Temporary Foreign Worker Program

Co-Developing a Worker Protection Protocol

July 16, 2019

The Innovation Lab and Integrity Operations, Integrity Services Branch, collaborated over several months culminating in a workshop. The object was the co-development of a joint worker protection protocol to respond timely to sensitive health, safety and protection issues of Temporary Foreign Workers.

Using a human-centered approach, the objective of the workshop was to bring together stakeholders that work directly on the day-to-day management, coordination, and resolution of incoming protection cases to address the need to build a joint operations protocol across ESDC.

The workshop was attended by Integrity Services Branch, Skills and Employment Branch, Program Operations Branch, as well as by Immigration, Refugees and Citizenship Canada.

LAB INNOVATION

Context

The Temporary Foreign Worker Program (TFWP) serves as a temporary source of labour where Canadian skills or labour is not readily available. Employers that can demonstrate Canadians are unavailable, and meet other program requirements, can receive permission from ESDC/Service Canada to hire a Foreign National on a temporary basis.   The TFWP is jointly administered by ESDC, Immigration, Refugees and Citizenship Canada (IRCC), and Canada Border Services Agency (CBSA). The program administration within ESDC spans across three branches including, Skills and Employment Branch (SEB), Program Operations Branch (POB), and Integrity Services Branch (ISB).

Situations arise that require the timely and coordinated collaboration of various TFWP stakeholders across ESDC branches (SEB, POB, ISB), as well as other departments (IRCC, RCMP and CBSA) to address emergencies that require the timely protection of Foreign Nationals. Various situations arise that require a protection protocol, ranging from an accommodation or housing issue (such as mould), to an emergency (such as fire), or allegations of abuse or mistreatment.

Complicating the communication and coordination between the various program stakeholders is the wide range of case triggers. Information may be received through the tip line, media, provincial or territorial government bodies, law enforcement, on-site inspection, call or letter from the public, consulate/embassy, etc. The requirement of the Labour Market Impact Assessments (LMIAs), and the recent shift towards open work permits in situations where Foreign Nationals are experiencing abuse, or who are at risk of abuse in the context of their employment, further complicates timely coordination between stakeholders.

Approach

The Lab facilitated a design sprint inspired by Design Thinking that brought together different departmental perspectives to develop quickly and iteratively a process blueprint for a worker protection protocol. Access to end-users for this project was limited and, as such, a truly human-centered approach to design was not possible. Instead, the approach for this project was grounded in empathy through a collection of end-user stories, in keeping with a Design Thinking cycle.

- A 3-hour orientation and sense-making session on June 5, 2019, to introduce subject matter experts to the Lab project and to socialize roles and responsibilities among key ESDC players; and,
- A full day workshop on July 16, 2019 to begin the co-development of a joint worker protection protocol to respond timely to sensitive health, safety and protection issues.

Orientation & Sense-Making Session Highlights

The objective of the orientation/sense-making session held on June 5th was to introduce key subject matter experts across ESDC to the project, as well as to discuss the scope of the protocol and the roles and responsibilities of key players. A pre-mortem activity was held to consider what might go wrong with the development of the worker protection protocol in advance and to mitigate any risks. An activity and rich discussion regarding role definition and key responsibilities of TFWP across the different ESDC branches followed. (See Annex A for participant list; see Annex B for Roles & Responsibilities)
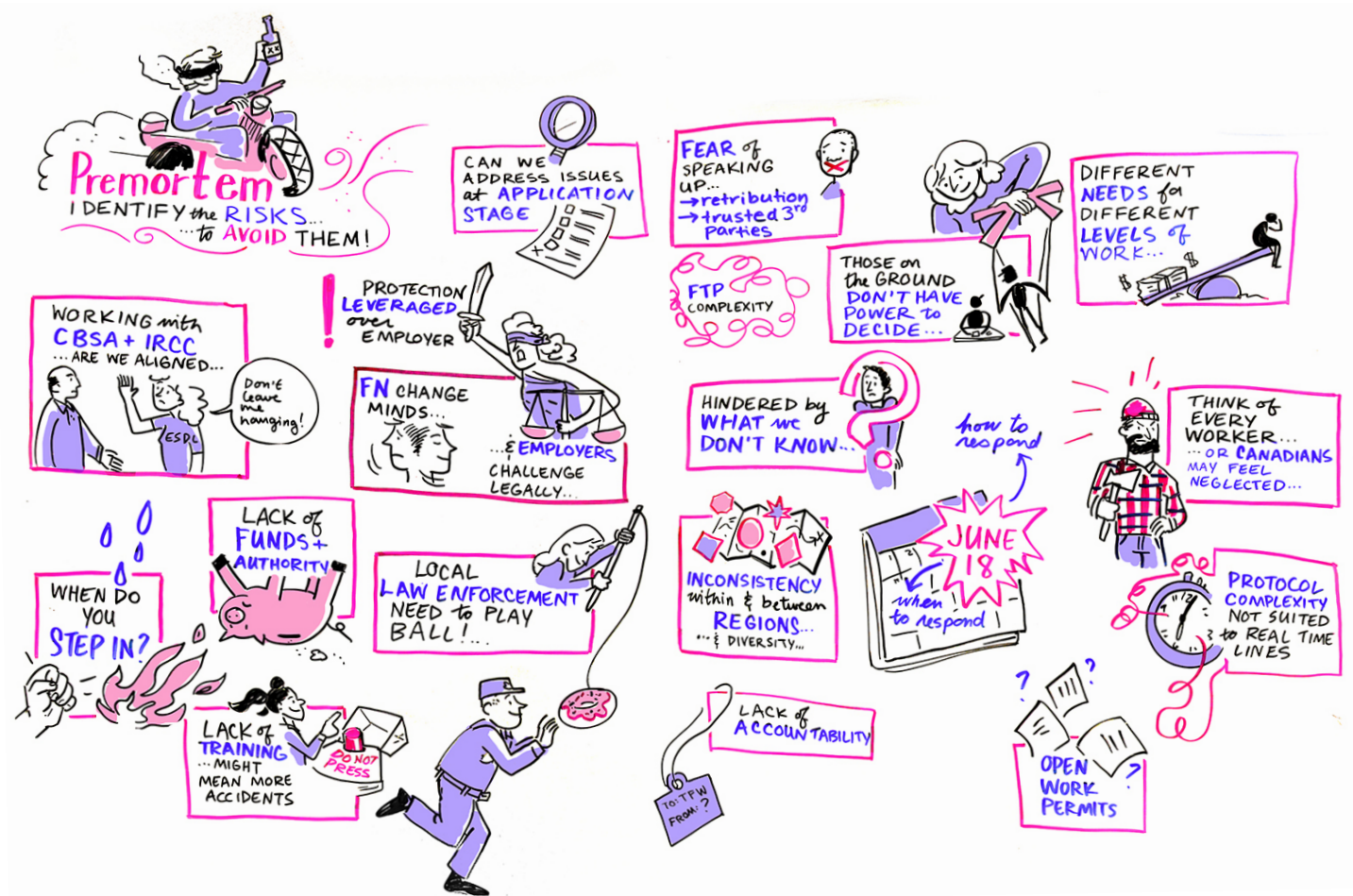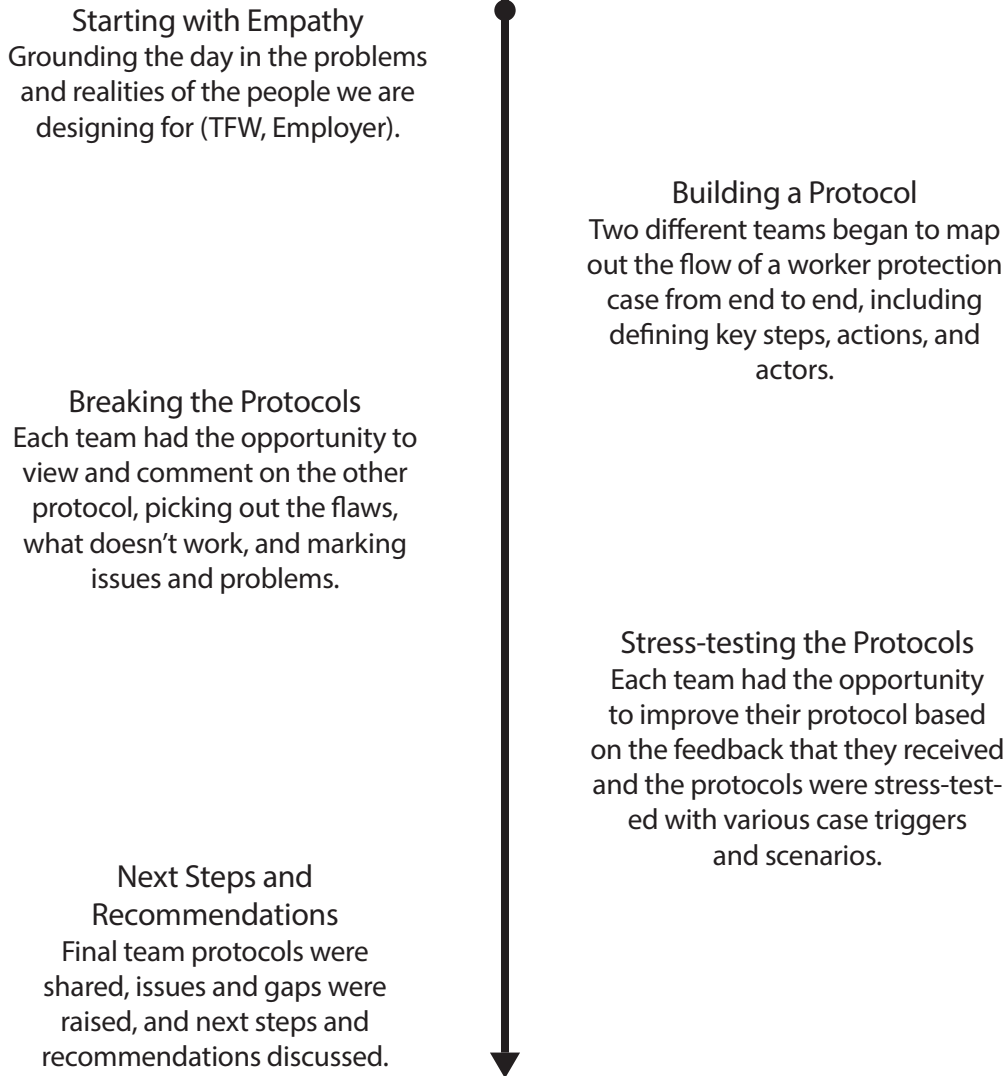

What We Learned

- The conversation was missing the voice and perspective of Integrity Policy in SEB, Regional POB, as well as IRCC as a program delivery partner.
- There was a common understanding of overall role and key responsibilities across the branches (SEB, POB, ISB) within the TFWP.
- Gaps were surfaced around the definition of what constitutes the need for worker protection in relation to ESDC's role.
- Key considerations related to the management of LMIAs and open work permits were raised, such as determining open LMIAs, preventing the approval of LMIAs for risky employers, and revoking an LMIA that might affect workers who do not require protection.
- Eleven out of 16 of the attendees participated virtually. This made participating in collaborative group activities difficult, and the challenge was intensified by limited technological capacity.

Co-Developing a Worker Protection Protocol

Building on the discussion and rich learning gathered through the orientation session, the Lab and ISB planned a full day workshop that took place on July 16, 2019. The workshop targeted subject matter experts and managers that work directly on incoming protection cases, including case coordination and resolution. With representation from across ISB, POB, SEB as well as IRCC (see Annex A for the participant list), the workshop was designed to bring the various stakeholders together to collaboratively build a worker protection protocol.

Starting with Empathy
Grounding the day in the problems and realities of the people we are designing for (TFW, Employer).

Building a Protocol
Two different teams began to map out the flow of a worker protection case from end to end, including defining key steps, actions, and actors.

Breaking the Protocols
Each team had the opportunity to view and comment on the other protocol, picking out the flaws, what doesn't work, and marking issues and problems.

Stress-testing the Protocols
Each team had the opportunity to improve their protocol based on the feedback that they received and the protocols were stress-tested with various case triggers and scenarios.

Next Steps and Recommendations
Final team protocols were shared, issues and gaps were raised, and next steps and recommendations discussed.

Key Challenges

TFWP is based on employer compliance and protection of the worker is not guided by policy or regulation to outline departmental/branch account-abilities or responsibilities.

The scope of "emergency" and "protection" are undefined. Who has the mandate for worker protection and what cases should be considered?

Protecting the worker requires we make use of external resources and help TFW to use the supports available to them.

The Protocols

Two teams, each with representation from ISB, SEB, POB and IRCC were tasked with working together to begin to map out the flow of a worker protection case from end to end. The teams began with defining the key steps or major milestones of the case management process, identifying the activities that take place under each step, as well as identifying key actors and their role.

Please refer to the attachment to view the completed process blueprints

(see Annex C for photo captures of the blueprints)

Key Themes and Considerations Moving Forward

As the teams worked through defining key steps in the case management process and identifying activities, consistent themes began to emerge in the conversation. These themes identify areas in which more work needs to be conducted in order to further develop the process blueprints into a protocol. These themes are captured below:

Scope and Definition of Worker Protection

"How might we collaboratively develop policy to determine the roles and responsibilities of TFWP partners throughout ESDC and beyond?"

- The Temporary Foreign Worker Program is based on employer compliance, and ESDC's role has traditionally been to ensure employer compliance to TFWP. However, recently, ESDC is responsible to consider the protection of the worker and there is no policy or regulation covering worker protection to outline departmental/branch accountabilities or responsibilities. Without support to develop this from senior management, there is little that can be done to implement an efficient, coordinated response to emergency worker protection situations.
- ESDC does not have the mandate to remove workers, but can educate them on their rights or offer them the option to leave.
- The scope of worker protection remains undefined as does the scope of crisis. More work is needed to consider where a protocol might begin and end.
- There is heavy reliance on other stakeholders to support the protection and potential removal process (e.g. community organizations and consultants provide support/services and shelter/food, RCMP can remove if a situation is criminal code related). More work is needed to better define this network of stakeholders and consider their capabilities for response during a protection situation.

Protection of Foreign Nationals in an Emergency or Abuse Situation

"How might we better consider the experience of the worker before, during and after an emergency, beyond the touchpoints they have with ESDC?"

- It is not clear who has responsibility to support workers across the program partners; ESDC does not have resources to shelter or support Foreign Nationals who require protection from risky situations.
- Who has the responsibility for the Foreign National once they make a decision in a protection situation? More work needs to be done to consider the worker's journey as well as the employer's.
- NGO and consulate support is critical to assist workers in a protection situation and no formal agreements are in place (food, shelter, assistance, access to computer to apply for permits, translation/interpretation services, etc.). There are no formal lists available by region to determine where to go for these supports. Furthermore, it is unclear who manages these relationships. More work to make better use of this resource network would have a huge positive impact on workers in protection situations.
- There are limited community supports in rural settings and the capacity/resources of consulates can affect the support provided to workers.
- The transition periods between placements put the Foreign National in a vulnerable position.

Employer Relations and Education

"How might we reconsider employer compliance to ensure continuous education and improvement?"

- POB liaises with employers, but is not funded to have relationships with employers to explore worker fit. Providing too much or certain types of guidance to employers poses risk of conflict of interest. However, there is a need for employer-facing representatives as this allows employers to ask questions regarding worker protection, encouraging continuous education.
- POB creates a list of open LMIAs that the TFW can potentially move into if they choose to leave. POB shares the list with ISB and SEB, and each group takes on informal and formal vetting processes. It is not clear who calls the employer to arrange a potential move. Better defining these roles ensures greater efficiency. Further, there is little understanding of this process in other departments, which opens up greater complexity and potentially doubled administrative burden.
- Successful employers do not receive feedback on their LMIA applications; there is an opportunity to provide feedback to the employer on improvements they can make towards living and working conditions.

Privacy and Confidentiality

"How might we use data and information to its full potential at a federal and local level?"

- Information and data sharing agreements with provinces and territories are not consistent or not exis-tent across country and are often extremely restrictive. Information and resources might be available at a local level with potentially huge impact, but there exists a lack of information sharing agreements.
- ISB has established Information Sharing Agreements (ISAs) with IRCC and CBSA but no agreement with RCMP has been established to date; however, this was not well known amongst participants.
- The privacy protocol and authority under which information can be shared is a grey zone.

Labour Market Impact Assessment (LMIA) and Open Work Permit Procedures

"How might we work across organisations and departments to balance employer and worker interests?"

- Operational procedures are required for finding new LMIAs: currently ISB receives list from POB of open LMIAs and ISB vets the list (IRCC would know if an employer is undergoing an investigation).
- IRCC flagged that open work permits are a transition measure, and thought that an open work permit would initiate an inspection. There are no formal mechanisms for communicating open LMIAs in lieu of open work permits and the lists of approved employers with openings is not readily available to IRCC. There is risk of doubled administrative burden.
- Cases exist where there are external investigations by other stakeholders, such as provincial bodies, housing inspections, consulate farm inspections (e.g. Mexico). This is not always properly communicated and can lead to duplicate work or gaps in knowledge.
- SEB mentioned that a sectoral work permit might be better open than open work permits.
- There was some discussion over the best way to develop a process for closing the loop on open investigations, as the situation of a worker might be resolved long before an investigation. This process should also consider routes for continuous employer education and improvement.

Case Management

"How might we create a collaborative, standardized case management approach that remains flexible in a crisis scenario?"

- Multiple case triggers can lend themselves to different approaches. Sometimes cases will be referred through SEB or POB and it cannot be assumed that the case trigger identifies the lead.
- There were distinct process paths triggered by different types of circumstances; there is a need to discuss and determine a detailed operational approach.
- ISB understands that it should be the lead regardless of who receives the situation information first.
- ISB has a case management system called Integrity Case Management System (ICMS) and POB has an LMIA Management System, there does not exist a shared case management system and record keeping across TFWP partners.
- Case decisions are often made at the executive level; these voices were missing from the workshop and in the development of the process blueprints. There is an opportunity for Senior management to participate in determining mandate/role of each branch with respect to worker protection cases.

Multi-Stakeholder Approach

"How might we create a network of support for the worker through a collaborative, multi-organisational approach?"

- There is an opportunity to explore a "task team approach" to a worker protection situation, for example ISB leads a call in event of an emergency with SEB, POB, ISB, IRCC and other parties, provides a briefing and collectively they determine tasks and next steps.
- There is an opportunity to further define case resolution (e.g. what does it look like, what does it mean).
- There is Interest in ISB sharing information (e.g. TFW interview data) with IRCC for assessment of open work permits in order to reduce the burden on the individual.
- There is an opportunity to invite external stakeholders to the crisis conversation such as CBSA and RCMP, provincial labour ministries, NGO or employer representatives, unclear of the privacy protocol.

Next Steps identified by Participants

- Workshop participants shared interest to engage senior management (e.g. presentation, tri-branch briefing note) seeking support for a project team (tiger team) to operationalize and determine procedures of the worker protection protocol.
- Further discussion to define worker protection scope and clarify program authority in relation to worker protection roles and responsibilities.
- Exploration of the Task Team case management approach to instances requiring worker protection.
- Engagement of policy and regulations TFWP specialists in the discussion.
- The Lab will also follow up with the client in the coming weeks and has offered to assist with management briefings.

Annex

Annex A: Participants
Annex B: Roles & Responsibilities
Annex C: Photo Captures of the Blueprints

A | Annex A: Participants

Multi-Stakeholder Approach

June 5, 2019

- Radmila Duncan, Program Manager, SEB
- Kathleen Vallance, Program Consultant, SEB
- Sumbal Kausar, Program Consultant, POB
- Alison Crawford, Senior Advisor, POB
- Terena Olsen, Senior Advisor, ISB
- Julie Girard, Senior Advisor, ISB
- Krista Ranacher, Program Officer, ISB
- Jacques Charest, Business Expertise Manager, ISB (Quebec Region)
- Carla Pierre, Service Manager, ISB (Quebec Region)
- Jennifer Chow, Business Expertise Advisor, ISB (Quebec Region)
- David Gardiner, Business Expertise Consultant, ISB (Western Region)
- Devin Young, Investigator, ISB (Atlantic Region)
- Deb Allen, Business Expertise Consultant (Ontario Region)
- Tyler Coleman, Service Manager (Ontario Region)

Workshop – Co-developing a Worker Protection Protocol

July 16, 2019

- Julie Girard, Senior Advisor, ISB
- Alison Crawford, Senior Advisor, POB
- Kathleen Vallance, Program Consultant, SEB
- Ruth Caceres Sandoval, Assistant Director, IRCC
- Jade Desrochers Coderre, Policy Officer, SEB
- Terena Olsen, Senior Advisor, ISB
- Julien Hakim, Manager, Service Canada
- Luce Gelinas, Manager, SEB
- Shanisse Klueskens, Policy Officer, SEB
- Amelie Laporte, Senior Policy and Program Advisor, IRCC
- Kelly Floyd, Senior Program Advisor, ISB

B | Annex B: Roles & Responsibilities

During the Orientation/Sense-Making session held on June 5th from 12:30pm to 3:30pm, participants defined their role as part of the TFWP and shared 3-5 key responsibilities. The exercise intended to surface gaps, discuss overlapping areas of work, clarify assumptions, as well as to identify risks. Amongst participants, there was a common understanding of roles and key responsibilities across the branches – a summary is included below.

Skills and Employment Branch

- Policy Development
- Interpretation of regulation and legislation
- Public and stakeholder engagement
- MINO support on file, meet minister's priorities
- Support strong workforce and strengthening of Canadian economy
- Work collaboratively with other government departments to define roles and responsibilities
- Community outreach and stakeholder engagement (Farms, Migrant, IRCC)
- IRPR (Regulations) interpretation

Program Operations Branch

- All things related to operationalizing TFWP
- Support tools (ex. IT, operational directives, stats, coordination of responses to judicial reviews & ATIP)
- Statistics
- Review and assess LMIAs, maintenance of employer's historical information, advice to regions on LMIAs
- Support services to employer and Employer Call Centre (ECC), as well as SEB, ISB, MINO, other stakeholders, etc.
- Interact with other departments
- Communications, web info
- Assist after problems arise
- Develops operational directives
- Systems enhancements

Integrity Services Branch - Regions

- Inspections
- Front-line contact with TFWs and emergency responders
- Referrals, questions
- Leads and inquiries through Employer Call Centre (ECC)
- Training under inspection authorities
- Service Canada also matches workers to LMIAs with IRCC
- Education and workshops for employers on policy and procedures - finding out why errors occur and fixing them with education remedially
- Brief management, HQ, and regional ADM on sensitive cases
- Working groups and steering committee
- Investigators are operational - they operate very differently
- Across regions
- Risk from previous non-compliance
- Guidance and coaching for investigators

Integrity Services Branch - Headquarters

- Employer compliance component based on POB and SEB info
- Work with TBS
- Develop chapters and guidance for inspections
- Ministerial briefings
- Exchanges with IRCC
- Communications including brochure, ISI bulletin
- Investigator information, active list, guidance documents and updates
- iScores - decide who receives inspection
- Decide AMPs and Bans
- Revision of technical advice and provisions - sensitive inspections
- Receives leads and tips that trigger an inspection

Process Blueprint 1

Process Blueprint 2