Abstract

In recent years, temporary foreign migration programs in Canada have expanded beyond the agricultural and caregiving sectors, allowing employers in a variety of areas, such as the restaurant, hotel and construction industries, to recruit temporary foreign workers. An unprecedented number of migrant workers have been admitted to Canada, creating two tiers of temporary foreign workers: those who can apply for permanent residence and those who cannot. This policy brief discusses the implications of temporary foreign migration policy and regulatory frameworks for low-skill workers from Latin America and the Caribbean. It questions the quantitative and temporary nature of labour shortages in Canada, which are at the very foundation of the temporary foreign worker programs. It highlights these workers’ unequal access to resources, and explains how their non-access to permanent residency makes them all the more vulnerable. Finally, the policy brief argues that all workers, regardless of skill, could be given access to permanent residence to equalize opportunities.

Essentials

- Low-skill temporary foreign workers are recruited by industries in which there are both too few Canadian workers available and too few willing to fill labour shortages.

- Unlike high-skill foreign workers, most migrants who come under the Temporary Foreign Worker Program do not have access to the pathways to citizenship even though labour shortages in their industries are often enduring.

- Low-skill temporary foreign workers make important contributions to the Canadian economy, sustaining occupations Canadians do not fill and facilitating the maximization of profits in key sectors by working for low wages and in precarious conditions.

- Low-skill foreign workers’ status as “temporary” and “foreign” creates barriers to a meaningful assertion of employment rights, thus making them vulnerable.
Introduction

Traditionally, there have been two main temporary foreign migration schemes in Canada. First, the Seasonal Agricultural Workers Program (SAWP) allows migrants from Jamaica, Mexico, Trinidad and Tobago, Barbados and the Organization of the Eastern Caribbean States to work on Canadian farms and greenhouses on a seasonal basis. Second, the Live-In Caregiver Program (LCP) facilitates the work of migrants in private Canadian homes. Participation in the LCP is mainly from the Philippines, with migrants from Latin America and the Caribbean (LAC) participating in low numbers. At the end of the employment contract, seasonal agricultural workers must return home, whereas live-in caregivers can apply for permanent residence.

Since the 2006 enactment of the Temporary Foreign Workers Program’s (TFWP) Pilot Project for Occupations Requiring Lower Levels of Formal Training, an unprecedented number of foreign workers have been admitted to Canada to work in restaurants, hotels, construction and factories, for example. This scheme ties temporary foreign workers’ status to their employers, making it difficult for them to assert their rights and making them vulnerable to exploitation. This reality has generated debates about their rights and entitlements in Canada—particularly access to permanent residence—and concerns about the divisions along citizen and non-citizen lines that it creates. Despite certain reforms intended to better protect the employment rights of temporary foreign workers, the structural barriers engendering unequal treatment and access to resources remain unchanged.

Recent trends

In recent years, Canadian temporary foreign migration programs have been expanded. In 2003, the TFWP was created as a regulatory framework to oversee the various existing temporary work programs and meet Canadian labour market demands for workers in designated professional occupations in the health, science and social science fields and in managerial occupations in the business, finance, sales, manufacturing and trade fields. In 2006, the TFWP was expanded through the Low-Skill Pilot Project. As a result, there has been an increasing and steady entry of foreign workers to Canada.

Under the TFWP, workers are granted a permit to enter and remain in Canada to perform specific work for a given employer and for a determined period of time based on the duration of the employment contract. Once they have been in Canada for four years, they are required to leave without the right to reapply under the TFWP for the next six years. Under the SAWP, workers are allowed to return every year, but their stay cannot exceed eight months per year.

The entry and stay requirements under all of these programs tie temporary foreign workers to their employers. When the employment contract ends for any reason, so does the worker’s status. As legal scholar Audrey Macklin explains in a 2003 issue of the International Migration Review, temporary foreign workers on work permits enter as parties to private employment contracts. The terms may vary, but the end of the work relationship signals the end of the worker’s relationship with Canada.
Those temporary foreign workers that fall under the skilled categories can apply for permanent residence after one or two years, depending on the program, through various federal or provincial programs that have been created specifically for high-skill workers. Live-in caregivers can also apply after 3,900 hours of work or 24 months. However, those temporary foreign workers deemed low-skill cannot apply for permanent residence through any of the federal or provincial work programs, even after working and living for up to four consecutive years in Canada.

The stated purpose of the TFWP is to address short-term labour and skills shortages in Canada. The program is based on the premises that there are not enough Canadian workers to meet labour market demands and that these labour shortages are temporary.

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Between 2006 and 2008, government officials kept stressing that labour shortages were quantitative, meaning that there are not enough workers in Canada to meet demand. For example, Monte Solberg, Minister of Human Resources and Skills Development in 2007-2008, stated publicly that “labour force growth is slowing,” “help wanted signs are springing up across the country,” “Canadian birth rates are low,” “baby boomers are set to retire in record numbers,” and “labour shortages are negatively affecting the Canadian economy.”

The TFWP is meant to fill the gap where local employers have made reasonable efforts to recruit and train Canadians by offering wages and working conditions that will attract local workers. If they are unable to attract local workers, they are required to obtain a Labour Market Opinion (LMO) from Human Resources and Skills Development Canada before recruiting foreign workers. As stated on the Citizenship and Immigration Canada (CIC) website, a positive LMO will show that a foreign worker is needed to fill a job vacancy and that there is no Canadian worker available to do the job.

However, labour shortages are not always quantitative. Temporary foreign workers are also being recruited to meet qualitative labour shortages, as observed by practitioners and scholars alike. They are often recruited to do work that Canadians are unwilling rather
than unavailable to do, especially at the lowest ranks of the labour market where wages and working conditions do not attract Canadian workers. Consequently, after the introduction of the Low-Skill Pilot Project, there was a rise in the recruitment of temporary foreign workers as fast-food and restaurant helpers, truck drivers and factory workers, among other occupations in the low-skill sector.

**If labour shortages are neither really quantitative nor temporary, how do we justify a temporary migration scheme?**

Analysts have also argued that many of the labour shortages are not temporary. For instance, the SAWP has existed since 1966. Every year since then, employers have needed temporary foreign workers to pick fruits and vegetables on Canadian farms and greenhouses. It is well documented that some of these workers, especially from Mexico, return every year, in some cases for over 20 years.

If labour shortages are neither really quantitative nor temporary, how do we justify a temporary migration scheme? The disjuncture between policy and reality raises questions regarding the purpose and effects of the TFWP. Has the TFWP come to meet immediate but mostly non-temporary needs in disfavored low-wage sectors? If the labour needs are not temporary, why exclude low-skill workers from the pathways to citizenship?

**Implications of labour migration**

Designed to ensure that the employment of temporary foreign workers supports economic growth in Canada, the TFWP draws a clear link between labour, migration and the economy. It represents the latest trend in immigration policy that draws labour immigration and utility to the Canadian economy tighter. In this context, as the Ontario Council of Agencies Serving Immigrants (OCASI) highlights on its website, “immigrants are understood and treated as economic units to be brought here through temporary visa arrangements.” This has implications for those foreign workers doing work that Canadians do not want at the bottom of the social ladder: it reproduces precarious working conditions.

As non-citizens whose temporary status is contingent on their employment contract to a specific employer, low-skill foreign workers are vulnerable to exploitation. Not all employers will be exploitative; however, the structural problem remains: temporary status allows maintaining wages and working conditions that many Canadians would find unacceptable. Even if they are subject to the same labour standards as Canadians, foreign workers’ fear of employer retaliation leading to layoff and loss of status deters them from asserting their rights. In this context, entitlement to the same rights does not mean equal access.

**Without access to permanent residence, the classification of low-skill migrant workers as “temporary” and “foreign” makes them unequal.**

A 2011 survey of 520 workers in the Greater Toronto Area by the Workers Action Centre on working conditions in the low-skill sector provides insight into the relationship between the type of work performed and violations of employment standards and working conditions. The study revealed that the right to minimum wage and overtime pay is not a reality
for many workers in this sector and that basic labour standards are often violated.

Without access to permanent residence, the legal classification of low-skill migrant workers as “temporary” and “foreign” makes them unequal. As Nandita Sharma suggests in a 2001 issue of The Canadian Review of Sociology and Anthropology, their work and immigration status differentiates them from Canadians and immigrants with permanent residence or access to it by establishing unequal access to resources and power.

This inequality is the result of an “othering” process. As non-citizens, foreign workers become outsiders within Canada despite their admission into the country and their contributions to the economy, doing work Canadians are unwilling to do. This distinction between “us” and “them” legitimizes the differentiation of rights and entitlements in Canada along citizen and non-citizen lines, as Sharma explains. Further, it facilitates employers’ differential treatment of temporary foreign workers depending on their status and country of origin by normalizing unequal treatment.

For temporary foreign workers from LAC, which made up 20 per cent of all temporary foreign workers in 2009, this can mean unequal treatment in relation to both Canadian workers and other foreign workers from European countries. For example, LAC temporary foreign workers hired in 2006 to construct a transit line from downtown Vancouver to the city’s international airport were paid almost half as much as their Canadian and European counterparts for the same job. They also received lower-quality housing, meal arrangements and smaller expense allowances.

Figure 2
Employment standard violations reported by temporary workers, Greater Toronto Area

than the European workers. The British Columbia Human Rights Tribunal concluded that the workers established a *prima facie* case of discrimination. In the reasons of its December 2008 decision, the Tribunal concluded that the employer’s evidence “reflects the attitude, expressed by several of [his] witnesses, that the European workers are generally superior to, more valuable, and more deserving of preferential treatment, as compared to the Latin American workers.” As Janine Benedet states in an International Association of Law Schools paper, “the race or national origin of the Latin American workers intersected with their vulnerability as temporary foreign workers to produce an opportunity for exploitation.”

**Temporary status often leads migrants to tolerate wages and working conditions that Canadians find unacceptable.**

The TFWP encourages a drive to maximize profit at the expense of workers since temporary status often leads migrants to tolerate wages and working conditions that Canadians find unacceptable. Temporary foreign labour has become the solution to Canada’s qualitative shortage in undesirable occupations. Employers could offer wages and working conditions that attract Canadian workers, but as Andrew Cardozo explains in a 2008 article in the *Toronto Star*, that would “drive up the costs of goods. Are people going to pay $3 for a Tim Hortons coffee?”

According to Minister of Citizenship, Immigration and Multiculturalism Jason Kenney, as stated in a 2010 CIC news release, “If Canada wants to succeed in the global economy, our country must be able to attract and retain immigration with the skills it needs while preparing us to face the challenges of the future… our governments’ combined efforts will help position Canada as a destination of choice for the world’s best and brightest.” However, all workers irrespective of their skill level are crucial to the economy. Labour shortages in many industries are not temporary, and consequently the status of low-skill foreign workers could be reconsidered.

**Conclusion**

Temporary foreign workers may not be Canadian, but they find themselves within the country’s territorial boundaries. In the 1985 *Singh* decision, the Supreme Court of Canada clarified that the Canadian Charter of Rights and Freedoms, which guarantees equality before the law and the right to equal protection and benefit of the law without discrimination, applies to foreign nationals in Canada regardless of their status. Canadian labour standards also apply to all workers regardless of their status. Despite these formal rights, the “temporary” and “foreign” status of low-skill workers generates inequality. Their status and differential treatment under the TFWP normalizes this inequality.

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Foreign workers fill labour needs that are not always temporary. They make important contributions to the Canadian economy irrespective of their skill level in occupations that many Canadians are unwilling to take. This workforce is at the base of the country’s economy, yet it is treated as disposable and less worthy. Opening pathways to citizenship would go a long way to recognize the value of temporary foreign work and to reduce the vulnerabilities of migrant workers.
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Further readings


