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Equality Rights for  
Temporary Migrant  
Labourers Under  
Section 15 of the  
*Charter*

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# Guiding questions

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How do **temporary foreign worker programs** in Canada perpetuate **discrimination** and abuse against **migrant laborers**?

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How do employer-tying work policies violate migrant workers' **section 15 *Charter* equality rights**?

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What are the main **challenges** in using section 15 to combat discrimination in temporary foreign worker programs?

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# Presentation structure

## MIGRANT LABOUR IN CANADA

Temporary foreign worker programs

Employer-tied visa policy

## SECTION 15 AND MIGRANT LABOUR

*Charter* rights for temporary migrant labourers

Administrative actors and *Charter* litigation

## SECTION 15 AND EMPLOYER-TIED VISAS

Discrimination and equality analysis

Section 1 considerations



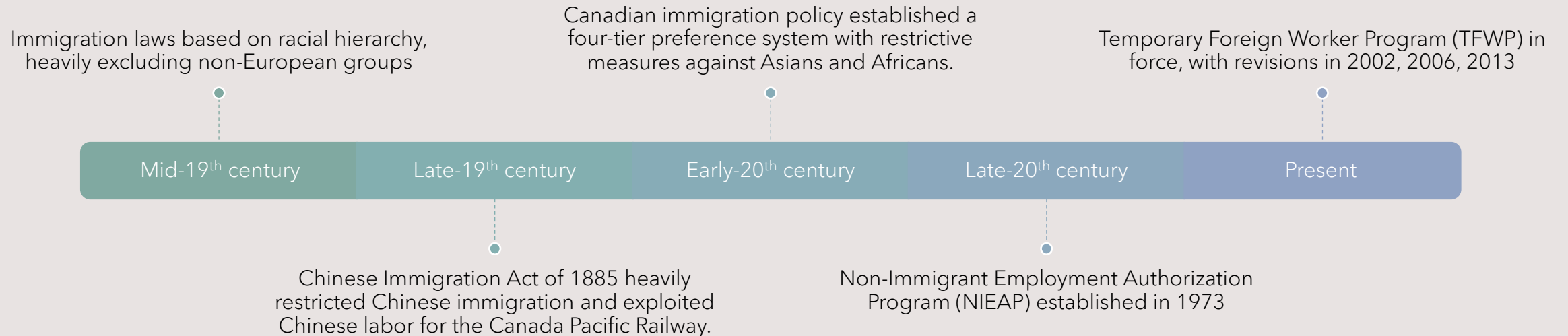
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# Migrant labour in Canada

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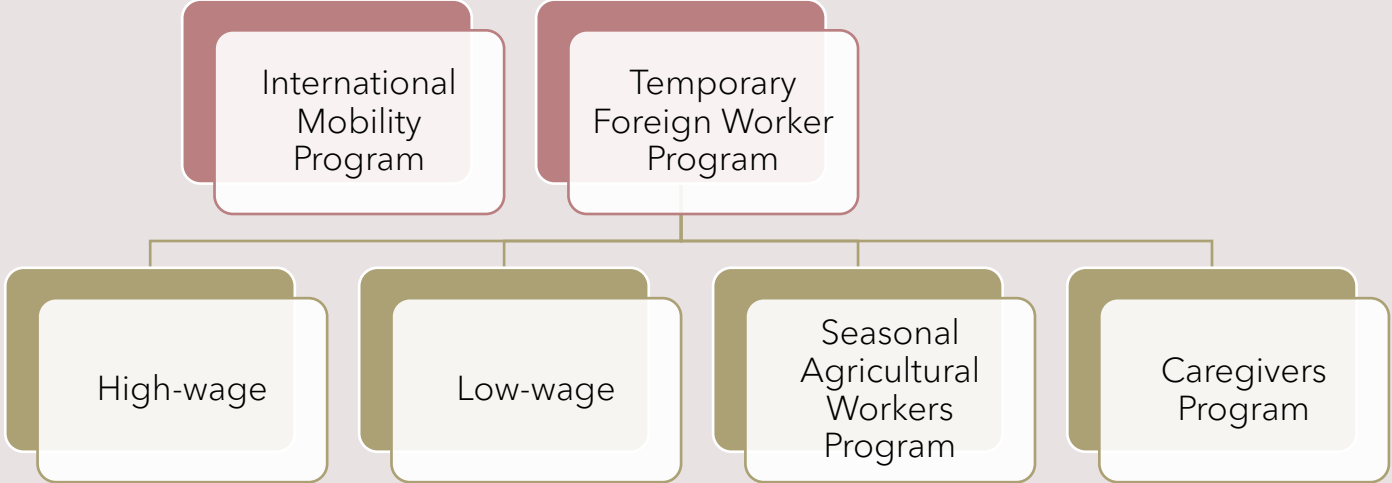
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# History of migrant labour in Canada





# Temporary Foreign Worker Programs



## Abusive employers in TFWP

Labour exploitation

Wage theft

Sexual and gender-based violence

Privacy violations

Physical and social isolation, threats

Unsafe work conditions

Unsanitary, indecent, precarious housing

## TFW quits abusive employer

Work permit  
automatically cancelled

Cannot work for new  
employer before  
obtaining new work  
permit

## Waiting to obtain new work permit

Administrative delays

Precarious financial and  
housing conditions

Forced repatriation

Denied access to justice



# Protections in place



Penalties for non-compliant employers

Fines

Public registry

Ineligibility for participation



Emergency open work permits for abuse victims

Rarely issued

Inaccessible



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# Section 15 and Migrant Labourers

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# *Charter* limitations

Historical reliance on section 7 in immigration public interest litigation

“Rather than disallow equality-based challenges to our immigration laws, we should welcome litigation that seeks to prove the suspicions that our immigration laws may have been shaped by the influence of xenophobic ideologies which may, in turn, have been fertilized autopoetically by government laws and policies. Even where oppressive immigration laws are applicable to all non-citizens and differentiate them as a class from citizens, we should welcome a forum for review in which we scrutinize their full impact on non-citizens so that we can appraise accurately the actual harms and benefits and consider government reasons for imposing such rules under section 1 of the *Charter*.”

Donald Galloway, “Immigration, Xenophobia and Equality Rights”

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Legislated  
discrimination  
against  
agricultural  
workers

Race

Colour

Origin

Citizenship status

Sex

Family status

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# *Charter* application to private employers

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- *Tigchelaar Berry Farms*
  - Employers administering authority pursuant to SAWP statutory framework
  - Question still unanswered

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# *Charter* application to deputized regulatory bodies

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- *Tigchelaar Berry Farms*
    - litigating against F.A.R.M.S.?
    - *Charter* can be exercised over non-governmental entities if:
      - (1) it is found to be “government” because of its very nature or because the government exercises substantial control over it; or
      - (2) it is not itself a government body but nevertheless performs “governmental activities”
    - Power of repatriation
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# Section 15 and Employer- Tied Visa Policy

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*Fraser* test:  
**adverse  
effects**

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Substantive equality framework, not  
formal equality

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Adverse effect discrimination

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Comparator group problem

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*Fraser* test:  
**existing  
disadvanta  
ge**

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Intersecting protected grounds

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History of discrimination within  
Canadian migrant labour programs

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Perpetuating stereotypes

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# Recommendations

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### 1. Strengthen Labor Protections:

Abolish employer-tied visas.  
Protection for fair wages, safe working conditions, and adequate housing.  
Increase regulatory oversight.  
Guarantee labourer access to internet and legal resources.



### 2. Improve Recruitment and Hiring Practices:

Transparent job postings and recruitment processes.  
Prevent exploitative recruiter fees.



### 3. Enhance Monitoring and Enforcement:

Establish robust monitoring and enforcement mechanism to ensure compliance with program requirements throughout the employment period.  
Comprehensive inspections of workplaces, record-keeping requirements.  
Collaboration between labor authorities and other relevant agencies to detect and respond to violations.



### 4. Facilitate Integration and Pathways to Permanent Residency:

Pathways for TFW to obtain permanent residency.  
Review the existing eligibility criteria for permanent residency.

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