A Personal Message From The Temporary Foreign Worker Advocate

Canada has long had a good reputation internationally as a truly welcoming country, offering a home and opportunity for people from all over the world. However, after almost three years of working with “temporary” foreign workers, my faith in Canada as a welcoming nation has been profoundly shaken. Instead, I have come to believe that the Temporary Foreign Worker Program (TFWP) itself, as well as the practices and policies that flow from this program, fundamentally racist.

In the face of a desperate need for permanent immigration, a high demand for labour in lower skilled jobs and a completely dysfunctional immigration system, our government decided to greatly expand the TFWP. It did not expand the immigration program. It did not put in extra resources to clear the bureaucratic backlog of immigration applications. It did put a lot of additional resources into aiding companies in bringing temporary workers to Canada. It was convenient and quick, plus it made employers happy. However, our need for workers is not temporary, despite the current downturn.

And that is why our government enticed people to come here with promises that their “temporary” status could change to “permanent”. Indeed, the vast majority of people in the TFWP came here because they wanted to immigrate and had an expectation that it was possible. It was only when the problems started, and the economy began to fail that we saw bureaucrats and politicians retreat behind the glib line “what part of temporary don’t you understand?”

Aside from providing a convenient escape for politicians, what is the significance of that word “temporary?” It has created a sub-class of workers with fewer rights than others in this country. It has incited more racism as well, not just from exploitative employers but from Canadians generally. Foreign workers are “them” - different from “us” permanent residents.

So now, as the economy sours, we hear: “why aren’t they going home?” “Why are they taking away jobs from us?” The answer is simple: they ARE “us”! All of us, except for the aboriginal peoples, are immigrants. It’s all a matter of degree; some of us have been here longer than others.

Finally, one of the most disturbing aspects of the TFWP and its companion Provincial Nominee Program is that we have now given corporations a great deal of power in determining who gets to immigrate to Canada. Where was the public debate on this massive policy shift? We have seen that many corporations cannot be trusted to treat their foreign workers fairly. And yet we have given them the responsibility to choose who gets to immigrate. Have we embarked on a program of privatizing immigration?

Entrenching Exploitation is the second report of the AFL’s Temporary Foreign Worker Advocate. Both it and its predecessor, Alberta’s Disposable Workforce, were co-written by myself and Jason Foster, AFL’s Director of Policy Analysis. The report does not tell a good news story, but it is an important story – one that must be told. Thank you for reading it.

Sincerely,

Yessy Byl
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Executive Summary

In November 2007, the AFL Temporary Foreign Worker Advocate released “Alberta’s Disposable Workforce” which examined the working and living conditions of temporary foreign workers in Alberta, documenting serious exploitation and abuse at the hands of employers and the government. In the months since, a lot has changed in Alberta, but much has stayed the same. The exploitation of foreign workers continues, even though the context has shifted significantly. With the boom turned to bust, it is important to update Albertans on the state of the Temporary Foreign Worker Program (TFWP).

This second report updates the findings of the first report and evaluates government responses and policy changes in the past two years. It also examines how the economic downturn is affecting temporary foreign workers. Finally, it offers an analysis of what the entrenchment of the TFWP means for Canada.

Update on Temporary Foreign Workers

The TFWP in Alberta has continued to expand and shift in the past two years. We continue to outstrip other provinces in our use of foreign workers. In December 2008, there were 57,843 temporary foreign workers in Alberta, a 55% increase in one year, and a quadrupling of the program in five years. If put into one place, foreign workers would comprise Alberta’s sixth largest city, larger than Medicine Hat or St. Albert. Alberta now brings in twice the number of foreign workers than permanent immigrants.

Just as important is the changing face of the TFWP. It is quickly becoming a program of low-skilled workers who are working in the retail, food service and hospitality industries. More than half of foreign workers in Alberta are considered low-skilled. And this number is increasing. Low-skilled workers are particularly vulnerable to exploitation, yet the TFWP does not address those vulnerabilities.

In 2007, for the first time, the U.S. was not the largest source country of foreign workers in Alberta – with the Philippines overtaking top spot. Workers are coming from developing nations more frequently. This is indicative of the changing nature of the TFWP. It also suggests the risk of exploitation is increasing.

The Advocate finds little change in the living and working conditions of foreign workers. They continue to be charged exorbitant, illegal fees from brokers, live under constant threats of deportation and experience racism in the community and workplace. There is still a widespread occurrence of employers abusing foreign workers’ rights at work – including failing to pay overtime, altering wages and working conditions inappropriately and other employment standards violations. Many still pay excessive rents to live in sub-standard housing.

The living and working conditions of foreign workers have not improved in the past 18 months. They continue to be exploited by employers and brokers, ignored by governments and estranged from communities.
Evaluation of Government Response

The main observation of federal and provincial government responses to problems with TFWP is the lack of effective response to alleviate conditions for foreign workers. While both levels of governments have been busy making announcements and adjusting policies and procedures frequently, the result of their efforts have mostly benefitted employers and done little for foreign workers.

At the provincial level, the government established an Advisory Office and Hotline and attempted to beef up labour law enforcement. These actions had the potential to assist foreign workers but have, for the most part, failed to live up to expectations due to a lack of adequate funding resources, and mandates that are too restrictive.

For example, enforcement officers can do little more than spot checks on the thousands of employers who have foreign workers, and their legal jurisdiction cannot address important areas such as housing or transportation expenses. The government has not provided sufficient resources, despite finding that 60% of restaurants employing foreign workers contravene the Employment Standards Code.

Alberta’s Provincial Nominee Program (now called Alberta Immigrant Nominee Program), which is the only avenue available to most foreign workers for permanent residence, remains too restrictive and far too small to serve an effective function. Only 4% of foreign workers are accepted into the program, even though the bulk of foreign workers come with the expectation and hope of permanent settlement, which was deliberated fostered by brokers and the government.

At the federal level, the bulk of changes were to serve the interests of employers, such as fast-tracking LMO applications and relaxing job search rules. The federal government continues to have NO enforcement capacity, and has shown no willingness to hold employers accountable for contraventions.

Foreign workers continue to be forced to fight for access to Employment Insurance (even though they pay in and are legally permitted to receive it) and are denied CPP in all but the most rare circumstances.

The Impact of the Economic Downturn

The rapid decline in Alberta’s economic fortunes has had an inevitable impact on foreign workers but one that is not straightforward. The Advocate has found three trends resulting from the recession.

First, is that higher skilled workers in construction and energy are being laid off and are, for the most part, returning home. No firm figures are yet available to determine how many have been laid off, but it is clear both foreign and permanent resident construction and oilfield workers are being laid off in large numbers.
However, a contradictory trend is occurring in the retail, food and hospitality sectors. In these industries the flow of foreign workers into the province continues unabated. These contradictory trends point to an ominous transformation in the TFWP.

The third trend is the complicated dynamic of whom to layoff. The Advocate has received reports that suggest some employers are laying off permanent residents before foreign workers. The situation regarding lay-offs is complex, but it is contributing to a rising level of racial tension in parts of many communities.

The situation is further complicated by the reality that employers, brokers and government in their bid to attract foreign workers have misled foreign workers about their prospects for permanent residency. After having lied to these workers, it is unfair to simply send them home now that our needs have shifted.

Making Sense of the Trends

After analyzing all the trends and changes over the past two years, the Advocate comes to a single, inescapable conclusion. The TFWP is quickly being transformed into something more permanent and certainly more problematic than a simple release valve for labour shortages.

Canada is rapidly creating our own version of a Gastarbeiter - a European-style guest work program - and this bodes ill for our nation. Europe’s guest-worker programs have created a permanent underclass of guest and migrant workers who toil in the dirtiest of jobs, who in many respects prop up the European economy through their low-cost labour but to whom the social and economic prosperity of Europe is closed.

Europe has created a rigid, two-tier labour market based upon exploitation and exclusion for guest workers. And now Canada is heading down that path with our TFWP.

Recommendations

The Advocate makes 21 recommendations for addressing the serious problems with the TFWP and for improving working and living conditions for foreign workers.

The most important set of recommendations calls for the immediate end to the TFWP in its current form, and the establishment of a one-time immigration stream for all foreign workers currently in Canada. The Advocate also calls for any future TFWP to be restricted to high-skilled workers only and have stringent rules for employers.

The remaining recommendations attempt to alleviate the worst problems with the current program in its current context.
In late 2006, it was becoming clear something was happening to Alberta’s labour market. Increasingly employers were turning to temporary foreign workers to resolve their perceived labour shortage problems. The fallout of this decision was also becoming evident. Desperate calls from foreign workers were flooding immigrant serving agencies, churches and the Alberta Federation of Labour (AFL) office.

In early 2007, the AFL decided to hire lawyer Yesy Byl to act as a Temporary Foreign Worker Advocate. She provided employment and immigration advocacy and casework, free of charge, to temporary foreign workers needing help.

In November 2007, the AFL released “Alberta’s Disposable Workforce: Six Month Report of the AFL Temporary Foreign Worker Advocate” which highlighted the re-occurring issues found in the Advocate’s casework. The report documented significant employer abuses and exploitation of foreign workers and highlighted the most serious shortcomings of the Temporary Foreign Worker Program (TFWP) gleaned from the hundreds of cases assisted by the Advocate. The report offered...
21 recommendations, aimed at both the provincial and federal government, on how to better protect temporary foreign workers.

In the 18 months since the release of the first report, much has changed in the Alberta labour market, the economy and government policy regarding the TFWP – yet much stays the same. The exploitation of foreign workers continues even though the context in which it occurs has shifted.

This second report of the Temporary Foreign Worker Advocate aims to do four things. First, it will update the public on the living and working conditions of foreign workers. Second, it will analyze the impact of government responses and policy changes that have occurred during the past year or so. Third, it will examine the impact of the economic downturn on foreign workers. Fourth, it will evaluate the state of Canada’s migrant worker policies and once again offer recommendations for fixing problems in the system.

Before beginning it is important to remind readers that this report, and the work of the Advocate, addresses only workers brought into Alberta through the TFWP. The other two classes of guest workers in Canada – farm workers under the Seasonal Agricultural Worker Program (SAWP) and domestic live-in caregivers (primarily nannies) – are not discussed. This is not to diminish the difficulties experienced by these guest workers, nor to ignore the profound exploitation that results from the badly designed policies under these programs.

All three guest worker programs are old, established programs (the TFWP was established in 1978), but only one has undergone a seismic change in its purpose, size and target populations. The SAWP and the live-in caregiver program have remained relatively stable during the past five years. It is for this reason we focus exclusively on the TFWP.

1. Update on Advocate Activities

As her work progressed, the focus of the Advocate’s activities shifted. The large caseload demand on the Advocate required the AFL to look at new ways to ensure this important service continued without taxing the structure and budget of the organization. The AFL is a central labour body not well-structured for offering casework assistance to individuals. It was unable to provide the degree of administrative and intake support to the Advocate necessary for the smooth functioning of her tasks. The caseload took a larger than expected toll on the Advocate.

In the spring of 2008, the AFL worked out an agreement with the Edmonton Community Legal Clinic (ECLC), a non-profit organization offering legal services to vulnerable populations, to transfer the Advocate’s active caseload to the ECLC. The AFL provided a financial donation to assist in the ECLC’s programs. The ECLC hired a Temporary Foreign Worker Coordinator who is doing full-time advocacy for foreign workers and they have recently added a part-time social worker to the program. The AFL’s Advocate continues to play a role in the ECLC
caseload, serving as a volunteer lawyer and advisor to the program.

While remaining active in individual advocacy, the AFL Advocate’s role has shifted. The Advocate now has a four-part mandate:

- To consult and cooperate with other foreign worker advocates regarding individual cases;
- To research developments with the TFWP and maintain contact with key figures involved with the program;
- To advocate for policy changes addressing ongoing problems with the TFWP;
- To educate the public and unions on the issues of working and living conditions of foreign workers.

The Advocate continues to closely monitor events related to foreign workers. She has spoken at many workshops and events and continues to speak to media, government and employers about the TFWP and the working conditions of foreign workers.

2. Update on Temporary Foreign Workers
Since the last report, Alberta has seen two phases in the development of the TFWP. Until late fall 2008, the program continued to expand at an alarming rate as employers turned to the use of foreign workers in greater and greater numbers. Then, last fall, the economy across the globe started to slide into a serious recession and the situation of foreign workers quickly became even more complicated.

**Numbers**

The most obvious observation about the TFWP is employers’ growing reliance on the program to handle their staffing needs. This is seen clearly in the staggering growth in the number of foreign workers in Alberta (which the government calls “stock”). According to preliminary figures released on February 13, 2009 by Citizenship and Immigration Canada, there were 57,843 temporary foreign workers in Alberta on December 1, 2008. This is a 55% jump from 2007 and more than four times the number residing in Alberta five years ago.

If all 57,000 foreign workers in Alberta were put in one place, they would make up Alberta’s sixth largest city – larger than Medicine Hat or St. Albert. Foreign workers now make up 1.6% of Alberta’s population. This number may not seem significant at first blush but barely five years ago foreign workers were not considered worth measuring in population statistics.

The official figures do not capture the program’s peak which occurred during the summer of 2008, before the economic crisis. It is not unreasonable to estimate that at its highest point, Alberta had more than 60,000 foreign workers residing in the province.

By contrast, permanent immigration has been relatively stagnant, with fewer than 25,000 immigrants coming to Alberta last year from outside the country, only a few thousand people higher than in 2004.

Alberta is not the only heavy user of the TFWP. In 2008, there were 252,196 foreign workers across the country, double the number in 2004 and, for the first time, higher than the number of new immigrants. In raw numbers, Ontario has the highest number of foreign workers at 91,733 (an increase from 59,340). B.C. has equal numbers to Alberta (58,456) and Quebec, interestingly, has half the number of foreign workers (26,085).

As a proportion of population, Alberta outstrips every other province in foreign worker density. Only B.C. and Alberta have more than 1% of population consisting of foreign workers. Most provinces have percentages that barely register.
Canada as a whole is making far more use of foreign workers than our neighbour to the south. U.S. programs involving temporary workers are not entirely comparable to Canada’s, but their programs appear to consist of approximately 320,000 guest workers\(^2\) despite having a total population ten times larger than Canada.

Compared to the U.S. figures, Alberta has 20 times higher usage of foreign workers, as a proportion of population.

The statistics make two patterns clear. First, Alberta is jumping on the TFWP bandwagon at a much faster rate than other provinces. While the national totals doubled, Alberta’s nearly quintupled. No other province had Alberta’s rate of growth. The density of foreign workers also points to our growing reliance on guest workers to fill our need for workers.

Second, the stagnation in Alberta’s permanent immigration system adds weight to the argument that we have become more reliant on guest workers to fill our social and economic needs. Nationally, the immigration picture is mixed, with Ontario and B.C. also posting little change in permanent immigration. However, other provinces such as Manitoba (51%), Saskatchewan (249%) and PEI (478%) have significantly increased their permanent immigration.

In the provinces with large increases, they are due to active provincial government policy to encourage and foster permanent immigration. For example, the Manitoba government has adopted a strategy of moving as many foreign workers as possible into a permanent resident stream using its Provincial Nominee Program (PNP). Alberta’s PNP (now called Alberta Immigrant Nominee Program – discussed below) by contrast remains small, little known, restrictive, and off limits for large numbers of foreign workers at this point in time. For the moment, Manitoba remains the only province which accepts the bulk of their foreign workers into a permanent immigration stream. In fact as an explicit indicator of its policy, Manitoba calls its temporary foreign workers “Transitional Foreign Workers.”

**Region**

Temporary foreign workers are not going to the same places in the province that permanent immigrants do. In the traditional immigration stream, the bulk of immigrants arriving in Alberta gravitate to Edmonton and Calgary. In 2008, 85% of those newcomers ended up in our two big cities.

The locations of foreign workers, on the other hand, are more diffuse. In 2008, only one in two lived in Edmonton or Calgary. Interestingly, 41% went to areas

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### Temporary Foreign Workers Across Canada

<table>
<thead>
<tr>
<th>Province</th>
<th>Number of Temporary Foreign Workers (2008)</th>
<th>Percent of Total Population</th>
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</thead>
<tbody>
<tr>
<td>B.C.</td>
<td>58,456</td>
<td>1.3</td>
</tr>
<tr>
<td>Alberta</td>
<td>57,843</td>
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<tr>
<td>Saskatchewan</td>
<td>4,378</td>
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<tr>
<td>Manitoba</td>
<td>5,397</td>
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<tr>
<td>Ontario</td>
<td>91,733</td>
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</tr>
<tr>
<td>Quebec</td>
<td>26,085</td>
<td>0.3</td>
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<td>Nova Scotia</td>
<td>2,549</td>
<td>0.2</td>
</tr>
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<td>New Brunswick</td>
<td>2,044</td>
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<tr>
<td>PEI</td>
<td>460</td>
<td>0.3</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>1,071</td>
<td>0.2</td>
</tr>
</tbody>
</table>

outside of Alberta’s six biggest municipalities. This is likely due to two factors. Most significantly, foreign workers do not get to choose their location. They are hired by an employer who sends them to locations to fit company needs. The pattern also reflects that labour markets are tighter in smaller centres which have smaller pools of workers from which to draw and find it difficult to persuade workers from Edmonton or Calgary to move. Last year’s statistics show the percentage of foreign workers going to rural Alberta is increasing. In 2003 60.6% of foreign workers were in Calgary or Edmonton; in 2007 that percentage was down to 53.4%.

Why is this significant? It relates to isolation and vulnerability. In small towns, a foreign worker has less access (sometimes none) to settlement services, fewer people of their own culture or language with whom to connect, and less opportunity for either employment alternatives or amenities which may make living in a new country more palatable. It is also more difficult to get information about employment and human rights in smaller municipalities.

While the community spirit in small towns can be quite supportive, it must be acknowledged there are unique challenges for a newcomer in these smaller centres that can profoundly affect quality of life.

Also, the diffuse nature of foreign workers’ location increases the challenge for government, non-profit agencies or advocates in finding these workers to assist them.

**Occupation**

Understanding the nature of the work foreign workers are being asked to perform speaks loudly about the nature of the TFWP and employers’ reliance upon it. It is important to look at the occupational classifications under which foreign workers are being brought to Alberta.

As of the time of writing, occupational classifications under the TFWP were not complete for 2008 (due in May 2009). However data for previous years is available and reveals a significant pattern. It is reasonable to assume the pattern of occupational distribution will not have changed significantly, at least for the first 10 months of 2008. Possible changes to the occupational makeup of the TFWP due to the economic downturn (which may be sizeable) will be discussed more fully later in the report.

Citizenship and Immigration Canada (CIC) uses a standardized system for classifying occupations, called the National Occupation Classification system (NOC). The classes of NOCs reflect the clusters of relative skill levels required for occupations. The classes are broken down in the following fashion:

**Skilled:**
- NOC “0” – senior and middle-management occupations
- NOC A – professional occupations requiring university degree
- NOC B – technical and skilled trades occupations requiring some post-secondary, apprenticeship or extensive job training
Low-skilled:
- NOC C – occupations requiring some job training and some high school
- NOC D – occupations requiring no training or education level.

If we examine the shifting occupation classifications over the last few years the trend clearly shows a shift toward lower-skilled occupations. In 2003, skilled occupations made up 50% of all foreign workers in Alberta while lower-skilled occupations comprised only just over 26%. By 2007 this had shifted to 40% skilled and 40-60% low skilled, with by far the largest increase in NOC D – up to almost 1 in 5 from virtually non-existent.

This is not surprising as the explicit intent of government policy regarding the TFWP has been to open the program to lower-skilled workers. As was noted in the first report of the Advocate, it was the decision to expand the TFWP to include lower-skilled workers that sparked both the rapid growth in the program and spawned the problems with exploitation and abuse.

That is what makes the rapid shift to lower-skilled temporary workers so troubling. And while CIC is yet to release occupational data for 2008, an analysis of Labour Market Opinions (LMOs) – the first step by an employer to hire a foreign worker - suggests the trend is accelerating. In 2008, approximately 30,000 LMOs were issued in Alberta. Most were for lower-skilled workers. As an Edmonton Journal article reported:

“the vast majority of labour market opinions issued in Alberta for 2008 were for workers in the unskilled category, including babysitters and nannies, retail and restaurant help and labourers. In fact, there were three times more labour market opinions approved for employers seeking unskilled workers than for the higher skilled category.”

It is safe to estimate that more than 30,000 low-skilled foreign workers were working in Alberta near the end of 2008 - three times higher than all TFWP workers back in 2003. Since the worst abuses exist for low skilled workers, it is no wonder TFWP program enforcement has become such a huge issue.

The TFWP has ceased to be a program to facilitate the temporary employment of select high-end professionals which was the case prior to 2002 when it still abided by its original purpose. The TFWP has, instead, become a pipeline for the importation of low-skilled labour from developing nations.

It is also worth noting briefly the classification of “unknown,” which consistently refers to about one in five foreign workers during the past five years. Much of this category includes the family members of foreign workers accepted into the TFWP, and of which a large proportion are working in low-skilled occupations.

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<table>
<thead>
<tr>
<th>Temporary Foreign Worker Occupational Classification, Alberta</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
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<tr>
<td>NOC “O”</td>
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<td>6.4</td>
<td>5.9</td>
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<td>NOC A</td>
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<td>22.2</td>
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<td>NOC D</td>
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<td>Unknown</td>
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<td>25.6</td>
<td>24.6</td>
<td>22.3</td>
<td>18.7</td>
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</table>

* Synthetic Codes are occupations classified by CIC outside the NOC system.
themselves. Another proportion of this category is due to administrative weaknesses in the program – the department is unaware what occupation the permit stipulates. This is a statement about the administrative health of the program.

The unknown category also includes “open” permits for citizens of certain European nations and Australia, where the worker is not restricted in the type of work they engage. It is noteworthy to observe that workers from certain western nations are trusted with greater flexibility than citizens of Asian and Central and South American countries.

Country of Origin

Paralleling the shift in occupational status, not surprisingly, we also see a marked change in country of origin among temporary foreign workers. When the program was focused on high-skilled occupations, the bulk of workers came from the U.S., Japan, United Kingdom and Australia. Today that trend has reversed itself. The fastest growing source countries are Philippines, Mexico and India.

In 1998, the top five source countries for foreign workers in Alberta, in order, were: United States, Philippines, Japan, United Kingdom and Australia.

Ten years later, in 2007, the list has changed to: Philippines, United States, United Kingdom, Mexico and Australia. India followed very closely in sixth.

The shift toward less developed nations has been stark. In 2007, the Philippines overtook the United States for the first time as Alberta’s largest source country under the TFWP. U.S. workers, as a proportion of all workers in the TFWP dropped by almost two-thirds while Philippino/Philippina workers increased by 50% proportionally, and by 663% in raw numbers.

The shift is not surprising as it reflects the occupational priorities of the program. Low-skilled workers are more likely to be recruited from poorer, less-developed nations as they have more to gain by coming to Canada to work in retail or hospitality. Nonetheless, it does raise significant consequences for temporary workers and Alberta.

First, language and cultural challenges become more pronounced. American or British workers have a relatively easy time acculturating to Alberta. Philippino/Philippina or Indian workers will meet a much steeper learning curve.

Second, workers from developing nations are more likely to be visible minorities, making them both more visible and more vulnerable. Issues of racism are more of a concern today than 10 years ago.

Third, workers from developing nations are less likely to have sufficient “points” under the mainstream immigration streams, making the TFWP the only viable alternative if they wish to come to Canada. This expands the divide between the

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<tr>
<td>United States</td>
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<td>China</td>
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Source: Citizenship and Immigration Canada, 2007
TFWP and the permanent immigration programs and thus further entrenches the sub-standard conditions experienced by foreign workers.

Living and Working Conditions

It was reports of employment standard violations, illegal broker fees and inhumane living conditions that first motivated the AFL to create its Temporary Foreign Worker Advocate. The Advocate’s first report documented with stark clarity the realities of working and living in Alberta as a temporary foreign worker.

Foreign workers were found to experience a series of difficulties and abuses in both their living and working conditions. These included:

- Payment of exorbitant and illegal fees to brokers for finding employment;
- Job description, wages and other working conditions not matching original promises;
- Not receiving overtime pay and other contraventions of employment standards;
- Expectations of unpaid “extra” work for the employer;
- Sub-standard housing arrangements, often at excessive rents owed to employer;
- Experience of racism from employer, co-workers and community;
- Threats of deportation from employer;
- Misleading promises from employers, brokers and government of the possibility of permanent residency and citizenship.

During the past two years, media reports and public discussion about the working and living conditions of foreign workers have raised awareness of the difficulties faced by these workers. But has the spotlight that has been shone on these inhumane conditions caused any change?

The experience of the advocates working with foreign workers suggest the answer is no. The ECLC and other immigrant-serving agencies continue to have demanding caseloads with hundreds of workers coming to them for assistance with employment problems, immigration issues and complaints of sub-standard living conditions. The nature of the problems has not changed. The most common concerns continue to be contraventions of employment standards, threats of deportation, racism, sub-standard housing and exploitative labour brokers.

Indeed, little has changed in the living and working conditions of foreign workers. Just as was the case two years ago, the depths of the exploitation is difficult to even ascertain, given how silent and hidden many foreign workers are.

It is not just the reports of advocates that point to how little has changed in the working and living conditions of foreign workers. The government of Alberta has acknowledged foreign workers face particular difficulties at work.

Even the issue of labour brokers charging workers for their services has proven to be intractable. Alberta has clear legislation prohibiting these charges but the government has taken few steps to track down brokers operating in the province.
Service Alberta, the department responsible for the *Fair Trading Act* which regulates employment agencies, enforces the rules using a complaint-driven system which requires foreign workers to file a complaint against the broker. This is an ineffective approach for foreign workers, as they are less likely than others to file a complaint due to lack of awareness, fear of reprisal and doubts about the system.

Service Alberta reports 277 current investigations into broker activities. Since 2007, there have been seven Orders issued and one prosecution (which is still ongoing). Service Alberta acknowledges that the bulk of investigations result in no formal action, or are abandoned due to “lack of evidence” or inability to pursue the broker.

The low number of orders and prosecutions point to the barriers to enforcing the *Fair Trading Act*. Workers may be unwilling to report the broker for fear of reprisal. The broker may be difficult to track down and “hard” evidence (i.e. paperwork) difficult to find. The exact purpose of the fees may be impossible to ascertain (certain fees for processing CIC forms, etc., are allowed).

Making things more difficult is the fact that brokers have craftily shifted their strategy and are now often demanding payment in the originating country before the worker ever gets to Canada. The Alberta government has no jurisdiction to prosecute brokers who are not operating in the province nor can it go after Alberta employers who allow such fees.

Reports from foreign workers suggest the brokerage problem has actually gotten much worse. Brokers based in the home country frequently use threats of violence against the worker or their family to coerce full payment of the fees or to ensure the worker does not complain to authorities about the illegal charges. This prevents the bulk of illegal fees from ever being reported to authorities, either in Alberta or in the originating country.

In short, conditions for foreign workers have not improved in the past 18 months. They continue to be exploited by employers and brokers, ignored by governments and estranged from communities.
The last two years of publicity and public debate about the TFWP has prompted both the federal and provincial governments to alter policies, establish additional offices and take steps to appear more responsive to the changing situation.

The pace of changes has, at times, been rather fast and the range of responses rather complex, suggesting a need to outline the nature of the changes and to analyze their impact on foreign workers.

**Provincial Government**

Shortly after the Advocate’s first report, the Alberta government announced a number of measures to assist foreign workers. In a review of Canadian jurisdictions, it appears that Alberta is the only province, possibly along with Manitoba, which has taken some substantive steps to address some of the key concerns related to the TFWP.
Advisory Office

In late 2007, the Alberta Employment and Immigration department announced that it was instituting the Temporary Foreign Worker Advisory Office (TF-WAO), along with a temporary foreign worker Hotline. Initially, the office was provided no administrative support, no dedicated office space or “drop-in” area, greatly hindering its effectiveness. Some of these shortcomings were addressed in the summer of 2008, when additional staff was assigned to the TFWAO.

The hotline appears to be used with a degree of frequency by foreign workers. The line was originally staffed only in English, limiting access for many low-skilled workers. However, the hotline now has quickly accessible translation services. A leaflet outlining basic rights is available in 10 languages but is not easy to find as it is buried on an English-only website.

The government refuses to release specific data about the use of the TFWAO and the hotline so it is not possible to gauge the level of demand for its services. Releasing this information would provide useful insights into the nature of problems experienced by foreign workers.

The largest shortcoming of the TFWAO is that it officially states that its mandate is to be a “referral service” only. They are generally unable to offer direct advocacy for foreign workers who phone for assistance. The official approach is that they send them on to other agencies or departments, such as Employment Standards.

The stunted functions of the TFWAO prevent the provincial government from providing what could potentially be its most valuable service. Most foreign workers seeking assistance are looking for new or alternate employment, often to escape a bad employer. Of course, under the TFWP, only employers with valid Labour Market Opinions (LMOs) can hire foreign workers – meaning the workers need to find an employer with a LMO.

Community agencies are not positioned to offer this kind of employment referral service nor are they funded to do so. However, the provincial government is uniquely placed to provide employment assistance as they receive from the federal government a list of Alberta employers with valid LMOs. The TFWAO has the potential to help connect foreign workers with employers. However, their mandate prevents such assistance.

Given its limited role, the TFWAO is no longer of great benefit. Frankly, community agencies may now be better placed to more adequately provide services to foreign workers, if only they received proper funding to do so.

Employment Standards Enforcement

Probably the most effective response implemented by the Alberta government is to assign eight Employment Standards enforcement officers as an “audit team” charged with auditing employers with LMOs to ensure they were complying with Employment Standards legislation. In addition, these employers are automatically included in the “targeted employer” program as part of Occupational Health and Safety enforcement.
Official figures as to non-compliance rates among these employers have not been released. However, at a conference in the fall of 2008, the Employment and Immigration Director of Enforcement, responsible for overseeing both employment standards and safety inspections, reported that 60% of employers in the food industry with LMOs contravened the Employment Standards Code. He also reported high levels of safety shortcomings, especially in training and provision of appropriate protective equipment.

Attempts at more effective enforcement are confounded by a trio of complications. First, there are considerable time delays with the federal government forwarding the list of employers with LMOs to the province, meaning the data is often far out-of-date making inspection efforts moot in many respects.

Second, the province – correctly or incorrectly – has interpreted its enforcement mandate as to include only provincial employment statutes. It recently issued a decision indicating it does not have the authority to enforce contract provisions that address payment of airfare, accommodation or other non-statute issues. For instance, a recent letter from Employment Standards advises a foreign worker that since airfare is “considered an expense, required under Service Canada’s Labour Market Opinion but which is outside of the scope of Employment Standards, I am unable to enforce payment for airfare on your behalf.” The letter goes on to recommend that a claim be submitted to HRSDC for their investigation, despite the fact that there is no enforcement processes within HRSDC for employment contract violations.

This a particularly concerning development, as much of the more objectionable mistreatment occurs around these “fringe” issues of accommodation, transportation, broker fees, deduction of wages for living costs, etc. If the province has removed itself entirely from addressing these issues, foreign workers are left with no legal recourse.

Third is a general lack of resources. Eight enforcement officers cannot be expected to reach the tens of thousands of employers who have LMOs. The Director of Enforcement has indicated this means their approach is simply a spot check on a portion of the employers. The reality, for most foreign workers, is that most cases of contravention of employment rights continue to go unenforced.

Settlement Services

The Advocate’s first report also noted that foreign workers are denied access to community settlement services available to permanent immigrants. CIC is the primary source of funding for services across Canada and it prohibits funded immigrant-serving agencies from providing assistance to foreign workers.

The provincial government partially filled in that gap by offering settlement funding to a number of agencies, two in Edmonton, two in Calgary and three in smaller cities as a pilot project. While this project will help reduce the massive demand for settlement-like services for foreign workers, restricting it to a small number of communities still leaves half of foreign workers - those working in smaller centres – without any support or services. Making matters worse, the
pilot project prohibits the agencies from providing assistance in finding employment – the single biggest need among foreign workers.

AINP

In the late 1990s the federal government instituted the “Provincial Nominee Program” (PNP) which allowed the provinces to decide their immigration needs and sponsor applicants in a “fast tracked” permanent residency process. These PNP programs were generally made available to temporary foreign workers in Canada but the provinces were able to select their own eligibility criteria, restricting the program to certain skill levels, occupations and so forth. Most provinces have admitted primarily skilled workers to their PNP’s. Most provinces, with the notable exception of Manitoba, have made very little use of their ability to turn temporary foreign workers into permanent immigrants. While there were 252,196 temporary foreign workers in Canada in 2008, only 8,341 Provincial Nominees were granted permanent residency.

A key feature of PNP’s is that they are employer driven. The employer starts the process and recommends foreign workers for the program. Their role of pre-selection shapes significantly the makeup of workers accepted into the program. It also creates an impression among workers that they are beholden to the employer, even though once in the PNP stream, the worker has few specific obligations to the sponsoring employer. The Advocate has heard reports of unhappy employers threatening to withdraw workers from the PNP.

In June 2008, Alberta renamed its Provincial Nominee Program (PNP), as the Alberta Immigrant Nominee Program (AINP) and at the same time established a family stream. The newly announced family stream allows permanent residents and citizens to nominate high-skilled family members. It is a fast-track immigration process. It applies only to NOC “O”, A and B occupations, explicitly excluding lower-skilled workers.

There would be little concern about the addition of the family class if not for one reality – the new family stream is to be included in the overall PNP/AINP quota, which is quite small. In 2007, less than 4.4% of foreign workers were accepted by the PNP. The targets for 2009 and 2010, still only reflect a tiny fraction of the number of workers arriving in Alberta under the TFWP.

There are three major drawbacks to the AINP. First it targets primarily skilled workers, excluding the growing unskilled portion of the TFWP. Second, the numbers represent a very small fraction of the foreign workers in Alberta, most of whom want to become permanent residents. By way of contrast, the province of Manitoba has opened up its PNP to all skill levels re-

<table>
<thead>
<tr>
<th>Year</th>
<th>Temporary Foreign Workers In Alberta</th>
<th>PNP/AINP Sponsored Immigrants</th>
</tr>
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<tbody>
<tr>
<td>2003</td>
<td>11,462</td>
<td>178</td>
</tr>
<tr>
<td>2004</td>
<td>13,236</td>
<td>426</td>
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<tr>
<td>2005</td>
<td>15,834</td>
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<td>2006</td>
<td>22,114</td>
<td>956</td>
</tr>
<tr>
<td>2007</td>
<td>37,293</td>
<td>1,651</td>
</tr>
<tr>
<td>2008</td>
<td>57,843</td>
<td>Approx 3,000</td>
</tr>
<tr>
<td>2009</td>
<td>TBD</td>
<td>Target: 4,000</td>
</tr>
<tr>
<td>2010</td>
<td>TBD</td>
<td>Target: 5,000</td>
</tr>
<tr>
<td>2011</td>
<td>TBD</td>
<td>Target: 5,000</td>
</tr>
</tbody>
</table>

Source: Citizenship and Immigration Canada
sulting in the majority of foreign workers becoming permanent residents within two years of arrival in the province. This approach makes sense. As many employers commented in the government sponsored “round table discussions on low skilled Temporary Foreign Workers” held in January 2009, they need these workers on a permanent basis, not temporary.

The third drawback is that the program is entirely employer driven (with the exception of tradespeople who have earned their national certification, called Red Seal, and a very few others). Unfortunately, many employers simply cannot be bothered to apply for AINP for their foreign workers. Often they mistakenly believe that workers will leave the minute they obtain their permanent residency. Indeed, at one meat-packing plant, the statistics show that there is a better retention rate among the foreign workers who had obtained their permanent residency than among Canadian workers.

The AINP does permit some low-skilled workers in specific sectors to apply. However, many possible applicants face significant barriers. Even though a job in a meat packing plant does not require experience or grade-12 education, foreign workers brought to Alberta must have three years experience in a similar industry and must have the equivalent of grade 12. Applicants have been turned down because they do not have that experience. They also face stringent English requirements, often at a level higher than that achieved by Canadians working in the same plant.

Further, the AINP limits the number of sponsorships an employer can make. For example, in the food services industry “An Employer is eligible for only one allocation per restaurant location for one (1) of the three selected occupations.”

Most employers respond to this limitation by refusing to participate because they feel they cannot simply choose one person when they often have ten or more temporary foreign workers employed at their restaurant.

Other employers use this program as a further excuse to exploit workers who desperately want to immigrate. Many dangle the possibility of nomination in the AINP to ensure acquiescence to unreasonable requests such as unpaid work, additional work, etc.

A final limitation of the AINP which has become particularly problematic in this economic climate is that the AINP office has indicated that sponsorship will be withdrawn if at any time prior to the foreign worker attaining permanent residency that worker is laid off. This is downright abusive. Many of the foreign workers wait for two years before obtaining their AINP nomination, the permanent residency application process takes a further 8 to 12 months. If they are laid off mere months before the granting of permanent residency, they are forced to start the process all over again with a new employer (assuming that it is even possible to do so).

There have been indications that the Alberta government is considering making the AINP generally available to low-skilled workers. However, when the Advocate inquired whether the target numbers would increase if the eligibility were broadened, the response was that changing the target number was not proposed.

Workers who are fleeing persecution or violence in their home country are particularly vulnerable to unscrupulous recruiters. In one case, a foreign worker recruited for a low-skilled job was charged approximately $10,000 recruitment fee and told to pay for his own airfare to Canada. Upon arrival in Canada the employer refuses to reimburse the airfare, despite being legally obligated to do so. When the worker filed a complaint with Alberta Employment Standards they refused it on the grounds that they don’t have “jurisdiction” over such matters.
Any expansion of the program without a fair process for accessibility would only further exploit foreign workers.

Overall

The Advocate’s overall evaluation of the provincial government’s response is that its actions are important steps in the right direction, but that they are too limited, restricted or under-resourced to capture the full scope of the situation. Pilot projects, advisory offices and a handful of enforcement officers are certainly preferable to what was available for foreign workers two years ago, but these programs need to be expanded and more properly resourced if they are to achieve desired effectiveness.

Ultimately, the provincial government can offer little more than bandaids to the injuries created by the TFWP as the province’s scope of authority is, in many respects, after the fact. It is, ultimately, the federal government that has the largest potential to make the lives of foreign workers better.

Federal Government

The most notable aspect of the federal government’s response to the exploitation of temporary foreign workers is its complete lack of a response. The federal government persists in abdicating responsibility, claiming that foreign workers are to be protected by provincial employment standards legislation.

The federal government is involved in two ways. First, it grants “labour market opinions” (LMOs) to employers through Human Resources and Skills Development Canada (HRSDC) – Foreign Recruitment Branch. The LMO process is best characterized as a government-employer relationship. Foreign workers cannot even receive a copy of their employer’s LMO from the government, which cites privacy concerns. Second, Citizenship and Immigration Canada (CIC) issues work permits to foreign workers, a government-worker relationship (even though an employer’s actions can jeopardize a worker’s status in Canada).

HRSDC and the LMO Process

LMO Obligations

The first Advocate report highlighted concerns with expanding the TFWP to lower-skilled workers without bolstering protections for workers under the program. The federal government’s only nod to the additional level of vulnerability of lower-skilled workers was establishing some minimum contract standards. A contract with low skilled workers had to include reasonable accommodation, availability of health care, employer-paid airfare to and from source country, compliance with provincial employment standards law. As part of the LMO process, an employer is supposed to provide a copy of the signed contract to HRSDC.

The effect of these minimal expectations was to allow HRSDC to compel employers to provide basic rights, at the threat of withdrawing their LMO. How-
ever HRSDC has routinely failed to enforce any basic requirements, and only extremely rarely revokes LMOs for contraventions.

These meager protections were implemented in 2002 at the beginning of the expansion. Rather than toughening them, HRSDC has chosen to remove itself from any kind of monitoring. The following information is now posted on the HRSDC website:

“Enforcing the terms and conditions of the employment contract

The Government of Canada is not a party to the contract. Human Resources and Social Development Canada (HRSDC)/Service Canada (SC) has no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of employment. It is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and to look after their own interests.”

Combined with the provincial proclamation that it cannot enforce many of the provisions of these contracts and foreign workers are, essentially, left defenceless. Both levels of government have abdicated responsibility for protecting the rights of these workers.

Even more troubling is that HRSDC has no ability to refuse a LMO on the basis of an employer’s contravention of employment standards or contraventions of employment contracts with their foreign workers. An exploitative employer can continue with a merry-go-round of foreign workers unhindered by any level of government.

Officials and politicians have for many months promised the implementation of an “integrity” element in the LMO process – their phrase for enforcement. However, as of the date of writing, there has not been a single announcement about increased enforcement at the federal level.

Processing Speed

The one area where the federal government has taken action is the area of processing speed which is an important issue for employers. In 2007, during the acceleration of demand for LMOs, the process was taking about six months. Due to employer pressure, by mid-2008 processing times had dropped to two to four weeks. This was despite even greater demand and the implementation of expedited systems (E-LMO) during this period. In fact, E-LMO processing times were about one week in 2008.

They also implemented a list of “Occupations Under Pressure” for B.C. and Alberta, which relieved employers of most obligations to demonstrate they conducted a valid search for permanent resident workers.

With the downturn in the economy, resources have been allocated elsewhere and as of March 2009, it is now taking 6 to 8 weeks to obtain an LMO. Of course, right now it is foreign workers, and not employers, who are in the most urgent
need for updated LMOs – as laid-off foreign workers are seeking new employers willing to hire them. There is a lack of political will to assist stranded foreign workers already in Canada, as the LMO process makes no differentiation between an LMO for a new entrant and one who is already in Canada.

Brokers

Even with the issue of illegal broker fees, the federal government has done little to assist foreign workers. They did add an additional clause to the low-skilled worker mandatory contract standards:

“11. THE EMPLOYER shall not recoup from the EMPLOYEE, through payroll deductions or any other means, any costs incurred in recruiting or retaining the EMPLOYEE. These include, but are not limited to, any amounts payable to a third-party recruiter.”

However, this is little more than a token gesture. HRSDC has admitted previously that it cannot and will not enforce contract provisions.

CIC responses

Work Permits

Once an employer obtains a “Labour Market Opinion” from HRSDC, the worker then applies for a Work Permit pursuant to the regulations under the Immigration and Refugee Protection Act (IRPA). Work Permits stipulate the location and employer for whom the foreign worker can work. They are not legally permitted to work for other employers until their permit is amended.

There is very little legislation governing work permits. Most of the rules are simply policies which can be changed suddenly and often with little communication to affected parties. CIC has made a number of these “policy” changes in the past 18 months.

Possibly the change with the most significant long-term implications is the quiet elimination of the time limits for how long low-skilled foreign workers can stay in Canada. There is no legislated limit for how long a skilled foreign worker could stay in Canada so long as the LMO and work permits were routinely renewed. However, when the low-skilled TFWP was introduced in 2002, the initial policy was that a low skilled worker could only stay for one year and then had to return home for at least four months. In December of 2006, the government announced that this one-year limit was extended to two years. Employers were objecting to having to send badly needed, trained employees back to their originating country. Some time during 2008, it became apparent that the two-year limit for low-skilled workers was being quietly eliminated. Low-skilled foreign workers were obtaining work permit renewals without having to leave Canada after being here for two years. CIC has indicated there is no longer a “hard and fast” rule on time limits and now each case is to be judged on its merits.

This shift has far-reaching consequences for the future of the program and for the workers on these new, timeless permits. It radically redraws the purposes of the

“...The Advocate has come across many cases where due to employer or broker deception a foreign worker finds there is no job available, or the job is not what their permit allows. They are then forced into working illegally. In the very few cases when wrongdoing is reported, it is invariably the worker who is punished by being deported. CIC has chosen to be willfully blind about how to properly sanction employers and brokers who lie and cheat about employment availability, and worker permit status...”
TFWP, turning it from a “boom-time” quick fix into a permanent guest worker program. This will be discussed in more detail later in the report.

There have been a few issues where CIC has responded to some of the more pressing issues for workers. They have successfully reduced waiting times for processing work permits within Canada (i.e. amendments to existing permits). In early 2008, the waiting time was 10 to 12 weeks. During this time, the foreign worker would be legally prohibited from working – leaving hundreds of workers destitute for almost three months.

However, in late 2008, CIC announced a “fast track” system for foreign workers seeking to switch employers. These applications are now processed in about three weeks. Renewals of work permits with existing employers continue to take 12 weeks, with some negative impacts, especially in the cases of late applications.

CIC has also clearly stated that a foreign worker can hold two work permits at the same time. This is a positive development, as it allows foreign workers to find alternative employment during a temporary layoff or during a strike.

Enforcement

However, much like HRSDC, CIC has made no efforts to improve its enforcement of the TFWP. The Advocate has come across many cases where due to employer or broker deception a foreign worker finds there is no job available, or the job is not what their permit allows. They are then forced into working illegally. In the very few cases when wrongdoing is reported, it is invariably the worker who is punished by being deported. CIC has chosen to be willfully blind about how to properly sanction employers and brokers who lie and cheat about employment availability, worker permit status and so forth.

Border Agency officials have recently become a problem for temporary workers. In the past, a foreign worker could go to a border crossing to get their work permits approved (border officials can issue permits on site). This was a simple practice to prevent trouble for both employers and worker by eliminating the need for the worker to return to their home country, or having to wait many weeks for CIC to process the application for renewal. However, in early 2009, possibly due to the economic downturn, there have been reports of border officials using their discretion to instead issue “voluntary” deportation orders. The Advocate fears it may be the beginning of some form of “crackdown” on foreign workers. The distress this causes for all parties is obvious.

Education

What has not occurred is any kind of program to educate workers of their rights under Immigration law. Workers generally are not informed they have status to remain in Canada so long as their work permit is valid – regardless of whether they have been laid off or terminated. We still regularly hear stories of employers insisting (to the point of physical removal) that foreign workers must immediately leave the country upon termination, lay-off or even when a workplace injury occurs. Many foreign workers do not realize this is false. Work permits should clearly indicate that the holders have the right to remain in Canada for the entire duration of their permit, regardless of their employment status.
Permanent Residency

The Advocate continues to find that the vast majority of workers arriving under the TFWP come with the hope of permanent residency and eventual citizenship. Most are unaware of the rules preventing low skilled and other TFWP workers from applying for immigration. Many are misled by brokers or unscrupulous employers. Others naively assume Canada is more open than it is. The prohibition from permanent residency is one of the most serious flaws of the TFWP.

CIC partially addressed this issue when they announced the creation of the “Canadian Experience Class,” effective August 2008. This new immigration class permits skilled temporary foreign workers to apply for permanent residency from within Canada and while still under the TFWP, if they have worked for two years in a skilled occupation within a three-year period. This provision is similar to rules for live-in caregivers. For skilled workers, this new program is a huge step forward.

As for low-skilled workers, they are not eligible for the new Experience Class. The very recently revised immigration rules allow for a small possibility of entry for those with university education who happen to be working in a low-skilled job.

For most low-skilled workers, however, the only possibility for permanent residency is the Provincial Nominee programs, which, as we mention above, remain very small and select with their sponsorships.

Employment Insurance, CPP

Rarely do brokers tell foreign workers that their wages will have CPP, EI and income tax deducted so workers are often shocked upon receiving their first paycheque.

However, despite deductions, workers through TFWP have a difficult time getting benefits from these programs. CPP will only transfer contributions if their home country has a similar plan – a rarity. And few are here long enough to vest their contributions for a CPP pension.

Employment Insurance is the most important benefit for most workers and foreign workers are no exception, especially in the current economic climate. Most foreign workers who apply for EI are denied. The logic of the EI staff is that since they have an “employer specific” work permit, they are not “available” for work for other employers, which rules require them to be.

In one case the appellant had worked for 14 months as a nurse in Nunavut when she was let go. She moved to Alberta to look for work and applied for EI benefits while job searching. In the decision, the Umpire said:

“Having moved from Nunavut to seek employment in Alberta or Manitoba, the claimant was not in compliance with her Work Permit which only allowed her to work in Nunavut. Accordingly, the claimant could not claim that she was available for work within the meaning of section 18(a) of the Employment Insurance Act because of the restric-
tions of the Work Permit issued to her by Citizenship and Immigration Canada. When her employment with the Government of Nunavut was terminated the claimant did not seek to have the conditions of her Work Permit changed to allow her to work elsewhere. The fact that she may have subsequently made such a request is irrelevant since she had not done so at the time she claimed employment insurance benefits.”

Here is the conundrum: a temporary foreign worker cannot apply for EI benefits until he or she gets a new work permit which means they have a new job and no longer need EI benefits! While there have been occasional decisions that offer a more rounded understanding of the situation, EI has proven to be a highly frustrating area of concern for foreign workers.

There has been some important movement on this issue in the past few months. Due to the work of the Advocate and other agencies, including the Calgary Workers’ Resource Centre and the Edmonton Community Legal Clinic (who have handled and won appeals for foreign workers), there is, in Alberta at least, a growing recognition that foreign workers are eligible for EI benefits while their permits are still valid and they are actively looking for work.

Currently on the HRSDC website, the government clearly indicates that foreign workers are eligible for EI:

“Temporary foreign workers are eligible to receive regular and sickness Employment Insurance benefits if they are unemployed, have a valid work permit and meet eligibility criteria, including having worked a sufficient number of hours.”

The problem clearly lies in communicating this policy and ensuring consistency between the official position and the decisions rendered on specific cases. Despite the clarity of the policy, it is disturbing that so many foreign workers are forced to appeal an initial denial before receiving benefits. All too often these workers do not have the wherewithal to commence an appeal or to seek assistance with respect to the initial denial. As a result, EI is effectively denying benefits to many otherwise eligible claimants. As well, in conversations with other advocacy groups across Canada, it appears that the EI offices in other provinces are routinely refusing EI benefits to foreign workers and that most people still believe that EI is simply not available to foreign workers.

4. The Impact of the Economic Downturn

Every Canadian is well aware that in the fall of 2008, the world economy took a serious and sudden downturn. Much of the world is currently mired in a deep recession and Canada is not immune. Neither is Alberta. 51,000 jobs have been lost in the province since December. The price of oil has dropped from over $100 a barrel to $45. This has sparked a rapid reduction in construction and energy sector employment as new projects are shelved and exploration scaled back.
Given the central place energy has in Alberta’s economy, a cascade of lay-offs has begun, with suppliers, manufacturers and support industries (such as engineering, transportation, etc.) also cutting back. In terms of economic consequences, the service sector lags behind somewhat. Alberta has not yet witnessed a sizeable reduction in employment in restaurant, hospitality or recreational services.

If the economy continues to contract as expected in 2009, these industries will also be affected as families cut back on travelling, eating out and purchasing new vehicles, appliances or equipment. Alberta’s unemployment rate, at 5.8%, remains relatively low for now, but most expect it to rise in the coming months as the recession takes hold. It should be noted that one of the reasons for the relatively modest rise in Alberta unemployment rates despite larger-scale job losses is that many foreign workers do not show up on the official figures, as often they are sent home when laid off, and therefore are not included in the statistics. If they are unemployed, they either go home or are severely restricted in their job search, pushing them off the official tabulations for unemployment.

The rapid shift in Alberta’s economic fortunes has an inevitable impact on the TFWP and the immediate future of foreign workers in Alberta. Yet the impact is not as straightforward as one might think.
Two-way Flows

The rapid onslaught of the recession, combined with the time-delay tendency of CIC statistics, means solid data for the past four or five months is almost impossible to attain. Consequently, TFWP observers are forced to rely upon anecdotal information and scraps of disconnected insights to piece together the shape of this new puzzle. This is, obviously, not ideal.

The AFL Advocate has been communicating on a regular basis with community-based temporary foreign worker advocates, unions and employers as the recession unfolds. Two apparently contradictory trends emerge.

First, it is evident that in construction and the oil sector, foreign workers are being laid off in rather large numbers. These workers tend to be from high-skilled (NOC B) occupations (such as building trades, engineering and so forth). Foreign workers are not alone in this predicament as layoffs are widespread in these industries.

What is happening to them following lay-off? Most are simply returned home, often with promises that they will be recalled within a few months (even though that is clearly not true). A minority are opting to remain in the province to attempt to establish permanent residency and/or find alternative employment. To date few are having much success in their job searches. It is a difficult time to find work in construction or energy. Plus foreign workers are doubly challenged, as they are restricted in who can hire them to employers with valid LMOs. And once they find an employer, the worker needs to apply to have their work permit updated – a lengthy step that is likely to scuttle what few jobs they might be offered.

The second trend is a continued influx of new foreign workers in the service sector, in particular retail, hospitality and food service. In the last three months of 2008, 7,159 new LMOs were issued in Alberta – the vast majority for low skilled employment. While that is an 18% reduction from the summer of 2008, it remained higher than the number of LMOs issued at the end of 2007.

There have been few reports of layoffs among foreign workers in restaurants, gas stations or fast-food outlets. The demand for low-skilled foreign workers in the service, hospitality and food industries has not yet abated.

What has emerged is a two-way flow of foreign workers. Higher-skilled workers are being returned home as the economic crisis expands, yet employers continue to recruit new low-skilled workers. This may appear contradictory but, as will be discussed below, it is entirely expected and consistent with the emerging goals of the TFWP.

Patterns of Layoff

A third trend has also appeared. The AFL has received a large volume of phone calls from permanent resident workers (i.e. citizens and naturalized immigrants) claiming to have been laid off or have had their hours reduced while foreign workers in their workplace continue to work full time. It is impossible to ascer-
tain how widespread the practice is, but there is no question it is occurring to some extent.

The legal status of these cases is complex. It has been the practice of HRSDC to state on the LMO granted to employers that temporary foreign workers must be laid off first. However, three issues arise from this supposed stipulation.

First, there is no legislation requiring any such lay-off and there is no mechanism to enforce this provision of the LMO. There is no way to police employer practice in terms of lay-off, making the provision relatively meaningless.

Second, LMOs also stipulate that work provided to the foreign worker MUST be full time (defined as at least 30 hours per week). If an employer wishes to reduce hours, rather than lay off workers, they can apply it only to permanent residents.

Third, if the employer hopes the lay-off will be short duration, releasing a foreign worker can be problematic as they may return home. If they do so, the employer is unlikely to ever get them back. A permanent resident is more likely to accept recall a few weeks after a layoff.

There is no doubt some employers are retaining foreign workers and laying off permanent residents for unethical reasons — the same reasons they may have hired the foreign workers in the first place. Due to the lack of worker protections in the TFWP, foreign workers are easier to exploit and more likely to be a compliant, docile workforce.

Growing Tension

Whether widespread or isolated, cases of permanent residents being laid off while foreign workers remain exacerbate racial and social tensions which were already beginning to bubble to the surface due to the recession.

Large numbers of recently arrived non-Canadians working and living in Alberta communities have the potential at any time to create discomfort among neighbours as language barriers and cultural differences can challenge and threaten long-time residents and make the newcomers vulnerable and excluded. The rapid influx of foreign workers across the province has strained many communities. Albertans, frankly, have not been as welcoming as they could be. Often bad employers worsen the situation by isolating the workers within the communities.

But when the economy turns south, discomfort can become tension and even full-blown racism. There is legitimate concern that foreign workers may be targeted by frustrated permanent residents scared by the economy.

Even United Nations Secretary-General Ban Ki-moon has expressed concern about the potential for rising racism against foreign workers. “I would also urge those countries who accommodate many migrants — they should ensure, through their domestic legislation and political and social framework — to protect and promote the human rights of migrant workers.”

The situation is delicate. Permanent residents have reason to be frustrated at seeing temporary workers employed when the unemployment rate is starting to
climb. However, foreign workers came in good faith to work in Canada and to send them home a few months after their arrival also has elements of injustice as well.

The other reality is the majority of foreign workers come with the hope and expectation of permanent residency in Canada. Sometimes, they were naïve about our immigration system but most often they were misled by brokers or employers or were led on by government promises that the PNP/AINP would be available to them.

Even our governments perpetuate the lie that permanent residency is likely for temporary foreign workers. For example, on Alberta’s immigration website they have the following promotional statement:

“Alberta Temporary Foreign Workers - Trade your suitcase for a permanent residence card.
It’s never been easier for skilled and selected semi-skilled temporary foreign workers to become permanent residents of Alberta. Learn about the Alberta Immigrant Nominee Program and then talk to your employer. With our streamlined process you’ll have your permanent residence card before you know it. So the next time you pack, it’ll be for a vacation.”

Everywhere they turn, foreign workers are inundated with false promises of permanent immigration. Canada has given them a reasonable expectation of permanent residency in Canada if they work under the TFWP. That they are not eligible, yet believe they are, is our fault, not theirs. We created a false hope in these men and women and we did so to lure them here to work for us.

Our misleading tactics to draw them here are unethical and intolerable. And now that our immediate “need” for them has abated, it would be unjust to simply pack them up and ship them back home. It would be compounding their exploitation with additional injustices of our creation.

Both in the interests of minimizing injustice and preventing tension in communities, the AFL Advocate strongly argues that Albertans should remember that the foreign workers did not create the economic downturn and are being negatively affected just as much as permanent residents. Turning frustration, fear and anger toward foreign workers is the wrong target. They did not create the program or its serious shortcomings and they did not create the economic downturn.

And neither did the thousands of permanent resident workers who are being laid off. Their frustrations with the state of the economy and the structure of the TFWP are valid. The issue of who gets laid off first is a symptom of a bigger problem. The TFWP created this situation by constructing a second class of temporary workers with different status than permanent workers – setting the stage for tension. Permanent residents and foreign workers need to band together to help each other withstand the recession.
5. Making Sense of the Trends: Building Our Own Gastarbeiter Program

When examining the trends in the TFWP over the past two years, we come to a single inescapable conclusion. The TFWP is not being expanded to handle a simple labour shortage. It is being wholly transformed into a new kind of migrant worker program that is intended to replace a more thoughtful immigration program. The TFWP is quickly moving toward the European model of guest worker policy. And this has troubling implications for Canada and Alberta.

Initiated with Germany’s Gastarbeiter programme in the 1950s, all western European countries have an advanced policy of utilizing low-skilled foreign guest workers to fill employment positions at the lower end of the labour market spectrum – retail, manual labour, hospitality, etc. For decades, these programs have imported guest workers for “limited periods of time” to work in hard-to-fill jobs. Like in Canada, guest workers have restricted access to social rights and experience economic exploitation from employers, landlords and brokers. As these programs have matured, the lengths of work permits have grown longer and the nature of the employment more permanent. Many European nations have a class of guest workers who have lived much of their lifetime in the receiving nation – but with limited rights to obtain citizenship or other rights.
Rules vary between European nations but, in general, the guest workers themselves are highly unlikely to ever achieve citizenship due to rigid and restrictive rules. In many countries, the workers’ offspring, born in the receiving country, are provided an opportunity to become citizens (if they revoke their right to citizenship in the source country). The end result is a large pool of essentially permanent residents who have little practical access to the rights of citizenship in Europe.

Europe has created a permanent underclass of guest and migrant workers who toil in the dirtiest of jobs, who in many respects prop up the European economy through their low cost labour, but to whom the social and economic prosperity of Europe is closed. The contradiction of the situation is summed up in a recent report by Amnesty International. “Throughout Europe, migrants are vilified, abused and confined to the margins of societies; societies that, at the same time, accept without question the services that they provide, including essential labour in low-skilled industries such as construction, agriculture and domestic work.”11

There are an estimated 30 million guest workers in Europe12, mostly from North Africa and Eastern Europe, but many from Asia as well. It has been well reported that the past decade has seen a disturbing increase in anti-immigration political parties, race-based rioting, social exclusion and heightened social tension.

A comprehensive study13 comparing guest worker programs internationally highlighted four distinct consequences of entrenched guest worker programs. First, the study finds that these programs create segmented “immigrant sectors” in the economy, “sectors that employ primarily or exclusively foreign workers.”14 A feedback cycle perpetuates and deepens this entrenchment, where the jobs are increasingly perceived by permanent residents as undesirable, increasing demand for foreign workers which in turn leads to further suppression of wages and working conditions in these sectors. In this cycle, the economy eventually cleaves into two distinct segments – which has occurred in Europe to a high degree.

Second, guest workers are highly vulnerable workers and therefore experience a great degree of exploitation. Their wages are suppressed compared to permanent resident workers and their working conditions are poor. The programs inherently allow and create this precariousness through their structures.

Third, these programs tend to grow over time – both in terms of length of stay and the numbers of guest workers received. Guest worker programs set into motion a set of dependencies that lead to their expansion.

“[U]nexpected exploitation, especially lower than expected income and thus savings, may force foreign workers to stay and work in the country much longer than they initially intended. ... There may also be significant pressure for prolongation of the TFWP from stakeholders in the host country, especially from employers and recruitment agents. ... Furthermore, where the operation of a TFWP has led to ... significant income for private recruitment agents and providers of various private services to foreign workers, the termination of the TFWP may not only be politically difficult but also economically costly.”15
Once employers become reliant upon these programs, it is very difficult to shrink or end them. Instead, workers are allowed to stay longer and longer and more and more employers turn to the program to meet their employment needs.

Fourth, over time there is a growing trend in all European nations of “circumvention” – guest workers who enter the country illegally, remain after their permit expires or are similarly undocumented. Undocumented migrant workers have become a serious point of social tension and racism in Europe. The guest worker programs actively establish the conditions to encourage and promote foreign workers to remain illegally. They do so by simultaneously building employer reliance on low-wage foreign labour and forbidding permanent citizenship and security to migrant workers.

Canada’s Burgeoning Gastarbeiter Program

Examining Canada, it is clear the expansion and shifting of the TFWP has started Canada down the path to a European-style segmented labour market. We have already witnessed the exploitation and precariousness of foreign workers. We have also seen the rapid growth in numbers of LMOs and increased lengths of stay to four years and possibly longer. With the economic downturn, we increasingly see a segmentation of the economy with retail, food service, and hospitality industries growing more reliant upon foreign workers. And while it appears that the occurrence of foreign workers arriving/remaining illegally has, to date, been sporadic, there are legitimate fears that as permits expire increasing numbers of undocumented foreign workers will remain in Alberta.

The language of both the provincial and federal governments highlights their intention to institutionalize low-skilled foreign workers. The provincial government is pointing out that Alberta will be short 100,000 workers in the next 10 years. Prime Minister Stephen Harper has indicated that Canada will still be experiencing a labour shortage despite the downturn.

Employer groups suggest the same thing. “We’ve done such a great job of convincing Canadian-born students to go onto higher education and get trade training that there are lots of jobs that are difficult to fill.”

The alleged existence of a low-skilled “labour shortage” is a matter that can and should be vigorously debated. However, the messages point clearly to a desire on the part of employers and the government to maintain the TFWP as a permanent component of Canada’s labour market strategy.

Canada is building a program that will have the clear consequence of formalizing a sub-class of foreign workers who are marginalized from society, vulnerable to exploitation and used by employers to suppress wages and working conditions in certain industries.

We are becoming the latest nation to create an exploitative Gastarbeiter. And by doing so we are in the process of entrenching exploitation in our country.
6. Conclusion: Entrenching Exploitation

The speed of changes in the area of temporary foreign workers and the TFWP has made it hard for anyone – policy makers, advocates, employers, government, community agencies – to keep up. And with the impacts of the recession only just starting to be felt in Alberta, it can be expected that changes will come even more rapidly over the next few months.

But in the blur of the details, four important observations are clear.

First, the rapid expansion and occupational shift of the TFWP has been done solely at the behest of employers clamouring for a quick fix to labour problems and done without foresight, without consideration of consequences and with little regard for the wellbeing of foreign workers. Plus it occurred with no public debate about the merits of the expansion. The result has been large-scale exploitation and abuse.

Second, government responses to address the most obvious and pressing forms of exploitation have, at best, fallen far short and, at worst, exacerbated the problem. The responses are more designed to allay public opinion than to truly alleviate the exploitation of foreign workers. The structural and systemic problems inherent in the TFWP have not been addressed.

Third, the TFWP, in its new form, is rapidly becoming an institutionalized part of Canada’s and Alberta’s labour force strategy. It is increasingly being seen as a preferred approach for addressing labour market imbalances particularly in low-skilled occupations.

Fourth, as the new TFWP becomes more permanent, we will witness a growing polarization and segmentation of the labour market, leading to the creation of a permanent underclass of foreign workers who are marginalized from society. The purpose of this new class of workers is to artificially suppress wages and working conditions in certain low-wage sectors that become dependent upon foreign workers, sparking greater racial tensions and entrenching exploitation.

We have time to correct the problems the TFWP has created. Ironically, the economic downturn affords us the kind of breathing room we require to rework our immigration system and implement a foreign worker program better designed to protect the rights of the foreign workers, and Canadian workers.

But to make such a reform requires changing the political calculation. It requires putting the interests of human beings, be they permanent Canadians or migrant workers, ahead of profit and greed. It requires telling employer groups to find better solutions for their short-term labour problems.

In short it requires the kind of political will that has clearly been absent in the past five years. And to build that political will, we must rely on the citizens of Canada to speak out clearly against this inhumanity.
Endnotes

2. For H1B figures, see U.S. Citizenship and Immigration Services, 2008; for H2 data, see Global Workers Justice Alliance, http://www.globalworkers.org/migrationdata_us.html#Guest, 2008
13. “Temporary Foreign Worker Programmes: Policies, Adverse Consequences and the Need to Make Them Work”, Dr. Martin Ruhs, University of Cambridge; published by The Center for Comparative Immigration Studies, University of California (San Diego), June 2002
14. Studies, University of California (San Diego), June 2002
15. Ibid. p. 18
16. Ibid. p. 24-25
17. Edmonton Journal, March 6, 2009
19. Canadian Federation of Independent Business Alberta Director Danielle Smith, as quoted in Edmonton Journal, February 26, 2009
7. Recommendations

The first Advocate report contained 21 recommendations, most of which have not been implemented by either level of government. While all of the recommendations remain valid, at least in part, the quickly changing circumstances outlined above call for a renewed set of recommendations.

It should again be pointed out that this report does not deal with the problems arising from the Seasonal Agricultural Workers Program nor the Domestic Live-In Caregiver Program and consequently the recommendations only address the TFWP.

We lay out the recommendations in two parts. The first four recommendations lead to the only long term solution for the TFWP that both respects the rights of foreign workers and ensures Canada does not create a permanent guest worker program.

1. The TFWP in its current incarnation should be ended immediately. No new LMOs should be issued, and any outstanding LMOs phased out over the next 12 months.

2. All foreign workers currently in Canada with valid work permits should be offered access to permanent residency in Canada, if they choose. This should take the form of a one-time special program to process applications of existing TFWP workers.

3. In future, any labour market issues should be addressed through a combination of enhanced use of under-represented groups in the labour market (aboriginals, people with disabilities, newcomers, etc.) and through an improved and expanded permanent immigration program.

4. Any future guest worker program should include NOC “0” and A occupations only, and should require substantial employer proof of labour shortage. No other occupations should be permitted under a TFWP.

The remaining recommendations attempt to address specific problems with the TFWP to reduce the level of exploitation and mistreatment connected with the program. It should be made clear that these reforms only make the program less unpalatable and do not address the inherent injustice built into the program.

All Levels of Government

5. All levels of governments should immediately ensure that all social safety protections are made available to foreign workers and their families on a basis equal to permanent residents in Canada. To not make these programs available is discriminatory, causing huge issues for ethnic communities scrambling to try to support people and results in untold hardships for foreign workers and their families.
Federal government

6. TFWP workers, regardless of skill level, who have worked the equivalent of two years in a three-year period should be entitled to apply for permanent immigration status, much like the system in place for live-in caregivers. With the implementation of this permanent residency entitlement, the following should be implemented:

   a. Upon the permanent residency application being accepted, a foreign worker should be issued an open work permit for the duration of the processing period;
   b. If a foreign worker is not eligible for permanent residency, or does not apply for permanent residency within three years of arrival in Canada, then there should be no work permit renewals beyond the three year period.

7. To eliminate the use of abusive brokers, the federal government should only allow the use of foreign workers from countries with which Canada has signed an accord, guaranteeing that the home country government will act as the labour broker. This would cut out brokers from the process, as has occurred with the agricultural workers from Mexico through the SAWP.

8. Where foreign workers have brought their families and are laid off and unable to find alternate employment, the government should require the employer to provide return airfare for the workers’ families as well as for the workers.

9. The federal government should arrange to have provincial governments report all contraventions of employment legislation to HRSDC and the federal government should utilize this information to review and, if necessary, revoke the LMO of offending employers.

10. The federal and provincial governments should negotiate an agreement to allow the province to enforce housing, transportation and other issues required by the LMO and allow the province to order rectification of any contraventions.

11. So long as the government allows the issuing of LMOs to enable more foreign workers to come to Canada, there should be a separate stream for the issuance of LMOs for foreign workers who are currently in Canada and whose employment has been terminated. Employers wishing to offer employment to foreign workers in Canada should not be subject to the current difficult criteria and the granting of a LMO should take no longer than a two-week period in such cases.

12. The “occupations under pressure” list should be eliminated. Employers requesting LMOs for NOC B, C and D occupations should be required to provide extensive evidence of labour shortages.
13. A strict quota should be implemented, capping the numbers of NOC B, C, and D workers permitted into Canada in any given year.

14. Additional resources should be allocated to enforcement of LMO processes, allowing HRSDC to investigate employers and issue appropriate penalties.

15. EI and CPP rules pertaining to the TFWP should be clarified and amended, as necessary, to ensure that foreign workers have access to benefits on the same terms as Canadians.

16. LMOs should include a legal obligation that the employer be financially responsible to re-imburse the worker for any illegal fees charged by brokers. Employers need an incentive to ensure these fees are not charged to workers.

**Provincial government**

17. The mandate of the provincial Advisory Office should be expanded to allow direct casework and advocacy, focusing on referral to alternative employment when needed. Additional funding resources should be provided to the Office to accommodate this expanded role.

18. The settlement-type services pilot project should be expanded to include immigrant-serving agencies in all communities.

19. Employment legislation enforcement should be expanded with larger dedicated teams of officers and a broader scope of enforcement topics (housing, brokers, etc.)

20. General information meetings should be organized with all newly arrived temporary foreign workers to provide basic employment and human rights.

21. The Fair Trading Act should be amended to further restrict which brokers are permitted to operate in Alberta, to clarify the prohibition against the charging of recruitment fees and to allow for larger penalties against brokers who breach the Act. It should also be amended to prohibit fees charged to live-in caregivers which is currently allowed.