

**SUBMISSION
TO
HONOURABLE IDA CHONG, MINISTER OF
REGIONAL ECONOMIC SKILLS & DEVELOPMENT**

**BUILDING TRADES PERSPECTIVES AND LABOUR PROPOSALS
ON LABOUR MARKET OPINION EXEMPTIONS**

**SUBMITTED FEBRUARY 4, 2011
BC MINISTRY OF REGIONAL ECONOMIC AND
SKILLS DEVELOPMENT**

**British Columbia and Yukon Territory
Building and Construction Trades Council
#204 – 4333 Ledger Avenue, Burnaby, B.C. V5G 3T3
Tel: 604-291-9020 Fax: 604-291-9590**

**bcytbctc@bcbuildingtrades.org
www.bcbuildingtrades.org**



Comments on Provincial LMO exemptions

We welcome the opportunity to comment on the increasing provincial role in determining Labour Market Opinion exemptions. In spite of the detailed comments that we are making at this time, they are preliminary. We would like more time to reflect on how best to co-ordinate any amendments to the current process to ensure that the exemption is necessary, fair and consistent. We are worried about the devolution of LMO exemptions from the federal government. New BC regulations and administrative procedures may lead to patchwork practices that will put provinces at odds with each other.

The BC Building Trades Council represents approximately 40,000 construction workers in the province. We begin by making it clear we are not against the importation of Temporary Foreign Workers (TFWs). Our only conditions are that there are not unemployed Canadian citizens and landed immigrants available to fill the positions offered. Further, we will not tolerate TFWs as a source of cheap labour.

We hope this consultation on LMO exemptions will be on-going. It is not enough to canvass the opinions of stakeholders in a one-off event and then claim that stakeholders were consulted. True consultations can only result from setting up conditions where all interested parties are allowed a forum to build relationships of trust and respect. Differences of opinion are expected but parties must know that they have been heard, their comments must be recorded and publically available. A true consultation involves the setting up of advisory committees which have regular meetings and a defined role in the development of public policy.

We strongly encourage the province to include all of the worker advocacy stakeholders in this LMO exemption consultation process. Aside from construction unions, stakeholders include:

- The labour movement; BC Federation of Labour, the UFCW, the BCGEU, HEU, Steelworkers and others unions.
- Migrant workers advocacy groups; SIKLAB, Justicia for Migrant Workers and Migrante.
- Human rights and labour lawyers who have dedicated themselves to this issue (included are; Fiorello, Glavin, Gordon; Main Street Law, Victory Square Law, Kevin Blakely LLB, and others).
- Settlement agencies, MOSAIC and others.
- Academics including David Fairey, Trade Union Research Bureau and many others connected to Metropolis (see their Spring, 2010 issue).
- Municipal and community authorities who work with migrant workers and their families (e.g. Vancouver School Board Settlement Workers in Schools - SWIS, Collingwood Community Centre and others).
- Finally, churches and the ecumenical community at large including the MCC and Karios.

The LMO process is in place to ensure that employers have made an honest and genuine effort to employ Canadian citizens and landed immigrants first. Exemptions and expedited LMOs open the door to variances that relax oversight by authorities. We depend on government staff to adjudicate the priority to provide the best service for all applicants for migrant workers. We do not support weakening administration procedures simply to meet employer demands that their application is taking too long to adjudicate. A knee-jerk reaction and rubber stamping of LMO exemptions to match changes in labour demand for some employers can seriously damage training opportunities for landed immigrants and Canadian citizens. A sudden influx of migrant workers will also inordinately stress the few resources that are available to advocate and support migrant workers once they arrive. Migrants are a vulnerable class of workers who:

- 1) are unable to communicate in English,
- 2) have a lack of knowledge of worker rights in Canada,
- 3) are separated from their home support communities,
- 4) have restrictions on their work permits (dependent and tied to a single employer or even a group of employers).
- 5) have high unemployment in their home country and wages averaging less than \$500 per month. TFWs have less incentive to complain about minimum wages in Canada given that they are still earning more than double their national average.

This being said we are ready to look at legitimate employer complaints about delays in LMO approvals and assess the best method to address those issues.

LMO Exemptions

The list of LMO exemptions is fairly straight forward; there are eight:

- 1) workers under international agreements,
- 2) inter-company transfers,
- 3) spouses,
- 4) exchange programs,
- 5) co-op students,
- 6) academics and students,
- 7) religious workers and
- 8) others.

While not exactly an exemption the Expedited LMO was a process that essentially 'rubber stamped' approval for certain occupations 'under pressure'. Essentially this process amounted to an exemption. The E-LMO program ran as part of the TFW pilot project in BC and Alberta from 2007 until April of 2010. It was discontinued because of continuing high unemployment in Canada as a result of the 2008 recession. The E-LMO enabled employers who had been previously assessed as legitimate applicants (i.e. they meet the criteria of being

a legal business for a determined period of time) to by-pass the normal assessment by HRSDC officers for specific “under-pressure” occupations.

The E-LMO was introduced after lobbying from employers and representations from the Canadian Bar to the Ministers of HRSDC and Canada Immigration and Citizenship. Pressure had been mounting on government officials as more employers learned about the TFW program. At this juncture it is important to note that before 2006 the number of TFWs in the BC construction industry was less than 1,000. New awareness by employers about the possibility of TFWs coincided with a boom in residential housing construction, particularly high-rise condominiums in the Lower Mainland. Within a few short months the demand on the local regional TFW unit of the Human Resources and Skills Development Canada escalated. Without consultation the federal government announced in 2007 the designation of seven construction trades as “under-pressure”.¹

According to ‘Annex F’ of the Canada-BC Immigration Agreement (April, 2010)

CIC may issue a work permit to an eligible individual foreign national destined to work in BC in a specific occupation for a named employer or defined group of employers without requiring a LMO.

‘Annex F’ now replaces the E-LMO. We have had many concerns with the E-LMO in the past. These concerns, explained later in this submission, carry over to ‘Annex F’.

While facilitating and expediting the entry of TFWs ‘Annex F’ recognizes

... the importance of supporting BC’s efforts to train and improve the skills of British Columbians, and of ensuring compliance with all applicable also including those involving immigration, employment standards, workplace safety and labour regulations.

LMO exemptions for ‘occupations under pressure’ have the potential to destabilize construction labour markets for apprentices and journey-level workers alike. The impact of TFWs on apprenticeship training is a topic now being investigated by academics. An initial study by the Canadian Apprenticeship Forum (June, 2010) has concluded that the impact is not yet large. Nevertheless it is important to acknowledge the concerns about the consequences for BC apprentices of increasing dependence by some employers on TFWs. The CAF study found that some employers rely on TFWs to overcome “lack of motivation, unrealistic wage expectations, poaching and

¹ For the construction trades the “under pressure” list included: Journeyperson Carpenters, Construction Labourers, Journeyperson Crane Operators, Journeyperson Industrial Electricians, Journeyperson Ironworkers, Journeyperson Roofers and Journeyperson Welders

low completion rates" by Canadian apprentices.² Clearly, some employers see TFWs as a way around their responsibility to provide training. The CAF report also repeatedly talks about the impact of TFWs in compulsory trades. There are no compulsory trades in BC. The six month qualifying period mentioned in the CAF study only applies to Alberta³

It is important to note that less than 30% of construction apprentices registered with the ITA actually complete their training to journey-level certification. This compares with over 90% completion rates for apprentices registered with Building Trades Joint Board (employer-union) trades training programs. One of the most important reasons explaining the poor completion rate for non-union apprentices is the difficulty they encounter completing the experiential portion of their training. Over 80% of the hours required to complete an apprenticeship are employment hours (time spent in the classroom at vocational institutes constitutes the other 20%). The construction industry is characterized by short, project by project employment. Apprentices and journeymen alike are constantly moving from one employer to another. As projects are completed workers are laid-off. Without the support of apprenticeship advisors at the joint board and access to dispatch services apprentices are left to their own devices to find their next job. Apprentices who are unemployed for long periods of time (a problem that impacts the non-union trainee more than union trainee) give up their quest to achieve journey-level certification. They are forced to take on employment in other industries to meet their income requirements. Add TFWs to this delicate balance. TFWs who accept construction employment at wage rates less than the standard apprentice rate impact skills development in BC.

The construction industry is unique. The tender-bid process is highly competitive. Ruthless bidding is often accompanied by corrupt 'bid-shopping'. Unrestricted sub-contracting down to individual workers provides an end-run around employment standards legislation. Other companies sub-contract out to employers who operate in the underground economy. Cash payments to TFWs who overstay their work permits are common. In spite of this shady side of the industry all employers need to access a pool of highly skilled craft workers. In this context any change to the way that TFWs gain access to employment (i.e. LMO exemptions) can easily destabilize the delicate balance between the need to train new workers and employers' imperative to win tender bids.

Before moving on to specific comments about our experience with LMO exemptions it's important that we all agree on the definition of a TFW. TFWs are not 'temporary immigrants'. TFWs are not residents, their work permit is tied to a single employer or group of employers, they are excluded from settlement programs and they face a host of other limitations on their rights.⁴ Immigrants

² The Increasing use of Temporary Foreign Workers: Impacts on Apprenticeship? Canadian Apprenticeship Forum, Prism Economics, p.7

³ Ibid.p.31

⁴ Eugenie Depatie-Pelletier, Restrictions on Rights and Freedoms of Low-Skilled Temporary Foreign Workers, Canadian Issues (Metropolis), Spring, 2010. P. 65.

are defined in the Immigration and Refugee Protection Act (IRPA), as those who have made application and have been accepted under one of a number of immigrant classes (e.g. Skilled Worker, Family Class, Entrepreneur, Refugee and Experience Class). TFWs are migrant workers covered by separate legislation in IRPA. TFWs are also subject to international law (pending ratification in Canada) in the UN Convention on the Protection of the Rights of All Migrant Workers and their Families. Because they don't share the same rights as landed immigrants and citizens they are vulnerable to the whim of their employers. They often do not speak English; have little or no knowledge of the Employment Standards, Labour, Human Rights or WCB protections under BC legislation. Even if they are aware of their rights, they are often afraid of employer retaliation should they make a complaint. And they have no way of communicating their concern without interpretation and translation services

Problems with 'non-occupation specific' exemptions

We have encountered problems with inter-company transfer exemptions. This exemption allows companies that operate in a foreign country to send workers to their branch in Canada. The guidelines for the exemption are clear enough. The exemption provides the ability to transfer executives/senior managers and employees who possess specialized knowledge. Middle managers and supervisory staff are not supposed to qualify. The problem is that the designation of who qualifies is left up to the employer.

In one case the employer categorized labourers, machine operators, mechanics as supervisors with specialized knowledge. In testimony at the BCLRB the company foreman justified the categorization. The foreman said 'Those workers (the hydraulics operators and train operator) are supervising their own actions, they're supervisors'⁵. Without oversight the inter-corporate transfer exemption has been abused by some employers as a loophole to gain an LMO exemption.

Exemptions for professionals allowed under free trade agreements should not be a problem, as long as the exemption is truly for a professional. It is a problem if it is for a trades worker. As with the inter-company transfer example, cited above, we are concerned that some employers may use the trade agreement exemption as a loophole to by-pass proper LMO oversight.

- Is the immigration agent at the border the only person monitoring the work permit?

Prior to 'Annex F' (7.1(d)) CIC provided an exemption for spouses of the principle holder of an LMO; as long as the principle's work permit had been limited to NOC category O,A, or B. Under 'Annex F' this exemption is being extended to work permits issued to low skilled workers (NOC C, and D). The principle LMO

⁵ CSWU 1611 vs SELI-SNCP, BCLRB hearings, Vice-Chair Topalian, October, 2006

holder has a very restricted work permit but the spouse is allowed to work freely at any job they can find.

From the social point of view; we understand the family needs to support itself while in Canada. However it is at odds with labour market requirements of this country. At this time we do not believe that this contradiction has a large impact on domestic labour markets. The exemption's use is not widespread as most TFWs are not accompanied by their spouse. To this point we haven't seen an impact on the construction industry as a result of this exemption. Having noted the above though we are of the opinion we need to continue to monitor the new exemption.

Our concern regarding exemptions for foreign students and exchange students is that there is nothing stopping the person from taking employment outside of their field of study. Students should be encouraged to stay in Canada after their studies in order to find work in their field of study not to disrupt other areas of the labour market.

LMO exemptions for 'occupations under pressure'

The Expedited LMO for 'occupations under pressure' has posed the greatest concern for Building Trades unions. It will be the same with 'Annex F'.

Any truthful dialogue about skills and labour shortages cannot take place without considering wages and working conditions. Most skilled workers won't accept work unless employers offer a competitive wage, benefits and work conditions. An employer who offers \$10 per hour for an experienced construction labourer is not likely to find many takers. When the offer is \$30 per hour there is no problem with labour supply. Some employers will exaggerate and overplay their complaints to government staff overseeing exemptions to LMOs; they will complain about "skills shortage" when the real problem is a "wage shortage".

From 2006 onward BC Building Trades surveys of affiliate unions found less than full employment in a number of the trades that the E-LMO designated "under-pressure" (especially; labourers, ironworkers, welders and certain crane operators). These surveys were always provided to the regional TFW office as evidence of the oversupply of workers. The fact was that Unions representing trades designated as "under-pressure" were not experiencing full employment. Even in the few trades that were experiencing full employment not a single union indicated the unavailability of workers. Unions were able to draw on workers from other parts of the province or country had employers been willing to cover some of the travel and living-out costs or EI support that may have been required.

We are more than willing to provide the latest Dispatch survey to the BC Ministry of Regional Economic & Skills Development on the condition that its use is strictly

for the purposes of assessing labour market conditions and that the survey will maintain the confidentiality of the survey.

The E-LMO was also slow to adapt to changes in the market. From the spring of 2009 through until April of 2010, Ironworkers remained as an “under pressure” occupation. Yet, the Ironworkers Local 97 was reporting unemployment of over 60% during this time. This situation led to the embarrassing granting of work permits to 25 off-shore workers to erect a crane at the Esquimalt graving dock.⁶

Concluding remarks

The Building Trades would like to be involved in on-going consultations with the Ministry of Regional Economic and Skills Development on the issue of amending the exemptions and eliminating the need for some occupations to go through the LMO review process.

There are a number of other worker advocacy groups that should also be invited to participate in the on-going consultations.

Because of changing demand on labour markets and occasional strains on specific labour markets we recommend that there be no specific trades designated as ‘under pressure’. We encourage the Ministry not to provide exceptions to the LMO process for any construction trade. As an alternative we call on the government to increase administrative resources so that temporary worker applications can be assessed including the requirement to conduct a LMO, in a timely fashion.

⁶ See attached clippings from the Victoria Times Colonist, April 1, 2010.

ATTACHMENT:

Union workers protest that 25-member Chinese team gets \$5.5 million crane assembly job in Esquimalt

Mar 31 2010



A protest was held by union shipbuilders who are unhappy that a new 30-tonne crane at the Dockyard will be assembled by workers from China, where it was built. Union members say that the assembly work will take two or three months and could be done by their members, some of whom are unemployed and eager for work. (March 31, 2010)

Photograph by: Debra Brash, Times Colonist

Foreign workers are assembling a new 30-tonne crane at the Esquimalt Graving Dock but local workers will get the job of modernizing an existing crane at the ship repair and construction facility, said its director.

Word that a 25-member team from China will be erecting the new \$5.5-million crane, which arrived early this morning in sections on board a ship, has inflamed union workers who say they need the work and are capable of carrying it out.

Canadian Ironworkers built the existing cranes at the graving dock, said James Leland, business manager for Ironworkers Local 97,

“Ironworkers have been building and erecting cranes in B.C. for a 106 years. Erecting cranes is what we do and we do it well.”

Close to 100 union members rallied today at the Admirals Road entrance to the federally owned graving dock to decry the plan to use foreign workers on the crane.

“Our government is investing in infrastructure projects in order to help stimulate the economy and employ Canadian workers. Yet here in Victoria, they decided it is okay to bring in Chinese workers to do jobs that should be done by unemployed Canadians,” Leland told the rally. “We have seen unemployment of up to 50 per cent in our trade on Vancouver Island.”

The federal government has opened the door to multinational companies, telling them they are not only welcome to manufacture offshore but that they can come here with foreign workers to take jobs from Canadians, Leland said.

Canada’s immigration rules allow companies to bring in workers with specialized knowledge, he said. “This loophole is big enough to drive a truck through.” The government is turning a blind eye to this issue, he said.

NDP Esquimalt-Royal Roads MLA Maurine Karagianis echoed concerns of union members, saying she will raise the issue in the provincial legislature.

Esquimalt-Juan de Fuca MP Keith Martin, said, “With skilled trades, you either use them or you lose them. We have to keep these skilled workers employed to maintain the capacity and provide the training for the apprentices, who are the future of our trades.”

Jim Milne, Esquimalt Graving Dock director, said later that the new crane will be assembled on the south side of the facility, where the existing 30-tonne crane, about 20 years old, is currently located. A 150-tonne crane was in place today to lift sections of the new crane off the ship.

The new crane will be erected by May. Further work by supplier Konecranes Plc of Finland, which had the crane manufactured in China, will be carried out and local workers will be used for that stage, Milne said. It is expected to be ready to operate in July.

Also, the older 30-tonne crane will be dismantled and updated by local workers, he said. It will be reassembled on the north side of the dry dock.

Konecranes won the job to build the crane for the graving dock following competitive process.

“Konecranes had the lowest bid and the Government of Canada could not stipulate local content in the contract with Konecranes as per our international trade commitments,” Ruslan Tracz, communications manager for engineering assets strategy with Public Works and Government Services Canada, said this week.

“The foreign workers have been contracted by Konecranes Plc, the contractor responsible for the manufacturing and installation of the crane.” Konecranes is required to comply with Canadian immigration rules and any other requirements for entry, Tracz said.

These foreign workers are familiar with the crane’s design and construction, and were part of the manufacturing process from the start, he said. They are responsible to erect the crane efficiently and safely to allow for the long-term warranties, contractual matters, and the project’s schedule.

cjwilson@tc.canwest.com