



**HOUSE OF COMMONS
CANADA**

TEMPORARY FOREIGN WORKERS AND NON- STATUS WORKERS

Report of the Standing Committee on Citizenship and Immigration

**David Tilson, MP
Chair**

MAY 2009

40th PARLIAMENT, 2nd SESSION

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

If this document contains excerpts or the full text of briefs presented to the Committee, permission to reproduce these briefs, in whole or in part, must be obtained from their authors.

Also available on the Parliamentary Internet Parlementaire: <http://www.parl.gc.ca>

Available from Communication Canada — Publishing, Ottawa, Canada K1A 0S9

**TEMPORARY FOREIGN WORKERS AND NON-
STATUS WORKERS**

**Report of the Standing Committee on
Citizenship and Immigration**

**David Tilson, MP
Chair**

MAY 2009

40th PARLIAMENT, 2nd SESSION

STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

CHAIR

David Tilson

VICE-CHAIRS

Hon. Maurizio Bevilacqua

Thierry St-Cyr

MEMBERS

Paul Calandra

Rick Dykstra

Hon. Jim Karygiannis

Pascal-Pierre Paillé

Alice Wong

Olivia Chow

Nina Grewal

Alexandra Mendes

Devinder Shory

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Jean Dorion

CLERK OF THE COMMITTEE

Andrew Bartholomew Chaplin

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Sandra Elgersma

Daniel Thompson

Penny Becklumb

THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

SEVENTH REPORT

Pursuant to its mandate under Standing Order 108(2), your Committee has conducted a study on *Temporary foreign workers and non-status workers*.

ACKNOWLEDGEMENTS

The Committee could not have completed its study on temporary foreign workers and non-status workers without the cooperation and support of numerous people. In particular, the Chair and members of the Committee extend their thanks to the many witnesses who shared their concerns and ideas in this joint effort to improve how Canada manages workers from abroad.

In addition, the Committee wishes to acknowledge the work and support of Penny Becklumb, an analyst at the Library of Parliament who contributed significantly to early drafts of the report; Sandra Elgersma and Daniel Thompson, analysts currently with the Library of Parliament who provided significant support; and Denyse Croteau and Maxime Ricard of the Committees Directorate who saw to the logical evolution and steady support of the Committee's study plan.

The Committee would also like to thank the translation and interpretation staff of the Department of Public Works and Government Services, and the support services of the House of Commons Committee Directorate.

Finally, the Chair wishes to thank the members of the Committee and their predecessors for the hours they dedicated to study this important issue to prepare this report.

PREFACE

During the Thirty-Ninth Parliament, Second Session, the Committee travelled across Canada from March 31 to April 17, hearing from witnesses on temporary foreign workers and non-status (or undocumented)¹ workers, along with two other topics. Over a three-week period, we received over a hundred written briefs (see Appendix B) and heard from dozens of witnesses (see Appendix A) in the 12 cities where we stopped: Vancouver, Edmonton, Moosejaw, Winnipeg, Kitchener-Waterloo, Scarborough, Toronto, Dorval, Québec City, Fredericton, Halifax and St. John's. The present Committee felt it important to finish this work during the 40th Parliament.

Temporary foreign workers and non status workers have different stories of entry to Canada, different legal statuses, and different opportunities for social and economic participation in Canadian life. However, they share non-permanent status and vulnerability to abuse, meet some of the same labour market shortages, and both face barriers to attaining permanent residency.

Part I of this report focuses on Canada's immigration programs for temporary foreign workers. It addresses the current situation and vision for the future, opportunities for transitioning from temporary to permanent resident status, and various aspects of the temporary foreign worker programs themselves, including administration, worker protection, and worker experience.

Part II of this report focuses on non-status workers, a term adopted by the Committee in the course of this study. It addresses means of stemming the growth of the population of non-status workers.

1 During the study, we used the term "undocumented" to refer to this population of workers. However, we believe that the term "non-status" most accurately describes the population addressed in this study: that is people who have no current legal status in Canada, whether they were at one time known to authorities (and therefore documented) or not.

TABLE OF CONTENTS

PART I: TEMPORARY FOREIGN WORKERS	1
CHAPTER ONE: THE CURRENT SITUATION AND THE COMMITTEE’S VISION FOR THE FUTURE	1
Introduction	1
How we got to this Point	2
A. Labour market shortages.....	2
B. Immigration.....	4
Vision of the Future.....	5
CHAPTER TWO: TRANSITION FROM TEMPORARY TO PERMANENT RESIDENT STATUS.....	9
Introduction	9
Provincial Nominee Program	10
Live-in Caregiver Program	11
Canadian Experience Class.....	12
Supportive Policy Changes.....	13
A. Family Accompaniment	14
B. Work Permits for Family Members	16
CHAPTER THREE: ADMINISTRATION	17
Introduction	17
Labour Market Opinions (LMOs).....	17
A. Assessing labour shortages	19
B. Expediting the processing of “hiring permit” (currently LMO) applications.....	21

C. Improving the process in other ways	22
Prevailing Wage Rates	22
Work Permits	24
CHAPTER FOUR: WORKER PROTECTION.....	27
Introduction	27
Information Provided to Workers on Rights and How to Access Assistance.....	27
A. Providing information in the worker’s country of origin	28
B. Providing information in Canada.....	29
Recruitment Agencies.....	30
A. Providing information to all parties.....	33
B. Prosecuting illegal conduct under existing provisions.....	34
Worker Support.....	36
Employer Monitoring and Compliance	37
Symbolic Measures of Protection.....	40
CHAPTER FIVE: WORKER EXPERIENCE	41
Introduction	41
Access to Benefits and Social Insurance	41
Residence	44
PART II: NON-STATUS WORKERS	47
INTRODUCTION.....	47
STEMMING THE GROWTH OF THE POPULATION OF NON-STATUS WORKERS	51
CONCLUSION	53
LIST OF RECOMMENDATIONS.....	55

APPENDIX A: LIST OF WITNESSES HEARD IN THE SECOND SESSION OF THE 39 TH PARLIAMENT	63
APPENDIX B: LIST OF BRIEFS	71
REQUEST FOR GOVERNMENT RESPONSE	73
SUPPLEMENTARY OPINION OF THE CONSERVATIVE PARTY.....	75
SUPPLEMENTARY OPINION OF THE BLOC QUÉBÉCOIS	77
SUPPLEMENTARY OPINION OF THE NEW DEMOCRATIC PARTY	79

PART I: TEMPORARY FOREIGN WORKERS

CHAPTER ONE: THE CURRENT SITUATION AND THE COMMITTEE'S VISION FOR THE FUTURE

Introduction

There are restaurants closing their doors because they have no workers. McDonald's is closed at lunchtime because they have no people serving, so they just open their window.²

For the first time in the history of Alberta, in 2006 there were more temporary foreign workers than permanent immigrants arriving in our province.³

There is a new immigration and labour market reality in some regions of Canada. Labour needs are being met by growing numbers of temporary foreign workers and by people working in Canada without legal status. This new environment and the substantial expansion of the temporary foreign worker program prompted the Committee to embark on a study of temporary foreign workers and non-status workers.

In December 2007, there were 201,057 temporary foreign workers in the country, 115,470 of whom entered Canada for the first time that year (57%). While initial entries have increased overall, the increase in provinces such as Alberta (3.6 times since 2003) and British Columbia (1.8 times since 2003) is most pronounced. The table below shows entry and stock data⁴ on temporary foreign workers and the number of new permanent residents for each province in 2007.

2 Alex Istifo, St. Maratken Community Society Inc, *Committee Evidence*, Meeting No. 20, April 2, 2008, 09:30.

3 International Brotherhood of Electrical Workers, Local Union 424, speaking notes, April 1, 2008, p. 1.

4 "Initial Entry" represents the number of temporary residents identified as entering the system at Citizenship and Immigration Canada (CIC) for the first time. "Re-entry" represents the number of temporary residents who have a new permit issued abroad or at a port of entry during the observed calendar year. "Stock" statistics measure the number of temporary residents present in the CIC system on December 1. Source: CIC "Facts and Figures 2007", available at <http://www.cic.gc.ca/english/resources/statistics/facts2007/index.asp>.

Table 1: Temporary Foreign Workers (initial entry, re-entry, and stock)⁵ and permanent residents by province, 2007

	BC	AB	SK	MAN	ON	QB	NB	NS	NFLD	PEI
Initial Entry	29,006	24,371	1,851	2,878	37,184	15,047	904	1,253	1,071	153
Re-Entry	7,376	5,034	630	1,056	26,813	7,392	388	419	176	67
Stock	43,375	37,257	2,998	4,603	82,873	23,458	1,427	2,051	887	298
<i>Permanent Residents</i>	<i>38,941</i>	<i>20,857</i>	<i>3,517</i>	<i>10,955</i>	<i>111,312</i>	<i>45,208</i>	<i>1,643</i>	<i>2,520</i>	<i>545</i>	<i>992</i>

These numbers suggest that temporary foreign workers are playing a role in Canadian society like never before. In the midst of the program's widespread expansion, policy makers need to stop and ask how we got to this point and identify a vision for the future. These are the two questions addressed in this chapter.

How we got to this Point

The simple answer to this question is that there are not enough workers in Canada to satisfy the demands for labour experienced in certain sectors. However, the reality is much more complex and involves exploring the reasons for labour market shortages as well as current opportunities for immigration to Canada. These phenomena are two of the main drivers of the demand for temporary foreign workers.

A. Labour market shortages

It has reached a point... and as an economist, this is something I have never seen, and frankly, never expected to see. Businesses sometimes don't operate because they can't get money, and businesses sometimes don't operate because they can't get customers, and businesses sometimes don't operate because prices for their products aren't high enough for them to make a profit. But now, for the very first time, I am seeing businesses where all these conditions are met and they aren't operating because they can't get enough workers to do their particular business.⁶

While people perceive labour market shortages differently, they are generally in agreement that Canada faces certain demographic realities that are shrinking the available labour market pool. Disagreement arises over the question of whether enough has been done to fully take advantage of the labour force in light of this labour market reality. The Committee heard divergent views on this issue—on the one hand, witnesses suggested that employers choose to bring in temporary foreign workers rather than offer more

5 Ibid.

6 Dr. Roslyn Kunin, Canada West Foundation, *Committee Evidence*, Meeting No. 18, March 31, 2008, 13:30.

lucrative remuneration and benefits or invest in training and recruitment. On the other hand, employers outlined significant measures taken to hire from within the local labour pool that still left them short-handed and struggling to compete.

Making the best possible use of the labour force is a shared responsibility. Witnesses identified many areas for improvement that would help to lessen the demand for temporary foreign workers. For instance, labour mobility within Canada could be improved through the use of tax incentives for relocation and harmonized occupational standards.⁷ Improved foreign credential recognition would speed up employment of new immigrants.⁸ Support for training and apprenticeships would help to attract young Canadians,⁹ while extending employment for retirees would help to retain those more experienced.¹⁰ Witnesses encouraged the use of various measures to reach out to under-employed groups, such as women and Aboriginal people, and gave examples of successful programs in these areas.¹¹ Finally, witnesses suggested that employers need to examine why certain jobs are unattractive and improve working conditions.¹² Witnesses who raised these labour market alternatives feared that temporary foreign workers provide an easy short-term solution, possibly jeopardizing investments in these other areas.¹³

Some of the employers and employer associations that appeared before the Committee gave another perspective. They underlined that labour shortages restrict business opportunities and explained how access to temporary foreign workers has been essential to stabilizing and growing business.¹⁴ Some referred to extensive local recruitment efforts that yielded few new hires or reliable, long-term employees.¹⁵ Others mentioned long-term recruitment investments, such as hiring a coordinator to improve First Nations relations and recruitment—measures that do not help with current shortages.¹⁶ Several witnesses stated that temporary foreign workers are not a cheap or easy alternative, and that it would be preferable to meet the demand for labour locally.¹⁷

7 BC and Yukon Building and Construction Trades Council, written submission, March 31, 2008.

8 Wayne Peppard, SUCCESS, *Committee Evidence*, Meeting No. 18, March 31, 2008, 14:35; Edmonton Mennonite Centre for Newcomers, written brief, 1 April 2008, p. 4.

9 International Brotherhood of Electrical Workers-Local 424, written brief, April 1, 2008; p. 2.

10 Martin Collacott, Fraser Institute, *Committee Evidence*, Meeting No. 18, March 31, 2008, 13:35.

11 For instance, the Mainland Nova Scotia Building and Construction Trades Council talked about “Techsploration”, a program designed to attract women into construction trades. Written brief, April 16, 2008, p. 4.

12 Canadian Auto Workers Union, written brief, April 8, 2008.

13 Alberta Federation of Labour, written brief, April 1, 2008.

14 Miles Kliner, Sunterra Meats, *Committee Evidence*, Meeting No. 19, April 1, 2008, 14:20.

15 Carol Logan, Prince George Hotel, *Committee Evidence*, Meeting No. 34, April 16, 2008, 10:10.

16 Rory McAlpine, Maple Leaf Foods Inc., *Committee Evidence*, Meeting No. 22, April 3, 2008, 10:20.

17 For example, Dr. Rosylin Kunin, Individual, *Committee Evidence*, Meeting No. 18, March 31, 2008, 14:05.

B. Immigration

We should not look to the temporary foreign worker program to deliver more than it can. Canada has a number of policy tools that can do more to increase the performance of our labour market than a dramatically expanded temporary foreign worker program. Similarly, improvements in other areas of Canada's immigration program may produce larger and more lasting benefits.¹⁸

Two aspects of Canada's immigration system may contribute to the increasing demand for temporary foreign workers. They are the backlog in processing applications for permanent resident status, and the current requirements for economic immigrant selection.

According to Citizenship and Immigration Canada (CIC), in the spring of 2008 there was a backlog of 925,000 applications for permanent residency waiting to be addressed, 585,000 of which were potential immigrants in the skilled workers category. This backlog translates into long waiting times—currently 80% of federal skilled worker applications are processed in 62 months, with 30% of cases being finalized in 21 months.¹⁹ These waiting times are not compatible with the fast-paced business environment, so employers are turning to the temporary foreign worker program to bring workers to Canada faster.

Employers also turn to the temporary foreign worker program because it allows them to bring in a different kind of worker than that provided for in the economic immigration stream. Canada's temporary foreign worker program began with three streams: one for seasonal agricultural workers, one for live-in caregivers, and one for people with highly specialized skills that were not available in Canada. In 2002, the federal government recognized the need for unskilled labour and introduced a pilot project (now a temporary worker program) for people with lower levels of formal training. Workers coming to Canada through these programs may not meet the selection criteria for economic immigrants in the areas of official language proficiency, level of schooling, or occupational classification.

Witnesses regularly referred to these immigration challenges in their discussion of the temporary foreign worker program. They encouraged the Committee to push for a more efficient immigration system that responds to labour market demands.²⁰ Some expressed concern about the emergence of what is perceived to be a two-tiered system,

18 Colin Busby, Policy Analyst, C.D. Howe Institute, *Committee Evidence*, Meeting No. 28, April 9, 2008, 13:10

19 CIC, "Statistical information: Applications processed at Canadian visa offices: Skilled workers—Federal", <http://www.cic.gc.ca/english/information/times/international/02a-skilled-fed.asp>.

20 For example, KAIROS: Canadian Ecumenical Justice Initiatives April 8, 2008; Canadian Restaurant and Foodservices Association (9 April 2008), Ontario Council of Agencies Serving Immigrants, April 9, 2008.

providing access to permanent residency to the educated and highly skilled while leaving low skilled workers with only temporary employment options.²¹

I had the owner of the Tim Hortons restaurant along Albert Street say to me, "John, I don't need a doctor, I don't need a lawyer, I don't need an accountant, but I do need somebody who can pour coffee. That's what I need."²²

We know that quite often our agricultural workers do not even meet the basic admissibility criteria. I think that in future it might be worthwhile to develop this gateway, to enable these people to become Canadian citizens.²³

Vision of the Future

Immigration is not about filling labour market shortages with just-in-time labour. CIC is not a temp agency. We should be building a nation of active citizens.²⁴

Temporary foreign workers contribute to the Canadian economy, and all Canadians, indirectly, are beneficiaries.²⁵

After hearing from more than 100 witnesses, the Committee believes that the temporary foreign worker program has changed considerably from its roots as a focused program for rare instances of genuine labour market shortage. Instead, for many participants (employers and workers alike), the temporary foreign worker program has become the faster and preferred way to get immigrants to Canada to meet long-term labour shortages.

The expansion of the temporary foreign worker program represents a failure of the economic stream of immigration to bring in the type of workers needed and in a timely fashion. The Committee heard repeatedly that the "immigration system is broken" and that if it were amended, the demand for temporary workers would lessen. There was widespread agreement that permanent immigration was more desirable and better for nation building than using increasing numbers of temporary workers. The changes introduced in the Second Session of the Thirty-Ninth Parliament through Part 6 of Bill C-50, the *Budget Implementation Act, 2008*, attempt to address deficiencies in the economic

21 For example, Macdonald Scott, Immigration Consultant, As an Individual, *Committee Evidence*, Meeting No. 25, April 8, 2008, 10:20, Eugénie Depatie-Pelletier, Research Associate, Canada Research Chair on International Law of Migration, University of Montreal, As an Individual, *Committee Evidence*, Meeting No. 31, April 14, 2008, 13:15

22 John Hopkins, individual, *Committee Evidence*, Meeting No. 20, April 2, 2008, 10:20.

23 Pierre Lemieux, Union des producteurs agricoles, *Committee Evidence*, Meeting No. 29, April 10, 2008, 11:35.

24 Victor Wong, Executive Director, Chinese Canadian National Council, *Committee Evidence*, Meeting No. 26, April 8, 2008, 13:20.

25 Janet McLaughlin, individual, *Committee Evidence*, Meeting No. 24, April 7, 2008, 13:25.

immigration program. It is still too early to evaluate the impact those changes will have. Accordingly, the Committee believes that further study of, and changes to, the skilled immigration program may be required. In the meantime, it is clear that employers, communities and even sectors of the economy have come to rely on temporary foreign workers.

The Committee believes that temporary foreign workers represent only one solution to resolving labour shortages. Other measures must also be implemented, such as improving the economic integration of immigrants and others on the margins of economic participation; improving labour mobility; investment in training, apprenticeships, and retraining; and improving productivity. The recommendations included in this report reflect this multifaceted approach and what the Committee believes is the rightful place of the temporary foreign worker program. Hiring temporary foreign workers should complement, rather than replace, investments in the local labour market named above. Further, the cost to the employer of hiring a temporary foreign worker should reflect the true cost of ensuring a safe and healthy workplace where temporary foreign workers enjoy the same working conditions as Canadian workers.

Because employers rely on the temporary foreign worker program for the short-term and because it takes time to implement more sustainable solutions, the Committee proposes no change to the current temporary foreign worker programs in terms of scope or purpose. Instead, the bulk of our recommendations are intended to improve the current programs, strengthening protections for workers and facilitating requirements for employers. Our proposals fill in gaps that should not have been allowed to develop in the first place. However, the Committee wishes to underline that our goal is a functional immigration system with a much more limited scope for temporary foreign workers. Future temporary foreign worker programs should be focused and subject to sunset clauses precipitating regular reviews of labour market conditions.²⁶

Recommendation 1

The Committee recommends that the Government of Canada maintain the current Temporary Foreign Worker program, possibly enhanced by the recommendations of this report, in order to fill labour needs that are of a temporary nature, such as labour needs that are seasonal or likely to be of a cyclical nature.

This report acknowledges that there are problems with Canada's temporary foreign worker programs, some that have been known for some time, and some that have arisen along with the program's rapid expansion. While we make recommendations to address many of these problems, the Committee believes that monitoring and evaluation is required

26 Professor Don DeVoretz argued that successful temporary foreign worker programs are focused and subject to a sunset clause. *Committee Evidence*, Meeting No. 18, March 31, 2008, 13:45.

on an on-going basis, allowing the programs to evolve and adjust to changing conditions. An independent body could consider additional concerns, monitor program or policy changes, and help with the eventual closure of most temporary foreign worker programs.

Recommendation 2

The Committee recommends that the Government of Canada create a temporary foreign worker advisory board comprised of various stakeholders to provide it with periodic feedback and recommendations. The advisory board should be given a broad mandate, including on-going monitoring, oversight, and review of the temporary foreign worker programs.

CHAPTER TWO: TRANSITION FROM TEMPORARY TO PERMANENT RESIDENT STATUS

Introduction

If these are good workers, if we can't fill the positions and they want to stay—and we want them to stay—what is that process going to look like? Will they be able to? Will they not be able to? That's what I start to worry about. What are we going to face in the go-forward?²⁷

The Committee believes that all temporary foreign workers in the current programs should have the opportunity to apply for permanent residency after meeting certain criteria, an opportunity not currently universally available to them. The Committee's vision is the vision of immigration that Canada has long cherished: mutual commitment on the part of immigrants and this country to work hard and invest in improving the future. We want immigrants to feel that Canada is welcoming and that there are no barriers to social and economic participation. We also want them to feel that it is worthwhile to commit their time, talents and their children's futures here. These commitments follow naturally from permanent immigration, serving all parties—employers, workers, and communities—well. The Committee recognizes that many workers and employers desire their employment arrangement to be permanent and we feel that permanent migration is in Canada's best interests. Of course, those who do not wish to apply to remain in Canada would be under no obligation to do so.

While temporary work programs diverge from the Committee's vision of immigration, providing a pathway to permanent residency to all temporary foreign workers is a step in the right direction. Allowing temporary foreign workers in the current programs access to permanent residency is the best short term measure, coupled with the long-term changes previously mentioned. In the long term, when the temporary foreign worker program is more limited and reserved for genuinely temporary situations, a path to permanent residency may no longer be desired.

There are three avenues currently available for transitioning from temporary to permanent status from within Canada: the provincial nominee programs, the live-in caregiver program and the Canadian Experience Class. Witnesses addressed the current opportunities for transition to permanent residency, identifying concerns and helping to shape the Committee's recommendation for a broader avenue.

27 Carol Logan, Prince George Hotel, *Committee Evidence*, Meeting No. 34, April 16, 2008, 10:10.

Provincial Nominee Program

Section 87 of the *Immigration and Refugee Protection Regulations*²⁸ creates the provincial nominee class of economic immigrants, pursuant to which a person may become a permanent resident of Canada if nominated by a province under a provincial nominee agreement between the Government of Canada and the government of the province. All 10 provinces and one territory have entered into these agreements, with the overarching aim of filling labour shortages identified by provincial and territorial governments.

Each provincial or territorial nominee program is unique, varying in eligibility criteria, program size and history. This variation in provincial nominee programs also affects the opportunities for temporary foreign workers to transition into permanent residency. Two temporary foreign workers with the same profile could have different opportunities to settle permanently based on the province or territory of their original work permit. Factors such as years of schooling, official language capability and occupational classification are assigned different values in the different programs.

As the Committee traveled across Canada, it was clear that in some provinces, the temporary foreign worker and provincial nominee programs were working in tandem to provide a pathway to permanent status for temporary foreign workers needed on a long-term basis. Eric Johansen described the partnership in his province as follows:

The temporary foreign worker program generally has quicker access to workers than can be provided through an immigration program, such as the Saskatchewan immigrant nominee program, or any other federal stream, so it's very critical for employers. We've designed our nominee program to take advantage of that fact, and we have several categories in which individuals come into the province initially on a temporary work permit gained through a labour market opinion process with Service Canada. When they're here for six months, they can then apply to our nominee program for permanent status. So we see that two-step program as often serving employers very effectively. If we can get more temporary foreign workers here, we think it'll build our program and help us meet our goals as well.²⁹

The Committee was impressed with the way that some provinces, in particular Saskatchewan and Manitoba, use the temporary foreign worker program to meet long-term labour market challenges and strengthen communities. Their strategic approach and collaboration between business, government, and community sectors is a good news story that might be of interest to other jurisdictions. All measures should be taken to facilitate the transition from temporary worker to permanent resident through the provincial nominee avenue.

28 S.O.R./2002-227.

29 Government of Saskatchewan, Saskatchewan Immigrant Nominee Program, *Committee Evidence*, Meeting No. 20, April 2, 2008, 10:10.

Recommendation 3

The Committee recommends that the Government of Canada initiate dialogue and facilitate cooperation with the provinces and territories, so that the temporary foreign worker and provincial nominee programs function together smoothly to provide a pathway to permanent residency.

Live-in Caregiver Program

People who enter Canada under the Live-in Caregiver Program are eligible to apply for permanent resident status if they have completed two years (24 months) of authorized full-time employment as a live-in caregiver within three years from the date of entry into Canada under the program. Additional eligibility criteria such as a valid work permit and valid passport and admissibility criteria for permanent residency must also be met.

Witnesses generally applauded the opportunity available to live-in caregivers to apply for permanent resident status. However, their testimony revealed that the current policy increases the vulnerability of live-in caregivers and provides insufficient flexibility to meet eligibility criteria. In particular, caregivers are under great pressure to complete the required period of employment. The stakes are high not only for themselves, but also for their families left behind in the country of origin who are hoping to reunite in Canada as permanent residents.

In this context, periods of unemployment can be devastating. Witnesses suggested that caregivers tolerate poor working conditions in order to meet the employment requirements:

For example, many of them are forced to work overtime without pay or are forced to work without pay at all. Since enforcing their rights could potentially mean getting fired and being unable to complete the two-year employment requirement for permanent residence, caregivers are almost always willing to tolerate abuse from the employer.³⁰

Witnesses also suggested that live-in caregivers sometimes failed to complete the period of employment due to circumstances beyond their control, such as illness, relocation with the employer overseas, pregnancy, or the death of an employer.³¹ When a live-in

30 Abigail Martinez, Parkdale Community Legal Services, *Committee Evidence*, Meeting No. 26, April 8, 2008, 14:30.

31 Several witnesses raised this concern, including Grassroots Women, March 31, 2008, Philippine Women Centre, March 31, 2008, Parkdale Community Legal Services, April 8, 2008, and Association des aides familiales du Québec, April 10, 2008.

caregiver loses her job, witnesses attested to waiting periods of several months for a new work permit to be authorized, further affecting the worker's prospects of completing sufficient months of employment to apply for permanent residency.³²

Live-in caregivers who do not fulfill the requirements for permanent resident status are sent home to their country of origin. They have the right to apply for humanitarian and compassionate consideration to remain in Canada, although this provision is meant to be for exceptional cases. One witness stated that the Federal Court and CIC have offered very little leniency in these situations.³³ Yet the consequences of not meeting the employment requirements can be devastating for a family.

The Committee recognizes that the current program places the live-in caregiver in a disadvantaged position, dependent on her employment for more than her livelihood. No one should feel that they have to tolerate mistreatment in the short-term for the long-term gain of permanent residency. Nor should anyone be prevented from obtaining permanent residency when they fail to meet requirements through no fault of their own. Greater flexibility should be introduced into this policy.

Recommendation 4

The Committee recommends that the Government of Canada provide for a possible one-year extension of the three-year period during which a live-in caregiver must complete 24 months of employment in order to be eligible to apply for permanent resident status, when there is a good reason the live-in caregiver did not complete the employment requirements within the initial three-year period.

Recommendation 5

The Committee recommends the implementation of the "Juana Tejada Law" which would exempt live-in caregivers from the second medical exam when they apply for permanent residence.

Canadian Experience Class

The Canadian Experience Class (CEC) was introduced in Budget 2007 and implemented in August 2008. It allows certain skilled temporary foreign workers and international students with Canadian degrees and Canadian work experience to apply for permanent residency from within Canada. The Immigration Levels Plan for 2009 indicates that the government anticipates 5,000 to 7,500 individuals will become permanent residents through this new channel.

32 Lualhati Alcuitas, Grassroots Women, *Committee Evidence*, Meeting No. 18, March 31, 2008, 16:20.

33 Scott MacDonald, No-one is Illegal, *Committee Evidence*, Meeting No. 25, April 8, 2008, 10:20.

The idea of allowing temporary workers to apply for permanent residency from within Canada appealed to many witnesses. Some were concerned, however, that the eligibility criteria for the CEC (in development at the time of this study but announced officially on August 12, 2008) would reflect the same preferences as the points system in place for skilled workers.³⁴ In particular, witnesses were concerned that individuals with lower levels of formal training and/or lower levels of official language ability would not be eligible for the CEC. While some felt that excluding such individuals was wrong as a matter of principle, others were concerned with retaining their current temporary workers.

When the CEC was officially announced in August 2008, it was confirmed that this path to permanent residency is available to temporary foreign workers with *skilled* work experience in Canada. Under the Canadian National Occupational Classification, skilled work experience means skill types O, A or B (managerial, professional or technical occupations, and skilled trades). Temporary foreign workers with lower levels of formal training are not eligible to apply for permanent residency under the CEC.

While the Committee applauds the introduction of the CEC as a pathway to permanent residency for some temporary foreign workers, we believe that it is too narrow in scope. Following the success of the live-in caregiver program, the Committee believes that the transition to permanent residency should emphasize employment and ability to settle in Canada. All temporary foreign workers should be eligible to apply for permanent resident status after working 24 months within a 36 month period, with the possibility of extension in extenuating circumstances as recommended above. Seasonal agricultural workers and others with shorter work permits would need to be accommodated through special requirements for the eligible employment period.

Recommendation 6

The Committee recommends that the Government of Canada create a path to permanent residency for all temporary foreign workers modeled on the opportunity currently available to live-in caregivers.

Supportive Policy Changes

Following from the premise that all temporary foreign workers should be eligible to apply for permanent residency, other policy changes are needed to facilitate the workers' long-term integration. They include family accompaniment and work permits for family members.

34 Many witnesses raised this concern. See for example No One is Illegal, April 8, 2008; Chinese Canadian National Council, April 8, 2008; Canadian Restaurant and Foodservices Association, April 9, 2008; Union des producteurs agricoles, April 10, 2008; Prince George Hotel, April 16, 2008.

A. Family Accompaniment

Not all temporary foreign workers bring their families when they come to work in Canada. The visa officer will take into account the ability of the temporary worker applicant to support any dependants on the anticipated salary. Because workers with lower levels of formal training generally earn less, they are less likely to be able to demonstrate adequate financial support and therefore less likely to be accompanied by family members.

The experience of live-in caregivers illustrates some of the difficulties of family separation during the period of employment as temporary foreign workers and during the transition to permanent residents. After receiving permanent resident status, former live-in caregivers may apply to sponsor family members if they qualify as eligible sponsors.³⁵ The entire process, from the caregivers' departure from their country of origin to reuniting in Canada can take years. One study found that Filipino youth experienced an average of five years of separation from their live-in caregiver parent³⁶ (most often, their mother). Witnesses told the Committee about the adverse effects of what often turns out to be prolonged family separation under this program:

Often the years of separation result in trauma of these Filipino youth. A recent study with [the University of British Columbia] found that family reunification and family separation have resulted in the youth's lack of integration and isolation here in Canada.³⁷

Witnesses identified family separation as a concern and felt that all temporary foreign workers should be entitled to bring their immediate family members or have a clear path to family reunification. The reasons for this position varied. Some felt that family separation contributed to workers' isolation³⁸ and social problems such as alcoholism. It was felt that permitting family members to accompany temporary foreign workers would assist them to integrate, especially for the long-term.

Others felt that it is a question of equal rights. Eugénie Depatie-Pelletier observed, "In the recognition of temporary family reunification rights, that is to say the right to bring in one's family during the worker's stay in Canada, and also with regard to recognition of the right to seek permanent status, we see that there is discrimination based on gender, on

35 Persons are ineligible to sponsor their family members if they are: permanent residents subject to a removal order; detained or in prison; convicted of a sexual offense or a *Criminal Code* offense against a family member; in default of spousal or child support payment; in default of a debt owed under the *Immigration and Refugee Protection Act*; undischarged bankrupt; in receipt of social assistance for a reason other than disability; or they are in default of a previous sponsorship undertaking. Source: *IP 2 Processing Applications to Sponsor Members of the Family Class*, 2008-06-20, p. 22.

36 Mildred German, Philippine Women Centre of BC, quoting a study from the University of British Columbia, *Committee Evidence*, Meeting No. 18, March 31, 2008, 16:10.

37 Denise Valdecantos, Philippine Women Centre of BC, *Committee Evidence*, Meeting No. 18, March 31, 2008, 15:05.

38 Immigrant Worker Centre/ The Filipina Women's Association of Quebec/ CATT(I)M/ CATT, written brief, September 2007, p. 11.

sex, and also on the basis of certain countries of origin.”³⁹ Others claimed simply that those with lower levels of formal training should have the same rights with respect to family as the highly skilled.⁴⁰

The Committee recognizes that, where family separation occurs, it is not in the best interests of anyone—workers, their children, or Canadian society. It is not an acceptable consequence of government policy and administration that youth, many of whom are future Canadian citizens, become isolated and have difficulty integrating into Canadian society. Accordingly, the Committee believes that the immediate family of temporary foreign workers should have the opportunity to accompany the worker to Canada.

For those situations that are short-term and truly temporary, family separation may be preferred to relocation. Work permits of six months or less should authorize only the worker’s entry to Canada. In addition, in situations where the temporary foreign worker will reside in employer-provided housing, family accompaniment may not be practical, unless the family resides separate from the principal worker.

Enabling accompanying immediate family members to work, as proposed in the next recommendation, increases the family’s earning potential and likelihood of coming together to Canada. However, the Committee believes that this outcome should be monitored, in the event that further changes are required to avoid family separation for temporary foreign workers. The effect on family is one aspect that the proposed advisory board could monitor.

Recommendation 7

The Committee recommends that the Government of Canada mandate the proposed temporary foreign worker advisory board to include family separation in its monitoring.

39 Eugénie Depatie-Pelletier, individual, *Committee Evidence*, Meeting No. 31, April 14, 2008, 13:15.

40 Commission des droits de la personne et des droits de la jeunesse du Québec, written brief, April 14, 2008, p.7.

B. Work Permits for Family Members

Under the current temporary foreign worker programs, family members accompanying the worker may not necessarily be eligible to work. For instance, spouses of workers with lower levels of formal training are limited in their opportunities to work in Canada. They may only work if they too apply as temporary foreign workers and are not automatically issued an open work permit, unlike spouses of highly skilled workers.⁴¹

Witnesses explained that this limitation inhibits the long-term settlement of temporary foreign workers under existing avenues. Chelsea Jukes, a human resources consultant, identified the lack of an open work permit for spouses as “one of the biggest stumbling blocks” faced by her transport company. She explained the impact it has had on their recruitment efforts:

It has contributed in some of our locations to up to 90% of our turnover for the drivers who have left. Ninety percent of them would identify that the inability of their spouse to settle in our communities and in Canada was one of the biggest factors in going home.⁴²

The Committee believes that immediate family members of all temporary foreign workers should be automatically eligible for an open work permit if they are in Canada. We applaud the government of New Brunswick, which has approached CIC to conduct a pilot project along these lines. It is a matter of fairness to extend the same opportunities to families regardless of the skill classification of the temporary worker applicant. Furthermore, spouses and teen-aged children are a potential pool of labour that should not be overlooked, especially given the current demand. Finally, if we want to encourage temporary foreign workers to remain in Canada as permanent residents, it is unwise to deny them the opportunity to work in the initial stages, especially as this barrier may jeopardize their likelihood of staying long-term.

Recommendation 8

The Committee recommends that the *Immigration and Refugee Protection Regulations* be amended so that accompanying immediate family members of persons with a temporary work permit are automatically eligible for an open work permit.

41 In order for spouses to be issued an open work permit, the temporary foreign worker must have a work permit of at least six months and be employed at National Occupational Level O, A or B: <http://www.cic.gc.ca/english/information/faq/work/work-faq08.asp>.

42 Chelsea Jukes, Westcan Bulk Transport Ltd, *Committee Evidence*, Meeting No. 20, April 2, 2008, 11:30.

CHAPTER THREE: ADMINISTRATION

Introduction

In this chapter, three administrative elements of the temporary foreign worker program are discussed. Specifically, observations and suggestions in relation to labour market opinions, prevailing wage rates, and work permits are considered.

Labour Market Opinions (LMOs)

In order to hire a temporary foreign worker, an employer must first receive a positive or neutral labour market opinion (LMO) from Service Canada, (the service delivery arm of Human Resources and Skills Development Canada (HRSDC))⁴³. The purpose of the LMO is to ensure that there really is a shortage of Canadians or permanent residents willing and able to do the job, and therefore that hiring a temporary foreign worker will not have a negative impact on the Canadian labour market.

In assessing an LMO, Service Canada considers the following factors:

- the occupation in which the foreign worker will be employed;
- the wages and working conditions offered to the foreign worker;
- the employer's advertisement and recruitment efforts to hire a Canadian/permanent resident;
- the associated labour market benefits that may accrue from hiring the foreign worker (e.g., transfer of new skills/knowledge, creation/retention of jobs, etc.);
- consultations with organized labour if the position the foreign worker will fill is part of a bargaining unit; and

43 Some jobs do not require a labour market opinion: <http://www.cic.gc.ca/EnGLish/work/apply-who-permit.asp>. This report on temporary foreign workers generally applies in respect of workers holding jobs that do require an LMO.

- a determination of whether the entry of the foreign worker is likely to affect the settlement of an ongoing labour dispute.⁴⁴

Some employers have complained that the LMO application process is unnecessarily complicated and that processing times, which may take months, are too long for busy employers who need workers immediately. Accordingly, the government took measures to speed up LMO processing times, such as introducing the Expedited Labour Market Opinion Pilot Project (E-LMO) and revising certain advertising requirements that employers have to fulfil before concluding there is no suitable domestic worker and hiring a foreign worker.

The E-LMO, which operates in Alberta and British Columbia, is based on a list of occupations “identified as being in high demand sectors where there is a high degree of confidence in the labour market information for the sector and it is easily accessible.”⁴⁵ Service Canada processes qualified employer applications for LMOs for occupations on the E-LMO list within five days of receiving all required information. In March 2009, Service Canada implemented changes to the E-LMO process that require employers to submit evidence of recruitment efforts undertaken, the results of those recruitment efforts, and the rationale for not hiring interested Canadians.⁴⁶

A second measure the government took to speed up the LMO process was revising advertising requirements that employers had to fulfil before concluding that there was no suitable domestic candidate for a job. Initially, “Regional Lists of Occupations under Pressure” were developed for British Columbia, Alberta and Ontario. Employers seeking to hire for listed occupations had to meet less onerous job advertising efforts before hiring a temporary foreign worker. On January 1st, 2009, the Regional Lists of Occupations under Pressure were replaced by new national advertising requirements. Employers now have to advertise most positions for 14 calendar days.⁴⁷

Witnesses from across the country raised various concerns with the LMO process. While some of the views expressed from different witness groups seem contradictory (some employers want the process to be sped up, while some worker groups want LMO decisions to be more considered), in fact they can be articulated as a coherent goal: the

44 This text was taken directly from the CIC website: <http://www.cic.gc.ca/EnGLIsh/resources/publications/tfw-guide.asp>. Also see section 203 of the *Immigration and Refugee Protection Regulations*, S.O.R/2002-227.

45 Government of Canada, “Government of Canada Announces Expansion of Temporary Foreign Worker Program Pilot Project to Ease Labour Shortages for Employers in B.C. and Alberta”, <http://news.gc.ca/web/article-eng.do?nid=371869>.

46 HRSDC, Temporary Foreign Worker Program, Expedited Labour Market Opinion Pilot Project, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/elmoppchanges.shtml.

47 HRSDC, *Temporary Foreign Worker Program: Minimum Recruitment Requirements*, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.shtml.

LMO process must be transparent, quick and efficient, and it must produce an accurate evaluation of the likely impact on the labour market of bringing in a temporary foreign worker to fill a position. The Committee heard a range of suggestions as to how the LMO process could be improved in support of various aspects of this goal.

A. Assessing labour shortages

A re-evaluation of LMO criteria is required given rural and regional unemployment across the country.⁴⁸

A number of witnesses questioned the current methodology Service Canada uses to determine whether there is a labour shortage in respect of an occupation. Some feel that the LMO assessment should better take into account factors such as regional unemployment and barriers to worker mobility across Canada. Many witnesses called for greater transparency in the methodology and of the criteria used to assess labour shortages, and for greater stakeholder input in making such decisions.⁴⁹

The Committee makes the following observations. The LMO process comprises two parts: assessment of whether there is a labour shortage for a certain occupation, and evaluation of an employer and job offer. Duplication of effort could be avoided if the first part, the assessment of a labour shortage, were performed once for a certain occupation in a province, and the outcome then used for subsequent LMO applications regarding the same occupation and province. For example, if, in considering an LMO for Company A, Service Canada determines that there is a shortage of cooks in Alberta, that finding should hold true for the LMO submitted by Company B, which also seeks to hire cooks in Alberta. Accordingly, the Committee suggests that the labour market assessment part of an LMO be separated from the employer and job offer evaluation part of an LMO.

This idea has already been partially implemented as the “Occupations Under Pressure” list and the E-LMO process, each of which admit that certain occupations in a particular province are facing labour shortages. The Committee believes that this is the right direction for achieving efficiencies. Service Canada should not be repeatedly assessing whether a certain occupation is experiencing a labour shortage. It should make that assessment just once and properly, and then use the determination until a change in the market warrants re-visiting the determination.

48 British Columbia and Yukon Territory Building and Construction Trades Council, executive summary, March 31, 2008.

49 Joyce Reynolds, Executive Vice-President, Government Affairs, Canadian Restaurant and Foodservices Association, *Committee Evidence*, Meeting No. 28, 9 April 2008, 14:20,. Lynn McDonagh Hughes, Manager, Operations, Nova Scotia Tourism Human Resource Council, *Committee Evidence*, Meeting No. 34, April 16, 2008, 10:15. The Waterloo, Wellington, Dufferin, Grey Building and Construction Trades Council strongly encourages HRSDC and CIC to consult with local building trades councils to more accurately determine the availability of skilled trades people in the local marketplace prior to opening the door to temporary foreign workers: resolution on foreign workers.

Recommendation 9

The Committee recommends that the Government of Canada work with provincial and territorial governments, with input from other stakeholders, to develop and maintain a list of occupations for which it has been determined that there is a *bona fide* labour shortage in the province or territory, and therefore in respect of which employers may hire temporary foreign workers.

The Committee agrees with the witnesses who called for greater stakeholder input in assessing labour shortages. More information that goes into making an assessment and more transparency in the process followed can only lead to a more accurate and fair determination.

Recommendation 10

The Committee recommends that the Government of Canada make provincial and territorial lists of occupations experiencing labour shortages publicly available, including on the Internet, as well as the methodology used to arrive at that determination.

Recommendation 11

The Committee recommends that the Government of Canada welcome stakeholder input in making labour shortage determinations. It should facilitate an Internet-based system through which stakeholders may provide observations or suggestions relevant to changing or making a labour shortage determination and thereby modifying the list of occupations experiencing labour shortages. The Government of Canada should:

- **post all observations and suggestions it receives for the public to see;**
- **consider all observations and suggestions; and**
- **provide a public response in relation to all observations and suggestions detailing how such information is, will be or will not be taken into account, and why.**

If the labour market assessment portion of the LMO were performed as recommended above, employers would no longer be required to apply for an LMO in order to hire a temporary foreign worker. Instead, they would check to ensure the position they seek to fill is a listed occupation, and then they would apply for a “hiring permit” by

providing all the job- and employer-specific information they currently provide for an LMO. The term “labour market opinion” would no longer be descriptive of the second part of the current LMO process, that is, evaluation of the employer and job offer.

Recommendation 12

The Committee recommends that the Government of Canada modify the Labour Market Opinion process currently followed to include:

- **verifying that the occupation for which the employer wishes to hire is included on the list of occupations for which it has been determined that there is a *bona fide* labour shortage in the province or territory; and**
- **assessing the same employer- and job-specific criteria currently checked in relation to the LMO process.**

Positive determinations on both steps would lead to the issuance of a “hiring permit” for the employer (rather than a positive or neutral LMO, as is the current terminology.)

B. Expediting the processing of “hiring permit” (currently LMO) applications

Employers identified various processing concerns with the current LMO process, including the length of time, multiplication of forms, and the repetitive burdens placed on those who apply frequently. The Committee believes that separating the labour market assessment portion of the process from the employer- and job-specific assessment would greatly reduce the repetition of the labour market determination and thereby speed up processing times. In addition the following steps should be taken to speed up processing without compromising fairness of determinations.

Recommendation 13

The Committee recommends that the Government of Canada automatically approve an application for a “hiring permit” if the application is certified to be substantially the same as a prior application that was approved, and no relevant factors have changed.

Recommendation 14

The Committee recommends that the Government of Canada provide for electronic “hiring permit” extensions.

C. Improving the process in other ways

One witness expressed concern with the current practice of pre-approving LMOs in bulk. The witness felt that this “offers large employers the ability to ‘bank’ LMOs... and [recruit] specific crews of workers when they are needed. The problem is that labour markets change. Construction industry labour markets are particularly volatile.”⁵⁰ While welcoming stakeholder input in making labour shortage determinations will help keep those determinations up to date, as set out in Recommendation 11, problems would still arise if a “hiring permit” with no expiry date were issued during a period when a certain occupation was in demand, but the “hiring permit” was not used to hire someone until a later time when there was no longer a shortage of domestic workers in that occupation.

Recommendation 15

The Committee recommends that all approved “hiring permits” have expiry dates. Six months may be an appropriate validity for a “hiring permit.”

The following recommendation stems from other testimony the Committee heard and is self-explanatory.

Recommendation 16

The Committee recommends that the Government of Canada maintain, on a voluntary basis, a list of all employers who have received “hiring permits,” and that information from the list be available for use by unemployed temporary foreign workers in Canada, and those helping them, in identifying employers seeking to hire temporary foreign workers.

Prevailing Wage Rates

What we're saying is that rather than a labour shortage, in fact what we may have is a cheap labour shortage.⁵¹

Without this escape hatch [temporary foreign workers], employers would have to offer better pay, benefits and training programs in order to attract labour.⁵²

-
- 50 British Columbia and Yukon Territory Building and Construction Trades Council, written brief, March 31, 2008, p. 7.
- 51 Carol Phillips, Assistant to the President, Canadian Auto Workers Union, *Committee Evidence*, Meeting No. 26, April 8, 2008, 14:15
- 52 Canadian Auto Workers Union, written brief, April 8, 2008, p. 4.

The “prevailing wage” in respect of a certain occupation in a certain region is the wage that a Canadian would be paid in that occupation and region. When Service Canada receives an LMO application from an employer seeking to hire a temporary foreign worker, it checks to ensure that the wage the employer proposes to pay to the temporary foreign worker is equal to or higher than the prevailing wage. The purpose is to ensure that employers are not using temporary foreign workers as cheap labour and thereby creating downward pressure on wages and working conditions in Canada.

In testimony before the Committee, Andrew Kenyon of HRSDC explained that the “prevailing wage” for an occupation is calculated as an average based on a variety of data sources, including EI databases, employer surveys, provincial wage surveys, and surveys of competitors.⁵³

While no one who appeared before the Committee disputed the principle of requiring that temporary foreign workers be compensated at the same wage rates as domestic workers, witnesses raised concerns about actual rates that have been set as well as with the process for setting them.⁵⁴

Specifically, some witnesses claimed that prevailing wage rates are set too high, and that they fail to take into account factors such as tips and gratuities, and levels of experience.⁵⁵ Some witnesses were unaware that lists of prevailing wage rates are publicly available on the Internet.⁵⁶ Several witnesses called for more transparency and stakeholder input in calculating prevailing wage rates.⁵⁷

The Committee is not in a position to comment on whether any specific prevailing wage rate has been set appropriately, or whether the process for setting a wage rate is optimal. We believe that stakeholders in the field are in the best position to make specific comments and recommendations in that regard. Accordingly, the Committee makes the following recommendations in support of modifying the system to increase transparency and to facilitate incorporating stakeholder input into prevailing wage rate calculations.

53 Andrew Kenyon, Director General, Temporary Foreign Workers Directorate, HRSDC, *Committee Evidence*, Meeting No. 13, February 25, 2008, 16:00.

54 Hotel Association of Canada, written brief, May 9, 2008, p. 2.

55 Daniel Hirschhorn, Director, Saskatoon Immigration and Employment Consulting Services Inc., *Committee Evidence*, Meeting No. 20, April 2, 2008, 11:15; Joyce Reynolds, Executive Vice-President, Government Affairs, Canadian Restaurant and Foodservices Association, *Committee Evidence*, Meeting No. 28, April 9, 2008, 14:15

56 See: www.labourmarketinformation.ca, and click on “wages & salaries.”

57 United Food and Commercial Workers Union, *The Status of Migrant Farm Workers in Canada 2006-2007*, written brief, p. 3.

Recommendation 17

The Committee recommends that the Government of Canada modify the information it provides to employers and the public at large on the topic of the temporary foreign worker programs (including websites and print information) to make it easier for people to find the lists of current prevailing wage rates and to clarify that “hiring permit” applications will be rejected if they indicate a wage rate that does not equal or exceed the prevailing wage rate.

Recommendation 18

The Committee recommends that, in relation to the lists of current prevailing wage rates, the Government of Canada disclose the method of arriving at each rate, including the statistics relied upon.

Recommendation 19

The Committee recommends that the Government of Canada establish a process by which stakeholders may provide input on any method used to arrive at a prevailing wage rate, and receive a response to their comments from the Government of Canada. The process may be Internet-based, and should be simple, public and obvious.

Work Permits

Currently, the work permit that temporary foreign workers are required to obtain before working in Canada specifies a single employer for whom the worker may work. The Committee heard testimony of how this situation limits the worker’s ability to change employers and thereby gives the employer considerable power over the employee.

Canadians, when confronted by a bad boss, can at the very least quit and get a job with a competitor across the street. But temporary foreign workers don’t have this option—and employers know it.⁵⁸

If a temporary foreign worker becomes unemployed for any reason, or discovers that there is no job waiting for him or her upon arrival in Canada, the worker cannot simply take another job. First, he or she must find another employer who has a positive or neutral labour market opinion (or is willing to apply for one) and who wishes to hire him or her. Then, the worker must wait for a period of weeks, which may stretch into months, while the work permit is amended to reflect the name of the new employer.

58 Alberta Federation of Labour, written brief, 1 April 2008, pp. 10-11.

Accessing the knowledge and the means to activate this process is beyond the resources of most [temporary foreign workers]. Language and cultural barriers are compounded by the challenges of being a newcomer with few connections or contacts in their new Canadian community.⁵⁹

Some employers and workers cannot wait that long. Employers with immediate labour needs may be frustrated with the wait and fill the position with another worker. Workers often face financial difficulty during a protracted period of unemployment, especially if they cannot access any government benefits. Witnesses stated that some temporary foreign workers resort to unauthorized employment, or make claims for refugee status as a result of some of these difficulties.

On the other side of the issue are the employers who often make considerable investments of time and money in finding, recruiting, transporting and training new temporary foreign workers, and therefore who face significant losses if the worker leaves their employment to work for someone else before the end of the contract period.

They signed employment contracts with us, but because of the way Canadian laws are written, these foreign workers are free to roam the country for the length of their visa and we were now worse off than before bringing these workers here. We were now short 11 workers and down the \$55,000 we spent to bring them here, house them, transport them, etc.⁶⁰

A second employer can get a temporary foreign worker permit for the same worker and avoid the recruitment and start-up costs.⁶¹

To address the concerns of employers and workers alike, a number of witnesses suggested that work permits no longer be employer-specific, but that instead they be sector- and province-specific.⁶² While a temporary foreign worker might be required to register the name of his or her employer with the government, the worker should not be delayed from starting a new job while the government updates the work permit, as long as the worker continues to work in the same sector and region. To address interests of initial employers who may incur significant costs in bringing a worker to Canada, provision should

59 British Columbia and Yukon Territory Building and Construction Trades Council, written brief, March 31, 2008, p. 3.

60 Stewart Mussel Farms Inc., written brief, April 15, 2008, p. 2.

61 Canadian Restaurant and Foodservices Association, written brief, April 9, 2008, p. 4.

62 For example, the International Brotherhood of Electrical Workers, Local Union 424, written brief, April 1, 2008, p. 4; John Doyle, Researcher, Manitoba Federation of Labour, *Committee Evidence*, Meeting No. 22, April 3, 2008, 09:55; Farida Osmani, Coordinator, Undocumented and Temporary Foreign Workers, Association des aides familiales du Québec, *Committee Evidence*, Meeting No. 30, April 10, 2008, 14:10.

be made for cost-recovery from the secondary employer to the initial employer on a pro-rated basis.⁶³ Also, to help reduce the time a temporary foreign worker spends between jobs, the government should facilitate workers and their advocates in identifying potential employers who have valid “hiring permits”, and are therefore eligible to hire a temporary foreign worker.⁶⁴

Recommendation 20

The Committee recommends that the Government of Canada discontinue making work permits of temporary foreign workers employer-specific, and that it make such work permits sector- and province-specific instead. Where there is a change of employers, employers should be able to claw-back the recruitment and associated costs from subsequent employers to earlier employers on a pro-rated basis.

To address financial difficulties faced by some temporary foreign workers who find there is no job waiting for them upon arrival in Canada, several witnesses suggested that employers be required to post a bond in the amount of one month’s wages that would be released to the worker if the employer failed to provide a minimal level of employment.⁶⁵ While the Committee agrees with the principle of this approach, we are concerned with the administrative burden and cost this would impose upon the system and employers. Accordingly, we recommend a common emergency pool be created instead. Funds for the emergency pool could be raised from all employers of temporary foreign workers in connection with the “hiring permit” process. Emergency funding would then be available to support unemployed temporary foreign workers in need, on a short term basis, in accordance with guidelines that should be established. Provincial advocates of temporary foreign workers may play a role in identifying meritorious candidates.

Recommendation 21

The Committee recommends that the Government of Canada levy a fee on employers in connection with issuing “hiring permits” in order to fund a pool of money for emergency support of unemployed temporary foreign workers in Canada. It should also establish guidelines for disbursements from the pool.

63 Canadian Restaurant and Foodservices Association, written brief, April 9, 2008, p. 4.

64 Edmonton Mennonite Centre for Newcomers, written brief, April 1, 2008, p. 2.

65 Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s Disposable Workforce*, The Six-Month Report of the AFL’s Temporary Foreign Worker Advocate, November 2007, Recommendation 18, p. 19. Also, Manitoba Federation of Labour, written brief, April 3, 2008, p. 5.

CHAPTER FOUR: WORKER PROTECTION

Introduction

Ensuring that temporary foreign workers experience all of the rights and protections to which they are entitled requires a multi-faceted approach, with efforts in the workers' countries of origin and in Canada. As foreigners with potentially little to no knowledge of Canadian immigration policy, workers are vulnerable to misinformation and mistreatment by recruiters—in extreme cases, human trafficking can result. Once in Canada, workers are vulnerable to mistreatment by employers, health and safety violations, and other problems stemming from ignorance of the Canadian work and living environment. Further, workers are made vulnerable by the very fact of their temporary status.

In my research everything I've seen about the social rights implications for temporary foreign workers seems to indicate that the very temporary nature of their status creates barriers for their human and social rights.⁶⁶

Witnesses underscored on several occasions how workers' temporary status contributed to their vulnerability. By removing the threat (real or perceived) of being sent home, providing all workers with a path to permanent residency should significantly reduce the potential for temporary status to hold workers hostage to bad employment situations.

However, this provision alone is not enough to ensure worker protection. Reflecting the view that protecting workers should be a shared responsibility, the Committee proposes to strengthen protection by focusing on the four following areas: information provided to workers on rights and how to access assistance, recruitment agencies, worker support within Canada, and employer monitoring and compliance. In this chapter, we also address symbolic measures of protection that were suggested to the Committee.

Information Provided to Workers on Rights and How to Access Assistance

Many of the abuses and difficulties that temporary foreign workers experience stem from their ignorance of the laws and regulations in place at different levels of government. Testimony before the Committee suggested that workers may be unaware because they were never informed, because they were informed in a language they did not understand, or because they were intentionally misinformed.

66 Jill Hanley, individual, *Committee Evidence*, Meeting No.29, April 10, 2008, 11:10.

Witnesses suggested that workers were uninformed in the following areas: employment standards, workers' compensation, occupational health and safety, tenancy law, human rights law, immigration opportunities, legal recruitment practices, cost of living in Canada, payroll deductions, tax filing procedures, and entitlement to benefits such as health care, employment insurance, and workers' compensation. Workers were also uninformed about where to go for assistance.

The Federal Government should ensure that migrant workers receive information, in their own language, regarding their rights and responsibilities in a neutral, uncomplicated and uncompromised manner.⁶⁷

A. Providing information in the worker's country of origin

The extent to which temporary workers are provided information in their country of origin varies considerably. Formal avenues of recruitment such as those used by the Mexican government for the Seasonal Agricultural Workers Program or by the International Organization for Migration are more likely to include valuable orientation information. Some individual companies also go to considerable effort. However, workers may be recruited by a range of entities, including multinational recruitment companies and local recruiters in the country of origin.

The Committee believes that more needs to be done to help temporary foreign workers make an informed choice about working in Canada. Information needs to be reliable and provided consistently. People are making significant decisions about relocating, based on information provided about wages and immigration opportunities. Canada needs to do its part to ensure workers are protected, at the same time fulfilling our human rights obligations and protecting our international reputation. The Canadian government can use its presence overseas to better inform workers before they leave their country of origin.⁶⁸

Recommendation 22

The Committee recommends that the Government of Canada require each temporary foreign worker candidate to attend an in-person orientation session in his or her country of origin prior to the work permit being issued, and that NGO/non-profit settlement, counselling and advocacy agencies regularly provide input to the orientation session.

67 Industrial Accident Victims Group of Ontario, speaking notes, April 8, 2008, p. 1.

68 Edmonton Mennonite Centre for Newcomers, written brief, April 1, 2008, p. 3.

B. Providing information in Canada

Once the worker is in Canada, there are some mechanisms in place to try and ensure that he or she receives the information required for working and living here. CIC produced a pamphlet available in six different languages⁶⁹ that advises workers of their rights and responsibilities and provides them with current information about relevant provincial labour offices. Employers are required to inform workers about health and safety and to sign them up for health and workers' compensation benefits.⁷⁰

In regions that have regularly hosted seasonal agricultural workers and live-in caregivers, there are community organizations that provide orientation and some services. These organizations have been instrumental in informing workers of benefits and assisting them to apply. For example, the United Food and Commercial Workers Union reports assisting more than 4,000 migrant workers with their claims for parental benefits through Canada's EI program, with an average claim of \$5,000.⁷¹

Testimony also indicated that sometimes workers and service providers were ignorant of the workers' eligibility for certain social programs. In her discussion of workers' compensation benefit, for instance, Janet McLaughlin wrote:

Many health care practitioners are not well informed about migrant workers and their rights. Some physicians are unaware that these workers are eligible for workers' compensation, and hence even in the face of obvious work-related injuries, physicians often do not apply for benefits.⁷²

The Committee believes that every effort should be made to ensure that temporary foreign workers receive the benefits and social programs for which they are eligible. Given the increasing numbers of foreign workers, the onus should be placed on Canadian service providers to understand the circumstances of foreign workers and facilitate their receipt of benefits. This task requires better communication with front line service workers about the circumstances of temporary workers.

While the federal government and employers clearly bear some responsibility to inform program participants, other government and community actors can also take initiative. For instance, the Alberta Workers Compensation Board has a fact sheet on their website entitled "Information on Workers Compensation Benefits for Temporary

69 English, French, Spanish, Mandarin, Hindi and Tagalog.

70 "Information for Canadian Employers: After Hiring", <http://www.cic.gc.ca/english/work/employers/hire-after.asp>.

71 United Food and Commercial Workers Union, "The Status of Migrant Farm Workers in Canada 2006-07", p. 9.

72 Janet McLaughlin, individual, April 7, 2008, written brief, p. 4.

Workers".⁷³ More programs and services could follow this example. Frontline workers in the immigrant settlement sector also need to be informed about temporary foreign worker programs.

Recommendation 23

The Committee recommends that temporary foreign workers be required, within three months of their arrival, to meet with an accredited NGO to follow up on labour legislation compliance.

Recruitment Agencies

Recruiting workers overseas and then processing the paperwork to bring the workers to Canada can be a long and complicated process. Accordingly, an industry of third-party recruitment agencies has sprung up to do the legwork and handle all the details for companies too busy or too small to themselves engage in foreign recruiting. Such recruitment agencies are also known as labour brokers, employment brokers or recruiters.

Reputable recruiters provide a valuable service helping to place foreign workers with companies, legitimately earning their fee from the employers. However, some recruiters charge foreign workers directly for finding them jobs,⁷⁴ as well as receiving a fee from the employers. In some cases, they arrange for wage deductions to cover the fee, or for financing.⁷⁵ In other cases, workers mortgage their homes⁷⁶ or borrow from family and friends for the chance to come to Canada and work. The Committee heard evidence that some workers spend almost all their time in Canada working to pay off their loans and never make enough to provide a better life for their families, which was their purpose for coming to Canada in the first place.⁷⁷

73 <http://www.wcb.ab.ca/>

74 The Committee heard evidence of foreign workers being charged fees for placement services in the range of \$2,000 to \$25,000, in addition to fees charged to the employer: Association des aides familiales du Québec, written brief, April 10, 2008, p. 7; and Alice Colak, Chief Operating Officer, Immigration and Settlement Service, Catholic Social Services, *Committee Evidence*, Meeting No. 19, April 1, 2008, 15:20, respectively.) The practice of charging a fee directly to the worker is illegal in only some provinces, as discussed further below.

75 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, November 2007, p. 10. The Committee received evidence that, in some cases, interest rates as high as 60% were charged on loans taken out to come to Canada: Sue Wilson, Federation of the Sisters of St. Joseph of Canada, speaking notes, April 7, 2008, p.1.

76 The Migrant Workers Ministries Committee of the Diocese of London, Ontario and the Office for Social Justice Diocese of London, written brief, September 2007, p. 3.

77 Sue Wilson, Federation of the Sisters of St. Joseph of Canada, speaking notes, April 7, 2008, p. 2.

Brokers commonly charge [temporary foreign workers] thousands of dollars for their services, and often mislead the workers about immigration prospects, the nature of the work and other matters.⁷⁸

The Committee heard of other types of questionable conduct some recruiters engage in, including:

- charging workers a fee to bring them to Canada for nonexistent jobs, or for jobs from which they are laid off shortly after arrival;⁷⁹
- exaggerating the amount workers can expect to earn in Canada, sometimes grossly;⁸⁰
- providing translations of contracts that are inconsistent with the original English or French version in describing work and other details of employment;⁸¹
- giving incorrect information about opportunities to obtain permanent resident status once in Canada;⁸²
- charging workers unconscionable fees for extra services, such as obtaining an extension of their work permit,⁸³ transportation, housing,⁸⁴ document translation or interpretation services,⁸⁵

78 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, November 2007, p. 6.

79 Ibid., p. 11.

80 The Migrant Workers Ministries Committee of the Diocese of London, Ontario and the Office for Social Justice Diocese of London, written brief, September 2007, p. 3.

81 Ibid., p. 4.

82 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, November 2007, p. 11.

83 Some workers have been charged between \$1,400 to \$2,500 to have a work permit extended, which service is provided by the Canadian government for \$150: The Migrant Workers Ministries Committee of the Diocese of London, Ontario and the Office for Social Justice Diocese of London, written brief, September 2007, p. 4.

84 Ibid.

85 Catholic Social Services, written brief, April 1, 2008, p. 4.

- providing inaccurate advice about the possibilities of family reunification in Canada, workplace standards and rights,⁸⁶ language training, or other training or upgrading opportunities;⁸⁷ or
- requiring workers to change employers because the recruiter received a better offer from another employer.⁸⁸

Because regulation of recruitment agencies is a provincial matter, there is no set of standard rules governing recruiters across the country. Only some of the provinces regulate recruiters. For example, in Alberta and Manitoba, employment agencies (which include recruiters) must be licensed and may not charge a fee from a person for finding them employment.⁸⁹ Prince Edward Island plans to enact similar legislation.⁹⁰

However, according to some witnesses, even in provinces where recruiters are regulated, “current regulations have proven ineffective in stopping the practice [of charging workers a fee].”⁹¹ The Committee heard information about recruiters circumventing provincial legislation by incorporating in a province other than the one in which they primarily operate,⁹² or incorporating in a foreign jurisdiction making it even harder for Canadian enforcement officials to reach them.⁹³ One witness even provided the name of a recruitment agency that he claimed was blatantly violating provincial recruiter regulations squarely in the province, apparently without repercussion.⁹⁴

In the interest of protecting vulnerable foreign workers, the federal government needs to take steps to stop these practices. The Committee believes that there is no one, simple solution to the problem, and that an appropriate response has various elements. Providing information to all parties and making better use of existing legal provisions are solutions that respect provincial jurisdiction and have the potential to reduce worker vulnerability.

86 Association des aides familiales du Québec, written brief, April 10, 2008, p. 7.

87 Catholic Social Services, written brief, April 1, 2008, p. 4.

88 Association des aides familiales du Québec, written brief, April 10, 2008, p. 7.

89 Alberta: *Employment Agency Business Licensing Regulation*, Alta Reg. 189/1999 under the *Fair Trading Act*, R.S.A. 2000, c. F-2. Manitoba: *Employment Services Act*, C.C.S.M. c. E100.

90 CBCnews.ca, “‘Double dipping’ with foreign workers to be made illegal: minister,” July 3, 2008.

91 For example, see the Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s Disposable Workforce*, The Six-Month Report of the AFL’s Temporary Foreign Worker Advocate, November 2007, p. 11.

92 Trevor Mahl, President, TC Hunter, *Committee Evidence*, Meeting No. 19, April 1, 2008, 14:45.

93 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s Disposable Workforce*, The Six-Month Report of the AFL’s Temporary Foreign Worker Advocate, November 2007, p. 11.

94 Michael J. Toal, United Food and Commercial Workers Union, Local 1118, written brief, April 1, 2008, pp. 1-2.

A. Providing information to all parties

The best approach for dealing with unscrupulous recruiters is to avoid them altogether. The Committee believes that providing workers and employers with information about their rights and liabilities, and best practices in relation to recruitment practices could go a long way to ameliorating current problems.

Recommendation 24

The Committee recommends that the government take all necessary steps to inform workers abroad of the legal provisions regarding recruiters in the province in question.

For employers, the government should provide the information they need to make a responsible decision in engaging a recruitment agency. In addition, because the task of finding and recruiting a temporary foreign worker without the help of a recruiter is daunting or impossible for many small- or medium-sized businesses, an Internet forum where employers could meet, coordinate their efforts and share their experiences could help employers work cooperatively, pool resources and hopefully avoid using unscrupulous recruiters.⁹⁵

Recommendation 25

The Committee recommends that the Government of Canada use the Internet and other means to make the following information readily available to employers who hire temporary foreign workers:

- **a warning about unscrupulous recruitment agencies and descriptions of the shady practices in which they may engage;**
- **information about countries in which such problems are particularly acute;**
- **a statement of best practices against which an employer may judge the practices of a recruitment agency the employer is considering engaging; and**

⁹⁵ A variation of this proposal was suggested by the Tourism Industry Association of Nova Scotia, written brief, April 16, 2008, p. 3.

- **information about employers' or employees' liability for fees charged by recruitment agencies to the workers it places.**

In addition, the website should provide an open forum in which employers can “meet” to pool resources and share experiences.

Recommendation 26

The Committee recommends that the Government of Canada produce simplified management guides enabling employers and recruiters to better understand the applicable standards, regulations and the administrative terms and conditions of the program, such as the prohibition to withhold personal documents, particularly passports and health cards of migrant workers.

B. Prosecuting illegal conduct under existing provisions⁹⁶

Unscrupulous recruiters who operate in provinces or territories that have not yet regulated recruitment agencies are not completely free to operate without scrutiny. There already exist various federal and provincial laws under which certain unethical recruiter practices could be prosecuted.

Section 118 of the *Immigration and Refugee Protection Act*⁹⁷ (IRPA) makes it an offence to “knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.” The fact that this offence does not require force or the threat of force, but could be based on fraud or deception alone makes it a viable possibility for prosecuting recruiters. The penalty for committing this offence is a fine of up to \$1 million or life imprisonment, or both.

96 This response was suggested by Eugénie Depatie-Pelletier, University of Montreal, written brief, April 2008, p. 24.

97 S.C. 2001, c. 27. Also see section 119, which deals with disembarking persons at sea for the purpose of inducing, aiding or abetting them to come into Canada in contravention of the IRPA.

*Criminal Code*⁹⁸ sections 279.01 to 279.04 set out three human trafficking offences.⁹⁹ The first¹⁰⁰ contains the global prohibition of trafficking in persons, defined as the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of control, direction or influence over the movements of a person, for the purpose of exploitation. Key to this definition is the fact that the criminal offence of trafficking in persons does not require movement across an international border to be triggered, but prohibits any situation where a person is moved or concealed and is forced to provide or offer to provide labour, a service, or an organ or tissue.

A victim's consent to trafficking is never a valid defence because of the exploitation that is inherent in the offence.¹⁰¹ This primary trafficking offence is punishable by a maximum of 14 years imprisonment, or life imprisonment under aggravated circumstances.

Section 279.02 prohibits a person from benefiting economically from trafficking and carries a maximum penalty of 10 years' imprisonment. Finally, the third prohibition outlaws the withholding or destroying of identity, immigration, or travel documents to facilitate trafficking in persons, and carries a maximum penalty of five years' imprisonment.

Beyond these specific offences, a number of generic provisions in the *Criminal Code* could be used to prosecute specific forms of exploitation and abuse. These include offences such as fraudulent documentation, physical harm, abduction and confinement, intimidation, conspiracy and organized crime.

Even cases that do not involve physical harm, a criminal or immigration offence could be made out if the worker's decision to come to Canada is based on the recruiter's deception about conditions and opportunities that await the worker in Canada, or fear of threats posed to the worker or his or her family if they are unable to pay back debts incurred to come to Canada at the hands of a loan shark.

98 R.S.C. 1985, c. C-46.

99 The text that follows is taken largely from the following publication: Laura Barnett, *Trafficking in Persons*, PRB 06-24E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, June 26, 2007, pp. 8-9.

100 Section 279.01(1): "Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable:

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case."

101 Section 279.01(2): "No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid."

In addition to being subject to existing legal provisions, recruiters could also be held accountable by enforcing certain professional standards, if a recruiter is dispensing advice or services on immigration matters. A recruiter who provides false, incorrect or misleading advice regarding Canadian immigration law to a foreign worker, or who charges a fee to represent or advise the person in an immigration matter (such as obtaining an extension on a work permit) could be referred to the Canadian Society of Immigration Consultants, if the recruiter is a member of that organization. All those who are not (which might be expected to be the vast majority) could be reported to the appropriate provincial law society for practising law or providing legal services without a license, but only if they provide the advice or legal services in Canada.

Recommendation 27

The Committee recommends that the Government of Canada refer appropriate cases of abuse by recruitment agencies to law enforcement agencies, the Canadian Society of Immigration Consultants, or provincial law societies for prosecution or discipline under existing legal provisions, and that it encourage employers, workers and other stakeholders to do the same.

Worker Support

The AFL found that foreign workers are at a disadvantage because they are not aware of their rights, do not know how to access these protections, and can be easily persuaded or dissuaded by employers from seeking due compensation. Most importantly, Alberta's employment standards system is complaint driven. Therefore, no complaint, no problem.¹⁰²

Testimony heard before the Committee made it clear that providing information to workers might not be enough to avoid abuses and ensure that they receive benefits to which they are entitled. As the quote above indicates, foreign workers may be inhibited by the lack of employer cooperation and the requirements of complaint-driven protection regimes. Temporary foreign workers need to be able to turn to a third party for assistance, someone independent from the employment relationship and yet familiar with the temporary foreign worker programs and relevant legislation.¹⁰³

102 Al Brown, International Brotherhood of Electrical Workers - Local 424, *Committee Evidence*, Meeting No. 19, April 1, 2008, 15:30.

103 Many witnesses were in favour of providing some kind of temporary foreign worker advocate. For example, United Farm and Commercial Workers Union, April 1, 2008; Manitoba Federation of Labour, April 2, 2008; Amnistie Internationale, April 10, 2008.

The Committee was encouraged by the advocacy services offered in Alberta. The Alberta Federation of Labour started providing advocacy services in April 2007, assisting temporary foreign workers with filing employment standards or human rights complaints, finding alternate employment, and dealing with other problems, such as immigration applications and recruitment fees. In December that same year, the provincial government opened two advisory offices for temporary foreign workers that offer help resolving employment standards or occupational health and safety issues as well as referrals to the appropriate authority for other matters.

The statistics shared with the Committee suggest that there is a strong demand for these services: one witness quoted a news story claiming that the provincial advisory offices had received 800 complaints from temporary foreign workers.¹⁰⁴ The advocacy office initiated by the Alberta Federation of Labour received inquiries from more than 1,400 people and opened case files for 123 temporary foreign workers in the first six months of operation alone.¹⁰⁵

Employer Monitoring and Compliance

Our staff received a phone call from one of the women working on [a] farm—she spoke in a low voice, very fearful of being overheard. She said the women on the farm were constantly watched, and that they were rarely allowed to go anywhere without an employer representative. She related that their work day was typically from 6:00 am to 9:00 pm with one half-hour break during the whole period.¹⁰⁶

During our travel across the country, the Committee heard numerous stories of employers flouting provincial employment and other standards, and/or violating commitments made to the workers or in the LMO process.¹⁰⁷ For example, some employers:

- pay lower wages than those indicated in the LMO;
- don't pay for overtime;

104 Bill Diachuk, Ukrainian Canadian Social Services, *Committee Evidence*, Meeting No. 19, April 1, 2008, 13:25.

105 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's disposable workforce*, The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, November 2007, p. 1.

106 United Food and Commercial Workers Canada, National Report on the Status of Migrant Farm Workers in Canada, 2004, p. 11.

107 For example: British Columbia and Yukon Territory Building and Construction Trades Council, written brief, March 31, 2008; Michael Toal, Representative, Local 1118, United Food and Commercial Workers Union, *Committee Evidence*, Meeting No. 19, April 1, 2008, 15:30; and Janet McLaughlin, University of Toronto, written brief, March 28, 2008.

- make illegal deductions from the worker's wages;
- misinform workers about their entitlements to benefits;
- require workers to work for extremely long hours with few breaks;
- don't provide adequate lavatory facilities;
- expose workers to undue health and safety risks;
- prevent or obstruct workers from leaving the property after work hours;
- house workers in extremely cramped or degrading conditions;
- retain workers' passports, health cards and other such documents;
- require workers to perform duties that are substantially different than those for which they were recruited;
- deny workers' medical care;
- frustrate workers' attempts to make private phone calls; and/or
- threaten to repatriate workers who complain or otherwise do not obey orders.

Time and again during our travel across the country, witnesses told the Committee that reacting to worker complaints alone is insufficient to enforce employment standards and conditions for temporary foreign workers—employer monitoring is required.¹⁰⁸

Under section 92(13) of the *Constitution Act, 1867*, provincial governments have jurisdiction to regulate employment standards, including wages and working conditions, as well as housing. Regulating includes setting standards and enforcing those standards. The federal government has no jurisdiction to enact laws in these areas (except in limited cases that are generally not applicable to temporary foreign workers.) However, the Committee

108 For example: British Columbia and Yukon Territory Building and Construction Trades Council, written brief; March 31, 2008, p. 9; KAIROS, written brief, April 8, 2008, p. 3; Edmonton Mennonite Centre for Newcomers, notes for oral submission, 1 April 2008, p.1; Janet McLaughlin, University of Toronto, written brief, March 28, 2008, p. 6; and Canadian Restaurant and Foodservices Association, written brief, April 9, 2008, p. 4.

believes that the federal government has a role to play in employer monitoring and compliance in the context of the temporary foreign worker program. The federal government established the program, authorized the employer to hire a foreign employee, approved various working conditions for the employee (such as wages), and authorized the employee to enter Canada and work for the employer. Accordingly, we believe that the federal government has a continuing responsibility to ensure that the program is functioning properly.¹⁰⁹

To that end, the Committee agrees with witnesses who called for the federal government to establish monitoring teams to spot check employment and employer-provided housing conditions of temporary foreign workers.¹¹⁰

All it takes is a team of government officials out there, unannounced spot checks, and the word will spread like wildfire that the government is watching.¹¹¹

Such checks should be performed in response to evidence of possible unacceptable conditions related to a specific employer, as well as completely at random.

Recommendation 28

The Committee recommends that the Government of Canada establish monitoring teams to perform unannounced spot checks of working and housing conditions on temporary foreign worker job sites. Visits of the monitoring team could be requested by workers through a 1-800 number or via the internet. Possible infractions or unacceptable conditions should be reported to appropriate provincial authorities for further investigation and response. The Government of Canada would place a stay on removals for individuals involved in an ongoing investigation and/or with matters before the courts or other appropriate bodies.

109 This point was emphasized by the United Food and Commercial Workers Canada in the national *Report on the Status of Migrant Farm Workers in Canada, 2004*, pp. 3, 4 and 8.

110 British Columbia and Yukon Territory Building and Construction Trades Council, written brief, March 31, 2008, pp. 6-7. Also see Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, November 2007, Recommendation 9, p. 17, which reads: "[HRSDC] should be funded for a meaningful investigative role with respect to Labour Market Opinions, including the ability to conduct "audits"."

111 Joe Barrett, British Columbia and Yukon Territory Building and Construction Trades Council, *Committee Evidence*, Meeting No. 18, March 31, 2008, 15:00.

The Committee heard evidence of employers who systematically or egregiously violate provincial labour standards or the terms of an employment agreement and yet are permitted to continue hiring temporary foreign workers. In the interests of abuse prevention and deterrence, the Committee agrees with witnesses who stated some employers should not have access to the temporary foreign worker program.¹¹²

Recommendation 29

The Committee recommends that the Government of Canada deny an employer future access to workers for a period of at least one year and for a period of five years in repeated or egregious cases if the employer violated provincial labour standards, the terms of (an) employment agreement(s) or provincial recruitment provisions.

Symbolic Measures of Protection

A number of witnesses who appeared before the Committee recommended that Canada become a party to the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹¹³ Unfortunately none of the witnesses who appeared before us provided a detailed analysis of the legal and other changes Canada would be required to implement to conform with the articles of the Convention in order to ratify it. Given this lack of information and noting that none of the 52 states that have already signed the Convention is an industrialized, migrant-receiving country, the Committee is not prepared to recommend that Canada become a party at this time. Rather, work should be done to fully analyze and assess the implications of committing to ratify the Convention before any decision is made.

112 For example, the Canadian Restaurant and Foodservices Association, written brief, April 9, 2008, p. 3; Michael Toal, United Food and Commercial Workers Union, Local 1118, written brief, April 1, 2008, p. 3; United Food and Commercial Workers Union, *The Status of Migrant Farm Workers in Canada 2006-2007*, written brief, p. 4; Immigrant Worker Centre, Filipina Women's Association of Quebec, Coalition d'appui aux travailleuses et travailleurs (im)migrantes, Coalition d'appui aux travailleurs et travailleuses agricoles, written brief, fall 2007, p. 7. Also see the Federal Labour Standards Review Commission Final Report, *Fairness at Work: Federal Labour Standards for the 21st Century*, LT-182-10-06E, recommendation 10.13, p. 245.

113 GA Res. 45/158, UN GAOR, 45th Sess., Doc. A/RES/45/158, December 18, 1990, (entry into force July 1, 2003.)

CHAPTER FIVE: WORKER EXPERIENCE

Introduction

This final chapter of Part I, on Canada's temporary foreign worker programs, will address outstanding aspects of worker experience that demand changes to program stipulations or government practices. In particular, access to benefits and social insurance, and residence will be examined.

Access to Benefits and Social Insurance

Temporary foreign workers are entitled to a range of social programs during their stay in Canada and, in some instances, after their return to their country of origin (see Box 1). Testimony heard by the Committee indicates that, even when informed, workers sometimes have difficulty accessing these benefits. This problem stems, in part, from program requirements such as residence in Canada, and in part from non-compliance by employers. The following anecdotes provide a sample of what the Committee heard:

In December 2005 I was with Javier, a [seasonal agricultural] worker, before, during, and after he had his second full stroke, which was provoked by a workplace accident, something that may have been prevented or minimized had he had access to a CAT scan after his first stroke only days earlier. But because he was a temporary worker, B.C. still had not given him MSP provincial health coverage, so he did not get the appropriate medical attention he needed. His employer... was prepared to send him back as he was, after the first stroke, partially paralyzed at that moment. Only because we stayed with him was he able to get medical attention. However, he is now back in Mexico, permanently disabled for life, without the proper medical attention or financial support.¹¹⁴

Alicia is a widow whose husband had chemicals spill on him at work in an Ontario greenhouse. The employer would not even allow him to take a shower after the spill; much less take him for needed medical follow-up. Based on this chemical spill, he had complications from which he later died. Alicia receives no compensation from either the Mexican or Canadian government for this.¹¹⁵

114 Erika Fuchs, *Justicia for Migrant Workers - British Columbia, Committee Evidence*, Meeting No. 18, March 31, 2008, 15:55.

115 *Ibid.*

Box 1: Temporary Foreign Worker Eligibility for Benefits and Social Insurance

Employment Insurance (EI): Temporary foreign workers and their employers make payments into EI just like Canadian workers. However, they are not usually eligible for basic benefits, due to the number of qualifying hours required or the requirement to be available for work in Canada. Temporary foreign workers are eligible for the parental leave and compassionate care benefits available through EI.

Workers Compensation: Workers compensation is awarded on the basis of evidence of disability from recognized medical practitioners and other care providers. If a worker becomes permanently injured and qualifies for the benefit, it can be collected from anywhere. If a worker is not permanently injured, his or her availability for work in the province of injury may affect on-going benefits.

Canadian Pension Plan (CPP): Temporary foreign workers and their employers pay into CPP just like Canadian workers. Temporary foreign workers are eligible to apply for their CPP benefits from anywhere in the world.

Health Care: Temporary foreign workers are covered by provincial health insurance in most provinces, although coverage varies by the length of the work permit. In some provinces, such as Ontario, British Columbia, Quebec, and New Brunswick, a three month waiting period applies for all new residents. The employer is responsible for ensuring that a foreign worker has medical coverage for periods not covered by provincial insurance.

The requirement that EI recipients be available for work in Canada is one factor that makes it difficult for workers to avail themselves of this insurance during periods of unemployment. Despite this reality, workers and employers make regular EI contributions. The Committee believes that the current mis-match between EI premiums paid and the benefits temporary foreign workers are likely to be able to derive from the program has to be rectified. With the provision of the common emergency fund, as set out in Recommendation 21, there will be no further need for workers to continue paying into EI.

Recommendation 30

The Committee recommends that the *Employment Insurance Act* be reviewed by the Finance Committee so that consideration be given to the exemption of temporary foreign workers and their employers from making contributions to employment insurance.

Location may also affect the ability of an injured worker to benefit from workers compensation. Sometimes the worker does not have time to have his or her health situation assessed for workers' compensation before leaving the country (voluntarily or involuntarily). It is very difficult in this situation to have the benefits applied retroactively. One witness spoke about the impact of a different reality of health care in other countries:

“the current system does not always take into account the difficulties workers, especially those in remote areas, experience just to get to a qualified doctor or to pay for appointments, exams, and reports.”¹¹⁶ Regular medical appointments may be required to demonstrate the on-going need for payments.

Workers also may not receive adequate injury or disease compensation because of the current nature of their work permits. If a worker’s injuries do not allow him or her to carry out the type of work required in his or her sector, the worker will not be employable within the parameters of his or her work permit in Canada. Workers compensation would not be available for the long term for a worker in this situation.

The Committee feels that Canada and its provinces and territories should not abandon workers who are injured or who become ill as a result of employment in Canada. Several witnesses noted that temporary foreign workers tend to be employed in sectors with high injury rates, such as farming, construction, and manufacturing.¹¹⁷ A temporary foreign worker should experience the same care and opportunities as a permanent resident or Canadian citizen injured or diseased at the workplace. The Committee believes that this problem requires specific study by a federal body. In the meantime, we support giving injured and/or sick foreign workers access to a medical exam before they leave Canada. This initial assessment will help identify injuries or disease caused by the workplace and is the first step to appropriate compensation.

Recommendation 31

The Committee recommends that the Government of Canada conduct a review of the adequacy of workers’ compensation for temporary foreign workers and the barriers they and their families encounter in receiving full compensation. The review should include recommendations and a model statute that would address current deficiencies, if required.

Recommendation 32

The Committee recommends that the Government of Canada, through the Interim Federal Health Program, offer injured and/or sick temporary foreign workers a free medical exam before returning to their country of origin.

116 Janet McLaughlin, individual, April 7, 2008, written brief, p. 5.

117 Dr. Jenna Hennebry, individual, April 9, 2008, written brief, p. 4; Dr. Sylvie Gravel, individual, *Committee Evidence*, Meeting No. 29, April 10, 2008, 9:05.

Location may also affect the rate of application for CPP benefits by temporary foreign workers. While they may be informed of the CPP deduction and benefit when they enter Canada, for most, it will be many years before they will be able to claim their pension. Temporary foreign workers are often in their prime working years, and by the time they are eligible to apply may have lost all contact with Canada. While it is the beneficiary's responsibility to apply in writing for CPP, Service Canada mails a statement of contribution and other information to a segment of contributors each year. Provided the home address is current and on file, temporary foreign workers may receive this package. The Committee feels that better efforts are required to communicate with workers about their benefits once they have left the country.

Recommendation 33

The Committee recommends that the Government of Canada create a web portal for people who were at one time temporary foreign workers in Canada. This web portal could include information on how to access benefits from outside of the country, including forms and contact information for the relevant government bodies.

Finally, the Committee heard about employers who frustrate worker attempts to obtain benefits through non-cooperation or non-compliance with LMO conditions, such as the requirement to obtain health insurance. Allegations ranged from withholding worker health cards to sending injured workers home without having the opportunity to see a doctor. The Committee believes that our recommendations to improve information provision and employer monitoring will help to diminish these occurrences. However, this may be an area for the recommended temporary foreign worker advisory board to monitor closely.

Residence

Employers have different obligations when it comes to housing temporary foreign workers. As required in connection with their work permit, live-in caregivers must live in their employer's residence, and seasonal agricultural workers must live in a residence provided by the employer (generally on the farm property). Employers of workers with lower levels of formal training have to ensure that housing is available. It is not unusual for employers to purchase housing and rent it out to fulfill this obligation. Employers of other categories of foreign workers, for instance, highly skilled, have no obligations to provide or assist with housing.

While these program requirements were likely instituted with the good intentions of facilitating access to work and ensuring that workers with limited means had housing, witnesses told the Committee of their adverse consequences. The concerns raised dealt primarily with the adequacy and condition of housing made available, the rates charged for

this housing, and the vulnerability of workers required to live on their worksite with their employer. Many witnesses shared stories of housing that was inadequate, crowded, in poor condition, or not suitable as a residence.¹¹⁸

The report of the Temporary Worker Advocate in Alberta focused on problems in relation to employer-owned housing rented out to workers with lower levels of formal training. This anecdote, cited in the report, is similar to others shared with the Committee: “Eight [temporary foreign workers] were placed in one 3-bedroom house and each person was deducted \$250 biweekly (\$4,000 per month); in another, 14 [temporary foreign workers] were placed in one house paying rent of \$320 per month (\$4,480).”¹¹⁹

The Committee heard strong opposition to the requirement for workers to live on their worksite with their employer.¹²⁰ Witnesses felt that this requirement, for live-in caregivers in particular, places the workers at risk. Living with the employer may contribute to a caregiver’s isolation, increasing her vulnerability to abuse and limiting her ability to seek assistance.

Witnesses also felt that this provision violates the rights of temporary foreign workers. In particular, witnesses cited the rights to privacy under section 5 of the Quebec Charter, to freedom of association, to equality (because it does not apply to non-migrants) and to freedom and security of the person under the *Charter of Rights and Freedoms*¹²¹

The Committee believes that it is unconscionable to require workers to live in accommodations provided by the employer without being sure that these accommodations meet Canadian standards. Rather than making recommendations that would address this oversight, however, the Committee prefers to move away from the live-in or on-site residence requirement altogether. The Committee believes that temporary foreign workers should have the same freedom of residence as Canadians.

Recommendation 34

The Committee recommends that the Government of Canada remove the requirement that individuals with certain work permits live with or on the premises of their employer.

118 For example, the testimony of Catholic Social Services, April 1, 2008; Friends of Farmworkers, April 7, 2008; and the Diocese of London, April 7, 2008.

119 The Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s disposable workforce*, The Six-Month Report of the AFL’s Temporary Foreign Worker Advocate, November 2007, p. 12.

120 Amnistie Internationale, written brief, April 10, 2008.

121 For example, the testimony of Ligue des droits et libertés, April 10, 2008, the Association des aides familiales du Québec, April 10, 2008, and, as an individual Eugénie Depatie-Pelletier, April 14, 2008.

However, there are principles from the current requirements that the Committee feels should be retained. In particular, if housing is scarce (e.g., in a rural area), the employer should be required to ensure suitable housing is secured for the worker.¹²² Since temporary workers may have few connections in Canada, they may not be able to secure housing initially or in difficult market conditions. It follows that housing provided should be inspected, to ensure that standards are met. In order for the monitoring teams to carry out the random spot checks suggested in Recommendation 28, information on housing provided should be collected on the “hiring permit” application.

In order to call home to their families in Mexico, they had to sneak off the farm late at night and walk to the nearest pay telephone located a substantial distance away.¹²³

Several witnesses who appeared before the Committee told of workers who had great difficulty seeking help because they were located in remote regions (generally on farms) and simply did not have access to a telephone. The Committee notes that such workers would likely also be unable to keep in touch with family and friends in their home countries, which we see as a senseless hardship. Accordingly, we are of the opinion that employers who provide housing for temporary foreign workers should also provide a working telephone for the use of the workers as a standard aspect of basic housing. Long distance charges may be borne by the workers through the use of calling cards or other such services. By requiring employers to confirm on the “hiring permit” application that telephone access is available to workers, and requiring them to provide the phone number, government agents will be able to efficiently monitor employment standards to a certain degree simply by phoning the worker and conducting a brief interview.

Recommendation 35

The Committee recommends that, in respect of those employers who propose to house temporary foreign workers, the Government of Canada grant “hiring permits” only upon the employer undertaking to provide the worker(s) with access to basic phone service.

Recommendation 36

The Committee recommends that the Government of Canada include a housing section on the “hiring permit” application. The employer would need to indicate: 1. If housing will be provided; 2. If it includes telephone access.

122 Employers should not be responsible to secure housing for accompanying family members.

123 United Food and Commercial Workers Canada, National Report on the Status of Migrant Farm Workers in Canada, 2004, p. 12.

PART II: NON-STATUS WORKERS

INTRODUCTION

Nobody knows for certain how many migrants are currently living in Canada illegally. The fact that they lack status in this country makes them impossible to accurately track. Estimates of the population living in Canada without status range from 80,000 to 500,000.¹²⁴

There are a variety of means by which people end up living in Canada without status; however, it is believed that most enter legally and fall out of status while still in Canada. This is unlike the situation in the United States, where many migrants cross the border into the country illegally and are therefore never known to authorities. Accordingly, such people are often referred to as “undocumented.” Since most immigrants living illegally in Canada have been known to authorities at some point and are therefore “documented,” we are using the term “non-status” to refer to them in this report.

There are lots of different situations that lead to migrants having no legal status in Canada. Some common scenarios are as follows:

- a foreigner enters Canada to work or study legally on a temporary basis, and stays in the country after their temporary status expires;
- an elderly parent visits their adult child in Canada and never returns home;
- a failed refugee claimant does not leave the country after their claim is refused and avenues of appeal exhausted; or
- the foreign spouse or common-law partner of a Canadian or permanent resident of Canada comes to Canada for a “visit” and stays in the country without filing a spousal immigration application, or before such an application is processed.

124 Les Linklater, Director General, Immigration Branch, Department of Citizenship and Immigration, *Committee Evidence*, Meeting No. 13, February 25, 2008, 15:50.

Actual situations are as numerous as the people who experience them. Often people fit into several categories, (e.g., a temporary foreign worker overstays his or her visa and then files a refugee claim that is denied.)

Different people react differently to being without status in the country. Some seek to take advantage of Canada's refugee and social system by filing false refugee claims or fraudulently seeking social benefits. Periodically the media reports stories of people here illegally who repeatedly commit crimes and yet avoid deportation. Less often do we hear the stories of the untold thousands who find jobs under the table and quietly toil for years, often at jobs Canadians refuse, while they raise their children and integrate into Canadian society.

Witnesses described for the Committee how such workers and members of their families are even more vulnerable than temporary foreign workers to abuse and mistreatment in the workplace, and marginalization in Canadian society. Fear of being reported to the authorities leads some non-status workers to tolerate substandard working conditions.¹²⁵ Unwillingness to report abuses or to take advantage of protections, and ineligibility for social benefits and supports compounds problems.¹²⁶ Even the Canadian-born children of non-status workers may suffer if their parents are too scared to take advantage of the services and supports available for the children.¹²⁷

There is no way out. I have no future and no plans, and I cannot allow myself to make plans because I don't know if I'll still be here tomorrow.¹²⁸

Despite the regrettable conditions in which many non-status workers and their families live, there is no consensus on establishing an amnesty program to regularize their statuses. Non-status people have not respected Canada's immigration rules, and therefore many are of the view that Canada should not reward such people by giving them permanent resident status, especially when hundreds of thousands of people are patiently waiting years to legally call Canada home. In addition, and depending on how it were structured, an amnesty program could very likely exacerbate the problem of non-status migration if it simply attracted more people to come to Canada illegally.

125 For example: British Columbia and Yukon Territory Building and Construction Trades Council, written brief, March 31, 2008, p. 6; Canadian Auto Workers Union, written brief, April 8, 2008, p. 4; Parkdale Community Legal Services, written brief, April 8, 2008, p. 2; Community Social Planning Council of Toronto, written brief, April 8, 2008, p. 2.

126 STATUS Campaign, written brief, June 2006, p. 1. Mennonite New Life Centre of Toronto, written brief, March 28, 2008, p. 2; Canadian Auto Workers Union, written brief, April 8, 2008, p. 4.

127 Parkdale Community Legal Services, written brief, April 8, 2008, p. 2; Félicien Ngankoy Isomi, written brief, April 10, 2008, p. 3.

128 Félicien Ngankoy Isomi, written brief, April 10, 2008, p. 3.

Perhaps the one thing we can all agree on with respect to the non-status migration problem is that it is complex and multifaceted with no single clear solution. Tough enforcement can be brutal; sweeping regularization can open the flood-gates; and almost any approach to deal with the problem seems unfair to someone.

Accordingly, the Committee does not propose to solve the problem of non-status migrants in Canada. We recognize that these people are contributing to our society by filling a labour need that is not being met domestically.¹²⁹ We understand that in many cases, these people were failed by our immigration system that provided them with no realistic opportunity to immigrate to Canada legally.¹³⁰ We know that these people and their families are vulnerable to marginalization and mistreatment, and that many suffer chronic anxiety. Accordingly, the Committee offers the following observations and recommendations with a view to stopping the problem from getting any bigger.

129 Abtron of Canada Inc., written brief, April 7, 2008, p. 1.

130 Mr. Ken Sy, Immigration Specialist, Chinese Community, Abtron Canada Inc., *Committee Evidence*, Meeting No. 24, April 7, 2008, 15:15; Canadian Hispanic Congress, written brief, April 8, 2008, p.2.

STEMMING THE GROWTH OF THE POPULATION OF NON-STATUS WORKERS

Canada is a wealthy, developed, democratic and peaceful country with strong social programs. Accordingly, there will always be people willing to use almost any route, legal or illegal, to come here to live. However, many non status workers make a positive contribution to Canadian society—in part by filling labour demands that are not being met domestically by Canadians or legal immigrants. A number of witnesses raised the issue of this mis-match: our points system for economic immigration favours highly-skilled professionals and people with managerial or technical backgrounds, while our labour market is in need of certain types of tradespeople and people with lower levels of formal training. Witnesses described how a large number of non-status workers work in the construction industry in Toronto,¹³¹ yet these jobs would not otherwise be filled with the doctors and engineers, for example, who qualify under our points system.

Workers essential to our economy are not allowed to come as legal immigrants.¹³²

Accordingly, the Committee believes it is time to expand Canada's legal avenues of immigration to better match those we select to come to Canada with actual labour demands. We need to make it legal for the people we need to come here. We expect that any such change in the immigration system will result in fewer valuable migrants resorting to illegal means of migration.¹³³

The Committee has identified three practical means for opening Canada's front door to all types of workers needed here. First, we note that providing a pathway for temporary foreign workers to transition to permanent status, as contemplated in Recommendation 6 of this report, would go a long way to reducing the incentives for workers we want here to fall out of status in the first place.

Second, the Committee believes that some provinces and territories could negotiate modifications to their provincial nominee programs to provide a pathway for temporary foreign workers to transition to be permanent residents, thereby enhancing provincial and territorial work forces. This approach would have the added benefit of retaining more immigrants in smaller communities across Canada, as well as in large metropolitan areas. We have discussed the provincial nominee programs in more detail in Part I of this report, and therefore refer readers to that section and Recommendation 3.

131 Cosmo Mannella, Labourers' International Union of North America, *Committee Evidence*, Meeting No. 25, April 8, 2008, 11:40.

132 Canadian Auto Workers Union, written brief, April 8, 2008, p. 4.

133 Mario Bellissimo, Barrister and Solicitor, written brief, April 8, 2008, p. 5.

Third and finally, the Committee re-affirms its long-standing position that Canada's current points system needs re-examining. We need to ensure that we have an efficient economic immigration system that is responsive to Canada's actual labour needs. The workers we need here on a long-term basis must be able to immigrate here legally on a permanent basis from the start. We will know that our immigration system is working effectively when the temporary foreign worker program is relegated to providing temporary workers to fill short-term needs.

While these measures do not provide a new legal option for existing non-status workers, they would help to stem the growth of the population of non-status workers.

CONCLUSION

One oft-repeated phrase during the Committee's hearings was that "if a person is good enough to work here, he or she is good enough to stay here". The Committee shares this sentiment and is committed to recommending the long-term changes to the immigration system that would return permanent immigration to its rightful place of priority.

In the interim, businesses and communities are relying on the temporary foreign worker program to bring in needed labour. This report recommends changes to this program to make it work better for these stakeholders and for the workers themselves. Most importantly, however, we envision a pathway to permanent residency for all temporary foreign workers, a vision consistent with Canadian history and values.

The Committee's overall goal is to amend Canada's legal avenues of economic immigration to better match those we select to come to Canada with actual labour requirements. We acknowledge the role that non-status people currently play in meeting labour demands. Our hope for the future is that fewer people will resort to the uncertainty and vulnerability of working without status in Canada because the legal avenues will be open, fair, and efficiently administered. Our work in the coming months is to turn this hope into reality.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Government of Canada maintain the current Temporary Foreign Worker program, possibly enhanced by the recommendations of this report, in order to fill labour needs that are of a temporary nature, such as labour needs that are seasonal or likely to be of a cyclical nature.

Recommendation 2

The Committee recommends that the Government of Canada create a temporary foreign worker advisory board comprised of various stakeholders to provide it with periodic feedback and recommendations. The advisory board should be given a broad mandate, including on-going monitoring, oversight, and review of the temporary foreign worker programs.

Recommendation 3

The Committee recommends that the Government of Canada initiate dialogue and facilitate cooperation with the provinces and territories, so that the temporary foreign worker and provincial nominee programs function together smoothly to provide a pathway to permanent residency.

Recommendation 4

The Committee recommends that the Government of Canada provide for a possible one-year extension of the three-year period during which a live-in caregiver must complete 24 months of employment in order to be eligible to apply for permanent resident status, when there is a good reason the live-in caregiver did not complete the employment requirements within the initial three-year period.

Recommendation 5

The Committee recommends the implementation of the "Juana Tejada Law" which would exempt live-in caregivers from the second medical exam when they apply for permanent residence.

Recommendation 6

The Committee recommends that the Government of Canada create a path to permanent residency for all temporary foreign workers modeled on the opportunity currently available to live-in caregivers.

Recommendation 7

The Committee recommends that the Government of Canada mandate the proposed temporary foreign worker advisory board to include family separation in its monitoring.

Recommendation 8

The Committee recommends that the *Immigration and Refugee Protection Regulations* be amended so that accompanying immediate family members of persons with a temporary work permit are automatically eligible for an open work permit.

Recommendation 9

The Committee recommends that the Government of Canada work with provincial and territorial governments, with input from other stakeholders, to develop and maintain a list of occupations for which it has been determined that there is a *bona fide* labour shortage in the province or territory, and therefore in respect of which employers may hire temporary foreign workers.

Recommendation 10

The Committee recommends that the Government of Canada make provincial and territorial lists of occupations experiencing labour shortages publicly available, including on the Internet, as well as the methodology used to arrive at that determination.

Recommendation 11

The Committee recommends that the Government of Canada welcome stakeholder input in making labour shortage determinations. It should facilitate an Internet-based system through which stakeholders may provide observations or suggestions relevant to changing or making a labour shortage determination and thereby modifying the list of occupations experiencing labour shortages. The Government of Canada should:

- post all observations and suggestions it receives for the public to see;**

- consider all observations and suggestions; and
- provide a public response in relation to all observations and suggestions detailing how such information is, will be or will not be taken into account, and why.

Recommendation 12

The Committee recommends that the Government of Canada modify the Labour Market Opinion process currently followed to include:

- verifying that the occupation for which the employer wishes to hire is included on the list of occupations for which it has been determined that there is a *bona fide* labour shortage in the province or territory; and
- assessing the same employer- and job-specific criteria currently checked in relation to the LMO process.

Positive determinations on both steps would lead to the issuance of a “hiring permit” for the employer (rather than a positive or neutral LMO, as is the current terminology.)

Recommendation 13

The Committee recommends that the Government of Canada automatically approve an application for a “hiring permit” if the application is certified to be substantially the same as a prior application that was approved, and no relevant factors have changed.

Recommendation 14

The Committee recommends that the Government of Canada provide for electronic “hiring permit” extensions.

Recommendation 15

The Committee recommends that all approved “hiring permits” have expiry dates. Six months may be an appropriate validity for a “hiring permit.”

Recommendation 16

The Committee recommends that the Government of Canada maintain, on a voluntary basis, a list of all employers who have received “hiring permits,” and that information from the list be

available for use by unemployed temporary foreign workers in Canada, and those helping them, in identifying employers seeking to hire temporary foreign workers.

Recommendation 17

The Committee recommends that the Government of Canada modify the information it provides to employers and the public at large on the topic of the temporary foreign worker programs (including websites and print information) to make it easier for people to find the lists of current prevailing wage rates and to clarify that “hiring permit” applications will be rejected if they indicate a wage rate that does not equal or exceed the prevailing wage rate.

Recommendation 18

The Committee recommends that, in relation to the lists of current prevailing wage rates, the Government of Canada disclose the method of arriving at each rate, including the statistics relied upon.

Recommendation 19

The Committee recommends that the Government of Canada establish a process by which stakeholders may provide input on any method used to arrive at a prevailing wage rate, and receive a response to their comments from the Government of Canada. The process may be Internet-based, and should be simple, public and obvious.

Recommendation 20

The Committee recommends that the Government of Canada discontinue making work permits of temporary foreign workers employer-specific, and that it make such work permits sector- and province-specific instead. Where there is a change of employers, employers should be able to claw-back the recruitment and associated costs from subsequent employers to earlier employers on a pro-rated basis.

Recommendation 21

The Committee recommends that the Government of Canada levy a fee on employers in connection with issuing “hiring permits” in order to fund a pool of money for emergency support of unemployed temporary foreign workers in Canada. It should also establish guidelines for disbursements from the pool.

Recommendation 22

The Committee recommends that the Government of Canada require each temporary foreign worker candidate to attend an in-person orientation session in his or her country of origin prior to the work permit being issued, and that NGO/non-profit settlement, counselling and advocacy agencies regularly provide input to the orientation session.

Recommendation 23

The Committee recommends that temporary foreign workers be required, within three months of their arrival, to meet with an accredited NGO to follow up on labour legislation compliance.

Recommendation 24

The Committee recommends that the government take all necessary steps to inform workers abroad of the legal provisions regarding recruiters in the province in question.

Recommendation 25

The Committee recommends that the Government of Canada use the Internet and other means to make the following information readily available to employers who hire temporary foreign workers:

- a warning about unscrupulous recruitment agencies and descriptions of the shady practices in which they may engage;**
- information about countries in which such problems are particularly acute;**
- a statement of best practices against which an employer may judge the practices of a recruitment agency the employer is considering engaging; and**
- information about employers' or employees' liability for fees charged by recruitment agencies to the workers it places.**

In addition, the website should provide an open forum in which employers can “meet” to pool resources and share experiences.

Recommendation 26

The Committee recommends that the Government of Canada produce simplified management guides enabling employers and recruiters to better understand the applicable standards, regulations and the administrative terms and conditions of the program, such as the prohibition to withhold personal documents, particularly passports and health cards of migrant workers.

Recommendation 27

The Committee recommends that the Government of Canada refer appropriate cases of abuse by recruitment agencies to law enforcement agencies, the Canadian Society of Immigration Consultants, or provincial law societies for prosecution or discipline under existing legal provisions, and that it encourage employers, workers and other stakeholders to do the same.

Recommendation 28

The Committee recommends that the Government of Canada establish monitoring teams to perform unannounced spot checks of working and housing conditions on temporary foreign worker job sites. Visits of the monitoring team could be requested by workers through a 1-800 number or via the internet. Possible infractions or unacceptable conditions should be reported to appropriate provincial authorities for further investigation and response. The Government of Canada would place a stay on removals for individuals involved in an ongoing investigation and/or with matters before the courts or other appropriate bodies.

Recommendation 29

The Committee recommends that the Government of Canada deny an employer future access to workers for a period of at least one year and for a period of five years in repeated or egregious cases if the employer violated provincial labour standards, the terms of (an) employment agreement(s) or provincial recruitment provisions.

Recommendation 30

The Committee recommends that the *Employment Insurance Act* be reviewed by the Finance Committee so that consideration be given to the exemption of temporary foreign workers and their employers from making contributions to employment insurance.

Recommendation 31

The Committee recommends that the Government of Canada conduct a review of the adequacy of workers' compensation for temporary foreign workers and the barriers they and their families encounter in receiving full compensation. The review should include recommendations and a model statute that would address current deficiencies, if required.

Recommendation 32

The Committee recommends that the Government of Canada, through the Interim Federal Health Program, offer injured and/or sick temporary foreign workers a free medical exam before returning to their country of origin.

Recommendation 33

The Committee recommends that the Government of Canada create a web portal for people who were at one time temporary foreign workers in Canada. This web portal could include information on how to access benefits from outside of the country, including forms and contact information for the relevant government bodies.

Recommendation 34

The Committee recommends that the Government of Canada remove the requirement that individuals with certain work permits live with or on the premises of their employer.

Recommendation 35

The Committee recommends that, in respect of those employers who propose to house temporary foreign workers, the Government of Canada grant "hiring permits" only upon the employer undertaking to provide the worker(s) with access to basic phone service.

Recommendation 36

The Committee recommends that the Government of Canada include a housing section on the "hiring permit" application. The employer would need to indicate: 1. If housing will be provided; 2. If it includes telephone access.

APPENDIX A LIST OF WITNESSES HEARD IN THE SECOND SESSION OF THE 39TH PARLIAMENT

Organizations and Individuals	Date	Meeting
<p>Canada Border Services Agency Robert MacDougall, Director General Enforcement Program, Enforcement Programs Directorate</p> <p>Department of Citizenship and Immigration Les Linklater, Director General Immigration Branch Heidi Smith, Director Permanent Resident Policy and Programs Development Division, Immigration Branch</p> <p>Department of Human Resources and Social Development Canada Andrew Kenyon, Director General Temporary Foreign Workers Directorate</p>	2008/02/25	13
<p>As an individual Don DeVoretz, Professor of Economics Co-Director and Principal Investigator of the Centre of Excellence on Immigration and Integration, Simon Fraser University</p> <p>British Columbia and Yukon Territory Building and Construction Trades Council Joe Barrett, Researcher David Fairey, Researcher Trade Union Research Bureau Wayne Peppard, Executive Director</p> <p>Canada West Foundation Roslyn Kunin, Director British Columbia Office</p> <p>Fraser Institute Martin Collacott, Senior Fellow</p> <p>Grassroots Women Lualhati Alcuítas Phillipa Ryan, Board Member</p> <p>Justicia for Migrant Workers - British Columbia Erika Del Carmen Fuchs, Organizer</p>	2008/03/31	18

Philippine Women Centre of BC

Mildred German, Member
Filipino-Canadian Youth Alliance – National

Denise Valdecantos, Board Member

S.U.C.C.E.S.S.

Tung Chan, Chief Executive Officer

As an individual

2008/04/01

19

Peter Veress, Founder and President
Vermax Group Inc.

Alberta Federation of Labour

Yessy Byl, Temporary Foreign Worker Advocate

Gil McGowan, President

Catholic Social Services

Alice Colak, Chief Operating Officer
Immigration and Settlement Service

Edmonton Mennonite Centre for Newcomers

Jim Gurnett, Executive Director

**International Brotherhood of Electrical Workers -
Local 424**

William Begemann, Assistant Business Manager

Al Brown, Assistant Business Manager

Sunterra Meats - Innisfail

Miles Kliner, General Manager

TC Hunter

Trevor Mahl, President

Ukrainian Canadian Social Services

Bill Diachuk, President
Edmonton

United Food and Commercial Workers Union

Michael Toal, Representative
Local 1118

Government of Saskatchewan

2008/04/02

20

Eric Johansen, Director, Saskatchewan Immigrant Nominee
Program, Immigration Branch, Advanced Education
Employment and Labour

Regina and District Chamber of Commerce

John Hopkins, Chief Executive Officer

**Saskatoon Immigration and Employment Consulting
Services Inc.**

Daniel Hirschhorn, Director

TDL Group (Tim Hortons)

Chris Thomas

Westcan Bulk Transport Ltd.

Sandra Cornford, Foreign Worker Liaison

Chelsea Jukes, Consultant
Human Resources

**Canadian Immigrant Settlement Sector Alliance
(CISSA)**

2008/04/02

21

Darcy Dietrich, Member-at-large

Canadian Manufacturers and Exporters

Gurcan Kocdag
National Board

Kramer Ltd.

Jan Katerynych, Human Resources Manager and In House
Counsel

Moose Jaw Multicultural Council Inc.

Tara Blanchard, Executive Director

Saskatchewan Chamber of Commerce

Steve McLellan, Chief Executive Officer

As an individual

2008/04/03

22

Kenneth Zaifman, Lawyer
Zaifman Immigration Lawyers

Canadian Society of Immigration Consultants

Wenda Woodman, Manager
Complaints and Discipline Department

Manitoba Federation of Labour

John Doyle, Researcher

Maple Leaf Foods Inc.

Nick Johnson, Vice-President
Human Resources, Commercial, and Business Support, Maple
Leaf Consumer Foods

Rory McAlpine, Vice-President
Government and Industry Relations

Sandy Trudel, Economic Development Officer
City of Brandon

Susan Yaeger, Senior Manager, International Recruitment
Maple Leaf Consumer Foods

As individuals

2008/04/07

24

Alex Lolua, Director
Government Relations

Janet McLaughlin
Department of Anthropology, University of Toronto

Sean Strickland
Waterloo Wellington Dufferin Grey Building and Construction
Trades Council

Abtron Canada Inc.

Ken Sy, Immigration Specialist Chinese Community

Adult Entertainment Association of Canada

Tim Lambrinos, Executive Director

**F.A.R.M.S. (Foreign Agricultural Resource
Management Services)**

Paula Goncalves, Administrative Manager

Susan Williams, General Manager

Federation of Sisters of St. Joseph of Canada

Sue Wilson, Director
Office of Systemic Justice

Friends of Farmworkers

Ronald Cadotte, Vice-Chairperson

Derry McKeever, Community Spokesperson

**Migrant Workers Ministries Committee of the Diocese
of London**

Marie Carter, Specialist
Migrant Workers Ministry

Gerry VanKoeverden, Volunteer (migrant outreach)

Lek VanKoeverden, Volunteer (Migrant outreach)

**Provincial Building and Construction Trades Council
of Ontario**

Patrick J. Dillon, Business Manager and Secretary-Treasurer

Canadian Ecumenical Justice Initiatives (KAIROS)

2008/04/08

25

Alfredo Barahona, Program Coordinator
Refugees and Migrants

**Labourers' International Union of North America
(LIUNA)**

Cosmo Mannella, Director
Canadian Tri-Fund

Mennonite New Life Centre of Toronto

Tanya Molina, Executive Director

Mariela Salinas, Student intern (Settlement)

No One Is Illegal

Kirpa Kaur, Activist

Scott MacDonald, Certified Immigration Consultant
Carranza Barristers and Solicitors (Toronto)

STATUS Coalition

Amy Casipullai, Policy and Public Education Coordinator
Ontario Council of Agencies Serving Immigrants

Francisco Rico-Martinez, Co-Director
Faithful Companions of Jesus (FCJ) Refugee Centre

As an individual

2008/04/08

26

Mario Bellissimo, Certified Specialist, Barrister and Solicitor

**Canadian Association of Professional Immigration
Consultants**

Alli Amlani, President
Ontario Chapter

Philip Mooney, National President

Canadian Auto Workers Union

Raj Dhaliwal, Director
Human Rights Department

Carol Phillips, Assistant to the President

Canadian Society of Immigration Consultants

Rivka Augenfeld, Public Interest Director

Chinese Canadian National Council

Victor Wong, Executive Director

Community Social Planning Council of Toronto

Zenia Castanos, Intern

Tam Goossen, Board Member
Research Advisory Committee Chair

André Lyn, Researcher

Navjeet Sidhu, Researcher

Industrial Accident Victims Group of Ontario

Alberto Lalli, Community Legal Worker

Consuelo Rubio, Community Legal Worker
Centre for Spanish Speaking People

Justicia for Migrant Workers

Chris Ramsaroop, National Organizer

Parkdale Community Legal Services

Abigail Martinez
Osgoode Hall Law School

Geraldine Sadoway

Sonia Singh

United Food and Commercial Workers Union

Stan Raper, National Coordinator
Agricultural Workers Program

As individuals

2008/04/09

28

Luin Goldring, Associate Professor

Department of Sociology, York University
Jenna L. Hennebry, Assistant Professor
Departments of Communication Studies and Sociology
Wilfrid Laurier University

African Canadian Legal Clinic

Marie Chen, Staff Lawyer

C.D. Howe Institute

Colin Busby, Policy Analyst

Canadian Restaurant and Foodservices Association

Joyce Reynolds, Executive Vice-President
Government Affairs

**Construction Recruitment External Workers Services
(CREWS) and Building Industry and Land
Development Association (BILD)**

Silvia Bendo, Executive Director

International Association of Immigration Practitioners

Ramesh Dheer, National President

Ontario Council of Agencies Serving Immigrants

Debbie Douglas, Executive Director

Roberto Jovel, Coordinator
Policy and Research

**Status Now! - Campaign in Defense of Undocumented
Immigrants**

Sima Zerehi, Coordinator
Communications

As individuals

2008/04/10

29

Sylvie Gravel, Professor
Work injuries, Safety at work, Business School
University of Quebec at Montreal

Jill Hanley, Assistant Professor
McGill School of Social Work

Félicien Ngankoy
Communauté catholique congolaise de Montréal

Union des producteurs agricoles

Pierre Lemieux, First Vice-President

Hélène Varvaressos, Director General
AGRICarières, Comité sectoriel de main-d'oeuvre de la
production agricole

As an individual

2008/04/10

30

Alain Vallières, Lawyer

Amnesty International

Claudette Cardinal, Coordinator
Refugees, Canadian Francophone Section

Béatrice Vaugrante, Director
Canadian Francophone Section

Association des aides familiales du Québec

Farida Osmani, Coordinator
Undocumented and Temporary Foreign Workers

Samia Ouar, Project Leader and Worker

Immigrant Workers Center

Valérie Lavigne, Community Organizer
Lisa Montgomery, Community Organizer

Ligue des droits et libertés

Louise Boivin, Coordinator
Committee on the Rights of Immigrants and Refugees

Nicole Fillion, Coordinator

Solidarity Across Borders

Mostafa Henaway, Community Organizer

Anna Purna Malla

As an individual

2008/04/14

31

Eugénie Depatie-Pelletier, Research Associate
Canada Research Chair on International Law of Migration
University of Montreal

Fédération des chambres de commerce du Québec

Yvon Boudreau, Representative
Consultant

Quebec Human Rights and Youth Rights Commission

Marc-André Dowd, Vice-President

Carole Fiset, Human Rights Educator
Education and Cooperation Department

Atlantic Provinces Trucking Association

2008/04/15

32

John C. Robison, Member
President, SkillSearch Recruiting

Government of New Brunswick

Tony Lampart, Executive Director
Immigration Division, Population Growth Secretariat

Humphrey Sheehan, Chief Executive Officer
Population Growth Secretariat

New Brunswick Multicultural Council

George Maicher, President

Stewart Mussel Farms Inc.

2008/04/15

33

Stephen Stewart, Owner

Atlantic Region Association of Immigrant Serving Agencies

2008/04/16

34

Gerry Mills, President

Halifax Coalition Against Poverty

Kevin Wyman

Mainland Nova Scotia Building and Construction Trades Council

Cordell Cole, President

Nova Scotia Federation of Labour

Rick Clarke, President

Nova Scotia Labour Relations Board

Mary-Lou Stewart, Chief Executive Officer

Nova Scotia Tourism Human Resource Council

Lynn McDonagh Hughes, Manager
Operations

Prince George Hotel

Carol Logan, Director
Human Resources Branch

Coalition on Richer Diversity

2008/04/17

36

Barbara Burnaby

Donna Jeffrey, Executive Director
Refugee and Immigrant Advisory Council

Jose Rivera

Fish, Food and Allied Workers

Greg Pretty, Industrial Director
Research and Communications Branch

International Brotherhood of Electrical Workers

Richard Dalton, Business Manager
Local 2330

Michael Power, International Representative
Atlantic Canada, Newfoundland and New-Brunswick

Newfoundland and Labrador Building and Construction Trades Council

David Wade, Executive Director

Newfoundland and Labrador Federation of Labour

Lana Payne, First Vice-President

West End Baptist Church

Gordon Sutherland, Pastor

APPENDIX B LIST OF BRIEFS

Organizations and individuals

Adult Entertainment Association of Canada

Alberta Federation of Labour

Mario Bellissimo

British Columbia and Yukon Territory Building and Construction Trades Council

Canadian Auto Workers Union

Canadian Hispanic Congress

Canadian Society of Immigration Consultants

Christian Labour Association of Canada

Coalition d'appui aux travailleurs et travailleuses agricoles

Coalition d'appui aux travailleuses et travailleurs (im)migrantes

Coalition: Regent Park Community Health Centre, the Lighthouse Community Centre and Queen West Community Health Centre

Community Social Planning Council of Toronto

Construction Recruitment External Workers Services

Department of Citizenship and Immigration

Eugénie Depatie-Pelletier

Edmonton Mennonite Centre for Newcomers

Federation of Sisters of St. Joseph of Canada

Jill Hanley

Hotel Association of Canada

Immigrant Workers Center

Industrial Accident Victims Group of Ontario

International Brotherhood of Electrical Workers - Local 424

Mainland Nova Scotia Building and Construction Trades Council

Maple Leaf Foods Inc.

Janet McLaughlin

Mennonite New Life Centre of Toronto

Migrant Workers Ministries Committee of the Diocese of London

New Brunswick Multicultural Council

Félicien Ngankoy

Nova Scotia Federation of Labour

Office for Social Justice of the Diocese of London

Parkdale Community Legal Services

PINAY (The Filipina Women's Association of Quebec)

Provincial Building and Construction Trades Council of Ontario

Quebec Human Rights and Youth Rights Commission

Seasonal Agricultural Farmworker and Immigrant Owner

STATUS Coalition

Union des producteurs agricoles

United Food and Commercial Workers Union

Alain Vallières

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Citizenship and Immigration from 2nd Session of the 39th Parliament (Meetings Nos. 13, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 36 and 50) is tabled.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Citizenship and Immigration from 2nd Session of the 40th Parliament (Meetings Nos. 5, 7, 8, 9, 11, 12, 13 and 14) is tabled.

Respectfully submitted,

David Tilson, MP
Chair

Supplementary Opinion of the Conservative Members of the Committee

Our members support much of what is in this report, particularly the recommendations related to strengthening sanctions against firms that exploit the temporary foreign worker program and modernising the Labour Market Opinion process.

The Minister of Immigration has already announced that he will be publishing regulations in the coming months to address many of the issues raised by the witnesses during the course of this study.

We do not support many of the recommendations in this report which we believe would undermine the nature of the temporary foreign worker program, create roles for the government which we do not believe that it would fulfill effectively, hinder the ability of reasonable firms to conduct their business, empower an undefined set of groups, or adversely affect the domestic labour market – particularly in a time of global economic uncertainty.

It is our view that there is a place for a temporary program in our immigration system to address our temporary labour needs, and therefore we oppose any move to alter the design of the Temporary Foreign Worker to make it a permanent program in all but name. That would undermine the integrity of the Federal Skilled Worker Program and, thus, our immigration system. As such we respectfully dissent from recommendations 3 and 6.

It is our view that government operates best when it undertakes its specific functions with a high degree of focus; rather than increase the scope of its powers in undefined and limitless ways. We oppose efforts to create an unnecessary advisory board, or to require the government to respond publicly to the comments of every group or individual who chooses to express a view. As such we respectfully dissent from recommendations 2, 7, 19, and the third point of recommendation 11.

We oppose efforts to levy a tax on employers of temporary foreign workers: a tax is a tax, even when it's mislabeled as a fee. We are

not comfortable with establishing disincentives to the use of the Temporary Foreign Worker Program by responsible firms. In fact, we want to encourage responsible firms to make use of this important program. As such we respectfully dissent from recommendation 21.

We are not comfortable with the role for NGOs that this report seeks to establish. We are concerned with putting NGOs in quasi-judicial roles like determining labour law compliance. We are also concerned with the potentially wide definition of the term NGO, and are sceptical of providing such varied groups special status under the law. As such we respectfully dissent from recommendations 22 and 23.

It is our view that the Temporary Foreign Worker program should not be designed to allow the family members of low skilled workers to enter the Canadian labour market without a separate Labour Market Opinion. In rural communities, an influx of individuals with open work permits would drastically distort the local labour market, displacing local youth and Canadian visible minorities from entry level employment positions, essentially pricing them out of the local labour market. As such we respectfully dissent from recommendation 8.

We would also like to note of our scepticism of the magnitude of positive results likely to be obtained from the posting of various informational websites. This seems unlikely to be effective.

In closing we would like to thank the witnesses who appeared before this committee during this study, the committee members from the 39th Parliament, and the committee members from the 40th Parliament, who for the most part worked cooperatively to complete this study and produce this report.

Respectfully Submitted,

Rick Dykstra, M.P.

St. Catharines

Parliamentary Secretary to the Minister of Citizenship and Immigration

Bloc Québécois Supplementary Report

The Bloc Québécois played an active part in the drawing up of the report. We applaud the work of all the Committee's members, who cooperated to reach consensus on a number of issues. While the report does not entirely reflect the Bloc Québécois's position, we are generally satisfied with it.

However, the Bloc Québécois is disappointed that the report does not contain a recommendation that temporary foreign workers be exempted from the employment insurance plan. This exemption was called for repeatedly during the Committee's cross-Canada hearings. The reason is very simple: the plan is simply not designed for temporary foreign workers. The results can be unfair and irrational.

Unfair, because the great majority of temporary foreign workers cannot benefit from the plan's income protection provisions. Once their jobs end, they return to their country of origin and are thus not available for employment in Canada. To collect employment insurance premiums for these workers is thus nothing but a disguised tax.

Irrational, because the payment of employment insurance premiums opens access to parental benefits, even from outside Canada. For example, increasing numbers of farm labourers work in Canada for a short time and then, on returning home, receive parental benefits from the federal employment insurance plan. These workers are doing nothing illegal: they are simply taking advantage of benefits to which they are entitled. But it is irrational to allow temporary foreign workers who leave the country after a few months' work to benefit from its social safety net while Canadian citizens, for example seniors who spend winters in the south, are obliged to be in Canada for six months and a day before they can receive benefits. Exempting temporary foreign workers from employment insurance premiums is fair and rational for all residents of this country.

In our opinion, the only logical thing to do is to stop collecting employment insurance premiums for temporary foreign workers so that they will cease to be entitled to parental benefits, especially as the report already contains a recommendation (#21) that provides for an emergency support program for temporary foreign workers who find themselves unemployed while in Canada.

Temporary Foreign Workers Minority Report

Olivia Chow, MP

The Citizenship and Immigration Committee made considerable progress in identifying and understanding issues faced by temporary foreign workers. While the report identifies significant issues with the Temporary Foreign Workers program and how to address them, there are three areas that need to be developed further, namely issues surrounding 1) nation building, 2) social inclusion, and 3) prosecuting unscrupulous recruiters, consultants and employers who prey on the most vulnerable.

Nation Building

Canada is a nation that has been built by waves of immigration. In the early 19th century, British and Irish immigrants came to Canada and used their skills to build Canadian communities. By bringing their families to Canada, immigrants established permanent roots in cities and towns across the country. At the turn of the 20th century, tens of thousands of Chinese migrants were brought to Canada to build the Canadian Pacific railway, which has become a symbol of our national unity. After the railway was complete, however, migrant workers who risked their lives and sacrificed their families were either unceremoniously kicked out of the country or their family members were prevented to join them in Canada. Today, with the continued expansion of the Temporary Foreign Workers program, Canada as a nation is repeating a similar exploitation and exclusion of labour. Essentially, if temporary foreign workers are good enough to work here, these workers and their families should be good enough to live and stay here, permanently.

In 2007, the Temporary Foreign Workers program admitted over 200,000 migrant workers into the Canadian labour market. The Temporary Foreign Workers program should not replace the existing immigration program; it should only meet labour demands that are seasonal or of a cyclical nature. Through the expansion of the Temporary Foreign Workers program, the Government continues to facilitate the exploitation of thousands of workers and their families. As a result, the program drives down living wages and creates sub-standard working conditions for many. Immigrants with permanent status, on the other hand, do not drive down wages. Permanent status allows individuals and families to establish roots, forge relationships and community ties, and contribute towards the Canadian economy. Efforts should be made to limit the number of workers who fall under the Temporary Foreign Workers program.

Live-In Caregivers fall under the Temporary Foreign Workers program. These workers come to Canada to address a long-term labour shortage. As such, Live-In caregivers, who qualify, should be granted landed immigrant status with conditions which are to be relieved after three years. These conditions will prove that she/he has worked as a caregiver in Canada for at least two of the last three years from the time they arrived in Canada. Families of caregivers should be given a choice to immigrate with them and the above-noted conditions will apply to the whole family.

Allowing only certain skilled temporary foreign workers to apply for permanent residency through the Experience Class furthers the reliance on the Temporary Foreign Workers program to recruit much needed lower-skilled workers to address long-term labour shortages. One

solution to this problem would be to extend the Canadian Experience Class (CEC) program to give equal opportunity to all temporary workers.

As for those undocumented workers already living and working long term in Canada, they should be given a chance to apply for permanent resident status from within Canada. The Government should also allow provinces to nominate the applicants they need regardless of their current status. Currently Provincial Nominee Programs (PNP) are unable to nominate refugee claimants or those without status for permanent residence because the CIC visa offices refuse to give the visas while the applicants are in Canada. CIC should work with the PNP programs so that the provinces can nominate the applicants they need regardless of their current status.

Social Inclusion

Families are the foundation for healthy and strong communities. Every individual, regardless of their status, should be afforded the same rights and should be protected under the law. Basic employment rights, such as health and safety coverage, housing standards, minimum wage and the right to collective bargaining must be extended temporary foreign workers.

Temporary foreign workers should be covered under the Interim Federal Health program to ensure continuous coverage from arrival to permanent residence. Currently, OHIP denies coverage to many caregivers who apply for permanent residence.

Living in housing that meet basic standards should be a right of all workers. If employers are providing housing to temporary foreign workers, this should be indicated on the "hiring permit" application. In addition, employers must indicate whether or not municipal housing authorities have been notified of the housing to be provided and whether or not the housing has been recently inspected and approved. This is already a practice required of all employers under the Live-In Caregiver program, and should be extended to all other temporary works.

The Government should comply with the rulings of the Supreme Court of Canada and make it a condition that provinces bringing migrant workers to Canada allow these workers the right to associate and bargain collectively.

The Temporary Foreign Workers program should allow for the extension of contracts when a migrant worker has been injured at work. This would permit the Workers Compensation Board to continue providing both benefits and services, including proper rehabilitation. In addition, if there is evidence that the worker would be left with a permanent impairment as a consequence of the accident, this extension of time would allow the Board to streamline the process of determining the extent of that impairment and its level of compensation. Furthermore, in situations where injuries occurred due to work, the Government should ensure that worker compensation claims are duly filed.

Temporary foreign workers contribute to Employment insurance but seldom qualify to receive EI. Laws should be changed so either they are exempted from payment or EI are made more accessible to these migrant workers.

Canada can only gain in the long run by providing temporary foreign workers and their families with a complete orientation program immediately upon arrival; therefore, settlement services should be extended to temporary foreign workers and their families. Language training is also of particular importance. The Government should provide additional resources to support these settlement interventions as they lead to successfully integrated newcomers.

Prosecute Unscrupulous middle-people, Don't Persecute the Victims

Unscrupulous immigration consultants, recruiters and corrupt agencies continue to take advantage of vulnerable individuals and families by cheating them out of money through false promises. Instead of persecuting the victims of these unscrupulous immigration consultants, we must crack down on these exploitative practices and prosecute corrupt consultants and agencies that prey on the vulnerable.

Vulnerable workers need a voice. If the Temporary Foreign Workers program is to remain, it only makes sense to provide those workers with an independent body that will advocate for them. An advocacy office would provide much needed services for not only workers, but also their employers, and the Government of Canada. An advocacy office could act as a centralized location for the management of information and services such as health care, languages and skills training, permanent residency applications, employer best practices, labour data, and so on. A better serviced and informed work force would inevitably result in empowering workers, thus making them less vulnerable. The Government should establish these advocacy offices across the country.

A federal, provincial and municipal joint team in every province with temporary foreign workers would be responsible to regularly monitor the housing, working, health and safety conditions of the workers in the Temporary Foreign Workers program. Inspectors should be granted the ability to issue orders, fines and penalties. The Government should mandate that these teams be set up within six months, and teams should report annually on their plans and results.

The Government should not allow provinces to bring in temporary foreign workers unless specific national standards are met, including health and safety coverage, minimum wage, and the right to collective bargaining.

The Government should sign bilateral agreements with sending countries to ensure recruiters are not charging fees to workers. The federal Government must work with provincial Governments to ensure that recruiters bringing temporary foreign workers to Canada are licensed by the Provincial Ministries of Labour. The Government should create a working group, with the federal, provincial and territorial Governments, who would be responsible for developing national standards for the regulation of recruiters. These national standards should be adapted into best practices that employers could use to assist in evaluating and selecting foreign recruiters.

