

Temporary Foreign Workers Alberta's disposable workforce



The Six-Month Report of the AFL's Temporary Foreign Worker Advocate

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The Alberta
Federation of Labour

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Executive Summary

In 2006, for the first time in history, Alberta had more temporary foreign workers (TFWs) arriving in our province than permanent immigrants. There were 22,392 TFWs working in Alberta. Meanwhile only 20,717 immigrants were granted permanent resident status in the same year. The number of TFWs in Alberta has doubled since 2003 and tripled since 1997.

This great influx of temporary workers has led to a growing concern about the working and living conditions for the men and women brought here. Through the past two years, the AFL and its affiliates grew increasingly alarmed at the reports about mistreatment, exploitation and false promises. We were also concerned about the negative effects that this growing use of TFWs was having on wages and the labour market.

In response to these concerns the AFL decided to launch a Temporary Foreign Worker Advocate program to offer free services to TFWs needing assistance with work-related problems. The Advocate was launched in April 2007, with Edmonton lawyer Yessy Byl serving as the Advocate.

This report represents the findings of the Advocate after six months of assisting TFWs. It covers the Advocate's activities until October 31, 2007.

Advocate's Activities

In six months, the Advocate has taken inquiries from over 1,400 people, and opened case files for 123 TFWs in need of assistance. The Advocate also spoke to a number of conferences and seminars as part of the mandate to educate Albertans. She also did dozens of media interviews.

An analysis of the 123 files handled by the Advocate reveals a troubling picture of how Alberta is treating this group of workers. Quite frankly, we are exploiting their vulnerability and taking advantage of their precarious position.

The majority of the Advocate's files (93 of 123) involved TFWs desperately seeking alternate or even any kind of employment. The Advocate has been successful in placing 52 of them to date.

The analysis also reveals some disturbing common occurrences of abuse and maltreatment. The recurring problems are grouped into broad themes:

1. Wages and working conditions

- The bulk of cases concerned workers experiencing problems with working conditions: wages lower than promised, job provided being radically different than promised, job disappears upon arrival, demands to perform inappropriate personal services, racist behaviour from employer, threats of deportation and imprisonment.

2. Brokers

- 89 cases involved workers brought to Canada via brokers, and all had difficulties. Complaints included: illegal fees charged to TFW (between \$3,000 and \$10,000), misleading claims about the job, inaccurate promises of permanent immigration.

3. Housing

- One-third of clients had housing difficulties. Employers are supposed to provide housing to non-skilled TFWs. Two problems arose: poor quality of housing (more residents than bedrooms), and excessive rents (\$4,000 to \$6,000 a month for one residence).

4. Lack of Rights Enforcement

- TFWs theoretically have the same basic employment rights as Alberta workers, but enforcing those rights is nearly impossible. Lack of awareness, language barriers and misleading employer-provided information are common problems. The biggest problem is Alberta's complaint-driven enforcement system which does not work for TFWs.

5. Bureaucracy

- The bureaucracy around work permits and Labour Market Opinions (LMO) leads to great hardship for TFWs. Long wait times – up to six or eight months - without income, inaccessible and complex administrative systems and a lack of penalties against unscrupulous employers and brokers make matters difficult for TFWs.

6. Trade Certification

- TFWs who work in certified trades receive inadequate assistance from employers to pass their Red Seal exam which they must pass to continue working.

7. Unskilled Workers and the Contract of Employment

- There is inadequate monitoring and enforcement of the employment contracts employers must sign with unskilled workers. This leads to wages being lower than promised, illegal

deductions for transportation, airfare and accommodation.

Recommendations

After six months of assisting TFWs, the Advocate has come to the conclusion that there are deep and troubling flaws in the program, both in its structure and operation. The rapid expansion of the program has been an unqualified disaster and it is the most vulnerable participants – foreign workers – who are feeling the brunt of the pain.

The Advocate has drawn up recommendations for the federal and provincial governments to fix the many glaring problems in the program. The first, and most important, is a call for the expanded TFW program to be ended and reverted to its original purpose, and for the permanent immigration system to be overhauled to allow foreign workers to become landed immigrants.

The Advocate also makes 20 other recommendations aimed at reducing the exploitation of TFWs until such time as the program is ended. They range from stronger enforcement of employment rights, penalties for unscrupulous employers and brokers, and revamping rules to give TFWs more rights and flexibility.

Introduction

Why does Alberta need a Temporary Foreign Worker Advocate?

For the past five years, Canada's federal government has expanded its Temporary Foreign Worker (TFW) program in response to demands from provincial governments and employers. The expansion has accelerated since the election of the Conservatives in 2006. Citing labour shortages in certain sectors, employers have lobbied for the right to bring workers to Canada on temporary permits to fill a growing range of occupations.

Significantly, the 2006 figure for TFWs in Alberta is greater than the 20,717 immigrants granted permanent resident status in the province that year — the first time in history temporary workers overtook permanent residents.

Here in Alberta TFWs have been employed in greater numbers and in a wider range of economic sectors than most other provinces, everything from oil sands operations to trades to food services. Starting about two years ago, unions affiliated to the Alberta Federation of Labour (AFL) began raising concerns about the welfare of workers brought to Canada under the TFW program. They also became

concerned that TFWs were being used as pawns in keeping wages down and as a tool for employers who did not want to invest in training workers locally. Looking at the program, the AFL and its affiliates came to the conclusion that the program is inherently flawed as workers under this program have fewer rights than immigrants who enter Canada through other streams.

According to figures from the federal department of Citizenship and Immigration, as of December 1, 2006, there were 22,392 TFWs in Alberta. That's more than double the 11,067 temporary workers who were in the province in 2003 and more than three times the 7,286 who were in the province in 1997. Significantly, the 2006 figure for TFWs in Alberta is greater than the 20,717

immigrants granted permanent resident status in the province that year — the first time in history temporary workers overtook permanent residents.

Official statistics for 2007 are not yet available. However the number of applications for LMOs (of which about 85% are normally granted) have more than tripled to over 60,000¹. This suggests we will see a substantial increase in the number of temporary workers in Alberta.

TFWs who find themselves in difficult situations really have no where to turn. Traditional avenues of assistance, such as immigrant serving agencies like the Edmonton Mennonite Centre for Newcomers, are prohibited by their federal government funders from providing assistance to TFWs.

In response to the dramatic jump in calls to the AFL offices about the treatment of TFWs, and the absence of any other service to assist TFWs, the AFL established its own "Office of the Temporary Foreign Worker Advocate" in April 2007. The AFL hired Edmonton lawyer Yessy Byl to serve as the advocate. The AFL's Advocate has helped temporary workers who are being ill-treated by employers or employment brokers and has provided assistance to workers from India, Lebanon, Romania, Mexico, the Philippines and other countries. Complaints range from exorbitant and illegal fees charged by labour brokers to substandard housing to employers refusing to pay overtime or renegeing on promises related to wages and training. The Advocate discovered over the course of the past months that we have seen just the tip of the iceberg.

How Canada got its large scale guest-worker program

Canada has always had programs geared to bringing in workers on temporary work

visas. Historically, Canada's government sponsored "Temporary Foreign Worker" programs largely centred on seasonal agricultural workers and live-in domestic caregivers. A third program was initially targeted to groups such as highly skilled academics, business executives, engineers and other professionals, and was designed to provide an efficient channel for professionals coming to Canada to work.

In response to pressure from employers facing labour shortages in certain sectors, the government of Canada threw open the doors of this third program in 2002. The government

dramatically

expanded the list of occupations under which workers could come to Canada on temporary, restricted visas; the list now includes unskilled workers (e.g., fast food counter clerks), low skilled workers (line cooks at fast food restaurants) and skilled workers (trades people).

The result is that the federal government, with the tacit support and encouragement of provincial governments and employers, has created a guest-worker program that far outstrips the United States. In 2006, the entire U.S. had 160,000 guest workers. Canada had 171,844. Alberta alone had over 22,000. As a proportion of population, Alberta had 12.5 times as many TFWs than the United States.²

What most Canadians do not yet understand is the scale of the government's involvement in bringing workers into Canada on restrictive, temporary permits and the consequences for those workers. TFWs are severely limited in their ability to change employers and it is difficult, if

not impossible, to apply for permanent immigration status. Workers in some occupation classes are effectively barred from applying for permanent resident status. Some workers in desirable occupations are possibly eligible for permanent status through their employer applying through the Provincial Nominee Program (PNP) – a provincial program that allows the Alberta government to sponsor a certain number of TFWs on behalf of the employer.

The PNP is, in reality, no solution. It is open to only a select number of occupations. Current wait times are anywhere from 12 to 18 months, during which a worker's temporary permit might expire, sending them home.

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Also, in spite of the provincial government's publicity campaigns to promote the PNP, participation is very low. Fewer than 2,000 workers were accepted into the PNP in the first five years of its operation (2002 to March 2007). What is telling is that one workplace, the Olymel pork processing plant in Red Deer, accounts for 10% of the total provincial nominations since 2005. This is attributed to the active involvement and engagement of the local union in the plant, UFCW 1118³, who used the bargaining process to convince the employer to sponsor more TFWs. The vast majority of other TFWs work in non-unionized workplaces and, as a result, have not benefited from such representation.

Hiring Temporary Foreign Workers - Easy for Employers

Though Canada's immigration system is plagued with backlogs and excessive waiting periods for immigrants wishing to come to Canada as permanent residents, it is fairly simple for an employer to bring a worker to Alberta on a temporary work permit.

It is a two-step process. The employer applies for a Labour Market Opinion (LMO) from Human Resources Development Canada (“HRDC”). HRDC will issue a LMO, which gives the employer permission to hire TFWs, if they believe “the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada”⁴. The employer is required to demonstrate that they tried to find Canadian workers and were unsuccessful. The LMO also states what the employer must pay the TFW a rate which the government says must be at least equivalent to the “prevailing market rate” for the given occupation and region.

Brokers commonly charge TFWs thousands of dollars for their services, and often mislead the workers about immigration prospects, the nature of the work and other matters.

The second step is the issue of a temporary work permit to a foreign worker through Citizenship and Immigration Canada (“CIC”). To issue a work permit, the immigration officer must be convinced that the foreign national has received a bona fide job offer for which he/she is qualified from an employer with a valid LMO and that they will leave Canada at the end of their authorized stay. The permit states the name of the employer where the TFW will work. It

is not legal for the TFW to work for any employer not named on their permit. It is valid for either one or two years.

As part of their LMO, the employer is required to provide specific forms of support to TFWs, including a guarantee of wage levels and skills training for tradespeople. For non-skilled workers, they must also provide housing and airfare.

Changes made by the federal Conservative government have removed some of the hurdles for employers to obtain LMOs. They have instituted a process for “Occupations Under Pressure”. The list includes almost

all construction trades, many health professionals and scientific professions such as engineering, it also includes a long list of lower skill occupations such as retail clerks, food service clerks, custodians and service station attendants.

Under the expedited process employers are no longer obliged to place an advertisement in local newspapers for six weeks for local applicants before searching farther abroad; just one week in a federal job centre will now suffice. The standards for determining whether a worker from outside the country is really needed have been substantially scaled back. In short, it is easier to get a LMO than ever before.

Other changes to the TFW program have also benefited employers. Unskilled workers can now be granted two-year work permits (previously restricted to one-year), and streamlining of LMO processing shortens employer wait times.

Labour Brokers

The complexities of finding workers in far-away countries has led many employers to turn to agencies to assist in the search and with the paperwork required to process the foreign worker. A sizeable industry of third-party recruiters, more commonly called labour brokers, has sprung up to provide these services. The broker finds workers and workers with both the employer and the worker to process the paperwork.

The brokers are classified in Alberta as employment agencies and fall under Alberta’s *Fair Trading Act*. Under the act it is illegal to charge a fee to find someone a job. They are only to charge the employer for their services. Some of the services can be charged to workers if they are considered “settlement services” – filling out work permit applications, liaising with Immigration Canada and so forth.

However, there are large and difficult problems that have appeared with the brokers. They are difficult to regulate and can duck under legal requirements with some ease. Brokers commonly charge TFWs thousands of dollars for their services, and often mislead the workers about immigration prospects, the nature of the work and other matters.

Legal Status for TFWs — what rights do they have?

A worker who is hired on a temporary work permit has the same legal right to protections as other workers in Alberta. TFWs are fully covered by *Alberta's Employment Standards Code, Occupational Health and Safety Act and Labour Code*. If they are injured on the job, they are entitled to receive compensation from the Workers' Compensation Board. They are not eligible for CPP pension or able to collect EI benefits, however.

The formal legal rights do not necessarily transfer well into practice. TFWs have an inordinately difficult time accessing those rights in the workplace.

The Advocate found that foreign workers are often at a disadvantage because they are not aware of their rights, do not know how to access these protections and can be dissuaded by employers from seeking due compensation. Most importantly, Alberta's employment standards system is complaint-driven. This is problematic because TFWs are much less likely to lodge official complaints than other workers.

Enforcement is also more difficult, as the location of TFWs is not known to the Alberta government. Alberta Employment, Immigration and Industry minister Iris Evans has admitted they do not know how

to find TFWs: "we don't know how to protect them because we don't even know who they are."⁵

The AFL's TFW Advocate

The Alberta and federal governments currently do not provide any systems or services specifically designed to address the concerns and to protect the interests of TFWs. The AFL's Advocate has been the sole resource for hundreds of temporary workers in Alberta. Because workers have nowhere else to turn, the Advocate's office has been inundated with telephone calls and e-mail messages over the past six months. Even the provincial government's 'hot-line' for employers of TFWs has been directing immigrant workers to contact the Advocate's office.

Since the Advocate's office opened in April 2007, the Advocate has encountered a range of disturbing situations and dangerous working conditions. This report outlines the

Advocate's work to assist temporary workers, the need for more education for immigrants, employers and the general public, and raises crucial concerns about the TFW program and our governments' reliance on this fast-track approach to bringing in workers.

The report details the Advocate's efforts to address the myriad of problems that many TFWs face here in Alberta, including abuse by labour brokers whose promises of jobs often vanish once people arrive in the province, unfair conditions, the absence of monitoring mechanisms and the lack of enforcement.

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Review of Advocate's Activities



Two men came from Central America to work in construction in Alberta. They paid \$4,000 each for recruitment fees. The money was deducted at the rate of \$500 per pay cheque. They had been promised a rate of pay of \$22 but were effectively paid about \$16 per hour. After finding out that the contractor was paying their employer on the basis of \$24 per hour, the men complained. They were fired.

Finally, the Advocate offers a series of recommendations for how to fix the broken TFW program and how we as Canadians can do a better job protecting the men and women who come here to work temporarily.

The AFL's Temporary Foreign Worker (TFW) Advocate began working on April 23, 2007. The mandate of the project is two-fold. First the Advocate is to assist TFWs experiencing difficulties with working in Canada. This assistance includes filing employment standards or human rights complaints and acting as a conduit for the workers with employers, HRDC, Immigration Canada and the Province of Alberta. The primary goal of this advocacy is to resolve the issue in such a manner that the worker is no longer being mistreated or forced to return home unfairly.

Second, the Advocate is to educate Albertans about the nature of the TFW program and the experiences of TFWs in Alberta.

1. Assistance to TFWs

The demand for the services of the Advocate became overwhelming very quickly. The project was envisioned as requiring the part-time services of a lawyer. Instead, the work generally exceeded full-time hours. Because of the demand just within Edmonton, services were not generally made available to the rest of the province. As well, beyond an initial notification to agencies of the creation of the project, very little "promotion" took place. Word about the Advocate spread informally and with surprising speed among newcomer communities in the province. Indeed, most TFWs were made aware of the Advocate through their ethnic communities or immigrant-serving agencies.

It must also be noted that the amount of time needed to address the concerns of clients far exceeded expectations. Hundreds of hours of phone calls, letters, paperwork and translation were required to successfully achieve resolution. This reality also greatly taxed the resources of the Advocate.

It is clear to the Advocate that the need for such services is desperately high in Alberta. The Advocate has no doubt the AFL project has merely "skimmed the surface" of the need for advocacy and education around TFWs.

2. Education

Demand for the Advocate to speak at agencies, functions and meetings was also larger than anticipated. This speaks to the desire of Albertans to understand the nature of the program and how the human beings brought to Alberta to work are faring.

The primary goal of this advocacy is to resolve the issue in such a manner that the worker is no longer being mistreated or forced to return home unfairly.

A key focus of the education presentations were sessions to immigrant-serving and other community agencies such as Catholic Social Services, Mennonite Centre for Newcomers and others. The Advocate also spoke at a number of conferences, including those organized by Canadian Council for Refugees, Parkland

Institute, and others. There is a great need for education within the ethnic communities, immigrant-serving agencies, social services agencies and the general public. There is a pressing need to provide these agencies with more information and more tools so that they can assist the TFWs who come to them.

The Advocate also conducted a wide range of media interviews, locally, provincially and nationally. Discussing TFWs in the media

is an important mechanism for informing Albertans about the issue. No attempt was made to track media engagements, but the number of interviews ranged in the dozens.

3. Intake

Due to the extreme demands on the Advocate's time and resources, statistical tabulation often became a secondary priority. The pragmatic realities of solving crises for TFWs, including clearing overwhelming governmental hurdles so they can work legally, swamped the desire for detailed data collection.

Between the dates of April 23, 2007 and October 31, 2007 (the dates included in this report) the Advocate reports:

- More than 700 "logged" telephone messages;
- An equivalent number of live telephone answers;
- 123 official files opened to actively assist TFWs;
- Hundreds of inquiries answered with little or no follow-up advocacy (and therefore no file opened).

In many cases, a meeting or telephone call from a TFW did not result in an open case file. Many simply wanted advice, or did not want the Advocate to take action on their behalf. Many inquiries related to basic questions about rights and legal status. The volume of basic information calls suggests a real need for ongoing information sessions to be made generally available to TFWs to answer general questions and advise them of their rights (addressed further in Recommendations section).

There was also a large number of inquiries from employers, agencies and individuals

seeking to help a TFW. None of these calls resulted in opened files, but did receive intake advice and referral.

4. Issues of Concern

An analysis of the 123 files handled by the Advocate reveal a troubling picture of how Alberta is treating this group of workers. Quite frankly, Albertans are exploiting their vulnerability and taking advantage of their precarious position. Regardless of their original motivations for bringing in a TFW, it is clear many employers find it convenient and profitable to establish unfair and often immoral working and living conditions for these men and women.

Regardless of their original motivations for bringing in a TFW, it is clear many employers find it convenient and profitable to establish unfair and often immoral working and living conditions for these men and women.

The majority of the files, 93 of the 123, involved TFWs desperately seeking alternate or even any employment. To date, the Advocate has been successful in placing 52 (others are still pending).

Other issues include such matters as income tax returns, trying to recoup wages from a former employer, enforcing trade certification training requirements, dealing with illegal employment agency fees and filing applications for the PNP.

Examining the 123 cases, we find some disturbing common occurrences of abuse and maltreatment. These same themes were also found regularly in the phone calls and meetings which did not result in case files. These recurring difficulties are laid out below.

a) Wages and Working Conditions

The bulk of cases related to problems at work, with wages and/or about working conditions. Sixty clients were not paid



Fourteen men were brought from India to work for a large non-union contractor. These men were welders and pipefitters with substantial middle east oil experience. Typically work in the middle east means that all accommodation and transportation is paid for and the workers were told that the job in Canada would also provide airfare and accommodation. Literally on the way to the airport, they were told that they would have to reimburse the company for the airfare and then found out when they arrived in Canada that they had to pay for their accommodation. Shortly after their arrival in Canada 10 of the workers were terminated, allegedly for not being up to Canadian standards. This slur on their ability was devastating for these men. There had been no training, no warnings,

... no opportunity for evaluation let alone improvement. The workers at this company were members of the Christian Labour Association of Canada (CLAC), but CLAC did absolutely nothing for these men. With the assistance of the Plumbers and Pipefitters Union Local 488 the Advocate was able to place the ten men with a unionized construction company. The company was very happy with the skill levels of the men to the point of putting two of them on critical jobs within a couple of weeks. The company has implemented a thorough training course to ensure these men are able to pass the Red Seal certification exams. The workers are very pleased to be working for this employer.

properly or had problems with hours of work or related problems. Many of these claims were cases of the TFW being paid less, often substantially less, than their Canadian co-workers. Twenty-four clients reported no job existing or jobs disappearing upon or shortly after their arrival. Two clients had been fired after suffering workplace injuries.

Work-related concerns include:

- Wages provided are significantly lower than promised
- Working conditions are significantly different than promised (part-time, excessive overtime, no overtime pay, etc.);
- The job provided is radically different than the job promised (e.g. an administrative assistant arriving to find she was to work at a gas station; chefs from 5-star hotels spending half their time washing dishes and floors);
- Finding upon arrival the job no longer exists;
- Racist and exploitative behaviour by employer and other workers;
- Demands to perform personal services for the employer (e.g. wash personal vehicle);
- Threats of deportation if the TFW complained;
- Threats of imprisonment if the TFW complained.

One of the more disturbing patterns was the frequency with which an employer will threaten a TFW with deportation if the TFW raises any concerns about their

employment. Consistently the “hammer” of sending the worker back home was used to keep the TFW compliant and productive.

Over and over again, TFWs were subject to arbitrary and shifting employment conditions, with little ability to defend themselves or seek alternative employment.

In Alberta, the brokers fall under the Fair Trading Act, which prohibits charging of workers for employment placement or “recruitment” services, but until recently the Alberta government did not apply this rule against TFW brokers.

b) Brokers

One of the biggest issues involving TFWs is the use of labour recruitment agencies or “labour brokers”. These are companies that act as a middle-person for Alberta employers looking for TFWs. They do the functions of recruitment, work permit processing and training, for which

they charge a fee. There are a number of legitimate companies providing professional services in this field who properly charge employers for their services. Unfortunately, the rapid growth of the TFW program has led to a proliferation of operators who see the opportunity for making a fast buck by charging the foreign workers directly, contrary to Alberta law. Sometimes these brokers will even arrange for the financing of their fees.

Unfortunately brokers are largely unregulated. Under federal legislation immigration consultants must be licensed and belong to the Canadian Society of Immigration Consultants, a self regulating professional association. However, much of what brokers do does not require being a licensed immigration consultant. In Alberta, the brokers fall under the *Fair Trading Act*, which prohibits charging of workers for employment placement or “recruitment” services, but until recently the Alberta government did not apply this rule against TFW brokers.⁶

Of the 123 cases handled by the Advocate, 89 were brought to Canada by labour “brokers.” Most of these clients paid the broker a fee ranging anywhere from approximately \$3,000 to approximately \$10,000 – this is in addition to any fee paid by the employer to the broker.

This is officially illegal, but current regulations have proven ineffective in stopping the practice. One broker had payroll deductions for his fees stopped by order of Service Alberta and is now suing at least one TFW for those fees, calling them “settlement services.” In this case, the broker charged \$6,000 to the TFW who is earning \$11.74 an hour.

In many cases in the past, the TFW continued to be the “employee” of the broker, even once in Canada, allowing the broker to continue to reap a portion of their wages. The Advocate has worked with the federal government to ensure that this practice was shut down.

In cases involving brokers, 11 clients arrived in Canada only to find that jobs did not exist for them. An additional six clients faced layoffs very shortly after arriving in Canada.

The majority of the clients brought in by brokers report the broker convinced them to come to Canada by promising permanent immigration. Some were told this was a step toward achieving their permanent status, which is contrary to the rules of the TFW program.

Prosecuting brokers for illegal activity is extremely difficult. Many are incorporated overseas, making them hard to reach for enforcement officials. Broker activities are poorly defined and virtually unregulated.

With the current provincial crackdown on fees being deducted from workers’ wages once they arrive in Canada, brokers are now insisting that their fees are to be paid “up front” in their home country before the brokers will arrange for employment and permits. The end result is a booming industry in exploiting TFWs for thousands of dollars simply to fill in forms and tell falsehoods about their legal rights.

Two fundamental problems arose
— poor quality of housing and
excessive rents charged for housing.

c) Housing

Under the TFW program, employers are required to ensure that reasonable accommodation is arranged for unskilled TFWs. Employers have no obligations to skilled TFWs. Many employers

have used this obligation as an opportunity to make money.

About one-third of clients experienced difficulty with housing. Two fundamental problems arose – poor quality of housing and excessive rents charged for housing. A few skilled TFWs found no housing available to them upon arrival –in the middle of a dire housing crunch in Alberta.

Many employers engage the practice of renting a house or apartment owned by the employer to their TFWs, at rates established outside the employment contract (and therefore outside the reach of Employment Standards). Often multiple TFWs are crammed into a single house or apartment. In many cases, the rent was deducted from the TFWs paycheque, allowing no opportunity for negotiation. In one case, a TFW was given eviction notice after refusing to pay the broker his placement fees.

One group of clients arrived to find the employer placed them in a house to be shared with 4 to 6 other men. They were charged \$29 per day each. And then they



A labour broker recruited many chefs from Fiji to work in places such as Smitty’s Restaurants. The broker presented contracts of employment promising immigration, pay raises, etc. and when the workers arrived, their pay of \$11.74 per hour, was deducted for recruitment fees of \$6,000. The workers thought they were coming to work as chefs and had not realized they would be “line cooks.” (Even then, many of them found themselves washing dishes and sweeping floors for much of their shifts.) When the government of Alberta issued an Order stating the pay deductions were contrary to the Fair Trading Act, the broker started hounding many of the workers to sign contracts to pay the \$6,000 for “settlement services.” At least one of the TFWs has now been sued by the broker for this fee. To add insult to injury that worker has just been told by Smitty’s that they were not

had to pay their landlord another \$10 per day to transport them to the worksite which just happened to be on the other side of the city. This is \$5,220 a month in rent, plus another \$1,200 for transportation for six workers in one house. They complained about the amount of rent and having to spend two hours a day just getting to and from work. The employer did nothing.

First of all, TFW's are generally not aware of Alberta laws, nor is there any program to ensure that TFWs are educated as to minimum employment protections, WCB, etc. They are, simply put, unaware of what rights they possess. Those who do learn about their rights are typically afraid to do anything. Many workers are not being paid overtime but if they file a complaint they are subject to being fired and then what?

Secondly, most TFWs have some difficulty reading English and therefore the written materials that are provided are largely meaningless to them. The Advocate's

experience is that workers who have taken some action to protect their employment rights are those with excellent skills in English. The Advocate has met TFWs with absolutely no (or very little) skills in English. These people are clearly the most vulnerable to abuse.

Thirdly, Alberta's "protection" system is complaint-driven. It does not work well for TFWs who are often threatened with deportation if they cause problems, don't know the process even if they are aware of the laws and are fundamentally at a disadvantage if they are working for someone that is not complying with the law since they are not free to quit and work elsewhere.

Fourth, TFWs often receive information only from employer sources. Often, TFWs are picked up from the airport, provided employer-owned housing (often in segregated camps), and spend their time in Canada isolated from the community. Any training and rights education is conducted by the employer. There is no independent, external source of employment information available to TFWs.

Many workers are not being paid overtime but if they file a complaint they are subject to being fired and then what?

In another case eight TFWs were placed in one 3 bedroom house and each person was deducted \$250 biweekly (\$4,000 per month); in another, 14 TFWs were placed in one house paying rent of \$320 per month (\$4,480). This was a common concern.

The issue of housing is a particularly dire area of exploitation – due to the fact that no level of government has the regulatory ability to restrict the rents or place occupation limits, yet require the employer to arrange for housing. It is a recipe for price gouging⁷. Many of the people taken advantage of were the "skilled" workers for whom the employer has no obligation to provide or arrange for housing.

d) Lack of Rights Enforcement

Typically, the federal government response to criticisms of lack of protection for TFW is that workers are covered by provincial employment laws such as employment standards, WCB and OH&S. In addition, the employers' LMOs are supposed to legally bind them to provide certain wages and working conditions. While this may technically be true, it is an "empty" protection.

... going to renew his contract of employment at the end of his work permit even though the contract states that the employment is considered "permanent" once the worker has successfully completed the three month probationary period — which he has. Other workers have been told that their employment contracts would not be "renewed" less than two weeks before the expiry of the workers' work permits. Their situation remains unresolved.

Fifth, there is often no time for a TFW to see a complaint process through. Many times the Advocate was informed that employers had bundled the TFW to the airport within hours and put them on a plane, long before a complaint could be investigated. At this point a resolution becomes moot.

The threat of deportation is particularly effective at suppressing complaints. A number of clients reported being intimidated not to make WCB claims.

The federal government has no capacity to enforce their rules. Recently, as a result of the widespread practice by employers of paying TFWs far less than the wage rate required by the LMOs, HRDC is now requiring employers to provide payroll records when submitting applications for LMO renewal. This is a step in the right direction. However, the problem is that HRDC has no staff, nor authority to perform audits or to engage in any kind of investigation. If an employer is dishonest enough to pay TFWs less than promised, then they may be dishonest enough to manufacture records to provide HRDC, especially since they know no one will come knocking at their door asking to examine their actual records.

Finally, a lack of information is stymieing even the sincere attempts to enforce employment protections. Neither provincial nor federal government officials appear to have knowledge of which workplaces TFWs are physically located. If government does not know where TFWs are, there is no way to protect them.

e) Bureaucracy

The problem of enforcement is only the tip of the iceberg of problems in the TFW program that create hardship for workers. The Advocate experienced a number of

frustrations when attempting to resolve matters for clients.

The first is time delays. As of the date of writing, it is taking six months to process an application for a LMO – a basic requirement to allow a TFW to switch employers. It takes an additional 7 to 8 weeks to process a change to the work permit – the second requirement. What unemployed foreign worker could possibly wait around for seven to eight months without income?

The response by the government is that the worker should find an employer who already has a LMO.

The process for adding a worker's name to an existing LMO takes four to six weeks or longer – reducing the wait to about three months. Of course there's a problem: the government will not tell you which employers have LMOs. And even then, 3 months is an unconscionable length of time to wait to get new employment – especially if a worker is unemployed.

Initially HRDC was prepared to expedite the granting of LMOs for the Advocate if they had a foreign worker who was considered to be needing alternate employment on an "emergency" basis. However, as the processing time for LMOs increased from 2 – 3 months to the current 6 months, that assistance was stopped, leaving workers in emergency situations lingering on a waiting list – with no source of income. Now assistance is restricted to employment with employers who already have LMOs.

This time delay is leading to a new, tragic phenomenon: the rapid growth of the "underground" work force. This is often caused by employment agencies, or the employer, bringing people to Canada, misleading them as to their rights and, on occasion, actually arranging for

Of course there's a problem: the government will not tell you which employers have LMOs.



■ One tradesman with extensive world wide oil experience was convinced to come to Canada while he was working in Dubai. He saw this as an opportunity for him to work somewhere where his family could also live. He paid a labour broker \$9,000 only to arrive in Canada and be placed in a job that paid him much less than promised (\$18/hour), and significantly under the going rate for his trade. Unfortunately, Immigration had mistakenly only given him a four-month work permit and when he pointed this out to his employer, asking for assistance in extending the permit, the employer laid him off. The employer had not provided any training to prepare the worker for trade certification. We were able to assist the worker to obtain a job with a unionized contractor who is providing training.

employment that is contrary to the Immigration Act. Typically the only people who are held accountable are the workers – they are deported. In the meantime, the unscrupulous agents and employers continue exploiting people.

The second concern is the lack of access to mainstream immigration programs for TFWs. Alberta's PNP is often held out as a method to allow TFWs to remain in Canada. It is frequently cited by brokers to lure TFWs to Alberta. However it is too limited to offer any widespread assistance. Only one of the Advocate's clients was approved by the PNP (seven others are in process).

The third major concern is a lack of clarity around rules. There are no clear guidelines or criteria for fast-tracking LMOs, for assessing "emergency" situations for work permit amendments or for determination of a TFW's status. They are handled on a "case-by-case" basis. While the Advocate found the officials working for the federal and provincial governments to be respectful, cooperative and pleasant to work with, the lack of clear rules and criteria created immense amounts of frustration.

An example of the lack of clarity and vision in the TFW program is how it has handled the LMO process. HRDC, theoretically, requires in the LMO process a wage minimum that reflects market rates. This is to prevent employers using TFWs to undercut wages. However, until recently, the rates determined by HRDC appeared to be substantially behind the market rates for many jobs. For example, at the same time that many restaurants were bringing in TFW line cooks to work at \$11.74 per hour, a review of the general wage rate suggested that many restaurants were paying line cooks \$14 per hour. This is due, in part, to time lag. It can take more than a year between LMO approval and the placement of the TFW, resulting in the TFW earning well below what the market should be paying them.

However, in response to criticism of this situation, HRDC recently introduced substantially higher rates of pay for some jobs. LMOs must be renewed every one or two years and many employers are now in the process of renewal. The bizarre result is that some employers who have been employing TFWs are now faced with having to provide 18% or more pay increases to have their LMO renewed. On the surface, this appears to be a desirable thing - an attempt to ensure that TFWs are paid market rate. This is indeed beneficial with respect to prospective TFWs yet to arrive in Canada. Sadly, the result is quite different for many TFWs who are already working in Canada. Upon facing a renewal of a LMO many employers are now facing two alternatives: fire the TFW because of inability to pay a substantial higher pay rate or pay the TFWs more than the employees who are Canadian residents. Either way, the TFWs lose. Even in the second scenario, they will eventually suffer from resentment from both employers and co-workers if they end up making more than the Canadian employees. While it is of the utmost importance that TFWs be paid a fair wage by Canadian standards, there appears to be little flexibility in recognizing the needs of individual workplaces and no recognition of the need to provide some stability of employment for TFWs.

The TFW program, and its ancillary programs in the provincial government, is in a state of crisis. The rapid expansion of the program, both in terms of numbers and scope, has stretched the staff beyond their limits and exposed glaring weakness and omissions in the policies and procedures. Unfortunately it is mostly TFWs who experience the brunt of these problems either by being deported or having to sit without income for weeks or months on end.

f) Trade Certification

As indicated in the Introduction, the TFW program treats skilled and unskilled workers

differently. These different rules have created a variety of problems unique to each group.

For skilled workers, one of the biggest issues arises within the area of compulsory trades. In Alberta (unlike some other provinces such as Ontario), certain tradespeople such as welders, plumbers and pipefitters, must be certified as a journeyman within that trade before they can work. The LMO process does not permit employers to bring in TFWs as apprentices, so TFWs must be considered to be the equivalent of a journeyman tradesperson in Alberta. For compulsory trades, the tradesperson must complete the Red Seal certification process within six months of arriving in Canada.

The problem for TFWs is that without proper training and support, they are highly unlikely to pass the written portion of the exam, due to language and other barriers, even if they are fully competent to do the work. Many come to Alberta unaware of the certification requirements, or under false promises of training.

It appears most employers are offering no training or support to TFWs in compulsory trades. The result is that high numbers of skilled TFWs fail the test and are sent back home.

The unscrupulous consequence is that some brokers feed on this churn, and continue to supply a new crop of unsuspecting tradespeople to replace the failed ones. This, profitably, increases the number of fees they can charge, but it does little for the men and women brought here under false promises.

g) Unskilled Workers and the Contract of Employment

If a particular occupation is categorized as “unskilled,” then HRDC policy requires the employer provide a contract of employment contain certain provisions. On the surface, the protections to be provided in these contracts appear to be adequate: employers must pay return airfare and arrange for reasonable accommodation; employers are prohibited from deducting any recruitment or retention fees, including fees to third party recruiters; the employer must abide by provincial employment standards laws.

However, there is no monitoring of these contracts of employment. As a result, Advocate clients commonly provided evidence of schemes to circumvent the required

protections: waivers by which workers agree to pay return airfare themselves; “reasonable” rent but rental accommodation shared by as many as 14 people (as described above); deductions from paycheques to pay the employer’s legal fees for bringing the worker to Canada.

And what happens to the employers who circumvent these contracts? Nothing. HRDC does not have any enforcement or follow-up processes nor staff available to monitor the employment situations. If they do act, HRDC’s only course of action is to refuse to renew a LMO – which would result in the immediate deportation of the worker.

The cruel irony of the arrangement is that if an employer breaches their legal obligations, it is invariably the TFW who pays the price.

The rapid expansion of the program, both in terms of numbers and scope, has stretched the staff beyond their limits and exposed glaring weakness and omissions in the policies and procedures.

End Notes:

¹ The Economist, 22 November 2007 - “Not such a warm welcome” found at: http://www.economist.com/world/la/displaystory.cfm?story_id=10177080

² All figures are for 2006. American statistics from the Global Workers Justice Alliance; Canadian figures from Immigration Canada.

³ UFCW 1118 has ensured their employer applied for provincial nominee status for over 460 TFWs. 417 have been accepted into the PNP.

⁴ s. 203(1), *Regulations, Immigration and Refugee Act*.

⁵ Hon. Iris Evans, Alberta Legislative Assembly Hansard, May 30, 2007.

⁶ It should be noted that under the agricultural workers program, thirdparty agents are strictly prohibited. All hiring and contractual arrangements are done through government offices of Canada and the country that Canada has an agreement with.

⁷ It should also be noted that the government assistance program for the first month’s rent/damage deposit is not available to TFWs.

Conclusion and Recommendations

Fundamentally, the TFW program must be judged on its capacity to protect TFWs. Using this criteria the program is an abject failure.

After six months of direct involvement with TFWs, brokers, employers and the provincial and federal governments, the Advocate concludes that there are deep and troubling flaws in the program, both in its structure and its operation.

The rapid expansion of the program has been an unqualified disaster, and it is the most vulnerable participants in the program – the workers coming from around the world – who are feeling the brunt of the pain. These men and women come to Alberta with hope and faith, looking for a way to improve their lives and maybe to build a new life in Canada. Instead they arrive to experience exploitation and injustice from employers, brokers and Albertans and an inability by government bureaucracy to provide protection.

Fundamentally, the TFW program must be judged on its capacity to protect TFWs. Using this criteria the program is an abject failure.

It is the view of the Advocate that the TFW program as it currently exists must come to an end. The contortion of its initial purposes must cease, and Canadians need to find another solution to whatever labour market challenges we face.

Therefore the first, and most fundamental, recommendation of this report is as follows:

1. The expanded TFW program must cease, and be reverted to its original, pre-2002 purpose and process. Instead, the immigration system should be reformed to make permanent immigration more accessible and efficient. Foreign workers coming to Canada should be afforded the rights of permanent immigrants. Canadian employers should turn to training of existing Canadian workers, employment of under-represented groups in the labour market (aboriginals, people with disabilities, permanent residents), and permanent immigration to solve their labour market problems.

The Advocate recognizes that changing a system as large and labyrinthine as Canada Immigration cannot happen overnight. Yet we cannot afford to stand idle while we wait for this systemic change. We must take steps immediately to protect TFWs currently in Alberta and the thousands more who will be arriving in the coming months and years. The following recommendations are intended to correct the most pressing problems in the TFW program.

Federal government action — reforms to the TFW program

2. TFWs who have worked the equivalent of two years of employment within a three-year period should be entitled to apply for permanent immigration status. A similar system is in place for domestic live-in caregivers.
3. TFW work permits should not state the employer name. Permits should be issued for a particular occupation and province so the TFW is not tied to a specific employer, allowing them to switch employers without penalty if required.
4. The federal government should explicitly prohibit the charging of fees to skilled TFWs by brokers or by employers. It should establish a team with the resources to investigate and enforce the prohibitions.
5. The federal government should set up internal “ombudsperson” offices both within HRDC and within CIC to handle complaints and to assist TFWs in trouble. This function should include assisting TFWs in finding jobs with employers with LMOs. Ombudsperson contact information should be provided to all TFWs when issued work permits. The ombudsperson officials should have the ability to maintain confidentiality in the event that a worker reports that they are working illegally due to broker or employer arrangements.
6. The TFW program as applied to unskilled workers should be governed via agreements with other countries, and should clearly prohibit the use of brokers, etc. This will establish formalized links between governments, which should decrease profiteering and exploitation. A precedent already exists in the agricultural worker program.
7. Current guidelines requiring a contract of employment and obligating the employer to certain commitments should be extended to skilled workers. Employers are not required to provide housing or airfare to skilled workers, and should be required to do so.
8. Both HRDC and CIC should have dedicated processing functions to grant LMOs and process changes to work permits to allow for TFWs to leave abusive or unsatisfactory work situations. This process – from the granting of a LMO to the issuance of a work permit - should not take more than 4 weeks.
9. HRDC should be funded for a meaningful investigative role with respect to Labour Market Opinions, including the ability to conduct “audits”.

Provincial government action

10. The Alberta government should establish an arm's-length TFW Advocate office to assist TFWs with work-related and immigration complaints. All services should be provided free-of-charge to TFWs.
11. Until such time as the federal government enacts protections, the Alberta government should amend its legislation and strengthen its enforcement processes to:
 - 1) make the employers legally liable for any monies improperly charged by recruiters to employees;
 - 2) require the bonding of employment agencies licensed under the legislation.
12. The Alberta government should strengthen provisions under the *Fair Trading Act* to allow for an immediate suspension of licences for employment agencies (brokers) that charge employees fees for recruitment and placement. Settlement fees should be restricted to the sum of \$1,000. Recruitment agencies should not be permitted to charge for any visa or permit processing charges.
13. The Alberta government needs a more active enforcement regime for TFWs. Complaint-driven processes are insufficient. They should establish a team of Employment Standards, WCB and OH&S officers dedicated to issues dealing with TFWs. The team should utilize a more pro-active enforcement model of investigations, unannounced audits and preventative inspections. Additional staff in Service Alberta is also required to deal with complaints regarding employment agencies.
14. The Alberta government should schedule “general information” meetings that will inform TFWs of their basic legal and work rights. The schedule should be given to each TFW arriving at our borders, before they make contact with the employer.
15. The Alberta government should run education seminars for immigrant-serving agencies and ethnic community groups about the TFW program and what services are available to TFWs.

Both governments

16. The two levels of government should step up the implementation of the annex to the “Made-in-Alberta” Immigration Agreement signed by the federal and provincial government this past summer to more effectively and efficiently share information about the location of TFWs, to allow each to better enforce legal requirements of the program and employment law.
17. Immigrant serving agencies have the expertise and community connections to assist TFWs but are currently barred from doing so. Immigrant agencies should be permitted to provide services to TFWs and receive appropriate funding from both federal and provincial governments for these services.

Employer obligations and responsibilities

18. Employers should be required to post a bond, representing one month’s wages and return airfare for all TFWs they hire. If the employer fails to provide a minimal level of employment, the bond would be released to the TFW.
19. Employer obligations regarding housing should be clarified and strengthened. Accommodation standards (e.g. occupancy limits, quality criteria) should be explicit, and employers should be prohibited from earning excessive profits from accommodation of TFWs. These obligations should be encoded in the LMO approval.
20. Employers importing workers in the certified trades should be required to provide proof of efforts to use and train domestic apprentices before being issued a LMO.
21. Certified trade occupations should be required, as part of their LMO approval, to provide training, education support and language assistance to TFWs and to provide proof that such training is arranged before a worker is issued a work permit. Employers who fail to provide assistance should be barred from future LMOs.

You have rights. We can help.
Temporary Foreign Workers Advocate



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