

Under <i>legal practices similar to slavery</i> according to the U.N. Convention: Canada's "non white" "temporary" foreign workers in "low-skilled" occupations
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ABSTRACT:

In Canada, on the basis of their national origin and/or gender, some temporary foreign workers in low-skilled occupations may be bound by law to live and work on the property of another person, even if they are, at the same time, « not free to change their status» in Canada. They thus qualify as « persons under servile status» - persons under a human condition equivalent to the one experienced by slaves, under the terms of the *U.N. Convention against institutions and practices analogous to slavery*. Evidence gathered over the last decades - by academics, community groups, human rights NGOs, workers' unions and the federal department of Status of Women Canada – support the claim that the current immigration system restricts the human rights of some temporary foreign workers in low-skilled occupations in a way that *cannot* be considered «demonstrably justified in a free and democratic society». If Canada is looking to match the human rights minimal standards set by the *U.N. Convention against practices analogous to slavery*, the *Canadian Charter*, and the *U.N. Convention for the protection of the rights of all migrant workers and members of their families*, specific policy adjustments will have to be made. First, unless a worker is granted access to immigration procedures upon arrival, the work permit issued should not be restricted to a single employer, and no obligation to live with the employer should be imposed, in order to respect their *right to liberty and security of the person* and their *freedom of association* in Canada. Moreover, to exercise their rights, these taxpayers will also have to be, as all other workers, meaningfully covered by Employment Insurance, provincial Social Security programs and Public Health & Social services. Work permits will have to be exclusively issued in provincial employment sectors where the rights to collective bargaining and to safety at work are protected by provincial legislation; renewals of authorization to employers and agencies will have to be denied in case of past worker complaints; *trafficking* charges will have to be applied to abusive employers and agencies; and, on *compassionate grounds*, permanent status regularization procedures will have to be developed for all residing migrants (and all future abused temporary foreign workers) who have fallen out of status in Canada. Second, in order to respect their right in Canada to *equal benefit of the law*, all workers under temporary status filling a « not temporary» Canadian labour shortage - including workers in the agro-food and domestic services industries - will have to be granted *equal* independent (not conditional to the employer's sponsorship) family and immigration rights.

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Canada's "non white" "temporary" foreign workers in "low-skilled" occupations

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Through ratification² of the *U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*³ (CAPSS 1957), Canada agreed to «take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the institutions and practices similar to slavery» (art.1).

Under the terms of this convention, a *slave* is defined as a «person over whom any or all of the powers attaching to the right of ownership are exercised», and *persons under servile status* are defined as persons «in the condition or status resulting from any of the institutions or practices similar to slavery». Four practices similar to slavery are specifically aimed at in the convention: debt bondage, serfdom, abusive marriage and abusive adoption. The *serfdom* that States parties to the convention agreed to abolish at any cost is defined in the following terms in the convention's first article:

«Condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to

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² The list of countries who have ratified the Convention can be found at:
<http://daccessdds.un.org/doc/UNDOC/GEN/G06/125/36/PDF/G0612536.pdf?OpenElement>

³ The text of this U.N. Convention is available online at:
<http://www2.ohchr.org/english/law/slavetrade.htm>

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such other person, whether for reward or not, and is not free to change his status».

1. Canada's workers under temporary status

The "temporary foreign worker program" of Canada is «multifaceted» (Boyd, Taylor & Delaney 1986). Under the *Immigration and Refugee Protection Act*⁴ (IRPA-2002), associated regulations⁵ or administrative guidelines⁶, foreign workers with temporary status in Canada are either (I) authorized to work without a work permit⁷, (II) issued a work permit⁸ by Citizenship and Immigration Canada (CIC) or (III) issued a CIC work permit combined with a job offer validation⁹ issued by Human Resources and Social Development Canada (HRSDC). Furthermore, they will either be (A) authorized by CIC to work without a work permit, (B) issued by CIC an open work permit, (C) issued by CIC a «semi-open» work permit, (D) issued by CIC an employer-restricted work permit or (E) issued by CIC an employer-restricted work permit to which are automatically attached administrative live-in restrictions.

Within this heterogeneous legal/administrative framework, 12 broad categories of workers under temporary status may be identified: they may be granted different temporary resident status (recruited/autonomous workers, students, asylum seekers and other temporary residents), associated to different skill

⁴ The text of IRPA is available online at: <http://laws.justice.gc.ca/en/I-2.5/>.

⁵ The text of the IRPA Regulations is available online at:
<http://laws.justice.gc.ca/en/showtdm/cr/SOR-2002-227>

⁶ CIC main guidelines concerning temporary foreign workers are gathered and systematically updated within CIC's Foreign Worker manual (CIC FW 2007): <http://www.cic.gc.ca/english/resources/manuals/fw/index.asp>

⁷ See in particular CIC FW 2007, sections 5.2-5.22

⁸ See in particular CIC FW 2007, sections 5.34, 5.40, 5.41, 5.42 and sections 5.26-5.39

⁹ See in particular CIC FW 2007, sections 5.25

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levels¹⁰ («high skilled» or unskilled/«low-skilled»¹¹), and employed in different sectors (domestic/care services, agriculture or other sectors) (see table 1). These workers are administratively granted different sets of human and immigration rights (see table 5).

Table 1
Canada's residents under temporary status: admissions in 2006

Authorized (CIC) to work without a work permit (A)			Authorized (CIC) to get a work permit without HRSDC job offer validation					Authorized (CIC) to get a work permit only if in possession of an HRSDC job offer validation			
(1) «High skilled» workers and students on campus	«Low-skilled» worker hired by an employer of foreign origin		«low skilled»/skilled unspecified – granted open work permit (B)			(8) Selection of «high skilled» workers granted «quasi-open» work permit (C)		Granted employer-restricted work permit (D)	Granted employer-restricted work permit with live-in restrictions (E)		
	(2) Other «low-skilled» workers	(3) Domestic workers	(4) Foreign students outside campus	(5) Asylum seekers and other temporary residents	(6) Spouses of «high skilled» workers or students			(9) «High skilled» workers	«Low skilled» workers hired by a Canadian employer		
									(10) Workers FWP-LS	(11) Workers SAWP	(12) Workers LCP
Statistics not available			61 703	93 695	34 381			40 804	37 472		

Source: CIC Facts & Figures 2006

(A) Temporary foreign workers authorized without a work permit

If by administrative guidelines most workers authorized to work without a work permit (see table 2) are allowed to work for any relevant employer¹² (see table 1, worker category #1), some of them are not. More specifically, foreign domestic workers employed by a foreign national with temporary status in Canada (see

¹⁰ Official skill levels associated with occupations in Canada are established by HRSDC via the National Occupation Classification (NOC). The NOC grid applied in 2008 is still the one updated in 2006 and is available at online: http://www5.hrsdc.gc.ca/NOC-CNP/docs/Matrix_Poster_English.pdf

¹¹ "High skilled" occupations refer to occupations which require more than a 2-years post-secondary diploma. See in particular HRSDC's precisions available at: http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/lowskill.shtml . However, the classification of type of skill between "high" and "low" categories has been shown to presuppose gender and nationality bias (see section 6 of this paper).

¹² See note 7 above

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table 1, worker category #3) are considered «foreign representatives» (see table 2) and thus are not issued a work permit in Canada. They are, however, automatically bound to live and work on the property of a single (foreign) employer, without being free to change their status¹³ (even after 20, 40 or 60 years of full-time work in Canada), including to register within the Live-in Caregiver Program (see section E below) in order to be given a possibility of changing status eventually. CIC gives total authority to these foreign residents with (diplomatic) temporary status to decide if they want the worker to be granted a possibility to change status in Canada.

Other temporary foreign workers employed in Canada by a *foreign* employer in «low-skilled» occupations¹⁴ (see table 1, worker category # 2), for example Chinese construction workers working for a Chinese subcontractor hired by a Canadian Oil Company for digging work in British Columbia, are considered «commercial visitors» (see table 2) and, as such, are not issued a work permit, but they are at the same time not free to change employer or change status in Canada, and they may contractually be bound to a residence chosen by their foreign employer active in Canada.

¹³ CIC FW 2007, section 5.3 and appendix C (section 3)

¹⁴ CIC FW 2007, section 5.2

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Table 2
Categories of foreign workers temporarily authorized by the Regulations of the *Immigration and Refugee Protection Act (IRPA)* to enter and work in Canada without work permit

Section of IRPA Regs.	Official category of worker
R186(a) and R187	Business visitor
R186(b)	Foreign government representatives
R186(c)	Family members of foreign government representatives
R186(d)	Members of the armed forces
R186(e)	Foreign government employees
R186(f)	On-campus employment
R186(g)	Performing artists
R186(h)	Athletes and trainers
R186(i)	Press correspondents and journalists
R186(j)	Speakers
R186(k)	Convention organizers
R186(l)	Members of the clergy
R186(m)	Judges and arbitrators
R186(n)	Examiners and evaluators
R186(o)	Expert witnesses and investigators
R186(p)	Health care students
R186(q)	Civil aviation inspectors
R186(r)	Aviation accident or incident investigators
R186(s)	Crew members
R186(t)	Emergency status
R186(u)	Implied status

(B) Temporary foreign workers issued an open work permit

Similarly to students, asylum seekers and other temporary residents (including spouses of workers and students under temporary status, see table 3 below)¹⁵

¹⁵ See in particular CIC FW 2007, sections 5.40, 5.41, 5.42

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authorized on grounds other than purely labour market ones, 18-35 year old «unskilled» labour from countries characterized by important "white" populations¹⁶ are issued open (or quasi-open, see section (C) below) work permits and thus recognized the right to choose in which province, in which occupation and for which employer they want to work. If these temporary foreign workers are not free to change their status in Canada (unless already in possession of a university diploma), they are however allowed to change employer and to reside outside their employer's property.

(C) Temporary foreign workers issued a «quasi-open» work permit

Implementing international mobility rights for «high skilled» workers along the lines of international agreements focusing on the international trade of services, «high skilled» foreign workers are issued (employer specific) work permits on the basis of their employability in selected occupations, if they can show a relevant job offer from a Canadian employer¹⁷ (see Table 3). In this context, these workers can be considered under «quasi-open» work permits or, in other words, they are free to change employer in Canada (but will be delayed in doing so by work permit update procedures). At the same time, they are not only free, but strongly invited by the federal administration, to change (to a permanent) status in Canada¹⁸.

¹⁶ Privileged countries are: Armenia, Australia, Austria, Belarus, Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, Ireland, Latvia, Netherland, New Zealand, Norway, Poland, Romania, Russia, Slovak Republic, South Africa, Spain, U.K., U.S.A., Argentina, Brazile and Chile. Exception to this "white" rule is applied to the two richest Asian countries (Japan and south Korea) and to Peru. See in particular CIC FW 2007, section 5.34 and appendix E

¹⁷ See in particular CIC FW 2007, sections 5.26-5.39

¹⁸ See CIC 2008a

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Table 3
Workers authorized to work with a CIC work permit

Work permit type	Program category	Worker category	Qualifications
(C) «Quasi-open» work permit	(4) Foreign students – off-campus		Foreign workers without particular skills or with a low level of formal training
	(5) Asylum seekers and other temporary residents	Refugee claimants	
		Regularization – spousal grounds	
		Regularization – humanitarian grounds	
		Workers – Live-in caregivers	
		Refugees awaiting permanent residence	
		Persons affected by a moratorium on deportation	
		Foreign students – post-graduate employment	
		«Destitute» students	
		Others (Holders of a temporary resident permit of at least 6 months)	
	(6) Spouses of foreign workers O,A,B and spouses of foreign students		
	(7) Unskilled workers from Europe, Commonwealth, etc. (18-35 years old)		
(B) «Open» work permit	(8) Selection of «high skilled» workers	Employees of religious or charitable non-profit organizations	Programs for business people and/or skilled workers
		Position under a reciprocal agreement	
		Teachers (exchange) and invited speakers	
		International agreements	
		NAFTA/CCFTA negotiators	
		NAFTA/CCFTA investors	
		NAFTA/CCFTA professionals	
		NAFTA/CCFTA intra-company transfers	
		GATS professionals	
		Intra-company transfers	
		Emergency repairs	
		Canadian interests – important advantage	
		Entrepreneurs	
		Research, teaching or training	
		Post-doctoral fellows and subsidized researchers	

Source: CIC FW 2008

In 2006, 55.8% of high skilled foreign workers issued a work permit in Canada were issued a «quasi-open» work permit (see table 4).

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Table 4

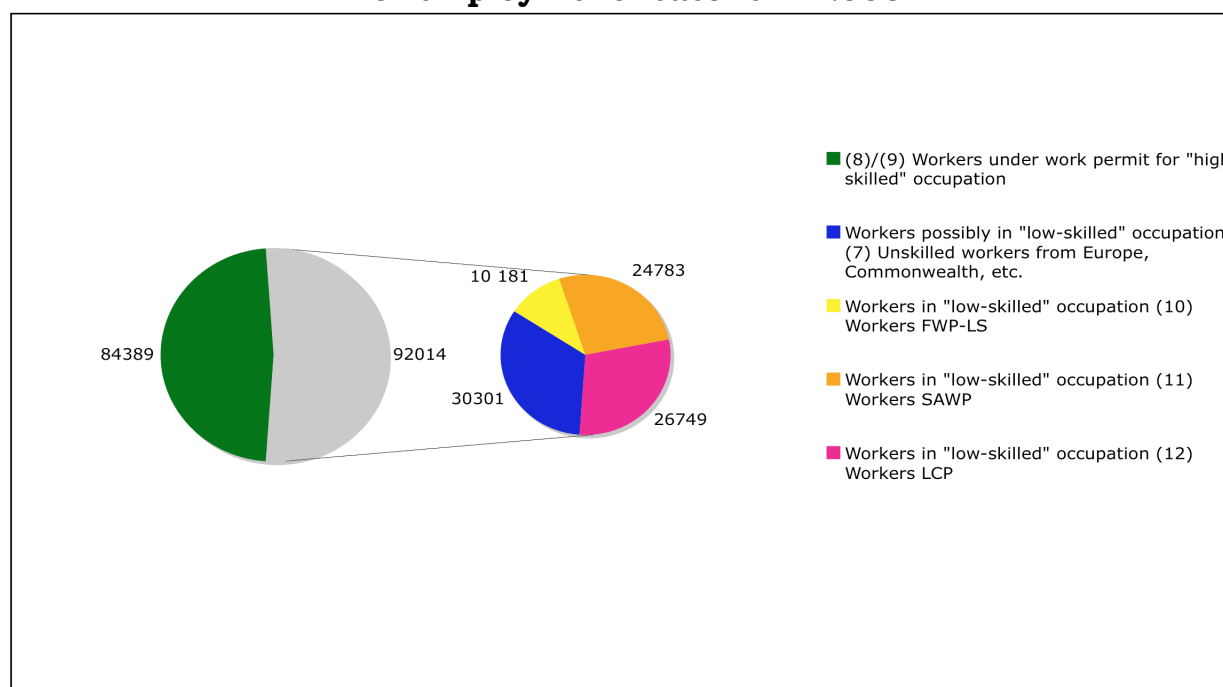
Temporary foreign workers authorized in 2006, by category

I-Authorized (CIC) to work (A) without a work permit			II-Authorized (CIC) to get a work permit without HRSDC job offer validation					III- Authorized (CIC) to get a work permit only if in possession of a HRSDC job offer validation			
(1) Other workers authorized without work permit	«Low-skilled» worker employed by an employer of foreign origin		«Low skilled»/skilled unspecified – granted (B) open work permit				(8) Selection of «high skilled» workers granted (C) «quasi-open» work permit	Granted employer-(D) restricted work permit		Granted employer-(E) restricted work permit with live-in restrictions	
	(2) Other «low-skilled» workers	(3) Domestic workers	(4) Foreign students	(5) Asylum seekers and other temporary residents	(6) Spouses of «high skilled» workers or students	(7) Unskilled workers from Europe, Commonwealth, etc.		(9) «High skilled» workers	«Low skilled» workers employed by a Canadian employer		
								(10) Workers FWP-LS	(11) Workers SAWP	(12) Workers LCP	
Statistics not available			18 564	59 714	11 742	30 301	47 137	37 252	10 181	24 783	26 749

Source: Depatie-Pelletier 2007a

However, in 2006, the majority (52.2%) of temporary residents admitted for employment reasons were unskilled or recruited for a «low skilled» occupation (see Figure 1).

Figure 1
Temporary residents issued a work permit and admitted for employment reasons in 2006



(D) Temporary foreign workers issued an employer-restricted work permit

Under the CIC/HRSDC Foreign Worker Program (see Table 4, section III), some workers are admitted for occupations requiring more than a two-year post-secondary diploma¹⁹ (see table 4, worker category #9), if associated labour market pressures are not classified a priori as a national priority by CIC (see Table 4, section II, worker category #8). Sectoral or case-by-case HRSDC's job offer validations must be obtained by the worker before the issuance or the renewal of the work permit. No administrative restriction is imposed on their right to choose their residence in Canada, and they are allowed upon arrival to ask for permanent status.

Since 2002, under the same framework (see Table 4, section III), some workers have been admitted for occupations other than care services and agricultural work requiring less than a two-years post-secondary diploma²⁰ (see table 4, worker category #10). HRSDC's job offer validations are necessary before the issuance or the renewal of the work permit. No administrative restriction is imposed on their right to choose their residence in Canada, but administrative validations of work contracts, including this kind of restriction, are possible. Moreover, they are forbidden to demand permanent status in Canada and, if not sent back/replaced by the employer after two years, they will have to leave for at least four months before being granted to right to ask for the renewal of their work permit. In 2006, only 10 181 people were authorized to work under this new scheme, in «new» occupations affected by a Canadian labour shortage or a decent work conditions shortage (CLC 2007), such as industrial butchers and light duty cleaners (see Table 5).

¹⁹ See in particular HRSDC 2008a

²⁰ See in particular HRSDC 2008b

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Table 5
Number of workers issued a work permit restricted
to a «low-skilled» occupation in Canada in 2006

Category	NOC position code	Persons authorized under restrictive work permit during 2006
Agricultural workers	8431, 9432, 8611, 8612, 9617	24 783
Domestic workers	6474 Caregivers and Domestic Workers	26 749
	1411 General Office Clerks	578
	1413 Records and File Clerks	101
	1421 Computer Operators	61
	1431 Accounting Clerks	364
	1434 Banking, Insurance and Others	117
	1441 Administrative Clerks	193
	1453 Customer Service, Informa	245
	1474 Purchasing and Inventory	53
	3414 Other Aides and Assistant	60
	6411 Sales Representatives, Wh	205
	6421 Retail Salespersons and S	350
	6431 Travel Counsellors	79
	6435 Hotel Front Desk Clerks	236
	6441 Tour and Travel Guides	234
	6442 Outdoor Sport and Recreat	191
	6453 Food and Beverage Servers	230
	6472 Elementary and Secondary	140
	6623 Other Elemental Sales Occ	192
	6641 Food Service Counter Atte	396
	6661 Light Duty Cleaners	632
	6671 Attendants in Recreation	183
	6672 Other Attendants in Accom	82
	7411 Truck Drivers	1200
	7421 Heavy Equipment Operators	105
	7432 Railway Track Maintenance	134
	7433 Deck Crew, Water Transpor	192
	7434 Engine Room Crew, Water T	142
	7441 Residential and Commercia	86
	7445 Other Repairers and Servi	135
	7452 Material Handlers	115
	7611 Construction Trades Helpe	453
	9462 Industrial Butchers and M	545
	9511 Machining Tool Operators	66
	9619 Other Labourers in Proces	207
	Other positions	1826
	Total	10 181
Total		61713

Source: Depatie-Pelletier 2007a

(E) Temporary foreign workers issued an employer-restricted work permit with live-in restrictions

Two other categories of workers are automatically imposed a work permit restricted to a single employer and they are also automatically forced to live on the employer's property. At the same time, as workers with employability in a «low skilled» occupation, they are not free to change their status in Canada.

Workers admitted under the Live-in Caregiver Program (LCP) are still imposed (by IRPA Regulations since 2002) the obligation to reside at the employer's property in Canada. Moreover, work permits issued to them are restricted to a single employer. At the same time, they are forbidden to ask for a change of status during the first two years of their immigration process in Canada²¹. On Dec 1st 2006, 21 489 workers in Canada were in possession of a valid work permit issued under the LCP (see table 4, worker category #12, and table 5/Figure 1 below).

Finally, Mexican and Caribbean workers admitted under the Seasonal Agricultural Worker Program²² (SAWP) are still imposed (via HRSDC's annual validation process of standard work contracts that integrate restrictions of human rights and freedoms²³) the obligation to reside on the employer's premises in Canada. Their work permits are also restricted to a single employer. At the same time, they are not only forbidden to ask for a change of status in Canada, but also forced to leave Canada at least one month every year²⁴. In 2006, 20 829 SAWP workers in Canada were in possession of a valid work permit (see table 4, worker category #11, and table 5/Figure 1 below).

²¹ See CIC 2008b

²² See HRSDC 2008c

²³ See HRSDC 2008d

²⁴ See note 23

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Table 6
Population on Dec 1st of workers authorized under Canada's two largest
guestworker programs (1978-2006)

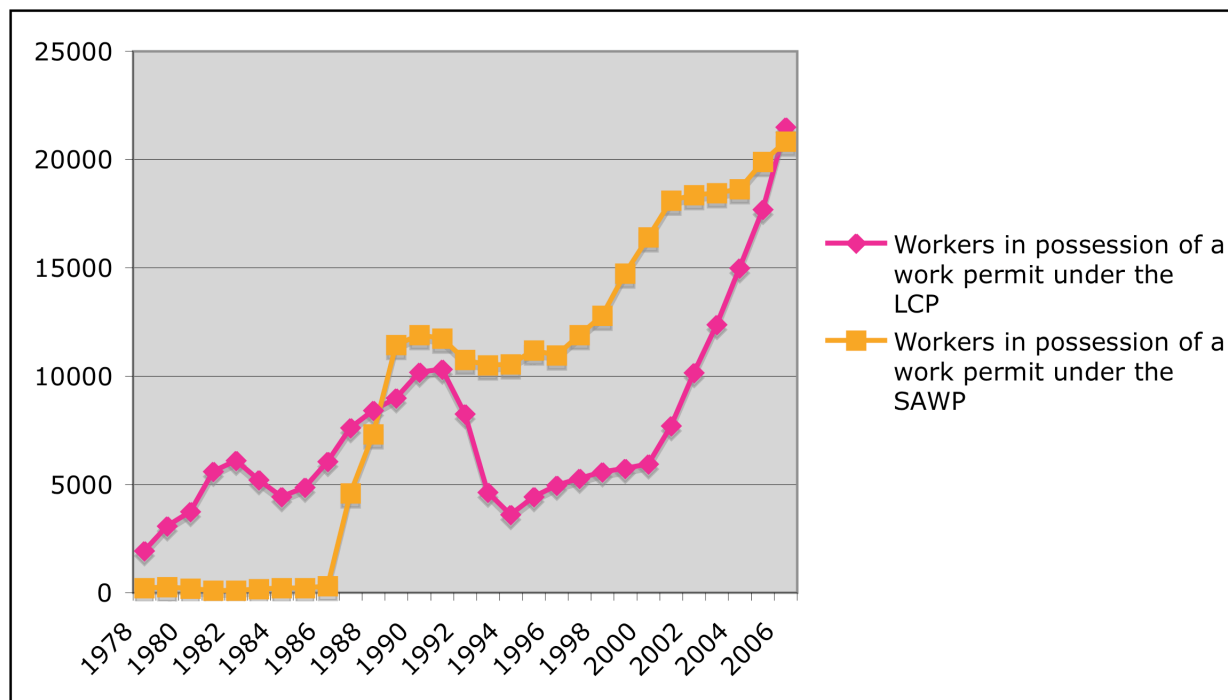
	Workers in possession of a work permit under the LCP	Workers in possession of a work permit under the SAWP ²⁵
1978	1931	210
1979	3078	255
1980	3737	192
1981	5599	89
1982	6090	99
1983	5207	162
1984	4415	213
1985	4849	198
1986	6042	293
1987	7617	4590
1988	8416	7304
1989	8986	11432
1990	10172	11886
1991	10321	11736
1992	8253	10757
1993	4628	10503
1994	3597	10548
1995	4417	11177
1996	4942	10948
1997	5272	11891
1998	5562	12782
1999	5724	14742
2000	5942	16402
2001	7694	18098
2002	10148	18354
2003	12370	18457
2004	14995	18628
2005	17697	19879
2006	21489	20829

Source: Depatie-Pelletier 2007a

²⁵ These statistics on the number of workers in possession of a valid SAWP work permit on Dec 1st may lead us to underestimate the effective presence of these workers in Canada which, for administrative and family/cultural/religious reasons, systematically leave Canada during the month of December.

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Figure 2
Evolution from 1978-2006 of Dec 1st stocks of workers authorized under
Canada's two largest guestworker programs



Source: Depatie-Pelletier 2007a

2. Canada's "persons under servile status"²⁶

Workers authorized to work without permit and workers authorized under work permits will (or may) be imposed legal obligations to live and work on the property of a single employer, if employed in «low-skilled» occupations, while at the same time not being free to change status in Canada. These workers are thus currently being imposed a «servile status» in Canada, under the terms of the *U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. The elements necessary to create their condition of servitude will be legally imposed or, in some cases, may result from HRSDC/CIC's validation of contractual «live-in» restrictions to the worker's right to liberty (security of the person) accommodating the sponsoring

²⁶ See definition under the Convention against slavery presented in the first part of this paper.

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employer (see «(x)» in table 7).

Table 7
Canada's foreign workers qualifying as persons under servile status
under the UN Convention against practices analogous to slavery

	(A) Authorized (CIC) to work without work permit			(B) Authorized (CIC) to get a work permit without HRSDC job offer validation					(C) Authorized (CIC) to get a work permit only if in possession of a HRSDC job offer validation			
	(1) Other workers authorized without work permit	«Low-skilled» worker employed by an employer of foreign origin		«Low skilled»/skilled unspecified – granted open work permit				(8) Selection of «high skilled» workers granted «quasi-open» work permit	Granted employer-restricted work permit		Granted employer-restricted work permit with live-in restrictions	
		(2) Other «low-skilled» workers	(3) Domestic workers	(4) Foreign students	(5) Asylum seekers and other temporary residents	(6) Spouses of «high skilled» workers or students	(7) Unskilled workers from Europe, Commonwealth, etc.		(9) «High skilled» workers	«Low skilled» workers employed by a Canadian employer		
		(10) Workers FWP-LS	(11) Workers SAWP	(12) Workers LCP								
Forced by CIC to work for a specific employer		X	X		X				X	X	X	X
Forced by CIC to live on the property of their employer		(X)	X		(X)				(X)	(X)	X	X
Not free to change one's condition in Canada		X	X			X		X		X	X	X

The Canadian programs imposing a "servile status" on foreign workers date back to at least 1955 and at the time, were exclusively applied to workers of Caribbean origin, who were only allowed to be employed as domestic (1955) or agricultural workers (1966). At the same time, Canadian immigration policies were officially giving privilege to immigrants coming from Europe or "white" Commonwealth countries such as the U.S.A and Australia, who did not face the same restrictions.

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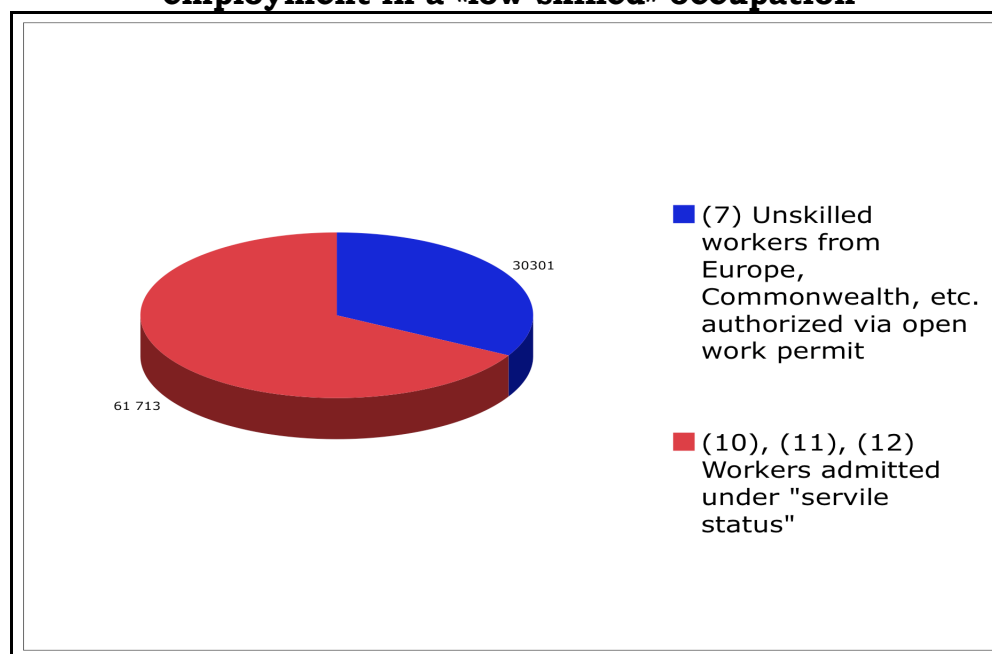
Since the *Immigration and Refugee Protection Act and Regulations* implementation in 2002, the Canadian administrative practice of "legal serfdom" is now applied to all workers issued a work permit (not just from those originating from the Caribbean - or from Mexico after 1974), for any of the occupations classified "low-skilled" in Canada affected by a labour shortage (not just domestic/care services and the agro-food industry), unless they come from Europe, "white" Commonwealth or other privileged countries (see table 7, worker category #7).

In summary, five (see table 7, worker categories #2, 3, 10, 11 and 12) of Canada's six²⁷ categories of temporary foreign workers possibly involved in «low skilled» occupations do qualify as persons under administrative «practice similar to slavery» under the terms of the *U.N. Convention against institutions and practices similar to slavery*. In 2006, 67.1 % of workers admitted in Canada under a work permit and allowed to work in «low skilled» occupation were imposed a servile status in Canada (see Figure 3).

²⁷ Or 9 categories, if we consider foreign students in Canada, asylum seekers, spouses and other temporary residents allowed to work as temporary foreign workers.

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Figure 3
Workers admitted in 2006 via a work permit authorizing employment in a «low-skilled» occupation



Source: Depatie-Pelletier 2007a

The imposition of "servile status" to five categories of temporary foreign workers constitutes a negation of their right to liberty and security of the person, and of their freedom of association, explicitly considered fundamental for all persons in Canada (*Canadian Charter of Rights and Freedoms*, art. 2 and 7). Other fundamental rights are denied via the "servile status" imposed on them, in particular their rights to dignity and to privacy protected by articles 4 and 5 of Quebec's Charter of rights and freedoms (Depatie-Pelletier 2007b).

If we take into consideration the sociological evidence gathered over the last decades by social scientists and the federal department of Status of Women Canada (see in particular references section II.I), migrant workers' associations and community groups, human rights NGOs and workers' unions (see in particular references section II.II) concerning systemic discrimination and systematic human rights abuses experienced by these workers in Canada, we

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are bound to conclude that the current combination of restrictions of fundamental rights and freedoms of Canada's temporary foreign workers employed in low-skilled occupations (restrictions associated with the imposition of a *servile status* by CIC) *cannot* be considered «demonstrably justified in a free and democratic society», as requested by the Canadian Constitution (Canadian Charter, art. 1).

3. Recognition in Canada of (im)migrant workers' human rights

Given that in Canada contractual living arrangements on the workplace owned by the employer are frequent, unless a temporary foreign worker is "free to change his status", the work permit issued should never be limited to a single authorized employer in employment sectors. As mentioned in the *U.N. Convention against practices analogous to slavery (art.1)*, the combination of these three factors restrains the "temporary" foreign workers' ability to exercise their human rights.

This fundamental aspect of the protection of the human rights of (im)migrant workers is also specified in article 52 of the 2003 *U.N. Convention for the protection of the rights of all migrant workers and members of their family*²⁸ (CRMWF) in the following terms :

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

²⁸ The text of this U.N. Convention is available on the web at http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm.

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(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation; (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

For the workers who are not free to change their status in Canada, the possibility of exercising the Canada Charter-protected rights to liberty and security of the person and freedom of association directly depends on the worker's opportunity to leave her/his employer, and thus be hired by a new one. If the worker's right to the security of her/his person is to be recognized, work permits restricted to a single employer need to be replaced by either open or occupation-specific work permits.

The possibility of exercising the Charter-protected rights to liberty and security of the person and freedom of association must be secured for all residents in Canada, including workers under temporary status, depending on a salary for their daily survival (and possibly also the survival of family members abroad or in Canada)²⁹.

If the right to change employer is necessary to allow a meaningful possibility to exercise fundamental rights and freedoms, it would become void in practice if the worker's work permit was still associated with a « live-in » obligation in Canada (and thus restricted to the very difficult task of finding the rare employers already authorized by HRSDC and already interested/ready to have

²⁹ The double billing (of Canadian employers and workers abroad) for placement by recruitment agencies should be strictly forbidden in Canada, as it is already the case in Alberta. This phenomenon causes pre-departure indebtedness for the worker, and thus extreme vulnerability to abuses by the recruitment agency and/or the employer. Employers should be made co-responsible for abuses by agencies in this matter. Moreover, for workers hired for employment in relatively low-wage occupations, authorized employers should finance entirely the worker's flight to Canada and ought to be prohibited from later using workers' wages to defray flight costs.

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the worker living full-time on their property). Even if all "temporary" workers were granted an open or quasi-open work permit (allowing them to work also for some or all employers not yet authorized by HRSDC), a legal obligation to reside at one's employer can always constitute, in itself, a fatal obstacle to the exercise in Canada of the right to security of the person.

This fundamental freedom is also protected within art. 39 of the U.N. Convention on migrant workers:

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are *necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others* and are consistent with the other rights recognized in the present Convention.

In this context, for Canada to match the standards set in the U.N. Convention against slavery and the U.N. Convention for the protection of rights of migrant workers, in addition to the issuance of open or occupation specific work permits, no obligation to live in the residence of one's employer should be administratively imposed on a worker who is not free to change her/his status in Canada.

4. Protection in Canada of (im)migrant workers' human rights

4.1 Prevention of migrants' human rights violations

* Labour & Health Legislation

In order to match minimal standards in matters of protection of the human

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rights of migrant workers set by the *U.N. Convention for the protection of the rights of all migrant workers and members of their families* (CRMWF), guestworker programs (programs for workers not allowed to change their status) will have to be exclusively authorized in provincial employment sectors where the rights to collective bargaining and to safety at work are already protected for all workers by provincial legislation.

More specifically, the right of all foreign workers to join a workers' union is explicitly stated as fundamental in the CRMWF (art. 40), as well as the right of all workers under temporary status to create a union - if necessary for the protection of one's rights as a worker (CRMWF, art. 26). The right to be meaningfully covered by labour legislation, such as health and safety at work legislation, is also considered essential to the workers' security of the person within the CRMWF (art. 49).

In this context, no employment offer should be validated by HRSDC for domestic/care workers, unless the provincial Worker's Compensation program automatically covers them in case of a work accident, and no hiring should be validated by HRSDC in the agricultural sector in Quebec, Ontario or Alberta until provincial governments explicitly recognize the right to unionize for agricultural workers — including all of those employed on a farm and/or with temporary status. Furthermore, in order to prevent abuses and illegal anti-unionization practices, "temporary" foreign workers unemployed or under-employed in Canada will need to be given legal priority access, over Canadian and foreign agencies authorized to charge employers for recruiting foreign workers for them, to the job offers validated by HRSDC and/or communicated by employers.

* Integration Programs

As underlined in the CRMWF (art.37), the federal administration should also

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make sure that, like other newcomers (such as immigrants and refugees), workers under temporary status are covered by integration programs in matters of health, housing, working conditions, etc, in the region of employment and that services providers are available to be contacted directly by the foreign worker.

* Monitoring of recruitment and employment practices

Despite the numerous individual cases of violation of the rights of temporary foreign workers brought to the attention of the federal administration over the last decades (see in particular AFL 2007), no such branch of service or protection for migrant workers has been created (with the exception of a small office opened last year by the Department of Immigration of the province of Alberta). For the rest of Canada, "services to migrant workers in Canada" are exclusively left to employers, employers' coalitions and/or consular agencies authorized to recruit foreign workers. However, workers interviewed by social scientists have systematically expressed their limitations.

In order to guarantee the security of the person for all temporary foreign workers in Canada, mechanisms to regularly monitor the respect of the workers' rights by employers will also have to be implemented. Furthermore, recruitment agencies and employers who have been the object of a past worker's complaint will have to be excluded from the federal "temporary" foreign worker programs until such issue is resolved. Also, trafficking or other criminal charges will have to be systematically imposed upon employers and agencies proved abusive³⁰, as specified by the 2000 U.N. Protocol to prevent, suppress,

³⁰ In order to minimize the temptations of abusing workers and the development of practices similar to human trafficking by placement agencies, the employer should automatically be held legally (thus financially) co-responsible for abuses inflicted on workers by the recruitment/placement agency (employers sub-contract their human resources management to these agencies), if the agency is not registered and

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and punish trafficking in persons³¹ ratified by Canada.

* Consultation mechanisms

In spite of the Mexican consulate's request on this matter in 2005, HRSDC has not yet agreed to facilitate the creation of associations of (im)migrant workers under temporary status in order to democratically bring these workers to formulate their preoccupations and proposals for improving their work situation. At the same time, the desire of a Canadian union, the United Food and Commercial Workers (UFCW), to attend the annual meeting for the determination of work conditions imposed on migrant workers in the agricultural sector, as well as to represent the interests of migrant workers, has systematically been ignored during the last decade by HRSDC. However, in the CRMWF, the necessity for countries such as Canada to consult systematically with representatives of temporary foreign workers is clearly underlined (art. 64).

4.2 Protection and reparation in case of rights abuses

* Protection mechanisms & Public Health and Social Services

According to article 15 of the Canadian Charter, to article 37 of the CRMWF and to the *Regulations of the Immigration and Refugees Protection Act* (IRPA-R, 203), workers under temporary status must enjoy the same work conditions and protection mechanisms as Canadian workers. Articles 25 and 43 of the CRMWF also emphasize the necessity for receiving States to give migrant workers treatment not less favourable than that from which nationals benefit

monitored in their placement activities concerning workers under temporary status by non-governmental organizations partners of CIC, CIDA or Foreign Affairs Canada (DTTIM, CTI & PINAY 2007).

³¹ The text of this U.N. Convention is available online at:
<http://untreaty.un.org/english/notpubl/18-12-a.E.doc>

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with regard to remuneration and work conditions, and in particular to "adopt all the appropriate measures such that migrant workers are not deprived of the rights that derive from this principal due to the irregularity of the situation of their stay or employment". However, the loss of status at the termination of the employment contract or at the end of the work permit's validity period makes it currently impossible for these workers in Canada to fully access provincial social protection mechanisms to which they have contributed, along with all Canadian workers.

In order to have access to justice in Canada in case of abuse in Canada, these workers need to have the period of validity of their work permit automatically extended, so that they keep the status of worker and not visitor in the province. Moreover, the applicability of this kind of de facto extended work permits should be opened to all employment sectors, in the eventuality that an abuse/work accident would temporarily or permanently prevent the worker from fulfilling her/his initial occupation. In particular, as workers and taxpayers, they should be covered by Health & Social services upon arrival and until they have reached a final decision in their administrative or legal procedures towards reparation of abuse.

In order for all workers under temporary status to have the material capacity to leave an abusive employer and seek protection and/or employment elsewhere, these workers will also not only contribute to, but also have access to Employment Insurance and Social security programs during their whole stay in Canada, as specified by the U.N. Convention (art. 37).

* Regularization of Status

Permanent status regularization procedures will have to be available at any given time on "*compassionate grounds*" for migrant workers abused or victim of work accident in Canada, and the access to an impartial trial before

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deportation, regardless of the legality of their situation, will have to be implemented following article 20 and 22 of the U.N. Convention for the protection of the rights of migrant workers.

Given the fact that the Canadian Immigration policies have been violating the U.N. Convention against institutions and practices similar to slavery for the last 50 years, all residing workers and families fallen out of status in the past year must access permanent status regularization procedures until a reform of Canadian foreign workers recruitment policies guarantee the respect in Canada of the minimal human rights standards set by the *U.N. Convention against slavery*, the *Canadian Charter*, and the *U.N. Convention for the protection of the rights of all migrant workers and members of their families*.

5. Equality between temporary foreign workers?

As mentioned before (see part 2), five programs for temporary foreign workers in Canada are applied in violation of the U.N. Convention against slavery. However, these administrative frameworks are also implemented in violation of article 15 of the Canadian Charter, which protect the right of every individual to *equal protection and benefit of the law without discrimination based on national origin*. "Temporary" foreign workers recruited from Europe and the rich Commonwealth to work as live-in caregivers or agricultural workers will have access to a CIC open work permit, while the workers from the Global South - mostly "non white" foreign populations - are imposed a work permit restricted to a single employer and an obligation to live on the employer's property. Given the human and social costs associated with the condition imposed upon discriminated workers, this discrimination, based on national origin in matters of recognition of fundamental rights and freedoms, cannot be « demonstrably justified in a free and democratic society ».

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Moreover, between "temporary" foreign workers in Canada, there is systematic discrimination on the basis of sex and national origin in matters of family rights (right to temporary family reunification) and immigration rights (right to ask for permanent status upon arrival). This discrimination is expressed through the skill level associated with the employment for which the worker has been recruited. In particular, the majority of female foreign workers admitted to Canada are recruited for employment associated with "low" skill level (see Depatie-Pelletier 2007d), as are the majority of workers from Mexico, Guatemala, etc. admitted to Canada. Given that types of skill (and thus skill levels) are correlated with gender and nationality, the current denial of family and immigration rights on the basis of skill level especially discriminate against women and workers originating from specific developing countries. As Colins (1996) put it:

"This potential for the manipulation of the point system is built into the immigration process through differential rankings of occupations and "skills". The evaluation of skill is an ideological process which reflects the values and material interests of specific groups. Men's work is frequently labelled as skilled, and women's as unskilled, or flowing from their "natural talents", such as manual dexterity and nurturance, even when it involves comparable hours of training and education. For example, the skills involved in clerical work, which is socially constructed as women's work, are undervalued and not recognized as socially significant (Walby 1992: 134). According to Jenson, ideological constructions of "skilled", "unskilled" and "natural talent" are part of the process by which unequal power relations of gender, race and ethnicity are reproduced (Jenson 1992: 142). (...) The social, political and economic construction of domestic work as unskilled, and subsequent limitations placed on women's freedom to circulate in the market as citizens, reinforces a devaluation of what is labelled as women's work."

In this context, equal rights to access family reunification and immigration programs would need to be granted upon arrival, to all "temporary" foreign workers, without discrimination based on type of skills (thus on gender and/or

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national origin), and hence including workers in employment requiring "low" skill levels (CRMWF, art. 38). Furthermore, children of workers (taxpayers) recruited to fill "not temporary" labour shortages in Canada, if still in their parents' care, will have to be allowed access to public primary and secondary education in Canada³².

Finally, procedures for immigration to Canada should be accessible *upon arrival* to all foreign "temporary" workers recruited in employment sectors, including workers admitted in occupations labeled as "unskilled" or "low-skilled", *if recruited for their employability in a provincial employment sector acknowledged to suffer from a recurring or growing labour shortage*. All immigration procedures need to be autonomous; that is, not requiring the intervention of an employer (as is proposed in certain provincial nomination programs), as this type of dependence on the employer only increases these workers' vulnerability and therefore possibilities of abuse of human/labour rights in Canada. Canada does not only need, on a permanent basis, highly skilled foreign workers. The aging of the Canadian population guarantees growing labour shortages in a variety of employment sectors, including sectors that do not require post-secondary training.

In any event, immigration rights should never be dependent of employer support, and sponsorship from a Workers' union, a Human Right NGO should be considered equally relevant than employer support by Canadian officials granting permanent status to temporary foreign workers:

"Given the evidence of temporary migrant worker abuse

³² CIC and HRSDC should also officially recognize the right of all foreign workers to unpaid leave and temporary return to their country of origin for family reasons. The use of such a leave should not cause any complication or concerns for the worker about repatriation at the employer's request, return to Canada during the validity of the work permit, right to eventually request an open work permit, or the possibility of obtaining permanent residency based on work done in Canada.

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presented in the recently-released publications (...), tying access to permanent residency to employer support risks yet further abuse of temporary migrant workers by employers. (...) If temporary migrant workers are given the carrot of potential permanent Canadian residency pending the approval of their employers, these workers will be made yet more vulnerable to the stick of Canadian employers (...). [This creates a major] power imbalance between workers migrating away from economic instability to Canada where their skills are in demand, and employers who are well aware that permanent residency is a major draw for these workers. » (CLC 2007b, p.2-3)

In conclusion, various specific policy reforms will have to be implemented by CIC and HRSDC if Canada is looking to match the human rights standards set by the *U.N. Convention against practices analogous to slavery*, the *Canadian Charter*, and the *U.N. Convention for the protection of the rights of all migrant workers and members of their families*. For the Canadian Federal Parliament, one way to guide the federal administration in this direction would be to have the last U.N. core instrument, the *U.N. Convention for the protection of the rights of all migrant workers and members of their families*, ratified by Canada in order to create the momentum to updates overdue (anticonstitutionnal since 1982) federal administrative guidelines in matters of recognition and protection of human rights of workers under temporary status in Canada.

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³³ The hundreds of relevant newspaper and magazine articles (published on the issue of systemic abuses of human rights of (im)migrant workers) are not included in this list of reference, but can be found on the website of the Canadian NGO *(Im)Migrant Workers Rights* (www.migrants.ca).

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