



The Status of Migrant Farm Workers in Canada

2008-2009



Wayne Hanley
NATIONAL PRESIDENT

Executive Summary

For almost two decades, UFCW Canada has been an advocate and voice for agriculture workers in Canada. UFCW Canada (the United Food and Commercial Workers International Union in Canada) is Canada's largest private-sector union and, in association with the Agriculture Workers Alliance (AWA), operates nine agriculture worker support centres across Canada.

Based on our direct experience with tens of thousands of workers since the early 1990s, this eighth annual report documents the continuing challenges, obstacles, and rights violations faced by the more than 25,000 migrant agriculture workers who now come to Canada each season under Canada's *Seasonal Agricultural Workers Program* (SAWP).

The SAWP is operated by the federal Ministry of Human Resources and Skills Development Canada (HRSDC) as a conduit of temporary foreign workers for the Canadian agricultural sector. The program has expanded substantially since its inception in 1966. The same can't be said for the rights of the workers who are bound by contract to a single employer. Their compensation, housing, and working conditions are set by the agriculture lobby, HRSDC, and the sending country of the worker. Workers themselves have no say, and too often face immediate repatriation at their own expense, and "blacklisting" if they do raise concerns.

Regrettably, a program that works for industry continues to fail the rights of the workers it recruits. And instead of improving the SAWP and making it a model program, the federal government has expanded another program – its *Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training* (TFWP), which offers even less protection to foreign workers. Altogether, the exploitation of migrant and temporary agriculture workers as cheap, disposable labour continues. It also sets a low and compelling standard for other Canadian industries, which increasingly are just as ready to exploit and abuse the rights of foreign workers.

The issue is fundamental. Labour rights are human rights for all workers in Canada, including seasonal and temporary workers. Those rights are worth fighting for. Our role as an advocate has strengthened through a number of initiatives and alliances. These initiatives have raised public awareness in Canada and in the sending countries that the SAWP can and must be changed into a model program – through enhanced inspection, enforcement, and the acknowledgment that the voice of the worker must also be part of the equation.

That is starting to happen. In June 2008, SAWP workers at

a farm in Portage la Prairie, Man., ratified the first-ever collective agreement covering seasonal migrant workers at a Canadian agriculture operation. A first contract is also in place at another Manitoba location. First-contract negotiations are also underway at two sites in British Columbia, one in Saskatchewan, and one in Quebec where temporary seasonal workers are employed.

In Ontario, where the majority of SAWP workers are employed, farm unions continue to be prohibited. But in November 2008, a landmark decision was delivered in the wake of a UFCW Canada *Charter* challenge. The Court of Appeal for Ontario ruled the legislative prohibition of farm unions was a violation of workers' rights to collective bargaining guaranteed under the *Canadian Charter of Rights and Freedoms*. The ruling was appealed by the Ontario government under the direction of Liberal Premier Dalton McGuinty. The appeal will be heard by the Supreme Court of Canada – which has twice before upheld the *Charter* guarantee of collective bargaining rights. A final and definitive ruling by the Supreme Court would positively impact both SAWP and TFWP workers in Ontario, as well as in Alberta where all agriculture workers are also denied collective bargaining rights.

Other legal and lobbying battles continue. Agriculture workers in Ontario and Quebec also suffer additional discrimination under the employment standards acts of those provinces – particularly the denial of premium pay for overtime and holidays that other workers in those provinces receive for excess hours worked, and for work scheduled on a statutory holiday.

Alberta outdoor agriculture workers are also excluded from the basic regulatory *Occupational Health-and-Safety Act* (OHSA) protections that cover other Alberta workers – in spite of the recommendations of a 2008 judicial inquest into the accidental death of a farm worker that OHSA protections should be extended to wholly cover the agricultural industry, which has one of the highest rates of workplace accidents and fatalities of any labour sector.

As a result of Alberta's inaction, UFCW Canada launched and continues a national multimedia campaign (*End the Harvest of Death*) to pressure Alberta to act to extend OHSA to agriculture workers. Our commitment to this is long-term, as it was in Ontario, where three years of UFCW Canada legal and lobbying efforts directly resulted in Ontario finally extending OHSA coverage to agriculture workers in that province in 2006.

Outside the courts, UFCW Canada continues to offer support and advocacy for agriculture workers through the Agriculture Workers Alliance (AWA) – the first-ever Canadian national

organization for both foreign and domestic agriculture workers. The nine centres operate in communities across Canada where migrant farm workers are predominantly located.

Outside of Canada, we have also strengthened our ongoing dialogue with sending governments, including Mexico – the largest source of workers in SAWP. Official agreements with three of Mexico’s largest states are now in place to work together to protect the rights of their citizens while working in Canada. In 2008 outreach was also commenced with other sending countries including, Guatemala, Thailand and Jamaica.

At the grassroots level, UFCW Canada also continues to work with allies also concerned with justice for migrant workers including social justice groups, faith-based organizations, and other non-governmental agencies. On the public front, we have committed to a multi-platform media and lobbying campaign that in 2008 made the challenges facing seasonal and temporary workers front-and-centre in the minds of Canadians and their legislators.

Forty-three years after its inception as a “short-term” solution to a shortage of workers in the agriculture sector, the SAWP and its cousin the TFWP, have evolved into a permanent blockade of workers’ rights. Over the same period the agriculture sector has predominantly grown into vertically integrated industrial-scale enterprise where migrant and temporary workers are often treated as disposable as last year’s crop.

UFCW Canada and the AWA are committed to a better, safer, more equitable reality for all migrant and temporary foreign workers in the agriculture sector. We know that most Canadians would feel the same if they were aware of the plight that so many of these ‘invisible’ workers face at thousands of agriculture locations across the country.

Canada can do better – and must.

Recommendations

Based on our continuing work with migrant and temporary farm workers in Canada we propose the following recommendations for changes to programs that bring migrant agricultural workers to Canada including the SAWP and the TFWP.

1. Provide a transparent, impartial process of appeal – available to all workers – before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.

2. Comply with the rulings of the Supreme Court of Canada and make it a condition of the SAWP and TFWP that provinces bringing migrant workers to Canada provide legislation that allow these workers the right to form and join unions to bargain collectively as provided under the *Canadian Charter of Rights and Freedoms*.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the SAWP and TFWP that workers under the programs are paid at least as much as the provincial seasonal average wage rate.
5. Create national standards that require of all the provinces that foreign workers are fully covered, like all other workers, under the regulatory employment standards and occupational health-and-safety provisions of the province in which they work. Provinces that do not meet this standard would be denied access to SAWP and TFWP workers.
6. Create national standards for the provinces to accredit, monitor and discipline if necessary both domestic and offshore recruiters of foreign workers. Provinces that fail to meet these standards would be denied access to workers under the SAWP and TFWP.
7. Give the workers a place at the bargaining table to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being “named” (requested by name) by an employer, and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
8. Inspect all worker housing prior to and following their occupancy. Random inspections should also be mandated and occur regularly throughout the season. Employers who are found to be in non-compliance with standards for adequate housing terminated from the SAWP. Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters. These conditions should also apply to housing rented to TFWP workers by employers.
9. Make it mandatory that all written materials, instructions and signage – particularly regarding workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish,

Thai, Punjabi, and other native languages as necessary. In addition, an orientation on employment standards and health-and-safety legislation should be conducted for migrant and temporary workers in their native language before they start their employment. A complete, language-friendly information package should also be provided to each worker.

10. Eliminate the practice of withholding 25% of wages for Caribbean and Guatemalan workers.
11. Immediately terminate from the SAWP and TFWP any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through the consulate.
12. If an employer is removed for the SAWP for violating the agreement – including unfair labour practices such as blacklisting a worker – the employer should be banned from participating in any other federal or provincial foreign temporary worker programs.
13. Ensure workers are given a free medical exam before they return to their home country, to confirm they are healthy and free from workplace illness or injury. If this is not the case, ensure that worker compensation claims are filed.
14. Provide financial support to the Agriculture Workers Alliance and UFCW Canada for effective, on-the-ground representation for seasonal agricultural workers.
15. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign workers after 24 months accumulated Canadian employment.
16. Ensure that employers remit a credible *Labour Market Opinion* (LMO) based on much more substantial evidence than currently required, that a shortage of domestic labour exists before allowing the hiring of workers under the SAWP or TFWP programs.
17. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.

Introduction

UFCW Canada is Canada's largest private-sector union with more than 250,000 members across Canada working throughout every sector of the food industry from field to table. In the province of Quebec, it is known by its French acronym, TUAC Canada. In association with the Agriculture Worker Alliance (AWA, see below), UFCW Canada operates nine AWA support centres across Canada.

For almost two decades, UFCW Canada has been the leading voice and advocate for migrant agriculture workers. Since 2002 UFCW Canada has also directly delivered support services, information and health-and-safety training to tens of thousands of migrant agriculture workers who come to Canada through Canada's *Seasonal Agricultural Workers Program (SAWP)*.

Currently, more than 25,000 workers participate in the SAWP – a dramatic increase since this “trial basis” program began in 1966. But while the demand from the industry has grown, the labour and human rights of these workers have remained constrained. There is no pathway to permanent citizenship. Instead, these workers who do some of the hardest and most dangerous work in Canada are excluded from workplace rights other Canadian workers take for granted.

The fact of the matter is that, since its inception, SAWP workers have had absolutely no say about their working and living conditions. That is left up to annual negotiations between the Canadian government through the federal Ministry of Human Resources and Skills Development Canada (HRSDC), the sending countries, and the major employers in the agriculture industry. There is no input invited from the workers, nor do they have anyone representing them at the bargaining table.

The result? A system where employers are essentially unsupervised and unchecked when it comes to the treatment of workers. As for workers who express concerns about health-and-safety issues, or working and living conditions, too often they have found themselves repatriated at a moment's notice, at their own expense.

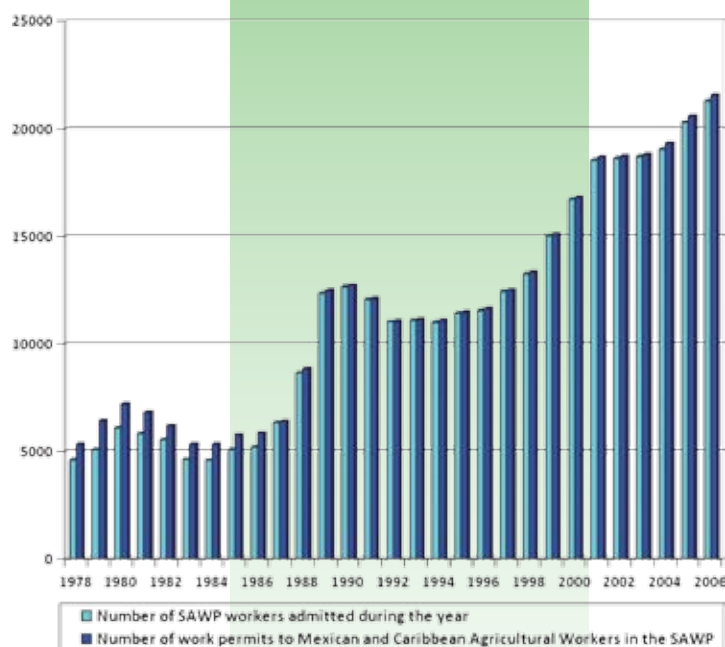
More alarming still is the industry's expanded access to the federal government's *Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training (TFWP)* which offers workers (mainly from South Asia and Central America) even less protection and supervision than through the SAWP.

The result is a competing population of migrant and temporary foreign workers who are vulnerable, powerless ... and the backbone of the Canadian agriculture sector.

Seasonal Agricultural Worker Program

For more than 40 years, the Canadian agricultural industry has fueled its growth with a virtually inexhaustible workforce of migrant labourers in need of jobs supplied through the SAWP. Administered by the federal government, the SAWP acts as a conduit that allows foreign agriculture labourers to work up to eight months a year planting, cultivating, and harvesting during the peak seasons.

The SAWP was launched in 1966 as a short-term solution to a domes-



Annual total SAWP workers in Canada and permits awarded (1978-2006)

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tic labour shortage in Canada's agriculture sector. Four decades later, it has become the permanent fix to supplying workers to a sector that denies labour and workplace rights that most other workers take for granted – such as overtime, holiday premiums, and vacation pay. In Ontario, the restriction of agriculture workers' rights also includes a prohibition on farm unions. The same goes for agriculture workers in Alberta. Outdoor agriculture workers in Alberta workers are also excluded from the protections of that province's *Occupational Health and Safety Act* (OHSa).

The first country to participate in the SAWP was Jamaica. The Canadian-Jamaican labour arrangement allowed for 264 Jamaican workers to come to Canada temporarily as harvesters in Southern Ontario. By 1974, it was extended to include other Caribbean countries and Mexico. Today participating countries include Mexico (1974), Jamaica (1966), Barbados (1967), Trinidad and Tobago (1967), and the Organization of Eastern Caribbean States (Grenada, Antigua, Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Montserrat) (1976).

The agricultural sectors that now access foreign workers include fruit, vegetables, and horticulture. All provinces except for New Brunswick and Newfoundland and Labrador participate in the program. The SAWP also serves as a model for migrant workers in other Canadian industries including hospitality, construction, and meat-packing.

In 2008, the number of migrant farm workers in Canada totaled 21,328. Of this number, 11,798 were from Mexico and 5,916 were Jamaican. The remainder came from Trinidad and Tobago, OECS, and Barbados. The large majority of the workers – nearly 18,000 of them – were employed in the province of Ontario with its large concentration of industrial-scale agriculture operations.

Quebec followed as the province with the second largest contingent of nearly 2,670. For the 2007 growing season, the number of migrant farm workers in British Columbia grew to over 3,000 which prompted the expansion of AWA centres in that province to three locations. A new AWA centre was also opened in Manitoba in 2007 to service the expanding number of SAWP and TFWP workers in that province.

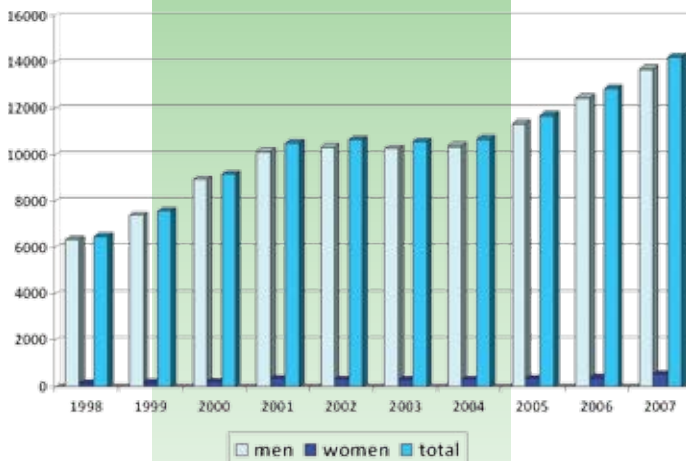
By far, Mexico is the largest sending country.

It is no surprise that the underdeveloped economies and high unemployment in participating countries such as Mexico and the Caribbean have led to a lineup of workers facing economic hardship at home who are eager to supplement their family incomes with wages paid in Canadian dollars. With the global economic crisis at hand, the number of workers from these less stable economies looking towards Canada for migrant labour opportunities will likely increase.

Unfortunately these conditions offer no incentive for the agricultural industry or the Canadian government to improve working conditions and wage rates for migrant agricultural workers. The result? A Canadian agricultural industry that remains stagnant when it comes to labour standards – and working conditions – for both Canadian and foreign workers.

In fact, lobbying to drop the standards of the SAWP even further is now coming from employers looking to emulate the TFWP program where foreign workers must pay for their own housing, their travel to Canada, and sometimes fees to employment brokers.

Both the SAWP and TFWP are subject to the federal *Immigration Refugee Protection Act* (IRPA). To participate in the program and hire seasonal or



Mexican workers in Canada under the Seasonal Agricultural Workers Program (1998-2007)

temporary agricultural workers, employers must apply to HRSDC Canada for a *Labour Market Opinion* (LMO) to demonstrate that local labour is not available for hire.

Until the recent economic crisis, it was not difficult to do, as both the SAWP and TFWP offer workers few protections, restricted labour rights and minimum compensation. Whether Canadian unemployment levels do drive domestic workers to seek agriculture work remains to be seen. In the meantime, the many challenges facing both SAWP and TFWP workers has substantially increased the number of workers seeking support, advice and services from the nine centres we support in association with the Agriculture Workers Alliance.

Agriculture Workers Alliance

For almost two decades, UFCW Canada has been the leading voice and ally of foreign workers in the agriculture sector. In 2002, we opened our first agriculture workers support centre in Leamington, Ont. Building on its success, a series of other centres were opened across Canada to meet the needs of agriculture workers.

In 2008 that effort expanded through the launch of the Agriculture Workers Alliance – the first-ever Canadian national advocacy and support network for domestic as well as foreign workers in Canada under the SAWP and TFWP.

The AWA, in association with UFCW Canada now operates nine agriculture worker support centres across Canada: in Leamington, Bradford, Simcoe, and Virgil, Ont.; Saint-Rémi, Que.; Portage la Prairie, Man.; and Surrey, Kelowna, and Abbotsford, B.C.

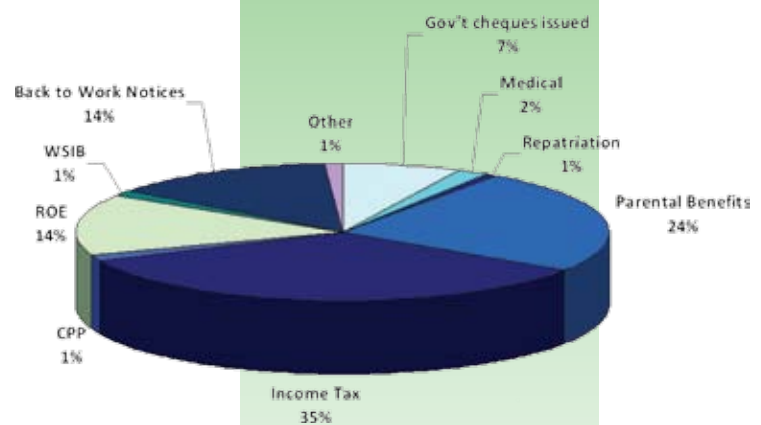
Together, they stand as Canada's the most comprehensive resource of support and outreach to seasonal and temporary agriculture workers.

These AWA centres provide a number of support and advocacy services at no cost to domestic agriculture workers as well as migrant and temporary foreign agriculture workers. In 2008 alone, our centres worked on 40,984 inquiries (phone calls, drop-in visits at the centres and during outreach) across Canada. The AWA National Database has also been created to provide tracking of cases while working in Canada, and even after they return home.

Staff and volunteers at our centres assist agriculture workers with a number of issues: helping to file health insurance and prescription claims; intervening in cases of repatriation, submitting claims for parental benefits; assisting with the filing of income tax statements; submitting workers compensation claims, as well as claim entitlements for vacation pay; evaluating deductions for Canada Pension Plan and Employment Insurance; and submitting claims for parental benefits to name just a few of the services provided (see graph).

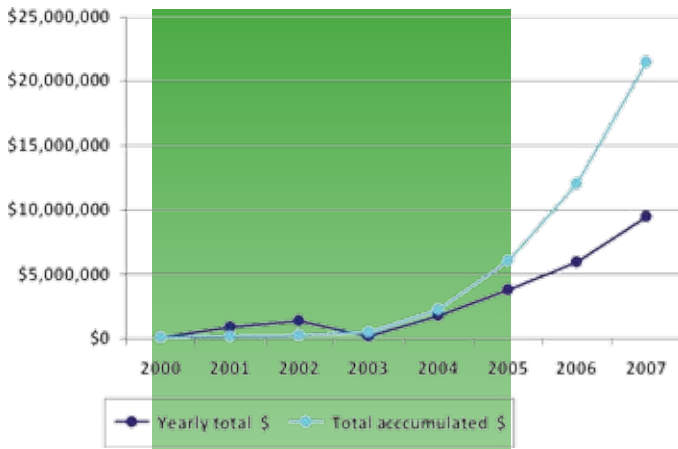
The entitlement to parental benefits was historically unknown to the workers, and not promoted by the government. Nonetheless, the centres' staff have helped file more than \$23-million in accumulated parental benefit claims on behalf of SAWP workers when they qualify for the benefit because they pay Employment Insurance premiums.

The staff at the centres also advocate on behalf of workers in dealing with delays in receiving Ontario Health Cards, and subsequent difficulties receiving reimbursements after paying for medical care. They assist in cases where

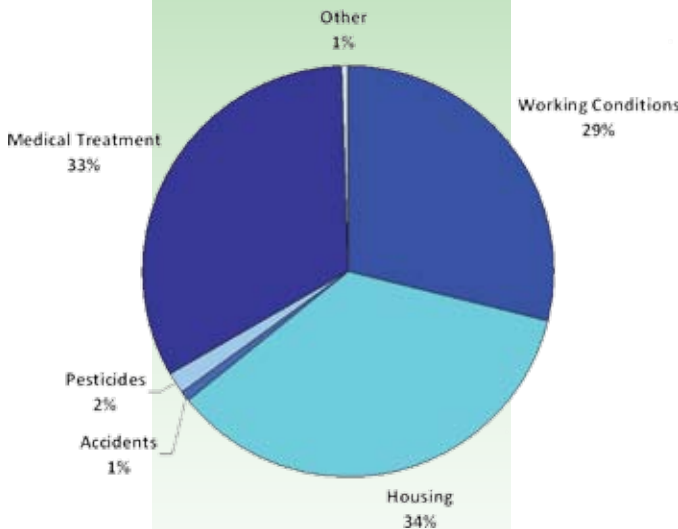


**National caseload analysis
from AWA centres(2007)**

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Monetary value of parental benefit claims (national, 2000-2007)



National complaint analysis from AWA centres (2007)

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migrant agriculture workers are subjected to inadequate or sub-standard accommodations. The centres' staff deal with concerns about working conditions; hours of work; rest periods; inadequate training and knowledge and lack of proper equipment in dealing with machinery, chemicals, or pesticides; transportation costs; and food and overtime pay.

Through the centres, we also delivered hundreds of workshops to thousands of workers on a variety of subjects including but not limited to ESL/FSL language classes, Health-and-Safety, Know Your Rights, Workers Compensation, Parental Benefits, and Bicycle Safety to name a few. Workshops are also conducted about employment standards acts, the Canada Pension Plan and Employment Insurance, and how to claim parental benefits

In order to be fully accessible to agricultural workers who work long hours on weekdays, and may also work on weekends, the centres are open in the midafternoon and late evenings as well as on weekends. As Canada's leading resource and network for all agriculture workers, the AWA also provides a web site and an e-newsletter service with relevant, up-to-date news, legal, and health-and-safety information. The website and e-newsletter are published in English, French, Spanish, Thai, and Punjabi.

Consulate staff from sending countries also look to the AWA for assistance on numerous issues including workers compensation and in providing assistance to access medical care. Through this work and outreach we have acquired a definitive understanding of the many problems migrant farm workers encounter.

UFCW Canada and the AWA also work closely with community groups, academics, local labour leaders, and faith-based groups to create and broaden awareness of the difficulties migrant workers encounter while working here. We continue to build an ever-widening circle of support and advocacy in order to bring change to the SAWP that would bring positive results for migrant farm workers. This work has resulted in increased public awareness of the inadequacies and inequities of SAWP and an increasing demand for government action.

The AWA and UFCW Canada have also developed partnerships with different faith-based groups, academic, government agencies, and NGOs to provide support, research and education for agriculture workers. Currently the AWA has partnered with and developed relationships with academics from leading universities including Wilfrid Laurier, Guelph, McMaster, McGill, British Columbia, Alberta, York, and the University of Toronto.

The AWA also continues to build on our established partnerships with the Canadian Association of Labour Lawyers, the World Council of Churches, KAIROS, *El Sembrador*, the Canadian Labour Congress and its affiliates, the Ontario Metropolis Centre, numerous provincial federations of labour, and the Federation of Canadian Municipalities.

We are building an ever-widening circle of support and advocacy in order to bring change to the SAWP that would bring positive results for migrant farm workers.

This work has resulted in increased public awareness regarding the inequities and labour rights violations many of these vulnerable workers face such as:

REPATRIATION AND THE LACK OF A FAIR REVIEW PROCESS

At any time, for any reason – or for no reason at all – SAWP workers can be repatriated by their employer on a moment's notice. The action cannot be appealed, so the fear of repatriation is the employer's bluntest tool in suppressing the rights of the workers. Sometimes it is used following a legitimate worker complaint about a health-and-safety or living condition issue. On some occasions in the last few years, repatriation has also been used to punish union sympathizers, and warn others the same could happen to them.

This SAWP repatriation provision also allows employers to send home workers who become sick or injured while working in Canada. It is truly a sick system that discourages workers from reporting they are injured, for fear they will be repatriated.

The fear is legitimate, for under the SAWP there is no appeal system. So, even in Canadian provinces where SAWP workers may be covered under health-and-safety legislation, a complaint about a dangerous work situation that could lead to injury is also unlikely. The worker would be on a plane before the case could be heard.

RETENTION OF DOCUMENTS

On top of fear, some employers continue to use the holding of a worker's passport, health insurance card, and other personal documents as a means of control. In the past this practice has also been condoned by consular officials.

This action, which is illegal and clearly improper, points out how powerless most migrant workers remain under the SAWP. While our AWA centres continue to handle complaints from workers who have suffered this injustice, workers outside our outreach have no place to take their complaint under an employer-favoured system that delivers the workers and then leaves them to fend for themselves.

HEALTH-AND-SAFETY STANDARDS

The report from the *Canadian Agricultural Injury Surveillance Program* (CAISP) finds that, after mining and logging, agriculture is the third most hazardous occupation in Canada. However, when it comes to workplace fatalities, agriculture tops the list.

The number of workplace health-and-safety issues that farm workers – particularly migrant agriculture workers – face is abundant.

Race, ethnicity, language proficiency, and citizenship act as determinates in workplace health-and-safety for migrant agriculture workers. In the social hierarchy of the agricultural industry, migrant and temporary farm workers are at the very bottom.

Since 2001, UFCW Canada has recommended in every report submitted to the Canadian government that it establish eligibility criteria for all provinces wishing to participate in the SAWP on behalf of their farm owners. One essential criterion for participation that we have recommended is that migrant farm workers be covered under provincial health-and-safety legislation in order for that province and its farm employers to participate in the SAWP. To date, the federal government has refused to act on this recommendation.

We will keep applying pressure, as we did to Ontario which finally relented in 2006 to end the exclusion of farm workers from the protection of the province's *Occupational Health and Safety Act*. This change was finally enacted by the province only after UFCW Canada began a legal challenge based on the provisions of the *Canadian Charter of Rights and Freedoms*.

Today farm workers in Ontario finally have the right to refuse unsafe



work; the right to know about workplace hazards; and, depending on the size of the operation, the right to a joint health-and-safety committee. Since the change in legislation, the Ontario ministry has conducted more than 200 inspections and has issued 173 *Orders to Comply* as a result of their investigations.

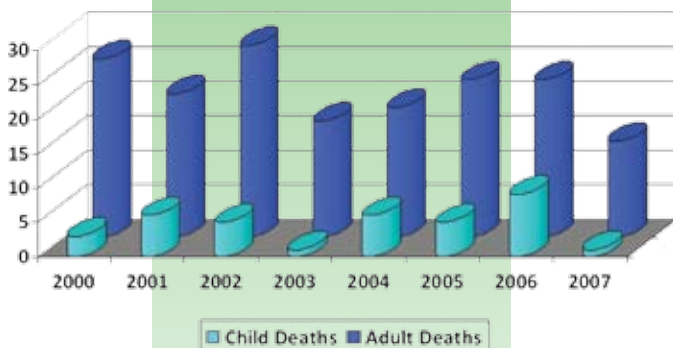
The Ontario Ministry of Labour has also investigated, charged, and fined agricultural operations with unsafe working conditions that have resulted in worker injuries.

Unfortunately, even with the extension of the Ontario OHSA to cover farm workers, migrant agriculture workers remain fearful of reprisal until the SAWP is amended. While migrant farm workers have the provincially legislated right to refuse to perform unsafe work, the worker's employer can simply have him repatriated for exercising this fundamental right.

The same trap for migrant workers exists across the country. While health-and-safety coverage may be in place, the reality is that until the threat of arbitrary repatriation is alleviated, many migrant agriculture workers will fail to take advantage of their right to refuse unsafe or hazardous work.

In Alberta, they have no right at all. That province continues to exclude all outdoor agriculture workers from protection under health-and-safety legislation – this in spite of a 2008 judicial inquiry by Justice Peter Barley that recommended ending the exclusion immediately. The recommendation, delivered in 2009, followed the work-related fatality of Kevin Chandler – an Alberta agriculture worker. Chandler is one of 170 workers who have died accidentally on Alberta farms since 1980.

As Canada's primary advocate for the rights of agriculture workers, UFCW Canada launched a national multimedia campaign to pressure Alberta to follow the inquiry's recommendations. The *End the Harvest of Death* campaign allows Canadians to send their remarks directly to the premier of Alberta. The campaign has also been endorsed by the Alberta Federation of Labour AFL and was covered extensively by the provincial and national media.



**Deaths in the Alberta
agricultural industry
(2000-2007)**



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THE INEQUITY OF PROVINCIAL LABOUR STANDARDS AS THEY RELATE TO AGRICULTURAL WORKERS

Employment standards are the laws that govern basic workplace regulations such as minimum wage, hours of work, vacations, and many other rights. These standards are intended to be a measuring stick to dictate the minimum requirements for all workers in any given province. Unfortunately, to date, many provincial labour laws continue to exclude farm workers from many provisions governing hours of work, vacation pay, and overtime. In addition, current provincial legislation prohibits collective bargaining for all Ontario agriculture workers. Outdoor agriculture workers in Alberta face the same violation of their *Charter* rights to form and join unions for the purpose of collective bargaining.

In Alberta farm workers also suffer limited rights under the *Employment Standards Act*. The exclusion of farm labourers from the provincial employment standards means that farm workers cannot join unions or engage in collective bargaining. In addition, agricultural workers in Alberta are excluded from regulations stipulating minimum wage, hours of work, overtime, vacation pay, holiday pay, rest periods, and the employment of children.

There are approximately 12,000 agricultural workers in Alberta. Of those, 2,600 are employed as temporary or seasonal workers and approximately 600 are migrant workers. Piecework remains prevalent in Alberta's agriculture industry, with employers being able to impose harder work and longer hours with minimal supervision. In addition, piecework opens the door to the utilization of child labour as wages are correlated with production rather than work hours. As agriculture workers are excluded from the Alberta *Employment Standards Code*, child labour is not illegal and remains a reality in the industry.

In the past decade we have seen a rolling back when it comes to employment standards in British Columbia, particularly with regard to agriculture workers. Since coming to power in 2001, the Liberal government in B.C. has reduced employment standards and failed to enforce safety regulations concerning agriculture workers.

As one of its first measures, in July 2001, the B.C. government disbanded the inter-agency *Agricultural Compliance Team*. According to a study conducted by the Canadian Centre for Policy Alternatives – B.C. office (CCPA-BC), enforcing and administering the ESA in the agricultural industry had been a challenge in the province despite the fact that agricultural employment only constituted 1% of the total provincial employment.

The study states that nearly 15% to 20% of the resources of the Employment Standards Branch in B.C. had been utilized on enforcement within the agriculture sector prior to 2002. The high rate of resources devoted to enforcement within this sector, particularly in relation to seasonal harvesters, reflect the high number of employers who did not comply with the B.C. *Employment Standards Act of 1993-1994*.

Instead of devoting more resources to deal with this issue, in 2002-2003, the government of British Columbia passed a set of amendments to the ESA, which stand to date. The reductions of entitlements for workers set the act back nearly 10 years to the 1995 revisions. The parts of the amendments to the act that directly impacted agricultural workers include:

- Eliminating the provision that farmers maintain records of wages paid to employees of Farm Labour Contractors who are utilized on their properties
- Shifting the liability for unpaid wages to Farm Labour Contractors by Creating exemptions from growers' liability
- Considering the inclusion of statutory holiday and annual vacation pay as part of piece rates thus reducing the minimum piece rates payable by nearly 4%
- Excluding farm workers who are paid hourly from statutory holiday and annual vacation allowances
- Reducing the minimum hours to be paid to workers who are transported by Farm Labour Contractors where there is no work from four to two hours
- Reducing the overtime pay for more than 120 hours of work in a two-week period from double-time to time-and-a-half. In addition, regulations exclude farm workers from all overtime entitlements.

These changes not only reduced the wages of agricultural workers in B.C. but also made it even more difficult for these workers to issue complaints for lost wages.



Manitoba farm workers gain Employment Standards protection

While the discrimination of Ontario, Alberta, and B.C. is dismaying, there is evidence that equitable treatment of agriculture workers can happen – given the political will.

On June 30, 2008, the Manitoba government amended its employment standards legislation to finally offer agriculture workers across the province the same workplace protections and standards that have covered most other Manitoba workers since 1957.

Prior to the amendments, the Manitoba's *Employment Standards Act* provided the least provisions and protections for agricultural workers in Canada. The act excluded agriculture workers from vacations, a weekly day of rest, lunch breaks, minimum wage, maternity and parental leave, and provisions regarding child employment.

This historic victory was hard won after more than a decade of advocacy by UFCW Canada on behalf of both domestic and migrant farm workers. Even though Manitoba farm workers had the right to unionize prior to the amendment, they had been excluded from the protections of the province's *Employment Standards Code*. The extension of the code to cover agriculture workers includes proper termination notice, vacation pay, days off, work breaks, unpaid leaves, and overtime and statutory holiday pay for workers at indoor factory farms.

Building bridges with Sending Countries

By far, Mexico is the biggest stakeholder as a participant in the SAWP. In 2007, UFCW Canada began to establish an ongoing dialogue with Mexico concerning the SAWP and improvements that need to be made in order to adequately meet the needs of Mexican workers in Canada.

It began with UFCW Canada's 2007 participation in a delegation to the Mexican Congress Commission on Population, Borders and Migration in order to discuss the problems facing Mexican migrant workers in Canada and our work. Later that year, five Mexican federal deputies from the same commission came to Canada in June 2007 to more fully discuss and explore the issues UFCW Canada had presented in February.

Since then, UFCW Canada National President Wayne Hanley and senior UFCW Canada staff have participated in a series of ongoing bilateral meetings with senior Mexico government officials, political leaders, and leaders of the major Mexico trade unions and public interest groups.

The result of this ongoing dialogue is now a formal partnership with a number of Mexico stakeholders to ensure that the human and labour rights of agriculture workers from Mexico are recognized and enforced while they work in Canadian fields and greenhouses under the SAWP.

The first partnership agreement is with the *Central Nacional Campesina* (CNC) and the *Central Campesina Cardenista* (CCC) – the major Mexico advocacy groups representing workers' issues.

The partnerships continued to develop in 2008 with the signing of a letter of agreement with two concerned Mexican state bodies. The Ministry of Migrants in Michoacán state and the Migrant Institute in Tlaxcala state both signed letters agreeing to joint work, information exchange, direct communication, support, and co-operation in defence of the rights of migrant workers. The agreements spoke to the need for follow-up in Mexico on cases that occur

in Canada such as worker compensation benefits and insurance claims that are oftentimes neglected once a worker is repatriated.

In 2009, the state of Michoacán increased its commitment to joint advocacy with UFCW Canada for migrant agricultural workers with UFCW Canada with an official signing of a letter of agreement by the governor of the state.

On February 24, 2009, Wayne Hanley, the National President of UFCW Canada (pictured, far right) and Governor Leonel Godoy Rangel (centre) of Michoacán state signed a landmark co-operation agreement to ensure that the human and labour rights of agricultural workers from Michoacán, Mexico are recognized and enforced while they work in Canadian fields and greenhouses.

It is a first-of-its kind North American agreement, where a state institution has partnered with a civil society organization to extend services and assistance to its citizens working outside of Mexico. It is a unique pact developed after work and consultation between Mexico executive and parliamentary authorities, as well as state authorities, and UFCW Canada, which has led the campaign for the rights of migrant workers.

Under the pact, workers from Michoacán will be assisted in Canada by UFCW Canada in association with the Agriculture Workers Alliance (AWA). As part of the agreement, the AWA network of centres, staffed by Spanish-speaking staff, will offer counselling and advocacy services regarding labour rights, housing conditions, medical claims, and other work-related issues.

In addition to an advocacy role, the AWA centres will also offer the Michoacán workers workshops and information on health and safety, worker compensation claims, English and French as second languages, translation services, and internet access.

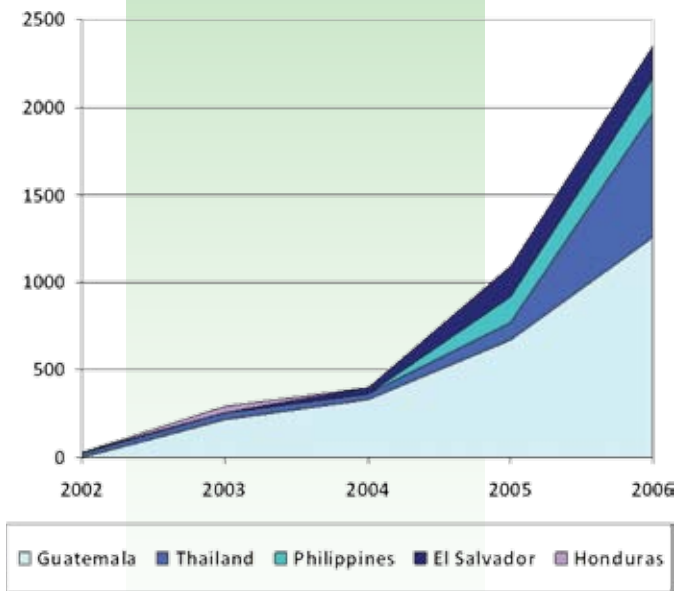
Mexico believes SAWP needs improved protections for its workers in Canada, including the need for a transparent appeals process for workers facing repatriation. As the major sending country, it has also believes special attention needs to be paid to migrant workers' to health care – including language barriers, lack of training on workers compensation, employer retention of documents, the inadequacies of the private medical insurance workers are compelled to buy, and to barriers to obtaining provincial health cards.

We also share Mexico's commitment – as the use of temporary foreign workers expands into more Canadian employment sectors – that the utmost attention be devoted to workers' rights and representation as a central feature of any temporary foreign workers program.

As a result, Mexico has formally recognized UFCW Canada and the AWA as their most credible advocates in Canada, based on our decades-long commitment to those workers. Mexico also understands that without more concrete labour rights guaranteed for all migrant workers in Canada, unregulated competition for access to the Canadian labour market could actually lower



Growth in numbers of non-SAWP migrant workers in Canada (2002-2006)



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standards as Canadian employers pick and choose new sources of offshore labour willing to send their workers without any protections required.

In addition to Mexico, outreach has also been commenced with other sending countries since 2008, including meetings between UFCW Canada representatives and Thailand's ambassador to Canada. A tour of a Thai workers centre in Canada was also conducted. Problems discussed included unscrupulous job brokers, as well as the issue of Thai workers who go AWOL and enter the underground Canadian economy because of bad employers and the lack of monitoring under the TFWP.

In 2008 UFCW Canada representatives also continued discussions with officials from Guatemala and Jamaica. Like Thailand, they are also major sending countries of temporary foreign agriculture workers. While all these countries compete for a share of the Canadian labour market, they also share a concern the competition not degenerate into wide open, race-to-the bottom bidding where the rights of their workers are forfeited at the Canadian border.

That could be the ultimate impact of Canada's loosely monitored TFWP, unless its complete lack of worker protection is addressed.

Protecting workers' families at home may also be an issue. Anecdotal reports have arisen from some areas in Mexico, Guatemala, and El Salvador that, while some workers are away in Canada, their families at home have been forced to pay "protection" money to local extortionists. It is further evidence that increased – not decreased – regulation is required on all fronts of the SAWP and TFWP.

Temporary low-skilled worker program

Agricultural work in fields and greenhouses is physically demanding and dangerous. As Canadian workers have refused to accept the arduous working conditions and low wages associated with work in the industry, and the Canadian government has failed to devise a solution to improve these labour conditions, the flow of migrant workers to Canadian agricultural complexes has continued and has even been extended with the introduction of the Temporary Foreign Workers Program (TFWP) to include sectors of the agricultural industry barred from acquiring workers through the SAWP. Since 2002 workers from Thailand, China and Guatemala and Mexico have been providing additional labour for the agricultural industry as temporary foreign workers under the Occupations Requiring Lower Levels of Formal Training as part of the TFWP.

This program provides even less protection and oversight than SAWP, which is why year-round, industrial agriculture facilities have turned to TFWP as their program of choice. For the workers it is a choice that typically leaves them in the total arbitrary control of their employer.

A case in point: on December 6, 2008 a few weeks before the Christmas holiday more than 70 Mexican and Jamaican agriculture workers at the mushroom grow house outside of Guelph, Ontario were fired without notice. Rol-Land Farms, a multi-million dollar a year, privately owned industrial agricultural corporation had employed the workers under the Temporary Foreign Worker Program.

The workers were also evicted from the housing rented to them by Rol-Land Farms without notice although many of them had already paid their monthly housing charges via automatic deductions from their paycheques.

Many of the workers were repatriated the next day without having an opportunity to make any arrangements. The workers' embassies were not notified of the terminations or repatriations.

Although the workers had signed contracts to work for the mushroom farm for 12 months, the majority had been in Canada only for short periods ranging from three to seven months – barely long enough to cover the cost of coming to Canada and paying rent to their employer.

The provincial and federal governments did nothing for these workers. Having faced no governmental sanctions for their first round of firings and terminations on December 23, 2008, Rol-Land Farms fired an additional 50 Guatemalan farm workers, the majority of whom were women. This time the workers were given a few days notice before their scheduled eviction. They were repatriated December 28-30. These women were contracted to work for a one-year period but were facing repatriation to Guatemala after only two to four months in the country.

These waves of firings and repatriations served as testaments to the failures of the Temporary Foreign Worker Program. The TFWP allowed Rol-Land farm to treat these migrant workers as second-class workers and disposable tools. The incident was a wake-up call for the need for the federal and provincial governments to start accepting responsibility for the treatment of migrant workers under the TFWP.

In the meantime, other industrial growing, year-round growing facilities would like access to the TFWP, or a SAWP that resembles it. The Canadian Horticultural Council (the mouthpiece of the corporate farm lobby) continues to urge the federal government to expand access to seasonal farm labour – without the current SAWP protections attached. Some of their recommendations include:

- Add the floriculture sector to the TFWP program
- Remove the clause in the labour contract that ties the Off-Shore Labour Rate to the prevailing wage rate
- Raise the employee's deduction to cover the total cost of medical insurance
- Issue seasonal work permits for all foreign immigrants and visitors including foreign students to increase farm labour availability during each harvest year
- Remove the word "Seasonal" from the "Work Sharing Program" in the case of the nursery industry, making temporary employment available year-round
- Raise worker deductions to cover up to 50% of travel costs for Mexican workers

Unlike the recommendations suggested by the Canadian Horticultural Council, UFCW Canada continues to push for measures that will improve the working conditions of migrant agriculture workers, and to ensure, in the case of TFWP, they are not used as a device to lever down the already thin rights of other temporary worker programs such as the SAWP.

Unscrupulous job recruiters are another danger that are part and parcel of the TFWP system. Many TFWP workers arrive in Canada essentially as indentured labour because of fees in the thousands of dollars paid to offshore recruiters. To date, HRSDC has not dealt effectively with the problem. The only jurisdiction in Canada that has is Manitoba. In March 2009, it led the way again by way of introducing the first and only legislation of its kind in Canada that prohibits fees paid to offshore recruiters, while forcing Canadian



recruitment agencies to register and post a performance bond.

It is legislation sorely needed in every other Canadian jurisdiction. Given the political will, the federal government could make it happen through the creation of national standards by which all provinces would be expected to regulate, monitor, and discipline if necessary both domestic and offshore recruiters of foreign workers. Provinces that failed to meet these standards would be denied access to workers under the SAWP and TFWP.

Beyond regulating recruiters, Manitoba has again shown leadership by allowing temporary foreign workers access to eventual landed immigrant status under the *Provincial Nomination System* (PNP). This has worked well for both employers and employees at the Maple Leaf hog slaughter and processing facility in Brandon, Man. (members of UFCW Canada Local 832). This, too, should also be emulated outside Manitoba's borders. Currently, the only other workers under the TFWP who can qualify for PNP are workers at unionized facilities, such as UFCW Canada Local 1118 members at Cargill in High River, Alta., and Olymel in Red Deer, Alta.

The pathway to status is part of the collective agreement, and is evidence that the best treatment of foreign workers comes with union representation.

Migrant farm workers and the right to unionize

Since our last report, the landscape of formal worker rights for migrant agriculture workers has changed dramatically, including the first-ever collective agreement at a farm with SAWP workers.

Nationally, the AWA and UFCW Canada, supported by the efforts of UFCW Canada local unions across the country, have filed 11 agriculture sector certification applications before provincial labour boards since 2006.

Of those 11, seven bargaining units have been certified. Three of those bargaining units have collective agreements and another two are currently in negotiations. This clearly proves that agriculture workers in Canada, foreign or domestic, want UFCW Canada representation.

In Manitoba, SAWP workers at Mayfair Farms in Portage la Prairie made history on June 20, 2008 by overwhelmingly ratifying the first-ever contract to cover migrant agriculture workers employed seasonally at a farm operation in Canada. For the first time a group of migrant agriculture workers in Canada have a grievance procedure, a right to be recalled each season based on seniority, as well as other contract language to protect them from being evicted from their employer-owned lodgings, or expelled from Canada until their case is heard by an independent arbitrator.

In August, workers at a hog-breeding operation in Malonton, Man., also have overwhelmingly ratified a first collective agreement between PICS Farms and UFCW Canada Local 832.

In British Columbia, UFCW Canada Local 1518 successfully organized two farms in British Columbia in 2008: Greenaway Farms (which is currently in negotiations for a first collective agreement) and Floralia Plant Growers Ltd.

A majority of workers at Greenaway in Surrey, B.C., many of whom are migrant workers, voted to join the union in August 2008. Two months later, a majority of workers at Floralia Abbotsford, B.C., formed the second UFCW Canada bargaining unit at a B.C. agricultural operation, after a majority of the workers also voted to join UFCW Canada Local 1518, in spite of the fact the employer repatriated half of the workers back to Mexico a day after UFCW

Canada filed for the certification vote.

First-contract negotiations have commenced at both locations. At the time of publication, both employers, along with the province's major farm lobby, had filed an appeal with the B.C. Labour Board that argues SAWP workers don't constitutionally have the right to unionize. The attorney general of Canada does not concur with that opinion. Neither does the attorney general for British Columbia. UFCW Canada also believes the appeal is groundless and is legally responding in accordance.

In Saskatchewan, UFCW Canada Local 1400 won certification from the Saskatchewan Labour Board in December 2008 for an industrial-scale potato farm. The process of bargaining for a first contract has commenced.

In Quebec, four applications for certification remain in front of the Quebec Labour Relations Board. The central issue for the board there is a constitutional challenge of *Article 21.5* of the *Labour Code* that bars agriculture workers from the right to bargain collectively unless there are at least "three ordinary and continuous employees." UFCW Canada continues to argue that *Article 21.5* is an automatic and discriminatory obstacle to the SAWP workers who, as a majority, applied to join the union.

In Ontario, a landmark ruling in November 2008 has led farm workers in Ontario, including migrant workers, one step closer to ultimately exercising their constitutional right to join a union. On November 17 the Court of Appeal for Ontario told the provincial government to drop its ban on farm unions because it violated the *Charter* rights of Ontario's more than 100,000 agriculture workers.

The court ruled that Ontario's *Agricultural Employees Protection Act* (AEPA), which currently denies Ontario farm workers the right to unionize, is a violation of *Freedom of Association* rights guaranteed under the *Charter*. The court gave the Ontario government until Nov. 17, 2009 to provide farm workers with sufficient legislative protections to enable them to bargain collectively as other workers in the province.

The ruling was reinforced by a June 2007 precedent setting decision by the Supreme Court of Canada, which ruled "... the *Section 2(d)* guarantee of *Freedom of Association* protects the capacity of members of labour unions to engage in collective bargaining on workplace issues ..." (*B.C. Health Services*).

But for now, justice has been delayed. The Ontario Government under the direction of Liberal Premier Dalton McGuinty sought leave to appeal to the Supreme Court of Canada, which was granted by the Court on April 2nd 2008. We anticipate a hearing by the spring of 2010 and a ruling by the summer of 2010. We anticipate the ruling to be positive and provide some time for implementation.

That decision may be preceded by a ruling by the *International Labour Organization* (ILO), an agency of the United Nations. On March 23, 2009, UFCW Canada filed a formal complaint with the ILO that Ontario's prohibition of farm unions violates the ILO's *Convention 87: Freedom of Association and Protection of the Right to Organize*. Canada is a signatory to the Convention. At the time of this publication, the date of the ILO hearing was pending.



Summary: equity is the permanent solution to ending the abuse of migrant workers

Canada was built on the hopes and hard work of people from around the world who came to this country to make a better future for themselves and their families. A century ago they formed the bedrock of Canada's agriculture communities. Today, workers from abroad are still fundamental to the agriculture sector, but what was once a foothold to the future is now a rotating door of seasonal and temporary worker programs that fail to acknowledge the voice and rights of those workers.

It is not the Canadian way. Labour rights are human rights. As Canada expands foreign worker programs – for agriculture and other sectors – politicians and employers must recognize that fairness, equity, regulation, and enforcement are the keys to building a stable and productive labour force.

For almost two decades UFCW Canada has been an advocate and voice for agriculture workers in Canada. Based on our direct experience with tens of thousands of workers since the early 1990s, we continue to see temporary foreign worker programs that work for industry but fail the rights of the workers. Through our efforts as a national organization committed to labour rights, and through our nine Agriculture Workers Alliance across Canada, we will continue to press for a better, safer, more equitable reality for all migrant and temporary foreign workers in the agriculture sector. We will also continue to work at the grassroots level with social justice groups, faith-based organizations, and other non-governmental agencies who are also committed to justice for migrant agriculture workers.

We believe the best way to do that is to recognize that, while it is not now, SAWP could become a model program for not just the agriculture sector, but all sectors looking to employ temporary foreign workers.

How could that happen? By providing workers access to the same rights and statutory protections afforded other workers in Canada. By creating national employment, health-and-safety, and labour standards by which provinces must abide if they want to participate in foreign worker programs. By allowing seasonal and temporary workers to gain a voice in their workplace through forming unions without the fear of reprisal or arbitrary repatriation. By providing a pathway to status for those workers who see Canada as future home – not just a temporary workplace.

More than any other governing body, if change is to come, it must come from the federal government – a government which increasingly looks abroad to satisfy corporate Canada's appetite for temporary and seasonal labour. It is a matter of political will and recognizing that equity, not exploitation, is how to build a better Canada.

Recommendations

Based on our continuing work with migrant and temporary farm workers in Canada we propose the following recommendations for changes to programs that bring migrant agricultural workers to Canada including the SAWP and the TFWP.

1. Provide a transparent, impartial process of appeal – available to all workers – before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.
2. Comply with the rulings of the Supreme Court of Canada and make it a condition of the SAWP and TFWP that provinces bringing migrant workers to Canada provide legislation that allow these workers the right to form and join unions to bargain collectively as provided under the *Canadian Charter of Rights and Freedoms*.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the SAWP and TFWP that workers under the programs are paid at least as much as the provincial seasonal average wage rate.
5. Create national standards that require of all the provinces that foreign workers are fully covered, like all other workers, under the regulatory employment standards and occupational health-and-safety provisions of the province in which they work. Provinces that do not meet this standard would be denied access to SAWP and TFWP workers.
6. Create national standards for the provinces to accredit, monitor and discipline if necessary both domestic and offshore recruiters of foreign workers. Provinces that fail to meet these standards would be denied access to workers under the SAWP and TFWP.
7. Give the workers a place at the bargaining table to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being “named” (requested by name) by an employer, and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
8. Inspect all worker housing prior to and following their occupancy. Random inspections should also be mandated and occur regularly throughout the season. Employers who are found to be in non-compliance with standards for adequate housing terminated from the SAWP. Imme-




diately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters. These conditions should also apply to housing rented to TFWP workers by employers.

9. Make it mandatory that all written materials, instructions and signage – particularly regarding workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, Thai, Punjabi, and other native languages as necessary. In addition, an orientation on employment standards and health-and-safety legislation should be conducted for migrant and temporary workers in their native language before they start their employment. A complete, language-friendly information package should also be provided to each worker.
10. Eliminate the practice of withholding 25% of wages for Caribbean and Guatemalan workers.
11. Immediately terminate from the SAWP and TFWP any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through the consulate.
12. If an employer is removed for the SAWP for violating the agreement – including unfair labour practices such as blacklisting a worker – the employer should be banned from participating in any other federal or provincial foreign temporary worker programs.
13. Ensure workers are given a free medical exam before they return to their home country, to confirm they are healthy and free from workplace illness or injury. If this is not the case, ensure that worker compensation claims are filed.
14. Provide financial support to the Agriculture Workers Alliance and UFCW Canada for effective, on-the-ground representation for seasonal agricultural workers.
15. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign work-

- ers after 24 months accumulated Canadian employment.
16. Ensure that employers remit a credible *Labour Market Opinion* (LMO) based on much more substantial evidence than currently required, that a shortage of domestic labour exists before allowing the hiring of workers under the SAWP or TFWP programs.
 17. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.



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