



# THE SCHOOL OF PUBLIC POLICY

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## MASTER OF PUBLIC POLICY CAPSTONE PROJECT

Shrink the Temporary Foreign Worker Program (TFWP): How a more targeted TFWP can better protect workers in Canada

**Submitted by:**  
Alexa Hutchinson

**Approved by Supervisor:**  
Saul Templeton  
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# THE SCHOOL OF PUBLIC POLICY

## Table of Contents

### Table of Contents

|   |           |
|---|-----------|
| <b>Introduction.....</b>  | <b>1</b>  |
| <b>TFWP Background.....</b>   | <b>2</b>  |
| Low-Skill Pilot Project .....   | 3         |
| Faster Access to TFWs .....   | 4         |
| Better Protection of Workers .....  | 5         |
| <b>Adverse Outcomes of TFWP Expansion of Canada’s Labour Market.....</b>  | <b>6</b>  |
| Structural Dependence on TFWs.....  | 6         |
| Drastic Change to Type of TFWs in Canada .....                            | 8         |
| Suppressed Wages.....   | 9         |
| Expedited Labour Market Opinion Pilot Project Increased Unemployment..... | 10        |
| Increased Regional Labour Market Disparities.....                         | 12        |
| Poor Working Conditions for TFWs.....                                     | 13        |
| Underemployment of Immigrants .....                                       | 14        |
| <b>What Led to these Adverse Outcomes.....</b>                            | <b>15</b> |
| Inadequate Labour Shortage Identification.....                            | 16        |
| Insufficient LMIA Criteria and Enforcement of LMIA Criteria .....         | 17        |
| Business Lobby Efforts .....  | 19        |
| <b>Contraction of the TFWP.....</b>                                       | <b>20</b> |
| <b>The Current Situation.....</b>   | <b>23</b> |
| <b>Proposed Direction of the TFWP.....</b>                                | <b>25</b> |
| Limitations of the LMIA Process.....                                      | 26        |

|   |           |
|---|-----------|
| More Rigorous LMIA Process.....                                     | 27        |
| Better Fee Structure .....  | 29        |
| Better Rights and Protections for TFWs .....                        | 31        |
| A More Coordinated Strategy to Find Domestic Labour.....            | 32        |
| Continue to Significantly Reduce the Number of Low-Skill TFWs ..... | 34        |
| <b>Conclusion.....</b>  | <b>37</b> |
| <b>References .....</b>   | <b>38</b> |



# THE SCHOOL OF PUBLIC POLICY

## Executive Summary

Canada's Temporary Foreign Worker Program (TFWP) is at a crossroads. For much of the 2000s, the TFWP went through a period of significant expansion, and the number of Temporary Foreign Workers (TFWs) in Canada more than tripled between 2002 and 2012. However, it expanded in a way that was not consistent with Canada's labour market needs, and program design did not create sufficient incentives for employers to search for Canadian workers before hiring TFWs. As a result, it produced adverse effects on the labour market, including wage suppression, increased unemployment, reduced interregional labour mobility, poor working conditions for TFWs, and underemployment of immigrants. This prompted the government to introduce reforms in 2013 and 2014 meant to return the TFWP to its original purpose and reduce the number of TFWs in Canada, particularly in the low-skill stream. However, many groups are pressuring government to move back to a more expanded TFWP, citing serious labour shortage concerns. Amid the pressure, the current government has undertaken a Parliamentary review of the TFWP, planned for release in September.

In light of this review and likely program changes to follow, this paper recommends that Canada maintain a limited TFWP that is flexible enough to respond when businesses are facing genuine labour shortages, but that does more to protect Canada's labour market. Additional measures should be taken to properly target the TFWP, including more rigorous criteria for determining labour shortages and the need for TFWs, higher fees to incentivize employers to do more to hire domestic workers and reduce dependency on TFWs, and better rights and protections for TFWs, including sector- or occupation-specific work permits and a path to residency. The government should also continue to reduce the number of low-skilled TFWs in Canada. Finally, the TFWP needs to be part of a well-coordinated strategy to capitalize on available domestic labour, including policies that encourage Canadians to take up available jobs. This last point has been largely forgotten in recent versions of the TFWP and is crucial to ensuring that the TFWP protects Canadian workers and reduces dependency on TFWs.

## INTRODUCTION

The Temporary Foreign Worker Program (TFWP) is a federally administered program that allows Canadian employers to hire foreign workers on a temporary basis when they are unable to find qualified Canadian citizens or permanent residents to fill open positions due to a labour or skills shortage. It has been justified on the grounds that employers' inability to find domestic workers could cause wages and costs of production to rise drastically to a point where firms may have to interrupt or shut down production.<sup>1</sup> Instead, Temporary Foreign Workers (TFWs) can help stabilize the labour market and the economy by ensuring that businesses can find workers in a timely manner, continue productivity, and remain competitive until domestic labour can be found.<sup>2</sup> A TFWP is most efficient when it is used in occupations or industries facing short-term increases in labour demand, or where current workers do not have necessary credentials and are not expected to in the near future.<sup>3</sup> In addition, it should not negatively affect Canadians workers' access to jobs, wages and working conditions, or the eventual rebalancing of the labour market.<sup>4</sup> However, this paper will show that the expansion of Canada's TFWP has had long-term adverse effects on the labour market because it was not targeted solely to occupations experiencing acute labour shortages, and its design did not create the proper incentives for businesses to recruit Canadian workers. These adverse effects include wage suppression, increased unemployment, reduced interregional labour mobility, poor working conditions for TFWs, and underemployment of immigrants. The government attempted to address

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<sup>1</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 6. Citizenship and Immigration. 2012. "Fact Sheet: Temporary Foreign Worker Program (TFWP)."

<sup>2</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 1. Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 6.

<sup>3</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 7.

<sup>4</sup> Ibid. 6.

Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 38.

these issues by introducing reforms in 2013 and 2014 restricting access to the TFWP. While these reforms should bring the TFWP closer to its original purpose, this paper suggests additional improvements to better target the TFWP and protect workers in Canada.

## **TFWP BACKGROUND**

The Department of Employment and Social Development (ESDC) and the Department of Citizenship and Immigration (CIC) jointly manage the TFWP. In order to hire a TFW, employers must undergo a labour market test, called a Labour Market Impact Assessment (LMIA), administered by ESDC to confirm that they have made reasonable efforts to hire a Canadian worker, that the job offer is genuine and that they have met commitments to past TFWs.<sup>5</sup> This test is meant to ensure that the hiring of a TFW will not negatively impact employment opportunities for Canadian workers.<sup>6</sup> If they receive a positive LMIA, the prospective TFW must obtain a work visa from CIC, which is only valid for one particular employer, work location and occupation. The employer is then responsible for arranging worker's compensation, medical coverage, and a social insurance number, and must agree to respect the conditions and time limits on the TFW's work permit. As the program is designed to meet short-term gaps in the labour market, the number of years that a TFW can work in Canada is limited.<sup>7</sup>

Canada's current TFWP evolved out of the Non-Immigrant Employment Authorization Program (NIEAP), which was established in 1973 and was limited to

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<sup>5</sup> Citizenship and Immigration. 2012. "Fact Sheet: Temporary Foreign Worker Program (TFWP)."

<sup>6</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 4.

<sup>7</sup> Citizenship and Immigration. 2012. "Fact Sheet: Temporary Foreign Worker Program (TFWP)."

seasonal agricultural workers, live-in caregivers and certain skilled workers; mostly professionals in roles such as university professors, scientists, specialized technicians and entertainers.<sup>8</sup> In its first few decades of existence, the TFWP program changed very little and remained similar to the original NIEAP; however, in the past 15 years, it has undergone several changes that have drastically changed its size and purpose, making it a program of much political contention and debate.

### **Low-Skill Pilot Project**

Between 2002 and 2012, the TFWP went through a period of significant expansion that was justified on the basis that Canada was experiencing critical labour shortages in many industries that were inhibiting economic recovery.<sup>9</sup> This expansion was made in response to growing pressure from businesses and business groups that claimed to be having difficulties hiring Canadians, despite their recruitment efforts.<sup>10</sup> In 2002, the government increased access to TFWs by introducing the Low-Skill Pilot Project, which allowed companies to hire TFWs in low-skill jobs in many occupations requiring little education or job-specific training.<sup>11</sup> The changes also lowered the cost of hiring a TFW by eliminating a requirement that employers pay TFWs the median wage for a given occupation, instead allowing them to pay high-skilled TFWs 15 percent less than median wage, and low-skilled TFWs 5 percent less than median wage, as long as they met provincial minimum wage requirements.<sup>12</sup> While there was no administration fee,

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<sup>8</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 4.

<sup>9</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 7.

<sup>10</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program". 4.

Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 2.

Alberta Federation of Labour (AFL). 2012. "Federal Government Making it Easier to Hire Temporary Foreign Workers."

<sup>11</sup>Canadian Union of Public Employees (CUPE). 2013. "The Facts: Temporary Foreign Worker Program".

<sup>12</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 6.

employers were required to pay return airfare and assist in finding suitable accommodation for low-skilled TFWs.<sup>13</sup> In 2006, the program was further expanded to include additional low-skill occupations.<sup>14</sup> These changes represent an evolution from a small, targeted program designed to address short-term labour needs in high-skill occupations – such as engineering, science and technology, and academia – into a broader labour market tool used by many industries and for many skills levels.<sup>15</sup> In 2007, 44 percent of TFWs in Canada worked in low-skill jobs.<sup>16</sup>

### **Faster Access to TFWs**

One of the criticisms of the TFWP has been long processing times for LMIAs – sometimes several months – which has made it harder for businesses to respond quickly to pressing labour needs.<sup>17</sup> This led the government to remove certain constraints and administrative obstacles to ensure that the TFWP could achieve its goal of effectively and efficiently addressing labour shortages.<sup>18</sup> In 2007, while under pressure from businesses in Western Canada reporting labour shortages in some occupations and difficulties finding workers with adequate skills, it introduced the Expedited Labour Market Opinion (E-LMO) pilot project in Alberta and British Columbia (BC), which allowed faster access to TFWs.<sup>19</sup> The project increased the number of eligible occupations, increased the length of TFW work permits and allowed employers already participating in the program to apply for and receive an LMIA within five days.<sup>20</sup> This weakened the labour market test, as employers did

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<sup>13</sup> Dominique Gross. 2014. “Temporary foreign workers in Canada. Are they really filling labour shortages?” 5.

<sup>14</sup> Canadian Union of Public Employees (CUPE). 2013. “The Facts: Temporary Foreign Worker Program”.

<sup>15</sup> Jason Foster. 2012. “Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program.” 22.

<sup>16</sup> Dominique Gross & Nicolas Schmitt. 2012. “Temporary Foreign Workers and Regional Labour Market Disparities in Canada”.

<sup>17</sup> Alberta Federation of Labour (AFL). 2012. “Federal Government Making it Easier to Hire Temporary Foreign Workers.”

<sup>18</sup> Citizenship and Immigration Canada. 2013. “Backgrounder: Improvements to the Temporary Foreign Worker Program.”

<sup>19</sup> Dominique Gross. 2014. “Temporary foreign workers in Canada. Are they really filling labour shortages?” 8.

<sup>20</sup> Citizenship and Immigration Canada. 2013. “Backgrounder: Improvements to the Temporary Foreign Worker Program.”



not have to apply for an LMIA for each individual worker; however, the E-LMO pilot project was eventually terminated in 2010.<sup>21</sup>

In 2012, the government introduced the Accelerated Labour Market Opinion (A-LMO), which allowed businesses that had been issued an LMIA in the previous two years to apply for and receive an LMIA within ten days. The A-LMO applied only to high-skilled TFWs and businesses nationwide were eligible to apply. These changes were made to make the TFWP more accessible, efficient and responsive to labour market needs in light of Canada's economic recovery.<sup>22</sup>

### **Better Protection of Workers**

In 2011 and 2012, government announced several changes aimed at better protecting both Canadian workers and TFWs. These included increased labour law and employment code compliance reviews of employers both during the application process and after TFWs were working, the ability to ban noncompliant employers for two years, and a more rigorous LMIA to verify that a TFW would be consistent with the employer's business needs and the employer's ability to fulfill the terms of the offer.<sup>23</sup> In addition, the number of years a low-skilled TFW could work in Canada was limited to four.<sup>24</sup>

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<sup>21</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 6

Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment".

<sup>22</sup> Government of Canada News Release. 2012. "Government of Canada Announces a More Efficient and Responsive Temporary Foreign Worker Program".

<sup>23</sup> Ibid.

<sup>24</sup> Citizenship and Immigration Canada. 2011. "Temporary Foreign Worker Program—Operational Instructions for the Implementation of the Immigration and Refugee Protection Regulatory Amendments".

## ADVERSE OUTCOMES OF TFWP EXPANSION ON CANADA'S LABOUR MARKET

### Structural Dependence on TFWs

As the criteria for access to TFWs were loosened, the total number of TFWs in Canada increased from 101,000 in 2002 to 338,000 in 2012, which suggests that Canada was facing a significant labour shortage.<sup>25</sup> However, during this time, the national unemployment rate did not fall below 6 percent, and was approximately 7 percent in both 2002 and 2012, which suggests that Canada was not facing a significant labour shortage.<sup>26</sup> There is evidence that many employers and industries have become reliant on this increased access to TFWs, and that they are being used not just for relief during acute labour shortages, but as a more permanent fixture in Canada's labour market.<sup>27</sup> This has been aided by government policy – in its 2007 Budget Plan, the government indicated that the TFWP would be its main tool to help businesses in need find workers.<sup>28</sup> To demonstrate the entrenchment of TFWs in Canada's labour market, when overall unemployment was dropping between 2003 and 2008, the number of new TFWs in Canada increased at a rate that exceeded this tightening of the labour market.<sup>29</sup> Almost one fifth of employers using the TFWP in 2013 had a workforce of at least 30 percent TFWs, and almost one tenth of employers had a workforce of at least 50 percent TFWs.<sup>30</sup>

In justifying the TFWP, the government has stressed that it is highly elastic, meaning that the number of TFWs in Canada should fluctuate in relation to labour trends.

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<sup>25</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 1.

<sup>26</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program". 4.

Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 7.

<sup>27</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 36.

<sup>28</sup> Department of Finance. 2007. "The Budget Plan".

<sup>29</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program". 30.

<sup>30</sup> Employment and Social Development Canada. 2014. "Overhauling the Temporary Foreign Worker Program (TFWP)."

As the 2008-2009 recession hit, and unemployment rose, then Immigration Minister Jason Kenney predicted that the number of TFWs in Canada would decrease.<sup>31</sup> However, the total number of TFWs stabilized and remained steady through the recession; there were no significant reductions in the number of TFWs in Alberta, BC, Ontario or Quebec when unemployment rose during the recession.<sup>32</sup> Although the number of new TFWs dropped by 41 percent at the height of the economic downturn, 103,000 applications were approved in 2009, which was higher than any year prior to 2006.<sup>33</sup> This number increased by 9.4 percent in 2010 and increased again in 2011.<sup>34</sup> This shows that at best, the TFWP was only somewhat elastic during the economic downturn and therefore not as responsive to labour shortages as it was meant to be, perhaps because employers had developed a structural dependence, or even a preference, for TFWs.<sup>35</sup> It also suggests that employers were using TFWs on a permanent – as opposed to short-term – basis for their labour needs.<sup>36</sup>

Some employers actually prefer TFWs to Canadian workers. One study found that Alberta construction employers believe TFWs to be harder-working, more willing to work additional hours, less likely to question or challenge supervisors and more willing to accept working conditions.<sup>37</sup> These employers indicated that they wanted to hire TFWs in the long term, not only for these reasons, but also to alleviate concerns about high wages.<sup>38</sup> There was evidence of this preference during the recession in 2008 and 2009, when a number of Alberta businesses retained TFWs while laying-off Canadian workers.<sup>39</sup> Media reports have

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<sup>31</sup> Bob Barnetson and Jason Foster. 2012. "Foreign Migrant Workers in Alberta". 4.

<sup>32</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program". 30.

<sup>33</sup> Ibid. 32.

<sup>34</sup> Ibid. 32.

<sup>35</sup> Ibid 30.

<sup>36</sup> Ibid. 23.

<sup>37</sup> Bob Barnetson and Jason Foster. 2012. "Foreign Migrant Workers in Alberta". 5.

<sup>38</sup> Ibid. 6.

<sup>39</sup> Ibid. 5.

indicated that RBC, McDonalds, and even a small pizza restaurant in Weyburn, Saskatchewan have hired TFWs instead of available domestic workers. At the time, the unemployment rate in Toronto – where the RBC office was located – was above the national average, which suggests that it should have been able to find domestic workers.<sup>40</sup> This structural dependence is not surprising as research suggests that foreign worker programs often grow larger and last longer than intended. As this happens, foreign workers begin to dominate certain occupations, and employers make business decisions based on the assumption that they will be available.<sup>41</sup>

### **Drastic Change to Type of TFWs in Canada**

Of particular note, and a concern to many, is the fact that the proportion of low-skilled TFWs has increased significantly, and accordingly, the proportion of high-skilled TFWs has decreased.<sup>42</sup> For example, in 2000, low-skilled TFWs made up 25 percent of the total; between 2002 and 2007, they averaged 38 percent, and in 2007, they accounted for 45 percent.<sup>43</sup> In 2000, 7 percent of TFWs were unskilled non-agricultural workers; in 2007, 19 percent were unskilled non-agricultural workers.<sup>44</sup> This shift in the type of TFWs admitted to Canada suggests that the program has drifted from its original purpose of addressing specific labour shortages until domestic labour can be found, given that more low-skilled as opposed to high-skilled Canadian workers should be available to work if wages and working conditions are sufficient.<sup>45</sup> It also means that as TFWs began to fill a wider variety of jobs on a more permanent basis, a large class of unskilled migrants

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<sup>40</sup> Erin Weir. 2013. "Temporary Foreign Workers".

<sup>41</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program". 23.

<sup>42</sup> Bob Barnetson and Jason Foster. 2012. "Foreign Migrant Workers in Alberta". 5.

<sup>43</sup> Dominique Gross & Nicolas Schmitt. 2012. "Temporary Foreign Workers and Regional Labour Market Disparities in Canada".

<sup>44</sup> Ibid.

<sup>45</sup> Bob Barnetson and Jason Foster. 2012. "Foreign Migrant Workers in Alberta". 5.

emerged in Canada.<sup>46</sup> In 2009, the Office of the Auditor General's (OAG) annual report found that the types of workers admitted under the TFWP had changed significantly in years prior, but that the changes did not appear to be part of a well-defined strategy to best meet labour market needs.<sup>47</sup>

## **Suppressed Wages**

There is evidence that TFWPs interfere with supply and demand forces by inhibiting the occurrence of normal labour market adjustment; the increased supply of workers puts downward pressure on wages and prevents wage increases that are in line with economic growth.<sup>48</sup> In addition, the fact that TFWs could be paid either 5 or 15 percent below the median wage also led to an overall decrease in wages.<sup>49</sup> As an example, in Alberta, wages increased on average 31 percent between 2006 and 2014, which was double the rate of inflation over the same time frame; however, the average wage in the fast food sector – which was included in the TFWP – increased by only 8 percent, well behind the rise in the cost of living.<sup>50</sup> While this was certainly influenced by other economic factors, the TFWP certainly had an effect. During the economic boom, wages for many occupations designated by the TFWP as “under pressure” in Alberta and BC did not rise any higher than other occupations.<sup>51</sup> Conventional economic theory would predict the opposite outcome – that wages should rise more than average in occupations facing worker shortages, even though higher wages reduce labour demand, and businesses may decide to

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<sup>46</sup> Bob Barnetson and Jason Foster. 2014. “The Political Justification of Migrant Workers in Alberta, Canada.” 36

<sup>47</sup> Office of the Auditor General Of Canada. 2009. “2009 Report of the Auditor General of Canada Report to the House of Commons”. 2.

<sup>48</sup> Christopher Worswick. 2013. “Economic Implications of Recent Changes to the Temporary Foreign Worker Program.” 6.

<sup>49</sup> Ibid. 9

<sup>50</sup> CBC News. 2014. “Temporary Foreign Worker Program Misuse Sanctioned by Harper Government, Union Says”.

<sup>51</sup> Jason Foster. 2012. “Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program.” 41.

hire fewer workers.<sup>52</sup>

If the TFWP is in fact used in a temporary manner, it may simply reduce the rate of wage inflation; however, if it becomes more permanent, its wage suppression effects can become more serious and affect the rebalancing of the labour market in the long term.<sup>53</sup> If it prevents wages from increasing in occupations where labour is in demand, the normal market signal of labour shortages and associated higher wages in these fields will not occur, and domestic workers will be less likely to apply for and train for these jobs, which will exacerbate labour market imbalances.<sup>54</sup> Fudge and McPhail suggest that low-skill streams of TFWP act as devices to regulate the labour market by lowering wages and conditions of employment.<sup>55</sup> The Alberta Federation of Labour (AFL) has found evidence that employers are choosing to hire foreigners at a lower cost, rather than hiring locals, which is not the intended purpose of the program.<sup>56</sup>

### **Expedited Labour Market Opinion (E-LMO) Pilot Project Increased Unemployment**

Gross found that the easing of hiring conditions under the E-LMO project accelerated the rise in unemployment rates in several occupational groups in Alberta and BC during the recession to varying degrees.<sup>57</sup> Gross estimates that between 2007 and 2010, the E-LMO project potentially caused a rise in overall unemployment levels by 3.9

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<sup>52</sup> Ibid. 41.

Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 5, 6.

<sup>53</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 41

<sup>54</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 7.

<sup>55</sup> Judy Fudge & Fiona McPhail. 2009. "The temporary foreign worker program in Canada: Low-skilled workers as an extreme form of flexible labour". 42.

<sup>56</sup> Alberta Federation of Labour. 2012. "From Last Resort to First Choice: How the Temporary Foreign Worker Program is Flooding the Market not Filling a Need".

<sup>57</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 14. 22.

percentage points in the two provinces.<sup>58</sup> The impact was twice as high for low-skilled workers than for high-skilled workers.<sup>59</sup> Gross concluded that the labour shortage it was meant to address was not as strong as originally thought and that not all occupation groups included in the project were actually undergoing labour shortages, particularly in the low-skill category. The 5 percent unemployment rate in Alberta and 7 percent unemployment rate in BC at the time indicated that there were legitimate concerns that they could be experiencing labour shortages. However, only six of the 21 major employment groups included in the project had among the lowest national unemployment rates.<sup>60</sup> For example, unemployment rates in low-skill construction and manufacturing processing were above 10 percent in Alberta and were not the lowest in Canada, yet these occupations were eligible.<sup>61</sup> In 2007, overall unemployment rates for low-skilled workers were 7.3 in Alberta and 8.4 percent in BC, and in 2009, at the height of the E-LMO project, they were 13.4 and 15.5 respectively.<sup>62</sup> This suggests that the program was not properly targeted to occupations facing labour shortages, as the project included 13 low-skill occupations.<sup>63</sup>

Gross also assesses that in some cases, business pressures rather than actual labour shortages led to easier access to TFWs.<sup>64</sup> Furthermore, Gross assesses that when given easier access to TFWs, employers did not face adequate incentives to find Canadian workers, and therefore the TFWP did not give priority to Canadian workers.<sup>65</sup>

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<sup>58</sup> Ibid. 14. 22.

<sup>59</sup> Ibid. 17.

<sup>60</sup> Ibid. 11.

<sup>61</sup> Ibid. 11.

<sup>62</sup> Ibid. 11.

<sup>63</sup> Ibid. 12.

<sup>64</sup> Ibid. 3.

<sup>65</sup> Ibid. 15.

## Increased Regional Labour Market Disparities

Gross and Schmitt found that the expansion of the TFWP in the early 2000s to all low-skill occupations distorted labour market patterns by suppressing interregional labour mobility from provinces of high unemployment to regions with low unemployment, albeit to a small degree.<sup>66</sup> Unemployment rates among low-skilled workers have generally varied between regions, and these regional differences persisted while access to low-skilled TFWs grew; Gross and Schmitt found that the TFWP increased the regional variances in unemployment rates by about 0.21 percentage points between 2002 and 2007.<sup>67</sup> They assess that the availability of TFWs meant that wages did not rise enough to trigger the level of internal migration that would normally cause regional unemployment rates to move closer together, and that expansion to low-skill occupations was not warranted given the state of the country-wide labour market.<sup>68</sup> In addition, Gross and Schmitt suggest that policy makers did not price TFWs in a way that incentivized employers to seek workers from other regions before turning to TFWs because hiring conditions were not strict enough and administration fees were too low.<sup>69</sup>

These findings are illustrated by the nature of migrants to Alberta during the energy boom of the 2000s. The province attracted an influx of migrants, but unlike in previous booms, there were more foreign workers and fewer interprovincial migrants.<sup>70</sup> A large increase of TFWs into Alberta began in 2006 and net interprovincial migration began to decline in 2007, which suggests that the increase in TFWs both preceded and

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<sup>66</sup> Ibid. 23.

<sup>67</sup> Ibid. 9, 23.

<sup>68</sup> Ibid. 1,3.

<sup>69</sup> Ibid. 2, 25.

<sup>70</sup> Bob Barnettson and Jason Foster. 2012. "Foreign Migrant Workers in Alberta". 9.



contributed to declining interprovincial migration.<sup>71</sup> Moreover, interprovincial migration declined despite relatively high unemployment in regions that traditionally lost migrant workers to other regions experiencing economic booms, although the rising cost of living in Alberta was most certainly a deterring factor in reduced migration.<sup>72</sup> This suggests that Canada was not experiencing an absolute shortage of domestic workers, but rather a labour market imbalance, in that available jobs were not necessarily in the same location as available workers.<sup>73</sup>

### **Poor Working Conditions for TFWs**

As the TFWP expanded to include a large number of unskilled workers, it created a significant number of vulnerable and marginalized workers, with no path to permanent status in Canada. However, it has failed to protect the rights of these TFWs in Canada and many have endured serious abuse from employers. In 2009, the Auditor General found that TFWs in Canada have been “explicitly denied many formal rights and practically excluded from most employment protections”.<sup>74</sup> For example, some TFWs in BC’s agricultural sector have reported being beaten with a stick for not working fast enough, living 27 people to a house, and not having access to running water in their homes.<sup>75</sup> A 2008 government investigation found that 120 Chinese TFWs working for a single company had been paid only 12 percent of their wages.<sup>76</sup> At one time, 60 percent of restaurants employing TFWs in Alberta had contravened the provincial employment standards code.<sup>77</sup> In addition, the

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<sup>71</sup> Ibid. 5.

<sup>72</sup> Ibid. 5.

<sup>73</sup> Ibid. 5.

<sup>74</sup> Office of the Auditor General of Canada. 2009. “2009 Report of the Auditor General of Canada Report to the House of Commons”

<sup>75</sup> Peter O’Neil & Tara Carman. 2013. “Temporary Foreign Workers: Filling Labour Gap or Depressing Wages?”

<sup>76</sup> Bob Barnetson and Jason Foster. 2014. “The Political Justification of Migrant Workers in Alberta, Canada.”

<sup>77</sup> Jamie Baxter. 2010. “Precarious Pathways: Evaluating the Provincial Nominee Programs in Canada”. 11.

expansion of the TFWP has led to an industry of companies that facilitate the recruitment of TFWs, many of which exploit workers by illegally charging fees or taking a portion of their pay.<sup>78</sup> Not surprisingly, growth in exploitation and violation of migrant workers and inadequate legal enforcement are correlated with migrant worker program expansion.<sup>79</sup>

Although TFWs are legally afforded the same protections as domestic workers, many TFWs, particularly those in low-skill categories, find it difficult to assert their rights, as they generally have limited knowledge of Canadian laws and social services, often face language barriers or social isolation, and have limited financial resources.<sup>80</sup> Therefore, they are much more likely to accept unpaid or lower wages, dangerous work, unacceptable working conditions, inadequate housing, or other abuses.<sup>81</sup> TFWs are also less likely to report abuses because their work permit specifies their work location, occupation and employer. Therefore, reporting abuses could mean that they lose their job and would likely face deportation.<sup>82</sup> For some, particularly low-skilled workers, the conditions and pay may still be better than in their home country, and they are therefore more likely to endure substandard treatment. While there are serious ethical concerns regarding the exploitation of TFWs, it also lowers working conditions for domestic workers.

## **Underemployment of Immigrants**

If Canada had been experiencing general labour shortages that were as serious as

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<sup>78</sup> Ibid. 11.

<sup>79</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 24-25.

<sup>80</sup> Delphine Nakache. 2009. "The Canadian Temporary Foreign Worker Program: Regulations, Practices and Protection Gaps". 4.

<sup>81</sup> Alberta Federation of Labour. 2012. "From Last Resort to First Choice: How the Temporary Foreign Worker Program is Flooding the Market not Filling a Need".

<sup>81</sup> Jamie Baxter. 2010. "Precarious Pathways: Evaluating the Provincial Nominee Programs in Canada". 11.

Canadian Union of Public Employees (CUPE). 2013. "The Facts: Temporary Foreign Worker Program".

<sup>82</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 24-25.

TFWP expansion suggests, one would expect that immigrants would have quickly integrated into the labour market and be earning wages similar to Canadians. However, new immigrants are now facing lower incomes and lower employment rates than fifteen years ago.<sup>83</sup> Immigrants have generally faced much lower than average employment rates – in 2012, employment rates were 66 percent for very recent immigrants, 75 percent for recent immigrants, 80 percent for established immigrants and 83 percent for individuals born in Canada.<sup>84</sup> Therefore, Canada should be making better efforts to improve outcomes for immigrants and more proactively seeking immigrants who can address critical gaps in the labour market.<sup>85</sup> Under the current supply-driven immigration system, immigrants are in competition with TFWs for access to many jobs, particularly for entry-level and low-skill jobs.<sup>86</sup>

## **WHAT LED TO THESE ADVERSE OUTCOMES?**

These adverse effects on Canada's labour market occurred because the TFWP expanded in a way that was not consistent with labour market needs. The TFWP was not targeted solely to specific occupations and industries facing labour shortages, it did not create proper incentives for employers to attract Canadians and it did not adequately protect the rights of TFWs or Canadians, who should have had first access to jobs. This resulted in an increasing number of TFWs in Canada that did not match the economy's

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<sup>83</sup> Ibid. 42.

<sup>84</sup> Kevin McQuillan. 2013. "All the Workers We Need: Debunking Canada's Labour Shortage".

<sup>85</sup> Ibid.

<sup>86</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 42. Vancouver Sun. "Temporary Foreign Workers: Filling Labour Gap or Depressing Wages?"

actual need. Foster suggests that the program went from a “small, nimble” program to a large-scale program that the government “lost the capacity to manage”.<sup>87</sup>

### **Inadequate Labour Shortage Identification**

Although the TFWP is intended to fill labour shortages, changes to the program between 2002 and 2012 occurred despite little data to indicate shortages in many occupations.<sup>88</sup> Consequently, the TFWP has been used to fill jobs in some regions and occupations that were not actually facing labour shortages, and in some cases, occupations and regions that were facing higher than average unemployment rates. For example, between 2002 and 2012, the overall number of people unemployed in New Brunswick was approximately 35,000 to 40,000, but in 2012, about 2,800 TFWs were working in the province.<sup>89</sup> This occurred in part because the government still lacked adequate data to assess the state of the labour market. For example, it collected information on vacancies by industry and province, but this information did not specify vacancy rates by occupation or skill level.<sup>90</sup>

While the TFWP was used as a broad tool to address a general labour shortage, Canada has actually faced what could be called a labour imbalance. As a result, the TFWP has distorted labour market forces that would have otherwise brought together more Canadian workers and jobs.<sup>91</sup> There have been worker shortages in some sectors – health care, professional, scientific and technical services – and worker surpluses in others, such

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<sup>87</sup> Amber Hildebrandt. 2014. “How Canada became addicted to temporary foreign workers”.

<sup>88</sup> Kevin McQuillan. 2013. “All the Workers We Need: Debunking Canada’s Labour Shortage”.

Dominique Gross. 2014. “Temporary foreign workers in Canada. Are they really filling labour shortages?” 1.

<sup>89</sup> Kevin McQuillan. 2013. “All the Workers We Need: Debunking Canada’s Labour Shortage”.

<sup>90</sup> Dominique Gross. 2014. “Temporary foreign workers in Canada. Are they really filling labour shortages?” 20.

<sup>91</sup> Kevin McQuillan. 2013. “All the Workers We Need: Debunking Canada’s Labour Shortage”.

as education, arts, and recreation.<sup>92</sup> Gross suggests that the government has not have enough data to understand current shortages and predict future shortages.<sup>93</sup> It has not been able to identify whether shortages are expected to be short-term, and therefore could require TFWs, or whether they are longer lasting, and should be addressed with other measures.

### **Insufficient LMIA Criteria and Enforcement of LMIA Criteria**

The LMIA process – including TFW applications and government evaluation of applications – has not been designed in a way that incentivizes employers to make a complete effort to hire Canadian workers before resorting to TFWs. First, the LMIA process has not been able to properly assess whether employers have made legitimate efforts to hire domestic workers before seeking TFWs. A more robust LMIA criteria was not established until 2011, well after the TFWP began to expand. Employers have admitted to finding ways to satisfy LMIA requirements without actually exhausting options to find domestic workers in order to access lower-cost TFWs, such as advertising wages too low or being overly critical of Canadian applicants.<sup>94</sup> The Alberta Federation of Labour (AFL) has found cases where employers have lined up a TFW before even posting a job advertisement, meaning that domestic workers with the desired skills were not even considered.<sup>95</sup> As such, the LMIA application process has been seen as a bureaucratic formality as opposed to an actual labour market test, especially since the government has

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<sup>92</sup> Ibid.

<sup>93</sup> Amber Hildebrandt. 2014. “How Canada became addicted to temporary foreign workers”.

<sup>94</sup> Bob Barnetson and Jason Foster. 2012. “Foreign Migrant Workers in Alberta”. 5.

<sup>95</sup> Christopher Worswick. 2013. “Economic Implications of Recent Changes to the Temporary Foreign Worker Program.” 9.

<sup>95</sup> Jason Foster. 2012. “Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program.” 38.

not reprimanded employers who have not prioritized domestic workers.<sup>96</sup> For example, in a well-publicized case, Chinese company HD Mining made the ability to speak Mandarin a job requirement to work in a BC mine, which resulted in the hiring of a number of TFWs in 2013.<sup>97</sup> It is hard to imagine a scenario where speaking Mandarin would actually be required to work a mining job in Canada. The media reported that internal company documents stated that no Canadians should be hired at the mine for at least 15 years, which is clearly an abuse of the TFWP.<sup>98</sup>

Second, the TFWP failed to provide adequate price signals to incentivize employers to search for domestic workers before resorting to TFWs.<sup>99</sup> The one-time administration and visa fees have generally been smaller than the cost of attracting domestic workers through higher wages and better working conditions or relocating workers from other regions, even when considering the additional costs employers must pay to secure low-skilled TFW.<sup>100</sup> Gross and Schmitt estimate that administrative costs represented about 5 percent of a low-skilled worker's monthly wage when a permit was valid for two years; this cost was halved when permits could be valid for up to four years.<sup>101</sup> Access to cheaper labour through TFWs, prevented higher wages, which are crucial to trigger internal migration, occupational changes and labour force participation changes.<sup>102</sup> In addition, the TFWP has lacked a mechanism to ensure that those who do rely on TFWs do not become dependent and continue to seek Canadian workers where possible.

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<sup>96</sup> Ibid. 38

Judy Fudge & Fiona McPhail. 2009. "The temporary foreign worker program in Canada: Low-skilled workers as an extreme form of flexible labour". 42.

<sup>97</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 2.

<sup>98</sup> Ibid. 2.

<sup>99</sup> Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 23.

<sup>100</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 19, 21.

<sup>101</sup> Dominique Gross & Nicolas Schmitt. 2012. "Temporary Foreign Workers and Regional Labour Market Disparities in Canada". 24.

<sup>102</sup> Ibid. 25.

## **Business Lobby Efforts**

Experts on both sides of the political spectrum have argued that corporate lobby efforts for an expanded TFWP have been driven not by genuine hiring difficulties or an actual labour shortage, but by businesses seeking to increase profits by broadening the labour pool and lowering labour costs.<sup>103</sup> Jim Stanford of the Canadian Auto Workers union has stated that, “the aggressive expansion of the TFW program is part of a deliberate effort to undermine the bargaining power of Canadian workers, whether they're in a union or not. It is part of a broader strategy to suppress wage growth and widen profit margins – not just in northern Alberta, but in any province and any sector.” An equally dismal assessment comes from conservative economist Herb Grubel, who described the TFWP as effectively a business subsidy that allows businesses to avoid increasing wages, avoid investing in training, and avoid investing in capital that will increase productivity.<sup>104</sup>

Barnetson and Foster argue that when faced with hiring difficulties, Alberta employers have been unwilling to do more to attract domestic workers and have instead pressured governments to expand the TFWP. They suggest that the notion of a labour shortage has been exaggerated or constructed in a way that provided political cover or justification for employers to advocate for TFW policies that loosened the labour market and eased increasing wage demands.<sup>105</sup> They found that during the 2000-2008 economic boom, the government of Alberta facilitated an increasing number of TFWs to the

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<sup>103</sup> Bob Barnetson and Jason Foster. 2014. “The Political Justification of Migrant Workers in Alberta, Canada.” 364. Kevin McQuillan. 2013. “All the Workers We Need: Debunking Canada’s Labour Shortage”.

<sup>104</sup> Vancouver Sun. 2013. “Temporary Foreign Workers: Filling Labour Gap or Depressing Wages?”

<sup>105</sup> Bob Barnetson and Jason Foster. 2014. “The Political Justification of Migrant Workers in Alberta, Canada.” 364.

province.<sup>106</sup> In doing so, government officials claimed that Alberta was experiencing a serious labour shortage due to a booming economy and an aging population, and that TFWs were needed to address it, while highlighting that labour shortages require migrant workers, that the LMIA process ensures that TFWs do not threaten Canadian jobs, and that TFWs are not exploited.<sup>107</sup> However, these claims were found to be mostly either unconfirmed or invalid, which Barnetson and Foster suggest is a “significant disconnect between the real and espoused reasons for the significant changes to labour market policy, changes that advantage employers and disadvantage both Canadian and foreign workers”.<sup>108</sup> They also found that MLAs continued to advocate for TFWs during the 2008 recession, indicating that government policy of attracting TFWs was perhaps not actually tied to addressing labour shortages, but more to benefitting employers by increasing the labour pool and lowering the cost of labour.<sup>109</sup>

Rheault examined the claim that businesses are influential in lobbying governments to expand the TFWP and increase access to foreign labour. Rheault found that between 1996 and 2011, the inflow of TFWs and the intensity of corporate lobbying did have a positive correlation, even after accounting for labour market conditions.<sup>110</sup>

## **CONTRACTION OF THE TFWP**

By the end of 2012, the number of TFWs in Canada had grown to approximately

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<sup>106</sup> Ibid. 361.

<sup>107</sup> Ibid. 360.

<sup>108</sup> Ibid. 349.

<sup>109</sup> Bob Barnetson and Jason Foster. 2012. “Foreign Migrant Workers in Alberta”. 6.

<sup>110</sup> Ludovic Rheault. 2013. “Corporate Lobbying and Immigration Policies in Canada.” 1.



340,000, the majority of whom were in BC, Alberta and Ontario.<sup>111</sup> Around this time, the preferential hiring of TFWs by companies such as HD Mining and RBC received public attention. This prompted the government to impose tighter rules in 2013, intended to return the program to its original purpose – a program to address genuine acute, short-term labour shortages, while requiring that employers make better efforts to hire Canadians.<sup>112</sup> The 2013 TFWP changes included the following:<sup>113</sup>

- TFW wage flexibility was removed and employers were required to pay TFWs at the prevailing wage
- The Accelerated Labour Market Opinion (A-LMO) process was removed
- The government’s ability to suspend and revoke work permits and LMOs in cases where the program was being misused was increased
- Additional questions on LMIA applications to ensure that the TFWP was not being used to facilitate the outsourcing of Canadian jobs
- Additional steps to the LMIA process to ensure that employers who rely on TFWs have a plan to transition to a Canadian workforce over time
- Introduction of a \$275 employer fee to process an LMIA and an increase in fees for work permits so that taxpayers no longer subsidize TFWP costs
- English or French became the only languages that could be required for TFW jobs

Significant reforms were made again in 2014 in order to better protect both

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<sup>111</sup> Weir, Erin. 2013. “Temporary Foreign Workers”.

Canadian Union of Public Employees (CUPE). 2013. “The Facts: Temporary Foreign Worker Program”.

<sup>112</sup> Government of Canada. 2013. “Further Improvements to the Temporary Foreign Worker Program.”

Government of Canada News Release. 2013. “Harper Government Announces Reforms to the Temporary Foreign Worker Program - Ensuring Canadians Have First Chance at Available Jobs.”

<sup>113</sup> Ibid.

Canadian workers and TFWs, as the government believed that TFWs represented a large enough percentage of the Canadian workforce to suggest that employers could still misuse the program.<sup>114</sup> The reforms included the following:<sup>115</sup>

- A more rigorous LMIA assessment, where employers must provide the number of Canadians that applied for a job, the number of Canadians interviewed and an explanation of why they were not hired
- Better labour data from Statistics Canada – a New Quarterly Job Vacancy survey based on a larger sample of 100,000 employers that includes data by local area on occupations and skill levels and an improved National Wage Survey with regional data
- Employers must attest that Canadian workers cannot be laid-off or have hours reduced due to the hiring of a TFW
- Employers cannot hire low-wage TFWs in regions where the unemployment rate is above 6 percent
- A cap of 10 percent on the number of low-wage TFWs employers can hire per work site by 2016, estimated to reduce the number of low-skilled TFWs by about 50 percent in three years; to be gradually phased in, starting at 30 percent, then reduced to 20 percent on July 1, 2015, and to 10 percent on July 1, 2016
- An increase from \$275 to \$1,000 in the application fee employers must pay per worker requested
- A reduction in the amount of time a TFW can be employed in Canada, to two years

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<sup>114</sup> Employment and Social Development Canada. 2014. "Overhauling the Temporary Foreign Worker Program (TFWP)."

<sup>115</sup> Ibid.

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- Employers with high wage TFWs are required to submit transition plans, showing steps to reduce reliance on TFWs
- An increase in the number of inspectors and inspections – one in four employers will be inspected each year – to ensure compliance
- Fines of up to \$100,000 for employers who abuse the program
- Publication of the names of employers who receive permission to hire foreign workers and the number of positions approved on a quarterly basis

The majority of the changes meant to decrease the number of TFWs did not apply to seasonal workers or live-in caregivers. These two streams have changed little over the years, because it is generally accepted that they address clear labour shortages and do not increase unemployment among Canadian workers.<sup>116</sup> The government had considered shutting down the low-skill stream of the TFWP, but decided instead to phase it out, as the economic and adjustment costs of shutting it down at once would be too extreme for many businesses.<sup>117</sup>

## **THE CURRENT SITUATION**

As demonstrated above, the TFWP has undergone many changes over time, including its size, how it is used, and by whom. In 1984, approximately 65,000 TFWs were admitted to Canada and in 2009, 142,209 TFWs were admitted.<sup>118</sup> Following reforms in 2013 and 2014 meant to limit access to the TFWP, the number of TFWs approved has

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<sup>116</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 20.

<sup>117</sup> Terry Milewski & Susana Mas. 2014. "Jason Kenney Effectively Phasing Out Temporary Foreign Workers in Low Wage Jobs."

<sup>118</sup> Citizenship and Immigration Canada. 2013. "Preliminary tables – Permanent and temporary residents, 2013"

decreased significantly – from 163,035 in 2013, to 104,242 in 2014, to 90,211 in 2015.<sup>119</sup> Of note is the fact that the number of TFWs approved in Alberta has decreased from an all-time high of 82,039 – slightly lower than the population of Lethbridge – in 2012, to 13,756 in 2015.<sup>120 121</sup>

The 2014 reforms are proving to be politically difficult to implement, as opponents are claiming that they were not properly targeted. Many groups are advocating for a reversal of the changes or an exemption, citing serious labour shortage concerns, particularly in low-skill jobs, and in smaller and remote communities where Canadian workers are not readily available.<sup>122</sup> Amid the pressure, the Liberal government has suggested that the 2014 reforms, brought in by the previous Conservative government, may not have been properly targeted and has called for a Parliamentary review of the program, which is slated to be released in September.<sup>123</sup> In the meantime, it recently eased the 10 percent cap on low-wage positions that was to take effect on July 1, 2016. Instead, the cap remains at 20 percent – or the current level, whichever is lower – for businesses that have been using the program for over two years. Businesses that have been using the program since June 2014 and new users are subject to the 10 percent cap on low-wage workers; certain occupations are exempt.<sup>124</sup> The government also removed the cap for

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<sup>119</sup> Employment and Social Development Canada. 2016. "Number of Temporary Foreign Workers on positive Labour Market Assessments by province / territory 2008-2015".

<sup>120</sup> Ibid.

<sup>121</sup> The lower number of TFWs could be attributed to the decline in oil prices during this time period. As oil prices declined, the number of laid-off domestic workers willing to work for lower pay would have increased, and likely reduced the demand for TFWs. Therefore, it is unknown how much the decline in the number of TFWs in Alberta was due to the 2013 reforms, and how much was due to an increased number of Canadians seeking work.

<sup>122</sup> Lee-Ann Goodman. 2014. "Western premiers say their provinces badly need temporary foreign workers"

Tamsyn Burgmann. 2014. "Temporary foreign workers needed for B.C.'s future, says Premier".

Bill Graveland. 2014. "Jim Prentice says foreign workers to top 1st meeting with PM".

<sup>123</sup> Alia Dharssi. 2016. "Easing of Temporary Foreign Worker caps welcomed by Alberta business".

<sup>124</sup> Employment and Social Development Canada. "Hire a Temporary Foreign Worker in a low wage position – program requirements"

seasonal industries, allowing them to hire unlimited TFWs for up to 180 days a year.<sup>125</sup>

## **PROPOSED DIRECTION OF THE TFWP**

The size and nature of the TFWP will certainly be a source of debate in the coming years as there are concerns that the growth of the labour force will not meet labour demands.<sup>126</sup> As the analysis above demonstrates, a TFWP must work to manage demand for migrant workers, as business' demand for migrant workers will likely not maximize benefits for society.<sup>127</sup> In light of the upcoming Parliamentary review, and likely reforms to follow, the government must be careful not to succumb to lobby pressures to move back to an expanded TFWP. It should not forget that TFWs are not the only way to address labour market shortages. Doing nothing is also an option, and businesses would then be forced to raise wages and working conditions to attract workers, or face the prospect of decreased production or possible shut down.<sup>128</sup> In cases where this could have large-scale or long-term negative economic consequences, a TFWP may be warranted. Ruhs lays out three conditions for a well-functioning TFWP – regulation of the cost of foreign workers, effective mechanisms to encourage employers to search for local workers first, and a strong commitment to enforcing immigration and laws, particularly against employers.<sup>129</sup> While the 2013 and 2014 reforms should better align the TFWP its intended purpose and Ruhs' conditions, additional measures should be taken to fulfill these conditions and to ensure that it is properly targeted. In addition, the TFWP should be used in conjunction with other policies to better capitalize on available labour already in Canada.

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<sup>125</sup> Alia Dharssi. 2016. "Easing of Temporary Foreign Worker caps welcomed by Alberta business".

<sup>126</sup> Kevin McQuillan. 2013. "All the Workers We Need: Debunking Canada's Labour Shortage".

<sup>127</sup> Martin Ruhs. 2006. "The Potential of Temporary Migration Programmes in Future International Migration Policy."

<sup>128</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 6.

<sup>129</sup> Martin Ruhs. 2006. "The Potential of Temporary Migration Programmes in Future International Migration Policy." 16,32.

## Limitations of the LMIA Process

The government has increased its ability to make assessments regarding the nature and scope of a labour shortage by collecting more pertinent data regarding labour market conditions and employment vacancies. This specific information will also allow it to more accurately determine the nature of a shortage – the likelihood that it will be temporary or more long-term<sup>130</sup>. This is crucial as the policy response should be different in each case. For example, the TFWP should be used only for specific, short-term labour shortages, while more permanent immigration can better address longer-term labour needs.<sup>131</sup>

However, more rigorous criteria for classifying labour conditions as labour shortages would allow the government to better coordinate TFW inflow with TFW need. For example, the United States Bureau of labour statistics requires that an occupation facing a shortage is experiencing at least 50 percent higher than average employment growth, an unemployment rate at or near historic lows and wage growth of at least 30 percent more than average.<sup>132</sup> Interestingly, when TFWP administrators used this criteria in 2005, it found that 32 occupations, representing 11 percent of overall employment, faced tight labour supply, almost all of which required post-secondary education or apprenticeship training; it also found that nine low-skill occupations actually faced an

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<sup>130</sup> Dominique Gross. 2014. "Temporary Foreign Workers in Canada: Are they Really Filling Labour Shortages". 20

<sup>131</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program."

<sup>132</sup> Karl Flecker. 2012. "No Fairness for Temporary Workers".

excess of supply.<sup>133</sup> This did not reflect the mix of high-skilled and low-skilled TFWs in Canada at that time.

Despite improved ability to better understand the current state of the labour market, there will always be uncertainty in predicting the future state of the labour market. Even with more precise data regarding unemployment rates, employment trends, demographics, education and training rates, it can still be difficult for the government to accurately assess whether a labour shortage will be short-term or long-term, and labour shortages can be misidentified. This should be recognized as a limitation of the TFWP; however, ensuring that other aspects of the TFWP are designed properly can mitigate this shortcoming.

### **More Rigorous LMIA Process**

The government has significantly improved the integrity of the LMIA process by requiring more information from employers regarding their declared need for a TFW and increasing its ability to evaluate efforts to hire domestic workers. In order to confirm that an employer has made reasonable efforts to hire a domestic worker, the employer must post a job advertisement on the Government of Canada's Job Bank or approved provincial counterpart and attempt two other approved methods of recruitment. The enhanced Job Matching Service, which allows LMIA officers to see both the skills and experience of Canadians who have applied to a job on the Job Bank, and how many qualified Canadians have applied for a job, improves an officer's ability to make a sound decision on an employer's efforts to hire a Canadian, and decreases the employer's ability to mislead

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<sup>133</sup> Ibid.

government. The addition of only English or French as a job requirement will better protect Canadian workers by decreasing the ability of companies such as HD Mining to abuse the TFWP by systematically rejecting Canadian applicants in favour of TFWs. An important factor in the improved LMIA is the termination of accelerated labour market tests, as it puts administrators in a better position to make a proper assessment of the file, which should increase the legitimacy of decisions. However, the LMIA could better protect Canadian workers by requiring that employers show that they have done more to attract domestic workers, such as reposting a job application at a higher wage, or with different benefits, perks or working conditions. There is no question that profitable companies such as RBC should be able to do more to attract local workers.

Although the LMIA process has been improved, the government must be mindful of its limitations. For example, it is still difficult to assess whether employers have purposely advertised wages too low, required skills that may be unnecessary or misled government on why Canadian applicants were not hired in order to gain access to cheaper TFWs.<sup>134</sup> Although more employers must now submit a plan to show how they will transition away from TFWs, it is difficult to assess the likelihood that they will follow through, and it is unclear how much follow-up, if any, the government does. The fact that the government is now publicizing the names of companies with TFWs should mitigate these risks, as interested parties will be better placed to report potential abuses to the government. Although the LMIA process may have some potential leaks, it is much more rigorous than pre-2012, when the TFWP was expanding.

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<sup>134</sup> Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 8.



When the TFWP was expanded, it lacked enforcement mechanisms to ensure that employers were not favouring TFWs over domestic workers or employing TFWs under substandard conditions. Recent reforms that increase the government's ability to conduct inspections and to ban and fine noncompliant employers have moved in the right direction, and should protect both TFWs and Canadian workers. However, it remains to be seen whether the government will act upon these increased enforcement powers. To date, only four employers have ever had their right to hire TFWs revoked or suspended, and all four cases occurred in 2014.<sup>135</sup> The emergence of a media report in early 2014 alleging that an oil company in Alberta replaced 65 workers with TFWs suggests that employers are still able to favour TFWs over domestic workers.<sup>136</sup> Enforcement is a crucial part of ensuring that the LMIA process protects Canadian workers. However, it also comes a cost, and the TFWP should ensure that at least some of the cost is recuperated from fines and TFW fees. If the government does increase TFWP fees, it should be better placed to provide the necessary enforcement on a continued basis.

### **Better Fee Structure**

As discussed above, the TFWP has not adequately protected resident workers' access to jobs because the relative cost of employing a TFW compared to other options has been very low. Therefore, it is natural – and arguably a sound business decision – to want to hire more TFWs. Going forward, the TFWP fees should be higher, so that they not only recover administrative and enforcement costs, but also encourage employers to offer

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<sup>135</sup> Employment and Social Development Canada. 2016. "Employers who have broken the rules or been suspended from the Temporary Foreign Worker Program".

<sup>136</sup> Globe and Mail. 2014. "Iron workers will be rehired as Ottawa promises review".

higher wages to attract local workers.<sup>137</sup> The \$1,000 application fee per worker that was introduced in 2014 certainly increases the incentive search for domestic workers, but not by enough. The fee is low compared to the \$2,325 per application the United States charges, part of which is allocated to training domestic workers.<sup>138</sup> In addition, it likely does not recover administrative and enforcement costs, which would be passed on to taxpayer. Assuming a TFW can work in Canada for two years, the fee only adds \$500 dollars per year to the hiring cost, which is very small compared to the cost over time of offering higher wages, or the cost of relocating a domestic worker from elsewhere. In addition, because it is a one-time fee, it creates an incentive for the employer to keep a worker as long as they can, and not just until a domestic worker can be found.

In conjunction with the application fee, Canada should also consider charging a fee for every month that a TFW is employed in order to reduce reliance on TFWs. Any administrative and monthly fees should vary based on occupation, skill level, industry, employer dependence on the TFWP and the firm's characteristics, such as size.<sup>139</sup> Singapore has adopted a fee structure that varies based on skill level, sector and dependency on the program; in 2014, the monthly fee in the construction sector was 80 Singapore Dollars (SGD) for a skilled worker and 470 SGD for an unskilled worker. The fees represent about 25 percent of the monthly wage in low-skill occupations.<sup>140</sup> A mix of higher application fees and monthly fees would help achieve the TFWP's goal of ensuring that TFWs do not affect domestic workers' access to jobs. It would also help ensure that

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<sup>137</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 19.

Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 20.

<sup>138</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 18.

<sup>139</sup> Ibid. 18-19.

<sup>140</sup> Ibid.18.

domestic workers are available in the long term by allowing wage signals to trigger labour choices.

There will inevitably be challenges in setting the fee high enough to manage TFW demand, but low enough that it does not impede access for those who truly need TFWs. However, a more effective pricing structure will not only improve the TFWP's incentive structure, but it will also help overcome insufficient labour market information and assumptions in the LMIA process. It will also help overcome the challenges associated with evaluating and following up on transition plans because the higher fees make it in the interest of the employer to transition away from TFWs. Therefore, an employer would need a transition plan in order to run an efficient business, and not just to fill a bureaucratic requirement.

### **Better Rights and Protections for TFWs**

Proper protection of TFW rights and enforcement of employer abuses is crucial to the TFWP both for the protection of TFWs themselves, and to maintain employment standards in Canada. The current version of the TFWP should provide better protection for workers after recent reforms that require employers to pay TFWs the prevailing wage, increase the number of inspections and impose fines of up to \$100,000 on employers who abuse the program. However, as mentioned earlier, only four employers have had their right to hire TFWs revoked, so it is unclear how much the government is using its new enforcement resources.

TFWs' temporary status in Canada has been an important source of their vulnerability. Going forward, the TFWP should enable a greater number of TFWs to apply for permanent residency or citizenship, particularly in cases where a worker has lived and worked in Canada for a prolonged period of time.<sup>141</sup> Only some TFWs can obtain permanent status through either Provincial nominee programs or the Canada Experience Class, as they accept a limited number of applicants, and most are high-skilled or higher-educated workers.<sup>142</sup> A path to permanent status would reduce their vulnerability as it provides access to more rights and social services, and they would be much more likely to integrate into Canadian society. While reducing the number of years a TFW can work in Canada to two was meant to reduce reliance on TFWs, it is unclear if the results will bear this. It could lead to a more regular rotation of TFWs in and out of Canada. If employers legitimately require TFWs for more than two years, consideration should be given to retaining the same TFW for longer, and having that person permanently immigrate to Canada, regardless of skill level, as they are filling more permanent labour market needs.<sup>143</sup> This also suggests the need to better coordinate the immigration process so that new immigrants are able to address labour needs.<sup>144</sup>

One way to shift more power to TFWs and prevent employer abuses is to issue sector- or occupation-specific work permits, as opposed to employer-specific work permits.<sup>145</sup> A general permit could be considered for low-skilled workers. This should help equalize the balance of power between employers and TFWs, as the TFW's status in Canada

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<sup>141</sup> Judy Fudge & Fiona McPhail. 2009. "The temporary foreign worker program in Canada: Low-skilled workers as an extreme form of flexible labour". 43.

<sup>142</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program." 25.

<sup>143</sup> Delphine Nakache. 2009. "The Canadian Temporary Foreign Worker Program: Regulations, Practices and Protection Gaps". 20.

<sup>144</sup> Jason Foster. 2012. "Making Temporary Permanent: The Silent Transformation of the Temporary Foreign Worker Program."

<sup>145</sup> Martin Ruhs. 2006. "The Potential of Temporary Migration Programmes in Future International Migration Policy." 32.

would no longer be reliant on a single employer. If a TFW can legally work for someone else, they would be more likely to escape abuse, and employers would be more likely to offer better wages and working conditions to attract and retain TFWs. This would also increase the likelihood that TFWs will report abuses and access available protections and resources.<sup>146</sup> This measure should also reduce the need for enforcement.

### **A More Coordinated Strategy to Find Domestic Labour**

Regardless of the shape and size of a TFWP, the government's priority should first be to make better use of available domestic labour.<sup>147</sup> As the TFWP expanded, other strategies to find Canadian workers seem to have been mostly overlooked or disregarded by both businesses and government. If the need for complimentary policies is forgotten, and the TFWP is used as a primary tool to find labour, Canadian workers are less likely to train in areas of need, as wage increases will not be large enough to attract them, and there could be no available domestic workers in the long term.<sup>148</sup> If too many jobs are filled by TFWs, and a high number of domestic workers are left unemployed, this creates other policy challenges, as higher unemployment will increase the number of people in need of programs such as Employment Insurance (EI) or other social assistance. While the recent reforms will certainly shrink the size of the TFWP and its adverse effects on the labour market, they do not appear to be part of a coordinated strategy to address the causes of a labour shortage and ensure that workers will be educated, trained and available for jobs in

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<sup>146</sup> Jamie Baxter. 2010. "Precarious Pathways: Evaluating the Provincial Nominee Programs in Canada". 11.

<sup>147</sup> Kevin McQuillan. 2013. "All the Workers We Need: Debunking Canada's Labour Shortage".

<sup>148</sup> Ludovic Rheault. 2013. "Corporate Lobbying and Immigration Policies in Canada." 1  
Christopher Worswick. 2013. "Economic Implications of Recent Changes to the Temporary Foreign Worker Program." 8.

the longer term.<sup>149</sup>

Therefore, the TFWP should be administered in conjunction with other policies that encourage domestic workers to take up vacant jobs such as subsidizing education and training in high demand fields, incentivizing migration to areas with available jobs through the tax system or otherwise, and facilitating employer recruitment.<sup>150</sup> These strategies should also be targeted at groups with typically lower workforce participation rates such as youth, immigrants, aboriginals, and people in areas of higher unemployment, on Employment Insurance (EI) or social assistance. Studies suggest that young Canadians are facing higher than average unemployment rates, and many are employed only part-time, or in positions that do not utilize their level of education or training.<sup>151</sup> Many new immigrants face a similar fate, so consideration should be given to improving economic outcomes for immigrants and modifying immigration criteria so that newcomers to Canada are more likely to be able to fill employment gaps.<sup>152</sup>

### **Continue to Significantly Reduce the Number of Low-Skilled TFWs**

Ideally, Canada should eliminate the low-skill stream of the TFWP, and admit only high-skilled workers, live-in caregivers, and seasonal agricultural workers, returning it to its original purpose. As this paper has demonstrated, as the TFWP expanded into other low-skill occupations where there was not necessarily a need, too many employers became dependent on TFWs, which reduced wages, increased unemployment, and increased the

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<sup>149</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 3.

Dominique Gross. 2014. "Can a Temporary Foreign Worker Program be Effective? Learning from a Canadian Natural Experiment". 2.

<sup>150</sup> Kevin McQuillan. 2013. "All the Workers We Need: Debunking Canada's Labour Shortage".

Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 22.

<sup>151</sup> Kevin McQuillan. 2013. "All the Workers We Need: Debunking Canada's Labour Shortage"

<sup>152</sup> Ibid.

number of vulnerable workers in Canada. It also meant that TFWs began to fill jobs that Canadians did not want, and if this continues, employers will not need to raise wages and improve working conditions to attract Canadian workers.<sup>153</sup>

However, the government could potentially be moving the TFWP in the opposite direction by easing the 10 percent cap on low-wage TFWs that was to come into effect in July 2016 in response to business pressures. The Banff & Lake Louise Hospitality Association has claimed that hotels and restaurants in the area are facing a shortage of hotel and restaurant staff; the Western Canada chapter of Restaurants Canada is claiming that the industry needs more TFWs.<sup>154</sup> However, given that the unemployment rate has climbed to 6.8 percent in Alberta, there should be available workers if hotels and restaurants are offering competitive wages, even in seasonal industries. It is also hard to believe that businesses in the industry are doing enough to find and hire domestic workers, as the Banff/Lake Louise area is certainly an attractive place to live and work. In 2013, the restaurant industry topped the list of occupations that hired TFWs; but in 2007, the industry did even not appear in the top ten.<sup>155</sup> After the 2014 reforms, the accommodation and food industry in Alberta underwent a drastic reduction in TFWs – it went from an all-time high of 23,103 permits approved in 2008, after the E-LMO project began, to only 3,222 in 2015.<sup>156</sup> These numbers suggest that the industry likely developed a reliance on TFWs, and that it may take time to adjust back.

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<sup>153</sup> Ibid.

<sup>154</sup> Alia Dharssi. 2016. "Easing of Temporary Foreign Worker caps welcomed by Alberta business".

<sup>155</sup> Amber Hildebrandt. 2014. "How Canada became addicted to temporary foreign workers".

<sup>156</sup> Government of Canada. Open Data. 2016. "Number of Temporary Foreign Workers on positive Labour Market Assessments by province / territory".

Many fisheries businesses who operate seasonally in Atlantic Canada have also been granted exemptions to hire unlimited TFWs for up to 180 days, which is concerning, given that unemployment rates in the region vary from 9.1 to 14.1 percent.<sup>157</sup> This certainly supports arguments that businesses have come to rely on TFWs to keep wages down, and that resistance to the new cap may not be driven by a lack of domestic workers. The government could consider putting a cap on the total number of TFWs in a region, based on unemployment rates, as opposed to a cap on the total number of TFWs a business can hire.<sup>158</sup> This would mean that employers would have to make better efforts to hire domestic workers and compete for TFWs, as labour supply would be lower. It would be even more effective if TFWs had more mobility and could change employers without losing status in Canada.

The restriction on hiring low-skilled TFWs in regions with unemployment rates above 6 percent is well intentioned, as they should not be needed when unemployment reaches a certain level at which workers will mobilize under the right conditions. Despite these intentions, it may not be the best way to protect domestic workers. Regional unemployment rates only show part of the labour market state as unemployment rates can vary by sector, occupation and skill level. For example, when the TFWP was expanded to low-skill occupations, the unemployment rate among workers with some high school education was 11.2 percent in Alberta and 16.9 percent in B.C., both of which were much higher than provincial averages.<sup>159</sup> This suggests that the need for low-skilled workers was likely much smaller than was assumed under the TFWP. Therefore, restricting access to the

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<sup>157</sup> Thomas Walkom. 2016. "Trudeau government tiptoes back into temporary foreign workers' morass".

<sup>158</sup> Dominique Gross. 2014. "Temporary foreign workers in Canada. Are they really filling labour shortages?" 3.

<sup>159</sup> Ibid. 14.



TFWP based on unemployment rates for a given occupation or skill level would better target the program to areas of actual need.

Although there should be very little, if any, need for low-skilled TFWs as long as unemployment rates are high enough, there could be a time where the state of the labour market warrants a certain number of low-skilled TFWs. In such cases, it should not expand like it did in the 2000s. However, if the TFWP is administered in a way that applies the proposed strategies above, the number of TFWs in Canada should better reflect actual need.

## **CONCLUSION**

When the TFWP expanded in the early 2000s, it moved away from its original purpose of alleviating specific and temporary labour shortages and became a widely used labour tool. An increasing number of TFWs came to Canada to work that did not match actual labour needs. Therefore, the TFWP suppressed wages, increased unemployment, displaced internal migrants and created a vulnerable class of workers that it did not adequately protect. Recent reforms to the TFWP have put the program back on the right track to allow a fast, flexible response for sectors facing labour shortages, but in a way that better protects Canada's labour market. There is little doubt that Canada needs TFWs; however, the additional reforms discussed above should ensure that the TFWP size and shape reflects labour market needs by providing stronger incentives for employers to attract Canadian workers and providing better protections for TFWs. In this way, the TFWP can improve outcomes for Canadian businesses, domestic workers, TFWs and the Canadian economy as a whole.

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