

LABOUR AND MIGRATION

Welcome! (But don't get comfortable)

The permanence of Canada's temporary migration program

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“‘HELP WANTED’ SIGNS are everywhere. When it starts to affect our ability to go to Tim Hortons and get a double-double, it ceases to be a laughing matter.”¹

The Harper government's first minister of citizenship and immigration, Monte Solberg, offered this quip to the media during a trip in oil-dependent Alberta, setting the tone for how labour market and immigration policies would change in Canada. It was certainly a simplistic reason for expanding Canada's Temporary Foreign Worker Program (TFWP), but the symbolism was powerful. It hit on worries about getting your “Timmies,” and stoked fears that companies were having trouble getting the oil out of the ground and growing the economy at a time of economic instability.²

This chapter examines how the Harper government massively increased the number of temporary work permits granted to employers, facilitated the undercutting of labour rights, promoted wage suppression, advanced wedge politics within the labour movement, and encouraged xenophobic and anti-immigration sentiment across the country. Herein lies the more sophisticated elements of the government's real economic action plan.

The TFWP had always been a relatively obscure and small program. Early into its first mandate, the Harper government purposefully expanded the program to

epic proportions with incremental and silent administrative and policy changes. This quiet determination to fundamentally alter Canada's labour and immigration policy framework soon grew bolder. From 2010 to 2013, a spate of legislative reforms solidly shifted Canada away from a policy of permanent economic immigration toward one that favoured the temporary migration of a disposable workforce.

Through the transformation, there was little concern on the government's part for workers' rights or employment standards. Not only were employers soon benefiting from a near doubling of the number of temporary permits that were granted between 2006 and 2013, they were also encouraged to use migrant labour in every occupational sector.³ Employers could offer lower wage rates, and this led to across-the-board wage suppression. Employers were also given unprecedented influence in determining who became a permanent resident and, ultimately, a citizen. The power granted to the corporate sector during this time frame was significant. By 2014, numerous cases of exploitation and widespread abuse of migrant workers had become increasingly commonplace and impossible to ignore.

The early years: building a flexible labour force

After forming a minority government in 2006, Prime Minister Harper boasted his intention was “to create the best educated, most skilled, and most *flexible* workforce in the world” (emphasis added).⁴ The government created this flexibility, in large part, by giving employers rapid and unfettered access to temporary work permits for workers sourced from abroad. Harper's first budget implementation bill committed the government to “making improvements to the Temporary Foreign Worker Program to respond to employer needs.”⁵ These improvements included:

- Reducing TFWP processing delays and rapidly responding to employer claims of regional labour and skill shortages;
- Expanding the online TFWP application system;
- Maintaining lists of occupations with alleged (but unsubstantiated) shortages; and
- Producing an employer-friendly guidebook on how to navigate the TFWP efficiently.

With a dozen key words, buried in the 477-page omnibus budget plan of 2007, the government gave the green light to widen the TFWP: “Employers may recruit workers for any legally recognized occupation from any country.”⁶

Since the changes were made under the guise of “internal administrative efficiencies of an employer-driven program,” the government made these changes by avoiding public awareness or parliamentary review.⁷ This profound merger of immigration and national labour market policies went largely unnoticed by the general public. However, it did send a clear message to employers and labour brokers that a friendly federal government was in town, willing to facilitate access to an international labour pool for every single job in the country under the TFWP.

In Budget 2007, the Conservative government allocated \$50.5 million to support the TFWP. A former director of the TFWP unit revealed that less than 2% of this money was earmarked for compliance measures.⁸ This meager percentage was allocated to the Canada Border Services Agency (CBSA) to provide security clearance processing of temporary workers — not to monitor or enforce labour standards. No budget funds were allocated to ensure the veracity of employment contracts. In fact, no formal monitoring of employers using the TFWP occurred until 2009. Even then, these initiatives were voluntary and limited to employers who consented after their work permits had been issued.

Harper went further by establishing the Occupations Under Pressure lists (OUP). There were lists of specific occupations where workers were allegedly deemed to be in short supply. Inquiries made to senior government staff by this author for details on the process and criterion of establishing these lists revealed there was no requirement for employer claims to be verified. Neither were stakeholders such as unions, trade councils or training colleges consulted.⁹ Rather, the process simply relied on employer claims they could not find workers. The OUP lists were used with fast-track TFWP programs in British Columbia in advance of the Winter Olympics, for example. As well, fast-tracking was used in Alberta for tar sands extraction. In this case, employers had access to Expedited Labour Market Opinions (ELMO) as a first step in obtaining a temporary work permit.¹⁰ Although public servants were instructed to process employer applications within 10 days, 85% of employer requests were positively assessed in just three to five days.¹¹

Across-the-board growth

The general public equates the TFWP with seasonal farm workers and nannies that help with elder care and child care work. In reality, the TFWP contains many different options for employers to access temporary work permits and migrant workers. This includes country-specific reciprocal agreements, like youth exchange programs, academic exchanges, or short-term cultural/artistic employment contracts (see Mertins-Kirkwood chapter). Temporary work permits are also provid-

TABLE 1 Entries of Temporary Foreign Worker Work Permit-Holders by Sub-Status; and Presence of Temporary Residents Not Subject to Labour Market Impact Assessment by Sub-Status

Category	2006	2007	2008	2009	2010	2011	2012	2013
Low-Skill Workers Total	36,833	50,816	61,700	51,138	45,579	45,545	52,294	55,651
High-Skilled Workers Total	28,331	33,013	35,182	29,101	25,338	24,501	28,297	27,672
International Mobility Programs Total*	83,989	94,356	113,162	136,198	156,396	187,241	219,395	250,424

Source Government of Canada, "Overhauling the Temporary Foreign Worker Program," Tables 2 and 3 (figures do not include permanent resident applicants).¹²

ed for low-wage work under a low-skill program, but employers such as universities can also obtain temporary permits for high-level research and study purposes. Even the Bank of Canada has used the TFWP to bring in specialists with developing currency that is difficult to counterfeit. Multinational corporations can accommodate the temporary transfer of senior executives or specialized workers using a pathway called the intra-company transfer (ICT) visa option. Employers can also obtain work permits as part of bilateral or multilateral trade and investment agreements (NAFTA, FTA or GATS). All told, the number of temporary workers in Canada has increased dramatically during the Harper years.

Growth of precarious work, shrinking wage security for all

The increase of temporary work permits under the Low Skilled Worker Pilot Program deserves particular attention.¹³ This program gave employers temporary work permits for a maximum of 24 months in occupations requiring, at most, a high school diploma or a maximum of two years on-the-job training. The program caters to hotel cleaning, food services and meat packing plant jobs. Industrial farm operators, as well as the food and restaurant industry, among others, had long been petitioning for enhanced access to low-skilled workers. The Conservative government grew this particular program for employers from just under 5,000 issued work permits to more than 25,000 by 2011.¹⁴

Migrant workers entering Canada under this program are very vulnerable (to wage exploitation, poor working conditions) because their status in Canada is dependent on one employer: they may work for no one else. The threat of deportation is frequently used to impose lower wages and poor working conditions. Often limited in English or French language abilities, and with little awareness of their

rights, many of these workers face exploitation and abuse by unscrupulous brokers and bad bosses. Equally disturbing is the number of work permits issued for jobs that do not describe the type of work a person is doing. The number of individuals with these open work permits grew the fastest under the Conservative government. More than a third of all permits issued in 2012 were denoted as job “level not stated.”¹⁵ These two categories together illustrate how little oversight exists under the Harper government’s watch.

Eventually, the media began to report an increasing number of employers feigning labour shortages in order to hire low-skilled workers. Workers’ organizations began reporting stories of workers having little choice but to accept lower wages than those promised or be deported after incurring massive debts to come here.¹⁶ At the same time, unemployed members of the national workforce reported being passed over on jobs in the hospitality, long-term care and services sectors so that employers could gain access to a compliant and vulnerable labour pool. With youth unemployment levels continuing to hover consistently at twice the national average, parents began to question why migrant workers were filling entry-level jobs their children could do.

In response to the growing media attention and public backlash, the Harper government made a series of politically opportune announcements of reforms between early 2010 and July 2013. These included:

- A promise to establish a list of disingenuous employers;
- Increased rigour assessing employer applications and shorter processing times;
- Ineligibility periods for employers found breaking labour standards;
- Time limits on work permits;
- Ability for employers to pay workers less than prevailing wage rates;
- Voluntary compliance audits;
- Changes to advertising guidelines of job postings;
- Requiring English and/or French for all jobs;
- Requiring employers to declare their applications will not lead to layoffs or outsourcing;
- Granting inspectors site visit powers without warrants; and
- Extending time frames for investigations.¹⁷

The reforms were strategically promoted to give the appearance of a crackdown on employer abuse. The reality was quite different.

Unpacking the 2010–2013 TFWP reforms

Late in 2009, with the media reporting on employment abuses at Denny’s restaurants¹⁸ and many others associated with the TFWP,¹⁹ Jason Kenney, then minister of citizenship and immigration, frequently boasted his government would establish a list on the CIC website of “disingenuous employers” – those who have broken the rules. It was his government’s “duty to migrant workers, employers, and all Canadians, to ensure that the program is fair and equitable.”²⁰ However, the so-called “bad boss” list was not established until 2011 and had no employers listed on it until late 2014.²¹ Currently, this list has the names of only five employers on it. Perhaps this is due to the fact that there were no government workers responsible for monitoring employers. In contrast, during this time, thanks only to access to information requests, it was discovered that 200 federal workers were assigned to speed up the processing of TFWP applications for employers.²²

The Conservative government steadfastly refused to be transparent regarding staffing levels within the TFWP unit. When the numbers finally came to light in 2014, the number of investigative staff in the period 2010–2014 was revealed to be woefully inadequate for the size of the program.²³ For example, in 2012, there were only 14 investigators at a time when more than half a million temporary work permits had been issued. The ratio of investigators to issued work permits translates into caseloads ranging from 12,228 to 45,150 per public sector worker during this period. This fact alone casts serious doubt on the possibility of any rigorous assessment taking place.

Any government claims that employers caught violating program rules would face a two-year ban should be judged against regulatory amendments that were quietly enacted. They proposed if a migrant worker “entered into or extended an employment agreement with an employer whose name appears on the [bad boss] list maintained on the Department’s (CIC) website,” border officials could deny the migrant worker entry into Canada.²⁴ Kenney’s notion of “fair and equitable” meant migrant workers could be barred from Canada because of their employers’ actions.

The government placed a four-year cap on the period of time a migrant worker could remain in Canada, after which they must leave for four years (referred to as the “four over four rule”). By doing so, the Conservative government made it clear that migrant workers were welcome to serve employers but may not get comfortable here. This hard line is estimated to have affected a first wave of at least 70,000 individuals, and this number will grow over time.²⁵ Migrant rights advocates anticipate this will lead to a significant spike in individuals slipping into undocumented status rather than return to their home country. Such policies increase worker vulnerability and contribute to downward pressure on wages as unscrupulous

employers take advantage of the growing number of undocumented persons who become desperate for any type of work.

Another highly controversial reform involved transforming the Expedited Labour Market Opinion (ELMO) into the Accelerated Labour Market Opinion (ALMO). In late April 2012, at a fabrication plant in Nisku, Alberta, a province where employers, at that time, had already been given well over 60,000 work permits, then HRSDC Minister Diane Finley announced employers would be immediately given rapid access (10-day processing of applications) for high-skilled migrant workers. “This improvement is a direct result of consultations that were held with employers,” said the minister.²⁶ What she left unsaid was that this change had neither been publicly debated nor discussed in Parliament.

The Conservative government hid details of the reform by waiting a month before releasing the specifics in a government release late on a Friday afternoon. In addition to the fast-track application process the government permitted employers using the ALMO window to pay migrant workers up to 15% less than *prevailing wage rates*.²⁷ While exploitative of migrant workers, this measure also provides a clear example of the government’s efforts to use the TFWP as a tool for suppressing wages. Recall that, in 2007, the Harper government invited employers to use the TFWP to recruit internationally for all occupational sectors. The “pay less” component of ALMO, introduced in 2012, meant that once an employer obtained a temporary work permit, they also received the ability to negotiate lower wages rates for *all* of their employees.

The ALMO reform meant if an employer had migrant workers in their employment, they could now negotiate a lower wage scale for all employees (migrant or not) doing the same job in the same workplace. In workplaces where no migrant workers were present, wage suppression would still take place. Consider two welding shops in one town: Shop A employs migrant workers and Shop B does not. The owner of Shop A can negotiate a 15% wage reduction for all its welders. Shop B will be affected by their competitor’s lower wage rates and would be forced to follow suit in order to remain competitive.

The ALMO rule applied not only to high-skilled occupations but also allowed for a 5% wage reduction for low-skilled occupations. This incremental two-step policy manoeuvre (opening all sectors to temporary foreign workers in 2007 followed by a “pay less” policy in 2012) successfully introduced a wage suppression policy across the entire labour force.

Ultimately, ALMO proved a political disaster for the government.

Access to information stirs the pot

The Harper government has consistently stonewalled, obfuscated or misrepresented its TFWP reforms. In 2012, the Alberta Federation of Labour (AFL) successfully obtained a detailed listing of employers who had obtained work permits for high-skilled migrant workers under the ALMO initiative. The nearly 500-page document was also published online by the *Globe and Mail*. The discovery that nearly 5,000 employers across the country had been given approval for temporary work permits in just eight months since the ALMO program was launched was explosive news.²⁸

Researchers found that nearly half of the approvals were highly questionable. Minister Finley had announced ALMO was intended to be used to import high-skilled workers such as managerial, professional and technical occupations, yet nearly half of the Harper government approvals went to “fast-food restaurants, convenience stores, gas stations and other businesses across the country that almost exclusively employ low-skilled workers.”²⁹

In an embarrassing effort to glide over the hole in the ice the access to information request had opened, Kellie Leitch, then newly appointed minister of labour, argued “these workplaces could have been in desperate need of highly skilled managers.”³⁰ Kenney also made a serious misstep. In response to a question in Parliament from NDP leader Tom Mulcair, the immigration minister tried to convince the House of Commons the 15% “pay less” rule, which was part of the ALMO initiative, did not exist.³¹ Later that same afternoon, at a press conference in Ottawa, he announced the end of the ALMO program due to cross-country outrage, making his misstep in Parliament particularly embarrassing for the government.

As the TFWP numbers surged upward, so too did public awareness of inherent problems in the program. Early in 2010, the Alberta Ministry of Employment and Immigration released a report based on an inspection of over 400 worksites employing migrant workers. The provincial government report found that 74% of employers had violated their employment standards rules.³²

By summer of that same year, Alberta’s employment and immigration minister, Thomas Lukasak, concluded the TFWP was no longer working well for his province, saying, “It’s a temporary solution to a permanent problem. Why not consider some permanency for this workforce? I always joke (that) the only group that really benefits from the current TFWP is Air Canada, because they are flying people in and out.”³³

Alberta was not unique. In Saskatchewan, 40% of employers with migrant workers were not in compliance with the province’s employment standards: 55% were not in compliance on farms, and 78% were not in compliance in restaurants.³⁴

Former Canadian auditor general Sheila Fraser was equally blunt in her 2009 review of the TFWP. Fraser's report to Parliament laid the blame squarely on the government, saying: "there has been no systematic follow-up by either CIC or HRSDC to verify that employers are complying with the terms and conditions under which the LMO application was approved, such as wages to be paid and accommodations to be provided."³⁵

The government formally agreed with the auditor general's recommendations, but an evaluation of the TFWP-LMO streams dated October 2012 and obtained under a freedom of information request stated that: "it has not been possible to determine the extent to which employers comply with the requirements of the Program or respect TFW rights because there has been very little monitoring of employers to assess trends in compliance."³⁶

Although Kenney would repeatedly claim his government was cracking down on the growing number of abuses that regularly came to public attention from 2009 onward, the facts show otherwise. Access to information requests reported by Press Progress on June 20, 2014 revealed that "[n]ot one single inspection was carried out in the first four months of that year at businesses that employ temporary foreign workers," despite 43 inspectors being on staff within the TFWP unit that year.³⁷

Unpacking the 2014 reforms

By late 2014, public sentiment about the TFWP was clear. Over 50% of people felt the program was being abused "frequently" or "all the time."³⁸ The TFWP was no longer obscure. It was now synonymous with exploitation, fraud and corporate abuse.

Employers did not help themselves. Restaurants Canada President Garth Whyte claimed continued access to the TFWP was essential for his sector. He claimed "hiking wages to \$100/hour wasn't enough" to lure Canada's 1.3 million unemployed to work in a kitchen. Canadian Federation of Independent Business (CFIB) President Dan Kelly suggested Canadian workers are "too lazy" to commit to a paying job. He said "foreign workers have a better work ethic" because "they're going to show up to work on time, they're going to work a full week without disappearing."³⁹ Public sympathy for the plight of employers was unmoved.

By this point seven in 10 Canadians thought the TFWP was being abused by the employers who weren't doing enough to hire Canadians.⁴⁰ Prime Minister Harper and Minister Kenney, the key government spokesperson on this file, were quick to take political advantage of the perceived culprit. From June to October 2014, the Harper government aggressively stepped up its accusations against employers as the source of the TFWP problems.⁴¹ A culpable and convenient scapegoat deflected

what nearly a decade of Conservative government policy had created with its “flexible” labour force agenda.

The government had one more strategy left to play. It would roll out another set of extensive reforms targeting employers as the culpable stakeholder, while repeatedly offering the specious commitment that Canadians would get first crack at available jobs. The list below summarizes key reforms introduced by the Harper government in the middle of 2014, included under the heading “Overhauling the TFWP: Putting Canadians First”:⁴²

- Divide the TFWP into two distinct programs;
- Report more data publicly;
- Restrict employers’ access to the TFWP;
- Introduce new labour market impact assessment processes;
- Introduce caps on low-wage work permits;
- Refuse applications in areas of high unemployment;
- Reduce the duration of work permits and length of stay periods;
- Change federal/provincial & territorial immigration agreements;
- Require transition plans for high-wage position;
- Improve labour market information;
- Impose stronger enforcement and tougher penalties;
- Increase detection of abuse;
- Raise the fees; and
- Improve rights awareness systems.

While some of these reforms appear to hold promise, the Harper government rolled them out in a politically self-serving manner. Close examination reveals that implementation measures once again tend to favour employers rather than workers.

When the numbers are against you, change how you count

To stanch criticism of how large the temporary worker controversy had grown, the Conservative government split the TFWP into two distinct programs. One stream retains the name TFWP and is intended to be the last resort for employers to fill jobs

for which there are no qualified members of the national workforce available. Little has changed to protect workers brought to Canada under this stream: the majority remain tied to one employer, and are stuck in low-skill occupations earning low wages. These workers originate from developing countries and are predominantly racialized. The second category is called the International Mobility Program (IMP) and is intended to “advance Canada’s broad economic and cultural national interests.”⁴³ The majority of these workers are expected to take high-skilled occupations earning higher wages.

These programs fundamentally alter how temporary work permits are counted and how changes over time can be compared. The new two-part system also gives the majority of employers an exemption from having to undergo the new Labour Market Impact Assessment (LMIA) process. The government’s own report, titled *Overhauling the TFWP: Putting Canadians First*, released in July 2014, includes two telling tables. The total number of temporary work permits granted to employers (and not subjected to a LMIA) as of December 1, 2013, was in excess of 630,000.⁴⁴ Meanwhile, the number of TFWP workers in the country on December 1, 2013 is presented as being just 83,740.⁴⁵ According to this depiction, it stood at only 65,487 in 2006 when the Harper government first came to power. Now the growth of the TFWP program looks marginal. This sleight of hand and categorical nuance allows the Conservative government to disingenuously sidestep the very real criticism of the size of the program.

In addition, the government claimed more data would be reported publicly, including the names of corporations that receive approved LMIA’s beginning in the fall of 2014. At time of writing, nothing has been posted on the governments LMIA web pages.

High unemployment rates no barrier to foreign hires

Under the new rules, employers in areas of high unemployment, particularly for jobs in accommodation, food services and the retail trade sector, will not be able to access the new TFWP program. Specifically, government documents state that: “any applications for positions that require little or no education or training will not be processed in economic regions with an unemployment rate at or above six percent.”⁴⁶

Yet the Harper government let employers access the TFWP within a First Nation community in Alberta where the unemployment rate was well above the 6% cut-off.⁴⁷ A similar situation exists in Saskatchewan because the federal government omitted the unemployment rates for First Nation communities in its data collection. Arthur Sweetman, an economist and policy expert at McMaster University,

said this is because the program is using “EI regional unemployment rates, (which) completely ignores Aboriginals living on reserves. It’s as if they don’t exist.”⁴⁸

Reducing work permit duration hurts migrant workers

Work permits are now valid only for one year, but can be subject to renewal. Shortened work terms means less income for migrant workers. Often low-skilled workers are charged thousands of dollars in illegal fees based on the length of their employment contracts. Workers who accepted four-year agreements prior to the rule change, but now face shortened contracts, will likely be forced to pay the remaining three-year debt to unscrupulous brokers. Many will return home with far less, or slip into an undocumented status. Given there is no exit protocols built into the TFWP system, and poor information available on the whereabouts of these workers to begin with, there is a strong likelihood a large percentage of those with work permits in Canada will become undocumented.⁴⁹ This reform punishes migrant workers, adds to labour force precarity, and misses the mark in dealing with unscrupulous labour brokers.

Federal–provincial/territorial immigration agreements short of useful

For the vast majority of the labour force, employment standards fall under the jurisdiction of the provinces and territories. The Harper government’s plan to reform intergovernmental immigration agreements avoids using this policy space to strengthen compliance measures in tandem with sub-national counterparts and international covenants. The Conservative government’s plan is to change the existing agreements by “limiting their scope,” not expanding them.⁵⁰ As a result:

- No effort will be made to address housing arrangements for migrant workers where inadequate, unsafe, and unsanitary housing stock has been a routine problem for agricultural workers and live-in caregivers;
- Nothing will be done to enhance provincial pathways to permanent residency for low-skilled migrant workers via provincial nominee programs;
- No vision will be applied to promote intergovernmental measures that could assist refugees to undertake jobs that employers claim need filling;
- Returning to a robust policy of permanent immigration for all classes of workers, in partnership with provinces and territories, and that focuses on national building versus catering to employers’ labour force needs, is avoided; and

- The government will continue to ignore a number of international standards that constructively support labour migration, including the 1990 UN Convention on the Rights of all Migrant Workers and Members of their Families ratified by nearly 50 countries.

Likewise the Conservative government ignores incorporating protections from the eight fundamental International Labour Organization conventions that govern human rights at work, and it will not consider adopting guidance from the non-binding ILO multilateral framework on labour migration.⁵¹ Failing to pursue such measures amounts to willful policy ignorance.

A pyramid on the shoulders of migrant workers

In 2013, when the Harper government initially tabled its discussion document for TFWP reforms, it included a proposal to bar employers who had criminal convictions related to human trafficking, sexually assaulting an employee, or causing the death of an employee. When the time came for implementing these reforms, the government dropped this proposal, arguing it was “too rigid and cumbersome” to be enforced.⁵²

The Harper government argued there can be acceptable situations for employers to be in non-compliance with their new rules, including “changes in economic conditions that affect all employers, good faith errors [and] unintentional accounting or administrative errors.”⁵³ Chris Roberts, national director of social and economic policy with the Canadian Labour Congress, pointed out that part two of the *Canada Labour Code* does not excuse the failure of employers to provide a safe work environment in an economic downturn. Nor does the Canadian legal system operate on the premise that ignorance is a valid defence for breaking the law.⁵⁴

The government’s reforms call for rule-breakers to have their LMIAs suspended. If this actually happens, affected migrant workers will no longer have a valid work permit, nor will they have legal status to remain in Canada. Vulnerability for workers increases, while the consequences for the employer are less significant.

The establishment of a \$1,000 fee per LMIA is long overdue, but there are no measures to counter the likelihood that unscrupulous employers and brokers will download this expense in the form of illegal fees or by garnishing wages.⁵⁵ In addition, the \$1,000 fee applies only to the newly defined TFWP. The IMP stream, which accounts for the vast majority of granted work permits, has processing fees of only \$230 per worker. The government claims this measure ensures those using the program will pay to manage it.⁵⁶ However, documents acquired by freedom of informa-

tion request show that labour market opinion processing costs ranged from \$224 in 2007 to \$337 in 2009.⁵⁷

The Harper government's compliance framework is depicted as a pyramid. Different levels of rule-breaking must be documented before an employer faces any sanctions. There are six stages of investigation before an employer is publicly identified as being in non-compliance with the new rules. The new rules state that if employers are found to have migrant workers in an unauthorized capacity, they can be fined an Administrative Monetary Penalty (AMP) up to \$50,000 and/or jailed for up to two years. Intentional misrepresentation, or withholding or providing false information in contravention of the program rules can earn you a \$100,000 fine and five years' imprisonment (or both). Being found guilty of human trafficking results in fines up to \$1 million and imprisonment for up to life (or both). Additionally, the government claimed breaking the rules has the potential for an employer to be temporarily banned from the TFWP.⁵⁸

In order for these financial penalties to come into play, the government has instituted a scoring system for rule-breaking. Violations deemed less serious earn fewer points than those deemed harmful to the labour market or individuals. Additionally an employer's history and the severity of the violations affect the total number of infraction points assigned. The system is complex and there is no evidence adequate staffing resources are in place to implement the compliance framework.

If TFWP rules are found to be broken, the minimum AMP is \$500 and the maximum is \$100,000. Syed Hussan with Migrant Workers Alliance for Change gives the real-life example of a migrant worker owed \$195,000 in unpaid wages. Under the new compliance framework, that worker would see their employer fined \$750.⁵⁹

A 2012 internal government evaluation of the TFWP found that 40% of employers had at least one corrective measure to make.⁶⁰ This indicates how rampant violations are with this program, yet the government's financial penalty system fails to send a message that it is committed to cracking down on abuses. The penalty system operates on a sliding scale granting latitude for violators who are individuals or small business versus large corporations. Firms deemed to be "small" include corporations with up to \$5 million in annual gross revenues. As a result, franchise operations like Tim Hortons or McDonald's would face the minimum levy of \$500 for the lowest grade infraction. No fees collected will go to migrant workers. Fines will go to government coffers, but not before employers can request an administrative and judicial review.⁶¹

Lifetime employer bans from the TFWP are not contemplated. Only in cases where at least five sanction points are allotted does a one-year ban come into effect, climbing to a maximum 10-year ban for eight allocated sanction points. This

point system trivializes serious violations of labour standards and human rights for migrant workers.

Caps structure and policy incoherence

The reforms establish a cap system (30% of the workforce in a year) limiting the number of low-wage migrant workers an employer can have within their workforce. Each year the cap will become more limiting reaching 10% by 2016. The policy intent is to alter the employer's dependence on low-wage workers and provide an incentive to recruit, hire, train and/or improve working conditions. The Harper government will consider reducing the cap beyond 10% after 2016.⁶² This is a bold boast, but an incoherent one, given that the fine-based penalty system is not structured to shift corporate behaviour away from the TFWP.

Thin protection measures

The Harper government reveals a minimal commitment to advancing meaningful protections for migrant workers. Their 40-page overhaul document has just five paragraphs detailing “protection of TFWS.”⁶³ Little is offered. The government's position reiterates that TFWS have the same rights and protections as Canadian workers under employment standards and occupational health and safety laws, yet reforms offer nothing to address well documented abuses of these laws.

The Harper government promises to provide an information package outlining rights and responsibilities that workers will receive, upon arrival, from CBSA officials at their port of entry. Despite the experiences of migrant rights groups documenting numerous and significant migrant worker abuses, and unions' familiarity with workplace rights protections for workers, neither sector was invited to contribute to these information packages.

Conclusion

From the moment the Harper Conservatives took power in 2006, their government moved swiftly, and with stealth, to expand a small migrant workers program into a tool serving almost exclusively the interests of employers. From 2006 to 2015, the government has manoeuvred the TFWP to contribute to wage suppression, worker displacement, unemployment and the undercutting of all workers' rights.

The Conservative government accepted the arguments of employers that labour and skills shortages existed, despite considerable evidence to the contrary. Immi-

gration policy has been both fundamentally altered and merged with a pro-business national labour force agenda at the expense of Canada's role as a welcoming nation to newcomers destined to become citizens. The mat at the door of the country could read: "Welcome, but don't get comfortable."

During the early years of the Harper government, Parliament and the public were bypassed, while "internal administrative changes" were implemented allowing the TFWP to grow to epic proportions. When reforms had to be announced, they were nothing more than window dressing hung with political opportunism. The courage of migrant workers, their allies, investigative journalists, and some unions in persistently exposing the realities of these policy choices can be credited for increased public awareness of the ugly side of temporary migration schemes.

Endnotes

1 Karl Flecker, "Building the world's most flexible workforce: The Harper government's double-doubling of the Foreign Worker Program", *Briarpatch Magazine* November 2, 2007.

2 Tim Harper, "Conservatives ready with big hugs for Tim Horton's," *Toronto Star*, August 26 2014. Accessed June 21, 2015, http://www.thestar.com/news/canada/2014/08/26/conservatives_ready_with_big_hugs_for_tim_hortons_tim_harper.html. This was not the only time that Tim Horton's iconic brand served as a backdrop for the Harper government's demonstrations of allegiance to corporate Canada.

3 Government of Canada "Facts and figures 2013 – Immigration overview: Temporary residents," accessed July 24, 2015 <http://www.cic.gc.ca/english/resources/statistics/facts2013/temporary/1-1.asp>. Specifically, the 'Temporary Foreign Worker Program work permit holders with a valid permit on December 31st by gender and age, 1994 to 2013' subsection.

4 James M. Flaherty, *The Budget Plan 2007 Aspire: To a Safer, Stronger, Better Canada* (Ottawa: Department of Finance Canada: 2007), 211.

5 Flaherty, *The Budget Plan*, 212.

6 Flaherty, *The Budget Plan*, 217.

7 Senior Government Official in discussion with the author, June 5, 2008.

8 Senior Government Official, interview with author, May 7, 2008.

9 Karl Flecker, *Canada's TFWP: Model program or Mistake?*, Canadian Labour Congress, April 2011.

10 An ELMO or LMO (renamed in 2014 as Labour Market Impact Assessments (LMIA) attempt to assess the potential impact of hiring a temporary migrant worker on the Canadian labour market. LMO's/LMIA's are required for different streams of the TFWP as part of an employer's application for temporary work permits.

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