

MAKING TEMPORARY PERMANENT: THE SILENT TRANSFORMATION OF THE TEMPORARY FOREIGN WORKER PROGRAM

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ABSTRACT

During the mid-2000s the number of temporary foreign workers (TFWs) present in Canada increased dramatically, more than tripling in eight years. The bulk of the increase was due to an expansion of the Temporary Foreign Worker Program (TFWP) to include lower-skilled occupations. The stated reason for the expansion was to address short-term labour shortages. Contrary to expectations, upon the onset of the economic downturn in 2008, the number of TFWs did not decrease significantly, and appears to be increasing again in 2010 and 2011. This paper tracks the evolution of the TFWP from a stable program designed to address short-term labour needs in high-skilled occupations into a broader labour market tool. The paper examines the most recent available statistical data for the TFWP and other documentary evidence to argue the role of the TFWP in Canada's labour market has quietly shifted, becoming a permanent, large-scale labour pool for many industries, reminiscent of European migrant worker programs. The paper also examines the potential labour market implications of an expanded, entrenched TFWP.

INTRODUCTION

This is a huge issue. The fact is no matter how hard employers try they can't find Canadians to do many of these jobs and we have no option but to look outside our borders.

Minister of Human Resources and Social Development Monte Solberg, quoted in *The Edmonton Journal* on February 24, 2007

At the height of the economic boom in Western Canada, Minister Solberg and other federal and provincial politicians impressed upon Canadians the magnitude of Canada's labour shortage and the need to turn to temporary foreign workers (TFWs) in increasing numbers to address pressing labour needs. Their solution was to rapidly expand the size and scope of the Temporary Foreign Worker Program (TFWP). In less than five years, the number of permits issued under the TFWP more than doubled. At the time, the

TFWP was trumpeted as a flexible solution to a short-term labour shortage problem and that it was sensitive to employer demand for workers. Implied within the discussion of increased use of temporary foreign workers was the promise that when labour shortages ebbed, the program's inherent elasticity would allow for a subsequent reduction in foreign workers. That claim was put to the test with the onset of the 2008 economic crisis.

This article examines the evolution of the TFWP, including its continued growth and entrenchment since the economic downturn. Specifically, it will focus on aspects of the program not related to the agricultural worker and live-in caregiver streams, which have been the attention of focus elsewhere. The pattern suggests that employers in certain industries have become increasingly reliant upon the TFWP to address labour market needs. This shift continues the long pattern in Canada's immigration policy, quietly shifting away from permanent settlement towards the use of foreign workers with limited citizenship rights (Fudge 2011). The new design of the TFWP is constructing a permanent class of vulnerable workers. The increased reliance by certain segments of industry parallels the evolution of migrant worker programs after the Second World War, such as the *Gastarbeiterprogramm* in Germany and in other Western European nations (Castles 2006).

MIGRANT WORKER PROGRAMS INTERNATIONALLY

The flow of workers from region to region in search of employment opportunity is as old as labour markets themselves. Programs that restrict the citizenship rights of migrant workers are also longstanding, but a new form of formalized "guest" worker program is of more recent origin, with some of the first implemented in the United States, Switzerland and Germany in the 1940s and 1950s (Ruhs 2002). In most cases, guest worker programs were established to mitigate short-term labour shortages or to regulate the flow of migrant workers into a region, although a secondary goal might be to stem illegal immigration (Martin 2003). The purpose of such programs was to expand labour supply without burdening the state with obligations of citizenship (Sharma 2007) and to maximize labour market flexibility for employers (Martin 2010).

Research into guest worker programs show they have a tendency to last longer and grow larger than intended, developing structural labour market dependencies among employers and creating pockets of foreign worker-dominated occupations that are disconnected from local workers and labour markets (Ruhs 2002). The programs build employers' economic and political reliance on the continuation and expansion of guest workers, as they begin to "make investment decisions that assume migrants will continue to be available" (Martin 2010: 127). In turn, this leads employers to pressure against program restrictions. The effects on labour markets can be long term and profound (Pastor and Alva 2004).

The pockets of TFW-dominated occupations "[...] tend to be concentrated at the extremes of the job ladder, with more or less education than the average

worker in the destination country” (Martin, Abella and Kuptsch 2006: 54). The concentration at the top end is due to the relative scarcity of very highly-skilled and specialized occupations, which naturally construct an international labour pool. The bottom end is comprised of low-skilled workers in low-paying, high insecurity jobs undesirable to permanent residents.

Correlated with migrant worker program expansion is growth in the exploitation and violation of migrant workers’ rights (Ruhs and Martin 2008) as well as inadequate legal enforcement (Ruhs 2002; Abella 2006). This is particularly true among programs classified as “laissez faire” programs, described by Ruhs and Martin (2008) as employer-driven programs with no quotas or restrictions by occupation or industry. Canada’s TFWP, as will be explained below, fits into this categorization.

Ruhs and Martin also argue that guest worker programs induce a trade-off between rights and numbers. “[C]ountries with large numbers or shares of low-skilled migrant workers offer them relatively few rights, while smaller numbers of migrants are typically associated with more rights. The primary reason for this trade-off is that rights can create costs for employers, and rising labor costs are typically associated with a reduced demand for labour” (Ruhs and Martin 2008: 260). Through most of its history, Canada’s TFWP program focused mostly on smaller numbers of higher-skilled workers. Changes over the past decade have shifted that balance.

HISTORY OF CANADA’S TEMPORARY FOREIGN WORKER PROGRAM

The TFWP evolved out of Canada’s first formalized migrant worker program, the 1973 Non-Immigrant Employment Authorization Program (NIEAP), which established a new class of temporary resident tied specifically to non-permanent employment. The NIEAP constructed a series of restrictions on the rights of these residents that continue to form core characteristics of the TFWP today (Trumper and Wong 2010). These include work permits tied directly to employment status, restriction of labour mobility rights by requiring formal permission to change employers or working conditions, and prohibition on applying for work permits or changing immigration status from within the country. The latter restrictions effectively prevented workers under the NIEAP from applying for permanent residency. Sharma has argued that the NIEAP effectively “legalized the re-subordination of many nonwhites entering the country by re-categorizing them as temporary and permanently foreign workers” without many of the rights of residents (2007: 175).

In the ensuing decades, Canada’s migrant worker programs diverged into multiple streams to address the needs of specific industries and occupations. Each stream varies in its permit restrictions and obligations to employers (Fudge and MacPhail 2009). Numbers remained small, at less than 40,000 into the early 1980s, when they slowly climbed into the 70,000 range (CIC 2009). By the 1990s, the TFWP had evolved into a program primarily for high-skill occupations, with two additional streams specifically for agricultural workers (Seasonal

Agricultural Workers Program - SAWP) and live-in caregivers (Live-in Caregiver Program - LICP). During this period the number of TFWs in Canada remained fairly steady at around 70,000 (CIC 2009), with highly skilled workers making up about two-thirds.¹

The SAWP and the LICP have received significant attention from researchers, in part due to the vulnerability of the migrant workers hired under them (e.g., Bakan and Stasiulis 1997; Preibisch 2010). In particular the SAWP has been subject of much debate, regarded by policy makers as a model program for creating a permanent flow of temporary workers for employers (Preibisch 2007), but criticized by others for the perpetuation of dangerous and exploitative working conditions (Bauder 2006; UFCW 2011). The remaining streams of the TFWP have been relatively unexplored until recently, and are the focus of this paper.

The TFWP is jointly administered by Citizenship and Immigration Canada (CIC) and Human Resources and Skills Development Canada (HRSDC). HRSDC is mandated to process employer applications. Under the rules of the program, an employer must demonstrate that recruitment efforts among permanent residents were unsuccessful. If HRSDC concurs, they issue a Labour Market Opinion (LMO), which permits the employer to recruit temporary foreign workers. Until recently, any employment offered TFWs had to be full-time and at no less than “market wage” levels identified by HRSDC. Changes announced in April 2012 permit an employer to pay a TFW 15 percent less than the posted “market wage” (HRSDC 2012). Once a potential employee is offered employment, the worker must apply to CIC for a temporary work permit. CIC determines if the worker is eligible to enter Canada and whether they are a risk of remaining in the country upon expiry of their permit. Work permits granted under the TFWP are for a specified period, usually one or two years, and specify both the employer and location of work, restricting the worker’s freedom of movement. Most TFWs are barred from applying for permanent residency through regular immigration streams, although they can be eligible for Provincial Nominee Programs.

TFWs are protected by basic employment protections in their jurisdiction. However, significant barriers exist for foreign workers who attempt to utilize such protections, rendering them “inaccessible” in any practical way (Nakache and Kinoshita 2010), in large part due to restricted labour mobility rights (Wong 1984; Martin 2003; Abella 2006). Foreign workers under the TFWP are not allowed to access settlement services available to permanent immigrants, which, combined with language and cultural barriers, lead to a high degree of social isolation and estrangement from the community and greater dependency on employer-provided orientation, information and services (Pastor and Alva 2004; Foster 2008).

In 2002, in response to pressure from employers for greater access to lower-skilled workers, the Liberal government established the Low Skill Pilot Project, which permitted employers to access foreign workers in lower-skill occupations. The Project defined “low skill” as occupations classified as NOC “C”, which

require no more than high school education or two years of job-specific training, and NOC “D”, requiring no prior training or education. The pilot project greatly expanded the number of industries and occupations eligible to access the TFWP.

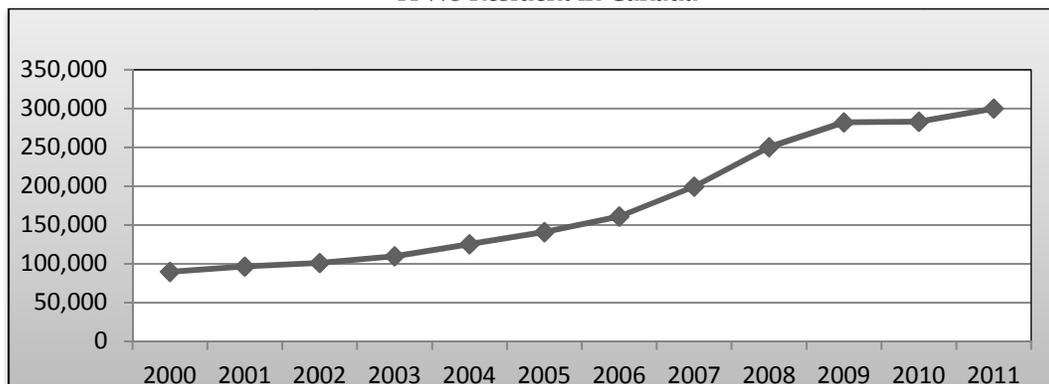
In 2006, the newly-elected Conservative government implemented further changes to the TFWP designed to speed up processing time and extend the pilot project. They also introduced a list of “Regional Occupations Under Pressure”, applicable to Alberta and British Columbia, which fast-tracked eligible employer applications by reducing Canadian-based recruitment obligations. In 2010, the list for each province contained more than 200 occupations, ranging from nurses and managers to hotel clerks, food and beverage servers and gas station attendants.

The combined effect of the two changes was to increase the total number of workers in Canada under the TFWP, and to shift the skill and education level, country of origin and demographic distribution of the workers. As the program expanded, concerns about exploitation and violation of rights arose (for example see AFL 2007; 2009). This will be explored more fully below.

TEMPORARY FOREIGN WORKERS IN CANADA

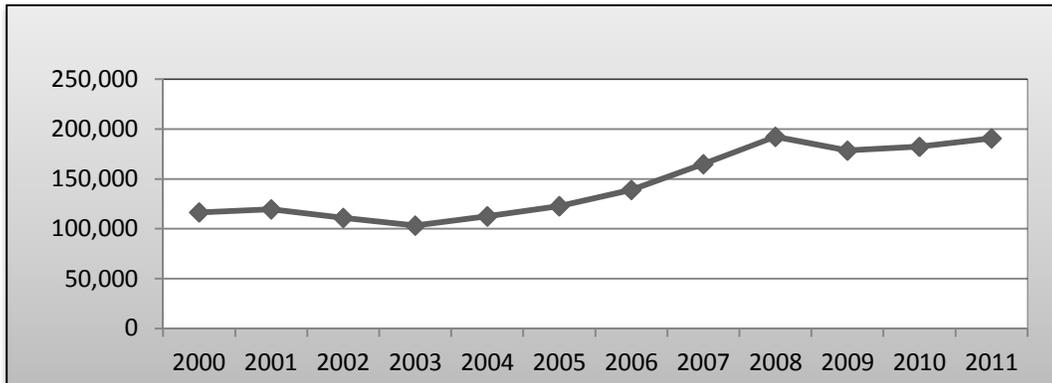
The 2002 pilot program started an increase in the number of TFWs in Canada. The 2006 changes accelerated this trend, as Charts 1 and 2 demonstrate. In a decade the number of TFWs resident in Canada (referred to officially by the federal government as the “stock”²) climbed from 89,000 to 283,000, while new entries jumped from 116,000 to 182,000 per year. In 2008-2010, the numbers levelled off, but did not drop significantly, a point to which we will return in the discussion below. Preliminary figures released for 2011 show that the number of TFWs in Canada began to climb again, surpassing the 300,000 level, and the number of new entries also jumped.

Chart 1
TFWs Resident in Canada



Source: CIC 2009; CIC 2011; CIC 2012

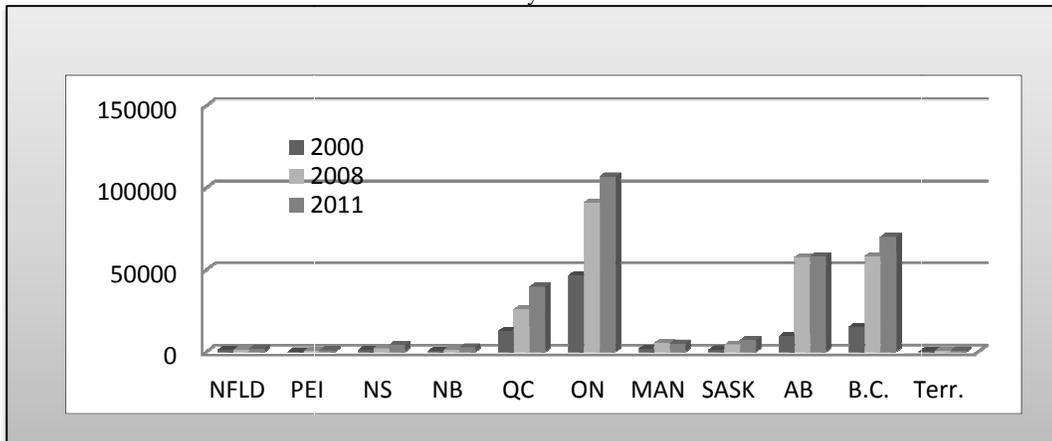
Chart 2
TFW Entries to Canada



Source: CIC 2009; CIC 2011; CIC 2012

All provinces witnessed an increase in both new entries and the number of resident TFWs. The growth was not equal across provinces (Chart 3). Four provinces accounted for the bulk of TFWs in Canada: Quebec, Ontario, British Columbia and Alberta. The latter two experienced the largest influxes of TFWs, with increases of 610 percent and 460 percent respectively. This is reflective of the economic boom in both provinces during the early and mid-2000s. Quebec and Ontario also saw significant increases. Other provinces, such as PEI, Manitoba and Saskatchewan, did see significant percentage increases, although the actual number of TFWs remained relatively small. The bulk of TFWs resided in larger cities across Canada, with Toronto, Montreal, Vancouver, Calgary and Edmonton (in descending order) hosting the largest numbers.

Chart 3
TFWs By Province



Source: CIC 2009; CIC 2011; CIC 2012

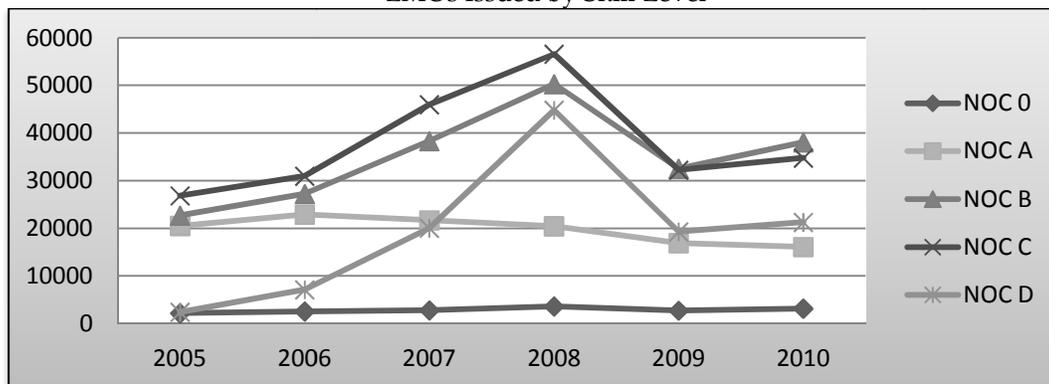
Reflective of the decision to open the TFWP to lower-skilled occupations, the period witnessed a significant shift in the relative proportions of occupational

skill amongst TFWs. Whereas in 2000, higher-skilled occupations (NOC 0, A, B) comprised a majority of resident TFWs (51.8 percent), by 2008 lower-skilled occupations (NOC C, D) had become the largest category. In 2010, 31.1 percent of TFWs were high-skilled, compared to 32.7 percent lower-skilled.

It should also be noted that, during the same period, the number of “occupation not stated” TFWs grew from 17.6 percent to 36 percent in 2010, a sizeable cluster of unknowns. This uncertainty complicates efforts to determine the extent of the shift toward lower-skilled occupations. The increase appears to be due to three factors: administrative error, growth in work permits issued to spouses (which have fewer restrictions), and unrestricted work permits issued under sub-streams of the TFWP such as to U.S. citizens (AFL 2009). Caution must be taken with any attempt to project the skill-level of these unclassified workers, however. The rise in “not stated” parallels the growth in lower-skilled occupations and the arrival of workers from countries of the global south, suggesting a greater portion of the unstated category would also be working in lower-skill occupations. Overall, there is a clear pattern of increased use of lower-skilled workers in the TFWP.

A second source of data supports evidence of a shift toward lower-skilled workers. HRSDC released data related to LMOs for the period 2005-2010. The data is not comparable to CIC data as LMOs are issued to employers and are not directly associated with the number of workers who arrive in Canada. However, the patterns in the pre-recession period parallel CIC data. In total the number of LMOs issued tripled between 2005 and 2008, from 74,719 to 175,737. The number of LMOs issued for NOC C and NOC D occupations skyrocketed in the 2005-2008 period, while the higher occupation NOC 0 and NOC A remained stable (Chart 4). Alberta and British Columbia experienced the largest increase in LMOs, again mirroring CIC figures. With the onset of the recession, the number of new LMOs in 2009 dropped temporarily, but began to climb once again in 2010. The complexities of this finding will be discussed more fully below.

Chart 4
LMOs Issued by Skill Level



Source: HRSDC 2010, 2011

Comparing the top occupational groupings for which LMOs were granted, in 2005 the top five non-live-in caregiver occupations³ were: musicians and singers; actors and comedians; producers, directors and related occupations; specialist physicians; other technical occupations in motion pictures and broadcasting. By 2008 the top five had shifted: Food counter attendants and kitchen helpers; cooks; construction trades helpers and labourers; light duty cleaners; musicians and singers. Food and beverage servers were number six. The transformation of the list is marked. Three of the top five occupational groupings are classified as NOC C and D occupations, and only one remains from the 2005 top list (HRSDC 2010).

Occupational shift drove a change in gender and country of origin as well. Whereas men made up 68.4 percent of TFWs before the expansion, in 2009 the split was 57 percent male, 43 percent female. Men continued to make up the largest portion of new entries (76 percent of new entries in 2000 compared to 66 percent in 2009). The discrepancy between the two data sets—total residents vs. new entries—suggests that males continue to make up the largest churn of the TFWP. Women are staying longer than men in part due to occupational differences. Males are over-represented in the building trades occupations, which due to occupational requirements may have shorter stays and a higher rate of pre-contract expiry exit,⁴ which might explain much of the discrepancy.

Before expansion, the TFWP was predominantly a program of the global north, as 57.6 percent of the TFWs originated in highly developed nations. The top five source countries in 2000 were the United States, Mexico, Japan, United Kingdom and Philippines. The situation had reversed by 2009, when less-developed nations made up 53.7 percent of the TFW's origins. While the top five remained relatively stable—Philippines, United States, Mexico, Australia, United Kingdom—overall proportions shifted. Philippines took over top spot in 2007 and by 2009 made up 18.6 percent of all TFWs in Canada. Just four nations—Philippines, India, China and Mexico—made up 34.3 percent of TFWs in 2009, up from 21.8 percent in 2000. In contrast, the four top developed nations (United States, Australia, United Kingdom, Japan), which in 2000 made up 43.5 percent of TFWs, had declined to 26.2 percent in 2009.

TEMPORARY FOREIGN WORKERS AND THE ECONOMIC DOWNTURN

In the third quarter of 2008, Canada entered a recession. Unemployment began to rise during the last two months of 2008 and through 2009, only beginning to drop again in mid-2010. From 2008 to 2009, unemployment climbed by 36 percent, or 400,000 people. The provinces with the biggest booms—British Columbia and Alberta—witnessed the largest climb in unemployment rates. While the recession was relatively short-lived in Canada, its initial impact was quite deep, with employment dropping at a faster rate than in any post-war recession (Cross 2011).

Predictions were that the number of TFWs would drop as the economy slowed, as employers laid off workers generally and the pool of available

permanent resident workers increased. It would be expected then that the number of new entries would drop off significantly and that the number of TFWs in Canada would also be reduced.

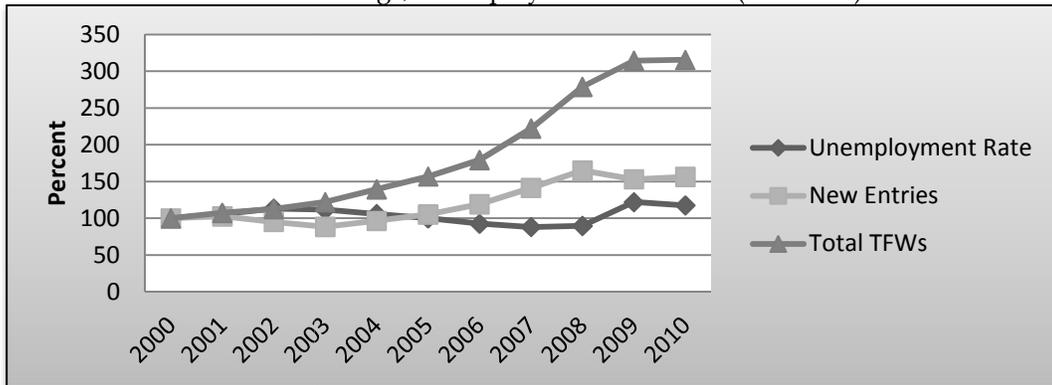
In 2009 and 2010, the TFWP can best be described as leveling off. In both years, new entries numbered around 180,000 workers—slightly lower than in 2008 but higher than any other year since the program's inception. New entries did drop between 2008 and 2009 by 9.3 percent, but rebounded in 2010 by 2.2 percent. In 2011 the program resumed its upward tracking.

The total number of TFWs in Canada also stabilized at around 280,000, the highest numbers ever. In both years since the downturn, the TFWs residing in Canada have increased, by 12.8 percent in 2009 and 0.3 percent in 2010. It should be acknowledged the continued growth, especially in the first year of the recession, is due in part to a lag effect. TFWs with valid permits are allowed to remain in Canada, even if they have no work. However, work permits are for one or two years, and so by 2010 unemployed TFWs would have seen their permit expire without hope of renewal, which requires current employment or a valid job offer. Thus we can conclude that the bulk of the 280,000 TFWs in Canada were actively working in December 2010.

Post-crash, the occupational data related to TFWs was mixed. In the two years following the recession's onset, new entries of TFWs changed rather noticeably, particularly in 2010. New entries of higher-skilled occupations witnessed a moderate drop of 16 percent over two years, while lower-skilled occupations dropped by 50 percent. However, it should also be noted that, as observed earlier, the number of "occupation not stated" climbed over 21 percent in the same two years, confounding an easy analysis of the trend. However, the number of TFWs present in Canada from each skill category remained steady, with only a 4 percent drop in higher skilled and a 5 percent drop in lower skilled (plus a doubling of the number of "not stated").

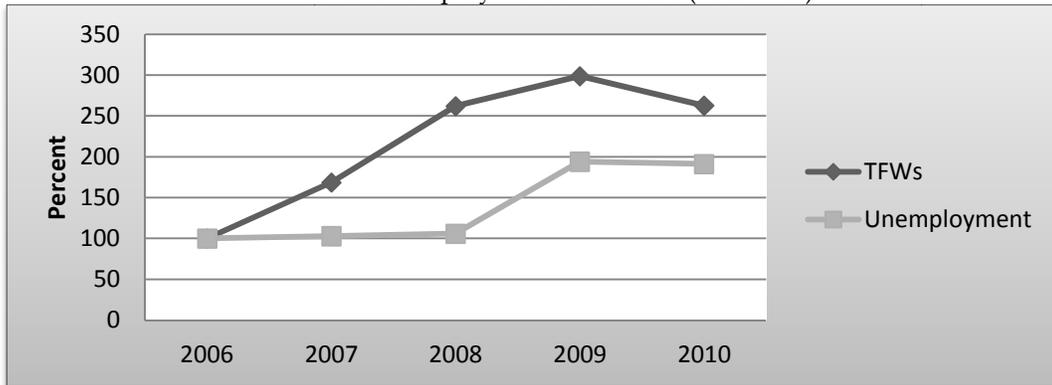
Chart 5 maps out the relationship between the TFWP and unemployment in Canada since 2000. The chart shows the percent change in the total TFWs, new entries and the employment rate, with 2000 as the base year and subsequent years as a percentage of the 2000 figure. Starting in 2003, both new entries and total TFWs climb as unemployment drops, although at a rate exceeding the relative tightening of the labour market. As unemployment climbs in 2008 and 2009, the TFW numbers stabilize, but do not shrink substantially. A program sensitive to rises in unemployment would be expected to contract more than the existing pattern demonstrates. Provincially, a similar pattern emerges. Examining the four provinces with the most TFWs (Charts 6-9), there are no significant reductions in the use of TFWs, and in Ontario and Quebec TFW numbers continue to increase.

Chart 5
Rate of Change, Unemployment and TFWs (2000=100)



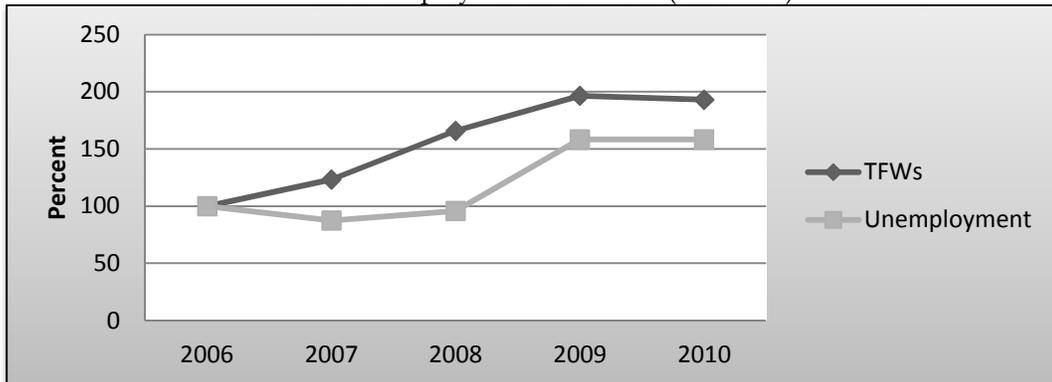
Source: Statistics Canada 2010; CIC 2011

Chart 6
Alberta Unemployment and TFWs (2006=100)



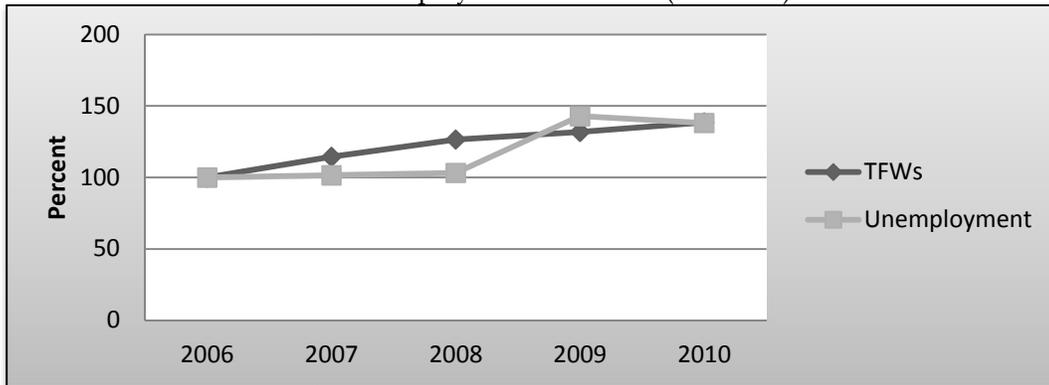
Source: Statistics Canada 2010; CIC 2011

Chart 7
B.C. Unemployment and TFWs (2006=100)



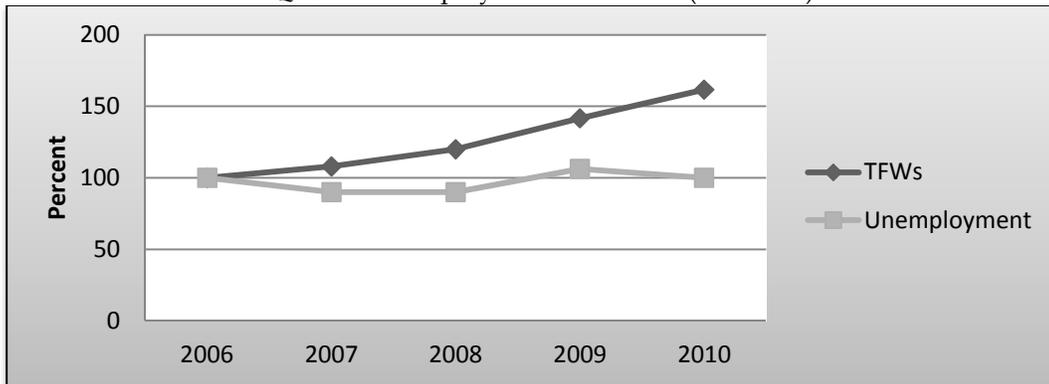
Source: Statistics Canada 2010; CIC 2011

Chart 8
Ontario Unemployment and TFWs (2006=100)



Source: Statistics Canada 2010; CIC 2011

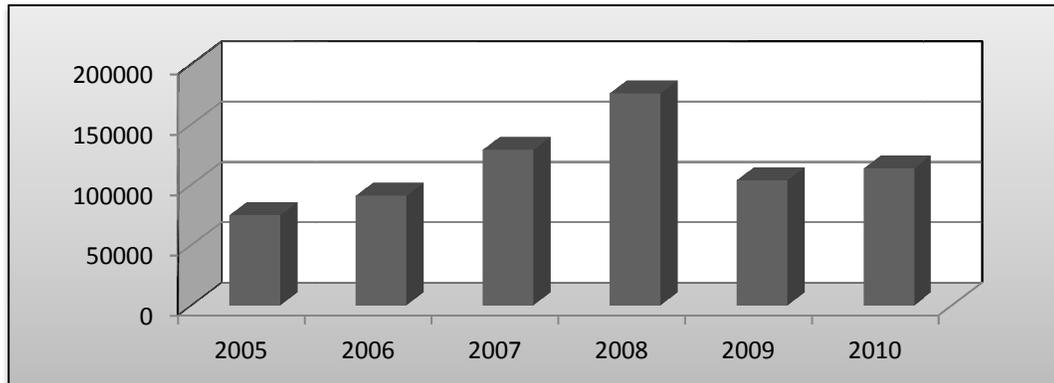
Chart 9
Quebec Unemployment and TFWs (2006=100)



Source: Statistics Canada 2010; CIC 2011

HRSDC LMO data tells a slightly more nuanced story. Chart 10 shows the total number of LMOs issued between 2005 and 2010. As mentioned above, LMOs tripled in the four years before the recession. However LMOs awarded dropped 41 percent in 2009, suggesting a sizeable reaction to the downturn. However, in 2009 103,000 new LMOs were issued, at the height of the contraction, which is more than any year previous to 2006, and still almost 40 percent higher than at the beginning of the boom period. In addition, in 2010 showed a quick rebound in LMOs, up 9.4 percent, much of that coming in the last half of the year. While granting of new LMOs was somewhat responsive to the economic downturn, it did not contract fully back to pre-boom levels, suggesting some element of the TFWP was responding to other demands.

Chart 10
LMOs Issued



Source: HRSDC 2011

OCCUPATIONAL DOWNSHIFTING AND SECTORAL RELIANCE

One additional trend is important for understanding the changing nature of the TFWP. It was reported above that the growth of the TFWP was associated with an expansion of lower-skilled occupations. This in turn has changed the demographic make-up of workers coming to Canada under the program. Additional nuances can be drawn from a more detailed analysis of the occupational and sectoral locations of foreign workers. This section examines what jobs and in what sectors TFWs are working and how that has changed over the past few years.

Attempts to look more closely at the specific jobs and employers where TFWs are found are stymied somewhat by a lack of data related to specific jobs filled by TFWs. CIC does not keep statistics on industry, sector or specific occupation. HRSDC collects more specific information regarding approved LMOs, discussed below. There has not been, to the author's knowledge, any comprehensive survey of TFW employment patterns since the rapid expansion of the program.

An analysis by Statistics Canada, from 2006 census data, offers a benchmark for TFW employment. It showed that at the time, except for farm workers and live-in caregivers (excluded from this analysis), TFWs tended to fill "skilled occupations which typically require a great deal of formal training" (Thomas 2010, 41), including university instructors, computer programmers and scientists. Travelling performers also make up a large portion of the jobs filled. Naturally the most common sectors employing TFWs were information and cultural industries, arts and entertainment and manufacturing. Given the timing of the study's data at the cusp of the influx of lower-skilled TFWs, its conclusions are more reflective of the program's initial mandate, rather than current patterns.

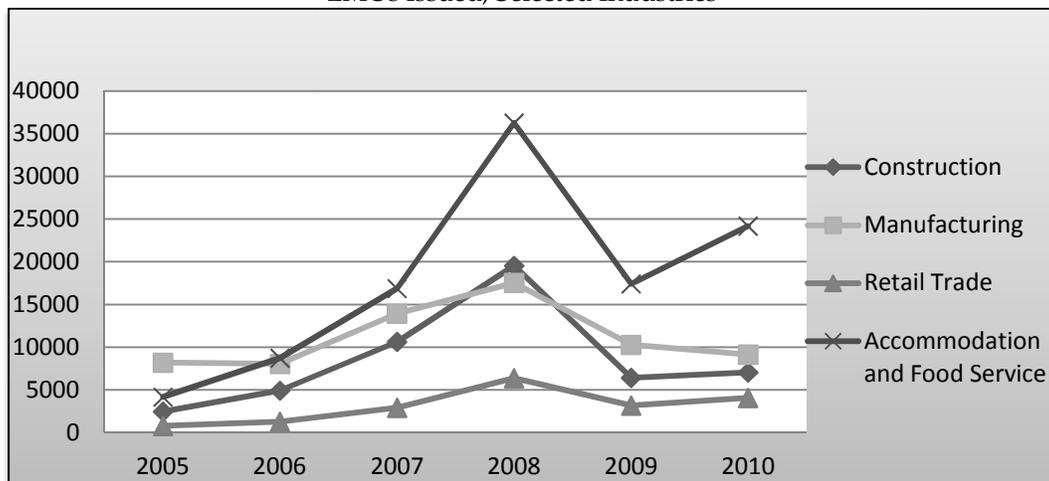
A sectoral analysis of approved LMOs from the period 2005-2010 (HRSDC 2011) reveals the TFWP's shifting mandate. Many traditional TFWP sectors, such as education, health care, professional and scientific, either remained flat or saw only minor increases in their demand for TFWs during the period. The arts and

entertainment and information and cultural sectors saw a decrease in the number of LMOs issued through the period.

Conversely, emerging sectors included retail trade, construction, transportation and warehousing, administrative and support, and accommodation and food service. Each sector saw noted increases in the number of LMOs issued to employers. Looking across all sectors, a general pattern emerges of a downshifting in occupational make-up of TFWs, supporting the data presented earlier. Further, it should be noted that this shift is a consequence of the influx of lower-skilled TFWs, rather than any significant reduction in the use of high-skilled TFWs.

While a number of sectors saw moderate growth in their demand for TFWs, four stand out. Exponential growth in LMOs occurred in construction, manufacturing, retail trade, and accommodation and food services, as shown in Chart 11. Between 2005 and 2008 these four sectors saw increases of between 200 percent and almost 900 percent, with the most dramatic growth seen in accommodation and food services. All four experienced a significant drop in LMOs in 2009, between 41 percent and 67 percent, a much larger decrease than the more traditional TFWP industries. However, in 2010, retail and accommodation/food quickly rebounded with increases above 30 percent. In both cases, in 2010 the number of LMOs issued was more than five times the number issued in 2005.

Chart 11
LMOs Issued, Selected Industries



Source: HRSDC 2011

Conversely, construction and manufacturing appear more sensitive to the economic downturn. In 2010, neither sector saw a rebound in its use of LMOs (manufacturing continued to decline while construction had only a small, single-digit percent increase). While the effect of this decline should not be overstated—both sectors had more LMOs issued in 2010 than in 2005—it does draw out a

nuance in the analysis of the shift in the TFWP. Demand for TFWs was more elastic in some sectors than others. This will be discussed more fully below.

Before the 2002 and 2006 policy changes, TFWs were found working as university teachers, scientists, specialist technicians and entertainers. TFWs that arrived between 2005 and 2008 were more likely to be coming to work as cooks, clerks, cleaning staff, construction labourers and truck drivers. Some of those jobs dried up post-2008, but many employers continued, or quickly returned, to rely on TFWs for labour needs in the post-crash period. Employers most likely to do that were in the retail, accommodation and food service sectors, a marked change from a decade earlier.

DISCUSSION

What do the pre- and post-crash patterns in TFW employment tell us about the current state of the TFWP and its possible future directions? It is clear that during the past decade the TFWP expanded rapidly and the expansion is due mostly to the influx of lower-skilled workers as a result of government policy changes to the mandate of the program. But did the purpose of the program— to address temporary labour shortages in specific industries and occupations—also change?

The data presented above suggest that as the downturn struck, some restriction in the inflow of TFWs occurred, particularly among lower skilled workers, but not at a sufficient level to contract the overall size of the program. The 2008 economic downturn had the effect of pausing the rapid expansion of the TFWP, but by the latter part of 2010 and 2011 the program was beginning to grow once again.

We see that in 2009 the number of new LMOs fell dramatically and total new entries leveled off, particularly in the sectors that witnessed the largest growth in the 2005-2008 period. However, the total number of TFWs resident in Canada did not drop. This apparent contradiction requires some explanation. The different trends are the result of each statistic measuring a different aspect of the phenomenon. LMOs track the future demand for new TFWs, and are best seen as a measure of the program's rate of growth. Total residency looks at the number of TFWs currently residing in Canada, and thus is a measure of current demand in the labour market.

A plausible scenario arising out of this mixed pattern is thus: at the onset of the recession, employers throttled back their search for new TFWs, but the demand for existing TFWs remained. It should be highlighted that employer demand for new TFWs did not dry up completely—had demand completely disappeared, LMOs issued would have been zero. Even at the height of the recession, many employers were applying for the right to hire new TFWs (or renew a contract for existing TFWs). In addition, the failure to see a drop in total TFWs suggests that the bulk of TFWs remained in Canada and were most likely employed. The level of demand for TFWs was steady during a period when policy-makers predicted it would contract.

It could be argued that the restriction of new entries demonstrates some degree of elasticity in the TFWP. However, it is difficult to reconcile that view with the fact that, when the program briefly paused in 2009, it was at a level three times larger than before the wave of expansion. Plus, in 2010 it showed signs of recommencing its growth; a trend confirmed in 2011. The TFWP did not shrink, as expected, during a significant economic downturn, raising questions about how elastic the program is. While further research is required, the preliminary analysis presented here suggests the TFWP has become a more significant, and more permanent, feature in Canada's labour market, partially disconnected from domestic labour market fluctuations.

Of course, as noted earlier, the TFWP and the use of temporary foreign labour more generally in Canada is not new. Both the SAWP and the LICP have for many decades been entrenched parts of their respective sectors (agriculture and domestic services), and the TFWP has long served specific industries, such as entertainment and post-secondary education. Demand for TFWs in these sectors remained steady through the period, and were unaffected by the economic swings. This is not surprising, given the international character of their labour markets and their longstanding employment patterns.

What is new in the evidence presented above is the emergence of a cluster of new industries and sectors using TFWs more regularly and possibly becoming reliant upon a flow of TFWs to address longer term labour market needs. These are sectors that, until recently, drew exclusively from permanent Canadian residents for labour.

Specifically, retail trade, accommodation and food services and transportation and warehousing significantly increased their use of TFWs. Further, in those new sectors, demand for new LMOs rebounded much more quickly than in other sectors, and faster than the economy as a whole. Much of the expansion of the TFWP is attributable to employment in these sectors, most of which is lower-skilled employment. Translating that to jobs, the period under examination saw a greater reliance on TFWs to be cooks, clerks, cleaners, truck drivers and warehouse labourers. The speed with which requests for new LMOs rebounded following the downturn hints at a growing reliance by employers in these sectors on TFWs as a source of labour.

The special case of the construction and manufacturing sectors requires some comment. Demand for TFWs spiked significantly in both industries during the economic boom, but fell back dramatically after the crash. Demand for new TFWs did not rebound in 2010 as it did in the sectors discussed above. On the surface this may appear to be an example of how policy-makers claim the program operates. TFWs fill a need for short-term labour in times of shortage, but then employers turn to domestically available workers during more lean times.

However it may also be a characteristic of these two industries. Both construction and manufacturing are more susceptible to boom and bust cycles, and their employment patterns reflect more starkly those cycles (Tinbergen and Polak 2005) with deeper troughs and sharper peaks. An important question for

the coming period of economic growth is how quickly and how extensively will employers in these sectors turn to TFWs to address labour issues? Foster and Taylor (2011) report from interviews with construction employers in Alberta's oil sands that TFWs are becoming a preferred source of labour for the sector and that companies are making plans for a new influx of TFWs in 2012 and 2013 as oil sands construction is projected to heat up again. It is too soon to reach a firm conclusion regarding the reliance on TFWs in these two sectors, however, and further research is required.

The analysis presented here suggests that an increasing number of sectors are turning to TFWs to address core labour supply issues and not simply to act as a relief valve during times of shortage. Indeed, the labour market patterns found in agriculture and domestic services may now be replicated in restaurants, hotels, and retail stores. The consequences of this shift will be discussed below.

The evolution of the TFWP over the past decade parallels the experience with Europe's guest worker programs, where sectors at the bottom end of the labour market become increasingly reliant upon migrant workers for labour supply, creating so-called migrant worker ghettos (Martin 2003). Prior to 2002, Canada avoided this outcome by restricting the TFWP to higher-skill occupations, keeping overall numbers down. The changes of 2002 and 2006 altered this policy and have set the program on a new trajectory. By opening up the program to a tier of occupations normally reserved for permanent residents, the government created a new international pool of labour for employers in hotels, restaurants, retail stores and other lower-skill occupations. Importing TFWs is attractive to employers in these sectors because the workers are compliant, more willing to work for low wages and less mobile than permanent residents (due to their restrictive work permits). The desirability of a docile labour pool has the potential to produce a reliance on foreign workers.

RHETORIC VS. REALITY

The data presented above run counter to the public statements of key government officials regarding the program's purpose and function. During the TFWP's expansion phase in the mid-2000s, policy makers argued the program was helping employers counteract short-term labour shortages. Even during the depths of the downturn, the Minister of Immigration, Jason Kenney, publicly asserted nothing had changed in the program's purpose:

The [TFWP] aims to address labour shortages that are temporary, where neither Canadians nor permanent residents can be found to meet these needs. Generally speaking, the number of foreign workers that come to Canada depends on employer demand. Therefore, increased numbers of temporary foreign workers should not be interpreted as a shift in the Government of Canada's policy toward temporary migration (Kenney 2010: 10).

Further, the Minister argued that TFWs were expected to leave the country if they lost their job, and predicted that “the full effects of the recession and its consequences for the labour market will translate into decreased numbers of temporary foreign workers” (13). Policy makers assured Canadians that formal procedures embedded into the TFWP, such as the requirement of a valid LMO based upon market need, expiry dates for work permits and rigidity in wage setting provided a mechanism to contract the program during downturns. It is upon this basis they claim the program is for short term labour needs.

Most mainstream analyses of the TFWP also adopt the position that it is a temporary labour market adjustment program. For example, one economic analysis concludes “[t]emporary foreign worker programs are designed to alleviate short-term specific labor shortages and are not expected to have long-term adverse effects on internal labor markets” (Gross and Schmitt 2010, 21). Even studies critical of the TFWP’s lack of protections for TFWs assume the program is designed for short-term labour market needs (for example see Siemiatycki 2010).

The evidence presented above belies expectations and the explicit assurances of government officials. Rather than contracting, the TFWP is staged to continue its expansion in the coming years. One reason for the contradiction between rhetoric and reality may be that the program is primarily employer-driven, and as such government has no direct capacity to reduce applications for new TFWs. If employers are forming dependence on TFWs, the TFWP lacks the tools to check rising demand.

There is also evidence that employers and recruiters have developed fairly sophisticated techniques to satisfy HRSDC’s job search requirements (see AFL 2009). One recruiter interviewed by the author acknowledged that the domestic recruitment process is perceived as a formality. This recruiter indicates they usually have a TFW recruited before posting the position domestically, and the recruiter assists the employer with placing ads to facilitate the LMO process. The recruiter reported the recession had no effect on the demand for LMOs. “Every one of our clients up there, they’ve been hiring throughout everything, that hasn’t changed. It’s still, we need guys, find us some guys” (personal communication, October 2010).

Recent changes announced to the TFWP are aimed at addressing some of the shortcomings in protection of TFW rights, but also mark an acknowledgement of its continued importance in the future. In 2008, Citizenship and Immigration announced the Canadian Experience Class stream, which allows high-skilled TFWs (NOC 0, A and B) with two years’ work experience in Canada to apply for permanent residency. In 2011, new regulations governing the TFWP were implemented, with two primary effects. First, TFWs are now limited to a maximum of four years residency in Canada, after which they would be ineligible for another work permit for a period of four years.⁵ Second, enhanced procedures were implemented to confirm the genuineness of a job offer, and a two-year ban was issued on LMOs for any employer who breaches their legal obligations through the TFWP.

A CIC official indicates the purpose of the new regulations was to update the TFWP for new realities. “The regulations were from the 1970s and they didn’t foresee how it was going to unfold in modern times with the explosion [of TFWs]” (personal communication, April 2011). The new regulations in effect recognize the new permanent role the TFWP plays in the labour market, especially among lower-skilled workers. The same official speculated that the program would continue to grow in the future: “employers use whatever works for them. [...] If an employer can successfully get a LMO they are going to get work permits” (personal communication, April 2011).

For the past decade, researchers specializing in immigration issues have observed the trend in Canadian immigration policy away from permanent residency to temporary migration (see Sharma 2007), and interpret the TFWP as part of that overall policy shift. This is a useful context in which to understand the growth of the TFWP, in particular because its new emphasis suggests “primary decision making around access to permanent residency [has been] transferred by the Canadian state to Canadian employers” (Valiani 2010, 1). However, the lens of immigration produces an incomplete analysis of TFWs as it does not examine labour market forces and their effect on policy design. The expansion of TFWP is driven by employer demand to address concerns related to the cost of labour; an analytical component often missed in the immigration debate. These decisions have direct effect on the operation of the labour market over the long term. It is to those potential consequences that we now turn.

LABOUR MARKET CONSEQUENCES

There has been very little research into the Canadian labour market effects of a sizeable, long-term migrant worker program reaching into multiple industry sectors. What research that has been done examined the labour market outcomes for TFWs themselves, which shows TFWs fare better than landed immigrants because they more aptly fit employer needs (Warman 2009). Other economic analyses from a neo-classical perspective concludes that the TFWP distorts regional labour market patterns by suppressing inter-regional labour mobility from provinces of higher unemployment to areas of low unemployment (Gross and Schmitt 2010; Gross 2010). There has been very little investigation into how the TFWP alters labour market dynamics such as domestic labour demand, wages and employment regulation. The discussion below is intended as a conjectural starting point for further research.

One of the clearer consequences of increased reliance upon TFWs is an increase in the number of workers vulnerable to exploitation by unscrupulous employers. TFWs are formally covered by all employment regulations, but enforcement of those protections proves problematic. Federally, little follow up is conducted to police employer obligations to workers (Fudge and MacPhail 2009). Provincial labour standards enforcement is complaint-driven and, other than Alberta which targets employers with LMOs, no special measures have been implemented to address protection of vulnerable foreign workers. TFWs,

hindered by their restrictive work permits, do not have the range of options available to other workers (e.g., to change employers), and thus become more susceptible to employment rights violations. In Alberta, during a targeted inspection campaign, 74 percent of employers with TFWs were found to have breached employment standards, with the most frequent violations involving illegal deductions, unpaid statutory holiday pay and inadequate record keeping (AEI 2010). The financial advantage afforded employers choosing to subvert employment regulation through the use of TFWs can become quite significant.

One of the great ironies of the program's structure is that, while the TFWP is becoming more permanent and persistent, the individual TFWs remain steadfastly temporary. Each year, tens of thousands of TFWs leave the country as their work permits expire, only to be replaced by tens of thousands of new TFWs, many to work for the same employer. The longer a TFW remains in Canada, the more likely they are to learn of their employment rights and find ways to advocate for those rights. By entrenching a short-term employment period, employers forestall any "rights learning" that may occur. The new four-year cap on residence will only exacerbate this dynamic.

Those looking for signs of what a TFW-dominated employment sector may look like can look at Canada's experience with the Seasonal Agricultural Worker Program (SAWP), which has a long history of using low-skilled migrant workers to work on farms, particularly in Ontario and British Columbia. It points to an industry that has become highly dependent upon foreign workers and increasingly separated from domestic labour markets (Fudge and MacPhail 2009). The agricultural sector has arisen as a low-wage labour market segment, where employers rely more upon Mexican workers than resident workers. This has suppressed wages, weakened health and safety protections and permitted the workforce to become marginalized both in the labour market and the communities in which they live (UFCW 2011). The influx of low-skilled workers risks replicating the SAWP program in other sectors, such as fast food and hospitality.

A second replication of the SAWP/LICP experiences may be a rise in TFW self-advocacy. Despite the challenges they face, migrant workers have taken action collectively to defend their legal and human rights. Live-in caregivers have mobilized to improve their legal standing in Canada (Sharma 2001) and farm workers have turned to joining unions and other collective action in response to poor working conditions (Dugale 2009). Many migrant workers have reached out to broader community advocacy groups to develop justice campaigns in many Canadian cities (Cranford and Ladd 2003). The last couple of years have witnessed the beginnings of similar collective action on the part of TFWs, who have organized rallies (Keung 2009) and joined unions (Foster and Barnetson, 2012) to defend their rights. It can be anticipated that TFWs will engage in more struggle as employers attempt to entrench working conditions.

Turning to wages, theoretically the TFWP, unlike the SAWP, was, until recent changes, structured to prevent wage suppression through the requirement of paying a market rate determined by HRSDC. However there has been significant

criticism of the methodology utilized by HRSDC suggesting the market level is somewhat arbitrary (Flecker 2010). As for wage suppression, some evidence reported by Fudge and MacPhail (2009) indicates that, during the boom, wage increases for occupations on the Under Pressure list were no higher than other occupations, suggesting “that the low-skilled streams of the TFWP operate as a device to regulate the Canadian labour market by lowering wages and conditions of employment” (26). This runs contrary to conventional labour market thinking, which would predict that occupations experiencing labour shortages would experience higher than average wage increases. While the evidence is indirect, it is consistent with effects of migrant worker programs elsewhere (Ruhs and Martin 2008). If used as a short-term labour shortage fix, the TFWP may reduce the rate of wage inflation, as the above suggests. If the program has become permanent, then wage suppression effects may also become entrenched, affecting the structural balance of the labour market over the long term. This concern is amplified with the recent changes permitting TFWs to be paid up to 15 percent less than the “market rate”. The new policy institutionalizes a differential rate for TFWs and legitimizes currently illegal practices of paying TFWs less than permanent residents, suggesting that wage suppression may become a serious concern going forward.⁶

Further evidence of perverse implications can be found by examining the outcomes of other vulnerable and marginal groups who cluster at the lower end of the labour market. Labour market outcomes have worsened for new immigrants in the past decade, including lower incomes and lower employment rates (Sweetman and Warman 2010). In addition, unemployment rates for aboriginal workers climbed during the mid-2000s boom (Voyageur 2007). These groups are finding themselves in direct competition with TFWs for access to entry-level and low-skilled jobs. Employers may see the new pool of TFWs as a more desirable and affordable option compared to these groups, and thus TFWs supplant their position in the market. This may be particularly relevant for immigrants, who possess similar labour market challenges (i.e., language barriers, lack of familiarity with community) but have not been “hand-picked” by the employer.

Unionization may also be affected. TFWs, with their short-term employment duration and enhanced dependence upon the employer, are more difficult to organize or to engage in collective action. Many longer-term benefits of unionization escape individual TFWs, as their employment is of such short duration. Plus it needs to be highlighted that the growth in TFW usage is predominantly in industries with low union density and where unions have traditionally struggled to organize. The presence of TFWs makes that task no easier. In this respect the TFWP assists employers in making themselves more union-proof.

The TFWP’s most important effect may be how it contributes to the push by employers and neo-liberal governments toward a more flexible labour market. Competitive pressures and global competition have driven employers to contain labour costs through a variety of avenues, including regulatory liberalization,

anti-union animus and economic pressure (see Stanford and Vosko 2004). The TFWP may be best seen as another avenue by which employers pursue a more flexible, compliant workforce. Not only do TFWs expand the available labour pool, thus diluting worker bargaining power, they introduce a form of employment relationship that places greater legal and economic power in the hands of the employer. The effects of this new relationship can be exerted directly on the TFWs themselves, as well as used to leverage broader labour market outcomes favourable to employers (i.e., dampening wage growth). The latter point is important. The presence of TFWs may also serve to chasten the domestic labour force in its demands, not only during economic booms but more generally.

The chastening is aided and abetted by the state, which plays a key role in establishing employer-friendly labour market dynamics through the TFWP. By restricting the labour mobility rights of TFWs and by relying heavily on the contract of employment to regulate the employment relationship, the state facilitates a skewing of bargaining power in key sectors of the labour market. TFWs represent the epitome of the “flexible” worker, in large part due to policy decisions on the part of the state.

The rapid expansion and entrenchment of the TFWP remains a recent phenomenon and its effects are only just beginning to be felt. Early signs suggest it works to edge the balance of bargaining power toward employers. Much more work is needed to extract its impact on the Canadian labour market in the medium and long term.

CONCLUSION

With the decision to expand the TFWP to low-skilled occupations, the Canadian government set into motion a transformation of Canada’s foreign worker regime. The obvious consequence was the rapid expansion of the program during the economic boom of the mid-2000s into sectors. More significant, however, was the quiet entrenchment of the program into Canada’s labour market. The program opened up a new avenue of available workers for employers in industries traditionally restricted to a domestic labour pool, such as retail and restaurants. This has led to a separation of the TFWP from its original purposes as a mechanism for addressing labour shortage issues in select occupations and industries. It now has the broader function of regulating labour supply in a fashion optimal for employer bargaining power.

Furthermore, this shift occurred without formal announcement or debate. Government officials continue to speak the language of the original mandate of the program, despite evidence to the contrary. There may be a political pragmatism in the unwillingness to admit the new direction of the program. While neo-liberal governments are quite frank about their willingness to advance employer interests, politicians may be fearful of conservative voters raising concerns about an influx of foreign workers “stealing” jobs from “Canadians”. By keeping the new nature of the TFWP under the radar, governments may be

hoping to avoid political backlash. Regardless, the stealth nature of the transformation should raise concerns for Canadians and for observers of the Canadian labour market.

The newly bulked-up TFWP is here to stay. We begin to see glimpses of how it will alter labour market dynamics in Canada. However, the long-term effects remain unknown.

NOTES

- ¹ For a certain percentage of files, CIC is unable to determine the occupational level for a worker. The proportion of “unstated” occupational categories ranges from 15% to 30% in a given year. The “unstated” were excluded for the above calculation.
- ² TFW “stock” is seen by many to be a de-humanizing term when discussing the number of foreign workers residing in Canada. As such, this article will minimize its use, but makes reference to it for clarity. A fuller discussion of the appropriateness of the term is outside the scope of this article.
- ³ The largest occupational grouping in all years is nannies and babysitters, as LMOs issued under the Live-In Caregiver Program are included in the tables. For the purposes of this analysis, those LMOs have been removed. The number of live-in caregivers has remained relatively stable during the period.
- ⁴ In every province except British Columbia, TFWs in building trades occupations are given a period of time to pass provincial certification. If they fail, they are required to return home before the completion of their contract.
- ⁵ The duration maximum does not apply to workers classified as NOC 0 and NOC A.
- ⁶ Officially, the policy requires the employer to pay TFWs the same rate as permanent residents working in the same occupation at the workplace. However, the policy wording is loose, and its enforcement lax, leaving opportunity for employers who wish to skirt the formal requirements of the policy.

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