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Low-Skill Temporary Foreign Worker Programs in Canada: Challenges to Citizenship

Introduction

There are a number of different ways that people not born in Canada can come here and work legally, but there are generally two broad routes: Permanent Residency and the Temporary Foreign Worker Program. In the last several years, about 250,000 new Permanent Residents have been admitted into Canada in any given year. Most of these applicants (~60%) fall under the category of economic immigrants, most of whom apply under the Federal Skilled Workers (FSW) program, also known as the points system.¹ Another large group of Permanent Residents is the "family class", which is comprised of family members of either Permanent Residents or Citizens of Canada who have been sponsored to come to Canada. In 2008, this group made up about 26% of all new Permanent Residents. Also falling under the category of Permanent Residency are refugee claimants, comprising ~9% of new Permanent Residents. Of interest, twenty-five years ago, the distribution of new Permanent Residents was 50% family class, 30% skilled labour, and 17% refugees,² which reflects a shift in Federal immigration policy away from social and humanitarian immigration to a greater focus on economic gains.

The other group of people who come to Canada to work are Temporary Foreign Workers (TFWs), and it is this group upon which I will focus in this paper. The Temporary Foreign Worker Program (TFWP) has been expanding rapidly in the last few years, with an increase in participation between 2005 and 2008 from 97,809 workers to

¹ There are four sub-categories that fall under the term 'economic class.' They are the FSW, Canadian Experience Class, the Provincial Nominee Program, and the Quebec Skilled Worker program. For a good summary see Office of the Auditor General (of Canada), "Selecting Foreign Workers Under the Immigration Program (Chapter 2)," *Report of the Auditor General of Canada to the House of Commons*, Fall 2009, 8.

² Citizenship and Immigration Canada, "Permanent residents by gender and category, 1984 to 2008," *Facts and Figures 2008*. <http://www.cic.gc.ca/english/resources/statistics/facts2008/permanent/01.asp>

204,108 workers, an increase of 209%.³ There are broadly four main streams that fall under Canada's Temporary Foreign Worker Program.⁴ These are the Seasonal Agricultural Workers Program (SAWP), the Live-in Caregiver Program (LCP), the Pilot Project for Occupations Requiring Lower-Levels of Formal Training (PPORLLFT), and skilled workers. Both the SAWP and the LCP have received much attention in the last few years from the media, unions⁵, activists⁶, academics⁷, and politicians⁸. However, though the number of workers enrolled in both the SAWP and the LCP has been increasing, by 20%⁹ and 49%¹⁰ respectively between 2005 and 2008, the majority of TFWP applications are for either skilled workers or, increasingly, the PPORLLFT program. The following two graphs represent the change in the distribution of temporary foreign workers (TFWs) in the last few years.

³ Human Resources and Skills Development Canada, "Table 2," *TFWP LMO Statistics Annual Statistics 2005-2008*. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table2a.shtml. These figures are based off of Labour Market Opinions (LMOs) and thus may differ slightly from broader Citizenship and Immigration Canada (CIC) statistics. The Auditor General report of Fall 2009 reports a much higher number of TFWs in Canada for 2008: 370,000 (p. 1). Fudge and MacPhaill, in "The Temporary Foreign Worker Program in Canada," state that, "In fact, 45% of the temporary foreign workers admitted into Canada in 2007 were admitted without a LMO" (p. 11).

⁴ There are a few additional TFW Programs covering, for example, foreign academics, entertainers, and IT experts.

⁵ The United Food and Commercial Workers International Union (UFCW) has been successfully organizing SAWP workers since 2008. see, United Food and Commercial Workers Union. "Ratification of UFCW Canada first contract at Manitoba farm historic breakthrough for migrant workers." Press Release, July 23, 2008.

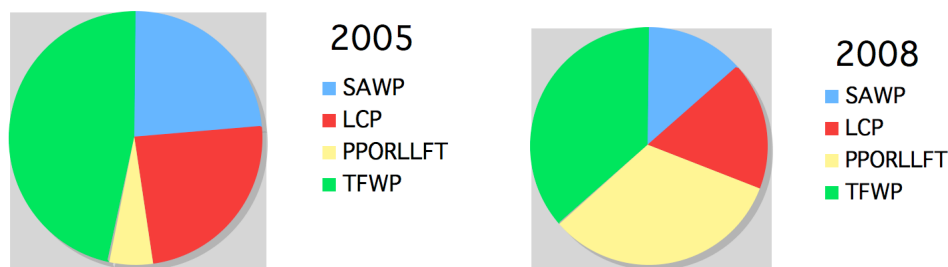
⁶ For example, No One Is Illegal (Montreal, Toronto Vancouver), Workers Action Centre (Toronto), Immigrant Workers Centre (IWC), Justicia for Migrant Farm Workers, and many others.

⁷ See for example, on LCP: Jacqueline Oxman-Martinez, Jill Hanley, and Leslie Cheung. "Another Look at the Live-in Caregivers Program," *Centre de Recherche Interuniversitaire de Montréal sur L'immigration, L'intégration et la Dynamique Urbaine*. Publication IM no. 24, September, 2004; on SAWP: Hinnencamp, Kaite. *Bibliography on Migrant Farm Workers in North America*, Compiled for Justicia for Migrant Farm Workers. <http://www.justicia4migrantworkers.org/NAfarmworkersbiblio.pdf>.

⁸ See for example, Standing Committee on Citizenship and Immigration. *Temporary Workers and Non-Status Workers*. 40th Parliament, 2nd Session (May, 2009).

⁹ HRSDC, "Table 10," *TFWP LMO Statistics Annual Statistics 2005-2008*. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table10a.shtml

¹⁰ HRSDC, "Table 7," *TFWP LMO Statistics Annual Statistics 2005-2008*. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table7a.shtml.



Distribution of TFWP Labour Market Opinions in Canada¹¹

These graphs clearly show that the growth in PPORLLFT applications has significantly out-paced growth in the other programs. Applications made under the PPORLLFT have increased from around 5,500 in 2005 to over 66,000 in 2008, an increase of almost 1200%!¹² Though higher skilled TFWs and participants in the LCP in some cases do have a route to Permanent Residency and Citizenship, this is very unlikely for PPORLLFT participants, and all but impossible for SAWP participants. Thus, the population of people who are working in Canada but who have no route to Permanent Residency or Citizenship is increasing significantly.

With this in mind, it is important to understand the regulations and policy surrounding the increase of low-skill TFWs, and the PPORLLFT program in particular, and how these policies and regulations affect the day-to-day reality of these workers. Are the exploitative working conditions experienced under the SAWP and LCP that have been brought to light recently, being experienced by workers who are in Canada under the PPORLLFT? How is public policy attempting to limit this exploitation? How is

¹¹ Graphs compiled from HRSDC, *TFWP LMO Statistics Annual Statistics 2005-2008*.
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/annual_stats_list.shtml

¹² HRSDC, "Table 8," *TFWP LMO Statistics Annual Statistics 2005-2008*.
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table8a.shtml

public policy causing this exploitation? This interrogation into the policies and problems surrounding the PPORLLFT will be occupy the main section of this essay. Following this, I will discuss the role of temporary worker programs in relationships between the state and migrant workers. Specifically, I argue that the temporariness of these programs functions as a support for employers in the capitalist economy, encourages the neoliberalization of citizenship, and possibly works as a tool for government management of populations. I look into how this temporariness affects the relationship between the state and TFWs as a group of non-citizens to whom some rights, but not others, are given. As people without citizenship, and with no route to obtaining citizenship, how is the state able to interact with this group of people within its borders, and how do TFWs then challenge traditional ideas of citizenship?

'Foreign' Workers in Canada – Not a new phenomenon

It is important to acknowledge that the existence in Canada of foreign workers who possess lower status than citizens is not a new phenomenon. Starting in the late 1800s, Chinese 'navvies' came to Canada to labour on the building of the CPR. Though many or most of these Chinese workers stayed in Canada (at least those who survived the work), there was a strong anti-Chinese sentiment in the public and in government, and if it was not for the desire of the CPR to have cheap, abundant labour, more Chinese labourers would have been deported or denied entry. That being said, there were many racist anti-Chinese pieces of Federal and Provincial legislation passed to limit the ability of Chinese workers in Canada to obtain full status in the country, including the 1885 Chinese Immigration Act, which imposed a massive head tax on Chinese immigrants, and the

Electoral Franchise Act which excluded all Chinese from the franchise.¹³ In 2006, the Canadian government officially apologized for these racist pieces of legislation and the harm they caused.

Starting in 1966 the Canadian government began entering into Memoranda of Understanding with Caribbean countries to allow foreign workers to come to Canada seasonally in order to fill supposedly temporary shortages in farm labour. In 1972 the program was extended to include Mexico as well. This program is now known as the Seasonal Agricultural Workers Program (SAWP). The intention of the SAWP is not, and has never been, to provide a route for permanent immigration to Canada for participants. Indeed, the main purpose of the program has always been to keep farm labour costs low without having to permanently accept migrants from Caribbean and Latin American countries.¹⁴ In 1966 the first group of seasonal workers, 264 Jamaicans, came to Canada, and in 2008 there were over 27,000 participants in the SAWP, mostly from Mexico.¹⁵ Under the rules of the program workers are allowed to stay in Canada for up to eight months, but must return to their country of origin for at least four months in order to be eligible to participate in the program the following year. At the end of each season, every worker is given a sealed evaluation form which they must give to officials from their government upon their return home. These evaluations allow Canadian farm owners to indicate which workers they deem desirable and preferable for re-employment the following year. This has led to a situation where in many cases workers have been

¹³ For more on Chinese navvies see, for example, Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: U of T Press, 1998), 94-98.

¹⁴ See Sophia J Lowe, "Plus ca Change? – A Comparative Analysis of the Seasonal Agricultural Workers Program and the Pilot Foreign Worker Program for Farm Workers in Quebec," MA MRP, Ryerson University, 2007: 27-30.

¹⁵ HRSDC, "Table 10," *TFWP LMO Statistics Annual Statistics 2005-2008*.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table10a.shtml

accepted back year after year, some for coming to Canada seasonally for 10 – 20 years in a row. But, the evaluations also serve to intimidate those who would speak out about any negative aspects of the program. As well, even if a worker were to return to Canada year after year as part of the SAWP, the regulations surrounding the program dictate that none of this accumulated time in Canada can count towards any future application for Permanent Residency.¹⁶ Altogether, the rules of the program have created a workforce with a multi-year connection to Canada, but that has very little say in running of the country where they spend a significant amount of their working life—and this after having been encouraged to come, and after having contributed significantly to the Canadian economy and food production. Even worse, SAWP workers contribute to EI but are not eligible to claim it because they must leave the country after finishing their contract. As one SAWP worker puts it:

They look down on us. But the Quebecers, when they finish their contract, the government pays them all winter long. But us, who pays us all winter? We have to pay our own bills at home with our own hard earned money. If we're gonna have to pay taxes...at least if we were paying taxes to our own government we would be getting benefits and social services. It's exploitation pure and simple.¹⁷

Thus, the EI contributions made by SAWP workers are a form of head tax—they must pay a fee in order to work and contribute here. Thus, seasonal agricultural workers living in Canada as a marginal or abject class is not a new phenomenon, and indeed the SAWP

¹⁶ Given that higher skilled TFWs can apply the number of years they have been working in Canada in order to strengthen applications under the new Canadian Experience Class, restricting SAWP participants' ability to do the same seem particularly classist or even racist. A managerial level TFW is eligible for a CEC PR application after only two years, while seasonal agricultural workers who have been working here for 20 years are not.

¹⁷ Aziz Choudry et al., *Fight Back: Workplace Justice for Immigrants* (Halifax: Fernwood, 2009), 27.

can be seen as a continuance of earlier foreign worker policies affecting Chinese and African workers.

Another long-standing precedent for low-status foreign workers in Canada is the Live-in Caregiver Program (LCP) which has its roots in the Caribbean Domestic Scheme, beginning in 1955.¹⁸ The current LCP program began in 1992, and in 2008 there were over 35,000 visas given out under the program, mostly to women from the Philippines.¹⁹ Workers participating in the LCP (and also the SAWP), are technically protected by labour laws and regulations while living in Canada. In practice though, equal and fair treatment is often not the case; having immigration status tied to employment is an inherently problematic situation because there is a strong deterrent against employees making complaints about employers. In terms of the temporariness of LCP participants, they are eligible to apply for Permanent Residency if they complete at least twenty-four months of employment in less than forty-eight months from the date of their arrival.²⁰ This stipulation provides a further deterrent to complaints about workplace exploitation, as switching employers can take a lot of time. However, in recent years, “over 90% of foreign nationals who enter Canada as a live-in caregiver with a work permit apply for permanent residence (PR) through this stream, and of these applicants, 98% are successful.”²¹

¹⁸ Oxman-Martinez et al., “Another Look at the Live-in Caregivers Program,” 4.

¹⁹ HRSDC, “Table 7,” *TFWP LMO Statistics Annual Statistics 2005-2008*.
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats_annual2008/table7a.shtml.

²⁰ The forty-eight month limit is a very recent change, and is an increase from the previous limit of thirty-six months. See, Canada Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations,” Vol. 143, No. 51 (December 19, 2009). <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-12-19/html/reg3-eng.html>.

²¹ Canada Gazette, (December 19, 2009).

Through these examples there emerges an image of Canada as a country built upon the labour (and in the case of Indigenous people, the land) of a racialized group with low-status. In this light the relatively new, and recently expanding PPORLLFT should not be seen as a large shift in policy; however, the massive increases in low-skill TFWs that the PPORLLFT facilitates, especially in relation to lower or static numbers of PRs, is alarming and may be symptomatic of a larger trend of neoliberalization and globalization of citizenship.

The PPORLLFT - Filling Shortages or Supporting Exploitation?

i. *How it works*

The Pilot Project for Occupations Requiring Lower Levels of Formal Training was introduced in 2002 with the intention of alleviating labour shortages in occupations requiring lower training, mostly in the areas of the service industry, oil and gas, and construction.²² The PPORLLFT facilitates the admission of foreign workers who would otherwise not qualify for entrance to Canada under the general TFWP due to the National Occupation Classification (NOC) system used by Human Resources and Skills Development Canada (HRSDC). There are five levels under the NOC, 0, A, B, C, and D. 0 is for managerial level (i.e. business elite), A is for professionals (e.g. occupational therapists, pharmacists, etc.), B is for skilled workers (e.g. skilled trades), C is for occupations requiring at most a high school diploma, and D is for occupation requiring

²² See, Sandra Elgersma, "Temporary Foreign Workers," *Parliamentary Information and Research Service*, September 7, 2007, PRB 07-11eE. The program was originally called the Low-Skill Pilot

little or no prior education and training.²³ The PPORLLFT program applies specifically to NOC C and D occupations. HRSDC lists several provisions that employers wishing to participate in the PPORLLFT must take, ostensibly to ensure that the foreign workers are not exploited and are able to participate in the program. Under the PPORLLFT employers must:

- “Sign an employment contract outlining wages, duties, and conditions related to the transportation, accommodation, health and occupational safety of the foreign worker;
- Cover all recruitment costs related to hiring the foreign worker;
- Ensure that there is suitable and affordable accommodation for the worker;
- Pay the foreign worker’s airfare to and from Canada;
- Provide medical coverage until the worker is eligible for provincial health insurance coverage;
- Register the worker under the appropriate provincial workers’ compensation and/or workplace safety insurance plans; and
- Indicate on the contract, when an offer of employment is for longer than 12 months, that wages will be reviewed and adjusted, if necessary, at the end of a year to ensure prevailing wage rates are being respected.”²⁴

Though these are admirable standards and provision in principle, in practice there are a number of problems with the program, which will be discussed below. In order to participate in the program, employers must also get a Labour Market Opinion (LMO) which assesses the validity of the request for employment of a TFW based on whether the employer is:

- “making adequate, ongoing efforts to recruit Canadians, including youth, Aboriginal people, recent immigrants and Canadians in areas of high unemployment?
- offering wages that meet the prevailing rate for the occupation and region or, if a position is unionized, offering the wage rate as established under the collective agreement?

²³ See, HRSDC, “National Occupation Classifications,” <http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/Welcome.aspx>.

²⁴ Human Resources and Skills Development Canada, “Occupations Requiring Lower Levels of Formal Training,” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/orllft_tfw.shtml.

- providing working conditions that are equivalent to those that would be offered to Canadians in the same occupation?
- considering unions as a potential source of workers?”²⁵

In other words, the employer must show that he or she is not seeking a foreign worker merely in order to keep wage costs low. As of 2007, when the name of the program was changed to PPORLLFT, employers are allowed to reapply for LMOs after one year if they wish to extend a workers contract for up to an additional year. Thus, TFWs can be in the country with a temporary work permit for up to two years after which they must leave in order to reapply.²⁶

In October 2009, the government announced that it was making changes to the *Immigration and Refugee Protection Act Regulations* that would affect temporary foreign workers. There are two main changes that affect PPORLLFT workers. The first is an attempt to police and punish delinquent employers by limiting their ability to receive positive LMO opinions, thereby cutting their access to TFWs. This would be done by creating a two-year ban for employers discovered to be violating the conditions of the LMO as outlined above, and also by creating a public list of bad employers, “in order to inform foreign nationals as to which employers are not eligible to hire TFWs.”²⁷ The other change affecting PPORLLFT workers is the creation of a 4-year maximum period of employment as a TFW. Currently, there is no limit to the number of years that a

²⁵ Ibid.

²⁶ There are some notable exceptions to this rule, namely workers who are subject to special international agreements like NAFTA and the SAWP program. Exceptions are also made for highly-skilled workers. See, Canadian Migration Institute, *Recommendations on the Proposed Amendments to the Immigration and Refugee Regulations Temporary Foreign Workers*. December 8, 2009. <https://www.cmi-icm.ca/.../2009-12-08-CMI-submsn-to-CIC-on-proposed-changes-to-IRPR.pdf>.

²⁷ See Canadian Gazette. “Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers).” Vol. 143, No. 41 (October 10, 2009). <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-10-10/html/reg1-eng.html>

foreigner can work in Canada as a TFW, though in most cases they still have to leave the country after two years of employment in order to reapply. The proposed changes would mandate a four-year maximum (i.e. two 2-year contracts²⁸), followed by a minimum period of six years spent outside of the country. According to the government, the intent of the 6-year ban is to, “signal clearly to both workers and employers that the purpose of the TFWP is to address temporary labour shortages, as well as encourage the use of appropriate programs and pathways to permanent residency in order to respond to the long-term labour needs of employers.”²⁹ There are a number of problems with the PPORLLFT program in general as well as with the recently proposed changes.

ii. *Problems*

Problems with low-skilled TFWPs and with the PPORLLFT specifically can be divided into three areas: workplace exploitation caused by lack of policing and enforcement of LMO and labour laws; barriers to accessing social services and rights; and, class and race-based access to permanent residency.

Despite rules aimed at ensuring equal and fair treatment of temporary foreign workers while they are in Canada, exploitation and unequal access to services and rights are widespread in lower skilled occupations. The British Columbia and Yukon Territory Building and Construction Trades Council (BCYTBCTC) in a submission to the House of Commons Standing Committee on Citizenship and Immigration notes that “common examples of exploitation and abuses include broken promises on wage remuneration,

²⁸ There is some ambiguity about whether a TFW has to leave the country after two years. The Alberta Federation of Labour in April 2009 claimed that HRSDC was not enforcing the requirement that TFWs leave to reapply. See Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” notes 70-72.

²⁹ Canada Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers).”

garnished wages to pay for illegal placement fees by ‘immigration consultants’ and illegal payroll deductions for accommodation, meals and transportation.”³⁰ They also report that it is not uncommon for workers to receive a lower wage upon arrival than they were promised and lower than the rate stipulated under the employer’s LMO obligations.³¹

Foreign workers in most cases arrange their temporary employment in Canada before they arrive here, and thus there is an inherent difficulty in making connections between potential employers and employees. This gap is often filled by ‘immigration consultants’ who have connections in foreign countries and can broker employment deals. Of course, there is a fee for this type of service, but LMO agreements and Provincial labour laws specifically say that fees associated with this service must be covered by employers and cannot be downloaded to employees. However, it appears to be common practice for employers to deduct wages in order to reimburse themselves for ‘immigration consultants’ fees. The amounts of these fees vary but are on average \$8,000 for the first year of the permit and \$5,000 for a renewal for a second year.³² Employers also often, illegally, deduct costs associated with transportation and accommodation.

These practices are technically illegal and prohibited under the Federal regulations governing the PPORLLFT and TFW programs, but without monitoring and enforcement these regulations are ineffectual. The Auditor General issued a report in November of 2009 which contains many damning assessments of the TFWP, including the following:

³⁰ British Columbia and Yukon Territory Building and Construction Trades Council, *Submission to the House of Commons Standing Committee on Citizenship and Immigration; Temporary Foreign Workers, Undocumented Workers and ‘Immigration Consultants’*, Submitted March 31, 2008.

<http://bcbuildingtrades.org/pages/submissions.asp>. 2.

³¹ Ibid.

³² BCYTBTC, *Submission to the House of Commons Standing Committee on Citizenship and Immigration*, 4-5.

there is no systematic follow-up by either [CIC or HRSDC] to verify that in their previous and current employment of temporary foreign workers, employers have complied with the terms and conditions (such as wages and accommodations) under which the work permits were issued.³³

Of course, without any enforcement, laws and regulations become meaningless. But, what is worse is that HRSDC openly states that it has no mandate to investigate and enforce employment standards:

The Government of Canada is not a party to the contract. Human Resources and Skills 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.³⁴

As a result, the obligation to ensure labour standards are met is downloaded to the worker, which in the case of TFWs is very problematic.

As well, Canada's TFWPs are justified by government policy makers as responses to short-term labour shortages, but because there is no enforcement and monitoring of rules, this justification is undermined. For example, employers are supposed to reapply for LMOs after one year if they wish to extend a workers contract for an additional year. However, it was exposed in a report by the Alberta Federation of Labour that neither CIC nor HRSDC was forcing employers to reapply.³⁵ Without having to justify a need for TFWs based on existing Canadian labour market shortages, a process which is also supposed to guarantee that employment standards are not lowered, the whole premise of the TFWP is undermined.

³³ Office of the Auditor General (of Canada). "Selecting Foreign Workers Under the Immigration Program (Chapter 2)," *Report of the Auditor General of Canada to the House of Commons*, (Ottawa, Fall 2009), 2-3.

³⁴ HRSDC, "Instruction Sheet to Accompany Employment Contract," http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/contracts-forms/annex2.shtml

³⁵ Alberta Federation of Labour, *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate*, April 2009.

An additional Federal program that exacerbates this problem is the Expedited LMO pilot project, which reduces domestic job advertising requirements and speeds up employers' access to TFWs. The government has produced a list of 'occupations under pressure' which qualify for an e-LMO.³⁶ Many low-skill occupations now fall under the list of occupation. According to Fudge and MacPhail (2009): "The combination of the list of regional occupations under pressure, which substantially reduces the domestic recruitment obligations placed on employers, and the expedited LMO process suggests that the requirement that foreign workers are only recruited when there is a labor shortage is formal rather than substantive."³⁷ The lack of rigorous assessment and monitoring at all stages of the LMO process, from the initial decision to grant an LMO to compliance with the terms of the LMO, fundamentally undermines the whole program and leads to unnecessary exploitation of foreign workers.³⁸

The changes recently proposed by the government do little to remedy these problems. Regarding the bad employer list it becomes the responsibility of TFWs to find and read the list and make sure that their employment offer is not from a delinquent employer. The Canadian Migration Institute (2009) suggests that: "this is an unreasonable expectation of TFW applicants, notably when the TFW program includes lower-skilled employment positions at NOC Levels C & D, employment positions which by definition require little formal education and often no more than basic Official language skills."³⁹ Also, if this list is meant to protect TFWs from paying recruiters offering non-existent or

³⁶ See. HRSDC, "Expedited Labour Market Opinion Pilot Project," http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/elmopp/elmoppone.shtml.

³⁷ Fudge and MacPhail, "The Temporary Foreign Worker Program in Canada," 27.

³⁸ Ibid., 26, and note 72.

³⁹ Canadian Migration Institute, *Recommendations on the Proposed Amendments to the Immigration and Refugee Regulations Temporary Foreign Workers*, 8.

exploitative jobs with employers on the list, then having a public list would mostly aide these delinquent recruiters, as they would be able to avoid using those names during their scams. The proposed six-year limitation is meant to encourage TFWs who wish to stay in Canada permanently to pursue permanent residency. But, in the case of low-skilled workers, there are few ways for them to do this. Thus the six-year ban serves to encourage that low-skilled TFWs are a rotational work force. This it would seem is in the benefit of neither workers nor employers, as the latter would lose experience workers after four years, though it is possible that the Provincial Nominee Program, discussed below, is a way for employers at least to not be negatively affected by the six-year ban.

Even though in many cases PPORLLFT workers are entitled to access social services, and indeed may contribute to them, in reality it can be difficult or impossible to access these services.

TFWs can have difficulty accessing EI because applicants and recipients need to show that they are available for work, and that they are present in Canada. If workers' status, i.e. their legal ability to work, is tied to the job that they just lost, then technically they are unavailable to work. Also, EI regulations require recipients to be present in Canada. When TFWs finish a two-year contract they must return to their country of origin in order to reapply for a second contract for (up to) two years. After this second period they must leave the country for at least six years.⁴⁰ Ending a contract (as opposed to being fired or quitting) entitles EI contributors to receive EI; however, unless they wish to violate the terms of their work permit by staying in Canada after their contract has

⁴⁰ If the proposed changes go through. See also note 31 above.

ended, foreign workers must return home after finishing their contract, which immediately disqualifies them from receiving EI because they are no longer present in the country.

As well, though technically this is also the case for workers with permanent status, EI rules discourage foreign workers from returning to school in order to upgrade their skills with the hope of finding a better job in the future. This is because you cannot receive EI and be enrolled as a student. However, for EI recipients with permanent status, returning to school is an attractive option, because there are many funding and financial supports available. This is not the case for temporary foreign workers, and thus the EI regulations serve to encourage them back into the same (low paying) type of work as quickly as possible.⁴¹

Additional barriers faced by TFWs include “insecurity related to immigration status, fear of deportation and lack of Canadian experience.”⁴² TFWs may lack knowledge of their rights, or else be fearful of negative repercussions if they attempt to access them, including fear of losing their job if they speak out. The case of the Canada Line subway construction project in BC demonstrates that employers will fight allegations of labour code violations, that employers have strong political allies (including immigration minister Kenney), and that discriminatory labour practices do exist.⁴³ In the words of the BCYTBTC, “The Canada Line case shows how the TFW program can easily be used by employers to drag down employment standards and

⁴¹ See, Aziz Choudry et al., *Fight Back*, 47-48.

⁴² *Ibid.*, 50.

⁴³ On the Canada Line labour dispute see, Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 38-41; and BCYTBTC, *Submission to the House of Commons Standing Committee on Citizenship and Immigration*, 6-7.

conditions in Canada...when there is little or no monitoring or enforcement of LMOs.”⁴⁴

This case also shows the overlap between lack of knowledge of and access to rights and exploitation caused by lack of enforcement—if there was more enforcement workers would have a better knowledge of their right; if there was a better knowledge of rights there would be more worker-complaint driven enforcement.

Because TFWs, especially low-skill, are not expected to remain in Canada long-term there is no funding for settlement or orientation programs. Even though they are likely not settling, there still needs to be some provision of services to help TFWs orient themselves to life and culture in Canada, and to orient them to the services and rights to which they are entitled. A good example of a situation in which a lack of knowledge and skills about Canada hinders a worker’s ability to avoid exploitation is the situation of trying to change employers while in Canada. It is possible for low-skill temporary workers to change employers in Canada⁴⁵ but it is unlikely that TFWs would be able to do this as they would have to find a new employer and convince this employer to obtain a new LMO. The submission by the BCYTBCTC explains why this is problematic:

accessing the knowledge and the means to activate this process is beyond the resources of most TFWs. Language and cultural barriers are compounded by the challenges of being a newcomer with few connections or contacts in their new Canadian community. How will a TFW, unable to communicate in English, find a new employer and explain the LMO process to an employer who is unfamiliar with hiring foreign workers?⁴⁶

Again, this point is especially pertinent to low-skill TFWs who by definition have a low

⁴⁴ BCYTBCTC, *Submission to the House of Commons Standing Committee on Citizenship and Immigration*, 7.

⁴⁵ Dominique M. Gross and Nicolas Schmitt. “Temporary Foreign Workers and Regional Labour Market Disparities in Canada.” *Metropolis British Columbia Working Paper Series*. No. 09 - 05 (June 2009): 9. Metropolis BC TFWP article suggests that TFWs are not able to change employers.

⁴⁶ BCYTBCTC, *Submission to the House of Commons Standing Committee on Citizenship and Immigration*, 5-6.

level of education and formal training, and thus are the least likely to be able to understand how to access rights and services while at the same time the most likely to be exploited.

There are very few ways that low-skilled temporary foreign workers can gain access to permanent residency in Canada. Most “low-skill” workers in Canada come from economically poorer countries, and are likely to be “visible minorities”. While this obviously is a result of centuries of colonialism and structural inequality globally, nonetheless Canadian immigration policy reinforces this racialized hierarchy by continuing to valorize higher skilled foreign workers who are less likely to have dark skin. At this point, basically the only route that PPORLLFT workers have to PR is through the Provincial Nominee Program (PNP). It is a program that allows the provinces to nominate TFWs who they want the Federal government to grant PR. However, provincial nominations of workers are still based on economic and labour needs, rather than on principles of social justice, strengthening communities, etc.—i.e. a workers’ access to PR through the PNP is based on what they contribute to the economy and not to society. More importantly, PNP nominations are *employer driven*, which reinforces pressure on workers to not make complaints about employers and to not be workplace activists.⁴⁷

Choudry et al. point out that not only do problems with Canada’s TFWP in general, as well as those with the PPORLLFT program, show a disconnect between Canada’s image as a fair country and the reality for TFWs when they are here, but they are also symptomatic of a larger systemic issue:

⁴⁷ Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 24.

it is not only a matter of a disjuncture between what Canada purports to uphold and the actual reality for immigrants in terms of health care and other social rights; it's also a question of the assumptions made about rights and claiming rights in a (capitalist) system, which, as a fundamental aspect of the way it function's, explicitly denies/undermines those rights to many people.⁴⁸

What then is the relationship between temporary foreign worker programs and the (capitalist) system?

Capitalism, Neo-liberalism, Citizenship and 'Temporary' Labour

What are the benefits of temporary foreign worker programs? Ostensibly they provide an opportunity for people from economically poorer countries to increase their income for a period of time, send remittances home to family, and then return home themselves with new skills. One argument made by the Conservative government is that a rotating temporary workforce increases the number of people who have the opportunity to access the Canadian labour market and improve their lot in life. But, TFWPs are meant to address short-term shortages in the labour market in Canada, i.e. to fill jobs that cannot be filled by people already entitled to work in Canada, and, indeed, this is the purpose of the LMO that is required when applying to hire a TFW. However, in many cases the labour shortages are not temporary but systemic—these are positions that will never be filled by Canadians. Farm labour, cleaning, food service, and live-in caregiving are examples of jobs that are systemically hard to fill. These jobs, at the current low hourly wage offered for them, will never be completely filled by citizens, and so the justification for filling them with TFWs is undermined. Activists, labour organizers and more radical or progressive academics point out that the labelling as temporary of the work that (most) low-skill TFWs do, is completely arbitrary and fallacious. Even if this is hard to prove

⁴⁸ Aziz Choudry et al., *Fight Back*, 56.

with work associated with the PPORLLFT program, there is an excellent example within a different TFWP in Canada, namely the SAWP which is famous for having participants come back year after year, making their designation as ‘temporary’ workers questionable at best.

Even worse, imposing temporariness on low-skill jobs does not solve the labour problem and encourages continued exploitation over a long period of time. UFCW organizer Sima Zerehi says:

the federal government has not actually come up with any sort of strategy to meet the labour needs that these temporary foreign workers are now addressing. So that means that after the four years that a TFW is here they are not going to be replaced by someone else who is a PR or who is a citizen. They are going to be replaced by another batch of foreign workers who are going to come in again [and] be unfamiliar with our labour laws, be unfamiliar with any support networks and once again be extremely vulnerable and precarious.⁴⁹

The jobs that TFWs do are permanent jobs and should be filled by permanent residents. Alternatively, given that there is significant unemployment in Canada, the wages offered for low-skill jobs should be increased, in order to reflect the difficulty of finding people to fill these jobs. Instead, by having access to TFWs, employers are able to keep wages low and fill positions. According to Fudge and MacPhail (2009), “The fact that the wages of most of the occupations under pressure in Alberta and British Columbia had not increased more than the wages in other occupations suggests that the low-skilled streams of the TFWP operate as a device to regulate the Canadian labor market by lowering wages and conditions of employment.”⁵⁰ In this light Canada’s low-skill temporary foreign worker programs can be seen as artificial supports for cheap labour which in turn

⁴⁹ Sima Zerehi comment on “Community groups rally in support of immigrant and migrant workers,” John Bonnar Audio Blog, December 2, 2009, <http://rabble.ca/category/podcasts/current-affairs/john-bonnar-audio-blog>.

⁵⁰ Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 27.

supports the capitalist system. But is there something more nefarious behind the government's support for temporary worker programs? After all, it is hardly surprising that the government would be supporting business owners at the expense of workers.

Of greater concern than cooperation between government and owners of capital is the 'neoliberalization of citizenship'. What do I mean by the 'neoliberalization of citizenship'? It is characterized by a privatization and individualization of rights and responsibilities associated with citizenship. This neoliberalization has been taking place over the course of roughly the last 25 years,⁵¹ and marks a shift away from the idea of 'social citizenship' as a characterization of the modern welfare state. The most widely accepted theorist of the development of social citizenship is T.H. Marshall, who argues that the welfare state came out of a progression of rights, starting with civil rights (to own property, equal treatment under the law, etc.) in the 18th century, then political rights (to vote, run for office, etc.) in the 19th century, and finally social rights (the right to demand certain provisions from government, i.e. social welfare) in the 20th century. The climax of this progression is what Marshall calls 'social citizenship'.⁵²

But, Marshall can be situated and explained in part by looking at the time at which he was writing, the post war era, when the UN, human rights, bigger social programs in Europe and other places were all at their apex. Janine Brodie describes how Marshall's description of 'the social' as only reaching existence and importance in the 20th century is false. 'The social', or rather 'social problems' really came into existence

⁵¹ See Janine Brodie, "The Social in Citizenship," in *Recasting the Social in Citizenship*, ed. Engin Isin. (Toronto: UofT Press, 2008); Barry Hindess, "Neo-liberal Citizenship," *Citizenship Studies*, vol. 6 no. 2 (2002).

⁵² Marshall, T.H. *Class, Citizenship, and Social Development*. Toronto: Doubleday, 1964.

in the 19th century as fissures in society opened up due to the explosion of capitalism and the industrial revolution, creating a poor class.⁵³ In the last 25 years, since Reagan and Thatcher, neoliberal ideology has been in ascendance, with a corresponding decline in the rights associated with social citizenship, namely the right to the collective provision of a certain level of basic needs.

The neoliberal undermining of ‘social citizenship,’ through the so-called ‘hand up vs. hand out’ approach, also called entrepreneurial citizenship,⁵⁴ applies market values to all social institutions and actions, creating a situation where, “citizens are released from social entitlements and obligations as they maximize their choice and capacities for self-sufficiency.”⁵⁵ Neoliberals do this in a number of ways, culminating in the goal of privatization ‘individualization.’⁵⁶ Individualization, “places steeply rising demands on people to find personal causes and responses to what are, in effect, collective social problems.” Thereby, “responsibility for social crises that find their genesis in such macro processes as structural unemployment, racism, or unequal gender orders is put onto the shoulders of individuals.”⁵⁷ In relation to temporary foreign workers, the individualization and privatization can be seen clearly: the relationship that matters in the TFWP is between the employer and the employee. Foreign workers as individuals apply to work for an employer, and the employers as owners of private businesses decide which employees they want to hire. The only government role is in the issuing of LMOs, which

⁵³ Janine Brodie, “The Social in Citizenship.” See also, Karl Polanyi, *The Great Transformation*, Beacon Press, 2001.

⁵⁴ Brodie, “The Social in Citizenship,” 42.

⁵⁵ Brodie, “The Social in Citizenship,” 41.

⁵⁶ See John Clarke’s ideas of ‘erasing, privatizing, subjugating, narrowing, functionalizing, fiscalizing, reinventing, economizing,’ etc. in “Subordinating the Social: Neo-liberalism and the Remaking of Welfare Capitalism,” *Cultural Studies* vol. 21 no. 6 (November 2007); also discussed in Brodie, “The Social in Citizenship,” 40-41.

⁵⁷ *Ibid.*, 41.

as we have seen has been heavily neglected. But how does this relate to citizenship per se, considering that TFWs by definition are a group of non-citizens?

What is occurring is that what should be an area of public policy and immigration policy is increasingly, as the TFWP expands, being framed as a labour issue. Sima Zerechi, describes this as the conservative government, “changing Canada’s immigration ministry into an extension of the labour ministry; what we really have is a ministry of temporary foreign labour that’s expanding, not a ministry of immigration that is going to bring more people to Canada to become part of our communities.”⁵⁸ While it is true that in Canada, at least, labour issues have always been a major part of immigration policy, what is new is that such a large number of people from other countries are coming to Canada without having any path to citizenship. This is alarming because, as Choudry et al. say:

The expansion of temporary work programs must be seen in the context of broader immigration policies. These programs are predicated on maintaining qualitatively different sets of rights and status for permanent residents and citizens on the one hand, and temporary workers on the other.⁵⁹

Discouraging permanent settlement and integration of the poorest migrants creates a two-tier system that undermines and contradicts the spirit of the Charter and of projects to construct a national identity of Canada as a nation that embraces diversity. But it also is symptomatic of the broader neoliberalization of how people relate to states, because TFWs lack of a claim to and/or access to many rights associated with citizenship is a direct result of the privatization of selection of economic immigrants (to employers who

⁵⁸ Sima Zerechi comment on “Community groups rally in support of immigrant and migrant workers,” John Bonner Audio Blog, December 2, 2009, <http://rabble.ca/category/podcasts/current-affairs/john-bonnar-audio-blog>.

⁵⁹ Choudry et al. *Fight Back*, 31.

apply for LMOs) and individualization (to the TFWs who must ‘take responsibility’ for ensuring their own rights are respected).

Also alarming is the construction of the temporariness of the jobs that TFWs do. What I mean is that if these jobs are not actually temporary then they are being *constructed* as temporary by the government and employers. A parallel can be seen with the ‘securitization of immigration’ discussed by Didier Bigo who believes that government, security experts, and others in power, construct immigration as a threat in order to affirm and strengthen their own authority as providers of security.⁶⁰ So, one might ask, if the temporariness of TFWs is also constructed, as I allege it is, then does this construction function in the same way as the ‘immigration threat’, i.e. to strengthen the authority of government to decide who is and is allowed to reside temporarily or permanently? Increasing the need for distinctions between citizens and non-citizens (or between those with and without permanent status) is a strategy to increase the importance of these distinctions and thus the power of those who have the authority to make these distinctions. This may sound far fetched, but it is in line with the move away from social citizenship which sees the state as owing various things (rights, services, etc.) to its citizens (i.e. the state as a tool of the collective public), towards the state as a hindrance to the market and those who control and profit from it. In this light, any individual, group, or movement that demands rights and recognition from the state can be seen as challenging to the state’s definition of citizenship.

⁶⁰ Didier Bigo, “Security and Immigration: Toward a Critique of the Governmentality of Unease,” *Alternatives*, 27 (2002).

Citizenship involves more than just legal status. Engin Isin traces the genealogy of citizenship and it is clear that what defines the concept is a demanding or a taking of a share of power and influence from those who have it by a previously dominated or object group.⁶¹ What is taken is influence over political, social, and cultural matters of a given polity. In the 20th century, citizenship was constituted by access to the welfare state. But, in any event, according to Isin and Neilsen, “whether the focus is on status or practice, it remains the doer rather than the deed.”⁶² On the other hand, they argue that what is important is not just the doer, but the deed itself, or rather the act. They are interested in ‘acts of citizenship’ which are those acts when, “regardless of status or substance, subjects constitute themselves as citizens or, better still, as those to whom the right to have rights is due.”⁶³ It is important to recognize that these acts of citizenship are still possible, even by those without *any* path to legal citizenship. Given the difficulty in doing so, acts by TFWs to claim the rights to which they are legally entitled (as well as those to which they are not (yet) entitled), can be seen as acts of citizenship, where citizenship is defined not by the state but by the person who acts as a citizen.

Conclusion

In this paper I have attempted to outline recent developments in the Canada’s TFWP, specifically related to so-called ‘low skilled’ workers. Specifically, I have focused on the PPORLLFT which has seen a massive increase in participants in recent years. Much, though not enough, attention has been given in recent years to exploitation and injustice related to the SAWP and LCP, and it seems clear that similar problems are endemic in the

⁶¹ Engin Isin, “Who is the New Citizen? Towards a Genealogy,” *Citizenship Studies* vol.1 no.1 (1997).

⁶² Isin and Neilsen, *Acts of Citizenship*, 2.

⁶³ *Ibid.*

PPORLLFT. Lack of enforcement of labour standards, and a generous approval of LMOs have led to a situation where certain occupations are entrenched as being for low-cost, easily exploited, rotational, foreign workers. As well, while some labour needs, for example those in relation to the Vancouver Olympics, can be seen as truly temporary, the lack of rigour in LMO process has led to the construction of certain undesirable occupations as 'temporary,' rather than forcing employers to offer a higher wage and or better working conditions in order to attract employees to these jobs. While this may not be financially practical for some small business owners, for the oil and gas, and construction industries, where a majority of PPORLLFT workers are, these increases are likely very possible.

I have also argued that the recent increase in TFWs is a symptom of a larger trend of neoliberalization of citizenship, which has seen the individualization of rights and the privatization of services. For Canada's TFWP this means that the relationship that matters is not between the foreign worker and the state, but between a private employer and an individual employee.

In terms of policy, it is clear that Canada's TFWP has two great shortfalls. Firstly, the lack of enforcement of laws and procedures and lack of monitoring of employers who employ TFWs completely undermines the entire TFWP, because all policy becomes meaningless. Secondly, giving only temporary status to workers, rather than permanent residency, serves to limit access to social rights and services, and to greatly increase the opportunity for and incidence of exploitation. Increasing Canada's TFW population instead of its permanent residents population is an ethically suspect development, which

is clearly shown by historical precedence even in Canada in the form of, at least, Canada's immigration policy towards the Chinese in the late 1800s and early to mid 1900s.

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