

NEOLIBERALISING IMMIGRATION IN CANADA:
THE PILOT PROJECT FOR OCCUPATIONS REQUIRING LOWER-LEVELS OF
FORMAL TRAINING AND THE EXPANSION OF CANADA'S TEMPORARY
FOREIGN WORKER PROGRAM

A Thesis Submitted to the Committee on Graduate Studies
in Partial Fulfillment of the Requirements for the Degree of Master of Arts
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ABSTRACT

NEOLIBERALISING IMMIGRATION IN CANADA: THE PILOT PROJECT FOR OCCUPATIONS REQUIRING LOWER-LEVELS OF FORMAL TRAINING AND THE EXPANSION OF CANADA'S TEMPORARY FOREIGN WORKER PROGRAM

C. Andrew Cragg

There has been a significant expansion in Canada's Temporary Foreign Worker Program (TFWP) over the past ten years. The Pilot Project for Occupations Requiring Lower Levels of Formal Training (PPORLLFT), a sub program of the TFWP, has been leading this expansion. Drawing upon testimony given to the Parliamentary Standing Committee on Citizenship and Immigration, this thesis examines the development and expansion of the program, since its inception in 2002, and shows that it is connected to the ongoing process of neoliberalisation in Canada. One significant example of this connection is the program's support for increases in two-step immigration streams that involve employer sponsorship for successful transition to permanent residency; this increase represents a privatisation of citizenship decisions. More than this, the neoliberal aspects of the PPORLLFT have increased inequality and the ability of employers to have a more disciplined workforce. This has decreased the ability of working people to have influence in their workplace and over economic policy more generally.

Keywords: neoliberalism, temporary foreign workers, immigration

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To my parents, siblings, and close friends, thank you for your guidance and support: without your encouragement, understanding, and (most of all) love, neither this thesis nor I would be complete.

And, to Laura, my partner in life and love:

By wealth nor beauty love can ne're be bound;
The power that joins our lives as hands link fingers
Diverse in role, united in direction,
Evades my words. In your dear eyes it lingers.

Abbreviations

AFL – Alberta Federation of Labour

BCYTBCTC – British Columbia and Yukon Territory Building and Construction Trades
Council

CAW – Canadian Auto Workers’ union

CPP – Canada Pension Plan

CEC – Canadian Experience Class

CIC – Citizenship and Immigration Canada

CIMM – Parliamentary Committee on Citizenship and Immigration

EI – Employment Insurance

E-LMO – Expedited Labour Market Opinion

FSWP – Federal Skilled Worker Program (the points system)

HRSDC – Human Resources and Skills Development Canada

IRPA – Immigration and Refugee Protection Act

LCP – Live-In Caregiver Program

LMO – Labour Market Opinion

NOC – National Occupation Classification

PNP – Provincial Nominee Program

PPORLLFT – Pilot Project for Occupations Requiring Lower Levels of Formal Training

SAWP – Seasonal Agricultural Workers Program

TFW – Temporary Foreign Worker

TFWP – Temporary Foreign Worker Program

TFWU – Temporary Foreign Worker Unit

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Introduction

In 2008, for the first time in Canadian history there were more temporary foreign workers (TFWs) in Canada than permanent residents.¹ This change is indicative of a shift that has taken place in the way that the federal government sees the connections between work, immigration, and citizenship.² It has become more and more common for Canadian employers to hire temporary foreign workers, and for the federal government to offer permanent residency status to TFWs based upon their working experience for, and their endorsement by, private sector employers. The Pilot Project for Occupations Requiring Lower Levels of Formal Training (PPORLLFT) accounts for the majority of the increase in TFWs that has occurred over the past several years. This program, introduced in 2002 and expanded in 2006, is a stream of the Temporary Foreign Worker Program (TFWP). In 2005 there were less than 6,000 visas given out under the PPORLLFT, but in 2008 this number had ballooned to almost 70,000, before falling back to 35,000 in 2010.³ The central focus of this thesis is to look at the driving factors behind the creation and expansion of the PPORLLFT and at the effects of the program on Canadian society. Specifically, I draw connections between the PPORLLFT and the broader neoliberal political economic context in Canada.

¹ The term “permanent resident” refers to a category of the Canadian immigration system, rather than to literally all people who are residing in Canada. The term replaced the older category of “landed immigrant.” The 2008 landmark statistic is based on a comparison of all permanent residents to Foreign Workers present on December 1st. Citizenship and Immigration Canada, “Permanent residents by gender and category, 1986 to 2012,” and “Temporary residents present on December 1st by gender and yearly status, 1986 to 2010,” *Facts and Figures Immigration Overview Permanent and Temporary Residents*, 2010

² Judy Fudge and Fiona MacPhail, “The Temporary Foreign Worker Program in Canada. Low-Skilled Workers as an Extreme form of Flexible Labor,” *Comparative Labour Law and Policy Journal* (Fall 2009): 5.

³ Human Resources and Skills Development Canada, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 2: Positions by skill level and management group of occupations.” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/index.shtml.

As the PPORLLFT has grown in size over the past six years, it has at the same time received increasing attention from academics, journalists and other scholars; a body of scholarship about the program has thus begun to develop. Studies from a legal perspective have appeared in the last few years, examining the work-related rights of TFWs in the program, the ability of TFWs to access these rights, and connections between these rights and the rules of the program.⁴ The most substantial of these studies is by Judy Fudge and Fiona MacPhail, who provide a detailed overview of the development of the PPORLLFT and of the rules and regulations of the program; they also look at the political and economic impact of the program, arguing that it has resulted in the suppression of wages through the use of TFWs as an extreme form of flexible labour.⁵ Focusing less on the impact of the program on TFWs themselves, other studies have looked at policy issues raised by the expansion of the PPORLLFT and their impacts on the TFWP and on the Canadian immigration system more generally. These issues include the impact of increases in two-step immigration processes like the Provincial Nominee Programs and the Canadian Experience Class;⁶ the increasing role of employers in developing immigration policy and in selecting immigrants;⁷ and the impact on the

⁴ Delphine Nakache and Paula Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short Term Economic Needs Prevail Over Human Rights Concerns?," Institute for Research on Public Policy (Montreal, May 2010); Yessy Byl, "Temporary Foreign Workers, Alberta's Disposable Workforce: The Six-Month Report of the AFL's Temporary Foreign Worker Advocate," Alberta Federation of Labour (Edmonton, 2007); Yessy Byl, "Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate," Alberta Federation of Labour (Edmonton, 2009); Eugenie Depatie-Peletier, "Under legal practices similar to slavery according to the U.N. Convention: Canada's 'non white' 'temporary' foreign workers in 'low-skilled' occupations," Metropolis Conference, Halifax 2008.

⁵ Fudge and MacPhail, "The Temporary Foreign Worker Program in Canada."

⁶ Naomi Alboim, "Adjusting the Balance: Fixing Canada's Economic Immigration Policies," Maytree (July, 2009); Sophia Lowe, "Rearranging the Deck Chairs? A Critical Examination of Canada's Shifting (Im)migration Policies," *Canadian Issues* (Spring 2010).

⁷ Salimah Valiani, "The Rise of Temporary Migration and Employer-Driven Immigration in Canada: Tracing policy shifts of the late 20th and early 21st centuries," http://www.yorku.ca/raps1/events/pdf/Salimah_Valiani.pdf; "The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program,"

Seasonal Agricultural Workers Program (SAWP) of the ability of farm owners to hire workers through the PPORLLFT.⁸ However, there remain a number of significant areas of inquiry that still require further investigation, including accessing information about who the main PPORLLFT employers are, sector-specific and regional studies of experiences of PPORLLFT TFWs, the role of immigration consultants, and connections between the program and international migration studies.

If critical studies of the PPORLLFT are only beginning to emerge, there is, nevertheless, a significant and growing body of critical scholarship examining the Canadian TFWP more broadly.⁹ Insofar as the PPORLLFT must be understood as being a part of the broader TFWP, this scholarship is both relevant and foundational to critical study of the PPORLLFT. This literature has demonstrated the historic and ongoing employment and exploitation of TFWs in Canada.¹⁰ Particularly, in the last twenty years, studies of the Live-in Caregiver Program (LCP) and the SAWP have demonstrated the racialized, gendered, and class-based nature of the exploitation of TFWs.¹¹ Critical studies of Canada's TFWP have also exposed the contested nature of 'citizenship' in

<http://www.ccs1.carleton.ca/~dana/TempPermLCPFINAL.pdf>

⁸ United Food and Commercial Workers and the Agricultural Workers Alliance, "The Status of Migrant Farm Workers in Canada 2010-2011," (2011), Sophia Lowe, "Plus ca Change? A Comparative Analysis of the Seasonal Agricultural Workers Program and the Pilot Foreign Worker Program for Farm Workers in Quebec," (MA thesis, Ryerson University, 2007)

⁹ For a selection of short articles by a significant number of scholars active in the field of studying the TFWP in Canada see "Temporary Foreign Workers," *Canadian Issues* (Spring 2010), and on the SAWP see Kaite Hinnencamp, *Bibliography on Migrant Farm Workers in North America*, Compiled for Justicia for Migrant Farm Workers (accessed December 27, 2009) <http://www.justicia4migrantworkers.org/NAfarmworkersbiblio.pdf>

¹⁰ For a general overview see, Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 2010)

¹¹ Nandita Sharma, *Home Economics: Nationalism and Making of 'Migrant Workers' in Canada* (Toronto: University of Toronto Press, 2006), Ricardo Trumper and Lloyd L. Wong, "Canada's Guest Workers Racialized, Gendered, and Flexible," in ed. Sean P. Hier and B. Singh Bolaria, *Race and Racism in 21st Century Canada: Continuity, Complexity, and Change* (Peterborough: Broadview Press, 2007)

Canada.¹² Other studies focus more attention on the impact of specific policies of the TFWP on TFWs and on the day-to-day experiences of exploitation by TFWs¹³ While these studies present a comprehensive understanding of the TFWP, and provide a critical scholarly foundation for the study of the PPORLLFT, as the PPORLLFT increases in importance within the TFWP this earlier scholarship will need to be reevaluated in light of this new context.

This thesis contributes to the scholarship on the PPORLLFT in a number of ways. First, I provide a comprehensive descriptive account of the creation of the PPORLLFT, including documentation of the employer-driven motivation for its creation in 2002 and expansion after 2006, and of the many policy developments of the program since its creation. The information for this account comes largely from a detailed analysis of the transcripts of the study of foreign workers carried out in 2008 by the Parliamentary Committee on Citizenship and Immigration. These transcripts are an invaluable resource for commentary on the PPORLLFT from a wide array of sources and have hitherto only been examined by the Committee itself in the creation of its final report.

Second, based on the data from the Committee documents, I draw connections between the creation, expansion, and effects of the program and broader theoretical understandings of the process of neoliberalisation. The analysis of these connections offers important insights into how the PPORLLFT supports processes of increasing labour flexibility, privatisation, and individualisation. This analysis also shows how the

¹² Daiva Stasiulis and Abigail Bakan, *Not One of the Family: foreign domestic workers in Canada* (Toronto: University of Toronto Press, 1997), Nandita Sharma, "On Being *Not* Canadian: The Social Organization of "Migrant Workers" in Canada," *Canadian Review of Sociology* 38 (2011)

¹³ See for example Jenna Henneby and Kerry Preibisch, "A Model for Managed Migration? Re Examining Best Practices in Canada's Seasonal Agricultural Worker Program," *International Migration* (2010), Janet McLaughlin, "Social Determinants of Health of Migrant Farm Workers in Canada," Report Commissioned by the Public Health Agency of Canada (PHAC), (2009), Aziz Choudry et al, *Fight Back: Workplace Justice for Immigrants*, (Fernwood Publishing, 2009)

neoliberal aspects of the program, through discouraging unions and shifting influence to the private sector, result in increased inequality, more easily disciplined workers, and reduced democratic and collective control over the economy for workers. A particularly important aspect of this analysis is that the PPORLLFT provides evidence of an increasing role being played by private employers in the selecting of new permanent residents. In other words, the PPORLLFT is part of an increasing privatization of citizenship decisions in Canada. Thus, this thesis provides evidence that there is a qualitative as well as a quantitative shift taking place within the Canadian immigration system. This is a qualitative shift from an immigration system that puts a high value on permanent settlement and selection of new Canadians through legislated and objective processes (embodied in the points system of the Federal Skilled Worker Program), to an immigration system defined increasingly by high numbers of migrant (or ‘non-immigrant’) workers whose limited ability to settle permanently in Canada is further constrained by reliance upon employer sponsorship.

The theoretical basis of this analysis is the recognition that neoliberalism is the dominant political ideology of the current era. Understanding neoliberalism requires recognizing both its ideological and practical components. The latter I refer to as neoliberalisation: the putting into practice of neoliberal ideological values. In describing this process of neoliberalisation in Canada I focus on three key elements: the role of the state in promoting neoliberal reforms, processes of privatisation, and manifestations of individualism; these three elements also form the framework for my analysis of the neoliberal elements of the PPORLLFT. But beyond just describing and observing the process of neoliberalisation, it is also crucial to examine the class-based impact of

neoliberalism. Specifically, following David Harvey and others, though writing in a Canadian context, I highlight that neoliberal reforms have increased inequality and facilitated workers being more easily disciplined, leading to greater power and influence for economic elites and less ability for working people (in Canada) to enact democratic and collective influence over the economy and over their workplaces. Insofar as the PPORLLFT is an example of neoliberal policy making, it has also resulted in these same effects on power and influence in the Canadian context.

Following this introduction, in chapter one, I explore the workings of the PPORLLFT, beginning with an outline of where the program fits in relation to the broader Canadian immigration system. I then discuss the historical context of foreign workers in Canada, demonstrating that though the PPORLLFT is a new program its use (and abuse) of foreign workers should not be seen as novel. The main purpose of the chapter, however, is to provide a detailed accounting of both the rules and regulations of the program and of the various policy initiatives and alterations that have taken place over the lifespan of the PPORLLFT.

In chapter two I analyse the transcripts of the Parliamentary Committee on Citizenship and Immigration (CIMM). From February to April 2008, the Committee undertook a cross-country tour in order to study the issue of temporary foreign workers, holding seventeen sessions and hearing from dozens of witnesses representing a wide range of interests. In the transcripts of the Committee's study it is possible to see nearly the entire range of existing comments and perspectives on the program. Three themes dominate the discussion: the labour market, permanent residency and immigration status,

and exploitation and discrimination. The analysis in this chapter follows these three dominant themes.

In chapter three I begin to discuss neoliberalism and its connection to the PPORLLFT. I start by presenting neoliberalism as a set of ideological principles focused on liberating individuals from the fetters of the state and emphasizing the importance of the market. The last thirty years of political and economic governance have been marked by the process of putting neoliberal ideology into practice, a process of change that is taking place at various levels, from local to global, and at different rates, across the world. This process is captured by the term ‘neoliberalisation,’ and I outline how this process has unfolded in a Canadian context, focusing on the role of the state in the politics of the economy, privatisation, and individualism. In the final section of this chapter, I apply these ideas about neoliberalisation to the description of the PPORLLFT in chapters one and two, arguing that the PPORLLFT does indeed have significant neoliberal characteristics and thus that the implementation of the PPORLLFT furthers the neoliberal project.

In the fourth chapter, I examine the political and material effects of neoliberalisation in Canada, and argue that the observable effects of neoliberalisation are the reorganization of wealth and power in society away from working people and towards economic elites. Based on this theoretical understanding of the class-based nature of neoliberal restructuring projects, in the second part of the chapter I discuss the effects of the neoliberal aspects of the PPORLLFT on class dynamics, arguing that the effects of the program include increased inequality and decreased power and influence for workers, both foreign and domestic.

Finally, I conclude by reiterating and expanding upon the broader implications of the neoliberal characteristics of the PPORLLFT, and by suggesting a number of important areas of research for expanding our understanding of the PPORLLFT.

Chapter One: Context and Substance of the PPORLLFT

Introduction

In this chapter I introduce and explain in detail the Pilot Project for Occupations Requiring Lower Levels of Formal Training (PPORLLFT). I begin with an outline of where the program fits in relation to the broader Canadian immigration system. Following this, I discuss the historical context of foreign workers in Canada, demonstrating that though the PPORLLFT is a new program, its use (and abuse) of foreign workers should not be seen as a novel feature of Canadian immigration policy. The main purpose of the chapter, however, is to provide a detailed accounting of the both the rules and regulations of the program and of the various policy initiatives and alterations that have taken place over the lifespan of the PPORLLFT. I lay out the details of the policies and regulations that govern the program in order to have a clear picture of how the program is meant to work and what it looks like on paper.

The PPORLLFT and the Canadian Immigration System

There are a number of different ways that people not born in Canada can work legally in Canada, but there are generally two broad routes: Permanent Residency and the Temporary Foreign Worker Program. In the last several years, about 250,000 new Permanent Residents have been admitted into Canada on an annual basis.¹⁴ Most of these applicants (~60%) fall under the category of economic immigrants, most of whom apply under the Federal Skilled Workers Program (FSWP), also known as the points system.¹⁵

¹⁴ Citizenship and Immigration Canada, “Permanent residents by gender and category, 1984 to 2008.”

¹⁵ There are four sub-categories that fall under the term ‘economic class.’ They are the FSWP, the Canadian Experience Class, the Provincial Nominee Program, and the Quebec Skilled Worker program. For a good summary see Office of the Auditor General (of Canada), “Selecting Foreign Workers Under the

People who come through the FSWP apply from their home country and, if successful, have permanent residency status upon arrival in Canada. Besides the FSWP, the other major group of economic migrants are temporary foreign workers who transition from the TFWP to the permanent residency stream. The other major categories of permanent residents are those who come to Canada under the ‘family class’ or as ‘refugees.’ In 2008, the ‘family class,’ which is comprised of family members of either permanent residents or citizens of Canada who have been sponsored to come to Canada, made up about 26% of all new permanent residents. Refugee claimants comprised about 9% of new permanent residents. It is noteworthy that twenty-five years ago the distribution of new permanent residents was 50% family class, 30% skilled labour, and 17% refugees,¹⁶ which reflects a shift in federal immigration policy in recent decades away from social and humanitarian immigration to a greater focus on the economic benefits of immigration.

People who come to Canada to work and who do not come through a permanent residency stream are Temporary Foreign Workers (TFWs). The Temporary Foreign Worker Program has expanded significantly in the last several years, with an increase in participation between 2005 and 2008 from 97,809 workers to 204,108 workers, an increase of 209%.¹⁷ There are broadly four main streams that fall under Canada's Temporary Foreign Worker Program: Seasonal Agricultural Workers Program (SAWP), Live-in Caregiver Program (LCP), Pilot Project for Occupations Requiring Lower-Levels

Immigration Program (Chapter 2),” *Report of the Auditor General of Canada to the House of Commons* (Fall 2009): 8.

¹⁶ CIC, “Permanent residents by gender and category, 1984 to 2008.”

¹⁷ HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 2: Positions by skill level and management group of occupations.” These figures are based off of Labour Market Opinions (LMOs) and thus may differ slightly from broader Citizenship and Immigration Canada (CIC) statistics. The Auditor General report of fall 2009 reports a much higher number of TFWs in Canada for 2008: 370,000 (Office of the Auditor General, 1). Fudge and MacPhail (2009: 11) state that, “In fact, 45% of the temporary foreign workers admitted into Canada in 2007 were admitted without a LMO.”

of Formal Training (PPORLLFT), and skilled workers.¹⁸ Both the SAWP and the skilled-worker streams have expanded since 2005, while the LCP has actually decreased in size. However, the majority of the increase in to the TFWP since 2005 has come from the expansion of the PPROLLFT, which appears now to have stabilized as a program that, in terms of numbers, is on par in size with the LCP and SAWP.

The graph below (figure 1.1) shows the increase in the PPORLLFT, as measured by the number of applications for work permits, known as labour market opinions (LMOs). Applications for LMOs made under the PPORLLFT increased from around 5,500 in 2005 to over 66,000 in 2008, an increase of almost 1200%, before dropping down to 35,000 in 2010.¹⁹ This increase in the PPORLLFT is contextualized by figures 1.2 and 1.3, which show the increasing role of the PPORLLFT within the TFWP and the expansion of TFWs relative to new permanent residents. Together these graphs show the increasing significance of the TFWP within the broader immigration system, and the large role that the PPORLLFT has played in this quantitative shift.

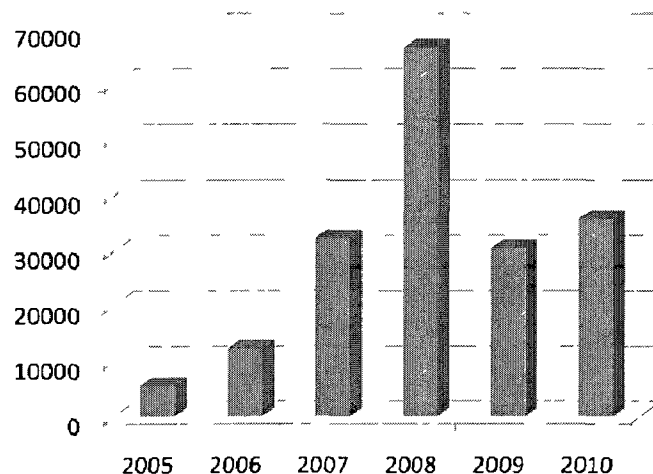


Figure 1.1 applications for LMOs under PPORLLFT, 2005-2009²⁰

¹⁸ There are a few additional TFW Programs covering, for example, foreign academics, entertainers, and IT experts.

¹⁹ HRSDC, "Table 8."

²⁰ HRSDC, "Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-

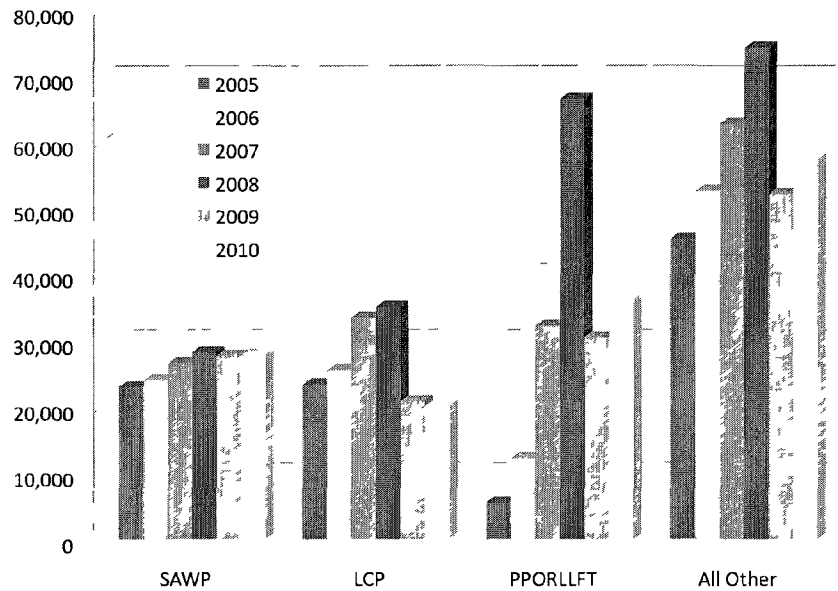


Figure 1 2 LMO applications by TFWP stream²¹

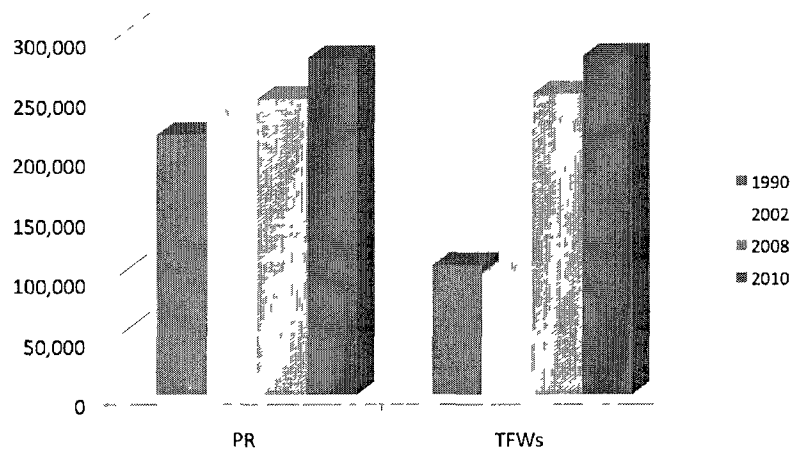


Figure 1 3 number of permanent residents and temporary foreign workers²²

2010, Table 8: Pilot Project for Occupations Requiring Lower Levels of Formal Training.”

²¹ HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 2: Positions by skill level and management group of occupations.” HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 9: Seasonal Agricultural Worker Program.”

²² CIC, “Permanent residents by gender and category, 1986 to 2010,” and “Temporary residents present on December 1st by gender and yearly status, 1986 to 2010.”

Temporary Foreign Workers in Canada – Recent Historical Context

The existence in Canada of workers of non-Anglo-Saxon descent who possess lower status than citizens is not a new phenomenon. The existence of black slaves in Canada in the 1700s and 1800s, the discrimination against Chinese railroad workers in the late 1800s and early 1900s, and the internment during the Second World War of Japanese-Canadians demonstrate this history.²³ However, it is the Seasonal Agricultural Worker Program and the Live-in Caregiver Program, two programs which have existed for several decades, that provide the more direct foundation upon which the PPORLLFT is built.²⁴ Starting in 1966 the Canadian government began entering into Memoranda of Understanding with Caribbean countries to allow foreign workers to come to Canada seasonally in order to fill shortages in farm labour. In 1972 the program was extended to include Mexico as well. This program is now known as the Seasonal Agricultural Workers Program (SAWP). The intention of the SAWP is not, and has never been, to provide a route for permanent immigration to Canada for participants. Indeed, the main purpose of the program has always been to keep farm labour costs low without having to permanently accept migrants from Caribbean and Latin American countries.²⁵ In 1966 the first group of seasonal workers, 264 Jamaicans, came to Canada; it has since grown to include workers from other countries, and in 2008 there were over 27,000 participants, mostly from Mexico.²⁶

²³ On slaves in Canada, see Robin Winks, *The Blacks in Canada A History*, (Montreal McGill-Queen's University Press, 1971), On discrimination against Chinese and Japanese in Canada see Kelley and Trebilcock, *The Making of the Mosaic*, 94-98, and 250-310 respectively

²⁴ Also important is the Non-Immigrant Employment Authorization Program (NEIAP) which was introduced in 1973 See Fudge and MacPhail, "The Temporary Foreign Worker Program in Canada," 7-9

²⁵ See Sophia Lowe, "Plus ca Change?" 27-30

²⁶ HRSDC, "Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 8 Pilot Project for Occupations Requiring Lower Levels of Formal Training "

Another long-standing precedent for low-status foreign workers in Canada is the Live-in Caregiver Program (LCP), which has its roots in the Caribbean Domestic Scheme, beginning in 1955.²⁷ The current LCP program began in 1992, and in 2010 there were over 20,000 visas given out under the program, mostly to women from the Philippines.²⁸ Workers participating in the LCP (and also the SAWP) are technically protected by labour laws and regulations while living in Canada, though in practice fair treatment is often not easily realized. Having immigration status tied to employment is an inherently problematic situation because there is a strong deterrent against employees making complaints about employers. In terms of the temporary status of LCP participants, they are eligible to apply for permanent residency if they complete at least 24 months of employment in less than 48 months from the date of their arrival.²⁹ This stipulation provides a further deterrent to complaints about workplace exploitation, as switching employers can take a lot of time. However, in recent years, “over 90% of foreign nationals who enter Canada as a live-in caregiver with a work permit apply for permanent residency through this stream, and of these applicants, 98% are successful.”³⁰ This aspect of the LCP makes it at least somewhat less discriminatory than the SAWP.³¹ However, as

²⁷ Jacqueline Oxman-Martinez et al “Another Look at the Live-in Caregivers Program,” Centre de Recherche Interuniversitaire de Montreal sur L’immigration, L’intégration et la Dynamique Urbaine (September, 2004) 4

²⁸ HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 7 Live-in Caregiver Program ”

²⁹ The forty-eight month limit is a very recent change, and is an increase from the previous limit of thirty-six months See, Canada Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations,” Vol 143, No 51 (December 19, 2009) <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-12-19/html/reg3-eng.html>

³⁰ Ibid

³¹ Or, at least the discrimination is more tolerable, due to the prospect of liberation For more on the LCP see Abigail Bakan and Daiva Stasiulis, *Not One of the Family Foreign Domestic Workers in Canada* (Toronto University of Toronto Press, 1997)

a result of their exploitative nature, both programs have received much attention in the last few years from the media, unions, activists, academics, and politicians.³²

It is important to note that both the SAWP and LCP are highly racialised programs, drawing workers almost entirely from non-white countries. As well, the TFWP as a whole has become increasingly racialised over the past thirty years. “In 1982, two out of every three temporary [foreign] workers were from Europe and the US. By 2005, only one out of three were from these areas.”³³ Numbers of TFWs from the Philippines, India, and China have increased the most dramatically over the last ten years, and the Philippines has now far surpassed the USA as the source country for the largest number of TFWs.³⁴ There is also an increasing correlation between class and race in the TFWP: “in skilled categories...almost 70 percent [of TFWs] still originate in Europe (mostly the United Kingdom), the United States and Australia, while almost 60 percent [of TFWs] from Asia and the Pacific and 85 percent [of TFWs] from the Americas (outside the United States) are in the lower-skilled categories.”³⁵ In other words, not only is the TFWP as a whole becoming more racialised, but so too is the division of occupations by skill level: the most precarious and easily exploited TFWs are increasingly non-white. While a specific study of racialisation associated with the PPORLLFT has not been produced yet,

³² The United Food and Commercial Workers International Union (UFCW) has been successfully organizing SAWP workers since 2008. See “Ratification of UFCW Canada first contract at Manitoba farm historic breakthrough for migrant workers,” UFCW Press Release (July 23, 2008). Activist groups that focus on the TFWP include No One Is Illegal (Montreal, Toronto, Vancouver), Workers Action Centre (Toronto), Immigrant Workers Centre (Montreal), Justicia for Migrant Farm Workers, and others. Recent publications on the LCP and SAWP include Oxman-Martinez et al., “Another Look at the Live-in Caregivers Program,” and on the SAWP Katie Hinnencamp (Justicia for Migrant Farm Workers), *Bibliography on Migrant Farm Workers in North America*, <http://www.justicia4migrantworkers.org/NAfarmworkersbiblio.pdf>. Attention given to the SAWP and LCP by politicians is most substantially contained in Parliamentary Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers*, 40th Parliament, 2nd Session (May, 2009).

³³ Trumper and Wong, “Canada’s Guest Workers: Racialized, Gendered, and Flexible,” 155

³⁴ Citizenship and Immigration Canada, “Temporary residents present on December 1st by source country,” *Facts and Figures*

³⁵ Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program,” 6

the Alberta Federation of Labour has noted that PPORLLFT TFWs are “more likely to be recruited from poorer, less-developed nations as they have more to gain by coming to Canada to work in retail or hospitality.”³⁶ And though comprehensive statistics on source countries of PPORLLFT TFWs are not easily available, based on the data available for the TFWP as a whole, it seems safe to assume that the PPORLLFT, as a low-skilled temporary foreign worker program, produces a highly racialised and exploitable workforce.³⁷

Through this recent historical context there emerges an image of Canada as a country built in part upon the labour (and in the case of Indigenous people, the land) of groups with low-status who are discriminated against based upon their race or country of origin. The relatively new, and recently expanding PPORLLFT should be seen in this light rather than as a large or novel shift in policy; however, the significant increase in low-skill TFWs that the PPORLLFT facilitates, especially in relation to the relatively constant number of new permanent residents, is alarming and may be symptomatic of a larger trend of neoliberal policy-making. It may also alert us to accelerating processes of the ‘privatisation’ of Canada’s citizenship regime.

Origin, Purpose, and Development of the PPORLLFT

The Pilot Project for Occupations Requiring Lower Levels of Formal Training was introduced in July 2002 and facilitates the admission of foreign workers who, due to their skill and education level, would not qualify for entrance to Canada under either the

³⁶ Byl, “Entrenching Exploitation,” 11.

³⁷ I have recently contacted Citizenship and Immigration Canada about obtaining more comprehensive statistics on the source countries of PPORLLFT workers. In light of the racialised nature of the TFWP in Canada generally, this is an area of the PPORLLFT that demands more detailed examination. This is especially so given the important questions that the PPORLLFT raises about the racialised nature of the Canadian economy, and of Canada’s citizenship regime, as well as issues it raises about community and social inclusion in Canada.

Federal Skilled Worker program (the points system) or as “skilled workers” under the TFWP. Skill level in this context is determined by the National Occupation Classification (NOC) system used by Human Resources and Skills Development Canada (HRSDC). Every occupation in Canada is given an NOC code, and each code is connected to one of five skill levels (see Table 2.1).

Skill Level Code	Description	Example Occupations
0	Managerial	Corporate executive
A	Professionals	Doctors, Lawyers, Pharmacists
B	Skilled Workers	Licensed Carpenters, Welders
C	High school education	Truck Drivers, Nannies
D	No education	Farm Labourers, Food Processing Labourers

*Table 2.1 – National Occupation Classification Skill Levels*³⁸

“Low-skilled” occupations are those that fall under levels C and D. The PPORLLFT program applies specifically to NOC C and D occupations. The top four occupational groups under the PPORLLFT in 2010 were Babysitters, Nannies and Parents' Helpers; Food Counter Attendants, Kitchen Helpers and Related Occupations; Cooks; and Harvesting Labourers.³⁹

The official motivation for the creation of the PPORLLFT was to “respond to labour shortages in occupations requiring lower levels of formal training (defined as persons working in occupations that usually require at most a high school diploma or a

³⁸ See, HRSDC, “National Occupation Classifications,” <http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/Welcome.aspx>.

³⁹ HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 6: Top Occupational Groups.”

maximum of two years on the job training),” mostly in the areas of “cleaning, hospitality, manufacturing, oil and gas and construction.”⁴⁰ The program builds on and incorporates aspects of the two other low-skilled TFW streams, the SAWP and LCP, which are occupation specific (namely, farm labouring and live-in caregiving) and expands them to all occupations deemed to be low-skill. The PPORLLFT is jointly administered by Human Resources and Skills Development Canada (HRSDC), Citizenship and Immigration Canada (CIC), and the Canadian Border Services Agency (CBSA). HRSDC deals only with employers and is responsible for assessing labour market conditions and determining the impact on the Canadian labour market of hiring a TFW; this assessment is done primarily through the issuance of labour market opinions (LMOs). For any particular application, the HRSDC examines the local labour market conditions relative to the occupation that is being applied for and determines whether the hiring of a foreign worker is justified, or more specifically whether hiring a foreign worker would have a positive, negative, or neutral impact on the Canadian economy. Employers are required to have a positive or neutral LMO in order to hire workers through the PPORLLFT.⁴¹ CIC deals with the migrant workers and is responsible for issuing the work permit that entitles the worker to be in the country and to work.⁴² CBSA is in charge of assessing the migrant worker’s admissibility in terms of any threat they might pose to the security of the country and their likelihood to abide by the terms of their visa.

⁴⁰ See Sandra Elgersma, "Temporary Foreign Workers," Parliamentary Information and Research Service (September 7, 2007), PRB 07-11eE; and Government of Canada, "Employer Information Bulletin, Temporary Foreign Worker Program Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D)," N.D. <http://www.docstoc.com/docs/33484003/EMPLOYER-INFORMATION-BULLETIN-Temporary-Foreign-Worker>.

⁴¹ Employers apply for and receive a LMO for a certain occupation in a certain location. HRSDC provides an opinion (positive, neutral, or negative) as to whether the local conditions justify the hiring of a foreign worker.

⁴² See Citizenship and Immigration Canada, "FW 1 Temporary Foreign Worker Guidelines," 33-35. www.cic.gc.ca/english/resources/manuals/fw/fw01-eng.pdf.

The beginning of the program in 2002 is closely linked to the introduction that year of the *Immigration and Refugee Protection Act (IRPA)* by the federal government. This new piece of legislation replaced the *Immigration Act*, which had been in place since 1976. The *IRPA* and its accompanying *Regulations* set out the guidelines and rules for all aspects of Canada's interactions with foreign nationals who wish to live, work, or travel in Canada, and thus they govern all aspects of the TFWP including the PPORLLFT. However, the PPORLLFT is not created by the *Act* or its *Regulations*, but rather these pieces of legislation give the government the scope to create new programs that fall within their parameters. Thus, the PPORLLFT is a policy initiative of the executive branch of the Canadian government and not of the legislature. A number of mostly minor changes have been made to the program since its inception. Most of these have been made within the scope of the *IRPA* and *Regulations*, and thus have not required legislative changes or approval; other changes have run counter to the existing *Act* and *Regulations* and thus have required going through legislative processes.

From its inception in 2002 until 2006 the PPORLLFT was seldom used, and was apparently not heavily promoted by the federal government. This changed in 2006, subsequent to which the government has taken a number of policy initiatives that have resulted in a significant expansion in the use of the program by employers. The expansion in the use of the PPORLLFT in 2006 coincides with the election of the first Conservative government of Stephen Harper in January of that year. Shortly thereafter, in March of 2006, HRSDC commissioned a private firm, Partenaires Delta Partners, to undertake a review of the PPORLLFT.⁴³ The following fall, the government announced the first of a

⁴³ See Partenaires Delta Partners, "Review of the Foreign Worker Program Pilot Project for Workers Requiring Lower Levels of Formal Training," March 2007.

number of new initiatives and policy changes meant to make it “easier, faster, and less costly for employers to hire temporary foreign workers.”⁴⁴ Announced in November of 2006 by Monte Solberg, Minister of Citizenship and Immigration, and Diane Finley, Minister of Human Resources and Social Development, the first changes affecting the program included the introduction of “regional lists of occupations under pressure,” a “step-by-step guide...developed specifically for employers who need to hire temporary foreign workers,” and federal-provincial working groups to “speed the identification of existing and emerging skill shortages and determine the best ways the foreign worker program can help address these shortages.”⁴⁵ These changes, it should be noted, applied to all aspects of the TFWP, not just the PPORLLFT.

The most significant of these changes was arguably the introduction of regional lists of occupations under pressure. These lists were intended to “cut the recruitment wait time for employers, [allowing] employers in certain regions who face critical labour shortages [to] be eligible to follow shorter, simpler and less costly advertising requirements to recruit the workers they need.”⁴⁶ For employers in British Columbia, Alberta, and Ontario seeking workers for listed occupations the normal advertising requirements were reduced from a minimum of 14 days. Instead, employers would be required to “advertise on the Government of Canada's national Job Bank...for a minimum of 7 calendar days,” and/or “demonstrate that they have established, on-going recruitment mechanisms already in place (e.g., using recognized job internet sites, unions,

www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/pilot_review/Flowskillreport-e.pdf

⁴⁴ Citizenship and Immigration Canada, "Canada's New Government to help employers address labour shortages in Western Canada" (November 15, 2010). <http://web.archive.org/web/20070219102928/news.gc.ca/cfm/view/en/index.jsp?articleid=256049&>.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* See also Government of Canada, “Backgrounder, Regional Lists of Occupations Under Pressure.” http://classic-web.archive.org/web/20070221120027/http://www.hrsdc.gc.ca/en/epb/lmd/fw/TFW_OUP_BG_e.pdf.

professional associations, corporate website, professional journals, newspapers, newsletters).”⁴⁷ Occupations falling under NOC C or D would be required to satisfy both of these requirements. The lists of eligible occupations varied from time to time but were quite extensive and wide-ranging. For example, when the program commenced in Alberta more than 150 occupations were on the list, ranging from “engineering managers” to “hotel front desk clerks”; of these occupations, thirty-five were C or D level occupations.⁴⁸ The regional lists of occupations under pressure were eliminated as of January 1st, 2009 and replaced by new “national advertising requirements” that are the same for all occupations.⁴⁹

In 2006, the government also announced the expansion of its “Temporary Foreign Worker Units,” which are regional offices put in place to help employers negotiate the TFWP.⁵⁰ According to CIC, “in addition to providing advice, TFWU staff coach clients and stakeholders through public-education sessions as well as employment-sector workshops and conferences.”⁵¹ The first TFWU was opened in Montreal in 2003 and two additional offices were opened in Calgary and Vancouver in September of 2006, “in response to a booming economy in the western provinces of B.C. and Alberta.”⁵² The Units were again expanded in February of 2008, with new offices opening in Toronto and Moncton; the Calgary office has also expanded to be able to service employers across the

⁴⁷ Government of Canada, "Regional Occupations Under Pressure List British Columbia." http://web.archive.org/web/20071012184141/http://www.hrsdc.gc.ca/en/epb/lmd/fw/BC_ROL_200611_e.pdf.

⁴⁸ Government of Canada "Regional Occupations Under Pressure List Alberta." <http://classic-web.archive.org/web/20070221120027/www.hrsdc.gc.ca/en/epb/lmd/fw/occunderpres.shtml>.

⁴⁹ HRSDC, “Temporary Foreign Worker Program, Labour Market Opinion Assessment Criteria.” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_assessment.shtml#aar.

⁵⁰ The Units are specifically prohibited from aiding TFWs.

⁵¹ Citizenship and Immigration Canada, "FW 1 Temporary Foreign Worker Guidelines," 175.

⁵² Ibid.

Prairies and the Territories.⁵³ For the government, these TFWUs have played a “significant role not only in educating and informing employers, but also in facilitating their active participation in the process.”⁵⁴ While the TFWUs help employers who wish to hire under any aspect of the TFWP, with the increase in the significance of the PPORLLFT within the TFWP, presumably the relative use of the Units by employers using the PPORLLFT has increased.

Changes affecting the PPORLLFT continued in 2007, starting in February when it was announced that the maximum length of employment of TFWs would be increased. Prior to February 2007, foreign workers in Canada under the PPORLLFT could be issued a work permit for an employer with a valid LMO, for up to 12 months, following which the TFW would be required to return to his or her home country for a minimum of four months before being eligible to participate in the program again. The February 2007 change extended the 12 month limit to 24 months: “the change acknowledged that employers often needed such workers for longer than one year and provided greater stability for them as well as the workers themselves.”⁵⁵ In May of 2009, the government realized that its practice of limiting TFW visas to 24 months and imposing four months of ineligibility fell outside of the scope of the *IRPA* and *Regulation* and so did not have a legislative basis. Thus the 24 month limit and the requirement to leave the country for four months were both eliminated.⁵⁶ Likely as a result of this situation, the government announced, in the fall of 2009, its intention to amend the *IRPA* and *Regulations* to create

⁵³ Ibid.

⁵⁴ Ibid., 176.

⁵⁵ Citizenship and Immigration Canada, “Backgrounders - Improvements to the Temporary Foreign Worker Program.” <http://www.cic.gc.ca/english/department/media/backgrounders/2010/2010-08-18.asp>.

⁵⁶ Citizenship and Immigration Canada, “FW 1 Temporary Foreign Worker Guidelines,” 34.

See also, Canadian Bar Association, “Low Skilled Worker Pilot Project,” May 2006, 3. <http://www.cba.org/cba/submissions/pdf/06-24-eng.pdf>.

a four-year cumulative limit on work visas for most TFWs. As well, after a TFW had accumulated four years of work in Canada, he or she would be barred from the program for four years.⁵⁷ The amended legislation would give the government the scope to enforce both the four-year limit and the four-year ban. Additionally, as part of this same group of changes the government announced a “more rigorous assessment of the genuineness” of job offers, and introduced punishments for unscrupulous employers including a two-year ban from the program and the publication of their name on a CIC website listing unscrupulous employers in order “to inform other temporary foreign workers already in Canada.”⁵⁸ Due to the minority parliament situation at the time, these changes were not immediately implemented, but have come into effect as of April 1, 2011.⁵⁹

Also in 2007, the government introduced the Expedited LMO pilot project (E-LMO), which as the name suggests was another initiative meant to make obtaining an LMO easier for employers by guaranteeing the processing of LMO applications for certain occupations within five business days. Like some of the initiatives described above, the E-LMO applied not exclusively to the PPORLLFT, however many of the occupations that qualified for the E-LMO were C and D level occupations. Initially, there were 12 occupations deemed to be facing significant shortages such that an expedition of LMO assessments could be justified. Half of these 12 occupations were C and D level. In 2008, the number of occupations qualifying for the E-LMO was increased to thirty-three, including fourteen C and D level occupations. As a compromise for obtaining an LMO

⁵⁷ Originally a six-year ban was proposed. See Canadian Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers),” Vol. 143, No. 41 (October 10, 2009), 3051-3065.

⁵⁸ Citizenship and Immigration Canada, “Backgrounder Improvements to the Temporary Foreign Worker Program.”

⁵⁹ Citizenship and Immigration Canada, “Regulatory changes to the Temporary Foreign Worker Program.” <http://www.cic.gc.ca/english/work/changes.asp>.

within five business days, eligible employers “agreed to a review of their compliance with the rules of the pilot at a later date. HRSDC completed approximately 250 compliance reviews under the pilot. While most employers were ultimately found to be compliant, approximately 30 of them were denied service as a result of non-compliance with the program’s rules.”⁶⁰ The E-LMO pilot project was eliminated as of April 15, 2010, with the government stating that it had “successfully achieved a number of objectives, including elimination of labour market opinion (LMO) application backlogs.”⁶¹

How the PPORLLFT is Administered

There are many rules and regulations governing the program in order to ensure that the program does not result in exploitation of foreign workers and does not have a negative impact upon the Canadian labour market. To guard against the former, HRSDC lists several provisions that employers wishing to participate in the PPORLLFT must make to ensure that the foreign workers are not exploited. Under the PPORLLFT employers must:

Sign an employment contract outlining wages, duties, and conditions related to the transportation, accommodation, health and occupational safety of the foreign worker; Cover all recruitment costs related to hiring the foreign worker; Ensure that there is suitable and affordable accommodation for the worker; Pay the foreign worker’s airfare to and from Canada; Provide medical coverage until the worker is eligible for provincial health insurance coverage; Register the worker under the appropriate provincial workers’ compensation and/or workplace safety insurance plans; and Indicate on the contract, when an offer of employment is for longer than 12 months, that wages will be reviewed and adjusted, if necessary, at the end of a year to ensure prevailing wage rates are being respected.⁶²

⁶⁰ Citizenship and Immigration Canada, “Backgrounder Improvements to the Temporary Foreign Worker Program.”

⁶¹ Citizenship and Immigration Canada, “Temporary Foreign Worker Program. Notice for employers in British Columbia and Alberta that the Expedited Labour Market Opinion pilot project (E-LMO) will end in April 2010.” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/endelmo.shtml.

⁶² Human Resources and Skills Development Canada, “Occupations Requiring Lower Levels of Formal Training,” August 26, 2011. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/

Though these are admirable standards and provisions in principle, in practice there are a number of problems with achieving them, as is discussed below.

To guard against negative impacts on the labour market, employers are required to apply to HRSDC for a labour market opinion (LMO) which assesses the validity of the request for employment of a TFW based on whether the employer is,

making adequate, ongoing efforts to recruit Canadians, including youth, Aboriginal people, recent immigrants and Canadians in areas of high unemployment; offering wages that meet the prevailing rate for the occupation and region or, if a position is unionized, offering the wage rate as established under the collective agreement; providing working conditions that are equivalent to those that would be offered to Canadians in the same occupation; and considering unions as a potential source of workers.⁶³

In other words, the employers must show that they are not seeking a foreign worker merely in order to keep labour costs low.

Once an employer is issued a positive or neutral LMO, they are allowed to offer employment to a TFW. To connect to foreign workers, many employers contract recruitment firms or 'immigration consultants.' Once the connection is made between the foreign worker and the Canadian employer, the TFW must present CIC with his or her employment contract, the validity of the LMO is cross referenced, and the TFW is issued a work permit for a period of time not longer than the length specified on the LMO. Importantly, the work visa is issued for only one employer: the TFW can travel freely within the country, but is only allowed to work for the employer listed on the visa. Should the TFW wish to change employers, he or she would have to obtain a new contract from a new employer possessing a valid LMO. Also, if a work visa is issued for longer than 12

orllft_tfw.shtml.

⁶³ Ibid.

months, the wage being paid to the TFW must be re-examined every 12 months to confirm that it is still in conformity with prevailing wage rates.⁶⁴

Once employed in Canada, PPORLLFT TFWs pay income tax, and contribute to EI and CPP. They are eligible to receive provincial health care coverage, subject to three month waiting periods in Ontario, BC, and Alberta during which time the employer must ensure health care coverage. TFWs can also receive workers' compensation, though receiving benefits might be complicated by their requirement to be employed in the occupation and with the employer specified on the visa. Receipt of permanent disability compensation by TFWs is less complicated because it can be collected from anywhere in the world. TFWs can receive CPP benefits, as they can also be collected from anywhere in the world. TFWs are also eligible to receive EI benefits, including parental leave and compassionate care benefits, though in practice accessing EI benefits has proven challenging.⁶⁵

Despite the general purpose of the TFWP to facilitate *temporary* residence in the country of foreigners for the express purpose of working, many (mostly non-PPORLLFT) TFWs can and do transition from the TFWP to permanent residency. There are currently two programs that exist for the explicit purpose of recruiting new permanent residents from within the TFWP, the Canadian Experience Class (CEC) and the Provincial Nominee Program (PNP). Workers in Canada under the PPORLLFT are ineligible for the CEC because it requires experience in NOC 0, A or B level occupations. Through agreements made between the federal government and individual provinces, the provinces

⁶⁴ HRSDC, "Occupations Requiring Lower Levels of Formal Training "

⁶⁵ Standing Committee on Citizenship and Immigration, *Temporary Foreign Workers and Non-Status Workers* 40th Parliament, 2nd Session (May, 2009), 42 See below for discussion of issues surrounding access to EI, CPP, and Worker's Compensation

are empowered to put forward to CIC the names of TFWs that they would like to be given permanent residency under the PNP. Specific criteria for the PNP vary by province.⁶⁶ BC, Alberta, and Saskatchewan accept NOC C and D applicants from only very specific occupations, for example in the areas of long haul trucking, tourism and hospitality, and food processing.⁶⁷ Manitoba has accepted a wide range of PPORLLFT TFWs for several years. Quebec only accepts nominees from NOC C level applicants (not D) but only if the TFW can satisfy various criteria including financial self-sufficiency.⁶⁸ New Brunswick does not explicitly exclude TFWs in NOC C and D level occupations; instead they determine eligibility through a points system, in which the skill level of the applicant's occupation is not relevant to the points gathered.⁶⁹ PEI accepts limited NOC C and D nominees under the "Critical Worker Stream" of its PNP.⁷⁰ Nova Scotia only accepts PPORLLFT TFWs for nominees in the very limited case of family business owners nominating a family member.⁷¹ Ontario currently does not accept NOC C and D level nominees.⁷² Newfoundland's policy on allowing NOC C and D applicant is foggy.⁷³ However, in all provinces, PNP nominations rely upon the sponsorship by the employer of the TFW and require that the TFW be employed.

⁶⁶ For more detailed studies of PNPs and NOC C and D level occupations see Jamie Baxter (Law Commission of Ontario), "Precarious Pathways: Evaluating the Provincial Nominee Programs in Canada," 2010, Delphine Nakache and Sarah D' Aoust, *Provincial and Territorial Nominee Programs An Avenue to Permanent Residency for Low-Skilled Temporary Foreign Workers?* McGill/Queens University Press (forthcoming).

⁶⁷ British Columbia, "Welcome B.C." <http://www.welcomebc.ca>; Alberta, "Semi-Skilled Worker Criteria." <http://www.albertacanada.com/immigration/immigrating/ainp-eds-semi-skilled-criteria.aspx>; Saskatchewan, "Saskatchewan Immigration." <http://www.saskimmigration.ca>.

⁶⁸ Quebec, "Quebec – Immigration." <http://www.immigration-quebec.gouv.qc.ca/en>.

⁶⁹ However, employer sponsorship is still required. New Brunswick, "New Brunswick Immigration." <http://www.gnb.ca/immigration>.

⁷⁰ Prince Edward Island, "Immigration." <http://www.gov.pe.ca/immigration>.

⁷¹ See family business worker criteria. Nova Scotia, "Nova Scotia Immigration." <http://www.novascotiaimmigration.ca>.

⁷² Ontario, "Ministry of Citizenship and Immigration." <http://www.ontarioimmigration.ca>.

⁷³ Newfoundland and Labrador, "Provincial Nominee Program." <http://www.nlppn.ca>.

Conclusion

In this chapter I have endeavoured to provide some context for the creation and expansion of the PPORLLFT. This context includes recognizing the history of low status foreign workers in Canada, and in particular the SAWP, and LCP, which laid the groundwork for the PPORLLFT. The context of the PPORLLFT within the broader Canadian immigration system is also important for understanding the increasing significance of the PPORLLFT relative to more widely known permanent residency streams like the FSWP and refugees, and relative to the other parts of the TFWP. As well, understanding the effects of the PPORLLFT, the subject of the next chapter, requires knowledge of the various rules and regulations of the program that have been developed since the program's inception in 2002. Knowledge of the rules and regulations of the program will also be relevant to the analysis of the program's connections to neoliberalism that I present in chapters three and four. With all of these contexts in mind, I turn now to an examination of the transcripts of the Parliamentary Committee on Citizenship and Immigration's 2008 study of temporary foreign workers.

Chapter Two: Perspectives on the PPORLLFT

Introduction

Over the past few years, the PPORLLFT has received an increasing amount of attention from a variety of interested parties, ranging from employer and labour groups, to opposition MPs and the government itself. Though issues relating to the PPORLLFT have been brought up in a few academic papers, union and NGO publications, and newspaper stories, the single greatest sources for commentary on the impacts and effectiveness of the program are submissions and evidence presented to the Parliamentary Committee on Citizenship and Immigration (CIMM). Specifically, from February to April 2008, the Committee undertook a cross-country tour in order to study the issue of temporary foreign workers, holding 17 sessions and hearing from dozens of witnesses representing a wide range of interests.⁷⁴ In this study, it is possible to see nearly the entire range of existing comments and perspectives on the program from the stakeholders themselves. In looking at these comments and perspectives, three overarching issue areas emerge. The first issue area is the effect of the PPORLLFT on the economy: its effect on economic growth, domestic employment, wages rates, unionization, and other economic factors. A second group of comments relate to permanent residency and the immigration status of TFWs. And thirdly, there are many comments and perspectives focusing on the exploitation and discrimination faced by TFWs in Canada.

⁷⁴ The tour began in Ottawa on February 25, 2008 ended on April 17th in St. John's. The official scope and purpose of the tour was to study three topics: temporary and undocumented workers, Iraqi refugees, and immigration consultants. The complete transcripts of the tour are available online. The content of the hearings is also the subject of the report by the CIMM of the 40th Parliament, entitled *Temporary Foreign Workers and Non-Status Workers: Report of the Standing Committee on Citizenship and Immigration*, (May 2009)

The PPORLLFT and the Economy

The impact of the PPORLLFT on the labour market, and on the Canadian economy in general, is clearly a central feature of the PPORLLT; after all, the *raison d'être* of the program is to provide foreign workers for Canadian employers. For many Canadian employers, the program is considered to be central to their business plans and future viability; for labour groups the program is not in and of itself undesirable, though in general in its current form it is seen disproportionately to benefit employers to the detriment of both domestic and foreign workers. The federal government, playing the role of referee and policy leader, has had to balance effective labour market regulation (for example through the LMO process) with the demands of employers for greater, faster, and easier access to foreign workers.

Employers in all parts of the country, though especially in the west, have lamented a new economic risk that they have had to face in recent years: the inability to find workers. It is often NOC C and D level occupations that are difficult to fill across the country, including positions like farm workers, construction labourers, restaurant servers, hotel cleaners, truck drivers, and many others; the Committee heard from delegations representing many employers and employer groups from these areas of work.⁷⁵

Employers acknowledge that part of this difficulty is because the NOC C and D jobs are generally less desirable jobs. Carol Logan, manager at the Prince George Hotel in Halifax, laments this fact:

[People say to me] ‘we don't go to school to come out and clean hotel rooms; that's not what we're doing.’ There are so many other opportunities out there, with

⁷⁵ For example the Canadian Restaurant and Foodservices Association, Westcan Bulk Transport Ltd., Atlantic Provinces Trucking Association, Union des Producteurs Agricoles, Foreign Agricultural Resource Management Services (F.E.R.M.S.), Construction Recruitment External Workers Services (CREWS), Prince George Hotel (Halifax), and Sunterra Meats.

call centres, more hotels coming, and the shopping mall, that applicants are choosing those positions as opposed to coming in, picking up a mop, and cleaning floors. So we struggle with that, and that's the foundation of our business.⁷⁶

The Canadian Restaurant and Foodservices Association also reports that its members are facing difficulties in finding employees. “There are restaurant operators in western Canada, where the labour shortage is already a crisis, who would have been forced to close their doors if not for the temporary foreign worker program.”⁷⁷ For the Atlantic Provinces Trucking Association the program has become an “indispensable tool in addressing human resource requirements within the trucking industry.”⁷⁸ For NOC C and D employers, the PPORLLFT has clearly become an important aspect of their operations.

The great fear that this labour shortage presents is its potential to significantly limit economic growth. Without the ability to fill desperate labour shortages through hiring foreign workers, businesses will suffer; this would have a negative effect on the economy in general, and is to be avoided at all costs. John Hopkins, president of the Regina and District Chamber of Commerce, speaking before the committee in Moose Jaw, explains this particular fear:

I had the owner of the Tim Hortons restaurant along Albert Street say to me, ‘John, I don't need a doctor, I don't need a lawyer, I don't need an accountant, but I do need somebody who can pour coffee. That's what I need.’ I have retailers who want people to come to work. We have McDonald's restaurants in Regina that cannot either open their drive-through or open the restaurant because they do not have the people they require to get it done. We are on the cusp of something unbelievable in Saskatchewan. The growth potential is almost limitless in this province, except for one critical thing, and that is the labour shortage.⁷⁹

⁷⁶ Carol Logan, Standing Committee on Citizenship and Immigration, 39th Parliament, 2nd Session, Meeting 34 (Halifax), 1010. Hereafter, evidence from the CIMM study on temporary and undocumented workers will be referred to as CIMM Study, and will include the meeting number and location, and the time that the testimony was given.

⁷⁷ Joyce Reynolds, CIMM Study, Meeting 28 (Toronto), 1415.

⁷⁸ John C. Robinson, CIMM Study, Meeting 32 (Fredericton), 1110.

⁷⁹ John Hopkins, CIMM Study, Meeting 20 (Moose Jaw), 1020.

Another bleak case of lost economic potential is presented by Sunterra Meats: “our sister plant in Trochu...was experiencing the same or even greater labour challenges [as us], and in 2006 actually had to discontinue operations at their plant for a good 50% of their business, in particular the value-added part of their business, just because the labour challenges made it so difficult.”⁸⁰ This appeal to the economic importance of the program is also made by the government of Saskatchewan. “We are experiencing...a critical labour shortage in Saskatchewan, and we simply need to improve access to foreign labour for Saskatchewan employers. We are in the midst of an economic boom that's arguably unprecedented in recent memory in Saskatchewan. Employers are really struggling to find individuals to come to work for them.”⁸¹

Though the program has been crucially important for overcoming (economically harmful) labour shortages, many business-oriented groups believe that the program needs to be made more responsive to the needs of employers. The point of arguing for the importance of the program based on economic necessity is not just to support the program in its current form, but also to make access to foreign workers easier and faster. Dr. Roslyn Kunin of the Canada West Foundation forcefully presents the unprecedented labour shortage scenario and argues that the solution is to ensure that the system is “more flexible.”

It has reached a point...and as an economist, this is something I have never seen, and frankly, never expected to see. Businesses sometimes don't operate because they can't get money, and businesses sometimes don't operate because they can't get customers, and businesses sometimes don't operate because prices for their products aren't high enough for them to make a profit. But now, for the very first time, I am seeing businesses where all these conditions are met and they aren't operating because they can't get enough workers to do their particular business. So that is why we have unprecedented demand for temporary workers...and that's

⁸⁰ Miles Kilner, CIMM Study, Meeting 19 (Edmonton), 1420.

⁸¹ Eric Johansen, CIMM Study, Meeting 20 (Moose Jaw), 1010.

why we need to make a system as flexible as possible to meet the needs of the labour force.⁸²

In this statement Kunin presupposes that the government has an obligation to help private businesses succeed. This presupposition, insofar as it relates to foreign workers, is a result of the fact that the federal government, through its protection of the Canadian labour market, is responsible for denying employers unrestricted access to potential employees from any part of the world. Thus, the government—the cause of the problem—has an obligation to help employers overcome the problem.

To meet the challenges they face, employers want faster and more consistent processing of LMO applications.⁸³ Again, an economic argument is made: employers need workers *fast*, and any delays will have negative economic consequences. Maple Leaf, an employer that has brought hundreds of TFWs to Canada, says that “the time delay we're facing on LMO approvals has become unacceptable and very difficult for us. We are facing significant plant shortages in labour. We're facing serious questions about the viability of plant operations, and yet the time it's taking to get any answers is far too long.”⁸⁴ As Conservative MP Ed Komarnicki says, employers “want something faster that meets their needs in getting the right people in the right place at the right time.”⁸⁵ Gurcan Kocdag of the Canadian Manufacturers and Exporters Association shows clear frustration at the unwillingness of government to completely serve the interests of employers.

“[Excessive regulation] just creates a difficult environment, where the lack of trust

⁸² Roslyn Kunin, CIMM Study, Meeting 18 (Richmond, BC), 1330.

⁸³ See, for example, the Canadian Manufacturers and Exporters, CIMM Study, Meeting 21 (Moose Jaw), 1340; Sunterra Meats CIMM Study, Meeting 19 (Edmonton), 1420; Regina and District Chamber of Commerce, CIMM Study, Meeting 20 (Moose Jaw), 1020; Canadian Restaurant and Foodservices Association, CIMM Study, Meeting 28 (Toronto), 1415.

⁸⁴ Rory McAlpine, CIMM Study, Meeting 22 (Winnipeg), 1025.

⁸⁵ Ed Komarnicki, CIMM Study, Meeting 19 (Edmonton), 1600.

becomes very apparent, and it's not necessarily a productive work environment.”⁸⁶ One further justification for the need for speedy processing of employers’ LMO applications is international competitiveness: in order to attract the best TFWs, Canada needs to make sure that these people are not waiting months for their applications to be processed.⁸⁷

Another issue for employers is how HRSDC determines the prevailing wage rate which employers are then required to pay as participants in the PPORLLFT. Daniel Hirschhorn, director of the Saskatoon Immigration and Employment Consulting Services, explains that employers do not like having wage rates set for them by HRSDC.

It's a bit tricky to use prevailing wage rates when you're hiring people you've never met. You're a little bit leery about their skill sets. Starting them a bit lower and then agreeing to move them up after one year to a higher wage rate, to the prevailing wage rate, would be acceptable. Companies would be more open to that. But telling companies that they have to pay \$15 an hour to a construction labourer, basically a grunt worker, is a tough one for them. So a lot of companies have shied away because of that.⁸⁸

For example, Fudge and MacPhail write that “the British Columbia Coalition for Businesses...has written to the Minister responsible to the program to express its members’ unhappiness with the prevailing wage rates, as they consider them to be ‘unfairly higher than average wages of BC employees for the same occupations.’”⁸⁹ The Canadian Restaurant and Foodservices Association more bluntly wants government “to ensure that the underlying policy on determining prevailing wage rates is market rate neutral and does not have the effect of putting upward pressure on wage rates.”⁹⁰ Thus, the general attitude of employers is that the program has an unjustifiable, and often

⁸⁶ Gurcan Kocdag, (CIMM Study, Meeting 21 (Moose Jaw), 1340.

⁸⁷ Ibid., 1400.

⁸⁸ Daniel Hirschhorn, CIMM Study, Meeting 20 (Moose Jaw), 1115.

⁸⁹ Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 9.

⁹⁰ Joyce Reynolds, CIMM Study, Meeting 28 (Toronto), 1415.

inflationary, impact on wages, removing employers' ability to offer employees what they determine to be a fair rate of pay.

These dissatisfactions are surprising given the apparent access that employers and employer groups have had to government in relation to structuring the program. As noted in chapter two, many of the changes to the PPORLLFT have taken place since 2006, subsequent to the report undertaken by Partenaires Delta Partners; this report makes clear the input that employers have had on the development of the program going back to its very inception.

In the early 2000s, a number of employers made representations to HRSDC seeking assistance from the Foreign Worker Program (FWP) by having access to foreign workers in occupations requiring lower levels of formal training to meet their human resource requirements in hard to fill vacancies...As a result, in July 2002, HRSDC approved new guidelines on a pilot-basis to test an approach to the temporary entry of foreign workers in occupations requiring lower levels of formal training.⁹¹

Also, in the review of the pilot project that Partenaires Delta Partners undertook, one of their "primary review questions" was "how well has the Pilot responded to employer needs?"⁹² In answering this question, they interviewed many employers and employer groups, concluding that "the primary objective of fulfilling a need for [TFWs] in occupations requiring little or no formal training is being largely met, judging by the satisfaction level among employers who have hired [TFWs] through the Pilot."⁹³ The Delta review demonstrates the focus of policy development on meeting the needs of employers and the success of employers in having their needs met.

During the CIMM hearings, numerous employer groups make reference to having

⁹¹ Partenaires Delta Partners, "Review of the Foreign Worker Program Pilot Project for Workers Requiring Lower Levels of Formal Training," 7; Canadian Bar Association, "Low Skilled Worker Pilot Project," 1.

⁹² Partenaires Delta Partners, 16.

⁹³ Ibid., 5.

conferred with the federal government about policy directions for the TFWP. For example, the Saskatchewan Chamber of Commerce “organized a teleconference meeting with the Minister of CIC last fall so that Saskatchewan businesses could directly convey their experiences. I was present at the meeting, and in short order we asked her to streamline the process of immigration.”⁹⁴ Westcan Bulk Transport Ltd. testified that they had been engaged in trying to influence the program for several years, and with some success: “We started in 2004. We sat at the lobbying table to get truck drivers allowed to come through the program.”⁹⁵ And it seems that these lobbying efforts have had some effect, with the Auditor General reporting that “average processing times for LMO applications overall improved from 38 days in the 2007–08 fiscal year to 17 days in the 2008–09 fiscal year.”⁹⁶ It seems clear then, that despite the many concerns and criticisms that employers and employer groups have presented, they have had significant opportunity to voice their concerns to influential government officials and that government policy makers have been responsive to these concerns.

The perspective from organized labour groups is of course quite different, despite the fact that there is perhaps a surprising acceptance of the usefulness of the foreign worker program for employers.⁹⁷ Rather than objecting, as one might expect, to the very

⁹⁴ Jan Katerynych, CIMM Study, Meeting 21 (Moose Jaw), 1350.

⁹⁵ Chelsea Jukes, CIMM Study, Meeting 20 (Moose Jaw), 1130.

⁹⁶ Office of the Auditor General, “Selecting Foreign Workers Under the Immigration Program,” 30.

⁹⁷ See for example Waterloo Wellington Dufferin Grey Building and Construction Trades Council: “First of all, I did submit to the clerk a copy of a resolution on temporary foreign workers that we recently passed at our annual meeting, and just to paraphrase that resolution, because it is quite lengthy, I’d like to say that the resolution points out the fact that our council recognizes that foreign workers can be an essential part of a company’s business strategy. We recognize that foreign workers are part of the Canadian economy. We recognize that foreign workers can fill labour shortages in Canada and bring new skills and knowledge to help the country’s economy grow.” Sean Strickland, CIMM Study, Meeting 24 (Kitchener), 1320.

existence of a foreign labour program,⁹⁸ labour groups' comments generally focus on arguing that the current form of the TFWP, including the PPORLLFT, is dysfunctional and has a significant impact on disciplining workers and suppressing wages. Labour groups reject the idea that there is such a significant labour shortage that it must be redressed through the TFWP, and argue instead that employers are using the program as a primary and permanent means to meet their labour-market requirements. Gil McGowan, president of the Alberta Federation of Labour (AFL), testified that the temporary foreign worker program "should only be used as a stopgap measure and as a tool of last resort for human resources. But increasingly across the country, but especially here in Alberta, employers are looking at the temporary foreign worker program not as a stopgap measure, not as a tool of last resort, but as their first choice for finding workers for their projects."⁹⁹ He places the blame for this situation not just on the business community but also on the federal government for facilitating the expansion of the program.

Over the last two years especially, this program has been allowed to grow exponentially, and it was in response to pressure from the business community, but it was the result of decisions made by the federal government. Up until very recently, this was a very narrow program that brought in a very narrow group of workers. But...it's been allowed to explode into a whole bunch of areas of employment and a whole bunch of occupations that were never being brought in.¹⁰⁰

⁹⁸ The acceptance of the TFWP on the part of at least some labour groups is perhaps reflective of the pervasiveness of neoliberal values (which I discuss in the subsequent two chapters). Rather than taking a more assertive stance on the protection of the Canadian labour market or the right of migrant workers to settle permanently in Canada, there is an acceptance of the efficacy of the TFWP as a solution to labour shortages in occupations requiring lower skill levels. Just how deep this acceptance of the neoliberal parameters of the TFWP runs in the labour movement, though an extremely interesting area of examination, is outside the scope of this study.

⁹⁹ Gil McGowan, CIMM Study, Meeting 19 (Edmonton), 1550.

¹⁰⁰ *Ibid.*, 1540.

This suggests that, contrary to comments made by business groups, the federal government and business groups have acted more or less in tandem to push the expansion and increased use of the PPORLLFT.

Given that high unemployment continues to exist at a regional level in Canada, various organized labour groups have suggested that worker shortages reported by businesses could be fixed by relocating domestic unemployed workers or offering higher wages. The Newfoundland and Labrador Building and Construction Trades Council, for example, recommends “tax incentives for construction workers to travel to meet the labour requirements of our country.”¹⁰¹ On the issue of wages, many labour groups see the difficulty that some employers have in finding employees as a matter of wage shortages not labour shortages. The Canadian Auto Workers (CAW) argue that “rather than a labour shortage, in fact what we may have is a cheap labour shortage.”¹⁰² Similarly, according to the Newfoundland and Labrador Federation of Labour, “we need to be aware that sometimes it's not labour shortages that we're talking about in the country. Rather, it's a wage shortage.”¹⁰³ This view is supported by the testimony of the Fish, Food and Allied Workers:

Interestingly enough, in places where fish plants are paying close to an industrial wage in Newfoundland, there's no shortage of workers. In fact there are waiting lists to get into those plants. Where we see labour shortages is not too far from St. John's, actually, where there are, for example, non-union plants that are paying wages around the minimum wage, and those are the people who are saying we don't have workers to do our fish.¹⁰⁴

They conclude that “The TFWP is an easy way out for employers who want to increase their profits the old fashion way through cheap labour rather than investing in equipment,

¹⁰¹ David Wade, CIMM Study, Meeting 36 (St John's), 0935

¹⁰² Carol Phillips, CIMM Study, Meeting 26 (Toronto), 1420

¹⁰³ Lana Payne, CIMM Study, Meeting 36 (St John's), 0910

¹⁰⁴ Greg Pretty, CIMM Study, Meeting 36 (St John's), 0920

technology, and, most importantly, training to increase productivity.”¹⁰⁵ This view is supported by Bloc Quebecois MP St-Cyr who, when questioning the representative from Maple Leaf, declared that, “the only possible explanation for employers wanting to bring foreign workers in this industry in Québec is that they want to put [downward] pressure on salaries.”¹⁰⁶ Again, the organized labour view is in stark contrast to the view presented by employer groups that the PPORLLFT and its regulated wage rates have arbitrarily raised wage rates to levels above what employers feel workers deserve in many cases.

In response to concerns about the “downward pressure” on wages and employment conditions that result from misuse of the program, labour groups have brought legal cases against some employers who they deem to be acting illegally. In early 2011, for instance, a class-action lawsuit was initiated by a group of PPORLLFT TFWs against Denny’s in British Columbia. According to the workers’ lawyer, “more than 50 Filipino foreign workers came to Canada, mainly as cooks and servers, to take jobs at Denny’s Restaurants in BC...and they have not received the hours of work, overtime pay, air travel and other conditions they were promised.”¹⁰⁷ As another example, the Construction and Specialized Workers’ Union brought a case against SELI, the company contracted to build the Canada Line public transit project in Vancouver. In this case, SELI Canada employed TFWs from Europe and Latin America as well as Canadian workers. The forty Latin American workers were paid less than the Canadian workers and substantially (30%) less than their European TFW counterparts. The union representing the Canadian and Latin American workers, the Construction and Specialized Workers

¹⁰⁵ Ibid.

¹⁰⁶ Thierry St-Cyr, CIMM Study, Meeting 22 (Winnipeg), 1035.

¹⁰⁷ Fiorillo Glavin Gordon and Kestrel Workplace Legal Counsel, “\$10 million class action lawsuit launched on behalf of Denny’s Restaurant Temporary Foreign Workers,” *BASICSnews.ca*, (January 11, 2011). <http://basicsnews.ca/?p=1038>.

Union, took the case to the Labour Relations Board and lost, but did win at the BC Human Rights Tribunal, which ruled that the employer had discriminated against the workers based on their country of origin.¹⁰⁸ In the words of the British Columbia and Yukon Territory Building and Construction Trades Council (BCYTBCTC), “the Canada Line case shows how the TFW program can easily be used by employers to drag down employment standards and conditions in Canada.”¹⁰⁹

In addition to its impact on wages, according to several labour groups the PPORLLFT has interfered with labour disputes, organizing, and workplace dynamics. For the CAW, “the low-skill pilot project is creating... complex and difficult new tensions in a number of these workplaces, sometimes pitting worker against worker.”¹¹⁰ Also, the employment of TFWs is not likely to aid in a union’s attempt to organize a workplace, for “if a temporary foreign worker is indentured to one employer, it’s very unlikely he’ll support the unionization of his employer.”¹¹¹ The CAW also claims that the PPORLLFT has been used intentionally by Presteve Foods, an employer in Windsor, to influence a labour dispute.

We are in a lockout situation at Presteve Foods and in a formal labour dispute with the employer. We don't know how many temporary foreign workers are in the workplace. They're displacing union jobs at \$12.80 an hour with temporary foreign worker jobs at \$8.75 an hour. The regular labour market opinion route was followed, but no one investigates an employer's claims. In this case, Presteve fraudulently claimed there was no union on the application and that \$8.75 was the prevalent wage in the workplace.¹¹²

¹⁰⁸ Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 38-41.

¹⁰⁹ British Columbia and Yukon Territory Building and Construction Trades Council (BCYTBCTC), “Submission to House of Commons Standing Committee on Citizenship and Immigration, Temporary Foreign Workers, Undocumented Workers, and ‘Immigration Consultants,’” (March 31, 2008), 7.

¹¹⁰ Carol Phillips, CIMM Study, Meeting 26 (Toronto), 1415.

¹¹¹ Al Brown (International Brotherhood of Electrical Workers), CIMM Study, Meeting 19 (Edmonton), 1540.

¹¹² Carol Phillips, CIMM Study, Meeting 26 (Toronto), 1415.

Thus it seems that the PPORLLFT can be, and has been, used by employers not only as a tool to keep wages down but also as a tool to diminish the power of unions and interfere with bargaining.¹¹³

A number of labour groups commented to the Committee that they have not been included in decision-making processes relating to the program, especially in comparison with employer groups.¹¹⁴ The 2006 review of the PPORLLFT demonstrates this: out of 91 interviews conducted, only 8 were with union representatives or foreign worker representatives.¹¹⁵ A representative from the Fish, Food and Allied Workers union told the Committee that his group used to be consulted by HRSDC on issues relating to TFWs, but now “they don’t call anymore.”¹¹⁶ In the face of this lack of consultation with labour groups, the Manitoba Federation of Labour observes that the government has been highly responsive to the demands of employers, and has

created lists of occupations that qualify for fast-track permits to import migrant labour. They've created a step-by-step guide in employer-friendly language on how to hire a foreign worker...[And,] the 2007 federal budget provided for an additional \$50.5 million over two years to ‘reduce processing delays and more effectively respond to regional labour and skill shortages.’¹¹⁷

These figures suggest that the government has been highly responsive to employers’ desires for faster and easier access to TFWs, while simultaneously shutting out the perspectives of labour groups.

¹¹³ For additional examples see National Union of Public and General Employees, “Canada: The Land of Denied Opportunity? A Review of Canada’s Temporary Foreign Workers Program,” (April, 2007).

¹¹⁴ See for example Sean Strickland (Waterloo Wellington Dufferin Grey Building and Construction Trades Council), CIMM Study, Meeting 24 (Kitchener); Alex Lolua (Provincial Building and Construction Trades Council of Ontario), CIMM Study, Meeting 24 (Kitchener).

¹¹⁵ Partenaires Delta Partners, “Review of the Foreign Worker Program Pilot Project for Workers Requiring Lower Levels of Formal Training,” 11.

¹¹⁶ Greg Pretty, CIMM Study, Meeting 36 (St. John’s), 0920.

¹¹⁷ John Doyle, CIMM Study, Meeting 22 (Winnipeg), 0955.

Access to Permanent Residency

The nature of the PPORLLFT as a temporary foreign worker program, and its recent expansion, bring to the fore the issue of status, specifically the nature of the relationship between PPORLLFT TFWs and the Canadian state. Amongst interested parties, including employer groups,¹¹⁸ organized labour groups, TFW advocates, and MPs, there is a perhaps surprising consensus that, contrary to the view of the federal government (as represented by the rules of the program), it is, in fact, not necessarily in anyone's best interest for TFWs to be temporary. They all agree that there should be a route to permanent residency for TFWs here under the PPORLLFT. But the questions of how, when, and which TFWs should be given permanent status are much more contentious.

Though there are certainly TFWs who plan to stay in Canada temporarily and return home once their contract is completed, most TFWs hope to stay in the country permanently. Yessy Byl, who was employed by the Alberta Federation of Labour as their TFW advocate, reports that “of the hundreds and hundreds of temporary foreign workers I have dealt with over the last two years, almost all have come here not to work temporarily but to immigrate to this country.”¹¹⁹ Similarly, Silvia Bendo, executive director of the Construction Recruitment External Workers Services and Building Industry and Land Development Association (BILD), says that “the reality is that most temporary foreign workers within our jurisdiction see the temporary foreign worker program as a stepping

¹¹⁸ Employers and employer groups supportive of access to permanent residency for lower skilled workers include the following: Tim Hortons, CIMM Study, Meeting 20 (Moose Jaw), 1125; Prince George Hotel, Meeting 34 (Halifax), 1010; Sunterra Meats, Meeting 19 (Edmonton), 1420; and Union des producteurs agricoles, Meeting 29 (Montreal) 1115.

¹¹⁹ Yessy Byl, CIMM Study, Meeting 19 (Edmonton), 1315.

stone to permanent residency.”¹²⁰ This is also true for Andrew Telegdi, a Liberal MP and former chair of the Committee: “my experience has been that a lot of the people coming to my office are people who want to stay, [even though] the government is expending a great deal of resources to try to get rid of them.”¹²¹ It seems clear, then, that most TFWs, despite their temporary status, do want to stay in the country permanently.

Not only do TFWs themselves want to stay in the country permanently, but the Canadian employers who hire them also often want them to stay. Employers are often frustrated by the fact that their TFW employees have to leave the country after four years. From their perspective, they have invested resources into the training of TFWs and do not want to have to continually go through this process with new TFWs. As a result, various employers support the possibility of having PPORLLFT employees transition to permanent residency. Currently, the only way for PPORLLFT TFWs to make this transition is through a Provincial Nominee Program (PNP) in a province that accepts NOC C or D level workers. In fact, many employers already use PNPs as way to keep employees, by sponsoring their transition to permanent residency. Sunterra Meats, which has a staff of 110, 42 of which are TFWs,¹²² is an example of a company that has taken this approach:

I would say that we don't really view [the PPORLLFT] as a temporary program. We very much see it as a program that will be part of our strategy at least for the foreseeable future... So from our perspective, the provincial nominee program that exists here in Alberta is very much a part of our go-forward strategy. We recruit and select on the basis that we want these folks to be a part of our team long term, not just on a temporary basis, obviously recognizing that in some cases it will be temporary, but we really don't see it as a temporary strategy from our business standpoint.¹²³

¹²⁰ Silvia Bendo, CIMM Study, Meeting 26 (Toronto), 1405.

¹²¹ Andrew Telegdi, CIMM Study, Meeting 19 (Edmonton) 1440.

¹²² Miles Kilner (Sunterra Meats), CIMM Study, Meeting 19 (Edmonton), 1440.

¹²³ Ibid., 1420.

A number of employers support this kind of PPORLLFT/PNP combination and see it as useful for selecting the most desirable employees for sponsorship for permanent residency. “We think it's in the best interest of all Canadians to have the six-month probationary period to see if they are a good fit before we just stamp somebody with a permanent residency card and say they're free to do as they wish in our country.”¹²⁴ The manager of a Halifax hotel also sees the hotel's engagement with the PPORLLFT and PNP in this way, even though Nova Scotia has not yet supported nominees from the PPORLLFT. The hotel manager sees an important role for employers in vetting potential permanent residents and choosing the best: “we're bringing those who want to come, and then based on their experience here, we are saying, ‘Okay, is this someone who's going to add to our economy, our society, or not?’ Then you can say, ‘Yes’, and then really represent them well, or you can say, ‘Well, actually, you know, no, it was bumpy.’”¹²⁵ Colleen Beaumier, a Liberal MP, sums up these views when she says that, “I think what we're all working toward is a temporary worker program as a type of probationary period, a channel opening another door for immigration.”¹²⁶

An additional appeal of the PPORLLFT/PNP combination for employers is the speed at which they can access new employees. The permanent residency stream for immigration is seen as too slow, but a combination of the PPORLLFT with its speed and ease of access to TFWs, and the PNP (or a Canadian Experience Class expanded to include NOC C and D occupations) for long-term stability, is seen as desirable. Trucking groups in Saskatchewan and New Brunswick already use the combination of the

¹²⁴ Chelsea Jukes (Westcan Bulk Transport Ltd.), CIMM Study, Meeting 20 (Moose Jaw), 1135.

¹²⁵ Carol Logan (Prince George Hotel), CIMM Study, Meeting 34 (Halifax), 1055.

¹²⁶ Colleen Beaumier, CIMM Study, Meeting 20 (Moose Jaw), 1140.

PPPORLLFT and a PNP to quickly hire TFWs on what they hope will be a permanent basis. “Applying regularly as a permanent resident would take so long that the position wouldn't be available when the employee gets here. It's just too long a process. The combination of temporary foreign worker, together with the provincial nominee program, in my view, is a wonderful combination and does serve the industry very well.”¹²⁷ The Saskatchewan government is also supportive of this approach, and their immigration policy is tailored to support a two-step process of quick access to TFWs for employers, followed by the possibility after six months of TFWs getting permanent residency via the Saskatchewan Immigrant Nominee Program¹²⁸ with employer sponsorship.

The temporary foreign worker program generally has quicker access to workers than can be provided through an immigration program... so it's very critical for employers... We've designed our nominee program to take advantage of that fact, and we have several categories in which individuals come into the province initially on a temporary work permit gained through a labour market opinion process with Service Canada. When they're here for six months, they can then apply to our nominee program for permanent status. So we see that two-step program as often serving employers very effectively. If we can get more temporary foreign workers here, we think it'll build our program and help us meet our goals as well.¹²⁹

In sum, employers are supportive of there being a path to permanent residency for their PPORLLFT workers, but they envision a two-step process that involves a probationary period during which employers can play a role in deciding which workers will be able to go forward for permanent residency.

Other groups are wary of expanding the PNP or the CEC to facilitate more permanent residency for NOC C and D TFWs. For these groups, there is a more fundamental issue of an immigration system that excludes most lower-skilled workers

¹²⁷ John Robison (Atlantic Provinces Trucking Association), CIMM Study, Meeting 32 (Fredericton), 1135.

¹²⁸ The Saskatchewan Immigrant Nominee Program is that province's version of the Provincial Nominee Program.

¹²⁹ Eric Johansen, CIMM Study, Meeting 20 (Moose Jaw), 1010.

from the permanent residency stream. The origin of the exclusion of lower-skilled workers from the permanent residency stream and their relegation to the TFWP lies in *Immigration and Refugee Protection Act* (IRPA) and the Federal Skilled Worker Program, also known as the points system. Part of the *IRPA*, introduced in 2002, was the alteration of the points system for economic class migrants whereby it became all but impossible for applicants from lower socioeconomic backgrounds to accumulate enough points to gain permanent residency.¹³⁰ This is an issue that Liberal MP Andrew Telegdi commented on repeatedly during Committee sessions, often pointing out that many successful Canadian entrepreneurs, for example Frank Stronach, who immigrated to the country as a lower-skilled worker, would not have been allowed in under today's rules. Telegdi believes that "we have an immigration system that is broken. What is fundamentally needed is a points system that reflects the needs of the economy."¹³¹

The "needs of the economy" include the need for workers in lower-skilled occupations: demand has continued to exist in Canada for workers willing to do jobs requiring lower levels of skill and training. Because the *IRPA* excludes this class of workers from direct permanent residency via the points system, it has created an imbalance between the labour needs of the Canadian economy and the profiles of new Canadian permanent residents. Thus, the Canadian Bar Association points out that, "because the framework within *IRPA* was unresponsive to the actual demands of the Canadian labour market, the Project was devised to fill the gap occasioned by these

¹³⁰ Canadian Bar Association, "Low Skilled Worker Pilot Project," 1-2; Also, Olivia Chow: "In connection with the temporary foreign workers program, one of the problems with the point system is that it does not really give many points to people who don't have a degree and cannot speak fluent English. As a result, many of the employers have to go through the temporary foreign worker route. It wasn't always like that, by the way. In the early 1990s and all through the 1980s there were A, B, C, and D categories, and people were coming in all categories. Now it's mostly stacked on the A and B categories, the people with degrees." CIMM Study, Meeting 26 (Toronto), 1350.

¹³¹ Andrew Telegdi, CIMM Study, Meeting 19 (Edmonton), 1440.

inherent problems.”¹³² The crucial point here is that demand for employees in NOC C and D jobs is not temporary, and thus if we as a nation are going to fill this demand by accepting workers from other countries, their acceptance should be on a permanent rather than temporary basis. Eugenie Depatie-Pelletier, a university researcher, makes the point that any fixing of the immigration system “will have to be, for sure, to adapt the point system in order to maybe have this guest worker program only work for temporary labour shortages and not permanent labour shortages, whereby we put temporary people under temporary status.”¹³³ Kenneth Zaifman, an immigration lawyer, adds that “if we had a selection system that addressed the reality of the labour market that we find ourselves in, then the need for temporary foreign workers would diminish.”¹³⁴

Though the PNP or an expanded CEC might succeed in overcoming the problem of the exclusion of lower-skilled workers from permanent residency, in doing so it would alter the character of the immigration system by placing much more power and influence in the private sphere. The major change is that routes to permanent residency that go via the TFWP involve a significant role for employers in decisions about new permanent residents; in contrast the selection criteria of the FSWP are formed through legislative processes and ministerial initiatives. Stan Raper, of the United Food and Commercial Workers, recognizes that the increase in employer-driven processes like the PNP and CEC are the result of employers taking matters into their own hands in their search for employees willing to take low paid work. “The PNP, the provincial nominee program, the economic class now that is being put in place [the CEC], the high-skilled workers

¹³² Canadian Bar Association, “Low Skilled Worker Pilot Project,” 1-2; See also, Eugenie Depatie-Pelletier, CIMM Study, Meeting 31 (Quebec), 1330.

¹³³ Ibid.

¹³⁴ Kenneth Zaifman, CIMM Study, Meeting 22 (Winnipeg), 1055.

program, all those are, again, employer-driven programs. So employers are again seeking ways to address the problem, the broken system of the points program, through these three types of programs.”¹³⁵ But the fear is that as the TFWP gains importance within the broader context of Canadian immigration policy, Canadian immigration policy will be increasingly employer-led. “There’s no cap on foreign workers, and it means we have an employer-driven immigration system, putting nation building in the hands of the private sector—not to mention the role of the third party recruiters in this process.”¹³⁶ This prospect is disturbing to Gil McGowan, the president of the Alberta Federation of Labour (AFL), who points out that “we’ve made a deal with immigrants historically: they come here, they work hard, and in exchange we give them citizenship. What we’re doing now is saying we’ll take your work, and when we’re finished with you, goodbye. That’s not the Canadian way, and it won’t build the country we want for the future.”¹³⁷

This more nationalistic concern about the character of nation building is strongly reflected in the final report prepared by the Committee:

One oft-repeated phrase during the Committee’s hearings was that ‘if a person is good enough to work here, he or she is good to enough to stay here’. The Committee shares this sentiment and is committed to recommending the long-term changes to the immigration system that would return permanent immigration to its rightful place of priority.¹³⁸

These views that are critical of a two-step employer-led immigration process share a mix of a moralistic sense (that by withholding citizenship we are reneging on a historic Canadian value of immigration and hard work in exchange for citizenship), a nationalistic

¹³⁵ Stan Raper, CIMM Study, Meeting 26 (Toronto), 1405.

¹³⁶ Jenna Hennebry (Wilfred Laurier University), CIMM Study, Meeting 28 (Toronto), 1415.

¹³⁷ Gil McGowan, CIMM Study, Meeting 19 (Edmonton), 1555.

¹³⁸ Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 53.

sense (that immigrants build the nation), and a democratic sense (that legislative processes are better than market-driven private sector processes).

Besides these three kinds of critical views, the process of getting permanent residency via the TFWP is also worrisome for some because of the unequal relationship it encourages between TFWs and their employers. There are strong links between the quasi-indentured status of TFWs and their likelihood to be exploited, as is discussed in more detail below. Because of their restricted work permit, TFWs are already tied to one employer, and the process of getting permanent residency through employer sponsorship further binds migrants to employers.¹³⁹ Thus, a system of permanent residency via the TFWP would see future Canadian citizens having to go through a potentially exploitative initiation process while they wait for their full rights to be activated. This would seem to be a poor approach to introducing migrants to their new country. The AFL has proposed a different approach, arguing that “if we need people in this country to build houses, work on our construction sites, serve our coffee, then we should bring them in as permanent residents and prospective citizens, rather than as a new second class of disposable workers.”¹⁴⁰ This view is reflective not just of the ‘good enough to work, good enough to stay’ mantra but also of a more humanistic view: we should give permanent residency to foreign workers not (just) because it is good for the nation, but also out of respect for our common humanity and in support of the right to decent meaningful work.

¹³⁹ Jenna Hennebry (Wilfred Laurier University), CIMM Study, Meeting 28 (Toronto), 1415.

¹⁴⁰ Gil McGowan, CIMM Study, Meeting 19 (Edmonton), 1555.

Exploitation and Discrimination

The exploitation of TFWs within the PPORLLFT has been widely commented upon, perhaps most notably by the Auditor General in her fall 2009 report,¹⁴¹ but also by many witnesses before the CIMM. Exploitation of TFWs is primarily the result of actions by unscrupulous employers and by foreign and domestic recruitment agencies (also known as immigration consultants). But in some instances the rules and regulations of the PPORLLFT are themselves exploitative, while in other instances the rules of the program create situations that make the exploitation of TFWs more likely. Additionally, in many cases there are rules in place to prevent exploitation, but compliance with these rules is neither monitored nor enforced by relevant authorities.

The nature of the exploitation of TFWs is wide-ranging. Two thorough studies of exploitation of TFWs have been produced by the Alberta Federation of Labour, which created a dedicated Temporary Foreign Worker Office in 2007 after becoming aware of the magnitude of the problem. The fact that in any given year more than 50% of PPORLLFT workers are in Alberta adds extra weight to these reports.¹⁴² Foreign workers were found to experience a series of difficulties and abuses in both their living and working conditions. These included,

Payment of exorbitant and illegal fees to brokers for finding employment; Job description, wages and other working conditions not matching original promises; Not receiving overtime pay and other contraventions of employment standards; Expectations of unpaid “extra” work for the employer; Sub-standard housing arrangements, often at excessive rents owed to employer; Experience of racism from employer, co-workers and community; Threats of deportation from

¹⁴¹ Office of the Auditor General, “Selecting Foreign Workers Under the Immigration Program.”

¹⁴² In 2006, 52.7% of PPORLLFT TFWs were in Alberta, in 2007, 68.1%, 2008, 64.1%, and 2009, 51.2%. HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 8: Pilot Project for Occupations Requiring Lower Levels of Formal Training.”

employer; Misleading promises from employers, brokers and government of possibility of permanent residency and citizenship.¹⁴³

An example of the human suffering incurred was presented to the CIMM by an Edmonton-based employment broker: “We recently had a group of workers—this is just an example—who were brought over and only worked a short period of time; they were promised long-term work under their work permit, but they were left literally out in the cold. When it was minus 50 here in Edmonton in January, these workers were let go and really had no place to work.”¹⁴⁴ Alarming, a more recent report by the Institute for Research in Public Policy states that “while only a small minority of employers unscrupulously exploit temporary foreign workers, violations of labour and employment law are increasing. Recent Alberta government reports, for example, suggest that three-quarters of inspected businesses that employ temporary foreign workers broke the province’s employment rules.”¹⁴⁵ It is fair to extrapolate the Alberta experience to other provinces, especially in light of testimony from across the country about the exploitation of TFWs.¹⁴⁶

One particular source of exploitation is immigration consultants or employment brokers. Foreign workers in most cases arrange their temporary employment in Canada before they arrive here, and thus there is an inherent difficulty in making connections between potential employers and employees. This gap is often filled by consultants who have connections in foreign countries and can broker employment deals. Of course, there is a fee for this type of service, but LMO rules and some provincial labour laws specifically say that fees associated with this service must be covered by employers and

¹⁴³ Yessy Byl, “Entrenching Exploitation,” 12.

¹⁴⁴ Trevor Mahl, CIMM Study, Meeting 19 (Edmonton), 1435.

¹⁴⁵ Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program,” 39.

¹⁴⁶ For example BCYTBTC, “Submission to the House of Commons Standing Committee.”

cannot be downloaded to employees. However, it appears not to be uncommon for TFWs to pay large fees to these brokers without the employer knowing, or for employers to pass on these fees to TFWs in the form of paycheck deductions. Fees vary but on average are \$8000.¹⁴⁷

Though there are many rules associated with the PPORLLFT that are meant to ensure fair treatment of workers, without monitoring and enforcement these rules are rendered irrelevant. The Auditor General's report in November of 2009 contains many damning assessments of the TFWP. One significant concern is that: "there is no systematic follow-up by either [CIC or HRSDC] to verify that in their previous and current employment of temporary foreign workers, employers have complied with the terms and conditions (such as wages and accommodations) under which the work permits were issued."¹⁴⁸ In the opinion of the AFL, "the federal government continues to have NO enforcement capacity, and has shown no willingness to hold employers accountable for contraventions."¹⁴⁹ But, what is most shocking is that HRSDC openly states that it has no mandate to investigate and enforce employment standards:

The Government of Canada is not a party to the contract [between TFWs and their employers]. Human Resources and Skills Development Canada (HRSDC)/Service Canada (SC) has no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of employment. It is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and to look after their own interests.¹⁵⁰

¹⁴⁷ Ibid., 4-5.

¹⁴⁸ Office of the Auditor General, "Selecting Foreign Workers Under the Immigration Program," 2-3.

¹⁴⁹ Yessy Byl, "Entrenching Exploitation," 2.

¹⁵⁰ HRSDC, "Instruction Sheet to Accompany Employment Contract," (October 28, 2011).
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/contracts-forms/annex2.shtml

As a result, the obligation to ensure labour standards are met is downloaded to the worker, rather than being born collectively through government monitoring and enforcement.

This worker-driven employment standards approach is coupled with the fact that most low-skilled workers are not highly educated and receive no settlement services since they are not supposed to settle in the country.¹⁵¹ Orientation to the languages and cultures of Canada would help to improve the experiences of TFWs, some of whom are in Canada for up to four years. But providing services for TFWs becomes particularly important in terms of providing education about the rights to which they are entitled and their ability to advocate for themselves in a complaint driven system. The AFL has raised all of these points: “TFWs theoretically have the same basic employment rights as Alberta workers, but enforcing those rights is nearly impossible. Lack of awareness, language barriers and misleading employer-provided information are common problems. The biggest problem is Alberta’s complaint-driven enforcement system which does not work for TFWs.”¹⁵² Though provision of services to help TFWs overcome the language and cultural barriers that they face and to increase their likelihood of successfully advocating for themselves in the workplace would be useful, this would still do little to improve the lack of monitoring and enforcement by federal or provincial governments.

Unfortunately, this situation does not seem likely to change based on recent federal government announcements. As mentioned in chapter one, changes have recently been implemented, in part, to reduce the possibility and instances of exploitation of TFWs. From the federal government’s perspective, “in recent years both the federal and

¹⁵¹ Alberta offers some services to TFW, but the federal government does not fund services for TFWs (though they do provide funding to help employers with the process of hiring TFWs).

¹⁵² Yessy Byl, “Temporary Foreign Workers, Alberta’s Disposable Workforce,” 2.

provincial governments have undertaken numerous initiatives to improve the Temporary Foreign Worker Program and to enhance protections offered to temporary foreign workers.”¹⁵³ But for the AFL, “the result of their efforts have mostly benefitted employers and done little for foreign workers.”¹⁵⁴ In regards to the much-vaunted “bad employer list,” for example, again it is the responsibility of TFWs to find and read the list and make sure that their employment offer is not from a delinquent employer. Taking this even further, modifications to the *Immigration and Refugee Regulations* actually *require* TFWs to check this list, and hold them responsible if they do not. It is now the responsibility of the foreign worker “to not enter into an employment agreement, or extend the term of an employment agreement, with an employer whose name appears on the list maintained on the Department’s website.”¹⁵⁵ The Canadian Migration Institute points out that: “this is an unreasonable expectation of TFW applicants, notably when the TFW program includes lower-skilled employment positions at NOC Levels C & D, employment positions which by definition require little formal education and often no more than basic Official language skills.”¹⁵⁶

An additional barrier faced by TFWs in accessing the rights that they possess is insecurity related to immigration status, and fear of deportation. Likely lacking full knowledge of their rights, TFWs might thus be fearful of negative repercussions if they attempt to access these rights, for example losing their job if they speak out. It is worth noting that these fears on the part of TFWs would not be entirely unjustified. The case of

¹⁵³ Citizenship and Immigration Canada, “Backgrounders - Improvements to the Temporary Foreign Worker Program.”

¹⁵⁴ Yessy Byl, “Entrenching Exploitation,” 2.

¹⁵⁵ Canadian Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations,” 3061.

¹⁵⁶ Canadian Migration Institute, “Recommendations on the Proposed Amendments to the *Immigration and Refugee Regulations* Temporary Foreign Workers,” (December 8, 2009), 8.

the Canada Line subway construction project in BC, discussed above, demonstrates both that employers will fight allegations of labour code violations and that discriminatory labour practices do exist.¹⁵⁷

In other ways the policies and actions of the government actually facilitate exploitation and discrimination or are themselves exploitative or discriminatory. Examples of this include that TFWs must contribute to services that they are unlikely or unable to receive, the restriction on the labour mobility of TFWs through single-employer visas, and the tendency to privilege some migrants over others based on social class or country of origin.

Accessing social services like EI, CPP, and worker's compensation can be difficult or impossible for PPORLLFT workers, despite the fact that they pay income taxes, and EI and CPP premiums. TFWs can have difficulty qualifying for EI because applicants and recipients need to show that they are available for work, and that they are present in Canada. If workers' status, i.e. their legal ability to work, is tied to the job that they just lost, then technically they are unavailable to work. "This puts temporary foreign workers in a legal and financial bind: on the one hand, they cannot get EI because they are not legally available for work; on the other, once they are legally available for work — having found new employment and having applied for changes to their work permit — they are no longer eligible for EI."¹⁵⁸ Additionally, EI regulations require recipients to be present in Canada. As of April 2011, once TFWs have worked in Canada for a cumulative period of four years, they must return to their country of origin for at least four years in

¹⁵⁷ On the Canada Line labour dispute see Fudge and MacPhail, "The Temporary Foreign Worker Program in Canada," 38-41; and BCYTBC, "Submission to the House of Commons Standing Committee on Citizenship and Immigration," 6-7.

¹⁵⁸ Nakache and Kinoshita, "The Canadian Temporary Foreign Worker Program," 20.

order to reapply for another contract in Canada. Normally, ending a contract (as opposed to being fired or quitting) entitles EI contributors to receive benefits; however, foreign workers must return home after finishing the contract which brings them up to the four year limit, and this immediately disqualifies them from receiving EI benefits because they are no longer present in the country.¹⁵⁹ Even if TFWs end a contract or are laid off before accumulating four years of work, the jurisprudence on whether TFWs can qualify for EI is confusing, misleading, and inconsistently applied. HRSDC states that “Temporary foreign workers are eligible to receive regular and sickness Employment Insurance benefits if they are unemployed, have a valid work permit and meet eligibility criteria, including having worked a sufficient number of hours.”¹⁶⁰ But the AFL reports that “in conversations with other advocacy groups across Canada, it appears that the EI offices in other provinces are routinely refusing EI benefits to foreign workers and that most people still believe that EI is simply not available to foreign workers.”¹⁶¹ However, TFWs have been successful in receiving parental leave benefits, though only recently and with the help of organized labour advocates. Interestingly, the CIMM recommended that for TFWs both EI contributions and EI benefits be eliminated and replaced by an employer-funded “pool of money for emergency support of unemployed temporary foreign workers in Canada.”¹⁶²

TFWs are entitled to all of their CPP benefits, though gaining access to these benefits can be difficult in practice. CPP contributors can draw on their pension from anywhere in the world, but “temporary foreign workers are often in their prime working

¹⁵⁹ Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 41-42.

¹⁶⁰ Qtd. in Yessy Byl, “Entrenching Exploitation,” 24.

¹⁶¹ Ibid.; See also Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program,” 19-21.

¹⁶² Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 26.

years, and by the time they are eligible to apply may have lost all contact with Canada.”¹⁶³ But even if they have not lost contact with Canada, as with EI, there is a lack of clarity from the bureaucracy about whether TFWs actually can collect CPP, with the AFL, for one, reporting that “CPP will only transfer contributions if their home country has a similar plan – a rarity.”¹⁶⁴ Similarly, the BCYTBCTC reported to the CIMM that they had confirmed with CPP official that TFWs cannot collect CPP.¹⁶⁵ In a written submission, the BCYTBCTC also notes that “TFWs are not provided with information and have little or no knowledge about their CPP entitlement as foreign residents.”¹⁶⁶ In sum, it appears that even if TFWs are technically allowed to collect CPP, currently it is unlikely that many of them will.

In the area of workers’ compensation TFWs also face certain barriers to accessing their entitlements. Many of the occupations of TFWs carry a higher risk of workplace injury. Unfortunately, researchers in this area have reported that TFWs are both more likely to be hurt and less likely to be compensated.¹⁶⁷ Accessing compensation after having been injured while at work is complicated for TFWs because “workers compensation is awarded on the basis of evidence of disability from recognized medical practitioners and other care providers. If a worker becomes permanently injured and qualifies for the benefit, it can be collected from anywhere. If a worker is not permanently injured, his or her availability for work in the province of injury may affect on-going

¹⁶³ *Ibid.*, 44.

¹⁶⁴ Yessy Byl, “Entrenching Exploitation,” 23.

¹⁶⁵ Joe Barrett, CIMM Study, Meeting 18 (Richmond, BC), 1500.

¹⁶⁶ BCYTBCTC, “Submission to the House of Commons Standing Committee on Citizenship and Immigration,” 7.

¹⁶⁷ Sylvie Gravel (University of Quebec at Montreal), CIMM Study, Meeting 29 (Montreal), 0905; also, Jenna Hennebry (Wilfred Laurier University), CIMM Study, Meeting 28 (Toronto), 1410.

benefits.”¹⁶⁸ As with EI, a worker’s ‘availability for work’ is complicated by their single-employer visa. For TFWs there is no possibility of retraining or changing occupations, as is often the case with Canadians who are injured. If a TFW cannot return to the same employer and the same job, he or she would be ineligible to work and thus would not be able to receive workers compensation in some cases. Also, TFWs may need to prove ongoing disability after having left the country, requiring medical appointments in their home country. “‘The current system does not always take into account the difficulties workers, especially those in remote areas, experience just to get to a qualified doctor or to pay for appointments, exams, and reports.’ Regular medical appointments may be required to demonstrate the on-going need for payments.”¹⁶⁹ More troubling are cases where unscrupulous employers actively avoid being punished for injuries to workers in their employ. Justicia for Migrant Workers has reported numerous instances of farm workers being put on a plane home by employers in order to avoid higher insurance premiums. Though TFWs do not pay into workers’ compensation, like they do with EI and CPP, the challenges they face in accessing fair compensation are nonetheless exploitative and discriminatory, particularly in comparison to the treatment of higher skilled TFWs, permanent residents and citizens.

In all of the examples above one of the main causes of the exploitation of PPORLLFT TFWs is that they are tied to one employer as a condition of their work visa. As a result,

employers are able to exercise undue influence on the workers because they can't move from one employer to another, as Canadians can, if they're mistreated. The employer holds a very heavy hammer over their heads, and this lack of mobility is

¹⁶⁸ Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 42.

¹⁶⁹ *Ibid.*, 43.

one of the big reasons why these workers are much more vulnerable in the workplace than Canadian workers.¹⁷⁰

Technically, TFWs *are* able to change employers in Canada or, rather, they are permitted to leave an employer, to quit their job if they feel they are being exploited. This fact was pointed out during the CIMM hearings by representatives from Tim Horton's, Maple Leaf, and the Canadian Foodservices and Restaurant Association, likely three of the largest employers of TFWs.¹⁷¹ Though this is true, as these three representatives went to some lengths to show, it is unlikely that TFWs would be able to change employers as they would have to find a new employer with a valid LMO or convince an employer to obtain a new LMO. A submission to the CIMM by the BCYTBCTC explains why this is problematic:

accessing the knowledge and the means to activate this process is beyond the resources of most TFWs. Language and cultural barriers are compounded by the challenges of being a newcomer with few connections or contacts in their new Canadian community. How will a TFW, unable to communicate in English, find a new employer and explain the LMO process to an employer who is unfamiliar with hiring foreign workers?¹⁷²

Additionally, Jenna Hennebry, a professor at Laurier University, makes the point that even if TFWs are aware of the possibility of changing employers and have the knowledge to successfully navigate this process their success still depends not upon their resourcefulness or ability to work, but upon a future employer. "TFWs could change employers, but it is still employer-driven in the sense that there needs to be another employer willing to hire."¹⁷³ Unlike citizens or permanent residents, their ability to

¹⁷⁰ Gil McGowan (AFL), CIMM Study, Meeting 19 (Edmonton), 1550.

¹⁷¹ Chris Thomas (Tim Horton's), Meeting 20 (Moose Jaw), 1120; Joyce Reynolds (Canadian Restaurant and Foodservices Association), Meeting 28 (Toronto), 1415; Rory McAlpine (Maple Leaf Foods), Meeting 22 (Winnipeg), 1045.

¹⁷² BCYTBCTC, "Submission to the House of Commons Standing Committee on Citizenship and Immigration," 5-6.

¹⁷³ Jenna Hennebry, CIMM Study, Meeting 28 (Toronto), 1425.

support themselves relies upon the decision of an employer not just to offer them a job but also to go through the LMO process. And, having successfully switched employers, the TFW still finds him or herself facing the same barriers to labour mobility and the same possibility of exploitation as was present with the previous employer.

The precariousness of the employment options of TFWs was demonstrated recently in Slave Lake, Alberta, after a forest fire destroyed much of the town, including the places of work of at least sixty TFWs. It was not just their place of work that was destroyed; it was their *only allowed* place of work that was destroyed. Being ineligible for Employment Insurance, and facing the difficult process of finding a new employer, these workers will have no way to support themselves or their families back home, likely for several months.¹⁷⁴ The view that single-employer work permits encourage exploitation was well represented during the CIMM meetings, and is reflected in the Committee's final report,¹⁷⁵ including the recommendation that "the Government of Canada discontinue making work permits of temporary foreign workers employer-specific, and that it make such work permits sector-and province-specific instead."¹⁷⁶

While there is a fairly broad consensus that the single-employer visa facilitates exploitation, others make more serious allegations about the PPORLLFT violating Canadian laws and international conventions, and being highly discriminatory along racial and class lines. Canadian legal researcher, Eugenie Depatie-Pelletier argues that aspects of Canada's three low-skilled temporary foreign worker programs are in violation of the United Nations *Convention for the protection of the rights of all migrant workers*

¹⁷⁴ Amy Dempsey, "Devastation from Slave Lake fire ripples overseas," *Toronto Star*, (May 18, 2011).

¹⁷⁵ See Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 24-26.

¹⁷⁶ *Ibid.*, 26.

and members of their family, the U.N. Convention against practices analogous to slavery, and the Canadian Charter of Rights and Freedoms.¹⁷⁷ “Since the *Immigration and Refugee Protection Act* and *Regulations* implementation in 2002, the Canadian administrative practice of ‘legal serfdom’ is now applied to all workers issued a work permit...for any of the occupations classified ‘low-skilled’ in Canada...unless they come from Europe, ‘white’ Commonwealth or other privileged countries.”¹⁷⁸ The Ontario Council of Agencies Serving Immigrants has also brought forth a legal argument before the CIMM, proposing that aspects of the TFWP “run contrary to the intentions of the *IRPA*.”

Paragraphs 3(1)(b) and (c) state that their purpose is to advance two combined objectives: to enrich the social and cultural fabric of Canadian society and to develop Canada's economic prosperity. We're focusing on one and forgetting the other.

Paragraph 3(1)(e) refers to the mutual obligations of new immigrants and Canadian society. We have shared and mutual responsibilities when we seek to successfully integrate immigrants to Canada. By using temporary workers, we shirk the responsibility of local society to integrate immigrants. In a few years, we will be relying completely on immigration to build the country's future.¹⁷⁹

The president of the New Brunswick Multicultural Council warns that “in years to come we will look at the situation in the same way we look back now and remember the Chinese head tax and things like quotas that we had for certain people coming into Canada.”¹⁸⁰ Increasing divisions between migrants along racial and class lines is also pointed out by Macdonald Scott, a Toronto immigration paralegal:

¹⁷⁷ Depatie-Peletier, “Under legal practices similar to slavery according to the U.N. Convention: Canada’s ‘non white’ ‘temporary’ foreign workers in ‘low-skilled’ occupations.” See also, Alberta Civil Liberties Research Centre, “Temporary Foreign Workers in Alberta: Human Rights Issues, Chapter 3: International Law and Temporary Foreign Workers,” 2010.

¹⁷⁸ Eugenie Depatie-Peletier, “Under legal practices similar to slavery according to the U.N. Convention: Canada’s ‘non white’ ‘temporary’ foreign workers in ‘low-skilled’ occupations,” 17.

¹⁷⁹ Roberto Jovel, CIMM Study, Meeting 28 (Toronto), 1545.

¹⁸⁰ George Maicher, CIMM Study, Meeting 32 (Fredericton), 1015.

we're going to be creating a situation...[where] we're going to be offering permanent residency with all its commensurate rights, privileges, and access to services to those who come from middle and higher classes, upper classes, and preferably from north countries. Then we're going to be offering a sort of serf status, almost, to those who come to lower-skilled jobs, those who come from south countries, those from poor and working classes in other countries.¹⁸¹

As a result of all of these considerations, about the effect of the program on the labour market, the access to permanent residency for TFWs, and the exploitative and discriminatory features of the program, a number of groups have called for a moratorium on any expansion of the PPORLLFT or for abolition of the program.¹⁸² Jill Hanley, speaking on behalf of a group of researchers at McGill and Concordia universities, sums up the reasons why the program needs to be seriously re-evaluated.

Our work on precarious status workers has clearly demonstrated that there is a problem with these workers' feeling that they have the full rights of Canadian workers. We see that in labour rights, health, education, family separation and reunification, sense of belonging, and unionization—in all of these areas—temporary foreign workers face major barriers. Sometimes the barriers are legal—they are excluded in policy from certain benefits—and sometimes it's the conditions of their work, or their fear of ultimate deportation or refusal of an eventual permanent status here in Canada.¹⁸³

Conclusion

The transcripts of the CIMM's 2008 study of temporary foreign workers in Canada contain a wealth of information about the state of Canada's temporary foreign worker program. The transcripts also reveal major tensions that exist between employer groups and organized labour groups over the effects of the program on the economy, and over the role of the TFWP in Canada's permanent immigration system. On the one hand,

¹⁸¹ Macdonald Scott, CIMM Study, Meeting 25 (Toronto), 1020. See also Nicole Fillion (Ligue des droits et libertés), CIMM Study, Meeting 30 (Montreal), 1335.

¹⁸² Maytree, "Abolish the Low-skilled Temporary Foreign Worker Program," *Policy in Focus* 10 (December, 2009); Canadian Labour Congress, "Canadian Labour Congress to Ministers Solberg and Finley: Where are the Filipino 11? Temporary Foreign Worker Program Should Be Suspended," November 27, 2007; National Union of Public and General Employees, "Land of Denied Opportunity," 15.

¹⁸³ Jill Hanley (McGill University), CIMM Study, Meeting 29 (Montreal), 1110.

employers see the PPORLLFT as crucial to addressing labour shortages, and see programs like the PNP and CEC as attractive options for permanent retention of valued TFW employees. On the other hand, labour groups are skeptical about the necessity of the program in terms of labour shortages and of its impact on the economy, seeing the program largely as a means to keep wages low. Labour groups, academics, and organizations dedicated to helping TFWs have also voiced concern over the effects of an increasing role for private sector employers in the selection of new permanent residents, and have highlighted serious issues of discrimination and exploitation resulting from the PPORLLFT.

Though the data present in the CIMM transcripts is both deep and broad, covering many issues from widely different perspectives, it lacks any analysis of the broader political economic context in which program has been developed. The PPORLLFT also needs to be examined in the light of the broader neoliberalisation that is taking place in Canada. This is the subject of the final two chapters.

Chapter Three: The PPORLLFT and Neoliberalism

Introduction

In the previous two chapters I have outlined a comprehensive understanding of the PPORLLFT, showing the motivations for its creation, the rules and regulations of the program, and its impact from the perspectives of a wide array of interested parties. Based on the information presented in these chapters, it is clear that the PPORLLFT has resulted in major issues relating to the exploitation of TFWs; has had significant and contentious effects on the labour market and labour relations; and has opened up larger questions about the granting of permanent residency and the nature of Canada's citizenship and immigration regime. As the quantitative importance of the TFWP, and the PPORLLFT as a major component of the program, increases, a qualitative shift is also occurring in Canada's immigration system. The regime is changing from an immigration system that puts a high value on legislated and objective new immigrant selection processes and wide-spread access to permanent settlement, to an immigration system that gives a direct role to employers in the selection of new immigrants and that encourages temporary and rotational migration. Understanding the driving factors behind this qualitative shift requires exploration of the broader political economic context in Canada and the world, and this is why looking at the process of neoliberalisation is so crucial. Thus, the purpose of chapters three and four of this thesis is to look at connections between the PPORLLFT and neoliberalism.

The discussion of neoliberalism in this chapter begins by providing a general sense of the rising significance of neoliberalism from the 1970s to the present time, and the substance of neoliberalism as an ideology. I then describe the putting into action of

neoliberal ideology, a process referred to as neoliberalisation, focusing on the role of the state in this process, on privatization, and on individualism. Finally, I argue that the PPORLLFT in its origins, development, and effects, is in fact significantly related to the process of neoliberalisation that has been taking place throughout the world over the last thirty years. Following this, in chapter four, I examine the effects that neoliberalisation has on inequality and class power dynamics, and look for similar effects resulting from the aspects of neoliberalisation that are reflected in the PPORLLFT. I present a critical perspective of these effects, demonstrating that the program results in increasing inequality, the disciplining of workers, and the erosion of democratic and collective influence of workers over the economy.

The Rise of Neoliberalism

The term ‘neoliberalism’ describes a set of ideological beliefs that have gained prominence over the past thirty years, beliefs primarily focused on liberating individuals from the fetters of the state and emphasizing the importance of the market. Neoliberalism began to gain prominence in the 1970s following the global economic crises that occurred during that decade, and the resulting decline of Keynesianism as the dominant political economic approach.¹⁸⁴ Although there were social democratic proposals for solving the crisis,¹⁸⁵ ultimately neoliberalism won out as the dominant political economic approach and has become the major political economic ideology throughout the world.¹⁸⁶

¹⁸⁴ For a more thorough analysis of this crisis see Gerard Dumenil and Dominique Levy, *Capital Resurgent Roots of the Neoliberal Revolution* (Cambridge, MA Harvard University Press, 2004), pp 21-37

¹⁸⁵ Greg Albo, “Neoliberalism and the Discontented,” *Socialist Register* (2008) 356 In a Canadian context, Cy Gonick observed that the initial response of the federal government to the crisis was to increase, not decrease, government intervention in the market, for example by creating the National Energy Program See Cy Gonick, “Lessons from Canada?” *Monthly Review* 32 8 (1981) 13, and Greg Albo, “Neoliberalism, the State, and the Left A Canadian Perspective,” *Monthly Review* 54 1 (2002) 48

¹⁸⁶ David Harvey, *Brief History of Neoliberalism* (Oxford Oxford University Press, 2007), 13 See also,

Since its rise in the 1970s, neoliberalisation has had an ever growing influence on contemporary politics and society in the world, as well as having a defining influence on public policy making at all levels of government. “Almost all states, from those newly minted after the collapse of the Soviet Union to old-style social democracies and welfare states such as New Zealand and Sweden, have embraced...some version of neoliberal theory.”¹⁸⁷ As a result, “global capitalism [has] entered a distinct and more aggressive phase. The previous willingness of business owners and governments to tolerate taxes, social programs, unions and regulations [has] petered out.”¹⁸⁸ Globally, the dominance of neoliberalism can be seen in the ascent of the proponents of neoliberal ideas to high public offices¹⁸⁹ and positions of leadership in major national and international public and private economic institutions, including the United States Treasury, the International Monetary Fund, and various large private banks.¹⁹⁰ Assumptions about the need to reduce government spending while increasing the role of the private sector and the market have become uncontroversial in mainstream discourse. “Neoliberalism has, in short, become hegemonic as a mode of discourse and has pervasive effects on ways of thought and political-economic practices to the point where it has become incorporated into the commonsense way we interpret, live in, and understand the world.”¹⁹¹ Given this dominance of neoliberalism, it is all the more important to understand the ideas and

Neal Brenner and Nik Theodore, “Cities and the Geographies of ‘Actually Existing Neoliberalism,” *Antipode* 34.3 (2002): 350.

¹⁸⁷ Harvey, *Brief History of Neoliberalism*, 3.

¹⁸⁸ Jim Stanford, *Economics for Everyone A Short Guide to the Economics of Capitalism* (London: Pluto Press, 2008), 46.

¹⁸⁹ For example Margaret Thatcher, Ronald Reagan, Bill Clinton, Paul Martin, Stephen Harper, and many others.

¹⁹⁰ David Harvey, “Neoliberalism as Creative Destruction,” *The ANNALS of the American Academy of Political and Social Science*, (2007): 23.

¹⁹¹ *Ibid*, 23.

values that constitute ‘neoliberalism,’ as well as to understand the impact and effects of these ideas and values on politics and society.

Defining Neoliberalism

As the name suggests, neoliberalism is a form of liberalism. In its common usage today, the term ‘liberalism’ generally refers to the more social, legal, and political aspects of liberalism, like tolerance of difference, the rule of law, and democracy. But “in economics... ‘liberal’ means something quite different: it means an absence of government interference.”¹⁹² The ‘neo’ in neoliberalism refers to a rejuvenation of principles related to neoclassical economics, which were themselves an advance from classical liberal economic philosophies from the 18th and 19th centuries associated with early capitalist thinkers like John Locke, Adam Smith, and David Ricardo.¹⁹³ Central principles of both classical and neoclassical liberalism include the sanctity of private property, the central importance of individuals and their ability of to make free choices, and the role of the unrestricted market in economic and social development.

The influence of these principles can be seen in descriptions of the economic and social objectives of neoliberal orthodoxy. David Clark, a political scientist, presents a number of defining values associated with neoliberal orthodoxy:

The neoliberal orthodoxy can be represented as a generalized belief that the state and its interventions are obstacles to economic and social development. This belief may be broken down into a number of more specific propositions: that

¹⁹² Stanford, *Economics for Everyone*, 47-8. But this, he says, is misleading because the state still plays a large and pivotal role.

¹⁹³ Locke, for example, in *The Second Treatise of Government* argues that the primary purpose for the formation of government is the protection of private property. Adam Smith, most famously, in *The Wealth of Nations* uses the metaphor of the ‘invisible hand’ to argue that if individual producers and consumers are allowed to act freely in their own individual interests, a state of affairs that is beneficial to all parties will result. In other words, the free market is more ideally suited to produce the most ideal benefit for society than any socially constructed attempt, like government regulation or protectionism.

public deficits are intrinsically negative; that state regulation of the labour market produces rigidities and hinders both economic growth and job creation; that the social protection guaranteed by the welfare state and its redistributive policies hinders economic growth; and that the state should not intervene in regulating foreign trade or international financial markets.¹⁹⁴

The common theme running through these economic policy prescriptions is reducing the involvement of the state in the economy and freeing up individuals' abilities to participate in competitive market processes related to all manner of activities affecting their day-to-day and long-term interests.

Notwithstanding neoliberal orthodoxy concerning the minimal state, within neoliberal theory there in fact remains an important role for the state in society and economy. As Jessop points out, "state intervention is not just a secondary activity aimed at modifying the effects of a self-sufficient market but is absolutely essential to capitalist production and market relations."¹⁹⁵ States play a crucial role in guaranteeing that contracts can be enforced and that private property is secured.

Based on these descriptions, then, it is clear that neoliberal ideologues privilege the individual over the collective, the market economy over the planned and regulated economy, and view the function of the state as primarily creating and enforcing this arrangement. Equally importantly, these values are meant not just to facilitate economic growth but also to enhance human well being, thus pointing to the moralistic foundation of neoliberalism.¹⁹⁶ But, though neoliberalism has become the major political economic philosophy, the process of putting into practice neoliberal ideals is complex and ongoing. Insofar as the goal of this chapter is to understand how neoliberal principles are connected

¹⁹⁴ David Clark, "Neoliberalism and Public Service Reform: Canada in Comparative Perspective," *Canadian Journal of Political Science* 35 4 (2002) 771

¹⁹⁵ Bob Jessop, *The Future of the Capitalist State* (Malden, MA: Polity Press, 2002) 43

¹⁹⁶ See Harvey, *Brief History of Neoliberalism*, 37, 181

to the creation and expansion of the PPORLLFT it is crucial to look not just at neoliberalism in theory but also in practice. In order to know whether the PPORLLFT is an example of neoliberalisation, of neoliberal theory in action, it is important to understand just what is neoliberalisation.

Neoliberalisation

While neoliberalism and neoliberalisation are intimately connected, it is important to distinguish the two. On the one hand, neoliberalism is an ideology, a set of political beliefs and goals. As discussed above, these beliefs emphasize the importance of reducing the role of the state and increasing the role of the market in all manner of social and economic processes, and that this process will increase the well-being of individuals. On the other hand, neoliberalisation describes the actually existing process of putting neoliberal ideology into practice, a process of change that is taking place at various scales, at different rates, and in slightly different ways, across the world. The process of neoliberalisation, unlike neoliberal ideology, is contingent upon the contextual embeddedness of neoliberal restructuring projects, and the reality that particular institutional contexts inevitably influence the ways that these projects are created, strategised, and implemented. Different places, different jurisdictions—for example nations, provinces, or municipalities—have different pre-existing laws, policies, customs, or institutional forms that have an impact on the implementation of neoliberal reforms.¹⁹⁷ In the words of Brenner and Theodore, “the evolution of any politico-institutional configuration following the imposition of neoliberal policy reforms is likely to demonstrate strong properties of path-dependency, in which established institutional

¹⁹⁷ Brenner and Theodore, “Cities and the Geographies of ‘Actually Existing Neoliberalism,’ 321; Jamie Peck and Adam Tickell, “Neoliberalizing Space,” *Antipode* 34:3 (2002).

arrangements significantly constrain the scope and trajectory of reform.”¹⁹⁸

This path-dependency is an important aspect of neoliberalisation, and means that in order to be able to recognize the process of neoliberal change taking place in any particular place, one has to be sensitive to the local context. In a Canadian context, established institutional and programmatic arrangements such as public provision of health care, labour laws, and social security programs have shaped neoliberal restructuring projects. Social programs, for instance, have not necessarily been eliminated wholesale.¹⁹⁹ The nature of Canada’s federalist political structure has also affected the path of neoliberal changes; for example, McBride and Shields argue that the downloading of many governmental responsibilities to the provinces, which began in the 1990s, is driven by a neoliberal agenda.²⁰⁰

But though path-dependency is important, Peck and Tickell warn of the need to strike a balance between describing neoliberalism in its more universal ideological sense, and neoliberalism (or what I call neoliberalisation) in its local context. This means “walking a line of sorts between producing, on the one hand, over generalized accounts of a monolithic and omnipresent neoliberalism,” and on the other hand “excessively concrete and contingent analyses of (local) neoliberal strategies, which are inadequately attentive to the substantial connections and necessary characteristics of neoliberalism as

¹⁹⁸ Brenner and Theodore, “Cities and the Geography of ‘Actually Existing Neoliberalism,’” 353

¹⁹⁹ For example, Unemployment Insurance has not been eliminated wholesale since the 1990s, as neoliberal orthodoxy would promote, but has been repeatedly scaled back and made more difficult to obtain. See Stephen McBride, “Domestic Neo-Liberalism,” in *Working in a Global Era: Canadian Perspective*, ed Vivian Shalla (Toronto: Canadian Scholar’s Press, 2006)

²⁰⁰ McBride and Shields argue that the devolution of powers to provinces reflects neoliberalism because it facilitated cuts in social spending while transferring blame and responsibility to the provinces, devolving powers to the provinces was strategically advantageous because it entrenched this neoliberal change, since it is much harder to reverse a de-centralization of power than it is to transfer powers to provincial governments in the first place. See Stephen McBride and John Shields, *Dismantling a Nation: The Transition to Corporate Rule in Canada* (Halifax: Fernwood, 2007), 101-130. See also, William Carroll and R S Ratner, *Challenges and Perils: Social Democracy in Neoliberal Times*, (Halifax: Fernwood, 2005), 15-16

an extralocal project.”²⁰¹ The necessary characteristics of, and the substantial connections between, localized experiences of neoliberalisation mean that though neoliberalisation varies from place to place there are core values and characteristics that transcend local contexts. This *must* be the case otherwise it would not be possible to meaningfully categorize any process as neoliberal. That neoliberalisation is not a cohesive project, in the sense of being centrally planned and directed, does not mean that it cannot be defined or that it is amorphous.

Three aspects of neoliberalism appear to be crucial to understanding and defining the ongoing process of neoliberal change in Canada: the changing role of the state, increased privatization, and the centrality of the individual. Though these are not new aspects of capitalism, the process of their alteration and rejuvenation is novel to, and meaningfully indicative and descriptive of, neoliberalism. Understanding the role of the state, the private sector, and the individual in the process of neoliberalisation is also important because the data presented in chapters one and two demonstrate that these three areas are central to the PPORLLFT. The PPORLLFT is, of course, a program created and managed by the state, but it is clear that the program is highly connected to private sector employers, and that the experiences of individual TFWs are a major focus of many comments on the program. As well, given that neoliberalisation is a path-dependent process, it is important to talk about these three aspects not just in general theoretical terms, but also to examine them in specific contexts and in relation to specific programmatic changes in those contexts. For the purposes of this study, therefore, it is imperative to locate neoliberal processes in the specifically Canadian context that the PPORLLFT exists within.

²⁰¹ Peck and Tickell, “Neoliberalizing Space,” 381-382.

The State and the Politics of the Economy

In the era of neoliberalism the state has been cast as an unwelcome meddler in the otherwise self-balancing market. “The basic idea is that the state should be limited in its role in modern society apart from securing private property rights and contracts.”²⁰² But contrary to neoliberal ideology, the process of neoliberalisation has demonstrated that the state continues to play an important role in the management of the economy, beyond just enforcing private property rights and contracts. As Brenner and Theodore point out, “neoliberal doctrine represents states and markets as if they were diametrically opposed principles of social organization, rather than recognizing the politically constructed character of all economic relations.”²⁰³ The actions of states and governments in the era of neoliberalisation demonstrate this well, through their crucial role in promoting and enacting neoliberal principles; the neoliberal state engages in the reduction of the state in certain respects, while actively intervening in social and market processes in other respects. And in either case, the active role of the state is central.

The state has significant power and influence over the economy, including decisions about what kind of economic policies should be pursued. Before the rise of neoliberal economic theories, states with capitalist economies generally promoted ideas associated with Keynesianism, a view that accepts the pre-eminence of the market as a guiding force of economic organization but that nonetheless advocates some intervention by states into market processes. Keynes showed the effect that lagging demand could have on economic growth and employment: if people are not purchasing goods then growth will decline and unemployment will rise. As a result, he “advocated proactive government policies to

²⁰² Albo, “Neoliberalism, the State, and the Left,” 46.

²⁰³ Brenner and Theodore, “Cities and the Geographies of ‘Actually Existing Neoliberalism,’” 353.

adjust taxes, government spending, and interest rates in order to attain full employment.”²⁰⁴ In contrast, after the neoliberal turn, “instead of promoting full employment as their top priority, central bankers . . . [focused] strictly on controlling inflation, protecting financial assets, and keeping labour markets strictly in check ”²⁰⁵ In this light, government regulation and taxation were cast as barriers to market forces, and labour and employment laws and unions as ‘rigidities’ potentially constraining economic growth by restricting the ability of producers to respond with flexibility to changing market indicators. Insofar as political leaders and government policy makers agree with this perspective, governments act accordingly to promote economic growth, and thus play a crucial role in the process of neoliberalisation.

In Canada, the implications of this switch in economic orthodoxy have been playing out politically throughout the past thirty years. Starting as early as the second half of the 1970s, “strengthening the free market, cutting regulation, reducing the size and range of government expenditures and activities became the new buzz words around Ottawa.”²⁰⁶ Since then the economic and social policies of the federal government have increasingly reflected neoliberal principles and priorities, such as the need to cut deficits,²⁰⁷ the reduction of public sector wages and spending,²⁰⁸ privatization, and support for free trade initiatives.²⁰⁹ The first significant state actions in support of

²⁰⁴ Stanford, *Economics for Everyone*, 58

²⁰⁵ *Ibid*, 47

²⁰⁶ Gonick, “Lessons from Canada?” 15

²⁰⁷ This goal was pursued aggressively under Chretien and Martin, when the deficit was eliminated. See Linda McQuaig, *Shooting the Hippo: Death by Deficit and Other Canadian Myths* (Toronto: Penguin, 2006)

²⁰⁸ See Panitch and Swartz, “Neo-Liberalism, Labour, and the Canadian State,” in *Working in a Global Era: Canadian Perspectives*, 347–376

²⁰⁹ This is most significantly demonstrated by the signing of NAFTA, but other free trade deals have been pursued, particularly in the last few years under the Conservative government, including with Columbia, and the ongoing negotiations with the EU

neoliberal principles came after the election of Brian Mulroney, of which the Free Trade Agreement of 1988 was one of the most visible and contentious expressions. The fiscal restraint and policies of austerity undertaken by the Chretien/Martin governments between 1993 and 2005 continued, and even furthered, the strong federal government support of neoliberal principles. Public spending on social programs decreased for the first time ever under Chretien and Martin,²¹⁰ and many provincial governments followed suit. Even social democratic provincial governments led by the NDP have promoted neoliberal type policies.²¹¹ In recent years the adoption of neoliberal values by the federal government has only gained strength and become more overt under the leadership of the Conservative Party of Canada

Federal and provincial governments in Canada have played a particularly active role in supporting flexibility in labour markets by interfering with collective bargaining processes. 'Free collective bargaining' allows for workers to negotiate as a group the terms of their work with their employer without fear of repression or coercion. Panitch and Swartz, however, demonstrate that since the early 1980s federal and provincial governments have increasingly interfered with the collective bargaining process, most clearly by enacting public sector wage freezes and back-to-work legislation that restricts the right to strike.²¹²

One particular way that governments have forced workers back to work has been by designating certain occupations as essential services, thereby eliminating the workers'

²¹⁰ Ken Battle, "Transformation Canadian Social Policy Since 1985," *Social Policy & Administration* 32 4 (December 1998) 321–340

²¹¹ See Carroll and Ratner, *Challenges and Perils* The contributors discuss recent social democratic provincial governments in Quebec, Ontario, Saskatchewan, Manitoba, and British Columbia

²¹² Leo Panitch and Donald Swartz, *From Consent to Coercion The Assault on Trade Union Freedoms*, 3rd Edition (Toronto University of Toronto Press, 2008)

right to strike. Recently, the federal Minister of Labour has expressed a desire to expand the definition of an essential service to include ‘the economy’ as a criterion for designating an occupation essential.²¹³ Under the current Conservative government, elected with a majority in 2011, the federal government has demonstrated an increasing willingness to interfere in contract negotiations, not just with its own employees, but also in contract negotiations of private sector employers and crown corporations. This has been demonstrated recently by the legislating of Air Canada and Canada Post employees back to work. The speed of the tabling of these bills, and the inclusion of mandated wage settlements, indicate the government’s support for the demands of employers for a more flexible labour force. The rise of back-to-work legislation, and interference by governments in free collective bargaining, also demonstrate the active role of the state in promoting the neoliberal principle of increased flexibility in labour markets, a view that looks disdainfully at unions as a restrictive rigidity.

Examining the process of neoliberalisation in Canada it is clear that the state has played an active and key role in putting into practice, to varying degrees, neoliberal ideas. This demonstrates the contradiction between the neoliberal call for reduced state intervention in the economy and the significant role of the state in practice. This role has to a large extent been influenced by the priorities of private sector business leaders. In Canada, beginning in the early 1980s, the country’s “largest corporations aimed to solidify a business consensus regarding their long-term strategy, assert themselves more forcefully in the policy-making process and alter the political culture of the country to an

²¹³ CBC News, “Raitt suggests economy should be ‘essential service,’” October 21, 2011. <http://www.cbc.ca/news/canada/story/2011/10/21/raitt-air-canada-flight-attendants.html>. Currently the Public Service Labour Relations Act says that in order for an occupation to be designated essential it must be made clear how it has an essential impact on the health and or safety of Canadians.

environment more suitable for business prosperity.”²¹⁴ That being said, the coalescing of interests between the state and the private sector that is part of the process of neoliberalisation is nothing new. As Poulantzas and Miliband, amongst others, have long recognized, the reason why the state so often acts in the interest of the capitalist class is because they share a common interest: they both rely upon the continued success of the capitalist system; and, in the case of Canada specifically, members of the capitalist class historically have had a very close relationship with state personnel.²¹⁵ Thus, “it is important to keep in mind that it was not less government intervention that was called for but a different kind of intervention. Only state intervention in the interests of workers or that which constrained capital mobility or profit making was to be reduced.”²¹⁶ The influence of private sector actors in the government’s development of the PPORLLFT is a major theme explored below.

Privatisation

The increasing role of the private sector and the individual are reflected in the neoliberal view that ‘the market’ is the best way of organizing economic relations, and thus the proponents of neoliberalism are largely opposed to public ownership; market forces work best with private rather than public ownership because where public ownership requires collective decision making via governmental processes that are not necessarily solely market-based, private ownership prioritizes individual decision making and thereby the ability of market forces to function and determine the value of

²¹⁴ Jaime Brownlee, *Ruling Canada Corporate Cohesion and Democracy* (Halifax Fernwood, 2005), 28

²¹⁵ Miliband, Ralph, *The State in Capitalist Society* (London Quartet Books, 1973), Nicos Poulantzas, *Political Power and Social Class* (London Verso, 1978) On the Canadian context specifically, see Leo Panitch, “The role and nature of the Canadian state,” in *The Canadian State Political Economy and Political Power*, ed Leo Panitch (Toronto University of Toronto Press, 1977) 3-27

²¹⁶ Brownlee, *Ruling Canada*, 17

commodities. Privatization is also “beneficial in neoliberal eyes [because] it reduces government spending, and it opens potentially lucrative new terrain for private, profit-seeking investment.”²¹⁷ Given the perceived value of market forces over public ownership and management, neoliberal governments have encouraged shifts from the public sector to the private sector. These shifts can be of public assets like buildings, crown corporations, and land, or they can be manifested in other ways less clear than the selling of public property.

In Canada, the privatization of public assets increased with the election of the Conservative government in 1984. Since then Canadian “governments have privatized an impressive range of Crown corporations in what can only be described as a sustained attack.”²¹⁸ In addition to the selling of public assets like property and state-owned corporations, other ‘implicit and indirect’ forms of privatization include “the disengagement of government from a sphere of service provision...[and] the deregulation of entry into state-owned monopolies.”²¹⁹ In Canada, federal, provincial, and municipal governments have contracted out services like garbage collection, road construction and maintenance, and water quality testing. More recently, the federal Conservative government has taken steps to end the state-owned monopoly of the Canadian Wheat Board.

Individualism

One significant effect of the privatization and reduction of state-supported social

²¹⁷ Stanford, *Economics for Everyone*, 250.

²¹⁸ See McBride, “Domestic Neo-Liberalism,” 264.

²¹⁹ Paul LeDuc Browne, “Unsafe Practices: Restructuring and Privatization in Ontario Health Care,” Canadian Centre for Policy Alternatives, 4.

services is the individualization of risk.²²⁰ Neoliberalism “stresses the priority of individualism, competitiveness and entrepreneurship over collective interests and needs, including trade union rights and universal welfare programs.”²²¹ Individualism, “places steeply rising demands on people to find personal causes and responses to what are, in effect, collective social problems.”²²² In the ongoing case of the privatization of the Canadian Wheat Board, the monopoly that the board has on grain serves to collectivize risk, spreading it amongst the Board’s 50,000 participants; the elimination of the Board would allow individual farmers the potential to increase their profits, but would also expose them to more risk. In a way this kind of privatization increases the control that individuals have by expanding their ability to make choices for themselves; but it also decreases individuals’ ability to have control over their choices because a single individual in the market place has less sway than a group of individuals acting collectively, and much less sway than a whole society of individuals acting collectively through legislatures or a state. Similarly, actions by the state to discourage unionization and restrict collective bargaining, as described above, have the effect of individualising the relationship between employees and employers and result in less control and influence for individual workers over working conditions and wages.

Though neoliberalism has become the dominant political economic ideology in the world, including in Canada, the process of putting into practice neoliberal reforms is very much ongoing. This process of neoliberalisation that is ongoing throughout the world involves privatization, individualism, and state actions in support of neoliberal

²²⁰ Stephen Gill, “Globalisation, Market Civilization, and Disciplinary Neoliberalism,” *Milennium* (1995): 407.

²²¹ Panitch and Swartz, *From Consent to Coercion*, 264

²²² Janine Brodie, “The Social in Citizenship,” in ed. Engin Isin, *Recasting the Social in Citizenship* (Toronto: University of Toronto Press, 2008), 41.

economic values and priorities. These three features, we have seen, are very much present in the Canadian experience of neoliberalisation. Thus, it is relevant to look for these features in aspects of the PPORLLFT, it being a program developed during the era of neoliberalisation.

The PPORLLFT and Neoliberalisation

Having put forth an outline of neoliberal ideology and observations about neoliberalisation in Canada, it is possible now to look for signs of neoliberalism in the rules and regulations of the program, discussed in chapter one, and in the observations about the development and expansion of the PPORLLFT discussed in chapter two. To do this, I outline my observations about the ways in which neoliberalisation is connected to the PPORLLFT following the three themes of the state, privatisation, and individualism. By looking at the actions of the state in relation to the program, and looking for instances of privatisation and individualism, the process of neoliberalisation can be identified; in other words, the PPORLLFT does indeed have some significant neoliberal characteristics.

The State and the Politics of the Economy

Looking at the overall picture of the program presented in chapters one and two, observations about the PPORLLFT and the priorities of neoliberalism show that the program is demonstrative of the active role of the state in promoting neoliberal values about economic policies and increased labour market flexibility. An examination of the implementation and operation of the PPORLLFT also demonstrates the two-sided nature of state action – at once reducing its role in the economy even as it intervenes to support capitalist interests. In the context of the development and expansion of the PPORLLFT,

the federal government, and some provincial governments, have clearly been more responsive to the needs and desires of employers than to those of labour groups or migrant workers, thus making a clear prioritization of the success of private sector companies and the need for labour flexibility over other considerations like nation building or curbing exploitation.

Policy developments within the PPORLLFT have been driven by employers and employer groups more than they have been by bureaucrats, labour groups, or migrant worker groups. Individual employers and employer groups have had significant influence on the development of the PPORLLFT; indeed, the PPORLLFT has been employer driven from its very conception as a response to the exclusion from permanent residency of lower-skilled workers that resulted from the introduction of the *IRPA*.²²³ Since then, policy development within the program has continued to focus on responding to the needs of employers, especially since 2006 when the program began to expand, by extending and eliminating work visa limits; introducing fast-tracked LMOs; dedicating significant additional resources to the processing of LMOs; producing a guide for employers on how to navigate and effectively use the PPORLLFT; and creating dedicated TFW Units to aid employers with any problems encountered during the process.²²⁴ The beginning of this expansion is connected to the report by Partenaires Delta Partners, a report which focuses almost exclusively on how the program has met the needs of employers.²²⁵ As well, a number of employers and employer groups have alluded to having personal meetings with

²²³ The introduction of the *IRPA*, and its connection to the motivation for the introduction of the PPORLLFT, is discussed above in chapters one and two.

²²⁴ According to Yessy Byl, “At the federal level, the bulk of changes were to serve the interests of employers, such as fast-tracking LMO applications and relaxing job search rules.” Yessy Byl, “Entrenching Exploitation,” 2.

²²⁵ Partenaires Delta Partners “Review of the Foreign Worker Program Pilot Project for Workers Requiring Lower Levels of Formal Training.”

federal bureaucrats and ministers about the program, demonstrating the importance of employers' opinions to policy makers.²²⁶ At the provincial and municipal levels, several governments have actively lobbied the federal government on behalf of employers.²²⁷ As a sign of the effectiveness for employers of some of these changes the Auditor General reported that "average processing times for LMO applications overall improved from 38 days in the 2007–08 fiscal year to 17 days in the 2008–09 fiscal year."²²⁸ The access of business leaders to government policy makers and the apparent responsiveness of policy makers to the needs of employers are thus significant.

Despite the responsiveness of the state to employers' needs, employers and employer groups have continued to lament that the program does not meet their needs effectively. They have continued to argue that though the PPORLLFT has been an important resource for their businesses, it has nonetheless fallen short in terms of speed and ease of access to TFWs. The basis of employers' arguments for faster and easier access to TFWs is that business profitability and economic growth are threatened by a "critical labour shortage."²²⁹ The solution, they suggest, is "to make a system as flexible as possible to meet the needs of the labour force."²³⁰ But what the demands of employers and the actions of the state demonstrate is not a desire for the elimination of all state intervention, but only intervention that hinders business profits and flexibility. On the one hand the state *is* actively reducing its role through, for example, the fast tracking of LMO applications, while in other ways it is continuing to have an active and interventionist

²²⁶ For example the Saskatchewan Chamber of Congress, and Westcan Bulk Transport Ltd. See above, chapter two notes 21 and 22.

²²⁷ Eric Johansen (Government of Saskatchewan), CIMM Study, Meeting 20 (Moose Jaw), 1010; Sandy Trudel (Maple Leaf Foods), CIMM Study, Meeting 22 (Winnipeg) 1030; Tony Lampart and Humphrey Sheehan (Government of New Brunswick), CIMM Study, Meeting 32 (Fredericton), 1050.

²²⁸ Office of the Auditor General, "Selecting Foreign Workers Under the Immigration Program," 30.

²²⁹ Eric Johansen (Government of Saskatchewan), CIMM Study, Meeting 20 (Moose Jaw), 1010.

²³⁰ Roslyn Kunin (Canada West Foundation), CIMM Study, Meeting 18 (Richmond, BC), 1330.

role: the single employer visa constitutes a major state intervention into labour market processes, and one which employers have strongly supported.

On the other side of the issue, very few resources have been put toward addressing the concerns of migrant workers or labour groups. Though some of the changes that have been made to the program have also benefitted TFWs, for example by allowing them to come to Canada more quickly or to stay in Canada longer, it seems unlikely that this was the motivation for the changes. With the sole exception of the creation of a bad employers list, all of the changes that have benefitted TFWs have also had a significant benefit for employers. For example, easing access to the program, extending visa lengths, and making visa renewals easier, all provide significant benefits for employers and can be directly linked to their lobbying efforts to make accessing TFWs faster and easier; thus the benefit for TFWs appears to be incidental, or at least not implemented at the expense of the demands of employers. Other changes to the program have had either a negative effect on TFWs, for example the four-year ban, or a neutral effect, for example the TFW Units.

Skeptics of this view might say that the government has taken a balanced approach by implementing policies that, on the whole, have some benefit for both employers and TFWs. But the most significant concerns of TFWs and their allies relate to exploitation,²³¹ a concern that is also central to the Auditor General's 2008 report, and the final report of the CIMM based on the 2008 study. The government has taken some action

²³¹ Or in a Marxist sense, these concerns relate to the super-exploitation of TFWs rather than to the inherent exploitation faced by all workers in a capitalist economy resulting from the extraction of surplus value from labour. It is interesting that labour representatives speaking to the Committee used the language of 'exploitation' as opposed to 'more exploited' or 'super-exploited.' Although these representatives may in fact have meant 'more exploited' or 'super-exploited,' it may also suggest that while they view the work of TFWs as exploited (in the Marxist sense) they do not actually see their own work as similarly, though not as drastically, exploited.

to address these concerns, but for the most part these efforts have left the burden of action on the shoulders of TFWs, and thus have institutionalized an individualistic—one might say privatised—approach to monitoring enforcement, discussed below. More importantly, the number of outstanding issues in the interest of TFWs that have yet to be addressed is long, including devoting resources to monitoring and enforcement of workplace standards and contractual obligations; clarification and rectification of access to social service like EI, CPP, and workers compensation; creating pathways to permanent residency for NOC C and D level TFWs and their families; and eliminating single-employer visas. Given that the changes that would be most beneficial to TFWs have not been implemented, it gives weight to the view that “while both levels of governments have been busy making announcements and adjusting policies and procedures frequently, the result of their efforts have mostly benefitted employers and done little for foreign workers.”²³²

Besides demonstrating the responsiveness of the state to the private sector in terms of policy development, the PPORLLFT also demonstrates state actions to increase flexibility in the labour market. ‘Flexibility’ in this context refers to the ability of employers to respond to changing market situations. The PPORLLFT increases employers’ flexibility by providing a quicker way to access new employees than is possible through the FSWP; employers can recruit and hire a new employee through the TFWP in a number of weeks or even days, while recruiting a foreign worker through the FSWP takes much longer because of the time spent waiting for the permanent residency application to be approved. The PPORLLFT also adds flexibility for employers through its tendency to discourage unions, which are seen in neoliberal theory as a type of labour

²³² Yessy Byl, “Entrenching Exploitation,” 2.

market rigidity.²³³ Also, in non-union workplaces TFWs are less likely to support unionizing than permanent residents and citizens whose status in the country is more solid.²³⁴ Fear of having status revoked, lack of knowledge of Canadian labour laws, single-employer visas and the challenges of changing employers, and hopes of employer sponsorship for permanent residency all discourage formation of unions. And, in unionized workplaces the PPORLLFT has been used to influence ongoing labour disputes²³⁵ and thereby increase labour flexibility for employers. In chapter four we will see that the labour ‘flexibility’ facilitated by the PPORLLFT has a significant effect on class power dynamics.

These observations about the orientation of PPORLLFT policies towards meeting employers’ demands and ensuring labour flexibility are reflective of broader neoliberal ideas about the role of the state in the economy. Fundamentally opposed to state intervention in market forces, neoliberal theory sees the main role of the state being to ensure that market forces are able to flourish, through, for example, enforcing property rights, negotiating free trade deals, and pressuring other states to take on a neoliberal approach. At first glance it appears that contrary to neoliberal values the PPORLLFT is still highly regulated, demanding that employers obtain LMOs, requiring them to provide return airfare, cover health and workplace insurance costs, etc. But given that the LMO process has been both sped-up and made less rigorous, and that there is very little enforcement or monitoring of any of the rules and requirements of the program, it is hard

²³³ Thomas I. Palley, “From Keynesianism to Neoliberalism: Shifting Paradigms in Economics” in eds. Deborah Johnston and Alfredo Saad-Filho, *Neoliberalism—A Critical Reader* (London: Pluto Press, 2004), 23.

²³⁴ “If a temporary foreign worker is indentured to one employer, it’s very unlikely he’ll support the unionization of his employer.” Al Brown (International Brotherhood of Electrical Workers), CIMM Study, Meeting 19 (Edmonton), 1540.

²³⁵ Carol Phillips (Canadian Auto Workers), CIMM Study, Meeting 26 (Toronto), 1415; National Union of Public and General Employees, “Canada: The Land of Denied Opportunity?”

to see the PPORLLFT as highly regulated. This makes it curious that there are in fact so many rules and regulations surrounding the program, given the lack of rigour in their enforcement. One possible explanation is that the rules and regulations are indicative of the path-dependency of neoliberal reforms to Canadian immigration policy; because immigration and labour are areas with a history of significant regulation and bureaucratization in Canada, neoliberal reforms in this area must work within this context. More significantly, the existence of the single-employer visa for PPORLLFT TFWs constitutes a major intervention into the labour market, and one which employers have supported strongly; this is a clear example of how neoliberalisation differs from neoliberal ideology and it shows how neoliberalism in practice is not about removing the fetters of the state as much as it is about supporting flexibility and profitability for owners of capital. Overall, given the lack of regulation in practice combined with much evidence of employer-driven and employer-focused policy development, the PPORLLFT is demonstrative of the active role of the state in promoting neoliberal values about economic policies and increased labour market flexibility.

Privatisation

A second group of observations about the PPORLLFT and neoliberalism can be made around the process of privatisation. The PPORLLFT encourages privatisation in a number of ways. It does this perhaps most notably through its connection to the PNP, increasing the role of the private sector in the process of nation building through increased influence of employers in the selection of new permanent residents. As seen in various testimonies before the CIMM, employers view very positively a two-step immigration process involving a transition period from the TFWP to the permanent

residency stream.²³⁶ This would involve some sort of probationary period during which employers decide whether or not they want to sponsor the TFW for nomination to a PNP. Though the nomination of PPORLLFT TFWs and their ability to transition to permanent residency has been relatively low, there is a significant shift that is already taking place towards this two-step immigration process.

CIC statistics show that in 2002 the FSWP comprised 76% of all new economic class permanent residents, while the PNP represented just 2.4%, the live-in caregiver program 2% and the CEC 0%.²³⁷ In 2009, the FSWP had dropped to just 46% of new permanent residents while all of the categories involving a transition from the TFWP had increased, the PNP to 16.5%, the LCP to 6.4%, and the CEC taking up 4.8%.²³⁸ Thus, from 2002 to 2009, the percentage of new permanent residents transitioning from the TFWP to the permanent residency stream, a process that involves some amount of employer sponsorship or endorsement, increased from 4.4% to 28%. Over the coming years this shift is going to increase, with CIC projecting that by 2012 these three streams will represent over 57% of new permanent residents.²³⁹ The Auditor General notes that by 2012, “the Provincial Nominee Program category could...become the largest source of economic immigrants in Canada.”²⁴⁰ In this light, it is worth recalling, in the context of the path-dependent nature of neoliberalism, the argument made by McBride and Shields that the devolution of powers to provinces in Canada, including in this instance the nomination of TFWs for new permanent residents, contributes to the entrenchment of

²³⁶ See above, chapter two note 45.

²³⁷ Note that the CEC did not exist until 2009. Citizenship and Immigration Canada, “Permanent residents by category,” *Facts and Figures*.

²³⁸ Office of the Auditor General, “Selecting Foreign Workers Under the Immigration Program,” 11.

²³⁹ *Ibid.*, 12.

²⁴⁰ *Ibid.*

neoliberalism.²⁴¹ To the extent that PPORLLFT employers are engaged in nominating employees for permanent residency, the program is part of this process of privatisation of citizenship decisions.

The privatisation of citizenship decisions is also seen in increases in the TFWP coming at the expense of the FSWP. In this change, privatisation can be seen in that for the TFWP the relationship that matters is between the employer and the employee and the government plays a relatively minor role; foreign workers as individuals apply to work for an employer, and the employers as owners of private businesses decide which employees they want to hire. The main role of government is in the issuing of LMOs, which as we have seen has been made to be largely a formality.²⁴² In contrast, the FSWP involves a minimal role for private employers and a major role for the government, including a legislative basis for selection criteria. As the FSWP and its legislatively-based selection process are allowed to decline, the federal government is effectively removing itself from public policy making in this area, and actors from the private sector are quickly filling the gap through participating in the selection of new permanent residents coming from the TFWP.

The PPORLLFT also encourages privatisation by facilitating the federal government's disavowal of any obligation to provide settlement service to TFWs in the way that it does for new permanent residents and new citizens. This burden then falls on individuals, volunteers, unions, and other non-publicly funded groups, effectively eliminating public provision of these necessary services. Though these services have not been picked up by the private sector since settlement services for TFWs are not a

²⁴¹ See above note 17.

²⁴² For example the Canadian Bar Association cites a statistic that HRSDC has a 90% approval rate for LMO applications. Canadian Bar Association, "Low Skilled Worker Pilot Project," 9.

lucrative market (and thus the connection to privatisation is less apparent), the charitable organizations, volunteers, and unions that do provide some of these services pick up the costs which if the services were publicly funded would have at least been partially borne by the employers of TFWs through their taxes. And, as a two-step immigration system increasingly becomes a reality, the lack of public provision of services and the concomitant lack of setting of standards for services will mean that more and more new Canadians will not have had the experience of publicly funded settlement services.

A final way in which the PPORLLFT is connected to privatisation is through its relationship with the Seasonal Agricultural Workers Program. Currently, farm owners can hire foreign agricultural workers through either the SAWP or the PPORLLFT. However, the PPORLLFT is beginning to take over from the SAWP in a more serious way, as per the announcement of the new Agricultural Stream of the PPORLLFT.²⁴³ Indeed there are already many TFWs employed as farm workers through the PPORLLFT.²⁴⁴ “Unlike the SAWP, which is restricted to workers coming from Mexico and several of the countries of the Caribbean Commonwealth, the Agricultural Stream of the NOC C and D Pilot Project has no such source country restrictions.”²⁴⁵ Though the full effect and motivation of this new stream is not yet clear, it is definitely a shift towards a more privatised system, in the sense that the SAWP involves significant government involvement since it is based on bilateral agreements between the government of Canada and governments in

²⁴³ HRSDC, “Creation of a New Agricultural Stream under the Pilot Project for Occupations Requiring Lower Levels of Formal Training,” February 28, 2011. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/agriculture.shtml.

²⁴⁴ As of 2010, there were 3,915 “harvesting labourers” and 2,305 “general farm workers” employed through the PPORLLFT rather than through the SAWP. HRSDC, “Temporary Foreign Worker Program Labour Market Opinion Statistics Annual Statistics 2007-2010, Table 6: Top Occupational Groups.” See also, Sophia Lowe, “Plus Ça Change Ça.”

²⁴⁵ HRSDC, “Agricultural Stream of the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D),” July 22, 2011. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/Agricultural/directives.shtml.

Mexico and the Caribbean. The new PPORLLFT-based program on the other hand takes foreign governments out of the arrangement and reduces the role of the Canadian government, since the PPORLLFT is based on employment agreements made directly between individual foreign workers and private Canadian employers. As well, private immigration consultants and employment brokers take the place of government and consular officials in helping to arrange employment. Thus, for these reasons any shift towards the PPORLLFT away from the SAWP should be seen as a form of privatisation.

Individualism

The PPORLLFT also encourages individualism, which is another key feature of neoliberalism. The individualism of the PPORLLFT is most clearly seen in the downloading of the enforcement of labour standards onto workers. HRSDC has openly removed itself from any obligation to enforce the conditions and terms of employment that are mandated by the program, stating that “it is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and to look after their own interests.”²⁴⁶ Rather than taking on the collective responsibility of monitoring employers and enforcing rules and regulations, the government has left this task to individual workers. Similarly, the bad employer list that was recently created by the government takes the approach of giving TFWs a resource so that they can find (and avoid) these employers themselves. It is the responsibility of individual TFWs to find and read the list and make sure that their employment offer is not from a delinquent employer. Worse, modifications to the *Immigration and Refugee Regulations* actually *require* TFWs to check this list, and hold them responsible if they do not. It is now the responsibility of the

²⁴⁶ HRSDC, “Instruction Sheet to Accompany Employment Contract.” http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/contracts-forms/annex2.shtml.

foreign worker “to not enter into an employment agreement, or extend the term of an employment agreement, with an employer whose name appears on the list maintained on the Department [of Citizenship and Immigration’s] website.”²⁴⁷ Thus, though on the surface the bad employer list appears to be a meaningful step towards protecting TFWs, it is actually an individualistic approach created in lieu of the government being actively involved in eliminating unscrupulous employers through increased monitoring and enforcement.

The PPORLLFT also encourages individualism because it discourages unionisation. The single-employer visa that is part of the program decreases the likelihood of TFWs participating in organized labour because it creates a powerful tool for employers to use against workplace activism. For TFWs with a single-employer visa, being fired by an employer for workplace activism means being fired from the only employer in the country that they are legally allowed to be employed by. Also, TFWs are less likely to engage in collective action via unions because, being new to Canada, they often have less knowledge of their workplace rights than domestic workers. This unfamiliarity with Canadian workplace rights is reinforced by the lack of settlement services for TFWs. As well, the temporary and rotational nature of the PPORLLFT reinforces this lack of knowledge, because no worker has more than four years to build up knowledge and confidence of their rights. Thus, as TFWs gain the confidence and knowledge needed to engage in collective action via unions, they get closer and closer to being sent back to their country of origin. Relatedly, in a temporary and rotational workforce, bonds of trust and solidarity developed over time are less likely to take hold. More directly, the PPORLLFT has been used by employers to actively discourage

²⁴⁷ Canadian Gazette, “Regulations Amending the Immigration and Refugee Protection Regulations,” 3061.

unionization.²⁴⁸ In all of these ways, by discouraging the formation of unions, the PPORLLFT creates more individualistic relationships between workers and between workers and their employers.

Conclusion

The purpose of this chapter has been to explore defining features of neoliberalism as an ideology, to describe the process of neoliberalisation, and to outline connections between neoliberalisation and the development of the PPORLLFT. In describing the process of neoliberalisation I have focused on three characteristics of this process, namely the role of the state in the politics of the economy, privatisation, and individualism. Similarly, in demonstrating the neoliberal aspects of the PPORLLFT I have used these same three categories in order to outline the significant neoliberal aspects of the program. That is, the PPORLLFT clearly demonstrates the responsiveness of the state to private sector interests and the creation of more flexibility in labour markets; encourages processes of privatisation, including of decisions surrounding selection of future citizens; and entrenches individualistic responses to social, political, and economic risk. In the next chapter, I make linkages between neoliberal processes, changing class power dynamics that are associated with neoliberalism, and the PPORLLFT.

²⁴⁸ See above, chapter two notes 39 and 40.

Chapter Four: The PPORLLFT and Class Power

Introduction

Whereas in the previous chapter I focused on describing characteristics of the process of neoliberalisation and the visibility of this process in PPORLLFT, in this chapter I focus on the political and economic effects of the process of neoliberalisation, both in general, and more specifically in reference to the PPORLLFT. By looking at the effects of neoliberalism it becomes clear that the main achievements of the process of neoliberalisation have been to significantly alter the distribution of wealth in societies, and the ability of working people to affect change in the workplace and through legislative processes. Far from increasing wealth and freedom, the actual effects of neoliberalism have been to increase inequality, and the ease of disciplining workers, and to reduce democratic and collective control over the economy by discouraging unions and shifting influence to the private sector. Since the process of neoliberalisation is observable in the PPORLLFT, one would expect these same effects on inequality and democratic and collective control to result from the program, and indeed they do. The neoliberal policies of the PPORLLFT have resulted in increased inequality and expanded capacity for disciplining workers, and these have in turn had a significant effect upon class power dynamics, empowering the economic elite while disempowering both foreign and domestic workers.

Neoliberalism and Class Power

Neoliberalism as an ideology, as well as neoliberalisation as the process of implementing neoliberal ideas, is meant to move us closer to a freer and more prosperous society. The economic policies, privatisation, and individualism that are characteristic of

neoliberalism are, for neoliberals, signs of progress. But from a critical perspective neoliberalism does not appear to be focused on creating more prosperity and freedom for all members of society, but on restoring elite class power. In Harvey's words, neoliberalism can be interpreted "either as a *utopian* project to realize a theoretical design for the reorganization of international capitalism or as a *political* project to re-establish the conditions for capital accumulation and to restore the power of economic elites."²⁴⁹ Greg Albo insists that, "neoliberalism cannot be reduced to a discourse about market society, [or] 'golden rules' for public policy... It is a particular form of class rule within capitalism."²⁵⁰ Stephen Gill, echoing the ideas of Karl Polanyi, calls neoliberalism starkly utopian, arguing that "a pure market system is a utopian abstraction and any attempt to construct it fully would require an immensely authoritarian use of political power through the state."²⁵¹ Given the utopian nature of neoliberal ideology, it is not surprising that there is a disconnect between neoliberalism in theory and the effects of neoliberalisation in practice.

The clearest indicators of the actual material effects of neoliberalism are statistics on rising inequality since the 1980s. According to the United Nations Development Program, from 1960 to 1997 the income gap between the world's poorest fifth and its wealthiest fifth increased from 30 to 1 to 74 to 1.²⁵² David Harvey provides some equally shocking figures: "the world's 200 richest people more than doubled their net worth in the four years to 1998, to more than \$1 trillion. The assets of the top three billionaires [were by then] more than the combined GNP of all least developed countries and their

²⁴⁹ Harvey, *Brief History of Neoliberalism*, 19.

²⁵⁰ Albo, "Neoliberalism, the State, and the Left," 48.

²⁵¹ Gill, "Globalisation, Market Civilization, and Disciplinary Neoliberalism," 420.

²⁵² Duménil and Lévy, *Capital Resurgent*, 7-8.

600 million people.”²⁵³ The average CEO now has a rate of pay hundreds of times that of the average employee, while in 1970 the average CEO made around 30 times that of the average employee.²⁵⁴ Canada is no exception to the trend. During the post-war period up to 1977 “the income share of the richest 1% was cut almost in half, from 14% to 7.7%, as the gains from growth led to more people working and better paid jobs. But by 2007 we were right back where we started: the richest 1% held 13.8% of incomes in Canada.”²⁵⁵ Relatedly, “between 1980 and 2005 the earnings of Canada’s bottom income group fell by 20.6 per cent, according to Statistics Canada, whereas top incomes rose by 16.4 per cent.”²⁵⁶ In other words, the rich have gotten richer and the poor have gotten poorer and more indebted: average household debt in Canada has risen from \$14,270 in 1981 to \$44,115 in 2011.²⁵⁷ Rather than increasing general prosperity, neoliberal policies have increased inequality and the concentration of wealth.

For David Harvey, the increase in inequality is a result of the ongoing process of accumulation by dispossession, a process that facilitates the transfer of wealth from the poor to the wealthy. Rather than accumulating new wealth through the expansion of industry and wage labour, “the main achievement of neoliberalism...has been to redistribute, rather than to generate, wealth and income.” Accumulation by dispossession is the “main mechanism whereby this was achieved,” and has resulted from privatisation

²⁵³ Harvey, *Brief History of Neoliberalism*, 35.

²⁵⁴ *Ibid.*, 16, 18. See also Hugh Mackenzie, “Recession-Proof, Canada’s 100 Best Paid CEOs,” Canadian Centre for Policy Alternatives (January 2011). <http://www.policyalternatives.ca/publications/reports/recession-proof>.

²⁵⁵ Armine Yalnizyan, “The Rise of Canada’s Richest 1%.” Canadian Centre for Policy Alternatives (December 2010): 3-4.

²⁵⁶ Conference Board of Canada, “Income Inequality,” September 2011. <http://www.conferenceboard.ca/hcp/details/society/income-inequality.aspx>.

²⁵⁷ Certified General Accountants Association of Canada, “A Driving Force No More: Have Canadian Consumers Reached Their Limits?” June 2011. http://www.cga-canada.org/en-ca/ResearchAndAdvocacy/AreasOfInterest/DebtandConsumption/Pages/ca_debt_report.aspx.

See also, Justin Podur, “The Logic of Occupy Wall Street for Canada,” *The Bullet* E-Bulletin No. 556 (October 16, 2011). <http://www.socialistproject.ca/bullet/556.php>.

and commodification, financialisation, the management and manipulation of crises, and state redistributions.²⁵⁸ Employers, with the help of states, are able to accumulate more by dispossessing workers of, among other things, their access to full-time, safe, and well-paid employment. Attacks on unions and collective bargaining, privatisation of public services and public control, increases in part-time and precarious work, control of massive wealth by private firms, and other aspects of neoliberalisation, all function as methods of dispossession and facilitate the accumulation of wealth by the wealthiest members of society.

Equally troubling are the effects of increased inequality and processes of dispossession on democratic processes. Privatisation is in its very essence a de-democratizing process. The transferring of ownership of property and decision-making from the public sector to the private removes direct democratic control and accountability. Arguments about citizens having new democratic opportunities to ‘vote with their dollars’ by holding producers accountable through the choosing of which products to buy, are undermined by the increasing indebtedness and declining wages of average households. “The idea that the market is about competition and fairness is increasingly negated by the fact of the extraordinary monopolization, centralization, and internationalisation of corporate and financial power.”²⁵⁹ A ‘market democracy’ gives substantially more voting power to those with more money, and those with more money are a smaller and smaller elite segment of society. For neoliberal ideologues, market principles even extend to the relationship between employers and employees:

“[Neoliberal] economists even describe the relationship between a large company and its

²⁵⁸ Harvey, *Brief History of Neoliberalism*, 159-165.

²⁵⁹ *Ibid.*, 203.

workers as a form of market exchange.”²⁶⁰ The thought of an individual worker being able to shop her labour around on the market and get a fair deal from an employer that employs many workers and controls millions of dollars in assets is preposterous. That the individualism and the discouragement of unions that are part of neoliberalisation encourage this sort of unequal negotiation points all the more to the effect of neoliberalism on class power.

Through looking at the actual effects of neoliberalisation, it becomes clear that the effects of neoliberalism diverge significantly from the ideals of neoliberal orthodoxy. Neoliberal processes like increasing labour market flexibility, privatisation, and individualisation have increased economic inequality; facilitated the accumulation of wealth by the already wealthy while simultaneously dispossessing workers of their rights and entitlements; created a more easily disciplined work force; and reduced democratic and collective control over the economy. Thus, McBride and Shields conclude that “fundamentally neo-liberalism is about shifting decision-making power to the marketplace and establishing a government policy environment that is driven by corporate priorities.”²⁶¹ In other words, neoliberalism is about influencing the balance of power in the workplace and in society away from workers. The case of the PPORLLFT as an instance of neoliberal policy supports this conclusion about neoliberalism.

The PPORLLFT, Neoliberalism, and Class Power

Just as the effects of neoliberalisation in general have been to increase inequality and the disciplining of workers, thereby shifting power and influence away from working people, so too have the neoliberal aspects of the PPORLLFT had these effects. That is,

²⁶⁰ Stanford, *Economics for Everyone*, 37.

²⁶¹ McBride and Shields, *Dismantling the Nation*, 14.

the PPORLLFT has resulted in increased inequality and has expanded capacity for disciplining workers, and these have in turn had a significant effect upon class power dynamics. The program has increased economic inequality by facilitating processes of accumulation by dispossession, by putting a negative pressure on wages, and by facilitating privatisation. It has contributed the increased disciplining of workers by placing extra barriers between workers and the full exercise of their rights, and by hampering labour mobility. As a result, the program has affected workers' ability to enact democratic and collective influence over the economy and over their workplaces.

The PPORLLFT facilitates the process of accumulation by dispossession in a number of ways. Accumulation by dispossession includes “the diminution or erasure of various forms of common property rights (such as state pensions, paid vacations, and access to education and health care) won through a generation or more of class struggle.”²⁶² The difficulties that TFWs face in accessing EI, CPP, Workers Compensation, and fair wages, can be seen as manifestations of accumulation by dispossession, whereby the ability of owners of capital to accumulate wealth is facilitated by the dispossession from TFWs of their rights to various publicly provisioned services that they would have access to if they were given the full status of permanent residency that they deserve. Ambiguities and regulatory black holes around accessing social services like EI and CPP reinforce low-skilled workers' dispossession and actually cause a transfer of wealth from these workers to the coffers of the federal government. The situation is complicated by the fact that the general Canadian public also benefits from, and thus is implicated in, this dispossession: TFWs contribute to the economy through their work and through their taxes, and yet face significant barriers to accessing the

²⁶² Harvey, *Brief History of Neoliberalism*, 160.

services to which they are entitled. Thus they can be seen to be paying a head tax of sorts for the privilege of working in Canada, the proceeds of which accrue to the Canadian state.

The PPORLLFT also increases inequality by putting a downward pressure on wages. In the Committee study, employers and economists repeatedly drove home the point that there is a serious labour shortage and that the ability of employers to find workers in certain occupations is threatening economic growth. Interestingly, neoliberal orthodoxy would suggest that if the market for labour is left to regulate itself, wages should rise to a point where the labour shortage disappears. The significant unemployment that exists in Canada suggests that the wages offered for low-skill jobs should be increased, in order to reflect the difficulty of finding people to fill these jobs. Instead, by having access to TFWs employers are able to keep wages low and fill positions. According to Fudge and MacPhail, “the fact that the wages of most of the occupations under pressure in Alberta and British Columbia had not increased more than the wages in other occupations suggests that the low-skilled streams of the TFWP operate as a device to regulate the Canadian labor market by lowering wages and conditions of employment.”²⁶³ In this light the PPORLLFT can be seen as an artificial support for cheap labour, resulting from the state’s willingness to create policies that are in the interests of elites. The downward pressure on wages resulting from the structure of the program also serves as an example of the difference between neoliberalism in theory, and neoliberalism in practice.

Privatisation resulting from the PPORLLFT, combined with increasing inequality, results in greater power for employers and economic elites. As described above, the

²⁶³ Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada,” 27.

program contributes to privatisation by supporting the growth in Provincial Nominee Programs at the expense of the Federal Skilled Worker Program; by disavowing publicly funded settlement services; and, through the new agricultural sub stream, by undermining the SAWP. Privatisation erodes democratic control by transferring public control and ownership to the private sector, and in a privatized system the ability of those with money to exert influence is expanded because of the importance of wealth in markets. Since the PPORLLFT increases inequality both through processes of accumulation by dispossession and through putting downward pressure on wages, it reduces the amount of influence that workers have over the economy.

The PPORLLFT has also created an expanded capacity for a more disciplined workforce by negatively affecting knowledge of, and realistic access to, rights and to social services; by limiting TFW's immigration status and labour mobility; and by expanding the PPORLLFT at the expense of the SAWP. Technically, PPORLLFT workers have the same employment-related rights as permanent residents or citizens, but *in practice they face barriers to accessing these rights*. These barriers, as described in chapter two, include lack of knowledge due to non-provision of settlement services as well as regulatory barriers that make accessing entitlements to EI, for example, unrealistic. Insofar as these rights and entitlements are meant to protect workers from exploitation and unfair treatment, TFW's inability to access these rights and protections makes them more vulnerable. And it also makes it easier for employers to demand more of employees without fear of reprisal. Examples of employers not fulfilling contractual obligations regarding wages, accommodations, and travel have been noted by a number of

labour and advocacy groups.²⁶⁴ That TFWs face barriers to realistically accessing their rights, barriers connected to the PPORLLFT, thus makes them more easily disciplined as a group and enhances capitalist class power.

In the previous section it was discussed that the PPORLLFT encourages individualism through supporting individualistic methods of rights enforcement, and through discouraging the kind of collective approach that unionism offers. Individualism encourages ideas of equality of opportunity amongst individuals that ignore relations of power and as a result proposes individualistic responses to what are collective problems. Thereby, “responsibility for social crises that find their genesis in such macro processes as structural unemployment, racism, or unequal gender orders is put onto the shoulders of individuals.”²⁶⁵ Though the individualistic nature of Canadian provincial labour laws obviously pre-dates the PPORLLFT, by ignoring the practical challenges faced by TFWs and by shirking any collective social responsibility to ensure that these visitors to our country are treated justly, the PPORLLFT both ignores and reinforces the inequality of power that exists between TFWs and their employers. The individualistic policies of the PPORLLFT, like TFW’s obligation to check bad employer lists and to monitor and report contractual violations themselves, present another barrier to workers accessing their rights.

Unions represent a vehicle for helping to inform TFWs of their employment-related rights and entitlements, and by helping TFWs to access these rights unions help to balance the relative power of employers in the workplace. But, as outlined in the previous section, the PPORLLFT discourages unionization by creating higher risks for TFWs who

²⁶⁴ For example the Yessy Byl (2007, 2009); the National Union of Public and General Employees (2007); Aziz Choudry et al., *Fight Back Workplace Justice for Immigrants*.

²⁶⁵ Brodie, “The Social in Citizenship,” 41.

engage in work place activism, and because the very barriers that unions could help TFWs overcome are also barriers to unionization, for example the lack of knowledge of the right to unionize. As well, PPORLLFT employers have used the program to actively influence labour disputes and undermine existing unions. Again, the end result of TFW's inability to realistically access their rights, a problem that is reinforced by the PPORLLFT, serves to increase the ability of PPORLLFT TFWs, as a group, to be more easily disciplined by employers.

The limiting of immigration status and labour mobility that are part of the PPORLLFT, also make PPORLLFT TFWs a more easily disciplined group of workers. The new 'four years in four years out rule' for TFWs is meant to encourage TFWs who wish to stay in Canada permanently to pursue permanent residency, and to ensure that the mandate of the TFWP as a *temporary* program is not undermined. But, in the case of NOC C and D level workers, there are few ways for them to transition to permanent residency. Thus the four-year ban causes the PPORLLFT to create a continually rotational work force, where every four years (at most) workers are sent home only to be replaced by new workers. United Food and Commercial Workers (UFCW) organizer Sima Zerehi argues that the imposed rotationality of the PPORLLFT does not solve labour shortage problems:

the federal government has not actually come up with any sort of strategy to meet the labour needs that these temporary foreign workers are now addressing. So that means that after the four years that a TFW is here they are not going to be replaced by someone else who is a permanent residency or who is a citizen. They are going to be replaced by another batch of foreign workers who are going to come in again [and] be unfamiliar with our labour laws, be unfamiliar with any support networks and once again be extremely vulnerable and precarious.²⁶⁶

²⁶⁶ Sima Zerehi comment on "Community groups rally in support of immigrant and migrant workers," John Bonnar Audio Blog, December 2, 2009. <http://rabble.ca/category/podcasts/current-affairs/john-bonnar-audio-blog>.

By creating a rotational work force, the PPORLLFT facilitates the continued access of employers to workers who are new to the country and unfamiliar with their employment related rights, and who have little reasonable chance of becoming citizens: in other words, continued access to an easily controlled and disciplined category of workers.

The single-employer visa and the possibility of employer sponsorship for permanent status also make PPORLLFT TFWs a more easily disciplined group. With regards to the single-employer visa, Jenna Hennebry makes the point that even if TFWs are aware of the possibility of changing employers and have the knowledge to successfully navigate this process, their success still depends not upon on their resourcefulness or ability to work, but upon a future employer. “TFWs could change employers, but it is still employer-driven in the sense that there needs to be another employer willing to hire.”²⁶⁷ Unlike citizens or permanent residents, their ability to support themselves relies upon the decision of an employer not just to offer them a job but also to go through the LMO process. Having successfully switched employers, TFWs still find themselves facing the same barrier to labour mobility: they are always only legally allowed to work for their current employer. This creates a significant disincentive to workplace activism, and makes the threat of being fired by the employer all the more serious, with the end result being a more disciplined worker. Similarly, empowering employers to sponsor potential nominees for permanent residency also leads to a more disciplined work force because the promise of permanent residency can function as a carrot while the possibility of not sponsoring can function as a stick, making TFWs less likely to risk displeasing their employers.

²⁶⁷ Jenna Hennebry (Wilfred Laurier University), CIMM Study, Meeting 28 (Toronto), 1425.

The increase in the PPORLLFT at the expense of the SAWP is troubling, not just because it is a form of privatisation, but also because of its potential to contribute to the disciplining of workers. Some groups have argued that the PPORLLFT is actually more exploitative than the SAWP, and are alarmed to see that it is increasingly being used as an alternative to the SAWP to bring in farm workers.²⁶⁸ In fact, according to a religious agency that advocates for farm workers, “the temporary low-skilled workers program in particular is much more severe than anything we've seen previously in the 30 years of work with the seasonal agricultural workers program.”²⁶⁹ Though the PPORLLFT does not require repatriation for at least four months a year (like the SAWP does), it is in other ways less desirable. Where the SAWP involves bilateral arrangements between the Canadian government and governments in Mexico and the Caribbean, the PPORLLFT greatly reduces the roles of governments, and introduces the role of private immigration consultants and employment brokers, who have been shown to act unscrupulously.²⁷⁰ For one farm worker advocate, “the SAWP program, for all its faults, is at least much more accountable to governments and provides much more protection for both farmer and worker.”²⁷¹ Under the SAWP, employers of TFWs are at least somewhat accountable to the Canadian and Mexican governments; but by hiring TFWs through the PPORLLFT, this level of accountability disappears.

Overall, the process of neoliberalisation that is visible in the PPORLLFT has resulted in greater economic inequality between workers and employers, and has resulted

²⁶⁸ For example, the Migrant Workers Ministry, Diocese of London (CIMM Study, Meeting 24 (Kitchener)); United Food and Commercial Workers and the Agricultural Workers Alliance, “The Status of Migrant Farm Workers in Canada 2010-2011,” (2011).

²⁶⁹ Marie Carter (Migrant Workers Ministry, Diocese of London), CIMM Study, Meeting 24 (Kitchener), 1435.

²⁷⁰ See Standing Committee on Citizenship and Immigration, *Temporary Workers and Non-Status Workers*, 30-37.

²⁷¹ Marie Carter, CIMM Study, Meeting 24 (Kitchener), 1445.

in an expanded capacity for employers to achieve labour flexibility through having a more disciplined workforce. The increase in inequality and flexibility result in changed power dynamics between classes: elites are able to exert greater influence and control by reducing the ability of workers to enact democratic and collective control over the economy.

Conclusion

This chapter has demonstrated that processes of neoliberalisation have resulted in a deepening of class inequality and have served to reinforce, even enhance, capitalist class power. The PPORLFFT, specifically, has resulted in increased inequality and has enhanced the capacity of employers to discipline the workforce. Consequently, the PPORLFFT has worked to empower elites while disempowering workers. Fear of having status revoked, lack of knowledge of Canadian labour laws, difficulties associated with single-employer visas, and hopes of employer sponsorship for permanent residency all discourage workplace activism on the part of TFWs. This in turn creates a situation of greater control and flexibility for employers. Similarly, privatisation and individualisation in combination with increased economic inequality reduce workers' ability to influence economic policy and working conditions, by shifting decision making from legislatures to private sector employers and market processes.

The inequality and disciplining of workers facilitated by the PPORLLFT, and the program's expanded use by employers, suggests that Canadian employers see the rights and working standards enjoyed by Canadian workers as rigidities. Employers thus seek workers without Canadian rights in order to have more a more flexible workforce. Thus, by discouraging the creation of well paid secure jobs held by workers with full rights and

rights that are realistically accessed, the PPORLLFT in large part functions to ensure the continued profitability of businesses and to discipline workers against demanding better treatment and, in the process, deepens inequality in Canadian society.

Conclusion

With the expanding role of the TFWP within Canada's broader immigration system, the PPORLLFT as a statistically significant part of the TFWP is becoming more and more important. The PPORLLFT is becoming regularized as a program with many thousands of TFWs and businesses participating. Though the size of the program has decreased from its peak in 2008, it has been stabilizing at a rate of above 30,000 participants per year, and there are no signs that the program will decrease in significance or be phased out. The PPORLLFT is no longer a pilot project, but a significant aspect of Canada's immigration and foreign labour policies.

In this thesis, I have attempted to provide a structural study of the PPORLLFT, demonstrating its origins, development and effects over the past several years. Through examining testimony given to the Parliamentary Committee on Citizenship and Immigration, I have related the PPORLLFT to the broader neoliberal political economic context of the past thirty years. This analysis has led to the conclusion that not only is the PPORLLFT significantly related to broader processes of neoliberalisation, it also reflects the impact of neoliberalisation on class dynamics. Specifically, the neoliberal aspects of the PPORLLFT have decreased the ability of working people to have influence in their workplace and over economic policy more generally; this is a result of the program causing increased inequality and the capacity for disciplining of workers, while at the same time discouraging unions and encouraging privatisation.

Some significant conclusions about Canadian immigration and labour policy have resulted from this analysis, perhaps most significantly related to the privatisation of citizenship decisions. The PPORLLFT is contributing the qualitative change in Canada's

immigration system from one that provides permanent residency to immigrants upon arrival to a two-step immigration process requiring employer sponsorship in order to transition from the TFWP to permanent residency. This is a shift that is in its early stages, with the FSWP still being the centrepiece of Canadian immigration policy. But this shift is accelerating with the rapidly increasing importance of the PNPs and CEC.

In many ways, this thesis is a narrow study of the PPORLLFT, focusing as it does on the political economic context and consequences of the program. Other methods of analysis and areas of inquiry demand attention. Analyses that look at the racialized nature of the program and its impact on racialising citizenship come immediately to mind as important areas of inquiry. Expanding upon knowledge of which employers are using the PPORLLFT, and upon connections between the state and the employers who use the program is another area of study. This kind of study might hopefully shed some light on the causes of the spike in the use of the program in 2008. Also, the social, political, and even cultural significance of the increase in two-step immigration processes that involve transferring from the TFWP to permanent residency streams is an area that lacks major study. Related to this, studies on the cultural and political impacts of the growing non-permanent rotational workforce are important: what is the impact of large groups of people in Canada who are only allowed to work here and not to settle with their families? The prevalence and impact of denial of sponsorship by employers of permanent residency for TFWs is another unstudied area. And, of course, undertaking studies that give voice to the experiences of TFWs themselves and their efforts to resist exploitation is equally important.

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