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CANADA

TEMPORARY FOREIGN WORKER PROGRAM

Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

**Bryan May
Chair**

SEPTEMBER 2016

42nd PARLIAMENT, 1st SESSION

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WITH DISABILITIES**

has the honour to present its

FOURTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the Temporary Foreign Worker Program and has agreed to report the following:

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TEMPORARY FOREIGN WORKER PROGRAM

INTRODUCTION

The Temporary Foreign Worker (TFW) Program is complex and multi-faceted, touching the lives of many Canadians, permanent residents, and foreign nationals. It is designed to facilitate economic growth by responding to labour market needs, while ensuring a balance is kept between the interests of businesses and those of the Canadian workforce.

The TFW Program was created in 1973 to allow employers to hire foreign nationals to fill gaps in their workforces on a temporary basis. The program has grown and been updated over the years to respond to Canadian labour market conditions. However, employers and temporary foreign workers have expressed long-standing concerns over various aspects of the program. Significant reforms announced in June 2014 have also had an impact on them. In February 2016, in response to feedback from various stakeholders with respect to the TFW Program, the Honourable MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour, indicated that a comprehensive review of the program was imminent and that a study by a parliamentary committee could offer support in this regard.¹

On 21 March 2016, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (the Committee) adopted a motion to study the TFW Program, with a “focus on the current program and ways to improve it.”² The Committee held a total of five meetings between 11 May and 1 June 2016, during which time it heard from 47 witnesses, including representatives from two federal government departments, labour organizations, advocacy groups, industry associations, business representatives, as well as temporary foreign workers. In addition to these public hearings, the Committee received a total of 63 briefs.

Committee members are deeply appreciative of the insights and personal experiences shared by the various participants, and would like to sincerely thank them for their assistance in understanding program intricacies and potential reform options. The Committee listened carefully to the testimony placed before it and now reports on its findings.

1 Government of Canada, “[Government of Canada overhauls Temporary Foreign Worker Program ensuring Canadians are first in line for available jobs](#),” News Release, 20 June 2014. See also Susana Mas, “[Temporary foreign worker program review to be launched by Liberals](#),” *CBC News*, 20 February 2016; and Robert Fife, “[Temporary foreign workers program faces federal review](#),” *The Globe and Mail*, 18 February 2016.

2 House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities [HUMA], [Minutes of Proceedings](#), 1st Session, 42nd Parliament, 21 March 2016.

CHAPTER 1: BACKGROUND

A. The Temporary Foreign Worker Program

Following reforms introduced in June 2014, the TFW Program encompasses only those work permit streams under which temporary foreign workers can enter Canada at the request of an employer who has successfully undertaken a labour market screen, known as a Labour Market Impact Assessment (LMIA). In this respect, the TFW Program is different from the International Mobility Program work permits. Unlike the TFW Program, it does not require an LMIA and its primary objective is to advance the economic and cultural interests of Canada, rather than filling specific gaps in the labour market. Employment and Social Development Canada (ESDC) is the lead department for the TFW Program, while Immigration, Refugees and Citizenship Canada (IRCC) is responsible for the International Mobility Program.³

There are currently four streams under which employers can apply to the TFW Program: the high-wage stream, the low-wage stream, the primary agriculture stream, and the stream dedicated to supporting permanent residency. Each stream has specific requirements to which employers must adhere.

The high-wage stream is comprised of positions where the wage rate offered to the temporary foreign worker is at or above the provincial/territorial median wage⁴, while the low-wage stream encompasses those positions with wages that are below the provincial/territorial median wage.

The primary agriculture stream allows employers to hire migrant workers from any country to work for on-farm primary agricultural positions for a maximum period of 24 months. This stream includes the Seasonal Agricultural Worker Program (SAWP), through which employers can secure temporary foreign labour from Mexico and various Caribbean countries covered under bilateral international agreements. Migrant workers under the SAWP can only work in Canada for a maximum of eight months from January to mid-December.

Finally, under the support for permanent residency stream, employers may apply to the TFW Program for an LMIA to either support an application for permanent residency, or as a mechanism to allow a foreign national to be able to work in Canada while they apply for permanent residency.

As of December 2014, the Live-in Caregiver Program is no longer a stand-alone stream. Currently, LMIA applications for caregivers are assessed in the high-wage or

3 Employment and Social Development Canada [ESDC], [Overhauling the Temporary Foreign Worker Program](#), pp.1 and 27–29.

4 The provincial/territorial median hourly wage is the wage that is in the middle of the hourly wage distribution in that province or territory. If, for example, the median hourly wage is \$25.00 per hour, it means that exactly half of the wages reported in that province or territory are greater than or equal to \$25.00, and that the other half is less than or equal to this amount.

low-wage streams, while the live-in component is no longer mandatory. Under the TFW Program, families can hire a foreign caregiver to provide care on a full-time basis, in a private household, to children, seniors or persons with certified medical needs when Canadian or permanent resident workers are not available.⁵

B. Recent program reforms

The current parameters of the TFW Program were established as a result of a series of recent reforms, the most significant of which were announced on 20 June 2014. These reforms were aimed at limiting the reliance of employers on temporary foreign workers and on strengthening compliance mechanisms to ensure employers respect program requirements.⁶

In their appearance before the Committee, officials from ESDC indicated that the program must be used by employers as “a last and limited resort to fill their acute labour shortages on a temporary basis;”⁷ thus serving the following three functions:

To fill jobs on a temporary basis until employers are able to recruit from or train the domestic workforce, or bring an individual through the immigration process.

To fill short-term, one-time, or seasonal jobs where the job does not exist after a foreign worker leaves the country.

Or, to facilitate the mobility of international talent by allowing employers to hire highly-skilled and specialized individuals who have unique skills and knowledge that can be transferred to Canadians or help create jobs for Canadians.⁸

In order to ensure these goals are met, employers must demonstrate to ESDC, through an LMIA application, that there are no Canadians or permanent residents available to do the job. The LMIA is a new labour market verification process that was introduced as part of the June 2014 reforms. It is used to determine the likely effect that the employment of a foreign worker will have on the Canadian labour market, and is issued by ESDC/Service Canada. The requirement for an LMIA is particularly important given that, in order for a temporary foreign worker to be able to apply for a work permit through IRCC, an employer must first obtain a positive LMIA.⁹

5 Reference document submitted by ESDC, *Temporary Foreign Worker Program Overview*, May 2016, pp. 5–6. See also Government of Canada, [Hire a temporary foreign agricultural worker](#), [Hire a temporary foreign worker through the Seasonal Agricultural Worker Program – Overview](#), and [Hire a temporary foreign worker as an in-home caregiver – Overview](#).

6 Government of Canada, “[Government of Canada overhauls Temporary Foreign Worker Program ensuring Canadians are first in line for available jobs](#),” News Release, 20 June 2014. See also ESDC, [Overhauling the Temporary Foreign Worker Program](#).

7 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 11 May 2016, 1615 (Paul Thompson, Senior Assistant Deputy Minister, Skills and Employment Branch, ESDC).

8 Paul Thompson, “HUMA Speaking Points: Review of the Temporary Foreign Worker Program,” Ottawa, 11 May 2016, p. 2.

9 Immigration, Refugees and Citizenship Canada, [Facts and Figures: Immigrant Overview – Temporary Residents](#), 2014, p. 49.

According to ESDC officials, the LMIA is “a more comprehensive and rigorous” screening mechanism than the previous Labour Market Opinion requirement. The LMIA process requires employers to indicate in their application the number of Canadians that applied and were interviewed for their available job, as well as the reasons those Canadians were not hired. Further, employers are required to attest to their awareness of the rule that Canadians cannot be laid off, nor have their hours of work reduced, at a workplace that also employs temporary foreign workers.¹⁰

In addition to these conditions, employers must adhere to specific advertising requirements introduced in July 2013. These include advertising in Canada for a minimum of four weeks, using recruitment methods that go beyond posting available positions on jobsites, and, in the case of low-wage positions, demonstrating that efforts have been made to hire Canadians from under-represented groups. ESDC/Service Canada will refuse to process the LMIA application where there are concerns that temporary foreign workers may have a negative impact on the Canadian labour market.¹¹

In order to cover the increased cost of delivering the TFW Program in this manner, the LMIA fee was raised from \$275 to \$1,000 in 2014 for each temporary foreign worker position requested by an employer. From 1973, the year the program was created, to 2013, there was no application fee.¹²

The June 2014 reforms also introduced specific changes with respect to the program streams under which employers can request an LMIA, including the high-wage stream and the low-wage stream, with the purpose of ensuring employers do not become too reliant on temporary foreign labour. Employers looking to fill labour gaps in the high-wage stream, for example, are required to submit a Transition Plan with their LMIA application. In this Transition Plan, employers must outline specific recruitment and training activities in place to reduce their reliance on temporary foreign labour for high-wage positions, thus transitioning to a Canadian workforce. A Transition Plan must be provided for each position for which an employer is seeking an LMIA. Employers must report on the success of the Transition Plan should they ever reapply to hire a temporary foreign worker or be selected for an inspection.¹³

With respect to the low-wage stream, employers with 10 or more employees applying for a new LMIA are now subject to a 10% cap on the proportion of their workforce that consists of low-wage temporary foreign workers. The cap has been phased in over a period of three years for employers above the threshold and is scheduled to apply to all employers by 1 July 2016. Exemptions to the cap include on-farm agricultural primary positions, caregiver positions and, for applications received in 2016, industries hiring

10 ESDC, [Overhauling the Temporary Foreign Worker Program](#), p. 9.

11 Ibid., pp. 31–32.

12 Ibid., p. 25.

13 Ibid., pp. 13–14.

temporary foreign workers in low-wage seasonal positions that are no more than 180 calendar days in length.¹⁴

In addition to establishing a cap on the proportion of the workforce that consists of low-wage temporary foreign workers, the June 2014 reforms reduced the duration of work permits set out in the LMIA with respect to low-wage stream positions from two years to one year. This change obliges employers to reapply for an LMIA annually so that changes in labour market conditions that may have occurred over the previous year can be taken into account. Finally, effective June 2014, LMIA applications for certain low-wage positions in the Accommodation, Food Services and Retail Trade sectors are no longer being processed in economic regions with an unemployment rate that is at 6% or higher. This means that employers in those regions can no longer seek to hire foreign nationals in certain low wage positions.¹⁵

Irrespective of the stream, since April 2013, employers seeking temporary foreign workers have been required to pay wages at or above the prevailing wage for that occupation in the region. This wage requirement was introduced to limit the possibility of wage suppression.¹⁶ In addition, since 2011, migrant workers can only work in Canada for a maximum cumulative duration of four years. This is in accordance with the “cumulative duration” rule, which also requires temporary foreign workers to spend the following four years either outside of Canada, or in Canada but not working, before being eligible to work again.¹⁷

Finally, the TFW Program is also now subject to what ESDC officials have described as “stronger” enforcement measures and “tougher” penalties meant to ensure greater employer compliance with program requirements. These changes have included increasing the number and scope of inspections, expanding the authority of inspectors, as well as launching a confidential tip line to report abuse of the program. According to ESDC representatives, since April 2014, approximately 3,800 tips have been received. These tips resulted in 640 inspections by ESDC officials, of which 220 were referred to other law enforcement agencies. A greater range of sanctions and monetary fines are also now in place for employers who break the rules of the TFW Program, including banning employers from the program, adding the names of employers whose LMIA’s have been suspended or revoked to a public website, as well as fining employers up to \$100,000 per violation.¹⁸

14 Ibid., pp. 9–10 and 26. See also Government of Canada, [Hire a temporary foreign worker in a low-wage position – Program requirements](#).

15 ESDC, [Overhauling the Temporary Foreign Worker Program](#), pp. 11–12.

The specific positions are: food counter attendants, kitchen helpers and related occupations, light duty cleaners, cashiers, grocery clerks and store shelf stockers, construction trades helpers and labourers, landscaping and grounds maintenance labourers, other attendants in accommodation and travel, janitors, caretakers and building superintendents, specialized cleaners, and security guards and related occupations.

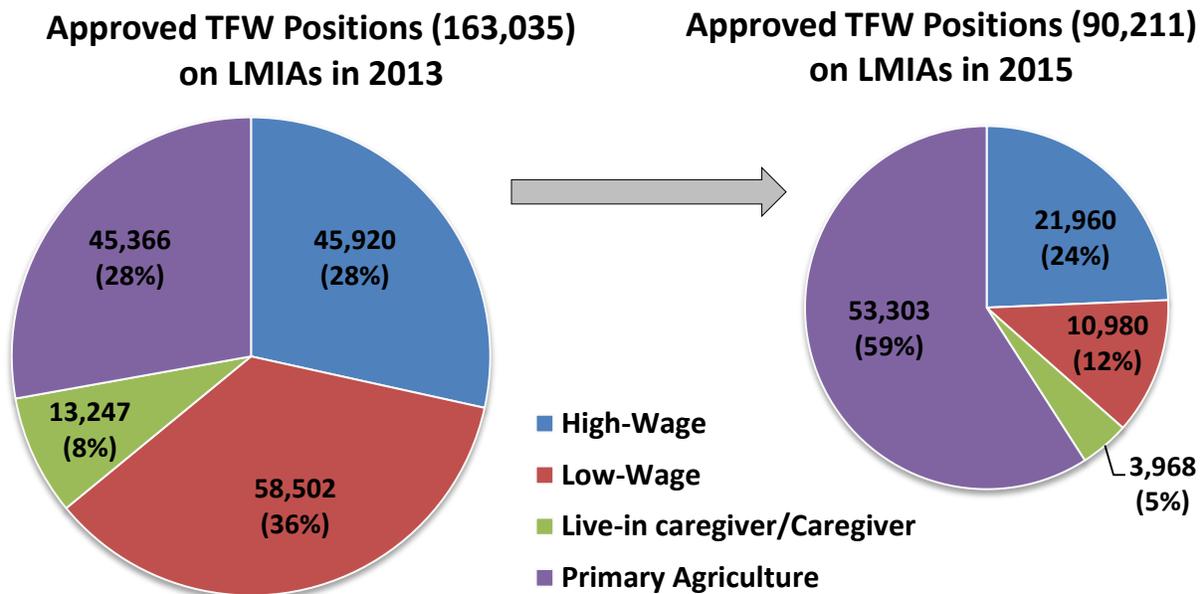
16 Ibid., p. 31.

17 Canada Gazette, [Regulations Amending the Immigration and Refugee Protection Regulations \(Temporary Foreign Workers\)](#).

18 ESDC, [Overhauling the Temporary Foreign Worker Program](#), pp. 17–24. See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Paul Thompson).

C. Statistical data

In their analysis of the TFW Program, officials from ESDC have noted a significant downward trend in requests for temporary foreign workers following the introduction of major reforms to the program in 2014. According to their estimates, the number of temporary foreign worker positions approved on LMIA's has decreased by 45%, from 163,035 in 2013 to 90,211 in 2015. In addition, the number of temporary foreign worker positions approved in 2015 amounts to less than 0.5% of the 19.4 million Canadians in the labour force.¹⁹ The chart below illustrates this downward trend in relation to the various program streams.



¹⁹ Reference document submitted by ESDC, *Temporary Foreign Worker Program Overview*, May 2016, pp. 7 and 12.

CHAPTER 2: THE LABOUR MARKET IMPACT ASSESSMENT PROCESS

Witnesses appearing before this Committee identified a number of broadly shared concerns with respect to aspects of the LMIA process that impact all streams of the TFW Program, such as fee, processing of applications and timelines.

A. Labour Market Impact Assessment fee

On more than one occasion, witnesses referred to the LMIA fee, which has been set at \$1,000 per application since June 2014, as “prohibitive” for businesses. Val Litwin, Chief Executive Officer of the Whistler Chamber of Commerce, for example, explained that the high fee only covers one year of employment for one temporary foreign worker, and does not constitute a guarantee that the position applied for will be filled. Mr. Litwin commented that this places a financial burden, especially on small businesses, making it difficult for them to remain “competitive and viable”.²⁰ Similarly, the Coast Spas Manufacturing Inc. representative, Jatinder Sidhu, expressed concerns over the fact that the LMIA fee is non-refundable. Should a business apply for 50 temporary foreign workers, he explained, the cost of LMIA applications would be \$50,000 irrespective of whether the applications are approved or rejected. Mr. Sidhu suggested that a negative decision has repercussions in two ways: a loss of the application fee, and the company is not able to recruit the temporary foreign labour needed to produce and remain competitive.²¹

Further, the Committee was told that the increase in the LMIA fee has had an impact on families that need to hire temporary foreign workers to serve as caregivers for their children, seniors, and disabled relatives. Donalda Madsen, a mother who has been using temporary foreign worker caregivers to tend to her disabled son’s needs since 1989, indicated that the rising cost of the program is making it very difficult for families like hers to afford hiring caregivers. In addition to having to pay for a caregiver’s airfare, health insurance, and other incidentals, she noted families are now also required to pay LMIA application fees on an annual basis in order to extend their caregivers’ work permits. If families lose their ability to hire caregivers, she cautioned, the burden will fall on institutions such as local extended care hospitals and community living agencies.²²

Witnesses suggested that the LMIA fee has also had consequences on the temporary foreign workers themselves. According to the Migrant Mothers Project, the rise in the LMIA fee has led some employers to download these costs onto temporary foreign workers, while making other employers less likely to hire temporary foreign labour.²³

20 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Val Litwin, Chief Executive Officer, Whistler Chamber of Commerce).

21 Ibid. (Jatinder Sidhu, Executive Vice-President, Coast Spas Manufacturing Inc.).

22 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 18 May 2016 (Donalda Madsen, appearing as an individual).

23 Brief submitted by the Migrant Mothers Project, [“Protecting the Rights of Temporary Foreign Workers,”](#) May 2016.

Overall, witnesses called for the LMIA fee to be abolished, or at least reduced, across a number of sectors, including small businesses in the hospitality industry, the manufacturing sector, as well as for families hiring caregivers. Should the fee requirement be kept in place, however, witnesses asked that the LMIA fee be refundable in the event of a denied LMIA application. Another suggestion was to extend the duration of work permits for low-wage temporary foreign workers, thereby reducing the costs associated with LMIA applications.

B. Processing of Labour Market Impact Assessment applications

Not all witnesses expressed concerns over the rise in the LMIA fee. One witness in particular, Jayson Hilchie, President and Chief Executive Officer of the Entertainment Software Association of Canada, indicated that companies in the Canadian video game industry originally supported the LMIA fee increase based on the assumption that a higher fee would reduce the number of applications and result in an “increased efficiency of application.”²⁴

According to Mr. Hilchie, however, companies in the video game industry have found inconsistencies in the way that program officers apply the rules and process applications across the different Service Canada locations. In their experience, applications are often denied based on a lack of understanding of the types of positions required by the industry. LMIA applications listing jobs not found under the National Occupational Classification (NOC)²⁵, for example, are often discarded.²⁶ Concerns in this regard were echoed by other witnesses from the high-tech industry, including representatives from the Vancouver Economic Commission, who noted that the current NOCs list only standardized jobs, thereby excluding occupations in emerging technologies.²⁷

Other witnesses noted complexities around the LMIA application itself. Bruce Webster and Ms. Madsen, for example, two individuals who have hired a series of caregivers over the years, indicated there is a duplication of information between the LMIA and work permit applications, and that the LMIA application itself is both lengthy and difficult to understand. Corinne Pohlmann, Senior Vice-President of the Canadian Federation of Independent Business, echoed concerns in this regard, suggesting this was an area that needed improvement.²⁸

24 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016, 1705 (Jayson Hilchie, President and Chief Executive Officer, Entertainment Software Association of Canada).

25 The National Occupational Classification (NOC) provides a list of all occupations in the Canadian labour market. It is developed by ESDC in partnership with Statistics Canada in accordance with 5-year Census cycles. For additional information, please refer to Government of Canada, [Welcome to the National Occupational Classification 2011](#).

26 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Jayson Hilchie).

27 [Brief submitted by the Vancouver Economic Commission](#), June 2016. See also [Brief submitted by the Canadian Interactive Alliance](#), May 2016.

28 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 18 May 2016 (Donalda Madsen; and Corinne Pohlmann, Senior Vice-President, National Affairs, Canadian Federation of Independent Business). See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Bruce Webster, appearing as an individual).

Witnesses also identified challenges around the processing of LMIA applications where the main objective is to hire a foreign national who can contribute to strengthening Canada's research and innovation performance, rather than filling a labour gap. According to Universities Canada, such is currently the case for foreign faculty members who, unlike post-graduation work permit holders, do not currently fall under the International Mobility Program, thereby requiring an LMIA. In their view, the LMIA exemption should be extended to all forms of academic hiring, including faculty members.²⁹

C. Timelines associated with the processing of Labour Market Impact Assessment applications

An additional challenge identified by witnesses was the length of time it takes ESDC/Service Canada to process LMIA applications across all streams, and the potential impact on companies' productivity and ability to generate revenue. Once a positive LMIA has been issued, a work permit still needs to be obtained. Accordingly, any delays in the processing chain could have an impact on how long it will take for a temporary foreign worker position to be filled.

For representatives from Montreal International, the 10 to 12 weeks it takes to process an LMIA application is viewed as "too long" and as "hamper[ing] the development/operations of some companies" that cannot find workers domestically and need to rely on temporary foreign labour.³⁰ Similarly, witnesses expressed concerns over the fact that it can take up to seven months to complete the process to hire a temporary foreign national, as well as over the inconsistencies that exist with respect to the speed of processing across different regions of Canada.³¹

Further, while the June 2014 reforms set a 10-business-day processing service standard for LMIA applications with respect to highest-demand occupations (skilled trades), highest-paid occupations (top 10%), or short-duration work periods (120 days or less),³² representatives from the Canadian Interactive Alliance have indicated that the 10-day service standard has not always been met. In their view, long processing times and inconsistencies around the processing of LMIA applications have made it difficult for companies in the interactive digital media industry to accept financing or contracts with specific deliverable dates, as employers often do not know when their selected staff will be able to start work.³³ Further, according to the submission by the Honourable Jeremy Harrison, Minister responsible for Immigration, Jobs, Skills and Training in the Province of Saskatchewan, the lack of service standards for applications

29 [Brief submitted by Universities Canada](#), June 2016.

30 Brief submitted by Montreal International, "[Consultation on the Temporary Foreign Workers Program](#)" 2 June 2016.

31 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Jayson Hilchie; and Anthony Cochlan, Partner, ACT Immigration and Business Consulting Ltd.). See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Anthony Pollard, President, Hotel Association of Canada).

32 ESDC, [Overhauling the Temporary Foreign Worker Program](#), p.14.

33 [Brief submitted by the Canadian Interactive Alliance](#), May 2016.

not deemed a priority also constitutes a “bureaucratic obstacle” for employers and has an impact on economic growth.³⁴

Specifically with respect to the effects on temporary foreign workers, witnesses noted that LMIA processing delays may lead them to face periods of unemployment and uncertainty. Migrant workers in low-wage positions are required to renew their work permits on an annual basis, a fact that is dependent upon the employer obtaining a positive LMIA.³⁵

In order to address issues related to LMIA processing and timelines, witnesses emphasized the necessity to streamline and standardize the LMIA application process. The Canadian Employee Relocation Council suggested, for example, implementing a Trusted Employer Program for the high-wage stream, which would be modelled after programs currently in use in the United Kingdom, Ireland and Australia. Under such a program, firms designated as trustworthy in their use of the TFW Program would have access to an accelerated labour market test.³⁶ Further, Rory McAlpine, Senior Vice-President of Maple Leaf Foods Inc., recommended the establishment of an appeal mechanism to allow employers to challenge unfavourable LMIA-related decisions.³⁷ Other suggestions included updating the NOCs to reflect current occupations and placing more program officers in local regions to process applications. In order to prevent duplication of information and increase expediency, witnesses also suggested that measures be put in place to increase coordination between ESDC/Service Canada and IRCC officials.

34 [Brief submitted by The Honourable Jeremy Harrison, Minister responsible for Immigration, Jobs, Skills and Training, Government of Saskatchewan](#), 31 May 2016.

35 Brief submitted by the Migrant Mothers Project, [“Protecting the Rights of Temporary Foreign Workers”](#), May 2016.

36 [Brief submitted by the Canadian Employee Relocation Council](#), May 2016.

37 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Rory McAlpine, Senior Vice-President, Government and Industry Relations, Maple Leaf Foods Inc.).

CHAPTER 3: STREAMS OF THE TEMPORARY FOREIGN WORKER PROGRAM

In addition to the general concerns over the LMIA process, witnesses spoke of other aspects of the TFW Program that, while often linked to the LMIA, tended to be more stream-specific. This is because, as illustrated above, each stream has its own set of requirements. The following are the main concerns identified by the witnesses with regards to specific aspects of the program streams.

A. High-Wage Stream

1. Transition Plans

Employers who wish to hire temporary foreign nationals in high-wage stream positions have been required to submit Transition Plans with their LMIA applications since June 2014. In their assessment of this requirement, witnesses expressed concerns over the fact that Transition Plans are “ill-suited” or “unrealistic” for companies looking to hire highly specialized individuals, such as top global innovators or specialized health professionals, who often cannot be found domestically. These individuals, they noted, not only fill temporary labour needs but also help train Canadians, thereby lessening the reliance on temporary foreign labour in the long-term. For the high-tech industry, which operates on fixed-term employment contracts and is often in need of securing employees within short deadlines, requirements like the Transition Plan and the LMIA were described as particularly onerous.³⁸

The labour shortage of high-skilled workers is well-documented. In a brief submitted by the Canadian Bar Association, it was noted that “[w]hile education and training for Canadians will have some positive impact on the supply of high-skilled workers in the medium and long-term, Canadian businesses will continue to require reasonable access to high-skilled foreign workers.”³⁹ According to the Canadian Bar Association, this labour shortage is the result of a low birth rate, lack of population growth, as well as a large wave of retiring baby-boomers.⁴⁰

Representatives from organizations that hire workers under this stream, such as the Entertainment Software Association of Canada, Technicolor, Montreal International and the Information Technology Association of Canada, have recognized that, despite significant training initiatives in place, it will take some time before these individuals can contribute to

38 Reference document submitted by the Entertainment Software Association of Canada, May 2016. See also [Brief submitted by Technicolor](#), May 2016; and [Brief submitted by The Honourable Jeremy Harrison, Minister responsible for Immigration, Jobs, Skills and Training, Government of Saskatchewan](#), 31 May 2016.

39 [Brief submitted by the Canadian Bar Association](#), 26 May 2016.

40 Ibid.

filling the labour gap. These initiatives have included training Canadians from an early age as well as engaging in innovative ways to recruit women in the high-tech industry.⁴¹

Witnesses suggested a number of options to better address the needs of employers and workers in the high-wage stream, including abolishing the Transition Plan requirement or, in the case of the high-tech industry, reinstating the federal IT Workers Program that exempted designated technology occupations from the LMIA requirement. Should the Transition Plan requirement be kept in place, however, witnesses asked that they be allowed to submit either a company-wide or an industry-wide Transition Plan on a yearly basis. This last measure would ease the administrative burden on both the applicant company as well as on Service Canada officers, witnesses noted. According to the Vancouver Economic Commission, another possible solution could be establishing a High Skilled or High Economic Benefit Professional Worker Program as a dedicated stream for industries employing high-skilled temporary foreign workers, such as the high-tech industry.⁴²

Alternatively, rather than requiring a Transition Plan setting out the company's initiatives to transition to a Canadian workforce, witnesses suggested the TFW Program could be used to increase training opportunities. For example, they spoke of using the program to create mandatory apprenticeship training opportunities for Canadians, which would ensure the transfer of knowledge domestically and lessen the reliance on temporary foreign labour over time. Christopher Smillie, senior advisor for Canada's Building Trades Unions, suggested this approach could be very useful for Canadian skilled trades workers as, currently, only 19% of Canadian companies actually hire and train apprentices.⁴³

B. Low-Wage Stream

1. Cap on the proportion of the workforce that consists of low-wage temporary foreign workers

Witnesses appearing before the Committee also expressed concerns over the fact that employers with 10 or more employees applying for a new LMIA are now subject to a 10% cap on the proportion of their workforce that consists of low-wage temporary foreign workers. For employers who were originally above the threshold, the cap has been phased-in over a three-year period beginning July 2014 and is currently at 20%.

Witnesses from various sectors of the Canadian economy, such as the seafood, hospitality and meat processing industries, reported challenges with respect to finding

41 [Brief submitted by Technicolor](#), May 2016; Reference document submitted by the Entertainment Software Association of Canada, May 2016; and Brief submitted by Montreal International, "[Consultation on the Temporary Foreign Workers Program](#)" 2 June 2016. See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Robert Watson, President and Chief Executive Officer, Information Technology Association of Canada).

42 [Brief submitted by the Vancouver Economic Commission](#), June 2016.

43 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 18 May 2016 (Christopher Smillie, Senior Advisor, Government Relations and Public Affairs, Canada's Building Trades Unions).

enough Canadians to fill available positions and spoke of the impact that the cap has had on their production levels.

Representatives from the Maritime Seafood Coalition explained that, prior to the introduction of the cap, the Maritime seafood industry had already been suffering from a labour shortage as a result of an aging workforce and outmigration. Sectors such as the lobster industry, for example, had to rely on temporary foreign workers to fill 20% to 25% of their workforce, while the figure was as high as 50% in plants located in rural communities. According to the Coalition's analysis, this labour shortage persists despite recruitment initiatives by the industry aimed at hiring and retaining Canadians first, such as increased wages, expanded benefits, more flexible work schedules, and, in the case of Prince Edward Island, a bursary to attract university and college students. With the introduction of the 10% cap, a loss of \$123 million is estimated by the end of the year 2016. The 10% cap is also expected to hinder the industry's ability to capitalize on recent trade opportunities, as the reduced production capacity may not be enough to meet rising demands.⁴⁴

HyLife Foods' representatives appearing before the Committee expressed similar concerns with regards to the meat processing industry, noting that there is a considerable shortage of meat cutting production personnel in rural Manitoba, despite various recruitment and training initiatives. These efforts have included employing people from across Canada, such as mushroom farmers from Ontario and construction workers from Alberta, as well as engaging in various forms of advertising. Most recently, the company has been considering the idea of establishing a meat cutting school in the First Nation reserve community of Sandy Bay. HyLife Foods' representatives also noted that the cap is calculated in an inconsistent manner, a view that was echoed by the Canadian Bar Association in its brief to the Committee.⁴⁵ In this regard, HyLife Foods' representatives observed as follows:

Calculation of the cap as currently set out in Schedule E may not lead to an actual workforce of 10% (or % as determined) at any one time. The calculation is subject to inconsistent interpretation for reasons including timing of provincial nomination (not available in all provinces) which removes low wage workers from the cap calculation, and the timing of transition of low-wage employees (current, inbound, requested in the LMIA application, and departing low-wage workers) during the processing of the LMIA application and the obtaining of work permits arising out of the LMIA.⁴⁶

While an exemption on the 10% cap was announced in relation to 2016 LMIA applications with respect to low-wage seasonal positions that are no more than

44 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Chris LeClair, Senior Advisor, Maritime Seafood Coalition; and Jerry Amirault, President, Lobster Processors Association of Nova Scotia and New Brunswick) and [Brief submitted by the Maritime Seafood Coalition](#), 16 May 2016. See also Brief submitted by the Bay of Fundy Business Council, "[Pathway to Citizenship Stream in Temporary Foreign Worker Program](#)," 30 May 2016.

45 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Jeremy Janzen, Senior Director, Human Resources, HyLife Foods; and Baerbel Langner, In House Legal Counsel, Immigration, HyLife Foods). See also [Brief submitted by the Canadian Bar Association](#), 26 May 2016.

46 [Brief submitted by HyLife Foods](#), 1 June 2016.

180 calendar days, representatives from the Maritime Seafood Coalition and the Hotel Association of Canada have indicated that a long-term permanent solution is necessary to meet their labour market needs.⁴⁷ Speaking of the meat processing industry, which was not included as part of this temporary exemption, representatives from the National Cattle Feeders' Association have asked that similar considerations be granted in their respect.⁴⁸

Temporary foreign workers employed in Prince Edward Island's fish processing industry also expressed concerns about the introduction of the cap, noting that it is forcing migrant workers to leave their communities even in circumstances when they would like to stay.⁴⁹

2. Certain low-wage positions in the Accommodation, Food Services and Retail Trade sectors

Witnesses also identified challenges with respect to the fact that, since June 2014, ESDC/Service Canada no longer processes LMIA applications for certain low-wage positions in the Accommodation, Food Services and Retail Trade sectors in economic regions with a 6% or higher unemployment rate. Coupled with the introduction of a cap on the proportion of the workforce that consists of low-wage temporary foreign workers, the inability to fill certain low-wage positions in areas of high unemployment was considered by representatives from the hospitality industry as contributing to the closure of some hotels and to the reduction of hours and days of operation.

According to Anthony Pollard, President of the Hotel Association of Canada, the fact that most communities have an unemployment rate that is above 6% has meant that many hotels do not qualify for an LMIA when seeking low-wage temporary foreign labour in the Accommodation, Food Services and Retail Trade sectors. In his view, this is troubling for the hospitality industry, which has been experiencing a labour shortage despite multiple initiatives to recruit Canadians first, including some targeting Indigenous peoples.⁵⁰

Witnesses also spoke of inaccuracies in the way that the unemployment rate for a particular region is determined, noting that the available labour market data is very high-level and therefore not suited to determining labour market conditions in smaller communities.⁵¹ As Mr. Litwin explained, the 6% unemployment rate estimated for the Vancouver mainland southwest catchment is in fact not representative of the labour market conditions in Whistler where unemployment currently sits at 1.8% and where,

47 [Brief submitted by the Maritime Seafood Coalition](#), 16 May 2016. See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Anthony Pollard).

48 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Casey Vander Ploeg, Manager, Policy and Research, National Cattle Feeders' Association).

49 [Brief submitted by Temporary Foreign Workers in Prince Edward Island's Fish Processing Industry](#), May 2016.

50 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Anthony Pollard).

51 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Elizabeth Kwan, Senior Researcher, Canadian Labour Congress).

due to the seasonality of the hospitality industry, a labour market shortage has been reported since 2012. This labour shortage exists despite initiatives in place to attract and retain Canadians in Whistler, such as subsidized staff accommodations, specialized customer service training programs for First Nations youth, educational partnerships, as well as wage increases. As part of their recruitment initiatives, businesses also participate in job fairs and engage in digital advertising through job sites and social media, he explained.⁵²

Reflecting upon possible solutions to address some of the most salient concerns associated with the introduction of a cap on the proportion of the workforce that consists of low-wage temporary foreign workers, as well as with the refusal to process certain LMIA applications in areas of high unemployment, witnesses recommended that greater micro labour market data be collected and that the cap be frozen at levels that are supported by LMIA labour needs. They also suggested that the seafood sector be covered under the primary agriculture stream, as it is currently part of the Canadian Agriculture and Agri-Food Workforce Action Plan. In addition, they recommended that a Seasonal Lodging Worker Program be created to recognize the seasonality of the hospitality industry and that some tourism jobs, such as foreign language tour guides, be moved from the low-skill to the high-skill category.

In a brief submitted to the Committee, Mobilize Jobs offered a different perspective on the employment of low-wage temporary foreign workers, noting that employers need to put more effort towards recruiting Canadian youth. In this regard, the organization wrote:

We strongly believe that most low skilled, low wage roles can be filled with Canadian youth, wherever the positions may be located. We have already proven that Canadian millennials will travel coast to coast to fill roles in BC, Alberta, Saskatchewan, Manitoba, Ontario and the Yukon. As a reference, some of our most popular positions are in rural communities and tourism destinations. If employers continue to not have access to this international pool of workers, they will need to become more and more innovative in order to attract Canadians back to their positions. We have proven it is possible.... We are simply asking that you protect those crucial first jobs that Canadians need in order to start their career.⁵³

3. Employer-specific work permits

While employer groups across the sectors raised production-related concerns with regards to the shorter work permit, temporary foreign workers employed in low wage positions and their advocates also identified challenges. According to this second set of witnesses, it was the nature of the work permit itself that was of greatest concern. In their view, employer-specific work permits tying migrant workers to one employer often lead to a power imbalance that is conducive to abuse. In this regard, Professor Ethel Tungohan observed as follows:

52 HUMA, *Evidence*, 1st Session, 42nd Parliament, 16 May 2016 (Val Litwin). See also Brief submitted by the Whistler Chamber of Commerce, "[Canadians come 1st – Supporting Economic Growth in Tight Labour Markets & Ensuring Canadian Workers Come First](#)," May 2016.

53 [Brief submitted by Mobilize Jobs](#), 26 May 2016.

[T]ying work permits to employers inherently makes workers vulnerable to abuse. This is because these arrangements magnify the power discrepancy between workers and employers. In many cases, employers force workers into compliance by threatening to terminate their contracts, which means that workers risk not only losing their jobs, but also losing the ability to stay in Canada.⁵⁴

While most temporary foreign workers in the TFW Program are issued employer-specific work permits, representatives from the Canadian Labour Congress noted that the individuals most vulnerable to abuse are those in low-skilled positions who have language barriers, work in isolation, and are indebted to recruiters.⁵⁵ Amongst migrant workers, women are at greater risk of suffering abuse due to the employer-specific nature of the work permit, witnesses explained.⁵⁶

During the course of the study, the Committee heard from various temporary foreign workers, especially those employed in caregiving positions, who indicated migrant workers may experience a wide range of abuse, including verbal, physical and sexual abuse. Specific examples provided in this regard included working for no wages, undertaking tasks outside the scope of the employment contract, not receiving vacation pay, as well as being forced to work more hours or days than cited in the LMIA.⁵⁷ Former temporary foreign worker Gina Bahiwal also spoke of female migrant workers who hid their pregnancy for fear of losing their employment and status in Canada.⁵⁸

In order to reduce the possibility of abuse due to the employer-specific work permit, witnesses called for open work permits or sector-specific work permits, which would eliminate the direct tie to a specific employer. Witnesses also recommended that the eligibility criteria for accessing settlement services, which currently only applies to permanent resident newcomers, be expanded to all migrant workers. Finally, they suggested that all temporary foreign workers have a pathway to permanent residency.⁵⁹

According to the Canadian Labour Congress, abusive labour practices such as the ones described in this section may also have an indirect impact on the Canadian workforce as employers may lack the incentive to, for example, raise the wage floor for all workers.⁶⁰ While calling for the rights of migrant workers to be protected, the organization emphasized

54 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016, 1745 (Ethel Tungohan, Assistant Professor, Department of Political Science, York University).

55 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Barbara Byers, Secretary Treasurer, Canadian Labour Congress).

56 Brief submitted by Jamie Liew, "[Making the Invisible Visible](#)," 30 May 2016.

57 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Pinky Paglingayen, appearing as an individual). See also [Brief submitted by the British Columbia Federation of Labour](#), June 2016.

58 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Gina Bahiwal, Coalition for Migrant Worker Rights Canada).

59 Ibid. See also Brief submitted by Ethel Tungohan, "[Policy Brief: Changes to the Temporary Foreign Worker Program and Caregiver Program](#)," 16 May 2016; and [Brief submitted by the Metro Toronto Chinese and Southeast Asian Legal Clinic](#), May 2016.

60 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Barbara Byers).

the importance of enhancing employers' recruitment and training of Canadians and permanent residents, rather than facilitating easy access to migrant workers.⁶¹

C. Primary Agriculture Stream

1. Seasonal Agricultural Worker Program

During the study, the Committee received positive feedback with respect to the SAWP from agricultural organizations and Jamaica, a nation with whom Canada has concluded a bilateral agreement in this regard. In their view, the SAWP provides many cultural and financial benefits and does not need to be reformed. For Canadian agricultural organizations, including the Canadian Agricultural Human Resource Council, programs like the SAWP contribute to filling a labour gap that exists in the agriculture and agri-food industry despite significant recruitment and retention efforts. This labour gap is due to the rural locations where the industry operates as well as to the seasonal, physical and strenuous nature of the work that is required. Rather than reforming the SAWP, employer witnesses recommended that the overall needs of the industry be addressed by removing the agriculture and agri-food industry from the existing TFW Program, and by establishing a dedicated Canadian Agriculture and Agri-Food Workforce Program. In addition to streams dedicated to the agriculture and agri-food sectors, this new program would also encompass the SAWP.⁶² Witnesses also called for the National Commodities List to be updated as the exclusion of grains, oilseeds and pulses from the list currently disqualifies many producers from accessing the SAWP or the agricultural stream.⁶³

Migrant workers, along with advocacy group and labour organization representatives, offered a different perspective with regards to the SAWP. According to their testimony, specific features of the program place temporary foreign workers in a vulnerable position. In its submission to the Committee, the Migrant Worker Solidarity Network of Manitoba stated that, under the SAWP, employers have discretionary power to repatriate workers when they do not comply with some aspect of the work or for "any other sufficient reason," as well as to specifically request workers by name to return the following season. The advocacy group also indicated that SAWP workers who are injured at work or become ill often face repatriation and a denial of medical treatment, as provincial health insurance is dependent upon a valid work permit. In addition, the advocacy group explained that migrant workers are subject to employer-specific work permits, a fact that limits their mobility and makes them even more vulnerable.⁶⁴

61 [Brief submitted by the Canadian Labour Congress](#), 31 May 2016.

62 [Brief submitted by the Government of Jamaica](#), May 2016. See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Portia MacDonald-Dewhirst, Executive Director, Canadian Agricultural Human Resource Council; and Mark Wales, Agriculture and Agri-Food Labour Task Force).

63 [Brief submitted by The Honourable Jeremy Harrison, Minister responsible for Immigration, Jobs, Skills and Training, Government of Saskatchewan](#), 31 May 2016. See also [Brief submitted by the Canadian Federation of Agriculture](#), May 2016.

64 [Brief submitted by Migrant Worker Solidarity Network Manitoba](#), 20 May 2016.

In this regard, the Committee was told about Sheldon McKenzie, a migrant worker from Jamaica who died of work-related injuries. According to Marcia Barrett, a representative from Caregivers' Action Centre, Mr. McKenzie's family experienced numerous difficulties trying to secure him medical attention in Canada as, under the SAWP, the employer has discretionary power to deport temporary foreign workers in certain circumstances.⁶⁵ Further, Gabriel Allahdua, a temporary foreign worker himself, spoke of how the employer-specific work permit and the uncertainty over not knowing whether they will be recalled by the employer for another season, leads to an atmosphere of fear and often drives migrant workers to withstand certain labour violations.⁶⁶

Witnesses also expressed concerns over the impact of the program's short duration on the migrant worker's ability to receive certain benefits. According to Mr. Allahdua, though temporary foreign workers under this program make contributions to Employment Insurance (EI) while in Canada, they are not eligible to receive EI benefits.⁶⁷ As noted by the Migrant Worker Solidarity Network of Manitoba and the British Columbia Federation of Labour, this is because, in order to receive EI, an individual must be living in Canada and be available for work in accordance with section 18(1)(a) of the *Employment Insurance Act*. When migrant workers are laid off under the SAWP at the end of the season, they are immediately returned to their home countries and are therefore ineligible to receive EI benefits. Further, witnesses noted that while EI would also provide sick benefits to those who are unable to work for extended periods of time due to medical reasons, SAWP workers, as explained above, are often encouraged to return to their countries of origin to seek medical attention.⁶⁸

Migrant workers and advocacy group representatives speaking about the SAWP identified training, open work permits, access to EI benefits, and pathways to permanent residency as possible solutions. In its brief, the Migrant Solidarity Network of Manitoba also suggested providing provincial health care coverage for SAWP workers upon arrival in Canada, as is currently the case in Manitoba.⁶⁹

65 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Marcia Barrett, Representative, Caregivers' Action Centre).

66 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Gabriel Allahdua, Member, Coalition for Migrant Workers Rights Canada).

67 Ibid.

68 [Brief submitted by Migrant Worker Solidarity Network Manitoba](#), 20 May 2016; and [Brief submitted by the British Columbia Federation of Labour](#), June 2016. See also [Employment Insurance Act](#), S.C. 1996, c. 23.

69 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Marcia Barrett); and HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Gabriel Allahdua). See also [Brief submitted by Migrant Worker Solidarity Network Manitoba](#), 20 May 2016.

CHAPTER 4: PATHWAYS TO PERMANENT RESIDENCY FOR ALL MIGRANT WORKERS

Temporary foreign workers may be able to use the work experience gained in Canada to apply for permanent residency through one of several economic classes of immigration. Workers can apply under federal government criteria using the Express Entry application system. Under Express Entry, applicants must first meet the eligibility requirements of one of the federal economic class programs (namely, the Federal Skilled Worker Program, the Federal Skilled Trades Program, or the Canadian Experience Class) in order to be entered into a pool, where all candidates are ranked.⁷⁰ The highest-ranking candidates are invited to submit a full immigration application. Another route to permanent residency is for workers to apply under a province's criteria using the Provincial Nominee Program. Each province and territory, except Quebec and Nunavut, has established nominee criteria to suit its regional economic priorities.

During the course of the study, the Committee had the opportunity to hear from various witnesses about existing barriers to accessing pathways to permanent residency. Witnesses spoke, for example, of the “cumulative duration” rule, which makes workers ineligible for new work permits if they have been working in Canada for four years and bans them from applying for a new one for an additional four years. These are often workers who have already integrated into Canadian society, filled a permanent labour need, and even started their own families, they noted. Along with the processing delays associated with various immigration programs, design flaws of the Express Entry program and recent changes with respect to caregivers, witnesses explained, the “cumulative duration” rule has contributed to the exodus of temporary foreign workers whose work permits have expired before being able to secure permanent residency status.⁷¹

Witnesses explained that the Express Entry program, designed to benefit those with the highest skills, has acted as a barrier for high-skilled individuals with fixed-term employment contracts as well as for international students. As Technicolor representatives indicated, though the visual effects and animation industry operates primarily on fixed-term employment contracts, the industry's labour shortage means migrant workers are almost always guaranteed to get new work contracts from their existing employer. Yet, the Express Entry program does not award as many points for fixed-term employment contracts as it does for permanent employment.⁷² This concern was echoed by

70 The Comprehensive Ranking System has a maximum score of 1,200 points. A positive Labour Market Impact Assessment or nomination by a province is worth 600 points. The other points are assigned to factors such as age, work experience, and education.

71 Brief submitted by the United Food and Commercial Workers Union Canada, “[A New Vision for a Sustainable Immigration System – Reforming Canada's Immigration System](#),” 1 June 2016. See also [Brief submitted by the Metro Toronto Chinese and Southeast Asian Legal Clinic](#), May 2016; [Brief submitted by the Canadian Labour Congress](#), 31 May 2016; and HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Francisco Mootoo, Member, Temporary Foreign Workers Association).

72 [Brief submitted by Technicolor](#), May 2016.

representatives from the Vancouver Economic Commission.⁷³ Similarly, Vincent Wong, staff lawyer at the Metro Toronto Chinese and Southeast Asian Legal Clinic, indicated that international students often cannot achieve the required minimum number of points under the Express Entry program, given that they may be recent graduates with very few years of work experience. In the witnesses' view, awarding points in this manner has led to a loss of talent across the various sectors of the Canadian economy.⁷⁴

Witnesses appearing before the Committee also identified barriers to permanent residency for caregivers, a group of migrant workers that traditionally enjoyed a dedicated pathway. Notably, Professor Tungohan spoke of the introduction of a cap on the number of caregiver applications allowed each year, as well as of a backlog of 38,000 applications awaiting a decision, with paperwork taking 49 months on average to be processed. It was also suggested that caregivers are subject to "inconsistent criteria" as, on the one hand, they are required to prove their intention to leave the country after four years, while on the other, they are asked to prove they can integrate in Canada in the long-term when applying for permanent residency. Yet another challenge identified in this regard was the growing trend towards rejecting permanent residency applications from caregivers based on the ground of "medical inadmissibility,"⁷⁵ even when evidence to the contrary has been provided. Given the existence of what Professor Tungohan described as "a childcare and elderly care crisis," witnesses suggested that removing caregivers' guaranteed pathway to permanent residency will have a serious impact on the nation's ability to provide appropriate care to children and the elderly.⁷⁶

With respect to temporary foreign workers employed in low-wage positions, the Committee heard that the current pathways to permanent residency favour high-skill workers, a practice deemed "discriminatory" by the Canadian Council for Refugees.⁷⁷ In their view, providing low-wage migrant workers with more opportunities to obtain permanent residency would go a long way to addressing the underlying cause of their precarious position, and would be in line with the evidence suggesting that many of the job needs they fill are in fact not "temporary." In this regard, Professor Jamie Liew observed as follows:

Many temporary foreign workers do some of the most difficult work in our society that allows our communities to function, including picking the fruit we eat, cleaning our toilets, and caring for our children, elderly and dying. These tasks will always need to be done, and addressing long-term labour needs via short-term disposable labour creates a two-tiered society with a growing population of workers who have access to fewer rights than others and are not permitted to integrate and further contribute to Canadian society.⁷⁸

73 [Brief submitted by the Vancouver Economic Commission](#), June 2016.

74 [Brief submitted by the Metro Toronto Chinese and Southeast Asian Legal Clinic](#), May 2016.

75 Defined in section 38 of the [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.

76 Brief submitted by Ethel Tungohan, "[Policy Brief: Changes to the Temporary Foreign Worker Program and Caregiver Program](#)," 16 May 2016. See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Ericson Santos de Leon, appearing as an individual).

77 [Brief submitted by the Canadian Council for Refugees](#), May 2016, p. 5.

78 Brief submitted by Jamie Liew, "[Making the Invisible Visible](#)," 30 May 2016, p.2.

During the study, the Committee also had the opportunity to hear from employers, labour organizations, and temporary foreign workers about the positive impact that successfully transitioning migrant workers into permanent residency can have on labour market conditions and for economic growth.⁷⁹ In this regard, Mr. McAlpine of Maple Leaf Foods Inc. observed as follows:

What we have found in our successful use of the program and the transition to permanent residency for foreign workers is that retention is much better than it's ever been before for our business, in our plants. Once workers obtain their permanent residency, they can certainly then move and work for anyone, but they are loyal and they know that a lot has been invested in them. They become pretty quickly part of the community because of the outreach we're making to the community, to our partners with the help of the union, to ensure their settlement is successful.⁸⁰

Overall, witnesses called for the “cumulative duration” rule to be abolished as well as for greater opportunities to obtain permanent residency. Speaking of the Express Entry program, witnesses recommended that fixed-term employment contracts and permanent work contracts be allocated the same number of points, and that the Canadian Experience Class be decoupled from Express Entry in order to allow international students greater access to permanent residency. With respect to the special case of caregivers, witnesses suggested that the cap on permanent residency applications be removed. Further, given that the only pathways to permanent residency for low-wage migrant workers are in Provincial Nominee Programs, witnesses recommended that the Provincial Nominee Program be expanded in every province and territory. Finally, it was suggested that greater resources be allocated to ensure the timely processing of applications.

79 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Rory McAlpine). See also HUMA, [Evidence](#), 1st Session, 42nd Parliament, 1 June 2016 (Naveen Mehta, General Counsel, Director of Human Rights, Equity and Diversity, United Food and Commercial Workers Union Canada; and Claudia Colocho, United Food and Commercial Workers Union Canada).

80 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Rory McAlpine).

CHAPTER 5: MONITORING AND ENFORCEMENT

As mentioned above, recent reforms to the TFW Program saw the introduction of a confidential tip line to report abuse, more frequent inspections, as well as heftier fines and penalties for employers who violate program rules. Despite these measures, temporary foreign workers and their advocates appearing before the Committee indicated that there is evidence the current compliance regime is not as effective as originally intended and that, as a result, migrant workers continue to suffer from labour standards violations. The Canadian Bar Association has also identified areas of concern with respect to the compliance regime as it relates to employers, including lack of transparency and appropriate processes, as well as penalties that are not proportional to the harm.

After having conducted a series of interviews of current and former caregivers, Professor Tungohan found that migrant workers are not likely to report abuse through the tip line. She explained that because they are subject to employer-specific work permits, should the employer be found non-compliant and be banned from the TFW Program, migrant workers may lose their jobs and be asked to leave the country.⁸¹

Further, Mr. Wong noted that employers often become aware that a tip has been submitted and take steps towards silencing migrant workers prior to the inspection. He also indicated that inspections are less likely to be conducted in isolated communities due to financial constraints. For temporary foreign workers, he suggested, the only benefit derived from the tip line system is having the employer respect program rules, as there is no real dispute resolution mechanism in place. Recourse available through the provincial standards complaint system, for example, which could include compensation for wages owed, is not applicable in these circumstances. In addition, he advised that it can take up to six years to achieve some form of complaint resolution.⁸²

Witnesses also identified loopholes in the monitoring and enforcement of measures in place to deter unscrupulous recruitment practices, noting that migrant workers continue to be at risk of arriving in Canada to find no job and are often indebted to recruiters. According to the British Columbia Federation of Labour, there exists an underground market of recruiters who charge migrant workers high fees to apply on their behalf and who often fail to accurately represent the nature of the work, details about the employer, or the number of jobs available in Canada.⁸³ In this regard, the Committee heard from Ericson Santos de Leon, a caregiver himself, who arrived in Canada to find that his recruiting agency had misrepresented the existence of an employer and thus found himself unemployed.⁸⁴

81 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Ethel Tungohan).

82 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 30 May 2016 (Vincent Wong, Staff Lawyer, Metro Toronto Chinese and Southeast Asian Legal Clinic).

83 [Brief submitted by the British Columbia Federation of Labour](#), June 2016.

84 HUMA, [Evidence](#), 1st Session, 42nd Parliament, 16 May 2016 (Ericson Santos de Leon).

Along with recommending the implementation of a more effective approach to enforcement and monitoring that does not rely on migrant workers to report abuse, witnesses called for greater pathways to permanent residency and open work permits for all workers. They also suggested migrant workers be provided with continued access to settlement services, as well as with greater information about their rights before and upon arrival, including access to the tip line.

Finally, noting the impact that tougher penalties can have on employers and the criminal justice system in general, the Canadian Bar Association called for greater transparency and clarity in the decision-making process, for more appropriate processes for employers to address a finding of non-compliance expeditiously, as well as for the reduction of penalties for non-compliance so that these are proportional to the harm that results from a breach of the program.⁸⁵

85 [Brief submitted by the Canadian Bar Association](#), 26 May 2016.

FINDINGS AND CONCLUSION

During the course of the study, we had the opportunity to hear from employers, temporary foreign workers and various organizations about the impact that certain aspects of the TFW Program, along with recent reforms, have had on them. We heard, for example, about labour shortages across different sectors of the Canadian economy, including the high-tech, hospitality, seafood, meat processing as well as the agriculture and agri-food industries, despite significant efforts to recruit and retain Canadians first. We also listened attentively to the stories of temporary foreign workers themselves who told us how various program-related factors are contributing to abuse and to perpetuate their precarious position within Canadian society. Finally, we were able to consider the views of various labour and youth organizations about the importance of remaining vigilant, and considering innovative ways, to ensure businesses use the program to satisfy truly “temporary” labour needs and do not become too reliant on temporary foreign labour at the expense of Canadians and permanent residents.

Having considered the testimony before us, the Committee finds that there are specific areas of concern that need to be addressed to better ensure the TFW Program functions in an effective manner that is not only responsive to labour market needs but that also fully respects the fundamental rights of those who use it.

A. Labour Market Impact Assessment Application fee

Witnesses were consistent in their view that the substantial increase in the non-refundable LMIA application fee has had an impact on their ability to employ temporary foreign labour, with some witnesses describing the current fee as “prohibitive”. The Committee heard that the fee increase has made it more difficult for certain businesses, in particular small businesses, to remain competitive. The Committee also heard that, for families needing to hire caregivers to care for their children, seniors and disabled relatives, the increase in the LMIA application fee has been financially burdensome. The Committee acknowledges that, while the increase in the LMIA application fee was intended to help cover the cost of delivering the TFW Program as reformed, it has also resulted in particular challenges for businesses and families. Accordingly, the Committee recommends as follows:

RECOMMENDATION 1

That Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada take immediate steps to extend work permits for caregivers in the low-wage stream from one to two years.

B. Processing and timelines regarding Labour Market Impact Assessment applications

Witnesses appearing before this Committee agreed that there is a need to streamline and standardize the LMIA application process to better serve applicants. In particular, the Committee heard that the length of time it takes ESDC/Service Canada to process LMIA applications affects companies' productivity and ability to generate revenue, and has an impact on the temporary foreign workers themselves whose work permit renewals are dependent upon a positive LMIA. Witnesses appearing before the Committee offered a number of suggestions to prevent duplication of information and increase the timeliness of processing applications, including implementing measures to increase coordination between ESDC/Service Canada and IRCC officials, as well as hiring more program officers in local regions. The Committee recognizes these concerns and therefore recommends as follows:

RECOMMENDATION 2

That Employment and Social Development Canada review the Labour Market Impact Assessment application process, with a view to increasing speed and efficiency; and that such a review take into consideration the National Occupation Codes as well as the adequate allocation of resources towards training and meeting service standards.

RECOMMENDATION 3

That Employment and Social Development Canada implement a Trusted Employer Program with the objective of reducing Labour Market Impact Assessment processing timelines for employers who have demonstrated trustworthiness in their use of the Temporary Foreign Worker Program.

RECOMMENDATION 4

That Employment and Social Development Canada review the policy with respect to foreign faculty members currently employed or seeking employment with a recognized Canadian academic institution, whose employment is currently dependent upon a Labour Market Impact Assessment, with a view to providing exemptions or accommodations for this class of foreign nationals.

RECOMMENDATION 5

That the Temporary Foreign Worker Program permit minor modifications to contracts between employers and employees with regards to the nature of the work and increases in wages if both parties consent, the changes do not disadvantage the worker, and Employment and Social Development Canada is adequately informed of any changes in short order. The changes must not violate the spirit of the job description.

C. Temporary Foreign Worker Program streams

Currently, the TFW Program comprises various streams, each with its own specific requirements to which employers must adhere. Witnesses appearing before the Committee suggested that the current way in which the TFW Program is structured needs to be reformed as current stream-specific requirements do not fully address the individual needs of various industries. For example, the seafood industry would like to be included under the primary agriculture stream as it currently is part of the Canadian Agriculture and Agri-Food Workforce Action Plan, while the hospitality industry would like a Seasonal Lodging Worker Program that recognizes the seasonality of this industry. The Committee acknowledges that the current program streams may not fully reflect Canadian labour market needs and recommends as follows:

RECOMMENDATION 6

That Employment and Social Development Canada appropriately restructure the Temporary Foreign Worker Program such that it achieves better overall economic and social benefit for Canadians and program participants. That Employment and Social Development Canada re-establish the Temporary Foreign Worker Program into more specific program areas and streams that adequately reflect the realities of labour market needs in Canada.

RECOMMENDATION 7

That Immigration, Refugees and Citizenship Canada study the impacts of expanding the definition of primary agriculture as found in the *Immigration and Refugee Protection Regulations*.

RECOMMENDATION 8

That Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada seek to review and improve mechanisms in which migrant workers are brought into Canada to fill both temporary and permanent positions, preventing the use of the Temporary Foreign Worker Program to satisfy permanent labour needs.

D. Transition Plans

The majority of witnesses who appeared before the Committee to talk about the high-wage stream shared the view that the requirement for a Transition Plan may not be realistic when there is a proven labour shortage of high-skilled workers that cannot be addressed domestically in the short-term. The Committee acknowledges that some witnesses have suggested abolishing the requirement for a Transition Plan altogether, while others have recommended that, should it be kept in place, they be allowed to submit either a company-wide or an industry-wide Transition Plan on a yearly basis in order to

ease the administrative burden. The Committee notes the concerns of witnesses that it may not always be feasible to transition to a Canadian workforce as training can take several years to prepare individuals to fill the labour gap and therefore recommends as follows:

RECOMMENDATION 9

That Employment and Social Development Canada provide an exemption on the Transition Plan requirement for 5% of the business' workforce that consists of high-wage temporary foreign workers.

RECOMMENDATION 10

That Employment and Social Development Canada work to implement measures to ensure appropriate training and education resources are allocated in those fields most likely to present labour and skills shortages. Also, that appropriate apprenticeship targets be included as a requirement of the Transition Plan for employers to ensure they meet their recruitment and training obligations for Canadians.

RECOMMENDATION 11

That Employment and Social Development Canada, businesses, and stakeholders continue to monitor labour market needs as to ensure skills, training, and educational output match Canada's current and future employment needs such that our reliance on foreign labour diminishes, and invest in better collection and retention of labour market information in Canada to adequately assess labour market needs.

E. Cap on the proportion of the workforce that consists of low-wage temporary foreign workers

During the course of the study, witnesses from various sectors of the Canadian economy indicated that the introduction of a cap on the proportion of their workforce that consists of low-wage temporary foreign workers has negatively affected their production levels and, as a result, hindered their ability to capitalize on recent trade opportunities. Several witnesses reported challenges with respect to finding enough Canadians to fill available positions, and recommended that some industry-specific exemptions be contemplated. The Committee recommends as follows:

RECOMMENDATION 12

That Employment and Social Development Canada ensure the cap on the percentage of temporary foreign workers a business can employ at a given time, be set at a minimum of 20%, and further review sector and geographic considerations.

F. Certain low-wage positions in the Accommodation, Food Services and Retail Trade sectors

LMIAAs with respect to certain low-wage positions in regions with a 6% or higher unemployment rate will not be processed. However, witnesses told the Committee that available labour market data is very high-level and not suited to determining labour market conditions in smaller communities situated within the broader geographic region. For example, smaller communities like Whistler, despite their lower unemployment rates, are grouped under larger regions where the unemployment rate is 6% or higher. Several witnesses suggested that it would be more accurate to disaggregate unemployment data so as not to unfairly penalize communities. The Committee agrees that there needs to be a review of the geographic zones to better determine which regions have a high unemployment rate. Therefore, the Committee recommends as follows:

RECOMMENDATION 13

That Employment and Social Development Canada take immediate steps to improve the collection of labour market data and review the geographic zones used for determining unemployment rates, with a view to aligning the labour market conditions of more localized economies with the requirements of the Temporary Foreign Worker Program.

G. Employer-specific work permits

Temporary foreign workers employed in the low-wage stream and the SAWP, along with their advocates, were consistent in their view that employer-specific work permits tying workers to one employer lead to a power imbalance that is conducive to abuse. The Committee acknowledges that employer-specific work permits can place migrant workers in a vulnerable position with negative implications for their physical and mental well-being. In order to reduce the possibility of abuse due to the employer-specific work permit, the Committee recommends as follows:

RECOMMENDATION 14

That Employment and Social Development Canada take immediate steps to eliminate the requirement for an employer-specific work permit; provided that it implement appropriate measures to ensure temporary foreign labour is only utilized within the existing provisions of the Labour Market Impact Assessment process, including sector and geographic restrictions.

RECOMMENDATION 15

That Immigration, Refugees and Citizenship Canada provide multiple entry work visas for temporary foreign workers employed in seasonal work, with the objective of allowing these individuals greater mobility during off-seasons; that when a work visa is extended, the multiple

entry visa must also be extended so workers can continue to enter and leave Canada.

H. Seasonal Agricultural Worker Program

Agricultural organizations appearing before the Committee spoke positively about the SAWP, noting that the program offers several cultural and financial benefits and is important in helping to fill labour gaps in the agriculture and agri-food industry, despite significant recruitment and retention efforts. In contrast, advocacy groups and witnesses such as Ms. Barrett and Mr. Allahdua expressed serious concerns that certain aspects of the program can place migrant workers in a vulnerable position. Specifically, they highlighted how employers have the discretionary power to send injured workers back to their countries of origin, and how the short duration of the program deems them ineligible to receive Employment Insurance benefits. The Committee recognizes that, coupled with its duration, certain SAWP related aspects are having a negative impact on temporary foreign workers.

I. Pathways to permanent residency for all migrant workers

Under the TFW program, the “cumulative duration” rule makes workers ineligible for new work permits if they have been working in Canada for four years and bans them from applying for a new one for an additional four years. The Committee heard that these are often individuals who have already integrated into Canadian society, filling a permanent labour need, and who have established roots in their adopted communities. As a result of the “cumulative duration” rule, temporary foreign workers whose work permits have expired have had to leave the country before being able to secure permanent residency status.

Witnesses were consistent in their view that the “cumulative duration” rule, along with certain aspects of the Express Entry system and the cap placed on the number of permanent residency applications from caregivers allowed in a year, constitute significant barriers to permanent residency for temporary foreign workers. The Committee acknowledges that all migrant workers, especially those that are filling long-term labour needs and are fully integrated into Canadian society, should enjoy greater pathways to permanent residency. Therefore, the Committee recommends as follows:

RECOMMENDATION 16

That Immigration, Refugees and Citizenship Canada review the current pathways to permanent residency for all temporary foreign workers, with a view to facilitating access to permanent residency for migrant workers who have integrated into Canadian society and are filling a permanent labour market need.

That Immigration, Refugees and Citizenship Canada allocate adequate resources to allow for the timely processing of permanent residency applications for those migrant workers that are hired under the Temporary Foreign Worker Program.

RECOMMENDATION 17

That Immigration, Refugees and Citizenship Canada work with provinces, territories and other government departments to increase information sharing that will create more harmonization with immigration and nominee programs to function in collaboration with one another. That these efforts aim to reduce duplication of work benefiting both the government and applicants.

RECOMMENDATION 18

That Immigration, Refugees and Citizenship Canada amend the *Immigration and Refugee Protection Regulations* to remove the relevant provisions with respect to the “cumulative duration” rule.

RECOMMENDATION 19

That Immigration, Refugees and Citizenship Canada reform the Express Entry program to allow for fixed-term employment contracts to be allocated the same number of points as permanent work contracts, where there is a strong likelihood of continued employment.

J. Monitoring and enforcement

Recent reforms to the TFW Program introduced a confidential tip line to report abuse, more frequent inspections, as well as heftier fines and penalties for employers who violate program rules. Witnesses agreed that the current compliance regime is not as effective as originally intended and that, as a result, migrant workers continue to suffer from labour standards violations at the hands of their recruiters and employers alike. In particular, the Committee heard that migrant workers are reluctant to, or simply do not, use the tip line to report abuses for fear of losing their jobs and being asked to leave the country. The Committee also heard that recruiters continue to charge migrant workers such as caregivers, and to misrepresent the existence of an employer in Canada. The Committee recognizes that there are monitoring and enforcement gaps in this regard that need to be addressed to ensure the protection of migrant workers’ rights. Therefore, the Committee recommends as follows:

RECOMMENDATION 20

That Employment and Social Development Canada, in collaboration with relevant stakeholders, review current monitoring and enforcement mechanisms, with the objective of addressing gaps in employer compliance and the protection of migrant workers’ rights. In addition, an effort shall be made to move away from a complaint-driven model of program enforcement. The review shall take into consideration the following specific measures:

- **increasing resource and information sharing with provinces and territories;**

- **increasing the frequency of on-site inspections and ensuring that they be conducted while temporary foreign labour is being used;**
- **creating an accreditation system for recruiters, which requires compliance with the Temporary Foreign Worker Program rules and from which employers could exclusively select;**
- **establishing a dispute resolution mechanism for migrant workers when conflict with an employer arises;**
- **ensuring, through on-site inspections, that labour laws and regulations are properly enforced where migrant workers operate; and**
- **guaranteeing that any workplace injuries that require immediate attention be granted emergency care where deemed necessary in Canada.**

RECOMMENDATION 21

That Employment and Social Development Canada, in collaboration with stakeholders, establish measures to ensure that incoming migrant workers and their employers are informed of their rights and responsibilities under the Temporary Foreign Worker Program, including dispute resolution and abuse reporting procedures, as well as information on wages, benefits, accommodations and working conditions; and that the Department undertake best efforts to provide this information in the language of preference of the migrant worker.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

That Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada take immediate steps to extend work permits for caregivers in the low-wage stream from one to two years.....27

RECOMMENDATION 2

That Employment and Social Development Canada review the Labour Market Impact Assessment application process, with a view to increasing speed and efficiency; and that such a review take into consideration the National Occupation Codes as well as the adequate allocation of resources towards training and meeting service standards.....28

RECOMMENDATION 3

That Employment and Social Development Canada implement a Trusted Employer Program with the objective of reducing Labour Market Impact Assessment processing timelines for employers who have demonstrated trustworthiness in their use of the Temporary Foreign Worker Program.28

RECOMMENDATION 4

That Employment and Social Development Canada review the policy with respect to foreign faculty members currently employed or seeking employment with a recognized Canadian academic institution, whose employment is currently dependent upon a Labour Market Impact Assessment, with a view to providing exemptions or accommodations for this class of foreign nationals.....28

RECOMMENDATION 5

That the Temporary Foreign Worker Program permit minor modifications to contracts between employers and employees with regards to the nature of the work and increases in wages if both parties consent, the changes do not disadvantage the worker, and Employment and Social Development Canada is adequately informed of any changes in short order. The changes must not violate the spirit of the job description.28

RECOMMENDATION 6

That Employment and Social Development Canada appropriately restructure the Temporary Foreign Worker Program such that it achieves better overall economic and social benefit for Canadians and program participants. That Employment and Social Development Canada re-establish the Temporary Foreign Worker Program into more specific program areas and streams that adequately reflect the realities of labour market needs in Canada. 29

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- increasing resource and information sharing with provinces and territories;

- increasing the frequency of on-site inspections and ensuring that they be conducted while temporary foreign labour is being used;
- creating an accreditation system for recruiters, which requires compliance with the Temporary Foreign Worker Program rules and from which employers could exclusively select;
- establishing a dispute resolution mechanism for migrant workers when conflict with an employer arises;
- ensuring, through on-site inspections, that labour laws and regulations are properly enforced where migrant workers operate; and
- guaranteeing that any workplace injuries that require immediate attention be granted emergency care where deemed necessary in Canada. 33

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That Employment and Social Development Canada, in collaboration with stakeholders, establish measures to ensure that incoming migrant workers and their employers are informed of their rights and responsibilities under the Temporary Foreign Worker Program, including dispute resolution and abuse reporting procedures, as well as information on wages, benefits, accommodations and working conditions; and that the Department undertake best efforts to provide this information in the language of preference of the migrant worker..... 34

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Citizenship and Immigration</p> <p>Robert Judge, Director Temporary Resident Policy and Program Division, Immigration Branch, Strategic and Program Policy</p> <p>David Manicom, Associate Assistant Deputy Minister, Strategic and Program Policy</p>	2016/05/11	11
<p>Department of Employment and Social Development</p> <p>Janet Goulding, Director General Temporary Foreign Worker Program, Skills and Employment Branch</p> <p>Paul Thompson, Senior Assistant Deputy Minister Skills and Employment Branch</p>		
<p>ACT Immigration and Business Consulting Ltd.</p> <p>Anthony Cochlan, Partner</p>	2016/05/16	12
<p>As individuals</p> <p>Ericson Santos De Leon</p> <p>Ethel Tungohan, Assistant Professor Department of Political Science, York University</p>		
<p>Canadian Labour Congress</p> <p>Barbara Byers, Secretary-Treasurer</p> <p>Elizabeth Kwan, Senior Researcher</p>		
<p>Coalition for Migrant Worker Rights Canada</p> <p>Gabriel Allahdua, Member</p> <p>Gina Bahiwal, Member</p>		
<p>Coast Spas Manufacturing Inc.</p> <p>Jatinder Sidhu, Executive Vice-President</p>		
<p>Entertainment Software Association of Canada</p> <p>Jayson Hilchie, President and Chief Executive Officer</p>		
<p>Maritime Seafood Coalition</p> <p>Jerry Amirault, President Lobster Processors Association of Nova Scotia and New Brunswick</p> <p>Chris LeClair, Senior Advisor</p>		
<p>Temporary Foreign Workers Association</p> <p>Lucio Castracani, Community Organizer and Member</p> <p>Francisco Mootoo, Member</p>		

Organizations and Individuals	Date	Meeting
Whistler Chamber of Commerce Val Litwin, Chief Executive Officer	2016/05/16	12
As an individual Donalda Madsen	2016/05/18	13
Canada's Building Trades Unions Christopher Smillie, Senior Advisor Government Relations and Public Affairs		
Canadian Federation of Independent Business Corinne Pohlmann, Senior Vice-President National Affairs		
Technicolor Émilie Dussault, General Manager Moving Picture Company Michelle Grady, Head of Film Moving Picture Company Didier Huck, Vice-President Public Affairs and Corporate Social Responsability, Moving Picture Company		
Vancouver Economic Commission Sean Elbe, Sector Development Manager Technology Kathy Gibson, Senior Consultant		
As individuals Jamie Liew, Immigration Lawyer and Law Professor Faculty of Law, Common Law Section, University of Ottawa Pinky Paglingayen	2016/05/30	14
Department of Citizenship and Immigration Robert Judge, Director Temporary Resident Policy and Program Division, Immigration Branch, Strategic and Program Policy Maia Welbourne, Director General Immigration Branch		
Department of Employment and Social Development Janet Goulding, Director General Temporary Foreign Worker Program, Skills and Employment Branch Paul Thompson, Senior Assistant Deputy Minister Skills and Employment Branch		
Hotel Association of Canada Anthony P. Pollard, President		

Organizations and Individuals	Date	Meeting
<p>Maple Leaf Foods Inc. Rory McAlpine, Senior Vice-President Government and Industry Relations</p>	2016/05/30	14
<p>Metro Toronto Chinese and Southeast Asian Legal Clinic Vincent Wong, Staff Lawyer</p>		
<p>Montreal International Hubert Bolduc, Chief Executive Officer Martin Goulet, Director International Mobility Services</p>		
<p>National Cattle Feeders' Association Casey Vander Ploeg, Manager Policy and Resarch</p>		
<p>Agriculture and Agri-Food Labour Task Force Mark Wales, Labour Task Force Agriculture</p>	2016/06/01	15
<p>As an individual Bruce Webster</p>		
<p>Canadian Agricultural Human Resource Council Portia MacDonald-Dewhirst, Executive Director</p>		
<p>Caregivers' Action Centre Marcia Barrett, Representative</p>		
<p>HyLife Foods Jeremy Janzen, Senior Director Human Resources Baerbel Langner, In House Legal Counsel Immigration</p>		
<p>Information Technology Association of Canada Robert Watson, President and Chief Executive Officer</p>		
<p>United Food and Commercial Workers Union Canada Claudia Colocho</p>		
<p>United Food and Commercial Workers Union Canada Naveen Mehta, General Counsel, Director of Human Rights Equity and Diversity</p>	2016/06/01	15

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Association of Caregiver and Nanny Agencies Canada

Bay of Fundy Business Council

Board of Trade of Metropolitan Montreal

British Columbia Federation of Labour

British Columbia Trucking Association

Canadian Bar Association

Canadian Camping Association

Canadian Chamber of Commerce

Canadian Council for Refugees

Canadian Employee Relocation Council

Canadian Federation of Agriculture

Canadian Interactive Alliance

Canadian Labour Congress

Canadian Nursery Landscape Association

Caregivers' Action Centre

Coalition for Migrant Worker Rights Canada

Community Legal Assistance Society

Cooper Institute

Dubin, Lori

Faraday, Fay

Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère

Government of Jamaica

Organizations and Individuals

Government of Saskatchewan

HyLife Foods

Income Security Advocacy Centre

Inter Pares

International Migration Research Centre

Justicia for Migrant Workers

KAIROS: Canadian Ecumenical Justice Initiatives

Liew, Jamie

Lululemon Athletica

Maritime Seafood Coalition

Metro Toronto Chinese and Southeast Asian Legal Clinic

Migrant Mothers Project

Migrant Worker Solidarity Network

Migrant Workers Alliance for Change

Migrant Workers Rights Canada

Migrante Alberta

Migrante Canada

Mobilize Jobs

Montreal Centre for International Studies

Montreal International

Ontario Council of Agencies Serving Immigrants

Paglingayen, Pinky

Parkdale Community Legal Services

Pfenning's Organic Vegetables Inc

Organizations and Individuals

Preferred Personnel of Canada Inc.

Progressive Contractors Association of Canada

Quebec Employers' Council

Rural Development Institute

Seafarers' International Union of Canada

Technicolor

Temporary Foreign Workers in Prince Edward Island's Fish Processing Industry

Tourism Industry Association of Canada

Tungohan, Ethel

Turner, George

Union des producteurs agricoles

United Food and Commercial Workers Union Canada

Universities Canada

Vancouver Economic Commission

Vegpro International Inc.

Victoria Coalition in Support of Temporary Workers

Wells, Donald

Werbin-Tanner, Staci

West Coast Domestic Workers' Association

Whistler Chamber of Commerce

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 11, 12, 13, 14, 15, 17 and 18](#)) is tabled.

Respectfully submitted,

Bryan May
Chair

Dissenting Opinion from the Official Opposition

As Members of the Official Opposition, we would like to thank the witnesses who appeared before the committee and those who submitted briefs as part of the study on the Temporary Foreign Worker (TFW) Program.

The previous government undertook a major reform of this program in 2014. We believe that every reform needs to be evaluated after the fact, and this program is no exception.

We fully endorse the principles of review, evaluation and efficiency outlined in the main report. However, we believe the study on the impacts of the TFW Program was rushed. Furthermore, we regret that the Committee was expected to adopt a report in so little time. An impressive number of witnesses were heard by the Committee in a very short time. Those who appeared before the Committee had very little time to speak, and some did not have the opportunity to speak at all. In short, we believe that we did not have enough time to adequately question the witnesses to gain an in-depth understanding of the matter at hand.

In our opinion, the Committee must undertake another study on the TFW Program to give interested stakeholders more time to appear and to give us, as members of the Committee, the information we need to make decisions in the best interests of Canadians.

Caregivers

The Committee adopted a recommendation calling on Employment and Social Development Canada to take immediate steps to extend work permits for caregivers in the low-wage stream from one to two years.

We believe that the TFW Program should treat caregiver positions differently. The work these caregivers do—either with children, elderly people or people with disabilities—is essential, and is not comparable to other positions filled by temporary foreign workers. The presence of a caregiver means that vulnerable people can stay at home longer, rather than being cared for in a health care facility. We need to recognize the assistance these foreign workers provide to our fellow Canadians. In addition, their presence results in significant cost savings for the Canadian health care system. As Ms. Donalda Madsen cautioned, “If families lose their ability to hire caregivers, [...] the burden will fall on institutions such as local extended care hospitals and community living agencies.”¹

In many cases, the \$1,000 fee for a labour market impact assessment (LMIA) becomes a heavy financial burden on families.

The original intent for introducing the \$1,000 fee for LMIA was to improve the process and to improve application processing times. Now, two years after this

¹ HUMA Committee Report: Temporary Foreign Worker Program

measure was implemented, based on the mixed results observed, we believe that the federal government should consider reducing these fees, primarily for families hiring caregivers.

In the case of caregivers, we also are of the opinion that work permits should have been increased from one year to four years. A number of witnesses confirmed that these workers become like family to those they are caring for, in addition to being trained to meet the specific needs of vulnerable people. We believe the federal government should show compassion in this area and reduce the administrative and financial burden for those who hire caregivers.

Impact of a “trusted employer” program

The Committee adopted a recommendation calling on Employment and Social Development Canada to implement a “trusted employer” program to reduce LMIA processing times for employers who have demonstrated trustworthiness in their use of the TWFP.

We are inclined to support the implementation of this type of program because it could reduce red tape and improve program efficiency. However, as this program was inspired by ones already in place in Australia, Ireland and the United Kingdom², we believe the Committee should have taken the time to study the advantages and disadvantages, and to see how Canada would benefit from such a program.

Foreign worker cap

The Committee adopted a recommendation calling on the Government of Canada to ensure that the percentage of temporary foreign workers a business could employ at a given time be set at a minimum of 20%, and that it further review sector and geographic considerations.

We agree with the part of the recommendation that states that the federal government should take into account the geographic and sectoral situation when establishing the percentage of foreign workers that can be employed at a given business, because this consideration would better meet the needs of various industries.

However, we are concerned that no maximum limit was set to prevent misuse. We believe that recruiting Canadian workers should be the top priority. Without a maximum limit on the percentage of foreign workers allowed, we are concerned that foreign workers may be hired to fill positions that Canadian workers could have filled, and that businesses will grow to depend on using foreign workers.

In addition, the wording of the recommendation implies that employers could hire foreign workers to fill up to 100% of their positions. This example clearly illustrates why we cannot support the recommendation as written.

² Brief submitted by the Canadian Employee Relocation Council, May 2016.

Rapid access to permanent residency

The Committee adopted two resolutions about permanent residency for temporary foreign workers. The Committee recommended that Immigration, Refugees and Citizenship Canada review the current pathways to permanent residency for all temporary foreign workers, and that it allocate adequate resources to allow for the timely processing of permanent residency applications for those migrant workers that are hired under the TFW Program.

The Committee also recommended that the Government of Canada eliminate the TFW Program's four-year rule and facilitate the transition to permanent residency for these workers, many of whom have already integrated into Canadian society.

We believe these recommendations will lead to temporary foreign workers gaining rapid access to permanent residency, which would penalize people who follow the traditional process to apply for permanent residency. The timelines for becoming a permanent resident in Canada are much longer than those for becoming a temporary foreign worker. We are concerned that this new pathway would be subject to abuse, as many people would choose to become temporary foreign workers rather than applying for permanent residency the traditional way. We also believe that wait times may be affected by these new measures, which would make both programs less efficient.

We recommend that the federal government evaluate the costs and consequences of the two programs before offering TFW Program participants accelerated access to permanent residency.

Tourism industry

In the context of the study on the TFW Program, we believe it is important to take the specific needs of the tourism industry into account.

In our opinion, the federal government must consider implementing a hiring program for temporary foreign workers in the tourism industry similar to the current hiring program in the agricultural industry. These two industries share characteristics: their need is seasonal and they are often located in remote regions. For these reasons, we believe the tourism industry would benefit from having the same advantages as the agricultural industry.

International Mobility Program

We would like to highlight the importance of the International Mobility Program, as it is a key part of the North American Free Trade Agreement. We recommend that the government maintain this program, given its importance to our relationship with countries with whom we have reciprocal agreements, and that the program be extended to meet the employment needs in the tourism industry, the agricultural processing industry, and other industries facing the same

challenges, as well as employment needs in regions where there are not enough Canadian workers.

In addition, we believe that an important part of this program—the International Experience Canada – Travel and Work In Canada component—must be reopened to candidates in eligible countries, possibly through a specialized tourism stream,³ to hire people ready to accept a job in the low-skilled workers category,⁴ as outlined by the Tourism Industry Association of Canada in a brief it submitted to the Committee.

Agricultural sector

A number of agricultural stakeholders shared their concerns about the labour shortages in their industry. We believe the federal government should study the possibility of granting the agricultural sector an LMIA exception, similar to the exception granted to the television and film industry. This would help solve the problem at hand and would accelerate the hiring process for temporary foreign workers.

Conclusion

We believe that the Committee rushed this study, and that many of the recommendations adopted by the Committee should have been considered more in depth. In addition, we are concerned about how certain witnesses had very little time before the Committee. In fact, some witnesses contacted Committee members to complain that they had taken time off work to appear before the Committee, and then they were not even given the opportunity to speak. We are not calling into question the good faith of the Committee members, but we do hope that this experience will serve as a lesson and that this situation will not happen again.

We strongly encourage the government to take into account the thoughts, concerns and recommendations expressed herein.

³ Brief submitted by the Tourism Industry Association of Canada, May 2016.

⁴ Ibid.

Dissenting Report of the New Democratic Party

“We believe in immigration, not exploitation” – *Barbara Byers, Secretary Treasurer, Canadian Labour Congress*

“Ultimately, migrant workers are physically separated from their families and loved ones. This contributes to family breakdown of the migrant worker and a vicious cycle of poverty and social ills. Spending time with our families is more important than spending money on them. We cannot bring our families with us to Canada. It is very clear that all of these conditions do not reflect a modern 21st century Canada. It does not reflect good jobs or jobs with good conditions, but a dark, artificial system seeking to perpetuate 18th-century working conditions.” – *Gabriel Allahdua, Coalition for Migrant Worker Rights Canada*

“In the history of Canada, people immigrated from different countries to build a nation. They worked in houses, shops, and factories, and on farms and railroads. If they were to come to Canada today, they would be temporary foreign workers. When considering policy changes I urge you, members of the committee, not to lose sight of this fact.” – *Dr. Ethel Tungohan, York University*

The Temporary Foreign Worker Program (TFWP) review conducted by the HUMA committee has been opaque, confusing, and completely inadequate. The review was conducted over the course of only five sessions, many of which were cut short. In this incredibly short amount of time, we were expected to review programs related to migrant workers including the Temporary Foreign Worker Program, the Seasonal Agricultural Worker Program and the Caregiver Program. Given the limited scope, we are concerned that this review was intended as a public relations exercise rather than as an opportunity to provide meaningful recommendations for change.

We are also troubled by the lack of commitment shown by the government to continued consultations with stakeholders while the government proceeds with reforms to the program. This is particularly concerning given how few voices have been heard so far. The committee should have prioritized the voices of workers. Instead, the committee mostly heard employers and employer organizations. There was not enough opportunity to hear from migrant workers directly. Canadian workers were also barely represented, despite the fact that employer abuse of the TFWP has resulted in layoffs, higher unemployment, and lower wages for Canadians. It is imperative that workers have the opportunity to share their side of the story. We cannot complete an adequate review without the perspectives of both workers and employers.

Because the committee’s study was so rushed and inadequate, we do not feel that this program received the thorough review that it deserved. That is why **New Democrats call on the Government of Canada to conduct a full, independent, and transparent audit of the program in order to fully identify all of the problems, abuse, and mismanagement that have been rampant in the program.**

Abuse of Workers

With great courage, witnesses told the committee stories about the abuse they had personally experienced on the job. They detailed abhorrent living conditions, constant fear of deportation, mental health crises, verbal and physical abuse, and a complete lack of autonomy in their daily lives.

The story of Pinky Paglingayen was typical in this regard:

"I came here in 2004 from the Philippines under the live-in caregiver program. I was employed by a family of four in Thornhill, Ontario. This family demanded that I pay \$3,000 in exchange for their helping me to come here. I felt as if I had no choice. Several days later they released me from my employment. That's when I felt so cheated, abandoned, and alone – *Pinky Paglingayen*

Gina Bahiwal provided an important gendered lens in understanding the temporary foreign worker program and the particular vulnerability experienced by women:

Access to health care is a problem for migrant women and injured workers. Migrant women who get pregnant and fired from work do not have access to health care. Injured workers who are being sent home cannot access health care here in Canada. – *Gina Bahiwal, Member of Coalition for Migrant Worker Rights Canada*

Ericson Santos De Leon gave testimony regarding the different kinds of abuse he and his family faced, including the experience of having his family's application for permanent residency rejected because of his son's medical history. In addition, Santos De Leon shared the excessive control that recruitment agencies hold over migrant workers:

"When I arrived in Montreal I found myself without a job. My agency paid someone to pretend to be my employer for my papers. For three months I lived on my savings. After three months I was getting desperate. I went to the agency and told them I really needed to work. They found me a job with a family, but it was under the table." - *Mr. Ericson Santos De Leon*

Barbara Byers, Secretary Treasurer of the Canadian Labour Congress told the committee about the abuse faced by those in the Caregiver Program and the pressures they face not to report abuse in order to be able to stay in Canada:

"There is no safety net and no appeal process for the caregiver who is left to find another employer willing to apply and get a positive LMIA and then an employer-specific work permit." – *Barbara Byers, Canadian Labour Congress*

Gabriel Allahdua spoke passionately about the abuse faced by workers on farms:

"It is very hard for us to speak up when we have a bad employer or if we are not getting our full wages. Imagine how much harder it is when speaking up doesn't just mean losing your job, but it means being forced to leave the country. Imagine how hard it is when your employer controls your housing, and your contract is not enforceable.

"The moment you speak up, you are threatened with losing your job or being sent home. The reality is, nobody is permanent on the program. At the end of the eight months, when you go back home, there is no guarantee that you are going to go back to Canada. The employer reserves the right to request you or keep you home. Just that makes you go and work above and beyond the ordinary. Imagine, too, that you are reminded daily that there are a hundred people lined up to take your job." – *Gabriel Allahdua, Coalition for Migrant Worker Rights Canada*

Academic researchers also testified about how policy measures that have been adopted have not been sufficient to address abuse and the repercussions for workers:

“Measures to curb abuse, such as workplace inspections and the creation of a temporary foreign worker tip line to report abuse have failed. You can have the biggest fines and the strictest enforcement, but if the end result is that workers are out of jobs and have to leave the country because their employers are banned from hiring foreign workers, workers are not likely to report abuse.

“I would say that incidences of abuse are quite rampant. The fact is recruiters here often times have existing relationships with recruiters in other countries. Recruiters in other countries charge caregivers illegal placement fees, but the Canadian government simply cannot enforce policies made in other countries. That's one issue. Another issue, as Mr. De Leon's story shows, is the issue of charging workers fees that simply are illegal. Even if we do have laws against the charging of recruitment fees, these laws simply aren't enforced.”

– *Dr. Ethel Tungohan, York University*

New Democrats believe firmly and unequivocally that all abuse of workers must be ended. We also believe that the committee's recommendations are insufficient to end the abuse.

To date, on-site inspections have been few and far between, and ineffective in rooting out abuse. We believe the government needs to dramatically increase the number of on-site inspections. However, we also believe a more comprehensive approach to ending abuse is required, an approach that provides workers themselves with more autonomy. Accomplishing this will require appropriate funding for organizations on the frontlines providing services to migrant workers. Therefore, **New Democrats recommend that the government allocate additional resources for migrant worker organizations and frontline service providers in order to assist migrant workers in protecting and defending their rights.**

The committee also heard that workers would benefit from the ability to collectively bargain their working conditions. Both the United Food and Commercial Workers (UFCW) and Maple Leaf Foods told the committee about the benefits they have enjoyed from their partnership.

Other witnesses also expressed the benefit of autonomy and protection that came from union representation:

“I came to Canada in 2012 as part of the circular migration program as a day labourer for Olymel, at a slaughterhouse in Saint-Esprit, which is about 45 minutes from Montreal. After one year of experience as a unionized worker, I was able, thanks to my seniority, to apply for an industrial butcher position in the company.” – *Francisco Mootoo, Temporary Foreign Workers Association*

“Determined that I would make Canada my home, I studied English at night through the courses provided by my union. Once I became a permanent resident, I worked in a settlement services office. I have the privilege of helping others to make Canada their home.

“I cannot imagine going through this process without the immense help of my union, UFCW Local 832, and my employer, Maple Leaf Foods. They provided me with the

settlement services that are not available to the vast majority of migrant workers. I did not have gaps in my health care. I had decent wages and working conditions, and I was part of a bigger family. As a result of being fortunate enough to be hired into a unionized setting, I was able to go into the Manitoba provincial nominee program.” – *Claudia Colocho, United Food and Commercial Workers*

While we understand that relevant labour laws are under both federal and provincial jurisdiction, we believe that the federal government can show leadership in this regard and initiate a conversation on the importance of ensuring that all workers have access to the protection of a labour union. **New Democrats strongly urge the government to work with provinces and territories to ensure that labour laws allow for unionization among temporary foreign workers, regardless of sector or industry.**

Medical Repatriation

Currently, migrant workers are only entitled to healthcare for workplace injuries that are deemed urgent enough to receive immediate care. The result is inadequate access to healthcare for migrant workers. There is also inadequate protection for occupational workplace and safety issues, such as long-term exposure to environmental threats. We believe that workers are deserving of full and adequate healthcare protection.

As research published in the Canadian Medical Association Journal (CMAJ) indicates, this is a particularly salient issue for seasonal agricultural workers. According to CMAJ:

“During 2001–2011, 787 repatriations occurred among 170 315 migrant farm workers arriving in Ontario (4.62 repatriations per 1000 workers). More than two-thirds of repatriated workers were aged 30–49 years. Migrant farm workers were most frequently repatriated for medical or surgical reasons (41.3%) and external injuries including poisoning (25.5%).” – *CMAJ, Medical repatriation of migrant farm workers in Ontario*

In tandem with steps to reduce workplace injuries, we must ensure that workers who are injured have access to same protections and healthcare as all workers in Canada.

The horrific reality of ignoring the medical needs of workers was highlighted by witnesses:

Women migrant workers who get pregnant while working here in Canada get fired, so they don't have access to health care. One worker who I talked to last month lost her baby. She had to hide her tummy and put on a girdle so the employer would not see that she was pregnant, because she was afraid of being fired, and what happened is that she lost her baby. – *Gina Bahiwal, Member of Coalition for Migrant Worker Rights Canada*

The committee also heard from Marcia Barret, a representative of the Caregiver's Action Centre and cousin of the late Sheldon McKenzie. Sheldon, a seasonal agricultural worker, was injured on the job on January 26, 2015 at the age 39 and died 8 months later. Marcia described her cousin in this way:

“Sheldon was a loving and devoted father of two teen daughters. He began to work as a migrant worker 13 years ago in Canada to care for his family. Sheldon loved to play soccer, loved music, and also coached the game.” – *Marcia Barret*

Barret shared with the committee the traumatic reality that her family faced after McKenzie was injured on the job:

“He died September 17, 2015, on his younger daughter's birthday. It was during this time of Sheldon's injury and death that I became aware of the frustration and the difficult conditions that the migrant farm workers bore. On top of the injury and death that traumatized our family, the policies that are in place were a source of frustration that we endured during that time” – *Marcia Barret*

If it had not been for Barret's advocacy, McKenzie would have been sent home despite the severity of his injuries.

New Democrats call on the government to ensure that adequate health and safety rules are in place for migrant workers and to require that healthcare be provided in Canada when workplace injuries or incidents occur.

Access to Citizenship

New Democrats believe that immigration is an essential part of our society and that our immigration programs should be designed with nation-building in mind. This means programs that emphasize access to permanent residence and citizenship instead of temporary work programs that force people into precarious positions with no rights and no opportunities. As Barbara Byers of the Canadian Labour Congress stated, “if you are good enough to work here, you are good enough to live here.”

New Democrats believe that in response to labour shortages, the primary emphasis should be to bring in workers as permanent residents. When labour shortages that are genuinely temporary in nature need to be filled, the migrant workers who fill them should always have the opportunity to access permanent residency and eventually citizenship. This is a matter of fairness and justice, as well as a means of ensuring the rights and the safety of workers. Exploitation is more likely to happen when workers have no rights and fear for their ability to stay in the country. We also believe that workers should not be punished for the abusive actions of their employers by being deported from the country.

New Democrats believe that all temporary foreign workers, regardless of program stream, should have a pathway to permanent residency. The Liberals have also promised in the past to provide a pathway to permanent residency for all migrant workers.

For this reason, it is very disappointing to see that the committee report did not put forth strong recommendations to ensure that ALL foreign workers have a pathway to permanent residency. New Democrats oppose the committee's recommendation that only workers fulfilling a permanent labour shortage be granted the opportunity of obtaining permanent residency. All workers who come here and support our economy with their labour deserve the opportunity to stay.

New Democrats recommend that pathways to citizenship be created immediately for all migrant workers. We also urge the government to ensure that appropriate safeguards are put in place to ensure that the potential for permanent residency does not become a tool for employer manipulation and control.

The committee must listen to the voices of workers and organizations working on the front lines with workers every day:

“The root of precariousness and vulnerability experienced by migrant workers in Canada is their precarious status in Canada. While opening TFW work permits to allow labour mobility will greatly improve this situation, access to permanent residency is the only measure that will truly eliminate the vulnerability that is built into the TFWP and put low-skilled migrant workers on an equal footing with the rest of Canadian society.” – *Canadian Council of Refugees*

Denial of Employment Insurance Benefits

New Democrats had hoped the Liberal government would restore access to Employment Insurance benefits for temporary foreign workers. The committee heard from both workers and organizations pleading for the government to allow migrant workers to receive EI benefits, especially as they are required to pay premiums.

“Although migrant farm workers contribute to employment insurance they are not entitled to EI benefits. This was something that they had before 2012, at least access to special benefits. Yet it is the same seasonal agricultural worker program that requires migrant farm workers to leave by mid-December each year invalidating the social assurance and disqualifying them for EI entitlements.” – *Barbara Byers, Canadian Labour Congress*

“Migrant workers contribute consistently to EI every week. However, we can't access any of these benefits. The one we can access has been revised downwards in such a manner that whatever we are getting is next to nothing.” – *Gabriel Allahdua, Coalition for Migrant Worker Rights Canada*

“There has to be something in place so that when they get sick on the job here or get injured on the job here, they're tapped into regular health care immediately. Whether its compensation or something else, it's taken care of immediately. They pay into EI, and I know a lot of them do not get EI benefits. That needs to change.” – *Marcia Barret*

New Democrats recommend that the Government of Canada restore workers' access to Employment Insurance entitlements, including parental, maternity and compassionate care benefits.

Seasonal Agricultural Worker Program

As the committee report illustrates, the number of approved temporary foreign workers has decreased from 163,035 in 2013 to 90,211 in 2015. It is also important to note that in 2013, the Seasonal Agricultural Worker stream of the program only accounted for 28% of temporary foreign workers. In 2015, that had increased to 59% of temporary foreign workers. Despite the prominence of the program, the committee only had the opportunity to hear from a handful of actual seasonal agricultural workers.

Seasonal agricultural workers are active in the economy and society of the communities in which they live. Seasonal workforces result in seasonal economies which can make out-of-season times incredibly straining for smaller communities. Supporting opportunities for migrant

workers to stay could lead to many positive benefits. Allowing migrant workers to bring their families and have the opportunity to permanently settle could help to ease the seasonal economic highs and lows, and contribute to strengthening smaller communities. Francisco Mootoo testified to this very issue:

“We have contributed a great deal to Canadian society and to our community, and we continue to do so. We settled in the regions and still live there, because we have become well integrated in the place we live.” – *Francisco Mootoo, Temporary Foreign Workers Association*

New Democrats believe that all temporary foreign workers, including seasonal and low-skilled workers should have equal opportunity to access citizenship, safety, and healthcare and be protected from abuse and exploitation. We cannot ignore the voices of the silenced majority under the TFWP who take great risk in speaking out about the abuse they endure. We must honour their courage and act to end the exploitation they face.

Caregiver Program

The committee had very little time to investigate the complexities and experiences of workers under the Caregiver Program, leaving recommendations to reform the program entirely inadequate.

New Democrats call on the government to immediately remove the cap on permanent residency applications that was recently instituted by the previous Conservative Government.

It is not fair to tell caregivers they will have the opportunity to become permanent residents if they come here, work hard, and follow the rules, and then leave them at the mercy of what is essentially a lottery to get an application in under the annual cap. Instead of a cap on applications, **the government should provide the Department of Immigration, Refugees and Citizenship with sufficient resources to process all applications quickly and fairly.**

Family Reunification

The few migrant workers who were able to participate in the committee hearings repeatedly told the committee about the impact of long-term separation on themselves and their families:

“Permanent residency on arrival would also address other challenges faced by low-wage migrant workers including family separation. Unlike high wage workers who arrive as permanent residents, low-wage workers cannot bring their loved ones with them and must endure years of separation, which can significantly affect their health and well-being” -*Community Legal Assistance Society*

“You just can't imagine how difficult it is, not only for me, but particularly for women. They are raising your children here in Canada, and most of them are just seeing their children through Skype. It's so difficult, you know, that they cannot even touch their kids. It's very difficult. As a mother, I feel every emotion that they pour out every time they come to see me. It's very difficult.” – *Pinky Paglingayen*

“To have my papers, to bring my family, that is it. My dream is to have my papers and my family – to arrange things for my family. That’s it – to be with my family all the time and not be separated – *Manuel, Migrant Worker Solidarity Network Manitoba*

Ericson Santos De Leon shared with the committee that having his family with him in Canada would be a big asset not only for himself but for Canada too since his family is young and willing to share their knowledge and talents here in Canada. Dr. Ethel Tungohan also explained that pilot projects have shown the benefits of having family members of caregivers to accompany the worker. She explained that having spouses arrive with caregivers allows them to be a potential source of labour for the Canadian economy.

New Democrats firmly agree that **migrant workers should be allowed to have their immediate family accompany them while they work in Canada.** We had hoped that through options for permanent residency that migrant workers would be able to bring their families, but the committee report neglects this issue.

Impact on Canadian Workers

The committee had almost no opportunities to hear from Canadian workers how the TFWP has affected them. The committee also considered very little evidence regarding the impact of the program on the Canadian labour market. This is all the more shocking given the number of high profile stories in recent years about Canadians who were fired from their jobs and replaced with temporary foreign workers. There are also Canadian workers who have been bypassed for available job opportunities because employers prefer to hire migrant workers.

Experts have also noted that the program has the effect of driving down wages for Canadian workers. Part of the problem has been a failure on the part of the government to enforce its own rules regarding prevailing wages, allowing employers to hire temporary foreign workers at lower wages than Canadian workers.¹

It is also troubling that the new Liberal government has loosened requirements and made it easier for certain employers to access temporary foreign workers. This is despite the fact that the Department of Employment of Social Development advised the Minister that employers in the industries affected were not doing enough to try to attract Canadians, such as raising wages and making jobs more appealing to Canadian workers.²

Many experts, including the Parliamentary Budget Officer, have also pointed out that there is little evidence of real labour shortages in Canada, in part because labour market information is so poor and lacks the kind of specificity needed to accurately identify labour shortages.

The government needs to improve its collection of labour market information, ensuring that the temporary foreign worker program is only being used to fill genuine labour shortages, and that the positions being filled are truly temporary and not permanent positions.

¹ <http://www.ctvnews.ca/canada/documents-show-feds-allowed-companies-to-underpay-temporary-foreign-workers-union-1.1962306>

² <http://ici.radio-canada.ca/nouvelles/politique/2016/04/29/001-travailleurs-etrangers-temporaires-atlantique-poisson-fruits-de-mer-transformation.shtml>

The government also needs to ensure that the necessary tools are in place to fill permanent positions with Canadians or with immigrants who are able to come as permanent residents with all the rights and protections that entails. This means **investing in training for Canadians, easing barriers to labour mobility** (such as providing tax credits for Canadians who move to other provinces for work), **providing education and supports for communities who are traditionally underemployed** (such as Indigenous persons and persons living with disabilities), and **enforcing transition plans for employers** who are currently filling permanent positions with temporary foreign workers.

International Mobility Program and the Trans-Pacific Partnership

The previous Conservative government split the Temporary Foreign Worker Program in two – the Temporary Foreign Worker Program (TFWP), which covers streams requiring a Labour Market Impact Assessment, and the International Mobility Program (IMP), in which no assessment of the impact on the Canadian labour market is required.

The IMP is actually much larger than the TFWP (nearly twice the size in 2014), yet the committee review paid no attention to the IMP, the role that the IMP plays in the Canadian economy, and the impact that it has on workers. This is very disappointing.

This is of particular concern since the Liberal government is looking to ratify the Trans-Pacific Partnership agreement. In addition to harming our economy, this agreement will expand access to the IMP, allowing employers to bring in foreign workers without any assessment of the impact on the Canadian labour market, even if Canadian workers are available to do the job. This has led some to describe the TPP as “the temporary foreign worker program on steroids.”³

New Democrats reiterate our condemnation of the Trans-Pacific Partnership. The government should not ratify this agreement which will harm our economy and undermine any attempts to ensure Canadians get the first opportunity to apply for available jobs, while perpetuating opportunities for the abuse and exploitation of migrant workers.

³ <http://www.cbc.ca/news/canada/calgary/tpp-trans-pacific-partnership-alberta-federation-labour-1.3542898>

