



Law Leaves Migrant Workers Dangling Precariously



Alfredo Sales knew blowing whistle on his boss was a huge risk. Fear is built into Canada's Temporary Foreign Worker Program. Third in a series.

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Canada has created a two-tiered system of labour rights though its Temporary Foreign Worker program started in 2002. As reported in the previous two articles in this *series*, the fact that migrant workers have fewer protections and options has led to abuses. Short of shutting down the program, a monitoring system that regulates the Temporary Foreign Worker Program to ensure employment standards are respected is an obvious fix.

But Charles Gordon, the lawyer who represented the Latin American construction workers who were confirmed by the B.C. Human Rights Tribunal to have been exploited, isn't optimistic. Gordon, whose clients' case was profiled in *yesterday's article*, says there is no "political appetite" to create a rigorous monitoring system.

"In theory, there are protections in the program. They're not allowed to pay fees for recruitment, for example. Most of them are working under contracts that say they're supposed to work so many hours a week, the employer is supposed to pay their airfare, those kinds of things. The problem is that there's no mechanism to enforce those rules. For people who break those rules -- there's no consequence."

Academics, lawyers and activists agree that the TFWP has serious flaws. They also agree on the primary cause of migrant worker abuse: the lack of enforcement. For example, even though workers have contracts with stipulated hours and salaries, there is no oversight to ensure that employers comply. In many instances, migrant workers in the low-skilled category pay \$4,000 to \$20,000 to recruitment agencies. Many are willing to pay because they are often told, incorrectly, that they will become permanent Canadian residents with the agency's help.

By law, of course, employers must pay any recruitment charges, not workers.

Furthermore, employers tend to disregard safety regulations and pay migrant workers less than their Canadian counterparts.

And since their temporary work permits tie them to their employer they are prevented from changing jobs if they are mistreated.

Judy Fudge and Fiona MacPhail, law and economics professors at the University of Northern

British Columbia, analyzed the TFWP for a 2009 *report* titled, *The Temporary Foreign Worker Program in Canada: Low-skilled Workers as an Extreme Form of Labour*. In it they describe the loose legal structure of the program. "The mechanisms to protect the rights of migrant workers are neither well developed nor effectively enforced," they state.

They note that Canada has not signed any international labour conventions with the UN or International Labour Organization to protect migrant workers' rights.

They also found that the contract the employer and temporary worker have to sign before the workers enter Canada is a "soft law" -- more symbolic than practical and legally binding.

'Permanently temporary'

Ontario lawyer Fay Faraday interviewed about a hundred migrant workers in low-skilled streams that she calls "permanently temporary" -- a contradiction in terms given that there is nothing temporary to industries such as farm work, caregiving, hospitality and construction. She found that the laws governing the program actually set migrant workers up for abuse, for instance allowing employers in jobs like fruit picking to only rehire acquiescent employees, rather than trouble-makers who might wish to unionize or complain about unsanitary housing or dangerous work conditions. And some cases -- such as those allowing employers to nominate their own recruits -- effectively privatizes migration, Faraday says.

Employers who have violated rules in the past need only *change* their company name or create a new *application* for migrant workers. So far, no one has been banned from applying for a migrant worker after breaking labour laws. Even if the bans were enacted, the current policy lifts bans after two years.

"This is not just a case of one bad apple here, one bad apple there," says Faraday, whose *report*, *Made In Canada: How the Law Constructs Migrant Workers' Insecurity*, found that abuse of migrant workers is endemic. "It's important to recognize that all these stories will keep coming forward because we've created a system that leaves the workers open to exploitation."

In the low-skilled category of the program, only live-in caregivers may obtain permanent residency in Canada, a perk that would make it seem like they're better off. But Faraday argues that caregivers -- 95 per cent of whom are Filipina women -- are also subject to abuse because they still work on a temporary status and are obliged to stick to their employer, regardless of how they are treated. If they lose that, they lose out on the chance of permanent residency.

It's also problematic that Employment Standards branches in most provinces operate on a complaint-driven system. That puts the onus on the workers to fend for themselves. "It leaves it wide open for retribution," lawyer Charles Gordon says. That's exactly what happened to one migrant worker who went to the ESB to report abusive conditions at Denny's, a multinational restaurant franchise.

Alfredo Sales versus Goliath

With profits last year of \$583 million, serving home-style breakfasts 24 hours a day in 1,600 diners across North America and around the world, Denny's has muscle. Alfredo Sales, an educated father of one, knew he had to take on his colossal employer when he noticed that all

the Filipinos at the Denny's where he was working in Vancouver, including himself, were being mistreated.

Sales, who is quite tall for a Filipino, speaks with an air of confidence. As a man of faith who believes in a "god of justice," he says he always was the type to fight for the underdog. Like many migrant workers, Sales came to Canada hoping to live the Canadian dream -- that hard work would earn him his keep in a just society. That idealism would cost him his job when he stood up for what he thought were Canadian values of human rights.

It began while he was on the flight to Vancouver to work as a supervisor at various Denny's franchises -- a flight he had paid for out of his own savings -- and read in his contract that his employer was legally supposed to have paid for his airfare.

Then, during lunch breaks, the other Filipinos working with him would laugh off how each of them had paid \$6,000 to a recruitment agency plus approximately \$1,000 for the airfare, all to earn a salary of \$9.80 per hour. For Sales, who as a supervisor was making \$13 per hour, it didn't seem funny at all.

Labour lawyer Ai Li Lim says that even though it's "absolutely illegal," it's also "typical" for migrant workers to be charged recruitment fees because there is no oversight. Similarly, union leader Gil McGowan says that recruitment agencies find loopholes. They avoid paying fines and getting blacklisted by Citizenship and Immigration Canada simply by defining their charges as "resettlement fees" rather than recruitment fees.

Sales first sought help from Service Canada, a government initiative that helps people access benefits and services. "I was also speaking on behalf of the other temporary foreign workers because we are in the same shoes," he says. The \$6,000 his fellow workers had each scraped together does not come easy in the Philippines -- many have to borrow it from loan sharks. "Others had to sell their lives," he says.

Service Canada advised Sales to sort things out with his employer before seeking legal recourse. He tried. He met two top managers of *Northland Properties*, the parent company of Denny's in B.C., Alberta and Saskatchewan. He says that the then vice president, Deborah Gagnon, offered him \$2,600 to settle the case. When Sales refused, he was fired.

Gagnon has since left Denny's. Nobody from Denny's administration responded to a request for an interview.

'It's not about money'

Sales knew the risk he was taking by standing up for himself and his fellow migrant workers. "When I laid down my cards, I thought they would send me home" he says. But he also gave Gagnon the benefit of the doubt. "I was thinking that the vice president, since she's a Canadian she might be very, very considerate."

Sales figured his termination was wrongful so he opened a case with the Employment Standards Branch, whom he says advised him to accept Gagnon's offer. Again Sales refused.

The delegate who handled his case, Amanda Clark Welder, is on maternity leave and the Employment Standards Branch refused to comment.

"I'm not stupid," Sales says. "It's not about money. Maybe they're thinking all the Filipinos are

all about money. 'Maybe if I give this guy \$2,600, maybe he'll stop and shut up right? Then he'll go.' But I have to stand for something."

Because temporary permits tie migrant workers to a single employer, Sales couldn't stay in Canada after he was fired. Adding insult to injury, Sales says he had to throw in a couple hundred dollars from his own pocket for his plane ticket back to the Philippines because Denny's bought him a cheap, longer roundabout trip.

In April 2011, the B.C. Employment Standards ruled that Denny's had to pay Sales \$6,755.39 for three months of lost wages. They also had to pay a penalty fee of \$500 because they had violated Section 83 of the Employment Standards Act, which protects workers from being punitively terminated for filing complaints.

Sales has since gained permanent residency in Canada as his education and work experience are considered "high-skilled," and he is working happily at a restaurant on Vancouver Island, where he says his employers treat him well.

He still has other funds owed to him so he's part of the class action suit brought by 70 migrant workers, most of them from the Philippines, who are seeking \$10 million from Denny's for unpaid overtime, airfare, recruitment fees and damages.

In the meanwhile, other workers involved in the class action suit allege that Denny's has been intimidating them to opt out.

According to a Globe and Mail *report*, one worker, Charo Salazar, alleges that her supervisor, Russell Jen, said that if she pulled out of the suit, Denny's "will guarantee 100 per cent" support for her application for permanent residency -- if not, they will not support her.

Tomorrow, last in this series: Fix or scrap the Temporary Foreign Worker Program? Experts lay out what's needed. Read part one [here](#) and part two [here](#). 🐦

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