

UFCW Canada Fifth Annual National Report on
The Status of Migrant
Farm Workers in Canada, 2005



Wayne Hanley
National Director

Presented June 2006 to:

The Right Honourable Stephen Harper
Prime Minister

The Honourable Diane Finley
*Minister of Human Resources
and Social Development*

Executive Summary

UFCW Canada (the United Food and Commercial Workers union in Canada) has actively assisted and advocated for migrant agricultural workers in this country since the early 1990s. This fifth annual national report to federal legislators provides continuing information with regard to the working and living conditions for migrant agricultural workers in Canada during 2005.

Canada has operated, through what is now Human Resources and Social Development Canada (HRSDC), the *Seasonal Agricultural Workers Program* (SAWP) since 1966. It was initiated in response to severe labour shortages experienced by farmers, inviting temporary workers from countries included in the program (the “sending countries”). Farm labour is hard, long, tedious, dangerous, low-paying, and seasonal. It is not difficult to understand why farmers would experience chronic labour shortages.

In 1968, through the SAWP, 1,258 migrant workers were employed in Canadian agricultural operations. That number has risen steadily to approximately 18,000 in 2005. There has been little change to the program since its inception in spite of the enormous increase in the number of workers and farm owners who participate.

The federal government and consulates from the sending countries continue their assertions that this is a model program and have implemented only minor changes throughout its history.

UFCW Canada is gravely concerned that the federal government has made no positive changes to the SAWP. Instead the government has initiated a pilot project, *Hiring Foreign Workers in Occupations That Usually Require a High School Diploma or Job-Specific Training*. There is an increasing call amongst faith groups, church leaders, community groups, and labour activists for more government regulations and supervision – not less.

We need to ensure foreign migrant workers are not exploited as merely a temporary cheap source of labour. The government’s new pilot program – which provides a “just-in-time” workforce for employers – must include regulatory controls to ensure exploitation is not its by-product. Unfortunately, HRSDC’s pilot program

***This fifth annual national
report to federal legislators
provides continuing
information with regard to
the working and living
conditions for migrant
agricultural workers in
Canada during 2005.***

for temporary foreign workers provides a regulation-free playing field that makes exploitation not only possible, but probable. Canada must begin to implement changes to its immigration policies. If Canadian employers continue to rely more and more on an offshore migrant workforce, we must initiate programs and policies to allow these workers immigration status.

In the absence of government initiatives and actions to remedy inadequate laws for migrant agricultural workers, UFCW Canada initiated three important legal challenges to begin to improve these conditions. UFCW Canada has challenged the mandatory collection of Employment Insurance (EI) premiums for migrant workers who are not allowed to collect regular EI benefits when they are unemployed. The federal government was unsuccessful in its initial attempt to have this case dismissed.

UFCW Canada is also pursuing its *Canadian Charter of Rights and Freedoms* challenge against the province of Ontario for the province's continuing denial of the right of agricultural workers to join a union and bargain collectively. Ontario and Alberta are the only provinces in Canada that refuse to extend this basic *Charter* right to workers in agri-industries.

Most notably, UFCW Canada initiated legal action against the government of Ontario for failing to provide health-and-safety legislation to all agricultural workers, including migrants. In response, the Ontario government has now passed legislation to include agricultural workers in health-and-safety legislation, but not yet to the extent required.

UFCW Canada fully funds and staffs five *Migrant Agricultural Worker Support Centres* located in Leamington, Simcoe, Bradford, and Virgil in Ontario, and in St-Rémi, Québec. These centres operate for about five months of the peak growing season and have on average one full-time and one part-time staff. They are overwhelmed by requests for help from migrant workers. Casework performed by staff at all five of our centres includes but is not limited to:

- issues surrounding working conditions
- pleas for help in repatriation cases
- assistance with filing worker compensation claims and appeals
- preparation of income tax returns
- questions concerning Canada Pension Plan (CPP) contributions, deductions, and benefits
- queries regarding payroll deductions, hours worked, and vacation pay entitlements
- translation requests for issues such as medical care and banking difficulties

- attendance at hospitals with injured and sick workers
- obtaining health cards
- filing claims with RBC Insurance (the mandated insurance provider under the terms of the SAWP) for medical and dental coverage not related to workplace accident or illness
- submitting parental benefits claims under the terms of EI.

Four decades have passed since the inception of the SAWP, and this program has become an accepted, well-established, and much relied upon source for labour. In fact, Ontario's horticulture industry admits that the growth and success of this industry in recent years can be attributed to the migrant workforce.

The federal government's responsibility for the workers in this program is paramount, despite its protestations that this is the role of consular officials. This is Canada's program and, after 40 years, it defies logic to insist that these are not *our* workers or *our* agricultural workforce. The government *must* acknowledge their importance and significant contribution to our agri-industry and reciprocate by instituting adequate worker provisions and protections. These provisions must include supervision, inspection, service delivery, and training and appeals processes.

UFCW Canada – as well as numerous church, labour, and social justice groups – continues to advocate on behalf of workers in the agriculture sector. We call on the federal government to provide a landed immigrant process for the thousands of seasonal agricultural workers, who, for 40 years, have continued to hold Canadian jobs, pay taxes, and contribute to Canada's economy – without status.

Allowing the migrant farm workers and their families to become citizens would help relieve the constant shortage of workers in rural Canada and acknowledge the important contributions these decent, hard-working people have made.

On behalf of more than 230,000 members across the country, UFCW Canada makes the following recommendations for changes to the SAWP to address the shortcomings and inadequacies of the program in order to provide protections for these workers:

- 1) Provide a landed immigrant process for seasonal agricultural workers and their families after 24 months of accumulated Canadian employment.**
- 2) 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 migrant worker.**

- 3) **Comply with the ruling of the Supreme Court of Canada and make it a condition of the SAWP that migrant farm workers belong to a union and acknowledge UFCW Canada as the union representative for migrant farm workers in Canada and to provide funding to run the Migrant Agricultural Worker Support Centres on their behalf.**
- 4a) **Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant workers.**
- 4b) **Enforce wages paid to SAWP workers at the same rate as the provincial seasonal average wage rate.**
- 5) **Include migrant farm workers in the process to determine the yearly wage rate and provide 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 in this process.**
- 6a) **Inspect all worker housing prior to and following their occupancy. Random inspections should also be mandated and occur regularly throughout the season; terminate employers from the SAWP who are found not to be in compliance with the standards for adequate housing.**
- 6b) **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.**
- 6c) **Make it mandatory that any and all written materials, instructions, and signage – particularly in regard to workplace health-and-safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, and other native languages as necessary.**

©2006 UFCW Canada. All rights reserved. Permission is hereby given to quote from this report as needed for journalistic, educational, organizing, or legislative purposes. Cover art by Rini Templeton (www.riniart.org), colorized by freeperson. ISBN 0-9739582-6-X



Introduction

UFCW Canada (the United Food and Commercial Workers union in Canada) has actively assisted and advocated on behalf of migrant agricultural workers in this country since the early 1990s. UFCW Canada's real and continuing interest in the well-being of foreign migrant agricultural workers is demonstrated by the following UFCW Canada initiatives:

- making numerous representations to federal and provincial governments regarding the treatment of Seasonal Agricultural Workers Program (SAWP) workers;
- making representations to the Mexican and Caribbean consulates on behalf of SAWP workers;
- wholly funding and operating five Migrant Agricultural Worker Support Centres which provide practical advocacy and representation to SAWP workers in Ontario and Québec on a daily basis; and
- researching, documenting, and publicizing the working and living conditions of SAWP workers.

This fifth annual national report to federal legislators provides continuing information with regard to the working and living conditions for migrant agricultural workers from the "sending countries" (those countries invited to send workers to Canada under the terms of the SAWP) during 2005. Regrettably, conditions for these workers remain largely unchanged. Our staff continued to provide critically needed services and advocacy to thousands of workers during the 2005 growing season.

The federal government and consulates from the sending countries continue their assertions that this is a model program and have implemented only minor changes throughout its history. They have provided no evidence or documentation to support this claim. In fact, they assert that the SAWP is a "best practice" model of managed migration that provides adequate working and living conditions and protection for migrant workers in the program.

In the absence of government initiatives and actions to remedy inadequate laws for migrant agricultural workers, UFCW Canada initiated three important legal challenges. UFCW Canada has challenged the mandatory collection of Employment Insurance (EI) premiums for migrant workers who are not allowed to collect EI benefits when they are unemployed. The federal government was unsuccessful in its attempt to have this case dismissed.

UFCW is pursuing its challenge under the *Canadian Charter of Rights and Freedoms* against the province of Ontario for its continued denial of the right for agricultural workers to join a union and bargain collectively. Ontario and Alberta are the only provinces in

UFCW Canada has actively assisted and advocated on behalf of migrant agricultural workers in this country since the early 1990s.

We present this fifth national report to our legislators in the expectation that they will welcome any and all information that will provide them a better understanding of the deficiencies of this national program.

Canada that refuse to extend this basic *Charter* right to workers in their agri-industries. We contend that only provinces that comply with the *Charter* should have access to workers through the SAWP.

Most notably, UFCW Canada initiated legal action against the government of Ontario for failing to provide health-and-safety legislation to all agricultural workers, including migrants. In response, the Ontario government has now passed legislation to include agricultural workers in health-and-safety legislation, but not yet to the extent required.

Although we are disappointed with the limitations of health-and-safety legislation for agricultural workers we are proud of our success in forcing the Ontario government to implement the first-ever health-and-safety legislation for workers in Ontario's agri-industry. As we continue to advocate on behalf of agricultural workers, we will work to improve this legislation and regulations until they are fully reflective of the legislative health-and-safety provisions that are enjoyed by all Ontario workers.

UFCW Canada's previous national reports have identified many instances where inclusion in Ontario's health-and-safety legislation may have prevented serious accidents and fatalities to farm workers. While we are proud of our achievement on behalf of these workers, we are deeply disappointed that governments seem increasingly inclined to act only on threat of legal challenges and lawsuits.

We present this fifth national report to our legislators in the expectation that they will welcome any and all information that will provide them a better understanding of deficiencies in this national program. Being so informed will allow them to initiate necessary changes in order to ensure that this federal program is consistent with Canadian beliefs of fairness, equity, and human dignity for all.

The Program (SAWP)

Canada has operated the Seasonal Agricultural Workers Program since 1966. It was initiated in response to severe labour shortages experienced by farmers. Farm labour is hard, long, tedious, dangerous, low-paying, and seasonal. It is not difficult to understand why owners and operators in the agricultural industry would experience chronic labour shortages.

In 1968, there were 1,258 migrant workers employed in Canadian agricultural operations through the SAWP. That number has risen steadily to approximately 18,000 in 2005. There has been little change to the program since its inception in spite of the enormous

increase in the number of workers and farm owners who participate.

Under the provisions of the SAWP, farmers apply to Human Rights and Skills Development Canada (HRSDC) for temporary migrant workers. This ministry issues temporary work visas to migrant workers who are recruited by officials in their home countries. The employment contract stipulates a number of conditions that must be met by both the worker and the farm employer.

When an employer believes that the worker has not honoured the terms of the employment contract, he informs the consulate and the worker is sent home, or repatriated. There is no process of appeal for the worker. When a worker believes that the employer has not honoured the terms of the contract, he informs his consulate official who may or may not attempt to resolve the issue of concern.

Often, the worker is unable to make contact with the consular staff. If successful in contacting consular staff, the worker is often advised to stop complaining – don't make trouble. Migrant workers repeatedly indicate that they do not trust their consulate and do not believe that their consulate will provide necessary assistance.

The fundamental flaw in the SAWP is the lack of representation afforded to workers. They have no voice and no representation except for their consular officials. Consular officials serve dual interests – those of the farm employers as well as those of the migrant workers. This conflict of interest arises due to the monetary advantages of migrant workers sending remittances to their home country from their Canadian wages. Sending countries and their consulates do not want to jeopardize this important source of income for their economically-disadvantaged countries. Consular officials are therefore reluctant to upset, antagonize, or risk conflict with employers.

This systemic flaw has not been addressed since the inception of the program in 1966. Despite repeated representations made to the federal government, there has been no attempt to provide advocacy or representation to the workers upon whose backs this program depends. The workers continue to participate because of severe poverty in their home country. Their options are limited to poverty or work through the SAWP – whatever the conditions.

The federal government's responsibility to these workers appears to focus solely on the issuing of temporary work visas. We believe that the federal government must amend the SAWP to provide safeguards, protections, enforcement, and appeals to ensure migrant workers are treated with dignity, respect, and equality. To do less in this ever-growing global economy and era of increasing forced migration is wholly unacceptable and shamefully hypocritical from a country as advantaged as Canada.

The fundamental flaw in the SAWP is the lack of representation afforded to workers. They have no voice and no representation except for consular officials. Consular officials serve dual interests – those of the farm employers as well as those of the migrant workers.

UFCW Canada fully funds and staffs five Migrant Agricultural Worker Support Centres located in Leamington, Simcoe, Bradford, and Virgil in Ontario, and St-Rémi in Québec.

Increasing Community Awareness

Over the past five years, we have worked closely with community groups, local labour leaders, and church groups in creating and broadening awareness of the difficulties and challenges experienced by migrant workers in our communities. We continue to build a widening circle of support and advocacy in order to provide more help and assistance for these workers. This has resulted in increased public awareness of the inadequacies of the SAWP and a growing demand for government action to provide solutions.

UFCW Canada fully funds and staffs five Migrant Agricultural Worker Support Centres located in Leamington, Simcoe, Bradford, and Virgil in Ontario, and St-Rémi in Québec. These centres operate for about five months during the peak growing season and have, on average, one full-time and one part-time staff. They are overwhelmed with requests for help from migrant workers. Casework performed by staff at all five of our centres includes, but is not limited to:

- issues surrounding working conditions
- pleas for help in repatriation cases
- assistance with filing worker compensation claims and appeals
- preparation of income tax returns
- questions concerning Canada Pension Plan (CPP) contributions, deductions, and benefits
- queries regarding payroll deductions, hours worked, and vacation pay entitlements
- translation requests for issues such as medical care and banking difficulties
- attendance at hospitals with injured and sick workers
- obtaining health cards
- filing claims with RBC Insurance (the mandated insurance provider under the terms of the SAWP) for medical and dental coverage not related to workplace accident or illness
- submitting parental benefits claims under the terms of EI

Our staff does an incredible job responding to the sheer volume of work and to the complexity of the casework involved. Our centres do not have an advertising budget, yet workers and employers know of our existence through word-of-mouth and the outreach programs of our staff. In fact, staff from our centres in Ontario and Québec this year responded to requests for help from workers as far away as British Columbia, Alberta, and Manitoba. Through this work and outreach we have acquired a definitive understanding of the difficulties migrant workers encounter and the lack of support they receive from the employer, the consulates, and HRSDC. Their needs are real, their concerns are valid. We provide our services to

these “invisible workers” to help them become visible. There is no excuse for the lack of service provision provided by and on behalf of the Canadian government. It is an oversight that cannot be validated.

The North-South Institute has completed several research projects on the SAWP, including detailed surveys of Mexican and Caribbean workers in the program. The findings of the North-South Institute are reflective of those of UFCW Canada. Their extensive survey reveals numerous concerns of these workers including their reluctance to complain about poor or inadequate living and/or working conditions due to fear of repatriation. The workers do not believe they receive adequate support or help from their consular officials – and, in fact, have little trust in these officials. The survey also found that many workers indicated they were required to apply chemicals and pesticides without training or protective clothing.

The Canadian Council for Refugees is also expressing concern for migrant workers in Canada. They are calling on the government to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. This group also recognizes that “farm workers have expressed dissatisfaction with the representation of consulate staff, who are seen to be more interested in protecting the program than defending the rights of the workers.” They intend to make a submission to the United Nations Committee on Economic Social and Cultural Rights with regard to migrant workers living and working conditions while in Canada.

The Canadian Ecumenical Justice Initiatives program promotes justice in Canada and internationally on behalf of eight major Christian churches and three church-related organizations. KAIROS is the ecumenical voice of these churches and states:

Without any legal status in Canada, these workers [seasonal agricultural migrant workers] provide a readily exploited, cheap pool of labour, which helps to solve seasonal or sectoral crunches in the Canadian marketplace. They can easily become a cheap, “flexible”, exploited workforce shifted from country to country. Maquiladoras are no longer the only alternative for employers seeking to squeeze more profit from workers. Canadian employers are actively seeking migrant workers, with assistance from the Canadian government, at the same time as the doors are being reinforced against refugees seeking asylum.

KAIROS has developed a two-year project to promote human rights of uprooted peoples living in Canada, including refugees as well as migrant workers. Its goal is to strengthen its capacity for advocacy through collaboration with unions and other refugee and migrant worker support groups to achieve changes that will im-

The workers do not believe they receive adequate support or help from their consular officials – and, in fact, have little trust in these officials.

There is a growing body of concerned Canadians that believe the reliance on migrant workers should be fairly balanced and reflective not just of the concerns and needs of the employer but also provide for the needs of the migrant workers.

mediately help people. KAIROS will host a *Migrant Justice Gathering* conference in June 2006. Continuing the call of the Anglican Church of Canada General Synod 2001, KAIROS will also press the Canadian government to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.

Every growing season, numerous articles in newspapers throughout Ontario, Québec, and British Columbia document reports of the precarious position of migrant workers in Canada and their exceptional vulnerability in the absence of basic legislative protections.

UFCW Canada has signed a memorandum of agreement with the National Union of Provincial Government Employees (NUPGE, also known as The National Union) that acknowledges UFCW Canada's continuing excellence and leadership in our work on behalf of agricultural workers and in particular migrant agricultural workers. An agreement of understanding and co-operation has also been acknowledged between the newly formed United Farmworkers of Alberta and UFCW Canada.

No Justice for “Just-in-Time Workforce”

It seems apparent, given the growth of the SAWP and the new pilot project of HRSDC ambiguously titled *Hiring Foreign Workers in Occupations That Usually Require a High School Diploma or Job-Specific Training*, that Canadian farm employers are becoming increasingly dependant on a migrant labour force. However, there is a growing body of concerned Canadians that believe the reliance on migrant workers should be fairly balanced and reflective not just of the concerns and needs of the employer but also provide for the needs of the migrant workers.

It is unfortunate that the federal government's response to criticism of the SAWP has not elicited any of the recommended changes put forward in our four previous national reports. The government has, instead, established this pilot program allowing farm employers to sign direct contracts with migrant agricultural workers from countries other than Mexico and Caribbean, offering even fewer protections and less supervision than those offered under the SAWP.

If the objectives of this pilot project are to allow farmers further abilities to self-regulate with regard to the employment of foreign migrant workers, we would point to the failures of self-regulation in the field of health-and-safety as one significant example of the necessity for government regulation, supervision, and enforcement. Every province in Canada has established minimal laws for

employment conditions, further evidence that employers are historically not up to the challenge of self-regulation in regard to employees' working conditions and rights.

Concern amongst faith groups, church leaders, community groups, labour activists, and individuals continues to mount over the difficulties experienced by migrant workers while in Canada. There is a growing call for more government control, regulations, and supervision to ensure vulnerable foreign migrant workers are not exploited as merely a temporary cheap source of labour. This movement to a "just-in-time work force" solution for employers must include regulatory controls to ensure exploitation is not its by-product. HRSDC's new pilot project provides a regulation-free playing field which makes exploitation not only possible, but probable.

Canada's increasing reliance on temporary workers from other countries is not a long-term solution to workforce shortages. Agricultural employers have utilized a migrant workforce since 1966 and now a growing number of employers from various industries are all looking to solve their labour issues with migrant workers.

Canada must begin to implement changes to our immigration policies. If Canadian employers must continue to rely more and more on an offshore workforce we must initiate programs and policies to allow these workers immigration status. Recent immigrants with high levels of education, doctoral degrees, and highly-respected academic backgrounds appear most likely to attain Canadian immigration status. Unfortunately, once in Canada, their qualifications are of little help to them in the job market. Consequently these immigrants are working in jobs outside their area of expertise.

Compare the current immigration policies that produce the untenable situation described above with the SAWP and Temporary Worker Program policies that stipulate that temporary workers cannot seek immigration status while in Canada. Their work experience in Canada will not earn them any extra points if they do apply for immigration once they return home. They are labourers, not academics, and, even though Canadian employers insist they are crucial, they are not preferred as Canadian citizens.

Health and Safety

UFCW Canada has recommended for the past four years that the federal government establish eligibility criteria for jurisdictions participating in SAWP. One such essential criterion for participation would be that the migrant workers be included in provincial health-and-safety legislation. The federal government did not act

Agricultural employers have utilized a migrant workforce since 1966 and now a growing number of employers from various industries are all looking to solve their labour issues with migrant workers.

The program must be immediately amended for the 2006 growing season to ensure that when a worker exercises his right under the health-and-safety legislation, he is not at risk of reprisal.

on this recommendation. UFCW Canada's response to the government's reluctance to legislate resulted in our launching a legal challenge based on the provisions of the *Canadian Charter of Rights and Freedoms* against the province of Ontario.

As a result of these legal proceedings, the government of Ontario has finally included agricultural workers under its provincial health-and-safety laws. As of June 2006, farm workers including migrant workers will have the right to refuse unsafe work, the right to know about workplace hazards, and, depending upon the size of the operation, the right to a joint health-and-safety committee.

For migrant agricultural workers these new rights cannot be exercised freely without penalty until the SAWP is amended to address the systemic flaws of its repatriation process. As of June 2006, a migrant worker has the right to refuse unsafe work. Exercising this right, however, may easily lead to repatriation of the worker under the SAWP. The program must be immediately amended for the 2006 growing season to ensure that when a worker exercises his rights under the health-and-safety legislation, he is not at risk of reprisal through repatriation or exclusion from participating in subsequent growing seasons.

Ontario receives over 80% of the nearly 18,000 migrant farm workers who come to Canada each year. Labour on a farm or other agricultural environment is physically demanding, requiring extensive work with a variety of machinery including tow trucks, scissor lifts, tractors, combines, and pulleys. As a result, farm work is clearly recognized as a very dangerous occupation. The inclusion of agricultural workers under health-and-safety legislation is long overdue and a critical necessity.

Staff members at all five of our centres encounter many cases of work-related injury and illness each year. Much of their time is devoted to translating for the worker and medical caregivers, and the filing and processing of worker compensation claims. In just one of our centres last season, staff assisted workers with broken legs, fingers, toes, and, in one case, a worker with severely torn tendons and ligaments in his arm. Staff at the centre advocated for this worker's compensation benefits until the consular official became involved. Now our staff is concerned that the worker will not return in 2006 as it seems that he is unable to move two of the fingers in his hand and has suffered permanent work-related disability. Staff at the centre is not confident that his worker's compensation claim will reflect his disability.

In Québec, a worker suffered a work-related accident that resulted in trauma to his spine. He has permanent damage as a result of the accident – for which the Québec workers compensation board refuses to compensate him on the basis that he had only a visitor's status in Canada.

A worker in Québec became sick during this past season and for about four weeks the employer refused to help the worker get medical attention. Finally, when the worker experienced a severe fever, the employer brought him to a hospital. There was no translator and the doctors relied solely on the information given by the employer. As a result, their medical inquiry followed the employer's suggestions including West Nile, encephalitis, or heat stroke. The worker was so ill he became delusional, he was tied to his hospital bed repeatedly, and lost over 40 pounds. His consulate's solution was to recommend repatriation, and the hospital made plans to have the patient transferred to Mexico accompanied by a nurse.

Staff at our Québec centre received an anonymous call with regard to this worker's condition and ongoing plight in the hospital. When our staff visited the worker, he indicated that he began to experience pain after he was subjected to intense pesticide spreading over a two-week period. With the help of our centre, this worker did receive insurance from RBC for the eight weeks he was ill. Since scant medical attention was paid to the possibility of pesticide poisoning, the necessary documentation to successfully file for workers compensation for illness related to pesticide exposure was not available. He wishes to file a claim against the employer for negligence and human rights violations.

In these instances and too many more like them, the workers' consular staff was of no help and in some cases was actually detrimental. UFCW Canada Migrant Agricultural Workers Support Centres and their staff provide the support, advocacy, and relevant information that the consulates, employers, Foreign Agricultural Resource Management Services (FARMS), HRSDC, and medical caregivers do not. The evidence is irrefutable – migrant workers need and deserve assistance while they work in Canada. The most reliable worker-focused support available is that provided by the UFCW Canada Migrant Agricultural Workers Support Centres.

Many workers experience reactions to chemicals and pesticides. They often do not speak or write English or French, and often are unaware potential health dangers exist as a result of exposure to chemicals, fertilizers, and pesticides. Although there is a requirement that training be provided to workers applying pesticides, there is no enforcement or supervision. The North-South Institute survey determined that only 45% of Mexican workers received any training in the application of pesticides, and many indicated that pesticides were applied while they were working in the fields. More than 50% of Jamaican workers surveyed said they were concerned about safety and only 33% of Jamaicans surveyed indicated that they received any safety training in the application of pesticides or operation of machinery.

Every growing season in Ontario, migrant workers are killed

In these instances and too many more like them, the workers' consular staff was of no help and in some cases was actually detrimental.

Simple proactive solutions could help to avoid many of these critical and often fatal accidents.

while riding their bicycles. This is their only mode of transportation, and, since they live in rural areas on farms and facilities that may be some distance from local towns, bicycles are essential. Unfortunately, given the long hours migrant workers work each day, they are often riding their bicycles at night without reflective tape, clothing, or lights. Often the workers are cycling to a pay phone so that they may call their families, their wives, and children.

Simple proactive solutions could help to avoid many of these critical and often fatal accidents. The employer could provide an ample supply of reflective tape for workers to affix to their bicycles and/or clothing. The employer could provide on-site access to a telephone so that workers do not have to travel later in the evening after work in order to stay in touch with their families. Easy-to-read pamphlets with descriptive photos or drawings in English, French, Spanish, and other languages as necessary should be made available to all the workers, describing local rules of the road.

Further to transportation safety issues, farmers should be required to transport workers in safe vehicles and in numbers that the vehicle is built to accommodate. Last summer, a van carrying 18 migrant workers crashed near Hamilton. The injuries of the workers were minor in this case. However, 18 workers in a van is clearly unsafe. Seat belt laws do not exempt farm workers or employers, nor should they. The SAWP program should be amended to include a clear policy on the employers' obligation with regard to the safe transport of migrant workers.

Wages

The terms of the SAWP provide a minimum wage rate for each successive season determined on the basis of the following formula:

- i) the minimum wage for workers provided by law in the province in which the worker is employed;*
 - ii) the rate determined annually by Human Resources and Skills Development Canada to be the prevailing wage rate for the type of agricultural work being carried out by the worker in the province in which the work will be done; or*
 - iii) the rate being paid by the employer to his Canadian workers performing the same type of agricultural work;*
- whichever is the greatest ...***

This remains a major point of contention solely due to the lack of transparency attributed to how Human Resources and Skills Development Canada determines the annual prevailing wage rate. Each year HRSDC announces the wage rate for migrant workers in the SAWP but offers no evidence that it conforms to the stipulated formula.

For example, in 2006 the wage rate will be \$8.30 per hour. Yet

statistics posted by HRSDC's Ontario Labour Market Information Service indicate wage rates received by Ontario's agricultural workers in various rural areas of the province appear higher in 2004 than what HRSDC has determined to be the prevailing rate for 2006.

Based on HRSDC's own 2004 statistics, wages for general farm labour varied substantially between different rural communities.

	<i>Low</i>	<i>High</i>	<i>Average</i>
Windsor	\$8.20	\$13.45	\$10.50
Niagara	\$8.00	\$12.65	\$10.65
London	\$8.95	\$13.00	\$10.85
Brantford	\$9.20	\$12.35	\$10.75

The new rate of \$8.30 per hour may be a true reflection of the 2006 prevailing wage rate; however, there has never been any corroborating evidence released by HRSDC to confirm this. In fact, the 2004 statistics noted above would seem to indicate that \$10.50 per hour is a truer reflection of the average wage rate for general farm labour. We have repeatedly called for amendments to the SAWP which would remove the cloak of secrecy and make public the calculation used to determine the yearly wage rate. The contract stipulates the formula by which this rate is to be determined; it would only follow logic to release the facts and statistics on which this formula is based.

Our staff is often asked to intercede on behalf of workers when they are not provided with proper pay stubs to indicate for how many hours they are being paid, what deductions have been taken, and if vacation pay has been paid.

Accommodations

Each year in our national report, UFCW Canada has provided information detailing personal accounts of unsatisfactory, unhealthy, or unsafe living conditions. Workers being housed above greenhouses – or, in one case, 18 adult workers housed in one basement in bunk beds that are placed less than a foot and a half apart, with no heat and bad plumbing – are some notable examples.

Although the terms of agreement of the SAWP program are clear that farmers are responsible for providing decent, livable, and healthy living quarters there is no real supervision to ensure that this requirement is met. Local health departments are designated to inspect the houses prior to the arrival of workers – sometimes this happens and sometimes it does not. UFCW Canada has long advocated for mandatory inspections and to time the inspections to follow the workers' arrival. This would ensure that the health department had a full understanding of how many workers would inhabit the accommodations. Some living quarters might be deemed

The contract stipulates the formula by which this rate is to be determined; it would only follow logic to release the facts and statistics on which this formula is based.

This response serves only to underscore our contention for the past five years – the SAWP is a program for employer needs and responds minimally, if at all, to worker needs and rights.

adequate for four to six adults but clearly inadequate for eight. A realistic inspection of the housing units is dependant on knowing how many people will actually be living in the unit.

This year in British Columbia, 40 migrant workers staged a work stoppage due to inadequate living conditions. Although the employer admitted that it was his first year in the program and that they were trying to resolve legitimate concerns over improper conditions, several workers were repatriated as a result of their advocating for proper housing. The employer received no penalties although he has expressed concern over the negative press he received and is reconsidering his future involvement in the program.

We note, with grave disappointment, that the SAWP has been bizarrely amended for 2006 as a result of a case in which our staff advocated on behalf of two workers whose belongings were destroyed in a fire. These workers were housed in the boiler area of a greenhouse and, while they were away from the residence, the boiler malfunctioned causing a fire. The employer would not reimburse the workers for their destroyed belongings. Our staff obtained legal assistance for the workers who successfully sued the employer for damages. Unfortunately, rather than amend the SAWP to prohibit housing workers in any part of a greenhouse, HRSDC has changed the SAWP only to put a dollar limit on the amount for which the employer will be financially responsible in case of fire.

This response serves only to underscore our contention for the past five years – the SAWP is a program for employer needs and responds minimally, if at all, to worker needs and rights.

Repatriation

When migrant workers raise issues of concern to their employer, they are at real risk of being sent home under the SAWP's repatriation provisions. They are removed from the country within a day or two and may not be allowed to participate in the program in future years. This ability to repatriate workers, allowing them no opportunity to appeal, is a fundamental inequity of the SAWP that must be remedied.

Until there is a fair and equitable process of appeal, the provisions of SAWP contracts are meaningless for the workers. There is little supervision or enforcement of the contractual obligations, and a worker risks repatriation if he tries to ensure the contract is honoured. In effect, this allows the employer to largely determine if he will actually fulfill the terms of the contract. As stated earlier, self-regulation for employers with regard to employee rights is not an accepted policy in Canada as evidenced by the basic minimal

employment standards legislation, enforcement staff, and penalties that all provinces have enacted.

Agricultural workers are exempt from most provisions of employment standard legislation. Basic rights for migrant workers are enshrined in the SAWP employment contracts, yet they have no ability to ensure these contracts are followed. The threat of repatriation prevents workers from insisting that the employment contract between himself and his employer be followed.

In the rare cases in which HRSDC determines an employer should be terminated from the SAWP, the employer is advised and given an opportunity to present his case to HRSDC. Not so for the worker. When an employer determines the worker should be terminated, the worker is simply sent home, quickly, without an opportunity for appeal.

There is no excuse or validation for this arbitrary one-sided and unfair policy. It creates an atmosphere of fear for the workers and impunity for the employers. It can be resolved simply – institute a process of appeal for all workers who are threatened with repatriation for whatever reason. This appeal process is more essential now than it ever was. Over 80% of the 18,000 migrant farm workers work in Ontario and now for the first time they have legislative health-and-safety rights. Without an appeal process for repatriation, these legislative health-and-safety rights will become as hollow as their employment contracts. If they exercise their right to refuse unsafe work, the employer can repatriate them. This inadequacy of the SAWP program will be clearly complicit in workers' inability to enjoy the protections of health-and-safety legislation.

Employment Insurance

For years migrant workers have paid mandatory premiums to Canada's Employment Insurance plan. For years they have never collected any benefits. They were required to return to their home countries when the employment contract ended and therefore were always ineligible to collect benefits. They did not collect sick benefits because if they became ill and it was not a workers' compensation issue, they were sent home.

Finally, in 2001, after years of paying into a program in which they were not allowed to participate, we realized that migrant workers were eligible to collect parental benefits. Staff at all five of our centres began to advise migrant workers of their right to apply for parental benefits. As a result of this outreach, our staff has helped many of the workers to fill out and submit the application forms for these benefits and have processed numerous claims on behalf of these workers for these benefits.

In the rare cases in which HRSDC determines an employer should be terminated from the SAWP, the employer is advised and given an opportunity to present his case to the HRSDC. Not so for the worker. When an employer determines the worker should be terminated, the worker is simply sent home, quickly, without an opportunity for appeal.

We continue to advocate that migrant workers be exempt from the Employment Insurance plan and that the premiums that have been directed to the plan be channeled to fund migrant workers support centres and training.

We believe that migrant workers should not be required to pay into the EI program without *full* access to its benefits. In November 2003, UFCW Canada applied to the courts to declare this practice a violation of Section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees every individual in Canada “equal protection and equal benefit under of the law without discrimination” including discrimination based on race, national, or ethnic origin. The attorney general sought to deny “public interest standing” in the matter to UFCW Canada, which would have quashed our efforts to legally enforce the workers’ *Charter* rights.

In a decision that potentially opens the door to others seeking justice for disadvantaged groups through the courts, Justice T. Ducharme of the Ontario Superior Court of Justice denied the motion to stop the union’s EI challenge, awarding costs to UFCW Canada. In his decision, Ducharme stated that UFCW Canada has demonstrated in numerous ways over the course of several years that it has a “real and continuing interest in the well-being of foreign migrant agricultural workers and particular experience, expertise, and success in representing the legal rights of agricultural workers, including SAWP workers ...”

We continue to advocate that migrant workers be exempt from the Employment Insurance plan and that the premiums that have been directed to the plan be channeled to fund migrant workers support centres and training. The federal government has been non-responsive to this issue. We will continue to direct our staff to help as many workers as are eligible to claim for EI parental benefits. In the interim, while the *Charter* challenge continues to be fought, we look forward to a government response that proposes real solutions that will help all migrant workers.

Unionization

With more than 230,000 members UFCW Canada is one of Canada’s largest private-sector unions. For more than a decade it has led the campaign to extend basic workplace rights and health-and-safety protection to both domestic and migrant agricultural workers in Canada. Currently, Alberta and Ontario are the only two provinces that continue to deny the right to join a union to agricultural workers.

UFCW Canada is again appealing to the Ontario Superior Court with a legal challenge to establish that the right to association enshrined in the *Canadian Charter of Rights and Freedoms* includes the right to bargain collectively. The recent Ontario Superior Court decision ruling Ontario’s *Agricultural Employee Protection Act* satisfies the freedom-to-associate clause in our *Charter* is simply the

first step in the lengthy legal process to have the Superior Court rule on this issue.

Sadly, several provincial governments in Canada prefer not to acknowledge that our country is a signatory to the International Labour Organization (ILO) convention that agrees and fully supports the basic human rights principal that everyone should be free to join a union and bargain collectively. Nurses' unions from British Columbia began presenting their own *Charter* challenge to the Supreme Court to establish that the freedom to associate includes the right to bargain collectively in February 2006 and UFCW Canada has been granted intervener status in this case.

For migrant workers in Ontario, the right to join a union is urgent given the problems they experience while living and working here, the demonstrated need for services and advocacy to which only UFCW Canada has responded, and the fact that they have no voice or representation within the parameters of the SAWP.

Recommendations

In 1966, the government of Canada responded to farmers' labour shortages by implementing the SAWP. Four decades have passed and this program has become an accepted, well-established and much relied upon source for agricultural labour. In fact, Ontario's horticulture industry admits that the growth and success of this industry in recent years can be attributed to the migrant workforce.

The federal government's responsibility for the workers in this program is paramount, despite their protestations that this is the role of consulate officials. This is Canada's program and, after 40 years, it defies logic to insist that these are not *our* workers or *our* agricultural workforce. The government *must* acknowledge their importance and significant contribution to our agri-industry and reciprocate by instituting adequate worker provisions and protections. These provisions must include a process for immigrant status, oversight, inspection, service delivery, and training and appeals processes.

Our experience in working directly with migrant workers over the past five years indicates that self-regulation has not provided them with the protections they need and to which they are entitled. Accordingly, we make the following recommendation for changes to the SAWP to address the shortcomings and inadequacies of the program in order to provide protections for these workers:

- 1) Provide a landed immigrant process for seasonal agricultural workers and their families after 24 months of accumulated Canadian employment.**

For migrant workers in Ontario, the right to join a union is urgent given the problems they experience while living and working here, the demonstrated need for services and advocacy to which only UFCW Canada has responded, and the fact that they have no voice or representation within the parameters of the SAWP.

This is Canada's program and, after 40 years, it defies logic to insist that these are not our workers or our agricultural workforce. The government must acknowledge their importance and significant contribution to our agri-industry and reciprocate by instituting adequate worker provisions and protections.

- 2) 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 migrant worker.
- 3) Comply with the ruling of the Supreme Court of Canada and make it a condition of the SAWP that migrant farm workers belong to a union and acknowledge UFCW Canada as the union representative for migrant farm workers in Canada and to provide funding to run the Migrant Agricultural Worker Support Centres on their behalf.
 - 4a) Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant workers.
 - 4b) Enforce wages paid to SAWP workers at the same rate as the provincial seasonal average wage rate.
- 5) Include migrant farm workers in the process to determine the yearly wage rate and provide 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 in this process.
 - 6a) Inspect all worker housing prior to and following their occupancy. Random inspections should also be mandated and occur regularly throughout the season; terminate employers from the SAWP who are found not to be in compliance with the standards for adequate housing.
 - 6b) 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.
 - 6c) Make it mandatory that any and all written materials, instructions, and signage – particularly in regard to workplace health-and-safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, and other native languages as necessary.

