Canadian Labour Congress response to IRPA Regulatory Changes Regarding Temporary Foreign Workers

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Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers) released October 10, 2009 in the Canada Gazette Vol. 143, No. 41

On behalf of the 3.2 million members of the Canadian Labour Congress (CLC), we thank you for the opportunity to present our views regarding the proposed changes to the Immigration and Refugee Protection regulations.

The CLC brings together Canada's national and international unions along with the provincial and territorial federations of labour and 130 district labour councils whose members work in virtually all sectors of the Canadian economy, in all occupations, in all parts of Canada.

The CLC has a long standing and critical interest in Canada's Temporary Foreign Worker (TFW) program. Although, we were pleased to learn of regulatory changes being put forward, we are disappointed with their limited scope and imbalance between employers and workers' interests.

The opportunities for substantial regulatory reforms have been supported by the Auditor General's (AG) Report on the TWF program which provided considerable criticism of how the current system operates. The AG report noted an absence of clear processes, no assurance that either CIC or HRSDC is doing the assessment to determine if job offers are genuine, and there is a lack of clarity and consistency in directives intended to ensure all factors are being met by employers. In short, there is a lack of confidence in systems that can ensure migrant workers are really needed or that the offers, terms, and conditions, are in fact genuine.[1]

This submission provides our analysis of the proposed regulatory amendments and the regulatory impact analysis statement. Please take note of our recommendations we believe are urgently needed to meaningfully serve the interests of migrant workers and the domestic workforce.

Summary of shortcomings with the proposed regulations amending Immigration & Refugee Protection Regulations:

- Fails to put in place measures that take responsibility for the explosive growth and subsequent exploitation and abuse many migrant workers face under the TFW program.
- Fails to fulfill the duty of fairness to migrant workers.
- Unduly favours employers while penalizing newcomers.

- Enables a systemic and gender specific discriminatory impact for some migrant workers seeking permanent residency status.
- Fails to reflect meaningful evaluations, recommendations or audits of the TFW program.
- Fail to present a rigorous benefits and costs methodology or accurate estimate of the number of migrant workers at risk.
- Fails to candidly portray the inputs received by labour as part of the 'engagement strategy'.

In addition, the proposed regulatory amendments do little to provide meaningful protection for vulnerable migrant workers already in Canada.

The amendments fall short of establishing a national regulatory framework enabling provinces and territories to deliver effective compliance, monitoring, and enforcement mechanisms, consistent with their jurisdictional labour standards.

The amendments do not put in place comprehensive regulatory measures needed to ensure employers are comprehensively recruiting and retaining unemployed and under employed workers from the domestic labour force.

The amendments fail to ensure employers are seeking migrant workers to fill legitimate and proven temporary labour/skills shortages.

The proposed limitations for a temporary work term (48-month cap) will likely cause undue and unfair hardships on some migrant workers such as Live-in Caregivers (LIC) resulting in a gender specific discriminatory impact.

We anticipate there is potential for arbitrary determinations with the exemptions clauses. For example, the amendment to subsection 200(3)(g)(ii) of the regulations; creating an exception for workers to *"perform work that would create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens or permanent residents, or"* raises questions as to who would make the determination of what work is this significant and based on what criterion?

Finally, given Canada's aging population, declining birth rates, and our growing dependence on immigration for a major proportion of net labour force growth, limiting paths to permanent residency for some occupational skills levels, represents a shortsighted regulatory approach that impedes potential to grow a diverse citizenry and labour force within an increasingly globalized economy.

CLC comments on specific regulatory amendments:

Proposed change #1

Subsection 183(1) of the *Immigration and Refugee Protection Regulations* (see footnote 1) **is amended by striking out "and" at the end of paragraph (*b*) and by adding the following after that paragraph:**

*(*b.1*) if authorized to work by this Part or Part 11, 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 under subsection 200.1(2); and*

CLC concern/recommendation:

This amendment places an unfair and impractical burden on migrant workers. It is unreasonable to presume that all migrant workers will have access to the internet, nor the linguistic or technical capacities to navigate a CIC webpage listing 'disingenuous employers'.

Furthermore, there is no evidence that disingenuous employers or unscrupulous labour brokers won't represent themselves differently from what may appear on a CIC website.

The track record of the TFW program to identify and deal with non-complaint employers is poor.

The AG's fall 2009 report on the TFW program found *"that with the exception of e-LMOs, there has been no systematic follow-up by either CIC or HRSDC to verify that employers are complying with the terms and conditions under which the LMO application was approved, such as wages to be paid and accommodations to be provided"*[2]

There is little balance in a regulatory change that imposes an unfair and punitive burden on migrant workers to avoid entering or extending an employment agreement with a 'disingenuous employer' while seeing no regulatory language that would prevent such employers from accessing the program to begin with.

The CLC recommends the inclusion of regulatory measures barring disingenuous employers from access to the TFW program and if employers or their contracted brokers are found to have violated labour standards and/or the TFW program policies, regulatory authority must

allow for an appropriate body to impose fines against the employer/broker which can be used to compensate affected migrant workers.

Proposed change #2

The portion of subsection 200(1) of the Regulations before paragraph (*a*) is replaced by the following:

Work permits – applications made before entering Canada

200. *(1) Subject to subsections (2) and (3) and section 87.3 of the Act, an officer shall issue a work permit to a foreign national who makes an application for the permit before entering Canada if, following an examination, it is established that…*

Paragraph 200(1)(*c*) of the Regulations is amended by striking out "or" at the end of subparagraph (ii) and by replacing subparagraph (iii) with the following:

(ii.1) intends to perform work described in section 204 or 205, has been offered employment to perform that work and an officer has determined under subsection (5) that the offer is genuine, or

(iii) has been offered employment and an officer has determined under section 203 that

(A) the offer is genuine,

(B) the employment is likely to result in a neutral or positive effect on the labour market in Canada,

(C) the issuance of a work permit would not be inconsistent with the terms of any applicable federal-provincial agreement, and

(D) in the case of a foreign national who seeks to enter Canada as a Live-in Caregiver,

(I) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in the household without supervision,

(II) the employer will provide adequate furnished and private accommodations in the household, and

(III) the employer has sufficient financial resources to pay the foreign national the wages offered the foreign national; and

CLC concern/recommendation:

Re: the existing IRPA regulation 200(1)(b) which reads, *"the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;"*

It is our understanding that no exit provisions are in place to ensure migrant workers actually leave the country.[3] Hence, this condition for a work permit is poorly worded.

This regulation should be amended to read, *"the foreign national or employer can provide evidence of return passage consistent with the period being authorized for their stay under Division 2 of Part 9"*; or, given that some migrant workers have access to a path for permanent residency status via PNP's, the LIC program or the Canadian Experience Class initiative, an amendment that would reduce confusion would be to strike out the existing text in 200(1)(b) thus removing this requirement for the issuance of a work permit.

The replacement text for section 200(1)(iii) pertaining to Live-in Caregivers (D)(I) and (II) fails to address a systemic imbalance of power between an employer and caregivers. Obligating a caregiver to reside in a private household denies these workers the ability to unionize and perpetuates the potential for workplace abuse and exploitation.

A number of CIC internal reports, some dating back as far as 1994, have made the department abundantly aware of serious concerns about abuse of this program by employers and immigration consultants, as well as risks to individuals.

A fundamental flaw in the LIC program is the obligation for workers to reside in an employers home, thereby, creating the conditions for exploitation and abuse. Regulatory changes are needed to end this arrangement and stipulate that employers must provide a Living Out Allowance (LOA) for Live-in Caregivers. Living Out Allowances must be adequate to cover accommodations, meals, transport to and from work, and phone calls to home at a minimum. Living Out Allowances details should be developed with the input of LIC advocacy groups.

Workers must be given the option of independent or shared accommodation arrangement outside of the employers home rather than a required live-in obligation.

We recommend the proposed regulatory text (D) (I) be amended to read, *"the foreign national may reside in a private household and provide childcare, senior home support or care of a disabled person in the household without supervision,*

Likewise (D) (II) should be amended to read *"the employer will provide adequate furnished and private accommodations either in the household or within reasonable distance to the household."*

We further recommend a national framework agreement that reiterates provincial/territorial and municipal levels of government to their respective responsibilities to ensure adequate resources are in place within the appropriate jurisdictions to monitor and enforce employers adherence to labour standards.

Furthermore, regulatory and administrative attention is needed to ensure that investigations of any workplace complaints can take place without migrant workers facing unwarranted reprisals by their employers.

Proposed change #3

Section 200 of the Regulations is amended by adding the following after subsection (1):

Work Permits – applications made on or after entering Canada

(1.1) *Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national who makes an application for the permit in accordance with section 198 or 199 on or after entering Canada if, following an examination, it is established that the requirements set out in paragraphs (1)*(a) *to* (e) *are met.*

CLC concern/recommendation:

Our concerns and recommendations noted above regarding exit provisions (see proposed change #2) also apply to this amendment.

Proposed change #4

Subsection 200(3) of the Regulations is amended by striking out "or" at the end of paragraph (*d*) and by adding the following after paragraph (*e*):

(f) in the case of a foreign national referred to in subparagraphs (1)(c)(i) to (ii.1), the issuance of a work permit would be inconsistent with the terms of any applicable federal-provincial agreement; or

(g) the foreign national has worked in Canada for one or more periods totaling four years, unless

(i) a period of six years has elapsed since the day on which the foreign national accumulated four years of work in Canada,

(ii) the foreign national intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents, or

(iii) the foreign national intends to perform work pursuant to an international agreement between Canada and one or more countries, including an agreement concerning seasonal agricultural workers.

CLC concern/recommendation:

The proposed 48-month cap has the potential to unfairly penalize some migrant workers, such as LIC's seeking permanent residency status, resulting in a discriminatory gender and racialized impact.

The current system requires LIC's to complete a 24-month live-in care commitment with an employer within a 36-month time frame. The vast majority of LIC's are racialized women. Live-in Caregivers advocates have provided ample documentation of the vulnerability of these workers to exploitation and workplace abuses.

Currently, the time-frame for an investigation of complaint filed by a LIC is two years (confirmed in writing for cases in Alberta)[4.] Given that a LIC can't apply for residency status until after their 24 in 36-month work commitment, it is highly likely, that a 48-month cap would negatively jeopardize access to residency status for LIC's who seek investigations of workplace abuse(s) they may have experienced.

We are also concerned this cap may create similar hardships for workers in the construction sector, as well as academics and other classes of migrant workers.

Canada's TFW program is intended to address genuine situations of labour or skills shortages that are temporary in nature. It is misguided policy to propose regulatory measures that makes the workers temporary rather than ensuring the labour deficit is temporary.

Regulatory changes are needed that will target employers who abuse the TFW program—not migrant workers.

We recommend withdrawal of the 48-month cap and six year lapse between work periods. Withdraw 200(3)(g)(i)(ii) and (iii).

We further recommend the subsection 200(3) of the regulations be amended as follows:

1. Amend 203(3)(d) to read: whether the wages and benefits offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet all accepted Canadian standards.
2. Add a footnote to "prevailing wage rate (PWR)" indicating the methodology to determine PWR must be publicly available and minimally rely on enhanced labour market information systems; be adjusted for regional variations; be adjusted for gender and/or race based factors affecting occupational categories and the PWR methodology must be reviewed on a regular basis.
3. Amend 203(3)(e) to read: whether the employer has made, or has agreed to make, reasonable efforts to retain, hire or re-train/train Canadian citizens or permanent residents by offering enhanced wages, benefits and/or working conditions; and
4. Amend 203(3)(f) by adding. HRSDC requires the employer to provide copies of correspondence for unionized workplaces signed by a designated bargaining agent(s) and the employer acknowledging no labour dispute is in progress which may be affected by the introduction of TFW's.
5. Amend 203(3) by adding the following paragraph after (f): In cases where an employer has on more than three occasions sought access to the TFW program the HRSDC LMO opinion will also assess the employers efforts to modernize or restructure their operations rather than repeatedly relying on the TFW program.

In addition, we recommend the TFW program must have the authority to impose program fees on employers to offset the social and development costs of repeatedly utilizing a migrant labour force.

Such levies would serve to offset the human replenishment costs of importing workers educated, trained in other countries and encourage employers to consider alternatives such as mechanization or restructuring work. Monies generated from such levies could be applied to offset the costs of providing comprehensive workplace monitoring and community integration initiatives for migrant workers.

The above measures can be implemented using a combination of tax credits/levies applied to employers accessing the TFW program.[5]

Proposed change #5

Section 200 of the Regulation is amended by adding the following after subsection (3):

Cumulative work periods — students

(4) A period of work in Canada by a foreign national shall not be included in the calculation of the four-year period referred to in paragraph (3)(g)* if the work was performed during a period in which the foreign national was authorized to study on a full-time basis in Canada.*

Genuineness of job offer

(5) A determination of whether an offer of employment is genuine shall be based on the following factors:

*(*a*) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made;*

*(*b*) whether the offer is consistent with the reasonable employment needs of the employer;*

*(*c*) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*

*(*d*) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.*

CLC concern/recommendation:

The genuineness of job offer amendment #5 (a) to (d) is a positive step; however, as the AG found there is a "lack of systematic assessment of the genuineness of job offers"[6]. The AG report cited both CIC and HRSDC are "developing regulatory options to strengthen the integrity of the TFW program", however, there is no evidence of this step being taken in these proposed regulatory changes.

In fact, the four proposed factors are limited. We recommend adding an additional factor that can verify a genuine temporary job employment offer can't be fulfilled domestically.

While proposed 5(b) might be interpreted as a means to determine if an employer's claim that a labour/skills shortage exists, the amendment is not explicit in this regard, nor does it provide guidance on a transparent methodology.

The CLC affiliates in the construction sector have pointed out that time and time again during the construction booms of 2007 and 2008, employer's reliance on the TFW program ignored the fact that qualified Canadians were in fact available; however, they were located in different regions of the country. In such cases, if employers were obligated to offer travel and LOA, claims of labour shortages in the construction sector would be alleviated.

We propose the development of a genuineness factor that utilizes an objective and transparent methodology that confirms legitimate labour or skills shortages do in fact exist.

The AG report noted that both CIC and HRSDC officials informed her office that neither the IRPA nor the regulations give them authority to conduct compliance reviews of employers.[7] It is disturbing that the AG reports that regulatory modifications aimed at resolving this shortcoming were being considered—yet again, there is no evidence of this initiative being taken in the proposed amendments.

This acknowledged and long standing omission could be addressed in this section.

We recommend the inclusion of a regulatory measure that enables the department to invoke an obligatory compliance review for any employer seeking access or having obtained access to the TFW program.

Such a review must require employers to demonstrate their adherence to wages, benefits, working conditions, recruitment efforts, and other

relevant labour standards requirements. Reviews will be initiated by the department at its discretion or by a documented complaint from a migrant worker, a union, and/or a public advocacy group, working on behalf of migrant workers.

Failure to meet the requirements of a review would deny an employer access to the TFW program.

Proposed change #6

The Regulations are amended by adding the following after section 200:

Offers deemed to be not genuine

200.1 *(1) Despite subsection 200(5), the following offers of employment are deemed to be not genuine:*

*(*a*) an offer of employment made by an employer who, in the two-year period preceding the day on which the offer of employment was received by the Department or the Department of Human Resources and Skills Development,*

(i) provided to a foreign national wages or working conditions that were significantly different from the wages or working conditions that were offered by the employer to the foreign national, or

(ii) employed a foreign national in a significantly different occupation than the occupation described in the employer's offer to the foreign national; and

*(*b*) an offer of employment received by the Department or the Department of Human Resources and Skills Development within two years from the day on which the employer who made the offer was informed by an officer that an offer of employment made by the employer was deemed to be not genuine under paragraph (*a*).*

Notice

(2) A list shall be maintained on the Department's website that sets out

*(*a*) the names and addresses of employers who have made offers of employment that have been deemed, within the preceding two-year period, to be not genuine under paragraph (1)(*a*); and*

*(*b*) the date on which each employer was informed that their offer was deemed not to be genuine.*

CLC concern/recommendation:

The two-year limit embedded in this change is arbitrary and inadequate. Why is it that the workers could face a 48-month limit on their status in Canada, yet employers would face only a two-year public notice status on a CIC website?

This amendment must explicitly state employers found to have made disengenuine employment offers will be: a) barred from accessing the program until such time that satisfactory restitution has been made to all former migrant workers; b) will have their names and address web posted on a department maintained website.

It is inappropriate to place a punitive measure on migrant workers as is proposed under regulatory change #1. Instead, a punitive onus must be placed on employers for their failures.

Proposed change #7

Subsection 201(2) of the Regulations is replaced by the following:

Renewal

(2) An officer shall renew the foreign national's work permit if, following an examination, it is established that the foreign national continues to meet the requirements of paragraphs 200(1)(a) *to (*e*).*

CLC concern/recommendation:

See above.

Proposed change #8

S*ubsection 203(1) of the Regulations is replaced by the following:*

Effect on the labour market

203. *(1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)*(c)*(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if*

(a) the job offer is genuine;

(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

(c) the issuance of a work permit would not be inconsistent with the terms of any applicable federal-provincial agreement; and

(d) in the case of a foreign national who seeks to enter Canada as a Live-in Caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,

(ii) the employer will provide adequate furnished and private accommodations in the household, and

(iii) the employer has sufficient financial resources to pay the foreign national the wages offered the foreign national.

CLC concern/recommendation:

We recommend 203(1)(b) be amended to include the following clarification,

In unionized workplaces, the Department of Human Resources and Skills Development requires copies of written correspondence from the employer signed off by the bargaining agent(s) acknowledging notice of the employer's intent to access the program.

Furthermore, the department must make the methodology they use to determine a "positive or neutral effect on the labour market" publicly available.

A fundamental flaw in the LIC program is the obligation for workers to reside in an employers home; thereby, creating the conditions for exploitation and abuse. Regulatory changes are needed to end this arrangement and stipulate that employers must provide a Living Out Allowance for Live-in Caregivers. Living-out allowances must be adequate to cover accommodations, meals, transport to and from work, and phone calls home at a minimum. Living Out Allowances details should be developed with the input of LIC advocacy groups.

We reiterate a fundamental flaw in the LIC program is the obligation for workers to reside in an employers home thereby creating the conditions for exploitation and abuse. Regulatory changes are needed to end this arrangement and stipulate that employers must provide a Living Out allowance for Live-in Caregivers. Workers must be given the option of independent or shared accommodation arrangement outside of the employers home rather than a required live-in obligation.

We repeat 203 (i) (ii) and (iii) addressing Live-in Caregivers be amended as follows:

We recommend the proposed regulatory text 203 (i) be amended to read, *"the foreign national <u>may</u> reside in a private household and provide childcare, senior home support or care of a disabled person in the household without supervision,*

Likewise 203 (ii) should be amended to read *"the employer will provide adequate furnished and private accommodations <u>either</u> in the household or within reasonable distance to the household."*

Proposed change #9

Section 203 of the Regulations is amended by adding the following after subsection (2):

Factors re genuineness

(2.1) An opinion provided by the Department of Human Resources and Skills Development in respect of the genuineness of a job offer shall be based on the factors set out in subsection 200(5).

Additional information

(2.2) The Department of Human Resources and Skills Development shall indicate in its opinion whether the employer, in the two-year period preceding the offer, has provided to a foreign national wages or working conditions that were significantly different from the wages or working conditions that were offered by the employer to the foreign national or employed a foreign national in a significantly different occupation than the occupation described in the employer's offer to the foreign national.

CLC concern/recommendation:

We recommend expansion of the factors 200 (5) be expanded as detailed in our inputs on proposed regulatory change #5.

Furthermore, we urge the two-year limit be expanded to minimally four years and that the department indicates its awareness of the on-going status of complaints registered by migrant workers regarding wages or working conditions.

Proposed change #10

The portion of subsection 203(3) of the Regulations before paragraph (a) is replaced by the following:

Factors re effect on labour market

(3) An opinion provided by the Department of Human Resources and Skills Development in respect of the effect of the employment of the foreign national on the labour market shall be based on the following factors:

CLC concern/recommendation:

No comment.

Proposed change #11

Section 203 of the Regulations is amended by adding the following after subsection (3):

Period of validity of opinion

(3.1) An opinion provided by the Department of Human Resources and Skills Development shall indicate the period during which the opinion is in effect for the purposes of subsection (1).

CLC concern/recommendation:

No comment.

Proposed change #12

The Regulations are amended by replacing "Department of Human Resources Development" with "Department of Human Resources and Skills Development" in the following provisions:

(a) the definition "National Occupational Classification" in section 2;

(b) the definition "restricted occupation" in section 73;

(c) subparagraph 82(2)(c)(ii);

(d) subparagraph 198(2)(a)(i);

(e) subsection 203(2);

(f) subsection 203(4); and

(g) paragraph 314(2)(b).

CLC concern/recommendation:

No comment.

Finally, we are deeply concerned with a number of comments found in the regulatory impact analysis statement.

In the **Issue section**—while there is recognition of the "marked increase notable in Western regions and in lower-skilled occupations" the statement fails to acknowledge that a series of flawed administrative (and political sanctioned) changes made to the program since 2006 contributed to the explosive growth in numbers.

A few examples make the point, such as: the creation of employer friendly guide on how to hire TFWs; the establishment of the E.L.M.O pilots in British Columbia and Alberta; budget 2007 directing more than $84M into the program (TFW) to "reduce processing delays and more effectively respond to regional labour and skill shortages"[8]. In the same budget document, the government also sanctioned employer's access to the TFW program "for any legally recognized occupation from any country."[9]

The AG's report pointed out that while some administrative and financial allocation initiatives did speed up processing times for LMO application,[10] she also reported for example, that directives on "how to assess whether employers meet some or all of the factors outlined in the Regulations are not clear or are incomplete; or that interpretations vary from one regional office to another and even within the same office. For example, directives on determining prevailing wages do not provide specific guidance and are not well understood by HRSDC officers." [11]

The AG report also pointed out that training of HRSDC officers was limited and did not include reviews or updates on procedures; files lacked adequate documentation to support the LMO[12].

The AG statement that ***"There is no formal quality assurance system to ensure that opinions are consistent and compliant with the Act and Regulations"***[13] is very troubling and the impact statement should have acknowledged the role administrative and politically sanctioned changes adopted since 2006, have played in the growth of numbers of an employer driven program.

In addition, there continues to be a lack of clarity on the actual numbers of TFWs in Canada. The impact statement cites 193, 061 TFW in 2008, yet the AG's report cites 204,783 in 2008[14]. In addition, CIC data tables have presented the figure of TFW at over 250,000 in 2008.

Greater effort clarifying the number of TFWs in the country, by region and by occupational code, should be made publicly available on a quarterly basis.

The **Benefits and Costs section** of the statement is also troubling.

The assumption that "1% of the total number of TFWs believed to be at risk to potential employer and third party mistreatment" fails to provide a realistic estimate of the TFWs at risk.

While the statement acknowledges the estimate is drawn from the Alberta Federation of Labour's 2007 study, the authors of the impact statement failed to speak with the authors of the AFL report. Had this basic research been done, the estimate would have to be revised to account for the over 700 phone calls logged as part of the six-month project. The 1% estimate also fails to consider the thousands of people who have gone through the TFW advisory offices in Calgary and Edmonton.

A balanced and more rigorous extrapolation of the estimated number of TFWs at risk should also have considered the fact that Alberta's own Employment standards department reported finding 60% of restaurant and hospitality employers with LMOs were found to be contravening the Employment Standards code.

The estimated number of TFWs at risk of mistreatment is likely significantly higher.

Furthermore, the value of TFW wages uses an average minimum wage in Canada of $8.75, yet in Alberta for example, the minimum wage for an LMO has not been below $10.25 for over a year.

Furthermore, costing assumes the proposed regulatory changes will remedy the exploitation levels, which we are doubtful they will—especially without remedial mechanisms for restitution and capacity for compliance reviews.

We also note the costing fails to factor in economic gains likely to be realized by the domestic workforce being fully engaged in sectors where employers have come to rely on the TFW program and where wages and working conditions have been suppressed because of cost savings employers can realize via accessing the program and mistreating workers.

Finally, in the **Consultation section** it is disingenuous to state the proposed regulatory changes found in the published Gazette on October 10, 2009 were in fact presented at sessions, particularly any sessions in which the CLC or its affiliates attended in the spring of 2007.

Thank you for the opportunity to present these comments on the proposed regulatory amendments.

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[1] Report of the Auditor General of Canada: Chapter 2 Selecting Foreign Workers Under the Immigration Program, Fall 2009

[2] Report of the Auditor General of Canada—Fall 2009

[3] Email correspondence with J. Sutherland 7.5.09

[4]

Correspondence with Y. Byl TFW/AFL Special Advocate Project Oct. 2009

[5] The California processing-tomato industry demonstrates how such a strategy can work. See Managing Labor Migration in the 21st Century, Chapter 5: *Managing Guest Workers* by P. Martin, M. Abella, C. Kuptsch, Yale University Press 2006

[6] Auditor General Report s.2.102 to 2.107

[7] Auditor General report s. 2.112

[8] Department of Finance Canada Budget 2007, "Chapter 5- A stronger Canada through a stronger Economy: Knowledge Advantage." NB: In addition to the 50.5 million over two years for the TWFP a $33.6 million allocation was made via C.I.C. to improve the security side of the TFW program for a grand total of over $84.1M. Budget 2007 by comparison allocated $6.4 million to annual operation of the FCRO.

[9] Department of Finance Canada Budget 2007, "Chapter 5- A stronger Canada through a stronger Economy: Knowledge Advantage."

[10] Auditor General Report s 2.98

[11] Auditor General Report s 2.99

[12] ibid

[13] Auditor General Report s 2.100

[14] Auditor General Report 2.90