



Manitoba Federation of Labour
Presentation to the
Employment Services Act Review

March 25, 2008

Introduction

The Manitoba Federation of Labour welcomes this opportunity to share its views on the kind of amendments that are necessary to make the Employments Services Act more responsive to the needs of Temporary Foreign Workers and children recruited by talent, acting and modelling agencies.

As of January 2007, there were nearly 4,500 registered Temporary Foreign Workers in Manitoba – about triple the number a decade earlier. In her statement announcing this review on November 21, 2007, Labour and Immigration Minister Nancy Allan said *“protecting temporary foreign workers vulnerable to exploitation by requiring all third-party recruiters to be licensed by the province and be members in good standing of a law society in Canada or the Canadian Society of Immigration Consultants; and assisting employers in their recruitment efforts by making sure they have access to legitimate and reliable recruitment choices.”*

This is an important commitment to temporary foreign workers who are very vulnerable to those who would exploit their labour and deny them even the most basic of rights.

That such an initiative is overdue is underscored by Manitoba Federation of Labour President Darlene Dziewit in her statement on this issue last November: *“Over two months ago, Canada's poorly regulated Temporary Foreign Worker Program (TFWP) enabled a labour broker to lure 11 skilled trades' people to Canada for non-existent jobs. Those workers - known as the "Filipino 11" - became indentured labour after having to pay over \$10,000 each in so-called administrative fees to labour brokers and intermediaries that thrive within the unregulated margins of the TFWP.*

Promised jobs in their field at up to \$23 an hour, some sold their homes or took out loans to cover \$10,000 or more in fees demanded by labour brokers. But once in Canada, they were 'sold' to unscrupulous employers, kept in an isolated rural house, and forced to do menial jobs earning - if paid at all - a fraction of what they were promised.”

An overview of the plight of temporary foreign workers has been fleshed out by research conducted by central labour bodies in Canada and by individual unions. This presentation will include some research already completed by other Canadian Labour Organizations such as the Canadian Labour Congress and the Alberta Federation of Labour.

Temporary Foreign Workers

The Temporary Foreign Workers Program has greatly expanded under the guidance of the Harper government since 2006. The TFWP creates a number of classes of workers:

- the Live-in Caregiver Program,
- the Seasonal Agricultural Worker Program,

- a pilot project for occupations requiring lower levels of formal training,
- workers in the oil sands construction projects in Alberta.

Under the Program, Canadian employers are able to import workers from other countries when they claim there is a labour shortage in Canada and they are unable to fill jobs. Which of these cases are based in reality and which are instances of employers creating a low wage environment that Canadian workers refuse to participate in is a separate issue altogether and one that deserves further exploration.

The changes to the TFWP made since 2006 by the Harper government are focused on facilitating the process for employers. The Conservatives have:

- created lists of occupations and that qualify for fast tracking permits to import migrant labour,
- created a step-by-step guide in “employer-friendly language” on how to hire a foreign worker,
- assigned government staff “to assist employers seeking to hire foreign workers in cases where a labour market opinion is not required.”

The 2007 budget provided for an additional \$50.5 million over two years to “reduce processing delays and more effectively respond to regional labour and skill shortages.”

Employers are now not required to advertise for six weeks to attract Canadian workers – only a seven day advertising period is now required before the employer to apply for a Temporary Foreign Workers import permit.

What the federal government has not done is take care of workers affected by this program. There is a dearth of effective compliance, monitoring and enforcement mechanisms to ensure that Canadian employers respect the rights of the guest workers they invite into the country, as well as the rights of any Canadian workers they may displace. Not that the Harper government is unaware of these issues. They have heard repeatedly from human rights groups, the labour movement, immigrant settlement agencies, community-based migrant worker advocates, and faith groups - all of whom have been pointing out flaws in the program. Flaws such as how guest workers are fleeced by unscrupulous labour brokers who charge exorbitant “processing fees” in exchange for work permits; how workers are misled with false promises about wages and working conditions; how they are exploited, intimidated and threatened with deportation by some employers unless they accept terms akin to indentured servitude; how they are faced with social isolation and separation from their families and communities; and, additionally, how they are sometimes exposed to racism and discrimination from the communities in which they work.

Recent accounts carried by the Canadian Broadcasting Corporation underscore some of these issues. On March 17, 2008 Manitobans heard of how Marcelo Tagulinao of Manila Philippines was quoted a \$1,700 fee by a Manila based consultant to fill out forms that were available on-line for free. The consultant, a member registered of the Canadian Association of Professional Immigration Consultants, said she is doing nothing illegal.

The same report details the activities of illegal recruiters. Companies seeking foreign workers to fill jobs in Canada hire recruiters to find workers. In some cases, the recruiters charge fees to the workers, in addition to the fees collected by the Canadian employer, a practice that is illegal in the Philippines. According to Melchor Dizon, a director of the Philippine Overseas Employment Administration, “The workers have to sell their home and properties just to work abroad...” The report goes on to identify jobs in Canada as an important lure for illegal recruiters. Dizon said “Often immigrants leave home only to find out later they’ve been had.”

On March 18th, 2008, another CBC story detailed the plight of seven Filipino truck drivers lured from the Middle East to Manitoba. Once here, the men were informed that they must sign a contract promising to pay the Montreal based, Mercan Capital Ltd., a recruiting firm \$5000 for its services. Following that, the men had so little money between them that they relied on donated food from the Manitoba Filipino community in order to survive. The report goes on:

Mercan Capital Ltd. then told them they'd have to pay even more.

"After you pay the \$5,000, you have to bring extra money to pay for the school for driving," said another of the men.

The men's debts each reached more than \$9,000.

There are several problems with the contracts the men signed, according to Ken Zaifman, a Winnipeg immigration lawyer.

The men were charged a recruitment fee, which is illegal under Manitoba's Employment Services Act.

In addition, the contract includes clauses saying if the job ends before two years are up, the men are on the hook for \$5,000 more — and if they discuss the terms of the contract with anyone, they could have to pay \$2,500. While neither of those clauses are illegal, Zaifman said he questions their enforceability.

On Saturday March 22, 2008, the Winnipeg Free Press carried a story outlining the case of Adelaida Perena. She was employed by a Winnipeg family in a capacity not authorized by her work permit.

A previous nanny employed by the same family claimed that the employer hired her out to work for other families without paying her and putting her immigration status at risk. Ironically, she had first met the family when she was referred to a family member to represent her in dealings with the Live-in Care Giver Program. In her civil suit, which was settled out of court, she claimed she was paid less than the amount agreed to, required working unpaid overtime.

Charges under the Immigration and Protection Act are pending in connection with the Perena case.

These kinds of stories are legion in Canada – stories that recount in disturbing detail how foreign workers can be victimized. To illustrate this, the following anecdotes are contained in Canadian Labour Congress papers:

September 2006, Park Place Seniors Living Ltd. laid off some 70 long-serving unionized care aides in Kelowna, B.C. who were earning a wage of just over \$20 per hour. The private seniors' care facility then hired a private labour contractor, AdvoCare, to provide care services for the 149 residents of the facility. AdvoCare posted the positions at \$14 to \$15 per hour, and when the former employees refused to accept the reduced wage rate, AdvoCare cited a "labour shortage" in its application to hire migrant workers under the government's Foreign Worker Program. In addition to reduced wages, AdvoCare offered a significantly reduced benefits package, eliminating sick leave, long-term disability, paid vacation and pension benefits previously held by the care aides.

In another case, the B.C. & Yukon Territory Building & Construction Trades Council (BCYT-BCTC) recently discovered that the centuries-old racist practice of using exploited workers from overseas to build major infrastructure projects like Canada's transcontinental rail line was being repeated today.

A Canadian-Italian consortium involving SNC Lavalin corporation and an Italian company called SELI Tecnologie is collaborating in the construction of twin tunnels for a rapid-transit line in downtown Vancouver known as the RAV line. The consortium had brought in temporary construction workers from Costa Rica, Columbia and Peru. They were working 11 hours a day, six days a week on the RAV line project and that for most, their hourly wage was less than \$5 per hour with no overtime bonus. If Canadian unionized workers had been hired, the prevailing wage range would have been between \$25 and \$30 an hour plus overtime.

Hazardous workplaces

Participants in the Foreign Worker Program face not only economic exploitation, but also a heightened risk of injury or death. In northern Alberta in late April of this year, 27-year-old Chinese scaffolder Liuhongliang and 33-year-old electrical engineer Ge Genbao were both killed when the roof of the massive oil container they were working on collapsed. Four others were injured. They had been working for a

Chinese company contracted by Canadian Natural Resources for work on its Horizon tar sands project. The company plans to bring 500 more migrant workers in on the program. A second tank collapsed on May 12, leading the Alberta Federation of Labour to call for the immediate shutdown of the work site.

Questions persist about why these two workers died and a dozen others were injured. Were there adequate workplace safeguards in place? Were workplace hazards made clear and fully understood? Officials from the province's occupational health and safety department are conducting their own investigation.

As abundant the news stories are that mirror the scandalous details of the above examples, it is our belief that they represent the tip of the iceberg. In many jurisdictions, action by provincial authorities is complaint triggered with no "third party" complaints accepted.

There are many barriers inherent in this process. Many Temporary Foreign Workers are reluctant to complain, for fear they will lose their Canadian based employment and be returned to their country of origin. Many are unaware of their rights under Manitoban and Canadian law or don't know how to carry their complaint forward. In many cases, lack of proficiency in either of Canada's two official languages is a further barrier. And, in far too many cases, their homeland experience discourages standing up for ones rights in the face of employer or government authority.

Alberta Federation of Labour Experience

The Alberta Federation of Labour (AFL) established a Temporary Foreign Workers Advocate Office in April 2007, using the services of Edmonton lawyer Yessy Byl. Byl's six month report to the AFL was released in November 2007. This report, to our knowledge, offers a unique look at the myriad of issues that face Temporary Foreign Workers in Canada. While the number of cases dealt with by the Advocates office is likely higher in Alberta than they would be in other jurisdictions due to the large number of Temporary Foreign Workers there, we believe that similar issues exist in Manitoba and elsewhere in Canada.

In the six month reporting period, the Advocates office was swamped by more than 1,400 contacts from foreign workers or their Albertan supporters. Logistics meant that only 123 case files were able to be opened and addressed.

These contacts can be separated in several broad theme areas:

1. Wages and working conditions
2. Brokers

3. Inadequate Housing
4. Lack of Rights Enforcement
5. Red Tape Barriers
6. Trade Certification Issues
7. Enforcement of Hiring Contract Provisions

While similar research has not been conducted into the circumstances surrounding Temporary Foreign Workers in Manitoba, it is our opinion that many if not all of the issues noted by the Alberta Federation of Labour (AFL) and the Canadian Labour Congress (CLC) research affect those workers in Manitoba.

The following are recommendations drafted by the CLC and the AFL in their reports and bear repeating here. Terminology has been edited to localize them to Manitoba.

1. The expanded Temporary Foreign Worker (TFW) program must cease, and be reverted to its original, pre-2002 purpose and process. Instead, the immigration system should be reformed to make permanent immigration more accessible and efficient. Foreign workers coming to Canada should be afforded the rights of permanent immigrants. Canadian employers should turn to training of existing Canadian workers, employment of under-represented groups in the labour market (aboriginals, people with disabilities, permanent residents), and permanent immigration to solve their labour market problems.
2. TFWs who have worked the equivalent of two years of employment within a three-year period should be entitled to apply for permanent immigration status. A similar system is in place for domestic live-in caregivers.
3. TFW work permits should not state the employer name. Permits should be issued for a particular occupation and province so the TFW is not tied to a specific employer, allowing them to switch employers without penalty if required.
4. The federal government should explicitly prohibit the charging of fees to skilled TFWs by brokers or by employers. It should establish a team with the resources to investigate and enforce the prohibitions.
5. The federal government should set up internal “ombudsperson” offices both within Human Resources Development Canada (HRDC) and within Citizenship and Immigration Canada (CIC) to handle complaints and to assist TFWs in trouble. This function should include assisting TFWs in finding jobs with employers with Labour Market Opinions (LMO). Ombudsperson contact information should be provided to all TFWs when issued work permits. The ombudsperson officials should have the ability to maintain confidentiality in the event that a worker reports that they are working illegally due to broker or employer arrangements.

6. The TFW program as applied to unskilled workers should be governed via agreements with other countries, and should clearly prohibit the use of brokers, etc. This will establish formalized links between governments, which should decrease profiteering and exploitation. A precedent already exists in the agricultural worker program.
7. Current guidelines requiring a contract of employment and obligating the employer to certain commitments should be extended to skilled workers. Employers are not required to provide housing or airfare to skilled workers, and should be required to do so.
8. Both HRDC and CIC should have dedicated processing functions to grant LMOs and process changes to work permits to allow for TFWs to leave abusive or unsatisfactory work situations. This process – from the granting of a LMO to the issuance of a work permit - should not take more than 4 weeks.
9. HRDC should be funded for a meaningful investigative role with respect to Labour Market Opinions, including the ability to conduct “audits”.
10. The government of Manitoba should establish an arm’s-length TFW Advocate office to assist TFWs with work-related and immigration complaints. All services should be provided free-of-charge to TFWs.
11. Until such time as the federal government enacts protections, the Manitoba government should amend its legislation and strengthen its enforcement processes to:
 - a) make the employers legally liable for any monies improperly charged by recruiters to employees;
 - b) require the bonding of employment agencies licensed under the legislation.
12. The government of Manitoba should strengthen legislative provisions to allow for an immediate suspension of licences for employment agencies (brokers) that charge employees fees for recruitment and placement. Settlement fees should be restricted to the sum of \$1,000. Recruitment agencies should not be permitted to charge for any visa or permit processing charges.
13. The government of Manitoba needs an active enforcement regime for TFWs. Complaint-driven processes are insufficient. They should establish a team of Employment Standards, WCB and OH&S officers dedicated to issues dealing with TFWs. The team should utilize a more pro-active enforcement model of investigations, unannounced audits and preventative inspections.
14. The government of Manitoba should ensure that TFWs receive education about their basic legal and work rights before or commensurate with the start of employment at a location away from the workplace and not monitored by the employer.
15. The government of Manitoba should host education seminars for immigrant-serving agencies and ethnic community groups about the TFW program and what services are available to TFWs.

16. Immigrant serving agencies have the expertise and community connections to assist TFWs. Immigrant agencies should be permitted to provide services to TFWs and receive appropriate funding from both federal and provincial governments for these services.

17. Employers should be required to post a bond, representing one month's wages and return airfare for all TFWs they hire. If the employer fails to provide a minimal level of employment, the bond would be released to the TFW.

18. Employer obligations regarding housing should be clarified and strengthened. Accommodation standards (e.g. occupancy limits, quality criteria) should be explicit, and employers should be prohibited from earning excessive profits from accommodation of TFWs. These obligations should be encoded in the LMO approval.

19. Employers importing workers in the certified trades should be required to provide proof of efforts to use and train domestic apprentices before being issued a LMO.

20. Certified trade occupations should be required, as part of their LMO approval, to provide training, education support and language assistance to TFWs and to provide proof that such training is arranged before a worker is issued a work permit. Employers who fail to provide assistance should be barred from future LMOs.

21. The MFL recommends that the levels of fines contained in the Act, to be levied upon conviction for transgressing its provisions, ought to be increased substantially in order to provide an effective incentive to obey them. As well – violating the Act's provisions should result in the violator's registration being cancelled.

Of the themes contained in the above recommendations, two are paramount – proactive enforcement by the Federal and Provincial governments, and education – both in the community and for the Temporary Foreign Workers themselves. Having standards in one thing, but they are meaningless unless the workers, employers and community are aware of them. Having built-in protections is another thing, but ineffective when they are complaint triggered and not actively enforced.

Manitoba Federation of Labour President Darlene Dziewit underscored critical issues in a statement made last November:

Organized Labour is calling for an immediate moratorium of the government's Temporary Foreign Worker Program (TFWP) until a comprehensive investigation of identified abuse and exploitation cases takes place. The full suspension of this program is necessary as the government officially acknowledges that it cannot "monitor the working conditions offered by the employer following entry into Canada" - that it cannot protect these workers...

...The Federal Conservative Government has done nothing to protect those most vulnerable workers from unscrupulous employers and brokers. It has simply remained passive in the light of this latest sad story of abuse of temporary foreign workers.

Children As Models, Actors

When Labour and Immigration Minister Nancy Allan made this review of the Employment Services Act public, she made specific reference to the increasing practice of the recruitment of children, mostly girls and young women under the age of majority, to become models and actors and the need to ensure their protection against exploitation.

Apparently, it is not uncommon for young people and their parents to be approached by “talent scouts” or recruiters from agencies that specialize in the recruitment of child models and actors. The targets of recruitment can be young as pre-teenagers.

What follows can be very expensive and potentially unsafe for the child. There are classes to teach acting, grace, poise, singing, dancing, elocution and (no doubt) other skills that are promised to lead to a bright and well paid future as a child actor or model. This may or may not be a well founded prediction. Employment opportunities may well take the young person beyond Manitoba’s (or even Canada’s) borders and beyond the shelter of Manitoba’s legal framework.

A survey of internet resources on the formulation of legislation and regulations governing the recruitment, training and employment of children as models and actors turned up very little for us to use as a guide on how to approach this topic.

But there are obvious issues that need to be addressed. In addition to the protections already extended to young people in the Employment Standards Code, there needs to be language enacted in the Employment Services Act to:

- Require all individuals or agencies engaged in recruiting minors to be registered and bonded in the province of Manitoba.
- Govern the activities of modelling and acting agents, managers and agencies who target young people and children for recruitment.
- Recruitment must be authorized and endorsed by the Ministry of Education to ensure the child’s education is not interrupted or compromised by these activities. When required by the Ministry of Education, the agency will provide a tutor to provide schooling that meets Manitoba Education standards.

- Tight restrictions on the performance of stunts, hours of work, mandatory meal and rest breaks, and duration of the work day must be drafted and enforced to protect the child's health and safety. Job sites will be required to provide the services of a qualified first aid practitioner.
- Restrictions must establish an acceptable amount that can be charged by an agent manager or agency for things like commissions, the cost of preparing photo portfolios, professional development classes and other training directly related to purpose for recruitment.
- The assignment of travel for work or audition purposes for young people should only be permitted when the child is accompanied by a parent or legal guardian, or a responsible adult with written authorization from a parent or legal guardian. In any event, the final responsibility for the security and safety of the child shall be shared by the parents or legal guardian and the agent or agency. An important objective of this provision is to guard against the exposure of the child to emotional, physical or sexual abuse by employers, colleagues, and/or customers.
- The US based Screen Actors Guild has negotiated tight restrictions on the following:
 - a) Limit the personal information on a child's resume and headshot.
 - b) Use the minor's agent or manager's address or phone number instead of personal information.
 - c) Do not include the child's school name or other information that can be used to easily locate the child (i.e. shirts with school insignia).
 - d) Never put Social Security Number on sign in sheets.

Similar restrictions should be included in the Manitoba Employment Services Act.

- The child's earnings need to be protected to ensure that a significant majority of the earnings are held in trust for the child's benefit. In the US, the so-called Coogan law has evolved to address this issue. In January 1, 2000, changes in California law affirmed that earnings by minors in the entertainment industry are the property of the minor, not their parents. Since a California minor cannot legally control their own money, California Law governs their earnings and creates a fiduciary relationship between the parent and the child.

Conclusion

The Employment Services Act has not been reviewed or amended since 1987. It is to the credit of the Government of Manitoba, the Minister of Labour and Immigration and her departmental advisors that the need for this review was identified and assigned a high priority.

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