

The Role and Regulation of Private, For-Profit Employment Agencies in the British
Columbia Labour Market and the Recruitment of Temporary Foreign Workers.

by

Daniel Parrott

B.A., University of Regina, 1987

J.D, University of Saskatchewan, 1991

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of

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Supervisory Committee

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Dr. Judy Fudge, (Faculty of Law)

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Abstract

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My thesis examines the role and regulation of private, for-profit employment agencies in the British Columbia labour market with respect to the recruitment of temporary foreign workers. In it, I reviewed the historical origins of employment agency legislation in Canada. I go on to describe Canada's Temporary Foreign Worker Program in connection with the transfer of federal immigration authority to the provinces. I also present a case study demonstrating how temporary foreign workers are recruited for the Live-in Caregiver Program in British Columbia, and use the study as a basis for comparing British Columbia's employment agency legislation with the agency licensing regimes in the other Western Provinces. I conclude that Manitoba's recent *Worker Recruitment and Protection Act* frames a best practice model for the protection of foreign workers during the recruitment process, and I encourage other provinces like British Columbia to develop and legislatively frame a similar set of best practices.

Table of Contents

Supervisory Committee	ii
Abstract.....	iii
Table of Contents	iv
List of Tables	vi
List of Figures.....	vii
Acknowledgments	viii
Dedication	ix
Chapter 1: Introduction	1
Chapter 2: The Origins of Employment Agency Legislation in Canada.....	19
A. Introduction.....	19
B. Immigrant Recruitment.....	21
C. Temporary Foreign Worker Recruitment	28
D. Employment Agencies	34
E. Employment Agency Legislation.....	38
F. Conclusion	41
Chapter 3: The Origins of the Temporary Foreign Worker Program and the Devolution of Federal Immigration Authority.....	44
A. Introduction.....	44
B. Developments in Immigration Policy and The Temporary Foreign Worker Program.	45
C. The Temporary Foreign Worker Program’s Explosive Growth	49
D. Devolution.....	55
E. Conclusion	58
Chapter 4: Private Foreign Worker Recruitment for the Live-in Caregiver Program in British Columbia	63
A. Introduction.....	63

B.	The Live-in Caregiver Program in British Columbia	66
C.	Philippine Regulatory and Institutional Framework	73
D.	Jurisdictional Conundrum: Domestic Laws with International Impacts	78
1.	<i>The Immigrant and Refugee Protection Act's Effect on Philippine Migration and Recruitment Patterns</i>	79
2.	The Philippines and Provincial Employment Agency Norms	82
E.	British Columbia Employment Agencies	85
F.	Conclusion	94
Chapter 5: Mapping Temporary Foreign Worker Protection in Western Canada		97
A.	Introduction.....	97
B.	Employment Agency Legislation Generally.....	99
C.	Temporary Foreign Worker Protection in Western Canada	102
1.	Manitoba	103
2.	Alberta	113
3.	British Columbia.....	121
D.	Conclusion	125
Chapter 6: Conclusion		131
Bibliography		137
Appendices		154
	Appendix 1 - Selected Extracts from Citizenship and Immigration Canada's 2009 Digital Library and Data Cube.....	154
	Appendix 2 - Structured Interview and Follow-Up Questions	169
	Appendix 3 - Employment Agency Legislation Mapping Tables For British Columbia, Alberta and Manitoba	174
	Appendix 4 - Cross-referencing licensed British Columbia employment agency and recruiter data with the Canadian Society of Immigration Consultants Membership List	205

List of Tables

Table 1	52
Table 2	54
Table 3	70
Table 4	70
Table 5	71

List of Figures

Figure 1	52
Figure 2	54
Figure 3	72
Figure 4	124

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Dedication

In memory of my father, an old Labour Standards Officer, who would regale me with his stories of Labour Standards investigations.

Chapter 1: Introduction

This thesis examines the role and regulation of private, for-profit employment agencies in the British Columbia labour market that recruit temporary foreign workers for positions requiring lower levels of formal training. Currently, there is little research in this area about British Columbia.¹ Instead, researchers have mainly focused on other temporary foreign workers, such as migrant farm workers,² and live-in caregivers.³ The thesis will contribute to this body of work by examining how private recruitment is used to populate this particular Temporary Foreign Worker Program stream, and how this activity is regulated by employment agency legislation in British Columbia and in the other western Provinces.

Temporary foreign workers have become an increasingly important part of meeting Western Canada's labour market demands.⁴ There is a debate over the nature of this demand, however. Government and business groups have characterized growing demand as a function of

¹ Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled workers as an Extreme Form of Flexible Labour" (2009) 33:1 Comparative Labor Law & Policy Journal 5 at 6 [Fudge & MacPhail, "Temporary"].

² For examples of British Columbia farm worker studies see: Kerry Preibisch "Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture", (2010) 44:2 International Migration Review 413. Kerry L. Preibisch and Evelyn Encalada Grez, "The Other Side of *el Otro Lado*: Mexican Migrant Women and Labor Flexibility in Canadian Agriculture" (2010) 35:2 Signs: Journal of Women in Culture and Society 296. David Fairey, et al., *Cultivating Farmworker Rights: Ending The Exploitation Of Immigrant And Migrant Farmworkers In BC* (Vancouver: Co-published by the Canadian Centre for Policy Alternatives – BC Office, Justicia for Migrant Workers, Progressive Intercultural Community Services, and the BC Federation of Labour, 2008) [Fairey, *Farmworker Rights*]. Adriana Paz "Harvest of Injustice: The Oppression of Migrant Workers on Canadian Farms" (2008) 18:5 Watershed Sentinel 24. Geody Leibel, *The Changing Face of Farm Labour in British Columbia: Exploring the Experiences of Migrant Quebecois and Mexican Agricultural Workers in the Okanagan Valley* (M.A. Thesis, University of Victoria Department of Anthropology, 2007) [unpublished]. Tanya Basok, "Canada's Temporary Migration Program: A Model Despite Flaws" (2007) The Migration Policy Institute, online: Migration Policy Institute <<http://www.migrationinformation.org/feature/display.cfm?id=650>>. Christina Hanson, Gerardo Otero & Kerry Preibisch, "Working Conditions in British Columbia's Horticulture Industry: Contrasting Mexican and Indo-Canadian Workers" (Paper presented to the Meetings of the Canadian Association for Latin American and Caribbean Studies, Calgary, Alberta, 27-30 September 2006)[unpublished]. Graeme Moore, *Hand-Harvesters of the Fraser Valley Berry Crops: New Era Protection of Vulnerable Employees* (Vancouver: BC Federation of Labour, 2004).

³ Examples of live-in caregiver studies can be found in Judy Fudge, "Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada" (2011) Vol. 23 Issue 1 Canadian Journal of Women & the Law 235 at 238, fn9 [Fudge, "Global"].

⁴ Fudge & MacPhail, "Temporary", *supra* note 1 at 5.

a worker shortage, while others contend that the shortage is one of workers willing to work at depressed wages. An example of this debate can be found in a Vancouver Georgia Straight article published in 2008.⁵ The article quoted Economic Development Minister Colin Hansen as stating that as the baby-boomer generation retires and as British Columbia's economy continues to expand, the gap between the number of jobs and workers will continue to grow: "Over the next 12 years, an estimated one million job vacancies will open up in B.C. Meanwhile, there are only 650,000 students currently in the province's education system."⁶ Mark von Schellwitz, vice-president the Canadian Restaurant and Foodservices Association also stated that that a plan to bring foreign labour to B.C. is necessary, and that, "This is not an economic boom, this is a demographic labour shortage that is going to get worse before it gets better."⁷ Meanwhile, others such as the director of Simon Fraser University's Center for Labour Studies, Mark Leier, and B.C. Federation of Labour president Jim Sinclair, both suggest that importing foreign workers is used to depress wages. The Canadian Centre for Policy Alternatives, in a separate article, argued that when businesses claim there is a "shortage" of workers, what is implicitly meant is that they cannot find workers at the wage they are offering.⁸ The distinction is important and strikes at the Temporary Foreign Worker Program's overall legitimacy. Is the Program, as the CCPA suggests, merely a subsidy for Tim Horton's and Canadian coffee drinkers?⁹ While the question is important, it is not the focus of my thesis. Instead, I accept official characterizations of the worker shortage at face value so as to focus on one particular

⁵ Travis Lupick, "Serious labour shortages forces B.C. to seek foreign workers" *The Georgia Straight* (14 February 2008), online: The StraightDotCom <<http://www.straight.com/article-132108/serious-labour-shortages-forces-b-c-to-seek-foreign-workers>>.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ David Green, "Temporary Foreign Workers and the Election: A Major Issue Getting Scant Debate" *The Canadian Centre for Policy Alternatives* (26 April 2011), online: The Canadian Centre for Policy Alternatives <<http://www.policyalternatives.ca/publications/commentary/temporary-foreign-workers-and-election>>.

⁹ *Ibid.*

piece of the neo-liberal puzzle, i.e. the regulatory protections provided to foreign workers during the recruitment process.

The nature and extent of existing regulatory protection is important as many of these foreign workers are recruited by provincially licensed private, for-profit agencies with international links to overseas labour markets. Significant problems have been identified and associated with the recruitment operations run by these types of agencies, and mostly relate to recruiters charging workers job placement fees. The collection of fees violates the principle of free placement services for workers and employers first established as a standard for public employment services in International Labour Organization Convention 2 in 1919,¹⁰ and again in Convention 88 in 1949.¹¹ In Convention 181,¹² the principle of free job placement services for jobseekers was retained as one of the protection provisions established to safeguard the interests of workers. And while Convention 181 allowed private recruiters to charge workers placement fees in exceptional circumstances when “limited to specified categories of workers or specified types of services”,¹³ the ILO also recognized that fee charging is often a slippery slope leading to recruiter abuses such as overcharging fees, debt bondage, deception, fraud and other forms of migrant worker exploitation.¹⁴ In fact, the question of private, for-profit employment agencies charging or not charging workers placement fees, and the consequent abuses, represents a persistent problem addressed a long series of International Labour Organization Recommendations,¹⁵ Conventions,¹⁶ meetings and Reports.¹⁷ The main conclusions in these

¹⁰ International Labour Organization, C2, *Unemployment Convention*, 1919, article 2.

¹¹ International Labour Organization, C88, *Employment Service Convention*, 1948, article 1.

¹² International Labour Organization, C181, *Private Employment Agencies Convention*, 1997.

¹³ *Ibid.*, article 7(2). See also: International Labour Organization, *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement* (Geneva: International Labour Organization, 2007) at 30.

¹⁴ See for example: International Labour Organization, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Worker: An Information Guide Booklet Three* (Geneva: International Labour Organization, 2003) at 17.

¹⁵ Some examples include: R61, *Recommendation concerning the Recruitment, Placing and Conditions of Labour of Migrants for Employment*, 1939; R62, *Recommendation concerning Co-operation between States relating to the*

documents are that governments should prohibit migrant worker abuse, and that the cost of assembling a migrant workforce should for the most part be borne by employers. Despite these concerns, documents such as the *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration* suggest that recruiter malpractice continues,¹⁸ and that by and large, private, for-profit employment agencies are, “responsible for a number of unethical practices which promote irregular migration and cause immense hardship to actual and potential migrants.”¹⁹

The problems related to private, for-profit recruitment have also been discussed in labour publications,²⁰ scholarly papers,²¹ and in provincial and federal reports.²² This literature

Recruitment, Placing and Conditions of Labour of Migrants for Employment, 1939; R71, *Recommendation concerning Employment Organisation in the Transition from War to Peace*, 1944; R72, *Recommendation concerning the Employment Service*, 1944; R83 *Recommendation concerning the Organisation of the Employment Service*, 1948; R86, *Recommendation concerning Migration for Employment (Revised 1949)*, 1949; R100, *Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories*, 1955.

¹⁶ Some examples include: C34, (*Shelved*) *Fee-Charging Employment Agencies Convention*, 1933; C66, (*Withdrawn*) *Migration for Employment Convention*, 1939; C88, *Employment Service Convention*, 1948; C96, *Fee-Charging Employment Agencies Convention (Revised)*, 1949; C97, *Migration for Employment Convention (Revised)*, 1949; C143, *Migrant Workers (Supplementary Provisions) Convention*, 1975; C181, *Private Employment Agencies Convention*, 1997.

¹⁷ For example: International Labour Organization, *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, (Geneva, 21-25 April 1997), online: International Labour Organization <http://training.ilo.org/actrav_cdrom1/english/global/seura/ilomigrp.htm> [ILO, *Tripartite*]. International Labour Organization, *Decent Work for Domestic Workers*. Report IV (1) International Labour Conference, 99th Session, 2010, Fourth Item on the Agenda at 9.

¹⁸ See ILO, *Tripartite*, *Ibid.*, “Assistant Director General’s Opening Address”;

¹⁹ International Labour Organization, *Towards A Fair Deal For Migrant Workers in the Global Economy* (Report VI, Sixth Item on the Agenda, International Labour Conference, 92nd Session, 2004) International Labour Conference, at 44, online: International Labour Organization <<http://www.ilo.org/public/english/standards/realm/ilc/ilc92/pdf/rep-vi.pdf>> [ILO, *Fair Deal*].

²⁰ See for example: Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s Disposable Workforce* (Edmonton: AFL, November 2007)[AFL, *Temporary*]; British Columbia and Yukon Territory Building and Construction Trades Council, *Submission to the House of Commons Standing Committee on Citizenship and Immigration; Temporary Foreign Workers, Undocumented Workers and ‘Immigration Consultants’*, (March 31, 2008), online: British Columbia and Yukon Territory Building and Construction Trades Council <<http://bcbuildingtrades.org/pages/submissions.asp>>[BC Trades Council, *Submission*]; Alberta Federation of Labour, *Entrenching Exploitation: The Second Report of the Alberta Federation of Labour Temporary Foreign Worker Advocate* (Edmonton: AFL, 2009)[AFL, *Second*]; Alberta Federation of Labour, *Report on Temporary Foreign Workers in Alberta* (Edmonton: AFL, December 2010) at 1, online: Alberta Federation of Labour <<http://www.afl.org/index.php/View-document/267-2010-Dec-16-Report-on-Temporary-Foreign-Workers-in-Alberta.html>>[AFL, *Report*].

suggests that for-profit abuse and exploitation are not isolated occurrences, but widespread and increasing. Judy Fudge, for example, claims that illegally charged placement fees are part of a widespread practice and just one more in a number of abuses against migrant domestic workers by employment agencies that were exposed in a series of newspaper articles published in 2009, and condemned in a report issued by House of Commons Standing Committee on Citizenship and Immigration.²³

This thesis addresses the issue of recruitment agencies that illegally charge fees to migrant workers with two broad goals in mind. First, the information provided in the thesis will contribute to the general knowledge and understanding of federal and provincial foreign worker programs, and illuminate how these programs integrate with private, for-profit recruitment. Second, the thesis will provide a clearer understanding of British Columbia's employment agency legislation, assess its regulatory effect within larger immigration policy, and compare it with similar legislation enacted in other western provinces. The overall goal is to not only advance legal knowledge and provide a basis for further social policy analysis, but to also assist provincial governments in developing meaningful and effective foreign worker protections.

²¹ See for example, Fudge & MacPhail, "Temporary", *supra* note 1 at 33; and Fudge, "Global", *supra* note 3. Other works on these and related problems include: Delphine Nakache and Paula J. Kinoshita, *The Canadian Temporary Foreign Worker Program Do Short-Term Economic Needs Prevail over Human Rights Concerns?*, IRPP Study, No. 5 (Montreal: IRPP, May, 2010); Human Rights Watch, *Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*, vol. 19, No. 16(c) (New York: Human Rights Watch, 2007); Leah F. Vosko, "Less than adequate: regulating temporary agency work in the EU in the face of an internal market in services" (2009) 2 *Cambridge Journal of Regions, Economy and Society* 395; Philip Martin, *Merchants of Labor: Agents of the evolving migration infrastructure*, Discussion paper, Decent Work Program, DP/158/2005 (Geneva: International Institute for Labour Studies, 2005).

²² For a provincial example, see: Nancy Allan, "Foreign Worker Recruitment and Protection: The Role of Manitoba's *Worker Recruitment and Protection Act*" (Spring, 2010) *The Metropolis Project Canadian Issues* 1 at 29. For a federal example, see: Parliament, "Temporary Foreign Workers and Non-Status Workers: Report 7 of the Standing Committee on Citizenship and Immigration" (2009) (Chair: David Tilson, M.P.), online: Parliament of Canada

<<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=3866154&File=108#part5>>.

²³ Judy Fudge, "Global", *supra* note 3 at 236.

I constructed the thesis around a legal theory expounded by US Supreme Court Justice Oliver Wendell Holmes. In 1880, Holmes delivered a series of lectures on the common law, where he attacked the prevailing views of jurisprudence and proposed new conceptions of the origin and nature of law. He maintained that the law could only be understood as a response to the needs of the society it regulated, and that it was useless to consider it merely a body of rules developed logically. The latter view had been propounded by legal theorists such as the then-Dean of Harvard Law School, Christopher Langdell.²⁴ The difference in approach from the prevailing method was encapsulated by Holmes in his well-known aphorism: “The life of the law has not been logic; it has been experience.”²⁵

The emerging theoretical school of Holmesian social realism urged law students to study economics, statistics, and history in their endeavour to discover the “mysteries” of the common law.²⁶ The approach was subsequently used in a series of US Supreme Court decisions that eventually upheld State employment agency legislation as being constitutional.²⁷ The Bench’s minority decisions, in particular Justice Brandeis’ early dissents, were considered “revolutionary” in that they challenged a Court majority who, steeped in Langdellian formalism, often worked out decisions using legal syllogisms and other cut-and-dried conventions of the profession.²⁸ The tension between the “formalist” majority versus the social realist dissent was picked up by American law colleges, with the California and Yale Law Reviews throwing their support behind the upstart revolutionaries.²⁹

²⁴ Susan Haack, “On Logic in the Law: ‘Something, but not All’” (2007) 20:1 *Ratio Juris* 1 at 1.

²⁵ *Ibid.*

²⁶ Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century’s End* (New York: New York University Press, 1995) at 19.

²⁷ See for example: *Adams vs. Tanner*, 244 U.S. 590 (1917) at 601; *Ribnik v. McBride*, 48 Sup. Ct. 614 (U.S. 1928); *Olsen v. Nebraska* 9 U.S.L. WEEK 4291 (U.S. 1941).

²⁸ W.C.J., “Constitutional Law: Police Power: Employment Agencies” (1917) 5:6 *California Law Review* 494.

²⁹ For commentary on these cases see: S.J.T. “Employment Agencies Forbidden to Take Fees from Workers” (1917) 27:1 *The Yale Law Journal* 134; W.C.J., “Constitutional Law: Police Power: Employment Agencies” (1917)

I have used a similar Holmesian approach in an endeavour to discover the “mysteries” of employment agency legislation, and its connection to contemporary immigration policy. The mystery stems, in part, from the fact that the international movement of foreign workers is distinguished into two separate, yet overlapping legal areas: immigration and employment. In other words, immigrants are often also workers, with immigration, in particular the economic class of immigrant, used as a tool for populating labour markets. Fudge suggests that the crossing of borders attracts a plurality of legal responses, ranging over different territorial scales (international, transnational, national, federal, provincial, and industry), and engaging a plurality of legal institutions, objectives, and techniques of the overlapping and competing jurisdictions involved in migrant worker regulation.³⁰ As a result, the institutional divisions and separate legal categories obscure the nature of larger, interconnected and often dynamic processes.

The topic’s legal and socio-economic complexities seemed particularly suited to a Holmesian theoretical approach grounded in economics, statistics, and history. My methodology -- conceived in the spirit of Justice Brandeis’ dissent – pulled together an array of related tools and techniques. These included: a historical analysis; the assembly and analysis of quantitative data; the use of qualitative data, in particular data derived from key informant interviews; a legal analysis of international, national and provincial legislation, and related regulatory, administrative and policy instruments; a documentary analysis of primary and secondary materials; and lastly, a case study of recruitment for the Live-in Caregiver Program in British Columbia.

The historical approach is used primarily in Chapter Two, which explores the Dominion’s late 19th and early 20th century migration patterns and immigration laws to explain

5:6 California Law Review 494; W.H.H. “The Regulation of Employment Agencies” (1928) 38:2 The Yale Law Journal 225.

³⁰ Fudge, “Global”, *supra* note 3 at 244.

the origins of provincial employment agency legislation. The Chapter consists of a documentary analysis of primary, historical materials such as Parliamentary papers, along with period case law and legislation. It also relies on secondary sources to describe and analyze recruitment efforts during this period, and its relationship with federal regulation and provincial employment agency legislation.

The thesis also uses quantitative methods, with some of its more important data derived from the Department of Citizenship and Immigration Canada, in particular its Data Cube on Temporary Residents.³¹ Other data sources include federal and provincial government websites, private sector websites, and Citizenship and Immigration Canada's Digital Library. Extracts selected from the 2009 Digital Library are reproduced in the Appendix 1.

Quantitative data are supplemented by information from qualitative sources. While quotes and description are drawn from secondary materials such as journal articles and media reports, the thesis also draws information from several key informant interviews. The interviews were both structured and unstructured, with informants being chiefly government officials from British Columbia, Alberta, and Manitoba, each overseeing their respective employment agency legislation, and with links to or knowledge of the Temporary Foreign Worker Program.

Interviews were conducted with: Mr. Pat Cullinane, Executive Director of British Columbia's Employment Standards Branch, Ministry of Labour, Citizen Services, and Open Government; Mr. Percy Cummins, Executive Director of Immigration Policy and Programs, in Alberta's Ministry of Employment and Immigration; Mr. Dave Dyson, Executive Director of Manitoba's Employment Standards Branch, in the Ministry of Labour and Immigration; Mr. Michael

³¹ The Cube is produced when statistical information collected by the Department is organized into administrative and longitudinal databases. Access to this Cube set was possible through the University of Victoria's research partnership with the Government of British Columbia through Metropolis BC, with Cube data provided by the British Columbia Ministry of Advanced Education and Labour Market Development's Strategic Information Branch.

Newson, Senior Policy Advisor, in the Labour Market and Immigration Division's Immigration Policy Unit of British Columbia's Ministry of Jobs, Tourism and Innovation ; and Mr. Darren Thomas, Service Alberta's Director of Fair Trading as Delegated. Additional interviews were conducted with Anika Henderson, Executive Director of the Southwest Newcomer Welcome Centre Inc., Swift Current Saskatchewan; and Agnes Dela Rosa, a former Philippine national now living in Saskatchewan. Each informant commented on temporary foreign worker recruitment and employment, and existing government policy and legislation. The questions used in the structured interviews are contained in the Appendix 2.

Hard and soft law sources were also analyzed. Hard law includes international, federal and provincial legislation and regulations, along with tribunal, superior court decisions and other case law. Soft law includes bilateral instruments such as memoranda of understanding between the provinces and international governments; and federal-provincial agreements pertaining to immigration and the entry of temporary foreign workers into provincial labour markets. Also included is a detailed regulatory map comparing employment agency legislation from each of the Western provinces, with the mapping results contained in Appendix 3.

In conducting my research I examined other primary and secondary sources. Primary sources include Parliamentary Debates, Reports and Sessional Papers, along with excerpts from departmental publications, such as journals, reports, manuals and bulletins. I reviewed secondary materials such as books and journal articles in the fields of anthropology, economics, history, labour studies, law, political science, sociology, and women's studies. I also reviewed reports authored by non-profit business, labour and public interest groups and organizations; Master and PhD theses in anthropology and sociology; and media reports and government news releases.

Primary and secondary sources were not only used directly, but also cross-referenced with each other to reveal additional insights and information. For example, the overlap between licensed British Columbia employment agencies, recruiters and the Canadian Society of Immigration Consultants was explored by cross-referencing information from government and private sector data bases, along with other online publications and websites. Some of these included the province's Corporate Registry, and membership information from the Canadian Society of Immigration Consultants website. The methodology and cross-referenced data are compiled in Appendix 4.

Lastly, a case study is used to examine the Live-in Caregiver Program in British Columbia. The study examines this one particular stream of temporary foreign migrant workers, and focuses on the role of recruiters and employment agencies in connecting caregivers with employers. It also focuses on aspects of British Columbia's employment agency legislation applicable to other temporary foreign worker streams. For example, the legislation is remedial, and not preventive. So while foreign workers can access remedies after-the-fact, it is only on completion of often complex investigations, and at times, litigation.

Each method has strengths and weaknesses. My goal was to combine methods so that one method's strength compensated for another's weakness. For example, the strength of a historical approach is that it allows for a longer view, revealing patterns and trends that might not otherwise emerge over the short term. It not only identifies recurrent themes, but also notes any continuity between eras, identifies points of comparison and contrast, and provides insight into another era's policy solutions. A long view can also provide a stabilizing context when addressing a quickly- changing, and complex contemporary legal and policy environment.

Contemporaneous commentary can also be useful in understanding how the recruitment of migrant workers was conceptualized. For example, the fact that many Dominion officials characterized private, for-profit employment agency practices as fraudulent, requiring at the very least regulation, if not outright abolishment, provides a useful backdrop for contemporary policy discussions. Historical characterizations become significant considering the similarities between eras: both use immigrants and temporary foreign workers to meet labour market demands; both have employer-driven foreign worker recruitment with employers relying on private, for-profit recruiters; both have recruiters and agencies exploiting workers; and both have government officials decrying foreign worker abuse. This suggests that contemporary policy makers can build on earlier mistakes and successes, and avoid re-inventing policy solutions.

There are limits to using a historical approach, however. Identifying a recurrent problem does not necessarily explain how or why the problem recurs. As a result, one era's policy solution may not necessarily translate well into another. For example, both past and present eras had challenges related to immigration. Yet, *The Immigration Act, 1869*³² provides a vastly different policy framework than its legislative descendant, *The Immigrant and Refugee Protection Act*.³³ In other words, while a historical approach may identify recurrent patterns, and offer policy solutions, a problem from a hundred years ago may not necessarily replicates itself in the exact same manner today, or lend itself to a previous era's policy solution. Original contemporary thinking and approaches are still required.

The quantitative method has obvious strengths summed up by historian Colin McEvedy, who wrote that, "Our grasp of a subject becomes secure only when the data can be quantified."³⁴ The method is strongest when used on points that lend themselves to a numerical description,

³² S.C. (32-33 Vict.), c.10 [IA].

³³ S.C. 2001, c. 27; effective June 28, 2002 [IRPA].

³⁴ Colin McEvedy, *The Penguin Atlas of Modern History* (London: Penguin Books Ltd., 1972) at 3.

such as the growth of the Temporary Foreign Worker Program in Western Canada. The data also help set and direct research efforts. For example, quantitative data revealed that most caregivers entering British Columbia under the Live-in Caregiver Program are Philippine nationals. This information led to research focused on the Philippine government's migrant labour export system, and how it integrates into provincial labour markets.

A weakness with quantitative data is that numbers alone are often unable to tell a complete story. The weakness can be remedied with qualitative methods, however. For example, key informants can explain data, and through information obtained during their interviews corroborate or confirm the veracity of government, non-government and media reports. Informants also provided or pointed to the existence of other valuable data sources. For instance, Mr. Cullinane not only provided historical and not widely known provincial employment agency licensing data, but he also drew attention to recent and relevant employment standards tribunal and superior court decisions involving a prominent British Columbia nanny agency.

A weakness in the qualitative method is that it can be difficult to find informants with the required knowledge or experiences, particularly within a graduate student's limited time and resource. This was particularly true with respect to temporary foreign workers. For example, I found and interviewed Agnes Dela Rosa regarding her and her husband's recruitment to Saskatchewan, only to find that Mr. Dela Rosa had been recruited directly by his employer. In contrast, government officials were more readily located, easily contacted and agreeable to being interviewed for publication. And while their interviews revealed important information, the views and direct experiences of temporary foreign workers recruited by private, for-profit employment agencies remained outside my reach.

The imbalance in informant sources was redressed by using a documentary analysis. The strength of such an analysis is that it can help bring missing voices and views into a thesis, if only vicariously. Foreign worker voices entered this thesis via media reports and tribunal decisions. Other articles, reports and books related to the difficulties encountered by migrant workers were consulted, and woven into the text. So while foreign workers were not directly consulted, the documentary analysis established their need for and interest in effective legislative protection.

A related method is the analysis of legal documents. During my research I reviewed a variety of hard and soft sources, ranging over international, national, and provincial jurisdictions, to frame the subsequent mapping, comparison and analysis of employment agency legislation in Western Canada. As noted above, mapping results are collected in Appendix Three, and are supplemented by an analysis on their relative effectiveness contained in Chapter Five. Altogether, the analysis provides an overview of the relative extent and effectiveness of the protections offered to foreign workers during the recruitment process by provincial employment agency legislation.

The shortfalls with legal analyses were alluded to in earlier references to Justice Holmes, in that legislative pieces are relatively dry and one-dimensional documents, and do not necessarily reveal much of the larger social experiences that helped generate them. This weakness is overcome, at least in part, by the case study method. The case study in Chapter Four examines how British Columbia's employment agency legislation operates, and reveals the extent of protection provided to temporary foreign workers. It focuses on the caregiver stream destined for low-skilled temporary employment in British Columbia and on the role of recruiters to clarify how the process works and who the intermediaries are. The limitation with this

method is that while it provides a textured and detailed picture of a process, it can be difficult to generalize from.

In summary, the thesis is built on a Holmesian theory of social realism, using a combination of various interconnected and supporting methodologies to demystify provincial employment agency legislation and its relationship with temporary foreign workers. It reveals that British Columbia, Alberta and Saskatchewan's employment agency legislation do not directly address many of the problems encountered by temporary foreign workers during the recruitment process and their subsequent employment. This stands in contrast to Manitoba's recent *Worker Recruitment and Protection Act*,³⁵ an innovative legislative piece directly addressing many of the problems experienced by foreign workers and by other types of vulnerable workers. Unlike Manitoba, the other three Western provinces have employment agency legislation designed for an earlier era, to meet a different set of policy challenges. In other words, British Columbia, Alberta and Saskatchewan's employment agency legislation was design at a different era and used to nominally regulate provincial labour markets with a long-established and accepted norm that the cost of worker recruitment is part of ordinary business overhead.

The passage of Canada's *Immigrant and Refugee Protection Act* in 2001-2,³⁶ occurred at the same time as the Western provinces complained of acute labour shortages and marked the transition to greater federal devolution of immigration authority to the provinces. A regulatory environment emerged that favoured private, for-profit foreign worker recruitment as an important mechanism for connecting temporary foreign workers with Western Canadian employers. Employment agency legislation outside of Manitoba has not kept up with this

³⁵ *The Worker Recruitment and Protection Act*, S.M. 2008, c. 23 [WRPA].

³⁶ IRPA, *supra* note 33.

development, however. Instead, the legislation that exists is remedial, as opposed to preventive, with provincial remedies often difficult to access by foreign workers. The result is a regulatory environment that has been conducive to third-party recruiter and agency expansion, with a commensurate increase in the exploitation of vulnerable foreign workers.

The arguments in support of these contentions are set out in the chapters that follow. Chapter Two explores the origins of provincial employment agency legislation in the context of Canada's immigration policies between Confederation and the First World War. It examines the role of recruiters during this period, both in recruiting immigrants for the Dominion and in providing employers with a reliable stream of temporary foreign workers. It also traces the rise of employment agencies operating in provincial labour markets.

Two types of recruitment models were used during this period: an immigrant recruitment model overseen by and coordinated through public authorities, and a private, for-profit model built around employer demand for provincial and temporary foreign workers. Private recruiters and agencies acquired notoriety for profiting off the unemployed. The Chapter establishes an important historical point, namely that unregulated profiteering is socially destabilizing and tends to burden vulnerable workers most. The Chapter also examines the methods used to regulate private recruitment in provincial labour markets, either by licensing private employment agencies, or else by eliminating agencies entirely by substituting a coordinated system of public employment bureaux.

Having sketched out a historical baseline, Chapter Three overviews the main features of Canada's immigration policy and its Temporary Foreign Worker Program, and identifies the major shifts in direction. It notes Canada's reliance on temporary foreign workers, and how this reliance sharply increased at the turn of the twenty-first Century. The increase was driven

primarily by Western Canada's economic boom, the associated labour shortages, and the concurrent rise of Stephen Harper's minority government in 2006. The combination resulted in the formation of a regionally-based, employer-driven immigration system, dependent on a significantly enlarged temporary foreign workforce and on a similarly enlarged private, for-profit recruitment sector. Historical experience and contemporary reports suggest that increased for-profit recruitment invites increased worker abuse and exploitation. A more detailed examination of the foreign worker recruitment process is offered by a case study in Chapter Four.

The case study begins with reviewing jurisdictional issues related to moving a mostly Filipina caregiver workforce into British Columbia. It notes that private, for-profit recruiters and employment agencies figure prominently in caregiver recruitment, and that many of these "nanny agencies" unabashedly call for the rollback on the provincial prohibition against charging caregivers recruitment and placement fees. Not surprisingly, examples of illegal fee-charging, and swindles are not hard to find.

Chapter 4 also describes the interactions between nanny agencies and the province's Employment Standards Branch. Of note are recent caregiver complaints against a prominent nanny agency that wound its way through the Employment Standards Tribunal system and into British Columbia's Superior Court. The resulting decisions provide important details on how private agencies operate, their attempts to circumvent legislated employment agency provisions, and some of the limitations inherent to the province's remedial approach to these issues. This chapter also focuses on the jurisdictional issues that often impede the regulation of foreign worker recruitment activities. The traditional view of provincial enactments only having effect within its internal territorial jurisdiction has led to a *laissez-faire* attitude towards protecting foreign workers during the recruitment process. The chapter notes that despite this view both

provincial and federal laws can and do have extra-territorial effects, and it provides examples accordingly. The fact that provincial legislation can have a wider impact opens the possibility of provinces managing the extra-provincial effects so as to create desired policy outcomes. In other words, provincial legislation can be conceived for its overall effect, rather than reflecting a preoccupation with borders and other jurisdictional lines. It also suggests that the provinces can have a larger role in protecting foreign workers from recruiter abuse and exploitation.

Having reviewed the history, policy, and case study, Chapter Five goes on to compare employment agency legislation in each of the western provinces. Manitoba is given particular attention, as it is currently the only provincial jurisdiction with legislation that directly addresses the problems created by foreign worker recruitment. The province's *Worker Recruitment and Protection Act*³⁷ provides a concrete example of how extra-jurisdictional activity can be regulated by means of provincial legislation. Manitoba's legislation creates a regulatory environment that holds employers and recruiters accountable, and minimizes the importance of recruiters in servicing employer labour demands. In contrast, British Columbia and Alberta's regulatory environment is built around employer dependence on employment agencies and recruiters. The dependence leaves private, for-profit recruiters and agencies relatively unregulated, and free to exploit foreign workers. Not surprisingly, the two jurisdictions not only have more licensed employment agencies, but also more numerous reports of contraventions, and of foreign worker exploitation.

The thesis concludes by characterizing Manitoba's legislation as a set of best practices with respect to regulating foreign worker protection. While Saskatchewan's employment agencies legislation may have been on the cutting edge in 1919, and Alberta and British Columbia's legislation appropriate for conditions in the 1970s, Manitoba's *Worker Recruitment*

³⁷ WRPA, *supra* note 35.

and Protection Act represents a direct and measured response to contemporary conditions. In other words, Manitoba not only analyzed the situation faced by many foreign workers during the recruitment process, but designed its legislation to remedy these problems. As a result, Manitoba's legislation meets the real expectations that migrant workers will be protected during the recruitment process, and that provincial governments will take all reasonable measures to ensure that this happens. While Manitoba's legislation provides one model of what this can look like, there may well be others. This should be further explored and developed by the provinces.

Chapter 2: The Origins of Employment Agency Legislation in Canada

A. Introduction

This chapter examines Canada's immigration policy from 1867 to the end of the First World War, and identifies the two primary streams for admitting workers to the country, i.e. the immigrant, and the temporary foreign worker streams.³⁸ The former was part of the Dominion's nation-building project, while the latter was driven by employer demand for temporary foreign labour. While both streams were concerned with recruiting cheap, pliable labour, there were significant differences in how recruitment occurred in the different streams. Immigrant recruitment, a creature of intra-imperial policy, was built on an extensive pre-existing network of steamship company agents and overseen by a relatively small number of Dominion Emigration Agents. While emigrating workers often paid their own passages, there is little evidence that they paid for job placements in Canada. In contrast, employer demand for temporary foreign workers was largely filled by private for-profit recruiters organized into what was known as the *padrone* system. As immigration continued, and the size and complexity of internal Dominion labour markets grew, employer demand for local workers gave rise to employment agencies. Both the *padrone* system and provincial employment agencies were employer driven, with the former providing access to foreign labour markets and the latter recruiting locally. Both charged workers placement fees, and both were notorious for exploiting workers.

The body of this chapter is divided into five parts, including this introduction. The next part, Part B, examines how the Dominion recruited immigrants overseas. An extensive European network of steamship company booking agents, maritime infrastructure, and established shipping

³⁸ In this chapter the word "immigrant" means a person migrating to Canada with the intention of permanent settlement, whereas a "migrant" means a person recruited to work in Canada on a temporary basis.

lanes, formed the backbone of the Dominion's recruitment strategy and immigration policies. It also reviews the main legislative pieces and the bureaucratic structures that supported this public/private initiative, and notes the tensions that sometimes arose between public policy and the private sector's profit motive.

Part C explores the temporary foreign worker stream, and notes that recruitment was primarily driven by employer demand for migrant workers capable of heavy labour in remote and inhospitable locations. Recruitment was organized along ethnic lines, most often of people from Southern Europe and Asia who were considered unsuitable as immigrant stock. Italian-Canadian *padroni* coordinated and oversaw the migration from southern Europe, and acted as intermediaries bridging the linguistic and cultural differences between employers and foreign workers. Asian workers were also brought to Canada as cheap labour toiling in remote areas under difficult conditions. Worker exploitation was rife. Despite this, foreign worker recruitment during this period was unregulated. If government regulation was passed at all, it was usually to prevent a foreign worker oversupply, or to discourage Asian worker migration and settlement.

Part D notes the growth and importance of the urban labour force. As this force grew in size and complexity, employers required assistance in finding and placing workers, a niche soon filled by private, for profit employment agencies. Agencies often preyed on the unemployed, and soon acquired a North America-wide reputation for unscrupulous behaviour, frauds and swindles. Part D reviews the Canadian case law resulting from the early attempts to remedy and rectify agency misconduct.

Part E focuses on governments' first regulatory efforts, which resulted in employment agency licensing regimes being enacted in provinces such as British Columbia and

Saskatchewan. Agency exploitation of immigrants also resulted in federal regulations being passed pursuant to *The Immigration Act, 1910*. Tight labour market controls precipitated by World War One, along with fears that a chaotic post-war demobilization would result in social disintegration, caused legislators to carefully consider how former soldiers and armament workers would reintegrate back into the labour force. This task was determined too important to be left to or interfered with by private sector agencies. As a result, both federal and provincial governments coordinated their post-war efforts, and knitted their existing labour bureaux into a national network of public employment offices. Most provinces, in turn, passed legislation prohibiting agencies from charging workers placement fees. Together these measures effectively put private, for-profit employment agencies out of business.

B. Immigrant Recruitment

In 1867, Canada was primarily agricultural,³⁹ with a high demand for farm labour.⁴⁰ Not only was this labour essential, but demand for it was also uneven by region, seasonal, and in many cases not susceptible to mechanization.⁴¹ Farm labour was difficult, low-paid work, and labourers often endured it, either as a stepping stone to their own land ownership, or towards more remunerative work in urban centres. In fact, rural-urban labour circulation formed a “constant current” from the country to the city,⁴² and the resulting rural labour drain meant that Dominion agriculture was chronically short of cheap, lower skilled labour.

The demand for agricultural labour occurred within the context of the Dominion’s nation-building and settlement policies, which were driven in large part by Great Britain’s need to

³⁹ J. E. Lattimer “Canadian Farming since Confederation” (1927) 9:3 *Journal of Farm Economics* 361 at 362.

⁴⁰ Joy Parr “Hired Men: Ontario Agricultural Wage Labour in Historical Perspective” (1985) 15 *Labour / Le Travail* 91 at 99 [Parr, “Hired”].

⁴¹ *Ibid.*

⁴² Lloyd G. Reynolds, *The British Immigrant: His Social and Economic Adjustment in Canada* (Toronto: Oxford University Press, 1935) at 16.

reduce its own “surplus” population. Canada, with its vast area and “illimitable” resources, saw itself as a solution to the Home Country’s problem.⁴³ Nation building during this period became characterized by the idea of “intra-Empire” migration, with Britain’s surpluses being absorbed by its colonies. Migration was considered imperially, with the colonies being “every bit as much a part of the Empire as Yorkshire or Kent.”⁴⁴ This framework translated into a northern Eurocentric nation-building discourse and policies, both aimed at establishing a morally and physically “pure” settler population loyal to the British Empire.⁴⁵

This policy was articulated legislatively through *The Immigration Act, 1869*,⁴⁶ and *The Immigration Aid Societies Act, 1872*.⁴⁷ The legislation bracketed a bureaucratic structure that resembled a shipping-receiving operation. At the front end were Emigration Agents, who worked the “European emigration markets from which the Dominion of Canada draws its annual supplies.”⁴⁸ At the back end, Dominion Immigration Agents were assigned an immigration district, where they assessed labour demand, transmitted labour applications, and assisted with receiving, directing and otherwise distributing the new arrivals.⁴⁹

Organizing the European front office occurred soon after Confederation with a Dominion-Provincial Conference in 1868. Attended by representatives of the governments of the Dominion, Ontario, Quebec and New Brunswick, it was agreed that the Dominion government would maintain and defray the expenses of Immigration Offices “at some major

⁴³ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1882-83* (Ottawa: MacLean, Roger & Co., 1883) at xxvii, fn1 [Canada, 1882-83].

⁴⁴ Desmond Glynn, “Exporting Outcast London: Assisted Emigration to Canada, 1886-1914” (1982) XV:29 *Social History* 209 at 213 [Glynn, “Exporting”].

⁴⁵ Leah F. Vosko *Temporary Work: The Gendered Rise of A Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000) at 46 [Vosko, *Temporary*].

⁴⁶ IA, *supra* note 32.

⁴⁷ S.C. 1872 (35 Vict.), c. 29 [IASA].

⁴⁸ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1886* (Ottawa: MacLean, Roger & Co., 1887) at xxvi [Canada, 1886].

⁴⁹ Dominion Immigration Agents also appear at times referred to as “Distributing Agents.” See e.g.: Canada, 1882-83, *supra* note 43 at xxiv.

places”, and that “the several Provinces on their part shall establish an efficient system of Emigrant Agency within their respective Territories.”⁵⁰ As a result, the Dominion established an emigration office in London and an agency on the European Continent, with other offices in the United Kingdom and on the Continent where deemed proper.⁵¹

Back in Canada, *The Immigration Aid Societies Act, 1872* provided for the incorporation of Immigration Aid Societies.⁵² The Act allowed the Minister of Agriculture to divide the provinces into immigration districts, and assign each an Agent. While it is not clear how many Immigration Districts were created, it appears that by 1887, agencies in Ontario and Quebec were joined by those added across the West, in Brandon, Qu’Appelle, Moose Jaw, Medicine Hat, Calgary, and Victoria.⁵³

Each Society was allowed to take applications from employers seeking immigrant labour, along with money to defray worker travelling expenses, and transmit the same to the district’s Immigration Agent. The Agent would in turn forward applications to Emigration Agents either in the United Kingdom, or elsewhere. Emigration Agents would then “take the necessary steps for procuring and forwarding to the proper place in Canada, such immigrant or immigrants as may be required by the application.”⁵⁴ The Act also allowed a Society to enter into contracts with employers wanting to employ immigrants, including terms such as the period of employment and rate of pay being offered to the immigrant, and it appears that a Society could enforce these contracts by seeking damages against the employer for non-performance.⁵⁵

⁵⁰ Udo Sautter, “The Origins of the Employment Service of Canada, 1900-1920” (1980) 6 *Labour / Le Travail*, 89 at 91 [Sautter, “Origins”].

⁵¹ H. Gordon Skilling, *Canadian Representation Abroad From Agency to Embassy* (Toronto: Ryerson Press, 1945) at 2 [Skilling, *Canadian*].

⁵² IASA, *supra* note 47.

⁵³ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1887* (Ottawa: MacLean, Roger & Co., 1888) at xxix [Canada, 1887].

⁵⁴ IASA, *supra* note 47, ss. 7-10.

⁵⁵ *Ibid.* s. 8.

In addition, the Act provided for the recovery of expense money from the immigrant, either in one lump sum or by instalments. The Emigration Agent was charged with drafting and having the immigrant sign an undertaking binding them to making repayment,⁵⁶ and to serve faithfully during his term of employment. Re-payment could be enforced by way of a civil suit. Section 13 of the Act suggests that failure to repay and/or non-performance of faithful service could be punished by a fine not exceeding \$20, or by imprisonment until the fine and costs were paid.

This bureaucracy collaborated with the steam ship companies connecting Canada to Europe. The companies not only provided the infrastructure for transatlantic passages, but also operated a vast administrative network of booking agents. Agents were scattered throughout Britain - located in most every city, town, and village – where they sold passage tickets to emigrants. For this service the agent received not only a commission from the company but often also a bonus from the Dominion Government as an incentive to press the sale of tickets to Canada.⁵⁷

The most important private interest was the Montreal Ocean Steamship Company (a.k.a. the “Allan Line”). Incorporated in 1854 by *An Act to incorporate the Montreal Ocean Steamship Company*,⁵⁸ the company received important capital infusions through lucrative Dominion mail service contracts,⁵⁹ and through profits derived from transporting troops during the Crimean War.⁶⁰ Thus capitalized, and with an eye to the future, the Allan Line opened a chain of passenger and freight agencies which laid the administrative foundation for its transatlantic

⁵⁶ *Ibid.* ss. 11-13.

⁵⁷ Skilling, *Canadian*, *supra* note 51 at 20.

⁵⁸ *An Act to incorporate the Montreal Ocean Steamship Company*, S.C. 1854 (18 Vict.), c. XLV.

⁵⁹ For a description of mail service contracts and its importance to shipping companies see: Kenneth S. Mackenzie, “A Ready-Made Flotilla: Canada and the Galway Line Contract 1859-1863” (1988) 74:3 *The Mariner’s Mirror* 255.

⁶⁰ Thomas E. Appleton, *Ravenscrag: The Allan Royal Mail Line* (Toronto: McClelland & Stewart Ltd., 1974) at 78 [Appleton, *Ravenscrag*].

service.⁶¹ By 1866, of the 714 agents and sub-agents residing in various towns and villages throughout the United Kingdom, 328 were acting for Allan Line ships.⁶² During the latter half of the 19th century the company would go on to handle a volume of emigrant traffic greater than any other British steamship company.⁶³

Annie Blondel-Loisel suggests that a public/private effort existed between the Dominion government and the Allan Line.⁶⁴ The company's network of booking agents and associated administrative structures, its feeder service collecting emigrants from around northern Europe and assembling them in Liverpool for transport to Quebec, and its capacity to provide trans-Atlantic passages for tens of thousands of emigrants annually, formed the backbone of Dominion immigration policy. In addition, Emigration Agents supervised booking agents, and kept the latter well supplied with posters, maps, and pamphlets about Canada. With their commissions at stake, agents were encouraged to press Canada as the destination of choice. Both Emigrant and booking agents were jointly engaged in the marketing of Canada as an emigrant destination, and any vigorous publicity and marketing by one benefited the other, and *vice versa*.

In fact, the Dominion's Emigration Agents subjected the English, Scottish and Irish, and to a lesser extent other European nationals, to a "ceaseless barrage" of publicity about Canada. Publicity included the production and distribution of posters, pamphlets, newspaper advertisements, public lectures, magic lantern slides, private letters and displays of Canadian products at agricultural fairs and exhibitions.⁶⁵ Press notices were issued, and later a regular news service was established to provide the press with Canadian news items of a general nature.

⁶¹ *Ibid.* at 79.

⁶² Parliament, "Report of W. Dixon, Esq., Canadian Emigration Agent, Liverpool England" by W. Dixon, in *Sessional Papers*, No. 3 (1867) at 52a.

⁶³ Appleton, *Ravenscrag*, *supra* note 60 at 132.

⁶⁴ Annie Blondel-Loisel, *La compagnie maritime Allan de l'Écosse au Canada au XIXe Siècle* (Paris: L'Harmattan, 2009) at 89.

⁶⁵ Skilling, *Canadian*, *supra* note 51 at 15.

Foreign newspaper men were also invited to participate in tours of Canada as guests of the Canadian government.⁶⁶ Canada's immigration policy was summarized in 1911 by the Minister of the Interior: "Our immigration policy is in the first instance simply an advertising policy – a means of placing the advantages of Canada before such people in other countries as we desire to induce to come to Canada."⁶⁷

The Allan Line complemented this campaign by providing information on how to get to Canada, and their advertisements appeared in countless local newspapers throughout Europe, from Scandinavia to the remotest parts of the United Kingdom. The company also printed off large quantities of pamphlets, maps and other propaganda. The Dominion's Antwerp Agent discussed the benefits of advertising and noted that the results were, "confirmed by Messrs. Allan Brothers & Co., at Liverpool, who on every opportunity distribute hand bills to stimulate emigration to Canada. Their great expenses for that purpose prove that they consider this means as a very efficient one."⁶⁸ A shortage of Dominion pamphlets in England for the 1871 season was apparently remedied by a supplemental Allan Company print run. As one correspondent noted, "If the Allans had not issued 100,000 pamphlets matters would have been worse."⁶⁹ A Dominion Agent in Scandinavia reported that, "Through the favour of Allan Brothers & Co., at Liverpool, I have been enabled to place an excellent map (5 by 9 feet, on rollers) in prominent places in about forty country villages."⁷⁰

There were some tensions between Emigration and booking agents, however. While the former were guided by government policy, the latter were driven by the profit motive.

⁶⁶ *Ibid.* at 17-18.

⁶⁷ *Ibid.* at 15.

⁶⁸ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1874* (Ottawa: MacLean, Roger & Co., 1875) at 117 [Canada, 1874].

⁶⁹ Appleton, *Ravenscrag*, *supra* note 60 at 122.

⁷⁰ Canada, 1874, *supra* note 68 at 134.

Emigration Agents suspected and at times detected agent practices that undermined Dominion interests. For example, Emigration Agents found that agents encouraged emigration to the United States over Canada, for the simple reason that the US destinations were further away, and the larger fare meant a larger commission. One Agent noted that, “In my travels through the different towns, I made it a rule to call upon Allan agents. In almost every instance, I found that they took no trouble to distribute the pamphlets on Canada and other printed information supplied to them. ... I tried to impress upon the agents that merely supplying pamphlets when asked for them, was not inducing emigration; but in any case, so long as booking for the States pays better than booking for Canada, these gentlemen will not make Canada a present of their commission.”⁷¹

During the years when the Dominion offered booking agents monetary bonuses for each emigrant sent to Canada, Emigration Agents found that, “The consequence of this is that no matter whether the applicant for an assisted passage is suitable or not for Canada, the Agents will forward his application knowing that if granted he will pocket the bonus as well as the ordinary Steamship Company’s commission. Thus many emigrants ineligible through age or occupation for Canada, are forwarded to the country through the agency of these parties.”⁷² Similarly, Emigration Agents complained of agents obtaining assisted passages for “would-be-emigrants”, whose only object was to get to Canada as cheaply as they could in order that they might afterwards make their way to the United States.⁷³ In other words, agents allegedly took little care in who they sent to Canada, knowing that they could receive both government bonus and company commission.

⁷¹ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1871* (Ottawa: MacLean, Roger & Co., 1872) at 86 [Canada, 1871].

⁷² Canada, 1874, *supra* note 68 at 158.

⁷³ Canada, *Report of the Minister of Agriculture of the Dominion of Canada, 1876* (Ottawa: MacLean, Roger & Co., 1877) at 158 [Canada, 1876].

Overall, the propaganda campaign was likely very potent, considering that the United Kingdom during this period was plagued by depression, endemic poverty and unemployment. The print materials promised full employment, high wages, social equality, recognizable communities, pleasant climate, and low cost entry to farming and landownership. As Vosko notes, the campaigning plied an ideology that hinted at the possibility of upward social mobility.⁷⁴ For example, one pamphlet suggested that upward social mobility was a near certainty: “Men commencing as labourers seldom keep in that condition very long, but after a brief period become employers of labour themselves. It is this moral certainty of rising in the social scale, [that] stimulates the exertions of the needy settler.”⁷⁵ Allan Line propaganda followed a similar vein: “The chief qualifications required for an emigrant are sobriety, industry and perseverance. Possessed of these, no one need despair of making a happy and comfortable home in the Dominion of Canada.”⁷⁶ Propaganda was also often coupled with Agents actively combing the countryside seeking out those people fallen on hard economic times.⁷⁷ Altogether one million emigrants are estimated to have come to Canada between 1867 and 1890, of which approximately 60 per cent were from the British Isles.⁷⁸

C. Temporary Foreign Worker Recruitment

Employer labour demands at times conflicted with the federal government’s immigration and nation-building priorities. The Dominion government preferred to recruit white, English speaking settlers, while employers often complained that many of the workers recruited from

⁷⁴ Vosko, *Temporary*, *supra* note 45 at 47.

⁷⁵ Ontario, *Emigration to the Province of Ontario* (Toronto: Department of Agriculture and Public Works, 1872) at 2.

⁷⁶ Appleton, *Ravenscrag*, *supra* note 60 at 123.

⁷⁷ See for example: Harper, Marjorie. “Enticing the Emigrant: Canadian Agents in Ireland and Scotland, c. 1870–c. 1920” (2004) 83 *The Scottish Historical Review* 41 at 45.

⁷⁸ Kelley and Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998) at 78 [Kelley and Trebilcock, *Mosaic*].

Britain's urban poor were unsuited for the heavy work required on farms or in other remote locations. Instead, railway construction, mining and smelting interests, and other related sectors required workers capable of heavy work that was ill-fitted to the ideology of upward social mobility used to recruit workers from the UK. British immigrants who attempted it often found the work demeaning and unacceptable.⁷⁹ Consequently, many large employers developed a preference for unskilled labour from Southern Europe, as these workers were seen as being accustomed to heavy labour, and also appeared to have a desirable avoidance of trade unionism.⁸⁰

This employer preference fell outside official immigration policy as Southern Europeans were not seen as desirable immigrant stock. Parliamentarian E.N. Lewis' caricature of Southern Europeans summed up the prevailing attitudes: "We do not want a nation of organ grinders and banana sellers in this country."⁸¹ As a result, industry could not rely on government recruitment systems, and instead, they began using ethnic intermediaries, the *padroni*, to recruit temporary workers outside official government immigration and settlement programs. The Dominion government tolerated this recruitment as the general thinking was that these workers could be relied upon to feel alien in the new land, not to jump track, not to wish to farm, and to be transient or sojourning in their frame of mind.⁸²

In fact, the government tolerated deviations from racialized norms whenever a shortage of workers required for heavy work appeared, and when there was a strong likelihood that the workers' presence would only be temporary. For example, the Dominion government tolerated

⁷⁹ For the complaints of one such Englishman who worked on a rail line in remote northern Quebec see: Ellen L. Ramsay "'The Great Dominion': A Pamphlet Written by an English Working Man, 30 June 1884, R. James" (1991) 28 *Labour / Le Travail* 261 at 263. For more general comments on this topic see: Canada, *Report of the Select Standing Committee on Immigration and Colonization* (Ottawa: 1877) at 71

⁸⁰ Robert F. Harney. "Montreal's King of Italian Labour: A Case Study of Padronism" (1979) 4:4 *Labour* 57 at 61 [Harney, "Padronism"].

⁸¹ *House of Commons Debates*, vol. 1 (23 January 1914), at 140.

⁸² Harney, "Padronism", *supra* note 80 at 61.

an estimated 15,000 Chinese labourers brought to Canada to work on the western leg of the Canadian Pacific Railway during the 1880s. Railway contractors such as Andrew Onderdonk favoured the importation of Chinese labourers as there were not enough workers in the West to do the job, nor were there enough American navvies willing to move north for the wages that were being offered. The Chinese also had the advantage of arriving on the West Coast, where transportation to worksites was a much easier endeavour than for most other immigrants who, upon landing in the East, had to be transported across the entire country. Equally important for employers was the assumption that, “Chinese workers were relatively easy to secure, were more servile than most other workers, and were willing to work at wages 30-50 per cent lower than those paid to white labourers.”⁸³

While these racialized deviations were tolerated when necessary, foreign workers were expected to return home once their work ended. With respect to the Chinese workers, once the rail road was completed, the Dominion government quickly enacted the exclusionary *The Chinese Immigration Act*.⁸⁴ While useful as temporary labour, Asian workers were never seen as settler material, and were thus actively discouraged from immigrating to Canada. The 1902 Report of *the Royal Commission on Chinese and Japanese Immigration* captured these sentiments recommending that Chinese immigration to Canada be prohibited.⁸⁵ The Report went on to recommend that an interim step to prohibition would be to quintuple the then existing entry head tax from \$100 in 1900,⁸⁶ to \$500 in 1903.⁸⁷

⁸³ Kelley and Trebilcock, *Mosaic*, *supra* note 78 at 94

⁸⁴ S.C. 1885 (48 & 49 Vict.) c. 71.

⁸⁵ See Canada, “The Royal Commission on Chinese and Japanese Immigration” (April, 1902) 2 *The Labour Gazette* 599 at 609.

⁸⁶ *An Act to restrict and regulate Chinese Immigration into Canada*, S.C. 1900 (63 & 64 Vict.), c. 32, s. 6.

⁸⁷ *The Chinese Immigration Act*, S.C. 1903 (3 Edw. VII), c. 8, s. 6.

With respect to Italian or southern European labour, the *padroni* were the English speaking member of that diaspora. Acting as intermediaries between employers and the culturally different and non-English speaking workers, the *padroni* “spared them both from dealing directly with the mysterious other.”⁸⁸ As Harney noted, it was language and literacy skills, i.e. “their ability to correspond and to communicate with the American employer which made the *padroni* powerful.” In fact, literacy was a form of capital and the basis of the brokerage system itself. Men who would have been brokers between the well-born and the peasantry or between government and peasantry in Europe, found themselves brokers between sojourners and English-speaking employers.⁸⁹

The *padrone* system in some ways resembled the Dominion government’s immigration operations. On the demand side, employers placed orders, sometimes offering a bounty per head if workers were urgently required. For example, a strike in 1901 caused the CPR to offer *padrone* Antonio Cordasco \$1 per man as an incentive.⁹⁰ And like the Dominion government, the *padroni* also produced propaganda. For example, Cordasco’s “kept” newspaper, the *Corriere del Canada*, was printed and sent in large quantities for distribution in Italy, and by various means circulated in districts in which emigrants were likely to be recruited.⁹¹ Like the Dominion, the *padroni* used advertising to encourage Italian workers to come to Canada.⁹² The propaganda targeted men who made the equivalent of 25 cents per day with the possibility of earning \$1.50 per day, or even twice that working as a foreman.⁹³ Other enticements promised

⁸⁸ Harney, “Padronism”, *supra* note 80 at 59.

⁸⁹ *Ibid.* at 71-2.

⁹⁰ *Ibid.* at 69.

⁹¹ Canada, “Action by Parliament of Canada to Prevent Fraudulent Representations to Working Men”, (June, 1906) VI The Labour Gazette 1346 at 1348.

⁹² Harney, “Padronism”, *supra* note 80 at 71.

⁹³ *Ibid.* at 83.

that, “A single season’s campaign enabled them to save money to send home; and, by staying several seasons, they could make a nest-egg so that they might never come back again.”⁹⁴

Reputable persons in Italy, such as priests, school-teachers, postmasters, and county notaries acted as a type of emigration sub-agent, employed to reach the potential migrant in the back country.⁹⁵ They were also employed as booking agents for steamship companies, selling tickets, and providing other necessary travel documents on commission.⁹⁶ The main agents, such as the Swiss recruiting firm Corecco and Brivio, dealt directly with North American *padroni*, and also formed alliances with particular steamship lines. In short, workers from southern Europe moved along *vincolismo* (linkages) lined with immigration societies, travel agencies, steamship company agents, and *padroni*, and used established shipping routes operated by the Canada Steam Shipping Company, Compagnie Transatlantique, and Lloyd’s.⁹⁷

Robert Harney states that in this so-called *commercio di carne umana* (white slave trade) there was profit to be made both in the transportation of “human cattle”, as well as in running the holding pens.⁹⁸ On the latter, *padroni* charged foreign workers registration fees, provided boarding houses, sold provisions, lent money, transmitted remittances and pre-paid tickets, and offered “protection” against all the dangers of an unknown world, usually at healthy, if not outrageous mark-ups.⁹⁹

Despite these charges and costs, Harney suggests that sojourners were content with their margin of saving and profit. Instead, when they did complain, it was, “of the cold, of unsanitary and unsafe conditions, and sometimes of a *padrone*’s dishonesty.”¹⁰⁰ The worst situations

⁹⁴ *Ibid.* at 62.

⁹⁵ *Ibid.* at 64.

⁹⁶ *Ibid.* at 65.

⁹⁷ *Ibid.* at 61.

⁹⁸ *Ibid.* at 63.

⁹⁹ *Ibid.* at 73.

¹⁰⁰ *Ibid.* at 83.

involved migrants being held over and unemployed in Canada, and having their savings depleted, or else arriving to find no work, or work at lower than promised wages. For example, in 1903 a group of Italian workers successfully sued Cordasco for failing to provide work for them as agreed, and for the difference in the stipulated wages and the wages they subsequently obtained for themselves. In the case of *Fandino & Alexandro vs. Cordasco*, “The plaintiffs declared that in December, 1903, they paid \$1 to the defendant to have their names inscribed on his register with the promise that not later than the following May he would secure work for them on the Canadian Pacific Railway for the whole of the summer at wages of \$1.50 a day. They further allege that defendant did not procure them the work, but that in the month of July they found employment themselves at \$1.18 per day, and they claimed \$139.16 damages for loss of time and difference in wages.”¹⁰¹ The Court subsequently found Cordasco responsible for the difference.

In 1904, a combination of intra-*padroni* competition, greed, and other miscalculations caused a large “influx” of Italian labourers to Montreal. Of the six to eight thousand labourers, approximately 1000 were out of work.¹⁰² The thousand or so unemployed foreign nationals upset the sensibilities of Canadian citizens on the streets of Montreal. A Royal Commission was subsequently appointed to inquire into the immigration of Italian labourers to Montreal, and the alleged fraudulent practices of employment agencies in that city. This matter was also known as the Cordasco Affair.

The much publicized Affair exposed the repulsive ways in which immigrants were abused, though it only resulted in minimal legislation aimed at curtailing false representation

¹⁰¹ Canada, “Failure of Employment Agent to Provide Work” (November, 1905) VI The Labour Gazette 599 at 599.

¹⁰² Canada, “Action by Parliament of Canada to Prevent Fraudulent Representations to Working Men”, (June, 1906) VI The Labour Gazette 1346 at 1347.

abroad.¹⁰³ The Act, known as *An Act respecting false representations to induce or deter immigration*¹⁰⁴ (and later incorporated into section 55 of *The Immigration Act, 1910*) sent a message that any person making false representations abroad resulting in the oversupply of temporary foreign workers in Canada could be fined from \$50 to \$1000. In other words, the main concern was not foreign worker welfare, but rather in optimizing the numbers of such workers in Canada. Despite the investigation, the *padroni* were left to continue their trade in foreign temporary workers relatively unhindered, and the system was likely only disrupted by the social upheavals brought on by the First World War.

D. Employment Agencies

Employment agencies emerged towards the end of the 19th century as production developed into industrial scales. A 1928 Yale Law Review article discussing employment agencies reviewed the urbanization of labour markets, a process which also applied to Canada:

Until well in the nineteenth century production was carried on in small shops, goods were sold in a market near at hand, and each town with its bit of surrounding country was an almost self-contained industrial unit. Even as late as the eighties the nation was largely agricultural, business was little beyond the stage of petty trade, and all goods except a few ‘cash’ staples were produced for local consumption. Under these conditions there was, save in name, hardly such a thing as ‘a labor market.’ In the country or the small town, where everything was a matter of neighborhood knowledge, the jobs open and the laborers available were matters of common knowledge, and the two were brought together with-out difficulty. It was only in the city, which was still new and strange, that the problem of ‘hiring’ did not solve itself and there was need for the service of brokers in human labor.¹⁰⁵

¹⁰³ Sautter, “Origins”, *supra* note 50 at 98.

¹⁰⁴ S.C 1905 (4-5 Edw. VII), c. 16.

¹⁰⁵ W. H. H. “The Regulation of Employment Agencies” (1928) 38:2 The Yale Law Journal 225 at 226-7.

In other words, not only was the task of finding workers in a large, complex labour force becoming too difficult for many employers, but job-seekers also found themselves in an anonymous market whose dominating forces were intricate and often difficult to understand.¹⁰⁶

Similar difficulties in connecting employers with workers were noted in the 1896 *Report upon the Sweating System in Canada*. The Report noted that, “[it] is frequently happening that workmen are idle in one town or city when their services are needed in another.” The Report went on to recommend that some system of labour registration should be adopted, so that workers might be kept informed as to where a demand might exist for their services, and employers at the same time advised as to where workers could be obtained.¹⁰⁷

Private, for-profit employment agencies eventually filled this demand for service. Unfortunately, the results were often less than satisfactory. The United States discovered, “with a unanimity that is rare in such matters”, that private exchanges were unable to handle in a comprehensive and constructive way the placement of labour, and that the abuses which attended the unregulated exchange seemed inseparable from their operation.¹⁰⁸ Canada had similar problems, and both US and Canadian reports on the matter corroborated each other. For example, a 1912 US Bureau of Labor report noted how stories of agency swindles and frauds were heard universally. Some of the more common agency frauds included the charging of a fee and sending applicants to where no work existed, and/or charging exorbitant fees.¹⁰⁹

Canada’s *Labour Gazette* reported similar examples, which corroborated the existence of a widespread problem. Instances of applicants being sent to non-existent jobs included *R. v. Blood*, where the accused was convicted of fraudulently holding himself out as an agent for a

¹⁰⁶ Sautter, “Origins”, *supra* note 50 at 95.

¹⁰⁷ Parliament, “Report upon the Sweating System in Canada” by A.E. Whyte in *Sessional Papers*, No. 61 (1896) at 17.

¹⁰⁸ W. H. H. “The Regulation of Employment Agencies” (1928) 38:2 *The Yale Law Journal* 225 at 228-9.

¹⁰⁹ United States, No. 109 *United States Bureau of Labor Bulletin* at 36.

company, and collecting 50 cents from 13 others as a fee for securing them employment with the company.¹¹⁰ *R. v. Sageese* involved charging a worker for a job that was essentially non-existent. Here, the accused “auctioned” the position for camp cook to a certain Miller, an Englishman, for a high price. Miller later found out that the camp would not hire Englishmen. The accused was subsequently convicted of fraud.¹¹¹ Similarly, in *R. v. Lang*, the judge found that the accused’s licensed employment agency was not a genuine enterprise, but instead “a fraudulent device for extorting money from very poor workingmen, strangers in the city, who were looking for a job to earn the daily bread [for] their families.” The defendant had practiced a series of systematic frauds, all the more dangerous for being “most cleverly planned.”¹¹² In *R. v. Yan*, a Chinese doctor was charged and convicted of obtaining money under false pretences from over 100 local workingmen,¹¹³ while in *R. V. Hagelbeick*, the accused was convicted of taking a dollar from each of two men for obtaining them employment, “but when the men went to the job they found that there was no opening for them.”¹¹⁴

The case of *VanDusen v. Roberston* involved two newspaper reporters going undercover as job-seeking workers, and using the services of Van Dusen’s New Method Employment Bureau. After paying fees and being sent to jobs that did not exist, the reporters published an article about their experiences in the local paper. Van Dusen sued unsuccessfully, alleging that the defendant reporters had entered into a conspiracy to injure his business.¹¹⁵

¹¹⁰ Canada, “Fraudulent Labour Agent Convicted of False Pretences and Forgery” (November, 1907) VIII The Labour Gazette 618 at 618.

¹¹¹ Canada, “Fraudulent Employment Agents Convicted” (February, 1908) VIII The Labour Gazette 1024 at 1024.

¹¹² Canada, “Conviction of Employment Agent for Fraud” (November, 1909) X The Labour Gazette 613 at 613.

¹¹³ Canada, “Chinese Employment Agent Guilty of False Pretences” (February, 1908) VIII The Labour Gazette 1026 at 1026 .

¹¹⁴ Canada, “Employment Agent Sent to Prison” (March, 1908) VIII The Labour Gazette 1165 at 1165.

¹¹⁵ Canada, “Employment Agent Loses Action for Conspiracy” (March, 1908) VIII The Labour Gazette 1161 at 1161.

Private employment agencies also preyed on foreigners, suggesting that newly arrived immigrant and temporary foreign workers were also caught up in these fraudulent schemes. For example, in *R. v. Plewes*, the accused was brought up on a charge of obtaining the sum of \$1 each from thirteen Italians upon his promise to obtain them employment. It was alleged that after employing them for a day or two, he discharged them without cause. The charge was dropped when the accused returned the money.¹¹⁶ In *R. v. Poull*, the accused was convicted on a charge of fraud in connection with bringing some 50 Poles and Russian Jews to Oshawa on the pretence that he would procure work for them at the local canning factory.¹¹⁷ In *R. v. Chapman*, the accused was charged and convicted of fraudulently obtaining money from a number of Italian workers. The accused collected relatively large amounts of money from his victims for “uniforms”, representing that they would earn \$2.50 per day “and [that] their most arduous duties would be wearing splendid uniforms and answering the bell for dinner.”¹¹⁸

As a result, Canadian regulators began drawing conclusions regarding the efficacy of the private employment agency sector. In 1913, the Dominion Government diplomatically noted that, “Whilst it is not suggested ... that the employment agencies throughout Canada are generally of an undesirable class,” it was nonetheless satisfied that the conditions in some localities rendered the passage of employment agency regulations “most desirable.”¹¹⁹ The Dominion subsequently enacted Regulations pursuant to section 66 of *The Immigration Act, 1910*, which brought all employment agencies having dealings with immigrants under the direct supervision of the Superintendent of Immigration in Ottawa. At the provincial level, the 1914 *Report of the Royal Commission on Labour Conditions in British Columbia* bluntly declared that

¹¹⁶ Canada, “Dishonest Employment Methods” (August, 1908) IX The Labour Gazette 212 at 212.

¹¹⁷ *Ibid.*

¹¹⁸ Canada, “Fraudulent Employment Agent Convicted” (March, 1908) VIII The Labour Gazette 1161 at 1161.

¹¹⁹ Canada, “Regulations for the Protection of Immigrants Seeking Employment Through Employment Offices in Canada” (May, 1913) XIII The Labour Gazette 1275 at 1275.

employment agencies were “unsatisfactory”, and recommended the abolition of all private agencies.¹²⁰

E. Employment Agency Legislation

Despite the fraudulent activities noted above, it appears that for many years only the Municipal Acts of British Columbia, Ontario, and Quebec provided for the licensing and regulation of private employment agencies. According to Udo Sautter, “The clauses of these acts were vague and not really binding; thus in 1904, in the entire Dominion only London, Winnipeg, and Vancouver seem to have had by-laws for the purpose.”¹²¹ Instead of legislating against private agencies, municipalities often opened their own Free Municipal Labour Bureaux, an apparent effort at relief, and offering the unemployed work instead of handouts. Bureaux were opened in Montreal in 1896 and Toronto in 1897. In the winter of 1908-09 Toronto also funded a temporary Free Employment Bureau organized by local charities. A severe unemployment crisis in 1913 stimulated similar efforts elsewhere, with Winnipeg and New Westminster opening municipal offices in that year. Edmonton and Calgary followed in 1914, and Ottawa established a civic Bureau for the hiring of city workers in 1915.¹²²

The Dominion also moved to curb unethical agency practices affecting the immigration field. As noted above, *The Immigration Act, 1910* gave the Governor-in-Council the right to make regulations and impose penalties in order “to safeguard the interests of immigrants seeking employment.” The details of licensing and inspection were more clearly spelled out three years later, in an Order-in-Council “designed to secure an effective oversight by the Federal

¹²⁰ Canada, “Report of the Royal Commission on Labour Conditions in British Columbia” (April, 1914) XIV The Labour Gazette 1189 at 1190.

¹²¹ Sautter, “Origins”, *supra* note 50 at 98-9.

¹²² *Ibid.* at 100.

Government over the employment agency business throughout the Dominion and to protect immigrants against impositions and injustices at the hands of unscrupulous agents trading on their ignorance of conditions in this country.”¹²³

There is evidence that Dominion Regulations were vigorously enforced. By August 1913 the Immigration Department had prosecuted and convicted six employment agencies.¹²⁴

Convictions were also later returned in *R. v. Welsh and Hodson*,¹²⁵ *R. v. Webb, Russ & Stewart*, and *R. v. Barker*.¹²⁶ The June 1914 *Labour Gazette* reported that, “A vigorous campaign has been undertaken by Chief Inspector D.H. Reynolds of the Dominion Immigration Department and Inspector Mitchell, who has charge of Ontario, against fraudulent employment agents, who have been engaged in extensive swindling operations.”¹²⁷

Several provinces appeared to follow the Dominion government’s lead. According to Sautter, “One month after the federal statute was enacted in 1910, a Quebec law gave licensing and inspection powers to the Minister of Public Works; an amendment of 1914 raised the licensing fee in cities with public offices in an attempt to increase the business of the latter.”¹²⁸ A British Columbia law of 1912, amended in 1915, required employment agency licensing and prohibited license-holders from sharing their remuneration with the employer's foremen or hiring agents.¹²⁹ Saskatchewan's *Employment Agencies Act* subsequently appeared in 1913 and in some respects was modelled after the earlier British Columbia law.¹³⁰ Ontario passed a statute in 1914

¹²³ Canada, “Regulations for the Protection of Immigrants Seeking Employment Through Employment Offices in Canada” (May, 1913) XIII The Labour Gazette 1275 bat 1275.

¹²⁴ Canada, “Prosecution for Overcharging Immigrant” (August, 1913) XIV The Labour Gazette 216 at 216.

¹²⁵ Canada, “Violation of Order-in-Council – Labour Agent Fined” (October, 1913) XIV The Labour Gazette 507 at 507.

¹²⁶ Canada, “Violation of Immigration Regulation by Employment Agents” (May, 1914) XIV The Labour Gazette 1359 at 1359.

¹²⁷ Canada, “Toronto” (June, 1914) XIV The Labour Gazette 1389 at 1389.

¹²⁸ Sautter, “Origins”, *supra* note 50 at 98-9.

¹²⁹ *The Employment Agencies Act*, S.B.C. 1912 (2 Geo. 5), c. 10; as amended S.B.C. 1915, c.23.

¹³⁰ *The Employment Agencies Act*, S.S., 1913, c.39.

that was never applied, though, “under the impact of the appalling evidence presented in 1916 by the Ontario Commission on Unemployment, . . . , the province came forward with a more detailed and stricter law in 1917.”¹³¹

The economic challenges associated with the First World War caused both provincial and federal governments to consider intervening in the labour market in a significant way.

Enlistment and troop mobilizations caused labour shortages across the country, motivating the provinces to open public labour exchanges to match employer demands with scarce labour supplies. Towards the end of the war, legislators turned their thoughts towards the social and political risks associated with shutting down the armaments industry and the impending demobilization. Both threatened to throw upwards of 750,000 men onto Canadian streets.¹³²

Social disturbances seemed likely unless substantial counter measures were taken. President of the Privy Council, N.W. Rowell, stated that if, “Canada faces acute conditions of unemployment without any adequate programme to meet the situation, no one can foresee just what might happen.”¹³³

Legislators feared the worst, and considered an idea whereby the provinces, with financial incentives, would build up networks of public labour bureaux co-ordinated through one or more federal clearing houses for the interchange of information. In May 1918, the Dominion government’s *Employment Offices Coordination Act* received royal assent,¹³⁴ thereby providing the legislative basis for demobilization and an employment placement program, coordinated with the provinces, and operated through a network of provincially controlled and publicly funded employment agencies.

¹³¹ Sautter, “Origins”, *supra* note 50 at 98-9.

¹³² *Ibid.* at 105.

¹³³ *Ibid.* at 109.

¹³⁴ *Employment Offices Coordination Act*, S.C. 1918 (8-9 Geo. V), c. 21.

The provinces subsequently passed complementary legislation, each barring private employment agencies from charging workers placement fees.¹³⁵ These measures together effectively put private agencies out of business. As noted by Saskatchewan's Provincial Treasurer in 1920, "Prior to one year ago, it was lawful for any private employment agency to operate. Today it is not. The government has taken over the whole business, putting persons desiring employment into touch with employers desiring help. This new arrangement is part of a general federal plan in which we agreed to co-operate and I think it should be a matter of pride that the scheme was modelled on the activities of our own provincial bureau previously."¹³⁶

F. Conclusion

This chapter has demonstrated how early immigration and temporary foreign worker movements built Dominion labour markets, and explored the recruitment activity in each area. Immigrant recruitment was conducted in the context of a grand intra-Imperial migration policy intended to populate British North America with northern Europeans, and structured around a bureaucracy directed by *The Immigration Act* and *The Immigration Aid Societies Act*. In contrast, temporary foreign workers moved through private networks managed by English-speaking diasporas, and faced subtle and not-so-subtle barriers to permanent settlement. Lastly, private employment agencies arose in urban labour markets, matching employer demand with a local labour supply.

Private sector involvement in each area was problematic. Booking agents chasing commissions and bonuses undermined Dominion immigration policy, while *padroni* and

¹³⁵ In Western Canada these were: *The Employment Agencies Act Repeal Act*, S.B.C. 1919 (9 Geo. V), c. 26, s.3; *An Act Respecting Employment Offices*, S.A. 1919 (9 Geo. V), c.15, s. 1; *The Employment Agencies Act*, S.S. 1918-19, c. 67, s.1; *The Employment Bureau Act*, S.M. 1919 (9 Geo. V), c.25, s. 9.

¹³⁶ Saskatchewan. Legislative Assembly, *Hansard* (15 January 1920) (Hon. Charles A. Dunning) at 241.

employment agencies exploited vulnerable workers. And while both *padroni* and employment agents perpetrated frauds and swindles, it was the latter that attracted the most significant official notice. During this period private, for-profit agencies were prosecuted, licensed, regulated and finally replaced by public labour bureaux.

It should also be noted that provincial prohibitions against charging workers fees for finding employment coupled with a Dominion-wide system of labour bureaux were recognized as an important social and legal advance. In response to the International Labour Organization's 1919 call for member nations to take measures prohibiting the establishment of employment agencies which charged fees or which carried on their business for profit,¹³⁷ the Dominion government noted that, "The principal object of this Convention is the establishment of the national system of employment agencies under the control of a central authority. The provisions of the Employment Offices Coordination Act, chapter 21, Statutes of Canada, 1918, may be largely utilized for the purpose of carrying out the proposals of this Draft Convention."¹³⁸ In other words, the international standard was essentially met, and no further action on the part of the government was required. In fact, this relatively advanced form of publicly funded labour bureaux and provincial employment agency legislation may have rendered moot subsequent ILO Conventions on the matter.

The principles enunciated in this post-war employment agency legislation would continue over the decades in one form or another. To this day, Saskatchewan's *Employment Agencies Act* remains virtually unchanged from its 1919 version. British Columbia, Alberta and Manitoba later reintroduced licensing and combined it with a prohibition, effectively corralling

¹³⁷ Canada, "Recommendation Concerning Unemployment" (December, 1919) XIX The Labour Gazette 1444 at 1445.

¹³⁸ Canada, "Draft Convention and Recommendations of First and Second International Labour Conference Brought Before Canadian Parliament" (June, 1921) The Labour Gazette 776 at 777.

employment agencies into a business model based on exclusively charging employers for their recruitment services. The continuity and stability of these provincial regimes would only be disrupted in the late 20th and early 21st centuries as federal immigration policy devolved to the provinces and with the rise of an employer-driven Temporary Foreign Worker Program. These changes are explored in Chapter Three.

Chapter 3: The Origins of the Temporary Foreign Worker Program and the Devolution of Federal Immigration Authority

A. Introduction

This chapter provides an overview of the main features of Canada's immigration policy and temporary foreign worker program, identifies the major shifts in direction, and frames the legal and policy context necessary for understanding the changes in foreign worker recruitment and the resulting pressures on provincial employment agency legislation. It is divided into four main parts. Part B begins by describing Canadian immigration policy at the time of the temporary foreign worker program's formalization in 1973 through the introduction of the Non-Immigrant Employment Authorization Program. It goes on to describe both policy and Program developments associated with the passage of *The Immigrant and Refugee Protection Act* in 2001.¹³⁹ This Part also reviews the basic elements of both immigration policy and the foreign worker program, it describes the point-based immigration system, also known as a "one-step" or "human capital" approach to permanent residency, and defines key elements of the temporary foreign worker program.

Part C notes how Western Canada's recent economic growth and its purportedly acute labour shortages translated into political pressure for a streamlined temporary foreign worker program. In 2006, Stephen Harper's Conservative Party formed a minority government in Canada's 39th Parliament. With a power base located in Western Canada, Harper's minority government proved to be particularly sensitive to the needs of employers in provinces like British Columbia, Alberta and Saskatchewan. It responded to these regional economic and political pressures by adapting the temporary foreign worker program to suit employer

¹³⁹ IRPA, *supra* note 33.

requirements. The result was explosive growth in the Temporary Foreign Worker Program's size and importance.

Part D describes how the federal government linked the Temporary Foreign Worker Program to the existing provincial immigrant nominee programs to form a regionally based, employer-driven immigration system. The federal government's transfer of immigration authority to employers and the provinces has been described as devolution. The Part describes and reviews some of the related immigration categories such as the Canada Experience Class, and programs such as the Temporary Foreign Worker Provincially Selected, and Temporary Foreign Worker Nominated by a Province.

Part E identifies the problems with recruiters and immigration consultants that arose from these developments. These problems create challenges for provincial employment standards generally, and foreign worker recruitment and employment agencies legislation in particular. It provides the basis for a more detailed examination of these impacts in Chapter Four using a case study of the Live-in Caregiver Program in British Columbia.

B. Developments in Immigration Policy and The Temporary Foreign Worker Program.

Prior to 1970, the majority of newcomers to Canada originated in Europe and the United States. These countries of origin were selected because immigrants from there were often thought to reflect values and outlooks relatively similar to those of the Canadian mainstream. A change in this selection process occurred in 1967 with the adoption of new *Immigration Act* Regulations.¹⁴⁰ The immigration process went from one based on national origin to one based

¹⁴⁰ Alan G. Green and David A. Green, "Canadian Immigration Policy: Effectiveness of the Point System and other Instruments" (1995) 28:4b *The Canadian Journal of Economics* 1006 at 1013.

on a point system that reflected language skills, work experience and other criteria associated with labour market success.¹⁴¹

The point system eventually developed into a human capital strategy or a “one-step” approach to permanent residency.¹⁴² Human capital is considered a collection of characteristics, such as education, language skills, and transferable work experience that enables a person to contribute and adapt to the economy.¹⁴³ The selection of workers under this strategy favours the young, healthy, skilled, and educated,¹⁴⁴ qualities considered to be beneficial to the prospective migrant for settlement, while providing flexibility and mobility within the workforce.¹⁴⁵ Overall, this approach was and continues to be considered consistent with long-term economic planning and nation-building.¹⁴⁶

As noted in the previous Chapter, Canada has been importing temporary migrant workers – that is, workers not intended for permanent settlement -- in one form or another since the nineteenth century. This stream was formalized in 1973 with the institution of a general temporary foreign worker program called the Non-Immigrant Employment Authorization Program pursuant to *The Immigration Act*.¹⁴⁷

¹⁴¹ Miles Corak, “Immigration in the Long Run: The Education and Earnings Mobility of Second-Generation Canadians” (2008) 14:13 IRPP Choices 1 at 8.

¹⁴² Naomi Alboim and Elizabeth McIsaac. “Making the Connections: Ottawa’s Role in Immigrant Employment” (2007) 13:3 IRPP Choices 1 at 6.

¹⁴³ Naomi Alboim and Maytree, *Adjusting the Balance: Fixing Canada’s Economic Immigration Policies* (Toronto: Maytree Foundation, July 2009) at 46 [Alboim, *Adjusting*].

¹⁴⁴ Carasco, Emily, et al *Immigration and Refugee Law: Cases, Materials and Commentary* (Toronto: Emond Montgomery Publications Limited, 2007) at 25.

¹⁴⁵ Business Council of British Columbia, *Labour Market Needs, Immigration Programs, Foreign Credential Recognition & Employment – LIFE In Ireland, New Zealand, Australia And Canada* (Vancouver: BCBC, March 2007) at 50 [BCBC, *Labour*].

¹⁴⁶ Alboim, *Adjusting*, *supra* note 143 at 45.

¹⁴⁷ R.S.C. 1970, c. I-2; see also Fudge & MacPhail, “Temporary”, *supra* note 1 at 8.

The main elements in this new Program were that it was employer driven,¹⁴⁸ and organized around Employment Validation Processes and Temporary Employment Authorizations.¹⁴⁹ The Validation Process was intended to protect Canadian workers by ensuring that a foreign worker's employment would not adversely affect the employment and career opportunities of citizens and permanent residents.¹⁵⁰ The Authorizations were work permits setting out the employer's name and location of employment; employment type, condition and length of employment; and were pre-arranged prior to arrival to Canada.¹⁵¹

The increased number of temporary workers recruited under the non-immigrant Program demonstrated a policy move away from immigrant settlement towards a reliance on temporary labour.¹⁵² And while the program initially focused on providing workers for "low-skilled" tasks in the domestic and agricultural sectors,¹⁵³ it eventually expanded to include workers destined for high-skilled occupations.¹⁵⁴ The program also relied on a significant amount of recruiter intermediation,¹⁵⁵ and was often plagued by recruiter misconduct.¹⁵⁶

In 2001, Parliament replaced *The Immigration Act* with *The Immigrant and Refugee Protection Act*. Federal immigration policy under the new Act continued to be based on a human capital approach. A new wrinkle in this policy appeared just prior to Act's passage, however. In the late 1990s, the federal government and certain provinces began co-operating to address the

¹⁴⁸ Donna Baines & Nandita Sharma, "Migrant Workers as Non-Citizens: The Case Against Citizenship as a Social Policy Concept" (2002) 69 *Studies in Political Economy* 75 at 92.

¹⁴⁹ Monica Boyd, "Temporary Workers in Canada: A Multifaceted Program" (1986) Vol. 20 No. 4 *International Migration Review* 929 at 930.

¹⁵⁰ *Ibid.*

¹⁵¹ Nandita Sharma, "Cheap Myths and Bonded Lives: Freedom and Citizenship in Canadian Society" (1997) 6:17 *Beyond Law* 35 at 52.

¹⁵² Nandita Sharma, "On Not Being Canadian: The Social Organization of 'Migrant Workers' in Canada" (2001) 38:4 *Canadian Review of Sociology and Anthropology* 415 at 424.

¹⁵³ *Ibid.* at 423.

¹⁵⁴ Fudge & MacPhail, "Temporary", *supra* note 1 at 11.

¹⁵⁵ Nandita Sharma, *Home Economics: Nationalism and the Making of Migrant Workers in Canada* (Toronto: University of Toronto Press, 2006) at 107.

¹⁵⁶ *Ibid.* at 175.

uneven distribution of skilled immigrant workers across the country. In fact, the majority of immigrants tended to settle in three provinces and, more particularly, just three cities: Toronto, Vancouver and Montreal. This cooperation resulted in the development of a “small immigration program” called the provincial nominee program.¹⁵⁷

The Act’s passage in 2001 included a section formally authorizing the Minister of Citizenship and Immigration to enter into agreements with the provinces to coordinate and implement immigration policies and programs.¹⁵⁸ Section 87 of the *Immigration and Refugee Protection Regulations* also created a provincial nominee class, providing a mechanism whereby foreign nationals nominated by a province could be granted permanent residence status. Framework agreements with eight provinces and one territory highlighting immigration as a key area for bilateral collaboration were entered into and formalized how governments would work together on this issue. Agreements for a Provincial Nominee Program were subsequently put into place with 11 jurisdictions (Yukon Territory, Northwest Territories and all provinces except Quebec), either as an annex to a framework agreement or as a stand-alone agreement.¹⁵⁹

Canada’s temporary foreign worker programs continued relatively unchanged under the new Act. The Program continued to be employer driven, though Temporary Employment Authorizations were replaced by Work Permits, and the Employment Validation Process was replaced by Labour Market Opinions. As with the Employment Validation Process, an employer requires a Labour Market Opinion before recruiting foreign nationals to work temporarily in Canada. And like the previous Validation Process, the Opinion fulfills the dual function of

¹⁵⁷ Parliament, “Competing for Immigrants: Report of the Standing Committee on Citizenship and Immigration” (2002) (Chair: Joe Fontana, M.P.), (“Background” section, at 17) online: Parliament of Canada web site <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1032164&Language=E&Mode=1&Parl=37&Ses=1&File=48#p008>>.

¹⁵⁸ IRPA, *supra* note 33, s.8.

¹⁵⁹ Citizenship and Immigration Canada, *Annual Report on Immigration, 2010, Section 3 Federal-Provincial/Territorial Partnerships*, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/publications/annual-report2010/section3.asp>>.

ensuring that foreign workers do not take jobs seen as belonging to Canadians or undercutting Canadian terms and conditions of employment.¹⁶⁰ In order to issue an Opinion, an official from the Department of Human Resources and Skills Development Canada is required to ensure that the employer has made reasonable efforts to recruit citizens and permanent residents, and that the employer is paying the prevailing “Canadian” wage rate to foreign nationals.¹⁶¹

Work permits are issued by the Department of Citizenship and Immigration Canada, and are analogous to the Temporary Employment Authorization. Permits are issued once the Department official has assessed the migrant worker’s suitability,¹⁶² and may be issued either with or without restrictions. An unrestricted or “open” work permit enables a person to seek and accept employment, and to work for any employer for a specified period of time. They are generally only issued to persons who are Labour Market Opinion exempt.¹⁶³ A permit may also be issued to restrict the worker’s occupation or location, however.¹⁶⁴

C. The Temporary Foreign Worker Program’s Explosive Growth

The beginning of the twenty-first century saw business groups complain of acute skilled labour shortages in western Canada.¹⁶⁵ The situation was exacerbated by Canada’s strong economic performance, led by the commodities boom in the West, which resulted in historically low unemployment rates and labour supply pressures, particularly in Alberta and Saskatchewan. These shortages were further exacerbated by significant backlogs in the federal Skilled Worker

¹⁶⁰ Fudge & MacPhail, “Temporary”, *supra* note 1 at 9.

¹⁶¹ *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s 203(3)(d). For additional description see: Fudge & MacPhail, “Temporary”, *supra* note 1 at 9.

¹⁶² Citizenship and Immigration Canada, *FWI Foreign Worker Manual* (Ottawa: CIC, 2010)[CIC, *FWI*]; generally speaking CIC officers ensure the foreign worker meets program eligibility as set out in the IRPA Regulations, and is suitable in terms of the health, safety and security of Canadian society.

¹⁶³ *Ibid.* at 81.

¹⁶⁴ *Ibid.*

¹⁶⁵ BCBC, *Labour*, *supra* note 145 at 51.

Program.¹⁶⁶ As a result, the Program was not seen as meeting regional needs in terms of numbers, processing times, occupations and skills.¹⁶⁷ Under strain from growing backlogs and pressure to deliver needed skills faster, the immigration system was viewed by many as inflexible and unresponsive, with employers, provinces and territories calling for changes.¹⁶⁸

In 2006, the Conservative Party formed a minority government in Parliament with 124 out of 308 seats, with over half its 124 members elected from Western Canada.¹⁶⁹ Not surprisingly, Stephen Harper's precarious minority government proved to be attuned and remarkably responsive to these regional calls and made a significant turn towards employer-driven temporary foreign worker programs.¹⁷⁰ The turn was exemplified in 2006 when Citizenship Immigration Canada and Human Resource and Skill Development Canada's lists of occupations under pressure were used to feed into revised procedures for the Temporary Foreign Worker Program. With these revisions, employers seeking workers in the listed occupations faced less stringent labour market tests than for other occupations.¹⁷¹ Federal Budget funding the following year allowed the government to further streamline the Program, which included measures to reduce processing delays, more effectively respond to regional labour and skills

¹⁶⁶ Citizenship and Immigration Canada, "Statistical information: Applications processed at Canadian visa offices: Skilled workers—Federal", online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/information/times/international/02a-skilled-fed.asp>>.

¹⁶⁷ Alboim, *Adjusting*, *supra* note 143 at 20.

¹⁶⁸ Parliament, "Government Response to the Report of the Standing Committee on Citizenship and Immigration, 'Temporary Foreign Workers and Non-Status Workers'" (2009), online: Parliament of Canada <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4017803&Language=E&Mode=1&Parl=40&Ses=2>> [Parliament, "Government Response"].

¹⁶⁹ There were 68 out of 124 members, with Alberta electing nothing but Conservatives; see online: Parliament of Canada <<http://webinfo.parl.gc.ca/MembersOfParliament/MainMPsCompleteList.aspx?TimePeriod=Historical&Language=>>>.

¹⁷⁰ Department of Finance Canada, *Advantage Canada: Building a Strong Economy for Canadians* (Ottawa: Department of Finance Canada, 2006) at 49 [Finance, *Advantage*].

¹⁷¹ BCBC, *Labour*, *supra* note 145 at 51-52.

shortages, and enhance program integrity.¹⁷² This included adapting work permit authorizations and employment validation processes such as Labour Market Opinions to fit regional employer requirements.

For example, in 2008 Human Resource and Skill Development Canada and Citizenship Immigration Canada signed a five-year Memorandum of Understanding with Petro-Canada to streamline the processing of Labour Market Opinions and work permit approvals. Work permits issued under the Memorandum were restricted to certain locations and employers, and gave the foreign workers in question the ability to move from one employer to another as long as they remained within the group of Memorandum employers.¹⁷³ In other words, the employer group negotiated the restrictions placed into the work permits, giving private interests considerable influence over a process that would have otherwise remained a federal administrative matter. The result of this and other streamlining initiatives was a surge in the number of workers entering under these programs: In 2008, the number of temporary foreign workers in the country was 251, 235 -- double the 2004 level.¹⁷⁴

The surge in temporary foreign workers can be observed in Figure 1 and Table 1 below, and is particularly noticeable when compared to workers entering Canada as permanent residents. Using the number of permanent resident workers as a baseline is a method used by Sharma.¹⁷⁵ Fudge and MacPhail have also used this comparative approach to demonstrate the relative importance of temporary foreign workers to the labour force.¹⁷⁶ Moreover, the Figure

¹⁷² Parliament, "Government Response", *supra* note 168. For a more detailed description of efforts to make TFWP more "employer friendly" see: Fudge & MacPhail, "Temporary", *supra* note 1 at 25.

¹⁷³ Citizenship and Immigration Canada, *FWI Operational Bulletin 084*, (Ottawa: Citizenship and Immigration Canada, 2008), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/manuals/bulletins/2008/ob084.asp>>.

¹⁷⁴ Parliament, "Government Response", *supra* note 168.

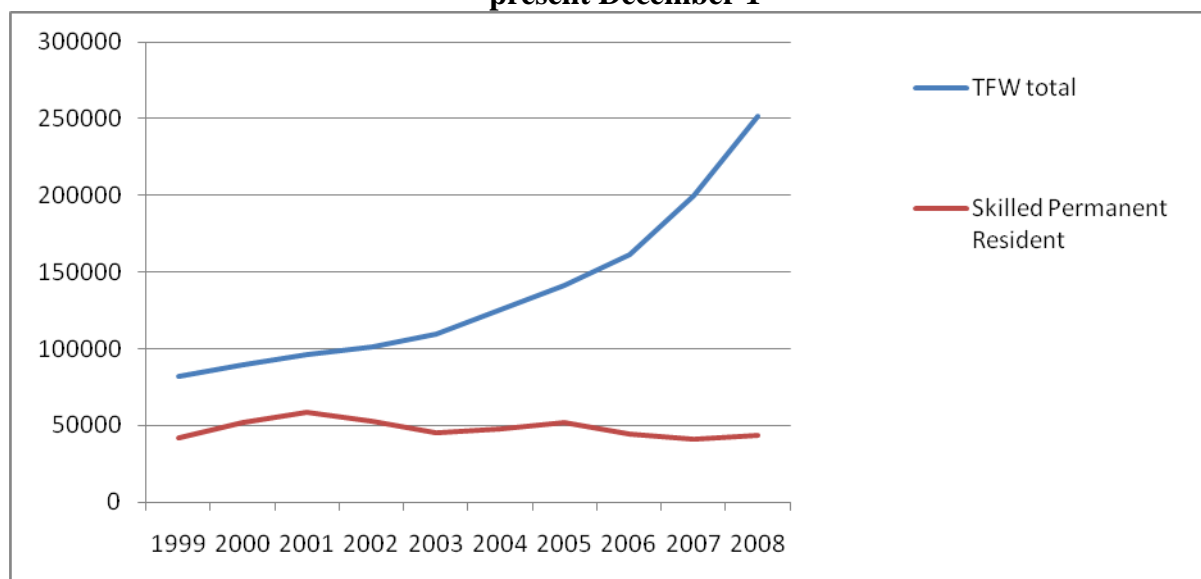
¹⁷⁵ See: Nandita Sharma, "On Not Being Canadian: The Social Organization of 'Migrant Workers' in Canada" (2001) 38:4 *Canadian Review of Sociology and Anthropology* 415 at 425.

¹⁷⁶ Fudge & MacPhail, "Temporary", *supra* note 1 at 16.

not only illustrates the dramatic post-*Immigrant and Refugee Protection Act* increases, but also the extent of Canada's pre-Act reliance on temporary foreign labour. Even prior to the Act's passage in 2001, temporary foreign workers were entering Canada at a rate nearly double the rate of workers entering as permanent residents.

Figure 1

Canada – Total Temporary Foreign Workers vs. Skilled Worker Permanent Residents present December 1st



Graph Source: CIC, *Facts and Figures 2008 (Digital Library)* (Ottawa: CIC Communication Branch, 2009) tab103n_canada and tab160n_canada.

Table 1

Canada – Total Temporary Foreign Workers vs. Skilled Worker Permanent Residents present December 1st

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
TFW	82,111	89,793	96,525	101,259	109,860	125,367	141,032	161,295	199,942	251,235
Skilled Workers	41,544	52,123	58,911	52,974	45,377	47,894	52,269	44,162	41,251	43,360

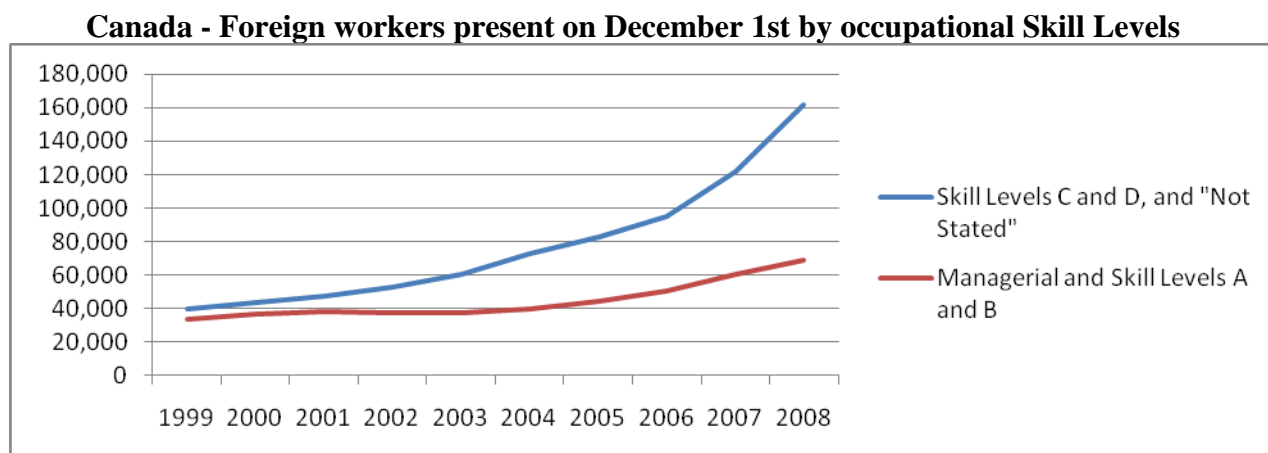
Table Source: CIC, *Facts and Figures 2008 (Digital Library)* (Ottawa: CIC Communication Branch, 2009) tab103n_canada and tab160n_canada.

During this same period, there has also been an increased demand for temporary foreign workers requiring lower levels of formal training,¹⁷⁷ to the extent that their entry has surpassed foreign workers with higher levels of formal training. Using a comparative method similar to the one used in Figure 1 and Table 1, the data in Figure 2 and Table 2 demonstrates how the numbers of skilled foreign workers at the National Occupation Code (NOC) level A and B grew slightly in relation to the accelerated growth of their lower-skilled counterparts occupying NOC C and D skill level positions. NOC skill level A usually requires a university education, while level B requires a college education or an apprenticeship. NOC skill level C usually requires secondary school or occupation specific training, while skill level D generally requires on-the-job training, short work demonstrations or no formal education requirements in order to perform the job.¹⁷⁸

¹⁷⁷ According to Citizenship and Immigration Canada, “In Canada, lower levels of formal training are defined as occupations that usually require at most a high school diploma or a maximum of two (2) years of job-specific training according to the [NOC Classification](#) system. These occupations are coded at the NOC C or D skill level.” In contrast, workers with higher levels of formal training are classed as managerial or coded at the NOC A or B skill level. See online: Citizenship and Immigration Canada <http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lowskill.shtml>. See also: Fudge & MacPhail, “Temporary”, *supra* note 1 at 18-21, for additional data and discussion on the increased number of temporary foreign workers recruited for low-skilled occupations.

¹⁷⁸ Human Resources and Skills Development Canada, *National Occupational Classification Matrix 2006*, online: Human Resources and Skills Development Canada <<http://www5.hrsdc.gc.ca/noc/english/noc/2006/html/Matrix.html>>.

Figure 2



Graph Source: CIC, *Facts and Figures 2008 (Digital Library)* (Ottawa: CIC Communication Branch, 2009) tab103n_canada, tab 143n_canada, and tab160n_canada.

Table 2

Canada - Foreign workers present on December 1st by occupational Skill Levels

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
C and D, and "Not Stated"	39,806	43,250	47,565	52,964	60,731	72,901	82,829	95,318	121,957	161,751
Managerial, A and B	33,473	36,492	38,159	37,121	37,397	39,760	44,473	50,610	60,276	69,155

Table Source: CIC, *Facts and Figures 2008 (Digital Library)* (Ottawa: CIC Communication Branch, 2009) tab103n_canada, tab 143n_canada, and tab160n_canada.

The growth in temporary foreign worker numbers entering Canada through the lower levels of formal training stream increased noticeably in 2002, the same year that the Federal Liberal government introduced a general purpose low-skill program. This program was a response to the demand for low-skilled labour in the oil and gas sectors in the West, as well as the construction sectors in Central Canada. In 2002 it was renamed the Pilot Project for Occupations Requiring Lower Levels of Formal Training.¹⁷⁹

¹⁷⁹ Fudge & MacPhail, "Temporary", *supra* note 1 at 22.

D. Devolution

The development of provincial immigrant nominee programs alongside a streamlined Temporary Foreign Worker Program set the stage for the eventual linkage of the two programs. Once linked, employers would not only have access to temporary foreign workers, but could also select future permanent residents in conjunction with provincial nominee programs. In fact, a proto-linkage first occurred at the federal level.

The idea of a special immigrant class based on temporary foreign workers was floated by the federal Conservative government in 2006 when a Department of Finance report noted that, “Particular attention should be given to skilled temporary foreign workers with Canadian work experience and foreign graduates from Canadian colleges and universities, as these groups are well placed to adapt quickly to the Canadian economy.”¹⁸⁰ In 2008, the federal government introduced Bill C-50, which contained a component granting the Immigration Minister the authority to issue instructions to deal with immigration backlogs, and encouraged the Minister to help Canada create what the Conservatives were characterizing as “the most flexible workforce in the world.”¹⁸¹ This amendment, in turn, provided the legislative basis for the Canada Experience Class.

The Canada Experience Class was subsequently developed for temporary foreign workers or graduates with Canadian work experience who are familiar with Canadian society and Canada’s job market, have knowledge of English or French, and have additional abilities that would assist them in making a successful transition from temporary to permanent residence in Canada. Applicants from the temporary foreign worker stream must have acquired in Canada

¹⁸⁰ Finance, *Advantage*, *supra* note 170.

¹⁸¹ Parliament, “[Response to the Standing Committee on Finance on the subject matter of Part 6 of Bill C-50](http://www2.parl.gc.ca/Content/HOC/Committee/392/CIMM/WebDoc/WD3507808/392_CIMM_C50/392_CIMM_C50_Opinion-e.html) – Dissenting Opinion of the Conservative Party of Canada” (2008), online: Parliament of Canada <http://www2.parl.gc.ca/Content/HOC/Committee/392/CIMM/WebDoc/WD3507808/392_CIMM_C50/392_CIMM_C50_Opinion-e.html>.

within the 36 months before the date the application is made, at least 24 months of full-time work experience, or the equivalent in part-time work experience, in a NOC type 0, or level A or B occupation (i.e., managerial, professional, or skilled and technical).¹⁸²

The federal government recently expanded the categories of temporary foreign workers who are exempt from the time-consuming Labour Market Opinion process, which is designed to ensure that there is a labour shortage and that prevailing wage rates are being paid, by introducing two important new programs: The Temporary Foreign Worker Provincially Selected and Temporary Foreign Worker Nominated by a Province. Regarding the former, Ontario and Alberta have negotiated agreements that waive the LMO requirement.¹⁸³ Ontario's agreement "seeks to promote the entry of TFWs destined to work in Ontario through agreed-upon mechanisms as expeditiously as possible, taking into consideration applicable law, operational and resource constraints, and national security."¹⁸⁴ Alberta's agreement seeks to "provide Alberta with mechanisms to facilitate the entry of TFW to Alberta to meet its economic development priorities, in a manner that does not negatively affect the normal functioning of the local labour market."¹⁸⁵

The Temporary Foreign Worker Nominated by a Province program is the broader of the two programs in that it applies to all the provinces that have entered into provincial nominee agreements. A person who has been nominated by a province for permanent residence and has a job offer from a provincial employer may be issued a work permit without requiring an LMO. In

¹⁸² Citizenship and Immigration Canada, *Canadian Experience Class OP 25* (Ottawa: Citizenship and Immigration Canada, 2010) at 4.

¹⁸³ The legal authority for these agreements is *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s.204(c). See also: CIC, *FWI*, *supra* note 162 at 43.

¹⁸⁴ *The Canada-Ontario Immigration Agreement* (2008), Appendix A, Annex G, Article 1.7; online: Citizenship and Immigration Canada <http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp#annexG>.

¹⁸⁵ *Agreement for Canada-Alberta Cooperation on Immigration* (2009), Annex B: Temporary Foreign Workers, Article 3.2(a); online: Citizenship and Immigration Canada <http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp>.

order for this provision to be applied, the application for the work permit must include a letter from the provincial government that confirms that the foreign national has been nominated for permanent residence by the province, and that the nominated individual is urgently required by the provincial-based employer who has made the foreign national a job offer.¹⁸⁶

The federal government's linkage of the Temporary Foreign Worker Program with Provincial Nominee Programs appears unprecedented. The use of these types of programs to transfer onto others (provinces, employers, and even postsecondary institutions) much of the federal government's role and the costs associated with selecting future citizens has been characterized by certain commentators as "devolution."¹⁸⁷ Devolution also represents a significant branching off from the one-step human capital approach to permanent residency. A two-step, as opposed to a one-step, immigration process involves foreign workers arriving to work in Canada temporarily before applying for permanent residency. In other words, time spent in Canada under a temporary work permit becomes the additional step prior to a permanent residency application. While two-step immigration previously existed on a limited basis through such programs as the Live-In Caregiver Program, it is now much more common due to the growth of provincial nominee programs and the establishment of the Canadian Experience Class, coupled with increased efforts to recruit temporary foreign workers.¹⁸⁸

The extent and depth of devolution is suggested by the open-ended number of permanent residents accepted under these programs.¹⁸⁹ In other words, regional employers' labour needs supersede a national immigration policy. The federal government's focus on regional employers is further reflected by the passage of new *Immigrant and Refugee Protection Act Regulations*

¹⁸⁶ CIC, *FWI*, *supra* note 162 at 44.

¹⁸⁷ Alboim, *Adjusting*, *supra* note 143 at 50.

¹⁸⁸ *Ibid.* at 49.

¹⁸⁹ Fudge & MacPhail, "Temporary", *supra* note 1 at 23.

giving Citizenship and Immigration Canada the authority to collect information on employer noncompliance with provincial employment standards and occupational health and safety.¹⁹⁰ With these Regulations in place, each regional employer's provincial compliance record can form an important element in federal decisions regarding work permits.¹⁹¹ The result is that while the federal government maintains its constitutional position with respect to immigration and continues to provide regulatory oversight, Canadian immigration policy has nonetheless branched off into one driven by the needs of regional employers, administered to a large extent by provincial governments, with some coordination through joint federal-provincial immigration agreements.

E. Conclusion

The growth in Temporary Foreign Worker Programs and the devolution of federal immigration authority to regional employers and the provinces has had a number of implications. First, employers' increased use of temporary foreign workers, particularly those placed into positions requiring lower levels of formal training, has resulted in a corresponding increase in the number of abuse reports commonly associated with these kinds of vulnerable workers. Fudge and MacPhail noted this relationship and observed that as the number of temporary foreign workers increased, so did the number of stories of foreign worker abuse appearing in the national and international media.¹⁹² Other reports have emerged involving foreign workers requiring lower levels of formal training and employed in the Seasonal Agricultural Worker Program,¹⁹³

¹⁹⁰ *Regulations Amending the Immigration and Refugee Protection Regulations*, S.O.R./2010-172, s.2 (4), online: Canada Gazette <<http://gazette.gc.ca/rp-pr/p2/2010/2010-08-18/html/sor-dors172-eng.html>>. In effect as of April 1, 2011 as *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 205(d).

¹⁹¹ *Ibid.*

¹⁹² Fudge & MacPhail, "Temporary", *supra* note 1 at 27.

¹⁹³ Fairey, *Farmworker Rights*, *supra* note 2. For reports on substandard living conditions, see: Justicia for Migrant Workers – BC, *Housing Conditions for Temporary Migrant Agricultural Workers in B.C.* (Vancouver: Justicia, October 2007) at 2, online: Justicia <<http://www.justicia4migrantworkers.org/bc/pdf/Housing%20Report%20>

the Live-in Caregiver Program,¹⁹⁴ and the Pilot Project for Workers with Lower Levels of Formal Training.¹⁹⁵

Second, employer access to a streamlined Temporary Foreign Worker Program stoked foreign worker demand, which in turn, opened up vast international recruitment opportunities.¹⁹⁶ A veritable industry of third-party recruiters has sprung up to do the legwork and handle all the details for companies too busy or too small to engage in foreign recruiting themselves.¹⁹⁷ And not only has the industry grown in size, but also in importance. The industry is often viewed as an indispensable intermediary between employers and foreign workers, bringing the former together with the latter. As Fudge and MacPhail note, “Canadian employers are increasingly dependent upon the use of recruitment agencies.”¹⁹⁸

Third, this increase in numbers and importance occurs at a time when many of the earlier problems associated with private immigration consultants and foreign worker recruiters remain unresolved. For example, problems with immigration consultants were recognized as far back as 1995 by the Standing Committee on Citizenship and Immigration. The Committee heard complaints about consultants ranging from incompetence, exorbitant fees, to outright fraud, and noted that the area was completely unregulated.¹⁹⁹ The Committee went on to recommend, *inter alia*, the licensing of consultants -- though it took nearly 10 years for any regulatory

[%20Oct%2007.pdf](#)>. See also: “Report on B.C. farm workers' conditions describe unsafe work conditions” *Canadian Press* (19 June 2008), online: Justicia <<http://www.justicia4migrantworkers.org/bc/#housing>>.

¹⁹⁴ Online: Philippine Women Centre of BC <<http://kalayaancentre.net/pwcofbc/?p=224#more-224>>.

¹⁹⁵ For examples see: AFL, *Temporary*, *supra* note 20; AFL, *Second*, *supra* note 20.

¹⁹⁶ SAWP is an exception, as worker recruitment is essentially a public enterprise conducted by the Caribbean or Mexican governments.

¹⁹⁷ Parliament, “Government Response to the Report of the Standing Committee on Citizenship and Immigration, “Temporary Foreign Workers and Non-Status Workers” (2009), online: Parliament of Canada web site <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=3866154&File=108#part5>>.

¹⁹⁸ Fudge & MacPhail, “Temporary”, *supra* note 1 at 33.

¹⁹⁹ Parliament, “Immigration Consultants: It’s Time to Act – Ninth Report of the Standing Committee on Citizenship and Immigration” (1995) at 3.

interventions. The Canadian Society of Immigration Consultants was established in the fall of 2003 and *Immigrant and Refugee Protection Act Regulations* were subsequently amended so as to restrict those who could represent, advise or consult with a person for a fee in Act matters to a Society member or to a lawyer.²⁰⁰ It appears that this intervention has not been particularly effective, however.²⁰¹ In fact, allegations of widespread fraud by immigration consultants have persisted,²⁰² resulting in new proposed legislation,²⁰³ along with a government call for proposals to replace the Society.²⁰⁴

Similar problems with private foreign worker recruiters are well documented, and as noted in the introductory chapter, have been widely recognized in union and labour reports, scholarly papers, by both provincial and federal governments, and internationally. These problems include, *inter alia*: Advertising and soliciting for positions that do not exist; charging workers fees for recruitment services, and otherwise charging workers exorbitant fees; misrepresenting the type and terms and conditions of employment to workers; forcing the migrant worker, upon arrival in the receiving country, to accept a contract of employment with conditions inferior to those contained in the contract that was signed prior to departure; withholding or confiscating passports and travel documents; stipulating in the employment contract provisions that deny fundamental rights, in particular freedom of association;²⁰⁵ and

²⁰⁰ *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 13.1.

²⁰¹ Canada, Auditor General of Canada, *The Fall 2009 Report of the Auditor General of Canada, Selecting Foreign Workers Under the Immigration Program* (Ottawa: Office of the Auditor General, 2009) at 33-35; online: Parliament of Canada <http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_02_e_33203.html#hd5m>. See also: Parliament, “Regulating Immigration Consultants, Report 10 of the Standing Committee on Citizenship and Immigration” (2008) (Chair: Norman Doyle, M.P.), online: Parliament of Canada <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3560686&Language=E&Mode=1&Parl=39&Ses=2&File=21>>.

²⁰² Fudge, “Global”, *supra* note 3 at 256.

²⁰³ Bill C-35, *An Act to amend the Immigration and Refugee Protection Act*, 3rd Sess., 40th Parl., 2010 (First Reading Senate, December 7, 2010).

²⁰⁴ Online: *The Canada Gazette* <<http://canadagazette.gc.ca/rp-pr/p1/2010/2010-06-12/html/notice-avis-eng.html>>

²⁰⁵ ILO, *Tripartite*, *supra* note 17 at Annex II, Guidelines on special protective measures for migrant workers recruited by private agents, Article 3; ILO, *Fair Deal*, *supra* note 19 at 58-60.

human trafficking.²⁰⁶ And while foreign worker recruiters are ostensibly regulated by provincial employment agency legislation, much of the misconduct occurs outside the province, and beyond direct provincial supervision.

In fact, one of the more important and unresolved issues associated with immigration consulting and foreign worker recruitment is the question of “jurisdictional conundrums.”²⁰⁷ While the “conundrum” idea is explored more fully in Chapter Four, briefly stated, it involves the difficulties in regulating recruiter and consultant conduct that occurs outside a particular government’s jurisdiction. The problem affects both provincial and federal governments. For example, the 1994 Thompson Report, which reviewed British Columbia’s employment standards and employment agency legislation, concluded that the province could not regulate recruitment contracts entered into outside of the country. The Report noted that, “These agencies charge a fee to the job applicants outside of Canada. This does not appear to violate the letter of the *Act*, which prohibits employment agencies from charging fees to job applicants in the province.”²⁰⁸ The federal government takes a similar position regarding the regulation of recruitment activity outside of Canada.²⁰⁹

Last, the linkage of temporary foreign worker programs with provincial immigrant nominee programs creates a natural connection between foreign worker recruitment and consultants providing immigration services. In other words, an employer-driven immigration system means that recruiters are well-placed to act as consultants for foreign workers wanting to access provincial immigrant nominee programs. It blurs the distinction between recruiter and

²⁰⁶ Fudge, “Global”, *supra* note 3 at 255.

²⁰⁷ The term “jurisdictional conundrum” originates with Fudge, “Global”, *supra* note 3.

²⁰⁸ Mark Thompson, *Rights and Responsibilities: A Review of Employment Standards in British Columbia* (Victoria: Ministry of Skills, Training and Labour, 1994) at 38.

²⁰⁹ See for example, Citizenship and Immigration Canada, Media Release, “Speaking notes for The Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism Cracking Down on Crooked Consultants” (8 June, 2010).

consultant by allowing the former to provide immigration-like services. Provincial immigrant nominee programs in Western Canada address this issue by requiring that any person assisting an applicant for a fee be a lawyer or a CSIC member, essentially a nod to section 13.1 of *The Immigrant and Refugee Protection Act Regulations*.²¹⁰ The requirement is mostly cosmetic, however, considering how existing regulatory oversights in have been found to be insufficient. The net effect is that recruiters not only have access to a vastly expanded recruitment market, but also a new market acting as immigration consultants, and with a minimal amount of regulatory oversight.

Chapter Four goes on to more closely examine these implications in the context of a case study of the Live-in Caregiver Program in British Columbia.

²¹⁰ For British Columbia's requirements see: online Government of British Columbia <<http://www.welcomebc.ca/wbc/immigration/come/work/about/information/representative.page?>>. For Alberta's requirements see: online Government of Alberta <<http://www.albertacanada.com/immigration/immigrating/immigration-representative.html>>. For Saskatchewan's requirement see: online Government of Saskatchewan <<http://www.saskimmigrationcanada.ca/immigration-representatives>>.

Chapter 4: Private Foreign Worker Recruitment for the Live-in Caregiver Program in British Columbia

A. Introduction

While Chapter Three examined developments in immigration policy and temporary foreign worker programs, and reviewed their implications on foreign worker recruitment generally, Chapter Four focuses more specifically on how this impacts foreign workers. It does so by constructing a case study around the recruitment of foreign workers by private agencies for the Live-in Caregiver Program in British Columbia.

The Live-in Caregiver Program was chosen as it has key elements in common with other “low-skill” Temporary Foreign Worker Program streams. Elements include being employer-driven, and intermediated by private, for-profit recruiters. The only significant difference is that a caregiver’s work permit not only restricts work to a single employer, but also restricts where the caregiver must live. The Program is also the only “low-skill” program that gives a foreign worker access to permanent residency without an employer’s nomination. With the exclusion of the Seasonal Agricultural Program, which is never a route to permanent residency and uses quasi-public recruitment through agreements with the Mexican government,²¹¹ caregiver recruitment differs little from the recruitment of other foreign workers employed in occupations requiring lower levels of formal training. In addition, the fact that these programs operate across Canada means that British Columbia’s recruitment experiences are likely similar to those in the other Western provinces. Overall, the study will reveal how private, for-profit recruiters operate,

²¹¹ For SAWP details see: Tanya Basok & Emily Carasco, “Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights” (2010) 32:2 Human Rights Quarterly 342 at 353.

locate their place and function within the larger migration context, and demonstrate their interactions with domestic laws and regulation.

The study is constructed around a variety of quantitative and qualitative data sources. Quantitative data include statistical sources such as the Department of Citizenship and Immigration Canada's Data Cube. The Department collects statistical information and organizes it into administrative and longitudinal databases. Information from these databases is then organized into Data Cubes. This Chapter uses information from the Temporary Residents Data Cubes.²¹² The quantitative data, in turn, is supported by a review of scholarly literature, along with qualitative data derived from web sites, judicial decisions and media reports.

The study also references the "conundrum of jurisdiction" a term used by Fudge to account for some of the complexity in regulating global care chains.²¹³ The term "global care chain" originated with Arlie Hochschild and referred to the series of personal links between people across the globe based on paid and unpaid care work.²¹⁴ The term was further elaborated on by Nicola Yeates, who emphasized the diversity of agents involved in the provision of care services, which include recruitment and placement agencies, overseas job promoters, and job brokers provided by commercial, non-commercial, governmental, and non-governmental bodies.²¹⁵ The chain, in turn, is divided into separate, yet linked jurisdictional compartments. This results in paid domestic work transgressing a number legal boundaries that Judy Fudge

²¹² Access to this particular Cube set was possible through the University of Victoria's research partnership with the Government of British Columbia through Metropolis BC, with Cube data provided by the British Columbia Ministry of Advanced Education and Labour Market Development's Strategic Information Branch.

²¹³ The concept of jurisdiction appearing as a "conundrum" was proposed and developed in Fudge, "Global", *supra* note 3. The discussion related to notes 214, 215 and 216 *infra* was also derived from that same article.

²¹⁴ Arlie Russell Hochschild, "Global Care Chains and Emotional Surplus Value" in William Hutton and Anthony Giddens, eds., *On the Edge: Living with Global Capitalism* (London: Jonathon Cape, 2000) 13. As found in Fudge, "Global", *supra* note 3 at 240.

²¹⁵ Nicola Yeates, *Global Care Chains: A Critical Introduction*, Global Migration Perspectives, No. 44 (Geneva: Global Commission on International Migration, 2005) at 5. As found in Fudge, "Global", *supra* note 3 at 241.

notes forms the basis of a conundrum that has historically made this important activity difficult to protect.²¹⁶

This chapter begins by describing the Live-in Caregiver Program generally, and reviewing the Program's quantitative data for British Columbia. Part B notes that the majority of migrant caregivers who arrive in British Columbia are female Philippine nationals. The data also reveals that while many Filipina caregivers are recruited directly from the Philippines, a significant number are also recruited "offshore", i.e. from outside their home country.

In order to better understand the care chain connecting the Philippines to British Columbia, Part C describes the main regulatory and institutional features governing that country's labour exports. It reviews key Philippine legislation such as *The Migrant Workers and Overseas Filipinos Act of 1995*, along with the country's main labour export institutions, which include the Philippine Overseas Employment Administration, the Philippine Overseas Labor Office, and the government's overseas consular offices.

Part D explores the jurisdictional problem, and draws attention to how local laws and policies can produce international impacts. For example, it notes how *The Immigrant and Refugee Protection Act's* passage in 2001 affected Filipino skilled worker migration, which in turn affected the Live-in Caregiver Program. A second example reveals the interaction between Philippine rules and provincial employment agency legislation. Both examples demonstrate that while the care chain is jurisdictionally compartmentalized, regulation in one segment can nonetheless impact activities in others.

Part E describes employment agency recruitment for the Live-in Caregiver Program in British Columbia. It notes how agencies recruiting for this program have organized a B.C. chapter of the Association of Caregiver & Nanny Agencies Canada. The Association's stated

²¹⁶ Fudge, "Global", *supra* note 3 at 242.

commitment is to pass recruitment costs onto caregivers, and the Part describes the membership's main strategies for avoiding the prohibitions in the province's employment agency legislation. These strategies include: recruiting and charging fees offshore; blurring the distinction between illegal and legal fees; vigorously opposing and lobbying against provincial employment agency legislation; and misrepresentation and fraud.

Given that the Live-in Caregiver Program shares key characteristics with other Temporary Foreign Worker Program streams requiring lower levels of formal training, it is reasonable to expect the streams to share the same type of recruiter problems. Moreover, as the Program expands, there should also be a corresponding expansion in recruitment problems. This in fact appears to be the case. The Chapter concludes by noting that if domestic legislation can produce international impacts, then it should be possible to design legislative initiatives that maximize the protections offered to temporary foreign workers in all federal programs.. Provincial legislators and policy makers adopted a trans-national perspective and methodology, however. With this in mind, Chapter Five goes on to map and compare employment agency legislation in the Western Canadian provinces.

B. The Live-in Caregiver Program in British Columbia

The Live-in Caregiver Program is the latest in a series of government initiatives to supply domestic help for Canadian households that stretches back to the nineteenth century.²¹⁷ During the period after World War Two, Canada turned once again to looking for domestic workers overseas, this time recruiting migrant workers from the Caribbean. The program was later incorporated into the Non-Immigrant Employment Authorization Program, and expanded to

²¹⁷ Lori A. Root, *"I May Be Lost But I Know How to Find My Way": The Lived Experiences of Filipina Caregivers in the Live-in Caregiver Program in Halifax* (M.A. Thesis, Mount Saint Vincent University, Women and Gender Studies Program, 2008) [unpublished] at 44.

include workers from other countries, especially the Philippines.²¹⁸ In 1982, the federal government introduced the Foreign Domestic Movement Program, which provided a process for domestic workers to transfer from temporary to permanent migration status.²¹⁹ The Program was later overhauled in 1992, and renamed the Live-In Caregiver Program.²²⁰

The following description of Live-in Caregiver Program processes and procedures follows the organization developed by Judy Fudge in her article on global care chains.²²¹ The Program itself comprises legislation, regulations, manuals, and guidelines. The process begins with an employer's application to Human Resources and Skills Development Canada for a Labour Market Opinion. The Department assesses the application to ensure that the employer is offering wages and working conditions that meet provincial/territorial labour standards; that the job duties are that of a full-time live-in caregiver; and that a reasonable search has been carried out to identify qualified and available Canadian citizens and/or permanent residents and unemployed foreign caregivers already in Canada. Prospective employers must also have sufficient income to pay a live-in caregiver, and provide suitable accommodation in their home, usually a private, furnished room. They must also pay for all services, fees, and costs of a recruitment agency and for all travel costs of the caregiver to and from Canada. Once the Department approves the employer's application, the employer must prepare and sign an employment contract, and send a copy of the favourable Opinion and the signed employment contract to the caregiver.²²²

²¹⁸ Fudge & MacPhail, "Temporary", *supra* note 1 at 21.

²¹⁹ Sharma, Nandita. *Home Economics: Nationalism and the Making of Migrant Workers in Canada* (Toronto: University of Toronto Press, 2006) at 117 note 9.

²²⁰ Fudge & MacPhail, "Temporary", *supra* note 1 at 21.

²²¹ Fudge, "Global", *supra* note 3 at 245.

²²² *Ibid.* at 246. See also: Citizenship and Immigration Canada, *OP 14: Processing Applicants for the Live-in Caregiver Program* (Ottawa: CIC, 2009) at 10.

The Immigrant and Refugee Protection Regulations state that a foreign national seeking to enter Canada as a live-in caregiver must make an application for a work permit in accordance with Part XI and apply for a temporary resident visa if such a visa is required by Part IX.²²³ The Program's eligibility criteria are set out in Regulation 112, and include submitting a copy of the mandatory employment contract and a positive/neutral Labour Market Opinion.²²⁴ The applicant then submits both mandatory contract and positive Opinion to the Department of Citizenship and Immigration Canada as part of the work permit application. The Department reviews these and other documents,²²⁵ as part of an assessment that ensures that the applicant meets the regulatory requirements with respect to education, training, work experience, and language ability.²²⁶ The applicant may also be interviewed by a Department official to confirm that the candidate meets certain requirements, such as language ability. Finally, the applicant must undergo statutory admissibility checks which include a medical examination, a security check for certain applicants, and compliance with normal visitor requirements.²²⁷

When all the requirements are met, the work permit is approved by the visa office and issued by the port of entry for a period of up to three years plus three months for a specific job with a specific employer,²²⁸ though the Permit's validity period is determined based on the duration of employment indicated on the Labour Market Opinion.²²⁹ Canada Border Services Agency officials have the final decision about whether or not to admit the applicant at the Canadian border.

²²³ *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 111.

²²⁴ Citizenship and Immigration Canada, *OP 14: Processing Applicants for the Live-in Caregiver Program* (Ottawa: Citizenship and Immigration Canada, 2009) at 7[OP 14]. Supplemented by Citizenship and Immigration Canada, *Operational Bulletin 192* (April 1, 2010), as found online at: <http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob192.asp>.

²²⁵ A required document list can be found in OP 14, *supra* note 224 at 12.

²²⁶ *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 112.

²²⁷ OP 14, *supra* note 224 at 16.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

What distinguishes the Live-in Caregiver Program from other Temporary Foreign Worker Program streams is that it requires the caregiver to live in the private household of the person for whom the worker provides care. As Fudge notes, the “*quid pro quo*” in this arrangement “is that it provides a unique pathway to permanent residency.”²³⁰ While work permits are restricted by employer and occupation, the creation of the Live-in Caregiver class under Regulation 110 allows Caregivers to apply for a change of status to permanent residency under Regulation 113 without having to leave Canada and without an employer’s nomination. This transfer of migration status can be done once a live-in caregiver has worked for a cumulative period of at least two years during the four years following her arrival in Canada.²³¹

Fudge goes on to note that, “Once a migrant domestic worker achieves permanent status, she is no longer required either to live in the home of her employer or to engage exclusively in care-giving activities.”²³² She can also sponsor family members as permanent residents. In addition, “The transition from temporary migrant to permanent status is not immediate”, however, in that it “typically takes between twelve and eighteen months for a live-in caregiver who has fulfilled all of the conditions of the LCP to receive permanent resident status. Over 90 per cent of the foreign nationals who enter Canada under the LCP apply for permanent residence status, and 98 per cent of them are successful. And while the vast majority of caregivers no longer live in their employers’ homes after they obtain permanent resident status, the majority face huge barriers in obtaining better jobs.”²³³

²³⁰ Judy Fudge, “Global”, *supra* note 3 at 245.

²³¹ *Ibid.* at 247.

²³² *Ibid.*

²³³ *Ibid.*

In British Columbia, the vast majority of caregivers entering the province through the Program are women, and of these, most are from the Philippines. This is demonstrated by the data set out in Tables 3 and 4 below.

Table 3										
Total Number of LCP Caregivers entering B.C. (total and by gender)										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
LCP	654	1,100	1,167	1,277	1,550	1,607	1,822	2,989	2,599	1,892
LCP (Female)	631	1,038	1,101	1,197	1,419	1,462	1,665	2,750	2,471	1,787
LCP (Male)	26	65	66	81	134	145	157	239	128	105

Source: CIC Data Cube

Table 4										
Female LCP Caregivers entering B.C. by Citizenship										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Philippines	469	877	902	991	1,035	1,138	1,373	2,388	2,087	1,425
India	16	25	27	80	230	150	89	42	73	102
China (includes HK and Macau)	--	--	--	--	--	20	52	96	104	87
Saudi Arabia	--	--	--	--	--	--	--	--	--	--
Taiwan	--	--	--	--	--	--	--	--	--	--

Source: CIC Data Cube

This data is consistent with the national pattern, where 90% of caregivers arriving in Canada are women.²³⁴ It is also consistent with data that ranks the Philippines in the top three source countries for international migrants, with Manila serving as an important hub in global migration circuits.²³⁵ It reflects the ongoing economic crisis in the Philippines that leads one out of every ten Filipinos to find work overseas.²³⁶ As a result, these statistics reveal a pattern of men and mostly women who are drawn into overseas domestic service by social inequalities at home.²³⁷

Table 5 presents the number of caregivers entering British Columbia by their country of last permanent residence.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Philippines	442	852	878	944	963	966	1,114	1,894	1,509	1,034
India	16	24	27	80	230	149	84	41	71	98
China (includes HK and Macau)	--	--	--	--	--	24	54	107	105	89
Saudi Arabia	--	--	--	--	--	11	29	49	121	64
Taiwan	--	13	17	12	17	84	120	234	321	202

Source: CIC Data Cube

²³⁴ Pauline Gardiner Barber, "The Ideal Immigrant? Gendered class subjects in Philippine-Canada migration" (2008) 29:7 *Third World Quarterly* 1265 at 1275 [Barber, "Ideal Immigrant"].

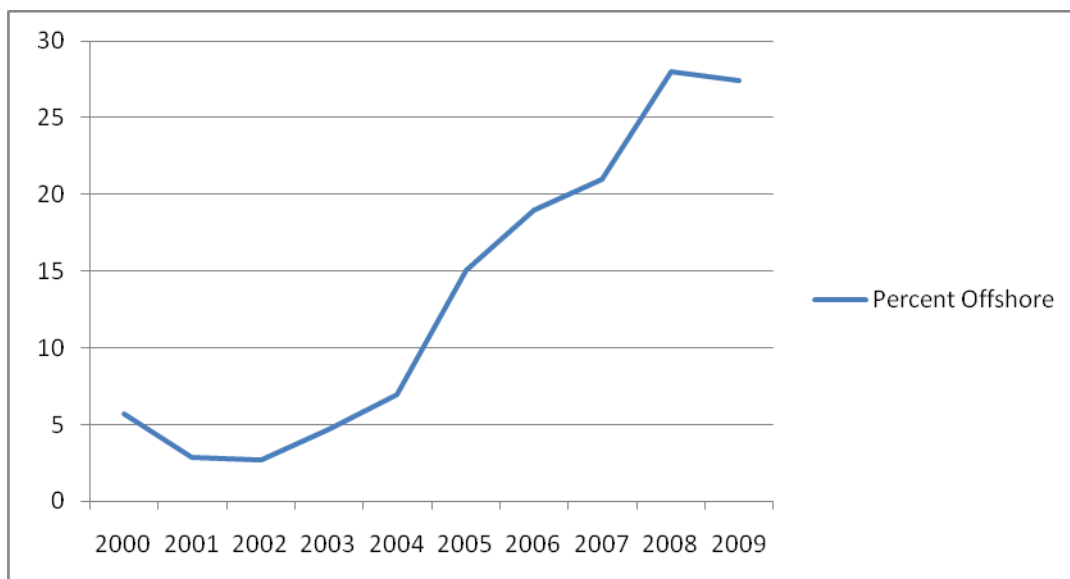
²³⁵ *Ibid.* at 1266.

²³⁶ Geraldine Pratt, "Collaborating Across Our Differences" (2002) 9:2 *Gender, Place and Culture: A Journal of Feminist Geography* 195 at 198.

²³⁷ Jarrah Hodge, "'Unskilled Labour': Canada's Live-in Caregiver Program" (2006) 3:2 *Undercurrent* 60 at 64.

A comparison of Tables 4 and 5 reveals that the citizens of one source country do not always permanently reside there, and suggests that a certain number of Philippine citizens are recruited as permanent residents from outside their home country. For example, in 2009, 1425 caregivers claimed Philippine citizenship (Table 4), while only 1034 caregivers claimed permanent residence in the Philippines (Table 5). This discrepancy suggests that a certain number of Philippine citizens are recruited as permanent residents outside their home country. The fact that Saudi Arabia and Taiwan deploy a negligible numbers of their own citizens as caregivers, suggests that Filipino caregivers might be the ones arriving in British Columbia through these countries instead.

Figure 3
Percentage of Filipino citizens recruited “offshore”



Source: CIC Data Cube

Lastly, as demonstrated in Figure 3, the data also suggest that the percentage of Filipino citizens recruited “offshore”, i.e. as citizens recruited from outside the Philippines, has trended up, with a jump in offshore recruitment occurring around 2008. Overall, there has been a steady

increase in offshore recruitment with 27% of Filipino citizens recruited offshore in 2009, as compared to only 6% in 2000.

In summary, the data reveals that the Live-in Caregiver Program is built on a large significant though care chain linking British Columbia with the Philippines. To better understand this chain, Part C examines the main regulatory and institutional features governing labour export from the Philippines.

C. Philippine Regulatory and Institutional Framework

The Philippines has developed an employment-driven emigration policy that emphasizes temporary labour migration, worker protection and foreign currency remittances. The Government identifies labour market niches abroad and arranges an orderly supply of labour through supervised recruitment by foreign employers, recruitment agencies and foreign governments based on bilateral agreements.²³⁸ Its system of managing temporary migration has been described as being “unrivalled” in its sophistication,²³⁹ with its worldwide distribution of Philippine migrant workers being described as “staggering” and perhaps unmatched by any other labour-sending country.²⁴⁰ The system was built and continues to operate around certain key regulatory pieces and institutions.

The formalization of Philippine labour exports began in 1974, when President Ferdinand Marcos issued Presidential Decree 442, also known as *The Labor Code of 1974*.²⁴¹ The Decree

²³⁸ International Labour Organization online:

<http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=55>.

²³⁹ Dovelyn Rannveig Agunias, “Managing Temporary Migration: Lessons from the Philippine Model” (2008) *Insight 1* at 1 [Agunias “Managing”].

²⁴⁰ Robyn Magalit Rodrigez, *Migrants for Export: How the Philippine State Brokers Labor to the World* (Minneapolis: University of Minnesota Press, 2010) at xii [Rodriguez, *Migrants*].

²⁴¹ Department of Labor and Employment, “Labor Code of the Philippines, Presidential Decree No. 442, As Amended,”; as found in Agunias “Managing”, *supra* note 239 at 39, note 2.

instituted labour export as a temporary measure to bolster the country's foreign exchange reserves through mandatory migrant worker remittances.²⁴² While initially provisional, the Decree's profitability led to its establishment as a permanent and a key economic strategy, with regulations used to ensure profitability. For example, 1983 Executive Order 857 required that migrant worker remittances be sent through Philippine banks.²⁴³ Though the Order was rescinded in 1995, the state developed other indirect means for compelling remittances.²⁴⁴ In addition to providing foreign currency flow, migrant worker export also attenuated the country's social problems created by chronic un- and under-employment.²⁴⁵

A political crisis in the mid-1990s saw the passage of *The Migrant Workers and Overseas Filipinos Act of 1995*.²⁴⁶ The crisis precipitated around the hanging of a domestic worker named Flor Contemplacion by the Singapore government, for what many Filipinos saw as trumped up murder charges.²⁴⁷ The resulting Act moved the Philippines from a labour exporting regime concerned merely with the commoditization of workers, to one where export was coupled with the regulation of overseas employment and the extension of rights and entitlements to migrant workers when abroad.²⁴⁸ It guaranteed that workers would be protected during the process of securing overseas employment and be provided welfare services while abroad. As a result, the Act covers the areas of employment, illegal recruitment and social and legal services.²⁴⁹

Together this and other legislation framed the development of a trans-national migration

²⁴² Robyn M. Rodrigez, "Migrant Heroes: Nationalism, Citizenship and the Politics of Filipino Migrant Labor" (2002) 6:3 Citizenship Studies 341 at 346 [Rodriguez, "Heroes"].

²⁴³ Robyn Magalit Rodrigez, *The Labor Brokering State: The Philippine State and the Globalization of Philippine Citizen Workers* (Ph.D. Thesis, University of California, Berkeley, Department of Sociology, 2005) [unpublished] at 8 [Rodriguez, *Labor*].

²⁴⁴ *Ibid.*, at 160.

²⁴⁵ *Ibid.* at viii.

²⁴⁶ Congress of the Philippines, "The Migrant Workers and Overseas Filipino Act of 1995"; as found in Agunias "Managing", *supra* note 239 at 39, note 9.

²⁴⁷ Rodrigez, "Heroes", *supra* note 242 at 342.

²⁴⁸ Rodrigez, *Labor*, *supra* note 229 at vi.

²⁴⁹ Rodrigez, "Heroes", *supra* note 242 at 347.

apparatus comprised of numerous government agencies centered around a key institution known as the Philippine Overseas Employment Administration.

Created in 1982, and overseen by the Department of Labor and Employment, the Administration is mandated to promote and develop the country's overseas employment program and to protect the rights of its migrant workers.²⁵⁰ The Administration is the sole government entity with the authority to regulate temporary overseas employment, including the activities of private recruitment agencies, and to manage the overseas employment program.²⁵¹ It controls overseas employment by limiting participation to qualified employers, workers and recruitment agencies. It also creates rules and regulations governing the recruitment process and sets minimum employment standards. Last, it maintains a system of adjudication to ensure that all parties comply with rules and regulations.²⁵²

The Administration deploys migrant workers through its own government recruitment facility, known as the Government Placement Branch. A division of labour exists between the Branch and the private recruitment sector, with the former dealing primarily with markets that do not wish to go through private recruiters. For example, the Branch secures labour for government-to-government hiring,²⁵³ such as providing health care workers for state-run hospitals.²⁵⁴ The Branch also assists the private sector by acting as a laboratory for new recruitment and by exploring new markets. In other words, the Branch assumes the risks associated with deploying Filipino workers into new markets, and seeds private recruitment by moving into areas that recruiters avoid due to a lack of capital or networks. Lastly, the Branch

²⁵⁰ Executive Order No. 797, Reorganizing the Ministry of Labor and Employment, Creating the Philippine Overseas Employment Administration and for other purposes, < <http://www.poea.gov.ph/rules/eo797.pdf> >. As found in Fudge, "Global", *supra* note 3 at 241, fn 29.

²⁵¹ Agunias "Managing", *supra* note 239 at 3.

²⁵² *Ibid.* at 5.

²⁵³ Rodriguez, *Migrants*, *supra* note 240 at 70.

²⁵⁴ Rodriguez, *Labor*, *supra* note 243 at 111.

also regulates private recruitment markets, especially those with prohibitively high recruitment fees, as high fees not only obstruct labour movement, but the reduced entry of workers into key markets may cause the Philippines to lose out in competition with other labour exporting states. The Branch may simply take over a market in cases when exorbitant fees are charged.²⁵⁵

Despite its international orientation, the Administration operates in the Philippines only, and maintains no offices or permanent representatives abroad. Instead, the bulk of its overseas-related activities is handled at what are called Philippine Overseas Labor Offices. Operating under the Department of Labor, the Offices are based in or near Philippine consular offices under the administrative supervision of the Philippine embassy.

The Labor Offices provide welfare assistance, and purport to monitor the welfare of Filipino workers in host countries. The Offices do not appear to operate any formal monitoring system, however. The Offices' effectiveness is further weakened by the fact that they do not always know how many workers are in the country or where to find them, by staff and other resource constraints, and by the lack of legal authority while in the host country.²⁵⁶ Offices also assist the Administration in its employer registration processes by verifying documents such as employment contracts,²⁵⁷ and authenticating employment contracts being offered directly to "low-skilled" workers such as domestics.²⁵⁸ Lastly, Offices promote the use of Filipino labour in the host country.²⁵⁹

The Administration also conducts marketing missions designed to open and secure labour export opportunities, often done in conjunction with its own Marketing Branch, and coordinated

²⁵⁵ *Ibid.* at 113.

²⁵⁶ Agunias "Managing", *supra* note 239 at 18.

²⁵⁷ See also "POEA Rules and Regulations", Part III, Rule I, Section 1. As found online at <http://www.poea.gov.ph/rules/POEA%20Rules.pdf>.

²⁵⁸ Agunias "Managing", *supra* note 239 at 9.

²⁵⁹ *Ibid.* at 4.

with Philippine embassies and consular offices abroad.²⁶⁰ For example, in 2008, the Administration dispatched several missions to Canada, visiting British Columbia and other Canadian provinces. In addition, the Administration received both government and private sector delegations from Manitoba, Saskatchewan, and British Columbia.²⁶¹ The purpose of these meetings was to establish bilateral relations using formal instruments such as labour agreements or memoranda of understanding, and resulted in a series of memoranda being entered into by three Western provinces.²⁶² British Columbia, Manitoba and Alberta signed memoranda with the Philippines on January 29, February 8,²⁶³ and October 1, 2008, respectively. A Philippine Overseas Labour Office was subsequently opened in Vancouver “With the ink still drying on B.C.’s own memorandum of understanding with the Philippine government.”²⁶⁴ The new Labor Office would not only assist the Administration with migrant worker deployment, but would also join with the Philippine Consulate General - also headquartered in Vancouver - to further promote and market Filipino labour.²⁶⁵

Overall, the Administration has been successful in finding and managing export opportunities for its migrant workers. In 2006, the Administration processed contracts for a record of one million Filipinos in a global sweep of 179 countries. This translated into an average of 3000 persons leaving the country each day, with around 30% of the land-based migrant workers headed for jobs in household service employment. In 2007, over a million

²⁶⁰ Rodrigez, *Migrants*, *supra* note 240 at 55.

²⁶¹ Philippine Overseas Employment Administration, *Annual Report 2008* (Mandaluyong: Republic of the Philippines, 2008) at 12.

²⁶² Saskatchewan’s memorandum, signed on December 16, 2006, preceded these three agreements, and was the first such agreement signed in North America.

²⁶³ Philippine Overseas Employment Administration, *Annual Report 2008* (Mandaluyong: Republic of the Philippines, 2008) at 13.

²⁶⁴ “Philippine labour sheriff lays down the law” *Mata Press Service* (30 July 2008), online: Asia Pacific Post <http://www.asianpacificpost.com/portal2/c1ee8c441b716617011b75bc35df0057_Philippine_labour_sheriff_lays_down_the_law.do.html>.

²⁶⁵ Rodrigez, *Labor*, *supra* note 243 at 796.

temporary migrant workers again left the Philippines to work in over 190 countries, each one bearing an employment contract issued and certified by the Philippine government.²⁶⁶ This grew in 2008 to over 1.2 million workers deployed in some 200 countries and territories around the globe. These workers joined the millions of Philippine migrants already employed overseas, who are all part of an estimated 10% of the country's population working abroad.²⁶⁷ In addition, remittances received from Filipinos living abroad in 2006 were reported by the Central Bank of the Philippines to be over US\$12 billion, comprising roughly 12% of the gross domestic product, constituting the largest single item.²⁶⁸

D. Jurisdictional Conundrum: Domestic Laws with International Impacts

One part of the jurisdictional conundrum that Fudge described is how regulations and policies adopted in one country can impact those in another.²⁶⁹ The interactions are complex. For example, *The Immigrant and Refugee Protection Act's* passage had impacts both within and outside Canada. The Act affected migration and recruitment patterns in the Philippines, which in turn affected the Live-in Caregiver Program in Canada. A second example describes how the Philippine Overseas Employment Administration's adoption of Canadian employment agency norms created an administrative headache involving small, private agencies engaged in offshore recruitment on behalf of small to mid-sized employers. Both examples suggest that a trans-national perspective is required to grasp the mechanics of contemporary migration, and those

²⁶⁶ Agunias "Managing", *supra* note 239 at 1.

²⁶⁷ Rodrigez, *Migrants*, *supra* note 240 at xii.

²⁶⁸ Barber, "Ideal Immigrant", *supra* note 234 at 1272.

²⁶⁹ Fudge, "Global", *supra* note 3.

governments that rely on “methodological nationalism”²⁷⁰ for their migration analysis will end up falling short in their legislative and policy responses.

1. *The Immigrant and Refugee Protection Act’s Effect on Philippine Migration and Recruitment Patterns*

Pauline Barber suggests that *The Immigrant and Refugee Protection Act* introduced in 2001-02 impacted Philippine migration and recruitment patterns. Barber cites an unpublished 2005 Canadian Embassy report from Manila that speculated on how the new legislation introduced a system for ranking categories of occupational skill, which may have made it harder for some potential applicants to qualify for skilled worker visas.²⁷¹ As a result, skilled Filipino workers and their families began seeking alternate pathways to permanent residency in Canada. One alternative was the Live-in Caregiver Program. Recruiters also adapted, finding novel ways to exploit the many skilled worker desiring access to this Program.

The Embassy’s speculation is supported by the data, in that the number of Filipino caregivers entering British Columbia increased significantly around the time the Act’s introduction. The data in Tables 3, 4 and 5 shows that the number of Filipino caregivers entering British Columbia increased significantly around this time. Program numbers jumped again when the federal government passed amendments to *The Immigrant and Refugee Protection Act* through its 2008 Budget Implementation Bill (C-38), which gave the Minister of Citizenship and Immigration Canada the power to issue and periodically change instructions regarding the processing of permanent residency applications. Department instructions published in

²⁷⁰ Wimmer and Schiller define methodological nationalism as an intellectual orientation that assumes that countries are the natural units for comparative studies. One particular variant uses territorial limitation to confine the study of social processes to the political and geographic boundaries of a particular nation-state. See: Andreas Wimmer & Nina Glick Schiller, “Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology” (2003) 37:3 *International Migration Review* 576 at 578; as found in Barber, “Ideal Immigrant”, *supra* note 234 at 1266, note 5.

²⁷¹ Barber, “Ideal Immigrant”, *supra* note 234 at 1275.

November 2008 specified that new permanent residents to Canada would be selected according to a list of 38 occupations.²⁷² The 38 occupations – mainly in the health, construction, and other trades sectors – were similar to those appearing in the employer-driven lists of “occupations under pressure” published since 2006 under the expanded Temporary Foreign Worker Program.²⁷³ Again, skilled Filipino workers excluded by the list may have looked to the Live-in Caregiver Program as an alternate route towards permanent residency.

There is also little doubt that the Program attracts skilled Filipino workers. For example, Lori Root’s research found Filipina caregivers to be skilled workers such as physiotherapists, nurses and university-trained administrators prior to entering the Program.²⁷⁴ Another study interviewed 19 caregivers. Of the 19, over 50% had bachelor degrees, a few had postgraduate training, and over a third reported having previous training and employment in nursing.²⁷⁵ Several workers in this study also reported using the Program as a stepping stone to obtaining permanent residence status in Canada,²⁷⁶ all without having to meet the qualifications of the immigration points system or family sponsorship.

An informal type of family sponsorship appears to have emerged, however. Barber suggests that some Filipino-Canadian families have hired Philippine relatives as caregivers, using the Program to fast-track them to permanent residency. In support, Barber cites a survey of 154 Canadian-destined caregivers, undertaken in Manila during pre-departure counselling

²⁷² Citizenship and Immigration Canada, News Release, “Minister Kenney announces immigration levels for 2009; Issues instructions on processing federal skilled workers” (28 November 2008), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/department/media/releases/2008/2008-11-28.asp>>.

²⁷³ Salimah Valiani, “The Shift in Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program”, (2009) [unpublished] at 9, online: Carleton University <<http://www.ccs.carleton.ca/~dana/TempPermLCPFINAL.pdf>>.

²⁷⁴ Lori A. Root, “*I May Be Lost But I Know How to Find My Way*”: *The Lived Experiences of Filipina Caregivers in the Live-in Caregiver Program in Halifax* (M.A. Thesis, Mount Saint Vincent University, Women and Gender Studies Program, 2008) [unpublished] at 79-87

²⁷⁵ Ivy Lynn Bourgeault, Rishma Parpia & Jelena Atanackovic, “Canada’s Live-In Caregiver Program: Is it an Answer to the Growing Demand for Elderly Care?” (2010) Vol. 3 *Journal of Population Ageing* 83 at 90.

²⁷⁶ *Ibid* at 99.

sessions in November and December 2004 that revealed that none were currently employed as caregivers, despite the visa stipulation of education and/or experience.²⁷⁷ Other Program applicants also misspoke of their employers as sponsors. Barber estimates that around 50% of new caregivers are destined for employment in the households of family members in Canada.²⁷⁸

Not all Filipino workers have Canadian relatives, and Barber also describes how a rise in Program applications was accompanied by corresponding developments in the Philippine recruitment sector tailored to the Canadian market. The sector increased its number of caregiver training programs to meet Program requirements, which jumped from 10 in 1999 to more than 800 in 2005, with almost 80% of these schools commencing operations during the period of 2002-2003.²⁷⁹ Migrants targeting Canada sought specialized “caregiver” training offered by an elite stratum of recruitment agencies that promised ease of placement, and assistance with visa processing at home and abroad. Ironically, migrants can pay dearly to deskill. Barber notes that the fees charged by these agencies vary but are always burdensome for emigrants, who are typically deeply in debt to relatives or money lending agents. Debt seems such a fact of life that, “Loan agents present in most migrant sending communities are called 5/6ers – meaning borrow 5000 pesos, pay back 6000.”²⁸⁰

In summary, the Act’s passage in 2001-02 produced extra-territorial impacts, affecting migration and recruitment patterns outside of Canada.

²⁷⁷ Barber, “Ideal Immigrant”, *supra* note 234 at 1276.

²⁷⁸ *Ibid.* at 1275.

²⁷⁹ Barber, “Ideal Immigrant”, *supra* note 234 at 1274.

²⁸⁰ *Ibid.* at 1285, note 60.

2. The Philippines and Provincial Employment Agency Norms

The Philippine government helps protect its migrant workers by aligning its rules with those of a host country's employment standards legislation. For example, *The POEA Rules and Regulations* provide the authority for imposing a host country's minimum employment standards on its migrant workers' employment contracts. In addition, Philippine Overseas Labor Offices verify that employment contracts incorporate wages for regular work hours and overtime pay not lower than the prescribed minimum wage in the host country.²⁸¹ As noted earlier, the Philippine government also negotiates with host states bilaterally, and uses the resulting instruments to secure better working conditions for Filipino migrants. For example, the Memoranda of understanding signed with British Columbia, Alberta, Saskatchewan and Manitoba, tie migrant worker welfare to local employment standards.

As part of this bilateral process, the Philippines moved to more stringently regulate the recruitment of migrant care workers destined for Western Canada. In 2008, the Philippines Overseas Employment Administration released Memorandum Circular No. 6 entitled *Guidelines on the Recruitment and Deployment of Filipino Workers to Canada*.²⁸² The authority for this Circular was based on Section 3 of *The POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers*, which states that, "Except where the prevailing system in the country where the worker is to be deployed, either by law, policy or practice, do[es] not allow the charging or collection of placement and recruitment fee, a land-

²⁸¹ See also Philippines Overseas Employment Administration, *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers* (2002), Section 2(b)(1), Rule I, Part III; online: POEA <<http://www.poea.gov.ph/rules/POEA%20Rules.pdf>>.

²⁸² Philippines, Philippines Overseas Employment Administration, *Memorandum Circular, No. 06*, "Guidelines on the Recruitment and Deployment of Filipino Workers to Canada" (2008), online: POEA <<http://www.poea.gov.ph/MCs/MC%206-08.pdf>>.

based agency may charge and collect from its hired workers a placement fee in an amount equivalent to one month salary, exclusive of documentation costs.”²⁸³

The Circular applies to all foreign employers and principals who are hiring Filipino workers, including caregivers,²⁸⁴ and sets out a regime for protecting Filipino nationals recruited for work in Canada. It governs the registration of Canadian employment agencies and employers, and the documentation of Filipino caregivers bound for Canada. It also advises Canadian employment agencies on how to register with their Filipino agency counterparts and the Administration, stipulates the documents that must be submitted by agencies in order to recruit Filipino workers, and identifies which party is responsible for the various costs involved when workers migrate from the Philippines to Canada.²⁸⁵ For example, it requires that Canadian employers “shoulder” all of the costs of recruitment, including visa fees and airfare.²⁸⁶

More importantly, the Circular stipulates that employment agencies are specifically prohibited from charging recruitment and placement fees to workers destined to the four Canadian western provinces, stating that, “Philippine agencies are prohibited from charging any recruitment and placement fee from workers to be deployed to the provinces of Saskatchewan, Manitoba, British Columbia, and Alberta and other provinces which laws prohibit the collection of recruitment fees. Philippine agencies shall charge employers the cost for its services.”²⁸⁷ In other words, the legislation and Circular import Canadian provincial employment agency norms and apply them to recruitment activities in the Philippines.

²⁸³ Philippines, Philippines Overseas Employment Administration, *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers* (2002), section 3, Rule V, Part II; online: POEA <<http://www.poea.gov.ph/rules/POEA%20Rules.pdf>>.

²⁸⁴ *Supra* note 282, Article I.

²⁸⁵ *Ibid.*

²⁸⁶ Employer must also shoulder a range of other costs, but the employee is responsible for passport fees, medical examination and health insurance. *Ibid.*, Article 5

²⁸⁷ *Ibid.* Article VI.

The 2008 increase in offshore recruitment noted earlier in Figure 3 coincides with the appearance of Circular No. 6. The coincidence suggests that some recruiters began avoiding Philippine government supervision under the new rules, though these rules would have been only one of many factors driving increased Filipina domestic worker recruitment outside the Philippines. In any event, offshore recruitment in unregulated jurisdictions effectively eliminates regulatory oversight as most governments are disinclined to meddle in what is seen as each others' internal affairs.

The Administration and its Overseas Labor Offices have also noticed recruitment-related problems occurring in offshore locations. Their Vancouver-based Consular Officer-In-Charge of Labour, Bernadino Julve, stated that, "his biggest headache" is Canadian-based or Canadian-contracted agencies that dodge Philippine and Canadian regulations by recruiting Filipino workers in third-party countries, notably Hong Kong, Singapore, and the United Arab Emirates, where the targeted workers have often been working for years. "Direct employers, like the big health agencies or construction firms, we don't worry about these employers. What we do worry about is these mom-and-pop agencies, these third-party agencies that will send people overseas to do recruitment. This is where the problems occur."²⁸⁸

In summary, the preceding discussion demonstrates that the regulations and policies in one country can affect those in another. For instance, provincial employment agency legislation influenced Philippine rules, while those rule changes in turn may have been one of many factors bumping up offshore recruitment numbers. Part E goes on to more closely examine the role of British Columbia employment agencies recruiting for the Live-in Caregiver Program.

²⁸⁸ "Philippine labour sheriff lays down the law" *Mata Press Service* (30 July 2008), online: Asia Pacific Post <http://www.asianpacificpost.com/portal2/c1ee8c441b716617011b75bc35df0057_Philippine_labour_sheriff_lays_down_the_law.do.html>.

E. British Columbia Employment Agencies

Private employment agencies recruiting caregivers for employment with Canadian families have organized themselves into a group known as the Association of Caregiver & Nanny Agencies Canada (ACNAC). Much of the following analysis is based on information from the Association's British Columbia chapter, made public in its newsletters and news releases, and appearing on its web site.²⁸⁹ And while ACNAC and its B.C. chapter may not represent all private employment agencies in the business of recruiting caregivers, it likely articulates many issues of common concern.

Part E also looks at the activities of one of the B.C. chapter's member, a licensed employment agency called Prince George Nannies and Caregivers Ltd. The agency is interesting for a couple of reasons. First, the agency's director, Mr. Christopher Taiho Krahn, also holds a position on the ACNAC national executive as secretary. That Mr. Krahn is a board member and a guiding mind behind both his agency and the Association might help explain their consistency in policy and action. Mr. Krahn is also a member of the Canadian Society of Immigration Consultants. The second reason is that on February 19, 2009, the Director of British Columbia's Employment Standards Branch found the company in contravention of Section 10 of *The Employment Standards Act* and ordered it to pay a total of \$26,653.68 in wages and interest to fourteen Filipina caregivers. The company appealed the Director's Determination, and the subsequent litigation and the resulting decisions provide insight into the company's – and Association's – recruitment strategies.

One of the Association's most notable aspects is its open advocacy of charging caregivers recruitment fees. The Association argues that its members must charge caregivers fees because

²⁸⁹The Association's web site can be found online at: <http://www.acnacanada.ca/>

Canadian families requiring child and elder care cannot always afford to pay large upfront recruitment costs. In other words, Canadian families are not like commercial enterprises, and unlike typical businesses, often lack the capacity and resources to absorb recruitment costs and overhead.²⁹⁰ The Association would therefore have the caregivers pay for their own recruitment, and further justifies its position, stating that “caregivers coming to Canada [should] do so with some form of investment made by them personally.”²⁹¹ The justification is self-serving, in that the “investment” really means money transferred from caregivers to recruiters.

The ACNAC’s position on fees distinguishes it from other licensed British Columbia employment agencies, such as those that might belong to the Association of Canadian Search, Employment and Staffing Service (ACSESS). ACSESS’ British Columbia members include well-known employment agencies such as Adecco, Kelly Services, and Manpower, and the province’s larger newspapers, *The Vancouver Sun* and *The Province*.²⁹² ACSESS’ *Code of Ethics and Standards* states that, “We will derive income only from clients [employers] and make no direct or indirect charges to candidates or employees unless specified by a license.”²⁹³ As a result, the two Associations have sharply contrasting positions on the question of who pays for recruitment.

The contrast may be explained by the ACNAC’s international orientation and its focus on recruiting foreign caregivers, while ACSESS’ members are more engaged in local recruitment for provincial labour markets. In other words, ACSESS members operate within a regulatory environment built on longstanding and well-accepted rules around who pays for recruitment.

²⁹⁰ Online: ACNAC <<http://www.acnacanada.ca/acna/GovernmentAffairs/AdvocacyIssues.aspx>>.

²⁹¹ *Ibid.*

²⁹² “ACSESS Membership Directory for British Columbia”, online: Association of Canadian Search, Employment and Staffing Services <<http://www.acsess.org/MEMBERSHIP/ProvinceResults.asp?ProvID=2>>.

²⁹³ “ACSESS Code of Ethics & Standards”, online: Association of Canadian Search, Employment and Staffing Services <<http://www.acsess.org/ABOUT/ethics.asp>>.

ACSESS employer-clients are also most likely other businesses who view recruitment as part of normal overhead costs. In contrast, ACNAC members operate or have agents in foreign jurisdictions with different norms on who should pay. Their members also deal with the smaller employers of the world, often families without deep pockets and with limited business sophistication. It means that the pressure for payment must inevitably fall onto vulnerable foreign workers, who as noted above, will take on burdensome debts to pay recruitment costs.

The ACNAC's advocacy conflicts with British Columbia's employment standards prohibition on fee-charging. The conflict is not merely theoretical, and its membership has used four main strategies to put its views into practice. The first strategy is to recruit foreign caregivers "offshore" in jurisdictions that do not prohibit recruiters from charging foreign workers recruitment fees. A second strategy is to blur the distinction between legal and illegal fees. A third is to judicially challenge current legislation, while a fourth is to lobby for its relaxation or removal.

Regarding offshore recruitment, the British Columbia Employment Standards Tribunal's decision in *Prince George Nannies and Caregivers Ltd. (PG Nannies)*,²⁹⁴ showed how the company structured its affairs so as to recruit Filipina caregivers outside both the Philippines and British Columbia. During the proceedings, the agency submitted evidence indicating that along with its B.C. operation, it also had representatives in Singapore and in the Philippines, and that most nannies placed by the agency, "work, or have worked, in locations outside of Canada; primarily Singapore, Taiwan, Hong Kong, or the Middle East."²⁹⁵ These locations represent key

²⁹⁴ *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2009 BCEST #D055/09.

²⁹⁵ *Ibid.*, at 3.

“offshore” sources for Filipino caregivers, and all three jurisdictions appear to allow agencies to directly charge workers recruitment fees.²⁹⁶

The Company got caught because while it may have entered into recruitment contracts in offshore jurisdictions, payments under these contracts were to be made by deductions from the caregivers’ wages while in British Columbia. Agency documents submitted to the Tribunal showed that each of the 14 caregivers was charged a total of \$4000, made up of a \$400 deposit paid overseas, with the balance to be paid by salary deduction.²⁹⁷ It would have been the salary deductions that the Director ordered the company to repay the caregivers.

As a result, the company moved to the second strategy of blurring the distinction between legal and illegal fees. The company aggressively argued that these charges were fees for advertising, resume preparation, image consulting, interview preparation, immigration settlement services and liaison services between caregiver and employer – in short, anything other than illegal placement fees. There was no evidence that any of these services were ever asked for or used, however. In contrast, the April 19, 2009 letter from caregiver Elvie Pingi to the Tribunal noted that, “The contracts signed by the caregivers do not list out in details (*sic*) the services offered and the corresponding fees charged for those services. The caregivers cannot select

²⁹⁶ The Asia-Pacific jurisdictions mentioned in the decision allow recruiters to charge worker placement fees. For example: Singapore, *Employment Agencies Act* (Cap. 92, 1985 Rev. Ed. Sing.) ss. 14 and 29, online: Singapore Statutes Online: < <http://statutes.agc.gov.sg/> >; *Employment Agencies Act* (Cap.92, Section 29) *Employment Agencies Rules*, s. 17, and Schedule 2 allows a licensee to charge and receive up to 80% of the workers first month’s earnings for a successful placement; online: Singapore Ministry of Manpower <<http://www.mom.gov.sg/legislation/Pages/employment-agency-rules.aspx>>. Taiwan, *Employment Services Act*, Paragraph 2 Article 81 gives the authority to create a placement fee Standard that can be used by a private employment agency to charge a worker. For the legislation see: Taiwan, *Employment Services Act* (1992), online: the Council for Labor Affairs Executive Yuan Taiwan R.O.C. < <http://laws.cla.gov.tw/Eng/FLAW/FLAWDAT0201.asp> >. For the Standard, see: *The Standards for Fee-charging Items and Amounts of the Private Employment Services Institution*, online: the Council for Labor Affairs Executive Yuan Taiwan R.O.C. < <http://laws.cla.gov.tw/Eng/FLAW/FLAWDAT0202.asp> >. Hong Kong, *Employment Agency Regulations*, Regulation 10 (Maximum Fees and Commissions) and Schedule 2, online: Hong Kong Legal Information Institute <<http://www.hklii.org/hk/legis/en/reg/cur/57A.txt>>.

²⁹⁷ *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2009 BCEST #D055/09 at 7.

which services they want the agency to provide. Therefore, the caregivers are limited to one bundle of services regardless if the services are utilized or not.”²⁹⁸ In short, the Tribunal found it difficult to see how presenting a bill for services never rendered and then exacting payment could be anything other than a cover for illegal fees.

A related strategy involves blurring the distinction between illegal recruitment and legal immigration consultant fees. The distinction between the two types of fees was addressed in a British Columbia Employment Standards Tribunal decision called *R. Serion and Josefina Serion o/a Terrens Nannies v. British Columbia (Employment Standards Tribunal)*.²⁹⁹ In this decision the adjudicator distinguished between two types of agency agreements: those used for finding employment, and those used for providing immigration services. The adjudicator ruled that while the former was covered by *The Employment Standards Act’s* employment agency provisions, the latter was not. The Adjudicator indicated a willingness to set the Director’s order aside, “insofar as it purports to order re-payment for immigration services.”³⁰⁰

The significance of this distinction was not lost on employment agencies, and a similar approach was later developed by the appellant agency in the *PG Nannies* case. Here, the agency argued that its fees for the most part were not charged to the care workers for finding employment, but rather for the provision of immigrant settlement services.³⁰¹ The agency went on to note *Re Serions*, and how that Tribunal had “acknowledged the legitimacy of an agreement for immigration services.”³⁰² The adjudicator rejected the agency’s argument, however, noting that unlike *Re Serions*, the agency had only a single contract, effectively bundling all services

²⁹⁸ *Ibid.* at 15.

²⁹⁹ 2001 BCEST #D378/01.

³⁰⁰ *Ibid.*, at 5.

³⁰¹ *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2009 BCEST #D055/09 at 8.

³⁰² *Ibid.* at 12.

together and charging for them whether the caregiver wanted them or not. The adjudicator concluded that, “it is difficult to be persuaded that PG Nannies is doing anything but charging fees to the Caregivers for the placement service.”³⁰³

Fudge notes that these decisions are troubling in that they provide a blueprint to employment agencies about how to charge live-in caregivers fees for services without contravening the province’s *Employment Standards Act*. In other words, “If employment agencies are permitted to charge employees fees for some services but not others they have an incentive to characterize the fee for placement services as, for example, a fee for immigration services, the effect of which is to allow employers to shift the cost of recruitment to workers.”³⁰⁴ What is also troubling is that certain employment agencies seem to be acting on this blueprint by acquiring not only an employment agency license, but also acquiring membership in the Canadian Society for Immigration Consultants. Future employment standards complaints about illegal fee charging may be made much more complex if some or all fees are characterized as fees for immigration services charged by an employment agency with principals also registered as Immigration Consultants. Such a fear is not groundless. As noted earlier, the owner of PG Nannies is a Society member, as is the principal of at least one other high-profile ACNAC member operating in British Columbia.

The risk of having Employment Standards order the return of illegally charged placement fees back to a worker can be largely avoided if the recruitment contract is both entered into and paid in full outside of British Columbia in an offshore jurisdiction. And while new federal immigration regulations now tie the assessment of a work permit application’s genuineness to

³⁰³ *Ibid.* at 19.

³⁰⁴ Fudge, “Global”, *supra* note 3 at 259.

the employer's and/or recruiter's provincial compliance record,³⁰⁵ all that is at risk is the recruiter's ability to obtain a work permit approval. And for the moment the risk of a work permit refusal appears to be a distant, as effective federal-provincial protocols for applying the new rules are still being worked out. An April 1, 2011 Operational Bulletin notes that, "CIC is working with provinces and territories to establish a process by which we can determine which convictions should be a basis for a work permit refusal, but this work has not yet been completed."³⁰⁶ In other words, even a conviction under provincial legislation is not necessarily sufficient to trigger a work permit refusal under Regulation section 205(d). And should a federal official learn of foreign worker paying recruiter fees outside the country, the Bulletin cautions that, "this [information] would NOT necessarily result in a WP refusal under R200(5)(d) since the employer or recruiter may not yet have been found guilty by the province."³⁰⁷ As a result, the reliance on provincial enforcement efforts means that federal regulation also be avoided by offshore recruitment strategy.

Receiving full payment offshore leads to a fraud whereby unscrupulous recruiters fail to secure a verifiable employer. The significance of not having a verified employer is explained by Philippine official Julve: "We've heard about unscrupulous individuals who would recruit Filipinos but the actual employer is nowhere to be found. The border authorities call the employer to check and there is no one there and the poor worker is sent back home."³⁰⁸ For example, a Filipina nurse named Villacrusis paid a licensed B.C. employment agency, Paragon

³⁰⁵ The Immigration and Refugee Protection Regulations, S.O.R./2002-227, s. 205(d)

³⁰⁶ Citizenship and Immigration Canada, *Operational Bulletin 275-C, Temporary Foreign Worker Program—Operational Instructions for the Implementation of the Immigration and Refugee Protection Regulatory Amendments* (April 1, 2011) at article 3.3.4, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob275C.asp>>.

³⁰⁷ *Ibid.*

³⁰⁸ "Philippine labour sheriff lays down the law" *Mata Press Service* (30 July 2008), online: Asia Pacific Post <http://www.asianpost.com/portal2/c1ee8c441b716617011b75bc35df0057_Philippine_labour_sheriff_lays_down_the_law.do.html>.

Personnel Agency, approximately \$4500 CDN to process her papers for employment through the Live-in Caregiver Program in British Columbia. Villacrusis quit her job at a hospital in Dubai and left for Vancouver with all the required papers only to be told by the Canada Border Service Agency on her arrival that her employer had backed out of her contract a month earlier. Villacrusis told the Border official that she would “rather die than go back to Dubai,” since she would be unemployed and was the only breadwinner in her family supporting two children in the Philippines. Villacrusis was subsequently returned to Dubai.³⁰⁹

ACNAC Vice-President, Ramil Domaoan, publicly defended Paragon by telling the media that agencies are only facilitating the documentation and application between the worker and the employer. “An employer can come to us and say, ‘I need a nanny.’ The agency gives her a nanny and all of a sudden, the employer changes his/her mind and the nanny is here. Would that be the agency’s fault? There are certain responsibilities attached to us, but not all.”³¹⁰ Domaoan’s explanation seems to contradict the Association’s Code of Ethics requiring recruiters to act conscientiously and diligently in providing services which protect the caregiver’s best interest.³¹¹ Nor is there any indication that the agency acted in good faith by refunding Villacrusis some or all of her fees.

The Philippines Overseas Labour Office’s Vancouver office began addressing these types of issues by inserting themselves into the administrative processes leading to a Live-in Caregiver Program work permit.³¹² Prior to the Office opening in Vancouver, the basic process for hiring a

³⁰⁹ Philippine Women Centre of BC, News Release, “Advocacy groups and Member of Parliament call to stop ‘secret’ deportations of Filipino live-in caregivers and scrap Live-in Caregiver Program” (July 9, 2009), online: Philippine Women Centre of BC <<http://kalayaancentre.net/pwcofbc/?p=215>>.

³¹⁰ “ACNA Canada Agencies Stand Together” (2009) 5 *Newsletter ACNA Canada* at 1, online: ACNA <<http://www.acnacanada.ca/acna/LinkClick.aspx?fileticket=uwssUZcVKj0%3d&tabid=59>>.

³¹¹ Online: ACNAC <<http://acnacanada.ca/acna/AboutACNA/CodeofEthics.aspx>>.

³¹² The POLO intervention is explained in “Philippine labour sheriff lays down the law” *Mata Press Service* (30 July 2008), online: Asia Pacific Post

Filipino worker involved having the employer submit a letter of Canadian job offer to Service Canada so as to obtain issuance of a Labour Market Opinion. The employment contract would then be signed and submitted along with the Opinion to the Canadian Embassy outside Canada for Work Permit and Visa processing and issuance. Now the Office requires that any contract signed between the employer and employee be registered and verified by Office staff in Vancouver. Contract registration and verification assist in screening out fraudulent recruiters hoping to collect placement fees from workers for non-existent Canadian jobs. Registration also allows the Philippine Overseas Employment Administration to arrange Pre-departure Orientation Seminars in Manila for workers about to be deployed to Canada.

Last, the Association has lobbied to weaken the employment agency provisions in British Columbia's *Employment Standards Act*. The strategy included a vigorous opposition to the *PG Nannies* Tribunal decision ordering that the fees be returned to the employees. The agency opposed the decision, first requesting reconsideration,³¹³ and then unsuccessfully appealing to B.C.'s Superior Court.³¹⁴ Association members also met with provincial Labour Minister Murray Coell, lobbying for ministerial support for PG Nanny's interpretation of section 10,³¹⁵ namely that its recruitment fees should be characterized as payments for advertising and other services unrelated to finding employment. In other words, the agency argued that sections 10(1) and (2) of the *Employment Standards Act* should be liberally interpreted, which would have effectively watered the provisions down to irrelevance.

http://www.asianpacificpost.com/portal2/c1ee8c441b716617011b75bc35df0057_Philippine_labour_sheriff_lays_down_the_law.do.html.

³¹³ See: *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2009 BCEST #RD106/09..

³¹⁴ *Prince George Nannies and Caregivers Ltd. v. British Columbia (Employment Standards Tribunal)*, 2010 BCSC 883.

³¹⁵ "Scheduled Meetings with Government" (2009) 5 Newsletter ACNA Canada 1 at 2.

F. Conclusion

The Live-in Caregiver Program's similarity to other Temporary Foreign Worker Program streams using private, for-profit recruiters suggests that the recruitment problems in one will be observed in the other. Any growth in employer-driven foreign worker programs should be followed by a corresponding growth in the employment agency sector, along with a growth in the problems associated unscrupulous recruiters and illegal recruitment fees. Recruiters take advantage of the jurisdictional limitations, use offshore recruitment, blur the distinction between legal and illegal fees, and colour their activities with membership in the Canadian Society of Immigration Consultants.

The relationship between employers and recruiters was noted by Nakache and Kinoshita, who wrote that, "With the growth of the TFWP, employers are increasingly dependent on recruitment agencies— also known as 'labour brokers,' 'employment brokers' or 'recruiters' — to help match them with appropriate temporary foreign workers." Nakache and Kinoshita suggested that the recruitment sector's growth has also meant a corresponding growth in foreign worker exploitation:

Too often, however, instead of legitimately earning their fee from employers, recruiters charge prospective foreign workers for work placement, which is illegal under several provincial laws. In Alberta, for example, workers are charged recruitment fees ranging on average between \$2,000 and \$8,000, with some approaching \$20,000. In addition, recruiters sometimes engage in illicit conduct, such as charging a fee to bring the worker to Canada for a job that never existed, no longer exists when the worker arrives, or exists for only a short time before the worker is laid off. Recruiters have also disseminated misinformation, such as exaggerating the amount a worker can expect to earn in Canada, and providing incorrect information about the worker's opportunities to obtain permanent resident

status once in Canada. Furthermore, recruiters often charge very high fees for other services, such as obtaining an extension of a work permit.³¹⁶

These comments are echoed in government reports such as the 2009 *Temporary Foreign Workers and Nonstatus Workers, Report of the Standing Committee on Citizenship and Immigration*.

There have been other reports of Filipino foreign workers being recruited offshore. For example, a Montreal-based recruiter engaged seven Filipinos working in Saudi Arabia to work in Manitoba. The workers paid the recruiter \$5000 each, and ended up indebted to the recruiter for more than \$9000.00 each. The recruiter eventually returned the money after being exposed by the media and advised that its practices were contrary to provincial legislation.³¹⁷

In addition, my thesis research found that British Columbia's employment agency licensing registry is peppered with members of the Canadian Society for Immigration Consultants.³¹⁸ As noted earlier, employment agents acting as immigration consultants can significantly blur the distinction between illegal and legal fees. Employment agents with Society membership would only deepen any confusion. Coupled with the "blueprint" set out in *Re Serions* and *PG Nannies*, employment agencies dressed as immigration consultants could end-run around the fee-charging prohibition set out in the province's *Employment Standards Act*. Illegal recruitment fees would vanish, as foreign workers pay burdensome fees to "immigration consultants" for "immigration services."

The Chapter concludes with some good news, however. The observation that local laws can have international impacts opens legislative possibilities for provincial governments, and

³¹⁶ Delphine Nakache and Paula J. Kinoshita, *The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail Over Human Rights?* (Montreal: Institute for Research on Public Policy, 2010) at 13.

³¹⁷ "Unscrupulous recruiting practices a hazard to new Manitoba immigrants" *CBC News* (March 18, 2008), online: CBC < <http://www.cbc.ca/canada/manitoba/story/2008/03/18/mba-immigration-2.html>>.

³¹⁸ The research methodology and results are described in detail in Appendix Four.

suggests that the conundrum of jurisdiction is not necessarily an insurmountable barrier to regulating employment agencies with international operations. Provincial laws can make a difference. Legislators need to supplement their provincial perspectives with trans-national methodologies. This idea is explored and developed further in Chapter Five's legislative mapping and review of employment agency legislation in Western Canada.

Chapter 5: Mapping Temporary Foreign Worker Protection in Western Canada

A. Introduction

Chapter Five maps the regulatory landscape as it pertains to employment agency legislation in Western Canada. It examines the region's employment agency legislation, and assesses each province's capacity for addressing and protecting foreign workers during the recruitment process and subsequent employment. Part B begins by noting the common elements that exist in each province's employment agency legislation, which include the prohibition against charging workers fees for finding work, the licensing of employment agency activities, and basic accountability measures such as prosecution and civil recovery.

Part C focuses on Manitoba, Alberta and British Columbia and how each province addresses the problems unique to the recruitment of temporary foreign workers.³¹⁹ These problems arise out of the "jurisdictional conundrum" described in Chapter Four. Private, for-profit recruiters operate outside Canada and beyond provincial employment agency laws and norms, where allegations and evidence of exorbitant fee-charging, swindles, and other frauds abound. Many foreign workers are desperate for opportunities outside their economically depressed home countries, rendering them vulnerable to fee-charging and other recruiter abuses. Temporary foreign workers, particularly those streamed into "low-skilled" occupations, enter Canada to work the less socially desirable jobs under restrictive work permits where they may face further exploitation by unscrupulous employers. Altogether, temporary foreign worker

³¹⁹ Saskatchewan is excluded from this discussion as it does not currently regulate or license employment agencies. The province has announced its intention to pass foreign worker legislation, however. See: Government of Saskatchewan, "Consultations for Foreign Worker Protection Legislation Underway", News Release (11 April 2011), online: Government of Saskatchewan < <http://www.gov.sk.ca/news?newsId=879b9309-234a-44e9-a708-947f1d3692c1>>.

recruitment and employment conditions are unlike anything generally experienced by provincial workers.

Part C begins with Manitoba, and describes how the province transitioned from its former *Employment Services Act* over to *The Worker Recruitment and Protection Act*,³²⁰ and how the new Act addresses foreign worker recruitment and their employment within the province. In contrast, Alberta's *Fair Trading Act*,³²¹ and British Columbia's *Employment Standards Act*³²² treat foreign workers as a subset of their respective provincial labour forces. The resulting "equality of treatment" between foreign and provincial workers often ends up favouring private, for profit employment agencies at the expense of foreign worker protection. Sharp criticism of temporary foreign worker treatment in Alberta led the province to undertake a relatively aggressive remedial program, however. The program is based on employment standards inspections coupled with the creation of a Temporary Foreign Worker Advisory Office. British Columbia's approach is more *laissez-faire*: temporary foreign workers fend for themselves, filing the odd employment standards complaints when necessary, the same as other provincial workers. The province's approach is not satisfactory, however, with temporary foreign workers now turning to the courts for additional remedies and protection.

This chapter concludes with a discussion of British Columbia and Alberta's reluctance to adopt a Manitoba-styled legislative approach to foreign worker recruitment, a reluctance which may be tied to the legislation's novelty, with the provinces cautiously watching and assessing Manitoba's experiences. The Part analyses these and other obstacles to the adoption of this legislative model, and notes that provincial concerns are often grounded in narrow, provincial perspectives, incommensurate with the Temporary Foreign Worker Program's growing

³²⁰ WRPA, *supra* note 35.

³²¹ R.S.A. 2000, c. F-2.

³²² R.S.B.C. 1996, c. 133.

importance and the devolution of federal responsibility to the provinces. Foreign worker well-being and the integrity of the Temporary Foreign Worker Program are both at stake, and should compel a serious review of Manitoba's approach. The goal of any review should be to identify and adopt best practices that will rebalance the regulatory environment in favour of employers and temporary foreign workers.

B. Employment Agency Legislation Generally

All four Western provinces have legislation governing employment agencies. The one element common to each jurisdiction is the prohibition against agencies charging workers fees for finding employment.³²³ As noted in Chapter Two, the prohibition was originally designed to streamline demobilization after World War I, and to protect former soldiers and armament workers reintegrating into provincial labour forces. As the prohibition was never repealed, provincial workers continued to be protected while looking for employment. A well-established consensus eventually emerged – recruitment costs were to be borne by employers and formed a normal part of business overhead.

With the exception of Saskatchewan, where there are no licensing requirements, each provincial licensing regime shares some basic regulatory architecture. For example, each province's definition of employment agency is drafted in essentially the same manner, and consists of three elements: the subject (agency), the activity, and the object (worker). Alberta and Manitoba separate the subject element from the activity and its objects. In Alberta, "the activities of securing persons for employment" is defined as an employment agency business. Once a "business operator" engages in these activities, the operator takes on the status of an

³²³ See: *The Employment Standards Act*, R.S.B.C. 1996, c. 133, ss. 11(1); *Employment Agency Business Licensing Regulation*, Alta. Reg. 189/99, s. 9(1); *The Employment Agencies Act*, R.S.S. 1978, c. E-9, s. 2; *The Worker Recruitment and Protection Act*, S.M. 2008, c. 23, s. 15(1).

agent.³²⁴ Similarly, in Manitoba “the activities of finding individuals...for employment, or finding employment for such individuals”³²⁵ is also defined as an employment agency business, and once a person engages in these activities, the operator takes on the status of an agent.

Defining employment agencies in terms of their activities makes it easier to distinguish between and license similar activities affecting distinctly vulnerable populations. For example, Manitoba distinguishes Child Performer Recruiters from Child Talent Agencies and licenses each on the basis of their respective commercial activities.³²⁶ British Columbia has separate licenses for Talent Agencies and Farm Labour Contractors,³²⁷ while Alberta’s *Fair Trading Act* covers a wide variety of licensing categories.³²⁸

Defining employment agencies in terms of their activities also makes it easier to define exemptions in regards to licensing requirements. For example, British Columbia and Alberta exempt certain business activities from their respective legislation. British Columbia exempts advertising,³²⁹ while Alberta exempts the operation of a trade union, the recruitment of students for private schools, and the recruitment of athletes or performing artists.³³⁰ British Columbia also exempts an employment agency from licensing if it recruits for one employer only, while Manitoba further restricts the exemption to an employee of an employer who engages in the activity of finding employees for that employer.³³¹ These employer-specific exemptions suggest that licensing is focused on granting access to the recruitment market generally as opposed to regulating this or that single employer’s activities.

³²⁴ *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999, s. 4(2).

³²⁵ *The Worker Recruitment and Protection Act*, S.M. 2008, c. 23, s. 1.

³²⁶ *Ibid.*

³²⁷ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, ss. 12 and 13.

³²⁸ R.S.A. 2000, c. F-2.

³²⁹ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 10(2).

³³⁰ *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999, s. 4(3).

³³¹ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 12(2). *The Worker Recruitment and Protection Act*, S.M. 2008, c. 23, s.2(5)(a).

Another feature of note is how the provinces conceptualize and administer their respective employment agency legislation. British Columbia, Saskatchewan and Manitoba view employment agencies as a labour and employment matter to be administered by their respective Labour/ Employment Standards Division/Branches. British Columbia's licensing regime is part of its *Employment Standards Act*, while Manitoba's regime is integrated into its *Employment Standards Code*.³³² In British Columbia and Manitoba, illegally charged fees can be deemed as wages and recovered through each Branch's wage collection process.

As previously noted, and on the other hand, Alberta treats its employment agency legislation as more of a consumer protection than an employment-related matter. Employment agencies are dealt with under the authority of the province's *Fair Trading Act*,³³³ and are thus regulated along with Direct Sales and Time Share Contracts, Electronic Media Marketing, Credit and Personal Reports, Loan Broker Fees, Consignment Sales, Cost of Credit, etc. Regulating employment agencies as a consumer protection piece creates problems as the legislation provides no clear authority or procedure for recovering illegally charged fees, either as wages or otherwise, and returning them to a worker.

Lastly, all four provinces impose fines for non-compliance. In British Columbia the matter is treated as an offense contrary to section 125 of its *Employment Standards Act*.³³⁴ In Alberta, the matter is treated as a summary conviction offense,³³⁵ with fines ranging up to \$100,000 or three times the amount obtained by the defendant as a result of the offence, whichever is greater, or to imprisonment for not more than two years or both.³³⁶ In Manitoba

³³² C.C.S.M., c. E110.

³³³ R.S.A. 2000, c. F-2.

³³⁴ R.S.B.C. 1996, c. 133.

³³⁵ An offense contrary to s. 11 of *Employment Agency Business Licensing Regulation*, Alta. Reg. 189/99, and of *The Fair Trading Act*, R.S.A. 2000, c. F-2, s. 162.

³³⁶ *The Fair Trading Act*, R.S.A. 2000, c. F-2, s. 164(1).

the matter is treated as a summary conviction offense, with fines for individuals ranging up to \$25,000,³³⁷ and for corporations up to \$50,000.³³⁸ While maximum fines look impressive, recent Alberta prosecutions only netted fines in the range of \$500 per count.³³⁹ Lastly, Saskatchewan also treats contraventions by way of summary conviction. Fines have not changed since the legislation's original 1919 enactment, however, and range from \$10 to \$25.³⁴⁰

In summary, British Columbia, Alberta and Saskatchewan's employment agency legislation, together with Manitoba's new Act, express a consensus that workers should not bear the cost of their recruitment and placement within the labour force. With respect to licensing, legislative drafters have demonstrated their precision and agility in drafting licensing rules designed to regulate and grant access to specific recruitment market segments. Part C addresses how well this consensus extends in relation to the recruitment of temporary foreign workers.

C. Temporary Foreign Worker Protection in Western Canada

Part C examines and compares each province's legislative approach to regulating temporary foreign worker recruitment and employment. It begins with Manitoba's *Worker Recruitment and Protection Act*, a statute that directly addresses the jurisdictional conundrum related to foreign worker recruitment. Manitoba's Act also helps to specifically protect foreign workers while employed within the province. In contrast, Alberta's *Fair Trading Act* contains no provisions specifically addressing jurisdictional complications or other problems related to foreign worker recruitment. Instead, Alberta treats temporary foreign workers as a subset of its provincial workforce. Public criticism and pressure caused Alberta to add programs specifically

³³⁷ *The Worker Recruitment and Protection Act*, S.M. 2009, c.23, s. 28(2)(a).

³³⁸ *Ibid.*, s. 28(2)(b).

³³⁹ See: News Release, "Government investigation gets foreign workers their money back" (22 January 2010), online: Government of Alberta <<http://alberta.ca/acn/201001/2768756938E65-B02B-FA7D-6636A43F3D71EB48.html>>.

³⁴⁰ *The Employment Agencies Act*, R.S.S. 1978, c. E-9, s. 3.

intended to assist foreign workers while employed in the province, however. British Columbia similarly treats foreign workers as a subset of its provincial workforce. Its *Employment Standards Act* offers temporary foreign workers no protection during their recruitment process, nor are there any special programs or efforts to protect foreign workers while employed within the province. Saskatchewan is not dealt with, as it currently does not license employment agencies. Part D goes on to discuss some of the reasons for the divergent approaches.

1. Manitoba

Manitoba's legislation addresses temporary foreign worker recruitment separately from other types of in-province employment agency recruitment. In other words, the province recognized that foreign worker recruitment by private, for-profit recruiters created a set of problems distinct from the normal in-province recruitment of resident workers. According to former Manitoba Minister of Labour and Immigration Nancy Allan, these problems included: "Exorbitant fees being charged to TFWs for employment placement; Contract requirements not being upheld; Immigration status being used to coerce TFWs; Inaccurate information regarding the Provincial Nominee Program and eligibility for permanent status; and Inaccurate information regarding labour and workplace safety and health legislation."³⁴¹ While provincial workers might also share in some of these problems, such as having an employer not uphold an employment contract's requirements, citizens and permanent residents have the option of quitting to find a new job. In contrast, temporary foreign workers employed under restrictive work permits often do not have this remedy. Minister Allan concluded that these scenarios made

³⁴¹ Nancy Allan, "Foreign Worker Recruitment and Protection: The Role of Manitoba's *Worker Recruitment and Protection Act*" (Spring, 2010) *The Metropolis Project Canadian Issues* 29 at 30.

it increasingly clear the importance of expanding labour legislation and, more importantly, of protecting all workers.³⁴²

Initially, the province's Employment Standards Branch had some difficulties in determining the size and scope of these problems, but after consulting with Immigration officials and the police, particularly around the issue of human trafficking, it became clear that many foreign workers were being exploited by both employers and recruiters.³⁴³ Dave Dyson, the Executive Director of Manitoba's Employment Standards Branch noted that, "The more we looked, the more we found. And the more we saw the more horrified we were as to what was actually going on."³⁴⁴ The Branch found foreign workers paying anywhere between \$10,000 and \$60,000 for a chance to work in Manitoba. Sometimes the recruiter was also the employer, promising the worker \$20 per hour, and then only paying \$10 per hour once the worker arrived in Canada. Workers would live in apartments supplied by the employer, and would be hit with a combination of low wages, and the repayment of the huge loans used to cover their recruitment fees. "You'd do the math", says Dyson, "and you realized that this worker would spend the next ten to fifteen years paying off their debt to the recruiter, which essentially amounted to indentured servitude or slavery. Doesn't matter what you call it, it wasn't good."³⁴⁵

In addition, it became clear that the province's *Employment Services Act*, legislation introduced in the 1980s and designed to regulate provincial employment agencies, was "completely worthless." According to Dyson, it was worthless with respect to foreign worker protection, but also in the sense that, "We don't have a problem even today with domestic [provincial] employment agencies. It seems to be well-accepted that workers don't pay for

³⁴² *Ibid.*

³⁴³ Interview of Mr. David Dyson, (26 July 2010) [Dyson, *Interview*].

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

finding jobs, and that employers bear the cost of recruitment. As a result, the Act was never used.”³⁴⁶ In fact, even without foreign worker issues, Dyson had already recommended to government that the Act be repealed.

Manitoba recognized the growing importance of temporary foreign workers to the provincial economy, and was interested in developing approaches to facilitate their retention under the Provincial Nominee Program. The importance of coupling short term labour needs with long-term retention heightened the resolve to protect foreign workers from unscrupulous recruiters and employers. The province also recognized that foreign worker movements were often enhanced by offering greater protection during recruitment and ensuring that employment experiences in the province were positive. It therefore became a provincial policy priority to strengthen ethical and orderly recruitment initiatives. As a result, in 2009 the province introduced *The Worker Recruitment and Protection Act* to replace its *Employment Services Act*. The Act not only regulated employment agencies generally, but also specifically addressed the problems related to foreign worker exploitation during the recruitment process and subsequent employment.

The new Act creates three distinct categories of recruitment activity: in-province resident worker recruitment generally, in-province recruitment of resident child performers, and foreign worker recruitment. With respect to the latter, the Act defines foreign workers as foreign nationals in Canada on a temporary basis, with the exception of those allowed to work without a permit, or whose work permit is Labour Market Opinion exempt.³⁴⁷ These three sets of activities are then used to define an employment agency business,³⁴⁸ child performer recruitment,³⁴⁹ and

³⁴⁶ *Ibid.*

³⁴⁷ *The Worker Recruitment and Protection Regulation*, Man. Reg. 21/2009, s. 4.

³⁴⁸ WRPA, *supra* note 35, s. 1.

³⁴⁹ *Ibid.*, s. 1.

foreign national recruitment³⁵⁰ and in turn form the basis of three distinct licensing areas: employment agencies, child performer recruitment/child talent agencies, and foreign worker recruitment.³⁵¹

Foreign worker recruitment regulation is structured into two main parts: employer registration and foreign recruiter licensing. The former is administered by Manitoba's Immigration Branch, while the latter is overseen by the province's Employment Standards Branch. Employer registration is likely the most important piece of the regulatory structure. Employers wishing to recruit a foreign worker must apply to register with the Director of Employment Standards.³⁵² During the application process the employer must declare whether or not it is using a foreign worker recruiter. The application is then sent to the Immigration Branch, where an Immigration official contacts the employer. If the employer lists a foreign worker recruiter, the official advises the employer that the recruiter is liable to reimburse the worker for any recruitment costs that the worker may have paid to anyone. If the employer is recruiting a foreign worker directly (the possible cover story for using an unlicensed recruiter), the official advises the employer that the Act makes the employer responsible for reimbursing the worker *any* recruitment costs that the worker may have paid to *anyone* during the recruitment process (emphasis in original interview).³⁵³ Not only can employers be held responsible for illegally charged placement fees, but these fees can also be deemed to be wages, and returned to workers via the Employment Standards Branch's wage collection processes.³⁵⁴ This deeming provision means that the employer would be responsible for a high priority wage debt that can be collected

³⁵⁰ *Ibid.*, s. 1.

³⁵¹ *Ibid.*, ss. 2(1), 2(3), 2(2) and 2(4).

³⁵² *Ibid.*, s. 11.

³⁵³ Dyson, *Interview*, *supra* note 343. *Ibid.*, s. 20(3)(b). Section 20(5) also applies to s. 16 regarding the prohibition against employers recovering recruitment costs from temporary foreign workers; and the s. 17 prohibition regarding the employer reducing the temporary foreign workers' wages.

³⁵⁴ *Ibid.*, s. 20(5).

inter-provincially by means of reciprocal enforcement agreements.³⁵⁵ The Immigration official's conversations with employers seem to effectively screen out employers using an undeclared and/or unlicensed recruiter, suggesting that these employers decided to avoid the financial risks associated with unlicensed recruiters.

Immigration officials also advise employers that the employment contract information contained in the Labour Market Opinion becomes the minimum standard enforceable under the province's *Employment Standards Code*.³⁵⁶ Normally the Opinion sets out the working conditions and rate of pay being offered a foreign worker, though the Opinion itself is not considered binding on the employer, nor is it regarded as forming part of the employment contract. The Act deems the Opinion to be part of the employment contract, which Employment Standards will enforce as though it were the minimum standard. As a result, employers generally becomes more attentive to a foreign worker's skills and abilities, especially if the deemed contract cannot be re-written or adjusted downwards to reflect any unsuitability detected after the worker's arrival. It becomes another reason for employers to avoid unscrupulous recruiters who may find it easier and more cost effective to recruit unsuitable foreign workers, thereby burdening the employer with employees unable to perform their required tasks and duties. According to Dyson, "The end result is that many employers have opted to do their own recruitment without any recruiter intermediation. The employer not only avoids unnecessary financial liabilities, but can also ensure that the worker's skills and abilities are commensurate with the wages, benefits and working conditions being offered in the LMO."³⁵⁷

³⁵⁵ See *The Employment Standards Code*, C.C.S.M. c. E110, Division Six regarding Priority of Wages and Enforcement, and s. 114 regarding reciprocal agreements.

³⁵⁶ *Ibid.*, s.12(1)(b).

³⁵⁷ Dyson, *Interview*, *supra* note 343.

This shift towards direct employer recruitment is reflected in the large number of business registrations versus the small number of foreign worker recruiters licensed in Manitoba. Since *The Worker Recruitment and Protection Act* has been in force, 1800 business registrations have been granted to Manitoba employers to recruit foreign workers. In contrast, of the 61 people who applied for a license to recruit foreign workers into Manitoba, only nine licenses were granted to recruiters that met the criteria for professional and principled international recruitment.³⁵⁸ As of March 2011 there are only 13 licensed foreign worker recruiters in the province.³⁵⁹

Registration also provides a mechanism for screening out unscrupulous employers. By requiring that an employer give proof of provincial registration before being able to apply for an Labour Market Opinion, the province effectively controls who can access federal temporary foreign worker programs.³⁶⁰ For example, should an employer violate an undertaking, or otherwise engage in unscrupulous activities, the Director can refuse to register a first-time employer, re-register a repeat employer, or else suspend or cancel an existing registration.³⁶¹ The possibility of a registration refusal, suspension or cancellation provides some leverage over an employer's conduct. In other words, if the province detects foreign worker abuse, provincial registration can be withheld or suspended, effectively disqualifying the employer from acquiring the Opinion needed to further participate in the federal government's foreign worker programs. This linkage mechanism also appears to integrate well with the recent changes to *The Immigrant and Refugee Protection Act Regulations* making work permit approvals contingent on employer

³⁵⁸ Manitoba Employment Standards Branch, "CAALL Jurisdictional Report 2010" (Report presented to the Meeting of the Canadian Association of Administrators of Labour Legislation Labour Standards Committee, Charlottetown, PEI, 9-11 June 2010) [unpublished] at 1.[Manitoba, "CAALL Report"]

³⁵⁹ Online: Government of Manitoba

<http://www.gov.mb.ca/labour/standards/asset_library/pdf/wrapa_valid_licensees.pdf>.

³⁶⁰ Online: HRSDC

<www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/whatsnewmanitoba.shtml>.

³⁶¹WRPA, *supra* note 35, s. 12.

compliance with provincial labour legislation.³⁶² And while the Director may refuse, cancel or suspend an employer's registration,³⁶³ the employer also has a right to appeal the decision to the Court of Queen's Bench.³⁶⁴

Lastly, the registration piece also provides Immigration officials with the opportunity to introduce employers to related services and other recruitment options. For example, the Branch's Settlement Services may know of suitable immigrant workers within the province who are looking for work. Settlement Services can assist the employer in connecting with these workers, and thereby avoid the expense, time, and effort associated with international recruitment.

The regulatory structure's second main piece is the licensing of foreign worker recruiters. The licensing piece is administered by the Employment Standards Branch and is divided into three parts: 1. Qualification Requirements. 2. Financial Disclosure. 3. Bonding. With respect to the qualification requirement, an applicant must be a member in good standing of either the Law Society of Manitoba or the Canadian Society of Immigration Consultants.³⁶⁵ Only the individual members of these Societies (as opposed to corporate entities) may apply for this licence.³⁶⁶ The Director may require a criminal record check,³⁶⁷ and also has the authority to share information with or otherwise report the misconduct of individual licensees to their respective self-governing Societies.³⁶⁸

³⁶²See discussion *infra* chapter Three regarding *The Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers)*, S.O.R./2010-172, s.2(4); and *The Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s.205(d).

³⁶³WRPA, *supra* note 35, s.13(1) and (2).

³⁶⁴*Ibid.*, s.21.

³⁶⁵*The Worker Recruitment and Protection Regulation*, Man. Reg. 21/2009, s. 6.

³⁶⁶WRPA, *supra* note 35, s.3(2).

³⁶⁷*The Worker Recruitment and Protection Regulation*, Man. Reg. 21/2009, s. 8(1)(d).

³⁶⁸*Ibid.*, s. 23(2).

Once a license applicant has met the initial qualification, the applicant is then sent a form requesting a complete financial disclosure to be verified by statutory declaration. Disclosure assists Employment Standards in determining the individual's actual business interests and whether or not these are consistent with the Act. The Branch also has access to intelligence software called "Centennial" that cross-references bits of information such as phone numbers, names, and addresses with those in a larger database, so as to determine links with known human traffickers and other forms of organized crime. If there are any inconsistencies in the disclosure, additional information can be requested. If false information is provided, it can be passed along to the respective Societies for investigation and discipline, or else prosecuted as an offense.

If a qualified applicant successfully discloses, he or she must subsequently provide a bond or surety of \$10,000 in the form of an irrevocable letter of credit to, or as a cash deposit made with the Director of Employment Standards.³⁶⁹ The money remains in the Director's possession and provides a material link between the province and foreign worker recruiters operating outside the province. The surety can be used to reimburse foreign workers for any fees collected from them at any time by any person during the recruitment process.³⁷⁰ Moreover, there are significant penalties for contraventions ranging up to \$25,000 for a convicted person, and up to \$50,000 for convicted corporations.³⁷¹ This is over and above the civil recovery of any fees illegally charged to workers.

The licensing and employer registration pieces address many of the recruitment problems identified in Chapter Four. Employment agencies are kept separate from foreign worker recruiters and regulated as distinctly defined entities, with the latter being extensively vetted, supervised, and bonded. The heightened supervision discourages the blending of legal with

³⁶⁹ WRPA, *supra* note 35, s. 5; and *The Worker Recruitment and Protection Regulation*, Man. Reg. 21/2009, s. 9.

³⁷⁰ WRPA, *supra* note 35, s. 20(4).

³⁷¹ *Ibid.*, s.28(2)(a) and (b).

illegal fees. Recruiters tempted to blend legal and illegal fees face losing their bond and their license, being charged under the Act, and facing Society discipline. Employer registration discourages the use of unlicensed recruiters, while the potential for section 20(3) liability discourages collusion with out-of-province fraud. Similarly, a licensed recruiter's responsibility for reimbursing fees pursuant to sections 15(4) and 20(1) also discourages collusion with out-of-province fraud.

The licensing measures also provide a form of quality assurance, and ensures that those employers requiring professional assistance are dealing with the most reputable and accountable members of the recruitment sector. According to Dyson, "The Manitoba Chamber of Commerce phoned the Deputy Minister and asked if we could bring in the new Act quicker because of so many concerns raised by their members, because their members felt that they were being duped by recruiters, and wanted a mechanism to know which recruiters were legitimate and which ones were not."³⁷²

Along with licensing, Manitoba's Employment Standards Branch has also organized a Special Investigation Unit tasked with proactively investigating and enforcing *The Worker Recruitment and Protection Act*, and other labour legislation. The Unit's current priorities include inspecting workplaces of newly arrived temporary foreign workers.³⁷³ These inspections are based on the information collected through the employer registration piece.

What brings these elements together and allows them to work is the close level of cooperation that exists between the province and the federal government departments such as Citizenship and Immigration Canada, and Human Resources and Skills Development Canada, and enforcement agencies such as the Canada Border Service Agency, the Royal Canadian

³⁷² Dyson, *Interview*, *supra* note 343.

³⁷³ Manitoba, "CAALL Report", *supra* note 358 at 1.

Mounted Police and local police services. While this cooperation has not been formalized within the context of a federal-provincial Immigration Agreement, it exists operationally through the medium of monthly management meetings, where each organization offers a problem-solving piece to help provide overall solutions. Additionally, potential jurisdictional problems, such as the province blocking employer access to the federal Labour Market Opinion process have been ironed out through effective inter-agency cooperation. The province's relationship with Service Canada in this regard has been described as "spectacular."³⁷⁴

The result is a tight, integrated administrative structure designed to protect the viability of the Temporary Foreign Worker Program, and prevent foreign worker abuse and exploitation. The system is so prevention-biased that no complaint mechanism exists under the Act, with investigations only initiated at the Director's discretion. Considering that Employment Standards Officers visit each new temporary foreign worker's worksite, even the need to place translated employment standards information onto the Branch's website has not been a priority.

The only complaints voiced during the consultations leading up the Act's passage were from the foreign worker recruitment sector. Recruiters predicted that any such legislation would kill foreign recruitment activities, and leave Manitoba employers mired in a labour shortage without access to foreign labour. Recruiters also argued that employers would refuse to pay the full cost of recruiting foreign workers, an admission of the sector's commitment to charging illegal fees, and reminiscent of the position taken by the Association of Caregiver and Nanny Agencies Canada in British Columbia. The sector turned out to be wrong on these points, however. Not only do employers do most of their own recruiting, but they appear to find recruitment costs a reasonable and normal part of business overhead.³⁷⁵ As a result, most

³⁷⁴ Dyson, *Interview*, *supra* note 343.

³⁷⁵ *Ibid.*

foreign worker recruiters have either closed up shop, or have moved on to other provinces, leaving the Manitoba market to be serviced by its remaining 13 licensed recruiters.³⁷⁶

2. Alberta

Alberta's employment agency legislation emerged in its modern form during the beginning of the oil sands boom in the 1960s. Like Manitoba's *Employment Services Act*, the legislation's fee prohibition and licensing requirements were never designed to address foreign worker recruitment, and were instead intended to protect resident workers seeking employment.³⁷⁷ Mr. Darren Thomas, Alberta's Director in charge of administering *The Fair Trading Act*, noted that the current incarnation of the province's employment agency legislation was, "Initially intended to deal primarily with people in Alberta looking for work in Alberta."³⁷⁸ In other words, the legislation suited the times. No major legislative reviews were required since the 1960s, due mostly to the relatively quiet and orderly nature of recruitment activities during this period.³⁷⁹ The nature of recruitment activities changed with passage of *The Immigrant and Refugee Protection Act*, devolution, and the massive rise in temporary foreign workers appearing in the tar sand industry around 2007.

Alberta subsequently signed a memorandum of understanding with the Philippines in 2008 designed to "pave the way for the orderly and ethical recruitment of Filipino workers to

³⁷⁶ Online: Government of Manitoba

<http://www.gov.mb.ca/labour/standards/asset_library/pdf/wrapa_valid_licensees.pdf>.

³⁷⁷ Interview of Mr. Percy Cummins, Executive Director, Immigration Policy and Programs, Immigration Division, Alberta Employment and Immigration (August 31, 2010).[Cummins, *Interview*]

³⁷⁸ Interview of Darren Thomas, Service Alberta, Director of Fair Trading as Delegated (July 27, 2010).[Thomas, *Interview*]

³⁷⁹ *Ibid.*

Alberta.”³⁸⁰ The Philippine government’s interest in Alberta may have been due to devolution and the emerging provincial immigration system. According to Barber, the Philippines are the top source country for Provincial Nominee Programs, with 80% of entrants contracted in Alberta.³⁸¹ In any event, the sudden growth in demand for temporary foreign workers led the program to being described as “out of control”³⁸² and “dysfunctional.”³⁸³ Mid-sized employers, who had trouble filling out government forms and were at a loss as to how to recruit workers internationally, created a corresponding demand for recruiters. There was suddenly money to be made in filling out forms and finding workers overseas, and anyone with friends or family in other countries, or with international business contacts found themselves well-placed to enter the recruitment business.³⁸⁴ As a result, licensed employment agency numbers in Alberta increased dramatically, more than tripling from pre-2007 levels, peaking at almost 700 licensed agencies in 2008, and falling to 577 agencies as of July 26, 2010.³⁸⁵

This dramatic increase may have been in part due to the low-threshold requirements that licensing presents to new entrants. To receive a license, an applicant completes an application form, and pays a \$120 licensing fee.³⁸⁶ The form also contains a questionnaire asking if the applicant has a record of legal and/or financial problems.³⁸⁷ The application form allows the Director to obtain a criminal record check, and advises that a Credit Bureau check may be done

³⁸⁰ Government of Alberta, News Release, “Alberta and Philippines sign worker memorandum” (1 October 2008), online: Government of Alberta <<http://alberta.ca/home/NewsFrame.cfm?ReleaseID=/acn/200810/24453B9BFBFE5-980B-E353-4303727DAA4E4FBF.html>>.

³⁸¹ Barber, “Ideal Immigrant”, *supra* note 220 at 1277.

³⁸² “Alberta’s Temporary Foreign Worker Program is so Out of Control”, *Muchmor Canada Magazine* (17 August 2010), online: Muchmore Canada Magazine <<http://www.muchmormagazine.com/2010/08/albertas-temporary-foreign-worker-program-is-so-out-of-control-action-urged/>>.

³⁸³ Trish Audette, “Foreign Worker Program Reassessed” *The Edmonton Journal* (21 July 2010), online: The Edmonton Journal <<http://www.edmontonjournal.com/news/Foreign+worker+program+reassessed/3303759/story.html>>.

³⁸⁴ Cummins, *Interview*, *supra* note 377.

³⁸⁵ Thomas, *Interview*, *supra* note 378.

³⁸⁶ *Employment Agency Business Licensing Regulation*, Alta. Reg. 189/99, s.6.

³⁸⁷ See online: Service Alberta <<http://www.servicealberta.gov.ab.ca/pdf/Forms/CONP0048.pdf>>.

in conjunction with the license application. In other words, there is little in the application process that addresses issues unique to foreign worker recruitment. At best, the process can only assure Albertans that a license holder is not a convicted felon nor has had credit or related financial problems.

The sudden influx of individuals and agencies, along with perfunctory screening meant that the quality among licensed agencies engaged in foreign worker recruitment has varied dramatically.³⁸⁸ The entry of low-quality recruiters may have led to an increase in the number of complaints, and an increased volume of investigations undertaken by Service Alberta. Service Alberta investigations reached a high of 277,³⁸⁹ with approximately 125 investigations currently open.³⁹⁰ Complaints include charging prohibited fees, misrepresentation and overcharging for services, and unlicensed agency activities.³⁹¹ Service Alberta acknowledges that the bulk of investigations result in no formal enforcement action, or are closed due to a “lack of evidence” or an inability to pursue the recruiter. Recruiters operating outside Canada may be difficult to track down, “hard” evidence (i.e. paperwork) difficult to find if it was ever created at all, or the exact purpose of the fees impossible to ascertain on available evidence. The high complaint numbers are significant considering that many foreign workers are usually unwilling to report their recruiters for fear of reprisal or deportation.³⁹²

In addition, Service Alberta has no resources dedicated to dealing with foreign worker complaints. No priority or special statistical status is given to complaints from foreign workers. Instead, foreign worker complaints are treated the same as those coming from any other resident

³⁸⁸ Cummins, *Interview*, *supra* note 377.

³⁸⁹ AFL, *Second*, *supra* note 20 at 13.

³⁹⁰ Email from Darren Thomas, Service Alberta, Director of Fair Trading as Delegated (August 24, 2010).[Thomas, *Email*]

³⁹¹ “Alberta’s Temporary Foreign Worker Program is so Out of Control”, *Muchmor Canada Magazine* (17 August 2010). See also: Thomas, *Interview*, *supra* note 378.

³⁹² AFL, *Second*, *supra* note 20 at 13.

Albertan. This means that Service Alberta's approximately 19 or 20 investigators have no dedicated resources or procedures for dealing with problems unique to temporary foreign workers. All employment agency and foreign recruiter complaints are mixed together, and then re-mixed with complaints arising from the other licensing pieces contained in *The Fair Trading Act*.³⁹³

Even when contraventions are detected, the Act offers few expeditious civil remedies. Instead, prosecution is the general recourse, with all the attendant costs and complexities of bringing a matter to trial. A successful prosecution can result in imprisonment, significant fines and restitution. Actual penalties appear relatively light, however. For example, a defendant who pled guilty to nine counts of operating an employment agency without a licence was fined \$500 per count.³⁹⁴ The defendant also agreed to repay a total of \$15,000 in fees back to the workers by a court ordered deadline.³⁹⁵ Had the order not been complied with, it would likely have ended up as an unsecured debt, and only enforceable within Alberta.

The Director may also impose administrative remedies. For example, the Director may issue an Order, or require an employment agency to enter into an undertaking so as to return illegally collected fees. The violation of an Order carries with it the threat of a prosecution, while an undertaking is essentially an agreement with the Director that is also made in the shadow of a possible prosecution. Generally, Orders and Undertakings tend to rely on moral suasion, in that they are public documents and placed on the Government's web site where they attract a certain amount of public attention. These administrative remedies are relatively rare, however (12 Orders issued between 2007 and 2010, and two undertakings entered into between

³⁹³ Thomas, *Interview*, *supra* note 378.

³⁹⁴ Government of Alberta, News Release, "Government investigation gets foreign workers their money back" (22 January 2010), online: Government of Alberta <<http://alberta.ca/acn/201001/2768756938E65-B02B-FA7D-6636A43F3D71EB48.html>>.

³⁹⁵ *Ibid.*

2005 and 2010),³⁹⁶ or else require prosecution for enforcement. As a result, organizations such as the Alberta Federation of Labour have concluded that the high complaint numbers and the low number of orders and prosecutions point to serious barriers in enforcement,³⁹⁷ if not with the entire legislative scheme.

Employers have had their own problems with recruitment. In 2007, both Alberta and federal government officials involved in or directly administering the Temporary Foreign Worker Program began meeting as an *ad hoc* working group to address the many employer complaints. Employers complained of the difficulties in accessing the Program and recruiting workers, which included the length of time it took to process Labour Market Opinions, or confusion around how the prevailing wage rate was set.³⁹⁸ The working group reacted by creating employer materials, which eventually ended up being published as a Guide for Employers. A Temporary Foreign Worker Guide was also produced, translated into 13 languages, and posted on the Employment Standards' web site, though the links to these Guides are in English.³⁹⁹ In addition, the Guides are distributed to foreign workers through employers and unions, while Citizenship and Immigration Canada also gives each foreign worker a Guide along with their work permit.⁴⁰⁰ The working group subsequently formalized its work, and in 2009 added Annex B regarding Temporary Foreign Workers⁴⁰¹ to the earlier *Agreement for*

³⁹⁶ Thomas, *Email*, *supra* note 390. Orders and undertakings are also listed on Service Alberta's web site: <http://servicealberta.ca/1287.cfm#employment>, and <http://servicealberta.ca/1288.cfm#employment>

³⁹⁷ AFL, *Second*, *supra* note 20 at 13.

³⁹⁸ Cummins, *Interview*, *supra* note 377.

³⁹⁹ These languages include: Chinese, French, German, Hindi, Korean, Polish, Punjabi, Romanian, Spanish, Tagalog, Thai, Ukrainian, and Vietnamese. Unfortunately, the only language on the Employment Standards web site is English, including the links to the translated *Guide*. This would make it difficult for a non-English speaking worker to find and access these Guides. Online: Employment and Immigration Alberta <<http://employment.alberta.ca/SFW/1699.html>>.

⁴⁰⁰ Cummins, *Interview*, *supra* note 377.

⁴⁰¹ *Agreement for Canada-Alberta Cooperation on Immigration, 2009*, Annex B: Temporary Foreign Workers, online: CIC <http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp>. [Canada-Alberta Agreement]

*Canada Alberta Cooperation on Immigration.*⁴⁰² The Annex allowed inter-governmental information sharing, and provided a basis for more active federal enforcement of its existing legislation.

Working group discussions also led Alberta to open a Temporary Foreign Worker Advisory Office to deal with questions and concerns from both employers and workers.⁴⁰³ Alberta's Ministry of Employment and Immigration set up two Temporary Foreign Worker Advisory Offices, one in Calgary and the other in Edmonton,⁴⁰⁴ with a total of 10 staff. Foreign workers can contact the Office by email, or else by calling the toll-free Temporary Foreign Worker Helpline.⁴⁰⁵ The Office's mandate is to offer referral service only, and it is generally unable to provide direct advocacy for foreign workers who phone in for assistance. Instead, the Office often redirects foreign worker complaints to other agencies or departments, such as Service Alberta's Residential Tenancies Dispute Resolution Service, the Human Rights Commission, Occupational Health and Safety, Employment Standards,⁴⁰⁶ or in the case of employment agency complaints, Service Alberta's Investigation Services. Unfortunately, it appears that the government does not currently release specific data about the use of the Advisory Offices and the Helpline so it is not possible to gauge the level of demand for its services.⁴⁰⁷

Due to criticism, complaints and other bad publicity,⁴⁰⁸ Alberta took some steps to protect temporary foreign workers while employed in the province. The province's Employment

⁴⁰² Signed May 11, 2007.

⁴⁰³ *Ibid.* See also: AFL, *Second, supra* note 20 at 14.

⁴⁰⁴ Online: Employment and Immigration Alberta <<http://employment.alberta.ca/Immigration/4548.html>>.

⁴⁰⁵ See online: Employment and Immigration Alberta <<http://employment.alberta.ca/Immigration/4548.html>>.

⁴⁰⁶ AFL, *Second, supra* note 20 at 14.

⁴⁰⁷ *Ibid.* See also, Cummins, *Interview, supra* note 377.

⁴⁰⁸ The Alberta Federation of Labour has been a consistent critic and has produced the following publications: see publications, *supra* note 20. See also opposition member Rachel Notley's March 18, 2010 press release and subsequent news item, *infra*, along with discussions in the next section.

Standards Branch produced a strategy whereby it combined its complaint process with targeted inspections. All complaints and referrals from the Temporary Foreign Worker Advisory Office are investigated, with 351 such complaints being made in 2009-2010. In addition, inspections are also carried out, with 50% resulting from complaint referrals, and 50% chosen from a list of employers with positive Labour Market Opinions.⁴⁰⁹ Inspections focus on all worksite employees, and not just temporary foreign workers. The inspections are random and unannounced, with Officers checking records to ensure compliance with wage payments, overtime, breaks and other employment standards. Workers are also interviewed to validate what was seen in the records. If any Occupational Health & Safety violations are observed, they are referred to an OH&S Officer for follow-up.⁴¹⁰ In 2009-2010 there were 375 such inspections, along with 138 follow-up inspections.⁴¹¹ Currently, the Branch has six Officers dedicated to investigating complaints and targeted inspections.

What Employment Standards Officers have discovered during their inspections has been troubling. Recently, the New Democratic Party opposition in Alberta's Legislative Assembly released information based on Employment Standards' monthly activity reports. The reports showed that up to 74% of inspected businesses employing foreign workers were violating labour laws.⁴¹² The infractions included not paying for overtime, statutory holidays and vacation time earned. New Democrat MLA Rachel Notley characterized these violations as "not minor paperwork problems", but rather "substantial" ones that hurt workers and their families.⁴¹³

⁴⁰⁹ Alberta, Employment Standards Branch, "Alberta Employment Standards 2009-2010 Year in Review" (Report presented to the Meeting of the Canadian Association of Administrators of Labour Legislation Labour Standards Committee, Charlottetown, PEI, 9-11 June 2010) [unpublished] at 1.[Alberta, "Year in Review"]

⁴¹⁰ Cummins, *Interview*, *supra* note 377.

⁴¹¹ Alberta, "Year in Review", *supra* note 409 at 1.

⁴¹² Reports found online: Alberta NDP <<http://www.ndpopposition.ab.ca/sites/default/files/documents-central/2010-03-05-employment%20standards%20tfw%20monthly%20activity%20img076941.pdf>>.

⁴¹³ Cotter, J., "Alberta NDP Releases Government Records that Show Foreign Workers Bilked of Pay" *Canadian Press* (18 March 2010); "Foreign workers mistreated 74% of the time" (17 March 2010), online: Alberta NDP

In response to this and other similarly negative publicity, the provincial government made temporary foreign workers a topic of Alberta's Parliamentary Assistants Initiative. The Initiative consists of a series of Round Table discussions and public meetings regarding foreign workers that were conducted in and around Alberta in the Fall of 2010 and chaired by Calgary MLA Teresa Woo Paw.⁴¹⁴ Woo Paw was to review the program to identify where this federal program fits in Alberta's labour force planning, what role foreign workers fill in Alberta's labour market, and how to ensure that the program is best serving the needs of Albertans. Woo Paw was to then report her findings back to the Minister of Employment and Immigration.⁴¹⁵

The province also recently reviewed its employment agency legislation. Apparently "everything is on the table" as the province considers modernizing its employment agency legislation, and addressing the problems associated with foreign worker recruitment. Some possibilities include adding to record keeping requirements, additional prohibited practices, stringent disclosure requirements, clarifying employment contract information, security requirements, etc.⁴¹⁶ Unfortunately, as of December 2010 none of these changes have materialized. Instead, a November 18, 2010 Alberta Federation of Labour workshop found that recruiters continue to act unscrupulously and without consequences, and that, "Illegal recruitment fees in the thousands of dollars, false promises of permanent residency, false charges

<<http://www.ndpopposition.ab.ca/node/2706>>. See also Nakache, Delphine and Paula J. Kinoshita. *The Canadian Temporary Foreign Worker Program Do Short-Term Economic Needs Prevail over Human Rights Concerns? IRPP Study, No. 5* (Montreal: IRPP, May, 2010) at 39.

⁴¹⁴ Trish Audette, "Foreign Worker Program Reassessed", *The Edmonton Journal* (21 July 2010).

⁴¹⁵ Alberta, Ministry of Employment and Immigration, *Memorandum Re: Parliamentary Assistant's Roles and Assignments* (9 April 2010), online: Government of Alberta <http://www.premier.alberta.ca/documents/teresa_woo_paw_memo.pdf>.

⁴¹⁶ Thomas, *Interview*, *supra* note 378.

for services, and false information given to temporary foreign workers are all commonplace in Alberta.”⁴¹⁷

3. British Columbia

British Columbia’s employment agency legislation is contained in its *Employment Standards Act*. Like Alberta, British Columbia has been historically concerned with recruitment conditions only within its provincial borders. This limited provincial scope was articulated in the 1994 *Rights and Responsibilities* Report, where the Report’s author, Mark Thompson, noted that the employment agencies charging fees to job seekers outside of Canada do not violate the letter of *The Employment Standards Act*, even if this recruitment is for work within the province.⁴¹⁸ The assumption at the time seemed to be that the employment agency activities occurring outside provincial borders was not a matter of concern. Instead, temporary foreign workers only gained protective rights once they enter the province. Once in the province, foreign workers were to be treated no differently, and provided no more and no less protection than other provincial workers.

The growth and importance of temporary foreign workers in the provincial economy has changed this conception, however, and there is a growing awareness of the problems facing temporary foreign workers during the recruitment process. For example, British Columbia’s 2008 memorandum of understanding with the Philippines set out that employers shall pay the costs related to the hiring of workers.⁴¹⁹ Awareness is also reflected in the 2010 *Canada- British*

⁴¹⁷ Alberta Federation of Labour, *Report on Temporary Foreign Workers in Alberta* (Edmonton: AFL, 2010) at 1, online: <http://www.afl.org/index.php/View-document/267-2010-Dec-16-Report-on-Temporary-Foreign-Workers-in-Alberta.html>.

⁴¹⁸ Mark Thompson, *Rights and Responsibilities: A Review of Employment Standards in British Columbia* (Victoria: Ministry of Skills, Training and Labour, 1994) at 38.

⁴¹⁹ *British Columbia – Philippines Memorandum of Understanding* (29 January 2008), Article 6.

Columbia Immigration Agreement's Annex F regarding Temporary Foreign Workers.⁴²⁰ Annex F notes that the effective monitoring of foreign workers, employment agencies and employers is required to ensure their compliance with Program requirements, and with all applicable federal and provincial laws.⁴²¹ Despite the focus on foreign workers, British Columbia interprets the Annex as a call for improved monitoring and enforcement of existing labour legislation related to the employment rights of all provincial workers.⁴²² The province considers it “incredibly difficult to monitor these [recruitment] issues at a provincial level when the interactions taking place are necessarily international in scope.”⁴²³ Instead, the province is of the opinion that the only effective way to manage the issue is at the federal level or as a coordinated approach among all provinces (or at least major temporary foreign worker receiving provinces) rather than each province developing its own legislation.

British Columbia moved towards greater federal-provincial cooperation by signing a letter of understanding with Human Resources and Skills Development Canada, and a memorandum of understanding on information sharing is currently being developed with Citizenship and Immigration Canada.⁴²⁴ The memorandum was initiated in light of the recent Temporary Foreign Worker regulatory amendments, which came into force on April 1, 2011. The new *Immigrant and Refugee Protection Regulations* Section 200(5)(d) will give Citizenship and Immigration Canada the authority to collect provincial information on employer

⁴²⁰ *Canada-British Columbia Immigration Agreement, April 2010, Annex F: Temporary Foreign Workers*, online: CIC <<http://www.cic.gc.ca/english/department/laws-policy/agreements/bc/bc-2010-annex-f.asp>>. [*Canada-British Columbia Agreement*]

⁴²¹ *Ibid.* Article 6.1.

⁴²² Email from Michael Newson (13 September 2010) [Newson, *email*].

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*

noncompliance.⁴²⁵ There has currently been little movement on implementing an information sharing system based on the letter, or in developing and signing a memorandum, however.

The province's position means that the foreign worker recruitment sector continues to be regulated by legislation designed for a relatively limited provincial application. In addition, historical conditions, some of which were discussed in Chapter Two, produced a well-understood and accepted consensus around the payment of placement fees, making heavy-handed state intervention unnecessary. As a result, recruiters not only use jurisdiction to their advantage, but also operate with a minimum of provincial regulatory oversight.

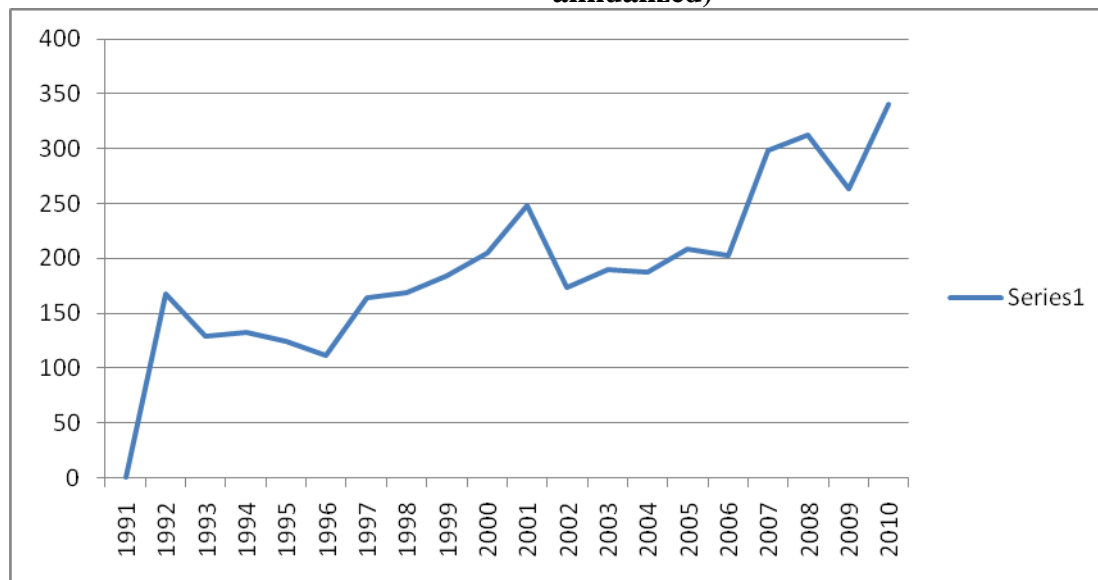
For example, foreign worker recruiters face minimal licensing requirements, with a license application consisting of an application form, a \$100 fee, and a completed knowledge questionnaire used as an education piece. Most applications are accepted, and the Employment Standards Branch denying a license application outright is rare.⁴²⁶ Getting an existing license revoked or suspended is also rare. Even a clearly non-compliant company like PG Nannies never had its license reviewed, suspended or revoked.⁴²⁷ As a result, it seems fair to conclude that British Columbia offers a hospitable regulatory environment towards all manner of recruiters; and, as noted in Chapter Four, its licensing regime covers a mishmash of employment agencies, foreign worker recruiters, and immigration consultants.

The province's hospitality is reflected in the sector's growth. While not as dramatic as Alberta's, it has grown nonetheless, as demonstrated by the data contained in Figure 4 below.

⁴²⁵ *The Immigration and Refugee Protection Regulations*, S.O.R./2010-172, online: Canada Gazette <<http://gazette.gc.ca/rp-pr/p2/2010/2010-08-18/html/sor-dors172-eng.html>>.

⁴²⁶ Interview of Mr. Pat Cullinane, Executive Director, British Columbia Employment Standards Branch (16 July 2010).

⁴²⁷ Email from Mr. Pat Cullinane (July 21, 2010).

Figure 4**British Columbia – Employment Agency Licenses Issued by Calendar Year (2010 figure annualized)**

Source: British Columbia Employment Standards Branch⁴²⁸

The growth also corresponds to increased reports of foreign worker exploitation such as the examples discussed in Chapter Four.

Provincial protection of foreign workers employed in the province is similarly limited. The Employment Standards Branch's efforts are confined to translating and publishing employment standards information normally available to other British Columbia residents. For example, the Employment Standards Branch's website home page contains Chinese, Filipino, French, Punjabi and Spanish language portals, that lead to employment standards facts sheets published in each respective language.⁴²⁹ The foreign workers in each of these linguistic groups receive the same type of employment standards messaging as English speaking provincial workers, including information about employment agencies.⁴³⁰ The Branch's efforts appear part

⁴²⁸ Graph derived from the data contained in email from Mr. Pat Cullinane (July 16 and July 23, 2010).

⁴²⁹ See online: BC Employment Standards Branch <<http://www.labour.gov.bc.ca/esb/welcome.htm>>.

⁴³⁰ See online: BC Employment Standards Branch <<http://www.labour.gov.bc.ca/esb/employment/>>.

of a government wide strategy, with multilingual information sheets and Guides also available on the WorksafeBC website,⁴³¹ the B.C. Ministry of Housing and Social Development's Residential Tenancy Branch,⁴³² and WelcomeBC.⁴³³

The only concession to temporary foreign workers comes from the fact that language barriers may make them incapable of working with the Branch's pre-complaint self-help kit, a kit designed to help employees and employers solve workplace disputes on their own. Employees with significant language or comprehension difficulties can bypass the kit, and have their complaints addressed and assigned immediately.⁴³⁴

D. Conclusion

Manitoba is the only western province that has legislatively addressed the problems created by private, for-profit recruiters at the expense of temporary foreign workers. The legislation frames a set of best administrative practices that deal directly with these problems. The other western provinces have been more or less reluctant to follow Manitoba's lead, however. The reluctance may be tied to the legislation's novelty, with each province cautiously watching and assessing Manitoba's experiences. For instance, Alberta's Percy Cummins stated that, "Manitoba's legislation is well-intended, but it hasn't been proven to be functional."⁴³⁵

⁴³¹ In Chinese, French, Korean, Punjabi, Spanish and Vietnamese links on the site's home page, online: Worksafe BC <<http://www.worksafebc.com/default.asp>>.

⁴³² With general information available in French, Arabic, Chinese, Filipino, Japanese, Portuguese, Punjabi, Russian, Spanish and Vietnamese, online: BC Ministry of Housing and Social Development <<http://www.rto.gov.bc.ca/content/publications/factSheets.aspx#129>>.

⁴³³ In particular Welcome BC's *Newcomer Guide* published by the Welcoming and Inclusive Communities and Workplaces Program (WICWP). The *Guide* is published in French, Chinese, Korean, Punjabi, Russian, Arabic, Farsi, Spanish and Vietnamese, with links in these languages found online: Welcome BC <http://www.welcomebc.ca/wbc/service_providers/publications_and_reports/publications/newcomers_guide.page?>

⁴³⁴ Online: BC Employment Standards Branch <http://www.labour.gov.bc.ca/esb/self-help/self_help_kit.pdf>

⁴³⁵ Cummins, *Interview*, *supra* note 377.

There are other reasons for Alberta and British Columbia's reluctance that came up during interviews, either directly or by inference. The more significant ones can be synthesized and grouped together. First, recruitment occurs outside of Canada and so should be a concern primarily addressed by the federal government.⁴³⁶ Second, private, for-profit recruiters are indispensable in large, employer-driven immigration systems. In other words, comparing Manitoba's much smaller temporary foreign worker program with B.C. and Alberta's, is to compare apples with oranges,⁴³⁷ and there is no indication that Manitoba's could be successfully scaled up. Third, using Manitoba's legislative model in provinces with much larger temporary foreign worker stock and flows is too costly. Each of these reasons will be addressed in turn.

At first glance, the fact that foreign worker recruitment occurs outside of the country would seem to make it more of a federal concern. Immigration is a shared federal/provincial constitutional matter, however. In addition, Chapter Four described how local laws can have international impacts, suggesting that the provinces are just as well-placed as the federal government to legislate for extra-jurisdictional impact. Manitoba's model demonstrates what is possible in this regard. Not only can provincial legislation affect the quantity and quality of international recruitment, but it can also strike a balance between employer and temporary foreign worker needs and interests.

The idea of recruiter indispensability is grounded in the reality that a mechanism is required to populate employer-driven temporary foreign worker programs. As a result, there seems to be a genuine concern about tinkering with private, for-profit recruitment, which for better or for worse has so far delivered foreign workers. In other words, provinces like British Columbia and Alberta with large, if not urgent, employer demands are not inclined to overhaul a

⁴³⁶ Newson, *email*, *supra* note 422.

⁴³⁷ Cummins, *Interview*, *supra* note 377.

functioning recruitment system, even if it means that a large number of foreign workers will continue to be exploited in the process. Following Manitoba's lead and effectively legislating the majority of private recruiters out of existence seem inconceivable to their provincial governments.

The problem with this line is that it misinterprets the Manitoba experience. Manitoba did not gut its recruitment sector. Instead, Manitoba focused on foreign worker protection, and re-engineered its regulatory environment so as to protect these workers during the recruitment process. The new environment favoured direct employer recruitment over recruiter intermediation. As a result, the province's recruitment sector subsequently shrank to adapt to its diminished role and importance. In contrast, Alberta and British Columbia's provincial perspectives, and relatively *laissez-faire* legal environments enhance the recruitment sector's size and importance. In other words, the relative importance of private, for-profit recruiters and agencies is not a function of employer-driven programs, or its relative size and scale, but is instead a function of perspective and focus, and varies in relation to the underlying regulatory environment.

A recent Metropolis BC study validates this environmental approach. The study of 161 live-in caregivers, mostly from the Philippines and working in Vancouver, found that a higher proficiency in English and better information about employment rules and rights significantly reduced the possibility of employment standards violations.⁴³⁸ The study went on to note that worker knowledge of language and rules was not sufficient, however. Instead, the study concluded that, "reforming some of the features of the program to eliminate adverse incentives to

⁴³⁸ Tracy Kalaw and Dominique M. Gross, *Employment Standards Violations and Live-In Caregivers' Characteristics in British Columbia*, WP# 10-08 (Vancouver: Metropolis British Columbia, 2010) at 40.

employers and directly addressing their reluctance to comply are necessary.”⁴³⁹ In other words, providing temporary foreign workers with the same protection as other provincial workers is a start. More effective is an arrangement that discourages employer non-compliance and abuse in the first place.

A third concern with the Manitoba model expressed by officials in British Columbia and Manitoba is cost. Cost-worries seem like cherry picking, however. While federal devolution was done for the benefit of provincial employers, the provinces seem to want the benefits of the arrangement without any of the corresponding obligations. It also goes against the spirit of commitments made in various bilateral instruments to ensure the well-being of workers during their recruitment and employment. The fact that Manitoba has provided a viable legislative and administrative model squarely addressing the problems created by foreign worker recruiters, taken together with the moral and legal responsibilities that the Western provinces have undertaken around the deployment of foreign workers, make a compelling argument that each province should initiate and pay for similar legislated protections.

Moreover, while it may appear cheaper to do nothing, doing nothing can have its own costs. For example, an employment standards branch may avoid the cost of doing routine inspections, only to see the number and cost of complaints, *post-facto* investigations, appeals and appeal-related litigation increase year on year. Similarly, the cost of chasing foreign worker recruiters in response to *post-facto* complaints, using dated legislation ill-equipped to address the unique problems created by recruiter activities would seem more costly than enacting legislation and designing administrative structures that prevent problems in the first place.

There are other non-monetary costs that should also be considered. For example, the Alberta government’s support for the tar sand industry came with a political cost that made it the

⁴³⁹ *Ibid.*

target of persistent criticism over the years. High profile and award-winning authors like Andrew Nikiforuk have written both extensively and critically about oil and gas development in western Canada.⁴⁴⁰ Nikiforuk's commentary is scathing, and includes descriptions of the plight of temporary foreign workers. In *Tar Sands*, he writes that the "Abuse of guest workers is so widespread that the Alberta government handled 800 complaints in just one three-month period in 2008."⁴⁴¹ In addition, the Alberta Federation of Labour took up the plight of temporary foreign workers, and appointed a temporary foreign worker advocate who produced two sharply critical reports since 2007. As a result, the political cost attached to not assisting vulnerable workers is criticism, controversy, and illegitimacy.

While British Columbia does not have this kind of Alberta-sized controversy, a recent class action suit appears to be a vote of non-confidence in its current regulatory set-up.⁴⁴² The plaintiffs, a class to be made up of 50 temporary foreign workers who worked at Denny's Restaurants in British Columbia, alleged *inter alia*, non-payment of wages at overtime rates and illegally charged recruitment fees. These allegations could have just as easily been grounds for complaints filed with the province's Employment Standards Branch. This suit suggests that foreign workers do not appear impressed with the "equal treatment" meted out by provincial authorities, and have instead turned to the courts for protection. At the very least it suggests that significant weaknesses exist in the province's legislation and programs.

It is also notable that the suit is based on principles embodied in Manitoba's current legislation. For example, the suit claims that employers owe foreign workers a fiduciary duty,

⁴⁴⁰ See for example: *Tar Sands: Dirty Oil and the Future of a Continent* (Vancouver: Greystone Books, 2008); *Saboteurs: Wiebo Ludwig's War Against Big Oil* (Macfarlane Walter & Ross); articles such as "Canada's Highway to Hell" (2007) 29:3 *Onearth* 34-41; "Resources: Not in Our Backyard" *Canadian Business* (22 October 2007); "Liquid Asset" *Report on Business* (28 March 2008).

⁴⁴¹ Andrew Nikiforuk, *Tar Sands: Dirty Oil and the Future of a Continent* (Toronto: Greystone Books, 2008) at 23.

⁴⁴² See the class action statement of claim, *Dominguez v. Northland Properties Corporation* (January 7, 2011), Vancouver Registry S-110095 (BCSC).

and in this way are responsible for any fees charged by an unlicensed recruiter, and must honour employment contract terms used to secure Labour Market Opinions. If the Court upholds these claims, it means that Manitoba will have been vindicated in the correctness of its approach. Manitoba not only correctly identified the problems arising out of the Temporary Foreign Worker Program and provincial immigration systems, but was also correct in how it legislatively assigned responsibility and accountability. It would also imply that British Columbia, Alberta and Saskatchewan are considerably behind in their approaches.

In summary, passing off responsibility to the federal government, pandering to recruiters, and pleading poverty all represent a provincial capitulation. If it's up to the federal government to manage and pay for foreign worker protection, then perhaps the only consistent course is to roll-back devolution and reduce access to the Temporary Foreign Worker Program. Yet such a capitulation is unnecessary. Manitoba, hardly an economic heavyweight compared to Alberta, has nonetheless passed *The Worker Recruitment and Protection Act* and demonstrated that there is nothing theoretically impossible with adopting a best practices approach that balances employer needs with their foreign workers' well-being. Incentives can and should be enacted that make this outcome reasonable, efficient and cost effective. And if Manitoba is any indication, the only losers will be recruiters charging illegal fees, who compromise employers and who prosper at the expense of foreign workers.

Chapter 6: Conclusion

The thesis examined the role and regulation of private, for-profit employment agencies in the British Columbia labour market with respect to temporary foreign workers. It located the topic within a larger historical and immigration policy context, using a range of interconnected and inter-supporting methodologies.

Historically, employer demand for local and foreign workers gave rise to third party intermediaries, either in the form of employment agencies or foreign worker recruiters. The record further suggests that when left unregulated, private, for-profit agencies and recruiters charged workers placement fees, and drifted towards perpetrating further frauds and swindles. This tendency towards worker exploitation seems to express itself irrespective of time and place, occurring in the late nineteenth century and contemporary Canada. Charging workers job placement fees represents a slippery slope towards worker abuse, exploitation and illegality. Moreover, it is typically the most vulnerable workers who suffer the most. As noted in early 20th century report to Congress of the United States Commission on Industrial Relations, and echoed by contemporary recruiters and agencies,

Employment agents say that employers will not pay the fees; hence they must charge the employees. Among the wage earners, too, however, those who are least in need and can wait for work pay the least for jobs and even get them free, while those who are most in need make up for all the rest and pay the highest fees. The weakest and poorest classes of wage earners are therefore made to pay the largest share for a service rendered to employers, to workers, and to the public as well.⁴⁴³

⁴⁴³ Final Report and Testimony submitted to Congress by the Commission on Industrial Relations created by the Act of August 23, 1912, 64th Congress, 1st sess., Doc. 415, vol. I, pp. 109-111. *See also* vol. II, pp. 1165-1440; as found in *Adams vs. Tanner*, 244 U.S. 590 (1917) at 605.

Almost a century ago, North American authorities identified private employment agencies as a source of labour discontent, and as being incompatible with progressive labour force development. Commentators at the time noted that, “instead of relieving unemployment and reducing irregularity, these employment agencies actually serve to congest the labor market and to increase idleness and irregularity of employment.”⁴⁴⁴ And, at certain critical moments, agencies were even seen as a threat to social order and stability. For instance, the crises associated with World War I provoked both provincial and federal governments into decisively addressing the problems associated with private employment agencies, by effectively legislating them out of existence. This step was not only considered necessary, but also progressive, and consistent with emerging international labour standards to such an extent that the prohibition against workers being charged job placement fees remained on the books in one form or another to this day.

For decades, Western Canadian employment agency legislation produced satisfactory results. When provincial employment agencies eventually re-emerged, they accepted the new norms, and ran successful business models based on charging employers only. Employers requiring these services, in turn, accepted these fees as part of their normal operating overhead. As a result, a period of quiet stability ensued, a period so quiet that a jurisdiction like Saskatchewan has not prosecuted an employment agency within living memory - a fact underscored by its *Employment Agencies Act* having remained essentially unchanged since 1919.

Conditions dramatically changed shortly after the turn of the 21st century in what has been represented by governments and businesses as acute labour shortages in provinces like British Columbia and Alberta occurring in the midst of a commodities-driven economic boom. Federal devolution of immigration policy to the provinces, which began a few years earlier, took

⁴⁴⁴ *Ibid.*

on a new urgency, as employers complained of too many bureaucratic obstacles and barriers to obtaining foreign workers. Employer-driven temporary foreign worker programs were streamlined and integrated with provincial immigrant nominee programs. The sudden change in Canadian policy had a rapid impact on the migration strategies used by workers in foreign countries. Along with new opportunities for workers came the risk of exploitation by employers, recruiters and consultants. The Western provinces acknowledged this peril when entering into memoranda of understanding with labour exporting nations such as the Philippines, and promised to protect foreign workers from exploitation during recruitment and employment. Yet, without legislative and administrative structures designed to address these new conditions, the door was thrown open to contemporary versions of Antonio Cordasco and his *commercio di carne umana*.

The fact that recruiters and consultants regularly exploit temporary foreign workers contrary to these Memoranda and provincial employment agency law is readily apparent. The concern over exploitation is expressed in federal-provincial Immigration Agreements where governments urge compliance with provincial and federal laws. The problem is also publicized by non-governmental organizations. For example, Anika Henderson of the Southwest Newcomer Welcome Centre Inc. in Swift Current Saskatchewan, an organization that provides settlement services and other programming to thousands of temporary foreign and immigrant workers annually, notes that many of the workers coming through her Centre's doors are "generally being charged by overseas recruiters in a big way. These workers tend to get charged large fees."⁴⁴⁵

⁴⁴⁵ Interview of Anika Henderson, Executive Director of the Southwest Newcomer Welcome Centre Inc., Swift Current Saskatchewan (November 25, 2010). [Henderson, *Interview*]

Provinces like British Columbia and Alberta tolerate this exploitation because the conventional wisdom suggests that employer-driven temporary foreign worker programs rely on recruiter intermediation to connect employers with foreign workers. Recruiters and consultants, with their international networks and contacts, seem indispensable. And as each province already prohibits charging workers placement fees, there does not seem to be much more that can be done.

This analysis is, however, a limited one. First, the prohibition was not originally enacted in a policy vacuum. It was part of an inter-jurisdictional response designed to address a particular social crisis, and was supported by a network of public employment bureaux administered under federal-provincial oversight. In other words, the legal and policy environment was re-engineered to eliminate private, for-profit employment agencies. Manitoba similarly re-engineered its legal and policy environment 90 years later to address contemporary conditions. In this environment, Manitoba employers still have access to and recruit foreign workers, only without having to rely on unscrupulous recruiters/consultants. Judge Brandeis would be proud.

British Columbia's experience with the Seasonal Agricultural Worker Program also demonstrates that recruitment does not have to rely on private agencies. In 2004, the province entered into a SAWP agreement with the Mexican government, whereby the latter provides employers with temporary foreign agricultural workers. And while the program in B.C. has been criticized for creating a pool of vulnerable workers, where the economic conditions and other "distinctions between the SAWP and domestic workers are marked and real",⁴⁴⁶ at least agricultural workers are not freely exploited by private, for-profit recruiters as part of that Program.

⁴⁴⁶ *Sidhu and Sons Nursery Ltd. v. UFCW Local 1518*, 2009 BCLRB B63/2009 at 13.

The findings and analysis presented in this thesis suggest that provincial governments like British Columbia should enact legislation that frames the type of best practices identified in and implemented by Manitoba. At the very least, British Columbia should review the administration of its employment agency legislation, which is currently based on temporary foreign workers bringing their complaints and problems to provincial authorities. As noted by Ms. Henderson, *inter alia*, “Temporary foreign workers are very, very reluctant to actually make formal complaints because the reality is that their future in Canada and their ability to derive an income is totally linked to their relationship with their employer. So there is a real hesitancy to make a complaint, even if they do understand that things weren’t done the way they were supposed to.”⁴⁴⁷ In other words, a complaint based remediation program offers foreign workers little if any protection at all. And while Ms. Henderson is in Saskatchewan, her views are likely representative of many groups working with temporary foreign workers in British Columbia, particularly when she states, “If I was a policy maker, I would love to see an automatic monitoring of the rules rather than making it the responsibility of the workers themselves to make a formal complaint. It would be nice to see some ongoing or automatic monitoring happening.”⁴⁴⁸

In closing, British Columbia and other western provinces do not necessarily have to precisely follow Manitoba’s example, though it might be easier than reinventing the proverbial wheel. Instead, I hope that the data and arguments presented in this thesis will have clarified some of the issues surrounding employment agencies and temporary foreign worker programs, and help stimulate discussion on what constitutes best practices, how policy and legislation can be changed to both frame these practices and successfully meet the needs of both foreign

⁴⁴⁷ Henderson, *Interview*, *supra* note 445.

⁴⁴⁸ *Ibid.*

workers and their employers, while ending an unhealthy reliance on unscrupulous, and ultimately superfluous middlemen and intermediaries.

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Appendices

Appendix 1 - Selected Extracts from Citizenship and Immigration Canada's 2009 Digital Library and Data Cube

Canada - Foreign workers present on December 1st by source country

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Philippines	6,385	8,265	10,782	12,500	15,298	17,674	21,551	33,860	44,966	51,325
United States	21,356	21,041	20,208	21,011	21,940	23,660	25,311	26,864	29,051	29,970
Mexico	9,994	11,171	11,602	11,636	11,941	13,297	15,178	18,138	22,549	22,308
Australia	4,577	5,441	6,253	6,895	8,269	8,607	9,064	9,849	13,243	19,333
United Kingdom	6,519	7,023	7,031	7,470	9,422	10,708	11,133	12,613	14,613	15,487
France	3,366	3,771	4,024	4,398	5,962	7,479	9,071	10,009	11,765	14,910
India	1,877	1,896	2,171	2,689	3,706	5,085	6,336	8,656	11,105	12,391
China, People's Republic of	1,336	1,582	1,815	1,944	2,415	3,070	4,195	6,627	8,532	10,664
Japan	6,567	6,491	7,829	8,281	8,609	8,842	8,429	7,875	9,329	9,153
Germany	1,991	2,267	2,068	2,256	3,115	3,635	5,425	6,916	8,289	8,933
Korea, Republic of	1,172	1,351	1,497	1,925	2,389	3,029	3,721	4,837	7,334	8,796
Jamaica	5,254	5,665	5,354	5,829	5,886	6,081	6,372	6,655	7,280	7,633
Taiwan	186	237	261	277	328	522	919	1,526	2,814	4,014
Saudi Arabia	450	523	615	746	866	1,017	1,236	1,594	2,693	3,326
Ireland, Republic of	951	1,006	1,041	1,121	1,559	1,633	2,068	2,599	2,894	3,306
New Zealand	869	1,137	1,232	1,445	1,782	2,065	2,096	2,462	2,951	3,282
United Arab Emirates	75	128	190	225	264	324	472	1,045	1,737	2,168
Brazil	422	498	485	601	740	820	1,160	1,478	2,027	2,046
South Africa, Republic of	1,183	1,351	1,484	1,577	1,564	1,706	1,582	1,578	1,863	1,979
Israel	540	723	786	928	1,207	1,367	1,468	1,633	1,950	1,858
Ukraine	327	297	274	309	359	406	494	1,065	1,601	1,786
Guatemala	15	15	13	238	353	276	396	779	1,438	1,651
Netherlands	605	631	672	731	951	956	1,230	1,310	1,555	1,601
Italy	540	627	478	426	468	645	852	1,219	1,427	1,416
Trinidad and Tobago	1,786	1,755	1,614	1,599	1,657	1,627	1,468	1,407	1,339	1,342
Thailand	153	126	192	214	262	326	879	1,257	1,120	1,299

Poland	294	322	260	328	426	402	550	964	1,355	1,225
Singapore	99	103	92	194	335	521	708	1,188	1,259	1,160
Switzerland	595	557	523	543	669	720	853	943	1,039	1,045
Chile	86	118	136	153	184	248	261	404	742	1,012
Colombia	161	175	198	168	181	240	298	579	1,077	1,007
Portugal	162	137	87	121	146	223	407	837	1,056	1,004
Romania	397	278	446	580	570	444	548	773	1,132	1,004
Sweden	427	397	361	427	430	513	577	710	932	978
Russia	557	563	536	487	484	475	586	691	959	938
Czech Republic	277	251	235	238	222	270	273	277	629	920
Belgium	329	351	298	343	368	399	447	592	709	842
Sri Lanka	85	89	99	126	175	183	352	606	845	827
Hong Kong	197	212	173	210	243	295	323	413	511	736
Spain	227	229	244	242	297	292	365	444	574	721
Fiji	41	39	27	25	24	28	36	298	541	637
Venezuela	142	147	127	184	239	262	402	619	732	618
Pakistan	153	169	154	247	234	243	253	339	482	595
Denmark	172	204	196	222	243	330	407	434	572	568
Iran	242	271	360	432	544	598	409	376	412	568
Indonesia	90	114	140	122	161	180	241	292	387	546
Lebanon	112	139	110	112	113	153	179	405	495	539
Egypt	79	97	76	113	177	208	297	414	466	536
Morocco	116	109	112	121	111	127	101	283	372	526
Austria	207	209	220	220	238	292	363	470	557	514
Bangladesh	41	62	70	87	108	170	196	242	297	467
Kuwait	159	155	170	169	168	186	196	218	331	457
Malaysia	123	129	125	139	206	157	206	261	369	451
Nigeria	82	82	88	93	119	153	163	244	313	442
Cyprus	15	9	11	21	26	42	83	188	322	440
Peru	87	103	113	152	166	227	258	323	455	438
Vietnam, Socialist Republic of	74	90	68	71	81	99	133	163	355	413
Turkey	97	119	120	125	168	196	228	252	369	412
Barbados	630	655	601	526	525	485	520	473	420	399
Mauritius	23	22	23	31	43	49	39	40	214	387
Norway	235	265	330	222	199	193	231	296	363	382
El Salvador	23	20	51	53	137	381	602	455	356	378

Latvia	12	15	14	21	21	29	28	31	50	375
Libya	67	102	133	159	192	240	295	368	330	363
Honduras	9	11	7	45	15	15	34	35	253	363
Argentina	168	201	312	445	419	370	343	338	378	355
Hungary	279	229	169	166	172	169	197	235	300	343
Saint Lucia	128	144	105	151	157	195	213	303	371	340
Kenya	82	89	99	119	103	181	158	210	265	304
Saint Vincent and the Grenadines	259	236	203	212	209	258	317	312	328	288
Ecuador	54	56	45	36	44	48	68	108	248	285
Finland	172	205	177	172	181	257	218	248	248	258
Slovak Republic	310	335	338	307	265	237	218	191	247	253
Tunisia	104	129	95	108	86	92	87	129	165	253
Ghana	76	73	62	70	66	79	88	119	189	244
Greece	89	107	124	105	106	90	104	164	193	208
Moldova	12	8	13	13	20	18	25	68	108	197
Nepal	24	17	21	30	44	61	66	93	148	193
Jordan	48	55	51	40	45	58	77	95	147	188
Costa Rica	81	48	43	57	61	73	117	160	167	179
Oman	35	50	64	84	104	121	134	129	130	137
Bosnia-Herzegovina	5	5	7	9	20	33	43	102	130	133
Guyana	88	67	50	37	57	51	56	84	112	132
Tanzania, United Republic of	27	33	28	52	61	87	61	66	79	122
Grenada	148	91	71	69	87	81	79	94	99	116
Haiti	79	62	26	38	44	53	53	88	105	116
Croatia	27	43	22	43	38	53	44	175	107	113
Dominica	107	95	95	103	118	182	108	109	117	107
Belarus	33	41	40	52	29	26	46	64	92	106
Qatar	21	26	27	28	29	30	38	52	71	104
Cuba	141	118	107	128	120	122	136	150	130	100
Algeria	21	17	19	31	28	34	48	57	72	94
Nicaragua	20	14	10	14	11	21	34	55	75	93
Bulgaria	55	62	68	71	69	64	59	85	91	92
Dominican Republic	36	37	20	29	26	44	49	77	85	92
Bahrain	16	22	29	39	32	35	51	67	77	85
Syria	31	31	26	48	46	56	55	44	57	83
Zimbabwe	37	39	51	49	48	50	49	71	73	81

Bahamas, The	20	17	18	19	16	15	21	33	46	78
Iceland	43	53	53	51	69	68	69	72	49	77
Cameroon	21	23	22	31	23	31	35	40	46	69
Senegal	24	30	13	18	27	37	20	20	35	67
Uganda	12	9	15	20	25	22	49	60	71	65
Ethiopia	20	14	20	26	32	28	29	33	44	65
Bolivia	13	20	18	22	24	31	33	35	39	64
Zambia	6	15	11	20	27	33	32	37	53	61
Côte-d'Ivoire, Republic of	22	20	10	17	18	25	26	25	34	61
Uruguay	15	19	21	56	67	67	59	73	69	60
Macedonia	12	23	14	20	20	13	10	26	42	51
Paraguay	12	11	7	14	26	21	17	29	33	51
Saint Kitts and Nevis	26	26	25	20	21	37	33	38	44	46
Botswana, Republic of	8	12	12	14	25	19	23	21	33	45
Lithuania	20	25	19	40	34	29	30	31	29	43
Slovenia	23	27	16	16	15	18	16	26	46	40
Bermuda	14	10	14	10	13	19	25	28	34	39
Armenia	12	16	33	58	36	58	55	63	52	34
Burkina Faso	32	27	27	21	18	19	15	19	28	31
Namibia	10	10	13	14	13	29	28	27	19	29
Madagascar	7	11	13	9	9	10	12	13	18	28
Cambodia	5	5	10	12	10	8	16	28	24	27
Macao	7	9	9	5	7	7	6	7	18	24
Kazakhstan	11	12	12	14	9	15	15	21	15	23
Luxembourg	6	10	7	9	8	18	11	14	14	21
Benin, Republic of	21	28	25	36	39	43	27	7	20	21
Estonia	20	7	9	13	16	38	16	12	16	17
Malta	8	13	8	9	8	6	8	9	12	15
Guinea, Republic of	18	16	14	13	15	9	8	10	9	15
Congo, Democratique Republic of	7	8	11	8	8	7	13	9	12	14
Mali	21	18	14	13	10	12	11	15	10	14
Yugoslavia (former)	99	105	83	93	105	59	38	24	18	6
Country not stated	681	625	652	720	886	1,219	1,777	2,507	4,668	6,478
Other countries	237	267	204	222	306	382	470	912	1,255	1,411
Total	89,746	96,463	101,174	109,781	125,230	140,906	161,046	199,457	250,256	282,194

Canada - Foreign workers present on December 1st by gender and occupational skill level

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Level 0 - Managerial	6,994	7,460	7,692	7,890	8,438	9,137	9,949	11,035	12,174	12,570
Level A - Professional	20,851	21,503	21,038	20,745	21,663	23,434	25,634	27,411	28,790	28,034
Level B - Skilled and technical	8,635	9,174	8,356	8,738	9,612	11,897	15,041	21,972	29,416	29,165
Level C - Intermediate and clerical	18,167	19,660	20,181	20,217	21,118	23,327	25,477	30,279	36,022	36,472
Level D - Elemental and labourers	256	359	317	749	843	996	2,279	6,278	12,894	15,021
Level not stated	6,486	6,806	7,233	9,177	12,521	14,073	15,762	17,986	25,528	39,310
Males	61,389	64,962	64,817	67,516	74,195	82,864	94,142	114,961	144,824	160,572
Level 0 - Managerial	1,095	1,219	1,347	1,368	1,586	1,781	2,033	2,389	2,733	2,696
Level A - Professional	6,617	7,358	7,529	7,770	8,249	8,789	9,612	10,561	11,783	11,656
Level B - Skilled and technical	2,326	2,202	2,289	2,585	2,863	3,163	3,750	4,890	6,546	6,675
Level C - Intermediate and clerical	8,913	11,035	13,431	15,076	18,398	21,368	25,717	35,435	42,075	43,720
Level D - Elemental and labourers	126	128	145	180	171	268	774	2,551	6,358	8,612
Level not stated	9,271	9,550	11,614	15,285	19,768	22,671	25,018	28,670	35,933	48,256
Females	28,348	31,492	36,355	42,264	51,035	58,040	66,904	84,496	105,428	121,615
Level 0 - Managerial	8,089	8,679	9,039	9,258	10,024	10,918	11,982	13,424	14,907	15,266
Level A - Professional	27,468	28,861	28,567	28,515	29,912	32,223	35,246	37,972	40,573	39,690
Level B - Skilled and technical	10,961	11,376	10,645	11,323	12,475	15,060	18,791	26,862	35,962	35,840
Level C - Intermediate and clerical	27,080	30,695	33,612	35,293	39,516	44,695	51,194	65,714	78,097	80,192
Level D - Elemental and labourers	382	487	462	929	1,014	1,264	3,053	8,829	19,252	23,633
Level not stated	15,757	16,356	18,847	24,462	32,289	36,744	40,780	46,656	61,461	87,566
Gender not stated	9	9	2	1	0	2	0	0	4	7
Total	89,746	96,463	101,174	109,781	125,230	140,906	161,046	199,457	250,256	282,194

British Columbia - Foreign workers present on December 1st by top source countries

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Australia	2,662	3,078	3,584	3,844	4,831	5,086	5,032	5,668	8,082	12,363
Philippines	1,590	1,934	2,372	2,770	3,218	3,587	4,114	6,235	7,910	8,578
United States	2,795	2,909	2,814	3,195	3,413	4,028	4,480	4,570	4,884	5,276
United Kingdom	1,381	1,603	1,722	2,032	2,875	3,195	3,400	4,016	4,907	5,159
Japan	2,839	2,693	4,180	4,613	4,844	4,995	4,706	3,956	5,011	5,133
Korea, Republic of	373	453	512	731	1,003	1,366	1,611	2,165	3,352	4,144
Mexico	113	101	101	201	259	802	1,713	2,575	3,932	3,866
Germany	307	338	326	413	566	727	1,440	1,987	2,383	2,925
China, People's Republic of	259	306	337	303	431	577	788	1,361	1,852	2,525
New Zealand	485	598	611	734	954	1,163	1,161	1,394	1,859	2,048
India	234	258	277	370	634	916	1,085	1,280	1,693	1,949
Ireland, Republic of	159	183	228	335	478	630	841	1,192	1,222	1,355
South Africa, Republic of	163	214	280	321	367	392	332	340	422	562
Top 10 source countries	12,925	14,170	16,738	19,037	22,816	25,865	28,742	33,927	44,172	52,017
Other countries	2,267	2,399	2,555	3,181	3,963	5,545	6,374	9,390	14,082	17,021
Total	15,192	16,569	19,293	22,218	26,779	31,410	35,116	43,317	58,254	69,038

British Columbia - Foreign workers present on December 1st by gender and occupational skill level

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Level 0 - Managerial	1,024	1,040	1,084	1,128	1,295	1,510	1,648	1,815	2,103	2,324
Level A - Professional	2,515	2,759	2,754	2,915	3,068	3,615	3,884	4,168	4,474	4,214

Level B - Skilled and technical	1,197	1,317	1,300	1,492	1,715	2,308	2,685	4,329	6,066	5,928
Level C - Intermediate and clerical	304	320	399	483	547	1,217	2,018	3,272	4,750	4,696
Level D - Elemental and labourers	37	32	29	22	17	59	109	382	1,668	2,251
Level not stated	2,613	2,827	3,594	4,226	5,739	6,413	6,779	7,759	11,277	16,496
Males	7,690	8,295	9,160	10,266	12,381	15,122	17,123	21,725	30,338	35,909
Level 0 - Managerial	161	190	228	255	317	354	400	498	661	699
Level A - Professional	966	1,166	1,198	1,264	1,374	1,504	1,769	2,060	2,424	2,262
Level B - Skilled and technical	376	414	442	519	628	727	892	1,138	1,521	1,472
Level C - Intermediate and clerical	2,139	2,474	3,044	3,456	4,098	4,684	5,445	7,526	8,756	8,844
Level D - Elemental and labourers	9	13	12	11	6	38	82	246	1,120	1,577
Level not stated	3,851	4,017	5,209	6,447	7,975	8,981	9,405	10,124	13,432	18,273
Females	7,502	8,274	10,133	11,952	14,398	16,288	17,993	21,592	27,914	33,127
Level 0 - Managerial	1,185	1,230	1,312	1,383	1,612	1,864	2,048	2,313	2,764	3,023
Level A - Professional	3,481	3,925	3,952	4,179	4,442	5,119	5,653	6,228	6,898	6,476
Level B - Skilled and technical	1,573	1,731	1,742	2,011	2,343	3,035	3,577	5,467	7,587	7,400
Level C - Intermediate and clerical	2,443	2,794	3,443	3,939	4,645	5,901	7,463	10,798	13,506	13,540
Level D - Elemental and labourers	46	45	41	33	23	97	191	628	2,788	3,828
Level not stated	6,464	6,844	8,803	10,673	13,714	15,394	16,184	17,883	24,709	34,769
Gender not stated	0	0	0	0	0	0	0	0	2	2
Total	15,192	16,569	19,293	22,218	26,779	31,410	35,116	43,317	58,254	69,038

British Columbia - Initial entry of foreign workers by top source countries

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Australia	2,571	2,869	3,383	3,460	4,499	4,483	4,431	4,795	5,948	5,516
Japan	2,238	2,316	3,292	3,590	3,654	3,904	3,648	3,123	3,859	3,431
United States	3,833	3,422	2,856	2,551	2,577	3,081	3,214	2,724	2,549	2,883
United Kingdom	1,451	1,563	1,584	1,680	2,431	2,410	2,414	2,744	3,116	2,769
Korea, Republic of	197	280	260	319	447	709	847	1,206	2,009	2,225
Philippines	470	923	964	1,015	1,075	1,103	1,363	2,827	3,196	2,104
Germany	339	311	360	351	474	562	1,211	1,501	1,680	2,088
New Zealand	413	474	484	593	794	1,002	953	1,096	1,383	1,345
Ireland, Republic of	153	184	227	315	472	550	831	1,040	1,029	1,185

France	203	164	171	221	397	505	575	600	755	985
India	313	279	223	267	420	461	508	647	1,132	757
Mexico	75	72	84	93	123	515	980	1,262	1,549	599
China, People's Republic of	237	229	279	183	226	299	297	516	583	519
Top 10 source countries	12,068	12,666	13,689	14,141	16,843	18,319	19,892	22,318	26,421	24,531
Other countries	2,293	2,224	2,176	2,003	2,839	4,141	4,565	6,721	9,922	9,592
Total	14,361	14,890	15,865	16,144	19,682	22,460	24,457	29,039	36,343	34,123

British Columbia - Initial entry of foreign workers by gender and occupational skill level

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Level 0 - Managerial	388	367	362	379	479	587	580	573	737	782
Level A - Professional	3,269	3,277	2,503	2,190	2,191	2,606	2,872	2,823	2,514	2,108
Level B - Skilled and technical	1,805	1,540	1,586	1,350	1,753	2,173	2,305	3,251	3,461	3,156
Level C - Intermediate and clerical	290	266	354	273	356	869	1,183	1,736	1,969	1,045
Level D - Elemental and labourers	66	68	50	20	37	113	183	492	1,510	830
Level not stated	2,640	2,813	3,546	3,913	5,363	5,720	6,082	6,966	9,581	10,539
Males	8,458	8,331	8,401	8,125	10,179	12,068	13,205	15,841	19,772	18,460
Level 0 - Managerial	83	87	104	95	148	144	159	175	247	236
Level A - Professional	1,072	1,154	973	827	841	916	1,137	1,181	1,249	1,007
Level B - Skilled and technical	479	465	470	379	468	531	613	601	704	499
Level C - Intermediate and clerical	779	1,161	1,295	1,418	1,630	1,756	1,998	3,231	3,021	2,037
Level D - Elemental and labourers	18	48	34	7	16	45	89	252	973	523
Level not stated	3,471	3,643	4,588	5,293	6,400	7,000	7,255	7,758	10,374	11,361
Females	5,902	6,558	7,464	8,019	9,503	10,392	11,251	13,198	16,568	15,663
Level 0 - Managerial	471	454	466	474	627	731	739	748	984	1,018
Level A - Professional	4,341	4,431	3,476	3,017	3,032	3,522	4,009	4,004	3,763	3,115
Level B - Skilled and technical	2,284	2,005	2,056	1,729	2,221	2,704	2,918	3,852	4,165	3,655
Level C - Intermediate and clerical	1,069	1,427	1,649	1,691	1,986	2,625	3,181	4,967	4,990	3,082
Level D - Elemental and labourers	84	116	84	27	53	158	272	744	2,483	1,353
Level not stated	6,111	6,456	8,134	9,206	11,763	12,720	13,337	14,724	19,955	21,900
Gender not stated	1	1	0	0	0	0	1	0	3	0
Total	14,361	14,890	15,865	16,144	19,682	22,460	24,457	29,039	36,343	34,123

British Columbia - Re-entry of foreign workers by top source countries

	2005	2006	2007	2008	2009
Mexico	208	644	1,264	2,211	2,667
United States	2,798	3,083	2,680	2,435	2,459
Australia	362	529	649	1,956	992
United Kingdom	453	560	611	688	837
Japan	456	522	467	667	548
New Zealand	110	156	246	361	465
Korea, Republic of	136	181	270	472	377
Germany	107	160	227	309	266
France	77	91	117	146	223
India	57	55	75	141	125
Ireland, Republic of	32	27	78	87	113
Italy	75	19	18	56	44
Top 10 source countries	4,782	5,981	6,609	9,386	8,959
Other countries	706	628	820	1,202	1,290
Total	5,488	6,609	7,429	10,588	10,249

British Columbia - Re-entry of foreign workers by gender and occupational skill level

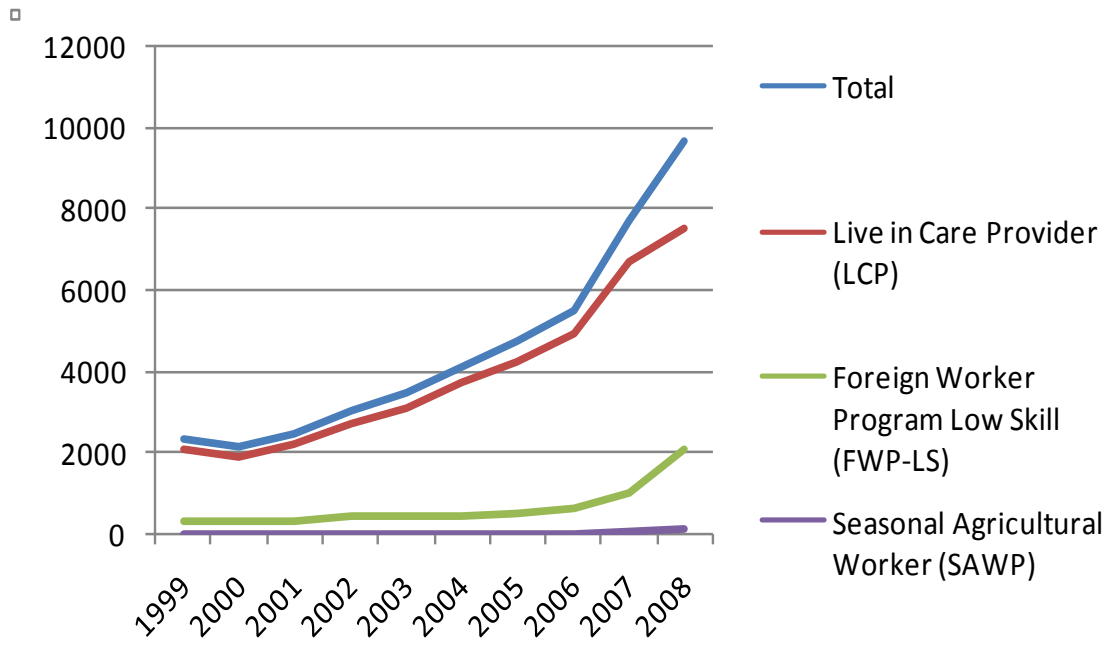
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Level 0 - Managerial	102	135	155	151	159	194	224	239	297	322
Level A - Professional	2,233	2,214	1,871	1,706	1,603	1,779	2,174	1,811	1,658	1,602
Level B - Skilled and technical	964	909	865	866	1,016	1,376	1,245	1,437	1,676	1,542
Levels C/D (Intermediate, clerical/elemental, labourers)	199	160	178	208	138	301	676	1,307	2,450	2,836
Level not stated	151	128	155	213	246	309	411	558	1,436	1,172
Males	3,649	3,546	3,224	3,144	3,162	3,959	4,730	5,352	7,517	7,474
Level 0 - Managerial	31	34	49	44	43	63	66	85	95	89
Level A - Professional	535	478	462	433	468	517	604	563	523	510
Level B - Skilled and technical	168	199	206	242	265	271	342	378	469	387

Levels C/D (Intermediate, clerical/elemental, labourers)	126	148	126	119	115	168	179	263	544	427
Level not stated	304	279	313	408	468	510	688	788	1,440	1,362
Females	1,164	1,138	1,156	1,246	1,359	1,529	1,879	2,077	3,071	2,775
Level 0 - Managerial	133	169	204	195	202	257	290	324	392	411
Level A - Professional	2,768	2,692	2,333	2,139	2,071	2,296	2,778	2,374	2,181	2,112
Level B - Skilled and technical	1,132	1,108	1,071	1,108	1,281	1,647	1,587	1,815	2,145	1,929
Levels C/D (Intermediate, clerical/elemental, labourers)	325	308	304	327	253	469	855	1,570	2,994	3,263
Level not stated	455	407	468	621	714	819	1,099	1,346	2,876	2,534
Gender not stated	0	0	0	0	0	0	0	0	0	0
Total	4,813	4,684	4,380	4,390	4,521	5,488	6,609	7,429	10,588	10,249

British Columbia – Low Skill Foreign Workers (females) on December 1 by Program Type

CIC Permit/Program	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Live in Care Provider (LCP)	2050	1873	2197	2677	3075	3721	4229	4904	6714	7511
Seasonal Agricultural Worker (SAWP)	-	-	-	-	-	-	-	16	61	119
Foreign Worker Program Low Skill (FWP-LS)	284	276	290	378	390	381	485	599	956	2051
Total	2334	2149	2487	3055	3466	4103	4717	5519	7731	9681

Source: CIC Data Cube; please note that due to privacy considerations any numbers less than 10 in this table had been suppressed and replaced with a notation "-". Any number less than 10 should not be reported to the public.



Total Stock of LCP [female] Foreign Workers Skill Levels C,D in BC on December 1 by Source Country										
Country	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Philippines	1659	1472	1776	2186	2524	2904	3164	3587	4934	5320
Taiwan	8	10	22	28	28	32	90	165	342	570
China	-	-	-	-	12	18	34	83	189	271
India	13	24	36	56	100	307	419	454	340	211
Saudi Arabia	-	-	-		16	12	19	39	73	169
Singapore	-	-	-		12	32	68	87	152	152
Peru	14	18	21	25	36	41	55	57	72	78
United Arab Emirates	-	-	-	-	-	-		18	48	68
Cypruss						-	-		36	54
Mexico	11	10	-	-	10	16	20	30	37	50
South Korea	-	-	-	-	-		16	27	45	49
Russia	-	-	-	-	-	-	14	19	30	34
Brazil	-	-	-	-	-	-	-	13	24	34
Japan	14	17	17	25	24	19	19	19	25	30
Ukraine	-	-	-	-	-	11	19	22	23	21
France	-	-	-	-	-	-	-	10	12	20

Thailand	-	-	-	-	-	-	11	-	14	17
Germany	-	11	-	-	-	-	11	-	12	17
United Kingdom	17	14	14	14	12	11	11	14	12	17
Columbia	-		-	-	-	-		-	11	15
Other Countries	274	272	259	280	251	270	243	232	283	314
Total	2050	1873	2197	2677	3075	3721	4229	4904	6714	7511

Source: CIC Data Cube; please note that due to privacy considerations any numbers less than 10 in this table had been suppressed and replaced with a notation "-". Any number less than 10 should not be reported to the public.

British Columbia - Humanitarian population present on December 1st by province or territory and urban area

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Kelowna	46	30	44	18	18	18	27	35	31	32
Kamloops	21	19	17	18	13	9	9	9	8	9
Chilliwack	42	13	13	11	12	7	10	6	9	11
Abbotsford	150	116	108	86	72	60	56	74	94	91
Vancouver	5,048	5,311	5,120	4,778	3,702	2,953	2,599	2,472	2,826	3,233
Victoria	11	14	7	6	14	12	13	10	11	10
Nanaimo	19	17	22	19	19	7	9	7	12	11
Prince George	14	14	16	11	10	11	10	7	5	5
Other British Columbia	4,014	3,992	3,504	2,942	2,287	1,857	1,598	1,586	2,092	2,463
British Columbia	9,365	9,526	8,851	7,889	6,147	4,934	4,331	4,206	5,088	5,865

Victoria	36	23	26	28	28	39	59	71	77	108
Williams Lake	-	-	-	-	-	-	-	-	-	-
Female Total	2050	1873	2197	2677	3075	3721	4229	4904	6714	7511

Source: CIC Data Cube; please note that due to privacy considerations any numbers less than 10 in this table had been suppressed and replaced with a notation "-". Any number less than 10 should not be reported to the public.

Appendix 2 - Structured Interview and Follow-Up Questions

A. Structured interview questions for July 16, 2010 interview with Mr. Pat Cullinane.

1. Background/History

B.C. enacted employment agency licensing legislation in 1995. Were there any particular events that led to and precipitated passage of these sections? What problems were the new licensing regime designed to remedy? What were the policy objectives surrounding employment agencies licensing?

2. Licensing Regime

Qualitative questions:

Have there been many licensing iterations? Different regulations?

How has the licensing regime developed over the years?

Quantitative questions:

How many licenses are applied for each year?

Has the Branch ever denied or revoked an employment agency license? If so, what were the circumstances? Was there an investigation of the applicant? If so, what was the authority used to conduct the investigation, and how was the evidence measured, and the results determined?

Is there a rate of license application rejection? Are there many license application related appeals? How many such appeals would there be during a year?

Have employment agency licenses ever been issued with conditions? If so, are there typical circumstances, and what would be typical the conditions?

Are there appeal fees regarding employment agency license denials or suspensions appeals?

How many employment agency licenses have been issued each year? Is the trend going up, down or has it remained the same?

3. Worker Protection in the Recruitment Process

What workers are most at risk in the recruitment process?

How is the licensing program designed to protect them in the recruiting process?

The workers in the PG Nannies case, were they recruited offshore, i.e. outside the Philippines?

Notice that website's main page has links to information translated into five foreign languages: Chinese, Filipino Tagalog, French, Punjabi and Spanish. I can see how some of these relate to the federal low skill FTW programs. For example, LCP is mostly Filipino, SAWP is mostly Mexico-Spanish, Punjabi is not SAWP, but a large part of the FLC sector. Then there is Chinese and French – what role to the Chinese and French FTWs play in the B.C. labour market? What market sectors? What federal program (LSPP)?

Are the employment agency fact sheets situation specific? For instance, does the Filipino employment agency fact sheet have a reference to POLO? Does the Spanish employment agency fact sheet reflect the fact that recruitment to SAWP is generally done by the Mexican Ministry of Labour and Social Planning?

4. Program Effectiveness Metrics

Were there any metrics put in place to help evaluate the licensing and registration regime's effectiveness? What were these metrics and who designed them? Has the licensing produced any measurable results? Would these results be considered improvements? What were the costs associated with producing these results, and is your Branch satisfied overall with these and other outcomes?

Complaints

Complaint process generally regarding FTWs? Are there many FTW complaints against employment agencies in any given year? How many, what are the typical the circumstances, outcomes, etc? Are complaints trending up, down, the same?

Audits

Are there routine audits of employment agencies? If so, describe what is looked for, and how many per year.

Prosecutions

Have any employment agencies been prosecuted? How many typically, what were the circumstances, outcomes, etc? Are complaints trending up, down, the same? Have there been any employment agencies prosecuted? If so, what were the contraventions? Were there fines, or other penalties?

5. Intergovernmental Relationships

Is B.C. in the process of trying to integrate its licensing with HRSDC's LMO process (like Manitoba)?

Does the Department ever cooperate with the Philippines Overseas Labour Office in Canada? If so, how and to what extent?

6. Other

Manitoba's legislation specifically excludes the recruitment of workers by certain specific entities such as labour unions, while BC legislation does not. What criteria would the Branch use to avoid "over-regulating", i.e. to determine that certain employment agency-like entities or activities are not the target of its licensing regulations?

7. Sum Up Question

What in your view are some of the strengths and weaknesses of the employment agency licensing programming general?

B. Structured interview questions for July 26, 2010 interview with Mr. Dave Dyson.

(Sent in advance by July 20, 2010 email.)

>>Thank you for your reply and your offer to answer my questions.
>>
>>My study focuses on employment agencies generally, and the recruitment
>>of foreign temporary workers in particular. The questions that I have
>>related to this would be as follows:
>>
>>What events led to and precipitated passage of WRPA?
>>
>>Were there any metrics put in place to help evaluate WRPA's
>>effectiveness? What were these metrics and who designed them? Has the
>>passage of WRPA resulted in measurable results? Would these results be
>>considered improvements? What were the costs associated with producing
>>these results, and is your Department satisfied overall with these and
>>other outcomes?
>>
>>How are things working with the feds, regarding Manitoba's employer
>>registry integrating with HRSDC's LMO process?
>>
>>Does the Department ever cooperate with the Philippines Overseas Labour
>>Office in Canada? If so, how and to what extent?
>>
>>I notice that The Worker Recruitment and Protection Regulation, M.R.
>>21/2009, s. 5 specifically excludes certain organizations from
>>requiring employment agency licensing. In contrast, BC has no such
>>exemptions. What were the issues and concerns that resulted in this
>>type of regulatory exemption?
>>
>>Similarly, The Worker Recruitment and Protection Act, C.C.S.M., c.
>>W-197, s. 2(5) exempts municipalities. Again, what were the issues and
>>concerns that resulted in this type of exemption?
>>
>>Have many licenses been applied for since WRPA? Is this more or less

>>than under the former legislation? Have many license applications been
 >>denied? Is there a rate of rejection? Regarding Licensing appeals,
 >>are these hearings "do novo", or simply argued by affidavit by way of
 >>notice of motion? How many such appeals would there be during a year?
 >>
 >>Have there been many complaints against employment agencies or foreign
 >>worker recruiters since WRPA? How many, what were the circumstances,
 >>outcomes, etc?
 >>
 >>Have any employment agencies or foreign worker recruiters been
 >>prosecuted since WRPA? How many, what were the circumstances,
 >>outcomes, etc?

D. Structured email interview questions for Mr. Michael Newson.

> 1. Article 6.1 states that monitoring of TFWs, employment agencies and
 > employers in order to ensure their compliance with TFW Program
 > requirements, as well as with all applicable federal and provincial laws,
 > is essential.
 >
 > a. What BC laws are being contemplated by this Article?
 >
 > b. How are and/or might employment agencies be monitored by the province
 > so as to conform with this Article's requirements?
 >
 > c. Has Manitoba's WRPA been looked at? What does BC consider to be some
 > of the strengths and weaknesses of this legislative approach?
 >
 > d. What is or would be BC's preferred approach to regulating employment
 > agencies so as to protect TFWs?
 >
 > e. Have there been any special education programs instituted in BC for
 > employers, TFWs and/or employment agencies (as per Article 6.4, or
 > otherwise)? If so, who administers and operates these programs?
 >
 > f. What type of provincial information will CIC distribute to TFWs prior
 > to or upon their arrival, per Article 6.4.1? How will this be done, e.g.
 > by fact sheet, internet, etc?

> 2. Article 6.2 states that British Columbia and Canada agreed to cooperate
 > in the on-going administration and enforcement of the TFW Program in BC by
 > working with all relevant departments, ministries and agencies that
 > respond to complaints or other information regarding working and living
 > conditions and employment standards associated with TFWs and their
 > employment. Both parties also agreed to maintain a coordinated
 > enforcement strategy for programs that have an impact upon TFWs.
 >
 > a. What are the provincial departments, ministries and agencies that

> would be involved in responding to TFW complaints and/or in collecting TFW
> information? Are information sharing agreements currently being drafted?
> If so, with whom?

> b. What type of enforcement is being contemplated, and how is coordination
> between the two levels of government being envisaged? Article 6.3
> suggests that it would be something similar to Manitoba, where "bad"
> employers are denied access to future LMOs? Or is some other method being
> considered? Would this require a legislative Act like WRPA or some other
> type of amendment to current legislation or a new Regulation?

> c. Would (or does) enforcement (currently) include special audits? If
> so, conducted by whom and for what purpose?

> d. Have any special enforcement units been proposed or constituted? If
> so, how would (or do) these units operate? Who are they responsible to?

> Thank you again for your help with this.

> Cheers,

> Daniel Parrott

Appendix 3 - Employment Agency Legislation Mapping Tables For British Columbia, Alberta and Manitoba

Licensing Process and Legislative Mapping Tables

(Current as of August 2010)

Originating Legislation and Associated Regulations			
Provinces: ⁴⁴⁹	BC	AB	MB
Originating Legislation	<ul style="list-style-type: none"> • <i>Employment Standards Act</i>⁴⁵⁰ • <i>The Administrative Tribunals Act</i>⁴⁵¹ 	<ul style="list-style-type: none"> • <i>Fair Trading Act</i>⁴⁵² 	<ul style="list-style-type: none"> • <i>The Worker Recruitment and Protection Act</i>⁴⁵³ • <i>The Employment Standards Code</i>⁴⁵⁴
Associated Regulations	<ul style="list-style-type: none"> • <i>Employment Standards Regulations</i>⁴⁵⁵ 	<ul style="list-style-type: none"> • <i>The Appeal Board Regulations</i>,⁴⁵⁶ • <i>Designation of Trades and Businesses Regulation</i>,⁴⁵⁷ • <i>Employment Agency Business Licensing Regulation</i>.⁴⁵⁸ • <i>General Licensing and Security Regulation</i>.⁴⁵⁹ 	<ul style="list-style-type: none"> • <i>Worker Recruitment and Protection Regulation</i>⁴⁶⁰
Act and Regulations administered by?	Employment Standards Branch	Service Alberta	Employment Standards Branch
Types of Recruitment Activities Requiring Licences + Authority			
Employment	<i>Employment Standards Act</i> ,	<i>Act</i> , s.104	<i>Act</i> , s.2(1)

⁴⁴⁹ Note that currently Saskatchewan does not require any employment agency licensing.

⁴⁵⁰ *The Employment Standards Act*, R.S.B.C. 1996, c. 133.

⁴⁵¹ *The Administrative Tribunals Act*, S.B.C. 2004, c. 45.

⁴⁵² R.S.A. 2000, c. F-2.

⁴⁵³ C.C.S.M., c. W-197

⁴⁵⁴ C.C.S.M., c. E110.

⁴⁵⁵ B.C. Reg. 396/95.

⁴⁵⁶ *Appeal Board Regulations*, Alta. Reg. 195/1999

⁴⁵⁷ Alta. Reg. 178/1999.

⁴⁵⁸ Alberta Regulation 189/99.

⁴⁵⁹ Alta. Reg. 187/1999.

⁴⁶⁰ M.R. 21/2009

Agency	s.12		
Foreign Worker Recruitment	None	None	<i>Act, s.2(4)</i>
Talent Agency	<i>Employment Standards Act, s.12</i>	None	None
Child Talent Agency	None	None	<i>Act, s.2(2)</i>
Child Performer Recruitment	None	None	<i>Act, s. 2(3)</i>
Farm Labour Contractor	<i>Employment Standards Act, s.13</i>	None	None

Employment Agencies

Employment Agencies - Licensing Processes			
Provinces:	BC	AB	MB
Employment Agency Defined?	<p>Yes.</p> <p>An employment agency is defined as “a person who, for a fee, recruits or offers to recruit employees for employers;”⁴⁶¹</p>	<p>Yes.</p> <p>An employment agency is a “business operator” engaged in the employment agency business.⁴⁶²</p> <p>An “employment agency business” is defined as “...the activities of securing persons for employment, securing employment for persons or evaluating or testing persons for employers who are seeking employees.”⁴⁶³</p>	<p>Yes.</p> <p>By implication, an employment agency is a person engaged in an employment agency business.⁴⁶⁴</p> <p>An “employment agency business” is defined as “the activities of finding individuals — other than child performers or foreign workers — for employment, or finding employment for such individuals.”⁴⁶⁵</p>
Are there any Exempted Business Activities?	<p>Yes.</p> <p>These are:</p> <ul style="list-style-type: none"> • Advertising.⁴⁶⁶ 	<p>Yes.</p> <p>These are:</p> <ul style="list-style-type: none"> • the operation of a school licensed under the <i>Private Vocational Schools Act</i>, with respect to securing or endeavouring to secure employment for the students or graduates of the school; • the operation of a trade union within the meaning of the <i>Labour</i> 	<p>No.</p>

⁴⁶¹ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 1.

⁴⁶² *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.1(b).

⁴⁶³ *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999, s. 4(2).

⁴⁶⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 2(1).

⁴⁶⁵ *Ibid.*, s. 1.

⁴⁶⁶ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 10(2).

		<p><i>Relations Code</i> or the <i>Public Service Employee Relations Act</i>, or;</p> <ul style="list-style-type: none"> • securing employment for athletes or performing artists in their area of expertise in athletics or the performing arts.⁴⁶⁷ 	
<p>Are there any Business Activities Exempted from Licensing Requirements?</p>	<p>Yes.</p> <p>Activities "... for the sole purpose of hiring employees exclusively for one employer" do not require a licence.⁴⁶⁸</p>	<p>Yes.</p> <p>The business activities exempted above do not require a licence.</p>	<p>Yes.</p> <p>These include:</p> <ul style="list-style-type: none"> • an individual who, on behalf of his or her employer, engages in activities to find employees, including employees who may be foreign workers, for that employer; • a person who, without receiving a fee directly or indirectly, engages in activities to find employment for a foreign worker who is his or her family member; • an agency of the government or a municipality;⁴⁶⁹ • a union, as defined in <i>The Labour Relations Act</i>; • colleges or universities, as defined in section 1 of <i>The Council on Post-Secondary Education Act</i>; • a public or private school, as defined in section 1 of <i>The Education Administration Act</i>; • a regional vocational school, established

⁴⁶⁷ *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999, s. 4(3).

⁴⁶⁸ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 12(2).

⁴⁶⁹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 2(5).

			under section 49 of <i>The Public Schools Act</i> . ⁴⁷⁰
Licensing Applicant Qualifications?	May have to satisfy Director that the agency will be run in best interests of employers and workers. ⁴⁷¹	May have to satisfy Director that agency in compliance with laws, including municipal bylaws, ⁴⁷² with no convictions. ⁴⁷³	May have to demonstrate character, financial history and competence. ⁴⁷⁴
Standard Application Form Provided?	Yes. ⁴⁷⁵	Yes. ⁴⁷⁶	Yes. ⁴⁷⁷
Does the Application Form Require a Statutory Declaration?	No.	Yes. ⁴⁷⁸	No.
Who Files the Application?	The business entity.	If a business entity operates an agency under different business name, each business name requires licensing. ⁴⁷⁹	
Application is made to whom?	Director. ⁴⁸⁰	Director. ⁴⁸¹	Director. ⁴⁸²
Does the Director Have Authority to	Yes. ⁴⁸³	No.	Yes. ⁴⁸⁴

⁴⁷⁰ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 5.

⁴⁷¹ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(2)(c).

⁴⁷² *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.4.

⁴⁷³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127(b) (vii).

⁴⁷⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 6(1).

⁴⁷⁵ <http://www.labour.gov.bc.ca/esb/forms/pdf/employagency.pdf>; see also *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(2)(a).

⁴⁷⁶ <http://www.servicealberta.gov.ab.ca/pdf/Forms/CONP0048.pdf>; see also *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126(1)(a) regarding the use of Director's form, and s. 178 for the Director's authority to establish forms.

⁴⁷⁷ http://www.gov.mb.ca/labour/standards/asset_library/pdf/employment_agency_business_license_form.pdf; Note the Director's authority to produce forms at *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 24.

⁴⁷⁸ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126(2) and (3).

⁴⁷⁹ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.3.

⁴⁸⁰ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(1)(a).

⁴⁸¹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126(1).

⁴⁸² *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s.3.

⁴⁸³ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 76(2).

⁴⁸⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 6(1). See also, *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s.7(2)(a).

Investigate an Applicant?			
Criminal Check Required?	No.	Yes, if applicants or directors are from outside Canada. ⁴⁸⁵	Yes, if requested by Director. ⁴⁸⁶
Application Fee Required?	\$100. ⁴⁸⁷	\$120. ⁴⁸⁸	\$100. ⁴⁸⁹
Surety or Bond required?	No.	No.	No.
Transferable?	No. ⁴⁹⁰	No. ⁴⁹¹	No. ⁴⁹²
Will a licence survive material changes in the business entity?	Not prescribed.	In the case of death, the licence passes to the estate. ⁴⁹³ A licence issued to a partnership expires when the partners change. ⁴⁹⁴	Yes, only if Director consents to continuity. ⁴⁹⁵ In the case of the death of a sole proprietor, a temporary licence may be issued. ⁴⁹⁶
License Duration?	One year. ⁴⁹⁷	24 months. ⁴⁹⁸	One year. ⁴⁹⁹
Can Director Impose Conditions and Terms on Licence?	No.	Yes. The Director may impose terms and conditions on a licence for the following reasons: <ul style="list-style-type: none"> the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence 	Yes, at outset, or any time with notice to licensee. ⁵⁰¹

⁴⁸⁵ See: <http://www.servicealberta.gov.ab.ca/1249.cfm>; see also *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126(1)(b).

⁴⁸⁶ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 7(2)(b).

⁴⁸⁷ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 2(1)(b).

⁴⁸⁸ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.6.

⁴⁸⁹ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 10.

⁴⁹⁰ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 9(1)(b).

⁴⁹¹ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 8.

⁴⁹² *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 7(3).

⁴⁹³ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 6.

⁴⁹⁴ *Ibid.*, s.7.

⁴⁹⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 8(1).

⁴⁹⁶ *Ibid.*, s. 8(2).

⁴⁹⁷ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 9(1)(a).

⁴⁹⁸ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s. 5.

⁴⁹⁹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 7(2).

⁵⁰¹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 7(1).

		<p>applied for or held;</p> <ul style="list-style-type: none"> • the applicant or licensee or any of its officers or employees <p>(i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,</p> <p>(ii) fails to comply with a direction of the Director under section 151(3),</p> <p>(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,</p> <p>(iv) fails to comply with an undertaking under this Act,</p> <p>(v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,</p> <p>(v.1) fails to comply with any other legislation that may be applicable,</p> <p>(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or</p> <p>(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;</p> <ul style="list-style-type: none"> • in the opinion of the Director, it is in the public interest to do 	
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		so. ⁵⁰⁰	
Employment Agencies - Licence Refusals, Suspensions, Cancellations			
Can Director Refuse to Issue a Licence?	Presumably, yes, if agency makes a false or misleading statement in an application for a licence. ⁵⁰²	Yes. ⁵⁰³	Yes. ⁵⁰⁴
Grounds for refusal?	The applicant is unable to satisfy Director that agency will be run in best interests of employers and workers, ⁵⁰⁵ or if a previous licence had been cancelled. ⁵⁰⁶	<p>The applicant is unable to satisfy Director that agency in compliance with laws, including municipal bylaws.⁵⁰⁷</p> <p>The Director may also refuse to issue a licence for the following reasons:</p> <ul style="list-style-type: none"> • the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held; • the applicant or licensee or any of its officers or employees : <ul style="list-style-type: none"> (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed, (ii) fails to comply with a direction of the Director under section 151(3), (iii) furnishes false information or 	<p>The director may refuse to issue a licence to an applicant if :</p> <ul style="list-style-type: none"> • the applicant provides incomplete, false, misleading or inaccurate information in support of the application; • the applicant fails to meet any qualification or satisfy any requirement of this Act or the regulations; • having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required; or • the applicant is carrying on activities that are in contravention of this Act, the regulations or the terms of the licence, or will be in contravention if the licence is granted.⁵⁰⁹

⁵⁰⁰ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵⁰² *Employment Standards Regulations*, B.C. Reg. 396/95, s. 4(a).

⁵⁰³ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.4. See also *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵⁰⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(1) &(2).

⁵⁰⁵ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(2)(c).

⁵⁰⁶ *Ibid.*, s. 2(3).

⁵⁰⁷ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.4.

⁵⁰⁹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(1) &(2).

		<p>misrepresents any fact or circumstance to an inspector or to the Director,</p> <p>(iv) fails to comply with an undertaking under this Act,</p> <p>(v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,</p> <p>(v.1) fails to comply with any other legislation that may be applicable,</p> <p>(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or</p> <p>(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;</p> <ul style="list-style-type: none"> • in the opinion of the Director, it is in the public interest to do so.⁵⁰⁸ 	
Is Notice of Refusal Required?	<p>No.</p> <p>The Director's written reasons must give notice of the time limit and process for appealing the determination, however.⁵¹⁰</p>	Yes. ⁵¹¹	Yes. ⁵¹²
Length of Notice?	n/a	Not prescribed.	Not prescribed.

⁵⁰⁸ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵¹⁰ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(b).

⁵¹¹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128(1)(a).

⁵¹² *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(3).

		Presumably sufficient notice to allow applicant to make representations to the Director. ⁵¹³	
Are Written Reasons for a Refusal Required?	Yes. ⁵¹⁴	Yes.	Yes. ⁵¹⁵
Can Director Suspend or Cancel a Licence?	Yes. ⁵¹⁶	Yes. ⁵¹⁷	Yes. ⁵¹⁸
Grounds for Suspension or Cancellation?	<p>The director may cancel or suspend an agency's licence if the employment agency:</p> <ul style="list-style-type: none"> • makes a false or misleading statement in an application for a licence • contravenes the Act or regulations • operates or has operated agency contrary to the best interests of employers and persons seeking employment, or • places a domestic with an employer and does not inform the employer of the requirement to register the domestic with the Employment Standards Branch in accordance with section 15 of the Act and section 13 of this regulation.⁵¹⁹ 	<p>The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:</p> <ul style="list-style-type: none"> • the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held; • the applicant or licensee or any of its officers or employees <p>(i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,</p> <p>(ii) fails to comply with a direction of the Director</p>	<p>With notice, the director may cancel or suspend the licence of a licensee</p> <ul style="list-style-type: none"> • for any reason for which the director may refuse to issue a licence to an applicant as above; • if the licensee fails to provide information requested by the director or required by the regulations; • if the licensee contravenes or fails to comply with this Act or the regulations; or • if the licensee contravenes or fails to comply with a condition of the licence.⁵²¹

⁵¹³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128(1)(b).

⁵¹⁴ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(a).

⁵¹⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(3).

⁵¹⁶ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 4.

⁵¹⁷ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵¹⁸ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(1).

⁵¹⁹ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 4.

⁵²¹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(1).

		<p>under section 151(3),</p> <p>(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,</p> <p>(iv) fails to comply with an undertaking under this Act,</p> <p>(v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,</p> <p>(v.1) fails to comply with any other legislation that may be applicable,</p> <p>(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or</p> <p>(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;</p> <ul style="list-style-type: none"> • in the opinion of the Director, it is in the public interest to do so.⁵²⁰ 	
Is Notice of Suspensions or Cancellations Required?	<p>No.</p> <p>The Director's written reasons must give notice of the time limit and process for appealing the determination, however.⁵²²</p>	Yes. ⁵²³	Yes. ⁵²⁴

⁵²⁰ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵²² *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(b).

⁵²³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128.

Length of Notice?	n/a	Not prescribed. Presumably sufficient notice to allow applicant to make representations to the Director. ⁵²⁵	Suspension or cancellation takes effect upon service on the licensee. ⁵²⁶
Are Written Reasons for Suspensions, or Cancellations Required?	Yes. ⁵²⁷	Yes. ⁵²⁸	Yes. ⁵²⁹
Are Director's Refusals, Suspensions, or Cancellations Appealable?	Yes. ⁵³⁰	Yes. ⁵³¹	Yes. ⁵³² In any of these decisions, the Director's written reasons must also give notice of the Applicant's right to appeal the decision. ⁵³³
Appealable to Whom?	Employment Standards Tribunal. ⁵³⁴	To the Minister, who shall then constitute an Appeal Board. ⁵³⁵	Court of Queen's Bench Judge. ⁵³⁶
Employment Agencies – Licence Renewals			
License Renewable?	Yes. ⁵³⁷	Yes. ⁵³⁸	Yes. ⁵³⁹
Re-application Required?	Yes. ⁵⁴⁰	Yes. ⁵⁴¹	No, if statutory declaration stating that no change in

⁵²⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(2).

⁵²⁵ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128(1)(b).

⁵²⁶ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(3).

⁵²⁷ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(a).

⁵²⁸ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128(1)(a). Section 128(1)(b) also gives the applicant to make representations to the Director prior to the decision being made.

⁵²⁹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(2)

⁵³⁰ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(b).

⁵³¹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 135.

⁵³² *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵³³ *Ibid.*, s. 9(3) and s.10(2).

⁵³⁴ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12.

⁵³⁵ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179.

⁵³⁶ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵³⁷ Implied by wording in *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(3).

⁵³⁸ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126.

⁵³⁹ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 11(1).

⁵⁴⁰ See http://www.labour.gov.bc.ca/esb/forms/pdf/ea_renewal_appl.pdf

⁵⁴¹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 126.

			information originally provided. ⁵⁴²
Renewal Fee?	\$100. ⁵⁴³	\$120. ⁵⁴⁴	\$100. ⁵⁴⁵
Can Director Refuse to Renew a Licence?	Yes. ⁵⁴⁶	Yes. ⁵⁴⁷	Yes. ⁵⁴⁸
Grounds for refusal?	Unable to satisfy Director that agency will be run in best interests of employers and workers, ⁵⁴⁹ and/or if a previous licence had been cancelled. ⁵⁵⁰	Unable to satisfy Director that agency in compliance with laws, including municipal bylaws. ⁵⁵¹ The Director may also refuse to renew a licence for the following reasons: <ul style="list-style-type: none"> • the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held; • the applicant or licensee or any of its officers or employees <p>(i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,</p> <p>(ii) fails to comply with a direction of the Director</p>	The director may refuse to issue a licence to an applicant if : <ul style="list-style-type: none"> • the applicant provides incomplete, false, misleading or inaccurate information in support of the application; • the applicant fails to meet any qualification or satisfy any requirement of this Act or the regulations; • having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required; or • the applicant is carrying on activities that are in contravention of this Act, the regulations or the terms of the licence, or will be in

⁵⁴² *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 11(1).

⁵⁴³ See http://www.labour.gov.bc.ca/esb/forms/pdf/ea_renewal_appl.pdf; legislative authority not clear, other than to suggest that “an application for a licence to operate an employment agency must be accompanied by a fee of \$100”, per the *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(1)(b).

⁵⁴⁴ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.6.

⁵⁴⁵ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 11(1).

⁵⁴⁶ Implied by wording in *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(3).

⁵⁴⁷ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.4.

⁵⁴⁸ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(1) &(2).

⁵⁴⁹ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 2(2)(c).

⁵⁵⁰ *Ibid.*, s. 2(3).

⁵⁵¹ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.4.

		<p>under section 151(3),</p> <p>(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,</p> <p>(iv) fails to comply with an undertaking under this Act,</p> <p>(v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,</p> <p>(v.1) fails to comply with any other legislation that may be applicable,</p> <p>(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or</p> <p>(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;</p> <ul style="list-style-type: none"> • in the opinion of the Director, it is in the public interest to do so.⁵⁵² 	<p>contravention if the licence is granted.⁵⁵³</p>
Is Notice Required?	No.	Yes. ⁵⁵⁴	Yes. ⁵⁵⁵
Are Written	Yes. ⁵⁵⁶	Yes. ⁵⁵⁷	Yes. ⁵⁵⁸

⁵⁵² *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 127.

⁵⁵³ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(1) &(2).

⁵⁵⁴ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128.

⁵⁵⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 9(3).

⁵⁵⁶ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(a).

⁵⁵⁷ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 128(1)(a). Section 128(1)(b) also gives the applicant to make representations to the Director prior to the decision being made.

⁵⁵⁸ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 10(2)

Reasons Required?			
Is Director's Refusal Appealable?	Yes. ⁵⁵⁹	Yes. ⁵⁶⁰	Yes. ⁵⁶¹
Appealable to Whom?	Employment Standards Tribunal. ⁵⁶²	To the Minister, who shall then constitute an Appeal Board. ⁵⁶³	A Court of Queen's Bench Judge. ⁵⁶⁴
Employment Agencies - Appeal Processes			
Who May Appeal?	A person served with a Director's determination to cancel or suspend a licence. ⁵⁶⁵	A person who applied for, or who held a licence, or who is subject to a Director's Order issued under section 129 or 157. ⁵⁶⁶	The person who applied for, or held, the licence. ⁵⁶⁷
On What Grounds?	The applicant must provide written reasons relating to the cancellation or suspension. ⁵⁶⁸	The Director's decision to refuse to issue or renew, cancel or suspend a licence. ⁵⁶⁹ The Director's decision to impose terms or conditions on a licence. ⁵⁷⁰	The Director's decision to refuse, cancel or suspend a licence. ⁵⁷¹
Who is the Respondent?	The Director.	The Director. ⁵⁷²	The Director. ⁵⁷³
Any restrictions on joining third parties?	None.	None.	Yes. A foreign worker is not required to be a party in an appeal. ⁵⁷⁴
How is Appeal Process	By written request to the Employment Standards	By Notice of Appeal to the Minister. ⁵⁷⁶	By application to the Court of Queen's Bench. ⁵⁷⁷

⁵⁵⁹ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 10(b).

⁵⁶⁰ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 135.

⁵⁶¹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵⁶² *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12.

⁵⁶³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179.

⁵⁶⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵⁶⁵ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12.

⁵⁶⁶ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179.

⁵⁶⁷ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵⁶⁸ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12(1).

⁵⁶⁹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179.

⁵⁷⁰ *Ibid.*, s. 179(1)(b).

⁵⁷¹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵⁷² *Appeal Board Regulations*, Alta. Reg. 195/1999, s. 5.

⁵⁷³ Presumably the Director would have standing similar to what it would have under s. 115 of *The Employment Standards Code*, C.C.S.M., c. E110.

⁵⁷⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 22.

Initiated?	Tribunal office, along with reasons. ⁵⁷⁵		
Appeal Fees?	None.	None.	Court Application Fees.
Time Limitations?	Yes. 30 days after the Director's determination when served by registered mail; or 21 days after the Director's determination when served personally. ⁵⁷⁸	Yes. The Notice of Appeal must be served on the Minister within 30 days after being notified in writing of the decision or order. ⁵⁷⁹	Yes. The application must be filed within 14 days of the Director's decision being served. ⁵⁸⁰
Other Notice Requirements?	None.	None.	The Applicant must serve the Director with a copy of the Application as soon as is practicable after filing. ⁵⁸¹
Who Hears the Appeal?	Tribunal Member(s). ⁵⁸²	An Appeal Board constituted by the Minister either by authority of Section 179(4), or by Regulation, or by some other Act, ⁵⁸³ within 30 days of being served. ⁵⁸⁴	A Court of Queen's Bench Judge. ⁵⁸⁵
What Powers does the Hearing Officer Have?	The Tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal. ⁵⁸⁶	The chair and the other members of the appeal board have the same power as is vested in the Court of Queen's Bench for the trial of civil actions. ⁵⁸⁷	All the powers of a Judge in a Court of Original Jurisdiction.
Is the Hearing de Novo?	Yes. ⁵⁸⁸	Yes. An appeal under section 179 is a new trial of the issues that resulted in the decision or order being appealed. ⁵⁸⁹	No.
What Hearing Procedures are	Flexible. Tribunal has the power to control its own	Flexible. Hearings procedures do not have to	Manitoba Rules of Court.

⁵⁷⁶ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179(1).

⁵⁷⁷ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(2).

⁵⁷⁵ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12(1).

⁵⁷⁸ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 12(2).

⁵⁷⁹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179(1).

⁵⁸⁰ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(2).

⁵⁸¹ *Ibid.*

⁵⁸² *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.106(4).

⁵⁸³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179(2).

⁵⁸⁴ *Ibid.*

⁵⁸⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(1).

⁵⁸⁶ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.110(1).

⁵⁸⁷ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 182.

⁵⁸⁸ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.110(1).

⁵⁸⁹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179(8).

Followed?	processes and may make rules respecting practice and procedure. ⁵⁹⁰	follow the Rules of Court. ⁵⁹¹	
Does Appeal Provide an Automatic Stay?	No. ⁵⁹²	No. ⁵⁹³	No.
Can the Appellant Apply for a Stay?	Yes. ⁵⁹⁴	Yes. ⁵⁹⁵	Yes.
What Remedies are Available?	The tribunal may, by order: <ul style="list-style-type: none"> confirm, vary or cancel the determination under appeal, or refer the matter back to the director.⁵⁹⁶ 	An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed. ⁵⁹⁷	The court may <ul style="list-style-type: none"> set aside, vary or confirm the decision of the director; make any decision that in its opinion should have been made; or refer the matter back to the director for further consideration in accordance with any direction of the court.⁵⁹⁸
How Soon for a Decision after the Hearing?	No time limits.	<ul style="list-style-type: none"> 45 days after the conclusion of the hearing or, 30 days, after the parties have made their submissions to the appeal board under section 13(2).⁵⁹⁹ 	No time limits.
Further Appeals?	None; a decision or order of the tribunal on a matter in respect of which the tribunal	To the Alberta Court of Queen's Bench, by originating notice within 30	Manitoba Court of Appeal, with leave.

⁵⁹⁰ *The Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 11(1).

⁵⁹¹ *Appeal Board Regulations*, Alta. Reg. 195/1999, s.14.

⁵⁹² *The Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 25.

⁵⁹³ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 180(1).

⁵⁹⁴ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.113.

⁵⁹⁵ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 180(2)&(3).

⁵⁹⁶ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.115(1).

⁵⁹⁷ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 179(6).

⁵⁹⁸ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 21(3).

⁵⁹⁹ *Appeal Board Regulations*, Alta. Reg. 195/1999, s. 15(1).

	has exclusive jurisdiction is final and conclusive and is not open to question or review in any court. ⁶⁰⁰ Judicial review is possible if the Tribunal acted outside its jurisdiction, however.	days of the appeal board's written decision. ⁶⁰¹	
Employment Agencies - Statutory Prohibitions, Duties and other Conditions			
Can Agency Placement Fees be Charged to Workers?	No. Agencies must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for: <ul style="list-style-type: none"> • employing or obtaining employment for the person seeking employment, or • providing information about employers seeking employees.⁶⁰² Also, an agency must not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone else. ⁶⁰³	No. Business operators may not directly or indirectly demand or collect a fee, reward or other compensation: <ul style="list-style-type: none"> • from a person who is seeking employment, or information respecting employers seeking employees, or; • from a person for securing or endeavouring to secure employment for the person, or for providing the person with information respecting any employer seeking an employee.⁶⁰⁴ 	No. A person who is engaged in an employment agency business must not, directly or indirectly, charge or collect a fee (a) from an individual who is seeking employment or information about employers seeking employees; or (b) from an individual (i) for finding or attempting to find employment for the individual, or (ii) for providing the individual with information about any employer seeking an employee. ⁶⁰⁵
Is Charging Prohibited Placement Fees an Offense?	Yes. The matter is treated as an offense contrary to section 125. ⁶⁰⁶ It is not clear what the	Yes. Treated as a summary conviction offense. ⁶⁰⁷	Yes. The matter is treated as a summary conviction offense.

⁶⁰⁰ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.110(2).

⁶⁰¹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 181.

⁶⁰² *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.10(1)(a)(b).

⁶⁰³ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s.11(1).

⁶⁰⁴ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.9(1).

⁶⁰⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 15(1).

⁶⁰⁶ *The Employment Standards Act*, R.S.B.C. 1996, c. 133.

⁶⁰⁷ An offense contrary to s. 11 of *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, and s. 162 of *The Fair Trading Act*, R.S.A. 2000, c. F-2.

	penalties are upon convictions.	Fines range up to \$100,000 or 3 times the amount obtained by the defendant as a result of the offence, whichever is greater, or to imprisonment for not more than 2 years, or both. ⁶⁰⁸	Fines for a convicted individual range up to \$25,000. ⁶⁰⁹ Fines for a convicted corporation range up to \$50,000. ⁶¹⁰
Can Illegally Charged Fees be Recovered?	Yes. Fees are deemed wages and can be recovered by the Director in the same way as wages pursuant to <i>The Employment Standards Act</i> . ⁶¹¹	No clear authority for recovery.	Yes. Fees can be recovered by the Director in the same way as wages pursuant to <i>The Labour Standards Code</i> . ⁶¹²
Are there Agency Service Fees that can be Legally Charged to a Worker?	Yes. Resume writing, interview preparation, immigration assistance. However, "An employment agency must not require a person seeking employment to use or pay for these other services as a condition of being placed in a job. An employment agency cannot require a person seeking employment to pay for immigration assistance as a condition of being placed in a job." ⁶¹³	Yes. Resume Preparation. Fees may be charged in relation to resume preparation, so long as the service is not a condition for receiving employment agency services. ⁶¹⁴ Resume preparation fees must be posted conspicuously. ⁶¹⁵	Yes. An employment agency business may charge and collect a fee for a service supplied to an individual as long as paying for the service is not a condition of the person's acting for or on behalf of the individual. ⁶¹⁶
Is There a Duty to Keep	Yes.	Yes.	Yes.

⁶⁰⁸ *The Fair Trading Act*, R.S.A. 2000, c. F-2, s. 164(1).

⁶⁰⁹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 28(2)(a).

⁶¹⁰ *Ibid.*, s. 28(2)(b).

⁶¹¹ R.S.B.C. 1996, c. 133, s.10(3).

⁶¹² *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 20(5).

⁶¹³ Accessed June 4, 2010 at http://www.labour.gov.bc.ca/esb/facshts/employment_agency.htm

⁶¹⁴ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.9(2).

⁶¹⁵ *Ibid.*, s.9(3).

⁶¹⁶ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 15(5).

Records?			
What Records Must be Kept?	<p>An employment agency must keep a record of the following:</p> <ul style="list-style-type: none"> • the name and address of each employer for whom the employment agency provides a service; • the name, occupation and address of each person who is directed to an employer for the purpose of being hired or who is provided with information about employers seeking employees. 	<p>Licenses and former licensees must maintain records of the following:</p> <ul style="list-style-type: none"> • the name and address of every employer <ul style="list-style-type: none"> (i) for whom persons seeking employment are obtained, or (ii) to whom persons seeking employment are directed; • the name, occupation, residential address and rate of wages of every person for whom employment is obtained; • the name, occupation and residential address of every person who is directed to any employer for the purpose of procuring employment; • the name, occupation and residential address of every person who is provided with information regarding employers seeking employees.⁶¹⁷ 	<p>A person engaged in an employment agency</p> <p>Business must keep the following records:</p> <p>(i) a list of each person the agency sought to find employees for,</p> <p>(ii) a list of each individual the agency sought to find employment,</p> <p>(iii) for each person listed under sub-clause (i) or (ii), a listing of any fee paid or payable by the person, and</p> <p>(iv) a copy of each contract entered into by the agency respecting the finding of employees for an employer or employment for an individual.⁶¹⁸</p>
Where must Records be Kept?	At the employment agency's principal place of business in British Columbia. ⁶¹⁹	Not prescribed, though records must be available for inspection in Alberta. ⁶²⁰	Not prescribed, though records must be available for inspection in Manitoba. ⁶²¹
How Long	2 years. ⁶²²	3 years. ^{623, 624}	3 years. ⁶²⁵

⁶¹⁷ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.8.

⁶¹⁸ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 15(1)(a)

⁶¹⁹ *Employment Standards Regulations*, B.C. Reg. 396/95, am. B.C. Reg. 307/2002, s. 2, s. 3(1)&(2).

⁶²⁰ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 132(2).

⁶²¹ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 18(2).

⁶²² *Employment Standards Regulations*, B.C. Reg. 396/95, am. B.C. Reg. 307/2002, s. 2, s. 3(1)&(2).

⁶²³ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.8.

⁶²⁴ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 9.

Must Records be Retained?			
What Language Must Records be Kept In?	Records must be kept in English. ⁶²⁶	Not prescribed.	Not prescribed.
Is Notice of Changes Required?	No.	Yes. A Licensee has 15 days in which to notify the Director of the following changes: <ul style="list-style-type: none"> • Change of address.⁶²⁷ • Change of partners.^{628 629} • Change of corporate officers or directors.⁶³⁰ 	No.
Is there a Duty to Produce Licence for Director's Inspection?	Yes. Records must be produced or delivered for inspection by the Director. ⁶³¹	Yes. Every licensee and former licensee must make records available for inspection by an inspector or the Director at a place in Alberta and at a time specified by the inspector. ^{632 633}	Yes. ⁶³⁴
Is there a Duty to Produce Licence for Public	No.	Yes. A Peace Officer has a right to inspect the licence. ⁶³⁵	No.

⁶²⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 18(1)(a); and *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 15(2).

⁶²⁶ *Employment Standards Regulations*, B.C. Reg. 396/95, am. B.C. Reg. 307/2002, s. 2, s. 3(1)&(2).

⁶²⁷ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 134(1).

⁶²⁸ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 7.

⁶²⁹ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 134(1).

⁶³⁰ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 134(1).

⁶³¹ *The Employment Standards Act*, R.S.B.C. 1996, c. 133, s. 85(1)(f); *Employment Standards Regulations*, B.C. Reg. 396/95, am. B.C. Reg. 269/98, s. 46.

⁶³² *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 132(2).

⁶³³ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 10(b).

⁶³⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 18(2).

⁶³⁵ *Ibid.*, s. 10(c).

Inspection?		A customer or potential customer has a right to inspect the licence. ⁶³⁶	
When Must Licence be Surrendered or Returned?	Licensee must surrender licence to the Director upon cancellation or suspension. ⁶³⁷	Licensee must surrender licence within 15 days of ceasing business operations. ⁶³⁸ With a change of partners. ⁶³⁹	Not prescribed.
Other Duties	Must inform the employer of a domestic worker of the requirement to register the domestic with the Employment Standards Branch. ⁶⁴⁰	None.	None.
Other General Prohibitions	None.	Strikes and Lockouts. The employment agency must advise workers of any strikes or lockouts before sending them to replace striking or locked out workers. ⁶⁴¹	None.

⁶³⁶ *Ibid.*, s. 10(a).

⁶³⁷ *Employment Standards Regulations*, B.C. Reg. 396/95, s. 11.

⁶³⁸ *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 134(2).

⁶³⁹ *General Licensing and Security Regulation*, Alta. Reg. 187/1999, s. 7(1)&(2).

⁶⁴⁰ *Employment Standards Regulations*, B.C. Reg. 396/95, am. B.C. Reg. 204/99, s. (a), s. 4(d).

⁶⁴¹ *Employment Agency Business Licensing Regulation*, Alberta Regulation 189/99, s.10.

Foreign Worker Recruitment Agencies

Foreign Worker Recruitment Agencies - Licensing Process			
Provinces:	BC ⁶⁴²	AB ⁶⁴³	MB
Foreign Worker Defined?	n/a	n/a	<p>Yes, a foreign worker is a foreign national who, pursuant to an immigration or foreign temporary worker program, is recruited to become employed in Manitoba.⁶⁴⁴</p> <p>The following are not considered foreign workers for the purposes of the Act:</p> <ul style="list-style-type: none"> • Foreign nationals working in Canada without a permit, pursuant to section 186 of <i>The Immigration and Refugee Protection Regulations</i>, SOR/2002-227; • Foreign nationals working in Canada under an international agreement, pursuant to section 204 of <i>The Immigration and Refugee Protection Regulations</i>, SOR/2002-227; • Foreign nationals whose work in Canada supports Canadian interests, pursuant to section 205 of <i>The Immigration and Refugee Protection Regulations</i>, SOR/2002-227; • Foreign nationals pursuant to section 207 (except 207(a)) (“applicants in Canada”) of <i>The Immigration and Refugee Protection Regulations</i>, SOR/2002-227; • Foreign nationals in Canada for humanitarian reasons pursuant to section 208 of <i>The Immigration and Refugee Protection Regulations</i>, SOR/2002-227.⁶⁴⁵
Foreign Worker Recruitment Activity Defined?			<p>Yes, "foreign worker recruitment" means</p> <p>(a) finding one or more foreign workers for employment in Manitoba;</p> <p>(b) finding employment in Manitoba for one or more foreign workers</p> <p>Regardless of whether or not a fee is charged.⁶⁴⁶</p>

⁶⁴² British Columbia’s employment agency provisions apply to all individuals including foreign workers.

⁶⁴³ Alberta’s employment agency provisions apply to all individuals including foreign workers.

⁶⁴⁴ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 1.

⁶⁴⁵ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 4.

⁶⁴⁶ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 1.

Are there any Exempted Business Activities?	n/a	n/a	No.
Are there any Business Activities Exempted from Licensing Requirements?	n/a	n/a	Yes. These include: <ul style="list-style-type: none"> • an individual who, on behalf of his or her employer, engages in activities to find employees, including employees who may be foreign workers, for that employer; • a person who, without receiving a fee directly or indirectly, engages in activities to find employment for a foreign worker who is his or her family member; • an agency of the government or a municipality;⁶⁴⁷
Applicant Qualifications?	n/a	n/a	Must satisfy the Director that the applicant is a member in good standing of the Law Society of Manitoba Bar or CSIC. ⁶⁴⁸
Standard Application Form Provided?	n/a	n/a	Yes. ⁶⁴⁹
Does the Application Form Require a Statutory Declaration?	n/a	n/a	No.
Who May Apply?			An individual, presumably a Law Society or CSIC member. ⁶⁵⁰
Application made to whom?	n/a	n/a	Director. ⁶⁵¹
Does Director	n/a	n/a	Yes. ⁶⁵²

⁶⁴⁷ *Ibid.*, s. 2(5).

⁶⁴⁸ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 6.

⁶⁴⁹ http://www.gov.mb.ca/labour/standards/asset_library/pdf/foreign_worker_recruitment_license_form.pdf; Note the Director's authority to produce forms at *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 24. See also, *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s.8(1)(a)&(b) and s. 8(2) for the type of information that must be provided by the individual applicant.

⁶⁵⁰ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s.3(2).

⁶⁵¹ *Ibid.*, s.3(2).

⁶⁵² *Ibid.*, s. 6(1). See also, *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s.8(1)(c).

Have Authority to Investigate an Applicant?			
Criminal Check Required?	n/a	n/a	Yes, if requested by Director. ⁶⁵³
Does the Director have the Authority to Report an Applicant to a Disciplinary Body?	n/a	n/a	Yes, the Director may share information with, or otherwise report a licensee to either the Law Society or CSIC. ⁶⁵⁴
Application Fee Required?	n/a	n/a	\$100. ⁶⁵⁵
Surety or Bond required?	n/a	n/a	Yes. \$10,000 in the form of an irrevocable letter of credit, or as a cash deposit. ⁶⁵⁶
Is the Licence Transferable?	n/a	n/a	No. ⁶⁵⁷
Will a licence survive material personnel changes in a business entity?	n/a	n/a	Yes, but only if Director consents to the continuity. ⁶⁵⁸
License Duration?	n/a	n/a	One year. ⁶⁵⁹
Can Director Impose Conditions and Terms on	n/a	n/a	Yes, at outset, or at any time with notice to licensee. ⁶⁶⁰

⁶⁵³ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 8(1)(d).

⁶⁵⁴ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 23(2).

⁶⁵⁵ *Ibid.*, s. 10.

⁶⁵⁶ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 5; and *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 9.

⁶⁵⁷ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 7(3).

⁶⁵⁸ *Ibid.*, s. 8(1).

⁶⁵⁹ *Ibid.*, s. 7(2).

⁶⁶⁰ *Ibid.*, s. 7(1).

Licence?			
Foreign Worker Recruitment Agencies - Licence Refusals, Suspensions, Cancellations			
Can the Director Refuse to Issue a Licence?	n/a	n/a	Yes. ⁶⁶¹
Grounds for refusal?	n/a	n/a	The director may refuse to issue a licence to an applicant if : <ul style="list-style-type: none"> • the applicant provides incomplete, false, misleading or inaccurate information in support of the application; • the applicant fails to meet any qualification or satisfy any requirement of this Act or the regulations; • having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required; or • the applicant is carrying on activities that are in contravention of this Act, the regulations or the terms of the licence, or will be in contravention if the licence is granted.⁶⁶²
Is Notice of Refusal Required?	n/a	n/a	Yes. ⁶⁶³
Length of Notice?	n/a	n/a	Not prescribed.
Are Written Reasons for a Refusal Required?	n/a	n/a	Yes. ⁶⁶⁴
Can the Director Suspend or Cancel a Licence?	n/a	n/a	Yes. ⁶⁶⁵
Grounds for Suspension or	n/a	n/a	The director may cancel or suspend the licence of a licensee (a) for any reason for which the director may refuse to issue

⁶⁶¹ *Ibid.*, s. 9(1) & (2).

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*, s. 9(3).

⁶⁶⁴ *Ibid.*, s. 9(3).

⁶⁶⁵ *Ibid.*, s. 10(1).

Cancellation?			a licence to an applicant as noted above; (b) if the licensee fails to provide information requested by the director or required by the regulations; (c) if the licensee contravenes or fails to comply with this Act or the regulations; or (d) if the licensee contravenes or fails to comply with a condition of the licence. ⁶⁶⁶
Is Notice of Suspension or Cancellation Required?	n/a	n/a	Yes. ⁶⁶⁷
Length of Notice?			Suspension or cancellation takes effect upon service on the licensee. ⁶⁶⁸
Are Written Reasons for the Suspension or Cancellation Required?	n/a	n/a	Yes. ⁶⁶⁹
Are Director's Refusals, Suspensions, or Cancellations Appealable?	n/a	n/a	Yes. ⁶⁷⁰ In any of these decisions, the Director's written reasons must also give notice of the Applicant's right to appeal the decision. ⁶⁷¹
Appealable to Whom?	n/a	n/a	Court of Queen's Bench Judge. ⁶⁷²
Foreign Worker Recruitment Agencies – Licence Renewals			
License Renewable?	n/a	n/a	Yes. ⁶⁷³
Re-application Required?	n/a	n/a	No, if statutory declaration stating that no change in information originally provided. ⁶⁷⁴

⁶⁶⁶ *Ibid.*, s. 10(1).

⁶⁶⁷ *Ibid.*, s. 10(2).

⁶⁶⁸ *Ibid.*, s. 10(3).

⁶⁶⁹ *Ibid.*, s. 10(2).

⁶⁷⁰ *Ibid.*, s. 21(1).

⁶⁷¹ *Ibid.*, s. 9(3) and s.10(2).

⁶⁷² *Ibid.*, s. 21(1).

⁶⁷³ *The Worker Recruitment and Protection Regulation*, M.R. 21/2009, s. 11(1).

⁶⁷⁴ *Ibid.*, s. 11(1).

Renewal Fee?	n/a	n/a	\$100. ⁶⁷⁵
Can Director Refuse to Renew a Licence?	n/a	n/a	Yes. ⁶⁷⁶
Grounds for refusal?	n/a	n/a	The director may refuse to issue a licence to an applicant if : <ul style="list-style-type: none"> • the applicant provides incomplete, false, misleading or inaccurate information in support of the application; • the applicant fails to meet any qualification or satisfy any requirement of this Act or the regulations; • having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required; or • the applicant is carrying on activities that are in contravention of this Act, the regulations or the terms of the licence, or will be in contravention if the licence is granted.⁶⁷⁷
Is Notice Required?	n/a	n/a	Yes. ⁶⁷⁸
Length of Notice?	n/a	n/a	Not prescribed.
Are Written Reasons Required?	n/a	n/a	Yes. ⁶⁷⁹
Is Director's Refusal Appealable?	n/a	n/a	Yes. ⁶⁸⁰
Appealable to Whom?	n/a	n/a	Court of Queen's Bench Judge. ⁶⁸¹
Foreign Worker Recruitment Agencies - Appeal Process			
Who May Appeal?	n/a	n/a	The person who applied for, or held, the licence. ⁶⁸²

⁶⁷⁵ *Ibid.*

⁶⁷⁶ *The Worker Recruitment and Protection Act, C.C.S.M., c. W-197, s. 9(1) &(2).*

⁶⁷⁷ *Ibid.*, s. 9(1) &(2).

⁶⁷⁸ *Ibid.*, s. 9(3).

⁶⁷⁹ *Ibid.*, s. 10(2)

⁶⁸⁰ *Ibid.*, s. 21(1).

⁶⁸¹ *Ibid.*, s. 21(1).

⁶⁸² *Ibid.*, s. 21(1).

On What Grounds?	n/a	n/a	The Director's decision to refuse, cancel or suspend a licence. ⁶⁸³
Who is the Respondent?	n/a	n/a	The Director. ⁶⁸⁴
Any restrictions on joining third parties?	n/a	n/a	Yes. A foreign worker is not required to be a party in an appeal. ⁶⁸⁵
How is Appeal Process Initiated?	n/a	n/a	By application to the Court of Queen's Bench. ⁶⁸⁶
Appeal Fees?	n/a	n/a	Court Application and other legal fees.
Time Limitations?	n/a	n/a	Yes. The application must be filed within 14 days of the Director's decision being served. ⁶⁸⁷
Other Notice Requirements?	n/a	n/a	The Applicant must serve the Director with a copy of the Application as soon as is practicable after filing. ⁶⁸⁸
Who Hears the Appeal?	n/a	n/a	A Court of Queen's Bench Judge. ⁶⁸⁹
What Powers does the Hearing Officer Have?	n/a	n/a	Those of a Judge in a Court of Original Jurisdiction.
Is the Hearing de Novo?	n/a	n/a	No.
What Hearing Procedures are Followed?	n/a	n/a	Manitoba Rules of Court.
Does Appeal Provide an Automatic Stay?	n/a	n/a	No.
Can the Appellant	n/a	n/a	Yes.

⁶⁸³ *Ibid.*, s. 21(1).

⁶⁸⁴ Presumably the Director would have standing similar to what it would have under s. 115 of *The Employment Standards Code*, C.C.S.M., c. E110.

⁶⁸⁵ *The Worker Recruitment and Protection Act*, C.C.S.M., c. W-197, s. 22.

⁶⁸⁶ *Ibid.*, s. 21(2).

⁶⁸⁷ *Ibid.*, s. 21(2).

⁶⁸⁸ *Ibid.*, s. 21(2).

⁶⁸⁹ *Ibid.*, s. 21(1).

Apply for a Stay?			
What Remedies are Available?	n/a	n/a	The court may <ul style="list-style-type: none"> • set aside, vary or confirm the decision of the director; • make any decision that in its opinion should have been made; or • refer the matter back to the director for further consideration in accordance with any direction of the court.⁶⁹⁰
How Soon for a Decision after the Hearing?	n/a	• n/a	Not prescribed.
Further Appeals?	n/a	n/a	Manitoba Court of Appeal, with leave.
Foreign Worker Recruitment Agencies - Statutory Prohibitions, Duties and other Conditions			
Can Agency Placement Fees be Charged to Workers?	n/a	n/a	No. An individual who is engaged in foreign worker recruitment must not directly or indirectly charge or collect a fee from a foreign worker for finding or attempting to find employment for him or her. ⁶⁹¹
Is Charging Prohibited Placement Fees an Offense?	n/a	n/a	Yes. The matter is treated as a summary conviction offense. Fines for a convicted individual range up to \$25,000. ⁶⁹² Fines for a convicted corporation range up to \$50,000. ⁶⁹³
Can Illegally Charged Fees be Recovered?	n/a	n/a	Yes. Fees can be recovered by the Director in the same way as wages pursuant to <i>The Labour Standards Code</i> . ⁶⁹⁴
Are there Agency Service	n/a	n/a	Yes. An employment agency business may charge and collect a

⁶⁹⁰ *Ibid.*, s. 21(3).

⁶⁹¹ *Ibid.*, s. 15(4).

⁶⁹² *Ibid.*, s. 28(2)(a).

⁶⁹³ *Ibid.*, s. 28(2)(b).

⁶⁹⁴ *Ibid.*, s. 20(5).

Fees that can be Legally Charged to a Worker?			fee for a service supplied to an individual as long as paying for the service is not a condition of the person's acting for or on behalf of the individual. ⁶⁹⁵
Can Employers Deduct Foreign Worker Recruiting Costs?	n/a	n/a	No. ⁶⁹⁶ An employer may sue a foreign worker to recover recruiting costs, if the worker fails to report to work, or is guilty or serious misconduct, however. ⁶⁹⁷
Is There a Duty to Keep Records?	n/a	n/a	Yes.

⁶⁹⁵ *Ibid.*, s. 15(5).

⁶⁹⁶ *Ibid.*, s. 16(1)(a).

⁶⁹⁷ *Ibid.*, s. 16(1)(a).

Appendix 4 - Cross-referencing licensed British Columbia employment agency and recruiter data with the Canadian Society of Immigration Consultants Membership List

A. Developing the Methodology

After reading the PG Nannies case, I wondered how BC employment agencies operated so as to connect foreign nationals with BC employers. I thought that perhaps that there might be some overlap between employment agencies and immigration consultants, and hypothesized that perhaps employment agencies worked together with consultants, or were in fact one in the same.

I checked the internet and found that CSIC publicly listed the name of their immigration consultants.

As the PG Nanny case named the owner of the employment agency, I was therefore able to test my hypothesis by looking for this name on the CSIC website. I found that Christopher Taiho Krahn, the owner of PG Nannies was also a registered CSIC consultant.

I then decided to take a random sample of the licensed employment agencies that appeared on the British Columbia Employment Standards Employment Agency Registry, and see if I could find other similar links between employment agencies and CSIC immigration consultants.

1. Better Business Bureau Database

The employment agency names that appeared in the Registry were business names, while the CSIC registrations and memberships were issued to individuals. As a result, I had to find a way to determine who the individuals/principals/owners behind each employment agency were. I did this first by Googling the employment agency name, and then by running a search through the Better Business Bureau of BC's public data base found at <http://mbc.bbb.org/>.

Using this method I was able to find another half dozen employment agent principals who were also CSIC members. I put this information into the following table, and put this table into a memo for my January 20, 2010 meeting with Professor Fudge.

CSIC Consultants Acting As Licensed BC Employment Agents

Name	CSIC Member Number ⁶⁹⁸	Licensed Employment Agency Name	Position of CSIC member in the Employment Agency
Jana McDermott	M074636	ABC Nannies Canada Inc	President ⁶⁹⁹
Natie Sotana	M095524	B C Happy Homes Immigration	Owner ⁷⁰⁰

⁶⁹⁸ all CSIC member names and numbers can be found on the CSIC website at <http://www.csic-scci.ca/find/all.html#C>

⁶⁹⁹ <http://www.bbb.org/mbc/business-reviews/nannies/abc-nannies-canada-in-delta-bc-1185500#profile>

		Services	
Areepurathu Radhakrishnan	M042072	Delta Immigration & Employment Consultants Ltd ⁷⁰¹	President ⁷⁰²
Sunny Yee	M085119	Top Homecare Solutions Ltd. ⁷⁰³	Principal ⁷⁰⁴
Jagmohan Singh	M064132	Instant Immigration Services Inc	Director ⁷⁰⁵
Kuldeep Bansal	M052598	Overseas Career and Consulting Service Ltd ⁷⁰⁶	President ⁷⁰⁷
Taiho Krahn	M095284	PG Nannies and Caregivers Ltd.	Principal

2. Corporate Registry Searches

During our January 20, 2010 meeting I told Professor Fudge that I could also identify employment agency principals/owners/directors by conducting a search of B.C.'s corporate registry. A registry search would cost money, whereas the BBB search was free of charge. The Registry search had the advantage of being more precise, up to date, and providing information supplied by each company's directors. As a result, Professor Fudge authorized and budgeted for Registry search costs.

I applied for a internet search account, and in a subsequent letter dated February 2, 2010 BC Online advised me of my new search account number and password.

I then decided to test the corporate searches using BC Online, using a sample of licensed employment agencies appearing on the Employment Standards Branch's October 30, 2008 Employment Agency Registry that I thought would represent agencies dealing with low skill TFWs. On February 14, 2010 I checked for online corporate registry for the following employment agency business names:

- AAAAPS Nannies, Nurses & Cleaners Agency
- Access Nannies & Caregivers
- Active International Immigration Services Inc.
- All Peace Nanny Agency
- A Pro Caregivers & Nannies
- Asia-Pacific Resource Reserve Corporation

⁷⁰⁰ <http://www.bbb.org/mbc/business-reviews/immigration-and-naturalization-consultants/b-c-happy-homes-immigration-services-in-surrey-bc-1155350#profile>

⁷⁰¹ <http://www.deltaimm.net/>

⁷⁰² <http://www.bbb.org/mbc/business-reviews/immigration-and-naturalization-consultants/delta-immigration-and-employment-consultants-ltd-in-surrey-bc-1233118#profile>

⁷⁰³ www.tophomecare.ca

⁷⁰⁴ <http://www.bbb.org/mbc/business-reviews/employment-agencies/top-homecare-solutions-ltd-in-vancouver-bc-1228832#profile>

⁷⁰⁵ <http://www.bbb.org/mbc/business-reviews/immigration-and-naturalization-consultants/instant-immigration-services-in-surrey-bc-1243101#profile>

⁷⁰⁶ www.overseasimmigration.com

⁷⁰⁷ <http://www.bbb.org/mbc/business-reviews/immigration-and-naturalization-consultants/overseas-career-and-consulting-service-ltd-in-surrey-bc-1232597#profile>

- Azarcon Immigration and Recruitment
- Best Choice Nannies & Manpower Services
- Canadian International Nanny Services Inc.
- Canadian Chinese Immigraiton Service Inc.
- CI International Nanny Caregiver Agency
- CISC Canadian Immigraiton & Settlement Consultants Ltd.
- Delta Immigration & Employment Consultants Ltd.
- Dependable Caregivers Agency
- Diva Nannies
- Dynamic Care Nannies Agency
- East West Immigration Services Inc.
- Elite Nannies
- Ferns Uniglobal Recruitment & Placement Services
- Filipino-Canadian Int'l Caregiver Agency
- First-Rate Caregivers Agency\Fiver Rivers Nanny Services
- Global Nannies & Caregivers Agency Ltd.
- Golden Home International Labour & Nanny Service Agency
- Heart of Gold Nannies Services
- Homecare Solutions
- IHC Caregivers
- International Nannies and Homecare Inc.
- Jollibee Nannies
- Life line Caregivers
- Lucky Nannies & Caregivers
- Manynanny Enterprise Ltd.
- Me-An Poppins Practically Perfect Caregivers
- Mhel's Nanny Agency
- Nannyfinders Directory
- Northern Capital Nanny Services
- Not Just Nannies
- One Stop Nannies
- Optimum Childcare and Nannies Inc.
- Philcan Domestic Personnel
- Philippines International Employment Service Agency
- PNP Offshore Recruitment Agencies
- Punjabi Nannies & Livein Caregivers Ltd.
- Quality Care Provider Agency
- Queeny International Nanny Agency

- Reliable Nanny and Caregiver Placement Agency
- Sampaguita Agency Nannies & Housekeepers
- Susan's Nannies
- Tender Care Nannies
- Tender care Services
- The Happy and Responsible Nannies
- Top Quality Nanny Services
- Triple M Nannies & Caregivers Services Ltd.
- Trusted Caregiver Agency
- Universal Care Inc.
- We Are Canadian Nursing Care & Etc. Agency
- West Coast Nanny Help Ltd.
- Westcoast Nannies

As the Employment Agency Registry list I drew this sample from was over a year old, many of the business names no longer appeared to be registered. As a result, I decided to cross-check the business names on the internet, in particular using the Better Business Bureau's database.

Altogether I discovered the following connections:

Name	CSIC Member Number ⁷⁰⁸	Licensed Employment Agency Name	Position of CSIC member in the Employment Agency
Grace Yifan Ma	M095243	Canadian Chinese Immigration Service Inc	Director ⁷⁰⁹
Parmider Khindra	M084696	East West Immigration Services Inc	Director ⁷¹⁰

While conducting cross-checks on the internet I discovered the existence of the ACNAC website.

3. ACNAC

As noted in the thesis ACNAC is a caregiver and nanny industry group, and its British Columbia chapter lobbies for the elimination of the prohibition against charging caregivers placement fees. Its website provided not only the names of its member companies operating in B.C., but also each company owner's name, and whether or not the owner was a CSIC member.⁷¹¹ Not every employment agency on the Agency Registry is an ACNAC member. Surprisingly, not every ACNAC member appeared licensed and listed on the Agency Registry. Nonetheless, the

⁷⁰⁸ all CSIC member names and numbers can be found on the CSIC website at <http://www.csic-scci.ca/find/all.html#C>

⁷⁰⁹ Ministry of Finance, BC Registry Services, "Notice of Change of Directors" January 12, 2009.

⁷¹⁰ Ministry of Finance, BC Registry Services, "BC Company Summary" January 5, 2010.

⁷¹¹ Accessed February 15, 2010 at

<http://acnacanada.ca/acna/ACNAMembers/BCYKNWTNUACNACanadaMembers.aspx>

ACNAC list provided a definitive list of what agencies were part of this nanny industry group in BC, and which owners are also CSIC members.

Combining these registries and databases allowed me to depict some of the overlaps between British Columbia employment agencies, foreign recruiters, and immigration consultants.

I conducted an exhaustive search in May 2011, using the most up-to-date B.C. Employment Agency Registry information, and cross-referencing with the other above-noted databases. I continued my searches until I exhausted my budget.

B. Results

I divided my data into two categories. The first is based on sole proprietorships, and the second on corporations.

1. Licensed British Columbia Sole Proprietorship Employment Agencies.

As of April 29, 2010, British Columbia's Employment Standards Branch licensing registry published the names of 73 individuals owning employment agencies as sole proprietorships. As a result, the individuals named in the employment agency license registry could be directly cross-referenced with the CSIC member registry. A list of British Columbia employment agency sole proprietors was compiled and cross-referenced with the CSIC database on May 7 and 10, 2010. This method detected that of 73 sole proprietorships, the following also four proprietors also had CSIC memberships. The CSIC membership number is in bold type and added after the individual's name:

1. ANNE LABONETE OCAMPO **M095438** o/a CANADA WORLD CONNEXION IMMIGRATION AND CONSULTING SERVICES.
2. HARINDER KAUR KANG **M085137** o/a CHANDIGARH EMPLOYMENT SERVICES.
3. MAHAMOOD CARL HOSEIN **M052583** o/a CITRN CANADA 4
4. YONG HEE LEE **M095488** o/a THE REPUBLIC IMMIGRATION AND STUDIES.

2. Licensed BC Incorporated BC Employment Agencies with CSIC Members as Principals

As of April 29, 2010, British Columbia's Employment Standards Branch licensing registry published the names of 168 corporations owning employment agencies. The individual names of directors and/or principals from each corporation were obtained through a search of British Columbia's corporate registry. The names I identified using *BC OnLine* corporate registry searches, along with the names of corporations using business names that were the also names of individuals, were checked against the names in the CSIC registry.

On May 21, 2010 I also Google-searched company names listed in British Columbia's Employment Standards Branch licensing registry, looking for indications that the company employed or was directed by a CSIC member. In addition, I cross-checked all incorporated companies for individual names through a check with the online Better Business Bureau registry.

This method detected that of 168 corporations owning employment agencies and listed in the Employment Standards Branch licensing registry, 18 had a total of 26 directors or other principals holding CSIC memberships.

The following list contains company information from the licensing registry, followed by individual names found through *BC OnLine* corporate registry, Google, and Better Business Bureau registry searches, and crossed-checked against the CSIC membership lists. The CSIC number is added after each individual's name:

1. A - CLASS NANNIES INC. A - CLASS NANNIES INC. 208, 3900 HASTINGS ST BURNABY V5C 6C1 (604) 780-0344 20110316
Jose Ramil Domaon Certified Canadian Immigration Consultant (CCIC) **M042439**
2. ABC NANNIES CANADA INC. ABC NANNIES CANADA INC. 15846 MCBETH RD SURREY V4A 5X3 (604) 581-1018 20110114 - Jana McDermott Certified Canadian Immigration Consultant (CCIC) **M074636**
3. ALL POINTS IMMIGRATION LTD. ALL POINTS IMMIGRATION LTD. 206, 8788 120 ST SURREY V3W 3N6 (604) 597-9020 20100811; at <http://www.allpointsimmigration.com/AboutUs.aspx> **Habib Bajwa M042410** Jamal Bajwa **M063869**
4. ASIA-PACIFIC CONSULTING COMPANY INC. ASIA-PACIFIC CONSULTING COMPANY INC. 7, 1520 CLIVEDEN AVE DELTA V3M 6J8 (604) 540-8644 20101116 - Zheng Song, Director / ZulitaJoseph **M084823**
<http://www.aspacinc.ca/company.html>
5. CANLINK CONSULTING INC. CANLINK CONSULTING INC. 243, 7080 RIVER RD RICHMOND V6X 1X5 (604) 821-9988 20100914;
<http://www.canlinkconsulting.com/AboutUs.php>; **Allan Chan President M095177**; Vice President **Silvia Banh M095191**; Director **Clive Tsang – M095187**; Senior Advisor **Stephen Chow M041503**; Senior Advisor **Mark Cogan M052604**; Senior Advisor **Alice Tang M042178**; Business Associate **Ji Li - M095493**.
6. DELTA IMMIGRATION & EMPLOYMENT CONSULTANTS LTD. DELTA IMMIGRATION & EMPLOYMENT CONSULTANTS LTD. 215, 8334 128 ST SURREY V3W 4G2 (604) 599-4988 20110201; <http://www.deltaimm.net/contact.aspx> R Krishna (**no member # available**)
7. DIAMOND GLOBAL RECRUITMENT GROUP INC. DIAMOND GLOBAL RECRUITMENT GROUP INC. 4841 YONGE ST TORONTO M2N 5X2 (888) 886-82 09 20100923; <http://www.diamondglobal.ca/staff.php> - **Evangeline Ancheta M063029**
8. GALT GLOBAL IMMIGRATION LTD. GALT GLOBAL IMMIGRATION LTD. 1205, 595 HOWE ST VANCOUVER V6C 2T5 (604) 685-3530 20110128 -

- <http://www.galtimmigration.com/about.html> - Arlene Tungohan **M064094**; Peter Meingast **M084838**
9. IEM CONSULTING INC. IEM CONSULTING INC. 1500, 701 GEORGIA ST W VANCOUVER V7Y 1C6 (604) 282-1690 20101022 BC Company BC0857447 Active DIRECTOR: Wang, ChiWei **M095401**
 10. INDICA IMMIGRATION AND EMPLOYMENT INC. INDICA IMMIGRATION AND EMPLOYMENT INC. 211, 10216A 152 ST SURREY V3R 6N7 (778) 395-0903 20110408 BC Company BC0835819 Active DIRECTOR: Singh, Ramandeep **M084762**; FORMER DIRECTOR: Hothi, Balbir **M084807**; ORIGINAL INCORPORATOR: Soni, Anil Kumar **M084860**.
 11. MAPLE LEAF EMPLOYMENT AGENCY SKYVIEW IMMIGRATION SERVICES INC. 211, 8232 120 ST SURREY V3W 3N4 (604) 598-2488 20100508 - <http://www.skyviewimmigration.com/about-us.html> - Harvinder Singh Chhina **M064117**
 12. MATRIXVISA INC. MATRIXVISA INC. 1500, 701 GEORGIA ST W VANCOUVER V7Y 1C6 (604) 395-0801 20101020; <http://www.matrixvisa.com/pages/moreaboutus.htm> - Cobus (Jacobus) Kriek, **M041426**
 13. NANNYNANNY.CA JOB PERMITS CANADA INC. 1960 ALBERNI ST VANCOUVER V6G 1B6 (416) 665-9237 20100616 NOT IN BBB DATABASE; however website states that "NannyNanny.ca and our in-house, licensed Canadian Society of Immigration Consultants work with agents around the world ensuring only the highest ethical recruitment standards. Browse through our database to view candidates both local and abroad." <http://www.nannynanny.ca/faq.php>
 14. OVERSEAS CAREER AND CONSULTING SERVICES LTD. OVERSEAS CAREER AND CONSULTING SERVICES LTD. 204, 12830 80 AVE SURREY V3W 3A8 (604) 572-7786 20101001 BansalKuldeep**M052598** BBB
 15. PRINCE GEORGE NANNIES AND CAREGIVERS LTD. PRINCE GEORGE NANNIES AND CAREGIVERS LTD. 2565 INLANDER ST PRINCE GEORGE V2L 1J6 (250) 612-2995 20110121 **Taiho Krahn** Certified Canadian Immigration Consultant (CCIC) **M095284**
 16. RED SEAL RECRUITING SOLUTIONS LTD. RED SEAL RECRUITING SOLUTIONS LTD. 612 BOLESKINE RD VICTORIA V8Z 1E8 (250) 483-5954 20101117 CampbellKael **M085104** <http://www.redsealrecruiting.com/about.php>
 17. REPONTE IMMIGRATION SERVICES INC. REPONTE IMMIGRATION SERVICES INC. 400, 601 W BROADWAY VANCOUVER V5Z 4C2 (604) 675-6951 20110126 BBB records show a (CSIC?) license number of **06-130996** for this company.
 18. STANDARD PERSONNEL PLACEMENT STANDARD IMMIGRATION SERVICES AND PERSONNEL PLACEMENT, INC. 136, 970 BURRARD ST VANCOUVER V6Z 2R4 (604) 889-1124 20110105 DeitzMarie **M042400** <http://www.standardimmigration.com/ContactUsCanada.html>