

**Permitting Precariousness: Addressing Employment Standards
Challenges for Temporary Foreign Workers in British Columbia**

by

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Abstract

Since 2002, there has been an increase in the number of low-skill and low-wage temporary foreign workers in Canada. This study examines the employment standards challenges that these workers may encounter while in the Temporary Foreign Worker Program. Employment standards legislation provides the minimum requirements for workplace procedures, conditions, and transactions, such as overtime pay and hours of work. Given that the regulation of labour and employment fall under provincial jurisdiction, this study focuses on the experiences of temporary foreign workers in British Columbia and provides policy options to improve their precarious situation.

This research explores a combination of provincial and federal policy changes to help mitigate temporary foreign workers' susceptibility to employer violations, both by increasing their access to employment standards support and by reducing their dependence on employers. Policy recommendations centre on reforming the current employment standards complaint and enforcement mechanisms, increasing temporary foreign workers' labour mobility, and separating the application process for permanent residency from employment relationships.

Keywords: temporary foreign workers; employment standards; British Columbia; precarious labour; workplace challenges; migrant status

To workers the world over

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List of Acronyms

BC	British Columbia
CIC	Citizenship and Immigration Canada
DCLS	Dawson Creek Literacy Society
EI	Employment Insurance
EPFNA	Employment Protection for Foreign Nationals Act
ESA	Employment Standards Act
ESB	Employment Standards Branch
ESDC	Employment and Social Development Canada
ESR	Employment Standards Regulation
GDP	Gross Domestic Product
IMP	International Mobility Program
NOC	National Occupational Classification
PNP	Provincial Nominee Program
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
WCDWA	West Coast Domestic Workers' Association
WRAPA	Worker Recruitment and Protection Act

Executive Summary

There has been an increase in the number of low-skill and low-wage temporary foreign workers (TFWs) in Canada since 2002. The minimum requirements for their workplace procedures, conditions, and transactions are governed by employment standards legislation and enforced by the Employment Standards Branch. However, as a result of their employer-specific work permits and precarious legal status, TFWs experience heightened vulnerabilities around employment standards violations. Given that the regulation of labour and employment fall under provincial jurisdiction, this study examines the employment standards challenges of TFWs in British Columbia and proposes policy options to address these issues.

The most commonly noted employment standards violations are related to unpaid wages and illegal deductions, with additional concerns around non-existent work, improper compensation, and unfair termination. TFWs also face a number of barriers in accessing the Employment Standards Branch's complaint mechanisms. The limitations of a complaint-driven system are further complicated by the fears TFWs have about losing their employment or jeopardizing future opportunities for permanent residency.

A combination of provincial and federal policy changes to mitigate TFWs' susceptibility to employer violations are analyzed, both by increasing their access to employment standards support services and by reducing their dependence on employers. The first option is to comprehensively amend the *Employment Standards Act* to better reflect the needs of TFWs. The second option proposes to create a job search tool for TFWs, while the third option suggests the replacement of employer-specific work permits with occupation-specific permits. The fourth option is to remove the employer component from TFWs' applications for permanent residency.

This study recommends that the Government of British Columbia make key amendments to the complaint and enforcement mechanisms found within the *Employment Standards Act*. Furthermore, the provincial and federal governments should collaboratively explore and develop new policies to reduce the vulnerability attached to TFWs' work permits and permanent residency applications.

Chapter 1.

Introduction

Employers in British Columbia can use the Temporary Foreign Worker Program (TFWP) to bring in workers to a particular region and industry on a temporary basis. More broadly, it is a federal program which enables employers to hire foreign nationals to address local labour shortages (Citizenship and Immigration Canada [CIC], 2015a). Foreign nationals can reside and work in Canada for a limited amount of time through the program, with their employer, occupation, and location specified in their authorized work permit (Employment and Social Development Canada [ESDC], 2014d). As an employer-driven program, the purpose of hiring temporary foreign workers (TFWs) is to fill short-term labour demands. Consequently, it is important to examine TFWs' employment experiences, particularly as they relate to the structure of the program and the employer-employee dynamics that may influence their working conditions.

As an area of provincial jurisdiction, matters related to employment and labour fall under the purview of the provincial government. Employment laws and regulations establish the minimum requirements for workplace procedures, conditions, and transactions for most workers in the province, including TFWs. Through the *Employment Standards Act* (ESA) and *Employment Standards Regulation* (ESR), the Government of British Columbia has legislated guidelines that address the most fundamental elements of employment, including minimum wages, overtime pay, leave from work, vacation pay, compensation, and admissible deductions (BC Ministry of Jobs, Tourism and Skills Training, 2015a). The provincial government is also responsible for the organization and administration of the employment standards complaints and resolution processes.

Despite the existence of labour and employment regulations, instances of workplace exploitation still arise. Navigating through workplace dynamics and

procedures can be difficult for workers, especially if their employer is not adhering to the minimum standards set out by the ESA. While inconsistent or subverted adherence to employment standards is not uniquely experienced by TFWs in BC (Fairey, 2007), foreign workers can encounter significant obstacles in the workplace as a result of their vulnerable status, both in the labour force and as temporary residents in Canada. Importantly, research suggests that employment standards issues are more common in low-wage and low-skilled sectors of the economy (Tucker-Simmons, 2013). As a result, TFWs employed in these occupations are likely to experience heightened vulnerabilities regarding workplace conditions and ESA violations.

The expectation that employment laws sufficiently protect employees from work-based exploitation can be especially problematic for TFWs, whose immigration status in Canada is tied to their work permits (Byl, 2010). TFWs do not have the same degree of labour mobility as permanent residents because their work permits are only authorized for a single employer, which can limit workers' willingness to address workplace issues with their employer or through the Employment Standards Branch (ESB). In addition to their condition of impermanence, foreign workers may also lack familiarity with provincial employment legislation and the Canadian legal system, which can be further exacerbated by discrepancies in language proficiency (Lenard & Straehle, 2012; and Nakache, 2013). As a result, these workers are in a less advantageous position to assert or advocate for their rights if they believe that their employer is violating the ESA.

Although most workers in BC are protected by the ESA, work-based challenges and their associated complications are heightened for TFWs as a result of the power imbalance that exists between them and their employers. This study outlines how current provincial and federal oversight mechanisms are inadequate in addressing employment-related issues for TFWs. Given that employment regulations fall within provincial jurisdiction, this capstone focuses largely on the role of the ESB, with acknowledgement of other government bodies and regulations where appropriate. By focusing on the use of the TFWP in BC, this study examines the employment standards challenges that TFWs may encounter in the province and provides feasible policy options to reduce and prevent these issues from occurring in the future.

Chapter 2.

Canada's Temporary Foreign Worker Program

This chapter outlines the main features of Canada's TFWP. The first section addresses the structure and organization of the program, including the different occupational streams. The second section provides a brief overview of the trends in the program's use, focusing on the period after the introduction of the Low-Skilled Pilot Project in 2002. The last section identifies recent changes that have been implemented to the TFWP, particularly around work permit distinctions and regulations.

2.1. Structure of the Temporary Foreign Worker Program

The first version of the TFWP began in 1973 as the Non-Immigrant Employment Authorization Program. While it has undergone a number of changes since this time, the program continues to allow employers to hire foreign workers to temporarily fill employment positions in high-demand occupations and sectors (Fudge & MacPhail, 2009). With the increasing use of the TFWP, Canada's immigration policy has had to shift to accommodate the growing number of temporary residents in the labour market. Core elements of the program, including work permits, legal status, pathways to permanent residency, and employer responsibilities, are addressed in the *Immigration and Refugee Protection Act* and *Immigration and Refugee Protection Regulations* (Immigration and Refugee Board of Canada, 2015).

The Government of Canada is responsible for the overall administration of the program through three federal departments. Employment and Social Development

Canada (ESDC)¹ is responsible for the employment side of the program. Employers that want to hire TFWs are required to submit a Labour Market Impact Assessment (LMIA)² that verifies if there is a substantiated labour need that cannot be filled by Canadian workers (ESDC, 2015). The department establishes if employers require an LMIA and determines whether their assessments are approved or denied. Along with the LMIA, employers must provide ESDC with an employment contract that details the wages, duties, work conditions, and other expectations and costs for the TFWs they intend to hire (ESDC, 2016). Importantly, the costs of the LMIA, TFWs' transportation to and from Canada, their health insurance, and any workplace safety insurance expenses are borne by the employer and are not cost-recoverable.

Citizenship and Immigration Canada (CIC) administers the work permits of temporary residents to Canada, regulating the eligibility and admissibility of foreign applicants (CIC, 2015d). TFWP applicants must meet the requirements of the position for which an LMIA has been approved before they can be issued a valid work permit.

Lastly, the Canada Border Services Agency operates at the Canadian borders and other ports of entry. They determine if TFWs may enter into the country after they have verified their employment and temporary residency documents to ensure they meet all legal requirements of the TFWP (Canada Border Services Agency, 2013).

The Government of Canada currently hosts four occupational streams – two that are sector-specific and two that are skill-specific – which each have their own structural requirements and limitations. The Live-in Caregiver Program is a distinct stream for domestic caregivers of children, or elderly and disabled individuals, while the Primary Agricultural Stream provides two pathways for TFWs to work on farms. The Seasonal Agricultural Worker Program allows workers from countries with bilateral agreements with Canada – usually Jamaica, Mexico, or the Caribbean – to work on a farm for a maximum of eight months per year. Individuals can also apply for on-farm primary agricultural work through the regular TFWP (Elgersma, 2014).

¹ Formerly known as Human Resources and Skills Development Canada (HRSDC).

² Previously called a Labour Market Opinion (LMO).

The regular TFWP has one stream for higher-skilled occupations and another for lower-skilled occupations. Based on the National Occupational Classification (NOC) system, TFWs in the higher-skilled stream fall into NOC 0, A, or B. These include managerial positions (0), occupations that require university qualifications (A), or college or apprenticeship experience (B) (ESDC, 2013). Beginning in 2002, the Low-Skilled Pilot Project became a new avenue for individuals with limited amounts of higher education and training to apply for the TFWP. The stream for low-skilled occupations includes NOC C and D positions, which only require minimal work experience and education or on-the-job training, respectively (see Appendix A for NOC trends). This was changed to the Pilot Project for Occupations Requiring Lower Levels of Formal Training in 2007, when the length of work permits was expanded from one to two years and the processing time for employer approvals and work permits was expedited (Fudge & MacPhail, 2009).

While the TFWP is a short-term employment program, there are opportunities for some TFWs to achieve permanent residency. This process varies by the stream that workers belong to and the province or territory they are working in. Live-in caregivers can apply for permanent residency once they have completed two years or 3900 hours of full time work acquired within a four year period (CIC, 2015f). There are no opportunities for permanent settlement for seasonal agricultural workers and they are required to return to their home country each year (Preibisch and Hennebry, 2012). Low-skilled TFWs are not eligible for federal immigration programs, although most provinces and territories have nomination programs through which TFWs and other temporary residents may apply to become permanent residents. The eligibility requirements and applicability of nomination streams for low-skill workers are established by each jurisdiction, allowing for considerable regional variability (Seidle, 2013). In contrast, TFWs in high-skill occupations have multiple opportunities for permanent residency. Many can apply to Provincial or Territorial Nominee Programs, in addition to the Federal Skilled Worker Program, Federal Skilled Trades Program, and the Canadian Experience Class. (Seidle, 2013). These last three streams converged under the Express Entry program for skilled immigrants in 2015, which is a streamlined application process for potential economic immigrants (CIC, 2015b). Each pathway to permanent residency has requirements regarding language proficiency and level of Canadian work experience.

2.2. Overview of Use of the Temporary Foreign Worker Program

Use of the TFWP has grown significantly over the years, as can be seen by the number of work permits that are issued annually through the different occupational streams of the program (see Figure 1). When the Low-Skilled Pilot Project was first introduced in 2002, there were a total of 76,817³ TFWP work permits issued that year in Canada (CIC, 2014a). This includes all work permits authorized for live-in caregivers, agricultural workers, and the high- and low-skill occupational streams, and excludes other temporary residents and workers.⁴ There were annual increases in the number of work permits issued to TFWs, which peaked in 2009 with 191,161 TFWP permits. Even though there has been a minor drop off in the numbers since this time, 2014 still saw a total of 177,704 TFWP annual work permits issued (CIC, 2015c).

High-skill TFWs are the largest stream for approved work permits; however, the number of TFWs using the low-skill stream has dramatically risen (see Figure 1). There were only 4,064 low-skill TFWs in 2005, which expanded to 39,363 in 2009 and peaked in 2014 at 41,002 (CIC, 2015c). The TFWP has shifted to allow employers to hire workers with lower levels of formal training and education.

³ This figure is the total the number of TFWP work permits issued annually. There are limitations to using this method since a TFW may hold more than one work permit in a calendar year. As a result, the number of work permits issued may not directly translate into the number of TFWs present in the country. Nevertheless, these figures provide a good indicator of the program's overall use since it illustrates the number of valid work permits that can be filled by a TFW. To maintain consistency, all data in this section use the same method.

⁴ These figures do not include foreign workers who have entered Canada through international student visas, international trade agreements or LMIA-exempt positions.

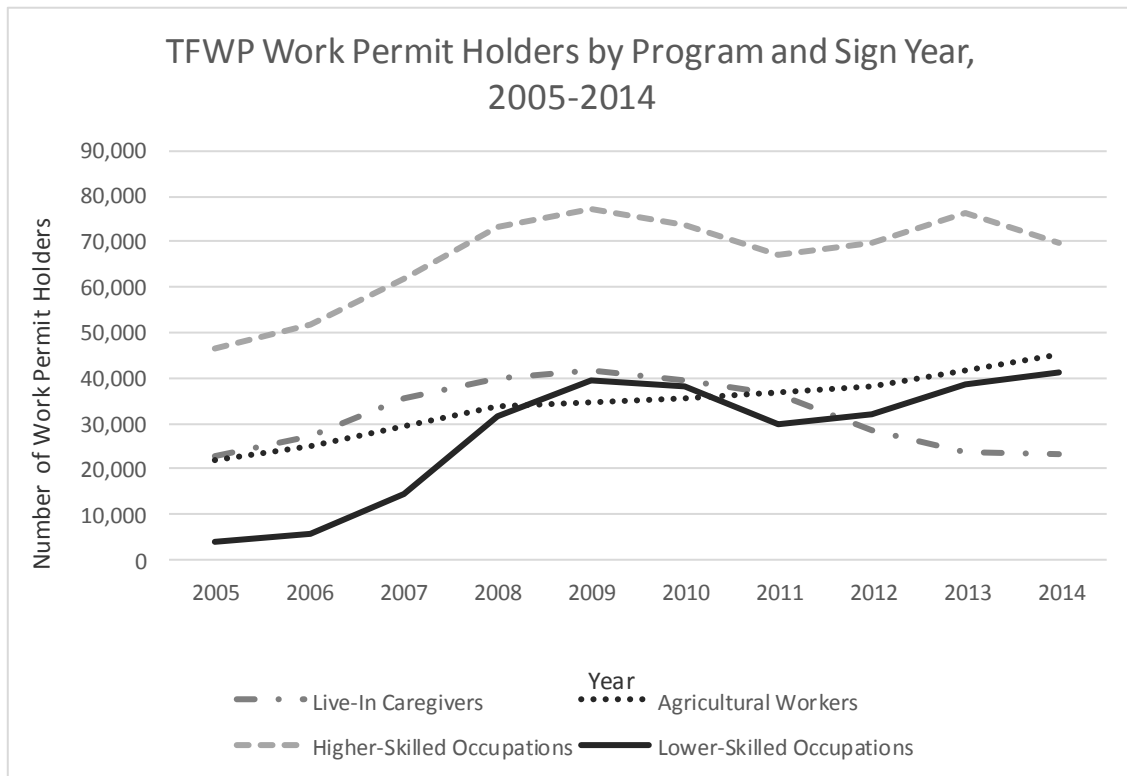


Figure 1: Temporary Foreign Worker Program: Work Permit Holders by Program and Sign Year, 2005-2014

Source: CIC Facts and Figures, 2014

Research by Lemieux and Nadeau (2015) demonstrates that most foreign workers – including both those with LMIA requirements and exemptions – are located in British Columbia, Alberta, and Ontario. Interestingly, their research highlights that both BC and Alberta have had consistently large shares of Canada’s total foreign worker intake despite comprising relatively smaller portions of the country’s total labour force.

When isolating TFWP work permit holders from other foreign workers, BC, Alberta, and Ontario continue to be the main destinations for TFWs in Canada (CIC, 2015c; see Appendix A). While BC received 17.9 percent of all TFWs in 2005, this increased to 21.2 percent in 2014. Alberta has had a similar but more dramatic increase, moving from 9.8 percent in 2005 to 20.6 percent by 2014. Ontario continues to be the most popular province for TFWs to work in, but this has declined from 53.5 percent in 2005 to 36.9 percent in 2014. Although the use of the TFWP fluctuates depending on the

time period and region under question, it is clear that the program is significant to many labour markets and economies within the country.

2.3. Changes to the Temporary Foreign Worker Program

The TFWP has more recently been the topic of debate amongst policy makers, labour advocates, academics, and the Canadian public. Criticism has been directed towards employers accused of bypassing the domestic labour force to employ TFWs (Tomlinson, 2014). Labour market studies highlight the increasing number of TFWs in Canada despite rising local unemployment rates (Gross, 2014). The growing use of the TFWP has also drawn attention to the employment conditions that many TFWs encounter during their time in Canada. An emerging body of research has documented the high degree of precariousness and vulnerability that migrant workers face (Nakache, 2013; Taylor & Foster, 2014). This can be particularly pronounced for workers in the low-skilled occupational stream, as the insecurity attached to their lower-waged earnings intersects with their temporary legal status and employer-specific work permits, which restricts their ability to change employers or occupations.

In response to these concerns, ESDC introduced a series of reforms (“the Overhaul”) in 2014. Notably, the Overhaul distinguished between two distinct foreign worker programs that were previously both housed under the TFWP. The regular TFWP, as discussed in this study, would continue to be an employer-driven program with LMIA requirements and employer-specific work permits. As stated earlier, the purpose would be to hire temporary workers in positions that cannot otherwise be filled with Canadians or permanent residents (ESDC, 2014d). In contrast, the International Mobility Program (IMP) would now encapsulate those foreign workers that are covered by bilateral and multilateral trade agreements, separating them from the regular TFWP. Foreign workers in the IMP have open work permits that allow them to change employers without government authorization. Furthermore, their employers do not require LMIA approval, removing the need to demonstrate a labour shortage in that sector or region (ESDC, 2014d). While this report has already distinguished between workers who require an LMIA (regular TFWs) from those who are LMIA-exempt (other foreign workers), the Overhaul formalized this difference by creating two sets of foreign worker programs.

Furthermore, the LMIA process for employers of TFWs was made more rigorous to ensure that hiring processes are properly conducted and labour needs are clearly identified. The \$275 fee to process an LMIA, first introduced in 2013, was increased to \$1000 (ESDC, 2014d). Employers who want to hire TFWs must now pay \$1000 to submit their LMIA for processing regardless of whether their assessment is approved or denied.

Additionally, the organization of TFWs into low- and high-skill streams was replaced with a categorization system based on provincial median wages. TFWs making less than the provincial median wage are considered low-wage workers and those above the median are high-wage workers (ESDC, 2014d). This system generally aligns with the skill-based system of organization that was previously used but no longer relies on NOC categorizations. As before, the two streams are subject to unique sets of rules. The Overhaul has reduced the number of low-wage workers that can be hired by employers with more than 10 staff. In 2014, TFWs could make up 30 percent of an employer's workforce, which was decreased to 20 percent in 2015, and will be further reduced to 10 percent in July 2016 (ESDC, 2014d).

The duration of work permits has been shortened to one year for low-wage workers and a new LMIA is required if the work permit is to be extended, creating an additional cost for employers (ESDC, 2014d). Furthermore, LMIAs will not be processed in accommodation, food, and retail sectors when the unemployment rate in that region is at or above six percent. These requirements exist alongside the four-and-four policy that was introduced in 2011, which limits TFWs stay in Canada to a maximum of four years, after which time they are required to leave Canada for a minimum of four years (CIC, 2015g; *for more information see Nakache & Dixon-Perera, 2015*).

There are fewer limitations imposed on high-wage TFWs, though new measures have been put in place for this stream as well. For example, employers of high-wage TFWs must now include transition plans with their LMIAs to address their long-term employment needs. This may involve training opportunities for local workers or intentions to help the TFWs they hired to permanently settle in Canada (ESDC, 2014d).

The Overhaul announced that ESDC will conduct investigations and audits, and also introduced a system of penalties for employers caught abusing the TFWP. Penalties include monetary fines, suspension or revocation of approved LMIAs, and being added to a public list of banned employers (ESDC, 2014d). These measures have been adopted to reduce the number of employers who are non-compliant with the TFWP's rules. Importantly, the Overhaul reiterates that matters related to health, labour, and recruitment continue to fall under provincial jurisdiction and it is up to provincial governments to ensure these regulations are followed (ESDC, 2014d).

Chapter 3.

Temporary Foreign Workers in British Columbia

This chapter provides greater depth to the context of TFWs in BC. First, there is a brief overview of the province's current labour market. This is followed by the discussion of the major trends in the TFWP's use, as determined by the numbers of work permits issued and LMIA's assessed. Finally, permanent residency opportunities for TFWs in BC are addressed, which is important for the later discussion of employment-related precariousness that TFWs encounter as a result of their temporary legal status.

3.1. Labour Market Overview

BC has a diverse economy composed of a number of different sectors and industries. BC's gross domestic product (GDP) has grown each year since the mid-1980s, with the only exception measured in 2009 (see Figure 2). Economic performance continues to be strong, with a GDP growth rate of approximately 4.7 percent in 2014 (Statistics Canada, 2015).⁵ Labour participation is an important component of economic performance and the supply of labour can have significant impact on the functioning of the provincial economy.

⁵ GDP values are calculated using 2015 (current) dollars.

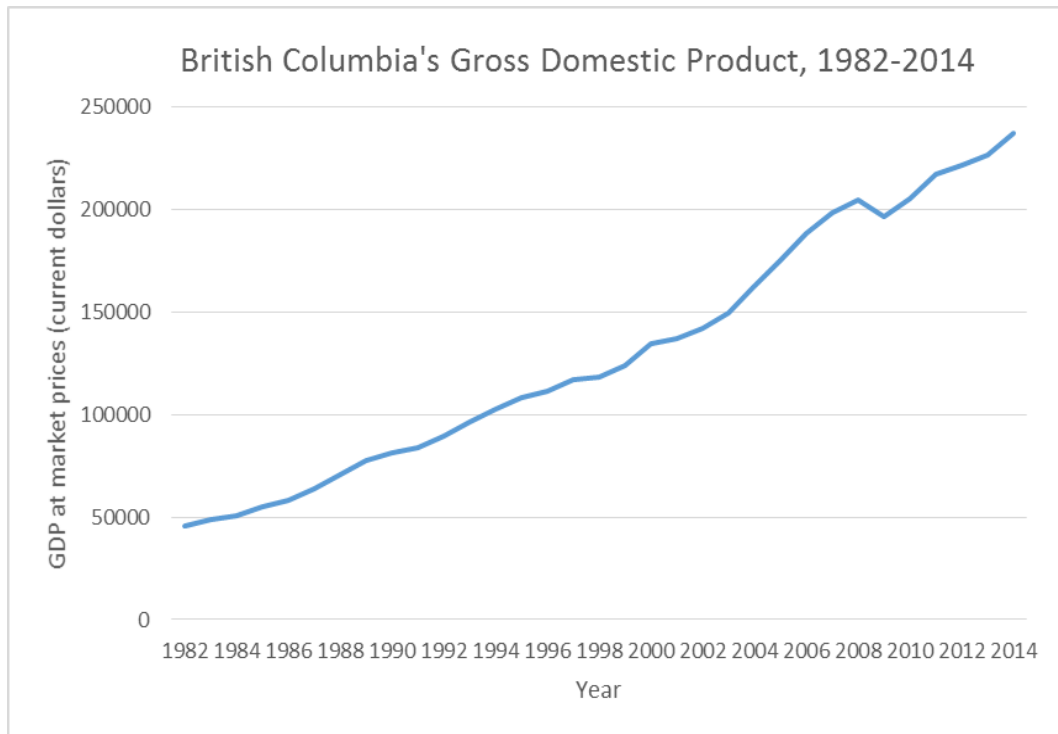


Figure 2: British Columbia's Annual Gross Domestic Product at Market Prices, Current (2015) Dollars

Source: Statistics Canada, 2015

The unemployment rate in BC is comparatively lower than other provinces in Canada, meaning that a smaller percentage of people in the province are looking for work and unable to find it (Statistics Canada, 2016).⁶ Since 2005, BC has had an average annual unemployment rate below the national average (see Appendix B). While unemployment fell to 4.3 percent in 2007, the rate increased during the Great Recession and reached 7.7 percent in 2010. However, it has declined since this time, averaging 6.1 percent in 2015. Although these figures alone cannot capture BC's overall labour market performance, it does demonstrate that BC has a lower unemployment rate than the rest of Canada.

Based on BC's most recent Labour Market Outlook report, there are expected to be 935,000 job openings between 2014 and 2024. Approximately 68 percent of these

⁶ Average annual unemployment rates are calculated using monthly averages provided by the Labour Force Survey, with unemployment unadjusted for seasonality.

will be the result of workers exiting the labour force and will require new labour participants to fill these openings (WorkBC, 2015). Consequently, BC's strong economic performance and need for labour are expected to continue into the future.

Although the projection of 935,000 job openings is lower than the estimate provided in the 2012 to 2022 Labour Market Outlook (see WorkBC, 2013), this new figure acknowledges the worldwide decline in oil and gas prices and removes projections of jobs related to unconfirmed liquefied-natural gas projects (WorkBC, 2015). The current outlook predicts that labour supply in the province will continue to outstrip labour demand, though they are expected to trend closer together as the decade passes (WorkBC, 2015). This does not imply that high unemployment rates are imminent, but draws attention to the need for better skills matching in the labour market through targeted education and training. However, as the difference between the two most recent Labour Market Outlook reports demonstrate, the needs of the economy shift with changes in national and international markets and projection figures may evolve.

3.2. Data and Trends in Program Use

The use of the TFWP in BC has been fairly consistent over the past decade. According to statistics categorized by province or territory and sign year, BC received between 17.6 and 21.1 percent of all of Canada's TFWP work permit holders annually from 2005 to 2014 (CIC, 2014a). This reflects the total number of new TFW work permit holders that are authorized each year, demonstrating the consistent need for labour participants in the province. Notably, BC had 26,662 new TFWP work permit holders at its peak in 2008, which fell to 20,108 in 2014.

Alongside figures for the annual total of new work permits, it is possible to examine point-in-time data that demonstrates how many valid TFWP work permit holders are in the province on a single day. Between 2005 and 2014, the share of TFWs present on December 31st of each year has fluctuated between 19 and 24 percent of the Canadian total (CIC, 2014a). There were 27,277 valid TFWP work permit holders present on December 31st, 2009, and approximately 21,755 in 2014. When these figures are compared to BC's share of the national labour force, calculated at approximately 13

percent, it is clear that the province receives a disproportionately high number of Canada's incoming TFWs (Lemieux & Nadeau, 2015). This has resulted from the strong interest of employers to hire TFWs.

It is important to note that there are limitations in these methods of data collection. Relying solely on the number of work permits issued over the span of one year does not acknowledge that TFWs may have multiple short-duration contracts in that year or may have multi-year contracts. Thus, the number of issued work permits may not reflect the true number of TFWs present in the province. Likewise, point-in-time data does not include those TFWs that are not present with a valid work permit on that particular day of the year. Nevertheless, these figures are useful for estimating how many TFW positions are approved each year and indicating changes to the TFWP's use.

In addition to work permits, information is available on the number of approved LMIAs. These are not a direct indication of how many TFWs are present in the province since employers may submit a single LMIA for multiple positions and not all positive LMIAs result in approved work permits (ESDC, 2014a). Nevertheless, data regarding LMIAs are useful because they highlight employers' interest in hiring TFWs. Furthermore, approved LMIAs indicate that the federal government has determined that TFWs can be used without negatively impacting the domestic labour market.

The greatest number of positive LMIAs received in BC were in 2008, reaching a total of 40,335 approvals (see Table 1). The largest category of approvals were in sales and service occupations (18,100), followed by trade, transport and equipment operation occupations (7,505), and primary industry occupations (5,040), such as agriculture and natural resource extraction (ESDC, 2014b). These categories make it evident that there is a wide dispersion of skills required in the province. By 2013, the number of approved LMIAs for the year had fallen to 24,500, with the greatest number of approvals in sales and service occupations (7,520), primary industries (6,445), and arts, culture, recreation, and sport (4,445), followed closely by trades, transport, and equipment operators (4,095) (ESDC, 2014b). These figures highlight the significance of service sector and primary industry occupations in BC, which encompass both high- and low-skill workers.

Table 1: Labour Market Impact Assessments Received for Different Occupational Categories in British Columbia, 2006-2013

	2006	2007	2008	2009	2010	2011	2012	2013
Management	70	45	95	75	60	70	75	60
Business, Finance & Administration	280	295	1,025	545	475	390	410	300
Natural & Applied Sciences	925	1,115	1,510	725	650	915	1,255	1,010
Health	895	910	1,095	875	585	405	385	225
Social Science, Education, Government Service & Religion	460	305	500	355	315	325	340	210
Art, Culture, Recreation & Sport	6,345	4,810	4,215	4,295	4,190	4,145	4,710	4,445
Sales & Services	7,275	9,190	18,100	7,120	7,710	6,640	9,045	7,520
Trades, Transport & Equipment Operators	1,780	3,515	7,505	4,160	3,430	4,960	5,220	4,095
Primary Industry	1,775	3,460	5,040	4,205	4,065	4,950	6,275	6,445
Processing, Manufacturing & Utilities	105	480	1,250	225	140	100	180	195
TOTAL	19,905	24,125	40,335	22,575	21,620	22,900	27,900	24,500

Source: ESDC, 2014b

(total varies slightly from ESDC (2014b) due to administrative data adjustments)

Using the NOC system detailed in Chapter 2, it is possible to identify which occupational categories are most common for TFWs in BC. The most positive LMIA's are for skilled and technical professions in NOC B, and intermediate and clerical positions in NOC C (see Table 2). In 2008 there were 10,395 NOC B and 11,755 NOC C approvals. This was the only year that had a significant number of NOC D approvals for elemental and labour-based occupations, recorded at 12,810 (ESDC, 2014a). The years preceding and following 2008 saw considerably lower numbers of positive LMIA's for NOC D occupations. Importantly, low-skill TFWs are often working in "agriculture, restaurants,

food processing, cleaning, tourism, construction and road building” (West Coast Domestic Workers’ Association [WCDWA], 2013).

Table 2: Approved Labour Market Impact Assessments (LMIAs) in British Columbia, by Year and National Occupational Classification (NOC)*

	2006	2007	2008	2009	2010	2011	2012	2013
NOC 0 - Management	450	395	1,015	770	745	620	800	550
NOC A - Professional	5,985	4,635	4,360	3,540	3,185	2,930	3,245	2,795
NOC B - Skilled/ Technical	5,130	6,610	10,395	7,210	5,930	8,900	10,230	7,575
NOC C – Intermediate/ Clerical	6,485	8,165	11,755	5,985	7,100	4,645	6,995	10,580
NOC D – Elemental/ Labourers	1,860	4,315	12,810	5,065	4,660	5,805	6,625	3,000
TOTAL	19,910	24,120	40,335	22,570	21,620	22,900	27,895	24,500

Source: ESDC, 2014a

(total varies slightly from ESDC (2014a) due to administrative data adjustments)

Positive LMIAs can be divided into high- and low-skill streams. The dominance of these streams has fluctuated over time. In 2008, the year that received the most positive LMIAs, there were 15,770 approved LMIAs for high-skill positions and 24,565 for low-skill positions (ESDC, 2014a). This can be explained by the introduction of the Expedited Labour Market Opinion (E-LMO) Pilot Project in 2007⁷, which reduced the processing time to assess LMIAs in critical sectors within Alberta and BC and expanded TFWs’ work permits from one to two years (Lemieux & Nadeau, 2015). There was considerable growth in the use of the TFWP in 2007, as compared to previous benchmark years of high TFW use, which also coincided with a significant increase in the number of lower-skilled TFWs using the program (Gross & Schmitt, 2012). However, given the economic

⁷ A similar Canada-wide program was introduced in 2012 for high-skill occupations through the Accelerated Labour Market Opinion (A-LMO) (see Gross, 2014).

challenges during the Great Recession, the number of approved LMIA for low-skilled workers fell to 11,050 in 2009 and has fluctuated in this range ever since (see Figure 3). Despite this reduction, low-skill and low-wage TFWs continue to hold a significant position in BC's labour market.

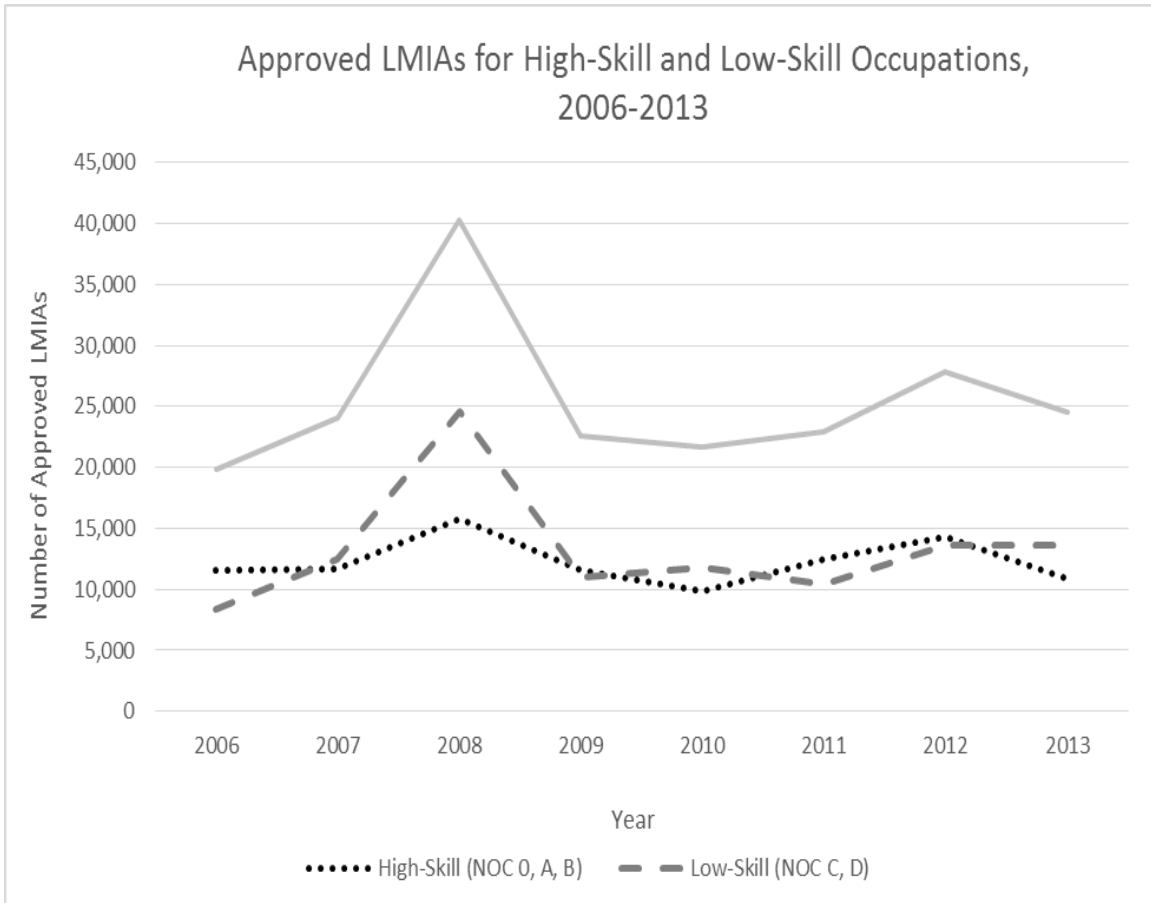


Figure 3: Approved Labour Market Impact Assessments (LMIAs) for High-Skill and Low-Skill Occupations in British Columbia, 2006-2013

Source: ESDC, 2014a

The vast majority of BC's positive LMIA are in census metropolitan areas (CMAs), which are urban centres and regions which contain a large concentration of the province's population (see Statistics Canada, 2012). Unsurprisingly, Vancouver receives the most positive LMIA, with 24,300 in 2008. This figure fell dramatically in the following years, with only 11,490 positive LMIA for Vancouver in 2013 (ESDC, 2014c). Large

numbers of positive LMIA were also seen in Abbotsford (1,610), Kelowna (1,795), and Victoria (1,350) in 2013 (see Appendix B).

As previously mentioned, LMIA approvals are not equivalent to the number of TFWs present in BC. However, the level of interest from employers in using the TFWP can be gleaned from this information. It also identifies regions where there are considerable concentrations of this interest. While smaller regions may have fewer LMIA and TFWs than larger centres, the impact of the TFWP can be significant given their local population and economy. As such, it is important to recognize that there are challenges in understanding how the TFWP is used across BC, especially when detailed information about the location and occupation of TFWs is limited.

3.3. Temporary Foreign Workers and Permanent Residency in British Columbia

The following subsections introduce permanent residency requirements and trends for TFWs in BC. This is relevant the discussion of employment standards challenges because permanent residency applications require employer sponsorship, creating an additional power imbalance in the employee-employer relationship.

3.3.1. Provincial Nominee Program Requirements

The Provincial Nominee Program (PNP) allows provinces to nominate foreign nationals that they feel can contribute to the needs of the provincial economy for permanent residency. The provincial government establishes criteria related to the applicant's skill level, educational attainment, Canadian work experience, language abilities, and other additional requirements deemed relevant (CIC, 2015e). These may be organized into different PNP streams through which foreign nationals may apply.

In BC, the PNP is divided into three categories: Skills Immigration, Express Entry BC, and Entrepreneur Immigration.⁸ Skills Immigration is the standard nomination

⁸ Each pathway has unique requirements (see WelcomeBC, 2016).

system which includes six pathways: Skilled Worker, Health Care Professional, International Graduate, International Post-Graduate, Entry Level and Semi-Skilled, and the Northeast Pilot Project. Estimated processing times for applications filed since 2014 are between 12 and 16 months (WelcomeBC, 2015). Express Entry BC is a nomination system that operates alongside the federal government's Express Entry program and only accepts applicants under four pathways: Skilled Worker, Health Care Professional, International Graduate, and International Post-Graduate (WelcomeBC, 2016). Given the higher priority of this stream, processing times for applications range between four and five months. Lastly, foreign businesspeople that want to become established in BC as permanent residents can apply through Entrepreneur Immigration.

The BC PNP is employer-driven and requires considerable involvement from employers. Before workers are nominated by the province, employers must agree to a number of conditions and assessments related to their recruitment techniques, employment positions, and overall standing of their workplace (WelcomeBC, 2016). Employers must also complete a portion of the PNP application for workers, and nominations may be declined if employers do not meet their stipulated requirements.

Options to apply for permanent residency for low-skill workers in NOC C and D occupations are limited to the Entry Level and Semi-Skilled stream and the Northeast Pilot Project. The Entry Level and Semi-Skilled stream only accepts applications for designated occupations within tourism and hospitality, long-haul trucking, and food processing. Applicants must satisfy each of the following requirements before they are considered for nomination: full-time employment with their employer for at least nine months; a full-time, indeterminate job offer; proof that minimum income requirements have been achieved in the past nine months and that expected income will match minimum income requirements needed for the number of dependents they have⁹; completion of secondary education and any qualifications required for that occupation; and basic language competency as demonstrated by a minimum score of four on the

⁹ For a single-person family in Metro Vancouver the minimum income is \$21,895 and is \$18,248 for elsewhere in the province. This increases for each additional family member to a maximum of \$57,943 in Metro Vancouver and \$48,290 for elsewhere in the province for a seven-person or more family. (See BC PNP Skills Immigration and BC Express Entry Program Guide, 2016.)

Canadian Language Benchmark 2000 (WelcomeBC, 2016). The Northeast Pilot Project has the same requirements with the exception that applicants must be in NOC C and D occupations that do not fall within tourism and hospitality, long-haul trucking, and food processing, and they must be working in Northeastern BC.

For most streams, foreign nationals must first register in the Skills Immigration Registration System and input their information to be scored using a points-based system.¹⁰ Scores are determined based on economic factors related to the skill level of the job offer, wage level, and region of employment, as well as human capital factors associated with work experience, education, and language ability (WelcomeBC, 2016). A total of 200 points can be accrued, with 120 based on economic factors and 80 for human capital factors. Upon receiving a registration score, registrants are placed in selection pools from which they may be invited to apply for the PNP. It is only when individuals accept this invitation that they become formal applicants. After completing their forms and paying \$550, applicants are screened and those who are approved are nominated by the province for permanent residency (WelcomeBC, 2016).

3.3.2. Use of the Provincial Nominee Program by Temporary Foreign Workers

Including principal applicants, spouses and dependents, BC had 4,306 PNP admissions in 2011, amounting to 12.4 percent of the total immigration to the province that year (Seidle, 2013). The federal government establishes limits on how many nominations can be made annually. Through provincial pressure to expand the program, the federal government has adjusted national and provincial nominee caps on a regular basis. In 2009 BC had a limit of 3,000 nominees, which has steadily increased each year, moving to 5,500 by 2015 (Seidle, 2013; WelcomeBC, 2015).

A significant number of PNP applicants in BC are TFWs. Approximately 79 percent of all nominees were from the TFWP between 2005 and 2010, highlighting the importance of this avenue to permanent residency for TFWs. In 2010 alone, TFWs

¹⁰ Health Care Professional and International Post-Graduate pathways from both Skills Immigration and Express Entry BC do not need to register.

comprised an average of 93 percent of all of BC's nominees (Seidle, 2013). Use of the PNP also demonstrates that many TFWs – for a variety of different reasons – would like to immigrate to Canada and may do so when given the opportunity (see Nakache & Dixon-Perera, 2015). Although the TFWP is only intended for short-term work placement and temporary residency, it can and does lead to permanent settlement.

The vast majority of BC PNP applications and nominations are within the Mainland/Southwest area.¹¹ In 2014, 6,025 of the 8,045 PNP applications received by the province were in this region, as were 3,020 of the 3,995 provincial nominations made (personal communication with a BC civil servant, December 7, 2015). Vancouver Island/Coast, Thompson Okanagan, and Northeast BC are the next most popular PNP locations, with 300, 245, and 220 nominations in 2014, respectively.¹² While it is not surprising that most provincial nominees are located in the region with the largest urban population, the PNP can also encourage settlement in other areas of the province.

Support for TFWs to become permanent residents can be linked to the importance of economic development and labour market integration for provincial nominees. Since TFWs have already been working in occupations and industries with identified labour needs, retaining these workers can alleviate some of this strain. Research has shown that TFWs are highly successful in integrating into the provincial economy due to their previous work experience in Canada (Sweetman & Warman, 2014). Importantly, their economic performance, including their wages and employment rate, is greater than immigrants who have not previously worked in the country.

3.3.3. Northeastern British Columbia

Northeastern BC provides an interesting case for the use of both the TFWP and the PNP. In recent years, this region has become an increasingly “work-focused environment” as their resource-based economy has rapidly expanded and labour

¹¹ This region includes Metro Vancouver, the Fraser Valley, Sunshine Coast, Whistler, Pemberton and Lillooet.

¹² Regional profiles can be found at <https://www.workbc.ca/Labour-Market-Information/Regional-Profiles.aspx>.

shortages have emerged (interview with Moore, December 8, 2015). Approximately 10.5 percent of all mining, gas, and oil extraction jobs were located in the Northeast in 2014, and forestry, farming, and hydroelectric generation comprise important parts of the goods-based economy (WorkBC, 2016b). Given the relatively small size of the population in this region, migrant workers have become a common feature in the Northeast, including workers from elsewhere in Canada and abroad.

While the exact number of TFWs that work in the Northeast is not available, the amount of approved LMIA's in the region's largest municipalities has grown (see Appendix B). The number of approved LMIA's peaked in 2012, totalling 1,335 for Fort St. John, Dawson Creek, and Fort Nelson (ESDC, 2014c). While many positions were for occupations related to skilled trades and operations, there was also a significant increase in lower-skill positions, particularly those related to secondary industries in the service sector, such as retail, food and beverage, and hospitality occupations (interview with Moore, December 8, 2015). As the economy in these communities expanded, more workers were needed in supporting industries to allow the region to function and grow.

The region has experienced cycles of high and low unemployment. Looking at the ten year average between 2004 and 2013, Northeast BC's unemployment rate was approximately 4.26 percent while BC's was around 6.28 percent (WorkBC, 2016b). The average annual unemployment rate in this region has been below the provincial average since 2003, with the only exceptions noted in 2008 and 2014. Some months and years have had such low unemployment rates that the percentage cannot be released due to concerns around privacy and confidentiality. Although the frantic pace of work has calmed since the slowdown in the oil and gas sector, there continues to be many service-sector jobs available in the community (interview with Dawson Creek Literacy Society [DCLS], November 23, 2015).

Due to the high demand for labour in this region, the provincial government introduced the Northeast Pilot Project in 2011. This allows NOC C and D workers who do not fit into the other PNP categories to apply for permanent residency if they are located and working in the Northeast (WelcomeBC, 2016). The pilot signals the region's interest in retaining workers instead of having them come in for short periods of time.

Due to the remote location and colder weather there can be difficulties in attracting new immigrants to settle in the area (interview with DCLS, November 23, 2015). The TFWP has become a means for attracting new migrant workers, and potential future immigrants, to the region.

Between 2012 and 2015 the Northeast Pilot Project received 127 applications and 76 nominations, with 2 refusals and 49 applications still pending decision (personal communication with a BC civil servant, November 17, 2015). Given the criteria of this PNP stream, the nominees were TFWs in NOC C or D occupations outside of tourism and hospitality, long-haul trucking, and food processing. While the number of nominations made through this particular pathway is small in comparison to the total nominations made for the Northeast (for example, in 2014 there were 36 nominations through the Northeast Pilot Project but 220 nominations in total for the region), there have been a growing number of low-skilled nominations each year (personal communication with a BC civil servant, November 17, 2015). This represents the interest of employers in retaining these workers as permanent members in their communities.

3.4. Summary

This chapter demonstrates that BC has had consistent use of the TFWP in the last decade. Employers' demands for labour have often been filled by high- and low-skill TFWs, with significant growth in the number of low-skill workers seen between 2007 and 2009. Importantly, many TFWs aim to become permanent residents through the program. Low-skill TFWs are only able to apply for permanent residency through the limited number of pathways offered by BC's PNP, which is an employer-driven system of immigration. As a result, low-skill TFWs' interests in achieving permanent residency are linked to their employment relationships.

Chapter 4.

Employment Standards in British Columbia

This chapter details the current employment standards regime in BC. Employment standards protections and the complaints process to address suspected employer violations are discussed. The chapter concludes by highlighting some of the major criticisms and contemporary debates around the province's current regulations and enforcement of employment standards.

4.1. Employment Standards Protections

The Government of British Columbia holds responsibility for the province's labour and employment laws. The *Employment Standards Act* (ESA) and *Employment Standards Regulation* (ESR) serve to regulate the minimum standards for workers in the province (*Employment Standards Act*, 1996). The Employment Standards Branch (ESB), which is housed under the umbrella of the Ministry of Jobs, Tourism and Skills Training, is a statutory authority whose primary functions are to administer and enforce the provisions of the ESA and ESR. The majority of workers hired in BC are covered by the ESA, including TFWs. Exceptions apply to unionized employees who are protected by their collective bargaining agreement and specific sectors that are covered by unique regulations (BC Ministry of Jobs, Tourism and Skills Training, 2015a).

The ESA and ESR address the most basic elements of work, including minimum pay, overtime, deductions, leave from work, termination, and compensation. *A Guide to the Employment Standards Act* provides a useful summary of its coverage. For example, the provincial minimum wage is \$10.45, with exceptions to liquor servers, live-in support workers, agricultural workers, and resident caretakers (BC Ministry of Jobs, Tourism and Skills Training, 2015a). Workers must be paid twice a month at a minimum, with intervals

between paycheques lasting no longer than 16 days. Furthermore, overtime pay comes into effect after eight hours of work and wages are doubled after twelve hours. While the full breadth of the ESA and ESR cannot be detailed here, they also include provisions for meal breaks, statutory holidays, child labour laws, and vacation pay (BC Ministry of Jobs, Tourism and Skills Training, 2015a).

The guidelines also make it clear that employers cannot make deductions from their employees' wages or charge fees as a means to recoup costs, including recruitment or job placement fees (BC Ministry of Jobs, Tourism and Skills Training, 2015a). Section 12 of the ESA addresses third-party recruitment where an employer may use an agency to search for and hire workers. It is required that all employment agencies are licensed and that these are renewed on an annual basis by completing a questionnaire and paying a \$100 fee (*Employment Standards Regulation*, 1995). Recruiters and employers are not permitted to charge workers fees for matching them with an employment position.

Furthermore, while federal work permits specify the length of a TFW's employment contract, employers cannot force workers to stay the full duration (BC Ministry of Jobs, Tourism and Skills Training, 2015a). Although the provisions of the ESA and ESR were not written with TFWs in mind, they have been interpreted to address challenges that these workers may face in the labour market.

4.2. Complaints Process

The ESB is responsible for handling complaints and resolving disputes where employment standards violations arise. Procedures for filing employment standards complaints changed in the early 2000s, now requiring most employees to use the Self-Help Kit to address their concerns directly with their employer before they can file a formal complaint (Fairey, 2007). A worker does not have to complete the Self-Help Kit if they are 18 years old or younger; are a farm, domestic, textile or garment worker; have significant challenges with language proficiency and comprehension; are pursuing a leave-based complaint; if the employer is no longer in business, or if assets are at stake; or if they have previously sent a letter to their employer and can provide a copy to the

ESB (BC Ministry of Jobs, Tourism and Skills Training, 2010). While these exemptions exclude some TFWs, such as live-in caregivers and seasonal agricultural workers, most other TFWs are still required to complete this step. Only in circumstances where there are considerable language barriers are TFWs likely to be exempted, though basic language proficiency is often required for many of the positions they occupy (refer to Table 1 for general occupational distributions).

When using the Self-Help Kit, workers must provide their employer with a package that includes a dated version of the ESB's Information Notice, Request for Payment form (or Problem Description form, if the matter is unrelated to pay), and Complaint Resolution factsheet (BC Ministry of Jobs, Tourism and Skills Training, 2015b). These forms can be found online or at an Employment Standards Office. Employees can include additional information in the package, such as ESA guidelines or documentation related to the suspected violation. Once the employer has received the package they have 15 days to respond to the employee. If the employer agrees to the employee's request, then the matter can be solved directly between the two parties. If the employer does not agree with the complaint, they must provide a written explanation and the employee may pursue a formal complaint (BC Ministry of Jobs, Tourism and Skills Training, 2010). Furthermore, if a response is not provided in 15 days, the employee can file a complaint with the ESB. Importantly, complaints through the ESB can only be filed six months from the violation or six months from the last day of work if the employee is no longer working for that employer (BC Ministry of Jobs, Tourism and Skills Training, 2015b).

If a resolution cannot be achieved between the two parties, there are different steps that the ESB can take. Some complaints will require an investigation on the part of an Employment Standards Officer; however, this is not frequently done (ESB, 2010). Alternatively, the Officer aims to resolve the matter through employment standards education and, if that is unsuccessful, mediation. The Officer will attempt to reach a settlement agreement between the two parties in mediation, which may occur in-person or by teleconference. Failure to reach a settlement will result in a follow-up adjudication hearing organized by the ESB (Fairey, 2007). If complaints are not resolved in the adjudication hearing, the Adjudicating Officer may write a determination which requires

some action on the part of the employer if they are found in contravention of the ESA. If parties are dissatisfied with the outcome of the determination, the complaint may be appealed to the Employment Standards Tribunal or pursued in the court system (BC Ministry of Jobs, Tourism and Skills Training, 2010).

4.3. Criticisms of British Columbia's Employment Standards

Starting in 2001, BC's Liberal government introduced a series of legislative and executive changes to the ESA and ESR with the aim to improve labour market flexibility in the province (BC Liberal Party, 2001). These included the mandatory use of the Self-Help Kit, decreased investigation requirements for complaints, reduced pay protections regarding minimum hours worked and overtime, and limiting wage recovery from two years to six months (see Fairey, 2007 for details). These changes have been criticized for reducing the breadth of employment standards protections, particularly for vulnerable workers, such as low-wage earners, racial minorities, and young entrants into the labour market (Fairey & Cohen, 2013). Labour representatives have also drawn attention to the fact it is no longer mandatory for employers to post employment standards information in the workplace (Ministry of Labour, Citizens' Services and Open Government, 2011). This limits workers' awareness of and knowledge about their rights, and disproportionately impacts those who are new to the labour force or are unfamiliar with the province's workplace culture and expectations. Even if workers are aware of the ESA and ESR, the complicated legal language used may still hinder them from fully knowing their rights (interview with Foster, November 16, 2015).

Furthermore, criticism has been directed towards funding cuts made to the ESB. There are significantly fewer staff working with the ESB and the scale of programs and investigations has shrunk. Within the first year of these reforms eight ESB offices were closed, leaving only nine in the province (Fairey, 2007). Finally, concern has also grown around the limited amount of data collected on employment standards issues and the ESB's performance in addressing them (Fairey, 2007). These criticisms reflect the structural and administrative changes applied to BC's employment standards, which have constrained worker protections and the role of the ESB.

Chapter 5.

Policy Problem

TFWs are subject to the same employment standards and regulations as other employees when working in BC. However, the structure of these standards and the organization of the complaints process can significantly impact TFWs' employment experiences. Given that low-wage workers already face high levels of vulnerability in the labour market, this experience is heightened for low-skill TFWs who have their immigration status and labour mobility tied to their employer through their work permits. Employment, immigration, and social status are key determinants to the experience of precarious labour, which can give rise to greater insecurity and challenges within and outside of the labour market (Vosko, 2006).

In recent years legal cases involving TFWs in BC have directed greater attention towards employers who have violated employment standards. A complaint was filed with the ESB in 2013 against Tim Horton's and franchise owners in Fernie, BC. They were accused of trying to recoup overtime pay from TFWs, while also illegally charging fees to cover program administration costs (Edwards, 2013). In that same year, a class action suit was settled between 77 TFWs and Denny's restaurants for failing to provide the amount of work that was stipulated in their contracts, pay overtime wages, and reimburse recruitment and travel costs as required by the TFWP (*Dominguez v Northland Properties Corporation*, 2013). While these cases do not illustrate the overall scope or severity of employment standards violations, they indicate that low-wage and low-skill TFWs are susceptible to workplace exploitation in BC.

In addition to having control over wages, working hours and continued employment, employers also have significant influence over TFWs' applications for permanent residency. Workers must accumulate a certain amount of Canadian work

experience and have a current job offer in the province before they will be considered for a Provincial Nominee application for permanent residency (WelcomeBC, 2015). Consequently, TFWs who have goals for long-term settlement in BC can become heavily dependent on their employer, potentially putting them in a position of greater vulnerability. Studies suggest that the power imbalance between TFWs and employers can reduce the incentive of employers to adhere to employment laws (Preibisch and Hennebry, 2012).

The vulnerable nature of their work, in combination with their employer-specific work permits and precarious, employer-contingent legal status, makes low-skill TFWs more susceptible to employment standards violations. Since there are diverse employment issues, this study will focus on TFWs and their challenges related to BC's employment standards laws, including incentives and disincentives to adherence on the part of employers and the accessibility of dispute resolution mechanisms for TFWs. By understanding the structural obstacles that TFWs face with employment standards, it is possible to address some of these protection gaps to reduce employer contraventions and improve TFWs' access to employment standards support systems.

The multi-jurisdictional nature of the TFWP requires both federal and provincial involvement in ensuring employers' compliance. However, BC's employment standards do not account for the unique conditions of the TFWP, particularly for low-skill and low-wage workers. As a result, worker protections are not fully adequate in addressing the employment standards issues that TFWs face. Adherence to employment standards is weakened by the interaction between temporary residency and precarious employment, an experience which centres on low-skilled and low-waged TFWs (Fudge, 2011). The TFWP and BC's employment standards fail to protect TFWs from employer violations or provide them with the means to effectively resolve such issues.

This research draws the interest of a number of different stakeholders, including employers, different levels of government, labour representatives, community service organizations, social advocates, and TFWs. Policy options to improve adherence to employment standards will target employers and provincial and federal governments, making them the major stakeholders for this assessment.

Chapter 6.

Methodology

6.1. Research Approach

This report uses a qualitative and exploratory research approach to examine employment standards challenges faced by low-skill and low-wage TFWs in BC. This approach relies on primary and secondary sources to provide a comprehensive overview of the policy problem, and to propose and analyze options for moving forward.

Existing literature written about TFWs, provincial employment standards, and employment challenges provide the foundation for this research. Journal articles, research reports, and other academic publications were reviewed to develop a clear understanding of the topic and how it has evolved over time. Through the initial literature review it was possible to identify gaps in the research that could be further analyzed. While the focus on this report is on TFWs in BC, research completed elsewhere in Canada has also been useful in informing the debate and providing greater context.

This report has also used media scans to address some of the more recent or nuanced issues. News coverage documents TFWs' experiences and provides specific examples of employer violations. Furthermore, given the difficulties in accessing data on employment standards complaints from the ESB (discussed below), recent legal cases involving TFWs in BC are referenced to provide evidence of documented workplace violations. The discussion of legal cases is particularly informative as the details of the suspected violations are systematically reviewed and addressed in court documents. All legal cases can be found online, though further information for pending cases may only be available through media outlets.

In addition to discussing reform efforts in BC, regulations from Alberta, Manitoba, and Ontario are highlighted to demonstrate how the TFWP and employment standards have interacted in other provinces. Along with BC, Alberta and Ontario are the most popular destinations for TFWs (Lemieux & Nadeau, 2015). Manitoba has also relied heavily on the TFWP in certain industries and has adjusted some of their employment legislation to reflect the concerns of this unique demographic (interview with Byl, November 10, 2015). By comparing these provinces, it is possible to identify different policies and practices for dealing with employment standards challenges for TFWs.

Finally, semi-structured interviews were conducted with 16 individuals and organizations to understand the use of TFWs and conditions influencing employment standards (see Appendix D). The interviewees were selected from four main groups: those involved in politics and/or policy; representing business and/or labour interests; focused on service provision and/or advocacy; or conducting research. Interviewees were asked to provide their views on adherence to employment standards where TFWs are hired, the conditions they believe influence adherence levels, current actions being taken to address employment standards discrepancies, challenges to ensuring employers' adherence, and possible solutions to address these concerns (see Appendix E). The goal of these interviews was to collect a range of perspectives and opinions to identify potential policy alternatives to improve compliance with employment standards where TFWs are employed.

6.2. Framework for Analysis

Based on the research and analysis to follow, policy options are assessed to determine what actions, if any, are best suited for addressing employment standards challenges experienced by TFWs in BC. Societal and governmental objectives are central to the evaluation of these options. The primary societal objective is to effectively reduce the challenges that TFWs experience related to employment standards, focusing on employer violations and accessibility to the ESB's complaint mechanisms. The governmental objectives are budgetary cost, ease of implementation, and stakeholder acceptance. Criteria and measure are used to indicate how each option performs in light of these broader objectives.

6.3. Study Limitations

This study is faced with a number of limitations. Importantly, it is difficult to know how many TFWs experience employment standards violations in the province. While it is possible to focus on filed complaints or dispute resolution procedures, these do not account for those workers who do not wish to file a complaint. Nor does this capture those individuals who are unaware that a violation has occurred or do not know how to proceed when they have identified a violation. The full scope and severity of employment violations are unclear unless it is possible to survey TFWs, ensuring that they are knowledgeable about their rights and able to discuss their workplace experiences without risk to their employment or future opportunities, or those around them.

Despite outreach attempts, this study was unable to secure the participation of provincial and federal government representatives. Since the ESB has the most insight and information on this topic based on their statutory responsibilities, the absence of their participation leaves a significant gap in the analysis. This can also be said for BC's Ministry of Jobs, Tourism and Skills Training and ESDC's Temporary Foreign Worker Program Unit.

Although TFWs are the main demographic under study, they were not interviewed for this report because of their precarious employment positions and legal status. Therefore, their unique perspectives on employment standards, employer adherence, and the complaints process are not directly included. However, the absence of their personal insights was compensated through other reports that have referred to TFW perspectives. Similarly, the community service organizations that were interviewed were able to reflect on the issues that TFWs have when seeking out or using their services.

It is also important to acknowledge the limitations of using interviews as a dominant source of information. While attempts were made to have a diverse range of representatives and views included, it was not possible to coordinate interviews with all relevant parties. There are concerns around overrepresentation of particular perspectives when the sample is non-representative. Individuals who are more willing and able to participate than others may have a reason for this, which can detract from

the general applicability of their statements. Therefore, the anecdotal nature of interviews and the biases inherent in them should be noted.

Chapter 7.

Temporary Foreign Workers' Employment Standards Challenges in British Columbia

This chapter discusses the range of employment standards violations that TFWs may face in BC. Since the expansion of the TFWP in 2002 and the E-LMO Pilot Project in 2007, an increasing amount of low-skill and low-wage TFWs have entered BC. Given the unique conditions surrounding their work permits and limited access to permanent residency, as well as the vulnerability inherent to lower-skilled and lower-waged occupations – such as those in retail, food and beverage, cleaning, and hospitality industries – it is important to address the types of employment-related issues these TFWs encounter. While TFWs may experience a range of challenges to their economic, social, physical, and mental wellbeing, the focus of this analysis will be on contraventions and barriers to provincial employment standards (see Nakache & Kinoshita (2010); Goldring & Landolt (2012), Foster (2012), and Taylor & Foster (2014) for further discussion).

7.1. Employment Standards Violations

Due to data limitations regarding employment standards violations experienced by TFWs – both reported and unreported – it is necessary to use multiple sources to provide a fuller understanding of the issue. Through a *Freedom of Information and Protection of Privacy Act* request, Sarah Marsden (2013) was able to obtain information about all foreign worker complaints filed with the ESB between 2008 and 2011. During this time, the ESB received and heard between 56 and 98 complaints annually from foreign workers, which only include those complaints that went beyond the Self-Help Kit stage (if required). Using this information, Marsden (2013) highlighted contraventions commonly reported by foreign workers. It should be noted that because this information

is not disaggregated, it is not possible to differentiate between complaints filed by TFWs and other foreign workers (such as those who are LMIA-exempt or undocumented), though it is likely that they encounter many of the same vulnerabilities as a result of their migrant and precarious status.

The largest category of employment standards violations was around payment of wages and compensation (Marsden, 2013). ESA contraventions were noted for delays and failures regarding minimum wages (Section 16), payday requirements (Section 17), wages upon termination (Section 18), overtime wages (Section 40), statutory holiday pay (Section 45 and 46), vacation pay (Section 58), and liability or compensation for termination (Section 63). Fees and deductions made by employers were found, including employers charging workers for their hiring (Section 10) and making illegal deductions from their paycheques (Section 21). Workers also experienced negative on-the-job situations, including misrepresentations of an employment position's availability, required duties, wages, and work conditions (Section 8), and mistreatment as a result of a complaint or ESB investigation (Section 83). Furthermore, violations were found against employers who were using unlicensed employment agencies (Section 12) or not providing wage statements (Section 27) or payroll records (Section 28).

From this list, it is clear that foreign workers are vulnerable to a wide range of contraventions, most of which centre on illegal wage and deduction practices. These violations were also echoed by a number of lawyers, labour advocates, and community service organizations that were interviewed about TFWs' challenges with employment standards in BC. Unpaid wages and overtime, illegal deductions, recruitment fees, non-adherence to work contracts and employer retaliation were the mostly commonly mentioned violations amongst interviewees. Many of these violations were also discussed at a workshop held by Migrante BC, a grassroots migrant worker organization, in January 2016. In particular, wage theft and unpaid overtime, employers not following TFWs' contracts, and the charging of recruitment fees and other expenses were emphasized. With the introduction of the \$1,000 LMIA processing fee, some employers have been illegally deducting these costs from TFWs' paycheques.

Recruitment fees vary by the individual and the agency, but estimates tend to range between \$8,000 and \$10,000 per TFW (Cooper & Gauthier, 2015). Recruitment fees add another element of precariousness since many TFWs have taken loans or borrowed money to pay these fees (interview with WCDWA, December 15, 2015). TFWs are more dependent on their employment because of the financial investment they have made to get there, including the need to pay back these loans.

There are also concerns about recruiters providing false information to TFWs, signing them up for non-existent jobs, and pressuring them to engage in unauthorized – and sometimes unpaid or ‘trial period’ – positions (WCDWA, 2013). Misinformation and non-existent jobs place TFWs in especially dire circumstances since they are left without any source of legal income. If TFWs engage in work outside of their contract, even if it is with the same employer, they are at risk of jeopardizing their legal status in Canada (interview with Gauthier, December 18, 2015). Employers’ promises of citizenship or completion of PNP applications place TFWs in conflicting situations if their employer is violating their rights but they do not want to lose access to these opportunities. Although citizenship does not guarantee that employers will uphold employment standards, the unique conditions encountered by TFWs leads to their pervasive precariousness in the Canadian labour force. As a consequence, TFWs experience significant amounts of fear and insecurity around their employment status.

Central to why these claims often go unreported are TFWs’ fears of employer retribution, especially when employers have made threats of termination or deportation. Lawyers that have worked with TFWs have mentioned that employer retribution is seldom addressed by the ESB and successful cases are rare (interview with Gordon, January 5, 2016). Many note that stronger enforcement against mistreatment and retribution are necessary to limit the risks of filing a complaint. Even if threats are not made, the fear of losing income and status are large enough that many TFWs simply choose to remain silent. Lawyers that have provided summary advice to TFWs note that many decide not to pursue a complaint once they have learned of the process and the possible risks involved (interview with Gauthier, December 18, 2016).

TFWs may encounter additional barriers to filing a complaint beyond those associated with their employers or the ESB. For example, complications may arise due to workers' long hours, remote location, limited access to transportation, language proficiency, and limited awareness about rights and protections (interview with immigrant support service organization, December 8, 2015). Furthermore, a lack of understanding of their work contract, insecure housing, poor access to settlement and legal services, and employers' promises of guaranteed work and citizenship also play a role (workshop hosted by Migrante BC, January 2016). These exacerbate the power imbalance between TFWs and their employers, especially since knowledge of rights and services are not widespread amongst TFWs.

7.2. Legal Challenges and Court Action

BC has witnessed a growing number of legal challenges involving TFWs. While some have focused on the use of the TFWP,¹³ others have drawn attention to human rights abuses.¹⁴ There have also been a small handful of cases that involve TFWs and employment standards violations.

A lawsuit in 2010 involving a high-skill TFW and Azuma Foods took into account the restricted labour mobility of TFWs when they become unemployed. This case of wrongful dismissal resulted in the TFW being awarded twelve months of severance pay. The ruling established that finding a new employer with a positive LMIA and obtaining a new work permit takes a considerable amount of effort and time for a TFW, beyond what a permanent resident would encounter under similar circumstances (*Nishina v. Azuma Foods*, 2010). In the case of wrongful dismissal, this hardship is amplified and the large severance award reflects the temporary status and program conditions of the TFW.

¹³ For example, the dismissal of a legal challenge against HD Mining in 2013 that claimed the company improperly used the TFWP. Read more: <http://www.cbc.ca/news/canada/british-columbia/b-c-mine-s-temporary-foreign-workers-case-dismissed-1.1332320>.

¹⁴ For example, the *Seli* (2008) case regarding the differential treated of TFWs based on race. Read more: [http://www.bchrt.gov.bc.ca/decisions/2008/pdf/dec/436_CSWU_Local_1611_v_SELi_Canada_and_others_\(No_8\)_2008_BCHRT_436.pdf](http://www.bchrt.gov.bc.ca/decisions/2008/pdf/dec/436_CSWU_Local_1611_v_SELi_Canada_and_others_(No_8)_2008_BCHRT_436.pdf).

A case against Denny's in Vancouver was one of the largest legal challenges involving TFWs in BC. An initial complaint was filed against the restaurant by a TFW in 2010 regarding recruitment costs and non-reimbursed airfare expenses paid by the worker. A second complaint was filed by the same TFW the week later for wrongful dismissal and unpaid overtime (Welder, 2011). The ESB determined that Section 83 of the ESR had been contravened, where an employee is "not to be mistreated because of [a] complaint or investigation" (ESR, 1995). The worker's lost wages with interest were ordered to be paid, in addition to a \$500 penalty (Welder, 2011).

The recruitment fees and airfare expenses were ongoing and became part of a large class action lawsuit involving a large group of TFWs in 2013. The lawsuit also included claims that Denny's failed to provide adequate hours of work as stipulated in TFWs' contracts and was not providing overtime pay (*Dominguez v. Northland Properties Corporation*, 2013). The case resulted in a \$1.425 million settlement and addressed the concerns of 77 TFWs employed by Denny's restaurants. The class action demonstrated the systematic nature of employment standards violations, as they were experienced by a large number of TFWs working for the same employer.

Starting in 2012, Tim Hortons began to receive human rights and employment standards complaints from TFWs. Four TFWs in Dawson Creek sought legal action for poor housing conditions, racial discrimination, the withholding of personal belongings, threats of termination, and wrongful dismissal ("Tim Hortons workers file double-double rights complaint", 2012). This emphasizes the power imbalance that exists between employers and TFWs within the workplace and beyond. Tim Hortons has pushed for the dismissal of the human rights complaint, though this has been rejected and the final decision still remains to be determined ("Tim Hortons' complaints continue", 2015).

A second case was brought against the franchise by workers in Fernie, BC. TFWs claimed that their employer was partially recouping overtime wages and making deductions for administrative fees ("More Tim Hortons workers accuse 'threatening' Fernie boss," 2013). These legal challenges pinpoint some of low-skill and low-wage workers' vulnerabilities, such as improper pay and unfair termination. Importantly, they

highlight the additional precariousness and workplace exploitation that TFWs may encounter, such as by having their passports withheld or being charged fees.

A class action lawsuit began in 2015 against Mac's Convenience Stores in BC, Alberta, Saskatchewan, and the Northwest Territories. Hundreds of TFWs have claimed to have paid recruitment fees in the range of \$8,000 each only to discover that their work permits were for non-existent jobs (Sheppard, 2015). Since work permits are only valid for a specific occupation and these TFWs were not authorized to work elsewhere, these violations placed TFWs' livelihoods and immigration status in jeopardy.

Although BC has only seen a handful of major legal challenges – whether resolved, dismissed, or in progress – they reveal the kinds of issues TFWs face in the province. Since formal legal proceedings are costly and time consuming, this route is not frequently used. However, the legal system provides opportunities for employment standards and human rights violations to be discussed and debated in a more public arena, explaining both the nature of workers' concerns and the dynamics that exist between employers and TFWs.

7.3. Barriers and Limitations of the Employment Standards Branch

BC's Employment Standards Branch (ESB) uses a complaint-driven system to address issues around employer compliance. Even the most progressive employment standards are not effective if they are solely complaint-driven because the legislation can only be retroactively enforced (interview with Byl, November 10, 2015). Community service organizations have also found that regional ESB offices do not provide a significant amount of support around the clarification of employment standards language or complaints processes, often referring TFWs to their website for more information (interview with DCLS, November 23, 2015). As detailed in Chapter 4, the complaint process involves multiple stages and levels of involvement on part of the ESB. Workers must make a complaint within six months of the contravention or termination, and back pay and compensation are also only calculated within a six month frame (BC Ministry of Jobs, Tourism and Skills Training, 2015b).

Many advocates and community service organizations have raised concerns about the Self-Help Kit, particularly for vulnerable and precarious workers including, but not limited to, low-skill and low-wage TFWs. When TFWs are worried about their continued employment and legal status in Canada, the likelihood of using this system is further reduced. Requiring workers who feel that they have been wronged and exploited to directly confront their employer fails to acknowledge the power imbalance that exists between employers and employees (interview with Portman, January 8, 2016). As such, the Self-Help Kit is viewed as a barrier to addressing employment standards issues since many workers do not feel comfortable confronting their employers.

If a complaint cannot be resolved between employers and employees using the Self-Help Kit, a formal complaint will advance to the mediation stage with an ESB Officer. Since the ESB is mediation-focused, ESA contraventions largely remain invisible because they are resolved behind closed doors (interview with Gauthier, December 18, 2015). Some advocates have also noted that occasionally there is pressure placed on TFWs to settle for whatever amount is offered in mediation, even if it is less than what is owed (interview with Fairey, November 25, 2015). One of the arguments used is the length of time it can take to go through the full adjudication process. Employment standards cases that go beyond mediation, particularly those that are complicated, can often take one to two years to be fully resolved (interview with Portman, January 8, 2016). As a result, many TFWs may choose to settle in mediation if financial concerns are at the fore. Settlement agreements become the final position in court, which means the agreement is all that can be enforced if an employer fails to comply (Fairey, 2007).

Interestingly, the ESB is not required to actively investigate formal complaints, calling into question the comprehensiveness of the process and the transparency of any settlements or determinations made (Fairey, 2007). Beyond the documents and records that the employer provides, this places the onus on the worker to demonstrate the severity of the violation they have experienced. Since ESA complaints are handled from Prince George, there is a strong reliance on email and phone correspondence instead of in-person interactions, including for hearings (interview with Fairey, November 25, 2015). It is typically only when investigations require documents that ESB Officers go to the employment site. In the absence of mandatory investigations and with evident

dislocation from the resolution process, TFWs may feel that they do not have the necessary supports in place to thoroughly represent their side of the complaint.

Given the time limits imposed on TFWs' work permits – shortened from two years to one in 2014 – and the absence of a guarantee that permits will be renewed, low-skill TFWs have a limited amount of time in which they can pursue a complaint. The process to file a complaint and resolve the problem can take months and oftentimes years (interview with WCDWA, December 15, 2015). Since work permits may have expired by this time, many TFWs will no longer be in Canada when their complaint is resolved (interview with Gordon, January 5, 2016). As a consequence of this, TFWs may not feel that it is worthwhile to pursue a complaint if they cannot see it through, or may settle in mediation even if they are dissatisfied with the agreement.

BC does not currently have a proactive monitoring model and enforcement mechanisms are fairly limited. While the Agricultural Compliance Team has existed since 1997, it was reduced by nearly three quarters due to budget cuts in 2001 (Fairey, 2007). Since this time, the role of proactive, investigation-based compliance teams has been minimal. Understandably, enforcement is restricted by underfunding since this influences how many staff members the ESB has in total, how many enforcement officers are available, and what resources can be put towards these activities (Fairey & Cohen, 2013). A retired ESB Manager that worked before the 2001 ESA changes were made emphasized that, while the ESB is currently focused on resolving individual complaints through mediation, it should be focused on systemic issues. Previously, the ESB had an activist element that involved audits and investigations of vulnerable work sectors, which helped to build a “culture of compliance” using education and enforcement (interview with Ages, December 16, 2015). It is by developing a larger role and degree of competence amongst ESB Officers that robust enforcement and compliance can be expected. Without the proper financial and administrative supports in place, it is not possible for the ESB to take on effective enforcement projects.

Some advocates have also called for anonymous and third-party complaint mechanisms as a way to improve how employment standards are enforced (Cooper & Gauthier, 2015). This would remove the onus from the worker to file a complaint, which

requires them to identify themselves to their employer. The need for TFWs to “stick their head out” makes them more vulnerable to their employers, thereby acting as a major deterrent to filing complaints (interview with Gordon, January 5, 2016). Furthermore, this would allow for a wider investigation of the workplace beyond the single worker, since individual complaints only solve individual problems (interview with Cousineau, January 4, 2016). As such, this approach attempts to deal with larger employer-based issues as opposed to just individual grievances.

7.4. Context of Employment Standards Challenges

The following subsections briefly discuss the context underlying employment standards challenges for TFWs. Of primary importance is their temporary legal status and limited labour mobility, as well as their access to support services and information. Interestingly, differences in regional labour demands may influence workplace dynamics, as has been noted by interviewees in Northeastern BC.

7.4.1. Legal Status and Labour Mobility

Since TFWs’ legal status is connected to their work permits, and thus, their employers, their ability to exit unfavourable work situations is highly circumscribed (Marsden, 2011). If a TFW stops working for their employer, that individual is not able to legally work in Canada until they find a new employer with an approved LMIA, which can take approximately six months (interview with WCDWA, December 15, 2015). If they do engage in work outside of their permit, this is considered unauthorized work and can jeopardize their legal standing (interview with Gauthier, December 18, 2015). As a consequence, TFWs in poor and exploitative working conditions may feel that leaving their employer is not worth losing their income or their legal status in the country. The absence of labour mobility is what sets TFWs apart from other (authorized) workers in the labour market. While low-skill and low-wage workers are often viewed as being more precarious and vulnerable to improper adherence to employment standards, permanent residents and Canadian citizens are more easily able to leave their employer. Though they may still experience significant difficulties in finding new employment, they are able to legally work elsewhere without having to apply for permission from the federal

government. TFWs do not have this flexibility, reducing the ability of these workers to improve their employment situations.

While TFWs' work permits and legal status are valid for their full duration regardless of continued employment (unless compromised for other reasons), the fear associated with possible deportation is often enough of a disincentive for TFWs not to challenge a problematic employer or search for new employment (Marsden, 2011). This is aside from the fact that becoming unemployed means the loss of income, potentially jeopardizing the worker's ability to meet their basic necessities, afford housing, and support their families (interview with immigrant support service organization, December 8, 2015). Since many TFWs come to BC to make more money than they otherwise could, becoming unemployed undermines the entire purpose of their participation.

Time is of the essence for TFWs who want to obtain permanent residency due to the four-and-four policy (Marsden, 2012). Recognizing the amount of time and effort it takes to switch employers for low-skill TFWs, this simply may not be feasible for some workers. Challenges can also arise based on their former employer's employment standards and TFWP violations, which can delay and possibly deny TFWs from obtaining a new work permit (Marsden, 2012). This is also applicable to the PNP process, since nominations may be withdrawn or rejected if the reviewing agent discovers that the employer contravened employment standards or regulations (personal communication with a BC civil servant, January 12, 2016).

Through their access to the TFWP and the conditions of limited labour mobility imposed on TFWs, employers have considerable control over their employees and workplaces. Importantly, this structure provides few incentives for employers to establish relationships with their TFWs or maintain high levels of adherence to provincial employment legislation (WCDWA, 2013).

7.4.2. Access to Services and Information

Since TFWs are typically not familiar with BC's laws and culture before their arrival, employers may be their main source of information (interview with immigrant support service organization, December 8, 2015). This can be even greater for TFWs

who lack English proficiency, as their ability to seek alternative information is restricted. Some advocates and community service agencies have raised concerns about the lack of information provided to new TFWs. In particular, information about their rights and responsibilities within the province are not made clear. While they receive a pamphlet from the Canadian Border Services Agency when they enter Canada, this is just a brief brochure and may not address the questions or concerns that TFWs have (interview with WCDWA, December 15, 2015). Community service agencies across BC can provide information and some limited level of support for TFWs, though the onus is often placed on the workers to reach out for this assistance. The accessibility and availability of information is understandably a challenge. Importantly, this is exacerbated in remote and rural regions, where community support systems are more dispersed and the physical isolation of workers acts as an additional barrier (interview with immigrant support service organization, December 8, 2015). While employers may or may not choose to take advantage of this position, the reality is that many TFWs are dependent on their employers beyond the workplace.

There is also a dearth of legal information and representation available to TFWs in BC (Cousineau, 2014). Some legal representation is made available through West Coast Domestic Workers' Association (WCDWA), as well as the Community Legal Assistance Society to a lesser extent. However, some advocacy groups have challenged this gap by offering workshops and clinics. Although these do not provide workers with legal representation, it can help TFWs become aware of their rights and the standards that their employers are expected to uphold. Identification of the problem is often the first step to addressing its occurrence. Community Legal Assistance Society, WCDWA, and the BC Federation of Labour have hosted mobile clinics for TFWs across the province, including topics on employment standards and other employment-related issues (Cousineau, 2014). Legal advocacy and support may also be provided by university law programs, often operating in partnership with community service organizations.

7.4.3. Considering the Situation in Northeast British Columbia

Employer-employee dynamics may shift under certain circumstances, such as when employers have an interest in retaining their workers or when there is a persistent

labour shortage in the region. Greater labour flexibility can potentially reduce the power imbalance between employers and TFWs, though the magnitude of this effect is uncertain. For example, Fort St. John has been described as an “employees market” where employers have to compete with each other to recruit and retain workers (interview with Green, December 7, 2015). As a result, poor working conditions can harm employers if they push workers towards competing employers or industries. This is particularly seen in low-skill occupations that are hard to fill in the region. The hospitality and retail sectors have grown considerably in the last decade and there are frequent openings that remain unfilled. With many service industry jobs available in Dawson Creek and Fort St. John, TFWs have some mobility in finding a new employer if their conditions are unfavourable, and many employers are willing to address workplace concerns brought to their attention by TFWs or community service organizations (interview with DCLS, November 23, 2015). It has been suggested that the need for workers can drive adherence for many Northeastern employers since they do not want to jeopardize the staff they do have (interview with Moore, December 8, 2015).

This is compounded by the fact that employers invest a considerable amount of time and money into recruiting TFWs, with the process taking up to a year or more in many cases (interview with Fort St. John employer, December 14, 2015). Interest in retaining workers is even more salient with the Northeast Pilot Project because of the possibility for permanent residency for low-skill TFWs. While PNP applications have been noted for being lengthy and complicated, employers appreciate the knowledge and stability provided from TFWs that transition into permanent residents (interview with Fort St. John employer, December 14, 2015). Although nominated TFWs are not obligated to remain with the same employer, many choose to remain with their employer until they become more settled.

Employment standards violations and unscrupulous practices still occur in the region and community service agencies note that TFWs are still fearful of becoming unemployed and losing their PNP opportunities (interview with immigrant support service organization, December 8, 2015). However, there is a notable shift in how employers and TFWs interact in the Northeast, particularly around worker retention and mobility.

7.5. Summary Conclusions

According to the academic research, legal cases, and expert interviews discussed above, there are a number of employment standards violations that TFWs are susceptible to. These are typically issues around unpaid wages and compensation, as well as illegal deductions through recruitment fees and administrative costs. Furthermore, there are issues around non-existent and unauthorized work, which can jeopardize workers' legal status in Canada if they contravene their work permit conditions. Employer retribution against TFWs that complain has been noted as a violation that is rarely addressed by the ESB. Importantly, TFWs that experience employer exploitation may be disqualified from permanent residency nominations.

TFWs also encounter barriers to accessing the ESB. The Self-Help Kit can be intimidating for TFWs and may dissuade them from filing complaints. Importantly, all complaints must be made within 6 months and retroactive wages can only be claimed for 6 months. If workers are not aware of their rights or delay filing their complaint, these time limitations can disqualify their claims. Importantly, TFWs may be pressured to settle for less than is owed during mediation, with the one to two year duration of the adjudication process emphasized to those who want to pursue their complaint further. Since many workers will have left the country in this time, they may feel that partial compensation is their most practical option. In addition to these barriers to accessibility, funding cuts have removed investigation requirements and severely limited its monitoring and enforcement activities.

When analyzing the policy problem, it is clear that the power imbalance between employers and TFWs creates a situation workers are vulnerable to violations and afraid to complain. Employer-specific permits limit labour mobility, especially because the process to apply for a new work permit is arduous and time-consuming. Furthermore, the only way for low-skill TFWs to achieve permanent residency is through their employers, which gives them a considerable amount of control in their workplace relationships. This power imbalance is exacerbated by TFWs' limited knowledge of Canadian rules and regulations, as well as the limited availability of services and information.

Chapter 8.

Incorporating Temporary Foreign Workers into Employment Standards Legislation

This chapter details some of the major reform movements around employment standards protections for TFWs. The first section examines advocacy efforts in BC, while the second section outlines legislation introduced in Alberta, Manitoba, and Ontario.

8.1. Employment Standards Advocacy in British Columbia

Direct advocacy related to TFWs' rights and interests has gained greater traction in recent years. Labour organizations such as the BC Federation of Labour and the Vancouver and District Labour Council have participated in workshops and campaigns on the topic of TFWs. While all labour organizations do not necessarily hold the same position, there has been widespread advocacy for greater fairness in the system, particularly around access to permanent residency for workers entering the country (interview with Hartman, January 7, 2016). Community service organizations and legal advocates have also increased their support for TFWs by providing province-wide clinics and support services about employment rights, immigration, and settlement (interview with WCDWA, December 15, 2015).

There have also been movements that are more focused on employment standards reform, both in general terms and in regards to TFWs. The BC Employment Standards Coalition was formed in 2011 with an interest in modernizing employment standards legislation to better reflect the realities of vulnerable workers in the province. Since this time, they have engaged in different strategies to spread information about employment standards gaps and lobby the government to consider reforms (BC Employment Standards Coalition, 2014). Most notably, they have developed model

legislation that addresses significant employment standards challenges that TFWs face. Their “Migrant Worker Recruitment & Protection – Model Legislation” was first drafted in 2013 and revised in 2014, highlighting potential ESA amendments that incorporate employment issues encountered by TFWs directly into the province’s legislation.¹⁵ The Coalition has developed 22 recommendations for ESA reforms which focus on recruitment agencies, employer registration, employment contracts, housing, TFW orientation and support services, compliance checks, and the time limitations of the complaints process (BC Employment Standards Coalition, 2014). Some of their key amendments include collateral bonds from recruitment agencies; a registry of TFW employers; the creation of province-wide TFW advisory offices; enforced employment contracts detailing the terms and conditions for employment; and the development of a compliance team that engages in proactive investigations. The Coalition also seeks to remove the mandatory use of the Self-Help Kit, allow workers to file complaints within 24 months, remove time limitations on back-pay, and permit the use of group complaints (BC Employment Standards Coalition, 2014). By lobbying the provincial government, the Coalition aims to influence changes to the ESA which can better protect TFWs.

Furthermore, the British Columbia Law Institute (BCLI) is currently engaged in the Employment Standards Act Reform Project, with the intention of reviewing and recommending amendments to the BC government (BCLI, 2015) Although this does not focus specifically on TFWs, suggestions that address low-wage, low-skill, and other vulnerable workers in the labour force are likely to have an impact on TFWs.¹⁶ However, neither this review project nor the model legislation noted above are binding; they are only meant to act as guides or tools for legislative and regulatory reform.

¹⁵ For full background and details of “Migrant Worker Recruitment & Protection – Model Legislation”, see: <http://bcemploymentstandardscoalition.com/wp-content/uploads/2015/11/2014-12-05-ESA-Migrant-Worker-Provisions-Backgrounder-Print-Copy.pdf>

¹⁶ For more information about the reform project, please see: <http://www.bcli.org/wordpress/wp-content/uploads/2015/03/ESA-Project-Backgrounder-Nov-2015.pdf>

8.2. Employment Standards in Other Provinces

The following subsections overview the legislation introduced in Alberta, Manitoba, and Ontario to improve TFWs' recruitment and/or employment conditions.¹⁷

8.2.1. Alberta

As the number of TFWs increased in Alberta, new measures were introduced to address some of the challenges facing this population. TFW Advisory Offices were created in Edmonton and Calgary, in addition to a TFW helpline that could be accessed by more remotely-located workers (Byl, 2009). While some researchers have suggested that the Advisory Offices do not necessarily increase TFWs' willingness to file a formal complaint, they do provide TFW-specific information and resources for those looking for employment support (Taylor & Foster, 2014).

The Alberta government has taken a more active role in enforcing employment standards and their ESB has undertaken random inspections of employers that have hired TFWs. Over half of these investigations have been conducted randomly, with other employers inspected due to complaints or inquiries made by third-party groups or the Advisory Office (Alberta Employment and Immigration, 2010). 56 percent of businesses audited in 2009 and 74 percent in 2010 were found in violation of the province's ESA. Most employer contraventions were related to unpaid overtime, holiday pay, record keeping, and vacation pay.¹⁸ Importantly, food and accommodation were the industries with the most violations, with 63 percent in 2009 and 56 percent in 2010 (Alberta Employment and Immigration, 2010). This highlights the vulnerability of workers in low-skill and low-wage work. By engaging in proactive enforcement, the Alberta government is able to identify industries that are more prone to non-compliance and are able to track changes to this activity. Furthermore, by identifying these contraventions, the ESB was

¹⁷ Though not discussed here, Saskatchewan and Nova Scotia also have worker recruitment legislation (see Saskatchewan's *The Foreign Worker Recruitment and Immigration Services Act*, 2013 and Nova Scotia's *Labour Standards Code*, 1989 for more information).

¹⁸ These violations were also reiterated in interviews with academics in Alberta, with additional mentions of illegal deductions, employers recouping administrative fees and wages, and challenges around housing (interview with Foster, November 16, 2015).

able to financially compensate TFWs. From April 2008 to March 2009, 26,691 TFWs received \$1,326,902 collectively, and from April 2009 to January 2010, 16,305 TFWs received \$448,138 from these audits (Alberta Employment and Immigration, 2009; 2010). Proactive investigations allow both reported and unreported contraventions to be addressed and can act as a deterrent for employers in the future.

Alberta also has a more robust system of licensing for recruitment agencies. Third-party recruiters pay a \$120 fee for a two-year Employment Agency Licence. In addition, they must provide a \$25,000 bond if they are recruiting NOC B, C, and D workers (Service Alberta, 2016). Recruiters are also required to submit their records, contact information, and written agreement with Service Alberta. To ensure that employers are only hiring licensed recruiters, the Alberta government has created a database of all valid licence holders. The bond and licensing mechanism are meant to reduce the incidence of illegal activities, particularly the charging of recruitment fees.

8.2.2. Manitoba

The Government of Manitoba has acknowledged that TFWs experience heightened vulnerabilities in regards to employment standards. Investigations conducted in the past twelve months are posted online and highlight the common violations that TFWs encounter, including wage abuses and illegal deductions (Manitoba Department of Labour and Immigration, 2016). Employers who are ordered to pay fines are publically listed alongside the name of their business, penalty amount, violation, and location. By collecting and publishing this information, the Manitoba government is able to keep track of frequent violations and hold employers accountable.

The Government of Manitoba has also developed the *Worker Recruitment and Protection Act* (WRAPA) to address recruitment and employment issues for TFWs. Through WRAPA, the government is able to conduct investigations on employers who hire TFWs (WRAPA, 2009). Before employers can hire recruiters, they must first register with the government and be screened. At the same time, recruitment agencies must apply for a \$100 licence annually and provide a \$10,000 bond. Importantly, only members who are in good standing with their provincial law society or the Immigration

Consultants of Canada Regulatory Council are able to obtain a licence (WRAPA, 2009). As in Alberta, the bond acts as a deterrent against illegal practices since it can be claimed by the government – in addition to any outstanding penalties – if they are found in violation. The names, contact information, and licence expiry date are published online for authorized recruiters so that employers can be aware of whether or not they are hiring unauthorized recruiters.¹⁹

8.2.3. Ontario

In 2014, the *Stronger Workplaces for a Stronger Economy Act* expanded Ontario's employment standards legislation. Many general improvements also have a positive impact on TFWs, such as adjusting minimum wage to inflation, requiring employers to provide employment standards information to their employers, removing limitations on back-pay and wages owed, and increasing the complaint period from six months to two years (*Stronger Workplaces for a Stronger Economy Act*, 2014). Mandatory self-audits also came into effect, where the ESB can require an employer to audit themselves and report their findings.

The 2014 amendments also saw changes to the *Employment Protection for Foreign Nationals Act* (EPFNA, 2009), which originally only applied to live-in caregivers and their employers and recruiters. It now became applicable to all TFWs in the province. Recruitment fees, illegal administrative deductions, acts of mistreatment and retribution, and the withholding of TFW property became strictly prohibited under this legislation. Recruiters and employers were also now responsible for providing TFWs with information detailing their rights and protections under both EPFNA and Ontario's employment standards (EPFNA, 2009). In contrast to the two year limitation for employment standards violations, claims made under the EPFNA can be filed within 3.5 years. These measures reduce some of the barriers TFWs face in filing complaints.

¹⁹ Exceptions apply under circumstances where employers are not required to hire a licensed recruiter, pending approval from Manitoba's ESB.

Chapter 9.

Evaluation Framework

This chapter outlines criteria and measures to assess each of the proposed policy options to follow. By applying the same criteria and measures, it is possible to analyze each option using a consistent and identifiable system of values. Based on the examination of these criteria and measures, the inherent trade-offs of the different policy options will be highlighted and discussed, and this analysis will be used to inform recommendations for moving forward.

The purpose of this research is to propose and analyze policy options to reduce the employment standards challenges that low-skill and low-wage TFWs experience in BC. Societal and governmental objectives provide the foundation for this evaluation by establishing the broad aims that the policies should achieve. The societal objective that is central to this analysis is the effective reduction of challenges around employment standards for TFWs relating to employer violations and accessibility to the ESB. The primary governmental objectives are budgetary cost, ease of implementation, and stakeholder acceptance. Criteria are scored using a high, medium, or low ranking system (see Appendix C).

Effectiveness

The effectiveness of each policy option is based on whether or not there is an overall reduction in TFWs' experiences of employment standards challenges in BC. However, there are a number of difficulties in assessing the incidence of employment-related issues because formal complaint mechanisms exclude contraventions that are intentionally or unintentionally unreported. Consequently, the use of multiple measures is necessary to evaluate the effectiveness of each option.

The first effectiveness criterion is the expected reduction in the number of employment standards violations experienced by TFWs. This can be measured through the number of complaints filed with the ESB to obtain information related to formal complaints. This should be measured over the long term to understand if the policy implemented has had an effect. Since policy changes may initially lead to an increased rate of reporting, the decrease should only be expected to occur after the policy has been implemented for two years. A significant downward trend in filed complaints, marked by a greater than 20 percent reduction, is given a high ranking. A downward trend of 5 percent or less is given a low ranking. The range in between is given a medium ranking.

To ensure that complaint numbers are decreasing because of policy effectiveness and not for other reasons (such as fear or lack of information), a survey should also be distributed to TFWs and/or community service agencies that assist TFWs to determine whether there has been a change in their experience of employment standards challenges. The survey should be standardized such that all individuals who complete the survey are asked the same questions, are made aware of their rights as employees in BC, and are able to identify whether they have experienced a violation and if they have previously filed a formal complaint. If it is expected that the survey will have few negative responses (less than 5 percent), this is given a high ranking. If the survey is expected to receive many negative responses (over 5 percent), this is given a low ranking. The range in between is given a medium ranking.

The second effectiveness criterion is to increase the accessibility of the ESB's complaints process by making it more TFW-friendly. This can be measured by the number of changes that target and/or address TFW-specific conditions and whether they address vulnerabilities related to the complaints process. If the option targets three or more TFW issues, this is given a high ranking, if it addresses two it is given a medium ranking, and if it only addresses one issue it is given a low ranking.

Furthermore, the ESB's interactions and monitoring of TFWs' workplaces should be documented, including random and complaint-driven inspections and other engagement activities. The expectation that an option would result in significant

monitoring (over 250 interactions annually) would result in a high ranking, while minimal monitoring expectations (less than 50 annually) would result in a low ranking. The range in between is given a medium ranking.

Since the evaluation of each option's effectiveness addresses the heightened vulnerability of TFWs within the employment relationship, it is weighted three times as much as the other objectives and is distributed across two criteria. This weighting reflects the importance of the policy's effectiveness in addressing the policy problem, with the governmental objectives following as secondary considerations.

Budgetary Cost

Budgetary cost is based on the financial expenses and resources required by the provincial or federal government to implement that policy option. Although this report is focused on BC's employment standards, options may include costs to the federal government through changes to the structure of the TFWP. The criterion is based on whether or not the policy has minimal additional costs. Costs are computed based on estimates of expected new costs as compared to not implementing that option. Values for each policy option are based on relative cost. A high ranking indicates minimal new costs (less than \$250,000), while a low ranking indicates substantial new costs (greater than \$1,000,000). The range in between is given a medium ranking.

Ease of Implementation

Ease of implementation evaluates the relative complexity of developing and introducing each policy option. This is assessed using two different criteria. The first criterion is the length of time that is required to develop and implement the policy option. This is measured using short-term (less than one year), medium term (one to two years), and long-term (more than two years) frames of reference. Short term implementation leads to a high ranking and long term implementation leads to a low ranking.

The second criterion is whether the policy option requires multi-party collaboration. Options that have minimal collaboration and distinct jurisdictional responsibilities are ranked as high, and those with significant collaboration and

jurisdictional overlap are ranked as low. Options that require some collaboration and jurisdictional overlap are given a medium ranking.

Stakeholder Acceptance

There are a number of stakeholders that have an interest in potential changes to employment standards and the TFWP. These include employers, different levels of government, organized labour, community service agencies, social advocates, and TFWs themselves. How individuals and groups perceive these changes is likely to impact the level of support each option is able to garner. Widespread support or disapproval can influence a policy's overall effectiveness. For the different levels of government, political feasibility is central to the overall acceptance of a policy change.

The stakeholders are grouped into three larger categories: employers and business representatives; municipal, provincial, and federal governments (where each is relevant); and social advocates, representatives of labour, community services organizations, and TFWs. It is only possible to assume the likelihood of support or opposition of each stakeholder, and not all stakeholders within each grouping or category hold the same opinion. As a consequence, a high ranking assumes most or all stakeholders are in support, a medium ranking assumes there is some stakeholder support, while a low ranking assumes few or no stakeholders are in support.

Chapter 10.

Policy Options

Based on the background and analysis of employment standards challenges experienced by TFWs in BC, this chapter introduces possible options that can be implemented to address this policy problem. The range of options detailed below focus on change. The status quo is not included because the research findings and interviews suggest that TFWs are negatively impacted by the current system in place and the status quo is not working. However, the complete elimination of the TFWP is also not included since this report has focused on the experience of TFWs and not the overall value or purpose of the program. Rather, the different policy options aim to reduce the level of employment-related precariousness experienced by TFWs.

10.1. Option 1: Amend the *Employment Standards Act*

Recognizing that TFWs encounter challenges related to the province's current ESA, changes to the legislation can reduce TFWs' workplace vulnerability. Guided by the BC Employment Standards Coalition's advocacy work and policies introduced in Alberta, Manitoba, and Ontario, this option seeks to amend BC's employment standards legislation to provide greater protections to TFWs.

ESA amendments should involve two sets of reforms. The first is to make changes that impact all workers covered by the province's ESA. This includes the removal of the Self-Help Kit, increasing the complaint period from 6 to 24 months, eliminating the time limit on retroactive pay, and requiring employers to provide ESA information in the workplace. This was largely the structure of the ESA prior to the changes enacted in 2001 (see Chapter 4).

The second set of reforms will address challenges unique to TFWs. A more rigorous licensing system for recruitment agencies will be implemented, which requires a collateral bond of \$10,000 for all agencies that operate internationally. This is to make employers and agencies that recruit from overseas more accountable for violations. Furthermore, a TFW-specific enforcement team should be created so that ESB officers can conduct proactive investigations and audits of employers. A targeted enforcement team can identify and document employer violations and dedicate resources to improving the conditions that TFWs face in the workplace. This option would see greater TFWs protections through the ESA and place a greater level of responsibility on the ESB to monitor and enforce employment standards.

10.2. Option 2: Introduce a Job Search Tool for Temporary Foreign Workers

TFWs may become unemployed or want to change employers due to unfavourable work conditions. However, TFWs do not currently have the capacity to conduct an employer search. The ability to search available LMIA-approved employers could alleviate some of the concerns TFWs have about filing a complaint because it provides alternative solutions to unemployment. Given that LMIA-approved employers have to recruit TFWs to fill their positions, developing a job search tool can help match TFWs with these employers. This would be done through a website that allows TFWs to browse postings from approved employers based on occupation and location. For the sake of TFWs' safety and confidentiality, the website would function as an online job board similar to WorkBC or the Canada Jobs Bank.²⁰ Only employers with valid LMIA's would be allowed to post vacant positions to reduce the likelihood of unauthorized employment. Along with employer postings, useful tutorials and guides for job search, work permit requirements, and other employment topics can be featured, much like the Skilled Immigration InfoCentre hosted by the Vancouver Public Library.²¹ This tool will

²⁰ See WorkBC example at <https://www.workbc.ca/Jobs-Careers/Find-Jobs> and the Canada Job Bank at <http://www.jobbank.gc.ca/home-eng.do?lang=eng>.

²¹ See Skilled Immigrant InfoCentre at <http://pwp.vpl.ca/siic/>.

shorten the time it takes to secure a new employer and provides TFWs with potential alternative employers.

10.3. Option 3: Eliminate Employer-Specific Work Permits

Having employer-specific work permits can place TFWs in positions of heightened vulnerability if they find themselves in unfavourable work situations. This option proposes to replace employer-specific work permits with occupation-specific work permits in a designated industry and region. Given that there can be considerable variability in labour market conditions across BC, occupation-specific permits would only apply to one of eight following regions: Vancouver Island/Coast, Mainland/Southwest, Thompson-Okanagan, Kootenay, Cariboo, North Coast, Nechako, and Northeast.²²

The purpose is to make it easier for TFWs to switch employers if necessary but to still allow the government to regulate the role and location of TFWs in the labour market. With this policy option, work permits would maintain a standard expiration date and require renewal for continued authorization to work. Employers would also require positive LMIAs before TFWs can be hired. The difference is in the increased level of mobility for individual TFWs, allowing them to work with a new LMIA-approved employer without long delays or extensive paperwork around work permits. This option would require a verification process so that TFWs are certain they are working with authorized employers. Occupation-specific work permits are useful in scenarios where TFWs are laid-off or in need of a new employer since it allows them to have greater labour mobility while still filling labour market demands and shortages in that distinct region.

²² Regional profiles can be found at <https://www.workbc.ca/Labour-Market-Information/Regional-Profiles.aspx>.

10.4. Remove Employer Component of Provincial Nominee Program Applications

Many TFWs' employment situations are complicated by their dependence on their employer to secure permanent residency, which can add to their experience of vulnerability in the workplace and community (interview with Hartman, January 7, 2016). Low-skill TFWs have access to two BC PNP streams which both require accumulated work hours, minimum income guarantees, language proficiency, a job offer, and the completion of part of their application by their employer (WelcomeBC, 2016). This option would remove the direct involvement of employers from the PNP process and create an employee-driven system for permanent residency (interview with University of British Columbia professor, November 23, 2015). Provincial nominations would continue to be based on the points system that already provides the foundation of the PNP, now placing greater emphasis and weight on human capital factors related to education, expertise and skill-set, and work experience. Currently, skill level and wage level of the job offer comprise the largest component of the score, totalling 110 of the maximum 200 points possible (WelcomeBC, 2016). This should be adjusted such that skill level is assessed based on workers' abilities and training and not the necessity of a job offer. Furthermore, wage assessment should be based on past earnings and future potential.

Given the scores that TFWs achieve in their initial registration and application, the system for nominations should follow accordingly. Labour market needs and regional demands should be front and centre for this process. Critical areas of employment and suitability for permanent residency should be assessed outside of employers' direct involvement. This option removes the employer-driven elements from the PNP and looks at the qualifications of the applicants and the needs of the market. TFWs are not obligated to stay with their employer once they have received permanent residency, which underscores the need to have the PNP be market-driven as opposed to employer-driven. Since TFWs are currently highly dependent on their employers, they are unlikely to file complaints or assert their rights if they believe it will jeopardize their future opportunities.

Chapter 11.

Evaluation and Policy Analysis

This chapter assesses each of the four identified policy options using the criteria established for effectiveness, budgetary cost, ease of implementation, and stakeholder acceptance. Given the uncertainty surrounding their exact outcomes, relative rankings are provided in a summary matrix below. Table 3 provides the ranking and score of each individual measure that is assessed. The values of each measure are then averaged for their respective criteria and scores are determined based on the weight assigned to that objective (see Table 4). As noted in Chapter 9, the social objective of effectiveness is given an equal weighting to the governmental objectives because it is the primary focus for what each policy option should achieve. This process identifies the trade-offs between the options and is followed by the discussion of other important considerations when making policy changes regarding employment standards and TFWs.

Table 3: Summary Matrix of Policy Options

Objective	Criteria	Definition	OPTION 1	OPTION 2	OPTION 3	OPTION 4
Effectiveness [weight = 3]	Reduction in employment standards violations [weight = 1.5]	Change in formal complaints filed by TFWs (percentage change over time)	high (3)	medium (2)	medium (2)	low (1)
		Survey data regarding TFWs' experiences of violations (percentage of responses)	medium (2)	low (1)	low (1)	low (1)
	Increased access to Employment Standards Branch [weight = 1.5]	Policy targets TFW conditions and vulnerabilities (number of issues)	high (3)	low (1)	low (1)	medium (2)
		Involvement and monitoring by the ESB (number of interactions with TFWs per year)	high (3)	low (1)	low (1)	low (1)
Budgetary cost [weight = 1]	Minimal cost [weight = 1]	New costs incurred (additional dollars spent)	medium (2)	high (3)	high (3)	high (3)
Ease of implementation [weight = 1]	Length of time and multiparty collaboration [weight = 1]	How long it takes to implement the policy (number of years)	medium (2)	medium (2)	low (1)	medium (2)
		Level of collaboration and negotiation required (number of jurisdictions and degree of collaboration between actors)	high (3)	medium (2)	low (1)	low (1)
Stakeholder acceptance [weight = 1]	Government, employer, and social advocate support [weight = 1]	Level of support amongst diverse stakeholders (number of stakeholders)	low (1)	medium (2)	medium (2)	high (3)

11.1. Amend the *Employment Standards Act*

Effectiveness

ESA amendments involve a series of employment standards reforms that incorporate the needs of TFWs. This is an option that includes both critical ESA amendments and opportunities for capacity building by the ESB. Many of TFWs' issues around filing complaints are mitigated when their rights and protections are expanded. By introducing more stringent standards and having a rigorous means of investigation and enforcement, it is expected that the number of employer violations will decrease over time. Importantly, it is likely that reports of employer contraventions will first increase before they eventually decrease. The initial increase is a result of improved TFWs' knowledge about ESA violations and the complaints process, as well as the use of proactive audits and investigations by the ESB. The eventual decrease will arise when employers change their behaviour once they realize there are consequences to non-compliance. It is essential that there is effective and sustained enforcement because changes in legislation are only effective if they are adopted and followed. Nevertheless, there will continue to be some violations that arise out of vulnerabilities related to the structure of work permits and PNP applications. It is expected that there will be a significant downward trend (greater than 20 percent) in the number of formal complaints once this policy is fully implemented, leading to a high ranking for this measure. However, it is also likely that TFWs will be more willing to detail employer violations in private surveys as opposed to through formal complaints channels. While employer violations are expected to decrease with this policy option, it is expected that surveys will still uncover some negative responses, in the range of 5 to 20 percent of all respondents. As a result, this measure receives a medium ranking.

This option would also increase TFWs' access to the ESB by increasing the limitation period for reporting violations and by removing the Self-Help Kit. Numerous interviewees emphasized that the way the complaints process is set up – particularly with the Self-Help Kit and six month complaint limitation – deters TFWs from filing complaints (interview with Gordon, January 5, 2016; interview with Portman, January 8, 2016). With the development of an enforcement team that audits employers and

conducts proactive investigations, the interactions between TFWs and members of the ESB will increase significantly, both formally and informally. Importantly, BC's previous agriculture enforcement team was successful in uncovering employer violations and providing workers with compensation and retroactive wages (interview with Ages, December 16, 2015). The provision of employment standards information will also increase TFWs' accessibility simply by the expansion of knowledge that is shared. Since this options touches on a number of TFW issues (three or more) and involves significant monitoring and engagement activities, it receives a high ranking for both measures.

However, ESA amendments alone do not address the vulnerability and fear of TFWs, though it can mitigate elements of it. The heightened vulnerabilities of TFWs can continue to deter them from seeking ESB assistance if they feel it may jeopardize their employment, legal status, or opportunities for permanent residence. Thus, some barriers are still present to how the TFWs interact with the ESB.

Budgetary Cost

There are a number of different financial costs associated with the implementation of this policy option. Expanding the licensing system of recruitment agencies and making minor adjustments to the ESA are relatively low cost. However, the elimination of the Self-Help Kit and the expansion of the limitation of the complaints period are likely to increase the workload of the ESB and require additional staff.

There are larger costs related to the creation and maintenance of an enforcement team, as this would require additional staff and training. Based on rough estimates from the WorkBC website, public administration managers earn between \$66,000 and \$95,000 annually, with program officers earning between \$53,000 and \$66,000 and administrative assistants in the range of \$33,000 to \$44,000 (WorkBC, 2016a). If a team was composed of one manager, one administrative assistance, and three officers – which is likely a low estimate – the annual salary costs could range from \$258,000 to \$337,000. This is not taking into account additional costs related to staffing, specialized training, or the resources needed for a fully functional enforcement unit. Additional expenses for this option are likely to fall in the range of \$250,000 to \$1,000,000, resulting in a medium ranking.

Ease of Implementation

Since many of the smaller ESA amendments are straightforward and have previous legislative precedence, such as changes to time limits and information provision, they can be introduced in a short period of time, ranging from six months to one year. Changes that would take longer than one year would be those requiring new systems or training, such as the enforcement team. However, they should not take more than two years to implement because there are pre-existing models in place, such as with the Agriculture Compliance Team. Given that this option falls within the one to two year range, it is given a medium ranking.

The provincial government is responsible for employment standards so it is largely a single-jurisdiction option. Some multi-jurisdictional collaboration is required around information sharing between the federal and provincial government if a TFW-specific enforcement team is created. For the full extent of these changes to take effect, employer compliance is needed. Nevertheless, this option only requires minimal collaboration and is a single jurisdiction issue. As a result, it is given a high ranking.

Stakeholder Acceptance

Since the BC Liberal Party relaxed employment standards in the early 2000s, it may be difficult to garner their support to increase employer regulations (interview with Fairey, November 25, 2015). Politically speaking, the government does not want to lose the support of businesses in the province and introducing greater controls may create tension. Furthermore, incurring new costs is rarely viewed favourably, especially when there is already public contention over the use of the TFWP. At the same time, some ESA reforms are more feasible than others, especially given the amendments made in other provinces and past procedures used in BC. Since this option does not require extensive federal involvement, they are likely to be supportive.

Employers are unlikely to be supportive of this option because it introduces greater government involvement and regulation. While social advocates are likely to view these amendments favourably, many may feel that it does not do enough to address the structural problems within the TFWP (interview with Byl, November 10,

2015; interview with Hartman, January 7, 2016). Since there is not strong stakeholder support, this is given a low ranking.

11.2. Introducing a Job Search Tool for Temporary Foreign Workers

Effectiveness

Advocates and community service organizations have noted that finding alternative employers can be difficult for TFWs (interview with Hartman, January 7, 2016). Developing a job search tool for TFWs allows them to find new employers if they are facing poor workplace conditions. This option does not address employment standards violations directly, though it does provide TFWs with alternative options. Employers may change their behaviour if they feel they may lose their TFWs, but they can also use this site to find to find replacements (unless their LMIA is revoked or restrictions are put in place). There are no accountability mechanisms for employers whose TFWs leave because of employment problems. Furthermore, unless the process is streamlined, TFWs may be deterred from using this option because of the length of time it takes and the negative impact it may have on their permanent residency applications. Thus, there is only expected to be a smaller downward trend in formal complaints (between 5 and 20 percent), resulting in a medium rank for this measure. In contrast, surveys are more likely reflect TFWs' daily experiences and will result in more negative responses (greater than 20 percent), leading to a low ranking of this measure.

Similarly, access to the ESB is only slightly improved. TFWs may be less concerned about unemployment when they have a job search tool available, thereby increasing their likelihood to file a complaint. However, many may not see the purpose in doing so if they have secured a new employer and do not want to go through the various steps of the complaint process. This option only addresses one TFW issue, leading to a low ranking. Furthermore, interactions are likely to remain low or informal between TFWs and the ESB since this does not target changes significant changes in adherence, resulting in a low rank for this measure as well.

Budgetary Cost

The cost of setting up a job search website would be relatively inexpensive since similar tools already exist federally, provincially, and municipally. Nevertheless, there are costs attached to creating and maintaining the website, as well as paying staff to regulate and update it. If the TFW search is incorporated into an existing employment database, the cost would be even lower than if it was standalone. Thus, there are expected to be minimal new costs (less than \$250,000), resulting in a high ranking.

Ease of Implementation

Since job search websites are commonplace, it would be possible to create a job search tool in less than a year's time. Coordinating the responsibilities and regulations of the system, as well as attracting employers to use the website to advertise their positions, may delay the process slightly. Furthermore, increasing the labour mobility of TFWs can create new issues around employer costs and investments. Employers currently incur expenses around LMIA applications, TFWs' airfare, medical insurance, and workplace safety insurance (ESDC, 2016). If TFWs are able to easily change employers – thereby changing the dynamic of the TFWP – new measures may need to be developed to reduce the financial and time costs placed on employers. This is given a medium ranking since it is likely to take one to two years to fully implement.

There is some complexity involved due to federal and provincial coordination depending on which jurisdiction hosts and operates the site. Information about employers will have to be provided federally since ESDC is responsible for authorizing LMIA's, though it may be better to operate the website provincially since it is easier to interact with WorkBC centres for employment information. Furthermore, employers will need to opt-in to advertise using this tool. The multi-party nature of this policy may make it slightly harder to develop. Since this requires some collaboration and involves minor jurisdictional overlap, it is given a medium ranking.

Stakeholder Acceptance

The provincial government is likely to support this plan because it encourages flexibility and allows workers to go where there is demand. The federal government is less likely to be supportive because it may appear as though they are making TFWs more permanent by building this tool. Public support may decline if citizens view this as a threat to their own jobs.

While this option does cut down on recruiting costs, employers are unlikely to be supportive of this option because it reduces the security of their investment in hiring TFWs. Concerns may also arise about other employers poaching their TFWs once they have already incurred the costs associated with bringing them to BC.

Social advocates may view this option as ineffective since it does not address employer violations or structural problems with the TFWP. Nevertheless, community service organizations and TFWs will likely appreciate the alternatives this option provides, especially for TFWs that become unemployed before their work permit expires. Given that there is mixed stakeholder support, this is given a medium ranking.

11.3. Eliminating Employer-Specific Work Permits

Effectiveness

The elimination of employer-specific work permits reduces the power imbalance between TFWs and employers by introducing greater labour mobility. This reduces TFWs' employer dependence and creates incentives for employers to treat their workers well so they do not have to find replacements. The effectiveness of this option in reducing employment standards violations is based on TFWs' increased flexibility in the labour market. When TFWs are being treated poorly, they will be able to leave their employer knowing they can work for someone else as long as LMIA, occupational, and regional conditions are met. However, if all employers are violating employment standards and there are no proactive adherence measures, then contraventions may not be significantly impacted. The occurrence of violations may be slightly reduced but this

option targets labour mobility more than contraventions. Much like the previous option, there is expected to be a small downward trend in formal complaints, leading to a medium ranking for that measure, but the continuation of negative experiences as recorded in survey responses will lead to a low ranking for that measure.

Access to the ESB is increased in that TFWs have fewer fears about employer retribution and unemployment if they know they have the ability to work elsewhere without hassle. However, there are concerns that this increase may not be sufficiently large since TFWs still do not know how to find a new employer and because employer support is required for TFWs who want to pursue permanent residency—leading them to avoid complaints and support services. Furthermore, TFWs who do find new employers may feel it is not worthwhile to pursue a complaint with their previous employer since they are already out of that situation (interview with immigrant support services organization, December 8, 2015). Since this only addresses one TFW issue, it is given a low ranking. This option does not increase the monitoring or engagement of the ESB on TFW-related issues, thereby resulting in a low ranking.

Budgetary Cost

There are expected to be minimal costs associated with this option. A verification system is required to pair TFWs with authorized employers, but there is an existing process in place which can be used to accommodate occupation-specific permits. Most costs would be associated with training, building administrative capacity, and providing updated information. Since it is expected that implementing this option will cost less than \$250,000, it is given a high ranking.

Ease of Implementation

Due to the complexity of designing and administering such a system, the policy would take more than two years to fully implement on a province-wide basis. This will require considerable study and possibly a regional or occupational pilot project. Alberta experimented with occupation-specific work permits for designated high-skilled TFWs between 2011 and 2014. For the duration of their work permit, TFWs were able to work in the same occupation for different employers so long as they satisfied the pilot

program's criteria (CIC, 2014b). While this was only a short-term program that targeted certain high-skill occupations, the general framework can inform a larger shift in the structure of work permits. Further research conducted on the pilot program in Alberta can be used to model best practices. Basing the work permits on the eight provincial regions, as opposed to being province-wide, will also create additional difficulties in coordination and implementation. Furthermore, as mentioned in the previous option, increasing TFW labour mobility can create concerns for employers who have invested their time and money into hiring TFWs. Adjustments need to be made if TFWs are given occupational work permits, since it would not be fair for a single employer to incur the hiring costs. Since this option would take more than two years, it is given a low ranking.

This option is also complicated by the fact that federal and provincial collaboration is required to organize and monitor the switch to an occupation-specific permit. While employers may not be directly involved in the decision-making process, they should also be consulted since they are financially impacted by these changes. Given the jurisdictional overlap and collaboration, this is given a low ranking.

Stakeholder Acceptance

The provincial government is likely to support this option since it makes TFWs more flexible in the labour market, allowing them to address shortages more easily. The federal government will be less supportive since recent changes to the TFWP have increased its regulation and this option does the opposite. However, since the change in the federal government in October 2015, it is possible that the Liberal Party of Canada may be more open to this shift.

Employers are unlikely to support occupation-specific permits because it eliminates the security of their investment in hiring TFWs. They may view TFWs' increased mobility unfavourably because they do not have the same level of control and may incur financial losses. Concerns around worker "poaching" by other employers may also arise, especially since employers of low-skill TFWs have to pay for airfare costs, in addition to the \$1000 fee for the LMIA.

Social advocates are likely to view this as a step in the right direction but may believe that more should be done to protect TFWs, especially since permit adjustments do not directly address employment standards or temporary residency issues. Some have suggested that open work permits are a better solution since they limit employer dependency more dramatically (interview with Fairey, November 25, 2015). However, occupation-specific permits do eliminate some of the vulnerability associated with employer-specific permits. Given that there is some stakeholder support, this is given a medium ranking.

11.4. Removing Employer Component of Provincial Nominee Program Applications

Effectiveness

TFWs' dependency on their employers when applying for permanent residency through the PNP has been noted as a frequent point of contention. By removing their involvement, TFWs will be less worried about maintaining a relationship with their employer if they are violating employment standards. Removing employers from the PNP does not have a direct effect on employer contraventions and there is no incentive for employers to change their behaviour in regards to employment standards. Thus, it is likely that there will be a negligible change to formal complaints, leading to a low ranking, as well as a high rate of negative responses through TFW surveys, also leading to a low ranking.

Access to the ESB is improved because TFWs are less concerned that complaints will jeopardize their access to permanent residency. This has a secondary effect where TFWs are less afraid of their long-term legal status in Canada. However, given TFWs' need to accumulate minimum work hours, they may delay their complaint. Once this is achieved, the employment relationship does not necessarily need to continue if the employer's "sponsorship" role is eliminated from the PNP. Since this touches on two TFW issues – permanent residency and fear about status – this given a medium ranking. However, since this option does not directly enhance the role of the

ESB or address employment standards, the number of formal interactions with TFWs will be minimal, resulting in a low ranking.

Budgetary Cost

Since this option only requires PNP adjustments and would otherwise remain largely the same, the costs of this option are minimal. There may be some costs related to additional staff involvement in the process, particularly around assessing skill and wage level outside of a job offer. However, since this will be based on TFWs' past work experience and formal training, this should follow from their original PNP registration score. General costs may also arise through changes in training and staff, as well as information updates and administrative capacity building. It is not expected that policy will cost more than \$250,000, leading to a high ranking.

Ease of Implementation

The foundation of the PNP and the federal immigration system are already based on the points system, meaning the model for nominating TFWs without employer involvement would not need to be newly developed. Given time for assessment and policy development, this option can be implemented within two years, leading to a medium ranking.

Significant collaboration across jurisdictions is required because the PNP is a federal-provincial program, making the process lengthier and more complex. Determining PNP criteria is the responsibility of the province, though final approval of nominations is done by the federal government. Thus, it is imperative that changes to the PNP are acceptable given federal expectations regarding immigration. Since the PNP has always been collaboratively negotiated and administered, this may not be overly tenuous. Nevertheless, the high degree of jurisdictional overlap leads to a low ranking.

Stakeholder Acceptance

The provincial government is likely to be supportive since this option simplifies elements of the PNP process and leaves discretion to the province to decide nominees. The federal government is likely to be less supportive since this may cause public concern around TFWs become permanent residents without having guaranteed employment positions. This is a greater issue federally since CIC provides the final approval for permanent residents. Given the strict federal immigration system in place, some citizens may feel that the PNP is unfair in comparison.

Employers will be supportive of this policy because they will no longer have to complete applications, which have been noted to be cumbersome and time-consuming (interview with Fort St. John employer, December 14, 2015). It may reduce some TFWs' commitment to their employers because they do not need to secure employment with them for nomination, though this may still occur informally due to convenience and familiarity.

Social advocates are likely to welcome the reduction in employer dependence. However, some may be concerned about how low-skill TFWs will fare in the nomination system overall since they are generally less competitive candidates for nomination. Furthermore, many advocates hold the position that the best way to address TFW vulnerability is to provide them with permanent residency upon arrival, and, therefore, would not view this option as going far enough (interview with Byl, November 10, 2015). Since there is likely to be support across stakeholder groups for this option, it is given a high ranking.

11.5. Ranking and Notable Trade-Offs

When each of the criteria and measures are weighted, it is evident that Option 1, which focuses on employment standards amendments, is ranked the highest (see Table 4). Given the emphasis on the effectiveness criterion, this policy option is seen as the most effective way to reduce employer violations and increase access to the ESB.

Table 4: Scoring of Policy Options Using Weighted Averages

Objective	Criteria	Option 1	Option 2	Option 3	Option 4
Effectiveness (weighting = 3)	<i>Reduction in employment standards violations</i>	3.75 (2.5x1.5)	2.25 (1.5x1.5)	2.25 (1.5x1.5)	1.5 (1x1.5)
	<i>Increased access to Employment Standards Branch</i>	4.5 (3x1.5)	1.5 (1x1.5)	1.5 (1x1.5)	2.25 (1.5x1.5)
Budgetary cost (weighting = 1)	<i>Minimal cost</i>	2	3	3	3
Ease of implementation (weighting = 1)	<i>Length of time & multi-party collaboration</i>	2.5	2	1	1.5
Stakeholder acceptance (weighting = 1)	<i>Government, employer, & social advocate support</i>	1	2	2	3
TOTAL		13.75	10.75	9.75	11.25

Each option has trade-offs, with certain features that are more appealing than others. Option 1 directly addresses employment standards violations and accessibility but is more costly and unlikely to garner widespread support from the provincial government or employers. In contrast, the remaining options focus on reducing TFWs' vulnerabilities related to the labour market and permanent residency but are less effective at mitigating employment standards challenges. However, they contribute to better workplace dynamics and provide greater agency to TFWs in the province, thereby influencing employment standards concerns indirectly.

Cross-jurisdictional coordination is essential for all options, particularly around information sharing, designating responsibilities, and negotiating changes. Since the TFWP can be a highly contentious topic, the political feasibility of each option is important. The political stance of governments can influence how problems are viewed and whether new policies are implemented. That being said, stakeholder acceptability is a secondary priority, as effectiveness remains the primary objective for each policy.

11.6. Other Considerations

There are a number of other relevant considerations in the discussion of TFWs' employment standards challenges. The use of penalties and fines by the ESB can play a significant role in how employers adhere to employment standards. Currently, employers found with their first violation are only fined \$500, in addition to any retroactive wages or compensation owed within the six month time limit (interview with WCDWA, December 15, 2015). Therefore, the incentive for employers to strongly adhere to the ESA is weak, especially since the first fine is quite low even if they are caught. While the ESB has provisions for \$10,000 fines, it is rarely, if ever, used. It is typically only through the court system that large penalties are enforced (interview with Ages, December 16, 2015). Substantial penalties can be a major disincentive for employer non-compliance and adjustments to the existing system are likely to improve employers' actions and employment conditions for all workers (Cooper & Gauthier, 2015).

It is also important to consider alternative forms of labour market security since TFWs are often concerned about job loss. Employment insurance (EI) is available to TFWs in theory, though studies have shown that TFWs encounter numerous difficulties in accessing this form of financial support (Nakache & Kinoshita, 2010; Marsden, 2013). Further research should be done on increasing the accessibility of EI to TFWs, including the possible development of a temporary unemployment assistance scheme that provides workers with income security through short-duration contingency loans (Mowat Centre, 2011).

The precariousness of TFWs is central to this larger discussion of employment standards. In particular, the time constraint introduced by the four-and-four policy unnecessarily heightens the vulnerability of many TFWs. The duration and expiration of TFWs' work permits already act as a sufficient regulation tool. TFWs are afraid of jeopardizing their employment and/or access to permanent residency given their limited window of opportunity in the country and are, therefore, less likely to pursue complaints. Adding to this is the possible loss of status or disqualification from the PNP due to employer violations. These policies should be removed because they serve a limited purpose at the cost of TFWs' sense of security and wellbeing.

Finally, it is important to recognize that strict regulations and added costs to the program will deter some employers from using the TFWP. For example, the introduction of the \$1000 LMIA fee has already encouraged some employers to seek an alternative temporary labour pool, such as international students (interview with DCLS, November 23, 2015). Changes to how the program is structured and enforced will invariably lead to changes in its use. While this may not seem like a problem at the surface, this reduces the mobility of TFWs because they will have fewer alternatives to turn to, thereby functioning as another deterrent against filing formal complaints.

Chapter 12.

Recommendation

The policy options proposed in this study address different factors contributing to TFWs' precariousness and vulnerability in the workplace. Each option could be implemented concurrently to comprehensively reduce TFWs' experiences of employment standards challenges, whether through direct or indirect means. However, given political, economic, and social constraints, it is important to focus on the most effective and feasible actions that can be implemented by the provincial and federal governments.

12.1. Provincial Jurisdiction

To reduce employment standards challenges in BC, it is recommended that the provincial government undertake key ESA amendments. These should be selected and prioritized based on their inclusion in the BC Employment Standards Coalition's model legislation and the best practices found in other provinces. Employment standards guidelines and contact information should be posted or made available in all workplaces so that employees can be made aware of their rights. Removal of the Self-Help Kit in its entirety and expanding the complaint and retroactive pay periods from six to 24 months eliminates many of the concerns workers have about filing complaints. Requiring recruitment agencies to provide mandatory collateral bonds and developing a proactive ESB enforcement team both act as deterrents against non-compliance. ESA amendments do not have to be TFW-specific and should focus on improving the workplace conditions and resolution processes for all workers. Instead of just targeting employers of TFWs, the ESB enforcement team should conduct audits of employers in vulnerable sectors, which will still capture many low-skill and low-wage TFWs. This

maintains the equity and fairness of employment standards legislation while also incorporating highly-marginalized members of the labour force.

Furthermore, to better understand the scope and severity of employment standards violations experienced by TFWs, it is necessary for more detailed data collection by the ESB. If statistics of reported violations are tracked – and supplemented by survey data and informal reporting from TFWs and community service organizations – it is possible to introduce more targeted reforms and policies.

It is also imperative that policies such as the rejection or disqualification of PNP applications on the basis of employment standards violations be removed. The possibility of these outcomes harms TFWs' wellbeing and opportunities for social advancement at no fault of their own. It also encourages workers to remain silent about employer contraventions in fear of potentially jeopardizing their status.

12.2. Federal Jurisdiction

Finally, enhancing TFWs' agency can change the dynamic of their interactions and relationship with their employers. It is recommended that the federal government's four-and-four policy should be eliminated to reduce the precariousness and pressure caused by these time constraints.

In collaboration, the provincial and federal governments should develop policies to reduce the vulnerability attached to TFWs' work permits and PNP applications. Since ESDC and CIC are ultimately responsible for approving these initiatives, the federal government has a large role in advancing these changes. Given existing models and past pilot projects, improvements to both labour mobility and access to permanent residency should be further explored, leading to alternative policy designs and implementation strategies in the future.

Chapter 13.

Conclusion

TFWs encounter a range of employment standards violations and barriers to accessing complaints mechanisms in BC. The interaction between provincial employment standards legislation and the requirements of the TFWP can increase the precariousness of low-skill and low-wage TFWs. While this study suggests that there are multiple contributing factors at play, progress can be made through a combination of policy adjustments. Importantly, reforming the province's ESA to better reflect the needs of vulnerable workers can improve how TFWs engage with the ESB. Given the policy reforms made in other provinces, BC stands to benefit from enacting similar legislative changes to protect workers from employment standards violations.

Additionally, policies which curtail TFWs' dependence on their employers, particularly around work permits restrictions and permanent residency applications, can restore balance to the employer-employee relationship and should be further researched by provincial and federal policymakers. As key components that contribute to TFWs' vulnerability in the workplace, it is imperative that the structural challenges inherent within the TFWP are also addressed. By taking a collaborative and comprehensive approach, the employment standards challenges experienced by TFWs in BC can be significantly minimized.

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Appendix A.

Use of the Temporary Foreign Worker Program in Canada

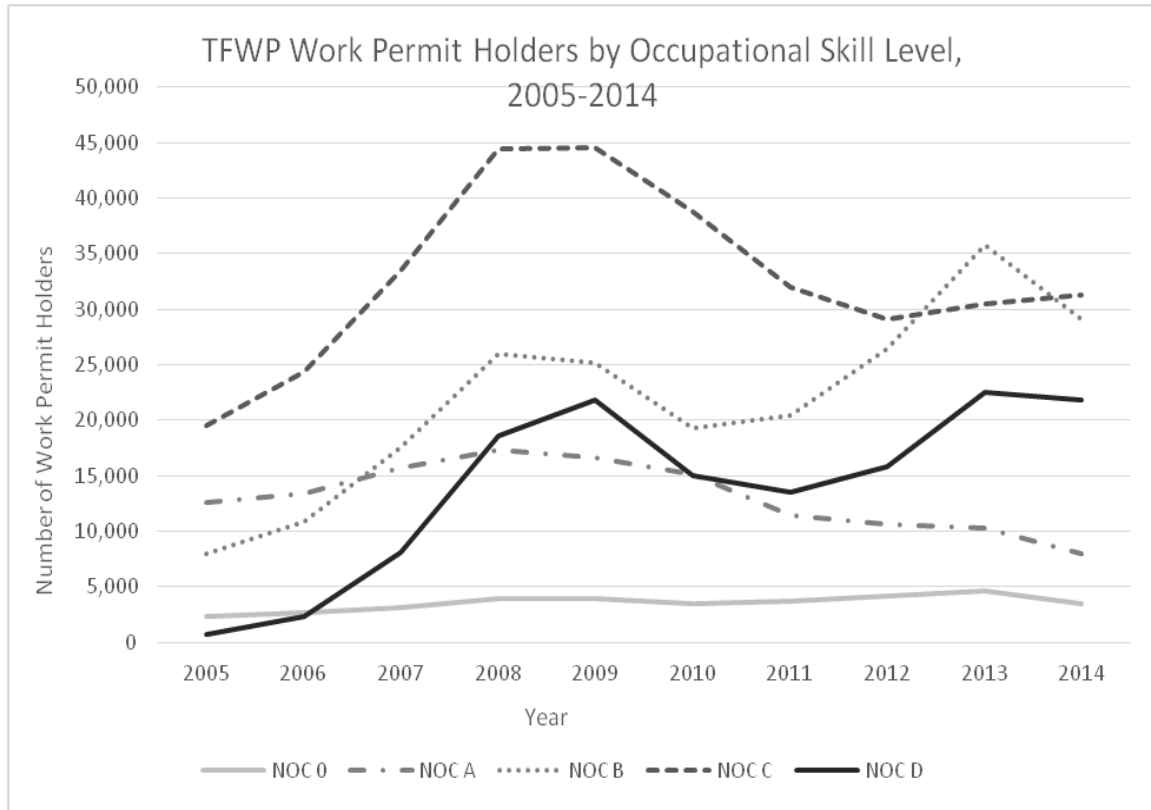


Figure A1: Temporary Foreign Worker Program: Work Permit Holders by Occupational Skill Level, 2005-2014

Source: CIC Facts and Figures, 2014

Table A1: Temporary Foreign Worker Program: Work Permit Holders by Province or Territory, 2005-2014

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Newfoundland and Labrador	1,058	792	1,074	1,013	1,077	832	921	1,432	1,800	1,659
Prince Edward Island	114	149	170	322	361	443	424	484	441	419
Nova Scotia	1,065	1,172	1,105	1,271	1,931	1,527	1,758	1,365	1,413	816
New Brunswick	459	507	781	984	1,060	913	1,147	1,315	1,333	1,271
Quebec	10,482	10,502	12,163	11,687	12,184	12,097	13,373	13,788	13,777	12,902
Ontario	41,238	46,269	53,546	51,162	43,570	43,066	41,662	39,526	39,521	35,102
Manitoba	1,389	1,648	2,303	2,345	1,696	1,312	1,161	1,531	1,458	1,102
Saskatchewan	1,011	974	1,404	1,855	2,281	1,602	1,685	2,440	3,310	2,110
Alberta	7,581	11,347	22,334	32,301	24,999	25,347	30,635	32,127	31,976	19,621
British Columbia	13,585	15,686	20,629	26,662	22,873	19,681	20,259	24,133	24,494	20,108
Northwest Territories	111	192	285	191	135	187	142	134	164	80
Nunavut	76	34	83	23	42	19	66	28	22	30
Yukon	108	114	106	101	46	53	83	107	114	86
Not stated	6	54	6	28	40	28	34	87	293	787
TOTAL	77,131	88,281	114,626	128,384	110,745	105,647	111,833	116,781	117,996	95,086

Source: CIC Facts and Figures, 2014

Appendix B.

Labour Market Context for Temporary Foreign Workers in British Columbia

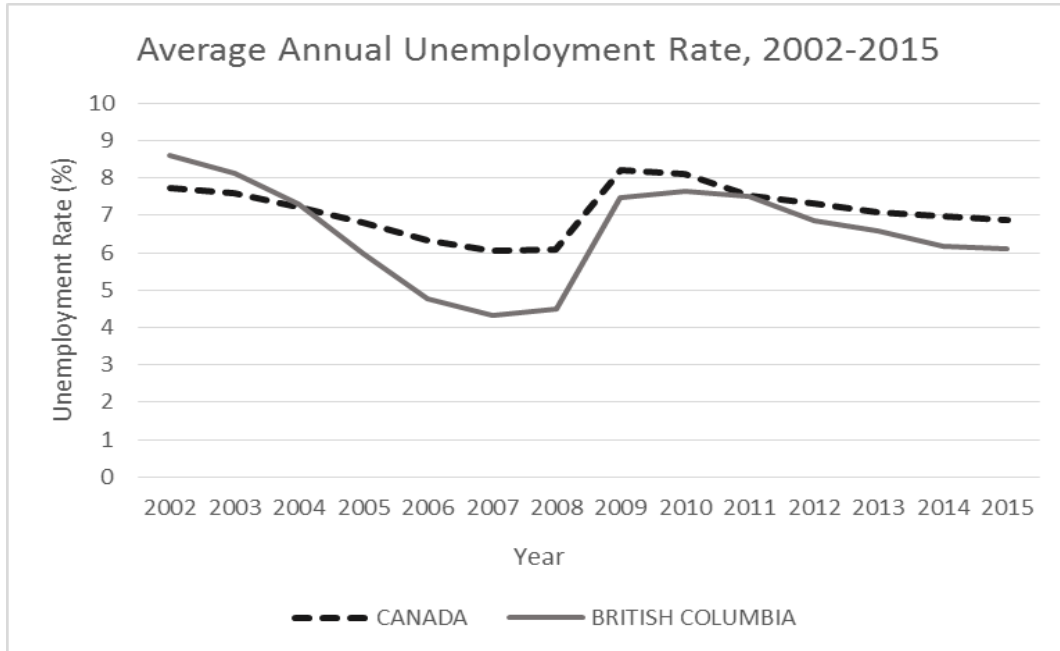


Figure B1: Average Annual Unemployment Rate for Canada and British Columbia

Source: *Labour Force Survey*, Statistics Canada, 2016

Table B1: Temporary Foreign Worker Positions with Positive Labour Market Impact Assessments (LMIA) in BC, by Urban Area and Year*

	2006	2007	2008	2009	2010	2011	2012	2013
Abbotsford	695	975	1,805	1,030	1,010	1,275	1,410	1,610
Chilliwack	145	390	615	425	395	400	735	465
Dawson Creek	25	120	150	50	100	110	270	235
Fort Nelson	20	30	45	45	65	225	750	75
Fort St. John	60	190	300	85	115	145	315	295
Kamloops	85	180	455	170	215	170	335	315
Kelowna	380	890	1,495	1,125	1,155	1,260	1,550	1,795
Kitimat	10	20	20	0	10	55	190	245
Nanaimo	75	90	235	100	110	105	100	115
Oliver	95	160	245	225	275	345	440	495
Osoyoos	35	65	115	115	130	125	180	215
Penticton	50	70	165	75	100	100	100	85
Prince George	140	115	290	205	95	140	260	225
Squamish	30	35	180	80	95	85	60	65
Vancouver	12,960	14,070	24,300	11,160	11,215	10,105	13,970	11,490
Vernon	40	175	320	150	145	150	205	220
Victoria	1,065	1,930	1,790	3,020	1,260	3,745	950	1,350
Whistler	380	555	1,170	575	510	365	470	380
2+ locations	2,470	2,520	3,375	2,660	3,095	1,895	2,590	2,635
Other locations	1,145	1,555	3,265	1,280	1,525	2,095	3,035	2,205
TOTAL	19,905	24,135	40,335	22,575	21,620	22,895	27,915	24,515

*Abbotsford, Kelowna, Vancouver and Victoria are census-metropolitan areas (CMAs) and Chilliwack, Dawson Creek, Fort. St. John, Kamloops, Nanaimo, Penticton, Prince George, Squamish, and Vernon are census agglomerations (defined by Standard Geographical Classification, 2011).

Source: *Foreign Worker System*, ESDC, 2014c
(total varies slightly from ESDC (2014c) due to administrative data adjustments)

Appendix C.

Criteria and Measures

Table C1: Societal Objective Matrix

Objective	Criterion	Definition	Measure	Ranking
Effectiveness	Reduction in employment standards violations*	Change in formal complaints filed by TFWs (percentage change over time)	Significant downward trend in TFW complaints (>20%)	High (3)
			Downward trend evident but smaller (5-20%)	Medium (2)
			Downward trend is negligible (<5%)	Low (1)
		Survey data regarding TFWs experiences of violations (percentage of responses)	Few negative responses (<5%)	High (3)
			Some negative responses (5-20%)	Medium (2)
			Many negative responses (>20%)	Low (1)
	Increased access to Employment Standards Branch	Policy targets TFW conditions and vulnerabilities (number of issues)	3+ TFW issues	High (3)
			2 TFW issues	Medium (2)
			1 TFW issue	Low (1)
		Involvement and monitoring by the ESB (number of interactions with TFWs per year)	Significant monitoring (> 250 inspections, significant interaction/engagement)	High (3)
			Some monitoring (50-250 inspections, some interaction/engagement)	Medium (2)
			Low monitoring (<50 inspections, low interaction/engagement)	Low (1)

*This criterion requires TFW-specific data collection regarding complaints filed with the ESB. Data should be compared over time to examine magnitude of policy effect.

Table C2: Governmental Objectives Matrix

Objective	Criterion	Definition	Measure	Ranking
Budgetary cost	Minimal cost	New costs incurred (additional dollars spent)	Minimal new costs (<\$250,000)	High (3)
			Some new costs (\$250,000 - \$1,000,000)	Medium (2)
			Substantial new costs (>\$1,000,000)	Low (1)
Ease of implementation	Length of time	How long it takes to implement the policy (number of years)	Short term (<1 year)	High (3)
			Medium term (1-2 years)	Medium (2)
			Long term (>2 years)	Low (1)
	Multi-party collaboration	Level of collaboration and negotiation required (number of jurisdictions and degree of collaboration between actors)	One jurisdiction and/or minimal collaboration	High (3)
			Minor jurisdictional overlap and/or some collaboration required	Medium (2)
			Significant jurisdictional overlap and/or major collaboration required	Low (1)
Stakeholder acceptance	Government, employer, and social advocate support	Level of support amongst diverse stakeholders (number of stakeholders)	Most or all in support (3+ stakeholders)	High (3)
			Some in support (2 stakeholders)	Medium (2)
			Limited support (0-1 stakeholders)	Low (1)

Appendix D.

Interview Participants

David Ages, retired Employment Standards Branch Manager

Yessy Byl, advocate

Devyn Cousineau, lawyer

Dawson Creek Literacy Society (DCLS), immigrant support and settlement service organization

immigrant support service organization *[organization undisclosed]*

David Fairey, labour economist

Fort St. John employer, retail *[name undisclosed]*

Jason Foster, academic

Jodie Gauthier, lawyer

Maira Green, City of Fort St. John

Charles Gordon, lawyer

Joey Hartman, Vancouver and District Labour Council

Jennifer Moore, North Peace Economic Development Commission

Stephen Portman, Together Against Poverty

University of British Columbia professor *[name undisclosed]*

West Coast Domestic Workers' Association (WCDWA), non-profit legal support organization

Appendix E.

Sample Interview Schedule

1. What are your opinions on adherence to employment regulations where temporary foreign workers are hired?
2. What do you believe are some conditions that increase and decrease the likelihood of adherence to employment regulations in regards to the use of temporary foreign workers?
3. Are you aware of any actions currently being taken to improve and/or maintain a high level of adherence to employment regulations? If so, please explain.
4. Are there additional challenges to ensuring adherence to employment standards and regulations?
5. What are possible solutions to address concerns surrounding adherence to employment regulations?