

WHO HAS THEIR EYE ON THE BALL? “JURISDICTIONAL FÚTBOL” AND CANADA’S TEMPORARY FOREIGN WORKER PROGRAM

Jenna Hennebry

A paradigm shift is well underway in Canada with respect to migration, one in which temporary migration rivals permanent migration and where the transition from temporary to permanent status has become the “new normal,” says Jenna Hennebry. Here she discusses some of the changing realities of Canada’s Temporary Foreign Worker Program, and asks whether it is a “win-win” policy for both Canada and the sending countries. With particular attention to the impact on development and labour market distortion, she discusses the growing trend toward “two-step” migration, and reflects on the jurisdictional “fútbol” that characterizes this program.

Un changement de paradigme est bel et bien engagé du côté de la politique d’immigration canadienne. C’est ainsi que l’immigration temporaire rivalise désormais avec l’immigration permanente et que le passage du statut temporaire à permanent est devenu la « nouvelle norme », affirme Jenna Hennebry, qui analyse l’évolution du Programme des travailleurs étrangers et se demande s’il repose véritablement sur une politique « gagnant-gagnant » qui profite à la fois au Canada et aux pays d’origine. L’auteure décortique cette tendance vers une immigration « en deux étapes », en prêtant une attention particulière à son impact sur le développement et le marché du travail, tout en examinant le « football » juridique qui caractérise ce programme.



Over the last decade debates over temporary migration in Canada have matured from esoteric opinion pieces in the back pages of local newspapers to front-page headlines in the national newspapers. Canada’s Temporary Foreign Worker Program (TFWP) has also been on the radar on the Hill, proving to be a hot-button issue for the Standing Committee on Citizenship and Immigration. This was particularly true during the debates around Bill C-50 — a budget bill under which changes to Canada’s *Immigration and Refugee Protection Act* were introduced.

Despite this public attention, the potentially important role of temporary migration to Canada’s immigration system, and indeed to Canadian society, has not seemingly been on the radar of policy-makers in Ottawa. Given the relatively ad hoc nature of policy-making in the program over the decade, this is not surprising, but it certainly is worrisome. To those outside Citizenship and Immigration Canada, a comprehensive approach,

one in which there is policy commensurability and integration across departments or governments, seems like a pipe dream.

The reality is that the TFWP is *not* an immigration program, nor was it designed to be. Yet increasingly this program is being used as a stepping stone to permanent immigration, a phenomenon called “two step-migration.” At times it seems as if Canada has a multiple personality disorder — or at the very least some significant confusion about the aims and role of these rapidly growing and diverse programs. Is the TFWP designed to fill short-term labour shortages, or is it a pathway for permanent immigration meant to address longer-term labour needs? Is it a supplement to development aid? Is it a “win-win” program for both sending and receiving states?

Although temporary migration programs differ from one country to another, most countries invoke a kind of “development rationale,” whereby it is assumed that receiving countries benefit from the increased supply of labour

and human capital, while sending countries benefit from not only remittances but also the return of more highly skilled workers. This is perhaps why temporary migration programs are often billed as “win-win” policy options for both sending and receiving states.

However, in practice, it is not clear whether these programs have been successful in procuring long-term ben-

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efits for all involved. The evidence to that effect is murky at best, and the longer-term impacts of temporary migration for labour markets and multicultural societies are even less clear.

For sending countries, temporary migration may be nothing more than a quick fix for their more chronic economic and social problems, injecting much-needed remittance monies into annual GDPs and boosting consumption among migrant families. For example, it is estimated that one-third to one-half of the Philippines’ population is directly dependent on remittances from family members working overseas.

As an index of this dependence, UBC geographer Geraldine Pratt notes that 43 percent of the women coming to Canada through the Live-in Caregiver Program (LCP) in 2006 were married, separated, divorced or widowed. Similarly, the majority of temporary migrants in Canada’s Seasonal Agricultural Worker Program (SAWP), the longest-standing temporary migration program in Canada, are married and support families at home. A recent survey of nearly 600 temporary foreign workers in agriculture, funded by CERIS Ontario Metropolis Research Centre, found that 92 percent of respondents were married and had an average of three children.

Obviously, since the majority of SAWP workers are married, sending

money home is one of the most important ways that migrants are supporting their families. The Department of Foreign Affairs and International Trade cites the estimate that “Mexico received as much as \$80 million in remittances in 2002 from seasonal agricultural workers in Canada.” According to Citizenship and Immigration Canada, a majority of live-in caregivers from the Philippines

send remittances to spouses and/or children.

But whether temporary migration leads to any form of sustainable development has not been clearly established. In fact, evidence tends to point toward heightened relationships of dependency, increased emigration and brain drain.

Researchers generally agree that development is more likely to occur if migrants invest their remittances in agricultural land, machinery, livestock or businesses that have productive capacities. However, they have documented that many migrants use it to purchase food, clothing and medicine; to pay for children’s education; to build or repair their houses; to upgrade household facilities; to acquire foreign-built amenities; and to pay off debts. Research tends to show that the development associated with migration is uneven and depends on the character of the remittance communities. For example, migrants from rural communities with higher-quality land, better infrastructure and greater access to markets are more likely to invest their earnings in productive areas. Those from poorer rural areas with weaker infrastructure and poorer-quality land are more likely to spend their remittances on daily household needs. With respect to the

SAWP, the development effects are also mixed, with a few migrants purchasing land and others using their remittances to subsist.

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When SAWP workers were asked what they spend their money on, the majority indicated that they spent their earnings on supporting their families.

Previous research carried out in 2005-07, funded by the International Development Research Centre, further explored remittance spending among temporary migrants in the SAWP. It found that migrants spent the greatest majority of remittances on basic subsistence (food, potable water, clothing), followed by consumption of household goods (such as electricity, stoves, etc.), followed by improvements to communication such as telephone lines or cellular phones in order to co-ordinate remittance sending and keeping in touch with migrants working in Canada — essentially “making better migrants.”

Any discussion of migration and development must also take into account the costs of migration borne by migrants and their families, including fees to recruiters, housing and transportation, fees to employers, health insurance and fees for sending remittances. For example, in the SAWP migrants must pay into Royal Bank of Canada supplemental health insurance, and often workers must pay to open bank accounts in order to receive their pay (or pay monthly fees, even while the accounts are inactive when the workers return home in the winter), and they must cover the costs of sending remittances (often through Western Union) and international telephone calls, which can cost as much as

\$300 to \$500 per year. Since SAWP workers send money home frequently, the cost of sending remittances can be quite high. In other words, temporary migrants and their families incur significant costs to migrate to Canada

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(both monetary and social), particularly those for whom "temporary" migration may span over 20 years.

So the role remittances from temporary migrants play in promoting sustainable development is still not conclusive, and the potential benefits in terms of skills acquisition are even less clear. In the SAWP, migrants are not eligible for training, and immigrant services organizations are not funded to provide classes for them while they are in Canada.

Research has shown that most temporary migrants in Canada's seasonal temporary migration program have participated in the program for an average of 7 to 9 years, with many participating for over 20 years. Among the migrants surveyed in the CERIS project, 24 percent have come to Canada for 10 years or more. Clearly for a good number of migrant workers (notably those from Mexico and Jamaica), migrating to Canada to work has been far from temporary.

In terms of development-friendly practices, such as reduced costs for sending remittances or training opportunities, very few steps in this direction have been taken, despite the fact that the SAWP is often touted as an alternative to development aid. Most temporary migrants, except for foreign students, are not eligible for training while in Canada, and in the SAWP they are legally not permitted to take classes while in Canada. Although most of them, as we found out in the CERIS survey, would like to receive some training such as English-language training, computer training or

small business start-up training, no such training programs have been implemented for low-skilled migrants.

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access to language training are development-friendly practices that could easily be implemented, but these have not been anywhere on the agenda during the SAWP's 35-year existence.

Canada's history with temporary migration has also not provided clear evidence that temporary migra-

tion is a winning policy option for the Canadian economy. In particular, there is no strong evidence that the TFWP responds to or positively impacts the Canadian labour market.

While there was a decline in Labour Market Opinions (LMOs) in 2009, probably in response to the economic downturn, there was a 122 percent increase in employer requests for temporary-visa workers between 2005 and 2007. While countries such as Spain and the UK halted or froze temporary migration programs during the downturn, the Canadian government did not alter the program and instead relied on employer demand to continue to drive the numbers. Yet the employer-driven nature of the program does not make

TABLE 1. NUMBER OF TEMPORARY FOREIGN WORKER POSITIONS, BY PROGRAM¹

Program stream	2007	2008	2009
Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D)	32,277	66,460	30,488
Live-in Caregiver Program (LCP)	33,532	34,732	20,861
Seasonal Agricultural Worker Program (SAWP)	26,622	28,231	27,654
Subtotal	92,431	129,423	79,003
Other (managerial/professional/skilled) ²	63,057	74,545	52,371
Total, excluding SAWP	128,866	175,737	103,720
Total	155,488	203,968	131,374

Source: This table was compiled based on "Temporary Foreign Worker Program Labour Market Opinion Statistics, Annual Statistics 2006-2009," HRSDC http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/annual/annual_stats_list.shtml.

¹ HRSDC's Labour Market Opinion (LMO) statistics include annual and quarterly data on the number of temporary foreign worker (TFW) positions on LMO confirmations. This is not a direct correlation with the number of entries. Not all TFWs require an LMO to apply for a work permit. There are a number of exemptions, including those provided for in the General Agreement on Trade in Services and the North American Free Trade Agreement.

² Other includes management, professional and skilled/technical occupations (National Occupational Classification 0, A and B) or "high-skilled" occupations.

TABLE 2. TOTAL ENTRIES OF FOREIGN WORKERS BY SKILL LEVEL, CANADA, SELECTED YEARS

Occupational skill level	2002	2004	2006	2008
Level 0 – Managerial	4,605	5,193	6,006	7,287
Level A – Professional	39,337	30,678	35,359	33,115
Level B – Skilled and technical	19,139	17,450	22,518	30,419
Level C – Intermediate and clerical	28,029	30,336	36,905	48,926
Level D – Elemental and labourers	1,105	1,523	4,618	16,875
Level not stated	18,699	27,372	33,695	55,890
Total	110,915	112,553	139,103	192,519

Source: Citizenship and Immigration Canada, "Facts and Figures 2008" (2009). These figures represent the number of foreign workers who enter Canada annually, and are calculated based on the number of work permits issued at the port of entry. They do not include foreign workers who are already in Canada during this period (as work permits vary in duration, some are renewable or have subsequent work permits).

the program inherently more responsive to the labour market. In fact, it may serve to encourage labour market distortion. One indicator of a lack of labour market responsiveness — or possibly distortion — is that employers requests for foreign workers are not consistently aligned with the actual numbers that they hire and many also fire workers while they are in Canada. Across Canada in 2008 there were 203,968 confirmed positions through Labour Market Opinions, and 192,519 foreign workers entered the country that same year (see tables 1 and 2).

It is not clear whether the application process efficiently assesses employers’ needs. According to the HRSDC Web site, “As employers seeking to hire temporary foreign workers, you must be prepared to demonstrate that you meet the minimum advertising requirements by providing proof of advertisement and the results of your efforts to recruit Canadians or permanent residents.” Thus employers must: (1) advertise for a minimum of 14 days on the national job bank (or the equivalent in Saskatchewan, Quebec and the Northwest Territories) during the three months prior to applying for a LMO; (2) conduct recruitment activities consistent with the practice in the occupation, during the three months prior to applying for a LMO; and (3) demonstrate they have made “reasonable, ongoing recruitment efforts which include communities that face barriers to employment.”

How do the advertising requirements, which involve posting an advertisement in the job bank, in the trade press or in the newspaper, adequately demonstrate difficulty in hiring a Canadian worker?

The key for a temporary migrant worker program to succeed is to design and administer it to minimize “failures” due to distortion (labour markets adjust to the presence of migrants, so that employers and their bankers assume they will continue to be available when they make investment and other decisions) and dependence (when migrants, their families and their communities come to depend on foreign jobs).



The Gazette, Montreal

Migrant seasonal workers from Mexico gather berries for Atoka Cranberries Inc. near St-Louis-de-Blandford in Quebec.

Clearly, Canada must do more to prevent both distortion and dependence particularly with respect to new program streams for lower-skilled occupations, such as the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D) introduced in 2002 — which is often referred to as the Low-Skill Pilot Project.

It is well known that migrants often move across numerous categories throughout their migration experience, and there are many types of two-step migration, but most of them typically involve migrants entering under one class and then converting to another at a later date. Migrants are people whose aspirations and goals change with experience, which makes managing migration for employment

far more complex than managing trade in goods or capital. For many migrants from developing countries, “the dichotomy between temporary and permanent migration appears to be a false one as the intention was always permanent migration” as Siew-Ean Khoo and her colleagues from the Australian Demographic and Social Research Institute point out. For example, many internationally trained nurses enter Canada from the Philippines as temporary workers in the LCP and the TFWP, but as noted by Margaret Walton-Roberts from the International Migration Research Centre, Indian nurses are increasingly migrating as international students and intend to change their status after completing their educational programs.

In Canada, nonstate actors, employment agencies and recruiters (such as Premier Caregivers Inc. or NursesBC) are playing a role in this two-step migration process. They help employers find workers from abroad, and in some cases help temporary migrants apply for residency. In particular, the “nanny trade” is becoming more competitive. As a result a growing number of medically trained profes-

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sionals are working as live-in caregivers as a way to do the “two-step” into Canada. As Gateways International Services advertises on its Web site, “Looking to hire a nanny? Why not hire a nurse from another country?” These agencies are increasingly present in Canada’s migration system, particularly with the introduction in 2002 of the Low-Skill Pilot Project. Since this program provides no assistance to employers looking to find and hire foreign workers (or for workers looking for employers who have permission to hire foreign workers), organizations such as Workpermit.ca or WorkVantage have stepped in to fill the gap.

Aside from the LCP, the two-step migration process has largely been a high-skill migration phenomenon, and this trend is likely to persist, given the introduction of the Canadian Experience Class (a program that opens a pathway to permanent residency for foreign students and highly skilled temporary migrants). There are no such pathways to permanent residency in the SAWP and the Low-Skill Pilot Project, despite the fact that many migrants have a long history of participation and are interested in gaining permanent entry (see table 3). In fact, of 444 SAWP migrants from Mexico and Jamaica interviewed in 2008-09, 60 percent indicated they were interested in gaining permanent residency in Canada.

The absence of a direct pathway to permanent residency for low-skilled

temporary migrants is strongly criticized by academics and migrant rights organizations, who say that access to permanent residency would allow these migrants greater access to services and protection of their rights.

The Provincial Nominee Program (PNP) is another pathway for this two-step migration. Since its creation, increasing numbers of migrants entering

Canada are applying for and gaining permanent residency through the PNP. For example, in 2000 only 23 foreign workers gained entry through the PNP, and by 2009 that figure had risen to 6,108. While a majority of them were skilled migrants, there has been a significant growth in the number of less-skilled workers who have transited through the PNP since 2005: 1,448 by 2009.

PNP gives significant influence to employers in the selection of immi-

grants, given that they select the temporary migrants and provide the jobs. It is important to consider whether use of the PNP in conjunction with foreign worker programs gives employers another carrot or stick to use with their workers. The trend for foreign worker programs in OECD countries seems to be to “trust the employer,” to give employers or employer organizations more of a voice in admissions, transportation and employment decisions and to rely on industry or private sector organizations to mediate the temporary migration process. This has perhaps gone furthest in Canada, where employers pay user fees to fund the Foreign Agricultural Resource Management Services (FARMS) organization, which handles many of the tasks dealt with by government agencies in other countries, such as matching workers with employers transporting workers.

At the same time it is important to consider the additional costs that may

TABLE 3. SEASONAL AGRICULTURAL WORKERS INTERESTED IN APPLYING FOR PERMANENT RESIDENCY IN CANADA

Number of years in the SAWP	Interested in applying for PR				
	No (N)	No (%)	Yes (N)	Yes (%)	Total
From Mexico					
1 or less	13	35	24	65	37
2-3	31	44	40	56	71
4-5	32	47	36	53	68
6-7	35	45	42	55	77
8-9	14	25	42	75	56
10-11	11	39	17	61	28
12 and greater	24	39	38	61	62
Subtotal	160	40	239	60	399
From Jamaica					
1 or less	2	40	3	60	5
2-3	3	33	6	67	9
4-5	3	75	1	25	4
6-7	0	0	6	100	6
8-9	0	0	4	100	4
10-11	1	25	3	75	4
12 and greater	7	47	8	53	15
Subtotal	16	36	29	64	45
Total	176	40	268	60	444

Source: J. Hennebry, K. Preibisch, and J. McLaughlin, 2010. “Health Across Borders — Health Status, Risks and Care among Transnational Migrant Farm Workers in Ontario.” CERIS Ontario Metropolitan Centre: Toronto, Ontario.

be incurred by employers, migrants and communities if the trend becomes widespread. Employers typically pay fees to recruiters or associations (e.g., Foreign Agricultural Resource Management Services) to assist in securing LMOs and hiring workers they provide airfare and in some cases housing. Migrants often pay recruiters (whether “legally,” to write their resumé or train them for interviews, or “illegally,” to help them get employment) and pay for some travel and, in some cases,

In some ways this is a subtle form of interdiction or may be used as a job screen. The negative effect on integration could be even greater in the case of foreign workers whose entry job is in the lower-skills category, because these workers are more vulnerable to human rights abuses and health risks, and they do not have sufficient access to protections and benefits. With little discussion or public debate, the practice of moving from the TFWP to permanent residency seems to have become a rea-

have to balance rights, labour market needs and social cohesion in a multicultural society. Can Canada achieve this balance if it continues to expand temporary migration programs?

With so many different governments and nongovernmental actors involved in the layers of program streams that operate in multiple sectors, “jurisdictional futbol” seems an appropriate way to characterize the program. Mapping the programs is nearly impossible; in Canada, a list of the primary actors involved in the administration and management of the TFWP would need to include several federal and provincial departments and ministries (Labour, Immigration, Health) as well as foreign governments or

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housing; international students pay high international tuition fees; and communities, in particular immigrant service providers, provide support for foreign workers, typically without government funding for foreign workers.

There are also incredible social costs — for the migrants and for communities. Temporary migrants, particularly those in lower-skilled occupations, must spend years separated from their families (they are typically not allowed to bring their family members or are discouraged from doing so), and many don’t have multiple-entry visas that permit visits home. Communities grapple with the growing numbers of interlopers, the great majority of whom are not supposed to integrate and will return home after they finish doing work that others do not want to do (only to be replaced by other migrant workers).

So on the one hand the use of foreign worker programs with the PNP means that these migrants will have Canadian work experience that makes it easier for them to integrate into the labour market, but on the other hand, this may cause unnecessary delay in an already lengthy immigration process, adding more years of family separation, debt and stress that are likely to have lasting negative effects on integration.

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Possibly the most important question is not whether Canada’s Temporary Foreign Worker Program is a “win-win” situation for Canada, but who pays, and who keeps the winnings? The short answer to this question is, of course, employers, but this is not the root of the problem, since the system depends on their demand. A greater point of concern is the increased role of nonstate actors. But the major concern is the lack of policy coherence across departments and levels of government in the administration and management of the programs. With many policies operating in the same sectors, the TFWP is difficult to manage for governments and difficult to navigate for migrants and workers.

Temporary migration management is a balancing act for both sending and receiving states. Sending states balance the pressures of unemployment and the need for remittances with protection of their citizens abroad, and hope that sending workers to developed nations will put them in good favour during trade negotiations. Receiving states

consulates, in addition to non-governmental organizations, such as immigrant service providers, unions, employment agencies, industry associations, etc., not to speak of international organizations. What is clear from this nonexhaustive list is the complexity of the program. Yet despite its many actors and extensive government involvement, it still lacks significant oversight, monitoring and regulation, particularly over the long term in relation to the Canadian immigration system.

A paradigm shift seems to be occurring in Canada with respect to migration, where temporary migration rivals permanent migration, and the transition from temporary to permanent status has become the “new normal” and, according to some, the “new and improved.” However, given the evidence so far, Canadians need to be cautious about this shift; it is time for serious debate and discussion, and we should start by figuring out who has their eye on the ball.

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