

19 October 2021

Standing Committee on Education and Economic Growth
First Report of the Second Session, Sixty-sixth General Assembly
Motion 46 – Referring Bill No. 19, *Temporary Foreign Worker Protection Act* to Committee

Mr. Speaker and Members of the Legislative Assembly,

The Standing Committee on Education and Economic Growth was referred Bill No. 19, *Temporary Foreign Worker Protection Act* on May 13, 2021 for further study and to consider input from the public and relevant stakeholders. Your committee is pleased to present its findings and recommendations in its first report of the Second Session of the Sixty-sixth General Assembly.

Committee Mandate

The Standing Committee on Education and Economic Growth is charged with matters concerning education, heritage, culture, tourism, industry, labour, provincial infrastructure, transportation, telecommunications, immigration, rural development, municipal and provincial planning, and other such matters relating to education and economic growth.

Committee Membership

Permanent members of your committee are:

Zachary Bell, Chair (District 10, Charlottetown-Winsloe) (*member as of January 8, 2021*) (*Chair as of June 8, 2021*)

Trish Altass (District 23-Tyne Valley-Sherbrooke) (*as of May 25, 2021*)

Hon. Ernie Hudson (District 26, Alberton-Bloomfield)

Stephen Howard (District 22, Summerside-South Drive) (*as of May 25, 2021*)

Hal Perry (District 27, Tignish Palmer Road) (*as of August 17, 2021*)

Gordon McNeilly (District 14, Charlottetown-West Royalty) (*as of May 28, 2021*)

Former permanent members of your committee include:

Karla Bernard (District 12, Charlottetown-Victoria Park) (*until March 25, 2021*)

Hon. James Aylward (District 6, Stratford-Keppoch) (*until January 8, 2021*)

Robert Henderson (District 25, O’Leary-Inverness) (*until May 28, 2021*)

Lynne Lund (District 21, Summerside-Wilmot) (*until May 25, 2021*)

Heath MacDonald (District 16, Cornwall-Meadowbank) (*until August 17, 2021*)

Substitute members for the meetings referenced in this report include:

Cory Deagle (District 3, Montague-Kilmuir)

Background

On May 13, 2021, the Standing Committee on Education and Economic Growth was referred Bill No. 19, *Temporary Foreign Worker Protection Act* for further study and to consider input from the public and relevant stakeholders.

Motion No. 46 – Referring Bill 19 (Temporary Foreign Worker Protection Act) to Committee

WHEREAS the House has under consideration Bill 19: Temporary Foreign Worker Protection Act;

AND WHEREAS community organizations have indicated concerns with the Bill;

THEREFORE BE IT RESOLVED that this House commit Bill 19: Temporary Foreign Worker Protection Act to the Standing Committee on Education and Economic Growth for further study and consultation;

THEREFORE BE IT FURTHER RESOLVED that the Committee solicit and consider input from the public and relevant stakeholders on Bill 19;

AND THEREFORE BE IT FURTHER RESOLVED that the Committee report to the House with its findings and any recommendations that the Committee considers appropriate in the upcoming fall sitting.

As noted in the Motion, the committee was to report its findings and recommendations to the Legislative Assembly in the fall session of 2021.

Committee Activities

Since their last report on November 24, 2020, your committee met on six occasions to discuss Bill No. 19, *Temporary Foreign Worker Protection Act*. In addition to in-person meetings, your committee also launched a campaign seeking public consultation which resulted in various submissions. Many of the following recommendations are a result of those submissions. Your committee also thanks the Legislative Assembly Research Officers who provided a jurisdictional scan which provided members with a greater understanding of the protections in place for temporary workers in other Canadian provinces and territories.

Your committee met on **June 8, 2021** to consider their work plan and to discuss the referral of Bill No. 19, *Temporary Foreign Worker Protection Act*. Your committee decided to extend invitations for in-person meetings to various groups, as well as request a jurisdictional scan be done outlining other jurisdictions' protections for temporary foreign workers.

Your committee met on **June 22, 2021** to receive a briefing from the Cooper Institute (Eliza MacLauchlan and Ann Wheatley) on their report: *Safe at Work, Unsafe at Home; COVID-19 and Temporary Foreign Workers on Prince Edward Island*.

On **July 27, 2021** your committee discussed seeking public consultation. The campaign ran from July 9, 2021 to August 25, 2021 and resulted in various submissions which supported your committee's recommendations. Notable submissions were from CUPE PEI, the Cooper Institute, the PEI Seafood Producers Association, the PEI Federation of Agriculture and the PEI Fisheries Association.

Your committee met on **September 10, 2021** to receive a presentation from Fay Faraday, a scholar in residence and faculty affiliate with Osgoode Hall Law School at York University. Faraday presented on and fielded questions in relation to concerns with and suggestions for changes to the proposed Bill No. 19, *Temporary Foreign Worker Protection Act*.

Your committee met on **October 5, 2021** to receive a presentation from CUPE PEI on their thoughts on Bill No. 19, *Temporary Foreign Worker Protection Act* in addition to their written submission to the committee received on August 25, 2021. Your committee also met on this day *in camera* to consider its report to the Legislative Assembly.

Your committee met *in camera* on **October 8, 2021** to consider its report to the Legislative Assembly.

Recommendations

As a result of its deliberations, your committee is pleased to recommend the following to the Members of the Legislative Assembly:

- 1. Your committee urges government to conduct a full review of the legislative framework currently in place for temporary foreign workers to ensure gaps can be addressed through a whole-of-government approach.**

CUPE PEI told the committee that many migrant workers continue to be excluded from protections under the *Employment Standards Act* and access to healthcare remains a major gap when someone is under implied status, has precarious immigration status, or falls out of status completely. Your committee urges government to take into consideration gaps surrounding temporary foreign worker protections in the ongoing review of the *Employment Standards Act*.

- 2. Your committee recommends federal and provincial governments work together to remove any duplication or overlap of enforcement and inspections in relation to temporary foreign worker programs in a manner that does not restrict either level of government.**

Your committee received feedback from the PEI Seafood Processors Association stating concern over costly duplications of enforcement and inspections. The collaboration between federal and provincial governments would allow for any duplication to be identified.

3. Your committee recommends that government introduce additional amendments to allow for investigations to be conducted proactively rather than on the basis of a complaint.

Currently, there is no requirement for the inspector to initiate investigations on a proactive basis. While in Section 32 it is stated an inspector may at any time for any reason conduct an investigation, the proposed legislation should look at adopting Manitoba's model of proactive government enforcement as it has proven to be effective. This will require adequate resources and staffing within the department responsible for carrying out investigations and enforcement.

The concern of the proposed complaints-based system was highlighted by York University Associate Professor, Fay Faraday; CUPE PEI and the Cooper Institute during the committee's consultation. Your committee further notes this change should clearly state a complainant bears no onus to prove the respondent contravened the Act, but that it is the inspector's responsibility to conduct a thorough investigation.

4. Your committee recommends that the department include a template in the regulations that could be used as an agreement between workers and recruiters/employers.

Your committee notes that Subsection 27(g) requires any contract to include the terms and conditions specified in the regulations. Your committee recommends that a template of a formal agreement be included in those regulations when they are released. This will ensure a level playing field for all negotiations and as a basis of all agreements in the regulations. This recommendation was a suggestion of CUPE PEI for committee consideration in their written submission.

5. Your committee recommends that government amend Bill No. 19 to include a new section requiring employers be held liable for their recruiters.

In many other Canadian jurisdictions such as Manitoba, Nova Scotia and Quebec, employers must only use recruiters that are registered. The Cooper Institute stated that by requiring employers to be responsible for their recruiters, it will encourage employers to only use licensed recruiters and provide protection for both themselves and their employees. Fay Faraday stated it would be government's strongest point of shutting down harmful practices as it ultimately is the employers that provide the avenue for labour migration to take place. Employers must be responsible for the conditions under which they bring workers into the country because it can ultimately impact their entire experience in Canada.

6. Your committee recommends government create a new section in the legislation that enumerates the rights of foreign workers and makes reference to guaranteed human rights protections.

This addition should clearly outline the fundamental human rights of temporary foreign workers and the intention of protection. Your committee believes this section should also make reference to other applicable legislation under which foreign workers have their rights guaranteed. As it is

written now, the proposed legislation does not explicitly state that all foreign workers on Prince Edward Island are entitled to human rights protections. CUPE PEI, who had suggested this recommendation, also noted that this change should be seen in acts such as the *Labour Act*, *Employment Standards Act* and *Human Rights Act* so there is no ambiguity in the protections that foreign workers are offered.

7. Your committee recommends that government add a new section that requires adherence by recruiters to a code of conduct.

CUPE PEI suggested Saskatchewan's model for a code of conduct be used as a reference. Fay Faraday also suggested that a code of conduct is necessary and that it must clearly list the unacceptable practices of employers.

8. Your committee recommends that government include a new section that explicitly guarantees the freedom of association for all temporary foreign workers on Prince Edward Island, which includes but is not limited to the right to join a union.

Although this right is guaranteed in the *Labour Act*, Section 9(1), your committee believes that reiterating this protection will only serve to strengthen the legislation. This recommendation was supported by Associate Professor, Fay Faraday (Osgoode School of Law, York University), the Cooper Institute and CUPE PEI. Faraday also suggested that the ability to bargain collectively would allow for workers to ensure their rights and a sufficient quality of life. The Cooper Institute highlighted the need for the legislation to explicitly prohibit recruiters and employers from taking reprisal action against a worker who is active in, or communicates with a community organization for support of any kind.

9. Your committee further recommends that Section 26 be amended to include a provision for public education, employment contracts, or information regarding the afforded rights, to be provided to temporary foreign workers in English, French when appropriate, and the worker's primary language.

During the Cooper Institute's research for the report *Safe at Work, Unsafe at Home: COVID-19 and Temporary Foreign Workers on Prince Edward Island* they found that language barriers were a significant obstacle to finding services and supports. To address this issue, providing any employment contracts or information on the rights of the temporary worker in their primary language as well as in the language the contract was written in will allow for much of that language barrier to be removed.

Section 26 requires recruiters and employers to make available information relating to the rights of foreign workers to those workers. Your committee recommends government expand this to include a public education piece. Further, your committee suggests seeking input from relevant industries to assist in the development of a standardized information package that is given to all temporary foreign workers clearly outlining their afforded rights.

10. Your committee recommends that an amendment be made to Section 3(2) to change “may” to “shall” as it relates to the Minister’s appointment of a Director.

The legislation relies on the appointment of a Director but as it is written, does not require the Minister to appoint a Director. CUPE PEI highlighted that the legislation does not currently include a mechanism through which the framework can be implemented if a Director is not appointed.

11. Your committee recommends that an amendment be made to Section 21(1) to include, amongst the enumerated prohibited practices, a new subsection that specifically mentions retaliation against workers for participating in unions.

CUPE PEI told your committee that it is not uncommon for migrant workers to face intimidation when they seek to unionize or participate in a union. The specific inclusion of the prohibition of mistreatment against workers for seeking participation or actively being a member of a union is recommended.

12. Your committee recommends an amendment be made to Section 28 prohibiting recruiters or employers from releasing personal information to federal authorities without an order from a court requiring disclosure. Your committee further recommends that the Act be amended to include a section explicitly guaranteeing to all foreign workers that any identifiable individual immigration data collected by the provincial government during the implementation of the Act will not be shared with the federal government in any manner that could result in immigration enforcement action.

This amendment would ensure any workers with precarious immigration status who have suffered exploitation and wish to assert their rights will feel safe doing so without fear of losing their immigration status or being exposed to risk of deportation.

CUPE noted in their submission to the committee that currently Section 28 does not include a prohibition on recruiters or employers from releasing personal information to federal authorities without an order from a court requiring such disclosure. By ensuring that employers cannot share any records with federal authorities unless required to do so by the courts, migrant workers will be better protected.

13. Your committee recommends that Section 29 be amended to clarify that both the licensed foreign worker registry and registered employer registry will be made available online.

The Cooper Institute stressed that these registries must be easily searchable and include necessary information for receiving a license. British Columbia recently adopted the use of a registry that includes both recruiter and employer.

- 14. Your committee recommends that an amendment be made to Section 33 indicating no statute of limitations be applicable to complaints relating to contraventions that involve violence, threats of violence, threats relating to immigration status, and sexual misconduct, and that an extension of one year be given for all other complaints.**

Your committee believes a one-year limitation on complaints is not a sufficient amount of time for many migrant workers to launch a complaint. This time limit does not take into account that workers may not be comfortable filing a complaint until they are no longer working for the employer in question may have returned to their country of origin, or may have obtained permanent residency. CUPE PEI and the Cooper Institute recommends 2 years from the date of the contravention.

- 15. Your committee recommends government consider amending Section 34 to include a provision which allows complaints to be filed anonymously, by a third party, or verbally to create an audio or video statement. Further, your committee recommends complaints be permitted in the complainant's primary language and that translation services be made available.**

CUPE PEI suggests that attention needs to be given to workers who may have precarious immigration status and who could be dissuaded from participating in the complaints process in fear that they may face consequences as a result of advocating for themselves. Faraday stated complaints must be allowed to be made anonymously, and by a third party. The Cooper Institute also voiced their support for the ability of third parties to file complaints.

The jurisdictional scan conducted by Legislative Assembly Research Officers found that while the Prince Edward Island legislation seems to be largely based on British Columbia's act of the same name, their version allows for anyone to file a complaint regarding a contravention of the Act, and the Director may investigate even if no complaint has been made.

- 16. Your committee recommends that an amendment be made to Section 38 to state that no worker shall have costs ordered against them or face penalties of any kind for bringing a complaint forward, even if that complaint is deemed to be without merit.**

In their written submission to the committee, CUPE PEI suggested that the proposed legislation explicitly note that no worker shall have costs ordered against them or face penalties for all complaints that were brought forward.

- 17. Your committee recommends that an amendment be made to Section 58 to require the Director to publish the names of violators. Therefore, your committee recommends Subsections 58(1) and 58(2) be amended so that the word "may" is replaced by the word "shall". Further, your committee recommends the names be compiled and made publicly available online.**

Currently, the section gives the Director discretionary power to publish names. The committee feels it is in the public interest of all Islanders, including foreign workers, to know which employers and recruiters are violating the Act. As it is currently written, the Director may make the information available for public inspection during regular business hours at the office of the Director. This makes it impractical for workers in various industries such as farming or those in the seafood processing industry during fishing season, to be available during business hours to go to the office of the Director.

18. Your committee recommends that government strive to educate employers on Bill No. 19 following Royal Assent in advance of proclamation. Further, your committee recommends that government publicly announce the intended day of proclamation.

Your committee feels that employers who may currently be in contravention of the Act be given a grace period to allow for education on the contents of Bill No. 19 and to familiarize themselves with it in advance of proclamation. Having a publicly available date for proclamation will allow industry to be prepared.

Conclusion

Your committee thanks government for bringing forward this important Bill. Although the legislation as it stands now is strong, your committee and those who have submitted feedback believe it could be further strengthened. Your committee and contributors know this legislation will not alone address all of the issues that migrant workers face. Your committee thanks all who have contributed either in-person or by submitting a written feedback, all of which assisted in the creation of this report. It should be noted that all who submitted believe in the integrity of Bill No. 19, *Temporary Foreign Worker Protection Act* and appreciate the work of temporary foreign workers on Prince Edward Island as many of our key industries rely on them.

Your committee thanks government for their consideration of the aforementioned recommendations and again to all who have contributed to their creation. This concludes your committee's work on Bill No. 19, *Temporary Foreign Worker Protection Act*.

Respectfully submitted,

Zachary Bell, MLA
Chair, Standing Committee on Education and Economic Growth