

# MIGRANT WORKERS IN CANADA: EMERGING POLICY ISSUES

By

Mark Thompson  
University of British Columbia

All countries in the Western Hemisphere have attracted foreign workers at various periods in their histories. Canada is one of several countries in the region that has continued to attract new residents. In order to achieve a variety of socio-economic and humanitarian objectives, Canada has achieved one of the highest rates of immigration in the world for the past half century.

Traditionally the majority of immigrants have come to Canada permanently, usually with their families and the ultimate objective becoming citizens. Over 200,000 persons per year arrive in Canada annually under several programs to encourage immigration. In 2006, leading countries of origin included: China, India, Philippines, Pakistan, Iran, United States, Romania, United Kingdom, Korea and Colombia.

In recent years, however, rates of admission of temporary migrants or temporary foreign workers have dramatically increased in both scale and scope over time. These workers come to Canada to fill vacant jobs on a temporary basis and normally do not have any preference for becoming permanent residents or citizens. Various national programs, known collectively as the Temporary

Foreign Worker Program (TFWP) address vacancies that domestic recruitment is allegedly unable to fill. The first of these programs served the agricultural sector. Since 1966 the federal Seasonal Agricultural Worker Program (SAWP) has permitted farm employers to hire workers from selected countries to fill seasonal jobs in the sector. It has risen from an annual level of 1,258 workers in the late 1960s to over 20,000 in 2006. Initially, workers were recruited from the English-speaking countries in the Caribbean to work in Ontario and Quebec. Since 2003, workers from Mexico and Guatemala have come to Canada to work in those provinces, plus British Columbia and Alberta. This program has served as a model for similar policies for other sectors. Today, the TFW programs permit the admission of over 100,000 workers, spanning nearly all sectors of the economy. The programs also cover various skill levels (including some occupations with very low skills) and are designed to allow eligible foreign workers to work in Canada for an authorized period of time. In any given year, about half of migrant workers who enter Canada are covered by broad policies embodied in the North American Free Trade Agreement (NAFTA) with the United States and Mexico. NAFTA permits international labour migration for specialized occupations and to facilitate inter-company transfers. The largest source of migrants under these programs is the United States. Another specialized program covers live-in-domestic workers who enter Canada to care for children and the elderly. After completing their initial contracts, they are eligible to apply for citizenship. Other TFW's come through special agreements between Canada and other nations.

In order to recruit foreign workers, employers must demonstrate first that they are unable to find suitable Canadians/permanent residents to fill vacant jobs. They typically are required to advertise for workers in Canada and offer a wage that reflects local standards. and that the entry of these workers will not have a negative impact on the Canadian labour market.

Since 2000, the scope of occupations covered by TFWP's has widened dramatically. Migrant workers are not only employed in agriculture, they work in hotels, fast food restaurants, construction and food processing plants. The federal government has reached agreements, not at all well publicized, to add other occupations to the list of eligible positions on an expedited basis. These include information technology workers, performers, human resource managers and many other professional and semi-professional occupations.

Employers who wish to hire TFWs must first apply to the federal government a Labour Market Opinion (LMO). Several factors are considered when developing this opinion, such as:

- Whether the wages and working conditions are in keeping with norms for the occupation;
- Whether the TFW is likely to fill a labour shortage;
- Whether or not there is a labour dispute in progress;
- The efforts made by an employer to recruit or train Canadians or permanent residents;

- Whether hiring the foreign worker will result in transferring skills or knowledge to Canadians or in creating or retaining employment for Canadians; and
- Ensuring that an employer-employee relationship exists where the foreign worker agrees to work full-time for an employer for a specific wage/salary.

If an employer's application for an LMO is successful, it can then recruit a foreign worker(s) to fill vacant positions, under one of several bi-national agreements between Canada and other nations. Employers typically turn to recruiting agencies located in supplier countries who will find eligible candidates and assist them in completing records checks, medical requirements and the like. These agencies charge prospective workers (sometimes heavily) for these services and arrange to collect their fees from wages migrant workers receive in Canada (a practice that is illegal in Canada). In the case of the SAWP, the Mexican government recruits prospective workers and even assists them financially in completing Canadian requirements for entry into the program. Successful applicants are assigned to employers for a pre-determined period of service. Workers then apply for a permit to work in Canada and pass a security screening before entering Canada.

The preliminary steps of the recruitment and hiring process are simple in theory, but complex in practice. Three departments of the Canadian

government are involved. Their decision criteria are not well-known and do not involve extensive consultation with stakeholders, in particular representatives of Canadian workers.

Workers accepted into the TFWP are given a contract of employment, based on a template provided by the Canadian government, and in some cases negotiated with the government of the supplying country. Employers may add provisions to the template unilaterally to reflect the conditions under which TFW's will work.

The TFWP's "guarantee" foreign workers the same status as Canadians in the same location or occupation. However, implementation of this principle is complicated. Under the Canadian constitution, the regulation of employment is a provincial responsibility. Therefore, statutory protections for workers vary from one province to another. Two federal welfare programs apply to TFW's: Employment Insurance and the Canada Pension Plan. In addition, federal and provincial income taxes are withheld from workers pay. No province explicitly excludes migrant workers from its labour standards legislation, although some occupations where migrant workers are found frequently are not covered, including domestic workers and farm workers.

### **Canadian labour standards**

Labour standards in Canada fall into three broad categories: employment standards, labour relations and occupational health and safety. Employment

standards legislation establishes basic standards in the workplace, including minimum wages, holidays, hours of work, vacations and family leave. With few exceptions these laws apply to all employed persons who are not managers. For nonunion workers, these standards provide a legislated safety net. In most cases, the legislated levels are truly minima. For example, no province requires a minimum wage that is a living wage. However, legislated public holidays are widely observed in all sectors of the economy.

Most Canadian workers who are not managers have the right to form unions and negotiate collectively with their employers. This process is based on American legislation and can be complicated. In general, workers employed in a particular site exercise their right to collective representation through an election. The ease with which this choice is expressed depends on provincial legislation. In some jurisdictions, a union needs only to obtain signed applications for membership from a majority of workers in the site to obtain government recognition as a trade union. Other provinces require secret ballot elections that often entail longer processes and greater opportunities for employers to express their opposition to a union, which is normally their position when a union attempts to organize employees. In either case, if a union is certified to represent a group of workers, the employer is legally required to bargain in good faith to obtain a collective agreement.

The third set of labour standards is occupational health and safety. Work practices are regulated through legislation or administrative orders. In addition, all provinces provide “workers’ compensation,” a form of employer-paid no-fault insurance to cover lost wages and medical expenses for workers who are injured at work. All provinces require employers to belong to the publicly managed insurance system, i.e., there are no private insurance carriers in this area.

Canadian occupational health and safety legislation operates on three basic principles: workers’ right to participate in the application of regulations; workers’ right to know the hazards they may encounter on the job; and workers’ right to refuse work they reasonably consider to be unsafe. The “right to know” is implemented through workplace health and safety committee. Most Canadian workplaces with 20 or more workers are required to have health and safety committees. This system differs considerably from other national programs, but is well-established in all Canadian provinces and territories.

Despite formal protections for migrant workers in Canada, none of these legislative frameworks adequately protects foreign workers admitted under TFWP. In essence, these failures are the most controversial elements of the Canadian TFWP.

None of these legislative regimes are well-suited to most migrant workers entering into Canada in the 21<sup>st</sup> century. Canadian employment standards

laws primarily are complaint-driven. In other words, enforcement of the law depends on the willingness of a worker to approach the enforcement agency and allege that the employer has not provided the minimum conditions prescribed in the statute. The most obvious problem with the application of this legislation is the knowledge of workers of their rights. Most agencies depend heavily on the internet to provide information about workers' rights. Many migrants do not have ready access to the internet. In addition, only a few documents appear in languages other than English or French. In British Columbia, "fact sheets" setting out basic information on the law are available in Spanish, French, Punjabi and Chinese, languages spoken by immigrants, plus some migrants from Latin America. No information is available in other European or Asian languages. The administrative capacity of enforcement agencies to deal with complaints in foreign languages which are not spoken widely in immigrant communities is almost non-existent. Even where fact sheets exist, they are, by definition, written, and many migrant workers in less skilled jobs are not fully literate in their native languages. No well-developed mechanism for distributing information to migrant workers explaining their rights and the procedures for enforcing their rights exist.

Obviously, migrant workers arrive with expectations about how labour legislation functions based on some experience or perceptions about the operation of comparable systems in their own country. Conversely, Canadian administrators operate with cultural mindsets based on normal Canadian practices. Often these expectations differ widely. Thus, the routine

administration of routine complaints or allegations of violations of employment standards legislation is very complex.

In locations with large numbers of migrant workers, advocacy groups do function to assist workers in obtaining their rights or dealing with government agencies. These groups receive very little funding. Some labour organizations assist them, and ethnic communities may provide support on a volunteer basis. None of these organizations receive government funding or are regarded by governments which arrange to import migrant workers regards such groups as possible participants in an integrated enforcement systems.

Finally, the federal government has no systematic program for notifying provincial employment standards agencies of the location, occupations and nationalities of migrant. Thus, even the provincial agencies who are the most enthusiastic about enforcing employment standards (if any exist) are severely handicapped in their efforts to tailor their activities to the needs of migrant workers.

While migrant workers have the same rights to seek union representation as Canadian workers, the barriers to exercising these rights are almost insurmountable. Migrant workers arrive for pre-determined periods of time, so their interest in seeking collective representation over the presumed opposition of employers is unlikely to be strong. The benefits of unionism in Canada are often the greatest over longer periods of time, when negotiated

wage rates, protections against layoffs and the right to challenge dismissals become more valuable. Again, migrant workers bring with them perceptions about unionism and collective bargaining based on what they may know from their native countries, which typically vary considerably from the Canadian system. Where these perceptions are negative, as often is the case for citizens of countries where democratic institutions are weak, employers can easily play on these attitudes to discourage unionization in Canada. Apart from the reluctance of migrant workers to contemplate unionization, Canadian unions must approach them to seek their support for collective representation. Cultural, educational and language barriers to success in organizing campaigns are significant. If a new group of workers unionizes, many months may pass before a first collective agreement is negotiated successfully. During the period when the agreement is negotiated, migrant workers see little benefit from the expenditure of emotional energy, dues and participation in the bargaining process. They often become discouraged and reject their union or settle for modest gains to expedite the completion of an agreement.

In practice, groups of workers composed primarily of migrants almost never unionize in Canada. They do benefit from union representation when they are working closely with Canadian workers who are already unionized or have an interest in obtaining the protection of a union. To their credit, a number of Canadian unions are making strong efforts to organize migrant workers, often using advocacy activities described above as links to migrant workers who are potential members.

The Canadian system of occupational health and safety relies heavily on the participation of workers in its administration. The cultural, linguistic and administrative barriers to effective enforcement described above also apply to employment standards protections. However, system is not driven by complaints in the way that employment standards and labour relations laws are. When accidents occur, they normally are recorded with the workers' compensation insurance system, either because a worker reports the incident, his or her fellow workers take such action or the medical system identifies a condition as resulting from employment. The existence of these data sources enables or even requires enforcement agencies to investigate accidents, or at least serious accidents, to determine if applicable regulations are observed in the work place. In addition, the existence of workplace health and safety committees provide migrant workers who are injured with potential advocates to ensure that workers' rights are observed.

### **Conditions of Migrant Workers**

There are no comprehensive studies of the conditions of migrant workers. Given the wide range of occupations, there cannot be any generalization about the entire category. However, several studies of Mexican farm workers employed in Ontario and British Columbia reveal that these workers receive treatment far below Canadian standards. They are not informed effectively of their rights under Canadian law. An estimated one-third of all workplace

accidents are not reported to workers' compensation authorities. Virtually no complaints of employment standards violations originate from this group.

Two small studies by the employment standards agency in Quebec found that fewer than one half of all employers inspected were observing the legal requirements.

Similar abuses have occurred in the construction workers. They have signed contracts for conditions far inferior to Canadian levels and below those promised when their employer applied for an LMO. There have been allegations that contracts signed in workers' home countries have been altered after they arrived in Canada.

Existing systems of enforcing contracts of employment for TFW's simply do not function. None of these contracts contain procedures for resolving disputes between migrant workers and management. Statutory enforcement systems do not provide any effective substitute for appeals or grievance procedures. Employees who complain about their treatment risk dismissal by the employer which leads to removal from Canada. Consular officials from the countries supplying workers are either unavailable or unwilling to assist individual workers with these problems.

There are no systems to ensure that migrant workers are adequately housed, can receive necessary medical attention (although they have medical insurance) or are assisted in integrating in any way into their communities. In less skilled jobs, workers normally do not speak English or French, unless one

of the languages is their native tongue. Thus, daily activities outside of work are very challenging for them.

Federal and provincial agencies responsible for the administration of these programs do not coordinate their activities. Federal authorities arrange for the transportation of these workers to Canada and turn them over to employers. No agency is responsible for ensuring that the commitment that these workers should receive the same treatment as Canadian workers is observed. Based on data available to date, it is virtually certain that few migrant workers receive all the rights to which they are entitled.

Migrant workers are powerless politically. Their home governments see these programs as a source of foreign exchange and are eager to please employers in a globalized competitive labour market. Canadian institutions do not serve them well. These conditions are a blot on Canada's reputation as a humane country that welcomes foreigners who wish to contribute to its society and economy.

### **Effects on Canadian Workers**

Canada experienced almost a generation of relatively high unemployment in the 1980's and 1990's. In the past 5 years, high resource prices and a large expansion in the production of non-conventional oil in Western Canada has reduced unemployment to the lowest levels in decades. Thousands of workers from other regions have come to these prosperous provinces and found jobs.

Yet outside of a few pockets of extreme demand, wages have not risen dramatically. Clearly, government policy favours the importation of migrant workers to fill vacancies without increasing wages. No studies have identified the impact of migrant workers on Canadian labour markets, but a few facts point to the direction of official policy and possible consequences.

The process for identifying prevailing wages to be included in LMO's is not public. In any case, there is no representation for Canadian workers in the determination of wage rates. In British Columbia agriculture, for example, the wages offered have not risen in three years, despite increases in production and low rates of unemployment, both conditions that should predict higher wages. The importation of low-wage foreign workers not only depresses Canadian wages, it reduces incentives to raise productivity of these workers by mechanization, improve production techniques or train Canadian workers for more skilled positions. None of these issues is considered when decisions to import migrant workers are made, and no public debate is underway about the relative merits of different labour market policies.

These are complex issues, still to be examined in Canadian society. Migrant workers provide valuable sources of incomes for their families abroad, but the net result of many of these programs is to import third world employment practices into Canada and to force Canadian workers to compete globally in jobs that cannot be exported.