

**SUBMISSION
TO
HOUSE OF COMMONS STANDING COMMITTEE
ON CITIZENSHIP AND IMMIGRATION**

**TEMPORARY FOREIGN WORKERS, UNDOCUMENTED WORKERS AND
"IMMIGRATION CONSULTANTS"**

**SUBMITTED MARCH 31ST, 2008 TO
HOUSE OF COMMONS STANDING COMMITTEE**

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EXECUTIVE SUMMARY

- Temporary Foreign Workers are vulnerable to exploitation and abuse because of their work permit restriction to a single employer, language barriers, lack of understanding of their rights, worry about their immigration status and unequal power relationship and dependence on their employer for income and information.
- The common examples of exploitation and abuses include broken promises on wage remuneration, garnished wages to pay for illegal placement fees by “immigration consultants” and illegal payroll deductions for accommodation, meals and transportation.
- Employer coercion and intimidation are met by slow moving and largely ineffectual Employment Standards and Labour Code protection processes.
- Human rights protections are only available to TFWs with legal representation.
- Global construction labour markets boast an excess of cheap accessible workers, averaging \$1.50 per hour.
- TFWs can not collect benefits for EI as they can’t meet the residency requirement. TFWs are unaware of their CPP entitlement and as a result unlikely to collect benefits. CPP contributions can not be withdrawn or returned.
- Some undocumented workers are TFWs who have fled to the black-market in order to escape from abusive conditions with their legal employer, others have overstayed tourist and student visas. In fact undocumented workers are even more vulnerable than TFWs. Employers of undocumented workers have an additional hammer over workers who are worried about their immigration status.
- A lack of monitoring and enforcement has opened to the door to widespread non-compliance and abusive conditions by unscrupulous employers of TFWs and undocumented workers.
- TFWs need orientation, advocacy and settlement services provided by government in order to access their rights.
- Bulk pre-approval LMOs must be renewed at least every six months.
- A re-evaluation of LMO criteria is required given rural and regional unemployment across the country.
- A Federal Royal Commission into the expansion of migrant worker with full participation by all stakeholders is the only way to gather balanced information about the program and develop policy for the future.

- Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

INTRODUCTION

The BCYT-BCTC is not opposed to the importation of foreign workers when there is a proven shortage of Canadian workers and provided that these workers are not used as a source of cheap labour. Unfortunately the experience for many Temporary Foreign Workers (TFWs) has been less than welcoming. Our office regularly receives calls from foreign workers looking for ways to address exploitative and abusive situations.

The issues of Temporary Foreign Workers, Undocumented Workers and Immigration Consultants are intertwined. Some TFWs who have their wages garnished to pay excessive fees to immigration consultants find relief by leaving their legal employer to labour as an undocumented worker. Other TFWs looking to leave an exploitative employer may turn to immigration consultants to help change their work permits to a new employer. Thus begins a new cycle of debt to the immigration consultant. The central theme is that workers are vulnerable to exploitation and abuse. Most of these workers are unable to speak English, unaware of their legal rights and need to maintain an income throughout any process of complaint, advocacy or change in their immigration status.

This brief submission identifies some of the basic flaws in legislation and regulations under IRPA governing the Temporary Foreign Worker Program. At the same time we consider the global and local forces that result in undocumented workers and the unconscionable fees charged by some immigration consultants. In the conclusion we summarize our recommendations to solve problems caused by the current policy and regulations.

TEMPORARY FOREIGN WORKERS

Exploitation begins with broken promises by employers on the payment of wages. Sub-contractors who perform framing formwork, cement finishing and rebar placing are common examples. Employers have promised wages of \$25 or more to satisfy LMO obligations. Workers arrive in Canada and are told their wage will be \$18 per hour.

The second common complaint concerns exorbitant payroll deductions to pay for "immigration consultants". The services provided for these fees rarely extends beyond arranging for legal services to process an employer's LMO and workers' work permit and visa. The average fee is \$8,000 for the first year and \$5,000 for the renewal for a second year. The legal fee portion ranges from \$1,750 to \$2,500. Workers who have come to the BCYT-BCTC are clearly aware that the majority of the fee

*Broken
promises*

*Labour Brokers
"immigration
consultants"*

(\$4,000 – \$5,000) is payment for placement or “job-finding”. These fees contravene the LMO commitment to Service Canada and are illegal under Provincial Employment Standards law across the country. We have heard of workers having to pay as much as \$12,000 for the first year. Immigration consultants arrange payment by having workers sign an authorization that allows employers to garnish wages. A payment of \$400 to the immigration consultant per pay period is common. Employers are very aware, if not complicit, in the arrangement with immigration consultants.

One group of workers actually paid an additional placement fee to a recruitment agency in their home country of \$4,500. Workers took out a loan from a firm that was linked to the employer. Once the workers arrived in Canada their wages were garnished until that fee was paid.

Another exploitative practice by employers is to arrange accommodation, meals and transportation and deduct the cost from workers’ salaries. In one case workers were required to pay employers \$1,800 monthly for this “service”. In the construction industry, both union and non-union, living out allowances, camp accommodation and travel allowances are common benefits. Employers recognize that workers need to maintain their families and mortgage payments when required to work away from home. Employers pay for workers’ jobsite room and board in order to attract and maintain a skilled and mobile labour force. Provincial Employment Standards law across the country requires that the payment of salary must be in currency (Sec. 20 BCESB). Workers cannot be remunerated with accommodation and meals. Garnishing workers wages for room and board is a bookkeeping trick to comply with Employment Standards law.

Systemic and legal requirements make the TFW vulnerable to this abuse. The fundamental vulnerability for Temporary Foreign Workers stems from the legal restriction that limits the ability to freely market their labour. Work Permits are tied to a single employer. Technically it is possible to change the work permit to a new employer. However, most TFWs are unaware of their right to change work permits. But even knowing about this right is of little practical help. Changing a work permit requires the worker to find a new employer willing to apply for a new LMO. If the new employer is successful and a new LMO approval is granted, the new employer can then make a job offer to the worker. At this stage the worker can apply for a new work permit. Even with the new Expedited LMO pilot project this entire process can easily take over a month. But accessing the knowledge and the means to activate this process is beyond the resources of most TFWs. Language and cultural barriers are compounded by the challenges of being a newcomer with few connections or contacts in their new Canadian community. How will a TFW, unable to

Other illegal deductions

Vulnerability

Single Employer work permits

*Employment
Standards
loopholes*

communicate in English, find a new employer and explain the LMO process to an employer who is unfamiliar with hiring foreign workers?

Vulnerability continues for TFWs who try and access other rights under Canadian law. Employment Standards legislation can not force an employer to re-instate a worker who has been fired for complaining about their employment conditions. In BC, workers with a complaint are first requested to try and mediate a resolution directly with the employer. The employer holds the hammer. If the worker is fired the best remedy that Employment Standards can offer is to mediate and eventually arbitrate a resolution. This process can take months. How is a TFW to maintain an income and remain in the country while waiting for this process to play out?

*Labour Code
intimidation*

Vulnerability continues for TFWs who try to exercise their right to organize a union under the Labour Code. Employers can pressure and intimidate their employees through "captive audience" meetings held during work hours. Employers can confound the organizing drive by inviting a "friendly" union to begin a competing organizing drive. Choosing to exercise rights under the Labour Code can spark employer retaliation and lead to costly legal disputes with the employer.

*Human Rights
coercion*

Charges of employer coercion and intimidation of TFWs were recently upheld in an interim decision by the BC Human Rights Tribunal. Costa Rican, Ecuadorian and Colombian foreign workers were imported to excavate a tunnel for the new Richmond-Airport-Vancouver LRT - Canada Line. The workers were represented by the CSWU 1611 in a discrimination complaint at the BCHRT. On the first day of hearings on the complaint the employer circulated a petition among its employees that asked for the complaint to be withdrawn. An interim decision by the BCHRT (November 9, 2007) found that workers were forced to sign the petition. This was an act of retaliation by the employer (contrary to Sec. 43 of the BCHRA). The tribunal ordered the employer to cease any further communication with its employees concerning the Human Rights complaint. The tribunal also found that the employer retaliation impacted the workplace climate and, as a result, ruled that all Latin American workers were included in the representative complaint.

Hearings on this BCHRT complaint will conclude with final arguments on April 10, 2008. Evidence has been presented that shows European TFWs were earning more than twice as much as Latin American workers. The complaint goes beyond ethnicity and skin colour to include country of origin as one of the discriminating criteria. The complaint cites evidence that some TFWs have been subjected to discrimination because they come from a poor country. A decision from the Tribunal is expected later this spring.

Vulnerabilities exposed in the BCHRT complaint go beyond legal barriers and cultural differences. Global labour markets and the power relationship between employers and TFWs and is part of the vulnerability issue.

Global labour markets

The price of construction labour in developing countries (China, India, Philippines, Latin America, the Caribbean, Africa and Saudi Arabia) is less than \$1.50 per hour. A monthly net salary of \$300 is a good salary for workers from developing countries. Occupational health and safety, overtime pay, statutory holidays and vacation time are non-existent or dismal in the home country. Flying in workers and dropping them into the Canadian environment is a shock to the worker. Liberated from severe hardship at home these workers are not likely to complain in Canada unless their exploitation is blatant, extreme and oppressive. The Canada Line case shows how the TFW program can easily be used by employers to drag down employment standards and conditions in Canada. The spiral down to the lowest acceptable labour conditions and standards is easy enough when there is little or no monitoring or enforcement of LMOs. We speak to the monitoring and enforcement issue in the next section of this submission.

Inability to claim EI benefits and difficulty with CPP

We finish the discussion about vulnerability by mentioning problems with EI and CPP. TFWs are required to pay premiums through payroll deductions to EI and CPP. The EI residency requirement prevents TFWs from accessing benefits. With regard to CPP, the contributions are non-refundable. TFWs are not provided with information and have little or no knowledge about their CPP entitlement as foreign residents.

Foreign Credential Recognition

Finally, the TFW issue in the construction industry raises the question of foreign credential recognition. The construction industry as a whole is in the need of an effective means to assess the unique training, skills and experience of newcomers at the same level we assess Canadian workers. Whether it is one assessment tool or more than one is to be determined, but what is clear is that it should be developed nationally to facilitate the mobility of the construction workforce. The standards developed for inter-provincial credential recognition should be the same standards we use for workers arriving from other countries.

UNDOCUMENTED WORKERS

Construction ideal for undocumented workers

The residential construction industry is ideal for undocumented workers. Short-term project by project work, sub-contracted employers and the pre-existing vibrant black-market economy is ripe in demand for undocumented workers. When residential construction is flourishing workers with limited skills have easy access to jobs. With a bit of on-the-job training painting, general labouring, cement finishing, concrete forming

*Added
vulnerability of
undocumented
workers*

and rebar placing become entry level positions open to undocumented workers.

Undocumented workers are even more vulnerable than TFWs. Constant worries about their precarious immigration status enables unscrupulous employers to take advantage of workers. Undocumented workers are unlikely to make complaints or seek out advocates to respond to abusive and exploitive conditions. Non-payment of wages, overtime, holidays and other basic employment standards are common infractions.

Average wages vary from \$7 to \$15 per hour. Undocumented workers are covered by WCB through duties that fall on the prime contractor. In spite of this injured workers are ignorant of their rights and will rarely make a claim in case of an accident and injury.

*Undocumented
workers on
publically
financed
projects*

Undocumented workers can be found throughout Vancouver building and construction sites, not just in the residential industry. The BCYT-BCTC was recently in touch with undocumented subcontracted painters employed at construction sites at U.B.C. and the Vancouver Children's Hospital. Last summer we received a report about workers bedding down for the night on the concrete floor in the half completed residential tower where they worked.

Some undocumented workers overstay tourist or student visas. Others, as pointed out earlier, are TFWs who have left an abusive situation and are better off working outside of their work permit conditions.

SOLVING TFW ABUSE AND EXPLOITATION

Employers with approved LMOs have made a commitment to the federal government that they will;

- pay salaries according to local labour market conditions
- purchase return airfare for all TFW employees
- pay the costs of a recruitment agency
- register and pay Medical Services Plan premiums for TFW employees

*Need for
monitoring
and
enforcement*

There is no monitoring or enforcement of any of these terms. Without compliance mechanisms employers routinely violate commitments made to the Canadian government and their TFW employees. Worse, these employers are allowed extensions on current LMOs and allowed to make new LMO applications. Over the last three years the BCYT-BCTC has repeated calls on the federal government to initiate comprehensive random, unannounced "spot-check" monitoring teams to ensure that

employers are in compliance with their commitments and responsibilities to Service Canada.

Pre-approved LMOs

Another problem stems from pre-approved bulk LMOs. This practice offers large employers the ability to “bank” LMOs. Pre-approved LMOs enables the recruitment of specific crews of workers when they are needed. The problem is that labour markets change. Construction industry labour markets are particularly volatile. All approved LMOs should have an expiry date of no more than six months from the date of issue.

LMOs and lay-offs

Changes to construction labour markets can also affect TFWs during the tenure of a current approved LMO. Recently, an employer certified to a BCYT-BCTC affiliate union, faced with a work shortage and laid-off seven workers. Five of these were Canadians, just two were TFWs. After several weeks of talks and a timely intervention call from an official at Service Canada, the employer was persuaded to rehire the Canadians. But the problem remains. There is no monitoring and enforcement of the LMO. Employers can lay-off Canadian workers before the TFW employees.

TFWs versus immigrants

Currently there are over 180,000 TFWs in the country (including Live-in-Caregivers and Seasonal Agricultural Workers). The TFW group is larger than any single class of immigrants (Family Reunification Class accounts for 100,000, Business and Skilled Worker Classes make up 110,000 and Refugees, 30,000). The BCYT-BCTC has provided conditional support for the proposed new IRPA Canada Experience Class for TFWs who complete two years of successful employment. However our concern is that the new incentive for TFWs will become another hammer that abusive employers can hold over the head of employees. TFWs will suppress complaints that might jeopardize their chance at permanent residence. The new CEC should not be implemented until these and other concerns are addressed.

Proposed Canada Experience Class

Before expanding the TFW program and introducing the CEC we also urge the federal government to investigate the impact of the program on families and communities in the TFW home countries. Unaccounted for is the cost of the sacrifice on children and spouses who endure separation from their loved ones for years at a time. Additionally there seems to be no thought about the economic damage done to developing countries by poaching from their skilled worker pool.

Need for settlement & orientation services for TFWs

The TFW program is currently devoid of any settlement funding. ESL and FSL courses are of primary need. Settlement programs are needed to assist TFW newcomers with basic orientation on access to health care, finding accommodation, solving residential tenancy concerns, recreation and adjusting to Canadian society.

*Re-evaluation
of LMO criteria*

We must also be willing to re-assess the criteria and effectiveness of current LMOs. The Building Trades are very aware of the challenge and cost of traveling out of town for work. Mobility and travel allowances that fairly compensate for the expense of moving to construction hot-spots in the country would go a long way to resolving short term skill shortages in parts of the country. In the midst of Oil Sands development in northern Alberta and hot residential construction markets in Western Canada sit thousands of unemployed factory workers in Ontario and forestry workers in rural BC. Skills assessment, retraining and credentialing of these workers can meet some of our labour force shortages in the Western Canadian construction labour markets. With rare exceptions BCYT-BCTC affiliate unions have always been able to dispatch workers to employers. Affiliate unions in rural BC are experiencing high rates of unemployment. The recent dispatch report, attached to this submission, points to continuing high unemployment in rural BC. Posting a job on Service Canada's Job Bank for five days (the current requirement to prove a shortage of workers in order to gain approval for an LMO) may not be enough of a test to ensure that unemployed apprentices and others across the country have had access to the vacant job positions.

*Apprenticeship
training*

Likewise is the need to re-visit and re-invest in apprenticeship training. In spite of the construction boom in BC recent apprenticeship completion statistics indicate that BC is falling behind when it comes to training new skilled workers. Building a dependence on TFWs does nothing to improve the urgent need to encourage employers to invest in apprenticeship training. The attached statistical summary from the BC Industry Training Authority shows the discouraging apprenticeship completion statistics.

CONCLUSION

*Royal
Commission*

The BCYT-BCTC calls on the federal government to call for a Royal Commission to travel the country and take submissions from all stakeholders on the issue of Temporary Foreign Workers, Undocumented Workers and "immigration consultants".

*Resources for
monitoring &
enforcement
teams*

We call on the government to immediately allocate significant resources to monitor and enforce the terms of LMO agreements. Joint federal-provincial compliance teams should involve Service Canada, CIC, Revenue Canada, Employment Standards and the WCB (WorkSafe in BC).

*Advocacy
Centre for
Migrant Workers*

We call for joint federal-provincial advocacy centers to assist TFWs. Referral information and assistance is required by thousands of workers looking to solve abuse and exploitation by their employers.

Orientation programs

We call for orientation programs for TFWs at the point of entry into Canada. These orientations must alert workers to their rights and obligations as TFWs. Information about their rights under Employment Standards Acts, Labor Code, Human Rights Law, WCB and Occupational Health and Safety Regulations, Residential Tenancy Law, and access to health care is fundamental.

Settlement services

We recommend the allocation of significant resources to support settlement services designed for TFWs. Specifically, ESL and FSL training and services to facilitate adapting to Canadian culture and society.

Reassessment of LMO criteria

We recommend reassessment of LMO approval criteria. Canadian workers faced with the challenge of living out allowances, mobility costs and retraining opportunities must be included into LMO evaluations.

Revisit pre-approved LMO

We further recommend that pre-approved LMOs be re-evaluated at least every six months and that employers not be allowed to lay-off Canadian workers before TFWs in the event of a work shortage.

UN Convention on Migrant Workers

Finally, we call on the Canadian government to ratify the UN International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. It's time for developed countries, and particularly members of the government, to make a binding commitment to end the exploitation and abuse of migrant workers.