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Boosting our Economy: How the Temporary Work Visa Program increases Migration, but decreases Human Rights

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Temporarily Restoring the Economy?

A Look at the Temporary Foreign Work Program Today

Alexandria S. Palazzo

March 29, 2016
Roadmap

1. Introduction – What is the TFWP?

2. Legislative Background

3. Analysis: Addressing the TFWP Shortcomings

4. Our US Counterpart

5. The Future of TFWP: Recommendations

6. Conclusion
Introduction – What is the TFWP?

• Managed by Human Resources and Skills Development Canada (“HRSDC”) and Canadian Immigration and Citizenship (“CIC”) of the Federal Government

• Allows Canadian employers to hire migrant workers to fill temporary labour shortages
• In theory: immigrants are admitted into Canada as parties to an “ongoing and open-ended social contract” with their employers

• In practice, however: foreign workers are admitted temporarily to do jobs that are socially undesirable by Canadians due to wages and/or working conditions

• They have limited access to public benefits while in Canada
Legislative Background

• Non-Immigrant Employment Authorization Program (“NIEAP”) introduced on January 1, 1973

• Became formally known as the TFWP in the 1990s

  – Polarizing Trend: Low-skill vs. High-skill Job Markets affecting TFWP
  – Low-Skilled Worker Pilot Project
TFWP Shortfalls

Weaknesses of the TWFNP include:

1. The Employment “Contract”
2. Provincial Employment Standards
3. Recruitment Agencies
4. Union Representation
1. The Employment Contract

- Model contract set out by HRSDC
- Cannot be enforced by Federal Government
- Only Provincial law applies
- No regulatory body ensuring enforcement
  - CSWU Local 1611 v. SELI Canada Inc.
2. Provincial Employment Standards

- Discrepancies across provinces

- Provincial governments are not as resourceful or staffed as the Federal government

- Temporary foreign workers are not entitled to social assistance anywhere in Canada
3. Recruitment Agencies

- Notorious for using coercive methods to lure TFWs to work in Canada
  - Sometimes use incorrect documents

- Worker Recruitment and Protection Act

- Bill C-57
4. Union Access

- Due to temporary nature, it is hard to foster collective action among workers/members

- Presence of the TFWP attempts to make employers more union-proof

- In Ontario and Alberta, TFWs do not have collective bargaining rights
  - *Fraser v. Ontario (Attorney General)*
Our U.S. Counterpart: H2 Program

• U.S. employs similar bifurcated temporary worker visa program that targets high-skilled and low-skilled workers separately

• H1 Program: reserved for high-skilled TFWs in specialized fields
  – TFWs afforded great protection

• H2 Program: low-skilled TFWs
  – Split into H2-A and H2-B programs
  – Agricultural and other intermittent workers
Future Recommendations

1. Federal government to enact an umbrella organization to displace TFWP
   a. Pursuant to s. 91(25) of the *Canadian Constitution Act of 1867*
      a. Paramountcy Doctrine

1. Or, ensure all provinces are abiding by the same regulations to avoid discrepancies
   a. Not up to the courts
   b. See s. 95 of the Canadian *Constitution Act of 1867*
Conclusion

• It is of timely fashion that the TFWP be reviewed

• Trudeau’s majority government: how will he change Canada’s political landscape and affect immigration policy during his term?

• Questions?