



**Canadian Chamber of Commerce  
Response to the Government of Canada / IRCC's consultation on  
Introducing occupation-specific work permits under the Temporary Foreign Worker Program  
July 22, 2019**

**Introduction**

The Canadian Chamber of Commerce is the vital connection between business and the federal government. It helps shape public policy and decision-making to the benefit of businesses, communities and families across Canada with a network of over 450 chambers of commerce and boards of trade, representing 200,000 businesses of all sizes in all sectors of the economy and in all regions.

Many businesses in our extended network use the Temporary Foreign Worker Program when workforce needs cannot be met by Canadian labour supply. The Canadian Chamber welcomes the opportunity to provide feedback on this consultation. The below is based on input from a broad cross-section of Canadian Chamber members with expertise in Immigration issues.

**Temporary Foreign Worker (TFW) Program**

Our members consistently indicate that labour shortage is a top issue, and often *the* most pressing problem they face. The TFW Program is a key mechanism in a suite of responses that many Canadian Chamber members utilize to address their labour needs. The program is not without its challenges, yet it is vitally important to the Canadian business community – and the economy as a whole.

The Canadian Chamber has taken the position that access to talent is of paramount importance, and has advocated in recent years to modernize the approach to temporary foreign workers in a series of specific and constructive ways. Annexed to this submission are two policy resolutions containing our recommendations to further improve access to talent and the TFW Program. Importantly, these resolutions have the support of the breadth and depth of the Chamber network.

**Proposed changes: introduction of occupation-specific work permits**

The Canadian Chamber has concerns about the introduction of occupation-specific work permits as proposed. We suggest that, should the government proceed as outlined, many employers will cease to use the program. The human and financial resource cost to bring a temporary foreign worker to Canada would outweigh the risk of losing that employee soon after arrival. Although we do not believe this is the intent of the proposed changes, there is a high probability that this will be an outcome.

We maintain that if the overall integrity of the TFW Program, including the treatment of temporary foreign workers, is the overarching concern, the government should proceed with the Canadian Chamber's long-standing recommendation (also included in HUMA's 2016 report) to implement a Trusted Employers Program. Both Australia and the United Kingdom have had these programs effectively in place for decades, and Canada should adopt a similar model. The Canadian Chamber, its network and members would be willing partners in supporting the design, development and implementation of such a program.

Earlier this year, the government introduced a new regulatory authority for immigration officers to issue open work permits to temporary foreign workers in cases where there is demonstrable abuse or risk thereof. Where the vulnerability of temporary foreign workers is of concern, we recommend the government focus on improving the open work permit process. For example, setting service standards between the time that a complaint is received and assessed, and then, when appropriate, an open work permit is issued. Again, the implementation of a Trusted Employers Program would further discourage any such abuse from the outset, and in the unfortunate cases where there were transgressions, the employer involved would be appropriately sanctioned.

Specific to the proposed introduction of an occupation-specific work permit under the TFW Program introduced in the Canada Gazette, Part I (vol.153, no.25) and the questions asked therein, the Canadian Chamber has three main points:

- 1) We suggest there is no clear answer to the length of time that a temporary foreign worker should remain with a first employer. Contract requirements with a first employer would likely be different between sectors. While 6 months might be reasonable for businesses focused on seasonal work, it may be different for longer-term employment that is not dependent on seasonal variations in workload. (e.g., meat processing, mushroom growing or the service sector). One-size does not fit all.

We note that the overall time frame for temporary foreign work permits in lower wage categories or agricultural workers is short. If the government's objective is to promote labour mobility for temporary foreign workers, it would be more productive to focus on pathways to permanent residence for all temporary permit holders.

- 2) The costs associated with lawfully recruiting foreign labour and obtaining work authorization for such temporary foreign labour is very high. The Canadian Chamber notes that there is no discussion in the proposed framework of how to compensate the employer who first brings the temporary foreign worker to Canada for the costs incurred if/when the temporary foreign worker moves on.

There may be other approaches that contemplate reimbursement of costs to the initial employer who has the burden of initial recruitment. However as the recommendation stands, an occupation specific work permit that would allow temporary foreign workers to have significantly more mobility without employers receiving compensation for costs incurred would dissuade many Canadian employers of temporary foreign workers from participating in the program in the future. The suggestion of a two-month waiting period

would not be sufficient for balancing the investment that the employer has already put into the recruitment and hiring process.

- 3) During the Canadian Chamber's outreach, the recurring question from members was "how will such changes promote labour mobility and promote competitive wages if employers cease to use it?" If the government's preferred policy option is to move away from employer-specific work permits, we would suggest establishing an entirely new model. This model could involve regional-based, community-focused or sector-specific temporary permit holder labour pools. We have recommended this in the past as an option for temporary workers who have lost their jobs and could be adapted for the issuance of temporary work permits. It could also resemble the "Group of Employers" approach which ESDC previously had in place. The Canadian Chamber and its members would welcome the opportunity to work with IRCC colleagues in developing such a model.

In conclusion, the Canadian Chamber is not supportive of the introduction of an occupational-specific work permit under the Temporary Foreign Worker Program, and is very concerned about the unintended consequences even with any modifications within the proposed framework.

Should you have further questions or need for follow up, please contact Leah Nord, Director Skill and Immigration Policy, Canadian Chamber of Commerce (613-697-9080; LNord@chamber.ca).



## **Annex A**

### **Canadian Chamber of Commerce**

#### **2017 Resolution**

#### **Improving the Temporary Foreign Worker Program**

#### **Issue**

Canada's future economic growth will be determined by our ability to access and retain workers with the necessary skills to strengthen our workforce. It will also be determined by establishing sound economic policy in conjunction with fuelling prosperity for all Canadian citizens. The Temporary Foreign Worker Program supports Canada's economic and labour market interests.

The Chamber network has watched, with growing concern, moves by the federal government to restrict businesses' ability to utilize the TFWP. Restrictions introduced under the previous government have been partially rolled back, such as the 4 in 4 out rule, but other issues such as the lengthy LMIA process have been kept or expanded.

#### **Background**

##### Modernizing LMIA applications

In order to hire a Temporary Foreign Worker, the employer must first request a Labour Market Impact Assessment (LMIA), through Service Canada. The LMIA process is the government's way of ensuring that hiring a foreign worker is not taking away employment opportunities for Canadians and permanent residents.

This process remains based on paper application forms, submitted through mail or fax, despite the movement towards electronic processing in many parts of government. Furthermore, feedback on the status of an application and the reasons for the rejection of unsuccessful applications are rarely available. This could be resolved through the adoption of an electronic portal where applications could be submitted, and tracked through their processing. This would also facilitate compliance with maximum processing times for all applications.

When reviewing LMIA applications, it is necessary for the administrative decision-makers to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness. Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process being free of any abuse.

Unfortunately, this has not been the case with past Labour Market Opinion (recently renamed LMIA) applications.

It is imperative that the administrative decision-makers of the TFWP be subject to the standards outlined under

Canadian administrative law, and that decisions made be subject to review and appeal when necessary. Decisions subject to review are made with an increased level of consideration.

### Implementing the September 2016 TFW Review Recommendations

In 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities completed their review on the status of the Temporary Foreign Worker program. This report contained a number of recommendations that would benefit business.

Among these reforms, the committee recommended a review of the LMIA process to increase speed and efficiency. The committee further recommended the implementation of a “Trusted Employer Program” which would grant an exemption to the LMIA requirement, if an employer has shown to be a trusted user of the program in the past.

Further, the committee recommended that employers and employees be allowed to change the responsibilities and scope of employment, if both parties consent and those do not negatively impact the employee. This change would permit increased flexibility, and job advancement for workers which would benefit both employees and employers alike. The committee recommended that high-wage employees should be exempt from the transition plan requirements of the TFW program, which would lighten the regulatory burden.

Lastly, the committee recommended that IRCC and the federal government review pathways from the TFW program towards permanent residency. Temporary foreign workers are a valuable source of potential future Canadians, and facilitating their transition towards permanent residency and citizenship is a key step to growing Canada’s economy and the nation as a whole.

### Retain flexibility for LMIA exemptions

In the near future, Canada will likely face a nation-wide demand for senior expertise due to increasing global competition for talent, retirement, as well as the need for foreign expertise in emerging Canadian industries. In order to ensure that TFW admissions meet the needs of local labour markets, the government should improve cooperation with provincial governments to ensure they are able to name segments of the labour market that are in demand, and which fit the economic development of their regions.

Training local talent to replace retired workers will take years and in the meantime, rapidly growing industries desperately need to fill the empty gap between newly trained labour and locally available senior talent. Therefore, annex agreements should be renegotiated to include only a limited list of industries and occupations where qualified Canadians are not available, in order to address immediate labour needs on a temporary basis, as well as employing the Global Skills Strategy categories for occupations facing a shortage in Canada, based on reliable labour market information for each region.

### **Recommendations**

That the federal government:

1. Ensure that any further changes to the TFWP reflect the needs of the economy on both a regional and a sectoral basis.
2. Modernize LMIA applications and feedback by:
  - a. Increasing the use of online applications with streamlined forms.
  - b. Instituting an appeal process for denied LMIA applications.
  - c. Giving clearly detailed explanations to applicants when LMIA applications are denied.
  - d. Removing restrictions for full-time employment on the LMIA application.
  - e. Setting a maximum processing time for all LMIA applications.

3. Implement Recommendations from the September 2016 HUMA TFW Report by:
  - a. Reviewing the LMIA process to increase speed and efficiency.
  - b. Implementing a “Trusted Employer Program” to reduce processing times for applications.
  - c. Permitting contract modifications for TFWs if both parties consent, to alter agreed-upon wages or change duties.
  - d. Exempting high-wage TFWs from the Transition Plan requirement.
  - e. Reviewing pathways to permanent residency for any TFW fulfilling a permanent labour market need.
4. Expand the use of Global Skills Strategy categories for occupation-specific work permits for TFWs that are excluded from the requirement to apply for an LMIA.
5. Include industry representatives in TFW Working Groups prescribed in the Annex Agreements.



## **Annex B**

### **Canadian Chamber of Commerce**

#### **2018 Resolution**

#### **Improving the Temporary Foreign Worker Program**

#### **DESCRIPTION**

Canada's future economic growth will be determined by our ability to access and retain workers with the necessary skills to strengthen our workforce. It will also be determined by establishing sound economic policy in conjunction with fuelling prosperity for all Canadian citizens. The Temporary Foreign Worker Program (TFWP) supports Canada's economic and labour market interests.

The Chamber network has watched, with growing concern, moves by the federal government to restrict businesses' ability to utilize the TFWP. Restrictions introduced under the previous government have been partially rolled back, such as the 4 in 4 out rule which restricted temporary foreign workers (TFW) to 4 years in Canada maximum before requiring 4 years out of the country, but other issues such as the lengthy Labour Market Impact Assessment (LMIA) process have been kept or expanded.

#### **BACKGROUND**

##### Modernizing LMIA applications

In order to hire a Temporary Foreign Worker, the employer must first request a Labour Market Impact Assessment (LMIA), through Service Canada. The LMIA process is the government's way of ensuring that hiring a foreign worker is not taking away employment opportunities for Canadians and permanent residents.

This process remains based on paper application forms, submitted through mail or fax, despite the movement towards electronic processing in many parts of government. Furthermore, feedback on the status of an application and the reasons for the rejection of unsuccessful applications are rarely available. This could be resolved through the adoption of an electronic portal where applications could be submitted, and tracked through their processing. This would also facilitate compliance with maximum processing times for all applications.

When reviewing LMIA applications, it is necessary for the administrative decision-makers to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness. Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process being free of any abuse.

Unfortunately, this has not been the case with past Labour Market Opinion (recently renamed LMIA) applications.

It is imperative that the administrative decision-makers of the TFWP be subject to the standards outlined under Canadian administrative law, and that decisions made be subject to review

and appeal when necessary. Decisions subject to review are made with an increased level of consideration.

### Implementing the September 2016 TFW Review Recommendations

In 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities completed their review on the status of the Temporary Foreign Worker program. This report contained a number of recommendations that would benefit business.

Among these reforms, the committee recommended a review of the LMIA process to increase speed and efficiency. The committee further recommended the implementation of a “Trusted Employer Program” which would grant an exemption to the LMIA requirement, if an employer has shown to be a trusted user of the program in the past.

Further, the committee recommended that employers and employees be allowed to change the responsibilities and scope of employment, if both parties consent and those do not negatively impact the employee. This change would permit increased flexibility, and job advancement for workers which would benefit both employees and employers alike. The committee recommended that high-wage employees should be exempt from the transition plan requirements of the TFW program, which would lighten the regulatory burden. Lastly, it recommended that IRCC and the federal government review pathways from the TFW program towards permanent residency. Temporary foreign workers are a valuable source of potential future Canadians, and facilitating their transition towards permanent residency and citizenship is a key step to growing Canada’s economy and the nation as a whole.

### Retaining flexibility for LMIA exemptions

In the near future, Canada will likely face a nation-wide demand for senior expertise due to increasing global competition for talent, retirement, as well as the need for foreign expertise in emerging Canadian industries. In order to ensure that TFW admissions meet the needs of local labour markets, the government should improve cooperation with provincial governments to ensure they are able to name segments of the labour market that are in demand, and which fit their regions’ economic development.

Training local talent to replace retired workers will take years and in the meantime, rapidly growing industries desperately need to fill the empty gap between newly trained labour and locally available senior talent. Therefore, annex agreements should be renegotiated to include only a limited list of industries and occupations where qualified Canadians are not available, in order to address immediate labour needs on a temporary basis, as well as employing the Global Skills Strategy categories for occupations facing a shortage in Canada, based on reliable labour market information for each region.

We support the goal of promoting the hiring of local labor supply, particularly in the Employment Insurance program, as do thousands of member companies that offer countless job opportunities to those beneficiaries every day. But we believe that the strict limits on the use of temporary foreign workers now imposed under the TFWP are contrary to what is desirable for the Canadian labour force. Increasing the cost for the analysis of a file and impose substantial fines on offenders to limit abuse is one thing, but:

- making LMIAs burdensome and unwieldy;
- requiring employers to develop transition plans for trades and professions in chronic shortage while we know their commitment to developing the workforce;
- performing continuous checks to ensure that the number of workers does not exceed the allowed threshold;
- refusing to process applications from districts with full employment which are located in large economic regions where there is no public transport infrastructure that allows commuting;

are hindering rather than encourage prosperity and employment.

### Taking into consideration the evolution of the labour market

The labour market evolves quickly as a result of economic growth, an aging population and the digital transformation of the economy. The demand for new skills is soaring: more than a third of the top skills sought are or will be new, according to the World Economic Forum<sup>1</sup>. Moreover, full employment has been achieved in several Canadian towns where the supply of labour no longer meets demand.

Program criteria, whose temporary provisions were developed before it was launched in 2014, no longer correspond to current economic reality. For example, vacant positions across Canada increased by 30 percent between the first quarter of 2016 and the fourth quarter of 2017, while the Bank of Canada's intensity of labour shortages index increased by 63 percentage points, going from 28% to +35%<sup>2</sup>. Yet, during the same period, caps on the use of temporary foreign workers (TFW) were applied to most employers.

Program criteria should evolve according the labour needs of businesses, particularly the cap on TFW in a single facility. Also businesses, whether or not they used the Program before 2014, face the same labour market conditions and the same recruitment challenges.

The cap on the proportion of TFW should be maintained at 20 percent, prevailing level from July 2015 to July 2016, for all employers, and not exclusively for "employers who accessed the Program prior to June 20, 2014", as announced in April 2017 as part of Budget 2017<sup>3</sup>.

## **RECOMMENDATIONS**

That the federal government:

1. Ensure that any further changes to the TFWP reflect economy needs on a regional and sectoral basis.
2. Modernize LMIA applications and feedback by:
  - a. Increasing the use of online applications with streamlined forms;
  - b. Instituting an appeal process for denied LMIA applications;
  - c. Giving clearly detailed explanations to applicants when LMIA applications are denied;

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<sup>1</sup> World Economic Forum: Future of Jobs Report, 2016

<sup>2</sup> Bank of Canada: Monetary Policy Report - April 2018

<sup>3</sup> Employment and Social Development Canada: Government of Canada strengthens Temporary Foreign Worker Program through Budget 2017 - Canada.ca

- d. Removing restrictions for full-time employment on the LMIA application;
  - e. Setting a maximum processing time for all LMIA applications; and
  - f. Notifying employers of any changes to processes or information utilized in the calculation and submission of their initial LMIA application.
3. Create a temporary foreign worker (TFW) labour pool where semi-skilled or skilled TFWs who have been terminated without cause can register with an open work permit, creating a 'pool' from which other qualified industry specific employers from across Canada can recruit.
4. Revise program standards according to business labour needs, particularly for the use of TFW in a single facility, which should be capped at 20 percent for all employers.
5. Implement Recommendations from the September 2016 HUMA TFW Report by:
  - a. Reviewing the LMIA process to increase speed and efficiency;
  - b. Implementing a "Trusted Employer Program" to reduce application processing times;
  - c. Permitting contract modifications for TFWs if both parties consent, to alter agreed-upon wages or change duties, still adhering to federal and provincial wage and labour standards;
  - d. Exempting high-wage TFWs from the Transition Plan requirement; and
  - e. Reviewing pathways to permanent residency for any TFW fulfilling a permanent labour market need.
6. Adopt measures to meet chronic and local labour shortages by:
  - a. Exempting companies engaged in workforce development from the obligation to provide transition plans for trades and professions experiencing chronic shortages;
  - b. Expand the use of Global Skills Strategy categories for occupation-specific work permits for TFWs that are excluded from the requirement to apply for an LMIA;
  - c. Review National Occupation Classification (NOC) Code processes in all provinces, and establish flexible, responsive practices that incorporate rural, urban and regional labour market needs;
  - d. Amend the advertising criteria for LMIAs to allow companies from the same sector to jointly advertise rather than as individual organizations; and
  - e. Permit the application process for low wage temporary foreign worker positions in regions where there is full employment (i.e. less than 6% unemployment) located in large economic regions as defined by Statistics Canada and used in the Temporary Foreign Worker Program.
7. Include industry representatives in TFW Working Groups prescribed in the Annex Agreements.