

The Legal & Regulatory Framing of Migrant Workers: Protections and Precarity

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UN envoy links temporary foreign worker program to 'contemporary forms of slavery'

Migrant workers make up about 15 per cent of Canada's agricultural workforce, Statistics Canada says



[Darren Major](#) · CBC News · Posted: Sep 06, 2023 5:46 PM ADT | Last Updated: September 7



Temporary Foreign Workers: Framework

Jurisdiction:

- Concurrent Jurisdiction for immigration, with Federal Laws being paramount: CA 1867, section 95.
- Federal jurisdiction over entry, removal and 'naturalization' of foreign nationals: CA 1867, section 91(25)

Key Bodies:

Immigration, Refugees and Citizenship Canada (IRCC)
Employment and Social Development Canada (ESDC)
Canada Border Services Agency (CBSA)

Key instruments:

- *Immigration and Refugee Protection Act, 2001*
- *Immigration and Refugee Protection Regulations, 2001*



Programs or “streams” for Temporary Migrant-Based Labour

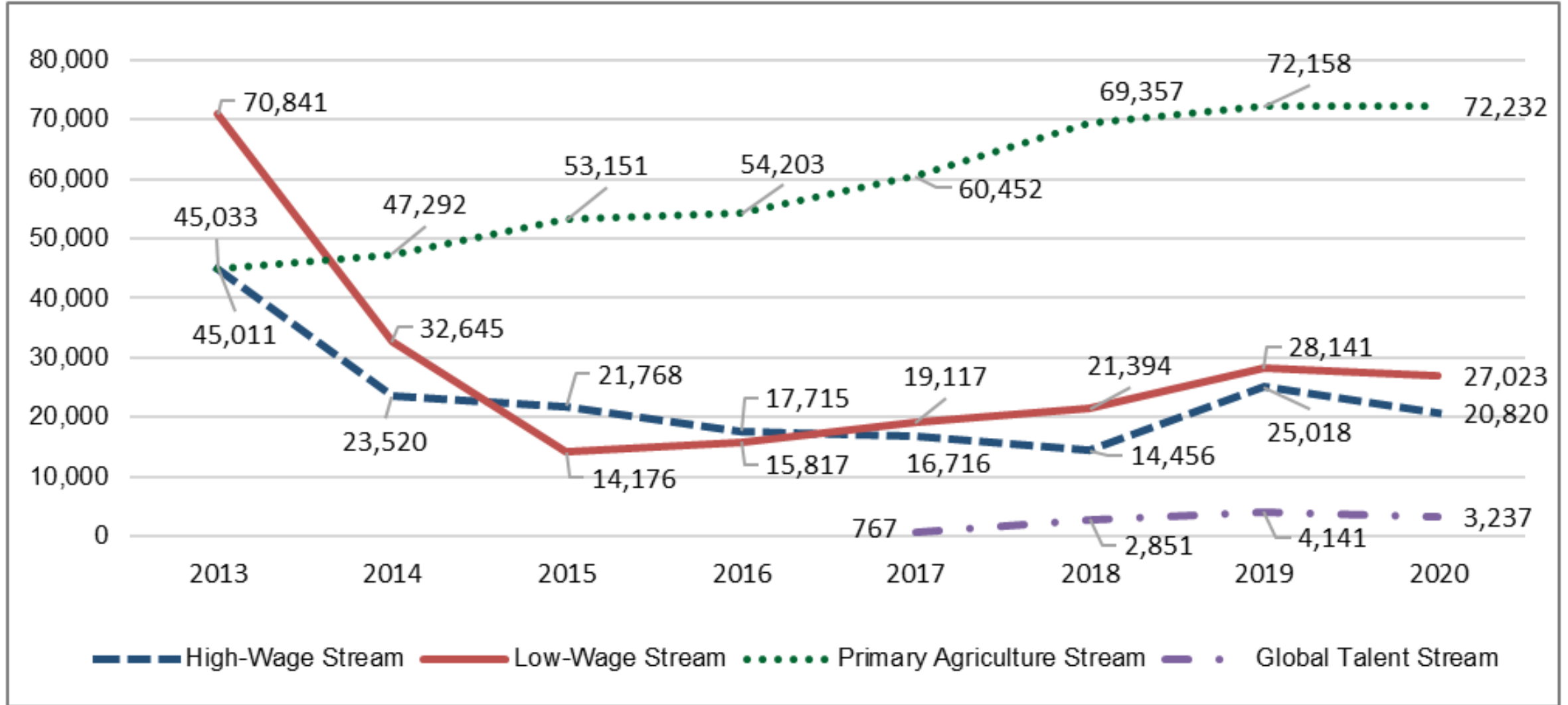
TEMPORARY FOREIGN WORKER PROGRAM

- High-Wage Stream (wages are at or above provincial median salary)
- Low-Wage Stream (wages below provincial median salary)
- Primary Agricultural Stream
 - On-farm agricultural worker
 - Seasonal agricultural workers
- Global Talent Stream (Specialized positions & accelerated process— salary 80K +, or on a list of occupations such as civil engineers, database analysts)
- Caregiver Program(s) (often contemplate transitioning to permanent status)

INTERNATIONAL MOBILITY PROGRAM

- International trade agreements, intra-company transfers, youth work-exchanges, international graduate students post-program, etc

Figure 5: Total number of temporary foreign worker positions approved, by stream (2013 to 2020)



Source: ESDC [Evaluation of the Temporary Foreign Worker Program](#) (June 2021)

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Agricultural Workers Programs

Seasonal Agricultural Workers Program (SAWP)

- Bilateral MOUS – Canada & Mexico, Canada & 11 Caribbean states
- Home states select workers... but employers select source state, & can nominate individual workers to return
- 6 week to 8 month work term with an employer
- Closed work permit

General Agricultural Stream

- Little state involvement, often a broker who will expect a commission, a private K.
- Usually 1 to 2 year agreement
- Closed work permit

Protections

Federal, Provincial, and Territorial labour laws, occupational health and safety law, all apply to temporary foreign workers.

PLUS Regulations authorize:

- Mandatory compliance reports from employers
- Mandatory information sheets on employee rights
- Hotlines to raise concerns
- 'Surprise' inspections of worksites (requires a warrant)
- Vulnerable worker open work permit process



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Pillars of health protections (Legislated or via the MOUs)



1. Health Care Insurance
2. Workers Compensation Regimes
3. Workplace Standards and Safety

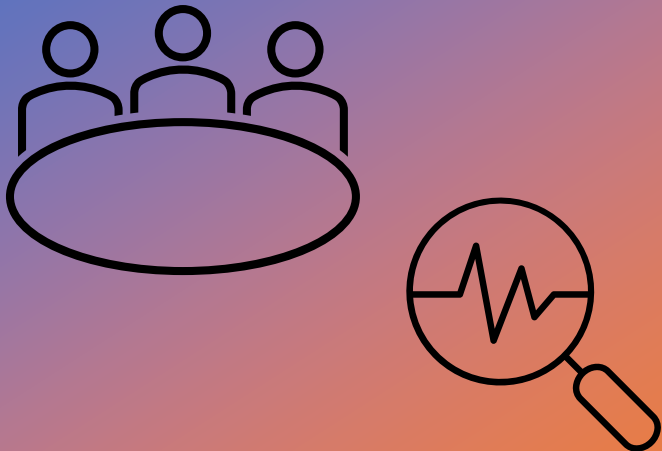
WHAT DO WE KNOW FROM RESEARCH AND COMMUNITY VOICE?

- TFW continue to work when ill or injured
- 69% attribute health problems to work
- Less than 25% seek medical assistance

When do seek health assistance, non-legal access barriers include

- Barriers inherent to work
- Barriers inherent to not having knowledge base of nationals
- Pressure of economic precarity

Barriers also arise from the intersection of the regulatory regime and reality



How the Regulatory Regime is implicated

(1) Private health care is not medicare – promise of equivalency fails in practice





How the Regulatory Regime is implicated

(2) Workers compensation regime designed to serve resident nationals – rules effectively undermine recover for migrants

How the Regulatory
Regime is implicated

(3) Facilitates medical
repatriation being abused
(and vulnerability results in
self-policing)



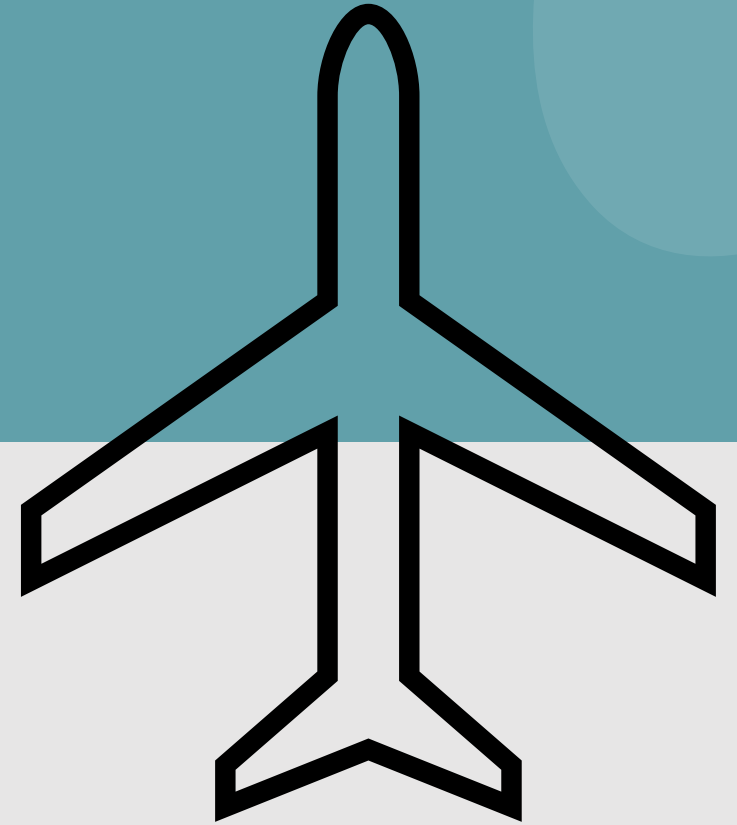


- We supply health care, hospital care, workers compensation.... But only as long as the worker's illness or injury does not preclude their continuing to work.
- Then the worker gets deported.
- Irony: because covered by WC lose right to bring private civil suit (unless injury caused by third party)

Deportation & Nomination

- Unfettered discretion of employers to invoke medical deportation – no procedural rights of employees
- Unfettered discretion of employers to nominate workers to return

Can you really be surprised that 69% of Mexican SAWP workers in BC reported they worked while ill or injured, due to concerns about jeopardizing future employment



THANK YOU

