers

There are two parallel schemes that employers in the agricultural sector can use to bring temporary migrant labour to BC: The SAWP and the Agricultural Stream of the Stream for Lower-Skilled Workers. Migrant workers in one scheme will often find themselves working alongside migrants who arrived through the other scheme. As such workers doing the same job can find themselves subject to different conditions and oversight. WCDWA spoke with workers from both schemes.

Both immigration streams have been introduced by the Federal Government at different times to address the chronic shortage of labour in the agricultural sector. However as noted by Faraday, these shortages have been experienced in Canada since at least the early 1900s.²⁶ In reality, the migrant workers who work in the agricultural sector are providing a temporary solution to a permanent problem.²⁷

The Seasonal Agricultural Workers Program (SAWP) was launched in 1966 on a trial basis to address labour shortages in the agricultural sector and it is now one of Canada's

²³ IP 4 *Processing Live-in Caregivers in Canada*, January, 2011: s,5.4, <http://www.cic.gc.ca/english/resources/manuals/ip/ip04-eng.pdf>.

²⁴ "Become a Permanent Resident-Live-in Caregivers," Citizenship and Immigration Canada, last modified October 19, 2012, accessed June 07, 2013, http://www.cic.gc.ca/english/work/caregiver/permanent_resident.asp.

²⁵ For more detailed critiques of the PR procedures for live in caregivers see Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Metcalf Foundation, 2012), <http://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>, and Salimah Valiani, "The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program," (2009), <http://www.ccsf.carleton.ca/~dana/TempPermLCPFINAL.pdf>

²⁶ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, (Metcalf Foundation, 2012), 37, <http://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>.

²⁷ Jenna Hennebry, "Permanently Temporary? Agricultural Migrant Workers and Their Integration in Canada" (Institute for Research and Public Policy) Study No. 26, February 2012, <http://www.irpp.org/en/research/diversity-immigration-and-integration/permanently-temporary/>.



oldest surviving temporary foreign worker programs.²⁸ The SAWP has a number of features that distinguish it from other programs. Operating within the broad framework of the IRPA, the program is a bilateral government managed migration scheme involving both private and public actors in Canada and the source countries. The agreements between Canada and the source countries are formalized by Memoranda of Understanding (MOU). Canada has MOUs establishing SAWPs with Mexico and 12 Caribbean nations.²⁹ The program requires migrant workers to reside in housing provided by the employer. Under the SAWP contract, employers can hire migrant workers from participating countries for a maximum duration of 8 months, between January 1 and December 15, provided that the employers can offer the workers a minimum of 240 hours of work within a period of six weeks or less, that they are hiring in specific sectors, and the migrant workers must work on the farm in primary agriculture.

The source country's government is supposed to undertake administrative responsibilities such as recruitment of workers. Migrant sending countries have offices in Canada where officials act as worker representatives who are meant to provide orientation, inspect workers' accommodation, investigate conflicts, and resolve disputes that arise between workers and employers. However, there have been allegations of discrimination by Mexican consular agents against workers who have complained about employer abuses.³⁰

The Federal Government has also established another migrant worker scheme for agricultural work - the Agricultural Stream for Lower-Skilled Occupations. In 2002 the Federal Government introduced the Stream for Lower-Skilled Occupations and at the same time introduced a particular stream for agricultural workers. Under this scheme, employers can hire temporary migrant workers in the same commodity sectors as the SAWP, however under significantly different conditions. Employers themselves are responsible for the recruitment and selection of workers and can directly hire workers from any country. Work permits may be issued for up to 24 months, rather than the 8 under the SAWP. A migrant worker hired under the SAWP may find herself/himself working alongside a worker hired under the Agriculture Stream performing exactly the same duties while each subject to a different set of requirements and obligations.

²⁸ "Report on the Status of Migrant Workers in Canada", UFCW, 2011: 08, <http://www.ufcw.ca/templates/ufcwcanada/images/Report-on-The-Status-of-Migrant-Workers-in-Canada-2011.pdf>.

²⁹ Participating SAWP country list: Mexico and the Caribbean countries of Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago listed in "Hiring Seasonal Agricultural Workers" Human Resources and Skills Development Canada, last modified May 16, 2013, accessed May 20, 2013, http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml.

³⁰ Robert Russo, "CASE COMMENTARY: Temporarily Unchained: The Drive to Unionize Foreign Seasonal Workers in Canada – A comment on Green Way Farms and UFCW", *BC Studies* Issue no. 169 (Spring, 2011): 131-138.

Other Migrant Worker Schemes

In addition to the LCP and agricultural worker programs, there are other migrant worker streams available to workers whose professions are classified in the C and D categories on the NOC matrix.

As mentioned above, the Stream for Lower Skilled Occupations was introduced in 2002 and is the overall program that allows employers to hire migrant workers in so called lower skilled occupations (C and D categories) on the basis of positive or neutral LMOs. In BC, employers are hiring migrant workers under this stream in diverse sectors such as agriculture, restaurants, food processing, cleaning, tourism, construction and road building. As with the agricultural scheme, work permits may be issued for 24 months and then renewed for another 24 months. Effective April 2011, nearly all temporary migrant workers are subject to a four-year 'cumulative duration' limit on the length of time they may work in Canada (exceptions include NOC A category workers, SAWP workers and applicants for permanent residence who have received approval in principle-which includes live-in caregivers).³¹ Once they have reached this maximum allowance, they must remain outside of Canada for four years before they become eligible to work in Canada as a migrant worker again.³² As with the Agricultural Stream and the SAWP, migrants who enter Canada under this system are not eligible to apply for permanent residency.

Provincial Nominee Program

The PNP is a scheme that allows participating provinces and territories to nominate economic immigrants for permanent residence. Each participating province or territory has a separate agreement with the Federal Government.³³ Applicants must possess the skills, education and work experience needed to "make an immediate economic contribution" to the province or territory that nominates them.³⁴ The federal government shares jurisdiction for immigration selection with the provinces in these programs.³⁵ Once nominated by a province, CIC carries out processes related to admissibility including medical examinations,

³¹ "Backgrounder – Four-year limit for foreign nationals working in Canada", Citizenship and Immigration Canada, last modified March 24, 2013, accessed April 16, 2013, <http://www.cic.gc.ca/english/departement/media/backgrounders/2011/2011-03-24.asp>.

³² IRPR s.200(3)(g)(i).

³³ Currently, the following provinces and territories operate PNPs (TNPs, as the case may be): Alberta, Manitoba, Newfoundland and Labrador, Ontario, Saskatchewan, British Columbia, Nova Scotia, Prince Edward Island, Yukon and Northwest Territories.

³⁴ "Provincial Nominees," Citizenship and Immigration Canada, last modified October 22, 2010, access June 26, 2013, <http://www.cic.gc.ca/english/immigrate/provincial/index.asp>.

³⁵ IRPA s. 8.



criminal and security checks. PNPs differ significantly from federal immigration categories in that their selection criteria are not captured in legislation or regulation. The Federal Government allows for a wide variation in terms of how provinces design and establish selection criteria for their PNPs. However, according to the regulations all must select candidates for permanent residence based on “their ability to become economically established in Canada”.³⁶ Several PNPs have significantly shorter processing times than the federal programs. The program allows nominees to apply for permanent resident status through CIC under the fast-tracked Provincial Nominee stream, which can be much faster than applying through federal immigration streams. Some PNPs provide a direct path to permanent residence. However, most consist of a two-stage path requiring the applicant to first work for a period of time as a temporary migrant. The province’s labor needs are assessed based on current and projected labour market conditions and economic benefits to the province.³⁷

In BC, the Ministry of Jobs, Tourism and Skills Training administers the BC PNP. The program has operated for approximately a decade; beginning with a very limited program, focused on addressing the shortage of registered nurses and has continually expanded in scope by adding new streams and categories. BC varies from many other provinces in that under certain circumstances it allows some workers classified under NOC C or D categories to be admitted to the PNP. Within the PNP, the category that is open to individuals with skills classified under NOC C or D is the Entry Level or Semi-Skilled workers in select occupations under the Strategic Occupations component. The stream has two elements to it; a category that is available throughout BC for the limited occupations of tourism/hospitality, food processing and long-haul trucking, and the Northern Pilot Project for workers in any NOC C or D occupation that work in the Northeast Development Region.³⁸

To be eligible to apply under this category, nominee applicants must have worked for their employer in an eligible occupation and on a full time basis for at least nine consecutive months immediately preceding the date of their application.³⁹ With the exception of recent masters or doctoral graduates in select degrees, potential applicants also require a full time indeterminate job offer. The employer and the nominee applicant submit a joint application to the BC PNP.⁴⁰ Applicants also have to demonstrate that they are able to establish themselves economically in Canada by meeting an income threshold

³⁶ IRPR s.87(1).

³⁷ “B.C. Provincial Nominee Program,” Welcome BC, accessed April 18, 2013, <http://www.welcomebc.ca/pnp>.

³⁸ For a map of the Northeast Development Region, see <http://www.bcstats.gov.bc.ca/StatisticsBySubject/Geography/ReferenceMaps/DRs.aspx>.

³⁹ “Entry Level and Semi-Skilled Workers: Who Can Apply,” Welcome BC, accessed April 24, 2013, <http://www.welcomebc.ca/Immigrate/immigrate-BC/Provincial-Nominee-Program-Home/Strategic-Occupations-Home/Entry-Level-and-Semi-Skilled-Workers-Home.aspx>.

⁴⁰ “BC Provincial Nominee Program,” Welcome BC, accessed April 18, 2013, <http://www.welcomebc.ca/pnp>.

which is dependent upon work location and the size of the family unit.⁴¹ Unlike migrants who come in under the O, A and B categories, workers in the C and D categories are not able to bring their families to Canada until they have obtained permanent residence. As such when calculating whether they meet the income threshold, they are not able to use the income of a spouse to supplement their income. This is in direct contrast to O, A and B category migrants who are able to bring their spouses in on open work permits.

As such the BC PNP offers limited options for NOC C or D workers to achieve permanent residency. The scheme is employer driven and is limited to a small number of occupations or remote regions. Even if applicants find employers who are willing to nominate them, they have to ensure that they maintain legal immigration status throughout the process and they have to prove that they are able to successfully establish themselves economically in Canada. They are also the mercy of their employer because the BC PNP application is jointly made by the employer and employee. Workers who lose employment during the PNP process will be considered ineligible for PR unless they can find another eligible employer and can persuade BC PNP to transfer the nomination to a new employer.

The Demand for Migrant Labour in British Columbia

In the BC Labour Market Outlook 2010-2020 it is projected that there will be 1.03 million projected job openings in BC (including both expansion and replacement demand). Reflecting BC's demographic shift to an aging population, it is expected that the number of new labour market entrants will steadily decline throughout the outlook period. Demand for workers is expected to grow by an annual average rate of 1.4% and the number of workers needed in BC's seven development regions is expected to exceed the number of workers available province-wide. In light of this, it is projected that BC employers will rely more heavily on migrants, including temporary migrant workers, to provide new labour over the next seven years. Migrants, both from outside the province as well as other countries, are therefore an increasingly important source of new labour supply. As a result of this, it is expected that new migrants to BC will fill one-third of all job openings in the province by 2020.⁴² According to Work BC, 22% of all job openings in BC between the years 2010-2020 are expected to be for NOC C and D 'lower-skill' positions.⁴³

A 2011 CIC Facts and Figures reports the total entries of foreign workers in BC totaled just over 20,000 in 2002; by 2006 these numbers had risen to 31,013 and then jumped to

⁴¹ "Ability to become economically established in BC," Welcome BC, accessed July 10, 2013, <http://www.welcomebc.ca/Immigrate/immigrate/Provincial-Nominee-Program-Home/Strategic-Occupations-Home/Ability-to-Become-Economically-Established-in-B-C.aspx>.

⁴² British Columbia. Work BC, BC Labour Market Outlook 2010-2020, (2010):2-4.

⁴³ British Columbia. Work BC, BC Labour Market Outlook 2010-2020, (2010): 9.



46,378 by 2011.⁴⁴ CIC's Preliminary tables for 2012 indicate that this figure rose to 49,488 in BC out of a total of 213,516 entries to Canada the same year. BC, therefore, has received the second highest number of temporary foreign workers after Ontario with 71,233, with Alberta falling into third place with 35,615.⁴⁵

The report states that at the end of 2011 (December 1, 2011), 69,965 'temporary residents', which includes migrant workers, were present in BC. Over 40,000 of those temporary residents were living in Vancouver, while over 26,000 were living outside of BC's main urban centres.

Part One has demonstrated how the main immigration schemes for 'lower-skilled' workers are for the main part designed to keep a temporary work force available to Canadian employers with little options available for changing to permanent status. Although the LCP and the BC PNP do offer options for permanent residency they are still dependent upon fulfilling criteria of length of employment, and in the case of the PNP, maintaining a full time job offer until processing for the permanent residence application is complete. As such, even these limited options are designed in a way that entrenches and exacerbates significant power imbalances between employers and employees and make the process of obtaining permanent status challenging.

⁴⁴ Canada. Citizenship and Immigration Canada. *CIC Facts and Figures Immigration Overview Permanent and Temporary Residents*, (Ottawa, Ont.) 2011: 74, <http://www.cic.gc.ca/english/pdf/research-stats/facts2011.pdf>.

⁴⁵ Canada. Citizenship and Immigration Canada. *CIC 2012 Preliminary Tables: Permanent and Temporary Residents - total entries of temporary foreign workers by province or territory and urban area, 2008-2012*, <http://www.cic.gc.ca/english/resources/statistics/facts2012-preliminary/01.asp>.

PART TWO

Literature Review and Analysis of Program

Part One of the paper established how the TFWP fits into a global phenomenon of increased reliance of OECD countries on impermanent importing of foreign workers in lower skilled positions and described the main immigration options available to migrant workers in the NOC C and D categories. Part Two will provide a brief review of the literature analyzing the TFWP and the impact of its regulations on migrant workers.

There has been a growing emphasis amongst researchers, advocacy organizations and field practitioners about the linkages between the precarious immigration status of lower-skilled temporary migrant workers, the precarious nature of the work, and how precariousness impacts the enforcement employment standards. Judy Fudge identifies a nexus between precarious immigration status and precarious employment status, in which the regulations used to control migration ensures temporary foreign workers are not secure in their employment and thus impacts their ability to demand decent wages, working and living conditions, and the right to organize.⁴⁶ This situation feeds into the employment market in general, creating a downward pressure on employment standards.

Precarious employment is unstable and insecure. Vosko defines it as “work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements.”⁴⁷ Precarious immigration status fosters precarious employment because the temporary foreign worker’s ability to remain in Canada is heavily reliant on the employer and workers fearing for their immigration status will be less likely to demand better employment standards. Indeed, most TFWP work permits are employer specific, tying the worker to one employer, thereby shifting the power imbalance and reliance further in favor of the employer.

The tied nature of the work permits has led to the development of the notion of “unfree” workers.⁴⁸ Migrant workers on employer specific work permits do not have the same labour mobility as citizens or permanent residents. Under Canada’s immigration laws, they must seek a new work permit if they wish to change employers. The idea of “unfree” workers, which perpetuates precariousness, has been linked to the erosion of labor standards in the workforce and some academics have opined that it has caused the clustering of migrant workers in particular industries where enforcement of employment

⁴⁶ Judy Fudge, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers,” *Comparative Labor Law and Policy Journal* 34, no. 1 (2012), 100, <http://heinonline.org.ezproxy.library.ubc.ca/HOL/Page?handle=hein.journals/clpj34&collection=journals&page=95>.

⁴⁷ Leah Vosko, *Managing the margins: gender, citizenship, and the international regulation of precarious employment* (Oxford, Oxford University Press: 2010), 103.

⁴⁸ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers’ Insecurity*, (Metcalf Foundation, 2012), 26, <http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>.



standards is a particular problem.⁴⁹ The supply of an ever-renewable workforce that has little ability to bargain for better standards tampers down wages and work conditions by essentially creating a disincentive for employers to invest in their workers and improve compensation and conditions.

Erosion of Employment Standards

Employment standards provide crucial labour protections that establish base-line rules for how employers can treat workers.⁵⁰ The *BC Employment Standards Act* (ESA), which is administered by the Employment Standards Branch (ESB), sets minimum standards of wage and working conditions “in most workplaces” with the purpose of ensuring that employees in BC receive at least basic standards of compensation and conditions of employment.⁵¹ Standards on hours of work, when overtime begins, provisions for vacation and statutory holidays with pay and parental leave are just some of the protections covered by the legislation. However the incentive for governments to strictly enforce employment standards is reduced when the workforce is predominantly temporary and migrant, and in some cases the reduction in standards can be deliberate. The ILO has noted that “evidence suggests that, in some situations, there may be a deliberate link between policies and practices of excluding migrants from legal and social protection while apparently tolerating their presence in precarious situations that ensure that they remain low paid and docile”.⁵²

The erosion of employment standards in BC has had significant impact on the greater provincial workforce. Despite being the province with the highest cost of living in Canada, workers in BC face greater employment insecurity and lower hourly wages than the national average. David Fairey and Marjorie Griffin Cohen argue “that BC’s poor record on poverty and income polarization is closely related to the low-wage policies the BC Government has implemented in the 21st Century,” which were implemented through a large number of changes, beginning in 2001, to the ESA. Most of the changes involved cutbacks in employee rights and protections, and substantial erosion of enforcement of the legislation.⁵³

⁴⁹ Bridget Anderson, “Migration, immigration controls and the fashioning of precarious workers,” *Work, Employment and Society* 24, no 2 (2010):301, doi: 10.1177/0950017010362141.

⁵⁰ David Fairey and Marjorie Griffin Cohen, “Why BC’s Lower-wage Workers are Struggling,” *The Tyee*, April 24, 2013, <http://thetyee.ca/Opinion/2013/04/24/BC-Employment-Standards/>.

⁵¹ “Information and Forms,” BC Ministry of Jobs, Tourism and Skills Training and Responsible for Labour website, accessed May 01, 2013, www.labour.gov.bc.ca/esb/information.htm.

⁵² Judy Fudge, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers,” *Comparative Labor Law and Policy Journal* 34, no. 1 (2012), <http://heinonline.org.ezproxy.library.ubc.ca/HOL/Page?handle=hein.journals/clpj34&collection=journals&page=95>.

⁵³ David Fairey and Marjorie Griffin Cohen, “Why BC’s Lower-wage Workers are Struggling,” *The Tyee*, April 24, 2013, <http://thetyee.ca/Opinion/2013/04/24/BC-Employment-Standards/>.

In addition to decreasing standards, workers also have to cope with a system of enforcement that it is broken, particularly for the most vulnerable workers. The employment standards enforcement system is a complaint-driven mechanism requiring the worker to come forward to initiate the process. The existing 'self-help' complaints procedure requires exploited workers, with the exception of farm workers, live in caregivers and a limited list of others, to first complain to their employer before they can file a formal complaint with the ESB.⁵⁴ At this point of the process, according to Fairey, the worker is "subjected to pressure from officers to settle for less than what they are entitled and if they do not settle on adverse terms must endure delays in settlement that can last for years." Fairey argues convincingly that "this is a classic case of justice systematically delayed constituting justice systematically denied."⁵⁵ It appears doubtful that any meaningful changes will improve the BC complaints process in the near future, in fact, recent cutbacks at the ESB have resulted in a 33 percent reduction in branch staff, a 47 percent reduction in enforcement officer staff, and the closure of 50 percent of the branch offices.⁵⁶

Certain inequities that 'lower-skilled' migrant workers face are written into legislation, in effect enabling discrimination without recourse. For example, SAWP workers are excluded from key employment standards protection such as hours of work and overtime and statutory holiday pay. In fact, the 2013 BC – Mexico employment contract states that while the average minimum work week shall be forty hours and the normal working day is not to exceed eight hours, if the employer requests and the employee agrees, hours of work may be extended "when the urgency of the situation requires it."⁵⁷ The contract also states that while workers are entitled to one day of rest for every six consecutive days of work, the contract stipulates that where the urgency of the farmwork cannot be delayed, "the employer may request the workers' consent to postpone that day until a mutually agreeable date."⁵⁸

Coupled with poor enforcement mechanisms and legislatively formalized inequities, migrant workers' freedom of association is also severely restricted. For instance, as noted by Valiani, in most provinces live-in caregivers are legislatively barred from unionizing and engaging in collective bargaining "because provincial law does not recognize the domestic

⁵⁴ "Employment Standards Self-Help Kit," BC Ministry of Jobs, Tourism and Skills Training and Responsible for Labour, accessed May 2, 2013, <http://www.labour.gov.bc.ca/esb/facshts/shk-employer.htm>.

⁵⁵ "Workplace Injustices," David Fairey, BC Employment Standards Coalition, last modified May 8, 2011, accessed April 24, 2013, <http://bcemploymentstandardscoalition.com/media/letter-to-the-editor/workplace-injustices/>.

⁵⁶ David Fairey and Marjorie Griffin Cohen "Why BC's Lower-wage Workers Are Struggling," The Tyee, 24.04.2013 <http://Opinion/2013/04/24/BC-Employment-Standards/>.

⁵⁷ "Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico in British Columbia for the Year 2013," HRSDC, last modified May, 2013, accessed June 26, 2013 http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/sawpmc2013_bc.shtml.

⁵⁸ "Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico in British Columbia for the Year 2013," HRSDC, last modified May, 2013, accessed June 26, 2013 http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/sawpmc2013_bc.shtml.



sphere as a workplace.”⁵⁹ Migrant agricultural workers in BC can theoretically unionize but collective bargaining is impaired in practice by program restrictions, such as the eight-month maximum duration law (for SAWP workers) and the naming system. In 2011, the United Food and Commercial Workers (UFCW) union, in association with the Agricultural Workers Alliance (AWA), succeeded in unionizing a farm in Abbotsford that hires SAWP workers. This success, however, came at a heavy price. Days before a union certification vote, fourteen Mexican SAWP workers were fired from their jobs and sent back to Mexico.⁶⁰ Documents allegedly leaked from the Mexican Consulate suggested that these workers were blacklisted because of their attempt to unionize.⁶¹ Charges were filed with the BC Labour Board regarding serious allegations that the Government of Mexico and its Vancouver consulate conspired with BC agriculture operations to blacklist Mexican SAWP workers because they were union sympathizers.⁶² In 2012 the BC Labour Relations Board ruled that the Mexican Consulate has state immunity and thus the charges could only proceed against the firms involved and not the Mexican Consulate. The UFCW has applied for judicial review of the decision.⁶³ Without a supportive complaints mechanism, entrenched legislative protections, or the freedom to unionize, precariousness is magnified.

The prevailing migrant worker paradigm clearly assigns less value to the work carried out by workers in so called ‘low-skilled’ immigration streams as compared to other professions from other immigration categories. As highlighted in the introduction, WCDWA strongly disagrees with the use of the terms ‘low,’ ‘lower’ or ‘semi-skilled’ workers to describe migrants in the NOC C and D categories. The use of these terms in official policy helps perpetuate the idea that these workers are less valuable and more disposable than other workers and are less deserving of employment rights protections. As will be highlighted in the research findings in Part Three, the current paradigm leads to discrimination and abuse.

New Policies that Perpetuate Insecurity

Recent legislative changes to Canada’s immigration system sustain and intensify conditions of legal insecurity for ‘lower-skilled’ foreign workers in Canada. As of April 2011,

⁵⁹ Salimah Valiani “The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program” (2009): 16, <http://www.ccsf.carleton.ca/~dana/TempPermLCPFINAL.pdf>.

⁶⁰ Wendy Tueck, “Migrant workers fired from BC greenhouse as union vote neared” *Globe and Mail*, August 22, 2012, <http://m.theglobeandmail.com/news/national/migrant-workers-fired-from-bc-greenhouse-as-union-vote-neared/article4179523/?service=mobile>.

⁶¹ CBC News, “Mexico blocking labour activists: Canadian union, May 10, 2011, <http://www.cbc.ca/news/canada/british-columbia/story/2011/05/10/bc-ufcw-mexican-consulate-vancouver.html>

⁶² To read more about this issue of unionization and blacklisting please visit the UFCW’s website at <http://www.ufcw.ca/> and search “Issues” and then “Stop the Blacklisting of Migrant Workers.”

⁶³ Courthouse News Service, “Union Fights Mexican Consulate in Canada”, March 27, 2013, <http://www.courthousenews.com/2013/03/27/56096.htm>

temporary migrant workers are subject to a four year 'cumulative duration' limit on the length of time they may work in Canada.⁶⁴ Once they have reached this maximum allowance, they must remain outside of Canada for four years before they become eligible to re-apply to the program. In essence, the laws entrench impermanence.⁶⁵ The exceptions to the 'cumulative duration' law introduces a further discrimination between O and A category workers and B, C and D category workers as only the latter 'lower-skilled' categories are subject to the four year rule.

In response to the continued debate surrounding the TFWP, Diane Finley, former Minister of Human Resources and Skills Development and Jason Kenney, former Minister of Citizenship, Immigration and Multiculturalism, announced reforms to the program on April 29th, 2013. Under the Economic Action Plan 2013 the government is introducing legislative, regulatory and administrative changes including requiring employers to pay temporary migrant workers at the prevailing wage by removing existing wage flexibility (which allowed employers to pay foreign employees high-skilled employees 15% less and low-skilled employees 5% less than the prevailing wage rate for that occupation when certain conditions were met), suspension of the Accelerated Labour Market Opinion (ALMO) process, increasing the Government's authority to suspend and revoke work permits and LMOs if the program is being misused, and the introduction of fees for employers for the processing of LMOs and an increase of fees for work permits.⁶⁶ These changes were immediately followed by exceptions for the SAWP and other primary agricultural occupations, "as there are proven and acute labour shortages in the industry and the unfilled jobs are truly temporary."⁶⁷

It remains to be seen whether the proposed reforms will protect workers. It is likely that the financial cost of the proposed fees to process LMOs will be shifted to or borne by employees rather than employers, particularly since the practice of charging of illegal recruitment fees by offshore recruitment agencies continues to be rife, as will be demonstrated in the research findings in Part 3. Similarly, the Government's enhanced discretion to suspend and revoke work permits "if the process is being misused," appear to affect migrant workers disproportionately more than the unscrupulous employers that the proposed regulatory amendment purportedly targets. The broader authority to revoke work permits will result in greater job insecurity for migrant workers. In effect, it is the migrant worker who will be asked to leave early or left without legal status in Canada while an

⁶⁴ "Backgrounder – Four-year limit for foreign nationals working in Canada," Citizenship and Immigration Canada, last updated March 24, 2011, access April 16th, 2013, <http://www.cic.gc.ca/english/departement/media/backgrounders/2011/2011-03-24.asp>.

⁶⁵ IRPR 200(3)(g)(i).

⁶⁶ *Canadian News Centre*, "Harper Government announces reforms to the Temporary Foreign Worker Program – Ensuring Canadians have first chance at available jobs" April 29, 2013, accessed May 02, 2013, <http://news.gc.ca/web/article-eng.do?nid=736729>.

⁶⁷ *Canadian News Centre*, "Harper Government announces reforms to the Temporary Foreign Worker Program – Ensuring Canadians have first chance at available jobs" April 29, 2013, accessed May 02, 2013, <http://news.gc.ca/web/article-eng.do?nid=736729>.



employer found to be in violation can likely continue operating, albeit after being reprimanded. As such, the measures appear to target migrants working illegally rather than employers who abuse the immigration system.

Case Study 1

Prior to her arrival in Canada, Caroline and her husband had been residing in Saudi Arabia. There, Caroline consulted an immigration agency to assist her in her Canadian employment search. The agency found Caroline a job as cashier at a gas station in New Brunswick and charged her \$9,500 to process the work permit application.

A few days before her departure date, Caroline discovered that she was pregnant. She immediately told the agency about her pregnancy, concerned that it would affect her placement in Canada, but they assured her that it was not problematic. Caroline boarded the flight to Canada with two other migrant workers headed to work for the same employer. Upon arrival in New Brunswick all three were informed that they were to live in the gas station managers' house. Caroline slept on the couch or on a mattress on the floor and began her first week of 'training,' for which she did not receive any pay. After this first week Caroline was instructed to pack her belongings. She was told, without further explanation, that she was being sent to BC where someone would find her a more 'suitable' job. Caroline felt very scared but did not feel that she had a choice in what was going on. She was taken to the airport and put on a flight.

When she reached Vancouver nobody was there to pick her up from the airport. Terrified and knowing no one, Caroline called the phone number she had for the BC partner agency of the immigration agency in Saudi Arabia. The owner of the BC partner agency instructed her to take a taxi to his office. When Caroline arrived he informed her that she would not be able to find a new employer due to her pregnancy but that he could obtain a work permit for her husband for an additional charge. Caroline was given two 'options:' to stay in his accommodation for free and her husband could send money to support her, or to work for him in his consulting office and receive \$300 dollars cash every two weeks. Alone and afraid, Caroline chose the latter, knowing that her husband couldn't afford to send money.

Caroline lived with 19 other people in the agency owners' accommodation – a five-bedroom house. The others had all come to Canada with his assistance only to discover upon arrival that their jobs did not exist.

PART THREE

Abuse and Denial of Rights: The Experience of Migrant Workers in BC

Part Two has mapped out how immigration regulations governing the TFWP foster impermanence, insecurity and entrenches precariousness. This part of the report uses WDWA's research findings from its focus groups discussions, interviews with migrant workers, and the experiences of clients who have sought WCDWA's support in recent years, to demonstrate how the problems identified in Part Two of the report are present both before and during migrants' time in Canada. The report inter-weaves WCDWA's research with examples from other researchers and media reports. This section focuses on several areas of concern including abuses by recruitment agencies, the absence of an effective regulations and employment standards enforcement mechanisms, low wages and unpaid overtime, housing issues, health and safety issues, and the lengthy pathways to permanent residence. WCDWA's research and testimony from research participants highlights how the precarious nature of migrant labor engenders vulnerability, limits opportunities to complain and seek redress for abuses, and ensures migrant workers live a life of uncertainty and impermanence.

Recruitment Abuses

Before migrant workers even get to Canada, our research findings indicate that they are often subject to unethical practices of recruitment agencies and 'consultants'. The role of private recruitment agencies in the placement of temporary foreign workers has taken on a greater significance globally. Flecker notes that the 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."⁶⁸

BC is not immune to this trend. Our research and interviews document enduring problems with private recruitment agencies operating both in BC as well as overseas. Due to a weak regulatory environment and the lack of enforcement mechanisms, particularly for off-shore recruitment agencies, many agencies engage in unscrupulous and illegal practices with impunity. These practices include charging illegal fees to prospective workers for finding jobs and asking workers to engage in illegal work.

⁶⁸ Karl Flecker, "Canada's Temporary Foreign Worker Program, Model Program or Mistake?," Canadian Labour Congress, (April 2008), <http://www.canadianlabour.ca/sites/default/files/pdfs/model-program-or-mistake-2011-en.pdf>.



Non-Existent Jobs

One live-in caregiver's story exemplifies how new entrants to the program, who are unfamiliar with the Canadian legal system can be preyed upon by recruitment agencies. This woman told WCDWA that her recruitment agency informed her, mere days before her departure date, that her employer was unable to hire her. However, they assured her that they had a new employer lined up for her and told her not to be concerned. On arrival in Canada she found herself working for the new employer even though she did not have a work permit to do so - essentially illegal work - while the agency promised her that they would obtain a new work permit. She found herself performing duties outside of her job description, and working from 6:30 am to 11:00 pm six days a week. Her day began by preparing an elaborate breakfast for the entire family, after which she would spend a full work day working as a cashier in the family's store, only to go back to the families' home at night to prepare dinner and clean up. She was paid less than minimum wage and received no overtime. After enduring several months of this exploitation and afraid that if she reported the abuse she would be sent back home, she finally went to a community organization for assistance. With the help of that organization, she managed to disclose her unauthorized work to CIC and regularized her status. In this example, the precarious nature of the caregiver's immigration status and her fear of deportation led her to stay in a cycle of exploitation. The fear of deportation meant she felt unable to leave the abusive employment situation.

Caroline's story, another live-in caregiver who spoke to WCDWA, also illustrates how recruitment agencies manipulate worker fears in order to persuade them to carry out illegal work for the profit of the agencies. Caroline paid extortionate fees to a recruitment agency that engaged in the illegal practice of importing foreign workers to jobs that did not exist. In Caroline's case she lived in a house filled with other recruits in similar situations. Upon arrival, they would work in their 'job' for a short, usually unpaid, 'training' period, after which they are 'let go' and forced to work illegally while the agency charged them extra for the processing of a new work permit. In Caroline's case, the agency further exploited her fears and unfamiliarity with the immigration system by forcing her to work illegally at the agency.

In both these cases, and in numerous others that WCDWA has dealt with, the newly arrived workers are 'assured' by the agency that although the job they were recruited for has fallen through, the agency will normalize the individual's immigration status. In the meantime, the agency encourages the worker to take on illegal, "under the table" jobs to support themselves. Workers are encouraged not to talk about their situation to any outside party, further reinforcing vulnerability through isolation and allowing for greater control and manipulation. This extends to spreading false information about support groups for migrant workers. One caregiver informed WCDWA that her recruitment agency warned caregivers that WCDWA was a government spy agency that passed along information about caregivers to CIC and CBSA.

Illegal Recruitment Fees and Other Recruitment Problems

The employer driven immigration system and weak provincial regulatory mechanisms create a permissive environment for recruitment agencies to engage in illegal practices. Since recruitment agencies can facilitate employment relationships, they often act as gatekeepers to prospective employment - a position of control that can lead to abuse. To illustrate, the BC Employment Standards Act (ESA) prohibits recruitment agencies from charging employees fees for recruitment services. However, due to the absence of effective enforcement, some recruitment agencies continue to charge clients for placement services, as the following case exemplifies:

WCDWA interviewed a former live-in caregiver who told us that during her first four months in BC her entire salary went to paying off agency fees. Before coming to Canada, she had paid the equivalent of \$3,400 dollars to a recruitment agency in East Asia to find her an employer, facilitate the recruitment, and process her visa and LCP application. However, when she finally arrived in Canada, 14 months later, she was told by the partner agency based in BC that she owed an additional \$4,500 dollars. This came as a surprise to her, as the recruiter in East Asia told her that the fees she paid covered the Canadian partner agencies costs. Likewise, the recruiter here in BC told her the fees collected were for the East Asia office.

In 2009, the BC Supreme Court judicially reviewed a case filed against Prince George Nannies and Caregivers Ltd ("PG Nannies"), a company in the business of recruiting foreign live-in caregivers. The company operated by requiring perspective caregivers to enter into what it called a 'Live-in Caregiver Advertising and Settlement Service Fee Agreement'. Pursuant to this agreement, prospective foreign caregivers had to pay a deposit of \$1,000 upon making the application to subscribe for PG Nannies' services, a further \$1,500 within 5 business days of the caregiver's receipt of an offer of employment and a further \$1,500 in three equal monthly installments after commencement of her employment.⁶⁹ The Court upheld the determinations by the Director of Employment Standards and Employment Standards Tribunal, both of which concluded that the caregivers were charged illegal fees for placement services.

Section 10(1) of the BC ESA prohibits agencies from receiving payments from employees for arranging employment. However, recruitment agencies are permitted to charge foreign workers for a variety of other services, such as advertising, which is specifically excluded at section 10(2) of the ESA. The PG Nannies case exemplifies how recruitment agencies in BC attempt to characterize a variety of fees and charges as 'services' outside the scope of section 10(1) or within the scope of the section 10(2) exception in order to circumvent the section 10(1) BC ESA prohibition.

⁶⁹ CanLii, "Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)", 2010 BCSC 883, June 23 2010, accessed May 15, 2013, <http://www.canlii.org/en/bc/bcsc/doc/2010/2010bcsc883/2010bcsc883.html>.



Exploitative practices by recruitment agencies operating in foreign countries are even more difficult to regulate since agencies operating in foreign countries fall outside the enforcement ambit of federal and provincial authorities. Discussions with many live-in caregivers indicate that many enter the program by paying high placement fees to offshore recruitment agents. Such agencies insist on transacting by verbal agreement only to avoid creation of documents that might prove incriminating. Many insist on payments to offshore accounts or payments to unnamed strangers in Canada so as to prevent establishment of a nexus to Canada or one of the provinces. Such a nexus can form the basis of jurisdiction.

Similarly, many of our interviewees in the SAWP program complained of discriminatory hiring practices. The Mexican SAWP program initially restricted entry to men between the ages of 22 and 45 who were married, with at least three but no more than 12 years of schooling and had experience working in agriculture. At this stage, only men from the Mexico City area could enter the program. After 1989, recruitment laws were changed and women aged 23 to 40 with dependent children could apply. However, according to a 2007 report, almost all of the migrant workers under SAWP continue to be male, with women comprising about 5% of those admitted to the program. Likewise, while unmarried men have been allowed to participate since 2003, our conversations with SAWP workers revealed that regional recruiters in Mexico still seek out married men with dependent children, requesting proof of marriage and birth certificates.⁷⁰ The research participants in one focus group suggested that it is the common belief within the migrant agricultural worker community that the logic behind this practice is to supply dependable workers that will not overstay their visas as they have families to return to.

Rehiring of SAWP Workers

The SAWP is a rotational program in which farm owners can 'name' specific workers to return. There is no limit on how many years a SAWP worker can return to work in Canada and between 70% and 80% of SAWP participants return year after year to the same farms.⁷¹ A 2010 survey of 600 migrant farm workers found that most of the workers admitted to the SAWP had been in the program for between seven and nine years.⁷² This statistic was confirmed by our conversations with Mexican SAWP workers, most of whom told us that while they originally intended to only participate in the program for one or two years in order to improve their families' lives back home, deteriorating economic conditions in their

⁷⁰ Philip Martin, "Towards Effective Temporary Worker Programs: Issues and Challenges in Industrial Countries," ILO, 2007: 42 http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_201427.pdf

⁷¹ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, (Metcalf Foundation, 2012), 20, <http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>, and Karl Flecker, "Canada's Temporary Foreign Worker Program, Model Program or Mistake?," Canadian Labour Congress, (April 2008), 8, <http://www.canadianlabour.ca/sites/default/files/pdfs/model-program-or-mistake-2011-en.pdf>.

⁷² Jenna Hennebry, Kerry Preibisch, Janet McLaughlin, "Health Across Borders-Health Status, Risks and Care among Transnational Migrant farm Workers in Ontario", CERIS-The Ontario Metropolis Centre, 2012, accessed June 14, 2013, <http://www.ceris.metropolis.net/wp-content/uploads/2012/03/Health-across-Borders.pdf>.

country have forced them to return year after year. Employers under the SAWP have the power to influence strongly, if not outright decide, which worker can remain in the program. Employers are entitled to select the workers they wish to employ, and only those workers who receive favorable evaluations from employers are permitted to continue to participate in the program.⁷³

The 'naming' practice adds to the insecurity caused by this type of circular migration by exacerbating the imbalanced employer-employee power dynamic. Regardless of how many seasons a worker returns to Canada, they remain permanently insecure, depending year after year on the 'goodwill' of their employer to request them back the following year. In

Case Study 2

Shortly before departing for Vancouver to work as a live in caregiver, Joy's prospective employer told her that he could not employ her after all. Not knowing what else to do, she boarded the plane and upon arrival, informed the Canada Border Services officer about what had happened. Joy explained to him that she had a new job offer with a Canadian employer but did not have a work permit for the job yet. After calling her prospective employer, the officer took Joy's passport and allowed Joy to enter Canada and reside with her new employer, telling her to reclaim her passport once her new work permit was issued.

For the next three months Joy was forced to provide caregiving, cleaning and other household duties for her new employer. She was told that her work permit had not yet arrived and that was why she was not going to be paid. It was the middle of winter and her employer forced Joy to sleep in a makeshift bedroom in her unheated garage. At night, Joy was locked out of the home and told to 'go outside' if she needed to use the washroom. Joy knew no one, had no idea where she was and no access to information and services. She was made to believe that she was not legally permitted to leave her employers home, and afraid that if she did, she would be deported.

this way, an employer can choose, very deliberately, to exclude certain workers from their employment without explanation. This permanent job insecurity can cause workers to endure substandard work conditions and abuses for fear of not being 'named' the following season if they speak up to demand their rights. Indeed, some of the workers we spoke to were unhappy with hiring practices of the consular agents but were unwilling to complain for fear of being blacklisted.

⁷³ Judy Fudge, "Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers," *Comparative Labor Law and Policy Journal* 34, no. 1 (2012), 113, <http://heinonline.org.ezproxy.library.ubc.ca/HOL/Page?handle=hein.journals/clpj34&collection=journals&page=95>.



In speaking with community organizers working with SAWP workers, some farms continue to provide substandard living accommodations to SAWP workers. On one farm, workers quietly told the organizer that there was no running water at the accommodation so the workers had to use an outdoor hose in a neighbor's home. However, nobody at the farm was willing to make a public complaint and risk not being named the following year. Organizers also spoke about workers having to work in inhumane, unfair and unsafe conditions. In most cases, the workers are not willing to jeopardize their placement in the program by lodging a formal complaint.

The Fight for Fair Wages and Paid Overtime

Low salaries, unpaid wages and no overtime pay are some of the most insidious problems under the TFWP. Due to the absence of an effective enforcement mechanism and or ineffective legislative protections, workers often do not receive the pay they are owed or pay that reflect the value of their work. With respect to farm workers, legislators have not only failed to protect them through employment standards law, but have singled out their occupation as one undeserving of crucial protections, such as overtime and statutory holiday pay. At the same time as this exclusion was being implemented, the definition of farm work was broadened significantly to cover a broader range of food processing jobs that were formerly not considered farm work.⁷⁴ The net effect of this expansion meant that a large number of workers in food processing were excluded from key employment standards protections.

Furthermore, wage discrepancies continue to persist between migrant farm workers working under the SAWP and those working under the Agricultural Stream of the Stream for Lower-Skilled Occupations. Whereas SAWP workers' contracts stipulate that they are paid no less than minimum wage and most workers often are paid minimum wage, Agricultural Stream workers can be paid on a piece rate basis. These discrepancies create a two-tier payment scheme for essentially the same work.

For live-in caregivers, unpaid wages and unpaid overtime continue to be persistent issues. Live-in caregivers that the research team spoke with reported that they were paid less than minimum wage, that their pay was often or always late, that they were owed wages by their employer and that they were paid in cash and did not receive pay information that showed a record of deductions or hours worked. Additionally, while a few caregivers informed the team that they sometimes received pay for hours worked overtime and their two weeks entitled vacation, what the team overwhelmingly heard was a complete disregard for overtime and vacation pay.

Public reaction to the raising of the minimum wage in BC in 2011 and 2012 demonstrates how live-in caregivers are seen as less deserving of fair wages. Some

⁷⁴ David Fairey and Marjorie Griffin Cohen, "Why BC's Lower-wage Workers are Struggling," *The Tyee*, April 24, 2013, <http://thetyee.ca/Opinion/2013/04/24/BC-Employment-Standards/>.

employers argued that the rise in minimum wage for caregivers meant that the cost of childcare and elderly care was becoming inaccessible. Indeed, some employers wrote to BC Premier Christy Clarke to protest the increase and demand the right to charge live-in caregivers more per month for accommodation to make up the difference.⁷⁵ Whilst access to affordable childcare that allows women and men to return to the workforce after maternity/paternity leave is important, this should not be done at the expense of abusing the rights of live-in caregivers to a decent wage and overtime pay.

WCDWA's research findings align with those of other academics and researchers. Geraldine Pratt describes how CIC's treatment of live-in caregivers as temporary workers, rather than permanent residents, legitimizes "wage levels and working conditions unacceptable to Canadian citizens" while framing women who demand their workers' rights as "greedy".⁷⁶ Such was the case with one of the women the research team interviewed who, after working over a month without being paid, asked for payment. Her employer's wife accused her of being selfish and only thinking about her salary. Eventually, she was only given \$500 for the first month of work and subsequently always had to ask multiple times, often waiting weeks, to receive any payment at all. Her employer's wife would always accompany her to the bank to deposit her cheque and had asked her on occasion, "do you really need the money?"

Adequate Housing

The LCP and SAWP streams of the TFWP stipulate that employers provide their workers with accommodation. Under the stream for 'lower-skilled' occupations, employers are expected to either provide affordable housing or show proof that affordable housing is available where the worker is expected to work. While regulations and contractual obligations exist for minimum standards for housing, our research confirms that they are not being enforced and violations are common, resulting in workers being forced to live in deplorable conditions. Employers' control of accommodation also increases worker reliance on employers, fostering vulnerability and potentially enhancing isolation.

The Live-in Requirement of the LCP

One core condition of the LCP is that a live-in caregiver must work for one employer only on a full time basis and must reside within that employers' home.⁷⁷ This requirement is unique within the TFWP. Researchers and academics consistently opine that the live-in

⁷⁵ Stanley Tromp, "Parents protest wage rise for BC Nannies," *Vancouver Courier*, January 13, 2012, <http://www.vancourier.com/Parents+protest+wage+rise+nannies/5992706/story.html>.

⁷⁶ Geraldine Pratt, "Stereotypes and ambivalence: The construction of domestic workers in Vancouver, British Columbia," *Gender, Place & Culture: A Journal of Feminist Geography*, vol. 4(2) (1997): 167, <http://dx.doi.org/10.1080/09663699725413>.

⁷⁷ IRPR s.113.



requirement fosters vulnerability because the nature of the work is inherently isolated, there is little separation between work and private life, and the employee has little opportunity to escape potentially difficult work environments.⁷⁸ Although the requirement can appear economically beneficial to caregivers as it reduces short term living costs, and can also help the transition into a new country by ensuring that new arrivals do not have to worry about finding accommodation as soon as they arrive in Canada, the arrangement leaves the caregiver in a potentially exploitative environment where it is easy for the employer to extend the work day and the type of work duties.⁷⁹ Work under the LCP is conducted in the private sphere of a home rather than the public sphere of a work place, making the employee more vulnerable to abuse since work in the private sphere has few oversight mechanisms. The diffuse nature of work places based in private homes makes it much harder for employment standards to be enforced, further enhancing vulnerability.⁸⁰

Research participants confirmed to WCDWA that the live-in requirement did in many cases place an additional burden on their working arrangements. Many caregivers revealed that 'living in' often meant being on call 24 hours a day. Workers under the program commonly report being exploited by employers who force them to work long hours without overtime pay, perform tasks outside of their job description, refuse requests for time off, and otherwise fail to live up to the stipulations of the standards required under the program. In one case, one caregiver reported that she was asked to work seven days a week and to perform not only household chores but farm work, including caring for the employers' horses.

Although CIC requires employers to provide live-in caregivers with accommodation that ensures privacy, such as a private room with a lock on the door, privacy can be difficult to carve out when the workplace is essentially also the employer's home. One caregiver told the research team that the door to her room did not lock and that she had no privacy. Indeed, she reported that her bed was often used to change her employer's suppository on. Her employers' wife would come into her bedroom when she wanted to make demands of her. She was not provided with a key to her employers' home, which was located on the 25th floor of an apartment building, and only allowed to leave once a week for four hours. At one point, while her employer was in the hospital, her employer's wife forced her to remain inside the apartment for two weeks. She told the caregiver not to leave under any circumstances and, in case of an emergency, to phone her.

Many caregivers reported to WCDWA that their living conditions do not meet the standards set by their standard form contracts. In most cases, caregivers are unwilling to complain because they need the job in order to complete the requirements to qualify for

⁷⁸ Julia Gilliland, "Permanent Worker, Temporary Resident: Media Representations of Canada's Live-In Caregiver Program" (master's thesis, University of Victoria, 2012,) 34, <http://dspace.library.uvic.ca:8080/handle/1828/4225?show=full>.

⁷⁹ Sabaa Khan, "From Labour of Love to Decent Work: Protecting the Human Rights of Migrant Caregivers in Canada." *Canadian Journal of Law and Society* 24, no.1 (2009): 29, <http://muse.jhu.edu/>.

⁸⁰ Julia Gilliland, "Permanent Worker, Temporary Resident: Media Representations of Canada's Live-In Caregiver Program" (master's thesis, University of Victoria, 2012,) 34, <http://dspace.library.uvic.ca:8080/handle/1828/4225?show=full>.

permanent residence. One caregiver reported that she was forced to sleep in an unheated garage in the middle of winter with no access to indoor plumbing. At night, her employer locked her out of the main residence and instructed her to 'go outside' if she needed to use the washroom. Some caregivers also noted that they are reluctant to leave bad employment situations because they would be rendered homeless as a result, particularly if they do not have a prospective employer and work permit in place.

Gilliard highlights that the live-in requirement of LCP also can lead to the development of a situation where the caregiver is seen as 'one of the family', and in this situation is vulnerable to emotion or moral manipulation.⁸¹ WCDWA's research confirms that caregivers often do feel obligated to do work beyond what is stipulated in their contract because of emotional bonds with the family. Even from the point of view of an employer who is generally law-abiding and well intentioned, the live-in requirement blurs the line between 'employee' and 'family member' and can lead to violations of employment standards that, while not deliberate, are nevertheless unfair.

Agricultural Workers and Living Arrangements

Due to a lack of effective monitoring and enforcement of living arrangements, accommodation conditions for agricultural workers vary with employers. Thus, one worker told the research team that he was housed in a brand new hotel-like building, while the research team was also told of workers who were being put up in uninhabitable buildings that lack basic necessities such as electricity and running water. One community worker spoke of houses without laundry facilities, which meant that workers could not wash their work clothes in a timely manner after long work days and were forced to re-wear soiled and dirty clothes. Most of the workers the team spoke to described accommodation covering their basic needs but no more. In one case, workers reported sharing bedrooms with bunk beds housing four men to a room, sharing one bathroom and one kitchen between ten men. In response to a question about the social dynamic in a shared home, most workers told the team that despite the lack of privacy, everyone normally gets along and the workers normally develop a rotating schedule, which allows them to share the single bathroom and kitchen in the morning. Arguments do occur but the workers are forced to adapt to the shared living space. In BC, where employers can recover accommodation costs through payroll deductions, some workers complained that the quality of the accommodation provided was not commensurate with the rent paid.

The lack of choice with regards to living arrangement can add to social isolation and exclusion. Many SAWP workers the team spoke to depend on their employer for transportation to the nearest town. Once every two weeks, workers are driven to the bank and grocery store to buy the supplies they need for the coming weeks. Some workers informed the team that on their days off, they would ride their bikes into town to meet up

⁸¹ Julia Gilliland, "Permanent Worker, Temporary Resident: Media Representations of Canada's Live-In Caregiver Program" (master's thesis, University of Victoria, 2012,) 34, <http://dspace.library.uvic.ca:8080/handle/1828/4225?show=full>.



with friends from other farms, play the occasional soccer game, attend church service, or simply to get off the farm for a while. Many workers stated that they are not permitted to invite guests to the house and that the majority of their time off is spent preparing meals, doing laundry, and doing assigned cleaning chores around the house.⁸²

Although the accommodation requirements of the temporary migrant streams vary, common elements that contribute to the vulnerability of the workers exist can be identified. The quality of accommodation is very varied and checks by authorities are limited. Lax monitoring and enforcement mean that contractual obligations and regulations provide little deterrence and employers who provide sub-standard accommodation have little incentive to alter their practices.

Health and Safety Issues

Among migrant workers, research findings consistently demonstrate that health and safety problems are endemic. Although BC's workers compensation laws cover temporary foreign workers, many workers, particularly those in the SAWP, are reluctant to make claims due to a combination of factors including fear of employer retaliation and reluctance to give up wages by taking time off.⁸³

Among farm workers, the team's research findings indicated that many often do not receive safety training or adequate protective equipment. While the BC-Mexico contract stipulates that employees handling chemicals or pesticides must be provided with protective clothing at no cost to the worker and provide appropriate safety training, several workers told the team that they did not receive any safety training and are often exposed to pesticides being sprayed above them and are not provided with protective gear or given prior notice, despite WorkSafe BC regulations. Interviews revealed that some workers were given a 'loan' at the beginning of the growing season to buy work clothes, including boots, pants, gloves and rain gear - a clear breach of the clause in BC-Mexico contract mentioned above.

Compounding general health and safety concerns, many temporary foreign workers have limited access to health care. Some farm workers explained to the team that they rely on their employers to drive them to a mobile health clinic that services the region and others reported that their complaints of injury or illness go unheeded. Community workers reported that some workers are immediately sent back to their home countries when injury is reported. WCDWA also has clients who are not eligible for MSP because of problems

⁸² For more information on accommodation conditions for agricultural workers see: "Mexican migrant agricultural workers and accommodations on farms in the Okanagan Valley, British Columbia," Metropolis BC Working Paper Series No.11-04 (April 2011) by Luis LM Aguiar, Patricia Tomic and Ricardo Trumper.

⁸³ Judy Fudge, "Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers," *Comparative Labor Law and Policy Journal* 34, no. 1 (2012), 105, <http://heinonline.org.ezproxy.library.ubc.ca/HOL/Page?handle=hein:journals/clpj34&collection=journals&page=95>.

with their immigration status and work permits and, as such, are reluctant to seek medical help in fear that they would be unable to pay.

Long work hours can also become workplace health and safety issues. The standard SAWP contract stipulates that overtime work can be mutually agreed upon between employers and employees. However, many workers informed the team that they do not feel like they have a choice when asked to work overtime or on their scheduled days off, in fear of repatriation and losing their place in the program. While some of the workers the team spoke to informed the team that they normally receive a break on Sundays, several others told the team that they were on their first day off in over a month. Almost all reported that they work on average ten to twelve hours a day and go months without a day off during peak season. Although many of the workers expressed that they do not mind working long hours in order to earn as much as possible during their short contracts, difficult working conditions can impact both the short-term and long-term health of the worker.

The Impact of Family Separation

While one of the main stated objectives of the IRPA is “to see that families are reunited in Canada,” Canadian immigration law generally bars workers in NOC C and D occupations from bringing their family members with them, unlike workers in O, A and B categories whose spouses are generally able to obtain accompanying spouse open work permits.⁸⁴ Most will never bring their family to Canada as they are not provided with any route to permanent residence and even those who are, such as live-in caregivers and provincial nominees, face years of separation while they work their way through the various qualifying and processing stages of their immigration journey.

Under the LCP, caregivers who complete program requirements are able to apply for permanent residence for themselves and dependent family members. As such, caregivers have to complete a minimum of 24 months of authorized work (or 3,900 hours of work in 22 months) prior to applying for permanent residence. Family members can only join the principle applicant when the permanent residence application is approved. Current processing times for permanent residence applications under the LCP average over three years.⁸⁵ Given processing times and program requirements, caregivers with family members who wish to apply for permanent residence have to endure family separation of at least five years. Many caregivers take longer to complete program requirements, prolonging periods of family separation. Like the LCP, in BC, NOC C and D workers eligible for the BC PNP are unable to bring their family members to Canada until the permanent residence application has been processed.

⁸⁴ IRPA s.3(d).

⁸⁵ According to CIC’s website processing times for PR under the LCP are averaging 38 months, as of April 26, 2013. “Processing times: Permanent Residence - Economic classes,” Citizenship and Immigration Canada, last modified May 11, 2013, accessed April 26, 2013, <http://www.cic.gc.ca/english/information/times/perm-ec.asp>.



Case Study 3

Back in the Philippines Luke worked as a registered nurse. His monthly salary of \$200 was not enough to support himself, his wife and his two children, so he decided to apply to come to Canada. For two years Luke worked for a fast food chain as a food counter attendant for minimum wage and under difficult conditions. He worked ten hour days, six days a week and did not receive overtime pay. His employer provided accommodation but charged him \$300 a month in rent. When the provincial minimum wage increased, Luke's employer raised his rent to \$500 a month so Luke affectively did not earn any more. At one point, there were seven workers living in a one bedroom apartment sleeping in bunk beds and sharing a small bathroom and kitchen.

Luke's work permit was issued for a specific location but when his employer asked him to work at other locations he agreed because he did not think he could say no and even though he knew that the change in location was not authorized. Some of his co-workers filed complaints but he did not because his employer had agreed to help him apply for permanent residence under the BC Provincial Nominee Program. Luke was never told about the income cut-off and was devastated when his nomination was denied because his income did not meet the required threshold.

Luke decided to apply for the Live-in Caregiver Program. It took Luke three months to find a new employer and apply for a new work permit. He did not apply for Employment Insurance during that time because he thought that it would have a negative impact on his future permanent residence application. Fortunately, he had some savings and was able to live with his brother during that time.

" Sometimes I feel like I want to go home, but I have to be optimistic", says Luke. "I wouldn't be here if it weren't for my children and I can't give up now. Being separated from my family has been the hardest part of working under the TFWP. My wife and I were happy together before I left. We are now separated and she has a new life with someone else. My children live with their grandmother and I send more than half of my salary to support them. It's a really long process and I have missed so many things over the years. It's a big sacrifice. My children are now five and six years old. My daughter was six months old when I left and I'm lucky that we have SKYPE, otherwise she wouldn't know that I'm her dad".

Interviews with other workers in NOC C and D occupations of the TFWP confirm that family separation is often perceived as the most difficult aspect of the migrant worker experience. Many live-in caregivers complain that by the time their children and spouses are granted permanent residence and arrive in Canada, they are virtually strangers and the

reconstituted family struggles to adapt. Many caregivers experience family breakdown because of long periods of separation. One farm worker that the team interviewed mentioned that he hated being away from his young child and wife and therefore preferred shorter SAWP contracts but the system prevented him from selecting employers.

The Promise of Permanent Residence - Challenges faced by Live-in Caregivers

A live-in caregiver's ability to apply for permanent resident status is contingent on the successful completion of two years of authorized work within the four years immediately following entry into Canada (or 3,900 hours of work within 22 a minimum of 22 months).⁸⁶ Most caregivers enter the LCP in order to gain permanent residence for themselves and their immediate family members. Many caregivers recount to WCDWA how they work for years in foreign countries in order to save enough money to pay broker fees to enter the program and many continue to owe brokerage fees upon arrival in Canada.

The promise of permanent residence and the urgency to complete the requirements of the program increases the caregiver's dependence on the employment relationship. Many caregivers tell WCDWA that they are willing to endure bad employment situations so as to complete program requirements more quickly. Many state that unemployment, financial insecurity and the challenges of finding a suitable employer are risks that they cannot afford as the potential cost of the application for permanent residence.

Long processing times for new work permits for prospective employers also increase anxieties about leaving bad employment situations. Some caregivers informed the research team that they agree to take on the risk of performing illegal work in order to overcome the financial insecurity of being without work. During the long processing times, many caregivers have difficulty maintaining health insurance coverage and, if terminated from their previous jobs, many also face challenges applying for employment insurance.

The Promise of Permanent Residence – Challenges faced by 'lower-skilled' workers eligible for BC PNP

In Part One, we reviewed the BC PNP program, noting that it provides only limited opportunities for migrant workers in the NOC C and D categories. Similar to the LCP, applicants in the strategic occupations stream of the BC PNP have to complete a work requirement term, 9 months, before becoming eligible to apply for a nomination. The permanent residence application is characterized as a 'joint application' between employer and employee. This means that the employee has to have an open-ended job offer from the employer throughout the immigration process which can take an average of 2 years to complete. Like the LCP, the research team heard many stories of workers enduring

⁸⁶ IRPR s.113.



exploitative work conditions in order to maintain their jobs and their permanent residence applications. Like the LCP, workers could not risk leaving their jobs since that meant the end of a permanent residence application.

Case Study 4

Before coming to Canada, Roy worked as a light rail transit worker in the Philippines. His employers' wife, who ran an employment agency, told him about an employment opportunity in BC working on a tunnelling project. In 2006 Roy, along with 30 other workers, arrived in Canada and obtained a work permit valid for a period of two years. Roy was happy with his job in Vancouver. He received \$35 an hour, was paid overtime, enjoyed extended health care and was working in a unionized trade.

However, one day at the end of his shift he was told along with his colleagues, that it would be their last day on the job. Things got difficult for him after that. He began living off his savings and tried to find a new job and obtain a new work permit. Roy paid an "immigration consultant" \$2,500 to assist with the job placement. The consultant found him a job on a construction site and told him to start working while his LMO and work permit were being processed. Roy worked for this company for two months during which time he was paid \$13 an hour in cash. The work times were unpredictable and he was owed two weeks pay when he left. Later, Roy found out that the consultant never submitted a work permit application for him and that he was not a registered consultant, as he claimed to be.

Eligibility is only the first hurdle to overcome. Many eligible 'entry level' and 'semi-skilled' applicants that gain successful nominations through the BC PNP are eventually denied permanent residence because they are deemed as not being able to successfully establish themselves economically in Canada. As economic migrants, all applicants in the program are expected to meet an income threshold. The BC PNP website states: "BC PNP will not approve an application if it appears likely that the nominee applicant's family income will be less than the applicable income threshold for the nominee applicant's place of residence".⁸⁷ Family income is calculated by totaling the applicants' annual regular wage from their employer's supporting the application and, if applicable, the spouse's annual regular wage in BC from work authorized under a valid work permit.⁸⁸

⁸⁷ "Ability to Become Economically Established in BC," Welcome BC, accessed July 10, 2013, <http://www.welcomebc.ca/Immigrate/immigrate-BC/Provincial-Nominee-Program-Home/Strategic-Occupations-Home/Ability-to-Become-Economically-Established-in-B-C.aspx>.

⁸⁸ "Ability to Become Economically Established in BC," Welcome BC, accessed July 10, 2013, <http://www.welcomebc.ca/Immigrate/immigrate-BC/Provincial-Nominee-Program-Home/Strategic-Occupations-Home/Ability-to-Become-Economically-Established-in-B-C.aspx>.



Income assessment creates several barriers for so called lower and semi-skilled nominee applicants. Firstly, many workers in NOC C and D categories make entry-level wages. Secondly, and in contrast to higher-skilled workers, lower-skilled workers are barred from bringing their spouses to Canada with them to work. Thus they cannot benefit from including a second income to the calculation.



PART FOUR

Research Conclusions and Summary Recommendations

This report has highlighted that the government's desire to move towards a 'flexible' and impermanent workforce has led to a marked increase in the influx of migrant workers. However, the increased numbers have not been accompanied by policies or laws to ensure effective protection of migrant workers. Indeed, current laws ensure that the majority of those classified as 'lower-skilled' migrants will never be able to transition from temporary to permanent status, and those that have access to pathways to permanent residence face years of waiting and complex paperwork.

The report has analyzed how the current employer-driven immigration structure for 'lower-skilled' workers leads to a marginalized workforce trapped in systemic insecurity. Insecurity of immigration and work status caused by the dependence of migrant workers on employers spawns an environment in which workers are unable to effectively enforce their rights. The breakdown of effective monitoring, control and oversight mechanisms and the lack of legislative protections compound insecurity.

Based on the research and the information gathered from our interviews and focus group discussions, WCDWA proposes a number of recommendations that, if implemented, would address some of the inequalities and gaps and enhance worker protections.

Recruitment

Due in part to the absence of an effective regulatory environment, migrant workers are vulnerable to the unscrupulous practices of recruiters and employment agencies both in BC and outside Canada, including the practice of charging of exorbitant and illegal placement fees, charging fees for jobs that do not exist, forcing workers to take on jobs with duties and conditions that are different than those originally agreed upon, and encouraging workers to take on unauthorized work.

- The 'naming' process of the SAWP must be abolished and agriculture workers under the program should be granted the right to recall.
- The BC ESA should be amended to prohibit employment agencies from charging employees any type of fee.
- BC should implement a comprehensive mechanism to monitor and regulate recruiters. As an example, the *Manitoba Worker Recruitment and Protection Act* (WRPA) prohibits anyone from charging or collecting fees from a foreign worker for finding or attempting to find employment for that individual. The WRPA also provides for a registration



system of both employers and recruiters. In order to become licensed, an employer/recruiter has to provide a cash bond of \$10,000.

Freedom of Association

Freedom of association is a fundamental right protected by the Canadian *Charter of Rights and Freedoms*. BC labor legislation must protect the rights of temporary foreign workers to have collective representation.

- For live-in caregivers, BC labor legislation can be amended to allow for sectoral bargaining in order to facilitate the right to unionize.
- Sectoral representation should also be permitted for other sectors that typically employ 'low-skilled' temporary foreign workers such as farm workers.

Employment Standards

Our research findings have identified a number of vulnerabilities tied to inadequate employment standards and ineffective enforcement practices. In light of this we argue that:

- Employment standards enforcement systems in BC must be strengthened with greater resources committed to ensuring a more pro-active approach to enforcement including greater review and investigation of labour sectors that particularly rely on migrant labour. In particular, work places that hire workers under the LCP and farm workers should be subject to unannounced spot checks.
- Monitoring and enforcement teams should be multi-sectoral and should also include representatives from law enforcement, Worksafe BC and municipal agents.
- Complaints systems should be simplified and use of the "Self Help Kit" at the ESB should be abolished. Employee should not be required to try to resolve the situation with the employer first before making a formal complaint.

Housing and Accommodation

- The live-in requirement of the LCP should be abolished with caregivers allowed to live away from their workplace if they choose.
- Regular monitoring and inspection of accommodation conditions should be conducted by multi-sector compliance teams including municipal agents, law enforcement, WorkSafe BC and employment standards officers.



- Government officers should use the established “blacklisting” mechanism and start publicly listing employers who have been found to have violated employment standards.

Immigration and Work

This report has highlighted the nexus between precarious status and precarious work. Migrant workers will remain vulnerable as long as their legal status in Canada is tied to a specific employer. These conditions create drastic power imbalances between employer and employee. Because workers’ ability to support themselves is tied to one employer, many workers are unwilling to leave bad working conditions because of the difficulty of securing a new work permit.

- Migrant workers should be able to freely circulate within the BC labour market. As such, we advocate for all migrant workers to be issued open work permits.
- Short of providing all workers with open work permits, freedom of association could be facilitated by issuing sector-specific, instead of employer-specific, work permits.
- CIC should prioritize in-Canada work permit application processing and improve case processing times for migrant workers in general.
- Employers in violation of immigration or employment standards laws should be penalized and prevented from hiring migrant workers until they are back in compliance. Workers should not be penalized for employer contraventions.
- Immigration regulations capping the duration of time a migrant worker can remain in Canada must be abolished.
- To reduce the impact of family separation, there should be no distinction between the rights of spouses of the ‘skilled’ categories of workers, and the ‘unskilled’ categories of workers to live and work in Canada.
- Both the Federal and Provincial Governments should recognize that the migrant workers arriving in Canada work in professions that are skilled. There should be no differentiated categories labeling workers as being ‘low-skilled,’ ‘high-skilled,’ ‘semi-skilled,’ or ‘entry-level.’

Facilitation Centres

To further facilitate the smooth and quick transition between jobs, we advocate that employment services should be funded to facilitate the matching of migrant workers currently in BC with employers seeking workers. This matching service should work closely with employment standards officers to exclude employers who do not meet minimum

employment standards. Migrant workers should also be granted access to the settlement services.

Pathways to Permanent Residence

Interviewee testimony throughout our research has confirmed that many workers endure terrible work conditions and employer abuse in the hopes of attaining permanent residence down the road. Others remain in a permanent status of insecurity despite returning year after year to work in BC without being offered any avenue to permanent residence. WCDWA strongly recommends that all migrant workers have a pathway to permanent residence.

- All migrant workers in Canada, regardless of their skill level or occupations, should have the right to apply for permanent residence.
- Live-in caregivers should receive permanent residence upon arrival to Canada.

