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THE IMPACT OF THE TEMPORARY FOREIGN WORKER PROGRAM ON THE CONSTRUCTION LABOUR FORCE IN WESTERN CANADA (2003-2015)

POLICY ANALYSIS AND RECOMMENDATIONS

Prepared for LiUNA

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April, 2016

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EXECUTIVE SUMMARY

For more than a decade, Canada has faced a desperate need for permanent residents and citizens, while a dysfunctional immigration system has been bogged down by a bureaucratic backlog of applications. Rather than address the backlog, the federal government decided to rapidly expand the Temporary Foreign Worker Program (TFWP). This is the most obvious sign of a failed immigration system under the Conservative government (2006-2015) unable to fill its critical role in the Canadian economy. The main aim of this Research Paper is to provide an historical, economic and political analysis of the TFWP and the construction labour force in Western Canada. This provides the required context for the new Liberal government to review the TFWP and consider a package of twelve policy recommendations.

History of Indentured Labourer in Canada

About 15,000 Chinese workers who were imported to Canada for the construction of the Canadian Pacific Railway in the 1880's were indentured labourers. Employers used Chinese workers to fill a shortage of white workers and dampen wages in the local labour market. The Canadian government also had an immigration policy between 1898 and 1911, which almost completely excluded African-Americans, who tried to escape segregation, lynching and racism in a number of U.S. states. Canada's immigration policy has excluded and denied specific racial groups the rights and freedoms associated with full citizenship. The TFWP is based on a social and economic relationship called indentured labour, where foreign workers are imported to Canada by an employer for a set period of time.

Origins of the TFWP

The TFWP has its recent historical roots in the Seasonal Agricultural Worker Program (SAWP), which was launched in 1966 to import temporary workers to Canada from developing countries for periods of six weeks to eight months. The creation of the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 marks the beginning of a shift in federal immigration policy towards temporary foreign workers (TFWs) instead of permanent residents. The TFWP was created in 2002 with the introduction of the Immigration and Refugee Protection Act (IRPA). It allowed companies to bring in TFWs to perform unskilled labour and established indentured labour as a permanent feature of the Canadian labour market.

Failure of Conservative Immigration Policy

The number of TFWs in Canada with work permits broke the 80,000 level in 1999 and began to increase rapidly. By 2006, the number of TFWs (160,854) surpassed immigrants entering Canada in the economic class (138,252). After 2006, the number of TFWs in Canada increased at an exponential rate and in 2008 (249,796) surpassed total immigration (249,252). This trend continued to 2011, when the number of TFWs (300,101) was greater than total immigration (250,758). The two main drivers of demand for TFWs were the backlog in processing applications for permanent resident status and the requirements for economic class immigrant selection.

Rapid Expansion of the TFWP

The TFWP was designed to allow employers to hire foreign workers to fill positions in the short-term, where there is a shortage of domestic workers. However, under the Conservative government the number of TFWs increased by 14% in 2006, and accelerated quickly to 24% in 2007 and 25% in 2008. In the first five years of the Conservative government (2006-2011), the average rate of increase was about 14%. The cumulative percentage increase between 2006 and 2011 was 69%. This policy undermined the national labour force, because there was no incentive for employers to search for domestic workers, before importing TFWs to fill vacancies. The TFWP became the faster and preferred way for employers to get immigrants to Canada to meet long-term labour shortages.

Exploitation and Human Rights on the Canada Line Project

The Canada Line construction project case study shows the federal and provincial governments failed to protect TFWs from exploitation and abuse by their employer on a major public sector infrastructure project. Initially, the employer paid the TFWs an illegal salary, well below even the minimum wage. After the TFWs joined a union, the employer illegally doubled the TFWs salary to undermine collective bargaining. The TFWs were coerced and intimidated by the employer to accept the offer, who were also allowed to illegally add the costs for housing, meals and airfare to their wages. The TFWs won a decision in the B.C. Human Rights Tribunal in 2008, which ruled they were the victims of discrimination. They won a landmark award and received cheques for back pay, expenses and injury to dignity.

Fatalities, Fraud and Exploitation on the Horizon Oil Sands Project

This Horizon Oil Sands project case study reveals that TFWs in Alberta were the victims of illegal construction practices, financial fraud and economic exploitation by a multi-national corporation on a major resource development project. The death of two TFWs in 2007 was the result of substandard methods proposed by Canadian Natural Resources Ltd for the construction of a storage tank. The report into the TFW fatalities revealed the foreign contractor did not provide a written, engineered plan for the assembly of the roof support structure. The chief engineer for the contractor, who developed the erection procedure, was not an engineer. The TFWs were crushed by falling steel. In addition, a group of 132 TFWs had their paycheques siphoned off by their employer. Most of the charges against the employers were dropped and the people responsible for the TFW deaths did not face criminal charges.

Canadians Displaced by TFWs on the Murray River Project

The Murray River coal mine case study shows the federal government allowed a foreign company to employ hundreds of TFWs at a mine in a region of B.C where there were experienced miners and a high level of unemployment. A federal court case revealed HD Mining manipulated the application process to import TFWs for the construction and operation of the mine. The company does not plan to replace the TFWs with local workers until the 11th year of production. This foreign investment has displaced Canadian workers, while communities are denied the positive effects of job creation. The policy has and will continue to exacerbate the unemployment problem in northeastern B.C. It has distorted the labour market by driving down wages in the mining sector and the rest of the economy. While the HD Mining operation has been suspended effective March 15, 2016, they may restart at a later date. The problem is still real.

TFWs Abandoned by Labour Broker on the Golden Ears Bridge Project

The Golden Ears Bridge case study shows the federal and provincial government failed to stop a labour broker from exploiting TFWs on a major public sector infrastructure project. Bilfinger Berger made an application to import TFWs, after claiming there was a shortage of skilled labour in Canada. There were unemployed workers in Canada who were qualified. About 80 Serbian TFWs joined a union and negotiated a collective agreement in 2007 with the labour broker. The TFWs were laid off without being paid. When the contractor found out, the subcontractors' bank accounts were seized by Revenue Canada. The TFWs were not eligible for EI, but deductions were made from their paychecks. The TFWs survived for more than a month on their own, before receiving B.C. government emergency funds. The union tried to get the TFWs new work permits, but new jobs were hard to find in a recession.

Recommendations

The new Liberal government should keep its election promise and implement a comprehensive set of reforms to the TFWP, which ensure Canadian jobs are filled with Canadians through the permanent immigration system. LiUNA recommends the new Liberal government make the following twelve policy changes to the TFWP.

Permanent Residency

There is an urgent need for the federal government to create a pathway to full citizenship for TFWs, when the demand for the worker exists and the worker wishes to become a Canadian citizen.

Labour Union Consultation

The federal government should implement a policy that requires an employer, who makes an application to employ a TFW, to consult with the specific union which performs the work. This will ensure Canadians are given first priority for job opportunities.

Advertising Requirements

The federal government needs to implement clear and expanded requirements for employers to advertise locally and across Canada on the Government of Canada's Job Bank, as well as its provincial and territorial counterpart, before hiring TFWs.

Qualifications

The federal government should implement new regulations that require TFWs to possess the same qualifications as Canadian workers, such as the Red Seal Standard.

Transition Plan

The federal government should require employers who hire TFWs to implement a transition plan on all public sector construction projects, which includes training-up of Canadian workers and a commitment of 25% apprentices, and ensure that TFWs are not brought in to hold apprentice positions.

LMIA Exemption

The federal government should make a commitment that the Labour Market Impact Assessment (LMIA) exemption under the BC Annex of April 2015, will not be accepted or applied.

Intra-company Transfers

The federal government should restrict Free Trade Agreement "Intra-company transfers" for construction workers, which includes the Trans-Pacific Partnership (TPP).

Wage Rates

The federal government should not use the provincial median wage rate, which is currently $22 per hour in B.C., and the prevailing wage rate needs to respect the "Craft" (Building Trade) package, which would include wage, holiday pay and benefits for industrial work. There should be no government discretion to add other terms of employment to reach or exceed these rates.

Reduce Work Permit Time

The federal government should limit TFWs to six month work permits in Canada to encourage employers to hire and train Canadian workers before TFWs. Employers of TFWs should reapply for an LMIA, which will allow the TFWP to respond more quickly to changes in labour market conditions.

Lay Offs

In the events of any lay-off, there is a need for the federal government to implement a policy that maintains the employment of Canadians during a recession or a period of lay-offs within a company. This policy would require employers to let go of TFWs and retain their local employees.

Enforcement

The federal government needs to operate a robust and sufficiently financed enforcement strategy to enforce the new regulations. Statistics Canada and ESDC need to set up a program to collect adequate data on the demand for construction trades in specific geographic regions, in order to properly monitor and enforce the TFWP.

Foreign Ownership and Competition

Foreign companies should not be allowed to bid on public infrastructure projects in competition with Canadian firms, and then employ TFWs under the most extreme conditions of economic exploitation. Foreign companies should not be allowed to make large direct investments in major resource projects on Crown land which are constructed and operated primarily by TFWs.

Final Comment

Some labour unions argue that the TFWP should be abolished due to the rapid expansion of the program, serious abuses by contractors and problems enforcing current regulations. If the new Liberal government does not implement a comprehensive package of policy reforms and enforce these new regulations, LiUNA will support the elimination of the TFWP.

1 - INTRODUCTION

1.1 Who is LiUNA?

The Labourer's International Union of North America (LiUNA) is a diversified private sector Union, which has approximately 100,000 active and retired members across Canada. In Western Canada, LiUNA represents the labourers craft in industrial, commercial and institutional (ICI) construction, as well as underground construction (tunneling), pipeline work and road building in B.C., Alberta, Saskatchewan, Manitoba and Yukon and North West Territories. The socio-economic impact of the federal immigration system and the Temporary Foreign Worker Program (TFWP) on the construction labour force in Western Canada is an important political issue for LiUNA.

1.2 LiUNA Leads Labour Movement's Efforts to Reform the TFWP

As the Conservative government (2006-2015) rapidly expanded the TFWP, LiUNA was leading the labour movement's efforts to defend the rights of Canadian and foreign workers. In a period of economic growth in Western Canada between 2002 and 2008, TFWs were employed instead of local workers for the construction of several major development and infrastructure projects. During this construction boom, TFWs were employed primarily in Ontario, Alberta and B.C. and made up a small share of Canada's workforce. But, the socio-economic impact of TFW's on the ICI construction industry in Western Canada could not be ignored, as their number increased exponentially.

Source: B.C. Government – The TFWs who operated the TBMs on the Canada Line project were laid-off on March 2, 2008, right after the TBM broke through the ground into the future site of the Waterfront Station.

In response, LiUNA launched several legal actions and an aggressive campaign to expose the abuse of the TFWP by construction contractors, such as labour code, employment standards and human rights violations, as well as low wages, intimidation, racism, discrimination and the displacement of Canadian workers.

LiUNA organized the TFWs who operated the tunnel boring machine (TBM) on the Canada line project in Vancouver. This was the first group of TFWs in Canadian history to achieve union certification in June 2006. The BC Human Rights Tribunal ruled in December 2008 that the employer discriminated against the TFWs by treating them differently than European workers. The TFWs were laid-off on March 2, 2008, which affected the hearing of evidence before the Tribunal regarding a complaint filed by LiUNA affiliate the Construction and Specialized Workers Union (CSWU) about exploitation and discrimination (Chapter 7).

There was a radical shift in Canadian immigration policy under the Conservative government, which increased the number of low-skilled TFWs entering Canada, while providing no path for these workers to become citizens. These disposable workers were sent back to their

home countries, after construction activity slowed down in Western Canada during the global financial crisis and recession in 2009. LiUNA pushed the federal government to reform the TFWP, which had serious problems with illegal brokers, employer fraud, safety, fatalities, as well as a lack of monitoring, enforcement, education and support services.

From LiUNA's perspective, the expansion of the TFWP under the former Conservative government established a revolving door immigration system, which was based on the exploitation and reproduction of an underclass of vulnerable and disposable workers. These TFWs had no legal rights and protections. For this reason, immigration policy under the Conservatives was a constraint on sustainable economic growth and employment in Canada.

LiUNA recommends that the new Liberal government implement a comprehensive set of reforms to the TFWP, which ensures Canadian jobs are filled with Canadians through the permanent immigration system. This new policy aims to stimulate economic growth, create employment and generate tax revenue for public investment in the construction of new infrastructure.

1.3 Aims and Objectives

The main aims of this Research Paper are to:

- Identify, collect and interpret statistical data on the numbers of permanent residents and TFWs entering Canada between 1993 and 2014 (Part I)
- Undertake historical, economic and policy analyses of the TFWP in Western Canada, which includes the position of the major political parties in Canada and their plans for reform (Part I):
- Provide case studies which document the excessive abuses of the TFWP by contractors, as well as problems the federal government is having with the current regulations (Part II);

The main objective of the Research Paper is to support LiUNA in its efforts to reform the TFWP, by developing a package of twelve policy recommendations, which will be presented to the new Liberal government. The conclusions and recommendations will also be used to raise awareness within the labour movement and for public education.

1.4 Structure of the Research Paper

To achieve this objective, the Research Paper is broken into two main parts, which include the following nine chapters.

PART I: HISTORY AND POLICY ANALYSIS OF THE TFWP

Chapter 2: Brief History of Indentured Labour in Canada
Chapter 3: The Failure of Canadian Immigration Policy and the TFWP (1993-2014)
Chapter 4: The Rapid Expansion of the TFWP Under the Conservatives (2006-2014)
Chapter 5: The New Liberal Government and the TFWP (2015)
Chapter 6: Conclusion and LiUNA Policy Recommendations

PART II: CASE STUDIES IN WESTERN CANADA

Chapter 7: Exploitation and Human Rights on the Canada Line Project
Chapter 8: Fatalities, Fraud and Exploitation on the Horizon Project
Chapter 9: Canadians Displaced by TFWs on the Murray River Coal Project
Chapter 10: TFWs Abandoned by Labour Broker on the Golden Ears Bridge Project

THE IMPACT OF THE TEMPORARY FOREIGN WORKER PROGRAM ON THE CONSTRUCTION LABOUR FORCE IN WESTERN CANADA (2003-2015)

PART I: HISTORY AND POLICY ANALYSIS OF THE TFWP

2 - BRIEF HISTORY OF INDENTURED LABOUR IN CANADA

The TFWP allows foreign workers to arrive in Canada using a visa issued by Immigration, Refugees and Citizenship Canada (IRCC), which has their employer's name on it. Employers import TFWs into Canada to work for a set period of time. During their stay in Canada, TFWs are often dependent on employers for housing, food and transportation. It is very hard for TFWs to get Employment and Social Development Canada (ESDC) to change the employers name on the work permit. The TFWs are bound to their employer, even when serious problems arise. They have difficulty changing jobs for any reason or seeking other employment. The purpose of this chapter is to briefly explore Canadian history to explain the origins of the TFWP and provide a definition for a social relationship called indentured labour.

2.1 Is the TFWP a Form of Modern Slavery?

Comparisons are being made in Canada between the TFWP and slavery, due to the nature of the social relationship between TFWs and their employers. The term slavery makes most Canadians think about the Trans-Atlantic slave trade, which involved the kidnapping and transportation of at least twelve million men, women and children from Africa to the Americas over a period of more than three and a half centuries.

The system of slavery in the U.S. and Canada before the Civil War is defined as chattel slavery, which means a person is owned forever, and their children and children's children are enslaved. Slaves were property who could be bought, sold, traded or inherited. They were abused, raped, branded, bred, exploited or murdered. Slave society is a based on a relationship between slave owners and slaves.

Indentured labour was imported to Canada from the 17th to 19th centuries, when wealthy individuals and businesses paid the passage of a person from Britain or Europe, who wanted to come to the New World. Immigrants worked for a period of five to seven years for the employer who paid their passage. This relationship is defined as indentured servitude (Justin Beach, 2014). TFWs are indentured labourers, not slaves.

Source: *Wikimedia Commons - Group of African men, women and children captured and in shackles, are herded by men with whips and guns in order to become slaves.*

A group of English convicts being transported to the colonies as indentured servants in the 17th or 18th century. They are being put aboard a ship on the Thames River at Blackfriars. The group includes young children.

Under the colonial immigration system in Canada, indentured labourers were promised freedom and citizenship, after they worked for a period of servitude. In sharp contrast, the TFWP does not offer the same promise of citizenship that was provided to Europeans more than two hundred years ago. Today, low skilled TFWs are sent back to their country of origin, when their period of employment is done.

In this respect, the conditions of indentured servitude under the TFWP are inferior to working conditions in the 17th-19th centuries.

2.2 Canadian Immigration Policy and Racialized Exclusion

Immigration policy has played an important role in the social, economic and cultural development of Canada throughout its history. Some argue there is a tradition of immigration in Canada based on the promise of permanent residency or full citizenship, which refers to the history of European indentured labourers in the 17th -19th centuries. However, others argue Canada has been built upon the labour of racialized groups, who were persistently excluded and denied the rights and freedoms associated with full Canadian citizenship (Gwen Muir, 2013).

The government of Canada did not officially state its racial preference for specific groups of immigrants. However, the history of Canadian immigration policy shows that people from Great Britain and northern Europe were favoured. Other Europeans were somewhat lower on the list, with people of Asian and African descent even lower still.

2.2.1 Were Chinese Railway Construction Workers the First TFWs?

One of the most significant events in Canadian history is the construction of the Canadian Pacific Railway in the early 1880's, primarily by indentured Chinese labour. The Canadian government awarded several contracts to an American syndicate in 1880 to build a railway between the coast of B.C. and a location near the B.C.–Alberta border.

The syndicate was asked to give priority to hiring white English speaking labour from B.C. and Canada, since federal money was being invested. However, there was a critical shortage of white labour, so the syndicate also hired French Canadian, Native Indian and Chinese labour.

Source: *Glenbow Archives - Chinese camp and work gang employed on the C.P.R. near Summit B.C. between Glacier House and the Loop, just west of Rogers Pass in 1889.*

Initially, the syndicate failed to win the B.C. contracts because its bids were too high. But, the syndicate eventually got the work through a series of dishonest transactions. The contracts were worth about $2 million less than the original bids, which put enormous pressure on the syndicate to keep labour costs down.

About 15,000 Chinese indentured labourers came to B.C. to work on the railway between 1881 and 1884. A total of 10,387 were imported from China, while 4,313 came from American ports. In 1880, there were 35,000 white citizens and about 3,000 Chinese in B.C (Immigration Watch Canada, 2005).

The syndicate paid general labourers between $1.50 and $1.75 a day, while skilled labour such as carpenters cost $2.00-$2.50 a day. Chinese workers earned $1 a day, agreed to buy provisions at inflated prices at company stores and accepted lower quality living and working conditions.

The most back-breaking and dangerous construction work was given to the Chinese workers, such as clearing and grading the railway's roadbed, as well as blasting tunnels through the rock. They paid for food, clothing, transportation, mail and medical care, which left little money to send home. Chinese workers usually lived in camps and slept in tents or boxcars. They cooked over open outdoor fires and ate a diet of rice, dried salmon and tea. Many suffered from scurvy, because they could not afford fresh fruit and vegetables. This was not the case for white workers.

Source: *Canadian Council for Refugees - Many Chinese men spent their remaining years in lonely and poor conditions because they often did not have enough money to return to their families in China.*

As the Chinese workers put down more tracks, the camps had to be moved further down the line, by taking down tents, packing belongings and hiking up to 40 kilometres. Due to these poor conditions, hundreds of Chinese workers died from illness, malnutrition, landslides and explosions. Families were not notified when workers were killed and they did not receive any compensation.

A Chinese railway worker gave testimony to the Royal Commission on Chinese Immigration in 1885. He was left with $43 after a full year of railway work at $25 per month. This barely covered his $40 debt to the steamboat company, which had brought him to Canada. Other yearly expenses were clothes ($130); room rent ($24); tools and fares ($10); revenue and road taxes ($5); religious fees ($5); doctors and drugs ($3); oil, light, water and tobacco ($5) (Immigration Watch Canada, 2005).

Chinese railway workers came to Canada seeking a better life for their families, but they were not allowed to bring their spouses or children. More than half of these workers returned home after the railway was completed in November 1885. The American syndicate saved about $3 to $5 million in construction costs by using Chinese labourers.

Some temporary workers were left behind in Canada due to personal bankruptcy, while others went home to China and returned with their wives and children. They spoke little English and

came into conflict with local workers and their labour organizations for accepting lower wages and poor work conditions. Employers used Chinese workers to dampen wage demands by local workers and to bust strikes. This caused discontent and weakened the development of the B.C. labour movement.

2.2.2 How Did Canadian Immigration Exclude African Americans?

Source: *Glenbow Archives - Thomas Mapp family and relatives, an African American family from Amber Valley, Alberta in 1925.*

The Canadian government consciously and carefully applied a policy of nearly total exclusion of African-Americans, which discouraged thousands of people who were interested in moving to Canada. Before the Civil War (1861–65), Canada had a reputation as the end of the Underground Railroad, where escaped slaves could find safety. The anti-black policy goes back at least to 1898, when Canada looked very attractive to many American blacks (Sissing, 1970).

In the early 1900s, African Americans were attracted to Canada by a combination of government promotional literature, as well as growing segregation and racism in a number of U.S. states, particularly lynching in Oklahoma. In 1911, there were media reports that a party of 194 men, women and children were ready to leave for Canada, with a second group of about 200 people waiting behind to see what would happen.

In response, the Winnipeg and Edmonton boards of trade, as well as the Edmonton City Council, called on the Liberal government of Wilfred Laurier to prevent black immigration. In 1910, there were about 100 African-Americans living in Edmonton and the city had a population of 25,000 people. An order in council was drafted on May 31, 1911 to prohibit the landing of "any immigrant belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada". The order was never proclaimed and Canada never passed this particular race law.

However, immigration officials used their system of recruitment agents in the U.S., who held public meetings in Oklahoma to discourage black immigration. Since the recruitment of immigrants was done by mail, officials also found a way to stop immigration from small towns where there was no government agent, by writing to the local American postmaster and asking whether the applicant was black. Another method used to stop black immigration was a strict interpretation of medical and character examinations (Shepard, 1983).

In the period 1896-1907, when 1.3 million white Europeans and Americans became Canadian immigrants, less than nine hundred African-Americans were admitted.

2.3 Brief History of the TFWP in Canada Since 1966

The social relationship between TFWs and employers is similar to indentured labourers in the 17th to 19th century. But, the TFWP has recent historical roots in the Seasonal Agricultural Worker Program (SAWP).The Canadian government signed the first deal under SAWP with Jamaica in 1966, which allowed 264 agricultural workers to legally enter Canada for periods of six weeks to eight months.

SAWP expanded in 1967 to include Trinidad and Tobago, and Barbados. Mexico joined in 1974. The Organization of Eastern Caribbean States (Grenada, Antigua, Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Montserrat) joined in 1976. In the 1970s, there were about 4,000 workers in SAWP. By 2008, the program expanded to about 30,000 workers (Canadian Labour Congress and Karl Flecker, 2010).

Source: *Solidarity Across Borders – The TFWP has its origins in a program that was designed to alleviate short-term labour shortages in agriculture.*

The creation of the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 marked the beginning of a shift in federal immigration policy towards an increasing reliance on temporary workers instead of permanent residency. The operation of the NIEAP organized and enforced the restrictive conditions of entry, under which the majority of people migrating to Canada for work were labouring in unfree employment relationships (Sharma, 2006).

The specific features of the labour contract that govern the lives of temporary workers favour the Canadian state and employers. The NIEAP allowed the federal government to realize substantial savings on the costs of training and services of temporary workers. The program also gave employers greater flexibility in meeting labour needs by securing more disciplined and cheaper labour.

In particular, the criteria for admittance under the NIEAP included the preauthorization of a number of employment conditions before entering Canada. The employer, location of employment, condition of employment and length of employment had to be prearranged and stated on the workers temporary authorization document. Temporary workers had to follow the terms of their employment authorization or they would be asked to leave the country. This meant a temporary worker was subject to deportation if they changed employers, changed occupations or took additional work without authorization of an immigration official.

The temporary worker was bound to work at a specific job for a specific period of time for a specific employer. As a result, temporary workers were denied their mobility rights in the labour market, because they were tied to an employer and a geographic location. In addition, the NIEAP operated as a forced rotational system of employment. The availability of indentured labourers is a permanent feature of the Canadian labour market. The federal government recruits people to work for a pre-specified period of time, after which they are replaced by other people. The only temporary thing about the program is that the individual worker is contracted to work in the country for a specific period of time. For this reason, the program has been described as a revolving door of exploitation.

The export of migrant workers from developing countries is a means to lessen the burden of unemployment and earn much needed remittance payments, which is money sent back to families in their home countries. For the developed countries, migrant workers meet rising labour demand, restrains wage increases, weakens the bargaining power of unions and boosts consumption (PSAC North Racially Visible Committee, 2013).

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3 THE FAILURE OF CANADIAN IMMIGRATION POLICY AND THE TFWP (2002-2015)

The most important pathway for immigrants to obtain permanent residency in Canada is the Federal Skilled Worker Program (FSWP). However, the FSWP and the other economic classes of immigration have failed to bring in the type of workers Canada needs in a timely fashion. The failure of immigration policy under the Conservative government (2006-2015) is underscored by the rapid expansion of the TFWP. Under the Conservatives, the TFWP made a radical transformation from a program designed to alleviate short-term labour market shortages to the faster and preferred way for employers to get immigrants to Canada to meet long-term labour shortages.

3.1 Method and Research Questions

The main objective of this chapter is to identify, collect and interpret statistical data from CIC on the numbers of permanent residents and TFWs entering Canada between 1993 and 2014. The study period begins with the Liberal Governments of Jean Chretien (1993-2003) and Paul Martin (2003-2005) and ends with Stephen Harper's Conservative Government (2006-2015). The statistical analysis will answer the following research questions:

- How many permanent residents and TFWs entered Canada under the previous Liberal (1993-2005) and Conservative governments (2006-2014)?
- Is there a difference between the number of TFWs entering Canada under these two governments and their specific regimes of immigration policy and regulation?
- Is there a relationship between the number of TFWs entering Canada and the performance of the immigration system?

Before these questions can be answered, it is necessary to describe the immigration system in Canada and define some of the basic classes of permanent residents.

3.2 The Immigration System and the Economic Class

The Immigration and Refugee Protection Act (IRPA) was passed by the Parliament of Canada in 2002 to replace the Immigration Act, 1976, as the primary federal legislation regulating immigration to Canada. The IRPA, which came into force on June 28, 2002, regulates the entry of permanent residents and TFWs into Canada. It assigns responsibilities to the government departments involved in the administration of the TFWP. The framework for the creation of the TFWP is based on the restrictions outlined in the Non-Immigrant Employment Authorization Program (NIEAP) discussed in Chapter 2.

Permanent residents are persons who have not become Canadian citizens, but are authorized to live and work in Canada indefinitely. The IRPA defines three basic classes of permanent residents—economic, family and protected persons. The Economic Class includes the Federal Skilled Worker Program (FSWP), the Provincial Nominee Program (PNP), the Canadian Experience Class (CEC) and the Federal Skilled Trades Program (FSTP) (Citizenship and Immigration Canada, 2010). The FSWP is designed to support economic growth by selecting immigrants with essential and transferable skills that contribute to the Canadian labour market.

Potential candidates are awarded points for their level of education, previous work experience, knowledge of English and/or French, age, arranged employment, and adaptability. The Family Class allows Canadian citizens and permanent residents to sponsor close relatives to become permanent residents. Finally, the IRPA gives IRCC the authority to grant permanent resident status in cases where there are humanitarian and compassionate considerations, or for public policy reasons.

The PNP allows provincial and territorial governments to participate actively in the immigration process. Nine provinces and two territories have entered into agreements with the federal government, which grants them the authority to nominate foreign nationals for permanent resident status on the basis of their contribution to economic development. These nominees must meet PNP eligibility criteria, but they are not subject to the requirements of the FSWP.

The Canadian Experience Class (CEC) was launched in September 2008 to facilitate the transition of TFWs and international graduates to permanent resident status, without leaving Canada. This program is designed to help retain residents with Canadian skilled work experience and Canadian credentials.

The Federal Skilled Trades Program (FSTP) was launched in January 2013 for people who want to become permanent residents based on being qualified in a skilled trade. To be eligible, an applicant must meet the required levels in English or French and have at least two years of full-time work experience in a skilled trade within the previous five years. The applicant needs to meet the job requirements for that skilled trade as set out in the National Occupational Classification (NOC), except for a certificate of qualification. In addition they need an offer of full-time employment for a total period of at least one year or a certificate of qualification issued by a Canadian provincial or territorial authority (Citizenship and Immigration Canada, 2015).

The NOC is a standard used by Employment and Social Development Canada (ESDC)

The NOC is a standard used by Employment and Social Development Canada (ESDC) that classifies and describes all occupations in the Canadian labour market according to skill types O, A, B, C and D. Occupations coded "O" are senior and middle-management occupations; "A" are professional occupations; "B" are technical and skilled trade occupations; and "C" and "D" are occupations requiring lower levels of formal training.

The skilled trades eligible for the FSTP in type B include the following major groups of the NOC:

- Major Group 72, industrial, electrical and construction trades,
- Major Group 73, maintenance and equipment operation trades.

Initially, the FSWP was designed to recruit skilled foreign workers, which refers to occupations coded at NOC classification O, A or B. However, sector specific programs such as the Seasonal Agricultural Workers Program (SAWP), allowed foreign workers in lower-skilled positions. The Liberal government introduced the Low Skill Pilot Project in 2002, which allowed companies to apply to bring in low skilled TFWs with skill types C or D. Low skilled workers may not meet the selection criteria for economic class immigrants in terms of official language proficiency, level of schooling or occupational classification.

3.3 Immigration Trends in Canada 1993-2014

Figure 1 shows the total annual number of permanent residents entering Canada between 1993 and 2014. When the Liberal government was elected in 1993, 258,631 permanent residents entered Canada. In five years, the number of permanent residents declined and reached a low of 176,193 in 1998.

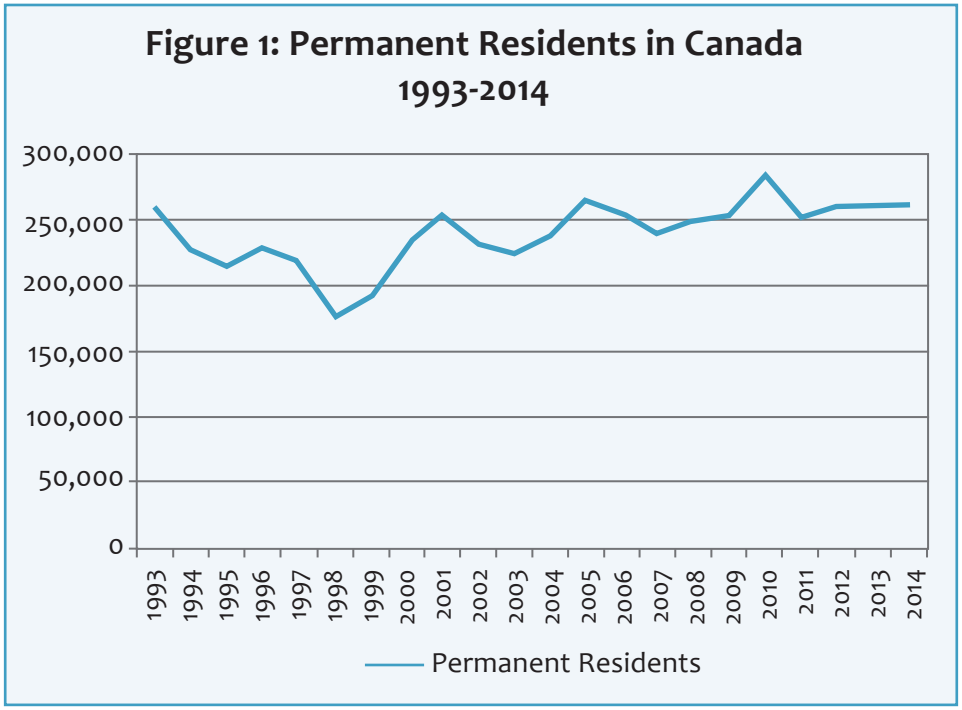

Figure 1: Source – *Customs Facts and figures 2014 – Immigration overview: Permanent residents*

The number of permanent residents entering Canada began to increase in 1998 and reached 252,637 by 2001. For the next 14 years, the level of immigration activity has fluctuated around 250,000 people per year. The peak year for immigration was 2010, when it reached 282,687. It has remained above 250,000 in very year since 2006, with the exception of 2007 and 2008. The average number of permanent residents entering Canada under the liberal government (1993-2005) was about 227,000, while under the Conservatives (2006-2014) it increased to around 257,000.

Figure 2 shows the number of permanent residents admitted to Canada under the economic class has a tendency to fluctuate, while trending upward over the study period. The economic class was about 100,000 in 1993 and increased to around 128,000 in 1997.

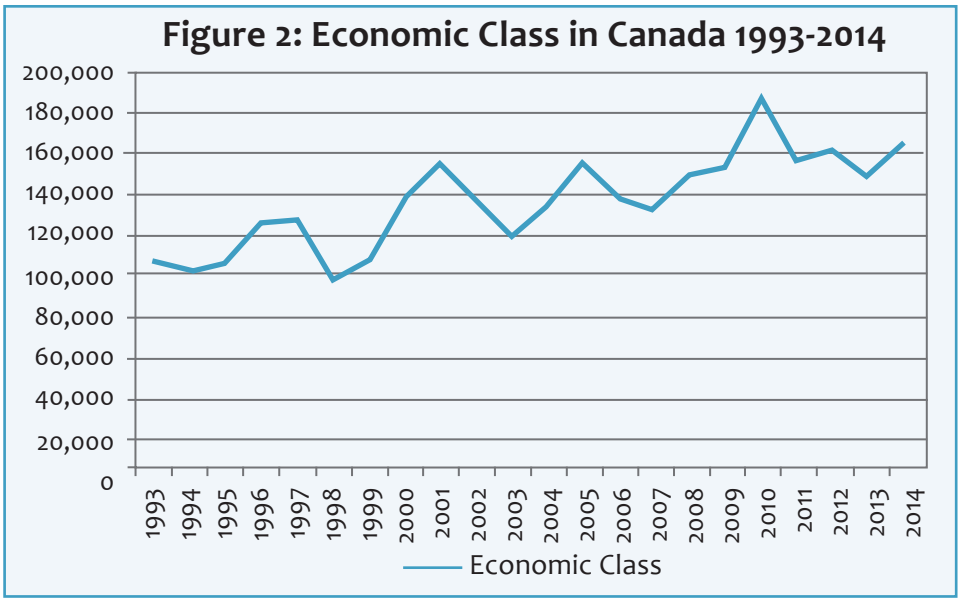

Figure 2: Source – *Customs Facts and figures 2014 – Immigration overview: Permanent residents*

The economic class dropped to a low of 97,909 in 1998 and then increased to a peak of 155,707 in 2001. After this point, the number of people entering Canada in the economic class fluctuates, but maintains an upward trend and reaches a peak of 186,915 in 2010. This represents a 91 % increase from the low of 97,909 in 1998. The economic class dropped to about 148,000 in 2013 and increased to 165,000 in 2014. The average number of permanent residents entering Canada in the economic class under the Liberal government (1993-2005) was 124,337, while under the Conservatives (2006-2014) it increased to 154,346.

Figure 3 shows the economic class accounted for about 40 % of all immigrants in 1994 and increased to around 50 % in 1997. After 2000, the share of the economic class in total immigration fluctuated around the 60 % level. There has been a corresponding decline in the proportion of family class immigrants and refugees. In addition, the economic class reached a peak of 186,915 in 2010, during the global recession.

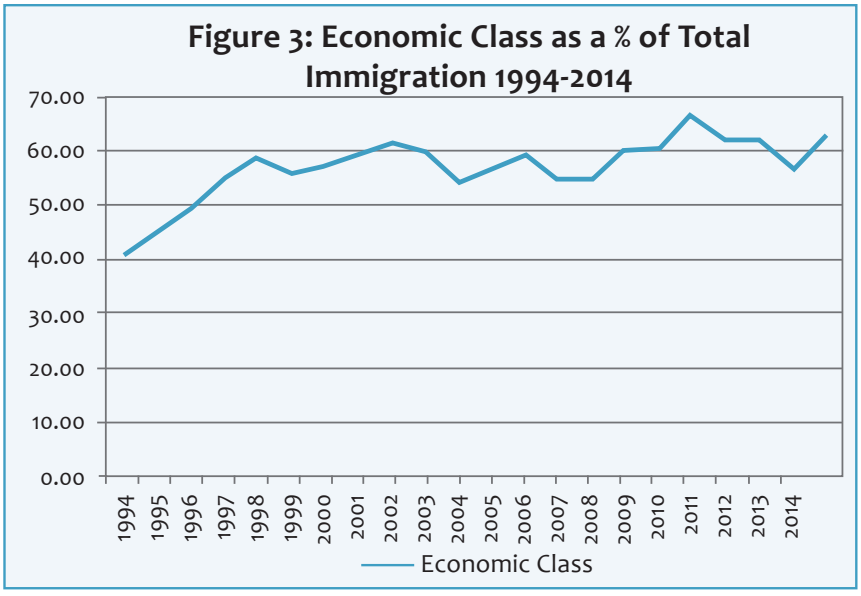

Figure 3: Source – *Customs Facts and figures 2014 – Immigration overview: Permanent residents*

Figure 4 shows the number of temporary foreign workers in Canada with work permits between 1993 and 2011. This indicator includes TFWs with a validated labour-market opinion (LMO) from Human Resources and Social Development Canada (HRSDC) and other foreign nationals tied to labour market programs, such as workers SAWP, the Live-In Caregiver Program and international agreements.

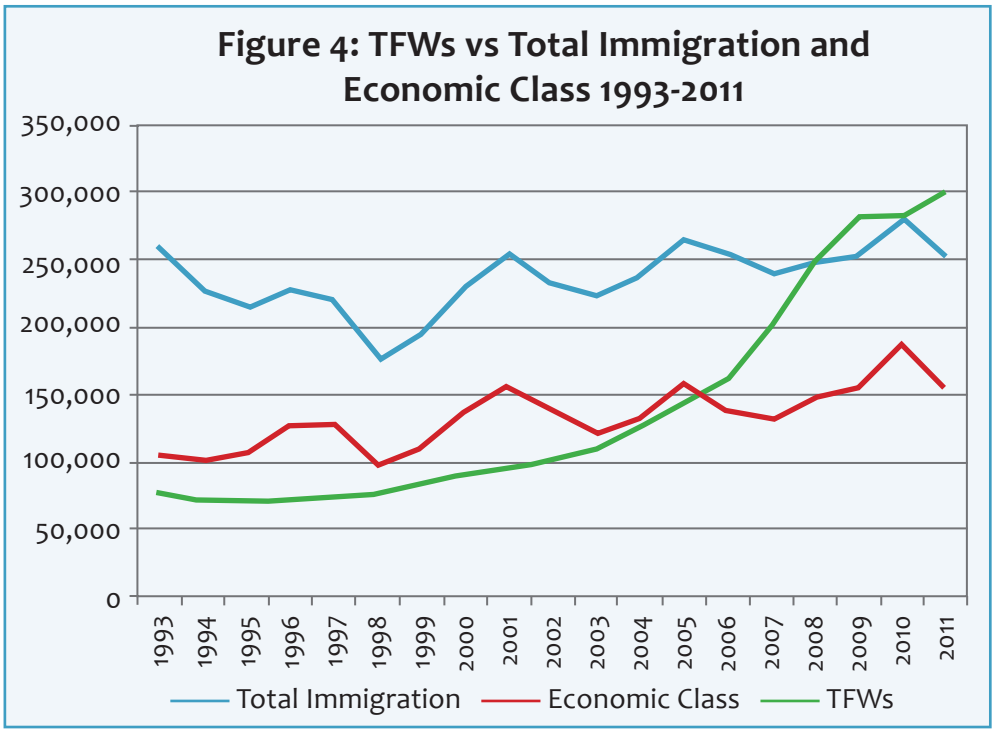

Figure 4: Source *TFWs- Stan Kustec, The role of migrant labour supply in the Canadian labour market, Research and Evaluation, Citizenship and Immigration Canada, June 2012*
Customs Facts and figures 2014 – Immigration overview: Permanent residents

The number of temporary foreign workers in Canada on December 1, 1993 was 76,664, after the Liberals were elected in October 1993. This number levels off between 70,000 and 80,000 until 1998. However, in 1999, the number of foreign workers broke the 80,000 level and began to increase rapidly.

By 2006, the number of TFWs (160,854) surpassed immigrants entering Canada in the economic class (138,252). After 2006, the number of TFWs in Canada increased at an exponential rate and in 2008 (249,796) surpassed total immigration (249,252). This trend continued to 2011, when the number of TFWs (300,101) was greater than total immigration (250,758). In addition, the number of TFWs continued its upward trend, while there was a decline in total immigration and the economic class.

3.4 The Demand for TFWs and the FSWP Backlog

The two most important drivers in the demand for TFWs are the backlog in processing applications for permanent resident status and the requirements for economic class immigrant selection. Under the Conservatives, the FSWP developed a large backlog as applications for permanent residency outstripped annual processing targets. As a result, there were significant delays in processing applications.

CIC reported there was a backlog of 585,000 potential immigrants in FSWP in spring 2008, which peaked at more than 640,000 later in the year. In 2008, 80% of the applications were processed in 62 months (Standing Committee on Citizenship and Immigration, May 2009). A large share of CIC's processing capacity for the FSWP was dedicated to clearing applications that were up to eight years old. The backlog was a barrier to Canada's ability to respond to a rapidly changing labour market, because it hampered CIC's ability to process applications from persons whose skills were needed immediately.

In response, CIC launched the Action Plan for Faster Immigration in November 2008, which limited the intake of new applications under the FSWP. CIC reduced the pre-2008 backlog by more than 50 percent and the overall FSW inventory by more than 25 percent. However, the backlog required further action, so CIC introduced three new measures in 2012 (Citizenship and Immigration Canada, 2013).

First, CIC launched the FSW Backlog Reduction Pilot in February 2012. FSW applicants with work experience were redirected to these provinces for possible nomination under provincial nominee programs (PNP). A more significant measure was introduced in the Jobs, Growth and Long-term Prosperity Act, which was passed into law on June 29, 2012. CIC terminated about 98,000 FSWP applications received before February 27, 2008, that had not received a decision before March 29, 2012. The law required all fees paid to CIC be returned to the applicants.

The third measure was a temporary pause on the acceptance of new FSWP applications, except for valid job offers and students pursuing Canadian PhDs. Implemented July 1, 2012, this measure enabled CIC to focus its processing resources for the FSWP on the remaining applications received since 2008. The pause remained in place until May 2013. It allowed CIC to implement program changes and make progress toward the goal of processing all FSWP applications by the end of 2014. As a result, the FSWP backlog was reduced to about 65,000 persons by the end of July 2013.

Employers also turned to the TFWP because it allowed them to bring in a different kind of worker than that provided for in the FSWP, which is designed for overseas immigration and doesn't value experience in Canada as an indicator of a newcomer's likelihood to succeed. Skilled tradespersons and TFWs usually don't qualify to immigrate under this stream, because they may not meet the selection criteria for FSWP in the areas of official language proficiency, level of schooling, or occupational classification (Standing Committee on Citizenship and Immigration, May 2009).

3.5 The Conservatives Reform the FSWP

CIC Minister Jason Kenney started a process of public consultation on February 17, 2011, which aimed to guide policy reform of the FSWP. At the time, the selection system awarded a

maximum of 16 points for high proficiency in one official language. CIC considered an increase for the maximum points awarded for proficiency in the first official language from 16 to 20. In addition, CIC planned to establish minimum language requirements, depending on the immigrant's occupational skill level (Richard Gilbert, 2011a). Currently, 28 points can be earned for skills in English and French. In total, applicants can earn 100 points in all six selection categories including official language abilities, age, education, work experience, employment already arranged in Canada, and adaptability. The passing mark has remained at 67.

Kenney made a proposal to give tradespeople different language requirements than managers or professionals. But, this policy change was not implemented. Education points are awarded based on the credential and the number of associated years of education. Tradespeople have a credential in their trade, but not the required years of education, so they are disadvantaged and lose points. In 2011, CIC proposed a reduction in the number of years of education required to claim points for a trade or other non-university credential. This would have improves access for skilled tradespeople, technicians and apprentices, who have post-secondary qualifications, but not the required number of years of study.

Kenney introduced a list of priority occupations in April 2013 that were eligible to immigrate to Canada under the FSWP, which included several new construction occupations. The FSWP backlog was reduced to about 100,000 applications in April 2013, from 313,825 in June 2012. A pause of intake for most new FSWP applications was put in place on July 1, 2012. When the pause was lifted on May 4, 2013, prospective applicants needed at least one year of continuous work experience in one of 24 eligible occupations (Richard Gilbert, 2013a).

This list included the following construction-related occupations: engineering managers, geoscientists, civil engineers, mechanical engineers, chemical engineers, mining engineers, geological engineers, petroleum engineers and land surveyors. Applicants could also meet the requirements of the FSWP if they had a qualifying offer of arranged employment. The eligible occupations stream had an overall cap of 5,000 new applications and sub-caps of 300 applications in each of the 24 occupations on the list.

3.6 Permanent Residency and the Provincial Nominee Program (PNP)

The number of people Alberta could nominate for permanent residence in 2011 was limited by the federal government to 5,000. With limited numbers, Alberta's focus was on nominating people, who worked in permanent jobs or had job offers, as well as those with the skills and qualifications in occupations that are in demand.

The Alberta government opened up permanent residency requirements to include skilled temporary foreign workers with an optional trade certificate in March 2011. This allowed these applications to be made to the Alberta Immigrant Nominee Program without the employer's involvement.

Eliminating the link between the employee and the employer through the application process created more privacy and autonomy. The change allowed 31 optional trades to apply directly for permanent residency, including roofers, tile setters, concrete finishers and cabinet makers. Prior to the policy change, only 19 compulsory trades were eligible to apply directly for permanent residency. These occupations included welders, ironworkers, gasfitters and plumbers (Richard Gilbert, 2011b).

The B.C. Government's Immigration Task Force (ITF) released a report in May 2012 that concluded more skilled immigrants must be attracted to the province immediately to stimulate job creation and avoid the closure or relocation of local businesses. In response to ITF consultations with employers in Fort St. John, the B.C. Provincial Nominee Program (PNP) introduced a two-year Northeast Pilot Project to address a shortage of labour in Northeast BC, by including more eligible occupations for foreign workers.

"Once again it shows the callous uncaring attitude of both levels of government to unemployed trades people in B.C., the untrained youth, unemployed women and First Nations, and to the foreign workers themselves," said Mark Olsen, former Business Manager of the Construction and Specialized Workers Union (CSWU), who noted the Bargaining Council of Construction Unions was vehemently opposed to this change in the scope of the program (Richard Gilbert, 2012c).

According to the B.C. Government, the Northeast Development Region was experiencing an extremely tight labour market driven by rapid growth in the energy sector. The region was also forecast to have the highest growth in labour demand of any of B.C.'s eight Development Regions in the next 10 years. The pilot project expanded the existing Entry Level and Semi-Skilled (ELSS) category to include all TFWs employed in the region in any C or D level occupation of the National Occupation Classification system.

"Once again it shows the callous uncaring attitude of both levels of government... *said Mark Olsen*

The added occupations included heavy equipment operators, trades helpers and labourers, as well as public works and other labourers. To apply under this category, nominee applicants must have worked full-time for their employer in B.C., in an eligible occupation for at least nine consecutive months immediately prior to the date their B.C. PNP application was submitted. All other requirements of the B.C. PNP's province-wide ELSS category remained the same, including: minimum education and English language standards; and a family income that met or exceeded the B.C. PNP's Income Threshold.

As an alternative, Olsen recommended that both levels of government implement the following measures:

- Training monies be provided to upgrade the skills of BC residents and Canadians, including youth, women and First Nations;
- Properly confirm the requirement for TFWs;
- Include Trade Unions as a critical source of information;
- If the requirement for TFW's was confirmed, they must be brought here properly and paid the current market rate, such as a union standard;
- Full enforcement by provincial and federal governments as per the terms and conditions of employment;
- Contractors must be required to provide sufficient bonding to ensure workers are paid properly; and;
- Provide a path to permanent residency for TFWs.

3.7 The Federal Skilled Trade Program (FSTP)

CIC Minister Kenney unveiled details of a new Federal Skilled Trades Program (FSTP) on Dec. 10, 2012 that targets skilled tradespersons for immigration to Canada. The new immigration program focused on tradespeople in high-demand occupations that were experiencing acute labour shortages, such as electricians, welders, heavy-duty equipment mechanics and pipefitters. It was launched on Jan. 2, 2013 (Richard Gilbert, 2012b).

The tradespeople in this new immigration stream do not have to challenge the 100 point system used by the FSWP. The criteria for the new program are based on four requirements that help ensure applicants have the right skills and experience. These requirements are:

1. an offer of employment in Canada or a certificate of qualification from a province or territory to ensure that applicants are "job ready" upon arrival;
2. basic language requirement;
3. a minimum of two years of work experience as a skilled tradesperson, to ensure that the applicant has recent and relevant practice as a qualified journeyman; and
4. skills and experience that match those set out in the National Occupational Classification (NOC B) system, showing that they have performed the essential duties of the occupation.

The new criteria put more emphasis on practical training and work experience, rather than formal education. Initially, CIC accepted up to a maximum of 3,000 applications in the first year of the program, in order to manage intake, avoid backlogs and ensure fast processing times. The program was designed to reduce the reliance of industry on other immigration streams, in particular the PNP and the TFWP.

When the new FSTP was launched by Kenney in January 2013, CIC produced a more comprehensive list of occupations. It was designed to reflect current labour market needs and ensure the program delivers tradespeople in high-demand occupations. Initially, 43 occupations were eligible in the first year of the program (Richard Gilbert, 2013b).

Group A targeted 17 occupations jobs with a moderate labour market need. This group had a sub-cap of 100 applications, which included carpenters, as well as contractors and supervisors for heavy equipment operator crews, quarries and the electrical and mechanical trades. Group B had no sub-caps and targeted 26 in-demand occupations, including sheet metal workers, structural metal fabricators, ironworkers, welders, plumbers, pipefitters, gas fitters, heavy-duty equipment mechanics and crane operators.

In addition to being qualified for an eligible occupation, applicants need to demonstrate basic language proficiency in either English or French at the Canadian Language Benchmark (CLB) level 5 for speaking and listening, and CLB 4 for reading and writing. CLB 4 is considered basic proficiency, while those with CLB 5 can more effectively participate in and understand routine conversations.

Other criteria include: an offer of employment in Canada or a certificate of qualification from a province or territory to ensure that applicants are job ready upon arrival; at least two years of work experience in the occupation within the last five years; and meeting the employment requirements set out in the National Occupational Classification system, showing that they have performed the essential duties of the occupation.

3.8 Express Entry and the Elimination of Backlogs

CIC launched a new electronic application management system called Express Entry on January 1, 2015, which was formerly known as Expression of Interest. The new system manages applications for permanent residence under several economic immigration programs, including:

- the Federal Skilled Worker Program;
- the Federal Skilled Trades Program;
- the Canadian Experience Class; and
- a portion of the Provincial Nominee Program.

Express Entry aims to: 1) improve application management, preventing the build-up of new application backlogs; 2) increase the labour market responsiveness of the immigration system through a greater role for employers; and 3) improve the economic outcomes of immigrants by ensuring that the skilled are invited to apply rather than those who happen to be first in line (Citizenship and Immigration Canada, 2014).

Express Entry candidates who receive a valid job offer, an enhanced nomination under the PNP or are among the top-ranked based on their skills, education and experience may be invited to apply for permanent residence in one of four economic immigration streams: the FSWP, the FSTP, the CEC and a portion of the PNP.

By requiring an invitation to apply for permanent residence, employers are involved in the selection process, while preventing backlog. This allows CIC to better coordinate application volumes with the annual immigration levels plan. Qualified applicants under Express Entry can expect faster processing times of six months when invited to apply for permanent residence. With Express Entry, candidates earn significant points after receiving an invitation to apply for permanent residence.

To prepare for the launch of Express Entry, CIC introduced new instructions on May 1, 2014, to control application intake in the FSWP and the FSTP. CIC planned to accept a maximum of 25,000 applications per year to support expected admissions in 2015. The list of eligible occupations more than doubled to 50 occupations from 24 occupations in 2013.There was a maximum cap of 1,000 applications per occupation.

CIC introduced an annual cap of 12,000 applications per year on the number of new CEC applications in November 2013, in order to manage intake, maintain reasonable processing times and prevent a backlog from developing. This cap was renewed on May 1, 2014, to allow for 8,000 new applications per year and to cover the transition period leading up to the implementation of the new Express Entry application management system. CIC planned to admit about 15,000 individuals under the CEC in 2014.

The FSTP cap was raised to 5,000 applications per year, and all 90 skilled trades under the program regulations are eligible for consideration, with a maximum of 100 applications each. CIC limited certain skilled trades occupations to 200 applications each in order to bring in as diverse a skill set as possible.

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4 THE HARPER CONSERVATIVES EXPAND THE TFWP

4.1 TFWP Becomes the Pillar of Conservative Economic Policy

Canada's immigration policy radically shifted under the Conservative government (2006-2015), as the numbers of TFWs entering the country surpassed the number of permanent residents and the economic class. The TFWP went through a series of changes, which expanded the list of occupations that qualified for the Low Skill Pilot Project and increased the speed of processing applications. The purpose of this chapter is to present statistical data on the rapid growth of the TFWP and outline the policy changes, which established the TFWP as the pillar of Conservative economic policy.

4.2 What is the Role of the TFWP in the Canadian Economy?

The TFWP is designed to allow foreign workers to temporarily fill positions when there is a shortage of suitable domestic workers. TFWs allow the domestic economy to avoid losses of output by providing a ready supply of workers, thus preventing wages from rising too quickly. This allows firms to adapt production and remain competitive. It also prevents production interruptions by allowing vacancies to be filled relatively quickly (Tracy Lemieux and Jean-François Nadeau, 2015).

Figure 5 shows the percentage rate of change in the number of TFWs in Canada between 1994 and 2011, which declined in the first three years of the period. However, the number of TFWs jumped by 5 % in 1997 and continued to increase at a rate between 5% and 14% until the end of the Liberal government in 2005.

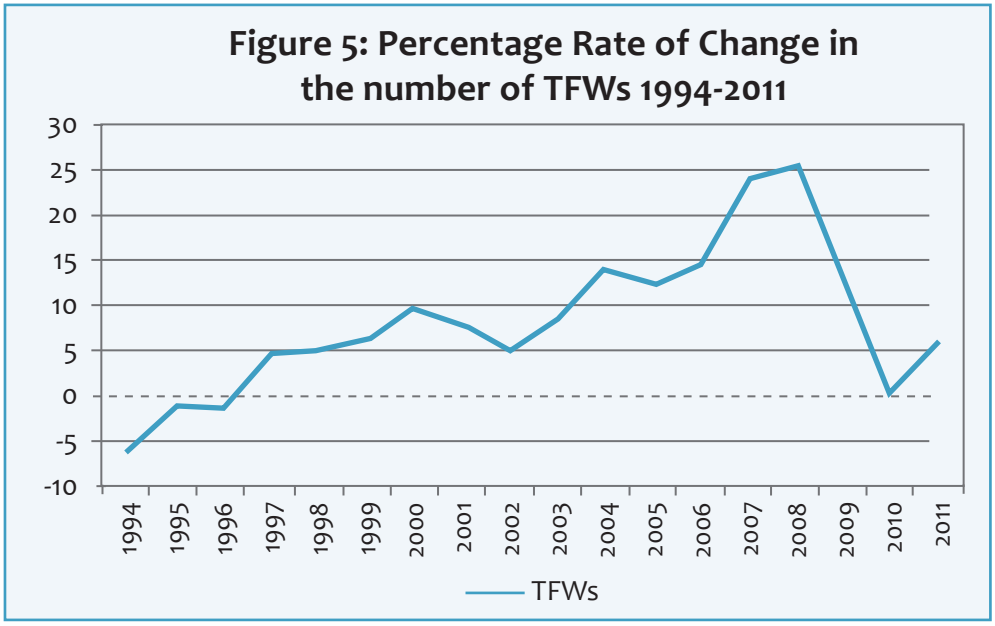

Figure 5: Data Source *TFWs- Stan Kustec, The role of migrant labour supply in the Canadian labour market, Research and Evaluation, Citizenship and Immigration Canada, June 2012*

The number of TFWs increased by 14% in 2006, when the Conservatives took power and jumped 24% in 2007 and a further 25% in 2008. During the recession in 2009, the number of TFWs still increased by 13% and finally levelled off at 1% in 2010. Even though the economy had not fully recovered in 2011, the number of TFWs increased by 6%. Under the Liberal

government (1994-2005), the average rate of change in the number of TFWs in Canada was 5%. In the first five years of the Conservative government (2006-2011), the average rate of increase was about 14%. The cumulative percentage increase between 2006 and 2011 was 69%.

The rapid expansion of the TFWP undermines the potential benefits of foreign workers, which are based on the assumption that the domestic labour force will adjust to changing labour market conditions, in order to meet domestic demand. By expanding the TFWP, the government has removed the incentive for domestic employers to search actively for domestic workers to fill vacancies, before importing TFWs.

HRSDC and CIC jointly administered the TFWP, with HRSDC being responsible for issuing Labour Market Opinions (LMOs) to employers. The LMOs are supposed to ensure that domestic workers are not adversely affected by hiring TFWs, before CIC issues work permits.

4.3 LiUNA Calls for an End to the Expedited Labour Market Opinion (ELMO)

Minister of Human Resources and Social Development (HRSD) Monte Solberg launched a new government initiative under the TFWP in September 2007 called the Expedited Labour Market Opinion (ELMO). The one-year pilot project added 12 new construction trades to the list of high-demand occupations eligible for fast-tracking through the immigration process on January 12, 2008. It was designed to address the labour shortage in B.C. and Alberta (Richard Gilbert, 2008a) .

The pilot project allowed eligible employers in B.C. and Alberta to follow shorter, simpler and less costly advertising requirements to fill empty jobs with TFWs. The number of occupations covered by the pilot project was increased from 12 to 33, with construction representing the largest share of the 21 new occupations covered by ELMO. These construction occupations were construction labourers, steam fitters and pipefitters, ironworkers, roofers, industrial electricians, welders, surveyor helpers, mechanical engineers, civil engineers, electrical and electronics engineers, petroleum engineers and mechanical engineering technologists.

All 33 high-demand occupations in the pilot represented half of the regular LMO requests received from employers in B.C. and Alberta. Initially, the ELMO aimed to fast track the entry of TFWs in 12 high-demand occupations. Only two of these occupations, carpenters and crane operators, were in the construction industry.

Figures from CIC state that there were 36,210 temporary foreign workers in B.C. in 2006, which is double the 18,951 in the province in 2002.

Mark Olsen, former CSWU business manager, sent a letter to Minister Solberg on January 16, 2009 that asked HRSDC to stop the use of the ELMO in the construction industry.

“As everyone is aware, there is a global financial crisis, which has also gripped British Columbia,” said Olsen. “In light of this new economic reality, there is absolutely no need for the importation of additional foreign workers into B.C. to perform construction work. This practice must be immediately stopped by your government (Richard Gilbert, 2009a)”.

The HRSDC announced on January 1, 2009, that the Occupations under Pressure (OUP) list had been replaced with new national advertising requirements. All occupations, from executives and managers to low-skilled workers were subject to the same minimum advertising

requirements. The changes made it more difficult for employers to hire TFWs as trades helpers and construction labourers. The policy change was in response to labour market conditions and aimed to ensure employers hired Canadians and permanent residents, before using TFWs. Olsen also asked the provincial and federal governments to ban the use of TFWs on all infrastructure projects financed under the stimulus package.

4.4 Low Skilled TFWs and the Canadian Experience Class (CEC)

The Canadian Experience Class announced in the 2007 budget was a key element of the Harper government's immigration plan. CIC Minister Diane Finley outlined details of a proposal in August 2008, which would allow TFWs with managerial, professional, technical or trade work experience to become permanent residents and eventually Canadian citizens (NOC A and B). The program was open to TFWs with at least two years of work experience and graduates of post-secondary programs lasting at least two academic years, provided they had at least one year of work experience (Richard Gilbert, 2008b).

The Alberta Federation of Labour (AFL) criticized the proposed measures to fast-track citizenship for only certain categories of TFWs. AFL President Gil McGowan argued that restricting this benefit to only professional, technical and skilled occupations would set up a permanent underclass of unskilled TFWs who are deprived of the rights to citizenship being extended only to elite workers.

The majority of TFWs in Alberta did not fall into the privileged O, A and B designated occupations. Only 14,842 temporary workers, or 39.8 per cent of all TFWs in Alberta, would have been included in this program in 2007 and 22,415 lesser-skilled TFWs would have been excluded.

In addition, the federal government left out unskilled service sector workers and labourers (level D), the fastest growing occupational category for TFWs in Alberta. In 2007, this category accounted for 6,338 workers. As documented in several case studies later in this document, this segment of workers is subject to exploitation and sent to their home countries when work in Canada is done.

4.5 Federal Government Acknowledges Radical Impact of TFWP

The first acknowledgement by federal politicians about the radical impact of the TFWP on the Canadian economy was the House of Commons Standing Committee on Citizenship and Immigration report in May 2009. The report focused on the need for a transition from temporary worker to permanent resident (Standing Committee on Citizenship and Immigration, May 2009).

"The committee believes that all temporary foreign workers in the current programs should have the opportunity to apply for permanent residency after meeting certain criteria, an opportunity not currently universally available to them," said the report. "The committee recognizes that many workers and employers desire their employment arrangement to be permanent and we feel that permanent migration is in Canada's best interests."

The report said there were 201,057 TFWs in Canada in December 2007, 115,470 of whom entered the first time that year (57%). Table 1 shows the top three recipients of TFWs were Ontario (82,873), B.C. (45,375) and Alberta (37,257). The number of TFWs entering B.C., Alberta, and Newfoundland and Labrador, was greater than permanent residents in 2007.

The Conservative policy of rapidly expanding the TFWP increased the contribution that TFWs made in Canadian society, due to the rapid increase of TFWs in Alberta (360 per cent) and B.C. (180 per cent) since 2003.

Table 1: Temporary Foreign Workers (initial entry, re-entry, and stock [5] and permanent residents by province, 2007

	BC	AB	SK	MAN	ON	QB	NB	NS	NFLD	PEI
Initial Entry	29,006	24,371	1,851	2,878	37,184	15,047	904	1,253	1,071	153
Re-Entry	7,376	5,034	630	1,056	26,813	7,392	388	419	176	67
Stock	43,375	37,257	2,998	4,603	82,873	23,458	1,427	2,051	887	298
Permanent Residents	*38,941*	*20,857*	*3,517*	*10,955*	*111,312*	*45,208*	*1,643*	*2,520*	*545*	*992*

Source: Report of the Standing Committee on Citizenship and Immigration, May 2009

The committee recommended the federal TFWP should work in tandem with the Provincial Nominee Program (PNP) to provide a pathway to permanent residency. The Committee was impressed with Saskatchewan, which takes advantage of the TFWPs quicker access to workers, compared to other federal immigration programs. The Saskatchewan government has several categories under which individuals come into the province, initially on a temporary work permit gained through the LMO process with HRSDC. When these individuals have spent six months in the province, they apply to Saskatchewan's nominee program for permanent status. So, there is a two-step program.

The introduction of the CEC pathway to permanent residency for some temporary foreign workers was supported by the Committee. However, it concluded the scope was too narrow. The 2009 Immigration Levels Plan forecast that only 5,000 to 7,500 individuals would become permanent residents through this new channel. The Committee recommended all temporary foreign workers should be eligible to apply for permanent resident status after working 24 months within a 36 month period, with the possibility of extension in extenuating circumstances.

The AFL released a report that found Alberta's Immigrant Nominee Program was too restrictive and too small to be effective. Only 4% of TFWs are accepted into the program, even though most foreign workers come with the expectation and hope of permanent settlement. This false hope was fostered by brokers and the government. Wayne Peppard, executive director of the BC and Yukon Territory Building and Construction Trades Council urged the federal government to implement something like the Canadian Experience Class that applies to the construction industry (Richard Gilbert, 2009b).

Other committee recommendations included: discontinuing employer specific work permits; applying penalties against employers who abuse workers and fail to comply with contractual obligations; providing information about unscrupulous recruiters and report cases of abuse to law enforcement agencies; and monitoring of working and living conditions.

4.6 Canada's Auditor General Criticizes the TFWP

Source: *McGill Alumni Magazine - Auditor General Sheila Fraser released report in November 2009, which is critical of the TFWP*

The Auditor General of Canada, Sheila Fraser, released a report to the House of Commons on November 3, 2009, which was highly critical of the planning and management of the TFWP by CIC and HRSDC.

"Although CIC followed a sound decision-making process in 2008 to design the Canadian Experience Class, the Department has made other key decisions without properly assessing their costs and benefits, risks, and potential impacts on other programs and delivery mechanisms," said Fraser.

"CIC and HRSDC have not clearly defined their respective roles and responsibilities in assessing the genuineness of job offers and how that assessment is to be carried out. As a result, work permits could be issued to temporary foreign workers for employers or jobs that do not exist (Fraser, Fall 2009) ."

Fraser said there is no systematic follow-up by either department to verify that employers have complied with the terms and conditions of the work visas, such as wages and accommodations.

"This creates risks to program integrity and could leave many foreign workers in a vulnerable position, particularly those who are physically or linguistically isolated from the general community or are unaware of their rights," she said. "Furthermore, weaknesses in the practices for issuing labour market opinions raise questions about the quality and consistency of decisions being made by HRSDC officers."

Fraser also found CIC and HRSDC were not carrying out evaluations of permanent and temporary foreign worker programs. For example, in 2002, HRSDC committed to the government to develop an evaluation framework for the TFWP. In 2007, CIC and HRSDC further committed to conduct an evaluation in the 2009–10 fiscal year and a summative evaluation in the 2011–12 fiscal year.

An evaluation strategy for this program was finalized in August 2008. HRSDC informed the Treasury Board of Canada Secretariat in April 2009, that each of these evaluations would be postponed one year to allow for a more complete assessment, which took into account recent and upcoming changes.

As a result, CIC and HRSDC were unable to determine the extent to which these programs were meeting their objectives and achieving their expected outcomes. The departments were also missing valuable information that could be used when making changes to programs or designing new programs. To make matters worse, these serious problems with the TFWP were taking place in a period of economic growth in Canada, when there was a rapid increase in the demand for TFWs and the number of TFW applications.

"There are no established limits on or target levels for the number of workers to be admitted under these programs," said Fraser. "The number of applications processed each year depends mainly on the demand from employers."

The number of temporary work permit applications received abroad rose to 204,783 in 2008 from 91,270 in 2002, an increase of more than 124 percent. The increase was 26 percent from 2007 to 2008 alone. This significant increase was driven by economic growth and the construction of large projects, such as oil sands development in Alberta and infrastructure development in B.C. to support the 2010 Olympic and Paralympic Games.

Fraser did not examine if the TFWP was being used to displace Canadian workers or drive down wages. However, she said six factors are used to assess the likely impact that the proposed entry of a TFW will have on the Canadian labour market. Among these factors are:

- whether an employer who applies for an LMO can demonstrate that efforts were made to recruit or train Canadian citizens or permanent residents before resorting to hiring a temporary foreign worker;
- the wages offered are consistent with the prevailing regional wage for the occupation;
- and the working conditions for the temporary foreign worker meet generally accepted Canadian standards.

Despite these guidelines for producing an LMO, Fraser found the directives on determining prevailing wages do not provide specific guidance and were not well understood by HRSDC officers. Each regional office uses labour market information differently to assess and determine prevailing wages. Until January 2009, there was no clear directive or criteria for assessing whether employers made reasonable efforts to advertise job offers to Canadian citizens or permanent residents prior to requesting TFWs.

Many of the HRSDC files reviewed by Fraser lacked adequate documentation to support the LMO. There was no formal quality assurance system to ensure that opinions were consistent and compliant with the Act and Regulations.

Fraser's review of the LMOs issued by HRSDC confirmed that they provide an opinion only on labour market effect and not on the genuineness of job offers. This lack of systematic assessment of the genuineness of job offers creates significant risks to the integrity of the TFWP, since work permits could be issued for employers or jobs that do not exist. The regulations are silent on the factors to be considered in assessing the genuineness of a job offer.

The pilot project for occupations requiring lower levels of formal training, which was launched in 2002 by the Liberal government, is also putting TFWs at risk of abuse and poor working conditions. Concerns over this vulnerability increased under the new Conservative government with the surge in LMOs for this pilot project, which went from 12,627 in 2006 to 68,568 in 2008.

According to Fraser, the pilot project for occupations requiring lower levels of formal training was launched with limited analysis of risks and without any formal goal, objectives, or basis on which to evaluate its success. The pilot had not been evaluated since 2002 and was a pilot for seven years.

4.7 The Accelerated-Labour Market Opinion (ALMO)

HRSD Minister Diane Finley announced on April 25, 2012 that the federal government was looking at ways to reduce the paper burden and speed up the processing time for employers who were hiring TFWs. Employers with a strong track record received an Accelerated-Labour Market Opinion (ALMO) within 10 business days. It allowed them to hire TFWs in high-skill occupations, including the skilled trades. HRSDC said wages up to 15 per cent below the average pay for an occupation would be accepted in specific regions (Richard Gilbert, 2012a).

"We don't want to set up a system, where there is an excuse to bring in people and pay them less than Canadians," said Mark Olsen, former CSWU business manager. "I find it difficult to understand how this will create jobs and stimulate the local economy because these workers are being paid a lower wage. The union will have difficulty representing these temporary foreign workers as they will be flown in, transported by bus and housed by the employer (Richard Gilbert, 2012b)."

The new ALMO had the following features:

- a simplified, online application process;
- faster and timelier processing for employers with a good history;
- risk-based and random in-depth compliance reviews of employers after LMOs are issued;
- enhanced automation to reduce paperwork, and improve capacity to track compliance and share information; and
- call centre support for employers.

Employers had to consent to post-LMO reviews to verify compliance with TFWP requirements. This involved making a reasonable effort to recruit from the domestic labour force, as well as providing wages and working conditions that are consistent with Canadian standards.

Tom Sigurdson, executive director of the B.C. and Yukon Territory Building and Construction Trades Council, said the changes to the program are part of an overall employer's strategy to reduce wages by increasing the supply of cheap exploitable labour. In addition, a survey by the B.C. Building Trades Council survey showed unemployment was at about 25 per cent for Building Trades unions. They could supply workers for all trades.

The AFL argued the combination of accelerated processing and a downwardly flexible wage structure for TFWs will exacerbate the unemployment problem in Canada. Sigurdson said the changes will also have a negative impact on apprenticeship training. There would be no incentive to hire apprentices and invest in training when employers can get access to cheap foreign labour. This means training opportunities would be provided to TFWs, before local apprentices.

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5 THE NEW LIBERAL GOVERNMENT AND THE TFWP

Stephen Harper kicked off the 2015 Canadian federal election, by asking Governor General David Johnston on August 2, 2015 to dissolve Parliament. At the time, political polls predicted the New Democratic Party (NDP) was leading or in a tie with the Conservatives. It was the first time since the 1979 election that a Prime Minister tried to remain in office into a fourth consecutive parliament. The length of the campaign was 11 weeks or 78 days, which is one of the longest in Canadian history.

5.1 Conservatives Pushed to Implement TFWP Reforms

More than two years before the start of the election campaign, the Conservatives responded to public anger over the abuse of the TFWP. Finance Minister Jim Flaherty announced reforms in the 2013 federal budget on March 21, 2013, including measures to ensure Canadians are first in line for jobs.

"The recent budget announcement shows that the federal government understands that there have to be major changes brought to the temporary foreign worker program," said Mark Olsen, former CSWU business manager. "The government must ensure Canadians get the available jobs and less experienced Canadians get skilled up, in order to get these jobs. They also need to do further enforcement and improvement of the program. So, we hope the federal government follows through with this commitment (Richard Gilbert, 2013a)."

As a result, the federal Conservative government made a commitment to:

- Work with employers to ensure that temporary foreign workers are relied upon only when Canadians genuinely cannot fill those jobs;
- Increase the recruitment efforts employers must make to hire Canadians before they will be eligible to apply for TFWs, including increasing the length and reach of advertising;
- Assist employers who legitimately rely on temporary foreign workers, due to a lack of qualified Canadian applicants.
- Find ways to ensure employers have a plan to transition to a Canadian workforce over time; and
- Amend the Immigration and Refugee Protection Regulations to restrict the identification of non-official languages as job requirements when hiring through the TFW process.

The government also proposed to introduce user fees for employers applying for temporary foreign workers through the LMO process, so that these costs would no longer paid for by taxpayers.

CIC Minister Jason Kenney and HRSDC Minister Diane Finley introduced reforms to the TFWP on April 29, 2013, which required employers to pay TFWs at the prevailing wage rate by removing the existing wage flexibility. The ALMO process was also suspended. The Construction and Specialized Workers' Union (CSWU) local 1611 and the International Union of Operating Engineers (IUOE) Local 115 viewed the reforms as evidence that the labour movement's opposition to the rapid expansion of TFWP had forced the Conservative government to make significant reforms (Richard Gilbert, 2013b).

In particular, the CSWU and the IUOE were waiting for a decision in a federal judicial review. Justice Russel Zinn was investigating the process in HRSDC that granted HD Mining permission to hire 201 Chinese TFWs to work at the Murray River coal mine, near Tumbler Ridge, B.C. The trade unions wanted the LMOs issued to HD Mining quashed and the whole process done over, because there were qualified Canadians to fill these jobs (see Chapter 9).

The policy reforms increased the federal government's authority to suspend and revoke work permits and LMOs, if the program is being misused. Questions were added to the employer LMO application to ensure Canadian jobs were not outsourced by the TFWP. The LMO application process was changed to ensure employers, who rely on TFWs, have a plan to transition to a Canadian workforce over time. The federal government decided to introduce employer fees for processing of LMOs and increase the fees for work permits, so taxpayers were not subsidizing the program. Finally, the only languages that can be used as a job requirement are English and French.

5.2 Liberal Proposals to Reform the TFWP

5.2.1 Motion in the House of Commons

The House of Commons voted against a Supply Day Motion on April 16, 2013, which would have struck a special committee to study the TFWP and provide recommendations to strengthen safeguards and prevent abuse. A minority of 128 MPs (42 %) voted in favour of the motion, which illustrates how important this issue was to Parliamentarians and their constituents. The motion was put forward by Rodger Cuzner, Liberal critic for Human Resources and Skills Development and Labour (Liberal Party of Canada, 2013).

The motion stated the House should recognize the use of temporary foreign workers to replace Canadian workers in jobs Canadians are qualified and able to do is an abuse of the TFWP. The bill stated the government is responsible for ensuring that this program is not abused in a way, which threatens the wellbeing of Canadian workers and the Canadian economy.

The motion requested a special committee be appointed to conduct hearings on this issue. The committee would have talked to Canadians affected by this practice and propose solutions to strengthen the rules around the TFWP to the by June 19, 2013.

5.2.2 Call for Auditor General to Audit the TFW

John McCallum Liberal Critic for Citizenship & Immigration, Multiculturalism sent a letter to the Auditor General of Canada on April 24, 2014 that expressed concern over widely-reported abuse of the TFWP and called on the Auditor General to undertake an immediate audit of the program.

"Employment and Skills Development Canada won't even begin an audit of the program until 2015/16," said McCallum. "Further, it has set no completion or reporting date for that audit. Meanwhile Canadians will continue to lose their jobs to employers who get the green light from the Government of Canada to replace their workforce with temporary foreign workers (McCallum, John, 2014a)."

McCallum asked the Auditor General to undertake an audit and evaluation of the program as quickly as possible to provide recommendations to the government. He said Sheila Fraser's report did not examine if the program was being used to displace Canadian workers or drive down wages.

McCallum said on May 5, 2014 that the TFWP should be scaled back and re-focused to achieve its original objective of filling jobs when qualified Canadian workers cannot be found. He said the Liberal Party is proposing reforms to ensure transparency and accountability. This involves a full review of the program by the Auditor General, as well as the public disclosure of information about what jobs are being offered to TFWs and in what communities (McCallum, John, 2014b).

5.2.3 Liberal TFWP Reforms and the National Fact-finding Tour

John McCallum launched a national fact-finding tour on May 12 to hear first-hand from Canadians about the impact of the TFWP. The tour began in Ontario and Quebec on May 21, 2014. McCallum held roundtable discussions with business and industry leaders, as well as Canadian and foreign workers with direct experience with the program. The focus was to gather on-the-ground information about the impact of the program on families and communities.

"The Temporary Foreign Worker Program is broken, and Liberals have been calling on the government to scale back the program and implement significant reforms," said McCallum. "Liberals are committed to finding out first-hand how hard-working Canadians have been affected by the abuse of this government program (John McCallum, 2014c)."

McCallum called for immediate reforms of the TFWP on May 18, 2014 in a motion tabled in the House of Commons. The five-point plan included: (a) establishing a mandatory complaint tracking system; (b) ensuring compulsory and regular workplace audits; (c) requiring mandatory disclosure of investigations into abuses of the program; (d) requiring mandatory disclosure of federal employer compliance reviews; and (e) establishing a monthly disclosure regime that indicates the number of temporary foreign workers in Canada by (i) region, (ii) National Occupation Classification code, (iii) employer (John McCallum, 2014d).

5.2.4 Justin Trudeau and the TFWP Reforms

One of the ways Liberal leader Justin Trudeau supported the proposed five-point plan was to discuss the impact the TFWP has had on middle class Canadians under the Conservative government.

"Most concerning, the program has grown dramatically in regions facing high unemployment, like southwestern Ontario," said Trudeau in a commentary piece published in the Star. "In Windsor, the number of unemployed workers has risen by 40 per cent while the number of foreign workers in the city has grown by 86 per cent. Unemployment in London has risen by 27 per cent while the number of foreign workers has increased by 87 per cent (Justin Trudeau, 2014a)."

During a speech to the Regina Chamber of Commerce on June 6, 2014, Liberal leader Justin Trudeau said numerous stories in the media have given the TFWP a reputation for abuse, poor administration, little oversight and no enforcement. He said the program has let down Canadians and those who hope to someday become Canadians.

"But Liberals believe that the program needs to return to its original purpose: to fill jobs on a limited basis when no Canadian workers can be found," said Trudeau. "We need greater transparency and accountability, driven by accurate, community-by-community data. And we must have genuine enforcement of its rules, in partnership with the provinces (Justin Trudeau, 2014b)".

5.3 The Conservatives Restructure the TFWP

Minister of Employment and Social Development Canada Jason Kenney introduced a plan on June 20, 2014 to restructure the TFWP into two distinct programs: (1) the TFWP: and (2) the International Mobility Program (IMP). The TFWP program requires foreign workers who enter Canada at the request of employers to be approved through a new Labour Market Impact Assessment (LMIA), which is replacing the LMO. The IMP refers to foreign nationals who enter Canada with a work permit where no LMIA is required. These foreign workers will be selected to advance Canada's economic and cultural national interest (Employment and Social Development Canada, 2014a).

The new LMIA requires employers to provide information on the number of Canadians that applied for a job, the number of Canadians the employer interviewed and an explanation if Canadian applicants were not hired. Employers must confirm they are aware of the rule that Canadians cannot be laid-off or have their hours reduced at a worksite that employs TFWs. Employers with 10 or more employees applying for a LMIA are subject to a cap of 10 percent of the proportion of their workforce consisting of low-wage TFWs. This cap is applied on employer per worksite of an employer and is based on total hours worked at this work site.

A new enhanced Job Matching Service allows Canadians to apply directly through the Canada Job Bank for jobs that match their skills and experience, and provide information to program officers reviewing an employer's LMIA application on how many qualified Canadians have applied for specific jobs. Employers seeking to hire high-wage temporary foreign workers are now be required to submit transition plans to demonstrate how they will increase efforts to hire Canadians, including through higher wages, investments in training and more active recruitment efforts from within Canada.

The reforms promised to provide stronger enforcement and tougher penalties by increasing the number of program requirements that inspectors can review from 3 to 21. The number and scope of inspections was also to be increased so that one in four businesses employing TFWs will be inspected each year. The TFW program Tip Line was to be expanded and a new "Complaints" website created. The ability to publicly blacklist employers who have been suspended and are under investigation will be expanded. This also applies to employers who have had an LMIA revoked and are banned from using the program.

5.3.1 Intra-company Transferees

The Conservative reforms to the TFWP allowed companies to transfer Canadians to overseas branches and foreign nationals to their Canadian branch without an LMIA. Exemptions for intra-company transferees are also stated in some trade agreements such as the Trans-Pacific Partnership (TPP). There is evidence these provisions have been misused, by allowing foreign nationals to enter Canada for jobs that may not have been as specialized as the program intends. This occurs when the foreign national is paid below the Canadian prevailing wage for their occupation. To address this problem, the Conservatives put guidelines in place to better define "specialized knowledge" enabling officers to compare an applicant's intended salary to the prevailing Canadian wage for that job (Employment and Social Development Canada, 2014 b).

The New Zealand government invited TPP Ministers from 12 countries including the United States, Japan, Canada, Mexico and Peru to Auckland to sign the agreement on Feb. 4, 2016. Following signature, all countries began their respective domestic ratification processes and have up to two years to complete that before the agreement enters into force (Todd McClay, 2016).

Under Article 12.4 (Grant of Temporary Entry) of the TPP, Canada made a commitment which covers the temporary entry of business persons. Intra-Corporate Transferees comprise business persons employed by an enterprise in these countries who seek to render services to that enterprise's parent entity, subsidiary or affiliate, as an executive or manager, a specialist, or a management trainee on professional development. The length of stay is up to three years, with the possibility of extensions. Canada may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

The new regulations, which came into effect on April 1, 2011, introduced the "cumulative duration rule", also known as the "4 in, 4 out" rule.

Canada extends its commitments for "specialists" to Australia, Brunei Darussalam, Chile, Japan, Mexico, New Zealand, and Peru. A specialist is defined as an employee who has specialised knowledge of the company's products or services and their application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures.

Canada shall grant temporary entry and provide a work permit to Intra-Corporate Transferees, and will not require labour certification as a condition for temporary entry or impose or maintain any restriction relating to temporary entry. For the purpose of this definition, specialty occupation means, for Canada, an occupation that falls within the NOC 0, A, and B. Technical and skilled construction trade occupations fall under NOC category B (Government of New Zealand, 2016).

5.3.2 Low Skilled TFWs and the Cumulative Duration Rule

Citizenship and Immigration Canada (CIC) released an operational instruction to its staff in March 2011 about amendments to the TFWP within the Immigration and Refugee Protection Regulations (IRPR). The new regulations, which came into effect on April 1, 2011, introduced the "cumulative duration rule", also known as the "4 in, 4 out" rule. Under the rule, many low skilled TFWs are subject to a four-year 'cumulative duration' limit on the length of time they may work in Canada. The regulation was not retroactive, but the clock started ticking on April 1, 2011, for all TFWs, regardless of how long they had been in Canada (Citizenship and Immigration Canada, 2011).

CIC Minister Chris Alexander and Employment and Social Development Minister Pierre Poilievre issued a statement on April 1, 2015, which was the earliest date a foreign worker could reach the four-year cumulative duration. As the date approached national attention was focused on the unfairness of the TFWP, because TFWs were set to be deported from Canada by the thousands.

"Employers have had four years to find alternative employees. Similarly, temporary foreign workers have had four years to pursue pathways to permanent residence," said the statement. "Temporary workers may wish to explore the many pathways to permanent residency we offer which are now delivered through Express Entry and Provincial Nominee Programs. But let there be no mistake: We will not tolerate people going 'underground.' Flouting our immigration laws is not an option, and we will deal with offenders swiftly and fairly (Citizenship and Immigration Canada, 2015)."

The NDP sent a letter to Ministers Poilievre and Alexander, calling on them to allow TFWs who have applied for permanent residency to remain in Canada. This would also allow employers, who have invested time and money to train these workers, to keep their experienced employees.

"The Conservatives have systematically taken away pathways to citizenship for lower-skilled temporary foreign workers" said NDP Employment and Social Development critic Jinny Sims. "And now, with this completely arbitrary deadline, they are forcing individuals who have already applied for permanent residency to leave the country (New Democratic Party of Canada, 2015)."

There is currently no federal pathway to permanent residency for low-skilled TFWs who fall under National Occupation Classification (NOC) codes 'C' and 'D.' Meanwhile, the majority of provincial nominee programs favour skilled workers who fall into the higher NOC code categories of 'O' 'A' and 'B'.

5.3.3 Stiffer Penalties for Employers

Poilievre announced on July 6, 2015 that stiff new consequences would be imposed on employers who break the rules of the TFWP and the IMP. Employers who were found non-compliant with program conditions could be subject to financial penalties ranging from $500 to $100,000 per violation, and up to $1 million in a one-year period. In addition, the existing two-year ban from the programs will be replaced with bans of various lengths – including one, two, five and ten years. Employers could face a permanent ban for the most serious violations. The new regulation came into force on December 1, 2015 (Employment and Social Development Canada , 2015).

5.4 LiUNA and the New Liberal Government

LiUNA applauded the victory of the Liberal government in the recent federal election on Oct. 25, 2015, because their platform recognized the TFWP is hurting the middle class in Canada, by driving down wages and displacing workers. LiUNA asked working men and women across Canada to reject the Conservative Party, in order to protect worker's rights, build communities and ensure a better future for members and their families (Government Liaison LiUNA, 2015). Before the election, the Conservatives claimed that many of the problems with the TFWP were already addressed by recent policy reforms.

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6 CONCLUSION AND LiUNA POLICY RECOMMENDATIONS

This Research Paper is an authoritative report that is designed to inform the federal government, the labour movement and the Canadian public about the relationship between the TFWP and the construction labour force Western Canada today. The main aim of the report is to help the new Liberal government better understand the political issues surrounding the TFWP, solve some its more serious problems and support public policy decisions. Part I is an historical, economic and political analysis of the TFWP, while Part II provides four case studies to document the excessive abuses of the TFWP.

6.1 Summary of Findings

6.1.1 Temporary Foreign Workers are Indentured Labourers

The TFWP is based on a social and economic relationship called indentured labour, where foreign workers are imported to Canada for a set period of time. The TFWs arrive in Canada using a visa issued by Immigration, Refugees and Citizenship Canada (IRCC), which has their employer's name on it. TFWs find it extremely difficult to get Employment and Social Development Canada (ESDC) to change the employers' name on the work permit, while TFWs are often dependent on their employers for housing, food and transportation. The TFWs are bound to their employer, which makes it difficult to change jobs for any reason, even when serious problems arise. The relationship of indentured labour under the TFWP is inferior to permanent immigration, because low skilled TFWs are sent back to their country of origin, when their period of employment is done.

6.1.2 Chinese Railway Construction Workers Were First TFWs in 1880's

One of the most significant events in Canadian history is the construction of the Canadian Pacific Railway between 1881 and 1884, by indentured Chinese labour. The contractor imported about 15,000 Chinese indentured labourers to work in B.C., because there was a shortage of white labour. Chinese workers did the most back-breaking and dangerous work, while accepting lower quality living and working conditions. More than half of these workers returned home after the railway was completed in 1885. Some workers were left behind in Canada due to personal bankruptcy, while others went home and returned with their families. Employers used Chinese workers to dampen wage demands by local workers and this caused discontent.

6.1.3 Canadian Government's Anti-black Policy 1898-1911

The Canadian government consciously and carefully applied a policy of nearly total exclusion of African-Americans, which discouraged thousands of people who were interested in moving to Canada. Canada was seen as a relatively safe destination after the Civil War (1861–65), as African-Americans tried to escape growing segregation and racism in a number of U.S. states, particularly lynching in Oklahoma. The federal government drafted a motion in 1911 to prohibit immigrants belonging to the Negro race, but it was not passed into law. However, immigration officials used their system of recruitment agents in the U.S and a strict interpretation of medical and character examinations to stop black immigration.

6.1.4 The Origins of the TFWP

The TFWP has its recent historical roots in the Seasonal Agricultural Worker Program (SAWP), which was launched in 1966 to import temporary workers to Canada from Jamaica for periods of six weeks to eight months. By 1976, SAWP had expanded to include Trinidad and Tobago, Barbados, Mexico, Grenada, Antigua, Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Montserrat. The creation of the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 marks the beginning of a shift in federal immigration policy towards temporary workers instead of permanent residents. The NIEAP operated as a revolving door or a forced rotational system of employment.

The TFWP was created in 2002 with the introduction of the Immigration and Refugee Protection Act (IRPA). It established the TFWP and indentured labour as a permanent feature of the Canadian labour market. The federal government recruits TFWs to work for a pre-specified period of time, after which they are replaced by other people. In the same year, the federal Liberal government introduced the Low Skill Pilot Project, which allowed companies to bring in TFWs to perform unskilled labour. Previously, the immigration system was focused on high skilled management and professional occupations.

6.1.5 The Failure of Conservative Immigration Policy

The failure of Canadian immigration policy under the Conservative government (2006-2015) is seen quite clearly in the inability of the bureaucracy to process applications for permanent residency in a competitive international labour market. The Conservatives operated under a policy of "sustained immigration" in Canada with about 250,000 permanent residents per year. The average number of permanent residents entering Canada under the Liberal government (1993-2005) was about 227,000, while under the Conservatives (2006-2014) it increased to around 257,000.

The number of permanent residents admitted to Canada under the economic class has a tendency to fluctuate around an upward trend and reached a peak of 186,915 in 2010. This represents a 91 % increase from the low of 97,909 in 1998. The average number of permanent residents entering Canada in the economic class under the Liberal government (1993-2005) was 124,337, while under the Conservatives (2006-2014) it increased to 154,346. The economic class accounted for about 40 % of all immigrants in 1994. After 2000, the share of the economic class in total immigration fluctuated around the 60 % level.

The number of temporary foreign workers in Canada with work permits plateaued at a level between 70,000 and 80,000 from 1994 to 1998. However, in 1999, the number of foreign workers broke the 80,000 level and began to increase rapidly. By 2006, the number of TFWs (160,854) surpassed immigrants entering Canada in the economic class (138,252). After 2006, the number of TFWs in Canada increased at an exponential rate and in 2008 (249,796) surpassed total immigration (249,252). This trend continued to 2011, when the number of TFWs (300,101) was greater than total immigration (250,758).

The two main drivers in the demand for TFWs are the backlog in processing applications for permanent resident status and the requirements for economic class immigrant selection. CIC reported there was a backlog of 585,000 potential immigrants in FSWP in spring 2008, which peaked at more than 640,000 later in the year. The backlog created huge delays in processing times as applications for permanent residency outstripped annual processing targets. There was no limit on the number of TFWs a company could employ. So many employers built their business model on the program. Tradespersons and TFWs usually don't qualify to immigrate under the FSWP, because they may not meet the selection criteria.

6.1.6 The Rapid Expansion of the TFWP

This failure of Canadian immigration policy has been exacerbated by the rapid expansion of the TFWP, which was designed to allow foreign workers to temporarily fill positions where there is a shortage of domestic workers. However, under the Conservative government the number of TFWs increased by 14% in 2006, and accelerated quickly to 24% in 2007 and 25% in 2008. In the first five years of the Conservative government (2006-2011), the average rate of increase was about 14%. The cumulative percentage increase between 2006 and 2011 was 69%.

The Conservatives implemented policies to expand the list of low skilled occupations that qualified for the TFWP and increased the speed of processing applications. The rapid expansion of the TFWP undermined the domestic labour market, because there was no incentive for employers to find domestic workers to fill vacancies, before importing TFWs. During the global recession in 2008 and 2010, the Conservative government was still bringing in more TFWs than permanent residents. The TFWP became the faster and preferred way for employers to get immigrants to Canada to meet long-term labour shortages.

6.1.7 Exploitation and Human Rights on the Canada Line Project

The case study of the Canada Line construction project shows the provincial government failed to protect TFWs from exploitation and abuse by their employer on a public sector infrastructure project. Initially, the SELI Joint Venture paid an illegal wage to TFWs that was well below minimum wage. After the TFWs joined a union, the Employment Standards Branch let the employer illegally double the TFWs salary to undermine the collective bargaining process. The B.C. Labour Relations Board (LRB) allowed the employer to set the wage, rather than negotiate with the union. The TFWs were subjected to coercion and intimidation by the employer to accept the offer. The LRB allowed the employer to illegally add the costs for housing, meals and airfare to the TFWs wages to justify their discriminatory labour practices.

The LRB dismissed every unfair labour practice complaint filed against the employer including fraud to cover up threats to transfer TFWs to Brazil after they joined the union. However, the Supreme Court of B.C. overturned the LRB decision, because the LRB had shown bias against the union and in favour of the employer. The TFWs were also vindicated on Dec, 3, 2008 by a decision in the B.C. Human Rights Tribunal, which ruled they were the victims of discrimination. Almost five years after the TFWs won the landmark award, they received cheques delivered by the Union for back pay, expenses and injury to dignity.

6.1.8 Fatalities, Fraud and Exploitation on the Horizon Oil Sands Project

This Horizon Oil Sands project case study reveals that TFWs in Alberta were the victims of illegal construction practices, financial fraud and economic exploitation by a multi-national corporation on a major Canadian resource development project. The death of two TFWs in 2007 was the result of substandard methods proposed by Canadian Natural Resources Ltd, which involved the construction of the walls and roof of a large metal storage tank at the same time. SSEC Canada, the contractor, did not provide written engineered procedures for the assembly of the roof support structure. The chief engineer for SSEC Canada, who developed the erection procedure for the roof support structures, was not an engineer. The TFWs were crushed by falling steel.

The Occupational Health and Safety (OHS) fatality report into the TFW fatalities was not released to the public by the Alberta Ministry of Labour until 2016, while CNRL continues legal action to stop a public inquiry into the workplace incident. The report revealed in June 2008 that a group of 132 TFWs had their paycheques siphoned off by SSEC Canada. A legal action was launched to recover the wages TFWs. The trust fund created by CNRL and the Alberta government to reimburse the stolen wages had difficulties finding and paying the TFWs. The Alberta government took two years to lay charges against the employers, and the trial was delayed when one of them refused to appear in court. Most of the charges were dropped and the people who were responsible in the TFW deaths did not face criminal charges. The TFWs were denied their legal rights in the workplace under the Employment Standards Code, OHS Act and Labour Code.

6.1.9 Canadians Displaced by TFWs on the Murray River Project

The case study of the Murray River coal mine project shows the federal government allowed a foreign company to employ hundreds of TFWs at a mine in a region of B.C where there are experienced Canadian miners and a high level of unemployment. HD Mining is importing TFWs for the construction and operation of the mine and does not plan to replace the TFWs with local workers until the 11th year of production. As a result, this private foreign investment has displaced Canadian workers, while communities are denied the positive effects of job creation. The policy has distorted the labour market by driving down wages in the mining sector and the rest of the economy. It has and will continue to exacerbate the unemployment problem in northeastern B.C.

The federal court case which challenged the federal decision to allow HD Mining to import TFWs revealed that HD Mining manipulated the application process, by placing advertisements for Canadian workers in various positions at wages that were below prevailing rates, while requiring the ability to speak Mandarin. The company received at least 300 resumes from Canadian citizens or permanent residents, but did not hire a single Canadian. HD Mining justifies the hiring of TFWs before Canadians, by claiming that only Mandarin-speaking Chinese understand the company's system of longwall mining. The TFWP does not have a viable system for monitoring and enforcing the requirements of its own application process.

6.1.10 TFWs Abandoned by Labour Broker on the Golden Ears Bridge Project

The Golden Ears Bridge case study shows that labour brokers were involved in the economic exploitation of TFWs on a major public sector infrastructure project. The contractor Bilfinger Berger claimed there was a shortage of qualified construction workers in Canada and applied to the federal government to import TFWs. The Joint Venture did not make a serious effort to hire local subcontractors and skilled labour. There were hundreds of workers in Canada who were unemployed and qualified to fill a number of positions on the project.

The CSWU organized about 80 Serbian TFWs and negotiated a collective agreement with a labour broker named Baulex Projects Ltd. in 2007. But, the TFWs were laid off without being paid, when Bilfinger Berger found out that Baulex had its bank accounts seized by Revenue Canada. In this case, Baulex was exposed for a range of illegal activities, including tax fraud, which caused the owner to flee back to Belgrade. The TFWs were not eligible for EI, even though these deductions were made from their paychecks. The TFWs survived for more than a month on their own, before receiving emergency funds from the B.C. government for rent and food. The union tried to get the TFWs new work permits, but finding new jobs in a recession was very difficult.

6.1.11 The New Liberal Government's Policy on the TFWP

The Liberal government's current policy on the TFWP is based on a promise to scale back the program, while providing greater transparency and accountability, in terms of accurate data, enforcement and compulsory workplace audits. The policy package includes a range of measures, such as a complaint tracking system, disclosure of abuse investigations, employer compliance reviews, and public disclosure of the number of TFWs in Canada broken down by region, NOC code and employer. Employers will be required to provide more evidence of efforts to find Canadians and the Auditor General will undertake a full review of the TFWP. Most importantly, a path will be created to provide temporary foreign workers with an opportunity to become citizens.

6.2 Recommendations

The new Liberal government should keep its election promise and implement a comprehensive set of reforms to the TFWP, which ensure Canadian jobs are filled with Canadians through the permanent immigration system. This policy reform should aim to stimulate economic growth, create employment and generate tax revenue for public investment in the construction of new infrastructure. LiUNA recommends the Liberal government make the following twelve policy changes to the TFWP.

> ***"We want these people to become permanent residents, so they can earn a fair wage and put better food on the table for their family. Higher wages will stimulate the economy ... increase in income and sales tax revenues to the government,"***
>
> *said Manuel Alvernaz, Business Manager, CSWU 1611.*

6.2.1 Permanent Residency

There is an urgent need for the federal government to create a pathway to citizenship for TFWs, when the demand for the worker exists and the worker wishes to become a Canadian citizen. These TFWs would come to Canada to work and then stay in the country to become full citizens with the right to vote and be a union member.

"We want these people to become permanent residents, so they can earn a fair wage and put better food on the table for their family. Higher wages will stimulate the economy through consumer spending, as well as an increase in income and sales tax revenues to the government," said Manuel Alvernaz, Business Manager, CSWU 1611. "When workers come to Canada as permanent residents, there is a significant benefit to these new immigrants and their families and the Canadian economy."

6.2.2 Labour Union Consultation

To make sure Canadians are given priority for job opportunities, there is a need for the federal government to implement a policy that requires an employer, who makes an application to employ a TFW, to consult with the specific union which performs the work. LiUNA will not oppose the TFWP as long as the application process determines there are no Canadians to do the work, TFWs will be properly paid, and that TFWs will not be exploited or abused.

6.2.3 Advertising Requirements

A labour market test ensures an employer provides an opportunity for Canadian citizens and legal residents to apply for a job opening, before hiring a foreign national on a temporary basis. Most countries applying a labour market test require the job to be advertised locally or nationally for a certain period of time. The employer must submit the job contract for review or specify the conditions of the contract, with special attention to wages. There is a need for the federal government to implement clear and expanded requirements for employers to advertise locally and across Canada on the Government of Canada's Job Bank and its provincial/territorial counterpart, before hiring TFWs.

6.2.4 Qualifications

There is a need for the federal government to implement new regulations that require TFWs to possess the same qualifications as Canadian workers, such as the Red Seal Standard.

6.2.5 Transition Plan

Employers who want to hire temporary foreign workers in high-wage occupations are required to submit transition plans with their Labour Market Impact Assessment (LMIA) application to ensure that they are taking steps to reduce their reliance on temporary foreign workers over time. LiUNA recommends that the new Liberal government also require employers who hire TFWs to implement a transition plan on all public sector construction projects, which includes:

- Training-up of Canadian workers.
- Commitment of 25% apprentices.

6.2.6 LMIA Exemption

Alberta, British Columbia, Ontario, Nova Scotia and Yukon currently have annexes to their immigration agreements with the federal government that establish Labour Market Impact Assessment (LMIA) exemptions in their jurisdiction. In these cases, the provinces and territories may propose LMIA exemptions for certain occupations and pilot projects involving exemptions to the LMIA process can be initiated. LiUNA recommends the new Liberal government make a commitment that the LMIA exemption under the BC Annex of April 2015, will not be accepted or applied in the construction industry.

6.2.7 Intra-company Transfers

The role of intracompany transfers was at the heart of the controversy surrounding the abuse and exploitation of TFWs on the Canada Line project, the Murray River project and the Golden Ears bridge project. For this reason, the Trans-Pacific Partnership (TPP) has implications for the TFWP, because the agreement could exempt international companies in Canada from requirements to offer jobs to Canadians first.

The deal contains provisions that would make it easier for companies from TPP countries to bring TFWs to their operations in Canada. Employers from these countries would also be exempt from a wage floor established in 2014 to ensure TFWs on intracompany transfers are paid the prevailing wage for their occupation. In addition, Conservative reforms of the TFWP in 2014 also created a new category called the International Mobility Program, which allows employers to bring in workers without looking for Canadians first. LiUNA recommends the new Liberal government restrict Free Trade Agreement "Intra-company transfers" for construction workers, which includes the TPP.

6.2.8 Wage Rates

The TFWP is administered based on wage instead of the National Occupational Classification (NOC). TFWs paid under the provincial/territorial median wage are considered low-wage, while those being paid at or above the provincial/territorial median wage are considered high-wage. LiUNA recommends the new Liberal government not use the provincial median wage rate, which is currently $22 per hour in B.C. The prevailing wage rate needs to be respect the "Craft" (Building Trade) package, which would include wage, holiday pay and benefits for industrial work.

6.2.9 Reduce Work Permit Time

The federal government needs to ensure foreign workers are coming into Canada as a last resort on a temporary basis, in order to encourage employers to hire and train Canadian workers before TFWs. For this reason, LiUNA recommends the new Liberal government limit TFW's to a six month permit to work in Canada. Employers of TFWs should reapply for an LMIA, which will allow the TFWP to respond more quickly to changes in labour market conditions.

6.2.10 Lay Offs

In the events of any lay-off, there is a need for the federal government to implement a policy that maintains the employment of Canadians during a recession or a period of lay-offs within a company. This policy would require employers to let go of TFWs and retain their local employees.

6.2.11 Enforcement

Currently, it is not possible to determine whether or not there is an actual need for TFWs due to labour shortages at the regional and local level in Canada. Despite claims by contractors that they can't find Canadians to fill specific positions on major construction projects, there is a lack of federal government data to prove the need to import TFWs. Statistics Canada and ESDC need to set up a program to collect and keep current data on the demand for construction trades in specific geographic regions, in order to properly monitor and enforce the TFWP.

LiUNA recommends that the new Liberal government also operate a robust and sufficiently financed enforcement strategy to enforce the new regulations.

6.2.12 Foreign Ownership and Competition

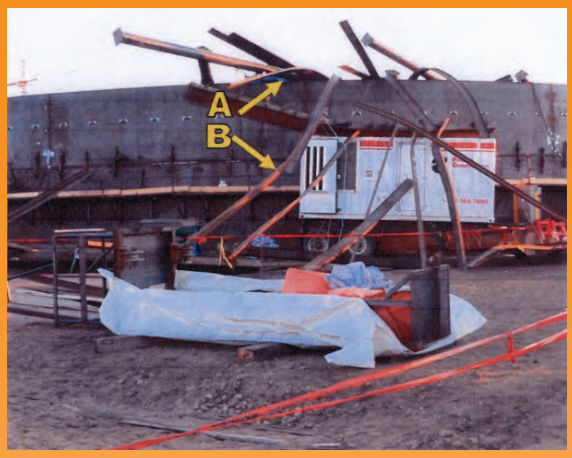
Foreign companies should not be allowed to bid on public infrastructure projects in competition with Canadian firms, and then employ TFWs under the most extreme conditions of abuse and economic exploitation. Foreign companies should not be allowed to make large private direct investments in major resource development projects on Crown land which are constructed and operated primarily by TFWs in regions of Canada where there experienced workers willing and able to work.

6.2.13 Final Comment

Some labour unions argue that the TFWP should be abolished due to the rapid expansion of the TFWP, serious abuses by contractors and problems enforcing current regulations. If new Liberal government does not implement a comprehensive package of policy reforms and enforce these new regulations, LiUNA will be support the elimination of the TFWP.

THE IMPACT OF THE TEMPORARY FOREIGN WORKER PROGRAM ON THE CONSTRUCTION LABOUR FORCE IN WESTERN CANADA (2003-2015)

CANADA LINE PROJECT



HORIZON OIL SANDS PROJECT

MURRAY RIVER
COAL MINE PROJECT

GOLDEN EARS
BRIDGE PROJECT

PART II: CASE STUDIES

7 EXPLOITATION AND HUMAN RIGHTS ON THE CANADA LINE PROJECT

7.1 Introduction

One of the largest and most controversial public infrastructure projects in Canadian history is the $2.1 billion Canada Line in Vancouver, British Columbia. SNC-Lavalin was awarded a $1.64 billion contract in August 2005 for the construction of a 19.5-kilometre Light Rail Transit (LRT) line that links downtown Vancouver with the international airport in Richmond and Richmond City Centre. Under the contract, SNC-Lavalin was responsible for the detailed engineering design of the project, procurement of all the equipment and materials, as well as the construction and delivery a functioning LRT system. The project was completed and opened to the public on Aug. 7, 2009, in time for the 2010 Winter Olympics.

Photo Credit: *Richard Gilbert – TFWs on the Canada Line project prepare to lift the tunnel boring machine from Waterfront station. The massive, 440-tonne machine was disassembled after it broke through into the open air on March 2, 2008.*

After construction started in October 2005, the Canada Line project gained positive media attention for two important achievements. The Canada Line was the first major LRT project in Canada to be built using the public-private partnership (P3) model. It was also the first rapid mass transit system in Canada to link the downtown core of a major city with an international airport.

However, less than a year later, the contractor, SNCP-SELI Joint Venture (the Joint Venture) was exposed by the CSWU and the media for the abuse and economic exploitation of Temporary Foreign Workers (TFWs). The Joint Venture is a partnership between SELI Canada Inc., which is owned by the Italian parent company SELI, and SNC-Lavalin Constructors (Pacific) Inc., a subsidiary of Canadian owned SNC-Lavalin. SELI Canada Inc. is responsible for tunnel construction.

The Construction and Specialized Workers Union (CSWU) 1611 launched a series of legal challenges and discrimination complaints against the Joint Venture in support of the TFWs who assembled and operated a massive 440 tonne tunnel-boring machine (TBM). As the CSWU's complaints moved through the legal system, the evidence revealed an intense labour dispute between the Joint Venture and a group of TFWs from Costa Rica, Colombia and Ecuador. The TFWs were fighting for equal pay, union representation and human rights.

7.2 TFWs Join Union for First Time in Canadian History

The TFWs on the Canada Line project demonstrated great solidarity and strength of character by standing up to the Joint Venture and demanding equal rights, when they discovered how little they were being paid in relation to Canadian workers. The BC Labour Relations Board (LRB) certified the CSWU to represent the TFWs, after a secret ballot on June 30, 2006. The LRB is a quasi-judicial tribunal with the authority to interpret and apply the B.C. Labour Relations Code.

The Union said pay stubs showed TFWs worked for $3.47 an hour, six days a week, at a minimum of 60 hours.

7.2.1 Low Wages

The CSWU made a complaint to the B.C. Employment Standards Branch (ESB) in June 2006, on behalf of about 40 tunnel construction workers on the Canada Line. The TFWs claimed Joint Venture paid them a wage of about $1,100 month, for a 66 hour work week. The investigation reviewed the pay roll record at the employer's office and found the TFWs complaints were valid (BC Building Trades, 2011). The Union said pay stubs showed TFWs worked for $3.47 an hour, six days a week, at a minimum of 60 hours.

"It is a disgrace that any workers in this country could be allowed to be exploited like these workers have been," said Mark Olsen, former business manager, CSWU 1611, who noted the TFWs voted to certify the union as their bargaining agent in future contract negotiations with the employer (Peter Kennedy, 2006).

The wages issues on the Canada Line project revealed the failure of federal and provincial authorities to enforce the labour code, employment standards, human rights laws, as well deal with the displacement of Canadian workers.

"The foreign workers on this high profile public infrastructure project with federal and provincial funding are not receiving minimum wage ($8 per hour) compensation as required under the Employment Standards Act," said Wayne Peppard, Executive Director of the BC and Yukon Territory Building and Construction Trades Council in a letter to B.C. Labour Minister Mike de Jong on June 1, 2006. "I urge the Minister of Labour to carry out a full investigation of payroll and other employment standards to ensure that all terms and conditions under the Employment Standards Act are being met (Wayne Peppard, 2006)."

The CSWU met with the Joint Venture on seven occasions trying to negotiate a Project Labour Agreement. The Union trains crews to work with the TBM equipment used on this project. Olsen said the Joint Venture told them "the federal government has approved us bringing in foreign workers to drive the tunnel, and so your members will bring no value to the Project." The Joint Venture imported TFWs who were previously employed by the company on the La Joya hydroelectric project in Costa Rica.

The TFWs arrived in Vancouver in or about April 2006. They were the core of a unit of about 55 tunnel construction workers employed by the Joint Venture on the Canada Line. The TFWs assembled the TBM and were responsible for the specialized tunnelling work. The CSWU served notice to bargain on June 30 and the parties agreed to start collective bargaining on July 10, 2006. The employer cancelled the first bargaining session. The CSWU provided the employer with a complete bargaining proposal on July 14.

InTransitBC, which was contracted in 2005 to design, build, partially finance, operate and maintain the Canada Line for a 35-year period, denied the TFWs were victims of economic exploitation. InTransitBC is a limited partnership formed by SNC-Lavalin, British Columbia Investment Management Corporation (bcIMC) and the Caisse de dépôt et placement du Québec.

7.2.2 Threats, Intimidation and Coercion

After the successful union organization of the workers, the CSWU filed an application to the LRB on July 5, 2006 under Section 38 of the Labour Relations Code, which asked for a declaration that SELI Canada Inc., SLCP-SELI Joint Venture and SNC-Lavalin Constructors (Pacific) Inc. are a common employer. The application was seeking a statement that the employer violated the labour code by stalling the start collective bargaining. The CSWU also filed an unfair labour practice complaint (described below) for discrimination to the LRB on July 4, which was adjudicated in April, 2008.

The Joint Venture tried to stop the TFWs from joining a trade union, by making a threat on July 3 to transfer five workers to a project in Brazil. Three of the employees were active in the CSWU's organizing drive. The TFWs were informed by a senior manager that plane tickets would be provided and they should report to the airport that night (Philip Topalian, 2008).

Three of the TFWs reported to work for their evening shift on July 4 and did not go to the airport. The senior manager summoned the TFWs to the office. Each TFW told the manager that he did not wish to transfer to Brazil. The manager was upset, because the Joint Venture bought non-refundable plane tickets. The TFWs were told to sign a letter that said they did not want to go to Brazil, but they refused.

The CSWU presented evidence about whether or not the Joint Venture had a real need for the TFWs in Brazil at the time of the proposed transfer. This evidence included documents from both Italy and Brazil in which the transfer of the TFWs was requested. It also included documentation showing the machinery required for the Brazil project had not been shipped from Germany, when the transfer requests were made. In addition, once shipped, the machinery would take four months to arrive at the Brazil site.

The Joint Venture failed to establish a legitimate reason to transfer the TFWs, so the CSWU argued the company fabricated evidence. The transfer was a threat to the bargaining unit and a consequence of the decision to organize. The CSWU pointed out that management at SELI S.p.A. and SELI Canada Inc., in Rome, Brazil and Canada were probably working together to undermine support for a bargaining unit of less than 60 employees in Vancouver.

7.2.3 SELI Refuses to Negotiate With the CSWU

The Joint Venture refused to meet with the CSWU and claimed the union made false statements about wages before and after the certification date. The company argued the union application under Section 38 and the unfair labour practice complaint made it impossible to continue with the collective bargaining process.

"It is our position that your certification was improperly granted if, as now seems clear, it is your intention to include SNC Pacific as one of the employers on the certification," said the Joint Venture's lawyer in a letter to the CSWU dated July 5. "Thus, until the Board dismisses your common employer application, our client will not engage in bargaining (Mark J Brown, 2006)."

LRB Vice-Chair Mark J. Brown ruled on July, 31, 2006 that it is premature to assess the common employer complaint, before the parties start collective bargaining. Brown ruled the Joint Venture can't refuse to bargain with the CSWU.

"I conclude that the Employer cannot simply refuse to meet to bargain collectively based on its view of the Union's applications," said Brown. "The Employer cannot set preconditions to the commencement of collective bargaining. In doing so, the Employer has violated Sections 11 and 47 of the Code. I direct the parties to meet to commence collective bargaining within 10 days of the date of this decision."

The working visas issued to the TFWs by Citizenship and Immigration Canada (CIC) had the names of SELI Canada Inc. and SNC-Lavalin as their employer. The right of the TFWs to work in Canada is directly related to their legal employer. Immigration documents also show the employer listed annual salaries of $47,500 to $53,500 in Canadian funds.

However, Brown concluded the evidence presented by the CSWU was speculative. He said there was not an actual or potential detriment to collective bargaining rights. This was a dispute between the parties with respect to the employer named in the certification. There was no need to reconcile that matter.

The LRB's decision was a blow to the CSWU, who viewed it as a denial of a fair hearing, because the original panel failed to consider its case. CSWU lawyers said it was unprecedented that a panel of the LRB dismiss outright a Section 38 claim of any union, without further inquiry or case management processes to obtain further particulars.

As a last defence, the CSWU applied for leave and reconsideration of Brown's decision. But, LRB Chair Brent Mullin ruled on Aug. 28, 2006 that "it was not an error or a denial of natural justice for the original panel to conclude that outline of facts and circumstances did not meet the LRB's requirements for common employer applications (Brent Mullin, 2006)."

7.3 CSWU Considers a Strike as SELI Bargains in Bad Faith

The CSWU provided evidence to the ESB that the employer was initially paying the TFWs $US 12,000 a year. Six days after the TFWs joined the union, the employer altered their contract by raising pay to $US 20,000. The increase to about $CDN 14 per hour (gross) deflated the TFWs solidarity. The final ESB report didn't acknowledge the TFWs had been paid $1,100 monthly. The Joint Venture told the ESB there were problems accessing payroll and the records weren't accurate. The employer was allowed to reconcile the error by compensating workers for unpaid overtime at a rate of about $14 per hour. Once the workers were paid back, the ESB determined the employer was in compliance and closed the case.

The CSWU's complaints revealed a pattern of activity by the Joint Venture, which aimed to frustrate and undermine the TFWs efforts to organize and negotiate a collective agreement. As a result, the TFWs were coerced into signing a deal that was below local labour standards.

When collective bargaining began in August 2006, the CSWU set out to achieve an industry standard collective agreement. The Joint Venture claimed it was unable to afford the standard agreement. The CSWU estimated on Aug. 24 that the company was saving about $4.5 million per year in labour costs, compared to current costs (Allison Matacheskie, 2007).

The CSWU also outlined the terms of an agreement inherited from Bilfinger Berger, which is a European company based in Mannheim, Germany. In this case, SELI Joint Venture was saving about $2.1 to 2.9 million per year. Bilfinger Berger abandoned a group of TFWs on the construction site of twin tunnels for a water treatment plant in North Vancouver. The company was fired by the owner Metro Vancouver.

The Joint Venture made an offer to the CSWU on Sept. 18, 2006, which included bonuses for loyalty and a production. The union was disappointed with the offer and advised its members to be cautious about the bonus. The Joint Venture applied for a last offer vote on Sept. 19, 2006. The company held daily meetings in which management intimidated TFWs who supported the union. The TFWs were also told operations would be shut down if they rejected the last offer vote, or voted in favour of a strike.

The last offer vote should have been conducted on the previous offer, because the Joint Venture altered the terms of the bonus. The employer bargained in bad faith by making an offer to the TFWs without talking to the CSWU. In addition, the last offer contained a provision which was contrary to the Human Rights Code. The employer also made threats of closure to the TFWs in an effort to intimidate and coerce them to accept the last offer and reject a strike vote.

The CSWU wrote a letter to SELI Joint Venture on Sept. 21 at 1 p.m., asking for disclosure of the names and addresses of all the employees in the bargaining unit. However, the employer did not respond immediately, which is required by the regulations. The CSWU postponed a strike vote, in part, because the employer refused to comply. Lisa Southern, LRB Vice-Chair and Acting Registrar, directed the Joint Venture to provide the information (Lisa Southern, 2006).

SELI Joint Venture wrote a letter to the CWSU on Sept 21, which was translated into both English and Spanish and widely distributed to the TFWs.

"If there is a strike, no wages or bonuses will be paid, and our offer to pay bonuses and to secure the employment of our employees will be revoked," said the letter. "As we have told you, a strike will force SELI to abandon this project. This will put our employees out of work. You are fooling our employees if you tell them that you can take care of them if they vote for a strike. The only way our employees can secure their future is by accepting our offer and voting no on your strike vote (Allison Matacheskie, 2007).

Finally, the Joint Venture applied to withdraw the application for a last offer vote. The company was allowed to make an application, and then withdraw that application, in order to re-file another offer. An employer is only entitled to one last offer vote and prohibited from changing the payroll until four months after certification. The Joint Venture should not have been allowed to reapply for a vote with new language in the collective agreement, without first presenting that new offer to the CSWU.

Southern granted the application to withdraw on Sept. 26, which allowed the Joint Venture to file a second application. Southern said this process met labour code requirements, because the offer was presented to the CSWU before the application was made (Lisa Southern, 2006). The vote was held on Sept. 26 and 27, and the CSWU urged the TFWs to reject the last offer agreement. The ballots were sealed pending a complaint to the LRB by the CSWU about discrimination and human rights violations.

The CSWU argued the changes made to the last offer should be destroyed or not counted, because the TFWs were being coerced or intimidated to vote on a last offer, which contained a provision that was contrary to the Human Rights Code. The TFWs should not have been compelled to vote on this offer, especially when it was based on a proposal which was different from the one presented to the Union in bargaining. The CSWU conducted a strike vote in October 2006. Seventeen employees voted in favour and 34 voted against a strike.

7.4 Human Rights Tribunal Orders SELI to Cease and Desist

The CSWU filed several complaints in August 2006 on behalf the TFWs to the B.C. Human Rights Tribunal over racial discrimination and unfair wages. The complaints alleged discrimination in employment on the grounds of race, colour, ancestry and place of origin, which is contrary to Section 13 of the B.C. Human Rights Code.

"These workers are in a very vulnerable position. They were before this ruling and continue to be vulnerable. That is why the tribunal gave an expedited ruling with such strong language," said Mark Olsen, former business manager, CSWU Local 1611. "We are calling on the federal government to do due diligence on these companies in the future. The federal government needs to get more involved and do more enforcement, so this does not happen again (Richard Gilbert , 2007)."

The original complaint was filed when the workers realized the terms and conditions of their employment were significantly different and substandard in comparison to their European colleagues, who perform identical, similar or less skilled and responsible work.

The Tribunal ruled on Nov. 9 that "the employer should not have further contact with employees in the complainant group except as is necessary in the ordinary course of the project." The Tribunal panel, which was chaired by Heather M. MacNaughton, also concluded that "the employer failed to establish the union is not a proper representative of the complainant group."

According to the Tribunal's ruling, SELI asked the workers to sign a petition, in "an attempt to intimidate and coerce individual members of the complainant group to withdraw their support for the union to represent them in this complaint."

The original complaint was amended on Sept 28, 2007, when "the union alleged the employers' managers drew up a petition which stated that those who signed it did not wish the union to represent them in their human rights complaint and managers had made intimidating or coercive comments to some members of the complainant group who refused to sign the petition."

Section 43 of the Human Rights Code reads that a person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

The Joint Venture appealed the decision to the B.C. Supreme Court on Nov. 14. The company argued that the Tribunal made errors regarding legal principles and left out several key points of evidence. SELI also applied for an adjournment of the case, by claiming the conditions imposed by the decision were so onerous the hearing could not proceed. The company maintained the position that the CSWU should not be representing the TFWs.

7.5 LRB and ESB Fail to Protect TFWs

LRB Vice-Chair Allison Matacheskie dismissed the CWSU's objection on Feb. 17, 2007 and ordered the ballots cast in the last offer vote to be counted. Fifty-six employees voted in favour of accepting the final offer. Seventeen voted against it. The LRB confirmed to the parties on February 23, 2007 that the "last offer' was the collective agreement in full force and effect. LRB Vice-Chair Philip Topalian dismissed every unfair labour practice complaint filed by the CSWU on April 3, 2008 (Philip Topalian, 2008).

7.5.1 Decision on Discrimination

The Joint Venture's last offer to the CSWU had two different payment structures for employees in the bargaining unit. The structures were: 1) Schedule A employees, who earned a gross hourly wage of $CDN 18-$28 per hours; and 2) Schedule B employees, who earned about $14.47 per hour in Canadian funds, which is a net yearly salary between $US 20,000 to $US 28,000. The Schedule A workers were being paid $23 or $24 dollars per hour. When working overtime, Schedule B employees earned $21.70 per hour, while Schedule A employees earned $34.50 per hour. All Schedule B employees, except one, were TFWs from Central and South America. The Schedule A employees were B.C. residents.

The CSWU launched a complaint with the LRB about the Joint Venture's discriminatory business practices, which paid TFWs about $10 less than Canadian workers. In addition, the TBM operators were the most skilled workers on the project, who performed the difficult and dangerous work.

"I find that, in the circumstances of this case, it is appropriate to take into account the value of the additional benefits, such as accommodation, meals and airfare, provided to the Schedule B employees that are not provided to the Schedule A employees," said Matacheskie in an LRB

decision on Human Right violations. "Seli is constantly moving to new projects throughout the world and offers some employees working on its projects the opportunity to continue to work for Seli on new projects."

Matacheskie concluded the project is scheduled to last for about two years, so the TFWs had entered into a new employment relationship with the Joint Venture, rather than a temporary transfer of location with the same employer. She said this was not a situation where the TFWs were asked to perform work in a different location for a few weeks and the employer pays the hotel, meal and travel costs.

"Rather, I agree with the Employer's argument that it is more analogous to a situation where an employer is opening a new office in a new location and offers employment to its present employees in the new location," said Matacheskie. "If the offers are accepted, the employer is not required to pay for any portion of the moving expenses."

7.5.2 Decision on Threats and Intimidation

In a paradoxical decision, Matacheskie ruled the Joint Venture provided employees with an opportunity to decline or accept employment in Vancouver. So, the TFWs were not threatened with termination or fired for declining to relocate. As a result, the LRB included the cost of relocation as part of the payment of Schedule B employees, when compared to Schedule A employees.

The LRB ruled the TFWs agreed to pay $500 per month for the cost of housing, as well as $25 per day for meals and $3,000 for economy airfares to their place of residence. These costs were about $18,125 per year per employee. The LRB said the TFWs accepted this offer and received these benefits in addition to a salary. It was also ruled that no evidence existed to show the TFWs are more skilled than the Schedule A employees.

Under the Employment Standards Act, wages should be paid in currency (ESA Sec. 20) Yet, the LRB counted the value of living allowance benefits as wages. TFWs were forced to pay the following benefits as income: economy airfare to their place of residence twice annually, poor quality housing in a rundown Vancouver motel, meals from only one restaurant, medical costs, work cloths, work visas, long distance phone cards, laundry, transportation to work and toiletries.

Topalian ruled on April 3, 2008 that the Joint Venture did not conduct a campaign to intimidate the employees from becoming or remaining members of the CSWU.

"The proposal to transfer certain employees to Brazil which led to the original application in these proceedings was, as I have found, motivated by valid business considerations rather than by any improper motivation for purposes of the Code," said Topalian. "The other matters complained of by the Union arose on a piecemeal basis during the course of these proceedings and, I find that in context, they do not amount to a course of conduct aimed at frustrating the Union's efforts to organize the employees and to negotiate a collective agreement on their behalf."

7.5.3 Decision on Fraud

Two expert witnesses were retained by the CSWU, who were former RCMP officer. A forensic document examiner, D.J. Gamble, examined the originals of the 39 contracts in evidence. Leslie Peace conducted an examination of documents using an instrument called an Electrostatic Detection Apparatus. It examines indentations on paper caused when two or more sheets are in contact, and writing on the top sheet causes indentations on the sheets below.

The CSWU alleged that the Joint Venture attempted to commit a fraud on the LRB to conceal the substitution of the first page of the majority of the contracts signed by TFWs. The union claimed the front pages signed by the TFWs in Costa Rica, which showed the original pay rates were removed and replaced with a page containing the $US 20,000 rate.

> ***"LRB ... has ... exhibited actual bias against the union in this case and in favour of the employer, contrary to all requirements of fairness that the court expects should be shown,"*** *said the CSWU's former business manager Mark Olsen.*

According to the CSWU, the Joint Venture was attempting to fraudulently conceal a breach of the labour code. The pay stubs provided as evidence to the ESB show the wages earned by TFWs in May and June 2006 was the full amount the employer intended to pay them, before union certification. In particular, the CSWU alleged the front page of the Canadian contracts was removed and replaced with a page containing the $US 20,000 rate. Someone at the Joint Venture altered the original contracts by stapling and re-stapling them in order to frustrate any forensic investigation.

In order to prove the allegation that SELI Joint Venture violated the labour code by increasing wages during the statutory freeze period, the CSWU had to show that the changes to the contracts increasing the TFWs pay rates were made during the four months following certification of the union. This period was between June 30, 2006 and October 31, 2006.

7.5.4 Supreme Court of B.C. Overturns LRB Decision

The B.C. Supreme Court overturned an LRB decision by LRB vice-chair Philip Topalian in May 2009.

"LRB vice-chair Philip Topalian has been found by the BC Supreme Court to have exhibited actual bias against the union in this case and in favour of the employer, contrary to all requirements of fairness that the court expects should be shown," said the CSWU's former business manager Mark Olsen. "This is a serious matter and our union does not take this step lightly, but Justice Walker's decision is highly critical of Mr. Topalian's conduct in a very important case that could have far-reaching impacts on B.C. labour relations law (Richard Gilbert, 2009) ."

In its initial complaint, the CSWU alleged the employer had contravened the Labour Relations Code, when it attempted to transfer foreign workers from the Canada Line project in Vancouver to Brazil. The union said the employer's efforts were intended to discourage its employees from becoming or continuing to be members in a trade union.

Next, the CSWU complained the Joint Venture violated the Labour Relations Code by increasing the wages of its employees in the four month freeze period following certification. Section 45 of the labour code prohibits alterations to the terms of a contract for a period of four months after a trade union has been certified as the bargaining unit for a group of employees. The purpose of the freeze is to avoid any influence on the bargaining process.

"In my view, the nature and history of the dispute between the union and SELI require a fresh hearing of the issues ... done by both the union and SELI in what has been a bitter and protracted dispute," *said Walker.*

For Justice Walker, the most significant complaint filed by the CSWU was the allegation the Joint Venture conspired to commit a fraud on the LRB by falsifying employment contracts in order to conceal its violation of Section 45.

"In conclusion, having found actual bias, I order the decision of the Board, which includes the decision of the original panel and the reconsideration panel, quashed," said Justice Walker in the decision. "I also find an apprehension of bias in relation to the Vice Chair's remarks concerning the Union's fraud allegations. It is vital for labour relations in this province that the Board's processes be viewed as impartial and procedurally fair (Justice Walker, 2009) ."

Justice Walker concluded on May 29, 2009 that an informed and reasonable observer could understand that Topalian had bent towards one side or a particular result in relation to the CSWU's evidence about the fraud. He said Topalian had made up his mind well before all the evidence was presented, and that his "mind was closed to the union's complaint that unfair labour practices had, in fact, occurred."

The CSWU provided evidence to show the employer acted fraudulently by creating documents in support of its stated defence that its workers were required for work in Brazil for bona fide business purposes.

"In my view, the nature and history of the dispute between the union and SELI require a fresh hearing of the issues without the involvement of any prior board members so that justice may be seen to be done by both the union and SELI in what has been a bitter and protracted dispute," said Walker.

The CSWU argued Topalian should be dismissed from the LRB, because no union can have confidence that he will be fair and unbiased. The BC Court ruling meant the union could start their unfair labour practices complaints all over again, long after the TFWs returned home and the project was completed.

7.6 TFWs Laid Off Before Human Rights Tribunal Ends

A critical phase of Canada Line construction was completed on March 2, 2008 when the TFWs who operate the 440-tonne TBM broke through the ground into the future site of Canada Line's Waterfront Station. The breakthrough completed the second of two side-by-side bored tunnels under False Creek and downtown Vancouver. The completion of this phase in construction was marked by a ceremony that was attended by the TFWs and B.C. Premier Gordon Campbell. However, shortly after the ceremony a group of TFWs were laid off and told they must go home immediately.

"The tunnel-boring machine broke through for a tidy media event. A bunch of foreign workers were used for a photo opportunity and a handshake with the Premier," said CSWU lawyer Kevin Blakley. "About a half-hour later, they were laid off. The guys who were laid off received a medal and were given a $20 bonus (Richard Gilbert, 2008a) ."

The union claims the laid off workers were among the most militant in pushing for union representation for a group of TFWs.

"Almost all the guys who were laid off testified before the Labour Relations Board or the Human Rights Tribunal," Blakley said. "On March 3, they got a letter that said they can leave to go home on a flight on March 6 or March 13. The workers were also told in writing they must be out of their accommodation by March 6."

The Joint Venture said the TFWs were not being punished or singled out, because 11 Latin Americans, eight Europeans and four Canadians also received lay-off notices on March 3. The company claimed the lay-off was strictly a business decision, despite the fact that more than a month of work remained to disassemble the TBM and prepare it for shipment to a new project.

The lay-off of the TFWs on March 2 affected the hearing of evidence before the B.C. Human Rights Tribunal. The hearing of evidence before the Tribunal took place on Feb. 13-15, Feb. 19 and March 10, 12 and 13. The departure of witnesses before the scheduled hearing dates affected the manner in which evidence was given before the Tribunal. The final argument was scheduled for April 10.

"After the employer made assurances to the tribunal to make sure (the foreign workers) are available, they are told they must go on the night of March 3," said Blakley. "The next hearing date was March 10. On top of this they were told we will pay you until March 13, even if you go home. This was a setup. It did affect the Human Rights Tribunal. We had to conduct a video deposition and pay for a court reporter and a videographer. All this was completely unnecessary (Richard Gilbert, 2008b) ."

Despite the timing of the lay-offs, the Joint Venture said they had no impact on the TFWs giving evidence before the Tribunal. The employer claimed the union's case had been done for months and the TFWs had already given their testimony. They said some workers were still in the country, but some left on their own accord. The TFWs were given a choice when to go home and had until March 13.

However, the CSWU produced a letter written in Spanish to the TFWs that said they must leave by March 6.The union said the TFWs were given both the carrot and the stick, because they had no place to live and also had the option to go home early with pay.

7.7 TFWs Win Decision Against SELI at Human Rights Tribunal

The TFWs were vindicated on Dec, 3, 2008 by a decision at the BC Human Rights Tribunal, which ruled they were the victims of discrimination based on skin colour, ancestry and country of origin. The CSWU relied on the testimony of TFWs, who had been employed with SELI for more than 20 years and who worked on dozens of projects around the world. The decision was the first adjudication anywhere in the world that was against an employer, who hires workers from low-income countries with the expectation of treating them differently and adversely compared to workers from high-income countries.

"CSWU established a prima facie case that the Respondents (SELI Canada, SNCP-SELI Joint Venture and SNC Lavalin Constructors) discriminated against the members of the complainant group in treating them differently from, and adversely as compared to members of the European comparator group, in respect of salaries, accommodation, meals and expenses," said the decision.

This conclusion flows from the CSWUs complaint, which alleged the terms and conditions of TFWs employment with the Joint Venture were significantly different and perceptibly substandard in comparison to those of their non-Latin American colleagues who perform identical, similar or substantially similar, or less skilled and responsible work.

7.7.1 TFWs Treated Differently Than European Workers

The Tribunal defined the comparator group as being made up of Europeans, who perform non-managerial tasks in the construction of the tunnel. The characteristics of the Europeans were relevant for comparison to the TFWs in relation to salaries and benefits, except for their race, colour, ancestry and place of origin. The Europeans like the TFWs were non-residents with expertise and experience in specialized tunnelling work. Both groups were employed by the Joint Venture and employed previously by SELI on other tunneling projects.

The TFWs were treated differently, when it came to ...

The Joint Venture treated the TFWs as a distinct group from the Europeans in many ways. To begin, the TFWs were paid in American dollars, bimonthly, while the others were paid differently. The TFWs were treated differently, when it came to the issue of meal tickets. The European workers' requests for changes in meal tickets and money for meals were treated on an individual basis, while the TFWs were treated as a group. When four or five TFWs asked to receive money rather than meal tickets, they were told that a change would only be made if all the TFWs requested it.

7.7.2 Differences in Housing, Salary and Meals

The TFWs were housed together at a low quality motel, while most Europeans were housed in False Creek apartments close to the worksite. None of the TFWs were moved to the apartments in False Creek. In addition, the Joint Venture considered and treated all Europeans as managers, regardless of whether they exercise managerial functions.

The majority of the Costa Ricans were paid a net salary of $US 20,000 or $US 20,500, with two exceptions, who were each paid $US 21,500 US. The Columbians and Ecuadorians were paid net salaries of $US 21,000 to $US 27,225. Depending on the applicable exchange rate, these base net salaries are about $CDN 23,000 and $CDN 31,000. The vast majority of the Europeans were paid in net Euros, plus bonuses. The base pay ranged from €33,600 to €39,000. Again depending on the applicable exchange rate, these base net salaries are the equivalent of between about $CDN 56,000 and $CDN 62,000.

The Europeans were therefore paid on average roughly twice the base net salary of the TFWs. In every case, where the parties agreed that the TFWs and European workers were performing the same work, the European workers earn substantially more. This is true regardless of their comparative experience, skills and duties.

TFWs received 60 meal tickets per month for lunch and dinner and $150 for breakfast. Most European workers received 30 meal tickets per month for lunch, and $150 for breakfast and $300 for dinner. All Europeans with one exception received $300 per month for miscellaneous expenses. By contrast, none of the TFWs received a monthly allowance for expenses. Rather, they were permitted to claim certain expenses, such as laundry and some phone charges, and receive reimbursement.

7.7.3 SELI's Case Based on International Compensation Practices

The Joint Venture argued the adverse treatment experienced by TFWs while working on the Canada Line as compared to European workers were justified due to SELI's international compensation practices. SELI undertakes tunnelling projects for an international market and employs workers from various locations who may move to projects wherever SELI works. SELI supplements those workers, as required, with local workers, who do not continue to work with SELI following completion of a given project.

In this case, SELI brought in a few key European managers and specialists, and a much larger group of Latin American workers, to begin the project. They also hired some Canadian residents, who, with very limited exceptions, performed different work than the international SELI workers. Later, the TFWs were joined by a second group of European tunnel construction workers.

The compensation package that SELI offered to its mobile labour force for a particular project is a function of three elements: 1). the actual compensation for work at the location of the project for which the employee is currently employed; 2) the labour market rates for comparable work at the location of the project for which the compensation package is being developed; and 3) the length of the employee's service at SELI and their skills and ability to operate particular equipment.

SELI employees usually start working for SELI in their home countries and will be paid in local labour market rates. If their home country labour market rates are low, when they go to a SELI project in another country their previous salary will be lower than a SELI employee who comes to that project after working in a high wage country. The Joint Venture argued that any differences in salaries paid were primarily a function of SELI's international compensation practices and global labour markets, and were therefore not discriminatory.

7.7.4 SELI Appeals the Tribunal's Decision

The Tribunal rejected the argument that SELI's international compensation practices were non-discriminatory. SELI Canada Inc., SNCP-SELI Joint Venture and SNC Lavalin Constructors (Pacific) Inc. was ordered to pay each foreign worker the difference between the salary paid to them and the average salary of the Europeans, the difference between expenses paid to the two groups and $10,000 compensation for injury to dignity. The total compensation on average for all TFWs including performance and loyalty bonus was around $45,000 gross. Their counterparts from Europe got about $95,000.

Despite the decision, the Joint Venture continued to deny that any discrimination took place. The lawyers for the Joint Venture appealed the decision. I argued the decision is fundamentally flawed, because the Tribunal failed to take account of the fact that SELI is an international company. The Tribunal's ruling was binding, but the TFWs would have to go through a lengthy judicial process before receiving back pay and damages.

"These workers have suffered enough – SELI Canada and SNC Lavalin should do the right thing, admit their serious mistakes and pay the workers the back pay and damages they are now owed," said Wayne Peppard, executive director of the BC Building Trades Council. "Forcing the workers through another lengthy judicial process to try and deny them the money they are owed would be cruel and vindictive treatment that these hard working men don't deserve (Richard Gilbert, 2008c) ."

The Tribunal ruled that money must be paid to the TFWs, but the exact amount was not calculated. The CSWU said the rough estimate of compensation owed to the foreign workers is more than $2.4 million (Richard Gilbert, 2008d). Meanwhile the decision of the BC Human Rights Tribunal was appealed by SELI-SNCP and awaited the BC Supreme Court judicial review.

7.7.5 TFWs Paid Five Years After Tribunal Award

Almost five years after TFWs involved in Canada Line construction won a landmark award from the B.C. Human Rights Tribunal, 36 employees received cheques for back pay, expenses and injury to dignity.

"It sends a message right across Canada, that companies cannot bring their international compensation practices to B.C., if in doing so its discrimination based on place of origin," said former CSWU business manager Mark Olsen at a press conference in Vancouver on April 3, 2013. "So, if workers are properly brought here from another country, it is irrelevant what they make on another like job somewhere else in the world. They have to be paid appropriately in B.C., especially when they are compared to other workers on the same job (Warren Frey and Richard Gilbert, 2013).

The CSWU and the TFWs reached a $1.25 million dollar settlement with the Joint Venture, which worked out on average to about $35,000 per worker.

7.8 Conclusion

The TFWs on the Canada Line construction project were successful in their efforts to gain union certification for the first time in Canadian history. In addition, the BC Human Rights Tribunal made a multi-million dollar award in favour of the TFWs, for the discrimination they experienced while being employed by the SELI Joint Venture. However, these achievements

are considered to be only a partial success, due to the failure of provincial authorities, in particular the ESB and the LRB, to protect these TFWs from the corrupt and unethical business practices of their employer.

In this case, TFWs were paid an illegal wage that was well below the minimum wage for several months. Next, the employer illegally doubled the TFWs salary after they joined the union in order to undermine the collective bargaining process. The Joint Venture obtained an order from the LRB permitting it to put the terms of its last contract offer directly to the workers for a vote.

By allowing SELI Joint Venture to unilaterally increase wages, the company was able to set the wage, rather than having to negotiate with the CSWU. The terms of the parties' first collective agreement were established, while the TFWs were being subjected to a campaign of intimidation and coercion to accept the employer's offer.

The CSWU's complaints revealed a pattern of activity by the Joint Venture, which was designed to frustrate and undermine the TFWs efforts to organize and negotiate a collective agreement. As a result, the TFWs were coerced into signing a deal that was below local labour standards. The LRB allowed the employer to add the costs for housing, meals and airfare to the TFWs low wages to cover up their discriminatory business practices. The company was not investigated for the super exploitive wages that were paid to the TFWs during the initial employment period.

The CSWU's complaints revealed threats by the Joint Venture to transfer TFWs during the push to organize, intimidation in staff meetings, an increase in wages after union certification and changes in the terms and conditions of the last offer. There were also allegations of fraud against the company for trying to falsify documents about the threat to transfer TFWs to Brazil after they joined the union.

The LRB dismissed every unfair labour practice complaint filed by the CSWU in April 2008. But the Supreme Court of B.C. overturned the LRB decision. The CSWU provided evidence to show the employer acted fraudulently by creating documents in support of its stated defence that its workers were required for work in Brazil for bona fide business purposes.

After of the breakthrough of the second of two side-by-side tunnels on March 2, 2008, a group of TFWs were laid off and sent home immediately. The lay-offs affected the hearing of evidence at the B.C. Human Right Tribunal. But, the TFWs were vindicated on Dec, 3, 2008 by a decision, which ruled they were the victims of discrimination. Despite the decision, the Joint Venture continued to deny that any discrimination took place and launched an appeal. Almost five years after the TFWs won the landmark award from the B.C. Human Rights Tribunal, 36 employees received cheques for back pay, expenses and injury to dignity.

The BC Building Trades called on the federal government to launch a public inquiry to investigate the process that provides work permits to TFWs who are employed on major infrastructure projects in Canada. Foreign companies should not be allowed to bid on public infrastructure projects in competition with Canadian firms, and then employ TFWs under the most extreme conditions of abuse and economic exploitation.

7.9 References

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8 FATALITIES, FRAUD AND EXPLOITATION ON THE HORIZON PROJECT

8.1 Introduction

Serious deficiencies with health and safety protection under the TFWP were exposed with the deaths of two foreign nationals during the construction of the $10.8 billion Horizon Oil Sands Project in northern Alberta. The TFWs named Ge Genbao, 27, and Lui Hongliang, 33, were killed on April 27, 2007. They were working inside the wall structure of a massive storage tank, when the roof support structure collapsed without any warning. Two other TFWs were seriously injured and three more sustained minor injuries. About 130 Chinese TFWs were sent home after the incident.

Photo Credit: *Alberta OHS – Photo from OHS report shows the interior of the storage tank after the collapse of the roof support structure. Arrow "A" indicates the welding machine that the Electrical Consultant was standing on partially dislodged from the tank wall, and Welder 1 was working in, at the time of the incident. Arrow "B" indicates the welding machine that fell from the tank wall, that Welder 2 was working in.*

Alberta occupational health and safety (OHS) investigated the fatalities and charged three companies in 2009 for failing to protect the TFWs. A total of 53 charges were laid against Canadian Natural Resources Limited (CNRL), the owner of the project, Sinopec Shanghai Engineering Company Ltd., a Chinese state-owned oil company and SSEC Canada Ltd. CNRL hired SSEC Canada, a shell company set up by Sinopec, to build the storage tanks. An investigation by Employment Standards revealed that Sinopec used SSEC Canada for financial maneuvers, such as siphoning off wages from the TFWs bank accounts.

Sinopec launched a legal battle in 2009, which challenged the jurisdiction of the Canadian legal system. The company pled guilty to three charges in September 2012 and was ordered to pay a $1.5-million fine in January 2013. This was the largest workplace safety fine in Alberta's history. The Alberta government did not release the OHS investigation report into the deaths of the TFWs to the public until Feb. 9, 2016.

This case study provides evidence that Chinese TFWs were denied their legal rights in the workplace on the Horizon project. It also reveals a pattern of financial fraud and economic exploitation of TFWs by a Chinese state-owned firm on a major Canadian resource development project.

8.2 TFWs and the Horizon Collective Agreement

CNRL officially began construction of the Horizon Oil Sands Project on Feb 10, 2005. The project was designed to be built in three phases, which combines the mining of bitumen with an onsite upgrader. Phase 1 was scheduled for completion in the second half of 2008 at 110,000 barrels per day (bbl/d). Phase 2 and 3 would increase production to 232,000 bbl/d by 2012. The total of all three phases was estimated at $10.8 billion. Capital costs for Phase 1 were expected to be $6.8 billion between 2005 and 2008. CNRL's oil sands leases near Fort McMurray contain an about 6 billion barrels of recoverable bitumen. The project will be in production for about 40 years (CNRL Press Release, 2005). The first production of synthetic crude oil from Phase 1 started on Feb. 28, 2009.

The controversy surrounding the Horizon project began on Dec. 16, 2004, when the Alberta cabinet made a decision to grant CNRL a special designation under Division 8 of the Alberta Labour Code. The approval required the project to be significant to the Alberta economy and in the public interest.

CNRL received Division 8 approval in the form of the following regulation. For the purposes of section 196 of the Code,

(a) the project known as the Horizon Oil Sands Project is designated as a project to which Division 8 of Part 3 of the Code applies,

(b) Horizon Construction Management Ltd. is designated as the principal contractor of the Horizon Oil Sands Project,

(c) Horizon Construction Management Ltd. is authorized to bargain collectively in respect of the Horizon Oil Sands Project, and

(d) the scope of construction in respect of the Horizon Oil Sands Project to which a collective agreement under Division 8 of Part 3 shall apply is all construction work until completion of phases 1, 2 and 3 of the Project (The Alberta Gazette, Part II, 2004).

The special designation authorized Horizon Construction Management Ltd (HCML) to negotiate a single collective agreement with a single union, which included union, independent union and non-union labour. CNRL signed a collective agreement with the Christian Labour Association of Canada (CLAC) on March 30, 2005, which would cover more than 6,000 employees, as well as TFWs from China, India and the Philippines. There are differing versions of the events that led to this deal.

CNRL said it attempted to negotiate a managed open agreement with the Alberta Building Trade Unions, while a second agreement with CLAC was underway. CNRL claims the deal collapsed, resulting in the final collective agreement with CLAC. This deal applied to all contractors working on the project and all of their employees regardless of union affiliation. CNRL also signed deals with the Communication, Energy, and Paperworkers (CEP) Union and Local 720 of the Ironworkers Union (Andrew Sims, 2013).

Another account suggests that when CNRL gained site designation under Division 8, the company proceeded to bypass the Building Trades Unions by establishing project agreements with CLAC, CEP and the Ironworkers. The Building Trades Unions were not prepared to enter an agreement. As a result, HCML said the agreement concluded with CLAC, was binding on all contractors whose employees were members of those unions. In addition, HCML said the agreement was also binding on contractors whose employees were members of the Building Trades Unions.

The Alberta Building Trades Council (ABTC) complained to the Labour Relations Board that CLAC has no right to represent all workers on the site, especially members of other unions. This complaint failed. They also said this interpretation of the collective agreement was unconstitutional.

"They're trying to save money on the backs of the very people they expect to build the plant, and that's not right," said Rob Kinsey, former business manager for Local 488 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada. "Our fear is that they (CNRL) are going to lower the terms and conditions enough that it won't attract our people, which gives them the unfettered right ... to bring in foreign workers who'll work for much less than what Albertans will work for (Mark Lowey, 2005)."

Kinsey said the special provision granted is undercutting wages and benefits, such as overtime payments, in a four-year collective agreement that the union spent 13 months negotiating with the oil sands sector. He predicted it will lead to jobsite conflict, more inexperienced workers being hired, lower-quality work and more workplace fatalities.

The AFL believed CNRL's goal was to set a wage and benefit structure below the going market rate. If Canadians are unwilling to work at these wages, then CNRL could claim there is a critical labour shortage and import TFWs. (Alberta Federation of Labour, 2005). The combination of the fast track for TFWs and special treatment for CNRL under Division 8 was a two fisted blow to workers in the building trades.

The ABTC and the AFL released court documents in February 2006 that showed CNRL was planning to use TFWs from China for part of the Horizon project. CNRL was tendering its tank farm work, and only two competitors were still involved in the procurement process. Both of the bidders were Chinese contractors and they planned to use primarily Chinese workers.

"There are Canadian workers available to do the work that CNRL wants done," said Paul Walzack, Executive Director of the ABTC. "We can provide the workers CNRL needs, but CNRL has decided that they want to push down wages and working conditions on this project by taking advantage of Chinese workers. We fail to see the necessity of this move, other than an attempt to prevent workers from receiving their fair share, and their right to choose their own union (AFL Press Release, 2006)."

Both the ABTC and the AFL called on the provincial and federal governments to prohibit CNRL from importing Chinese workers for this project. They said there are enough unionized boilermakers and pipefitters to complete this job with Canadian workers.

8.3 TFW Fatality Report Released by Alberta Government in 2016

Alberta OHS completed the TFW fatality investigation on Sept. 27, 2007 and the 18-page report was sent to labour and justice ministries for review. OHS reports are usually released to the public once court proceedings are completed. The OHS fatality report into the TFW fatalities at the Horizon project was released to the public by the Alberta Ministry of Labour on Feb. 9, 2016, in response to a CBC News story. The Alberta government has not provided any explanation about why the report was released almost nine years after the fatalities took place.

The CBC obtained a transcript of an Alberta court hearing on Jan. 22, 2016, which said CNRL is taking legal action to stop a public inquiry into the incident. CNRL managed to limit the scope of a future public inquiry to whether an air ambulance should have been dispatched to take one of the TFWs to hospital. The decision followed a teleconference involving lawyers for CNRL and Alberta Justice with Judge J. R. Jacques of the Alberta provincial court in Fort McMurray (Terry Reith, 2016).

On Feb. 17, 2016, the Association of Professional Engineers and Geoscientists of Alberta (APEGA) restarted a review into the collapse of the tank structure during construction at the CNRL Horizon project. The decision is based upon new information in the recently released OHS fatality report.

"The report contains information that a professional engineer should have been involved and was not. APEGA has an obligation to review those observations in greater detail," said APEGA Director of Communications Philip Mulder in a news release. "While not yet a formal investigation, further review could result in a formal investigation. A review or investigation can lead to valuable learnings for both the permit holder involved, as well as other permit holders and professional members of APEGA (Philip Mulder, 2016)."

Initially, the incident was not investigated by APEGA, because the association did not believe it had the jurisdiction, since the matter was already under review by Alberta OHS. However, the APEGA has come to an understanding over a nine year that it does have the jurisdiction to investigate.

APEGA licenses and regulates individuals and companies that practice engineering in the province, and it can discipline members or revoke licenses of those that break the rules or fail to protect public safety. CNRL had a permit to practice engineering in the province at the time of the incident and it continues to have a permit through the APEGA.

8.3.1 CNRL Awards Tank Farm Contract to SSEC Canada

According to the OHS report, CNRL awarded a contract to SSEC Canada for the construction of 14 tanks, 11 on the east tank farm and three on the west tank farm at the CNRL Horizon plant site. The effective start date of the contract was April 11, 2006.

SSEC Canada hired 132 Mandarin-speaking workers from Tenth Construction Company of Sinopec (TCC) to work as TFWs on the tank construction project. TCC is an industrial construction company in China, specializing in the construction and installation of petroleum refining projects. The TFWs had at least five years of experience in the trades and received additional training from a Canadian training agency before arriving in Alberta.

SSEC Canada expected to start the assembly at the west tank farm in July 2006. But, the TFWs didn't arrive until September and the work was scheduled for completion in September 2007. CNRL and SSEC Canada decided to construct the walls and roofs of the tanks simultaneously, because construction was behind schedule.

8.3.2 SSEC Canada Uses Substandard Construction Methods

The OHS report concluded the collapse of the tank and the deaths of Genbao and Hongliang were caused by the inferior or substandard construction methods used by SSEC Canada for assembling and supporting the tank roof support structures for the tanks.

"SSEC Canada assembled the roof support structure as a standalone structure, which was not intended to be assembled as such by the TIW (TIW Division of Canada Erectors Ltd) drawings," said the report. Neither CNRL nor SSEC Canada consulted with TIW with respect to what assembly sequence should be followed for the construction of the roof support structure. As the erection of the shell was independent of the roof support structure and they were being assembled concurrently, the top of the shell and the outer ring were not supporting each other."

According to the report, the TFWs carried out the assembly of the roof support structures in accordance with SSEC Canada's chief engineer's instructions and the assembly drawings provided by TIW. CNRL contracted TIW to provide the components, material schedules for arrival on site, and the engineered drawings for the 14 tanks on the east and west tank farms at the CNRL Horizon plant site.

However, TIW did not specify a sequence to follow to erect the tank they designed, because that was not part of the contract with CNRL. Instead, CNRL prepared a tank erection schedule specifying the sequence of construction, such as when the tank floors were to be laid, the walls to be started and the internal roof support structures were to be erected.

8.3.3 SSEC Canada Fails to Use Engineer for Tank Construction

The OHS Code requires skeleton structures to be erected in accordance with engineered erection procedures. However, SSEC Canada did not provide written engineered procedures for the assembly of the roof support structure. The company followed the tank erection schedule as set out by CNRL. In addition, the chief engineer for SSEC Canada was not an engineer, but he developed the erection procedure for the roof support structures and specified the number, size and location of the guy wires.

"CNRL did not do what was reasonable and practicable to ensure the (OHS) Act and the regulations were complied with, by failing to ensure that one of their contractors had erection drawings and procedures for a skeleton structure certified by a professional engineer," said the OHS report. "The Occupational Health and Safety Code requires skeleton structures to be erected in accordance with engineered erection procedures. SSEC Canada did not provide engineered erection procedures."

8.3.4 TFWs Killed by Falling Beams as Tank Collapses

As the structure collapsed, some of the support cables failed, many of the bolts that were holding the components together failed ...

As a result of these contributing factors, workers in and around tank 72-TK-lB heard several sounds, described as loud bangs or pops at about 2:30 p.m. on April 24, 2007. The roof support structure in the tank started to fall in an easterly direction during windy conditions. As the structure collapsed, some of the support cables failed, many of the bolts that were holding the components together failed and then the components began to come apart.

"One of the fatally injured workers, an Electrical Consultant, had been on the top of a welding machine working on the east side of the tank wall," said the report. "The Electrical

Consultant had been struck in the head and back by a section of the falling steel and thrown onto scaffolding outside the east wall of the tank," said the report. "The other fatally injured worker, a Scaffolder, had been standing on the tank floor, east of the tank centre, and had been caught and crushed under a falling girder."

The Electrical Consultant was pronounced dead at the scene. He didn't have a work permit and should not have been working in Canada. The Scaffolder was crushed by falling steel and died in an ambulance on the way to Fort McMurray. There were 13 workers inside tank at the time the incident occurred. Ten workers were Chinese TFWs employed by SSEC Canada, one the Electrical Consultant was directly employed by TCC. Two were Canadians employed by Iris NDT who were carrying out weld testing. After the roof support structure collapsed, some workers escaped through manways or holes in the tank wall.

The collapse was primarily the result of inadequate guy wires used as wind bracing on the partially assembled flexible roof structure. As wind speeds increased, the flexible roof structure began to load the guy wires. Due to the structure's flexibility and the unbalanced load conditions, the roof oscillated in the wind. The movement of the 127 metric ton roof structure caused cyclic loading on the guy wires.

The number and size of guy wires that were supporting the roof support structure in the tank was not designed for the static and dynamic loads imposed by the 33 to 45 km/h wind that occurred on the day of the incident, let alone for the maximum expected wind speed of 83 km/h, as determined by the Alberta Building Code or 190 km/h recommended by the American Petroleum Institute.

8.4 Alberta Government Fails to Stop Financial Crimes Against TFWs

The OHS fatality report was released by the Alberta government in 2016, but the investigation revealed in June 2008 that a group of 132 TFWs had their paycheques siphoned off by SSEC Canada. The AFL said this was a perfect example of how the TFWP is out of control. The TFWs did not belong to a union.

"The problems that led to the Chinese workers being ripped off are the same conditions that led to the two Chinese workers being killed on the same worksite," said Gil McGowan, AFL President. "Lax government oversight, a company in a rush to make billions in profits, and a union that doesn't ask enough questions are all to blame (AFL Press Release, 2008).

The Alberta Building Trades Council said the errors surrounding the compensation of the widow of Ge Genbao, who was killed at the Horizon project, highlights the need for a federal government enquiry.

"A public enquiry will allow us to sort through the myriad of issues, so that we can have a proper level of qualification, standards and enforcement," said Ron Harry, executive director of the ABTC (Richard Gilbert, 2008a). "A public enquiry will expose the flaws in the program and make recommendations that will rectify the conditions that workers face coming into Alberta. Temporary Foreign Workers should expect to be treated like any other Albertan or Canadian workers. "

The ABTC considered the treatment of Chinese TFWs employed by SSEC Canada at the Horizon project as a gross violation of the terms and conditions of the Labour Market Opinion (LMO), which is issued by the federal government. A federal enquiry into the financial abuse and economic exploitation of these TFWs is necessary to ensure Canadian standards for pay, safety, engineering and construction are enforced.

8.4.1 TFW Wages Stolen by SSEC Canada

The Christian Labour Association of Canada (CLAC) monitored the payroll process and ensured the correct amount was deposited into each employee's Bank of Montreal account. But, SSEC Canada had signing authority on all of the workers' bank accounts and the money disappeared before it reached the TFWs families in China. CLAC was unable to confirm what was actually being paid to the TFWs. A welder should earn about $8,000 to $10,000 a month. The widow of one TFW said he made about $600 per month. The Edmonton Journal reported the widows of the dead men said the wages earned by their husbands was about 12 per cent of what they should have been paid (Richard Gilbert, 2008a).

Workers Compensation Board of Alberta and CLAC found that Genbao's widow, Lui Ruijuan, had suffered through two separate plots to steal the cheques she was entitled to receive under a union group insurance program. The CLAC labour representative went to Zhengzou, China to meet with Genbao's family and present the insurance cheques. As the two hour meeting was about to end, he received a phone call that said the woman in the meeting was an imposter. She was actually the sister-in-law of the widow. The last minute phone call was from Ruijuan (Richard Gilbert, 2008b) .

After putting down the phone, the CLAC representative told the imposters that the call was to inform him the cheques were no good, due to a problem with the bank in Canada. He then called from Ruijuan and arranged to meet her in Beijing. Ruijuan and her six-year-old daughter Ge Ge were presented with a cheque for the death benefit and half of the $110,000 raised by fellow workers at the Horizon project.

Ruijuan also suffered from other fraud attempts. WCB took a few months to confirm the family address and locate Ruijuan. The first six WCB benefit cheques were sent to the original address of record. But, WCB got a call from a friend of the widow, which said there was an issue with her benefits.

A Chinese investigator was hired to visit Ruijuan's village near Zhengzhou to confirm her identity. Ruijuan and Ge Ge had been living with her in-laws, but they were kicked out a week after Genbao's funeral. She moved back to her parent's home in the same village. The WCB stopped sending the cheques to the original address in April, 2008. About $40,000 was sent to the previous address.

The WCB sent four cheques for February to May and Ruijuan confirmed that she received them. The cheques were sent for February and March, because they had not been cashed and a stop cheque order was issued. The WCB took action to retrieve the money by investigating how the cheques were cashed and presented to the bank in China.

8.4.2 CLAC Sues Sinopec to Recover Wages

A Chinese welder named Huang Yungang and CLAC sued Sinopec Shanghai Engineering Company Ltd (Sinopec) and a number of its affiliates to recover the wages of Chinese TFWs. CLAC claimed the wages were fraudulently taken by Sinopec without the workers' knowledge or consent. Huang worked on the project between December 2006 and May 2007.

According to the statement of claim filed on April 24, 2009 in the Court of Queen's Bench in Calgary, SSEC Canada's business manager Helen Wang assisted Huang in setting up a bank account in Fort McMurray. Huang signed English documents relating to the account. He did not understand the contents of the documents or the purpose of the account. All the money Huang earned was put into the account by Sinopec. Huang did not know how to access or operate the account (Richard Gilbert, 2009b).

Huang's total earnings from Sinopec for work on the Horizon project were about $47,700, which included $43,900 in wages and overtime pay, $3,800 for statutory holiday and vacation pay. In addition, he also made $1,895 in RRSP contributions. However, Sinopec only gave Huang $200 cash each month for personal spending money, which Huang thought was part of his wages and was paid from the account.

It is alleged that Sinopec and Wang fraudulently directed all or most of the money in Huang's bank account, after his employment was terminated and he returned to China in May 2007. A small payment of $4,800, less the $200 cash per month was paid to Huang. For this reason, the worker filed a statement of claim seeking to recover about $42,900 he said is owed to him.

The defendants Sinopec and The Tenth Construction Company (TCC) are incorporated under the laws of the People's Republic of China. Sinopec, SSEC Canada and TCC conduct business in Alberta as a joint venture. It is alleged the money was directed by Wang or one of the defendants to their agent in China.

8.4.3 Trust Fund has Difficulty Reimbursing TFWs

CNRL provided $3.17 million to the Ministry of Employment and Immigration for the creation of a trust fund for distribution to more than 100 Chinese TFWs who were not paid on the Horizon Oil Sands project. An investigation by the Alberta ministry revealed that SSEC Canada did not pay 132 Chinese TFWs between April and July 2007.

CLAC said payments by SSEC Canada were tracked through the remittance employers sent to the organization on behalf of the employee for benefits and RRSPs. During the four month period, all remittance payments were made to CLAC, as if SSEC Canada had processed their payroll. SSEC Canada did all the calculations for hours worked and sent CLAC money, but never pushed the button to send the money for payment of salaries. SSEC Canada made every effort to look like everything was done properly, but didn't process the money through their payroll (Richard Gilbert, 2009c).

CNRL wasn't obligated to pay the workers because SSEC Canada was supposed to do that. In fact, CNRL had already paid the wages to SSEC Canada. However, the Alberta government was trying to collect the wages owed from SSEC Canada. If the Alberta government is reimbursed by SSEC Canada, they will payback CNRL. Under Alberta laws, the government could have taken punitive action against SSEC, but no such action has been taken.

The Ministry of Employment and Immigration put the money in a trust fund and started the process of identifying and verifying who the TFWs were. No payment was made to anyone at this time. The trust fund will be held in an account until 2017, so the ministry can have enough time to locate the workers and give them their unpaid earnings. The amount of payment that each worker is owed will vary depending on the number of hours worked and the wage rate for specific trades. However, some TFWs should have earned $10,000 a month with overtime.

Shortly after the creation of the trust fund, the Alberta government faced significant logistical difficulties in finding and paying the TFWs in China. The issues include making sure the funds get into the hands of those who deserve them or if the disbursements will be made in person. The ministry had to decide whether cheques should be used or if the funds can be sent electronically. They also had to determine if a Canadian Bank or Chinese bank would handle the transaction and what deductions need to be made in terms of income tax and the Canada Pension Plan (Richard Gilbert, 2009d).

8.5 Sinopec Stubbornly and Openly Disregards Canadian Legal System

Sinopec launched a legal challenge centered on whether the province of Alberta has the jurisdiction to charge a Chinese company under the OHS regulations. The legal battle between the Crown and Sinopec took more than two years to move through the Provincial Court of Alberta (2010), the Court of Queen's Bench (2011) and the Court of Appeal of Alberta (2011). Finally, the Supreme Court of Canada (2012) upheld the decision of the Court of Appeal of Alberta. The Supreme Court forced the Chinese state-owned corporation to face criminal proceedings in Canada related to the deaths of two TFWs in 2007.

8.5.1 Sinopec Refuses to Appear in Court, Despite Record Number of Charges

The Alberta Provincial Court trial into the deaths of Ge Genbao and Lui Hongliang on the Horizon project began on April 20, 2009 with a total of 53 charges for various offences under the OHS Act being laid against: a) SSEC Canada Ltd. as an employer; b) Sinopec Shanghai Engineering Company Ltd. (Sinopec) as a contractor; and c) Canadian Natural Resources Limited (CNRL) as both a contractor and the prime contractor. These companies faced charges including several counts for failing to ensure the health and safety of the workers (Richard Gilbert, 2009a).

Other charges included failing to ensure a professional engineer prepared and certified drawings and procedures; failing to ensure the roof support structure inside the tank was stable during assembly; failing to ensure that U-bolt type clips used for fastening rope wire were installed properly; and failing to ensure that wire rope being used was safe. The number of charges was inflated because the prosecution wanted to proceed before the statute of limitations on the OHS Act ran out in 2009. SSEC Canada Ltd. had 14 counts, Sinopec had ten counts and CNRL was charged with 29 counts.

From the start, Sinopec delayed the proceeding by not appearing on June 8, 2009 in Fort McMurray Provincial Court. A new summons naming Sinopec Shanghai was issued by a Provincial Court Judge with a return date of Sept. 4th, 2009, in Fort McMurray Provincial Court. This was the second appearance date for SSEC Canada and CNRL. No one appeared either for Sinopec Shanghai on that date.

8.5.2 Sinopec Launches Legal Battle in Provincial Court of Alberta

According to a Provincial Court of Alberta decision on March 31, 2010, the Crown argued the service of the summons, which directed Sinopec Shanghai to attend provincial court, was delivered to Helen Wang and completed on Sept. 8, 2009 in Calgary. Since July 2006, Wang was the business manager and sole employee of SSEC Canada, a branch of Sinopec Shanghai. Wang was a senior Sinopec officer, who reviewed the CNRL tank farm contract. She received payment from SSEC Canada. After CNRL terminated the contract on July 27th, 2007, she was paid directly by Sinopec (Judge B.R. Garriock, 2010).

Wang's responsibilities included dealing with banks, accounts receivable, accounts payable, sub-contractors and off-site consultants, such as payroll service providers, lawyers, custom brokers, insurance agencies and local unions. Her job included taking care of Chinese workers when they arrived in Canada until they were taken to the project site. When CNRL terminated the contract, Wang's duties were to de-mobilize the project, to deal with the government investigation and to work with local counsel on behalf of SSEC Canada.

Sinopec argued it didn't have an office in Canada, and the Alberta provincial court had no authority to serve a summons on Sinopec outside of Canada. Wang was not the manager, secretary or senior officer of Sinopec, as defined in the Criminal Code, when the summons was served on Sept. 8, 2009. Wang testified she was not a senior person and was never authorized to make decisions for Sinopec. She was only the business manager of SSEC Canada.

Sinopec argued it didn't have an office in Canada, and the Alberta provincial court had no authority to serve a summons on Sinopec outside of Canada.

The Criminal Code specifies who should be notified to complete the delivery process to an organization or corporation. Sinopec argued SSEC Canada was not its branch company on Sept. 8, 2009. Wang said attempts were made to serve her with the summons for Sinopec Shanghai, but she did not accept it.

"The objective is to effect service by delivery to a person who occupies a relatively senior executive or managerial position with the body corporate or one of its branches," said Judge B.R. Garriock in his ruling. "In conclusion, I do not find that valid service of the summons was effected on Sinopec Shanghai."

Judge Garriock concluded Sinopec and SSEC Canada don't have a parent-subsidiary relationship and the two corporations are not part of a single organization. This means each corporation is a separate entity. Garriock said the relationship involved control and transactions similar to a subsidiary and its holding corporation. However, he needed more evidence to assess the importance of SSEC Canada and its activity to Sinopec Shanghai.

As a result, Garriock ruled in Sinopec´s favour. He said Sinopec had no corporate presence in Canada, so the summons was not served properly under the Criminal Code. Sinopec had to be served in Canada for jurisdiction to be gained by summons. For example, if a senior officer of Sinopec happened to be in Canada, delivery of a summons upon that person would constitute valid service on Sinopec. Canadian law does not permit service of summons outside of Canada, and Sinopec had no registered offices in Canada, nor did they have any senior officers in Canada.

In response, the Crown argued that if the Court found Wang was not a senior officer of Sinopec within the meaning of the Criminal Code, there was still adequate service because the summons was delivered. However, Garriock ruled the delivery must be to the appropriate person. The Crown also argued the attendance in Court of Balfour Der, Q.C., on the instructions of Sinopec Shanghai, was an appearance by the company under the Criminal Code. Garriock ruled the appearance in the Court by Der on behalf of Sinopec Shanghai was to argue there was an invalid service upon his client. It does not constitute attornment by Sinopec Shanghai to the jurisdiction of this Court.

8.5.3 Court of Queen's Bench Overturns Provincial Court Decision

The Crown successfully challenged the Provincial Court of Alberta ruling in the Court of Queen´s Bench on March 16, 2011. Justice Sterling Sanderman concluded that Justice Garriock was wrong and that Sinopec Shanghai was within provincial jurisdiction and should be tried with SSEC Canada and CNRL.

"When the accused, through counsel, appeared in the court having the jurisdiction to try that matter any defect in the service of the summons was cured and a plea should have been taken by the presiding Provincial Court Judge," said Sanderman in his ruling (Justice Sterling Sanderman, 2011). "In fact, the Crown requested that the accused be asked to enter a plea. The Court never made this request."

According to Sanderman, Garriock made a mistake by allowing Der to challenge the sufficiency of the service of the summons upon Sinopec. Garriock carved out an exception for Sinopec Shanghai, by allowing it Der to argue before the Court without deeming that the accused had attorned to the jurisdiction of the Court.

"An organization actively involved in business in this country, but not having a presence here, was given protection to avoid potential responsibility for wrongdoing not given to Canadian organizations," said Sanderman. "He allowed the accused to seek the protection of the Court but was not prepared to find that by doing so, the accused had attorned to the jurisdiction of the Court. This was an exercise of authority beyond the jurisdiction of the Court."

As a result, the Court refused to take jurisdiction over the offence and the accused that were simultaneously before it. Once the accused was present with counsel facing charges before the Court with authority to try the matter, a plea should have been taken.

The purpose of the service of the summons upon an accused is to provide the necessary information in relation to time, place and allegations so that the accused can protect his interests. In addition to providing the nature of the allegations, it sets a date allowing the accused to take part in the scheduling of future proceedings.

Sanderman ruled any deficiency that may exist in the service of the summons is overcome as soon as counsel instructed by the accused appears before the Court having the jurisdiction to try the matter. Any deficiency in the process designed to get the accused before the Court is cured by the appearance of the accused. As an organization can only appear by counsel or by an agent, the appearance of counsel in this instance remedies the lack of service.

Garriock's decision was quashed by Sanderman. The matter was sent back to the Provincial Court of Alberta for the Sinopec Shanghai to enter a plea. The Court had an obligation to take a plea from Sinopec Shanghai, because the company was properly before the Court and should appear for the trial of this matter.

8.5.4 Court of Appeal Upholds Decision by Court of Queen's Bench

Sinopec took its legal battle to the Court of Appeal of Alberta on Nov. 23, 2011, which agreed with the decision by Sanderman in the Court of Queen's Bench. Justice Myra Bielby concluded that the criminal law does not recognize conditional appearances to contest service. The majority of the Court of Appeal agreed that the service on Ms. Wang was ineffective. But, they also noted the appearance of Sinopec Shanghai's lawyer. Justice Bruce McDonald said a distinction must be made between matters that relate to the jurisdiction of a court to try an offence and those that arise from procedural defects in service (Justice Myra Bielby, 2011).

For example, if the offence had occurred in Saskatchewan, the company being charged could have appeared by way of counsel for the limited purpose of arguing that the Provincial Court of Alberta had no jurisdiction. Its jurisdiction is limited to events arising within the geographical limits of Alberta. However, where the challenge relates to a procedural matter, such as whether an accused knows about the charge and is given the right to appear and defend itself, it is enough if this knowledge is established by the appearance of the accused even without proper service. The accused cannot avoid that result by maintaining it appears only for the limited purpose of challenging service.

In this case, service was curable because counsel for Sinopec Shanghai had made an appearance before the Provincial Court to argue that service was not effective. Sinopec Shanghai's appearance, through counsel, resulted in its attornment to the jurisdiction of the Provincial Court. This principle has been applied by various other courts in other decisions.

8.5.5 Supreme Court of Canada Refuses to Hear Sinopec's Case

On July 9, 2012, the Supreme Court of Canada upheld the decision in the Court of Appeal of Alberta, by denying Sinopec's appeal. The Court forced a Chinese state-owned corporation to face civil proceedings in Canada related to the deaths of two TFWs in 2007. This means international organizations that do not have a presence in Alberta but conduct business there will not be able to avoid potential responsibility for workplace safety violations (Supreme Court Press Release, 2012).

8.5.6 Sinopec Pleads Guilty to Three Charges

SSEC Canada Ltd. pled guilty on Sept. 5, 2012 to three charges under the OHS Act, for failing to ensure the health and safety of a worker. The charges were related to the deaths of two TFWs in 2007 at the Horizon project. However, another 11 charges against the company were withdrawn. Sinopec and SSEC Canada showed no remorse or regret. All 29 charges against CNRL were stayed, which meant the proceedings were suspended but the government can reactivate them (Richard Gilbert, 2012). The CNRL charges were stayed because the prosecutor's office said holding the employer to account was enough.

Alberta Provincial Judge John Maher ordered SSEC Canada to pay a $1.5 million fine in a St. Albert court room on Jan. 24, 2013 which was the biggest workplace safety fine in the province's history. The company was given the maximum $500,000 fine for each of the three charges. The AFL argued that Alberta missed its chance to send a message that Chinese companies working in the oil sands need to play by Canadian rules. The fines were too small to make a difference to the massive corporation and would do nothing to deter them from practices that endanger workers (Richard Gilbert, 2013).

Crown prosecutors and SSEC Canada lawyers came up with an agreement, which allocated $1.3 million of the fine to the Alberta Law Foundation to create an education program for TFWs about their legal rights, as well as workplace health and safety. The program will be developed by the Alberta Workers' Health Centre, the Edmonton Multicultural Health Brokers and the Calgary Workers' Resource Centre. About 45 instructors will be hired to train about 5,500 workers in a three year period.

8.6 Conclusion

Canadian laws are supposed to protect every worker in the country, including TFWs who have the right to a safe and healthy workplace. TFWs in Alberta are covered by the Employment Standards Code, Occupational Health and Safety Act and Labour Code. This case study of the Horizon project shows that TFWs in Alberta are being denied their legal rights in the workplace. In addition, these TFWs were the victims of illegal construction practices, financial fraud and economic exploitation by a multi-national corporation on a major Canadian resource development project.

The collapse of the steel tank on April 24, 2007 was primarily the result of the substandard construction methods, ...

Tradespersons in Alberta have historically joined craft based trade unions, which have provided work through hiring halls. These unions provide long-term benefits like pensions and insurance which survive the tradesperson's many moves from employer to employer and project to project. The Horizon project represents a shift in Alberta's labour relations, because the project labour agreement used by the building trade unions for industrial construction has been replaced by a mixture of non-union, alternative union, and traditional building trade relationships.

The Chinese TFWs hired by SSEC Canada under the Horizon project collective agreement were delayed in getting to the worksite in northern Alberta, which caused work on the large metal storage tanks to fall behind schedule. The fatalities were the result of substandard methods proposed by CNRL, which involved the simultaneous construction of the walls and roof of the tank. CNRL agreed for the work to be done under its own construction management team, which would supervise quality control and safety. However, SSEC Canada began work using the new method before CNRL's team arrived on site.

The OHS Code requires skeleton structures to be erected in accordance with engineered erection procedures. SSEC Canada did not provide written engineered procedures for the assembly of the roof support structure. The company followed the tank erection schedule as set out by CNRL. In addition, the chief engineer for SSEC Canada was not an engineer, but he developed the erection procedure for the roof support structures.

The collapse of the steel tank on April 24, 2007 was primarily the result of the substandard construction methods, which used inadequate guy wires as wind bracing on the partially assembled flexible roof structure. The TFWs were crushed by falling steel.

The OHS fatality investigation report revealed in June 2008 that a group of 132 TFWs had their paycheques siphoned off by SSEC Canada. CLAC sued Sinopec to recover the wages of the TFWs, which were taken fraudulently. The TFWs who were killed on the job were covered by group insurance and eligible for workers compensation payments. Alberta WCB made errors with the compensation of a widow, by sending her cheques to an imposter. The trust fund created by CNRL and the Alberta government to reimburse the stolen wages had difficulties finding and paying the TFWs, who were sent back to China.

The errors surrounding the compensation of the widow of Ge Genbao, and the subsequent discovery of financial fraud highlights the need for a federal government enquiry into the economic exploitation of Chinese TFWs on the Horizon project.

The Alberta government took two years to lay charges against CNRL, SSEC Canada and Sinopec Shanghai. Sinopec delayed the trial further by refusing to appear in court, and then proceeded to launch a legal challenge against the Crown, which took more than two years to move through the legal system. Finally, the Supreme Court of Canada forced the Chinese state-owned corporation to face civil charges in 2012, which were related to the deaths of two TFWs in 2007.

The legal case into the TFW deaths turned out to be a public relations exercise by the Alberta government to make it appear they were getting tough on unsafe construction sites. Most of the charges were dropped and the people who were responsible in the deaths of the TFWs did not face criminal charges. Instead, SSEC Canada was given a fine, which was too small to have any effect on a multi-national corporation.

The OHS fatality report into the TFW fatalities at the Horizon project was completed on Sept. 27, 2007, but it was not released to the public by the Alberta Ministry of Labour until Feb. 9, 2016. The Alberta government has not provided any explanation about how it is in the public interest to release a report into the cause of two workplace fatalities almost nine years after the incident took place. CNRL took legal action in January 2016 to stop a public inquiry into the workplace fatalities.

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9 CANADIANS DISPLACED BY TFWs ON THE MURRAY RIVER PROJECT

9.1 Introduction

The Construction and Specialized Workers' Union (CSWU) Local 1611 and the International Union of Operating Engineers (IUOE) Local 115 launched a federal court battle in November 2012 to block the importation of TFWs for the construction of the $554.9 million Murray River coal mine project near Tumbler Ridge in northeastern B.C. The unions said the federal government failed to ensure Canadians were given first priority for new job opportunities. Instead, TFWs were hired and offered wages far below prevailing rates. Justice Russel Zinn upheld the right of HD Mining International Ltd. in May 2013 to hire TFWs. However, the legal proceedings revealed HD Mining was abusing the TFWP.

Photo Credit: *HD Mining – The decline portal structure for the Bulk Sample will be used for full mine development. It will serve as the main entry for personnel and materials, as well as a fresh air intake.*

This case study of the Murray River project outlines a plan by HD Mining to import hundreds of TFWs for the construction and operation a mine in a region of B.C. where the labour force has mining experience. The federal and provincial governments supported HD Mining's plan, despite evidence presented in federal court, which exposed the company for manipulating the application process that grants permission to hire TFWs.

The federal government's application process for hiring TFWs needs to recognize the effect of the TFWP on local and regional workers, who are crowded out of the labour market. In this case, the TFWP used public funds to supply cheap foreign labour for exploitation by the private sector on a major development project. Government intervention is having a negative impact on the regional economy and labour market. The policy is hurting Canadians, who are denied access to new job opportunities. It also distorts the labour market, which uses the wage mechanism to allocate workers to the most productive sectors of the economy.

9.2 The Environmental Assessment of the Murray River Coal Mine Project

HD Mining is a BC company that was incorporated on June 9, 2011 and is headquartered in Vancouver, B.C. Its majority shareholder Huiyong Holdings (BC) is affiliated with Huiyong Holdings Group, a Chinese energy company. Huiyong Holdings Group, China operates underground long wall coal mines. HD Mining has plans to import about 480 Chinese TFWs for the construction of the Murray River Coal Project.

The proposed project is subject to a joint provincial-federal environmental assessment, thus meeting the requirements of the BC Environmental Assessment Act (BC EAA 2002) and Canadian Environmental Assessment Act, 2012 (CEAA, 2012). The streamlined system aims to align provincial and federal regulations to minimize duplication, improve efficiency and reduce processing time. This involves conducting joint public comment periods, coordinating Aboriginal consultation, using common documents and establishing common working groups to facilitate the review process.

The Canadian Environmental Assessment Agency (CEAA) invited the public to comment on the proposed Murray River coal project on Dec. 11, 2014. The CEAA asked for input on HD Mining's Environmental Impact Statement (EIS), in order to assess the potential environmental effects of the project, as well as measures to mitigate those effects. The public comment period took place between Dec. 18, 2014 and Jan. 29, 2015 (CEAA Press Release, 2014).

The B.C. government issued an environmental assessment certificate to HD Mining on Oct. 1, 2015, for the Murray River Coal Project. This means the government expressed confidence the project will be constructed, operated and decommissioned in a way that ensures no significant adverse effects are likely to occur. The certificate requires HD Mining to develop a plan to support healthy communities and identify measures to mitigate economic and social effects (BC Governemnt News, 2015).

9.2.1 Project Description and Construction Activity

The Murray River project is located 12.5 km southwest of Tumbler Ridge on a property which consists of 57 coal licences covering an area of 16, 024 hectares. The mine is on Crown land within the Peace River Regional District (PRRD) and is expected to produce 6 million tonnes of coal per year over 25 years.

HD Mining received a Mines Act permit in March 2012 from the BC Ministry of Energy and Mines to mine a 100,000-ton bulk sample to test for use as a coking coal and perform coal washability testing. HD Mining completed site preparation activities at the Decline Site and Shaft Site in 2012 and 2013, and mining of the Service Decline began in January 2014 (H.D. Mining International Ltd, 2014a).

The project involves the construction of two declines and a shaft to provide access to the coal seams from surface. The decline for the Bulk Sample (Decline Site) will be used for the full mine development. It will serve as the main entry for personnel and materials, as well as a fresh air intake. The shaft planned for the Bulk Sample (Shaft Site) will also continue to be used as the return air shaft for ventilation. A new Production Decline will be constructed from the east side of Coal Processing Site down toward the base of the shaft. The Production Decline will be the primary means of hauling coal to the surface for processing. It will also provide secondary exit, an alternative route for transport of personnel and materials, and serve as a fresh air intake.

Since the infrastructure is already established, little site preparation is expected to allow these sites to be used during construction. As a result, construction will focus on the Coal Processing Site, where site preparation requires clearing the land surface within the Coal Preparation Plant (CPP) and the Coal Preparation Plant (CCR) North footprint areas. Other site preparation activities include:

- engineering design review by construction contractors;
- temporary infrastructure such as access roads, power, water supply, drainage, site grading.
- hoist house, air compressor house, lighting, washroom, mine dry, fuel station, boiler houses, maintenance shop, office building, cafeteria and a warehouse;
- temporary surface transportation and waste rock stockpiling system;
- concrete batch plant, water pump house.

The main underground infrastructure and facilities to be completed during Construction will include:

- Production Decline;
- Underground Operation Hub;
- mainline entries, including conveyor roadways, truck roadways and airways;
- connection ramps;
- electromechanical installations, such as ventilation fans, air heating system, underground power substation, and switching house (H.D. Mining International Ltd, 2014b).

The project's anticipated total capital construction costs over a three year period (2015 to 2017) are expected to be $CDN 554.9 million. In addition, bulk sample expenses of about $CDN 98.6 million were planned in 2014 and 2015.

9.2.2 TFWs and the Construction Workforce

Figure 1 shows total employment of both Canadian and TFWs is forecast to begin with 120 workers in 2014 and quickly ramp up over the next four years to reach 764 workers in 2018, which will be the first year of operations. Total employment is forecast to remain at 764 workers until 2042.

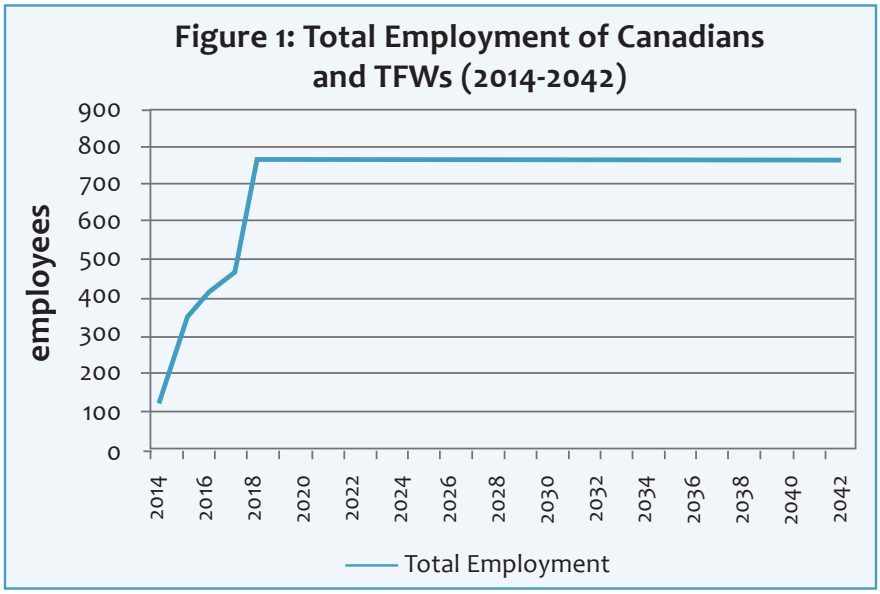

Figure 1: *Source - EIS – Section 1: Introduction, CEAA, H.D. Mining International Ltd, Murray River Coal Project*

Figure 2 outlines HD Mining's plan to import TFWs during the three year construction period. The number of Canadian workers and TFWs are both expected to be 60 each in 2014. There will be an increase to 230 Canadians and 250 TFWs by 2017.

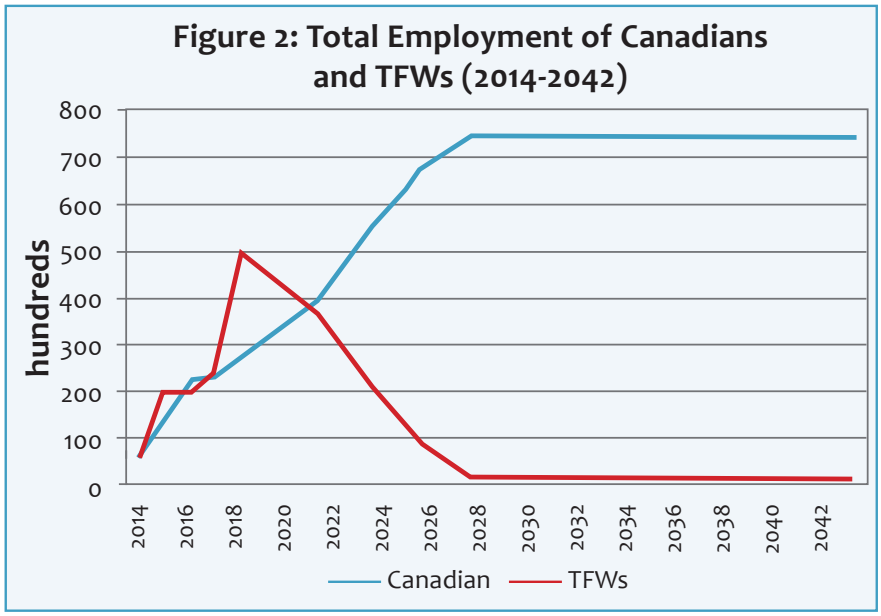

Figure 2: *Source - EIS – Section 1: Introduction, CEAA, H.D. Mining International Ltd, Murray River Coal Project*

9.2.3 TFWs and the Operations Workforce

HD Mining will use a technique called longwall mining, which it says is not used by other mining operations in Canada. The company assumes the majority of the skilled and unskilled labourers at the local, regional and provincial level will not have the required experience for the underground mine operations, at least in the initial years. Operations are expected to begin in 2018 using mainly TFWs. The number of TFWs peaks at 494 in 2018, while there are only 270 Canadian workers.

The number of TFWs remains above the 400 level for the next two years, with 452 in 2019 and 410 in 2020. TFWs will also be greater than the number of Canadians in 2019 and 2020. But, in 2021, Canadian workers (402) will exceed TFWs (362), for the first time since 2016. The number of Canadians continues to increase rapidly until it reaches 744 in 2027, while the number of TFW simultaneously falls rapidly to 20. The number of Canadians and TFWs remains at this level for the full life of the mine.

Figure 3 shows TFWs are forecast to make up more than 50 per cent of the workforce in every year between 2014 and 2020, except 2016. The project will run three eight-hour shifts per day, two operation shifts and one maintenance shift. The underground mine and surface operation will operate 330 days per year. The share of TFWs in total employment is expected to peak at about 65 % in 2018. HD Mining predicts the percentage of TFWs in the workplace will begin to decline rapidly in 2019 until it reaches 2.6 percent in 2028.

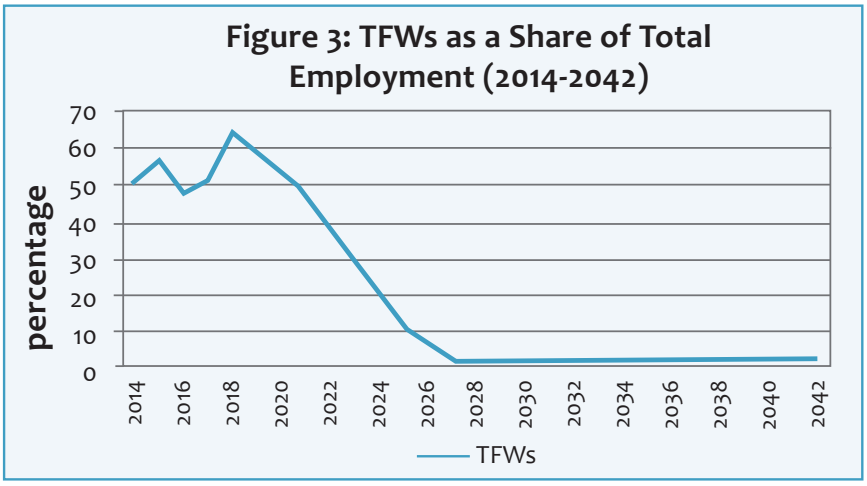

Figure 3: *Source: EIS – Section 1- Introduction, CEAA, H.D. Mining International Ltd, Murray River Coal Project*

9.3 Economic Impact of the TFWP on the Construction Labour Force

Northeastern B.C. is populated by small First Nations' communities and the larger centers of Tumbler Ridge, Chetwynd, Dawson Creek and Fort St. John. The Peace River Regional District is 119,000 square kilometers and has a population of about 58,895 residents. The economy is dependent on resource activities, including forestry, oil and gas, coal mining and wind energy. Tumbler Ridge is the closest town to the Murray River project and will be the main location for employee housing. Chetwynd is also located close to the project and may experience population impacts. Dawson Creek is the closest city and is expected to be a source of labour,

goods and services. Fort St. John is the largest city in the north-east region and the main government, logistics and supply centre. Fort St. John will be involved in the supply of labour, materials and service contracts (H.D. Mining International Ltd, 2014c).

9.3.1 Labour Market Competition and Wage Inflation

The Murray River project is expected to generate positive and negative economic effects on local and regional communities in northeastern B.C. Private sector investment in a major resource development project should have a positive impact on the economy through job creation, as well as an increase in household incomes, consumption and tax revenues. Major development projects also have a negative effect on the economy through competition with other businesses or projects for skilled labour.

HD Mining has said it will pay workers an average wage that is higher in relation to wages in local communities, particularly outside of the mining sector. Increased demand for skilled labour may cause wage inflation. Local and regional businesses will need to increase wages to retain skilled workers, or hire less experienced workers. As a result, businesses will look outside of the region to find workers. This is a sound economic argument, except for the fact that HD Mining is not planning to hire local skilled labour or train them to use the company's longwall mining equipment in the short-term.

The company plans to import TFWs to operate the mine, with the intention of training local workers in the long-term. The transition plan aims to replace TFWs with local workers by 10 % of the workforce per year over a 10 year period. In the 11th year of production, 20 TFWs will be left on the project. HD Mining claims the plan will mitigate the negative effects of the project on the labour market, by avoiding abrupt increases in demand for labour and wage inflation (H.D. Mining International Ltd, 2014d). The fact remains that in this case the TFWP will likely drive down wages in the region by distorting wages and the demand for particular trades. HD Mining will likely pay TFWs less than the prevailing wage.

The Murray River project has exacerbated the unemployment problem in northeastern B.C. The construction labour force in this region has mining experience. But, fluctuations in the international price of coal cause periods of unemployment in the regional labour force. HD Mining claims these skilled workers can only be trained to operate longwall mining equipment over a 10 year period. HD Mining's transition plan argues the negative socio-economic effects of the project can be mitigated by importing hundreds of TFWs to a region of B.C. with experienced coal miners, who are vulnerable to unemployment.

Another problem with the transition plan is its complete dependence on a relationship with Northern Lights College (NLC) to train workers for project positions. Training is supposed to be available through the development of an underground coal mining education program. However, very little information is available about this program. Discussions between HD Mining and NLC towards a potential agreement have been underway since 2012. It is not clear if these plans have been finalized with regard to the format or timelines for training. The training Memorandum of Understanding (MOU) expired in 2015.

9.3.2 High Unemployment in Tumbler Ridge 2014

The federal and provincial governments support HD Mining's investment of more than $600 million for the construction of the Murray River coal mine, using hundreds of TFWs, while workers in Tumbler Ridge are being hit hard by a recession in the coal mining sector. Anglo American Plc announced on Sept. 11, 2014 that production at its Peace River coal mine near Tumbler Ridge would be idled by the end of the year, due to declining prices for metallurgical coal. The IUOE Local 115, which represents 300 coal miners at the mine, denounced the TFWP, because the only miners left working in the town are from China, not Canada.

"What kind of a sad statement is it that we now have a fourth coal mine in Tumbler Ridge shutting down, another 300 coal miners out of a job and the only miners left working are Temporary Foreign Workers from China at HD Mining's coal mine development?" asked Brian Cochrane, Business Manager, IUOE Local 115 (IUOE News Release, 2014).

Cochrane said the HD Mining case reveals the consequences for Canadian workers of the abuse of the TFWP, because the federal government has allowed the program to take jobs from Canadians across the country. Cochrane said the union is asking HD Mining to hire some of the experienced and qualified miners from Peace River Coal at its Tumbler Ridge mine development.

Teck Resources decided on April 22, 2014 that it was deferring the restart of the Quintette coal mine until market conditions for a restart were more favourable. Work on the Quintette project was focused on examining options to reduce capital costs, while final permit applications were being reviewed by the authorities. The company received all required permits in the second quarter of 2014. The project was put on care and maintenance. Production could commence within 14 months of a construction decision (Teck Resources News Release, 2014).

Walter Energy decided on April 15, 2014 to suspend its B.C. operations due to poor coal prices, which resulted in 695 coal miners being laid off. The company placed its Wolverine mine near Tumbler Ridge on idle status effective immediately. The Brule mine continued to operate but was expected to be idle by July 2014. Employment impacts included layoffs of 415 employees at the Wolverine mine and 280 employees at Brazion mine, which includes the operations of Brule and Willow Creek mines.

A limited number of employees remained at each site to operate the preparation plants and, once coal processing was complete, to perform ongoing equipment maintenance and provide ongoing security for the sites during the idle period (Walter Energy New Release, 2014).

Mine closures have caused more than 1,000 workers to lose their jobs. This doesn't include all the workers, who supply equipment, materials and ancillary services to these mines. To put things in perspective, the BC government estimated Tumbler Ridge had a population about 4,000 people in 2014 (Government of B.C., 2012). Tumbler Ridge councillor and deputy mayor Rob Mackay estimated the local unemployment rate was between 60 and 70 per cent in October 2014, after Anglo American Coal and Walter Energy shut down their mines (Jonny Wakefield, 2014).

9.3.3 Crowding Out: TFWs and Unemployment

The Environmental Impact Statement submitted by HD Mining is based on the assumption there is an issue in northeastern B.C. with a labour scarcity, particularly with skilled labour experienced in the use of longwall mining equipment. As a result, HD Mining does not discuss the potential impact of TFWs on unemployment. There is a need for the federal government to recognize the unemployment effect of the TFWP on local and regional workers, who are crowded out of the labour market.

In economics, the concept of crowding out occurs when government involvement in a business sector of the market substantially affects the remainder of the market, either on the supply or demand side. This concept can be used to understand the impact of the TFWP on the construction labour market in northeastern B.C. In this case, crowding out is defined as the TFWP using public sector funds to supply cheap labour on a major private sector development project.

A case management conference held in Vancouver on Nov. 14, 2012 revealed that between 200 and 300 Chinese nationals were issued visas at the Canadian embassy in Beijing to work at the mine.

In a competitive labour market, private sector investment should generate employment opportunities for local workers. Government intervention is not required to achieve this goal. The market allocates labour to the most productive sectors of the economy through the forces of supply and demand.

The Murray River coal mine project demonstrates clearly that hiring TFWs can have a negative impact, when communities are denied the positive economic effects of job creation, such as an increase in household income, consumer spending and tax revenues. The operation of the TFWP under the HRSDC did not have a system for assessing the availability of Canadians to fill specific positions offered to TFWs.

9.4 Unions Launch Federal Court Case to Block the Importation of TFWs

Several years before federal government intervention in the labour market created this problem for workers in northeastern B.C., the CSWU and the IUOE launched an aggressive federal legal challenge in an attempt to stop HD Mining from importing TFWs to the Murray River coal mine. A case management conference held in Vancouver on Nov. 14, 2012 revealed that between 200 and 300 Chinese nationals were issued visas at the Canadian embassy in Beijing to work at the mine. An initial group of about 17 TFWs had arrived to start work on the extraction of bulk samples (Richard Gilbert, 2012a).

9.4.1 Case Management Conference

There was a possibility that large number of foreign nationals would arrive in Canada and take jobs away from Canadians. So the unions' took the position that the Labour Market Opinion (LMO) issued to HD Mining by Human Resources and Skills Development Canada (HRSDC) to hire the TFWs was seriously flawed and should be cancelled. The unions claimed HRSDC failed to ensure Canadians were first in line for new employment opportunities. The TFWs were also offered wages far below prevailing local rates.

Canadian employers who want to hire TFWs must obtain an LMO from HRSDC, which assesses the impact that hiring TFWs may have on the Canadian labour market. The LMO requires the employer to fulfill certain conditions to ensure domestic workers are not affected adversely by hiring TFWs. An LMO is also required by Citizenship and Immigration Canada (CIC) before the TFW can apply for a work permit. The unions were later granted limited access to the documents.

HD Mining's lawyer said HD Mining was issued the LMOs and went through an entirely legal process, in which the workers followed procedure to obtain work permits. Justice Douglas R. Campbell expedited the court proceedings and scheduled a hearing for Nov. 16 to determine if the unions have the ability to apply for a judicial review. Neither were a party to the LMO application process. If the judge granted the unions standing, HD Mining would have to publicly disclose the records of its LMO applications.

HRSDC Minister Diane Finley said the federal government was not satisfied with the process that led to permission for hundreds of foreign workers to gain employment at the Murray River project. In fact, Finley said the investigation into the Chinese TFWs was directly responsible for the federal government launching a new initiative to review the TFWP. Despite this fact, the Crown's lawyer said government was not considering the cancellation of the LMOs. About 60 more workers were scheduled to arrive in mid-December 2012. The remaining TFWs were issued visas that expired between May 31, 2014 and May 31, 2015.

9.4.2 Unions Granted Access to Some LMO Documents

Justice Douglas R. Campbell delayed a decision in Federal Court in Vancouver on Nov. 16, 2012 on whether or not the CSWU and the IUOE had the right to gain full access to records relating to hundreds of TFWs. Instead, Campbell brokered a compromise, which required union lawyers to stand down on the matter, while a Department of Justice lawyer voluntarily provided them with some confidential documents by Nov. 19. Lawyers for CSWU and IUOE were granted limited access to HRSDC records about TFWs to assess the process that had granted LMOs to HD Mining.

The Crown argued the unions didn't have standing or legal status because they didn't have a direct interest or hadn't been directly impacted by the decision to grant the TFWs permission to work at the mine. The unions argued the LMOs directly affected their members, who had been denied access to jobs at the mine, but were qualified to do the work.

Union lawyers said the LMOs also affected the union as an organization, since they held collective bargaining rights for other mines in B.C., including one in Tumbler Ridge. In addition, the LMOs were allowing hundreds of TFWs to enter the local labour market, which directly impacted the unions' most basic functions, such as organizing new workplaces, negotiating collective agreements, collecting dues and advocating on behalf of their members (Richard Gilbert, 2012b).

9.4.3 HD Mining Seeks Clarification on Status of TFWs

HD Mining chairman Penggui Yan wrote a letter to Minister Finley, which asked the federal government for clarification on the status of the TFWs who were being hired to work at a coal mine. The letter was submitted to Federal Court on Nov. 20, 2012 (Richard Gilbert, 2012c).

"We regret that we have to ask these questions of you, but given that you made your statement after the litigation was commenced, and given the attention it has received and is receiving in the court proceedings, we feel we have no other choice but to do so," said Yan. "As I am sure you are aware, we have very considerable business, financial and other interests at stake in these matters.

In support of Yan's letter, Michael Xiao, overseas department manager for Huiyong Holdings Group, filed an affidavit. It was a response to Finley's statement during court proceedings that there is a link between the investigation into the use of TFWs at the Murray River project and the Conservative government's review of the TFWP.

"In particular, your statement is somewhat ambiguous as to whether you are suggesting there had been any errors or irregularities in your ministry's decision to issue LMOs to our company, or whether you were expressing more general concerns with the existing temporary foreign worker program and the related LMO process."

According to Yan, HD Mining found it difficult to reconcile Finley's comments with statements made by HRSDC officials, who said the company followed existing policy and procedure during the process that led to the LMOs being issued. Yan wanted to know if Finley was personally involved in the review of the LMOs and if she was aware of any error or irregularity in the processing of the LMO applications. He also said HD Mining wanted a response by Nov. 19, so the new statement could become part of the final arguments on Nov. 20 about whether the unions should be granted standing to proceed with their application for a judicial review.

The unions' lawyer objected to Xiao's affidavit because the evidence was presented after final submissions were made to the court. He said the letter was an attempt by HD Mining to get Finley to provide a statement to be used in court proceedings. This could have resulted in Finley being called as a witness for cross-examination. The Crown lawyer refused to give the unions a confidential review of documents relating to about 60 TFWs, who were scheduled to arrive at the mine in mid-December.

9.4.4 Federal Court Judge Orders TFW Documents Released to Public

JJustice Campbell granted the CSWU and the IUOE public interest standing on Nov. 22, 2012 to review confidential records and ensure errors weren't made when HD Mining was issued LMOs by HRSDC. On Nov. 26, the Attorney General of Canada gave the unions copies of 12 LMOs on a confidential basis. HD Mining tried to block further access to this information. The company took the position that Campbell should stop dealing with the unions and all court proceeding should be stayed (Richard Gilbert, 2012d).

An attempt was made by Justice Campbell to find some common ground and allow the free-flow of information, by conducting in camera meetings on Nov. 28 and Dec. 5. However, HRSDC and HD Mining were united in taking a very hard line on the issue of handing over confidential documents. As a result, Campbell ordered the minister of HRSDC on Dec. 5 to hand over the LMOs and all the supporting materials submitted by HD Mining to hire 201TFWs. After the court order was issued, the confidential documents discussed in these sessions became part of the public record (Richard Gilbert, 2012e).

At the time, only one LMO application had been made public, which asked for permission to bring in 65 TFWs for underground mine operators. The educational requirements were secondary school, while no form of certification, licensing or registration was required. The company claimed it needed workers with 3+ years of underground coal mining experience and the pay was given as $35 per hour.

The LMO application also indicated that Chinese would be spoken in a team environment and the new employees would receive English language training as part of a TFW transition plan. However, this plan was not part of the documents provided to union lawyers for the in camera meetings. Justice Campbell said the TFW Transition plan must also be produced by HD Mining, because it is an integral part of each LMO application. The lack of a requirement for English for TFWs in underground mining occupations, raised serious concerns regarding HD Mining's ability to attract, train and transition Canadian workers.

A hearing on Dec. 14 revealed that HD Mining's transition plan would take 14 years, but lacked further detail.

HD Mining said English language training would be provided, and that interpreters and English speaking foremen would facilitate on the job training and transfer knowledge to Canadians. Throughout the court proceedings, HD Mining insisted that Mandarin was not advertised as a requirement for employment.

Other documents in the public record included ten LMO Confirmations, which covered the approval of different jobs for a total of 201 positions. The confirmations were all given on April 25, 2012, by the same HRSDC officer. In addition, there was a Bulk Request Assessment Recommendation, which justified the HRSDC officer's decision to approve the LMOs requested by HD Mining. In this case, the officer found that the wages being offered by HD Mining meet or exceed prevailing wage rates.

Union lawyers strongly disagreed. The HRSDC officer found HD Mining's offer of $32 per hour for a heavy duty mechanic exceeded the prevailing wage offer of $29.58 per hour. In fact, a heavy duty mechanic working at the Peace River Coal Mine, which is also in Tumbler Ridge, was paid $42 per hour plus benefits and the work is above ground. At the Grande Cache Coal Mine in Alberta, which has underground and above-ground work, a heavy duty mechanic was paid $42.43 an hour. All underground work attracts a premium of $ 3 per hour, which was set to rise to $3.50 per hour on April 1, 2013.

A hearing on Dec. 14 revealed that HD Mining's transition plan would take 14 years, but lacked further detail. The transition plan stated that TFWS would be used during 30 months of construction. It also said it would take one year to set up a training school and then two more years to recruit and train Canadians. After recruitment and training, it would then take the company another 10 years to replace the Chinese workers with Canadians, at a replacement rate of 10 per cent a year (Richard Gilbert, 2012f).

9.4.5 Federal Court Upholds HD Mining's Right to Import TFWs

Union lawyers presented an injunction application in federal court on Dec. 12 to stop additional TFWs from coming to Canada until the judicial review was finished. HD Mining successfully defended its right to employ TFWs on Dec 14, 2012, when Justice James Russell dismissed the unions' application. In his decision, Russell said HD Mining used and met the requirements of the TFWP. The company was not responsible for problems with the TFWP or reviewable errors made by HRSDC (Richard Gilbert, 2012g).

HD Mining took the position that the company was a pawn in a larger political issue relating to problems with the TFWP. HD Mining's lawyer argued the company was making a large investment that would have significant positive economic spinoffs, including the creation of other jobs for Canadians. He provided evidence that significant costs, financial harm and disruptions would occur if the injunction was granted. As of Dec. 10, 2012, CIC at the Canadian embassy in Beijing had issued 194 visas to Chinese nationals to work at the Murray River project.

The unions' lawyer based his argument on an affidavit filed by the IUOE, Local 115, which said there were 474 workers available in B.C., including 100 in the northeast region. He said the unions would suffer irreparable damage because hundreds of TFWs were being paid lower rates, which would depress the local labour market.

Russell said this argument was not clear and was speculative because it didn't include "any evidence from individual members or miners establishing that they are able, willing and qualified for the jobs in question." He said there was no direct evidence from anyone who might be interested in the jobs, so the court cannot assess irreparable harm to the union, their members or the labour market. According to Russell, the evidence presented on prevailing wages was conjecture or personal opinion. It was not presented by a mining expert or other qualified witness. For this reason, the evidence on prevailing wage rates was conflicting.

Therefore, Russel said it was not possible to determine the impact on the Canadian labour market if the injunction wasn't granted. He said the unions' claim that an HRSDC officer made errors in granting permission to HD Mining to import TFWs was not convincing or obvious. So, further review was needed to determine if an unreasonable error was made that required the LMOs to be quashed.

9.4.6 HD Mining Forced to Turn Over Documents by Federal Court

Justice Campbell ordered HRSDC on Dec. 7 to hand over the LMOs and supporting materials submitted by HD Mining to hire 201 Chinese TFWs. The unions requested access to the resumés of the Canadian applicants for a judicial review of the permits that were granted to HD Mining, under the TFWP. Despite the court order, HD Mining refused to hand over the confidential documents (Richard Gilbert, 2013a).

The unions' lawyer said HRSDC had the power to force HD Mining to hand over documents relating to Canadians who applied to work at the Murray River project. A lawyer from the federal Department of Justice argued HRSDC Minister Finley had no power to force HD Mining to comply with the court order.

Justice Michael Manson ordered HRSDC Minister Finley on Jan. 16, 2013 to "further consider the scope and nature of her compliance" with a court order to compel the disclosure of confidential documents from HD Mining. HD Mining's lawyer argued the resumés were not relevant to the case because they were not part of the decision making process by the HRSDC officer, who issued the LMOs (Richard Gilbert, 2013b).

Justice Campbell asked for any documents that HD Mining possessed that formed the basis of attestations the company made to HRSDC in its LMO applications, but were not part of the application. For this reason, HD Mining' lawyer said the order did not include the resumés of Canadian applicants. HD Mining initially released 600 pages of material, but refused several times to give up other documents.

9.4.7 Unions Claim Resumes Prove Canadians Displaced by TFWs

HD Mining handed over about 300 resumes from Canadian citizens or permanent residents who applied to work at the mine. The company did not hire one of these applicants, claiming they were not qualified, even for jobs classified as low skill. A court document filed by the CSWU and the IOUE Local 115 on Jan. 31, 2013 revealed multiple examples of Canadian workers, with excellent qualifications and experience.

"What these resumes prove is that Canadian workers had jobs they could easily perform taken away from them by an unscrupulous company that wanted Temporary Foreign Workers (TFWs) all along and by an incredible lack of enforcement of the rules by the federal government," said Mark Olsen, former business manager for the CSWU Local 1611 (Richard Gilbert, 2013c).

The resumes included workers, who had as much as 30 years mining experience, mineral engineering degrees and managed major mines in Canada. They had every imaginable qualification to do the work. But, HD Mining did not hire one Canadian applicant to work at the mine. The company repeatedly told the federal government, the media and the public there were no qualified workers.

The CSWU and the IUOE gained access to the resumes while preparing an application for a judicial review. The unions' lawyers submitted final documents for the judicial review to the federal court in Vancouver on Jan. 21, 2013. Given this information, the unions were confident their application would be approved. In addition, the unions wanted the federal and B.C. governments to review the TFWP.

9.4.8 HD Mining Sends TFWs Back to China

HD Mining announced on Jan. 29, 2013 that 16 TFWs on the initial phase of the Murray River project were being returned to China, due to the federal legal challenge. About 60 more workers were scheduled to join this group in mid-December 2012 to undertake underground preparatory work for the bulk sample phase. This work involved the extraction of a 100,000 tonne coal sample to determine the viability of full mine development and confirm that the coal is marketable.

HD Mining said the decision was taken due to concerns about the cost and disruption that this litigation has caused to the planning of the project. The company said it needed reasonable certainty before initiating work on the underground bulk sample. As a result, HD Mining also

decided to delay bringing any additional workers to Tumbler Ridge. Despite these setbacks, HD Mining continued with the construction of worker housing and the environmental assessment process.

The unions said HD Mining couldn't blame them for any cost and disruption to the project because the company repeatedly blocked their access to information for the judicial review.

"HD Mining has done everything it could to put legal roadblocks in our way in order to prevent any public scrutiny of its hiring process – a process where HD Mining made the astonishing claim it couldn't find a single qualified Canadian to work in coal mine development – something we have said isn't possible," said Olsen (Richard Gilbert, 2013d).

9.4.9 Court Ruling Vindicates HD Mining

Justice Russel Zinn upheld HD Mining's right to import 201 foreign workers for the construction of the proposed Murray River coal mine on May 21, 2013. Zinn dismissed an application by the CSWU and the IUOE to overturn LMOs that were granted to HD Mining by HRSDC. In particular, the judicial review investigated the application process within HRSDC and challenged the decision of foreign worker officer MacLean to issue positive LMOs to HD Mining.

"There is nothing on the record that establishes that (officer MacLean) was wrong in his assessment that sufficient efforts had been made to recruit Canadians, either when he made that assessment or in hindsight," said Zinn in his decision (Richard Gilbert, 2013e).

Justice Zinn rejected the unions' arguments that the LMOs failed to ensure there were no Canadians to do the work and that the TFWs were offered wages far below prevailing rates. He made this decision during three days of legal proceedings that concluded on April 12, 2013.

Based on the information that was before the officer MacLean on the Working in Canada (WiC) website, "there can be no dispute that his decision on the prevailing wage rate was reasonable," said Zinn. "The wages offered by HD Mining exceeded the prevailing wage rate indicated on that website."

MacLean used the WiC federal government website to determine if the wages offered to the TFWs were appropriate. However, he failed to look at the wages being offered at another mine in Tumbler Ridge. The rates on the WiC web site didn't come close to the wages paid at two mines in B.C. and Alberta that are closest to Tumbler Ridge.

HD Mining's lawyer argued MacLean balanced a number of factors in making a reasonable decision in granting HD Mining permission to hire TFWs. He said the company exceeded the minimum requirement for advertising, by placing ads for positions at the mine in 12 regional and provincial publications. HD Mining also held a Northern job fair and conducted interviews in three cities. In addition, the company developed a transition plan, which aimed to hire and train Canadians. It was also an accepted fact there is a labour shortage in some occupations and trades in specific regions in B.C (Richard Gilbert, 2013f).

The unions' lawyer argued the decision made by MacLean was unreasonable and seriously flawed. He said this case is extraordinary, because HD Mining plans to import an entire TFW workforce, which includes the underground workforce, regardless of skill level. From the

unions' perspective, it would have been reasonable for HRSDC to grant HD Mining permission to hire TFWs to supplement the Canadian workforce. In this view, the TFWP could have provided the company with access to a few highly-skilled workers in specific occupations, where there is a shortage.

For the unions, the issue of prevailing wage rate was critical because it operates in two ways to impact the Canadian labour market. First, the number and quality applications received by the company will be reduced, if the jobs are advertised at a rate that is below the rate prevailing in the market. In other words, the company won't get responses from Canadians if the wages are too low. Second, the lower wage rates serve to undercut the wages received by Canadians working in the same industry.

9.5 Conclusion

HD Mining is planning to import hundreds of TFWs for the construction and operation of the Murray Rive coal mine in northeastern B.C. During the three-year construction period, the project workforce is scheduled to increase to about 230 Canadians and 250 TFWs by 2017. Operations are expected to begin in 2018 using mainly TFWs. The number of TFWs will peak at 494 in 2018, while there are only 270 Canadian workers. The share of TFWs in total employment is expected to peak at about 65 % in 2018. TFWs are forecast to make up more than 50 per cent of the workforce in every year between 2014 and 2020. The transition plan aims to replace TFWs with local workers by in the 11th year of production.

This large private sector investment in the construction and operation of a mine will not have the desired positive effect on the regional economy, because HD Mining is not planning to employ local skilled labour or train them to use the company's longwall mining equipment in the short-term. As a result, the project has and will continue to exacerbate the unemployment problem in northeastern B.C.

Workers in Tumbler Ridge were hit hard by a recession in the coal mining sector in 2014. Mine closures caused more than 1,000 workers to lose their jobs in 2014, when the population of Tumbler Ridge was about 4,000 people. At the same time, HD Mining employed hundreds of foreign workers. The project demonstrates clearly that the TFWP can have an extremely negative impact on the economy. In this case, Canadian workers are displaced by foreign workers and communities are denied the positive effects of job creation, such as an increase in household income, consumer spending and tax revenues.

The federal court case which challenged the decision by HRSDC to grant permission to HD Mining to import foreign workers was one of the most comprehensive examinations of Canada's TFWP ever conducted. The TFWP is supposed to prevent employers from hiring foreign workers when there are Canadians who are willing and able to do the job. However, the rapid expansion of the TFWP by the federal government is displacing Canadian workers in small communities and towns in B.C. that are dependent on resource industries.

Individual TFWs rotate in and out of Canada. But, the TFWP has established foreign workers as a permanent structural feature of the regional labour market. Canadian workers are being crowded out of job opportunities, while wages are kept artificially low for everyone else.

Despite this problem, the TFWP does not have a viable system for monitoring and enforcing the requirements of its own application process. This includes making sure employers only hire TFWs to fill short-term labour shortages, when there are no qualified Canadians available.

The federal court case presented evidence that HD Mining was manipulating the application process under HRSDC, by placing advertisements for Canadian workers in various positions at wages that were below prevailing rates, while requiring the ability to speak Mandarin. The company received at least 300 resumes from Canadian citizens or permanent residents, but did not hire a single Canadian. HD Mining justifies the hiring of TFWs before Canadians, by claiming that only Mandarin-speaking Chinese understand the company's system of longwall mining.

During the trial on April 29, 2013, the former Conservative government introduced a number of reforms to the TFWP. The CSWU and the IUOE viewed the reforms as evidence that the labour movement's opposition to the TFWP had forced the federal government to make significant changes. However, the fact remains that the federal government has granted permission to a foreign company to employ hundreds of foreign nationals at a mine in B.C where there are experienced Canadian miners and a high level of unemployment. Even more troubling is the fact the federal government doesn't even have enough data to understand what shortages exist.

HD Mining suspended operations effective March 15, 2016, but they may restart at a later date. The problem is still real. This case raises so many serious questions about the ability of the federal government to properly operate, monitor and regulate the TFWP that a full review of the whole program by the new Liberal government is urgently required.

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10 TFWs ABANDONED BY LABOUR BROKER ON THE GOLDEN EARS BRIDGE PROJECT

10.1 Introduction

Photo Credit: *Peri Group – The Golden Ears Bridge is an almost one kilometre long cable-stayed structure over the Fraser River, which is the core element of the 13 km highway project.*

One of the most serious problems surrounding the TFWP is the activity of unscrupulous recruitment agencies. The rapid expansion of the TFWP under the former Conservative government caused many employers to use agencies to assist in the search for foreign workers from developing countries; and help with the process of filling out the required paperwork. As a result, an industry of third-party recruiters or labour brokers was established to provide these services.

There are legitimate labour brokers who properly charge employers for their services. However, the Golden Ears Bridge case study demonstrates clearly how some labour brokers involved with the TFWP are only interested in the economic exploitation of foreign workers and don't care about their well-being. The case provides evidence that there is an urgent need for federal and provincial governments to ensure only legitimate contractors are able to import foreign workers.

10.2 Project Description

The board of directors of TransLink, formerly known as the and the Greater Vancouver Transportation Authority, selected the Golden Crossing Group on Dec. 7, 2005 as the preferred proponent to design, build, finance, operate, maintain and rehabilitate the Golden Ears Bridge and associated road network. The Golden Crossing Group was led by Bilfinger Berger BOT Inc., a Canadian subsidiary of Bilfinger Berger BOT GmbH (Translink Press Release, 2005).

The Golden Ears Bridge Project involved the construction of a six-lane toll bridge that spans 14 kilometres across the Fraser River, connecting Pitt Meadows and Maple Ridge with Surrey and Langley. It included new arterial roads linking the bridge to the existing road network on both sides of the Fraser River, and municipal road upgrades to improve traffic flows and facilitate the integration of the new crossing into the existing road network.

Financing for the private-public partnership (P3) was provided by the Golden Crossing General Partnership under a 35.5 year agreement with TransLink. Bilfinger Berger (Canada) Inc. and CH2M HILL were the Golden Crossing Constructors Joint Venture (Joint Venture), which managed design and construction of the project. The architect was Hotson Bakker Boniface Haden.

Pre-construction activities for the bridge and road network began on Feb. 13, 2006, when Fraser River Pile & Dredge started to pump sand from the Fraser River and stockpile it for use in road construction. This activity was conducted in advance of the official start of construction to ensure the project stayed on schedule (Translink Press Release, 2006a). The bridge was scheduled to open in June 2009.

TransLink finalized an agreement with Golden Crossing Group on March 10, 2006, which paved the way for construction in the spring. The estimated construction costs for the bridge and road network was $808 million. The costs were expected to be recovered through toll revenue and the existing Albion Ferry subsidy (Translink Press Release, 2006b).

10.3 Joint Venture Claims There is a Labour Shortage

The controversy surrounding the Golden Ears Bridge project began when the Joint Venture claimed there was a labour shortage. In response, the company aimed to recruit people in local communities who commuted to construction jobs outside the region and would probably want to consider a shorter commute. The Joint Venture held a job fair on June 18, 2006 to seek ironworkers, steel fixers, superintendents and foremen, carpenters, welders, heavy equipment operators, concrete finishers, safety coordinators and general skilled construction labourers (Vancouver Sun, 2006a). The job fair was scheduled on Father's Day morning, which was part of the reason for the low turnout.

10.4 Canadian Ironworkers Shut Out of Bridge Contracts

A coalition of local labour and business leaders held a press conference in Vancouver on Aug. 31, 2006 to demand the federal government deny Bilfinger Berger's application to import TFWs. The coalition said there were enough skilled Canadian tradespeople looking for work to meet the project's needs. In addition, they said the company's efforts to hire Canadian workers were half-hearted at best.

For example, Jim Bromley, regional manager of Harris Rebar, said the tender process for subcontract work on the Golden Ears Bridge project was extremely frustrating for a union contractor that employed Canadian labour. Bromley said Bilfinger repeatedly provided inadequate drawings for use in preparing a bid, conducted several meetings and then announced the Harris bid was too high and that they would not get the work. Harris Rebar is North America's largest reinforcing company (Tom Sandborn, 2006).

G&M Steel Services Ltd., Acier AGF and Prince George Steel submitted letters at the press conference that said they were also rejected by Bilfinger Berger, as part of the tender process for subcontracts. These firms also said Bilfinger Berger had provided incomplete, imprecise and imperfect drawings. As a result, some people in the local construction industry came to the conclusion that the company was not serious about hiring skilled labour in Canada.

The leaders of the BC Federation of Labour, the BC and Yukon Territory Building and Construction Trades Council and Ironworkers Local 97 all showed their support for the protest by attending the press conference. Local unions and union shop employers said Bilfinger Berger was ignoring Canadian workers and asking for federal favors in hopes of driving down wages and collecting windfall profits through the use of TFWS who didn't have the same rights as resident and unionized workers.

The coalition acknowledged that B.C. may need to look outside the province for labour, but argued these needs could have been easily met by drawing upon workers from Eastern Canada. Ironworkers Local 97 said there was no shortage of available members in Canada. The union tabled documents at the press conference that said hundreds of qualified and unemployed members were available for work on projects like the Golden Ears Bridge.

More than 200 unionized ironworkers walked off the job on Sept. 20, 2006 to attend a rally to protest the hiring of TFWs by the Joint Venture. Bilfinger Berger had applied to Human Resources and Development Canada (HRSDC) to import 345 foreign skilled trades workers. The company said it had a policy to first hire locally and from Canada. However, it was necessary to make the HRSDC application in the event that contractors were not able to hire enough Canadians to work on the project. The Joint Venture said there was no advantage to hiring TFWs over Canadians, because they would be paid the same rates as union workers (Vancouver Sun, 2006b).

The Construction and Specialized Workers (CSWU) Union 1611 organized about 80 Serbian TFWs in 2007, ...

The International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, said there were about 1,500 unemployed ironworkers across Canada who should be given access to these job opportunities before TFWs. The Ironworkers Local 197 attempted to negotiate an agreement with the Joint Venture, but was not successful. The ironworkers were joined in their protest rally by members of the B.C. Federation of Labour and the B.C. Government Employees Union.

10.5 Joint Venture Imports a Group of TFWs

The Joint Venture imported a group of 33 TFWs in April 2007, which 15 carpenters, 10 iron workers and eight concrete finishers. The company said the TFWs covered under a Christian Labour Association of Canada (CLAC) collective agreement were paid the same as local workers. In addition, the Joint Venture claimed local workers only had general skills, but the cable-stayed bridge was a unique structure, which required more specialized and skilled workers (Vancouver Sun, 2007). Ironworkers Local 97 said the rate paid to workers under the CLAC collective agreement was lower than the rate accepted by unionized contractors. The rate in B.C. was $38.60 per hour for wages and benefits. Bilfinger Berger offered a package that was less than $32 per hour (Ironworkers Press Release, 2006).

10.6 TFWs Join CSWU, But Get Laid Off Without Pay

The Construction and Specialized Workers (CSWU) Union 1611 organized about 80 Serbian TFWs in 2007, who were employed by Baulex Projects Ltd., a European subcontractor to Bilfinger Berger. The CSWU negotiated and ratified a collective agreement with Baulex, which provided an increase in wages and better benefits for the TFWs. But, the CSWU got a big surprise when they tried to contact Baulex with the estimates of how much money was owed to each TFW (CSWU Newsletter, 2008).

Baulex Projects' contract with Bilfinger Berger was cancelled in September, 2007 and the Serbian TFWs were suddenly laid off without being paid. The Joint Venture said the contract was terminated, due to substandard work. However, the layoffs and cancellation of the contract were due to the fact that Baulex Projects' bank accounts had been seized by Revenue Canada.

The Serbian TFWs walked off the job shortly after lunch on Sept. 23. Bilfinger Berger provided the funds to Baulex to pay the TFWs, but they had not been paid been paid for two weeks.

"This is the first contract that Baulex has had in B.C. and they brought in 80 temporary foreign workers from Serbia," said Mark Olsen, former business manager with the CSWU. "We organized these workers and our business representative just ratified a collective agreement for the crew, which called for a raise retroactive to Aug. 1 (Richard Gilbert, 2008a)."

Revenue Canada froze Baulex's bank accounts, because the company didn't submit income tax, Canada Pension Plan and Employment Insurance (EI) deductions to the federal government. In addition, Baulex didn't submit payments for WCB coverage. However, Baulex deducted these payments from the pay checks of TFWs.

As a result, the TFWs were left without jobs, while it was not clear if they could stay in their housing. Some of the TFWs had been in Canada for about two years. Under the TFWP, they would have to return home, unless their work permits could be transferred to Bilfinger Berger or another employer. The CWSU worked to have the TFWs put on the payroll of Bilfinger Berger.

"The federal government needs to get their act together and help these people out," said Olsen. "The biggest reason for these problems is the lack of enforcement. No one is helping these guys out except the union that represents them."

10.7 B.C. Government Provides Emergency Funds to TFWs

The TFWs survived for more than a month on their own, before the CSWU was able to get each worker $600 in emergency funds from the B.C. government for rent and food. Seventy-one TFWs received cheques on Oct. 6. 2007. The CSWU tried to get the TFWs back to work as soon as possible. Some TFWs had already moved. The CSWU tried to track them down, so they could also receive emergency funding.

Under the TFWP, work permits are issued to allow workers to be employed by a specific company. If the employer goes out of business or the TFWs are laid off, they must return to their home country. TFWs are not allowed to seek other employment for the remainder of their work permit.

"Our federal government has a responsibility to ensure that foreign workers who are recruited to work in this country are treated fairly and with respect, and that promises made are promises kept," said Dean Homewood, business representative with the CSWU. "The treatment these 80 workers have experienced in Canada is shameful and needs to be corrected. These guys had Employment Insurance (EI) deducted from their paycheques. They are supposed to have the same rights as Canadian workers. If this is true, they should be able to collect EI (Richard Gilbert, 2008b)."

The TFWs were entangled in a web of serious problems, which were created by a lack of monitoring and enforcement by the federal and provincial governments. For example, the CSWU had to help the TFWs receive payment for money that was owed to them, including their back pay and reimbursement for airfare to Canada. Baulex was also responsible for paying their return airfare, but the company disappeared and the owner returned to Belgrade.

10.8 Abandoned TFWs Can't Find Jobs in a Recession

The CSWU tried to get the Serbian TFWs new work permits, which would allow them to work for a different employer. This included an assurance the new employer would pay the TFWs airfare back to Serbia at the end of their work in Canada. The union also wanted the federal government to address problems with EI. In addition to these problems, the TFWs had difficulty finding new jobs in a recession.

"We are still working with them to find employment," said Homewood. "With the economic slowdown there is not much work out there for temporary foreign workers. We have been successful in placing about a dozen guys, but there are still more than fifty in Canada actually looking for work. We are still collecting resumes and they had to fill out forms to extend their stay in Canada. The contractor also has to fill out a form so the TFW can change employers (Richard Gilbert, 2009)."

> ***"We were successful in getting the 10 per cent holdback and three weeks in wages that had not been given to these workers,"***
> *said Homewood.*

The labour market situation was difficult for TFWs in 2009. Only a few firms could get a Labour Market Opinion (LMO) from HRSDC, because it was hard to prove there was a labour shortage. Only companies that had an open LMO were able to hire TFWs. The CSWU tried to find the TFWs employment as carpenters, iron workers, masons and rebar installers. Many TFWs had more than one skill.

Homewood was looking to find jobs for TFWs in a range of trades, while making sure they get a Canadian wage. Initially, he worked to have the TFWs put directly on Bilfinger Berger's payroll. However, the company said the TFWs were no longer needed on the project. Then the TFWs tried to apply for EI, because they had EI premiums deducted from their paycheques. However, they were not able to collect.

The TFWs received a couple of payments between $500 and $600 a month from the Department of Social Development and Housing. The amount depended on whether or not the TFWs had dependents. Most TFWs received two to three months in payments. These payments were cut off when the CSWU recovered some of the payment from Canada Revenue Agency for money owed to the TFWs by Baulex.

"We were successful in getting the 10 per cent holdback and three weeks in wages that had not been given to these workers," said Homewood. "We got $240,000 that has been distributed to most of the workers."

Some of the TFWs sent holdback money and back pay to their families in Serbia, or used it to return home. For the remaining TFWs, the CSWU made another effort in January 2009 to get EI. The TFWs paid a lot of money into the EI system. So, they should have been able to get money out. The TFWs, who ran out of savings or sent their money home, had to rely on donations from the Serbian community. One particular church in Langley collected donations and provided free clothes, food and English lessons.

10.9 Conclusion

The use of labour recruitment agencies or labour brokers, which act as a middle-person for employers looking for TFWs, is one of the most serious problems with the TFWP. The rapid growth of the TFWP caused the proliferation of labour brokers, who take advantage of any opportunity for economic exploitation of TFWs. The controversy surrounding the Serbian TFWs on the Golden Ears Bridge project began when Bilfinger Berger applied to the federal government to import TFWs. The Joint Venture claimed there was a shortage of qualified construction workers in Canada.

A coalition of business leaders and unions including the BC Federation of Labour, the BC and Yukon Territory Building and Construction Trades Council and Ironworkers Local 97 disagreed. There were hundreds of workers in Canada who were unemployed and qualified to fill a number of positions on the project. As part of the tender process on the project, Bilfinger Berger provided incomplete, imprecise and imperfect drawings to local subcontractors. The Joint Venture did not make a serious effort to hire local subcontractors and skilled labour.

The CSWU organized about 80 Serbian TFWs and negotiated a collective agreement with a labour broker named Baulex Projects Ltd. in 2007. But, the TFWs were laid off without being paid, when Bilfinger Berger found out that Baulex had its bank accounts seized by Revenue Canada. In this case, it was revealed that Baulex was involved in the following unethical and illegal activities:

- charging TFWs directly for services instead of employers;
- defrauding the federal government through income tax evasion and the non-payment of other statutory payroll deductions ;
- paying TFWs substandard wages;
- laying off TFWs without notice.

To make matters worse, the TFWs were not eligible for EI, even though these deductions were being made from their paychecks. The TFWs survived for more than a month on their own, before the CSWU was able to get each worker $600 in emergency funds from the B.C. government for rent and food. The CSWU had to help the TFWs receive their back pay and reimbursement for airfare to Canada. Baulex was also responsible for paying their return airfare, but the company disappeared and the owner returned to Belgrade.

The CSWU tried to get the TFWs new work permits, which would allow them to work for a different employer. The TFWs had difficulty finding new jobs in a recession. The union also wanted the federal government to address problems with EI.

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GLOSSARY OF ACRONYMS

ABTC Alberta Building Trades Council

ALMO Accelerated-Labour Market Opinion

APEGA Association of Professional Engineers and Geoscientists of Alberta

CNRL Canadian Natural Resources Limited

CEP Communication, Energy, and Paperworkers Union

CIC Citizenship and Immigration Canada

CEC Canadian Experience Class

CLAC Christian Labour Association of Canada

CLB Canadian Language Benchmark

CSWU Construction and Specialized Workers Union

ELMO Expedited Labour Market Opinion

ELSS Entry Level and Semi-Skilled

ESB Employment Standards Branch

ESDC Employment and Social Development Canada

EIS Environmental Impact Statement

FSTP Federal Skilled Trades Program

FSWP Federal Skilled Worker Program

HCML Horizon Construction Management Ltd

HRSDC Human Resources and Social Development

IUOE International Union of Operating Engineers

IMP International Mobility Program

IRCC Immigration Refugee and Citizenship Canada

IRPA Immigration and Refugee Protection Act

LiUNA Labourer's International Union of North America

LRB Labour Relations Board

LRT Light Rail Transit

LMIA Labour Market Impact Assessment

LMO Labour Market Opinion

NOC National Occupational Classification,

NIEAP Non-Immigrant Employment Authorization Program

OHS Occupational Health and Safety

OUP Occupations under Pressure

PNP Provincial Nominee Program

SAWP Seasonal Agricultural Worker Program

SSEC Sinopec Shanghai Engineering Company Ltd

TCC Tenth Construction Company of Sinopec

TFWs Temporary Foreign Workers

TFWP Temporary Foreign Worker Program

TPP Trans-Pacific Partnership

TBM Tunnel Boring Machine

ABOUT THE AUTHOR

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Richard Gilbert is an economist and journalist in Vancouver who provides journalism, communications and market intelligence services to various stakeholders in the Western Canadian Construction Industry. As a member of the Canadian Freelance Union, Richard writes political and economic stories on a wide range of complex issues for construction businesses, associations, unions and publishers. Before becoming an independent consultant, Richard was a Senior Staff Writer with the Daily Commercial News (DCN), which is Ontario's only daily construction newspaper. Richard gained his business journalism experience as a Staff Writer with the Journal of Commerce (JoC) covering the institutional, commercial and industrial construction industry in Western Canada. The DCN and the JoC are owned by the Construction Market Data Group, a leading Canadian B2B publisher and provider of construction news, data, project leads and market intelligence.

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