Temporary Foreign Workers in British Columbia: Unfree Labour and the Rise of Unscrupulous Recruitment Practices

by

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Abstract

The political and economic processes of neoliberalization have led to the intensification of worker exploitation. In Canada, Temporary Foreign Workers (TFWs) who enter through the Low-waged Streams of the Temporary Foreign Worker Program (TFWP) are amongst the most vulnerable to abuse and exploitation. This thesis uses theories on unfree labour, state transformation, and anti-racism, along with data generated through qualitative research, to examine the state legislated exploitation of TFWs in British Columbia. I argue that the unscrupulous recruitment of TFWs into British Columbia is the functional process through which labour flexibility and unfreedom is achieved within the larger project of neoliberalization. I conclude by considering how regulatory reform of labour markets can be used in conjunction with anti-racist and anti-imperialist political demands that aim to challenge the functional processes of neoliberalization.

Keywords: labour migration; neoliberalism; migrant workers; recruitment; employment agents; state theory

This thesis is dedicated to all those who fight in the name of worker's freedom and liberation from exploitation

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List of Acronyms

B.C.	British Columbia
CBSA	Canadian Border Service Agency
CDA	Critical Discourse Analysis
EPFNA	Employment Protection for Foreign Nationals Act
ES	Employment Standards
ESA	Employment Standards Act
ESB	Employment Standards Branch
ESC	Employment Standards Coalition
FWRISA	Foreign Worker Recruitment and Immigration Services Act
IMP	International Mobility Program
LMIA	Labour Market Impact Assessment
MLA	Member of the Legislative Assembly
NDP	New Democratic Party
NIEAP	Non Immigrant Employment Authorization Program
SAWP	Seasonal Agricultural Workers Program
TFW	Temporary Foreign Worker
TFWP	Temporary Foreign Worker Program
UFCW	United Food and Commercial Workers
WCDWA	West Coast Domestic Workers Association
WRAPA	Worker Recruitment and Protection Act

Chapter 1.

Introduction

1.1. Research Context

The political and economic restructuring processes of neoliberalization have made labour markets more competitive and volatile. Increasingly employers are demanding access to a temporary and flexible foreign workforce to fill perceived labour shortages. In Canada this demand has been met through the increased use of the Temporary Foreign Worker Program (TFWP). There has been a notable shift in the practices of labour migration, and since 2008 the number of Temporary Foreign Workers (TFWs) coming in to Canada has exceeded the annual number of permanent residents entering the country (Lenard & Straehle, 2012, p. 3). In 2002 the TFWP was expanded to include the Low-Skilled Pilot Project[1] and the Agricultural Stream. The 2002 expansion of the low-skilled streams has led to an increase in the role of private employment agents who recruit TFWs into Canada. As I argue in the thesis this increase in the role of employment agents has occurred in the context of serious gaps in regulation designed to protect the rights of TFWs coming into Canada, and in particular B.C..

In B.C., employment agencies are required to pass a test in order to be licensed under the *Employment Standards Act* (ESA). However, Zell (2011) states that that there is "no formal quality or pro-active audit function conducted on a regular basis" and the enforcement of the Act remains reactive at best (p. 5). There is also a growing concern about unlicensed agents, or "ghost recruiters", who escape the reach of current regulatory frameworks. Unscrupulous and often illegal recruitment practices target TFWs who are particularly vulnerable to exploitation. In 2013 Koskie Glavin Gordon succeeded

[1] No longer a Pilot Project and currently called the Stream for Low-wage Occupations

in getting class certification and settlement worth $1.4 million dollars on behalf of TFWs at Denny's restaurants. The landmark class action revealed what is an all too common story for TFWs who are recruited by employment agents on behalf of employers in B.C.[2] The current regulatory framework for employment agencies in B.C. continuously fails to protect TFWs from abuse and exploitation from unscrupulous recruiters. Further examples of the unscrupulous recruitment of TFWs into B.C. include the Koskie, Glavin, and Gordon case against Overseas Immigration that is pending class certification and the Prince George Nannies and Caregivers Ltd. case.[3]

There is a substantial amount of scholarly attention paid to Canada's TFWP. Many scholars (cf. Hennebry, 2008; Hughes, 2012; Preibisch & Hennebry, 2012; Sharma, 2012, 2006; Walia, 2010) examine the exploitative processes embedded in the framework of the low-waged streams of the TFWP. Quite significantly, there is now a growing focus on how labour intermediaries engender new challenges through the recruitment of TFWs into Canada. Scholars (cf. Faraday, 2014; Fudge, 2011; Fudge & MacPhail, 2009; Fudge & Parrott, 2013; Kuptsch, 2006; Preibisch, 2010; Zell, 2014, 2011) focus on the recruitment side of labour migration in order to examine how this process impacts the mobility and agency of TFWs. In particular, Zell (2014) highlights how recruiters of TFWs are key actors in the social regulation and segmentation of labour markets. This project builds on the work of these scholars to examine the social and political regulation of labour markets within the neoliberal era. In particular, I focus on the ways in which illegal and unscrupulous recruitment practices function to create

[2] Temporary foreign workers employed at Denny's restaurants in British Columbia were required to pay fees to an employment agency of up to $10,000 in order to secure two year contracts to work as servers, cooks and kitchen supervisors. Further, many of those had to pay their own airfare to come to Canada, were given insufficient hours of work once here, and were not properly compensated for overtime work they sometimes performed. A worker who complained to the Employment Standards Branch was fired a week later.

[3] In June of 2009 Prince George Nannies and Caregivers Ltd. were found to be in the business of recruiting Live-In Caregivers and charging them illegal recruitment fees ranging from $4,000 to $5,500 each. According to Sheppard (2015) hundreds of TFWs have launched a class action lawsuit against Mac's Convenience Stores, claiming they paid more than $8,000 to get jobs in Canada that did not exist. TFWs are also suing three immigration firms — Overseas Immigration Services, Overseas Career and Consulting Services and Trident Immigration Services — all based in Surrey, B.C.

conditions of debt bondage and indentured labour for TFWs entering into B.C.'s labour market.

1.2. Overview of the Low-wage Streams of the TFWP

Before I delve into my research objective and review how my thesis will be structured, it is necessary to provide an overview of the Low-wage streams of the TFWP, in order to demarcate the ways in which they are designed through the state to engender exploitative work for the TFWs who enter through them.

The TFWP enables Canadian employers to access TFWs from a global labour pool in order to fill any lawful occupation in Canada. Currently Canada has four low-waged and low-skilled streams of the TFWP. TFWs who are coming to fill jobs in National Occupation Classification (NOC) levels C and D will enter through:

1. In-home Caregivers Program
2. Stream for Lower-waged Occupations[4]
3. Agricultural Stream
4. Seasonal Agricultural Worker Program (SAWP)

1.2.1. In-home Caregiver Program

The In-home Caregivers Program requires TFWs to care for children, persons with disabilities, and the elderly in their private homes. This is the only program that provides a path to permanent residency for workers. In order to apply for permanent residence a worker must within four years complete 3900 hours of full time caregiving work (Faraday, 2014, p. 20). However, permanent residency is often thwarted by the '4

[4] This program was initiated in 2002 under the official name "Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC CD)." It was also referred to as the "Low-skills Pilot Project", however since 2012 it is no longer a "pilot project" and is now referred to as the "Stream for Lower-waged Occupations" (Faraday, 2014, p. 18).

in 4 out' rule that came into effect April 1st 2015[5]. The federal government passed the 4 in 4 out legislation in order to limit how long TFWs can work in Canada.

1.2.2. Stream for Lower-waged Occupations

TFWs that enter through this stream do not have access to permanent residency. Workers are able to access work permits for up to 24 months, after which they can be renewed for an additional 24 months. Workers entering through this program are also subject the '4 in 4 out' rule (Faraday, 2014, p. 20). While workers are not required to live on the property of the employer, it is a requirement that the employer ensure that "reasonable and proper accommodation" is accessible nearby. In practice many workers in this stream end up living in bunkhouses built on the employer's property or through accommodations arranged through the employer (ibid).

1.2.3. Agricultural Stream

Workers coming in through this stream can also access permits up to 24 months that can then be renewed for an additional 24 months. Again these workers are subject to the '4 in 4 out' rule. These workers are not provided a path to permanent residency and are required to pay a maximum of $30 per week to live in employer provided housing (Faraday, 2014, p. 21). Since its inception this program has grown rapidly. Alboim and Cohl (2012) (as cited in Gabriel, 2014, p.118) note that in 2002, 1,304 workers entered through this program, and by 2010 this number increased by 2,119% to 28,930.

1.2.4. Seasonal Agricultural Worker Program (SAWP)

The SAWP is unique to the other streams in that it created through bilateral Memorandum of Understanding between Canada and the countries participating in the

[5] On April 1st 2011 the federal government introduced legislation that limits how long some TFWs can remain in Canada. TFWs who enter through the Lower Waged Streams (excluding the SAWP) must leave Canada after four years and they are not eligible tor return until they have been out of Canada for four years.

program[6]. Workers are not eligible for permanent residence in this program. However, workers are not subject to the '4 in 4 out' rule, and on average workers return for 7 to 9 years (Faraday, 2014, p. 22).

Largely my research focuses on the streams in which the recruitment process is privatized[7]. However, many of the migrant advocates and growers that I interviewed spoke about their engagement with all the lower-waged streams of the TFWP. Moreover, it is necessary to examine the conditions of unfreedom that persist in all streams of the program in order to understand how unfreedom is further engendered in the recruitment process. Faraday (2014) argues that recruitment practices cannot be the sole focus of examination. Rather, when looking at TFWs experience of recruitment it is crucial to contextualize it within the specific conditions of the streams that they enter through (p. 22). It is not possible to discuss the challenges engendered by recruitment practices without focusing on the precarity structured into these programs. TFWs are tied to a specific employer (effectively preventing them from leaving deplorable working conditions), denied access to health care and adequate housing, as well many other essential services, and threatened with deportation on a regular basis. Thus, by focusing on all of the low-waged streams of the TFWP it is possible to analyze how workers' recruitment is "intertwined with their temporary status, tied work permits, whether their housing is provided by the employer, and their usually very limited window of time to work in Canada" (Faraday, 2014, p. 22).

1.3. Research Objective

The Canadian state, at both the provincial and federal levels, fails to effectively regulate employment agents in B.C. involved in the recruitment of TFWs or to ensure that TFWs are afforded the same rights as Canadian citizens in practice, respectively. In light of this failure I aimed to strike a balance between a pragmatic investigation and

[6] Currently this includes Jamaica, Barbados, Trinidad and Tobago, Mexico, and the Organization of Eastern Caribbean States (Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Christopher-Nevis, Saint Lucia, and Saint Vincent and the Grenadines) (Faraday, 2014, p. 21).

[7] Recruitment is privatized in all the above streams, excluding only the SAWP where it is performed by state agents.

evaluation of the regulation of employment agents in B.C. and a critique of the political and economic processes of neoliberalization and the state legislated unfreedom of TFWs.

This study was guided by the broad objective of investigating the de-regulation and re-regulation of labour markets in the neoliberal era. More specifically I have focused in on the unscrupulous recruitment of TFWs as the functional process through which labour flexibility and unfreedom is achieved within the larger project of neoliberalization. Three main objectives guided this research. Firstly, I sought to examine the ways in which the neoliberal state is evolving, rather than eroding in relation to the management of labour migration. Secondly, I examined the nuances of the neoliberal state as a multifaceted political institution involved in both the construction of TFWs precarity and the development of protective legislation around their recruitment. Lastly, I investigated B.C.'s existing regulation of employment agencies in contrast to "best practice" models in other provinces.

Data for this research came from 19 semi-structured interviews, approximately one hour long each. The participants included – policy makers, migrant rights' advocates, growers in the wine and fruit industry, and licensed employment agents in B.C.. I coded the data using thematic, deductive coding, and coding in evolution. Documentary analysis of federal and provincial legislation regarding the TFWP and the regulation of employment agents, along with debates from the legislative assembly is used as supplementary support to the data generated from the interviews.

1.4. Thesis Overview

I have organized this thesis into 6 chapters. Chapter 2 reviews the literature that surrounds the work and research on the state transformation, neoliberalization, racialization and the de-regulation and re-regulation of labour markets. Chapter 3 covers my analytical framework and methodology. Chapter 3 includes a discussion of why it was crucial for me to combine sociological theory and critical geography theory in the analytical framework. The methodology portion of chapter 3 delves into how the analytical framework directly influenced my methodological choices, in particular my

decision to focus on labour markets as institutions and not to interview TFWs directly for this research.

Chapters 4, 5, and 6 include research findings and discussions around how the findings fit into a larger discussion around neoliberalization, unfree labour, and the re-regulation of labour markets. Chapter 4 focuses on the connection between state legislated unfreedom for TFWs, and chapter 5 hones in on the processes of illegal or unscrupulous recruitment practices. Chapter 6 examines how neoliberalization processes have led to deficits in regulatory protections for TFWs and the specific ways my research findings are connected to an understanding of how to adjust B.C.'s regulation of employment agents involved in the recruitment of TFWs. Lastly, chapter 7 involves a discussion of the limitations to the research, the significance of the findings and how they contribute to a larger conversation around labour migration and neoliberal projects. This chapter also highlights how regulatory projects are part of "unfinished politics" and the various ways in which academics and activists seek to counter neoliberalization processes and the exploitation of migrant workers.

Chapter 2.

Literature Review

2.1. Categorization of Literature

In order to situate my research topic I review the scholarly literature related to this topic by dividing it into four main sections: 1) state and labour market theory, 2) neoliberalism, neoliberalization and labour migration in Canada, 3) racism, racialization and unfree migrant labour in Canada, 4) legal-rights based framework for regulating TFW recruitment. This literature review spans multiple disciplines, in particular sociology and economic geography. I will expand on why I decided to include literature from multiple disciplines in chapter 3. Suffice to say, it was necessary to incorporate literature from economic geography in order to delve into the nuances and unevenness of neoliberalization processes, as well as a way to complicate sociological state theory with work on the social regulation of labour markets.

2.1.1. State and Labour Market Theory

This review of literature is categorized into four distinct sections; however, they are all interconnected topics with overlapping themes and foundations. For instance, contemporary state and labour market theories are directly connected to the concept of neoliberalism. The ideologies of neoliberalism and its political and economic practices, neoliberalization, are omnipresent in the contemporary era and ultimately neoliberalism is a state project. Thus it is necessary to discuss literature on neoliberalism, and its more nuanced counterpart, neoliberalization in connection with literature on state and labour market theory. This section demarcates the ways in which scholars discuss state and labour market theory, while simultaneously drawing connections to neoliberalization processes. Further, this section outlines how scholars have conceptualized the political

and economic processes of neoliberalization, neo-classical economics, and the social regulation of labour markets. Moreover, I use this section of the literature review to highlight how the state regulation of labour markets connects to the neoliberal goal of flexiblizing labour for increased capital gain.

My research investigates the unevenness and geographically specific characteristics of neoliberalization, specifically how neoliberalization incorporates strategic forms of state failure in the context of the TFWP. Therefore I focus here on literature that conceptualizes neoliberalization as more than a set of monolithic processes. Peck and Tickell (2007) argue that neoliberalism "internalizes, absorbs, and symbiotically adjusts" with other political ideologies, thus creating the "spatially and temporally variegated form of actually existing neoliberalism…" (p. 48). Hence the authors conclude that neoliberalism is "analytically and politically slippery…" as it appears "to be practically ubiquitous while existing in no two places in the same form" (p. 48).

Scholarship on the shift from Fordism to neoliberalism (cf. Colclough, 1993) often depicts this process as a movement rooted in privatization, deregulation, and the shrinking role of the state. However, other scholars (Theodore & Peck, 2013; Peck, 2001) have complicated this picture of neoliberalism by drawing attention to the increased interventionist state measures within the neoliberal era. In addition, critical scholars (cf. Leitner, Sheppard, Sziarto, & Maringanti, 2007) warn against framing neoliberalism as the successor of Fordism. These scholars contribute to a discussion that draws out the nuances of the role of the state and complicates the notion that political institutions that comprise the state under neoliberalism can be narrowly defined.

The above scholars provide a framework in which we can understand the complex linkages between state and labour market theory and the political and economic processes of neoliberalization. In particular they allow us to connect to a more nuanced conversation around the unevenness of neoliberalism in relation to the regulation of labour markets. Next, I focus on scholars that demarcate how state and labour markets are inherently socially regulated institutions.

The purpose of bringing together the scholars that follow is to emphasize that non-market forces socially regulate labour markets. The authors falsify the neo-classical claim that the law of supply and demand can suffice for the functioning of labour markets. The essential role of the state in the construction and regulation of labour markets is revealed through an analysis of how states construct and reproduce flexibility in labour markets in the neoliberal era (Harvey, 2005; Jessop, 2007; Peck, 1996).

Neo-classical economic theory is rooted in the idea that markets need only the law of supply and demand to function. In neo-classical economic theory the state is not required for the functioning of the labour market, as the ideal is the self-regulating market economy. However scholars (Peck, 1996; Polanyi, 1944) emphasize the inherent social regulation of labour markets. Polanyi (1944) precedes Peck (1996) by many years, however their understanding of the social regulation of labour markets transcend time and geography. At the heart of Polanyi's (1944) work is the idea that a self-regulating market economy is a utopian project that cannot be achieved. Polanyi (1944) argues that if the market mechanism were ever allowed to be the "sole director of the fate human beings and their natural environment" it would result in the complete destruction of human life and the "demolition of society" (p. 76).

Peck's (1996) work is essential to understanding the social regulation of labour markets. Peck builds on the work of Polanyi (1944) by focusing on the fictitious nature of labour as a commodity. Peck (1996) argues that social institutions and practices regulate both labour and labour markets. Peck recognizes that labour power cannot be separated from the humans that embody it. Thus he argues that labour markets are not regulated by the price mechanism; rather, they are *socially* regulated (p. 11, emphasis mine). Further, Peck pushes back against neo-classical economic theory that touts the benefits of a free market. He argues that there was never a historical moment at which a "free" market preceded a regulated market, as this cannot exist. Rather, Peck (1996) cites that labour market problems coevolved with regulatory solutions (p. 26). Overall, Peck's work provides a strong foundation on which to approach the question of how labour markets are regulated and why in the neoliberal era they continue to function in very "un-market like ways." The TFWP is a strong example of how "free" markets cease to exist, and

instead there is the social regulation of labour markets via the state intervention in the interest of capital and employers.

The flexibilization of labour in the neoliberal economy often occurs via state run labour migration programs. In the Canadian context, the TFWP reflects how the state meets the demands of employers for temporary and flexible labour. Thus it is necessary to discuss literature that focuses on the increasing role of the state as a tool for capitalist accumulation in the neoliberal era.

Many scholars (cf. Harvey, 2005; Jessop, 2007; Peck, 1996) argue that the state in the neoliberal era is actively involved in constructing and managing labour markets. Jessop (2007) has developed the Strategic Relational Approach (SRA) for understanding the state as an assemblage of political institutions that exist and operate within vast political systems. Jessop (2007) theorizes the state as "embedded in a wider political system (or systems), articulated with other institutional orders, and linked to different forms of civil society" (p. 6). Jessop's application of the SRA conceptualizes the state as a political process in motion that is responsible for the formation of "economic regulation that complements the role of market forces" in the pursuit of capital accumulation (p. 24). Additionally, Peck (1996) emphasizes that the neoliberal state is motivated by systematically structured institutional forces and power relations that are "locally variegated and historically contingent" (p. 5). Through this literature it becomes clear that the state is not a monolithic institution, but rather a multitude of political institutions that can be co-opted by various political agendas, in particular the neoliberal project of labour flexibility.

It is important to emphasize that state regulation of labour markets is frequently part of the neoliberal project of labour market flexibilization. Harvey (2005) theorizes the role of the neoliberal state by making the crucial distinction between neoliberalism in theory and in practice, referring to the latter as 'neoliberalization.' According to Harvey (2005) orthodox theory on neoliberalism, posits that the state ought to function in the interest of "strong individual private property rights, the rule of law, and the institutions of freely functioning markets and free trade" (p. 64). However, in practice the neoliberal state is much harder to pin down conceptually.

Harvey (2005) argues that the neoliberal state is increasingly engaged in neo-regulation in order to incorporate business and employer demands into its political practices (p. 77). Further, Harvey (2005) explains that there is no clear boundary between the state and corporate interests. The practices of neoliberal states stray far from the orthodox understanding of the retrenchment of the state. For instance, neoliberal states increasingly intervene in the management of labour markets by producing "legislation and regulatory frameworks that advantage corporations" (ibid). Harvey (2005) demonstrates that rather than the neoliberalism rendering the state irrelevant, it radically reconfigures state institutions and practices so that they better serve the accumulation of capital (p. 78). Thus we can conceptualize the regulation of Canada's labour market via the TFWP as a form of neo-regulation that provides employers with access to permanently temporary and flexible labour.

2.1.2. Neoliberalization of Labour Markets and Canada's Temporary Foreign Worker Program

Literature on neoliberalization frames the political and economic processes of neoliberalism as historically and geographically contingent (Brenner, Peck, & Theodore, 2010; Kelly, P. F., 2012; Peck, 1996; Peck & Tickell, 2002; Theodore & Peck, 2013). Peck and Tickell (2002) delve into the nuances of the effects of neoliberalization and argue that it must be understood as a process, and not an end state (p. 383). Thus when we look at Canada's TFWP we can theorize it as part of the complex evolution of neoliberalization. Scholars (Foster, 2012; McLaughlin, 2010; Preibisch 2010; Preibisch & Grez, 2010; Vosko, 2013) critically analyze the construction and expansion of the TFWP as a fundamental part of the neoliberalization of the Canadian labour market. These works on the TFWP reveal that the role of the state is not diminished in the neoliberal era. Rather, the state is actively involved in facilitating the accumulation of capital through the making and managing of temporary, vulnerable, 'just-in-time' labour.

The above authors' works illuminate the specific ways in which the state legislated temporariness of TFWs directly benefits employers within the neoliberal era. Specifically, Preibisch (2010) argues that migrant agricultural worker programs in Canada "…deliver a workforce *more willing* to accept the industry's living and working

conditions and one *less able* to contest them" (p. 413). Further, Preibisch (2010) states that the employer-specific work permits in addition to workers' difficulty or at times complete inability to transfer to other employers' results in TFWs being bonded or indentured to their employers (p. 413). Additionally, McLaughlin (2010) argues that the TFWP is structured in a way that drives forward particular elements of the neoliberal agenda. In particular she states that in Canada, … "employing migrant labour is not just convenient to capitalism, but has become a central component of the political economy, allowing a captive, disposable/re-placeable, "just-in-time" labour force to do the most difficult work with wages, conditions, and benefits and deemed unacceptable to most domestic workers" (p. 80). Thus, we can see how the temporariness and the extreme limits on the mobility of TFWs directly benefits employers, in terms of both the accumulation of capital through increased exploitation and the increased control that employers have over the mobility and labour of TFWs.

As discussed above, the temporariness that structures labour migration leads to the vulnerability of migrant workers, which allows employers to intensify their exploitation. Additionally, scholars (Gabriel, 2014; Gilbert, 2014; Goldring, 2014; Lange & Walsum, 2014) examine how state managed labour migration reinforces the permanent/temporary dichotomy and facilitates the exploitation of TFWs by legislating forms of social and political exclusion. In particular, Gilbert (2014) focuses on the "paradoxical and problematic ways that *temporary* labour mobility is being made *permanent* through the structures of a globalized, capitalist economy" (p. 153). Further, Gilbert (2014) draws attention to the way that Canada's SAWP is designed to place migrants on a circular migration path by denying them pathways to permanent settlement and forbidding their dependents from accompanying them into Canada (p. 157). Gilbert (2014) argues that because temporary worker programs are being negotiated as part of neoliberal trade agreements they are structured to prioritize the interest of the market, "while workers are expected to be flexible and mobile cogs chasing changing spatial fixes of capital" (p. 163).

One suggested solution to the TFW precarity and exploitation is to provide immediate pathways to permanent residency and citizenship. However, some critical scholars (cf. Gilbert, 2014; Sharma, 2012) do not promote the model of citizenship as

the solution to the precarity and temporariness experienced by migrant workers. Sharma (2012) points to the limits of citizenship as a model of inclusion and challenges the liberal perspective that promotes the inclusion of TFWs into the category of citizenship. Sharma (2012) argues that the institution of citizenship is "*fundamentally incapable*" of meeting the demands of TFWs (p. 30). So long as nation states maintain their sovereignty, Sharma posits that they will continue to have the power to draw the line between citizens and non-citizens, thus continuing the oppression and subordination of TFWs.

Moreover, temporary labour migration programs are part of the neoliberalization of labour markets, which position TFWs as precarious and temporary. The discussion around how to combat the vulnerability that is inscribed in these programs enters new territory as it challenges the notion that permanence or citizenship is the solution. While the flexibilization of labour disproportionately impacts TFWs who lack protections and job security, the impacts of neoliberalism are reverberating across all factions of the working class. Moreover, the declining rights of workers within Canada who have citizenship rights, further complicate the notion that the solution to temporariness and precarity can be found in citizenship.

Despite the variegated forms of 'actually existing' neoliberalism, referenced in the above section on state and labour market theory, I argue that we can follow the common thread of the flexibilization of labour (cf. Harvey, 2005; Jessop, 1991; Strauss, 2013) as a way to understand an overarching process in neoliberalism. Thus neoliberalism is linked to the TFWP in that this form of labour market regulation is intended to create permanently flexible, and highly exploitable migrant workers. In particular, Sharma (2002; 2012) looks at how labour flexibility is achieved through "differential inclusion" and the legislated inequality of migrant workers. Sharma (2002) argues that the formation of the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 marks a fundamental shift in the rights of migrant workers coming into Canada. Previously migrant workers would have entered as landed immigrants and had access to rights as permanent residents. However, with the formation of the NIEAP, migrant workers came in as workers who were excluded from the rights afforded to citizens and permanent residents (Sharma, 2002).

In this section I have worked to highlight how scholarship on neoliberalization links the social regulation of labour markets via the TFWP with the unending neoliberal project of labour flexibilization. I sought to examine how the practice of social and political exclusion is bound up in a larger process that positions TFWs as permanently temporary, and thus highly vulnerable to employer exploitation. In the next section I examine literature that highlights the interconnections between racism, state legislated racialization and unfree migrant labour in Canada. In particular, I seek to identify works that underpin how neoliberalism is a state project that operates through colonialism and imperialism via labour market regulation.

2.1.3. Racism, Racialization, and Unfree Migrant Labour in Canada

The following scholars contribute to a discussion on how the social regulation of labour markets by state institutions has led to highly oppressive and racialized labour migration pathways for TFWs in Canada. The process of creating flexible labour markets in the neoliberal era occurs through non-market institutions. Thus the flexibility of labour is achieved through a highly interventionist state that constructs and reproduces conditions of unfreedom for TFWs. In this section I examine literature that highlights the connections between state legislated unfree labour and the racialization of migrant labour in Canada. The state practices that lead to both the unfreedom and the racialization of migrant workers are linked in that these practices contribute to the formation of flexible labour markets within the neoliberal era.

Unfree labour is often understood as a relic of past forms of production, and free labour is said to be the foundation of the capitalist mode of production. However, there is significant scholarly attention (Fudge & Strauss, 2013; Lerche, 2007, 2011; Strauss, 2012; 2013) that focuses on how unfree labour exists as a foundational part of the capitalist labour process, in particular in the neoliberal era. For instance, Strauss (2012) argues, “Far from a vestige of pre-capitalist social relations, unfree labour is part of the continuum of exploitation that is intrinsically related the contradictory nature of commodification and to capital as a social relation” (p. 137).

Strauss (2012) demarcates the parameters of unfree labour, as it exists within the capitalist mode of production. In particular Strauss addresses unfree labour, highlighting that Marx understood free labour to be when workers were forcibly separated from the land during the enclosures, and thus 'free' to commodify their labour. Additionally, Strauss outlines the limits to this concept of 'free' labour, positing that Marx did not argue that commodified labour in capitalism was, truly free, as workers are compelled to sell their labour in order to gain access to the means of subsistence (p. 139).

Strauss (2012) makes the vital argument that conditions of unfree labour are dependent not only on the levels of exploitation, but also the scale at which it happens and the power imbalance between the actors involved. She makes the point that labour market de- and re- regulation, and the institutional migration regimes that aim to flexibilize labour in the global economy, are connected to the creation of the conditions of unfree labour (p. 143). Specifically, Strauss (2012) engages with the work of Theodore and Peck (2002), and their analysis of how labour intermediaries construct conditions of unfreedom. Moreover, Strauss (2012) highlights the necessity of understanding not only how employers benefit from the conditions of unfree labour but all actors who stand to profit from these conditions (p. 139). In chapters 4 and 5 of this thesis, I will apply the concept of unfree labour to analyze state legislated power asymmetries that are the foundation for the Low-waged streams of the TFWP and how this is exacerbated by the involvement of labour intermediaries who recruit TFWs.

As discussed above, capitalism as a mode of production often requires the recruitment of labour from beyond the nation state, and the predominately racialized workers who are brought in through temporary migration streams are often subjected to the conditions of unfree labour. Miles (1982) whose work I expand on in my theoretical framework and below, maps out the connections between racism, capitalism, and unfree labour within the context of temporary labour migration. Miles argues that when there is a need to expand the working class this is often done by recruiting contract migrant labour. He states that for political reasons "the form of labour recruitment and reproduction had to conform in appearance to the norm of wage labour, although a relation of direct politico-legal domination was established over the labourer" (p. 213). As

outlined by Strauss (2012) this trend of state legislated unfree labour for temporary migrants continues to shape the processes of labour market regulation in the contemporary global economy.

Satzewich (1991) adds to our understanding of racialization and unfree labour in the Canadian context, in his analysis of the racialization of Caribbean migrant farm labour in Canada. Satzewich (1991) highlights the ways in which the temporary status along with the conditions of unfree labour were used by the Canadian state and employers to exploit Caribbean workers. He states that in the case of Caribbean workers:

> Their constitution as unfree labour would make them reliable. Without the rights of citizenship, there was no ideological conflict between their unfreedom and the bourgeois democratic freedoms Canadians enjoyed. They were not defined as part of the imagined community which made up the Canadian nation, and as non-citizens, they did not have to be treated in the same manner as indigenous labour or immigrant labour (p. 175).

Moreover, Satzewich (1991) argues that the Canadian state's decision to incorporate Caribbean workers as unfree migrant labour was not borne out of the simple issue of the supply and demand for labour. Rather he states that "it was structured by the idea of 'race', and an ideology of racial superiority and inferiority" (p. 179).

The conditions of unfree labour are interconnected to the racialization of migrant workers, as both contribute to the process through which flexible labour is created within the neoliberal era. Next, I focus on scholarly work that demarcates the multitude of ways of understanding racialization in various contexts.

The inclusion of migrant workers into Canada occurs in the context of racism, racialization, ongoing colonialism, and neoliberalization. Scholars (Fanon, 1967; Miles, 1982; Murji & Solomos, 2005) define what race and racialization actually refer to. Murji and Solomos (2005) argue that despite the term 'racialization' being widely used across academic disciplines, political discourse, and discussion of racial and ethnic relations, there is often confusion about what exactly is meant by racialization in various contexts (p. 2). The authors state that it is quite often unclear what the "race" in racialization refers to and thus racialization can at times appear "much more seamless and closed

than the key emphasis on the construction of race that it contains should entail" (p. 4). They highlight that at times racialization is used as a synonym for race, and through this process the abstract concept of 'race' is often reified. Murji and Solomos (2005) focus on how Ann Phoenix (2005) applies the work of Fanon (1967) in order to argue that racialization differs from race. Phoenix (2005) emphasizes that race does *not* have a biological basis and instead it becomes significant through "social, economic, cultural, and psychological practices" (p. 8). This is a significant distinction to be made, as it is crucial not to reify the concept of race in such a way that it appears to have a material base.

Miles (1982) also makes significant contributions to the debates around race and racialization. He makes the bold claim that the concepts of 'race' and 'race relations' have no analytical value. Miles (1982) states "notions of 'race' and 'race relations' have no descriptive or explanatory utility and should not, therefore, be carried into academic discourse from the everyday world" (p. 3). Miles is careful to clarify that by no means is he denying that racial discrimination exists at both the institutional and individual level. Rather, he is challenging how the haphazard use of these abstract terms produces an unproductive discourse that in turn reifies the concepts and deepens issues of discrimination.

Miles' (1982) work is significant in the context of migrant labour as he challenges the Marxist economistic approach that centers the issue of economy before all else. For instance, Miles (1982) hones in on the work of Cox (1970) and argues that Cox's economistic conceptualization of race and racialization approximates to a conspiracy theory of sorts. Miles (1982) cites that while Cox (1970) asserts that the ideology of racism is the direct product of the capitalist mode of production, it is unproductive to focus on the origin of racism (p. 81). Rather than focusing on the origin of racism, Miles (1982) argues that we ought to focus on understanding the "generation and reproduction of racism" (p. 102).

Miles conceptualizes racism as a "lived ideology, having a certain political adequacy for the bourgeoisie" as racism provided an explanation for the uneven development of capitalism (p. 115). However, he cautions that while the ideology of

racism has been co-opted by the ruling class as a means to “justify” colonial capitalist expansion, it must not be regarded as originating from the capitalist class. Ultimately, Miles uses the concept of racialization to “indicate the existence of a social process in which human subjects articulate and reproduce the ideology of racism and engage in the practice of racial discrimination, but always in a context which they themselves have not determined” (p. 177). In this sense Miles conceptualizes race politics as the abstraction of class politics (Murji & Solomos, 2005, p. 10).

It is crucial to connect the concepts of ‘race’ and racialization in all their complexity to the processes of neoliberalization and labour migration. Walia (2013) argues that the “racist, classist, heteropatriarchal, and ableist construction of the legal/desirable migrant, emboldens the conditions for capital to further exploit the labor of migrants” (p. 6). In this sense Walia (2013) agrees with Miles’ (1982) argument that the origins of racism should not be prioritized. Walia (2013) reveals that the generation and reproduction of racism is enacted through state sanctioned forms of racialization and social exclusion. It is through state legislated forms of inequality that migrant workers become racialized and exploited for the purpose of capital accumulation.

Walia (2013) defines racialization as comprising of the “social, political, economic, and historical processes that utilize essentialist and monolithic racial markings to construct diverse communities of colour” (p. 61). Thus the racialization of migrants occurs through border imperialism that Walia (2013) conceptualizes as being “characterized by the entrenchment and reentrenchment of controls against migrants, who are displaced as a result of the violences of capitalism and empire, and subsequently forced into precarious labour as a result of state illegalization and systemic social hierarchies” (p. 38). Walia is contextualizing the racialization of migrants as a process that is embedded in and reproduced through state power that acts in the interest of capital in the global economy. Further, Walia (2013) argues that managed migration programs are structured around racism and racialization that serve to increase capital accumulation. Overall, Walia (2013) illuminates how racism, racialization, and neoliberalization are interwoven in the context of state managed labour migration in Canada. Walia’s (2013) work in conjunction with the above literature that focuses on defining racism and racialization in analytically useful ways, provides a foundation upon

which a discussion of the unfreedom of TFWs can be built. In chapter 4 I outline explicitly how I conceptualize racialization and how it connects to my findings around the ways in which the Canadian state and employers racialize TFWs.

Overall, the above scholars have focused on how racialization occurs in practice. And how the social regulation of labour markets contributes to the unfreedom of TFWs through state enacted racialization processes. Moreover, we can see that state legislated unfree labour, in particular the forms of unfreedom that racialized migrants are subjected to, are connected in that these processes serve to flexibilize labour, and thus contribute to the ongoing neoliberal project that centers around the increased exploitation of labour in order to benefit capital. The following section focuses on literature that hones in on the ways in which employment agents who recruit TFWs are engendering new forms of unfreedom and exploitation, while analyzing the potential of legal-rights based frameworks for regulating the recruitment process.

2.1.4. Legal-rights Based Framework for Regulating Temporary Foreign Worker Recruitment

As the use of third-party agents in the recruitment of TFWs increases, so has scholarly attention around the new challenges engendered in the recruitment process. In particular scholars (cf. Faraday, 2014; Fudge, 2011; Fudge & Parrott, 2013; Kuptsch, 2006; Parrott, 2011; Zell, 2011, 2014) have expanded the focus of research and begun to examine the recruitment of TFWs and how this process in and of itself deepens the vulnerability and exploitation of workers. It is crucial to note that these works focus on mainly on the unscrupulous recruitment of racialized migrant workers who enter Canada through the Low-wage Streams of the TFWP. Further, illegal recruitment practices exacerbate the unfreedom of TFWs in that the charging of illegal fees for job placement creates the conditions of indentured labour. Thus, the regulation of employment agents must be addressed in a context that recognizes the ways in which racialized migrant workers labour is shaped by severe asymmetries in power, leading to the conditions of unfreedom.

The issue of illegal or unscrupulous recruitment practices targeting TFWs is a significant issue that requires both academic and political attention. However, when we

compare scholarship on the issue of TFW recruitment with scholarship on the TFWP in general, there is a significantly less on the former. The news media and activist groups[8] have done much of the reporting on issues pertaining to the regulation of recruiters in Canada, with a focus on recruiters operating in B.C.. Although it is important to note that the existing scholarly work on the regulation of recruiters in Canada is both comprehensive and nuanced. Scholars focus on the complexity of issues such as jurisdictions of regulation and the gaps that exist between law and enforcement.

Largely, scholars who focus on the regulation of recruiters have adopted a legal rights-based framework. Faraday (2014) examines the existing legal rights-based framework for regulating recruiters. Faraday's (2014) report provides a critical and in depth analysis of the strengths, weaknesses, and gaps in the rights-based framework in Canada. In particular she looks at challenges faced by transnational low-skilled migrants who span multiple and intersecting jurisdictions in their migration process. Faraday (2014) puts issues of jurisdiction at the forefront of her analysis. She examines how federal and provincial regulatory schemes interact, while focusing on the importance of provincial regulation, as it is "directly responsible for establishing standards for both employers and recruiters" (p. 55). Through the lens of a critical legal rights-based framework Faraday (2014) maps out the complexities of regulating recruitment practices as well the barriers to being able to *actually* enforce the existing laws.

There are many complexities concerning the time and space that recruitment practices span. The current regulation of recruiters is failing to address the multiple jurisdictions that positions TFWs as precarious and thus highly exploitable. For example Fudge and Parrott's (2013) study on the legal regulation of employment agencies recruiting women from the Philippines to B.C. found that Canada's legal system creates a "jurisdictional conundrum". This means that TFWs are regulated as immigrants through the federal level and workers at the provincial level, leaving large gaps in their protection. Further, they examine the global political context in which recruitment occurs by focusing on the regulatory regime in the Philippines and the bilateral agreement

[8] Activist groups such as, No-One Is Illegal (NOII) – Vancouver division, Justice For Migrant Workers, (J4MW), Migrant Workers Alliance for Change, Migrante BC, The Philippine Women's Centre, BC, (PWC-BC).

between B.C. and the Philippines concerning the recruitment and employment of Philippine workers in the province. Fudge and Parrott (2013) and Faraday (2014) put forward their respective recommendations on how the legal regulation of recruiters can be implemented in a way that protects TFWs from exploitative practices. Further, these scholars contextualize their recommendations by making it clear that the regulation of recruiters is only addressing one element of many that impact the mobility, agency, and freedom of TFWs in Canada.

Zell's (2011) analysis of third-party agents who are involved in the recruitment of TFWs into B.C. discusses the changing regulatory context in Canada and proposes new directions to address the new challenges. Zell's (2011) work is comprehensive in that it maps out who the recruiters[9] in B.C. are, and the various forms of regulation that apply to them in different jurisdictions. Zell (2011) examines the issues of "unscrupulous recruiters", the charging of illegal fees, and the gaps in existing regulatory frameworks. Further, Zell (2011) describes how employers benefit from the existing flaws in the regulation of recruiters. In particular, she examines how employers are able to contract out their accountability to recruiters who turn around and exploit TFWs by illegally charging them for job placement and other "immigration related costs" (p. 15). Zell (2011) highlights that employers are the driving force behind the expansion of the TFWP. Further Zell (2011) outlines how this expansion of the TFWP is directly connected to TFWs relationship with recruiters who fundamentally shape their mobility and agency in Canada. Through Zell's (2011) analysis we can begin to see how employers' interests are at odds with the protection of TFWs. The permanent temporariness of TFWs is what makes them desirable for employers while simultaneously making them vulnerable to exploitative recruitment practices.

Overall, the scholarship on the legal rights-based framework for regulating recruiters in Canada is nuanced and critical of the limits to legal regulation. The scholars covered in this section map out what regulation does, what it *ought* to do, and how it can be incorporated into a larger framework that seeks to liberate TFWs from permanent

[9] Zell (2011) identifies, employment agencies (licensed and unlicensed), immigration consultants, and immigration lawyers as the three groups that are responsible for the recruitment of TFWs into British Columbia (p. 5).

temporariness and the conditions of unfree labour. Canada's TFWP engenders many challenges for TFWs who lack the same protections afforded to citizens. A significant tension that my research addresses is that while many critical scholars (cf. Faraday, 2014; Sharma, 2012; Walia, 2010) recognize that citizenship itself is problematic, many of the solutions to TFWs precarity are centered on their inclusion into the citizenship rights paradigm.

Chapter 3.

Analytical Framework and Research Methodology

3.1. Analytical Framework

My analytical framework is designed to help me interrogate the relationship between neoliberalization and temporary labour migration in relation to the social regulation of contemporary labour markets in Canada. In particular it is structured to allow me to hone in on B.C. employment agents in conjunction with employers as key actors involved in the exploitation and flexibilization of labour in the neoliberal era. Moreover, I use my analytical framework as a means to build a deeper engagement with some of the foundational concepts that I outlined in my literature review. Throughout this chapter I work to incorporate these concepts as a means to represent specific examples of broader processes that I outlined in the literature review.

My analytical framework incorporates both sociological theory and theory from political economic geography. This combination is integral to my work, as research on the regulation of labour markets in the neoliberal era requires an analytical framework that highlights the interconnectedness of the theories from the two disciplines. In particular it enables me to delve into the nuances around how processes of neoliberalization are enacted through processes of racialization and illegal recruitment. A foundational point in my research is that labour markets are inherently socially regulated. In order to explore this concept in depth and its evolution through time it is crucial to include work from multiple disciplines. Polanyi (1944) a historical sociologist began the conversation around the inherent link between economic markets and social relations. This conversation has been carried on by Peck (1996) an economic geographer who highlights how geography and spatiality matter in the context of the social regulation of labour markets.

In the beginning of this chapter I will examine how the idea of the self-regulating market is a myth. I will focus on theorists who demonstrate the inherent social regulation of labour markets in connection to the state legislated vulnerability of TFWs in Canada. I will then discuss works that aid my conceptualization of state transformation, in particular, the strategic inclusion of private actors into a state run labour migration program. Lastly, I bring together works that illuminate the interconnections of racialization and unfree labour.

3.1.1. The self-regulating market: A utopian project

In this chapter I use the theorists below to demarcate the multiple and intersecting functions of the state. By focusing on the inherent social regulation of labour markets, I am able to understand the transformation of the role of the state in the de- and reregulation of labour markets in Canada. In particular, I engage with Polanyi's argument that the self-regulating market is a utopian project. Moreover, I build on the concepts discussed in the literature review to examine the specific ways in which Canada's labour market, in particular the use of temporary migrant labour, is shaped by the non-market forces that are directly involved in the regulation of the labour market.

A major point of contention that my research focuses on is that while capitalists *demand* a "free market" and the reduction of state interference, they actually *require* that non-market forces be involved in the regulation of labour markets. Strauss (2014) highlights the hypocrisy of Canadian employers who are "so keen to tout the 'free market' and theories of supply and demand under other circumstances, cry foul when labour shortages mean they might be forced to raise wages and improve conditions to attract workers" (par. 6). I engage with this crucial point made by Strauss about the hypocrisy of Canadian employers who are dependent on the highly exploitable labour provided to them by the state run TFWP.

Further, Walia (2014) provides a specific example of the way the state, a non-market actor, socially regulates labour markets in the interest of employers. Walia (2014) argues, "The denial of permanent residency is precisely what makes migrant labour precarious: it ensures legal control by bosses, which embeds labour exploitability.

Migrant workers are extremely vulnerable to employer abuse – including being held captive – since any assertion of their rights can lead to deportation" (par. 7). Thus, we can see that the Canadian state is regulating labour markets in the interest of employers by denying permanent residency to migrant workers in order to position them as highly vulnerable and exploitable by their employers.

I also draw on Polanyi (1944) and Peck (1996) in order to examine the inherent social regulation of labour markets. For instance, Peck builds on the work of Polanyi by arguing, "We must understand the labour market as a socially constructed and politically mediated structure of conflict and accommodation among contending forces" (p. 5). By conceptualizing labour markets as both socially constructed and politically mediated I have been able to interrogate the driving forces behind the formation of the TFWP. In particular, I focus on how capital/employers are among the "contending forces" that influence the social regulation of labour markets, and thus the flow of labour migration.

As discussed in chapter 2 Polanyi opposes the free, unregulated market on both a moral and technical level. According to Block (2001), morally Polanyi (1944) finds the idea of treating labour (humans) and land (nature) as pure commodities to be controlled and destroyed by markets, abhorrent (xxvi). Secondly, Block (2001) describes how Polanyi (1944) maps out the ways in which the state *cannot* be disconnected from the management of fictitious commodities. The state *must* intervene to prevent inflation and deflation, intervene in periods of high unemployment, to influence migration flows, and lastly to control the use of urban space and agricultural land (xxvi). Polanyi's analysis of the impossibility of the disembedding the economy from society holds serious clout in the contemporary context. For instance, while the neoliberal era is often touted as a period of economic and political restructuring that greatly diminishes the role of state, I draw upon Polanyi to argue that market societies *require* the state to play an active political and technical role in managing markets.

To conclude this section I discuss here my application of the work of Jessop (2007) and how it connects to the inherent social regulation of labour markets via the TFWP. As discussed earlier, Jessop's (2007) SRA allows us to conceptualize the state as many multifaceted political institutions that are actively involved in the mode of labour

market regulation in the interest of capital accumulation. For instance, Jessop (2007) argues that the regulationist approach "…stresses that economic activities are socially embedded and socially regularized and that stable economic expansion depends on specific social modes of economic regulation that complement the role of market forces in guiding capitalist development" (p. 24). I draw on this argument in order to analyze *how* non-market forces regulate labour markets. In particular how the TFWP is the product of political and economic activities of reregulation that prioritize the needs and demands of employers who are dependent on the supply of temporary and highly exploitable labour. Moreover, I use Jessop's work to reconcile the perceived contradiction of how capitalists can utilize the state in order to achieve increased capital accumulation.

3.1.2. Neoliberalization and the inclusion of private actors

Having examined the integral role of non-market forces in the regulation of labour markets, I now draw on theories from economic geographers (Peck, 2001; Peck, Theodore, & Brenner, 2012) to analyze the geographically and historically contingent form of neoliberalism in the Canadian context. I explore how the Canadian state's management of labour migration via the TFWP is evolving within the neoliberal project. I focus on how the neoliberal state is repurposed through the process of downloading responsibilities to private actors.

I am particularly interested in the significance of the inclusion of private actors into a state run labour migration program, specifically the rise of private employment agents involved in the recruitment of TFWs into B.C.. To engage the topic of what the evolution of the state looks like within neoliberalism I turn to the work of Peck (2001). Peck (2001) highlights that while the rhetoric of the "neoliberal policy prescription is predicated on a vision of *naturalized* market relations" (p. 445), in practice "…'deregulationist' states are often impelled to adopt strikingly interventionist measures in order to mobilize or manufacture 'markets' where previously competitive forces were weak or absent" (p. 446).

While Peck (2001) explains how states can take on the role of the 'market manager', he also examines how the state can repurpose its own role through the strategic inclusion of private actors. For instance, Peck (2001) explains, "the embrace of neoliberalism leads states to denigrate their own capacities and potentialities, to restructure and cut themselves, to engineer their own 'reform' and downsizing" (p. 446). This point is compelling and I use it to broaden my understanding of the function of the state. In particular, I conceptualize the privatization of recruitment as the strategic expansion of state capacities, and not the retrenchment of the states role in managing labour migration. Moreover, I use Peck to understand the potential for private actors, specifically employment agents who recruit TFWs, to be incorporated as one of the many institutional structures that function as part of a broader neoliberal project.

My research depends on my ability to treat the state as nuanced, multi-scalar grouping of intersecting structures that political and economic processes operate through. Therefore I turn again to Peck (2001) as he rejects the image of the 'hollowed out' monolithic state. He explains that:

> [R]ather than a straightforward diminution of state capacities, or indeed a reduction in the 'size' of the national state, this 'hollowing out' process typically entails a simultaneous roll-back *and roll-out* of state functions. Moreover, what is being 'hollowed out' here is not the state *per se* but a historically and geographical specific institutionalization of the state, which in turn is being replaced, not by fresh air and free markets, but by a *reorganized* state apparatus. (p.447).

This is very significant as Peck is revealing how the state is subject to political and economic restructuring within neoliberalism, and this leads to a reorganization of state power rather than its retrenchment. Thus I posit that the state in the neoliberal context is not decreasing or increasing in power, but rather is being reorganized through processes of de and reregulation.

My thesis focuses largely on the link between state reorganization within neoliberalism, and the subsequent rise of private employment agents. In particular, I require theories that allow me to dissect the functional process of employment agents and their role within the ongoing neoliberal project that largely works to exploit and flexibilize labour. Further, I aim to understand the ways in which the private employment

agents who recruit TFWs through Canada's TFWP, are operating as an extension of state processes within the neoliberal era.

In order to investigate the significance of state transformation I use Peck, Theodore, and Brenner (2012) to deepen my understanding of the rise of private actors, specifically within recruitment, in the neoliberal state. The authors assert that neoliberalism never has or ever will exist as a monolithic structure. Thus the political and economic processes of neoliberalization are uneven and complex. Peck, Theodore, and Brenner argue that:

> [N]eoliberalization acts *on* and *through* state and institutional forms; its character and consequences necessarily evolve over time, while varying geographically along with contextual and institutional conditions, as well as with the evolution of crisis tendencies, both of accumulation and of regulation. (p. 175).

Their analysis highlights how the state is not one institution but rather a multiple and intersecting institutions that are subject to the political and economic demands that are part of the neoliberal project.

Thus it becomes problematic to try and conceptualize the neoliberal state as an abstract and monolithic set of processes that have a clear beginning and end. I use the above theories to conduct research that moves away from a one-dimensional conceptualization of state practices within neoliberalism. Instead, I am able to apply the above theories to interrogate the perceived separation of private actors from the overarching power of the Canadian state to regulate labour markets. Further, it is necessary to investigate the significance of private employment agents, as they are actors who provide employers with temporary, and disposable labour through the state run TFWP. By doing so, I can then broaden my analytical framework in order to incorporate state process of racializing migrant workers in order to regulate labour markets in the interest of capital. This allows me to delve into how the institutional forms of the state are reorganized, and at times privatized, without losing their power or status as state institutions. Moreover, while the transformation of institutions and processes is complex and varied within neoliberalism, an overarching theme is that the needs and

demands of capital are being prioritized over the rights and protections of workers, in particular TFWs.

3.1.3. Racialization, the state, and unfree labour

By combining the following works I am able to develop an analytical framework that situates the racialization of migrant workers in a neoliberal state project. The racialization of TFWs is a process that occurs via state legislated inequality and unfreedom that positions these workers as outside the state apparatus and the protections that are afforded to citizens. In addition to employers benefiting from the legislated precarity of TFWs, employment agents profit from the states failure to provide adequate or any protections from illegal recruitment fees.

My research focuses on the conditions that allow for illegal and/or unscrupulous recruitment practices to occur. In order to analyze this, I bring together theorists (Sharma, 2006; 2012; Walia, 2013) that focus on how the state produces the conditions of racialization that lead to unfree labour. The overarching point of this section is that neoliberalization creates the conditions of unfreedom and racialization for TFWs in order to supply employers with temporary and disposable labour. Here I lay the groundwork for chapters 4 and 5, which will examine how the conditions of unfreedom experienced by TFWs is interwoven into the poorly regulated recruitment of TFWs into B.C..

My analytical framework on racialization brings together the works of Sharma (2006; 2012) and Walia (2013). As mentioned in chapter 2 Walia (2013) makes explicit connections between the state apparatus and the process of racializing and exploiting TFWs in Canada. For instance Walia (2013) argues that migrants' "precarious legal status and precarious stratification in the labor force are further inscribed by racializing discourses that cast migrants of color as eternal outsiders: *in* the nation-state but not *of* the nation-state" (p. 6). I connect Walia's argument to Sharma (2002; 2012) who looks at how labour flexibility and racist conditions of exclusion are achieved through "differential inclusion" and legislated inequality of migrant workers.

My analytical framework also combines the critique from Sharma (2012) that the institution of citizenship is "*fundamentally incapable*" of meeting the demands of TFWs

(p. 30). As discussed in chapter 2, Sharma focuses her critique on how citizenship cannot be separated from the autonomy of a colonial state, and thus must not be considered a solution to the exploitation of TFWs. I connect this to Goldring and Landolt's (2013) argument that while "[C]itizenship status does not necessarily correspond to citizenship practice, nor does citizenship resolve inequality"(p.3), non-citizenship is synonymous with social exclusion and vulnerability. By combining these scholars I am able to then address the tension around how to combat the state legislated unfreedom of TFWs that leads to their exploitation by recruiters, with the understanding the inclusion into the citizenship model may reify the power of the colonial state in Canada.

My research argues that the restrictions placed on the mobility of TFWs and their exclusion from political, economic, and social protection results in TFWs performing unfree labour. Building on the literature in chapter 2 that outlines the foundations of unfree labour, I now draw on work by Strauss and Fudge (2013) that examines the rise of unfree labour within contemporary capitalist society. Strauss and Fudge (2013) analyze labour market regulation in relation to the "…concept of a "continuum" of unfreedom in order to understand how de- and reregulation and new institutions of intermediation have served to differently position groups of workers in relation to conditions of exploitation and unfreedom" (p. 14). Additionally, Strauss and Fudge assert that the concept of the continuum can be used to illuminate how temporary agency work is connected to the rise of unfree labour. They include a list of conditions that are indicative of unfree labour:

- Wages withheld/debt bondage
- Immigration status tied to employment relationship
- Immobility/documents withheld/tied housing
- Threats/intimidation and violence
- Low pay
- Insecurity
- Lack of control over the labour process
- Few or no social benefits (p. 15).

TFWs are subjected to all of the above conditions. By understanding the conditions of unfree labour, I am able to analyze how the Canadian state is legislating the conditions of labour unfreedom.

Here, my analytical framework posits that state legislated unfreedom is a racialized process, as the low-waged streams of the TFWP targets workers from "developing nations." Overall, I use these scholars to understand how neoliberalization creates the conditions of unfree labour and exacerbates the exploitation of TFWs by unscrupulous recruiters. In the following section I map out the ways in which I designed and conducted my research. I highlight the connection between my analytical framework that focuses on how labour markets as institutions create the conditions of exploitation, disposability, and temporariness for predominately racialized migrant workers who enter through the TFWP.

3.2. Research questions

My analytical framework, which focuses largely on theories that investigate labour market regulation, and labour markets as socially regulated institutions, is connected to my research design and questions. Throughout this research I sought to uncover the oppressive ways that Canadian state regulates labour markets, specifically around temporary labour migration. Thus my research was structured around answering the following questions that largely focus on labour markets as institutions and the actors within them:

1) How is the role of the state evolving within contemporary neoliberalism?
2) How do employment agencies in BC impact the mobility, agency and freedom of (TFWs) who enter through the low-wage streams of the TFWP?
3) How can the tensions between creating protection for TFWs in the recruitment process and overcoming the legislated forms of inequality that are embedded within the TFWP be reconciled?

The first question is multidimensional as it aims to examine how non-market forces, in particular how the state is involved in market managing and the reregulation of

labour markets in the interest of capital accumulation. Further this question seeks to address the evolution and repurposing of the state within the never-ending neoliberal project. I use this question to investigate and then push back against the dominant understanding of neoliberalism as the retrenchment of the state. Lastly this question is used to conceptualize the significance of the rise of private actors, in particular employment agents, into a state run labour migration program.

I use the second question to examine how the recruitment process is connected to the existing forms of exploitation that are legislated into the TFWP. I am particularly focused on how the power imbalance in the favour of employment agents leads to restrictions on mobility and agency for TFWs.

Lastly, I use the third question to explore the complexity around addressing the illegal and unscrupulous practices by employment agents involved in the recruitment of TFWs. I also use this question to confront the ways in which illegal recruitment is the consequence of the state legislated unfreedom that is the foundation of the TFWP. Thus while I focus on the intricacies of recruitment I contextualize this within a larger critique of exploitative labour migration within neoliberalism. Moreover this question allows me to investigate the limitations to the citizenship model of inclusion for TFWs on the basis that it reifies the power of a racist colonial state.

3.2.1. Research Methodology

My theoretical framework has directly influenced my methodology. Specifically, my analytical framework is structured around theorists that engage in analyses of the oppressive ways in which labour markets are regulated within the neoliberal era. By engaging in the works of scholars who demarcate how the functional processes of neoliberalism, such as labour flexibility and the racialization of migrant workers occur, I decided to design develop my research methodology in a way that enabled me to investigate and problematize the roles of labour market actors.

My interest in labour market de- and reregulation led me to examine state theory that focuses on labour markets as socially regulated institutions. By focusing on labour markets as institutions I was able to enact a research methodology that connected

interviews with documentary analysis. In particular I focused on applying deductive and thematic coding for the 19 semi-structured interviews that I conducted with various groups of participants. My use of thematic and deductive coding techniques enabled me apply the concepts from my analytical framework in order to develop a deeper understanding of how the political and economic processes of neoliberalization are linked to labour migration and recruitment. Additionally, I use documentary analysis and Critical Discourse Analysis (CDA) as a supplementary technique to the above method. By applying CDA to texts connected the regulation of the TFWP I was able to unpack the political processes that shape the de and re regulation of labour markets in B.C.. Further, CDA allowed me to contextualize debates around the TFWP at the provincial level within larger political discussions around labour market regulation and neoliberalization. The following section of the chapter will outline my research process, my data analysis and the obstacles that shaped my data collection process.

At the heart of CDA is the understanding that discourse is a *social* practice. In this sense there is an inherent dialectical relationship that exists between "a particular discursive event and all the diverse elements of the situation(s), institution(s), and social structure(s) which frame it (Fairclough, Mulderrig, & Wodak, 2011, p. 357). Further, the discursive practices that exist in discourse as a social practice are able to exert significant power imbalances through the reproduction of unequal power relations (Fairclough, Mulderrig, & Wodak, 2011, p. 358). Overall, CDA is a powerful tool for analysis as it is not a "dispassionate and objective social science" but rather it is an "engaged and committed form of intervention in social practice and social relationships" (ibid).

3.2.2. Selection of participants: Analyzing labour markets as institutions

As mentioned in the introduction I conducted 19 semi-structured interviews with participants. Initially I set out to interview 12 participants, four licensed employment agents, four migrant advocates, and four policy makers. However in the process of conducting the research I decided to make an amendment to include employers/growers, who employ TFWs, in the wine and fruit industry in the Okanagan in

the interviews. The inclusion of growers/employers enabled me to understand how capital influences the de- and reregulation of labour markets. Moreover, by including a wide array of groups with competing political agendas I was able to delve further into the nuances of the state as a conglomerate of multifaceted political institutions, that are responsive to various and often conflicting political demands.

Prior to each interview I gained informed consent from the participant. Most of my interviews were conducted face to face, and in those cases I provided the participant with a hard copy of the consent form. Before allowing the participant to read through and ask any questions, I would inform them that the SFU Office of Research Ethics had designated this study as minimal risk and I explained how I am mitigating any potential risks to the best of my ability. I took the signed copy of the consent form and left the participants with their own hard copy in addition to an electronic one that I sent to them via email. For interviews that were conducted over the phone, I sought informed consent by reading my oral consent script to the participant and allowing them to ask questions and make specific requests. I then emailed participants an electronic copy of the consent form and transcribed their oral consent. I requested participants' permission to audio-record the interviews and this was granted in all but one interview, where I sought their permission to take hand written notes.

I offered participants the option of being identified by name in the thesis or being unidentified. For those who requested to remain unidentified, I replaced their name with a code and omitted any identifying information from our interview during the transcribing process. I allowed participants to choose where the interview took place and in most cases I met participants at their place of work or in a nearby coffee shop. The semi-structured interview format allowed me to make adjustments based on the participant's connection to the TFWP and the recruitment process. Additionally, I altered existing questions or added new ones based on information that emerged from previous interviews with participants. Each interview lasted approximately 60 minutes. I will be sharing a final version of the thesis with participants who stated their interest in this.

While my research was driven by my awareness that TFWs are subjected to abuse and exploitation via state legislated unfreedom in the TFWP, my research does

not include interviews with TFWs. This is because in this research I made the decision to investigate the systemic oppression of TFWs through an analysis of labour markets as institutions. Despite my decision to focus on the institutional operations of labour markets, I have worked to incorporate the perspectives of migrant advocates who work directly with TFWs. Additionally, I have included works from academics that are directly involved in the struggle for the liberation of TFWs and migrant workers as a whole.

The participants that I included in the interviews enabled me to develop a nuanced understanding of labour markets are constructed through various actors and institutions. I have conceptualized labour markets as institutions that are in constant flux via the pressures of non-market forces. Canada's TFWP is a form of state managed labour migration that racializes labour markets, while simultaneously providing employers with temporary and disposable labour. My interviews with the participants allowed me to understand how exploitative and often illegal recruitment practices are connected to the repurposing of the state and the social regulation of labour markets in Canada.

3.2.3. Access to participants, sample size

My sample size of 19 participants is categorized into four groups. I conducted two interviews with policymakers, four with licensed employment agents, nine with migrant advocates, and four with employers/growers from the Okanagan wine and fruit industry. The migrant advocates ranged from community activists, labour lawyers, to social union activists.

The number of participants in each category varies based on my ability to connect with individuals willing to be involved in the research. It was challenging to connect with licensed employment agents, as there is growing attention around the unscrupulous tactics some agents engage in when they are recruiting TFWs.

Additionally, it was difficult to connect with policymakers due to the intense demands of their schedules. Initially I arranged for 6 interviews with growers/employers from the wine and fruit industry, however, upon arriving for a scheduled interview with a large fruit grower in the Okanagan I was informed that the owners had decided to stop

the interview from proceeding. The interview was cancelled due to the owners of the farm making it explicit that they did not want anyone on their staff to comment on their use of the SAWP. This was of particular interest to me because this farm had been recommended by other growers as an excellent place to speak to their recruitment of TFWs because a large portion of their workforce was made up of migrant workers. Overall, I was met with a lot of reluctance from growers/employers and licensed employment agents due to the public attention and controversy that surrounds Canada's TFWP.

Another obstacle that impacted my research process was my inability to connect with employers/growers who use the Agricultural Stream for recruiting TFWs into B.C.. All except for one employer/grower were using the SAWP to bring in TFWs. This posed a problem as part of my research is focused on the private employment agents who are providing employers with TFWs and in the SAWP state agents do the recruitment of workers. However, I was still able to discuss the rise of private recruitment via employment agents with the employers/growers using the SAWP. Some of the participants revealed that employment agents had encouraged them to switch to the Agricultural Stream so that they would use their recruitment services. I was also able to use these interviews as a way of understanding the demands of capital in relation to state run labour migration, and as a way to understand the repurposing of the state within contemporary neoliberalization processes.

While my recruitment process was complicated by my inability to access an equal number of participants in each category, I incorporated these changes as part of the research process. In particular, I contextualized my difficulty accessing employers/growers and licensed employment agents as indicative of the highly publicized and often negative attention that the TFWP receives in public political discourse. I address the issues around sample size and distribution through a deeper engagement with participants in the migrant advocate category. Migrant advocates, in particular those who work as labour lawyers, were able to provide me with in depth insight into how TFWs experience the recruitment process to work in B.C.. Overall, the limitations of the sampling sizes indicated that the political push back against unscrupulous employers and employment agents are widely known.

3.2.4. Research Process

Data Collection

Data for this research came from the 19 semi-structured interviews that I conducted between October 2015 and February 2016. Additionally I collected publically available documents, including from debates of the Legislative Assembly of B.C., the 2014 Overhaul of the TFWP, the employment standard regulations for B.C., Manitoba, Saskatchewan, and Nova Scotia, and various other policy documents regarding policy changes to the TFWP and the regulation of employment agents.

Data Analysis

With the permission of the participants I transcribed the 19 interviews and then began the process of organizing and coding the data. I applied thematic deductive coding practices. I began the process of coding by demarcating the interview transcripts into four distinct categories, migrant advocates, employers/growers, licensed employment agents, and policy makers.

I began to code and categorize the data by engaging in an in-depth analysis of the transcripts. I had an initial set of codes that I developed from my analytical framework. As I read through the transcripts in each category I engaged in coding in evolution. According to Schneider (2013), coding in evolution is a process whereby your deductive codes which are drawn from your theoretical framework, evolve into set coding categories through the process of reading through your empirical data and closely analyzing what how your codes should develop. I used coding in evolution to supplement my thematic pre-existing codes, as I was able to closely read through and thoroughly analyze the transcripts and develop new codes in the process. As I coded and analyzed the four sections I made analytical memos in the margins of the transcripts and used these to connect the codes across the four sections. I was able to develop

categories and codes that fit across all of the interview categories. In total I developed four main categories with 3 to 5 codes in each one.

I used documentary analysis to supplement my data analysis from the interviews. I compared the provisions related to the regulation of employment agents between B.C., Manitoba, Saskatchewan, and Nova Scotia. I performed a straightforward analysis of how B.C. compares to "best practice" provincial regulation. Further, I applied Fairclough's (2006) CDA in order to engage with policy debates and legislative documents around the TFWP and the regulation of recruiters.

I selected CDA for my documentary analysis because it allowed me to examine the power imbalances and oppression that is reproduced through the exclusion of particular voices in the production of policy and legislation around the TFWP, and in particular around the regulation of the recruitment process. CDA is a tool that can be used to point to the evidence of power in policy making in addition to showing *how* that power is generated and from whom (Woodside-Jiron, 2011, p. 155). By applying a CDA to policy documents on the TFWP I was able to examine the state in its multifaceted and at times conflicting roles. Overall, CDA allows me to examine policy and legislation as inherently social and political texts.

The following chapters are structured around the findings of my research. The major findings that I engage with in chapter 4 include, how employers demand that the state regulate labour migration in order to provide temporary and disposable migrant workforce. I focus on my findings that reveal how processes of racialization and illegal recruitment practices contribute to the intensification of TFWs experience of unfree labour conditions. Further, in chapter 5 I map out the ways in which the strategic inclusion of private actors into the recruitment process is connected to a strategic offloading of state responsibility, and the many problems this engenders for TFWs entering B.C.. Chapter 6 reports on my findings around the dangerous deficits in B.C.'s ESA and how these have developed through the uneven processes of state transformation within the neoliberal era. In particular I focus on state processes around labour market regulation and how state institutions "fail" in strategic ways, in order to serve the interests and demands of capital.

Chapter 4.

TFW Unfreedom and the Rise of Illegal Recruitment

The focus of my thesis is multifaceted, and one of the main elements I am focused on is how to understand the mutually constitutive relationships between neoliberalization, unfree labour, racialization, and illegal or unscrupulous recruitment practices.

In this chapter I discuss my research findings in the context of how they connect to my analytical framework and the codes and categories that emerged through my data analysis. This chapter draws heavily on the findings from my interview data. I illuminate how employer demands on the state lead to conditions of exploitation, unfreedom, and the process of racialization through labour migration. In chapter 5 I engage in a nuanced analysis that illuminate who the private recruiters are, how they operate, and their connection to neoliberal state transformation.

In the first section I focus on how employer demands for temporary and disposable labour are met through the state legislated unfreedom in the TFWP. Next I engage with the overall conditions of unfreedom that TFWs experience. Further, I examine how the Canadian state's denial of status or pathways to permanence to TFWs enables employers to leverage power over these precarious and highly exploitable workers. Lastly, I delve into the interconnections between the racialization of migrant workers within the neoliberal period and the ways in which the Canadian state socially regulates the labour market in the interest of capital.

4.1. Employer demand for a temporary and disposable workforce

Throughout my thesis I analyze the transformation of the state. My research reveals that the state legislated unfree labour that makes up the TFWP, is in part driven by the demands of Canadian employers. By focusing on the influence of employer demands I am able understand the state not as a monolithic institution, or something that is abstracted from society. Rather, my research shows that the state functions through many multifaceted intuitions that respond to the demands of various groups, in particular employers.

An overarching theme from my interviews with employers/growers is that they rely on the SAWP in order to have access to permanently flexible labour. Employers/growers asserted that they must have access to the temporary and flexible labour that is provided by the state via the SAWP. One grower and owner of a winery in the Okanagan stated that:

> We are set up to run with a temporary crew in a permanent fashion. With the work we do, if the guys are here for 7 or 8 months then we get 7 or 8 months of employment completed. If I was trying to pull other seasonal workers in, you know you are not going to get 8 months of out anybody[10]. And you realize pretty quick that you probably don't want 8 months out of them anyway. Like it is better that you send them off and maybe get a couple more people (TFWs) during harvest or something like that. (Mavety, Interview, January 25, 2016).

This highlights how employers benefit from the temporariness that is structured into the provision of TFWs. As well the participant is referencing how TFWs out perform the local labour and that it is better to bring in more TFWs during harvest than to bring in local seasonal workers.

Another employer who manages the TFWs from the SAWP, who work on multiple vineyards for various vineyard owners, outlined that they are able to be very strategic with their use of the program. He stated that the vineyard management

[10] By "other seasonal workers" the participant is referring to local labour or workers that do not come in through any of the streams in the TFWP.

company will bring in TFWs at various times throughout the season and overlap them for a month or two during the busiest times (Levesque, interview, January 21, 2016). Thus it is clear that employers are demanding continued access to TFWs in order to have a labour supply that exists solely for the purpose of having them fit into the labour process in the agricultural industry in the Okanagan.

In an interview with a migrant advocate they spoke to the issue of employers demanding disposable and commodified labour via the TFWP. The participant stated:

> Ya it is still a program that really limits freedom and does not value the worker, they are still disposable labour. And the farmers for the most part still see them as a possession, something that belongs to them. They always refer to their workers as 'my Mexicans' you know, ya it is rare that you will hear a farmer who doesn't say 'my Mexicans this and my Mexicans that' so ya. (Unidentified, interview, January 29, 2016).

This is significant because the participant is asserting that growers/employers are able to control and commodify the labour of TFWs because the Canadian state has legislated the conditions of unfreedom for TFWs. For instance, employers have complete control over the fate of the TFWs as they can either decide to put their name down for another year, or not. One grower stated:

> Yes, if I like the worker and I like the work ethic and if he likes to work for me, I give him the option and say you know what 'I would like to bring you back' and most of the time they do want to come back. They want stability right, because they don't know once they are out of the program, they don't know if someone is going to call them. (Dhaliwal, interview, January 19, 2016).

The participant highlights how the state managed program enables him to select which workers will be able to return for the following season. This is significant as it reveals the power imbalance that persists between TFWs and the growers for whom they work.

The disposability of TFWs is structured into the very functioning of the TFWP, in particular this is clear in the ability for employers in conjunction with the state to black list TFWs from the SAWP. A migrant advocate spoke about how state agents act in the

interest of employers who do not want TFWs who are seen as troublesome or threatening to the status quo to remain the program. They stated:

> …[W]e hear stories of state agents being very corrupt and I am thinking in particular of Mexico, some of their state agents will blacklist workers who have complained, made a fuss with their employer, or tried to join a union. (Unidentified, interview, November 30, 2015).

The power of state agents to enact blacklists against TFWs in order to uphold the interest of capital, illustrates one of the functional processes through which the unfreedom of TFWs is achieved. Moreover, it is not just the flexibility and temporariness of the labour force that employers seek, but the ability to dispose of workers who attempt to assert their rights.

Looking again at the flexibility of TFWs, a participant from the United Food and Commercial Workers Union (UFCW) indicated that farmers are using the farm to farm transfer option as a way of maintaining highly flexible labour and cutting costs around the flights for workers returning home. She explained that famers would pay the travel costs to bring a TFW in and then transfer the worker to another farm at some point in order to offload the cost of sending them home (Stoehr, Interview, October 22, 2015). Thus it is clear that employers are ensuring that their access to temporary, flexible, and disposable labour is maintained through the continuation of state run labour migration. Moreover, it is evident that the flexibility of the TFWs is connected to their commodification and unfreedom, as employers view them solely as commodified labourers who function to increase the accumulation of capital in the agricultural industry.

4.2. Conditions of TFW unfreedom

The ways in which employers demand access to temporary and flexible labour through the TFWP leads directly into an analysis of the conditions of TFW unfreedom. In particular, my research finds that across the four categories of participants interviewed, themes emerge around how the state enacts violence by legislating unfree conditions for TFWs. I analyze how the state legislates the immobility and thus precarity of TFWs and

how this is exacerbated by the isolation of TFWs on farms. Moreover, I examine how the state legislated unfreedom is part and parcel of the neoliberalization of the state in contemporary capitalist society.

As mentioned in chapter 3 unfree labour is on the rise in contemporary neoliberal society. Strauss and Fudge (2013) outlined how unfree labour can be understood as distinct from exploitation by bringing in the concept of the continuum. Here I outline how some of the conditions of unfree labour, unfold based on information gathered from my interviews.

A major theme that appears across all four categories of participants is the immobility, surveillance, and overall unfreedom that TFWs experience through the TFWP, and specifically the SAWP. For instance, immobility of TFWs is legislated by the state in that TFWs who come in through the SAWP or the streams for low waged occupations are subjected to tied work permits while also having their immigration status tied to their work permit. In addition to the state legislated immobility, in that TFWs have a tied work permit, TFWs coming in through the SAWP are being denied mobility off the farm. The ramifications of TFWs not having access to transportation are significant as this limits their ability to access services or to escape the surveillance of their employer.

Surveillance is a key element that contributes to the unfreedom of TFWs. This is a particular problem for TFWs in the agricultural sector as they are required to live in employer provided housing which places them on the property and thus under the surveillance of their employers. The participant from the UFCW details how surveillance, exploitation and unfreedom are interconnected for workers coming in through the SAWP:

> Sometimes you have a problem for example, Friday at 1am you drink beer and you [the migrant workers] are drunk and then you have a problem. I am drinking at night on a Friday but I don't lose my job, it is my personal life. But this kind of worker many times have lost their job because of personal problems not because of working problems, and it is not good. (Stoehr, interview, October 22, 2015).

This statement is significant in that it highlights how employers view TFWs as existing solely for the purpose of work, and not as people who have a right to unmonitored time outside of the workday. Moreover, this statement reveals the level of

surveillance that is attached to employer provided housing. Additionally a participant who employs TFWs through the SAWP describes the need for a “good firm training program” and states that she thinks workers should not be able to drink after work ever or take a vehicle off the property without explicit permission from her, the owner of the farm (Hogue, interview, January 20, 2016).

The state mandate that TFWs in the SAWP live in employer housing enables employers to monitor who TFWs interact with. Employers are thus able to surveil the TFWs on a constant basis as they are also able to control movement on and off the farm. One grower addressed the topic of controlling whom the TFWs connect with:

> It is not so much that I am trying to control what is going on but I mean if there is people entering the farm and interacting with the guys, I mean I would like to know who is there, and that they are not being taken advantage of as well. (Mavety, interview, January 25, 2016).

Here the employer is stating that he wants to be able to protect the TFWs from exploitation by monitoring whom they are in contact with. However, the point remains that when TFWs are required to live on employer property employers are then imbued with the power to surveil their movement and interactions, to whatever end.

There are two significant points that the above sections reveal. First, it is apparent that the tied work permits and the mandatory employer housing are creating the conditions of TFW unfreedom. Secondly, this unfreedom is not an unintended consequence, but rather it is based on the demands and desires of employers who seek access to a controlled labour force. For instance a grower/employer stated that he is happy using the SAWP because the TFWs have smiles on their faces and are reliable. He continues and says, “it is no question that they are reliable, like I mean they are here everyday and I understand that they are also not in a position to walk away” (Mavety, interview, January 25, 2016). Further, he noted that he is “relatively happy having a contract that is employer specific” because it “guarantees the labour force that we have for the season” and it prevents any potential difficulties that could come about if he were to “rent the guys out” to other growers (ibid). The language around renting the workers out reveals that the employer feels a sense of ownership over the works, like they are a commodity to be owned and controlled. Overall, there is a direct connection between

TFW exploitation and the employer power over TFWs that is created by state legislated forms of unfreedom.

4.2.1. Denial of status or pathways to permanence

This section is a continuation of the above discussion of TFW unfreedom in that TFWs who are denied pathways to permanence are thus less able to contest the conditions of unfree labour. Here I draw on my interviews to highlight how state and employer violence targets TFWs because their status in Canada, and in particular B.C., is temporary thus making them vulnerable. My overarching point here is that the ability of employers to abuse and exploit TFWs is directly connected to the state legislated temporariness of workers who enter through the low-waged streams of the TFWP.

When I discuss state and employer violence I am referring to the ability of employers to threaten (and in some cases follow through with) the deportation of TFWs. This is violence as it contributes to the extreme vulnerability of TFWs who fear being deported and denied the ability to assert their rights as workers and people. The Canadian state creates the conditions for this kind of employer violence by tying the work permits of TFWs to their immigration status. Therefore if a TFW loses their work permit they are then subject to immediate deportation. In the sections to come I will address how this form of unfreedom is connected to the rise of illegal recruitment practices.

Employers can and do use immigration related retaliation as a way of disciplining TFWs. By denying TFWs status[11] when they arrive in B.C., the state secures the conditions for unfree labour and worker abuse. MLA David Eby of the NDP maps out how the political and social exclusion of TFWs leads to rampant abuse, unfree labour, and often deportation:

> Well it is an incredibly vulnerable population when they arrive and the experiences of Temporary Foreign Workers in British Columbia has not been a positive one. Everything from the forest industry, to safety issues,

[11] Status being either permanent residency on arrival and/or an immediate pathway to citizenship.

> we had a camp of men who were living in what were described as slave like conditions; the Temporary Foreign Workers in the bush in British Columbia working on public land. We have had Temporary Foreign Workers working side by side with public employees, or side by side with employees from different countries, earning different wages, and doing the exact same work. It has been an incredibly problematic program and I have a sinking feeling that the cases that come forward are just the tip of the iceberg, that there are a large number of abuses taking place that never come forward because there are no protections that I am aware of for Temporary Foreign Workers…So no matter what the rule is about the number of workers coming in and whatever the policies are, without protections for whistle blowers and without some sort of path to citizenship where people can become fully protected citizens and then speak out about the conditions they have endured, we are not going to see progress on those issues. (Eby, interview, December 14, 2015).

Eby's analysis points to the serious repercussions of denying status to TFWs. It is significant to hear from a member of the opposition party that the current provincial Liberals are unwilling or unable to protect TFWs from extreme abuse and exploitation while working in B.C.. While access to citizenship does not automatically correspond to the protection of worker rights, my research reveals that the absence of permanence or citizenship is synonymous with heightened levels of abuse within the context of unfree labour conditions.

In my interviews with employers/growers there was an explicit awareness of their power to have workers deported and they use threat as a form of leverage over the TFWs they employ. For instance, an employer/grower referred to the power of deportation as a tool to keep TFWs in line, "And when you bring people in from other countries, if there are problems with alcohol or whatever, we can phone the Consulate and they will be on their way home" (Hogue, interview, January 20, 2016). First, this highlights that the employer/grower feels entitled to control the behaviour of TFWs outside of working hours, regarding the consumption of alcohol. This sense of entitlement and control also speaks to how the employer tied housing increases the conditions of unfreedom experienced by TFWs. Secondly, this employer/grower sees the role of the Mexican Consulate as an institution for employers to put demands on around the control of workers, and this highlights the repurposing of the state within neoliberalism. In particular, we can see how the state is used as a tool for employers and not a protective institution for workers.

Many of the migrant advocates I interviewed highlighted how employers use the threat of deportation as a way to exert control over TFWs. A labour lawyer argued that the denial of citizenship makes TFWs “all the more precarious and subject to abuse” and in order for their to be a chance at having their rights enforced TFWs need to be granted citizenship (Unidentified, interview, February 2, 2016). Another labour lawyer described a situation in which a TFW experienced immigration related retaliation from an employer. Gordon states:

> And I guess the next was Denny’s and I was working at a pro-bono legal clinic and a guy came in from, he was working at Denny’s and he had complained that he wasn’t getting overtime pay correctly, that he hadn’t been paid for his airfare as promised, to come to Canada, and he had gone to his employer to try and get that fixed and the employer didn’t respond and he went to the Employment Standards Branch to file a complaint and a week later he was fired. (Gordon, interview, February 19, 2016).

This is significant because it reveals that because the Canadian state ties TFWs immigration status to their employment status, employers can attempt to avoid repercussions by firing TFWs who move forward with complaints.

I have used the above examples from my participants to highlight the ways in which the state socially regulates labour markets in the interest of employers. Moreover, these examples emphasize the way the state responds to the demands of employers for temporary and disposable labour. The state is complex and multifaceted conglomerate of politically mediated institutions and the denial of pathways to permanence for TFWs directly contravenes with the ability of TFWs to access their rights as workers within B.C..

4.2.2. The racialization of TFWs

The previous sections in this chapter focus on how the various and interlocking iterations of unfreedom are connected to the political and economic processes of neoliberalism and the social regulation of labour markets. In particular how these processes empower employers to exploit and abuse TFWs in the interest of labour flexibility. Here, it is my purpose to delve into the explicit ways in which employers and

the Canadian state construct the racialized TFW and how this is part of both the ongoing colonial practices in Canada and unfree labour conditions. I begin by discussing my conceptualization of racialization and then outlining how the state racializes TFWs who enter through the low-wage streams. I then draw on my interview data that highlights how employer's demands for a particular "work ethic" and a "reliable" work labour force are connected to the racialization of TFWs. Further, I show how my research indicates that migrant advocates and policy makers conceptualize the TFWP as a new and intensified period of Canada's racist colonial practices related to labour migration.

As outlined in my literature review the term 'racialization' is ubiquitous in various academic disciplines and political discourse. However, despite, the frequency with which the concept of racialization is invoked, it is often not explicitly defined, making the term vulnerable to confusion. Thus, before I discuss the findings of my research around the racialization process of TFWs I want to clearly demarcate how I am conceptualizing racialization in my work. Specifically, I understand racialization as a set of processes that are directly linked to colonial state institutions. Thus, I engage Walia's (2013) work in which she put forward the crucial argument that racism is enacted through state sanctioned forms of racialization and social exclusion. Moreover, in Walia's (2010) work she outlines the interconnections between capitalism and racialization stating, "Despite its rhetoric, global capital does not aim at the elimination of national borders; rather, the border regime legalises 'foreign and temporary' worker programmes for the benefit of capital interests. The role of the nation state remains pivotal in a globalised economy, providing the principal means for disciplining the workforce" (p. 73). Thus, I understand the Canadian state to be a colonial institution that disciplines racialized workers through their inclusion into work performed under the conditions of unfreedom.

An example of the one of the ways in which the Canadian state racializes migrant workers is found in the division between the two main streams that regulate labour migration into Canada. The Low-wage streams of the TFWP have a set of conditions that are distinct to the conditions for TFWs who come through the High-wage streams of the TFWP. In the section below, Employment Standards Development Canada (ESDC) lists the various working conditions that TFWs are subjected to and how this compares to the International Mobility Program (IMP). What is most notable is that the Low-wage

streams, which have the tied work permits, employer housing, and no pathway to permanent residency also target workers from “developing countries”:

Temporary Foreign Worker Program

Objective: Last resort for employers to fill jobs for which qualified Canadians are not available.

- Based on employer demand to fill specific jobs
- Unilateral and discretionary
- Employer must pass Labour Market Impact Assessment (formerly LMO)
- Lead department ESDC
- No reciprocity
- Employer-specific work permits (TFWs tied to one employer)
- Majority are low-skilled (e.g. farm workers)
- Last and limited resort because no Canadians are available
- Main source countries are developing countries

International Mobility Programs

- **Objective:** To advance Canada’s broad economic and cultural national interest.
- Not based on employer demand
- Base largely on multilateral/bilateral agreements with other countries (e.g. NAFTA, GATS)
- No Labour Market Impact Assessment required
- Lead department CIC
- Based largely on reciprocity
- Generally open permits (participants have greater mobility)
- Majority are high skill / high wage
- Workers and reciprocity are deemed to be in the national economic and cultural interest
- Main source countries are highly developed (Employment and Social Development Canada [ESDC], 2014).

The description of the above streams is significant because it highlights the strategic way in which the state applies differential treatment to workers based on their country of origin. Moreover, we can see how the racialization of TFWs is directly connected to the way in which the Canadian state legislates their working conditions in Canada.

While racialization is first and foremost linked to how the state regulates the movement and conditions of work for racialized migrant workers from “developing countries”, employers also contribute to the process of racializing migrant workers. In my interviews with employers/growers it was apparent that they perceived a disparity in the

work ethic between local labour and TFWs. What is interesting about this is that rather than attributing the disparity in work ethic as connected to the exploitative and unfree conditions TFWs are subjected to, employers/growers understood this as something connected to the national identity of workers. For instance, an employer/grower stated:

> There are countless reasons we cannot find local people that have the work ethic, we have big problems with drugs, we have big problems with alcohol abuse, and like I said local people have no work ethic, and you can't start a season, we are dealing with perishables here. We need people who are going to be available and will show up for work. Some[12] will work for two or three days and they will want cash money and we can't have that. (Hogue, interview, January 20, 2016).

This passage is significant as the employer/grower is highlighting their perceived dependency on the TFW based on an assumption that local workers lack the work ethic of TFWs. The grower/employer is making a connection between country of origin and work ethic, rather than the different conditions under which TFWs labour in Canada. This theme also emerges in the work of Preibisch (2010) who asserts that employers, in particular growers in Canada, are using the TFWP as a way to practice ethnic segregation. In her analysis of interviews with growers Preibisch (2010) argues that employers are actively engaging in ethnic segregation in relation to the labour process in the farms. This segregation is the result of growers attributing particular strengths and work ethics based on a TFWs ethnic identity (p. 418).

The racialization and thus, the exploitation and abuse of TFWs via employers and the Canadian state, is as an affront to the image of Canada as a benevolent and fair country. It is crucial to tear down the idea that Canada has ever been anything more than a nation state that is built on ongoing colonialism and racism. The state legislated unfreedom of the predominately racialized workers from "developing nations" who enter through the streams for lower waged occupations of the TFWP is effectively a continuation of racist and colonial state practices that have defined the Canadian nation state since its inception.

[12] Local labourers.

The ongoing practices of colonialism and the "differential inclusion" of TFWs emerges as a theme from my interviews with both migrant advocates and policy makers. A participant who works as a labour lawyer and a community advocate for migrant workers put the ongoing process of racializing and exploiting migrant workers into context:

> Oh ya, history is repeating itself again. I mean it is a different labour market need and a different sub sector of racialized immigrant workers, it was Chinese workers with the railway and then now it is Filipino workers or even Mexican workers in the agricultural program and Filipino workers doing low-skilled precarious work at McDonald's or fast food or what have you. And so it is not surprising, I mean you had a backlash against Chinese workers back in the early 20th century and you see that same backlash now, so it is not surprising. (Nicolas, interview, December 18, 2016).

This is significant as it highlights the connection between the racialization of migrant workers and Canadian employers having access to a highly vulnerable and easily exploited labour force. Thus we can see that racialization processes and the othering of migrant workers is part of a long history that is directly connected to Canada's colonial past and present.

Moreover, it is apparent that the racialization of TFWs is now occurring within a larger neoliberal project in which the state regulates labour migration in such a way that employers have access to permanently temporary racialized workers. Gilbert (2014) highlights the connection between racism, racialization and the temporariness of labour migration, stating, "The hostility toward including these racialized, low-skilled workers in the community propels the temporariness of these programs" (p. 158). Gilbert (2014) has highlighted that the racialization of TFWs occurs through both state legislation and racist employers who understand these workers to be less deserving of the rights and protections afforded to citizens. Thus, TFWs are part of the neoliberal project that provides employers with temporary and disposable workers to fill perceived labour shortages through processes of racialization.

The TFWP is simply a new stage in Canada's vast history of racializing migrant workers in order to exploit their labour for the gains of capital. This is reinforced by another comment from NDP MLA David Eby who states:

> You know people watch these heritage ads of migrants from China building the trans Canada railway and being put in dangerous situations and they say “oh gosh, I’m so gad we’ve moved past that”, but at least those workers were allowed to remain in Canada and have a path to citizenship for their families. Where for many workers who are coming and doing dangerous and undesirable work now, we are sending those folks home with no path to citizenship, so I am not sure we are moving ahead particularly in these kinds of ways. (Eby, interview, December 14, 2015).

Here, Eby is dismantling the myth that enshrouds Canadian identity, that racism, colonialism and the exploitation of racialized workers is something in the past. Rather, Eby points to how the Canadian state has in fact intensified the exploitation of migrant workers by not only exploiting their labour in dangerous and often undesirable work, but also denying many TFWs a pathway to permanency in Canada. Further, the intensification of the racialization and subsequent exploitation of migrant workers is connected to the larger neoliberal project of labour flexibilization.

In Miles’ (1987) examination of the interconnections between racialization, capitalist development, labour migration, and various iterations of unfree labour, he argues, “…the ideology of racism is also, to varying degrees, a central relation of production in the instances of unfree labour…” (p. 187). Further, Miles details the ways in which racialization is enacted through racists ideologies within the capitalist mode of production:

> I conceive racism (which has additional, secondary conditions of existence and reproduction) as a potential ideological element of signification by which to *select* and to *legitimate* the selection of, a particular population, whose labour power will be exploited in a particular set of unfree production relations (p. 188).

Thus in the case of Canada’s TFWP the Canadian state racialized migrant workers by legislated the conditions of unfreedom that shape their experience within the Canadian labour market. The Canadian state legislates and thus *legitimates* the unfreedom of migrant workers through the practice of denying pathways to permanence or citizenship, along with tying racialized migrant workers to a particular employer, and allowing recruiters to place these workers into relationships of debt bondage.

4.3. The social regulation of labour markets: Beyond supply and demand

The previous section focused on how the state racializes TFWs who enter through the low-wages streams, and how employers benefit from and contribute to the racialization and permanent temporariness of TFWs. This section continues in the vein of how the Canadian state intervenes and regulates the labour market in the interest of employers, via the TFWP. I focus on my research findings that indicate, while employers often assert that they want a free market and contest the interventionist state model, they demand that the state intervene to provide them with temporary, disposable, and highly exploitable TFWs.

Through their use of the TFWP, employers are able to transcend the law of supply and demand that would require them to raise wages and improve working conditions, based on the national supply of workers. Moreover, I strongly emphasize that it is the Canadian state and employers who are suppressing the wage rate, and not the TFWs. It is crucial to focus on the role of the two aforementioned groups, as I am purposely pushing back against the dominant racist discourse that scapegoats TFWs as responsible for the suppression of the wage rate.

I have connected this section to Strauss's (2014) argument that I mentioned in chapter 3. Strauss (2014) highlights that while employers cite their adoration of the benefits of a labour market that is based on the law of supply and demand, they refute the possibility of raising wages or working conditions to attract local labour (par. 6). In an interview with a labour lawyer who worked on both the HD Mining case and the Denny's

class action[13] responded to my question about the impact of the discourse of "Canadian jobs for Canadian workers" has on policies around the TFWP:

> …I didn't see any big inconsistency in doing a case like Denny's and doing a case like HD Mining, certainly we don't, me and my clients didn't like the TFWP, but that is not because we didn't like foreign workers, it is just because you set up a regime that makes it impossible, or not impossible but difficult for them to be treated fairly. And furthermore, that clearly had the effect of undercutting Canadian labour market, and I think that was obviously what was going on for many, many years. You know when you have a whole bunch of TFWs working at a McDonald's in Victoria you know it was apparent to everybody that is not because you can't find Canadians to work there, it is because you don't want to pay Canadian wage rates, or because you don't want to deal with Canadian workers who because they aren't as vulnerable will in fact insist on certain things. It is much easier to have a completely compliant work force and that is what the TFWP gives to them. And that is why they wanted it. (Gordon, interview, February 19, 2016).

Gordon's response emphasizes the employer driven exploitation and unfreedom. This is connected to Peck (1996) and Polanyi (1944) as he emphasizes that labour markets are not self-regulated and employers demand that the state intervene in order to manage labour migration in their interest.

As outlined in my analytical framework, I draw on (Jessop, 2007; Peck, 1996, 2001; Polanyi, 1944) in order to conceptualize labour markets as both socially constructed and politically mediated institutions. Thus, I argue that employers are one of the political forces that influence labour market regulation. Specifically, employers exert political pressure on the state to manage labour migration in the interest of increased capital accumulation. For instance, in an interview with a migrant advocate she responded to a question of the influence of employers in the TFWP:

[13] This is significant because the HD Mining case involved Koskie, Glavin, and Gordon, working in the interest of protecting Canadian jobs in the case where the federal government approved an LMIA that allowed 200 TFWs to run a mine in Tumbler Ridge. The lawyers highlighted that there were qualified Canadian workers who were intentionally overlooked. The Denny's case involved Koskie, Glavin, and Gordon representing TFWs who had been exploited by their employer and by employment agents. The point is that while these two cases worked in the interest of different groups, they both targeted the abusive and exploitative practices of Canadian employers. Thus, it becomes clear that Canadian employers use the TFWP as a way of circumventing decent working conditions and wages.

> The employers have pushed this program very hard. It did start out as something fairly modest and I think it was through the lobbying and influence of employers across Canada that - particularly under the Harper government - the program was blown wide open. I also have a stack, from Alberta, about a two-inch thick double-sided list of all the employers in Alberta who managed to get the expedited process approval. So it just became very routine and completely at the behest of employers to have quick processes where they have no obligations to those workers and they can easily get rid of workers that they are unhappy with and so I see them combined with the interests of neoliberal governments as looking at a global workforce that they can quickly and easily secure the cheapest and most vulnerable workers in the shortest amount of time. (Hartman, interview, October 23, 2015).

This is a significant response as Hartman is emphasizing that employers are politically mediating the state by applying pressure for expedited Labour Market Impact Assessment's (LMIAs). Thus the state managed TFWP provides employers with the means to circumvent the law of supply and demand by involving the non-market forces, such as the state, in the role of labour market regulation.

Employers are simultaneously undermining the law of supply and demand and benefiting from the state legislated unfreedom of TFWs. TFWs are subjected to tied work permits and employment contracts that are connected to their immigration status. Thus, employers are in a position to use this as leverage and a way to exert control over TFWs. For instance, a participant from the Employment Standards Coalition (ESC) highlights how wage suppression is linked to the suppression of working conditions through the TFWP:

> If there were decent jobs and decent wages the issue would not be coming up because the so-called shortages for low-skilled labour is because they don't pay enough. So the excuse 'well the young workers are not interested in doing these menial jobs' well that's not true, the majority of the labour force of the tree planters are young workers and that is a dirty hard job, but they can make decent money, right? So if it were decent wages and decent working conditions then it wouldn't be an issue around whether Canadians can work and do those jobs. (Fairey, interview, December 15, 2015).

Fairey illuminates how not only do employers demand the intervention of non-market forces in the management of labour markets, they directly benefit from the ability to control and exploit TFWs at a higher level than local workers.

In this final section of chapter 4 I have highlighted how and why employers seek out specific ways of socially regulating labour markets. I have emphasized that it is the state and employers who actively apply pressure to the state to regulate labour markets in such a way that wages and working conditions are suppressed, and TFWs suffer the most as a result of this. More broadly, in this chapter I sought to reveal how the processes of neoliberalization, unfree labour, and racialization are interconnected in the context of the TFWP.

In the following chapter, I will focus on the ways in which neoliberalization involves the strategic inclusion of private actors into the recruitment of TFWs. Moreover, I will engage in an analysis that highlights how my research reveals the ways in which recruiters are regulated and how their practices engender new forms of exploitation and unfreedom for TFWs.

Chapter 5.

Unscrupulous Recruitment and Strategic State Failure

Throughout this chapter I lay out the ways in which my research reveals the interconnectedness between neoliberal state transformation, the strategic inclusion of private recruiters into the state managed TFWP, and the exploitation and oppression of TFWS. I use my data to map out the complexity of the informal and often unregulated practices that structure the recruitment of TFWs into B.C. Moreover, I use this chapter as a way to examine the nuances around *how* and *why* the issue of unregulated recruitment shapes the experience of TFWs who enter through the Stream for Lower-waged occupations. In particular, I seek to highlight how the interests of employers are often the driving force of state transformation in the neoliberal era, and how employers directly benefit from the rise of unscrupulous recruitment practices.

5.1. Neoliberalization and the strategic inclusion of private actors into TFW recruitment

Here I build on the themes from chapter 4, by analyzing the nuances of the repurposing of the state in the neoliberal era. Before I delve into the specifics of which actors are involved in the recruitment of TFWs, and how the recruitment practices engender abuse for workers, I want to focus on the significance of the rise of private actors within a state run labour migration program. I posit that the inclusion of private actors does not represent the retrenchment of the role of the state. Rather, it highlights the complexities of the neoliberal project, in which state institutions are able to strategically download responsibilities to outside actors as a means of distancing state institutions from the risk and responsibility of recruiting TFWs.

I argue that the rise of private recruiters within a state-run labour migration program represents the strategic offloading of particular tasks to actors that fall outside the direct accountability of state actors. Moreover, by offloading the responsibility of recruiting TFWs to private actors, the Canadian state continues to be involved in the management of labour migration, while also pushing away from the responsibility of recruitment. For instance, a migrant advocate spoke about the hypocrisy of the state strategically offloading the role of recruitment onto private agents:

> Well I think it is irresponsible on the part of the state in the sense that you are responsible for processing the workers legal entry into the country, but you are going to be hands off with respect to how that worker found out about the job and how that worker, how that worker comes into the country, with or without having to have paid a recruiter to come into the country. Those two things, I mean if you are going to regulate their entry into the country you might as well regulate that portion of it. (Nicolas, interview, December 18, 2015).

The participant's comment is significant as it highlights how the state's decision to offload the role of recruitment is in fact very strategic. Thus, we can see that the role of the state is not diminishing, and is instead being repurposed in a way that offloads the institutional responsibility for TFW abuse in the recruitment process.

An overarching argument in my thesis is that the state is not being retrenched or diminished and this was confirmed by my interviews with participants. The motivation for the state to offload the role of recruitment to private actors is two-fold. First, it removes the direct accountability of the state in cases of exploitation and abuse. Secondly, a migrant advocate highlighted that is also a cost saving mechanism:

> It is problematic because you have more people, more hands in the pot and the additional hands in the pot aren't subject to the same kind of rules that the government is subject to when they are having official programs to bring people in. So it is tough, and the other thing is, it's not like the Canadian government doesn't have experience doing this recruitment process, or finding people to come to Canada, they do that through Refugee program or the Refugee Stream all the time. So arguably they could do that for employment purposes, but it is easier to contract that out to third parties who aren't regulated. It is cheaper, it is much, much cheaper. (Nicolas, interview, December 18, 2015).

The above statement is multifaceted in that the participant highlights the ways in which the state is involved in particular types of recruitment; thus highlighting the strategic way in which the state has removed itself from the recruitment of TFWs. Further the participant points to how the Canadian state financially benefits from the strategic devolution in regards to recruitment of TFWs.

The following sections in this chapter will delve into who is involved in the recruitment of TFWs, how they are regulated, and how the exploitative practices embedded in the recruitment process is interwoven into the state legislated conditions of TFW unfreedom. My overarching point is that the unscrupulous recruitment of TFWs is the functional process through which labour flexibility and unfreedom is achieved within the larger project of neoliberalization.

5.1.1. Mapping out recruitment: Who, what, why?

Throughout my research migrant advocates, employers/growers, and employment agents spoke to the issues around the recruitment process that can engender challenges and outright abuse for TFWs. In this section I will focus on the informal and often un-regulated nature of the recruitment process, as well as the issues that arise around jurisdiction and the enforcement of the rights that exist on paper for TFWs. Moreover I will map out how the repurposing of the state positions recruiters as able to easily exploit TFWs throughout the recruitment process.

Who Recruits:

Three primary groups, immigration consultants, immigration lawyers, and employment agents perform the recruitment of TFWs into B.C. (Zell, 2011). Different institutional bodies regulate all these three categories of recruiters. I have focused on the regulation of employment agents, who are required to be licensed through the ESA in B.C.. I selected employment agents because they are regulated at the provincial level, and there are many reports of unlicensed or “ghost recruiters” operating within the province. In a larger project I would expand the scope to include all labour brokers who are involved in the recruitment of TFWs into B.C. as there is a lot to be gained from an in depth analysis of the third parties intermediaries who facilitate labour migration.

Moreover, the role of labour recruiters cannot be understated as their services are increasingly in demand due to employer's requests for temporary labour.

Employment agents can vary greatly depending on the size and scale of the recruitment operation. Some employment agents in B.C. are involved in large corporate operations where they also work as immigration consultants. On the other end some employment agents are working on a small and informal scale and are only recruiting friends and family through the TFWP. As I mentioned in my methodology chapter I faced obstacles in gaining access to employment agents who wanted to participate in my research, as there are many who are operating in an unlicensed capacity, or are licensed but may be involved in unscrupulous recruitment practices. However, I was successful in accessing employment agents that represent the various forms that recruitment operations take place; ranging from a one person agency to a large company that recruits TFWs and provides immigration consulting services.

What and why: State transformation and the driving forces behind the rise of unscrupulous recruitment

I argue that when looking at the role of employment agents who recruit TFWs into B.C. it is crucial to focus on the actors that are driving the privatization of recruitment. Both the Canadian state and employers are propelling the advancement of employment agents in the recruitment of TFWs. The state is offloading the responsibility to private actors, and employers seek out third-party agents whom they can off-load their accountability to.

The role of employment agents is complex; it goes beyond the process of simply bringing TFWs and often includes an ongoing and exploitative relationship. There is a dramatic power imbalance between employment agents and the TFWs who are recruited by them. The process of crossing a border to work engenders many challenges, thus TFWs are at the behest of poorly regulated employment agents. Employment agents not only have access to jobs, but they have the knowledge about how to navigate a complex bureaucratic system that TFWs must engage in to find work (Zell, 2011). Zell (2011) asserts, "…contracting out recruitment only widens the

information gap between job providers and seekers – because of either miscommunication or misrepresentation" (p. 9).

I argue that the increased role of employment agents is directly connected to the strategic repurposing of the role of the state within the neoliberal project. As I outlined in chapter 3 Jessop (2007) conceptualizes the state through the SRA and posits that state institutions are part of a political process in motion. Further Jessop posits that the various state institutions are shaped by political demands from multiple factions of civil society (p. 6).

I apply Jessop's conceptualization of the functioning of the state in my argument that the Canadian state has repurposed its role in the management of labour migration as a response to the political demands put forward by Canadian employers. As discussed throughout the thesis, employers place demands on the state for access to temporary and disposable TFWs. The state responds to this demand, while simultaneously neglecting to provide services that TFWs require in order to enter B.C. through the TFWP. For instance in an interview with a migrant advocate they highlighted that it is the absence of state services for TFWs to access information on how to navigate the bureaucratic process to enter Canada that has increased the role of employment agents who provide access to jobs and immigration services. When I inquired about the issue of employment agents positioning themselves as advocates for TFWs seeking information and assistance the migrant advocate stated:

> I wouldn't be surprised by that because I know that TFWs are often seeking – they come across issues and they are often seeking advice and advocates on a number of different fronts whether it be employment, immigration, or otherwise, and so it is not surprising. And there are tonnes and tonnes of legit advocacy groups out there that are doing a lot of great work, like Migrante, like Mosaic, like the WCDWA but I am not surprised that a recruiter jumps in and says 'I know about all these things you should do this this and that' so it is not surprising. It would be definitely interesting to see how prevalent that is. (Nicolas, interview, December 18, 2015).

This is significant as the participant illuminates that the Canadian state does not provide adequate or sometimes any information or assistance to TFWs; therefore they

must seek this out via non-governmental organizations that may or may not be reputable.

My research further reveals that employers at times very closely linked to the unscrupulous practices of employment agents. In an interview with another labour lawyer, who is currently working on the pending class action suit in which TFWs are suing Overseas Immigration Consultants and their employers from various Mac's convenient stores for alleged illegal hiring and recruitment practices, he highlights the interconnectedness between private recruitment and employers:

> It is hard for us to say at this point, you know you talk to workers and they don't necessarily know exactly what is going on, all they know is that they paid a bunch of money to come here. And there was clearly a close interaction between Overseas and Mac's going on, very close with a particular person at Mac's. Who in fact went with Overseas, so Overseas was going to Dubai and holding this large job fairs. Sometimes this person from Mac's went with them. Overseas would also hold interviews in its offices in Surrey with different employers coming to their offices to interview TFWs to work for them. So they clearly had very close relationships with certain employers. And we don't yet know what the nature of that relationship is in terms of if money is being passed around or what we don't know yet, because they are not going to tell us. (Gordon, interview, February 19, 2016).

This statement is significant in that the participant highlights how employers are directly involved in the demand for private recruitment, to the point that they work side by side with private actors throughout the recruitment process. Overall, I argue that the statements of participants in this section reinforce my argument that neoliberalization is not about the retrenchment of the state. Rather, we see state responsibilities being strategically offloaded onto employers and recruiters who are increasingly taking up what the state directly does in programs such as the SAWP, in which governments of sending and receiving countries are much more involved due to formal bilateral agreements.

Unregulated and unlicensed

The above section focused on how state transformation has led to the rise of private actors who work alongside employers to recruit TFWs, often through unscrupulous means. Here I focus on how my research reveals the specific ways in

which employment agents are able to fill employers demands for cheap and temporary labour, while the provincial government fails to regulate these practices in a meaningful way. While B.C. does require that employment agents be licensed through the ESA, Zell (2011) confirms "…there is currently no formal quality or pro-active audit function conducted on a regular basis, and much enforcement of the Act with respect to employment agencies remains reactive in nature" (p. 5). Thus, even if an employment agent is licensed there is no assurance that their recruitment practices fall in line with the stipulations in the ESA.

In an interview I conducted with a B.C. based employment agent they commented on the complete ineffectiveness of the employment licensing system:

> Its ridiculous, the most ridiculous questions in multiple choice like 'do you charge an applicant a fee?' and it makes no difference whether you are licensed or not, I mean these questions are meaningless, I mean it is another process, and I mean we are equitable, but when I looked at these questions I thought this is ridiculous, anyone could do this and then you just get issued a license. I hope that we are doing everything right and I am sure that we are but even if an agency is licensed… (Unidentified, interview, November 12, 2015).

The participant highlights that while their operation is in line with the ESA, this is based on their decision to operate in a moral and legal way. Moreover, for other employment agents it does not appear to make a significant difference whether they are licensed or not, as there is no effective enforcement being conducted by the ESB. This is significant because it highlights two fundamental points. One that recruiters are not subject to a pro-active licensing system and can operate in unscrupulous and illegal ways. Secondly, the Canadian state, specifically the ESB, is not fulfilling its duty in terms of the protection of TFWs.

In the context of the recruitment of TFWs, the role of the Canadian state is being repurposed; both in terms of the decreased enforcement by the ESB, and the strategic inclusion of private actors in the recruitment process. It is important here to note that the repurposing the state occurs in the context of a multi-jurisdictional process. Specifically, that the TFWP spans multiple jurisdictions, as workers are regulated at the federal level as immigrants and at the provincial level as workers. In her research on global care

chains Fudge (2011) highlights how the two intersecting jurisdictions can lead to gaps in the protection of migrant workers.

Moreover, the rise of private recruiters, who are regulated at the provincial level, engenders many challenges, including the informal connections that sometimes frame the recruiter's relationship to the TFW. For instance, employment agents can be connected to the TFWs they recruit through family ties or community relationships in the sending countries. The informal connection that some recruiters have to TFWs complicates the relationship when exploitation is involved.

A migrant advocate spoke to the issue of family and friend ties in the recruitment relationship and how it can exacerbate the abuse that TFWs experience. In particular he focused on his experience advocating on behalf of TFWs in the Filipino community and how their connection to recruiters was exploitative and abusive:

> And it is not uncommon that in other situations too they [the recruiter] will use this whole idea of being an older sister, and older brother, because that kind of dynamic is quite common in the Filipino community where you have kinship relationships forms even though they are not actually family members. And so you have that level of trust where, because they got you in because they set you up with your employer and they probably set you up with housing you seem them as an older brother or older sister figure so there is a relationship of trust and it is often abused by the recruiter to get the worker to do things that are completely illegal and contrary to their interests. (Unidentified, interview, December 18, 2015).

This passage is significant because it highlights that recruiters are using many tactics in order to position TFWs as vulnerable, and thus highly exploitable. Not only are recruiters at times using their connection through kinship or community ties but also through their ability to control the housing of TFWs. This form of exploitation is facilitated through the state legislated tied housing that TFWs are subjected to. Overall, it is clear that purposeful neglect of the B.C. government to create meaningful legislation to regulate the employment agents, who recruit TFWs, is far from benign.

Outsourcing accountability

While the state is actively involved in facilitating the rise of illegal recruitment practices, we must also remember that employers not only benefit from third party

recruitment, but they place explicit demands on recruiters to maintain control of TFWs. In an interview with a migrant rights advocate she spoke about the control over the worker that recruiters engage in at the behest of the employers who hire them:

> I have also seen though when they come, I guess they are legit in that it wasn't immigration fraud, but sometimes the recruitment agency is also sort of used as a way to control the worker. So like with a domestic worker in the home, if there is an issue, the employer might call the agency and the agency calls the worker to get them in line. (Unidentified, interview, November 30, 2015).

The above statement illuminates that employment agents are fulfilling the demands of employers who are looking for ways to offload their accountability. Employers reduce their accountability by exerting control over the TFW via the employment agent.

Additionally, employment agents are positioned to in theory represent the needs of both employers and TFWs. However, in practice employment agents benefit from an extreme power imbalance in their relationship with TFWs, and use this to the advantage of employers. A migrant advocate detailed how this uneven and contradictory triangulation plays out:

> It seems like a pretty serious conflict of interest for the recruiter to be working with both parties and sort of semi representing both parties and we have seen cases in Northern B.C. where in franchises like Tim Hortons, it might be Tim Hortons I am not entirely sure about that, where the employees *had* to maintain their relationship with the recruiter and if they didn't they would be fired. So kind of like the employer exerting pressure on the employee to have this relationship with this other body that is taking their money. (Unidentified, interview, November 30, 2015).

The migrant advocate has exposed the insidious way in which TFWs are forced into ongoing and exploitative relationships with employment agents who are acting in the interest of abusive employers.

Structure and length of the recruitment relationship

The above section mapped out how employers use employment agents to indirectly exert control over TFWs. This is directly connected to the length of the

recruitment relationship, as this is pivotal to understanding how exploitation occurs, and thus how to prevent it from happening. The fact that illegal recruitment practices often take place outside of Canada, as workers are being charged illegal fees before they arrive, is at times cited as an insurmountable obstacle in the path to abolish exploitative recruitment practices. However, I argue that what is most significant about the recruitment path is not where it begins, but where it ends. And when it is ending in B.C. with employment agents operating within our province, there is a multitude of ways to overcome the issue around abuse occurring within multiple and overlapping jurisdictions. I will examine some of these solutions within this chapter, and then provide a more in depth analysis in chapter 6 when I compare B.C. to best practice models of regulation throughout Canada.

Employment agents who recruit TFWs into B.C. often have connections with recruiters in other countries who are connected to the long supply chain that deliver migrant workers to employers. The length of the recruitment process can complicate the enforcement of B.C.'s ESA. For instance, TFWs sometimes pay recruitment fees to recruiters who are not operating from B.C., thus introducing the issue of jurisdiction. However, in the case of the landmark class action lawsuit against Denny's, the courts ruled despite the TFWs having paid the illegal recruitment fees outside of the province, the jurisdiction remained in B.C. because the employers were located in B.C.. On the topic of gaining jurisdiction despite the international context, Gordon, a lawyer from the case, states:

> We were able to circumvent that I think by simply saying that the agency was working as an agent on behalf of Denny's and Denny's was therefore legally responsible for whatever the agency did. And the courts are generally pretty good at saying 'well look the primary connection in the case is between the workers and Denny's and that is in British Columbia and you know we are not going to slice and dice this thing so you have to bring a case in so you would have to bring in a case in the Philippines and then you have to bring another case here.' I think if the court finds that the predominant aspect of the case is located here then they are likely going to take jurisdiction. (Gordon, interview, February 19, 2016).

What is most significant about this statement is that it highlights how the courts recognize that what matters the most is where the recruitment cycle ends. By placing the

onus on the employers, in this case Denny's, for their use of employment agents, the courts have set a precedent around employer liability.

It is necessary to focus on where the recruitment cycle ends because when TFWs are coming into B.C. there is always going to be a direct connection to not only a B.C. employer but a recruiter who is operating within the provincial jurisdiction. In an interview with a B.C. based employment agent, she highlights how frequently recruiters operating in international jurisdictions contacted them:

> Usually they contact me by email and I would say it happens at least once a month where we are approached by agencies from Indonesia, India, all over the world really. And basically they say we have all of these qualified nannies, can we create some kind of arrangement. They want to place their nannies with families here. And I don't even reply, I just ignore this. This is just not even an avenue that we would explore. It is just not something we would consider. I guess there is unregulated recruitment that happens in peoples home countries and now they (the recruiters) have a chance to reach out and see if there are any other opportunities to connect. (Jayne, interview, November 12, 2015).

The compelling point here is that the B.C. based employment agent is highlighting that the recruitment process must involve the cooperation of agents within the province. Thus we can see how the international jurisdiction of the recruitment process always ends with the placement of a TFW in a local jurisdiction. Moreover, it is the employment agents' personal decision not to engage with recruiters who are charging fees to workers. That this decision is born out of individual morality indicates that B.C. is failing to provide other deterrents to prevent relationships with recruiters who are charging fees for job placement.

The structure and length of the recruitment process is one of the most difficult aspects when it comes to the enforcement and existing regulation and the recovery of fees. However, provinces beyond B.C. have made significant strides in their regulation of employment agents that span multiple and intersecting jurisdictions. Overall, it is crucial to focus on not only how recruitment takes place but also *why* it does. When the employers are held accountable for their engagement in the recruitment of TFWs it makes the process of overcoming jurisdictional issues a surmountable task.

5.1.2. Illegal fees and unscrupulous recruitment practices

Throughout this thesis I have referred to both the illegal and the unscrupulous practices of recruiters who bring in TFWs. When I refer to unscrupulous recruitment practices I am using 'unscrupulous' as a technical term that refers to the insidious grey area that recruiters often operate within. As discussed, according to B.C.'s ESA, it is illegal for employment agents to charge workers for job placement. However, Zell (2011) highlights that employment agents will characterize the fees that are for job placement as fees for "immigration-related costs" in order to circumvent the provision in the ESA (p. 7).

A major finding from my research with participants, in particular migrant advocates, was that they often encountered TFWs who had paid fees that employment agents characterized as immigration related services in order to not appear to be charging for job placement. For instance, a labour lawyer from B.C. reported that:

> I have seen them [employment agents] try to get around, I have seen some where they don't put anything in writing, like everything is word of mouth, it is like a hand shake is what seals the deal. They won't send even emails. I had one particular fraudulent recruiter who was telling the workers to delete all the emails before they came to Canada. And then others I have seen will give the worker a very detailed accounting of what they are paying for and I mean there won't be anything that says, 'this is what you paid for information about the job' or 'this is what you paid for to get the job' because they know that is illegal. So instead you will see these outrageous fees for things like telephone calls home, or rent or whatever. But it will be things like $500 for a $20 call, like things that are just so obviously not the real expense. (Unidentified, interview, November 30, 2015).

This statement highlights how employment agents will strategically hide evidence of illegal payments collected from TFWs, as well as how the payments are re characterized in an attempt to legitimize the fees that TFWs have paid. From this statement, I argue that it is pertinent that B.C. adopts the best practice provisions for regulating the practices of agents who recruit TFWs. By not employing the readily available policy mechanisms that are available to provincial governments, B.C. is actively standing by and allowing agents to place TFWs in B.C. in conditions of debt bondage.

Employment agents in B.C. are becoming increasingly skilled in the area of charging illegal fees to TFWs. While the Denny's class-action lawsuit resulted in a large settlement for TFWs who faced exploitative working conditions and paid illegal recruitment fees for their job placement; the public litigation around the illegal charging of recruitment fees also allowed employment agents to hone their skills when it comes to charging TFWs for job placement. A B.C. based migrant advocate commented on the outcome of the Denny's class-action:

> … I think the Denny's case, the Denny's class action case also had a pretty big effect on that as well. That was a pretty public display of, very public litigation around that issue and so recruiters, recruitment agencies, and employers got a lot more sophisticated around either a) avoiding charging employment fees, and b) if they are charging employment fees, they are structuring them in a way that it doesn't look like employment fees…(Nicolas, interview, December 18, 2015).

Thus, we can see how insidious the recruitment relationship is between TFWs and employment agents who are actively looking to circumvent the current provincial legislation that prohibits the charging of fees for job placement.

Another migrant advocate explained that employment agents would often coach TFWs on what not to say to the Canadian Boarder Service Agents (CBSA) upon their arrival in Canada:

> …Depending on whether or not that recruitment was legit and I think there is a lot that aren't, sometimes workers are coached before they get to Canada, what they can say to the CBSA. So for instance, they might be told, 'if you are asked if you paid recruitment fees, say 'no'.' They are almost always coached that because that is a question they will get… (Unidentified, interview, November 30, 2015).

The overarching point from these statements is that the recruitment of TFWs is a business that seeks to profit from the exploitation of migrant workers. Moreover, the current regulatory framework for preventing this abuse is inadequate as recruiters are able to circumvent the law.

Throughout my interviews with migrant advocates, many of who work as labour lawyers, it became clear that in addition to the state legislated unfree labour conditions

TFWs are put into a position of debt bondage through the recruitment process. For instance a migrant advocate and lawyer pointed to the rate at which TFWs are forced to pay illegal recruitment fees to work for employers in B.C., "…There may be some legitimate recruiters that operate according to the law, but in my practice I never saw one. Like every one of them at least charged an illegal fee…" (Unidentified, interview, November 30, 2015). Additionally a migrant advocate from the UFCW reported how the debt bondage incurred through recruitment placed a TFW in desperate position:

> But my union UFCW is fighting for the Guatemalan people to not pay to come to Canada to work in the farms. Right now these kind of people pay too because I attended to one worker last year who was in the hospital and he was very, very scared because he needed money to pay in his country. And I asked him why, 'what is the problem?' because he was saying to me 'oh, Claudia please help me go outside the hospital' and I said 'No, but you are sick, you need to stay and for the all procedures for the medical concern.' And he say 'no I need to work' and I say 'yes you need to work but you need to feel better to work.' But he told me about how all the Guatemalan people pay for the spot, sometimes for the government people and sometimes parents too, mothers cousins, friends…(Stoehr, interview, October 22, 2015).

This statement illuminates how for profit recruitment places TFWs in debt bondage, thus intensifying their unfreedom as indentured workers in B.C.. It also reveals that recruitment is performed by a variety of actors and at times illegal fees are paid to recruiters who are state agents, or who have a familial connection to the TFW.

While I have outlined the illegal and/or unscrupulous recruitment practices of employment agents operating in B.C., it is crucial to also focus the other actors that profit from recruitment of TFWs. In particular, we must focus on how employers in B.C. are seeking out TFWs from a global labour pool, while actively looking to offload the cost of recruitment. For instance, I asked a licensed employment agent about the issue of employers in B.C. wanting the agent to charge the TFW the recruitment fee:

> Well to be honest that does happen and we try to explain to them that of course the rules don't allow you to do that and you cannot charge the worker. And it is in your interest if you are interested in bringing workers of course it is in your interest to do anything you can to bring them including the fee. We try to avoid these kinds of companies if we cannot persuade them to change. And we do primarily tend to offer them

> reasonable fees so they can cooperate with us and use our services. (Unidentified, interview, November 13, 2015).

From this statement it is clear that there are employers who are aware that charging TFWs for the recruitment process is prohibited, however, they are actively seeking recruiters who will offload the cost onto the TFWs. Thus there is a clear need for the state, at the provincial level, to create legislation that makes both employment agents and employer jointly liable for infractions in the recruitment of TFWs.

In this chapter I have worked to outline the interconnections between state transformation, the rise of unscrupulous recruiters, and the engendering of new and intensified forms of exploitation, unfreedom, and debt bondage for TFWs. Overall I have sought contextualize the illegal and/or unscrupulous recruitment practices of employment agents as the functional process through which labour flexibility and unfreedom is achieved within the neoliberal project.

Chapter 6.

Neoliberalization and the failure of British Columbia's *Employment Standards Act*

The previous chapter sought to analyze the ways in which the illegal recruitment practices that bring TFWs into the region engenders further abuse and exploitation for TFWs. Building on the themes of chapter 5, this chapter analyzes the ways in which the political and economic processes of neoliberalization have led to dangerous deficits in protection for TFWs in B.C.. I begin by examining how and why there is an absence of enforcement mechanisms for B.C.'s ESA. I focus on how the state responds to various and often-conflicting demands from political actors as part of the wider political process. Further I connect the perceived failure of the state to enforce the rights of TFWs to the broader processes of labour market regulation and state transformation.

In the second section, I focus on the political processes that have repurposed the roles of the state at the provincial level. I argue that the introduction of a complaint-driven system is a strategic mechanism that aims to download state accountability in relation to the enforcement of workers rights. Next, I further complicate the understanding of state failure by analyzing how and why states fail in particular ways in the neoliberal period. Lastly, I highlight how far behind B.C.'s ESA is in comparison to other provincial "best practice" models that regulate the recruitment practices that bring TFWs into the region.

6.1. The Failure of the Employment Standards Act

This section outlines the overarching failures of B.C.'s ESA, specifically how it fails to provide adequate provisions for TFWs within the region. In particular, I look at how various political actors influence how state institutions function. I look closely at how

competing political demands and discourses are incorporated into the broader political systems in which state roles emerge from. Further, I focus here more broadly on how and why we see the state fail to enforce particular provisions within the ESA. Overall, I am highlighting the complexities that are embedded in the regulation of state institutions and how different political demands can either support or undermine the larger neoliberal project of flexiblizing labour.

In addition to data generated through my interviews with my participants, I have performed a CDA of Debates of the Legislative Assembly of B.C., specifically those between 2014 and 2015 that focus on issues pertaining to TFWs. Thus I have further generated data that illuminates how political discourses influence the formation of regulations in B.C.. Throughout the analysis I focused on the role of various institutional actors and how they have applied political pressure in an attempt to influence the regulations in the ESA in the interest of protecting migrant workers. Lastly, I focused too on how particular state actors undermine the political demands for the enforcement of TFWs rights, by instead pushing a political agenda that prioritizes the demands of employers within the region.

Here, I work to contextualize the failures of the ESA within the larger picture of the ongoing and uneven neoliberal project. In order to accomplish this it is necessary to focus on the state as many multifaceted institutions, and the ways that those institutions are responding to various and often competing political demands. I again draw on the work of Jessop (2007) in which he details political and social determinants of state institutions. Jessop (2007) argues:

> While there are significant material and discursive lines of demarcation between the state *qua* institutional ensemble and other institutional orders and/or the lifeworld, the SRA emphasizes that its apparatuses and practices are materially interdependent with other institutional orders and social practices. In this sense it is socially embedded. (p. 5).

Through this analysis, it becomes clear that we must conceptualize the regional failure of the ESA as connected to both the institutional orders and social practices that regulate the functioning of the state apparatuses. Further, Jessop (2007) highlights that, “States do not exist in majestic isolation overseeing the rest of their respective societies

but are embedded in a wider political system (or systems), articulated with other institutional orders, and linked to different forms of civil society" (p.6).

It is crucial then that I draw on the above statements by Jessop (2007) in order to focus on the social embeddedness and social regulation of state institutions, as part of wider political systems. For instance, in my interviews with various participants they often highlighted how B.C.'s ESA was much further behind other provincial *Acts* that have been expanded in order to provide protection to TFWs. By analyzing B.C.'s ESA and state practices in general as being "embedded in a wider political system…with other institutional orders, and linked to different forms of civil society" (p. 6) we can thus theorize how various institutional pressures can be used to apply political pressure to the regional state institutions within B.C..

In my research I found that political pressure to restructure and improve state legislation in B.C. comes from various actors, both within and beyond that state. Some state actors applied political pressure in the Debates of the Legislative Assembly, and some non-state actors, such as labour lawyers highlighted the need to overhaul existing legalisation in the interest of enforcing the rights of TFWs. For instance, in an interview with a B.C. based labour lawyer I asked him to comment on whether B.C.'s ESA needed to be amended in order to be effective:

> Oh no, no, the ESA needs to be overhauled drastically. The B.C. ESA is sub-par to virtually ever other ESA in Canada on virtually every topic. And that's resulting largely from the 2002 amendments to the ESA after the election of Gordon Campbell. So we have one of the worst ESA in the country. (Gordon, interview, February 19, 2016).

From this statement we can understand that the inadequacies of B.C.'s ESA is connected to the institutional orders and social practices within the region. By focusing on the regional failure of state institutions we can then begin to understand how various political actors, within and beyond the state, are part of the social regulation of state practices. Moreover, Gordon's statement highlights how the election of Liberal leader Gordon Campbell ushered in institutional changes that have undermined the enforcement of workers rights. My overarching argument here is that the state is not an abstract institution but rather, an institution that is responsive to demands of various

actors. Thus, when we seek to transform the state's roles in the interest of protecting TFWs, it is crucial to recognize the power of all political actors.

Additionally, I want to emphasize that the above statement by Gordon, reflects the shift of the B.C. state towards the overarching goal of neoliberalism, which is to undermine the rights and security to workers and flexibilize labour for employers. Gordon highlights that the 2002 amendments to the ESA, which include the introduction of a complaint-driven process and the reduction of all inspections, are linked to the overall decline of the enforcement of workers rights within the region. While the diminishing of state's focus on enforcing the rights of workers through the ESA negatively impacts all those who labour in B.C., TFWs are experiencing a increased impact from this, as they are labouring under the conditions of unfreedom as imposed by through the state structure of the TFWP.

Here, I focus on the power of state actors to apply political pressure that aims to repurpose the role of the state, in order to provide real protection to TFWs. From my analysis of the Debates of the Legislative Assembly, Mable Elmore, the Member of the Legislative Assembly (MLA) for Vancouver-Kensington and Spokesperson for Temporary Foreign Workers and Immigration[14], has emerged as a highly influential state actor who has been instrumental in the call for regional protections to be added in order to protect and enforce the rights of TFWs in B.C.. Elmore has drawn attention to both the need for additional protections in the ESA for migrant workers and the need for greater enforcement for the protections that currently exist. For instance, in a 2014 debate on the TFWP and the protection of workers Elmore highlighted the hypocrisy at play, when the state expanded its use of TFWs while shrinking their protections:

> The number of Temporary Foreign Workers in B.C. has increased dramatically in the last ten years. During the same time the government has cut their employment standards staff by 50 percent and closed half their offices.
>
> We've heard stories of people being abused on the job and threatened when they complain. That seems to be the only recourse for workers, to

[14] Elmore is also the Deputy Spokesperson for Finance.

> come forward with this complaint driven process, and yet the province seems unable to protect them (*Hansard*, 5 May 2014 col 1410).

In this statement Elmore has effectively applied political pressure by illuminating how the strategic diminishing of the employment standards officers and offices is directly connected to the rise of TFW abuse.

The reduction of state institutions involved in the enforcement of TFWs rights is part of the political and economic processes of neoliberalism. In particular, we see the retrenchment of workers' rights and protections, and thus the rise in unfree and flexible labour, which is an overarching part of the neoliberal agenda. Moreover, Elmore's political agenda is clearly focused on the protection of TFWs in B.C.. Thus, I argue that Elmore's political demands are an example of the complexity of the role of the state. Specifically, the state is not a monolithic institution; rather it is a conglomerate of institutions that is embedded in a complex political process.

In another section of the Debate from the Legislative Assembly, Elmore pushes the debate further by calling attention to the more robust provisions for regulating and protecting TFWs in Alberta and Manitoba. However, Honourable Shirley Bond, the MLA for Prince George-Valemount,[15] responded by briefly focusing on the rights of migrant workers, but then moving forward with a discussion on prioritizing B.C. workers and their needs:

> Well, as I said previously, there is not a person in this House that suggests or supports the fact that when a temporary foreign worker comes to British Columbia in good faith, expecting to be cared for and treated with respect and dignity... When they're not, of course, there need to be sanctions against employers.
>
> We do need to remind the member opposite that while it is a federal program, we have been very supportive of the changes that Minister Kenney[16] has made and is planning to make. In fact, we have had numerous discussions about this. On our recent trip to Ottawa, where we

[15] Bond was appointed Minister of Jobs, Tourism and Skills Training and Minister Responsible for Labour on June 10, 2013.

[16] The changes made by Minister Kenny include the 2014 overhaul of the TFWP in which the program was adapted in order to "put Canadian workers first."

> took investors and also First Nations and others to meet with the federal government, we made it clear that in British Columbia we expect that British Columbian workers will come first. (Hansard, 5 May 2014 col 1410).

From this statement we are able to observe the nuances of political discourse and how claims by Elmore for regulatory protections of vulnerable and abused TFWs in B.C. can be turned into a commentary on regional protectionism. Bond's statement invokes colonial ideologies in order ensure that "British Columbian workers will come first."

Overall, this section has examined the overarching failures of B.C.'s ESA and how these failures are connected to the economic and political processes of neoliberalization. In particular, how Honorable Shirley Bonds in the Debates of the Legislative Assembly pushes a political perspective that prioritizes labour migration that meets the perceived needs of British Columbian workers. Further, Honorable Shirley Bonds positions the protection of TFWs in B.C. as a political demand that is at odds with the protection of the interests of workers within B.C.. Moreover, this section has highlighted the ways in which state roles are in fact socially regulated and embedded within a wider political system that includes the political mediation from various actors. Lastly, we can observe the unevenness of state institutions and the neoliberal project, as we see how state apparatuses are formed by various and often competing political demands.

6.1.1. Neoliberalization and the rise of the complaints driven system

The introduction of the complaint driven system in B.C. effectively communicates to workers in the region that they are personally responsible for ensuring that employers do not commit violations of their rights under the ESA. While the individualizing of workers rights is problematic for all those who labour in B.C., it is particularly dangerous to impose this onto TFWs. The danger lies in the fact that TFWs who enter the low-waged streams are tied to a particular employer in addition to having their employment status tied to their immigration status. Thus, as outlined in earlier sections on the state

legislated unfreedom of TFWs, if migrant workers lose their job for any reason, they face deportation.

Many of the participants I interviewed commented on how the vulnerability and temporary status of TFWs is a barrier to their ability to access protection from abuse in the work place. In an interview with David Eby, an MLA for the NDP in B.C., he commented on this issue, stating:

> I think one big issue that we have with a workforce that is as vulnerable as the temporary foreign work force is in British Columbia, is that they can be deported quite easily and they are very vulnerable. (Eby, interview, December 14, 2015).

Thus, it is clear that because TFWs are highly vulnerable to deportation, they experience a disproportionately negative impact by the complaint-driven system of accessing protection within the region. Moreover, this statement from Eby, highlights how the neoliberalization of the state occurs in an uneven way, as members of opposition parties like the NDP, push back against the political practices that create the conditions for the abuse and exploitation of TFWs.

Further, another B.C. labour lawyer detailed the systematic ways in which the rights of TFWs are undermined through the complaint-driven system:

> Well the *Employment Standards Act* has a lot of problems; it has a lot of problems. In my view it doesn't adequately protect workers doing precarious work. The fact that it is a complaint driven system is ridiculous because the most vulnerable worker, the fact that you require a vulnerable worker to fill out a form saying that they have tried to resolve this matter with their employer, encourages people not to access, not to access the complaint resolution features of the Act… (Nicolas, interview, December 18, 2015).

This statement highlights that the inclusion of complaint process can be understood as a strategic way of limiting the number of workers, in particular TFWs that access the complaint resolution features of the ESA. Nicolas goes on to detail how even when TFWs do put forward complaints, the repurposing of the state role under neoliberalism means that there are superficial resolutions provided rather than meaningful protection:

> …And even when employees do manage to complain and initiate a complaint, they [the Employment Standards Branch] insist on this mediation process where they [the workers] get settlements, instead of actively looking into the issue and providing a remedy that solves the issue in that work place, not only for that worker but for other workers who could potentially be subjected to this bad employers behaviour. So there is a lack of funding, lack of proactive enforcement. (Nicolas, interview, December 18, 2015).

Thus, it is apparent that while the state maintains an active role in providing employers in B.C. with temporary and highly vulnerable TFWs, there is a significant decrease in the role of the provincial governments protection and enforcement of the rights of workers. Moreover, the lack of protection disproportionately impacts the rights of TFWs who are vulnerable to employer retaliation that can result in their deportation.

The rise of a complaint driven system has specific implications for TFWs who have experienced illegal and/or unscrupulous recruitment practices in their migration to work in B.C.. In particular, the 6-month limitation poses an additional barrier to TFWs who are seeking damages against an employment agent who has illegally charged fees for job placement in B.C.. Labour lawyer Gordon highlights how the 6-month limitation undermines the protection of TFWs in the recruitment process:

> We had hope with Denny's that it was going to be kind of a blue print for how TFWs enforce their rights, since especially in British Columbia the Employment Standards Branch doesn't seem to be effective in enforcing rights. There is a 6-month limitation period and most of those workers aren't aware of their rights in the first 6 months of their arrival. Especially with the payment of agency fees which is very common and on airfare, all of those things, they just aren't aware they have those rights until it is too late, 6-months and its gone. (Gordon, interview, February 19, 2016).

Here, Gordon focuses on how the 6-month limitation can render the ESA and its protections completely inaccessible to TFWs who have been charged illegal fees for job placement, or other services by agents in B.C.. Further, this comment highlights the failure of the Canadian state at both the federal and provincial levels, to inform TFWs of their rights as workers within Canada. Overall, the Canadian state at the provincial level in B.C. is complicit in the continued exploitation of TFWs by recruiters who are operating within the region. The 6-month limitation for claims going through the ESB is effectively

allowing the province to strategically reduce its role in the protection of workers within the region.

Another B.C. labour lawyer who requested to remain unidentified recommended that the 6-month time limit for complaint be abolished, noting too how this directly undermines the rights of workers who have been exploited in the recruitment process:

> One huge thing that needs to be changed, at least for the recruitment, I mean for all employment standards, but especially the recruitment is the time limit. The 6-month time limit, right now most people aren't even in Canada when the 6 months expires because it starts counting when they pay the money. And it takes so long to get here so even if someone was waiting at the airport with a pamphlet about Employment Standards, which obviously doesn't happen, there is really no way they can enforce this. So I mean that is one, very small amendment that I think would make a huge difference. (Unidentified, interview, November 30, 2015).

This is significant as it highlights how the length and structure of the recruitment relationship that TFWs endure on their way to work in B.C. is something that must be factored in to the enforcement of workers rights. Moreover, this statement reinforces my argument that the illegal recruitment practices that TFWs are subjected to lead to the conditions of indentured labour. Specifically, when TFWs are charged illegal fees for job placements, they enter into a form of debt bondage. This debt bondage serves the interest of employers, who are thus able to further abuse and exploit TFWs, who must continue to work for them in order to pay off their recruitment fees.

The following sections of this chapter will focus on how various actors and their competing political demands influence the formation of state roles. Additionally, I will hone in on how state institutions can adopt more comprehensive regulatory mechanisms that effectively protect the rights of TFWs at all stages in the recruitment process.

6.1.2. The enforcement gap

Here I am building on the previous section that examines the neoliberalization of state roles. I am focusing on how the strategic reduction of state institutions involved in the protection and enforcement of workers rights, has had disproportionately negative impacts on TFWs, in particular those who have been subjected to illegal recruitment

practices. Throughout this section I will address state failures while simultaneously complicating the understanding of state failure within the neoliberal period.

My focus on the enforcement gap is directly influenced by the work of Vosko (2013) and her analysis of how the erosion of workers rights is connected to the neoliberalization of the state and the decline of enforcement mechanisms. Vosko (2013) argues that in the case of Ontario the lack of enforcement of workers rights has become a crisis. She states:

> This crisis is shaped not only by well documented deficiencies in the scope of Labour protection but by the fact that the administration of the Employment Standards (ES) system has not kept pace with the increasing number of workers and workplaces requiring protection under the province's Employment Standards Act. Coupled with an outmoded complaint-based system, the dearth of support for ES enforcement is cultivating a situation in which an unprecedented number of workers are bearers of rights without genuine opportunities for redress (Vosko, 2013, p. 845).

Vosko's statement illuminates a fundamental part of the neoliberalization of the state, in that the restructuring of the state undermines the rights of workers. In particular, if state institutions that have previously been charged with the enforcement of the workers rights are dissolved, the rights cease to exist for all intents and purposes.

While Vosko's focus is primarily on how the enforcement gap is impacting the rights of workers within Ontario, her analysis of the transformation of the state is applicable in a broader context. Additionally I am incorporating Jessop's (2007) work on theorizing the modern state in my analysis of how the enforcement gap is a symptom of the neoliberal project. In particular, I examine how neoliberal processes aim to repurpose the role of the state and create flexible and unfree labour for employers. Specifically, we can see how state institutions are readily providing employers with temporary, vulnerable and disposable labour, while simultaneously undermining the ability of workers to access protections. Moreover, this section aims to complicate how state failure is conceptualized by examining the social and political forces that influence and mediate the shifting roles of state institutions.

As I have argued throughout this thesis, the illegal recruitment practices that TFWs are subjected to, are a functional process of neoliberalization in that they create the conditions of unfree and flexible labour. Additionally, the enforcement gap that exists between the rights that TFWs have access to in theory and the actual practical application and attainment of them is too a functional process of neoliberalization. Moreover, when TFWs in B.C. are denied access to the enforcement of their rights, they become increasingly vulnerable to employer exploitation, as employers can abuse workers with impunity.

NDP MLA, Eby, makes a striking comment on the enforcement gap for workers engaged in standardized, and unionized work within the region:

> Well, I can tell you that *Employment Standards* is struggling with even the basics of full time unionized workers who are working in British Columbia and the example I would draw from is the multiple explosions at B.C. saw mills that are taking people's lives and the failures of Work Safe B.C. to enforce even basic standards of accountability and prevention in relation to these disasters…(Eby, interview, December 14, 2015).

This is a pertinent comment as Eby highlights that there is a failure to enforce the rights and to secure the safety of workers in B.C. who have access to unionized work. Thus, it is clear that TFWs who are legislated into conditions of permanent temporariness, and are at risk for deportation, face even further barriers in their pursuit of rights as workers.

The enforcement gap is a failure of state capacities to perform, as they ought to according to the legislation that exits. Therefore the question of how and why states fail in particular capacities must be addressed. In order to look at state failure, I turn again to the work of Jessop (2007) in which he argues that key element of state transformation is:

> The redrawing of the multiple 'lines of difference' between the state and its environment(s) as states (and the social forces they represent) redefine their priorities, expand or reduce their activities, recalibrate or rescale them in the light of new challenges, seek greater autonomy or promote power-sharing, and disembed or re-embed specific state institutions and practices within the social order (p. 6).

From this Jessop has created the foundation to understand state capacities. Jessop (2007) makes the compelling point that states exist within inherently social and political environments. Thus, we can avoid reifying the state, by focusing on how political processes impact state outcomes, including the failure to enforce the rights of workers.

By understanding how state failure interconnects with the political and social forces that mediate the functioning of state apparatuses we can begin to conceptualize both how and why the state has failed to effectively regulate the rights of workers, in particular that of TFWs in B.C.. For instance, NDP MLA, Elmore has directly applied political pressure within the Debates of the Legislative Assembly in B.C.. Elmore highlights how the state legislates the precarious and exploitative conditions of TFWs and at the same time the state fails to enforce the rights of workers:

> Their experience, particularly with their temporary visas and being employed to a single-employer work permit, an employer-specific work permit, with workers under the threat of repatriation if they raise concerns, puts temporary foreign workers in an exploitative and precarious situation. As well, the cuts and the lack of proactive enforcement of labour standards also contribute to their precarious nature, and the lack of access to appropriate legal services is a barrier that limits access for these individuals to seek and protect their rights (Hansard, 2 November 2015 col 1005).

Elmore's statement allows us to understand the nuances embedded within the failure of the state. What is so significant is that the state has not actually failed; certainly it is not successfully enforcing the rights of TFWs. However, the state is succeeding in meeting the demands of employers for temporary, disposable, and highly exploitable labour. Moreover the perceived failure is not in fact a failure, but rather the repurposing of state priorities in response to the demands of employers and capital and the various actors that apply political pressure to the state apparatus on behalf of capital.

In order to further investigate the repurposing of the state within the political and economic processes of neoliberalization, it is necessary to focus on state institutions as embedded within social and political practices. I achieve this by looking not only at the demands for TFW protection from Elmore, but also the demands from political actors. Specifically, political actors who pressure state institutions to meet the demands of employers, over workers. For instance, Liberal MLA Dan Ashton responded to Elmore's

above statement by highlighting that the ESB exists, and thus must be performing the work of protecting workers. After dismissing Elmore's claim that the state is not adequately enforcing the rights of TFWs, Ashton shifts the focus to how the state can use labour migration for economic gains:

> But we all know that in our growing economy, we could train every eligible British Columbian and we still would not have enough workers to fill those job openings. Responsible use of the federal government's temporary foreign worker program helps move our economy forward by filling short-term labour gaps (*Hansard*, 2 November 2015 col 1010).

This statement from Ashton highlights the embeddedness of states within wider political systems. In particular we can see how Elmore is applying political pressure for the province to direct increased attention to the enforcement of the rights of TFWs who labour in the region, and Ashton is undermining this by focusing on the needs of employers and the filling of short-term labour gaps.

The tension that exists in the formation of state agendas and roles is all the more apparent when Ashton, in response to Elmore's call to close the enforcement gap for TFWs, argues that all workers, regardless of status have access to the same rights:

> All workers in British Columbia, regardless of their immigration status, have the same rights and same protections. This includes protection under B.C.'s labour laws, employment standards, minimum wage and workplace safety standards (*Hansard*, 2 November 2015 col 1010).

This statement illuminates the ways in which competing political actors can attempt to undercut the political demands by denying the relevance or legitimacy of their claims. In this case Ashton is aiming to undermine the legitimacy of Elmore's claim that the state is failing to enforce the rights of TFWs. Through this analysis of the formation and repurposing of state roles, it is apparent that the failure of the state is largely based on the political vantage point that one takes. For political actors, such as Elmore, who are concerned with the abuse and exploitation of TFWs there is a clear failure in the functioning of the state. However, for Ashton, whose politics are rooted in a concern that labour markets in the region meet the demands of capital, there is no failure in the enforcement of TFWs to speak of.

As I have outlined in the discussion above, the understanding of state failure is a deeply political one. The concept of failure is rooted in the political discourse that state actors are situated within. Further, the goals of neoliberalization can complicate the demarcation between failure and success. For instance, state legislated permanent temporariness and flexibility of TFWs can be framed as a success in terms of the goals of the neoliberal project; while other political actors can frame this as the failure of the state to enforce the rights of TFWs.

The unfreedom that TFWs endure as a result of illegal recruitment practices is connected to both the enforcement gap and ongoing colonial practices that shape the functioning of temporary labour migration into Canada. As discussed in earlier parts of this thesis, the TFWP operates through explicitly racist and imperialist practices in which TFWs who enter through the low wages streams and are from "developing nations" are subjected to the conditions of unfreedom.[17] The enforcement gap as it relates to illegal recruitment practices, effectively creates the conditions of indentured labour, as TFWs are illegally being charged fees for job placement in B.C.. Moreover, there is little or no recourse for TFWs who have been charged fees for job placement as the ESB has the 6-month limitation, in addition to being a difficult and risky process for TFWs to navigate.

I argue that the state, in particular the provincial government, fails to effectively regulate the practices of employment agents who recruit TFWs in B.C.. However I couch this argument in the above discussion that situates the repurposing of the role of the state within the various and often conflicting political and social demands that are placed upon in. Further application of Jessop's (2007) argument that state institutions are not abstracted from political processes, and are instead embedded within wider political systems, we can look at how competing demands have led to the 'failure' of the provincial state to protect TFWs from illegal recruitment practices. Elmore applies political pressure on provincial state apparatuses by calling attention to the ways in which illegal recruitment creates oppressive and exploitative conditions for TFWs:

[17] Including, tied work permits, having their immigration status tied to their employment status, and employer tied housing.

> One of the areas that I want to highlight, as well, which is a big gap and just is a terrible situation, is the reality of recruitment fees that migrant workers are being subjected to in our province… There's widespread abuse of low-wage migrant workers at the hands of disreputable recruiters. This has been going on for years. A significant number of migrant workers are brought to Canada by recruiters who charge oppressive recruitment fees, which are illegal but are, in fact, going on under our noses because there's a lack of enforcement (*Hansard*, 2 November 2015 col 1005).

This is significant because we can see that the way that Elmore presents the failure to regulate the practices of employment agents is as a failure of the state. This failure is predicated on an understanding that the state ought to be fulfilling a mandate around the enforcement of the rights of TFWs within the region.

However, when we further complicate the understanding of failure in the context of the neoliberal project we can see how this oversight may in fact be part of the strategic downsizing and repurposing of state roles. As discussed in the theoretical framework, Peck (2001) argues that within neoliberalism states and their actors strategically engineer the downsizing of particular roles and responsibilities. Thus we can then understand the unchecked illegal recruitment practices as part of the overarching goal of neoliberal state transformation. For instance Elmore states:

> As well, there is routine and systemic charging of thousands of dollars in recruitment fees to be placed in low-wage jobs. And the fees, to the extent that they can equal as much as two years' wages from these workers' home countries, effectively place workers in debt bondage to their employers and recruiters. The failure to guard against these exploitative recruitment practices sets the stage for recruiters and employers to subject workers to even deeper erosion of their legal rights here in British Columbia and also raise insurmountable barriers for workers to enforce their rights to decent work (*Hansard*, 2 November 2015 1005).

Elmore's statement is significant as it allows us to examine how the state is purposely failing to address the "routine and systemic charging of thousands of dollars in recruitment fees" to TFWs working in B.C.. Elmore is a state actor who is pushing for the province to effectively protect TFWs from debt bondage. However, within neoliberalism the state is largely responding to the demand of employers for flexible and disposable temporary labour. Thus, I argue that the perceived failure of the province to protect

TFWs from illegal recruitment practices is a strategic failure in that these practices place TFWs in conditions of indentured labour, making them more easily exploited by employers within the region.

The enforcement gap and the rise of indentured labour through illegal recruitment practices are connected to the larger project of creating flexible and unfree labour that fills the demands of employers. By understanding the state as many multifaceted structures that are in constant flux based on various political demands, we can foster a deeper understanding of how the enforcement gap is reproduced through completing political demands. I have provided different statements from Elmore in which she demands that the state effectively protect TFWs. However, we also see how political actors involved in conversation with Elmore in the Debates of the Legislative Assembly only support the enforcement of TFWs rights in a superficial way, with no support for policy change. For instance, Liberal MLA Mike Bernier[18] addresses the abuse of TFWs by presenting it as something to be handled at the federal level:

> Fundamentally, the temporary foreign workers cannot and should never be abused by the system or by employers here in British Columbia.
>
> It's not fair. They deserve more, and they deserve the same rights and dignity as any other worker in Canada, as stated in the Employment Standards Act. Our federal counterparts are looking at creating a black list and the means to impose serious sanctions, including losing the ability to use this program or fines and jail time for employers who exclude efforts to use Canadians for jobs (*Hansard*, 5 May 2014 col 1110).

This is significant as Bernier addresses the abuse that should be covered by the ESA and then in the very next sentence passes the responsibility to the federal level. Moreover, Bernier is reframing the issue around the protection of Canadian jobs, as he speaks to serious sanctions that will punish employers who do not prioritize Canadian citizens or permanent residents for available jobs, rather than sanctions that target employers who abuse and exploit TFWs. Thus, it becomes clear that the enforcement gap is not necessarily a failure of state capacities. Rather, it is part of a larger process of

[18] Bernier was elected MLA for Peace River South on May 14, 2013. On July 15, 2015, Mike was appointed to the post of Minister of Education.

repurposing the role of the state to socially regulate labour markets in a way that prioritizes the demands of capital, over the rights of workers.

Closing the Enforcement Gap

Political pressure for the province to address the enforcement gap, specifically how it impacts TFWs via the unregulated illegal recruitment practices, comes from various actors. Here, I look at how MLAs from different political parties put forward competing demands around the issue of the enforcement gap in B.C.. This section highlights the multifaceted nature of the formation of state legislation. I am able to highlight the complexity of the state by looking at how political actors push demands through competing political discourses.

NDP MLA, Elmore consistently uses her platform as a state actor with a strong commitment to a community of migrant workers to highlight the hypocrisy of a region that depends on the labour of TFWs, yet undermines their rights and safety. Additionally, NDP MLA Harry Bains for Surrey Newton advocates for the enforcement of TFWs through legislation such as Bill 39, the Provincial Immigration Programs Act. Bains highlights how other regions in the country have implemented better enforcement and protections for TFWs and how B.C. has neglected to do so:

> When you look at some of the other jurisdictions — Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick — these provinces took this issue seriously, based on Canadian values that we believe in — that no one should be exploited in this day and age, regardless of the circumstances, and that everyone must be treated equally and within the law. They put regulations and enforcement tools in place, where they require these employers to register if they have temporary foreign workers, and they are given permits. The employment standards officers then would be able to go and to have spot checks — check the records, speak to employees, speak to employers. That's how they enforce it.
>
> Well, we don't have that, and this bill does not cover that either. Here was an opportunity. The government again squandered that opportunity to have that one part attached to Bill 39. It's not there…
>
> Why isn't this bill giving authority to the Employment Standards Act, or the director — giving the director powers to have all those employers register with the employment standards branch? And then give them the re-

> sources to enforce the rules and regulations under which these workers are employed (*Hansard*, 8 October 2015 col 1345).

While Bains applies political pressure that aims for state bodies to respond by increasing regulation that is coupled with real enforcement in order to protect TFWs who labour in B.C., the response from the Liberal party is to deny the need for increased enforcement and instead focus on the regulation of labour markets in a way that prioritizes workers with citizenship. In particular Liberal MLA Mike Morris[19] responds to Bains' call for increased enforcement by shifting the discourse and stating:

> With this bill, the priority is for us to ensure that British Columbian workers are first in line for these opportunities. We know that even if each eligible British Columbian was trained to fill these positions, we still wouldn't have enough workers available. That's why economic immigration is going to play a critical role in moving B.C.'s economy forward (*Hansard*, 8 October 2015 col 1405).

Morris's statement is significant as it illuminates how a progressive call from Bains and Elmore to have the rights of TFWs enforced through state legislation is undermined through a focus on the regulating labour markets through the framework of economic immigration.

The closing of the enforcement gap is a process that requires both the enforcement of existing legislation and the creation of new provisions that are clear and able to be applied in the manner in which they are intended. While progressive political actors such as Bains and Elmore apply pressure to the state apparatus to close the enforcement gap, there is a need for pressure from political groups within civil society. In the next section I will examine B.C.'s ESA, specifically the provisions that regulate recruitment, to other provincial models. I will focus on various political actors, including factions of civil society have influenced the formation of more comprehensive legislation with which to regulate agents who recruit TFWs.

[19] Mike Morris is a Canadian politician, who was elected to the Legislative Assembly of British Columbia in the 2013 provincial election. He represents the electoral district of Prince George-Mackenzie as a member of the British Columbia Liberal Party.

6.2. Comparison of B.C. to "best practice" models of regulation

Here I am building on the above sections that have outlined the repurposing of the state institutions within the neoliberal era. I am further contributing to my in which I highlight how state institutions are politically and socially regulated in the interest of employers, and thus at the expense of the rights and protections of TFWs. In this section I take a pragmatic approach in which I highlight the inadequacies of B.C.'s ESA, specifically the regulation of recruiters, in comparison to the models that exist in Manitoba, Saskatchewan, and Nova Scotia. My purpose here is twofold. First, I aim to provide an analysis of how the provincial government in B.C. can adopt more effective modes of regulating the practices of employment agents who recruit TFWs. Secondly, I am contextualizing the pragmatic policy solutions within a larger context in which I argue that my research highlights that the regulation of recruiters within the region, is but one small element that is necessary to overcome the state legislated conditions of unfreedom, that TFWs labour under. Overall, I set out highlight the rampant deficiencies of B.C.'s ESA, while simultaneously looking at how labour migration within a capitalist framework is inherently exploitative.

I draw on the comprehensive work of Faraday (2014) and her legal-rights based framework that examines how recruiters exploit TFWs in the Ontario context, along with other models for regulating recruiters produced by academics and migrant activists alike. I connect the data generated from my research to my own comparison of B.C.'s ESA to other provincial *Acts*. I will examine the ways in which B.C. can adapt very specific provisions that exist within other regions.

Faraday (2014) has contributed the most comprehensive work to date that outlines how recruiters' profit from state legislated precarious conditions of work in the low-waged streams of the TFWP. Faraday (2014) succinctly argues that:

> A recruiter's influence does not end when a worker is placed in a job in Ontario. Instead, an abusive recruiter can extract further profit by exacerbating insecurities created by the conditions imposed by Canada's temporary labour migration programs. It is important to understand how these different legal conditions — some imposed through the federal

> temporary migration programs, others through provincial law — intersect to create the space within which exploitative recruitment flourishes (p. 37).

Faraday's work reveals the connections between the federal and provincial levels of government. She goes on to prescribe specific ways in which Ontario along with the federal government can adopt policies that would mitigate the rampant illegal recruitment practices that TFWs experience. In line with Faraday's (2014) work, I argue that you cannot look at abusive and exploitative recruitment practices without also focusing on how the state legislates conditions of unfree labour for TFWs. Thus, here I examine the pragmatic steps that the B.C. provincial government can take to regulate the actions of employment agents.

As I have demonstrated the recruitment of TFWs into B.C. is a complex process. Recruitment relationships between employment agents and TFWs often span long periods of time and many jurisdictions. Thus, my analysis of how B.C. can effectively regulate the complexity of this process draws on provinces in Canada that have developed the most nuanced and pro-active regulatory frameworks. I have created a list of demands that draws on data from the CDA of the Debates of the Legislative Assembly, my interview data, and model legislation created by advocacy organizations that highlights how to effectively regulate employment agents who recruit TFWs. I will go through these demands in order to discuss how B.C. can improve its regulatory regime.

6.2.1. Demands for protecting TFWs from recruiter exploitation

1) No fees/recovery of recruitment fees
2) Protection from exploitation
3) Enhanced recruiter licensing and monitoring
4) Increased fines and improved enforcement mechanisms

As detailed in chapter 5 B.C.'s current system for regulating employment agents who recruit TFWs is ineffective at preventing the rampant abuse and exploitation of TFWs. I argue that the abuse and exploitation that TFWs experience throughout the recruitment process is largely due to the provincial governments response to the demands of employers for cheap and disposable labour, and the subsequent neglect to

create or enforce meaningful protections for TFWs. Thus in my discussion of the following demands for ending recruiter exploitation of TFWs in B.C., I focus on the influence of "best practice" models of regulation, and the political pressure from various actors that has brought about these changes.

1) No fees/recovery of recruitment fees

Currently B.C.'s ESA prohibits charging a fee for hiring or providing information about available jobs. Specifically, provision 10 including sections 1 through to 3 state that no employment agency can charge a worker for job placement or for information about employers who are seeking workers. Section 10 (3) provides a provision for recovering fees that states, "A payment received by a person in contravention of this section is deemed to be wages owing and this Act applies to the recovery of the payment" (ESA, A10.03, p.12). However, as discussed earlier, in practice employment agents throughout B.C. are consistently charging TFWs for job placement and/or information about employers who are seeking workers.

My research has highlighted that the demand to illegally offload the recruitment fees onto TFWs is at times driven by employers who are seeking ways to avoid paying the fees themselves. In chapter 5 I highlighted a passage from an interview with an employment agent in which he speaks to the issue of having employers try and offload the cost of recruiting TFWs onto the workers themselves. This issue is exacerbated by the fact that B.C.'s ESA currently does not hold employers jointly liable with employment agents for illegal recruitment practices.

Additionally in an interview with a migrant advocate and labour lawyer, I asked about the effectiveness of B.C.'s ESA in relation to the licensing and regulation of employment agents, and he responded:

> The licensing process in BC is not something that I… well actually it is not something that I am super familiar with. One of the things I was involved with was taking a look at the Manitoba Legislation, the migrant worker protection legislation (WRAPA) and the requirements there for getting a license, having to put up what effectively amounts to a bond I think, in case you do anything wrong. I think that kind of system is probably much

> more effective than what we have here in BC. (Nicolas, interview, December 18, 2015).

This response imparts an understanding that B.C.'s ESA provisions around the regulation of employment agents is inadequate and could be improved by adopting some of the provisions that exist in Manitoba's Worker Recruitment And Protection Act (WRAPA).

As I have highlighted above, and throughout other areas of this thesis, despite a provision in the ESA prohibiting the charging of fees for job placement or information about jobs, TFWs are frequently being charged illegal fees by employment agents in B.C.. Based on my research it is clear that B.C. must adopt more advanced mechanisms that enable workers, in particular TFWs, to recover recruitment fees. In 2008 Manitoba created the WRAPA in order to clamp down on the illegal recruitment practices of employment agents in the region. In section 4(5)b of WRAPA it states that before an employment agent can be issued a license to operate they must provide "a deposit of cash securities acceptable to the director" (WRAPA, A4.02b, p.6). In practice what this means is that employment agents are required to put up a $10,000 bond that can be used to pay back workers who have been illegally charged recruitment fees.

In Faraday's (2014) report she commends both Nova Scotia and Saskatchewan for implementing and improving upon the provisions found in Manitoba's WRAPA (p. 76). While WRAPA set the stage for advancing the ability of workers to recoup recruitment fees, both Nova Scotia and Saskatchewan have expanded and improved upon this regulation. Nova Scotia's Labour Code[20], and Saskatchewan's Foreign Worker Recruitment and Immigrations Services Act (FWRISA)[21] have implemented provisions that require employment agents to put forward a bond, $20,000 in Saskatchewan. Additionally, Faraday (2014) highlights that both provinces have greatly improved upon WRAPA in that they ensure that both employers and employment agents jointly liable for repaying any illegal recruitment fees that have been charged (p. 88).

[20] In 2011 Nova Scotia amended its Labour Code to include specific sections that are aimed at regulating the actions of employment agents and protecting the rights of TFWs.

[21] In 2013 Saskatchewan created the Foreign Worker Recruitment and Immigration Services Act.

Thus the provincial government in B.C. has many examples of best practice models of regulating recruitment to draw on. Based on my data in conjunction with my comparison of existing provincial models for regulating employment agents, it is clear that B.C. should adopt provisions on par with Saskatchewan's FWRISA and the Labour Code of Nova Scotia. Specifically, B.C. can enhance the protection of TFWs from illegal recruitment practices by including a provision that requires all employment agents to put forward a bond of at least $20,000, in addition to making both employment agents *and* employers jointly liable for any illegal recruitment fees incurred by workers. It is crucial that employers are jointly liable with employment agents, as ultimately employers are the ones who drive the demand for the recruitment of TFWs into the region. Moreover, if employers are jointly liable with agents they will be inclined to ensure that the employment agent they hire is reputable and not engaged in exploitative and abusive treatment of TFWs.

2) Protection from exploitation

As I discussed earlier, the illegal and exploitative recruitment practices that TFWs are subjected to are directly connected to the state legislated forms of unfreedom that are embedded within the TFWP. Specifically, the TFWP legislates conditions of immobility and unfreedom for TFWs, thus increasing the vulnerability of TFWs throughout the recruitment process.

Currently, the B.C. ESA does not include provisions that aim to provide TFWs protection from exploitation and abuse by recruiters. However, as outlined in chapter 5, TFWs are experiencing systematic and ongoing exploitation at the hands of recruiters. Additionally, data from my CDA of the Debates of the Legislative Assembly provide further evidence around the rampant malicious action from employment agents who exploit TFWs entering B.C.. Elmore states:

> I have heard stories about the problems of workers coming in illegally and being charged high recruitment fees, which are illegal, but there is no monitoring, enforcement or repercussions for recruitment agencies who charge these fees.
>
> As well, there's a difficulty of limited labour mobility because work permits are employer specific. Workers coming in are not advised of labour rights.

> They have limited services and are threatened with deportation if complaints arise — and today, this morning, even death, in the case of a temporary foreign worker from Israel who reported, here in British Columbia, that was his experience.
>
> This is unacceptable. We have no oversight of this program in British Columbia, and there is a need to address these problems. Part of the vulnerability is that these workers are in a very precarious situation because they do not enjoy the same legal status. We're seeing a two-tiered system where workers are scared to speak out. They don't enjoy the same protections as workers with permanent residency, and they are at a higher risk. This is unacceptable… (Hansard, 5 May 2014 col 1105).

Here Elmore, lays out the precise ways in which the failures of the ESA and the B.C. provincial government have crated the conditions for employment agents to exploit at abuse TFWs who enter our labour market. Further, Elmore calls on the provincial government to prevent this, “We need oversight. We need to ensure that employers are monitored. We need to ensure that there’s a process in place to ensure that labour market opinions are, in fact, valid and also to ensure that rights are upheld” (*Hansard*, 5 May 2014 col 1105).

Based on Elmore’s indictment of the provincial government regarding the failure to protect TFWs, and Faraday’s (2014) report that holds up Saskatchewan’s FWRISA as one of the most comprehensive regulatory models for protecting TFWs in the recruitment process, I argue that B.C. ought to update the ESA. In particular the ESA should be amended to include a section of provisions that prohibit predatory, abusive behaviour that is demonstrated by recruiters at a systematic level. Specifically B.C. should adopt the provision that Saskatchewan has in its FWRISA; section 22 of the Act states:

> 22. No foreign worker recruiter, employer or immigration consultant shall:
>
> (a) produce or distribute false or misleading information; (b) take possession of or retain a foreign national’s passport or other official documents or property; (c) misrepresent employment opportunities, including misrepresentations respecting position, duties, length of employment, wages and benefits or other terms of employment; (d) threaten deportation or other action for which there is no lawful cause; (e) contact a foreign national or a foreign national’s family or friends after being requested not to do so by the foreign national; (f) take action against or threaten to take action against a person for participating in an investigation or proceeding by any government or law enforcement

> agency or for making a complaint to any government or law enforcement agency; or (g) take unfair advantage of a foreign national's trust or exploit a foreign national's fear or lack of experience or knowledge (FWRISA, A22, p.11).

This provision from the FWRISA is very significant as it targets the unscrupulous practices of employment agents who recruit TFWs. As outlined in chapter 5, my research found that employment agents who exploit and abuse TFWs are able to do so because of the lack of information provided to TFWs, and the deficit of the enforcement of the ESA in B.C.. Thus, by implementing a provision that matches this, the provincial government in B.C. would increase the mechanisms available to the ESB to enforce the rights of TFWs who have experienced abuse and exploitation from recruiters.

3) Enhanced recruiter licensing and monitoring

My research has shown that the current licensing system for recruiters in B.C. is not an effective way of protecting TFWs from abuse in the recruitment process. The licensing process requires prospective employment agents to take a multiple-choice test once, and to pay an annual fee of $100. There is no formal inspection process that goes along with the licensing system, as it remains reactive only to the complain-driven method (Zell, 2011). Moreover, there is the issue of jurisdiction, in that often times employment agents in B.C. will have a long line of other agents who are involved in the recruitment of TFWs into the province.

My research emphasizes the need for enhanced recruiter licensing and monitoring. In particular, in an interview with a labour lawyer and migrant advocate they spoke to the need to improve the regulatory model in B.C.:

> I think anything the province can do to actually regulate these particular businesses, I think would be great. I don't think there is currently anything that is required of them in B.C., I am pretty sure that anyone can just decide that they want to be a recruiter. So I am not that familiar with Manitoba's system but if we had a system where they actually had to be registered, they had to pay a licensing fee, there was some ability to oversee what they were doing. I think that would be really beneficial, especially for the charging of fees. Like that just is something that happens in probably every case, so if we had a way, if you had to be registered in order to be a recruitment company they could at least

> enforce that particular Employment Standards protection. (Unidentified, interview, November 30, 2015).

This statement contributes to the crucial point that B.C. is drastically behind other provincial models for licensing and monitoring. I draw on this in conjunction with Faraday's (2014) argument that Manitoba's WRAPA can be improved upon through "…mandatory reporting of all individuals and entities that participate in the recruiter's supply chain in Canada and abroad…" (p. 89).

In line with Faraday's (2014) recommendation of enhancing Ontario's regulation of employment agents, and my own comparison of "best practice" models in Canada, I argue that B.C. ought to be brought in line with Nova Scotia's Labour Code includes a section that requires employment agents to disclose their complete supply chain before they can be issued a license. This is a very significant provision to include, as often TFWs will be charged illegal recruitment fees by agents who are not directly operating out of the region, but are connected to the employment agent in B.C.. Nova Scotia's provision is in depth and reads:

Nova Scotia requires disclosure of the recruiter's operations and supply chain, including:

> (a) whether the recruiter intends to live in the province full-time and, if not, "the applicant's plans for engaging in recruitment, how those plans are to be carried out and what portion of the applicant'sbusiness will involve placing workers in the Province";
> (b) a list of all countries from which the recruiter plans to recruit "and the names of any companies or individuals in those countries withwhich the applicant or the applicant's employer intends to deal and from which a benefit is expected to be received in relation to recruitment";
> (c) "a list of all bank accounts, both domestic and foreign, maintained by the applicant or by any other person or entity on the applicant's behalf in which the applicant has a current or anticipated future benefit in relation to recruitment work";
> (d) a list of all businesses, both domestic and foreign, associated with the applicant's recruitment work; and
> (e) "a description of the legal relationship between the foreign worker recruitment business and any other businesses, whether incorporated or unincorporated, that own, are owned or operated by, or affiliated with the foreign worker recruitment business." (Labour Code, A15.03).

This provision is robust and highlights that it is entirely feasible to regulate the actions of employment agents, despite their often long supply networks that span multiple jurisdictions. Thus, if B.C. were to adopt a provision similar to this one, it would reframe the issue of recruitment to focus on the responsibility of both employment agents and employers in B.C. to ensure that their recruitment of TFWs does not include any unscrupulous agents along the way.

4) Increased fines and improved enforcement mechanisms

As discussed, it is crucial that B.C.s ESA be amended to create joint liability between employment agents and employers who recruit TFWs. Additionally these provisions must be met with increased funding for the ESB so that regular inspections can be performed to ensure that employment agents are abiding by the legislation. In addition to this, B.C.s ESA must be updated to include increased fines and penalties for those who contravene the *Act*. Employers and agents both stand to profit from their exploitation of TFWs through illegal and/or unscrupulous recruitment practices. Thus by increasing fines along with improved enforcement mechanisms, there is the potential to remove the ability to profit of the exploitation of TFWs through the recruitment cycle.

In the Employment Standards Coalitions' (ESC) model legislation for migrant worker recruitment and protection in B.C. highlights how ineffective the administrative penalties are for a contravention of the ESA. According to the ESC (2013) report, "The fine for a first offence is $500, $2,500 for a second offence and a maximum fine of $10,000 for offences thereafter. However, an employer only moves up the penalty scale if it is penalized under the same provision of the ESA within three years and penalties do not apply where a settlement agreement is reached" (p. 28). Additionally, in an interview with a labour lawyer, they highlighted many issues with B.C.'s ESA, in particular the low cost of the fines, "And the fines if I remember are not particularly steep, given the amount of money these people could be making, so if there is to be deterrents there needs to be changes in that legislation as well" (Unidentified, interview, February 2, 2016). Thus it is clear that there is a serious need to increase the fines that are charged to those who contravene the ESA in order to effectively combat the abuse of TFWs.

In my review of Saskatchewan's FWRISA I noted that it has one of the most onerous provision in order to prevent the exploitation of TFWs. It states that:

Every person who contravenes a provision of this Act is guilty of an offence and liable on summary conviction to:

> (a) in the case of an individual, a fine of not more than $50,000, to imprisonment for a term of not more than one year or to both; and
> (b) in the case of a corporation, a fine of not more than $100,000 (FWRISA, A40.01, p. 19).

By increasing the fine for and adding the possibility of imprisonment, Saskatchewan has effectively created a deterrent to those who seek to exploit TFWs by charging illegal fees for job placement or generally misleading workers about the conditions of their labour. Moreover, B.C. based on my research, B.C. ought to adopt a similar provision in the ESA in order to push back against the rampant abuse of TFWs by both employment agents and employers.

6.2.2. Responding to political demands

As I discussed in the beginning of this chapter, various political actors determine how the state will function, as these actors place demands on the socially embedded state institutions. Therefore in order for B.C. to adopt a more rigorous and comprehensive regulatory framework for the recruitment of TFWs into the region, the state must be responsive to the calls from actors within the state and beyond.

In the continued struggle to have B.C. adopt and enforce effective regulations to protect TFWs from the worst forms of recruitment, it is important to focus on the political practices that have been successful in other jurisdictions. For instance, in Ontario the Employment Protection for Foreign Nationals Act (EPFNA) (Live-in Caregivers and Others), 2009 came into force on March 22, 2010. The EPFNA, created new provisions for protecting all foreign nationals, including TFWs, from illegal recruitment fees. Further, it focused on joint liability between employment agents and employers (Ontario Ministry of Labour, March 2010). The Migrant Workers Alliance for Change, based out of Ontario,

was largely responsible for this important advancement in the fight against illegal and exploitative recruitment.

The Migrant Workers Alliance for Change is made up of “various advocacy and community groups, unions, workers and community members, aimed at improving working conditions and fighting for better protections for live-in caregivers, seasonal agricultural workers and other temporary foreign workers” (Migrant Workers Alliance for Change, 2016). Through the creation of model legislation, in conjunction with campaign efforts that put migrant workers stories of abuse and exploitation at the hands of Ontario recruiters and employers, at the forefront of provincial news media, the Alliance was able to influence the provincial governments regulation of employment agents in a way that focuses on the protection of TFWs.

There is growing political pressure within B.C.[22] for the provincial government to take seriously the abuse and exploitation of TFWs through the recruitment cycle. In particular the West Coast Domestic Workers Association (WCDWA) has worked alongside the B.C. ESC to highlight how rampant abuse is by recruiters and to call for action from the provincial government. The increased political pressure from non-state actors alongside that of people within the state, in particular Mable Elmore, will hopefully succeed in having the state respond by implementing regulation alongside enforcement that can protect TFWs from the abuse of recruiters.

[22] Additionally, there is a new migrant advocacy coalition in Vancouver, B.C., “Rising Up Against Unjust Recruitment”, of which I am a member, that is working to apply similar forms of political pressure in order to enact change from the B.C. government around illegal recruitment. The coalition brings together individuals and organizations that are focused on creating meaningful regulatory models to end unjust recruitment practices. We have been in conversation with Syed Hussan, a coordinator from the Ontario Alliance, and we are learning how to adapt similar political practices in the B.C. context.

Chapter 7.

Discussion and Analysis

7.1. The limits to regulation

Throughout this thesis I have examined the transformation of state roles by looking closely at how labour markets are de and reregulated within the neoliberal era. While broadly I have focused on labour market regulation, I have also honed in on the recruitment of TFWs as a functional process of neoliberalism. I argue that the illegal and unscrupulous recruitment of TFWs functions to provide employers with a supply of highly vulnerable, temporary, and disposable workers. Moreover I have connected the exploitative and abusive conditions that TFWs endure throughout the recruitment process to the state legislated forms of unfreedom that are embedded within the TFWP. I have sought to complicate the understanding of the state within the neoliberal period. Specifically, I have examined how the state is evolving rather than eroding in the neoliberal era.

My focus on the exploitative recruitment cycle that TFWs are placed in has led me to focus on regulatory measures that can be applied to protect TFWs from rampant abuse by recruiters. As my research as shown, it is crucial for the provincial government work in conjunction with the federal government to implement regulatory regimes that do not position TFWs as disposable and easily exploited workers. However, it is also necessary to connect to a larger conversation that problematizes regulatory models on the basis that they are severely limited and cannot address the overarching issues that are endemic to the exploitation of migrant workers; such as, racist imperialist practices that create the conditions for forced migration in the global neoliberal era.

The creation of new ESA provisions in addition to the reinstatement of systematic inspections by the ESB would effectively cut down on the abuse that TFWs endure by both employers and recruiters. However, I argue that regulatory frameworks are limited in their scope for two main reasons. First, the regulation of recruiters in the region does not address the overarching issue of forced labour migration, or the inherent exploitation of wage labour that racialized workers endure through the TFWP. Secondly, the regulatory framework functions to reify the power and legitimacy of Canada as a colonial state.

Various activists and academics have put forward an analysis that engages in an in depth exploration of the complexities embedded in the call to end the exploitation of migrant workers in Canada. For instance, Walia (2013) highlights prescriptive ways that migrant workers can access rights and protections within the Canadian state. However, Walia's activist work with No One Is Illegal is also predicated on an understanding of the Canadian state as an illegal colonial institution that is involved in an ongoing genocide against the indigenous peoples of Turtle Island. In particular Walia (2013) succinctly argues:

> our visions must steer away from seeking greater recognition from a colonial system and go beyond demanding citizenship rights from a settler state. Slowly, we are negotiating a decolonized path towards relations based on dismantling settler colonialism through the affirmation of indigenous self-determination and the welcoming of migrants to live in respectful relationship to existing communities and the land (p. 138).

This is a very significant statement as Walia is speaking to a phase of moving beyond the colonial Canadian state as a mechanism for protecting migrants from abuse and exploitation. I think it is crucial to engage in these larger conversations that situate exploitation not as something that can be dealt with solely through regulatory models rooted within colonial state practices. Rather, any call for increased regulations must be situated within an understanding the neoliberalism operates through imperialism, colonialism, and explicitly racist state practices that position migrant workers at the racialized 'other.'

The work of Sharma (2012) adds another level of complexity to the conversation around how to reconcile migrant rights within the context of a colonial state. Sharma

(2012) deviates from Walia, in that she does not advocate for a model based around indigenous sovereignty. Rather, Sharma (2012) highlights that the institution of citizenship is "*fundamentally incapable*" of meeting the demands of TFWs (p. 30). Thus Sharma calls for an open borders approach in order to avoid the possibility of reifying another state power. Both Sharma (2012) and Walia (2013) contribute pivotal points to the analysis of the limits of regulation. Balancing a critique of colonialism and imperialism with pragmatic regulatory solutions is a daunting task. However, any attempt to do so much include these two scholars, as their works are largely defining the parameters of the discussion.

7.2. Neoliberalism as unfinished politics

In order to further complicate my engagement with proposed regulatory solutions I want to speak to the complexity of neoliberalism and regulatory fixes. Throughout chapter 5 I examined the ways in which state functions are formed through a socially and politically embedded process. Further, in chapter 6 I promote policy solutions through the regulatory reform of B.C.s ESA, based on "best practice" models that exist in other regions. I want to connect this to a larger conversation around neoliberalization and the fast-policy complex.

Peck, Theodore, and Brenner (2012) argue:

> Because the ideological reach of neoliberalism routinely exceeds its grasp, as the source of effective and sustainable policy "solutions," the increasingly insistent churning of policies has become a distinct characteristic of late neoliberalism and perhaps even a source of its tenacity. Systemically, neoliberalization is preoccupied by policy experimentation at the cusp of crisis, and this is the essence of what we characterize here as neoliberalizing fast policy (p. 278-279).

This argument is significant in relation to my research as it problematizes the production of policy within the political era of neoliberalism. Thus, I can complicate the policy recommendations around the regulation of recruiters in B.C. by seeking to understand how these, and perhaps all, policy solutions are absorbed into a neoliberal framework.

The push to create policy mechanisms that function to reign in the most abusive and exploitative forms of recruitment practices, also functions to entrench the political and economic practices of neoliberalization. For instance, the regulation of employment agents who recruit TFWs into the region does not directly problematize the larger issue of neoliberalism operating through imperialist channels. Rather, by focusing on the "best practice" models of regulation we run the risk of allowing neoliberalism to "fail forward" by providing regulatory solutions that are rooted within the overarching neoliberal ideology.

The ability for neoliberalism to "fail forward" through new regulatory solutions is what makes it a kind of 'unfinished politics.' Peck, Theodore, and Brenner (2012) caution that it is "…misleading to characterize neoliberalism as a taxonomicstate "type" or for that matter in terms of a definitive historical era or phase of capitalism" (p. 275). Rather, they focus on neoliberalization not as a "fixed ideological blueprint or rigid policy template, but as an open-ended, contradictory, and multiscalar process of market-disciplinary regulatory restructuring" (ibid). Thus any attempt to push back against regulation of labour markets in the interest of capital must be rooted in an understanding of the ability for neoliberalization processes to adapt and take on new characteristics that continue to prioritize regulation that favours the interests of capital.

Overall, I want this thesis and the policy recommendations that are put forward within in it, to be part of a larger conversation that is predicated on the understanding of the complexity of neoliberalization processes. I want to complicate the idea of the Canadian state as both the institution that legislates the unfreedom of TFWs and the institution that can create and enforce protections for the same workers. I hope that by looking at labour markets as socially regulated institutions that are embedded within a wider political system, there will be ways in which specific forms of political pressure can be applied in order to create more expansive rights for all workers. Moreover, I want to reinforce an understanding that neoliberalization has many functional processes. And the illegal recruitment of TFWs is a functional process that is connected to imperialism and ongoing colonialism, as it places racialized migrant workers into conditions of indentured labour. Thus, the resistance to this functional process must include regulatory

reform, in conjunction with anti-racist and anti-imperialist political demands that do not make distinctions between workers based on their relationship to colonial nation states.

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Appendix A.

Consent Form

Application Number: 2015s0354

Grant Information: Joseph Armand Bombardier Canada Graduate Scholarship-Master's, Social Sciences and Humanities Research Council of Canada

***Title of Study*:**

Regulation of Employment Agencies in Temporary Foreign Worker Recruitment to British Columbia

Who is conducting this study?

Principal Investigator: Alexandra Rodgers, M.A. Student in Sociology

Supervisor: Dr. Kendra Strauss, Assistant Professor, The Labour Studies Program and The Morgan Centre for Labour Research, Department of Sociology and Anthropology

What is this research for?

The research conducted in this study will be used to complete a M.A. thesis that will be published by the library at Simon Fraser University. This thesis will be available to the public.

Who is funding this research?

The study is being funded by the Joseph-Armand Bombardier Canada Graduate Scholarship-Master's from the Social Sciences and Humanities Research Council of Canada.

Why should you take part in this study?

My research examines the changing regulations and conditions around the recruitment of workers into the Canadian Temporary Foreign Worker Program (TFWP). I am interested in how employment agencies in BC, which are regulated at the provincial level, are impacting the formation of labour markets.

You are being invited to take part in this research study because your insights will enable me to understand what the process of recruiting Temporary Foreign Workers (TFWs) into British Columbia (BC) looks like in practice. I want to learn what you think about the existing regulation of employment agents in British Columbia (BC), what role you are/your organization is playing in the transformation of regulation, and what your perspective is on the issue of unregulated recruiters.

Your participation is voluntary.

Your participation is voluntary. You have the right to refuse to participate in this study. If you decide to participate, you may still choose to withdraw from the study at any time without providing an explanation. All data relevant to your participation (such as audio

records or notes) will be destroyed upon your request. Refusal to participate or withdrawal/dropout after agreeing to participate will not have an adverse effect or consequences on your employment.

How is the study done?

If you decide to participate in the study, I will ask you about the current practice of recruiting Temporary Foreign Workers (TFWs) into British Columbia (BC). I will ask you what your thoughts are on the regulation of employment agencies involved in the recruitment of TFWs into BC. I will also ask you what your perspective is on the issue of unregulated recruiters, and what your thoughts are on how regulation can adapt to the changing political environment.

This research can be conducted through a one-on-one, face-to-face interview between you and me at a place of your choice. Additionally, this research can be conducted over the telephone or via Skype, or Skype to telephone. For interviews conducted via the telephone or Skype to telephone it is important to be aware that these are not considered a secure medium for communication. My questions are open-ended and you are free to contribute as much as you want; most interviews last about one hour. I want to audio record the interview with your permission. You can stop the record and/or partially or completely delete it whenever you want.

Is there any way being in this study could be bad for you?

This study is of minimal risk to you. You may consider answering some of the questions related to the transformation of regulation relating to employment agencies in British Columbia (BC) politically risky. Please note that I have not received permission from your employer/organization to conduct this interview with you. Your opinions may contradict the position and/or policies of the organization you work for and your answers may put in you in a potentially vulnerable position. Please feel free to choose not to answer the questions that you may find inconvenient. In order to further minimize your minimal risk of vulnerability the interview will be conducted away from your place of work and at a location that you choose and feel comfortable at. At any point you may express concerns and withdraw from the study without providing any explanation and with no negative impact. In such a case, I will destroy the materials related and gathered from you to date. Refusal to participate or withdrawal/dropout after agreeing to participate will not have an adverse effect or consequences on your employment.

What are the potential benefits of participating in the study?

I hope that the potential benefit to you will be that your voice and experiences are heard and will be applied to research that seeks to advance knowledge on how to protect workers from exploitative recruitment practices.

Will you be paid for your time?

You will not be paid for the time you take to be in this study. However, I will pay the cost of your bus or taxi fare, parking, childcare, if you need to commute for the interview. Please bring your receipt or ticket with you to the interview.

How will your identity be protected?

Your confidentiality will be respected. Information that discloses your identity will not be released without your consent unless required by law. The audio recording of the interview with you will be stored digitally as password-protected files in my password-protected personal computer. The computer will be kept in a locked cabinet in my home-office that only I will have access to. I will destroy the audio recordings of the interviews after I have transcribed the interviews. Interview transcriptions will be stored within electronic files accessed via a password-protected computer and also on my password-protected network file space through the Simon Fraser University server. Only I will have access to the files and documents. Research materials will be destroyed 2 years after the completion of the study.

Telephone, Skype to telephone, email, mailing lists, and the Internet are not considered a confidential medium; therefore confidentiality cannot be guaranteed when/if we communicate via these methods.

If you request for your identity to remain unknown to others beyond me, measures ensuring strict confidentiality will be taken and will be maintained to the extent allowed by law. This means that all interview materials, including audio recordings, notes, and transcripts will remain protected. A pseudonym will be assigned in place of your name as one of the measures to protect confidentiality. Any direct identifiers, such as names of locations or specific events, which might pose a risk to your confidentiality, will be replaced with a code in all files and documents. The key to the code will be kept in a secure place, away from the data set.

Where will I use the study results?

The results of this study will be used in a M.A. thesis and may also be published journal articles, policy papers, books, and presented in academic conferences.

Who can you contact if you have complaints or concerns about the study?

If you have any concerns or complaints about your rights as a research participant and/or your experiences while participating in this study, you may contact Dr. Jeff Toward, Director of the Office of Research Ethics.

You can contact me anytime for your questions or requests.

You can also direct your questions to my supervisor, Dr. Kendra Strauss, Assistant Professor, The Labour Studies Program and The Morgan Centre for Labour Research, Department of Sociology and Anthropology.

Special terms and conditions

This section enables you to determine special terms of use for the information gathered through the course of the interview. To approve any of the below listed uses, please initial below the relevant term of use.

You consent to an audio recording of the interview and agree to the use of said interview for the above listed project.

You consent to being identified by name in written M.A. thesis, transcriptions of recorded interview material, and in written references to information contained in the interview, which are the purpose of this study. *Please note: the completed thesis will be available in published form through Simon Fraser University, and online through said institution's library database.*

You wish to remain unidentified in the written M.A. thesis, transcriptions of recorded interview material, and in written references to information contained in the interview.

You ask me observe the following special terms:

Future contact

If I need to contact you again regarding to the study (e.g. to clarify an answer, follow up on questions, or schedule an additional interview), is it okay to do so?

Yes No (Please circle one)

If yes, what is the best way to reach you?

Taking part of this study is entirely up to you. You have the right to refuse to participate in this study. If you decide to take part, you may choose to pull out of the study at any time without giving a reason and without a negative impact.

Your signature below indicates that you have received a copy of this consent form for your own records

Your signature below indicates that you consent to participate in this study.

Participant Signature Date (yyyy/mm/dd)

Printed Name of the Participant signing above

Principal Investigator's Signature Date (yyyy/mm/dd)

Appendix B.

Interview Questions

1) What is your job title? Can you describe what an average day at work is like for you?

2) How would you describe your connection to the recruitment of temporary foreign workers? What other organizations/institutions are you in contact with? How would you describe your relationship with these organizations?

3) What does the process of recruiting temporary foreign workers into British Columbia look like? Where does the recruitment cycle begin? Where does it end?

4) How has the process of recruiting temporary foreign workers into British Columbia changed over the past five years?

5) What is your perspective on the changes to the recruitment process?

6) How did the formation of the Low-skilled Pilot Project in 2002, now known as the Stream for Lower-skilled Occupations impact temporary foreigner worker recruitment into British Columbia?

7) How are you/your organization impacted by British Columbia's Employment Standards Act?

8) What is your opinion on British Columbia's regulation of employment agencies through the Employment Standards Act? Would you make any amendments to it? Can you describe what these amendments would be?

9) What are your thoughts on Manitoba's 2009 Worker Recruitment and Protection Act (WRAPA)? How does British Columbia's regulation of employment agencies via the Employment Standards Act compare to the WRAPA?

10) What are your thoughts on unlicensed employment agencies that are involved in the recruitment of temporary foreign workers? How can regulation be applied to the practices of "ghost recruiters?"

11) What would you say is the most pressing issue around the recruitment of temporary foreign workers into British Columbia?

12) Is there anything else you would like to tell me about the recruitment of temporary foreign workers in B.C? Are there any issues I haven't mentioned that you think I should consider?