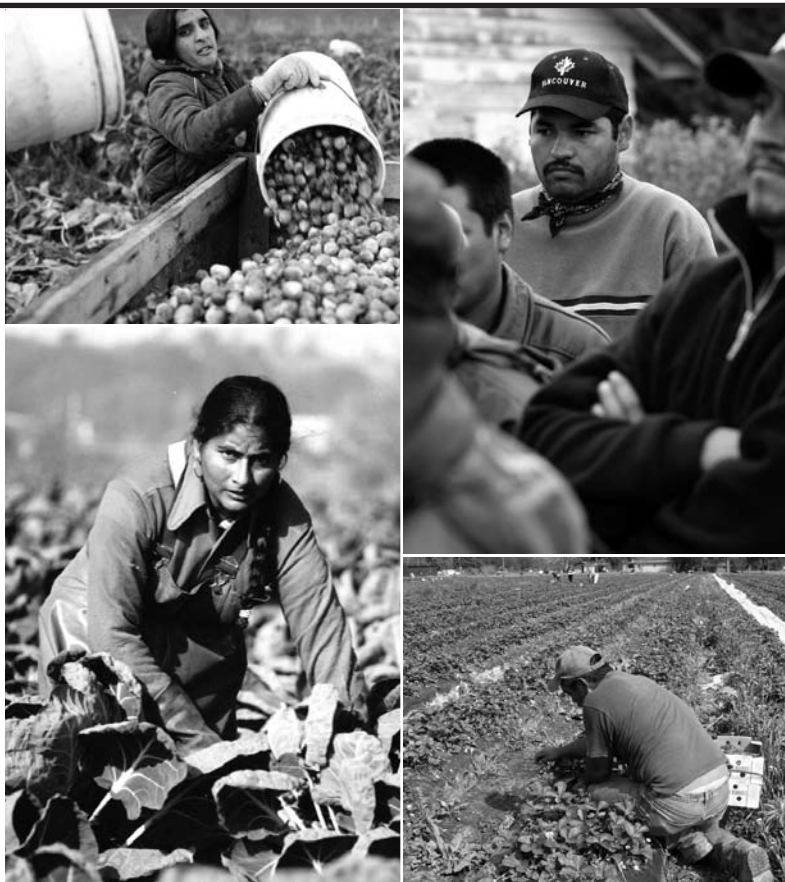


CULTIVATING FARMWORKER RIGHTS

ENDING THE EXPLOITATION OF IMMIGRANT AND MIGRANT FARMWORKERS IN BC



by David Fairey,
Christina Hanson,
Glen MacInnes,
Arlene Tigar McLaren,
Gerardo Otero,
Kerry Preibisch and
Mark Thompson



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office



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AN ECONOMIC SECURITY PROJECT REPORT

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by David Fairey, Christina Hanson, Glen MacInnes, Arlene Tigar McLaren,
Gerardo Otero, Kerry Preibisch and Mark Thompson

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FULL RESEARCH REPORT

Copies of the summary are available in English, Spanish and Punjabi from the CCPA office and website.

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Summary

BC farmworkers are a particularly vulnerable group of low-wage workers. Like all people who rely on farming for their livelihood, they are subject to the vagaries of global and local economic policies. But seasonal agricultural workers in BC – employed part-year in the harvesting, processing and packing of fruits and vegetables – face unique challenges to their economic security when compared with other BC workers.

First, most BC farmworkers are immigrants and a growing number are temporary migrants. The majority of immigrant farmworkers are Indo-Canadian; most are women, many in their 50s and 60s, who are not fluent in English. Their options for finding alternative employment are few and they have little power to challenge poor working conditions. If they are sponsored, they often feel compelled to repay their families for bringing them to Canada and supporting them here. Most troubling, they depend on farm labour contractors (FLCs) who act as intermediaries between the workers and the farm/greenhouse owners. The contractors arrange where they will work, how much they will earn, and how they will travel to and from farms. Farm owners have long relied on contractors for a reliable workforce despite their history of exploiting immigrant farmworkers and violating employment standards and safety regulations. Last year's tragic Fraser Valley highway crash, which killed three female immigrant farmworkers, is a stark reminder of this dangerous mix of conditions.

In 2004, the provincial government moved to address farm labour shortages. But rather than improving working conditions to attract new workers, BC joined the federal Seasonal Agricultural Workers Program (SAWP), giving the provincial horticultural industry the right to hire foreign seasonal workers from Mexico. Since then, the number of Mexican migrant farmworkers has exploded, from 50 workers in 2004 to 2,200 three years later. These workers, who come to Canada “tied” to a particular employer, face unique obstacles and threats to their rights.

BC Employment Standards Changes Since 2001

Employment Standards are the basic laws that govern issues such as the minimum wage, hours of work, holidays, and other workplace rights. They are supposed to set a basic floor, and are particularly important to vulnerable and low-wage workers in protecting and enforcing their rights. However, in the years since 2001, following extensive lobbying by farm owners, the province made changes that reduced standards. For example, the government:

2001

- Disbanded the inter-agency Agriculture Compliance Team (ACT), a highly successful multi-jurisdictional program that proactively enforced regulation in the agricultural sector and encouraged direct communication between staff members and the predominantly Indo-Canadian farmworkers;
- Returned to a complaint-dependent (rather than proactive) enforcement system, despite the vulnerability of immigrant and migrant farmworkers, the power of farm labour contractors over immigrant farmworkers, and a history of unscrupulous violations of regulations that led to establishing the ACT in the first place;

2002

- Eliminated the requirement that farmers retain records of wages paid to employees of FLCs on their properties, and created exemptions from growers' liability for workers' unpaid wages, shifting liability to farm labour contractors;
- Made substantial changes to the overall Employment Standards Act that rolled back the provisions of the Act;
- Significantly cut the budget of the Employment Standards Branch (leading to a one third reduction in staff and office closures throughout the province);

2003

- Reduced the minimum piece rates payable to farmworkers by approximately 4 per cent, by deeming piece rates to include statutory holiday and annual vacation pay;
- Excluded farmworkers who are paid hourly from entitlements to statutory holiday pay and annual vacations;
- Reduced from four to two hours the minimum hours to be paid to workers who are transported by FLCs to farms; and
- Reduced overtime pay for work in excess of 120 hours in a two-week period from double time to time and a half. Subsequently, regulations excluded farmworkers from all overtime entitlements.

Despite farmworkers' precarious position, the provincial government has steadily eroded employment protections and safety enforcement since coming to power in 2001 (see *BC Employment Standards Changes Since 2001* on page 6). This study examines the impact of those changes on immigrant and migrant farmworkers in the Fraser Valley. It looks at how this changed legal and policy climate has affected farmworkers' working and living conditions. The study proposes alternative models of employment standards, safety and health regulations, enforcement procedures and contracting programs that would better address farmworkers' needs and enhance their economic security.

Although immigrants and migrants fall into separate legal categories, as farmworkers they both suffer from a complex, confusing and controlling system that frequently exploits, threatens and silences them while too often placing their lives in danger. Regulations are often vaguely worded and unclear about who is ultimately accountable. If both contractors and farm owners are employers, for example, the issue of who is responsible for maintaining safety standards is divided and thus imprecise. And while the Seasonal Agricultural Workers Program is a federal initiative, provisions covering farmworkers' employment standards and enforcement, and health and safety regulations are governed by the province. In failing to coordinate with provincial ministries and agencies, the federal SAWP places the protection of migrant workers in a jurisdictional grey zone. As a result of BC's reduced employment standards and safety enforcement both immigrant and migrant farmworkers face multiple vulnerabilities.

This study is based on in-depth research and analysis of:

- Government documents;
- BC Employment Standards Act complaint and violation data;
- Key informant interviews;
- Information from reports and academic studies about "better practices" and policies for farmworkers in other jurisdictions; and
- Extensive qualitative interviews with both immigrant and migrant farmworkers.

The experiences of these workers are shared throughout the study, as are the results of a supplemental survey of Mexican migrant farmworkers.

By illuminating the real life costs of these policies and practices, this study aims to help build a system that enhances the prospects and bargaining position of vulnerable farmworkers at home and abroad.

Despite farmworkers' precarious position, the provincial government has steadily eroded employment protections and safety enforcement since coming to power in 2001. This study examines the impact of those changes on immigrant and migrant farmworkers in the Fraser Valley, and proposes policy alternatives that would enhance farmworkers' economic security.

Key Findings

- **IMMIGRANT FARMWORKERS LACK SECURE INCOME, ESPECIALLY WHEN PAID PIECE RATE.** They often work for less than the minimum wage. They work excessive hours to earn more income and to be eligible for EI (especially workers who are paid less than minimum wage), yet lack overtime pay and paid statutory holidays (as well as paid rest periods and annual vacation). They are vulnerable to the arbitrary power of farm labour contractors and to rights violations. According to one key informant, between 1997 and 2001 the inter-agency Agriculture Compliance Team (before it was disbanded) found 1,136 violations of the Employment Standards Act by farm labour contractors.
- **MIGRANT FARMWORKERS GENERALLY EARN THE BASIC MINIMUM OF THE BC-SAWP WAGE** (\$8.90/hour) – irrespective of experience. They work extremely long hours at the beck and call of farm owners, and – like BC immigrant farmworkers – lack overtime pay and paid statutory holidays. They too are vulnerable to the arbitrary power of their employer and to rights violations. Some migrants we spoke to work 60 to 70 hours a week – some up to 20 hours per day in peak harvest season. Extending their hours is the only way to increase their earnings since there is no overtime pay.

- **MIGRANT AND IMMIGRANT FARMWORKERS ARE RIGHTLY CONCERNED ABOUT THEIR SAFETY AND LIVING CONDITIONS.** Many work in environments that violate safety and health standards. Mexican migrant workers face significant barriers accessing medical care, especially due to their lengthy exclusion from BC's Medical Services Plan (MSP); many live in substandard housing and have unreliable access to transportation. Immigrant farmworkers are transported to and from farms in vans that regularly violate safety regulations. Yet, since 2001, both inspection reports and prevention orders conducted by WorkSafeBC have dramatically declined. Inspection reports in the agriculture sector dropped from an average of 523 in 1994–2001 to an average of 200 in 2002–2006 – a 62 per cent decrease. Similarly, prevention orders plummeted from an average of 940 in 1994–2001 to an average of 253 in 2002–2006 – a 73 per cent drop.

Many farmworkers work in environments that violate safety and health standards. Yet, since 2001, both inspection reports and prevention orders conducted by WorkSafeBC have dramatically declined.

- **MIGRANT AND IMMIGRANT FARMWORKERS FEAR THEY WILL LOSE THEIR JOBS IF THEY COMPLAIN** about their wages, hours or safety concerns, or even report injuries. The farm labour contracting system imposes an unfair power imbalance on immigrant farmworkers that coerces them into silence. Similarly, by restricting worker mobility and allowing employers excessive control over workers' contracts, the Seasonal Agricultural Workers Program undermines migrant workers' ability to truly exercise their employment rights. Farmworkers interviewed during the study said that contractors impress upon workers that complaints would affect their licensing and their ability to provide the workers with jobs.
- **FEDERAL AGENCIES HAVE CREATED A JURISDICTIONAL VOID** in their poor coordination of the SAWP with other governmental agencies. As such, the SAWP is not protecting workers' rights.

Key Recommendations

Our research demonstrates that current conditions for BC farmworkers erode economic security and are fundamentally untenable. In focus group discussions and interviews, farmworkers suggested how to improve their working conditions. We draw upon their experiences as well as other studies that seek to create better practices for farmworkers. Overall, our recommendations emphasize that BC employment standards must be improved and that enforcement of the standards must be comprehensive, proactive and continuous. We also maintain that health and safety regulations must be vigorously enforced and that the farm labour contracting system and the SAWP should be restructured to promote workers' rights.

Among this study's recommendations are that the BC government:

- **RESTORE OVERTIME PAY, STATUTORY HOLIDAYS AND ANNUAL VACATIONS** for farmworkers, thereby helping to reduce the highly exploited labour of immigrant and migrant farmworkers, whose rights should be identical to those of any other worker in BC.
- **ESTABLISH PIECE RATES THAT ARE EQUIVALENT TO THE MINIMUM WAGE.** If farmworkers are to be paid a piece rate it must be set at a level, as in Ontario, that allows them, with reasonable effort, to earn at least the minimum wage for the hours they work. Piece rates are a precarious source of income, and the practice should be reconsidered. An hourly wage system could be applied to all farmworkers, as is already the case under the SAWP.
- **RAISE THE MINIMUM WAGE TO \$10 PER HOUR AND INDEX IT TO INFLATION.** BC's high cost of living and labour shortage suggest the need for an immediate raise in the minimum wage.
- **STRENGTHEN INSPECTIONS AT FARM SITES AND RESTORE PROACTIVE MONITORING TEAMS SUCH AS THE AGRICULTURE COMPLIANCE TEAM (ACT).** Without regular, random and unannounced visits, Employment Standards Act and WorkSafeBC regulations cannot be enforced. Farmworkers aren't free to speak about their employment conditions and don't know how to register their complaints unless inspectors know their native languages. And without inter-agency cooperation, enforcement of employment standards and health and safety regulations is ineffective. Higher penalties for contraventions should also be established.
- **REVIEW THE FARM LABOUR CONTRACTING SYSTEM AND CONSIDER THE ESTABLISHMENT OF A NEW NON-PROFIT HIRING HALL MODEL FOR ALL FARMWORKERS – IMMIGRANT AND MIGRANT.** It's time to replace the private FLC system. A new non-profit program could become the exclusive supplier of labour and require growers to hire through a regulated system/hiring hall/pool. This new non-profit hiring model should be extended to migrant workers so they would no longer be hired by and bound to a single employer. Included in this new model should be the establishment of independent, local agricultural human resources centres that function as a support mechanism for farmworkers and provide safe transportation.

- **FUND COMMUNITY AGENCIES TO PROVIDE WORKERS' RIGHTS EDUCATION AND ADVOCACY.** Community agencies inform farmworkers effectively and inexpensively about their rights, and can do so in im/migrants' native language. Only if farmworkers are aware of their rights can they exercise them. SAWP migrant workers should receive information about their rights in their native language upon arrival in BC. Rights should be posted in the workplaces of all farmworkers in appropriate languages.

This report also has recommendations for municipal and federal governments, and for the Mexican government. They include:

- **ADOPT COMPREHENSIVE REGULATIONS FOR MIGRANT WORKER HOUSING** and improve housing inspections. Initial inspections need to ensure employer-provided accommodation meets existing standards; if the accommodation is substandard, it should not be approved.
- **RESTRUCTURE THE SAWP.** At minimum, the SAWP should allow workers to move more freely from one employer to another within the SAWP, by issuing workers occupation-specific work permits versus employer-specific permits. Furthermore, HRSDC (Service Canada) should move from being a labour-market matching service to a service that coordinates with all stakeholders. It should assume leadership in ensuring that all levels of government, including other federal agencies, the ESB and WorkSafeBC, exercise their responsibilities.
- **REQUIRE EMPLOYERS TO DEMONSTRATE A SATISFACTORY RECORD OF COMPLIANCE.** SAWP workers should be able to evaluate their employer, with the evidence to be considered in the latter's re-application for a Labour Market Opinion (LMO) in subsequent years.
- **REMOVE REPATRIATION AS AN EMPLOYER RIGHT.** Repatriation is the main deterrent for SAWP workers exercising their labour rights. Growers who wish to dismiss SAWP workers must demonstrate proper cause before so doing and dismissal should not be linked to repatriation.
- **ENABLE THE IMMIGRATION OF SAWP WORKERS.** If workers are accepted into the SAWP and work for three seasons, they should be able to apply for permanent resident status.
- **SIGN THE UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES.** Canada should sign on to this convention, which is compatible with the Canadian Charter of Rights and Freedoms, in guaranteeing fundamental rights to all people in Canada, including migrants.

Introduction

“Life has not smiled on me very much.” — *BC Mexican migrant farmworker*

On March 7, 2007, a van crashed on a Fraser Valley highway in BC’s Lower Mainland. Three farmworkers died – Sukhvinder Kaur Punia, Sarbjit Kaur Sidhu and Armarjit Kaur Bal – and eight were critically injured. All were Indo-Canadian women on their way to work early in the morning. This tragic incident makes all too visible the dangers of farmwork. At the time of the van crash, a Vancouver Sun editorial called for a wider investigation of the treatment of agricultural workers in the province.¹ This report responds to that call.

Soon after coming to power in 2001, the BC Liberal government reduced employment protections, particularly in the case of farmworkers – a population that is already made vulnerable due to global as well as local economic policies. Most BC farmworkers in the fertile Fraser Valley, employed in the horticultural industry, are Indo-Canadian immigrants. Since 2004, however, BC farmers have increasingly hired migrant workers from Mexico. They live and work in Canada as temporary migrants under the federal Seasonal Agricultural Workers Program (SAWP).

This report examines the impact of recent provincial policy changes on BC Indo-Canadian immigrant and Mexican migrant farmworkers. Our focus is on workers, sometimes called hand-harvesters, who work seasonally in the harvesting, processing and packing of fruits and vegetables in the Fraser Valley.² Though most of the work is seasonal in fields, it also involves greenhouses, canneries, nurseries and warehouses.

The questions that guided this study were:

- What implications do changing legislation, policies and practices (e.g. employment, immigration, safety, health, housing, transportation) have for immigrant and migrant farmworkers in BC?
- What impact does this changing legal and policy context have on farmworkers' working and living conditions?
- What alternative models of employment standards, safety and health regulations, enforcement procedures and contracting programs would be better able to address farmworkers' needs for economic security, health and safety, and labour rights?

This study is based on extensive research using a range of data sources, including government documents, BC Employment Standards Act complaint and violation data, 12 key informant interviews,³ primary qualitative data generated through focus groups and individual interviews with Indo-Canadian immigrant⁴ and Mexican migrant⁵ farmworkers, and information from reports and academic studies about “better practices” for employment, health and safety policies governing farmworkers in other jurisdictions.

The research team also collaborated with another project, which was funded by WorkSafeBC, to investigate health and safety among BC farmworkers with a comparative focus on Indo-Canadian immigrant and Mexican migrant farmworkers. Researchers Gerardo Otero and Kerry Preibisch interviewed key informants⁶ as well as Canadian and migrant farmworkers. They also conducted a survey of farmworkers. This report draws on specific components of their study that were available at the time, in particular their survey of 87 Mexican migrant farmworkers (see details below). The WorkSafeBC research provides additional and corroborating information to the CCPA study.

Both studies faced several challenges in conducting the research with government officials who were either unwilling or unable to provide information and with a horticultural sector that is troubled by illegal, abusive and less-than-transparent practices. As well, conducting research on seasonal farmworkers presents special difficulties since their characteristics and activities are not well documented at the national or even provincial level. Despite these challenges, our extensive and in-depth data enable us to provide a detailed analysis of the impact of policy changes on farmworkers.

The next section provides an introduction to immigrant and migrant farmworkers in the Fraser Valley. The report then outlines BC employment standards and enforcement in the farmworking sector, including changes since 2001. This is followed by an overview of the Workers Compensation Board (now WorkSafeBC) as it relates to BC farmworkers. The report then provides an analysis of the data from the focus groups, individual interviews, and survey with farmworkers. The final section sets out the conclusions and recommendations that emerged from the analysis.

A glossary of acronyms used in this report is provided at the back, on page 76.

Immigrant and Migrant Farmworkers in the Fraser Valley

Historically, BC has drawn on specific groups from poorer, non-white countries as a source of cheap labour, for dangerous occupations, with inferior employment and citizenship rights in Canada.⁷ As part of this history, early in the 20th century, BC farmers successfully petitioned the federal government to admit South Asians and Japanese to work in agriculture.⁸

Canadian immigration policy continues this racialized practice by permitting specific groups from the global South to enter Canada to fill jobs with poor pay and working conditions that other populations are unwilling to fill. Their racialized and highly vulnerable status allows employers to justify substandard working, housing and health/safety conditions.

BC farmers in the Fraser Valley rely largely on immigrants from the Punjab to replenish their labour force. Today, about 90 per cent of these farmworkers are Indo-Canadian; the majority are women, many in their 50s and 60s.⁹ Most immigrated to Canada as parents or grandparents under the federal family reunification program, sponsored by their Canadian children or grandchildren.

These farmworkers are vulnerable for several reasons. Many are older and are not fluent in English. Thus, few employment options other than farmwork are likely to be available to them, particularly as women. If they are sponsored, farmworkers often feel compelled to repay their families for their economic sacrifices in bringing them to Canada and maintaining their welfare.¹⁰ Income security programs for Canada's older population, such as Old Age Security (OAS) and the Guaranteed Income Supplement (GIS), are generally off limits to sponsored immigrants for 10 years, and are prorated after that.¹¹

In addition, immigrant farmworkers are in precarious situations due to their dependence upon farm labour contractors (FLCs) who arrange where they will work, how much they will earn, and how they will travel to and from farms. By special treatment in the Employment Standards Act, FLCs are the employers of farmworkers, even when these workers are under the effective control of a grower. Farm owners have long relied on FLCs for a reliable workforce, particularly

during the peak season, despite their history of exploiting and abusing immigrant farmworkers (especially those who are new to Canada), and of violating employment standards and safety regulations.¹²

Immigrant farmworkers are vulnerable for several reasons. Many are older and are not fluent in English. Thus, few employment options other than farmwork are likely to be available to them, particularly as women.

Though the provincial government was well aware of FLCs' flagrant violations of employment standards, it reduced enforcement procedures and resources in 2001/02. The van crash in 2007 is only one of many tragic illustrations of what happens when farmworker safety regulations are not enforced. A recent Work-SafeBC report highlighted the likely causes of the crash, most of which could have been prevented with adequate enforcement.¹³

While most BC farmworkers in the Fraser Valley are Indo-Canadian, Citizenship and Immigration Canada (CIC) began in 2004 to curtail this traditional source of labour by restricting the admission of parents and grandparents in its family reunification program.¹⁴ This policy shift contributed to the labour shortage that had been emerging in BC agriculture.

Accustomed to paying seasonal harvest workers no more than the minimum wage (and sometimes less) and providing substandard working conditions, BC farm owners faced a labour shortage in the early 2000s. The provincial government did not raise minimum wages and standards in agriculture to attract workers to meet these shortages. Nor did the federal government seek to maintain or increase the number of immigrants that traditionally serviced this sector. Mechanization of farmwork proceeded slowly. Instead, the horticultural industry lobbied the federal and provincial governments to gain the right to hire temporary migrant workers. In 2004, BC joined the Seasonal Agriculture Workers Program (SAWP) by agreement with Canada and Mexico to give Mexican workers temporary employment visas in agriculture, with wages slightly above the provincial minimum.

Canadian government officials and employers defend the program as necessary due to domestic labour shortages and an unstable workforce in agriculture. The federal government requires a Labour Market Opinion (LMO) from employers applying to the SAWP to demonstrate that they have tried to hire local labour and that a supply is not available. But this proviso does not address the low wages and poor working conditions that fail to attract local workers. In addition,

Seasonal Agricultural Workers Program (SAWP)

- A temporary workers program that began in 1966, the SAWP is authorized by the federal Immigration and Refugee Protection Act (IRPA) and managed through the Department of Human Resources and Skills Development Canada (HRSDC), now Service Canada.
- As with other foreign temporary worker programs, an employer who wishes to hire an agricultural worker must apply for and receive a positive HRSDC Labour Market Opinion (LMO) that shows local labour is not available.
- The program brings in approximately 20,000 workers from Mexico and the Caribbean annually, to fill jobs in agriculture, including apiary, tobacco, canning/food processing (fruit and vegetables), nurseries, field vegetables and berries, greenhouse vegetables, fruit, flowers and sod.
- The SAWP operates in all Canadian provinces, except Newfoundland and Labrador. Ontario employs over 85 per cent of all SAWP participants.
- Provincially, the program is administered by privately-run, user-funded agencies. In Alberta and B.C., since 2007, the Western Agricultural Labour Initiative (WALI) assists employers in applying for migrant agricultural workers through Service Canada and in coordinating the SAWP; it also represents employers' interests.
- Countries supplying migrants recruit, select and screen applicants, using as in the case of Mexico, such criteria as: gender (mostly men), age (25 to 44 for first time participants), experience in farmwork, lack of access to farmland in Mexico, good health status, family responsibilities (e.g. spouses, children) in Mexico, and education (no post-secondary education). Workers, mostly married men and a small and growing number of single mothers, arrive in Canada alone, leaving family members behind.
- Workers and employers sign a standard contract that outlines respective rights and obligations and length of employment that ranges between six weeks to eight months, and a wage equivalent to at least the minimum hourly provincial wage.
- Workers pay into Canadian programs such as Employment Insurance (EI) and the Canada Pension Plan (CPP), but do not receive all benefits.
- Workers are bound to a single employer and residential location secured by the employer, usually a farm. Employers are free to dismiss workers, regardless of time remaining in the contract. Dismissed workers are repatriated if the consulate cannot assign them to another farm operating under the SAWP. Employers hold the power to request specific workers back for subsequent seasons.
- Although Citizenship and Immigration Canada (CIC) grants visas to SAWP workers that may be valid until December 15, workers are generally sent home as soon as their contracts expire. Mexican workers who want to continue in the SAWP must submit employer evaluations to their Ministry of Labour within seven days of their return. A negative report can result in suspension from the program. Workers must also report the treatment they received from Canadian employers.
- Although SAWP is a federal program, provincial labour standards and safety regulations prevail.

Adapted from Justicia/Justice for Migrant Workers¹⁶

neither the federal nor provincial government has adequately acknowledged how the SAWP is deeply flawed in exposing workers to inadequate employment and safety protections, which renders them vulnerable to rights violations.

In contrast to citizens and permanent residents who have the formal right to circulate in the labour market, the SAWP does not allow workers to choose their workplace or residential location. SAWP workers are, in effect, unfree. They are allowed to come to Canada only to work for a specific employer, live on their employer's designated premises, for a specified period of time, and then return to their home country. It is virtually impossible for a worker to quit the initial employer and find employment elsewhere. Bound to a single employer with temporary status, workers face the threat of repatriation. While SAWP workers legally have the same labour rights and employment standards protections as other agricultural workers, in practice, if a SAWP worker complains that his or her rights are being violated, the consequence may well be a ticket home. The temporary status also separates SAWP workers from their families, making them further vulnerable to employers' excessive demands. SAWP visas differ not only from conventional landed immigrant categories, but also from other temporary migrant worker programs, in that they only allow the holders to stay in Canada for up to eight months (see *Seasonal Agricultural Workers Program (SAWP)* on page 15 for more information).¹⁵

In BC, the number of Mexican migrant farmworkers recruited through the SAWP has grown dramatically: from 50 in 2004 to about 2,200 workers in 2007. It is likely that the BC-SAWP will further expand as the labour shortage in agriculture continues, and farm owners seek a reliable, flexible – and indeed unfree – workforce. With its expansion, the ethnic, gender and age composition of the horticultural labour force is shifting, from being almost exclusively

SAWP in BC

- The SAWP was extended to British Columbia for the first time in 2004, based on an agreement with the Mexican government.
- The number of Mexican workers in the BC-SAWP has grown each year since its inception:
 - 2004 – 50 workers (nine employers);
 - 2005 – 700 workers;
 - 2006 – 1,253 workers (130 employers); and
 - 2007 – approximately 2,200 workers (200 employers).¹⁷
- In 2007, the hourly wage was \$8.90; employers could charge workers up to 7 per cent of gross pay for rent, to a maximum of \$550 (farmers may charge this figure to their workers even if their contract is for shorter periods of time).¹⁸
- In 2007, BC signed a new bilateral agreement with Commonwealth Caribbean countries to enable growers to hire workers from this region.

Indo-Canadian landed immigrants to a growing number of Mexican migrant workers, who are younger and predominantly male. To cope with a “continuing shortage” of labour, BC fruit growers are expecting to hire about 3,000 temporary foreign workers in 2008 (about 40 per cent more than in 2007), most of whom will be Mexican. In July 2007, BC entered a new agreement with the Commonwealth of Caribbean Islands to bring in seasonal agricultural workers from that region.¹⁹

Immigrant and Migrant Worker Study Participants

This study was carried out between June 2006 and December 2007, soon after the BC-SAWP came into effect. The study included in-depth interviews with 28 immigrant and 25 migrant farmworkers. The sample reflects the changing distribution of gender and age with the introduction of Mexican migrant workers into BC agriculture. Seventeen of the immigrant workers who participated in this study were women and 11 were men; their average age was 55. In contrast, 18 of the migrant workers were men and seven were women; their average age was 33 (see Table 1).

In comparing these farmworkers’ experiences, we focused on the impact of changing provincial policies. While the SAWP is a federal program based on bilateral agreements between the federal government and other countries, provisions covering farmworkers’ employment standards, and health and safety regulations are governed by the province.²⁰ In failing to coordinate with provincial ministries and agencies, the federal SAWP places the protection of migrant workers in a jurisdictional grey-zone. As a result of BC’s reduced employment standards and safety enforcement, both immigrant and migrant farmworkers face significant structural vulnerabilities.

In contrast to citizens and permanent residents who have the formal right to circulate in the labour market, the SAWP does not allow workers to choose their workplace or residential location. Bound to a single employer with temporary status, workers face the threat of repatriation. SAWP workers are, in effect, unfree.

Table 1: Ethnic, Gender and Age Composition of Study Participants

| | Indo-Canadian immigrants | Mexican migrants |
|------------------------------|--------------------------|------------------|
| Ethnicity/immigration status | 28 | 25 |
| Female | 17 | 7 |
| Male | 11 | 18 |
| Age (average) | 55 | 33 |

BC Employment Standards and Enforcement in the Farmworking Sector

Employment Standards are the basic laws that govern issues such as the minimum wage, hours of work, holidays, and other workplace rights. They are supposed to set a basic floor, and are particularly important to vulnerable and low-wage workers in protecting and enforcing their rights. Yet, soon after coming to power in 2001, the Liberal provincial government reduced employment standards and safety enforcement for farmworkers – despite the many abuses that plagued the agricultural industry.

First, we examine key changes in the provincial Employment Standards Act (ESA) and regulations and in their enforcement in the farmworking sector: from shifts in law and policy before 2001 to policy changes between 2001 and 2007. Next, we examine how the latter changes came about and the impact of these changes as measured by audits, complaints and contraventions. In particular, this analysis shows how policy changes reduced farm owner accountability for farmworker employment protections and downloaded liability onto farm labour contractors. Later in the report, we discuss the impact of policy changes on farmworkers through the qualitative focus groups and interviews and quantitative survey data.

Changes in Law and Policy from 1993 to 2000

In 1993-1994, Professor Mark Thompson conducted a review of the ESA for the provincial government.¹⁸ His report dealt extensively with farmworkers and farm labour contractors. It identified a pattern of violations of several employment statutes by growers and especially farm labour contractors, and recommended that farmworkers have equivalent protections to other workers.

Most of the resulting 1995 revisions to the Act and its regulations applied to farmworkers, with important exceptions:

- If they were paid piece rates, farmworkers were not entitled to the minimum wage (theoretically, government regulation established minimum piece rates to provide an average agricultural worker with pay equivalent to the prevailing minimum wage for other workers, although in practice this has often not been the case); and
- Overtime payments were less generous than for other BC workers.²²

Like other workers, however, farmworkers were entitled to pay for statutory holidays and annual vacations.

The revisions to the ESA did not alter the status of farm labour contractors (FLC) as intermediaries between growers and some of their workers, but the Act provided a more extensive regulatory framework for contractors. In particular:

- The Act required contractors to provide growers with copies of detailed payroll records for all work performed on their properties;
- Growers were required to retain these records for seven years; and
- Growers and contractors were jointly and separately liable for the wages of contractors' employees.

The Thompson report also recommended better enforcement to address the well-known widespread abuses and violations in agriculture of the ESA and other legislation. This report (along with a report by the Auditor-General of Canada) led the provincial government to create a special enforcement program for agriculture, including field visits and audits, with broad enforcement capabilities. The BC Ministry of Labour, in cooperation with Human Resources and Development Canada (HRDC), subsequently established the Agriculture Compliance Team (ACT) in 1997 to investigate labour violations in the agricultural sector, in particular the compliance of growers and farm labour contractors with their respective statutes. Later Canada Revenue Agency joined the ACT to deal with fraudulent tax returns.

This multi-jurisdictional review was proactive rather than complaint-based and was highly successful in revitalizing enforcement in the agricultural sector. It encouraged direct communication between staff members and the predominantly Indo-Canadian farmworkers, and cooperation between different levels of government. During the 1997 to 2001 period, according to one key informant, the ACT found 1,136 violations of the Employment Standards Act ("determinations") by farm labour contractors,²³ highlighting the need for its proactive and random inspections. The head of the ACT program received death threats because of his work and was assigned police protection.²⁴

Changes in Law and Policy from 2001 to 2007

After its election victory in May 2001, the Liberal government was committed to fulfilling its platform (*A New Era for BC*) to reduce labour regulation and introduce labour market “flexibility.” One of its first acts (July 2001) was to effectively disband the inter-agency Agriculture Compliance Team. According to key informants employed by the Ministry of Skills Development and Labour at the time, ESA administration and enforcement in agriculture had continued to be a big challenge for the Employment Standards Branch (ESB) throughout the 1990s. Although agricultural employment constitutes about 1 per cent of total provincial employment, 15 to 20 per cent of ESB staff resources had been focussed on enforcement activity in the agricultural sector in the years prior to 2002. This concentration reflected the high level of employer non-compliance with the Act identified in the 1993-1994 review of the ESA, especially in the seasonal hand-harvesting sector. One informant estimated that 95 per cent of the abuses found in agriculture were in this sector. As a result of these extensive problems, when the ministry reviewed the ESA in 2001/02, it dealt separately with agricultural employment.

The 2001/2002 review also paid special attention to agriculture because of exceptional political pressure from Fraser Valley farm owners and FLCs, and a pre-election commitment from Abbotsford dairy farmer and new Liberal Minister of Agriculture, Food and Fisheries John van Dongen to roll back ESA regulations covering agriculture and to get rid of the Agriculture Compliance Team.²⁵ At an open cabinet meeting on October 24, 2001 van Dongen said: “First of all, we want less government. That will result in a more competitive industry. That is an area that we intend to work closely on with some other ministries, such as Graham’s [Bruce] Ministry, Labour. A good example there is the kind of very complex employment standards and regulations we have that are choking industries like the raspberry industry.”²⁶

Then, in January 2002, the Minister of Agriculture, Food and Fisheries and the Minister of Skills Development and Labour issued a joint memorandum to FLCs and farm growers, stating that: “We want to take this opportunity to confirm government’s commitment to reviewing and addressing *systematic problems with respect to agricultural workers* under the Employment Standards Act, *particularly as it relates to seasonal harvest workers*. The review of the Act initiated in November is an important step in this process” (emphasis added). The statement announced that the ministers had jointly agreed that: “In response to concerns expressed by Farmers and Farm Labour Contractors about disruptions to the harvest during peak picking periods, Employment Standards compliance staff were directed to reduce their presence in the fields during that period. Enforcement activity by the Employment Standards Branch will continue throughout the winter and spring months. While *full efforts will be made to minimize or eliminate disruption of work during the critical period of harvest*, enforcement measures will proceed” (emphasis added).²⁷

According to informants who worked for the Ministry of Skills Development and Labour at this time, of all the ministries consulted during the new government’s review of the ESA, the Ministry of Agriculture was the most committed in the push for radical changes to the ESA protections for farmworkers. Behind the scenes, the Ministry of Labour pushed back on the Minister of Agriculture’s demands for radical reductions in farmworker regulations by demonstrating how badly hand-harvesters were being abused and how ESB enforcement staff were being threatened by employers. Nonetheless the majority of changes reflected the views of farm

owner associations expressed through the Ministry of Agriculture. According to our informants the raspberry growers were the most vociferous in their demands for reduced regulation of hand-harvesting.

Significantly, the Ministry of Labour's most knowledgeable staff person in this area, the leader of the ACT, was excluded from those consultations. In addition, no discussion paper was prepared and circulated to stakeholders on the changes being considered, as had been done in November 2001 for all other sectors. While consultation meetings had been held throughout the first half of 2002 with all the growers' organizations, with the BC Agriculture Council playing a lead role, farmworker advocates reported that there were no meaningful Ministry of Labour consultations with them about the proposed ESA changes affecting farmworkers.

It is apparent from our investigation into the political environment that produced the unprecedented rollback of ESA farmworker protections that the then Minister of Labour was unable (or unwilling) to resist the exceptional pressure brought to bear by farm owner and FLC organizations, the BC Agriculture Council, and the Minister of Agriculture, Food and Fisheries who wanted the Act stripped of modern workplace rights for agricultural employees. The ESA changes for farmworkers were among the most regressive because of the disproportionately heavy political influence that the fruit and berry industry employers had within the new provincial cabinet, despite the small size of this industry and its dismal record with labour standards.²⁸ Correspondingly, farmworkers, who were mainly racialized, female immigrants, lacked effective representation.

In the spring of 2002, the new government passed amendments to the Employment Standards Act²⁹ that contained substantial reductions in workers' entitlements (many rolling standards back further than existed before the 1995 revisions to the Act).³⁰ Amendments directly affecting agriculture:

- Eliminated the requirement that farmers retain records of wages paid to employees of FLCs on their properties; and
- Created exemptions from growers' liability for workers' unpaid wages, shifting liability to FLCs.

The most significant reductions in employment standards and protections for farmworkers were implemented subsequently, in the spring of 2003, through Cabinet Order in Council changes to the Employment Standards Regulation.³¹ The government reduced the entitlements of farmworkers in four respects:

- A reduction of the minimum piece rates payable by approximately 4 per cent, by deeming piece rates to include statutory holiday and annual vacation pay;
- The exclusion of farmworkers who are paid hourly from entitlements to statutory holidays and annual vacations;

The ESA changes for farmworkers were among the most regressive because of the disproportionately heavy political influence that the fruit and berry industry employers had within the new provincial cabinet, despite the small size of this industry and its dismal record with labour standards. Correspondingly, farmworkers, who were mainly racialized, female immigrants, lacked effective representation.

Employment Standards Branch Data Acquisition Challenges: Lack of Transparency

Our study sought access to ESB data to investigate the impact of regulatory changes and reduced enforcement activity for farmworkers. The study faced several challenges in collecting this data. Using Freedom of Information (FOI) procedures we submitted requests in July and August 2006 to the Employment Standards Branch for access to all ESB “determinations” (legal decisions) resulting from complaints and investigations involving farmworkers, for access to all reports of the Agriculture Compliance Team in 2001 and 2002, and for copies of all current Farm Labour Contractor license applications and bonding levels.

Over the ensuing four months the Ministry of Labour extended by 44 days the 30 day response time limit, estimated that the fees for locating, retrieving and processing the requested records would be significantly in excess of \$3,500, required an advance fee payment of \$3,309 before record retrieval would begin, and denied our request for a fee waiver.

The ministry’s reasoning in denying our request for fee waiver was that it was “... not possible to identify a specific issue that requires disclosure in the public interest.” The government is required to waive fees for access to public records where it can be demonstrated that disclosure of the information requested is in the public interest.

We then submitted a request to the Office of the Information and Privacy Commissioner (OIPC) for a review of the ministry’s fee waiver denial. The OIPC was unsuccessful in persuading the ministry to accommodate our requests without charging a fee, even though we modified our request in several ways.³⁷ The ministry refused our request despite the tragic van crash and the public interest obviously taken at that time in farmworkers’ employment and safety. It took another 14 months for our appeal of the fee waiver denial to be brought to inquiry by the Information and Privacy Commissioner (in March 2008).

In an industry that is ridden with a history of employment violations, such lack of transparency and accountability is all the more troubling.

- The reduction from four to two hours as the minimum hours to be paid to workers who are transported by FLCs to farms where work is not available; and
- The reduction of overtime pay for work in excess of 120 hours in a two-week period from double time to time and one half. Subsequently, regulations excluded farmworkers from all overtime entitlements.³²

The value of these reductions to employers is difficult to calculate, but we estimate that farmworkers paid hourly who had received four paid holidays during the harvest season, plus 4 per cent of their pay for annual vacations, suffered a loss in compensation of about 6 per cent. The amount for piece rate workers varied by crop, but averaged an approximate reduction of 3 per cent. In addition, a further change in the regulation in November 2003³³ broadened the definition of “farmworker” to include workers engaged in on-site selling and initial washing, cleaning, grading and packing.³⁴ As a result, the reduced entitlements encompassed more workers.

Other concessions were contained in a Memorandum of Understanding between the Ministry of Skills Development and Labour (representing the Employment Standards Branch) and the BC Agriculture Council (BCAC), the association that represents most of the commodity associations where large numbers of farmworkers are employed. In effect, the BCAC pledged that its members would not condone violations of the law and regulations, especially where they concerned FLCs. They would not “support or condone the utilization of unlicensed Farm Labour Contractors” and would not condone non-payment of wages owed to farmworkers by growers, contractors or processors.³⁵ In return the government undertook to divert the activities of an Employment Standards Officer from field inspection and enforcement to industry association liaison and the development of a collaborative education program for association members.

This agreement emphasizes voluntary compliance. If violations occur, it is up to individual farmworkers to negotiate with their employers and, if that process fails, to register their complaints with provincial authorities such as the Employment Standards Branch (ESB) or WorkSafeBC.³⁶ The return to a complaint-driven enforcement system occurred despite the knowledge that it is ineffectual for this category of vulnerable worker and the history of unscrupulous violations of regulations that led to establishing the Agriculture Compliance Team in the first place.

The return to a complaint-driven enforcement system occurred despite the knowledge that it is ineffectual for this category of vulnerable worker and the history of unscrupulous violations of regulations that led to establishing the Agriculture Compliance Team in the first place.

Assessing the Changes

To assess the impact of 2002/03 changes to the Employment Standards Act and regulations, and the rollback of administration and enforcement of the Act on the farmworking sector, we obtained from the Employment Standards Branch some of the limited historical data maintained by the ESB with respect to “audits,” “complaints,” and “contraventions” from 1996 to 2006.³⁸ These data are limited in several ways.³⁹ We determined that 16 ESB industry classifications⁴⁰ probably cover the overwhelming majority of audits, complaints and contraventions involving farmworkers (as defined by the Act).

The 2002/03 changes to the Employment Standards Act and its enforcement had an effect of significantly reducing the number of ESB audits and complaints in 2002/03 and 2003/04. ESB officer farm site visits also decreased: from 160 visits in 2001 to only 82 in 2006.

As it turned out (see Table 2), in each year for which audits and complaints data in agriculture was provided, the overwhelming majority of investigations involved employment in just three of the industry classifications of farming, farm labour contracting and horticulture. If there were inconsistencies or overlap in classification coding it is highly likely that it was limited to these three. Though the ESB data do not provide definitive descriptions for these three industry classifications, they allow a distinction between farm labour contractors (who are covered by special provisions in the Act and Regulation) and other employers in farming and horticulture. In particular, the data based on these classifications show that while its audits, complaints and contraventions declined, the ESB increasingly focused on FLCs.

It is clear from the above statistics that the number of audits and complaints in all agricultural industries and the three primary farmworking sectors reached a peak in 2001/02, and that the 2002/03

changes to the ESA and its enforcement had an effect of significantly reducing the number of ESB audits and complaints in 2002/03 and 2003/04. However, it is not clear what then caused the jump in audits and complaints in 2004/05. We do know that in 2004/05 the ESB conducted 80 payroll audits in the agricultural sector (demands for the production of payroll records by

Table 2: Employment Standards Branch Audits & Complaints Relating to Agriculture by Fiscal Year

| Fiscal year | Total agriculture industry audits & complaints (16 sectors) | Farming, farm labour contracting & horticulture | Farming, farm labour contracting & horticulture as a % of total agriculture |
|----------------|---|---|---|
| 1996/97 | 308 | 250 | 81.2% |
| 1997/98 | 225 | 147 | 65.3% |
| 1998/99 | 292 | 264 | 90.4% |
| 1999/00 | 232 | 208 | 89.7% |
| 2000/01 | 275 | 215 | 78.2% |
| 2001/02 | 399 | 296 | 74.2% |
| 2002/03 | 210 | 166 | 79.0% |
| 2003/04 | 189 | 157 | 83.1% |
| 2004/05 | 332 | 297 | 89.5% |
| 2005/06 | 219 | 187 | 85.4% |

Source: BC Employment Standards Branch

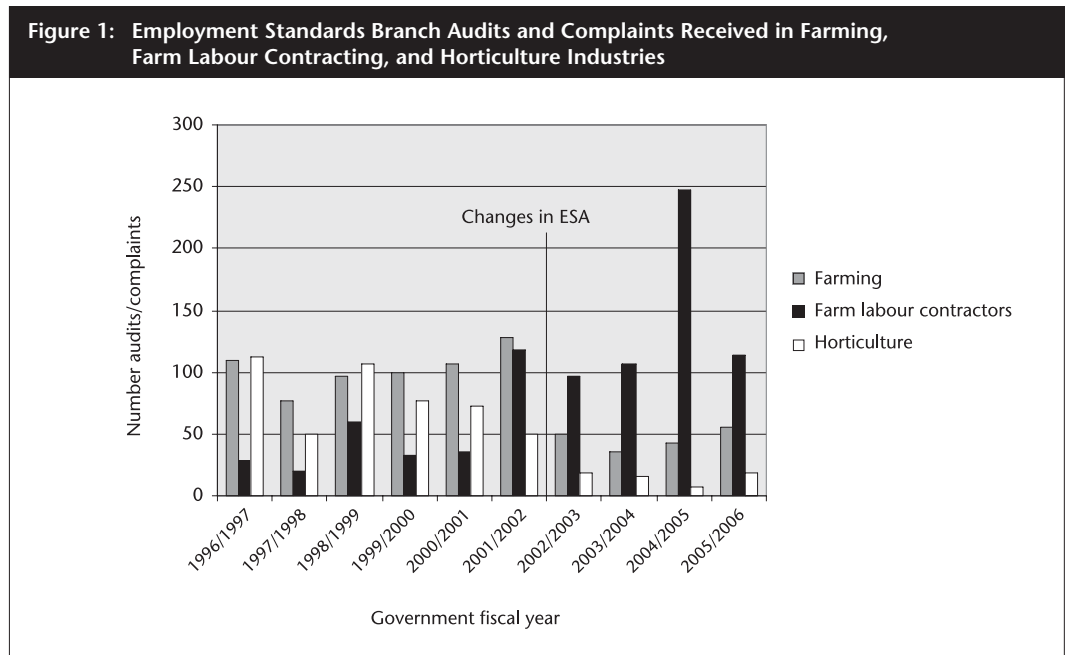
mail) – an increase from 59 payroll audits in 2003/04 and 49 payroll audits in 2002/03. We know that most of the increase in 2004/05 involved a 134 per cent annual increase in audits and complaints in the farm labour contracting sector (see Figure 1).

We also know that from 1996 to 2001 the ESB conducted significantly more audits and complaint investigations in the farming and horticultural sectors than in the farm labour contracting sector, and that after 2001 the relationship between these three sectors reversed. Audits and complaints in the farm labour contracting sector grew to become considerably more than in the farm and horticultural sectors, where the numbers declined to between 25 and 50 per cent of pre-2002 levels. These enforcement activity changes probably reflect the combined impacts of two employment standards changes in 2002:

- The amendment to Section 30 of the Act that ended the joint liability of farm growers and farm labour contractors for unpaid wages earned by farmworkers;⁴¹ and
- The diversion of significantly reduced enforcement staff resources from the ACT field inspections program to office-based farm labour contractor payroll audits.

Before 2002, farm owners were jointly liable for the unpaid wages of farmworkers employed through FLCs. After 2002, farm owners became liable for such unpaid wages only when they could not prove that the FLC providing farmworkers had been paid for the wages they earned. In effect, this shift downloaded liability to FLCs and likely reflects the fact that FLCs had less political clout with the government than farm owners. As a result, the latter became less accountable as they became less subject to ESB audits and complaints.

Several of these policy change elements most certainly explain to some degree the steady decline in wage payment complaints by farmworkers from 67 and 75 in 2001 and 2002, to just 25 in 2006. The government’s regulation in 2004 for direct deposit payment might also help to explain the decline.⁴²



As with the audits and complaints data in agriculture, ESB findings of contraventions of the Act are predominantly in the farming, farm labour contracting and horticultural sectors of agriculture. In the first column of Table 3 we see that the number of contraventions (findings of actual violations)⁴³ recorded for the agriculture industry were highest in 1996/97 (the first year of ACT), and second highest in 2000/01 (the year before changes to the Act and its enforcement). The upturn in the number of contraventions in the period 2003/04 to 2006/07 appears to be the result primarily of a substantial increase in FLC payroll audits in those years by ESB, and not an increase in field inspections or worker complaints. As with audits and complaints, ESB officer farm site visits decreased: from 160 visits in 2001 to only 82 in 2006.⁴⁴

The ESB data on contraventions also enables an historical analysis of the annual numbers of contraventions in each agricultural sector according to the section of the Act or regulations violated.

In lowering provincial employment standards and enforcement, the BC government has cleared the way for farm owners to be less accountable.

We analyzed the three primary farmworking sectors identified above and found that, up until 2002, contraventions of the Act covered many of its sections. Because the 2002 changes in the ESA and regulations reduced the possibilities for violations, contraventions virtually disappear or totally disappear with respect to minimum daily hours, overtime pay, statutory holiday pay, work on a statutory holiday, and vacation pay. Instead the focus of most contraventions shifts to FLC licensing, their duties (both of which increased significantly), payday provisions, payment of termination wages, payroll records, and exclusion from payday requirements. This shift in contraventions reflects policy changes made in 2002/03 that removed various protections of farmworkers. It also suggests that the strategy of

voluntary compliance and education has not addressed violations of employment standards successfully. In particular, since 2003/04, FLC share of contraventions has grown dramatically. In lowering provincial employment standards and enforcement, the BC government has cleared the way for farm owners to be less accountable, while downloading liability onto farm labour contractors and making farmworkers more vulnerable in claiming their rights.

Table 3: Employment Standards Branch Findings of Contraventions of the ESA in Agriculture

| Fiscal year | Total agriculture industry contraventions (16 sectors) | Farming, farm labour contracting & horticulture contraventions | Farming, farm labour contracting & horticulture as a % of total agriculture | Farming, farm labour contracting as a % of total agriculture |
|----------------|--|--|---|--|
| 1996/97 | 120 | 106 | 88.3% | 19.2% |
| 1997/98 | 44 | 34 | 77.3% | 25.0% |
| 1998/99 | 82 | 63 | 76.8% | 22.0% |
| 1999/00 | 93 | 81 | 87.1% | 28.0% |
| 2000/01 | 99 | 86 | 86.9% | 0.0% |
| 2001/02 | 52 | 46 | 88.5% | 11.5% |
| 2002/03 | 61 | 26 | 42.6% | 8.2% |
| 2003/04 | 90 | 90 | 100.0% | 84.4% |
| 2004/05 | 81 | 68 | 84.0% | 59.3% |
| 2005/06 | 63 | 61 | 96.8% | 73.0% |
| 2006/07 | 88 | 79 | 89.8% | 75.0% |

Source: BC Employment Standards Branch

Workers' Compensation and BC Farmworkers

In British Columbia, WorkSafeBC (formerly the Workers' Compensation Board) regulates occupational health and safety and provides insurance coverage for workers who are injured or suffer a disease related to employment. In contrast to lowered employment standards, health and sanitation regulations have improved in recent years. Today WorkSafeBC regulations provide farmworkers with the same degree of protection as other workers. Enforcement, however, is another matter.

Hygiene Regulations for Farmworkers

Harvest workers, unlike other agriculture workers, do not usually work near heavy equipment, operate tractors or perform some of the other strenuous or hazardous activities that lead to injuries. However, they do work in areas where pesticides are frequently applied, are often isolated from farm buildings, and are expected to eat meals in or near their workplace. For these reasons, hygienic conditions are especially important to this (predominantly female) workforce. This coverage is a relatively recent phenomenon in BC with a history that occurred in three stages.

In 1972, 55 years after the workers' compensation system was established, the WCB extended insurance coverage to farmworkers. Following a 1993 review of health and safety regulations,⁴⁵ the WCB implemented separate health and safety regulations for agriculture, including

Occupational First Aid, and guidelines for work with machinery and pesticides, all written specifically for agriculture. The Workplace Hazardous Materials Information System (WHMIS) was also extended to agriculture. These regulations did not address all hazards covered in other industries, but did require that employers provide an “adequate supply” of potable drinking water during the workday. The agriculture regulations required employers to provide hand washing, shower and laundry facilities for workers who entered fields after pesticides had been applied and the restricted entry period expired. The so-called “general duty regulations” attached to the agriculture regulations and applied to all workplaces contained no references to sanitary facilities.

The final step occurred in 2004. Ironically, the “de-regulation” of workplaces mandated by the provincial government after 2001 provided WorkSafeBC with the opportunity to extend the coverage of Occupational Health and Safety Regulations to farmworkers to “ensure equivalent standards of protection for all workers in all sectors.”⁴⁶ In 2004, WorkSafeBC issued new

regulations (effective January 1, 2005) that removed the last distinctions between farmworkers and the majority of other BC workers, incorporating agriculture into general health and safety regulations. Occupational Health and Safety Regulations, applicable to agriculture since 2004, require that employers ensure that workers do not keep or consume food where it could become “unwholesome” because of workplace contaminants. In addition, the regulations require employers to provide a sufficient number of washroom facilities, including separate washrooms for men and women. Where permanent installations are not feasible, portable washrooms and hand-washing facilities must be available. Finally, employers are required to post notices if water is non-potable.

Nearly one in four respondents in the Otero-Preibisch survey of migrant workers identified that they almost never or never had access to a washroom on the worksite. One third of the participants said there was almost never or never any water to wash their hands at their worksites. Our interviews with farmworkers revealed daily handling of pesticides.

But while sanitation *regulations* have improved for BC farmworkers, resources to *enforce* safety and sanitation regulations have declined. Violations of these statutes come out clearly in the Otero-Preibisch survey of Mexican migrant workers as well as in the focus groups and individual interviews conducted for this study (see below). A majority (56 per cent, n=87) of study participants in the Otero-Preibisch survey noted that there was never a place to eat away from the worksite; an additional 10 per cent identified

a place to eat was almost never provided. Nearly one in four respondents identified that they almost never or never had access to a washroom on the worksite. One third of the participants said there was almost never or never any water to wash their hands at their worksites.

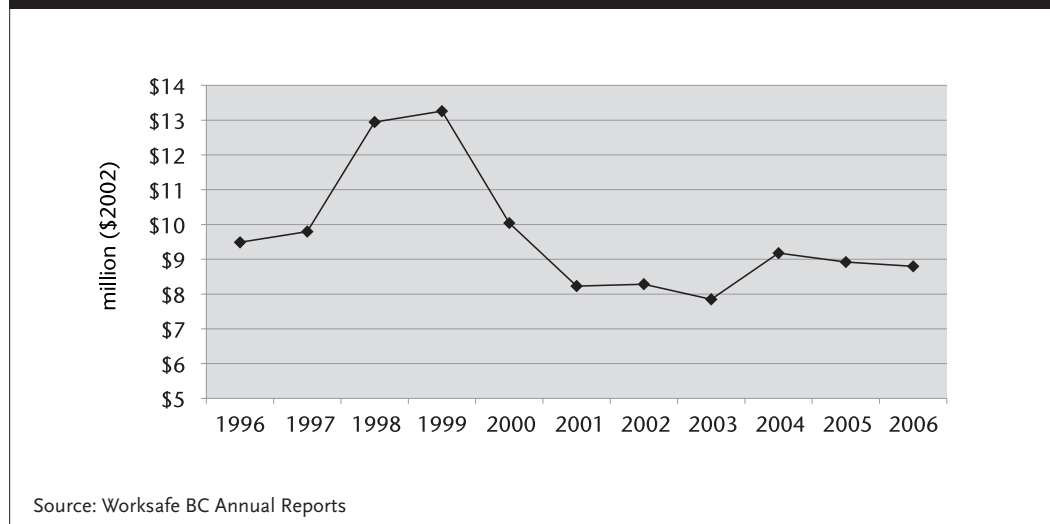
Coverage of Work-related Illness and Injury of BC Farmworkers

While parity in the rules between farmworkers and other BC workers is to be applauded, the reduction in enforcement and prevention activities by WorkSafeBC has left a traditionally vulnerable workforce exposed to hazards on the job. Farmworkers experience high rates of work-related illness and injury. In BC, about 800 workers in the agriculture industry are injured every year in work-related accidents. On average, four agricultural workers die from their injuries each year.⁴⁷ This puts the injury rate per 100 person years at 3.7 – 15 per cent higher than the 3.2 average for all BC industries. Our research suggests that these figures in fact conceal under-reporting of injuries. The interviews and survey with farmworkers revealed daily handling of pesticides, working with heavy equipment, day-to-day exposure to the outdoor elements, and the frequent lack of sanitary facilities, all of which have the potential to jeopardize health and safety. Farmworkers disclosed that they experience considerable pressure to not report injuries and lack understanding about their rights to workers' compensation.

The perilous conditions facing farmworkers is illustrated by the fact that WorkSafeBC named a farm labour contractor as the fourth-highest BC company to be fined in 2006. Diamond Labour Contracting was fined \$69,185 following an inspection that found the company in violation of transporting workers in a van without seatbelts.⁴⁸ The high fine likely reflects repeat offences.

Tracking the claims costs since 1996 for WorkSafeBC in the agriculture subsector reveals an uneven trend in cost pressure that peaked in 1999, but overall is fairly flat (see Figure 2).⁴⁹ What is important to note here is that there is no significant decrease in WorkSafeBC claims costs that would support a decrease in rates charged to the agriculture industry, as has occurred.⁵⁰

Figure 2: WCB Claims Costs in BC's Agriculture Industry 1996–2006 (\$2002)



Inspections and Enforcement

Since 2001, both inspection reports and prevention orders conducted by WorkSafeBC have dramatically declined across industries. These cuts are reflected in agriculture. Participants in focus groups and interviews reported that they saw very few or no health and safety inspectors during their work at the farms. The enforcement data provided by WorkSafeBC gives us some insight into why the workers may not see them.⁵¹

Inspection reports are usually the result of a directive to fix an existing hazard witnessed by a WorkSafeBC inspection officer, whereas prevention orders are usually the result of a directive to implement a policy or procedure intended to prevent an accident. Inspection reports in the agriculture sector dropped from an average of 523 in the 1994–2001 period to an average of 200 in 2002–2006 – a 62 per cent decrease. Similarly, prevention orders dropped from an average of 940 in 1994–2001 to an average of 253 in 2002–2006 – a 73 per cent drop (see Figure 3).⁵²

With other data revealing relatively flat injury rates and claims costs,⁵³ it would be difficult to conclude that safety in the agriculture sector was improving. Moreover, turnover among harvest workers is high. More likely, the decrease in inspections should be attributed to reductions in WCB services mandated by the provincial government. In 2002, the WCB budget was cut by 12

Figure 3: WCB Inspection Reports and Prevention Orders in BC's Agriculture Industry 1994–2006

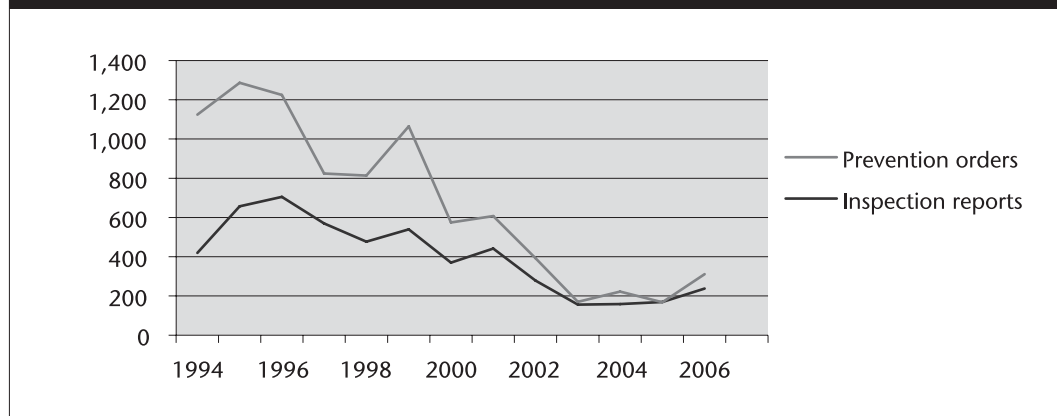
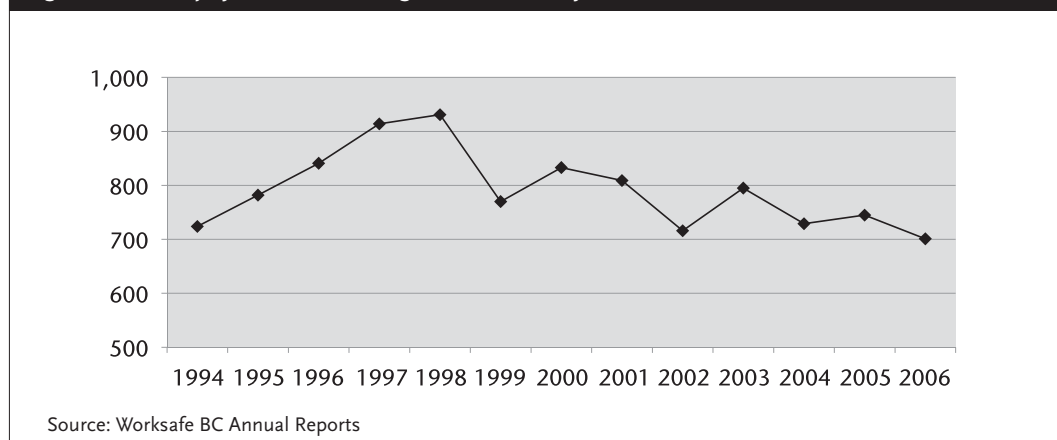


Figure 4: WCB Injury Claims in BC's Agriculture Industry 1994–2006



per cent, a move that resulted in a reduction of the number of prevention officers inspecting workplaces by 30 per cent.⁵⁴

While most BC employers are not responsible for transporting their employees to and from work, the labour structure of the agriculture industry – in particular for hand harvesters – dictates that farm labour contractors pick up workers (usually at home or where they have been provided housing) and drive them to various worksites. When a vehicle crash occurs between farms, the jurisdiction of the different enforcement agencies becomes blurred. Police forces, the Insurance Corporation of British Columbia (ICBC), the BC Ministry of Labour, the BC Coroners Service, the Motor Vehicle Branch, the Gas Safety Branch and WorkSafeBC investigators are all at the scene focusing on compliance with their respective legislative authorities.

Following the 2003 death of farmworker Mohinder Sunar from an FLC vehicle crash, WorkSafeBC recommended that the government “reinstigate the joint roadside inspections during berry season by RCMP, Motor Vehicle Branch, Gas Safety Branch, WCB, and the Ministry of Labour.”⁵⁵ This cross-jurisdictional approach existed between 1997 and 2001 with the Agriculture Compliance Team (ACT), in which WorkSafeBC (then WCB) participated. WorkSafeBC recognized the value of such a team due to the unique nature of the work carried out by farmworkers. But this team of investigators was not re-established. It might have prevented the tragic 2007 highway van crash.

In 2002, the WCB budget was cut by 12 per cent, a move that resulted in a reduction of the number of prevention officers inspecting workplaces by 30 per cent. Farmworkers disclosed that they experience considerable pressure to not report injuries and lack understanding about their rights to workers’ compensation.

The Impact of Changing Policies on Farmworkers

Focus Group, Interview and Survey Findings

This section of the report highlights findings based on the qualitative focus groups and interviews that the CCPA research team conducted with both immigrant and migrant farmworkers in the Fraser Valley. This section also includes preliminary findings of the Otero-Preibisch survey dealing with Mexican migrant workers, which supplements the qualitative CCPA study to give a broader picture, in particular, of health and safety issues. Before discussing the findings about the impact of changing policies on farmworkers, this section briefly outlines the methodology of the CCPA qualitative study and of the Otero-Preibisch survey study.

The CCPA research team conducted qualitative focus groups and interviews with the collaboration of community partners. In the case of immigrant farmworkers, a service provider who works for the Progressive Intercultural Community Services (PICS)⁵⁸ helped to recruit Punjabi farmworkers for the study and assisted with English/Punjabi interpretation and translation during the focus groups and interviews, which took place at the community agency. The recruitment of Mexican migrant farmworkers for focus groups and interviews required a variety of strategies. Justicia for Migrant Workers, a local advocacy group, helped to contact workers and conduct some of the research.⁵⁹ As well, the CCPA project research assistant met workers on days off in public spaces where they shop and run errands in several towns in the Fraser Valley. At initial meetings with migrant workers, the research team explained the purpose of the study, its ethical protocols, and coordination logistics. Of those initially contacted, 25 of 27 decided to participate in the study.⁶⁰

In selecting participants for the focus groups and interviews, the CCPA study sought to create a purposive sample that reflects farmworkers' diverse characteristics and experiences. The criteria for selecting immigrant farmworkers included age, gender, years in Canada, years as farmworkers, types of farmwork, and educational levels. The criteria for migrant farmworkers were gender, types of farmwork, and types of housing. Reflecting industry gender breakdowns, the CCPA study selected more female than male immigrant farmworkers, and more male than female migrant farmworkers.⁶¹

The qualitative approach, based on in-depth focus groups and individual interviews, allowed participants to discuss issues in response to open-ended questions.⁶² At the request of the local advocacy group, the migrant focus groups combined a workshop format that included information about the SAWP contract and workers' rights in BC with interactive discussion focused on key questions of the study.⁶³ Researchers talked to 28 immigrants (20 in focus groups⁶⁴ and eight in individual interviews) and to 25 migrants (21 in focus groups⁶⁵ and four in individual interviews). These methods provided an opportunity for a detailed analysis of the similarities and differences between migrant and immigrant farmworker experiences.

The Otero-Preibisch survey (funded by a grant from WorkSafeBC) consists of a non-random sample of 200 farmworkers, half from each of the two main groups: immigrant Indo-Canadian workers of Punjabi descent, and Mexican migrant participants in the SAWP. As of this writing, most of the Mexican migrant survey had been completed (87 questionnaires), but the immigrant survey was just getting under way. All references to "survey" data come from the 87 questionnaires currently processed. Since no list exists of the total populations of immigrant and migrant farmworkers, it was impossible to draw a randomly selected sample. Thus, Otero and Preibisch's key goal in drawing the survey sample was to represent two critical variables that may have a bearing on workers' health and safety: the type of crops and the geography in the Fraser and Okanagan Valleys. In conducting the survey, they sought workers who came from a variety of farms and municipalities. The resulting sample is broad in representing a range of experiences. For instance, the migrant workers come from all of the 32 states (including the Federal District) in Mexico. They worked with a wide variety of crops in most of the relevant municipalities from the two valleys.⁶⁶

Profile of Participants in the Qualitative Study

Immigrant Farmworkers

All 28 immigrant farmworkers who participated in the qualitative study had emigrated from the Punjab in India and spoke Punjabi as their first language. Most (24) landed in Canada through the family reunification program as family class immigrants sponsored by daughters or other members of their family. The remaining came to Canada through the economic class, either as a spouse or as the primary applicant.⁶⁷

When they came to Canada, 11 (39 per cent) had primary schooling, 14 (50 per cent) had some high school education, and three (11 per cent) had post-secondary education. At the time of the study, they had been in Canada from one to 32 years and on average had resided in Canada 9.6 years. Just under half had lived in Canada less than five years. Seventeen of the immigrant

farmworkers were women; 11 were men. Their ages ranged from 37 to 70 years, with an average age of 55.

Their hours of work in the 2006 agricultural season ranged from 700 to 1,550; on average they worked 885 hours. Their total wages ranged from \$5,800 to \$13,706; on average they earned \$7,282 (i.e. \$8.23 per hour). This low average suggests many were paid below the minimum wage.⁶⁸ One half of the farmworkers received hourly wages; over one third were paid piece rate, and the remaining received both hourly and piece rate wages, depending on the work they did. Nearly all immigrant farmworkers had worked in the fields and picked berries (e.g. strawberries and blueberries). Many also worked with vegetables (e.g. potatoes, broccoli, cucumbers) and a few with fruit. Their work included planting, thinning, pruning, picking, grading, sorting, cleaning and packing. Some worked in greenhouses (or canneries, nurseries or warehouses). Nearly all had worked for a farmworker labour contractor (FLC), and in the past season two thirds depended on a contractor for their transportation to and from farms. One third had their own transportation or shared it with family or friends.

Migrant Farmworkers

All 25 migrant farmworkers who participated in the in-depth focus groups and interviews came from Mexico through the SAWP. They came from a variety of states in the Central and Southern regions including Yucatán, Tlaxcala, Oaxaca, Morelos, Puebla, Michoacán, Sonora, Zacatecas, Querétaro, Guerrero, and Nayarit. Twenty-one of the farmworkers had an eight-month contract; four had a contract between six and 7.5 months. For seven participants, 2007 was the first year in the SAWP; 18 had been in the program before, 16 in the BC-SAWP. Eighteen of the migrant farmworkers were men; seven were women. All the men were married save one. Four of the seven women were single and three were separated or divorced. All the women had children except one. Eleven (46 per cent) of the participants⁶⁹ had from four to six years of schooling, nine (37 per cent) had seven to nine years, and four (17 per cent) had from 10 to 21 years.⁷⁰ Their ages ranged from 23 to 50,⁷¹ with an average age of 33.

Eight worked on the farms a minimum of 40 hours a week, 11 worked a minimum of 50 or more hours a week. Seven worked 70 or more hours a week, one up to 90 hours. They all earned \$8.90 an hour, with the exception of a group who began at \$8.60 an hour (see below). The Mexican migrants worked primarily in greenhouses (e.g. tomatoes, peppers).

The Otero-Preibisch survey dealing with Mexican migrant workers found that during the peak season they laboured an average of 12 hours Monday to Friday, 10 hours on Saturday, and seven hours on Sunday. More than a third of the workers reported working 12 hours Monday to Friday while an additional 15 per cent reported working 13 hours Monday to Friday during peak season.⁷² If we assume that all migrant workers labour the average hours reported in the Otero-Preibisch survey at peak ranges (65 hours per week) for a 32-week season during eight months, their average earnings would be \$18,569. Migrant workers, even if assuming peak working hours – and without days of rest, overtime pay and statutory holidays – are making less than the annual low income cut-offs (before tax), a measure of poverty, for an individual in the Vancouver area: \$21,202.⁷³ These data on working hours highlight the urgency of re-instating overtime payments in agriculture and at least one day off of work for rest per week.

The following analysis is based primarily on the in-depth focus groups and interviews with immigrant and migrant farmworkers who provided detailed accounts about their working experiences and the challenges they faced due to a labour market and im/migration system that fails to protect their rights.

The first section shows how the impact of reduced employment standards on immigrant farmworkers' economic security has forced them to accept low and unstable wages, work excessive hours, and tolerate rights violations as a result of the farm labour contracting system. This section also shows how the SAWP generally provides stable but depressed wages, without protecting migrant farmworkers from the poor conditions that they share with immigrant farmworkers. The second section focuses on safety issues and the third section on worker rights.

Low Wages, Long Hours, and Rights Violations

Immigrant Farmworkers

One of the most striking conditions of immigrant farmworkers in our study was their low income levels. On average, they earned \$8.23 per hour, in a time of alleged labour shortages and low provincial unemployment. In addition, they are paid through a complex, and less than transparent system, that often involves farm labour contractors (FLCs), piece rate wages, and Employment Insurance (EI) subsidies. Though piece rates for specific crops (e.g. \$0.314/ pound for strawberries; \$0.326/ pound for raspberries) are supposed to equal on average the hourly minimum wage, they provide little economic security. Earnings depend on many factors out of farmworkers' control. If they pick the harvest at the peak of the season, the weather has been good, the farmer takes good care of the crops, and their employer is honest (e.g. weighs the produce accurately), farmworkers can earn the minimum wage or above it.

But if conditions are not good, immigrant farmworkers who receive piece rate wages are unable to secure an income that is equivalent to minimum wage. For example, to earn \$64 a day, farmworkers may have to work 10 or more hours. As one participant revealed, "we work between 10 and 12 hours, but the earnings each day depend on the quality of the crop. If the crop is good, we make good money, but if the crop is bad, we lose." Farmworkers were often dissatisfied with the piece rate system, but felt they have little choice. This resignation is illustrated in the words of one man who said: "We are to [work at piece rate], because we live here." Since BC employment standard policy does not include the agricultural piece rate system in the statutory minimum wage, it does not provide farmworkers with a basic form of income security.

One of the most striking conditions of immigrant farmworkers in our study was their low income levels. On average, they earned \$8.23 per hour, in a time of alleged labour shortages and low provincial unemployment. And, if conditions are not good, piece rate wages can be below minimum wage.

Added to this precarious piece-rate system is the reliance of most immigrant farmworkers on the arbitrary power of FLCs to take them to fields, pay their wages and submit their Record of Earnings to the Employment Insurance (EI) system. Farmworkers told us about difficulties they had in the past receiving their wages from their FLC, who violated the law by not paying them the full amount of their wages, or not paying them for several months, until after the next crop was ready to be picked, or until the end of the season.⁷⁴ The Agriculture Compliance Team (ACT) once clamped down on such illegal practices, but as discussed above, since 2001 the Employment Standards Branch has reduced enforcement of violations in the farmworking sector. In reducing farm owner accountability, the ESA has, in effect, increased the control and arbitrary power that FLCs have over farmworkers and their wages.

The 2004 government regulation that requires direct payment of wages to a bank account may have offset the number of FLC violations of wage payment requirements in the Act. But an important source of FLC power is the EI system, which subsidizes wages and employers in the agricultural industry by supporting workers during the off-season (see *Employment Insurance and Canadian Seasonal Farmworkers* on page 37).

Farm labour contractors' knowledge of how the EI system works gives them an enormous advantage over immigrant farmworkers, especially those who are recent arrivals (almost half of

the farmworkers in this study had been in Canada less than five years). In establishing EI eligibility (e.g. converting piece rate into hours), contractors are known to abuse newer or less educated workers by recording fewer hours than they actually worked. Sometimes contractors sell or advance hours to farmworkers so they can "make" enough hours for EI. As one participant put it, "they are harassed...and the contractors...request these new workers to buy hours from them." Over and above FLC abuse, farmworkers must work long hours during the season to be eligible for EI subsidies to top up their meagre incomes. Several women in a focus group indicated that they work continuously 10 to 12 hours daily to make "enough hours for Employment Insurance."

Some farmworkers combine hourly paid work and piece rate work to increase their wages. They may work an eight-hour shift in canneries and pick berries for another four hours on piece rate.

An older woman said she works eight to 10 hours a day Monday through Friday in a potato packaging plant and picks berries with the same contractor, which pushes her daily hours up to 12, working seven days a week.

Participants reported that extended hours of harvesting have caused them numerous health problems including strains, repetitive motion injuries, dizziness, shoulder pain, back pain and swollen feet. The work is all the more treacherous in poor weather conditions. For example, several women talked about the hard and heavy work of picking potatoes from the wet ground. In cleaning the soil and sorting out pebbles continuously for 10 to 12 hours, their wrists become sore and sometimes they feel dizzy from the fast-paced work. On some farms, workers have to carry very heavy buckets of produce a long distance, over uneven ground, which hurts their shoulders and backs.

An older woman said she works eight to 10 hours a day Monday through Friday in a potato packaging plant and picks berries with the same contractor, which pushes her daily hours up to 12, working seven days a week.

Employment Insurance and Canadian Seasonal Farmworkers

Seasonal immigrant farmworkers are entitled to Employment Insurance (EI), which is payable during periods of unemployment. Eligibility is based on the number of hours worked. For first-time members of the labour force, the standard is 910 hours. Subsequently, workers must have worked 700 hours (in the Vancouver area, for example) to qualify.

The level of payment is based on the wage earned and the number of hours worked in the previous 26 weeks. The amount of payment is 55 per cent of weekly pay to a maximum of \$435 per week.

For Canadian seasonal workers who may find little employment between November and March, EI payments can be a significant part of their annual income.

Qualification is problematic for piece rate workers. No records of hours of work need be kept for pay purposes, only the number of units picked. Thus wages paid by piece must be converted to hourly rates for the calculation of EI pay rates and to meet eligibility requirements. Piece rate workers told us that they work long hours and their employer (usually a contractor) converts their pay into hours and reports accordingly to EI. This artificially inflates the hourly pay rate for the purpose of calculating EI, but extends the time workers must be employed to qualify for EI under the minimum number of hours.

When workers cease employment, employers must issue a Record of Earnings (ROE), but because of their discretionary power and the widespread practice of converting piecework to an hourly wage without having any proper mechanism to record accurately the hours actually worked, employers can easily falsify records.

Farmworker vulnerability built into this system was confirmed in an 800-page ruling of the federal Tax Court issued April 16, 2008. The case examined Employment Insurance fraud involving a farm labour contractor and his employment of 75 immigrant workers in the Fraser Valley.⁷⁵ Judge Dwayne Rowe appealed directly to British Columbia MLAs, federal MPs representing constituencies in the Lower Mainland, and officials in the provincial and federal governments who have some jurisdiction over this field of endeavour to read John Steinbeck's *The Grapes of Wrath*. The conditions portrayed in the novel of the 1930s US, the Judge noted, are similar to widespread exploitation of contemporary Indo-Canadian berry pickers in BC. In a conclusion to his ruling he stated that:

When a 65-year-old grandmother leaves her village in India, travels nearly two days to Vancouver and is hired within a week by a labour contractor who transports her – at dawn and back at night – in a crowded van for up to eight hours a day so she can earn eight hours pay at minimum wage – or less if paid on piece rate – something is radically wrong with certain aspects of the federal family reunification program and also the berry and vegetable industry in British Columbia. One of the reasons for enduring such hardship is that the elderly worker – and her family – and her co-workers have been assured they will receive cheques from the Canadian government during the winter months provided they obey – absolutely – the dictates of their employers and pay the full amounts of tribute exacted at their discretion during the settling-up meeting.⁷⁶

The lengthy testimonies convinced the judge that the farmworkers had little choice but to obey their employer. He was also convinced that conditions for berry pickers have changed little over the years and highlighted that current “strawberry and raspberry pickers are restricted to more or less the same dismal earnings as they generated in 1997.”⁷⁷

While hourly wages provide more economic security than piece work, some participants prefer the latter, with its sometimes higher income and less controlled supervision. One woman said that when they are on hourly wages, “the supervisors are constantly watching us. We can’t sit, talk, rest – they want us to work, work, work and we are constantly watched by the supervisors... but when it is paid on piece rate, there are no supervisors, but we workers supervise ourselves. We don’t stop working in order to not lose wages.” Whether their employment is paid hourly or by piece rate, farmworkers reported that it is intensely monitored (by themselves or others), which allows for exploitation.

Another difficulty that both piece-rate workers and hourly-paid workers face is their lack of control over when they will work and for how long. Women who pick potatoes in the field or work in a vegetable packing plant said their hours of work could vary between eight and 14 each day. If they work on a conveyor belt and it shuts down due to mechanical failures, they are not paid,

despite the fact that it is illegal to not pay processing workers while they are waiting to resume the work. As well, while other harvesters decide to pick for more hours, participants sometimes have long unpaid waits before the van takes them home. Many noted that farmworkers spend up to an hour and a half twice a day commuting to and from work – adding significantly to their long, exhausting days.

Even participants in our study who have many years of experience working on farms receive hourly or piece rate wages that are close to the minimum wage. One woman has worked in a greenhouse for seven years and currently earns only the minimum wage of \$8 an hour (plus vacation pay).

Whatever the payment system, the farmworkers we talked to wanted better wages. As one said, they are “paid properly, but the wages...are low.”⁷⁸ BC’s minimum wage (and piece rates) has been frozen since 2001, despite the rising cost of living, widening income gaps in BC, low unemployment rates and labour shortages. Even participants in our study who have many years of experience working on farms receive hourly or piece rate wages that are close to the minimum wage. For example, one woman who started in 1978 with a piece rate of 16 cents now earns 40 cents (including vacation pay), just above the minimum of 36 cents per pound for

blueberries. Another has worked in a greenhouse for seven years and currently earns only the minimum wage of \$8 an hour (plus vacation pay).

The women, in particular, had low wages. While most research on farmworkers casts them in gender-neutral terms, gender organizes harvest work in BC. Immigrant farmworkers are highly feminized (the majority are women) and migrant farmworkers are highly masculinized (the vast majority are men). Farmworkers told us about the gendered division of labour, a pattern that is pervasive in the agricultural sector in Canada⁷⁹ that generally results in women earning less than men.

One immigrant woman succinctly explained: “Men do the spraying and janitorial jobs, and women pick and pack.” Participants offered several explanations and justifications for the division of labour and men’s greater earnings. Some men do heavier work (e.g. lifting packing crates or shaking berry bushes) than women, and/or have more seniority and experience. Some men’s jobs such as driving a forklift (which pays between \$10 and \$12 per hour) and pesticide spraying require training; older women are unable to take the training because of barriers of language and literacy. This pattern supports other research showing that, relative to men, women lack

access to formal job training. As well, the skills they bring to the job as a result of their gender socialization (e.g. greater dexterity) lack social and economic recognition.⁸⁰ Consequently, women farmworkers may have to work longer hours than men to earn the equivalent amount of money and to be eligible for EI. Equity implications of this gender-based division of labour need further investigation (see below for discussion about gender and migrant workers).

Immigrant farmworkers reiterated that they feel compelled to tolerate their working conditions even though they lack adequate employment protections and are subject to rights violations, an indicator of their “unfree” status. One worker said that in spite of being too old to do such hard work, they feel “responsible” to continue to work: “Sometimes the immigrants want to work, but their children do not want them to, but, in other cases, the immigrant does not want to work, but the condition of the family makes it necessary.” In another group, a worker emphasized that “no one likes to do this hard work at this age” and all agreed that they have never been able to refuse doing work that is hard on them – “no, never refuse.” One woman explained: “The money is very important for myself, and also for my family. I cover my necessities with this money.”

Some Indo-Canadian farmworkers feel even more disadvantaged when they compare their wages with those of SAWP workers. Punjabi workers have heard that Mexican workers earn \$12.50 an hour. As one argued, “we are only making \$8 per hour and are working much harder. They are not giving proper money to the workers who are here. The Indo-Canadian workers only demand \$10 per hour, not \$12.50!”

Although immigrant farmworkers are under the impression that migrant farmworkers are paid as much as \$12.50 per hour, the latter figure represents an estimate by growers about the cost of employing migrant workers. This estimate is based on calculations including recruitment fees, housing, transportation, etc. In practice, migrant workers earn far less (the minimum wage for 2007 was \$8.90/hour). As well, growers can deduct worker housing and transportation expenses from their earnings. And, oftentimes, the living quarters offered to migrant workers by farmers are in such a degree of deterioration that the farmers must actually be making profits from rental charges. Few if any Canadians would choose to live in those conditions. Thus it is questionable whether the cost of hiring migrant workers is as much as the growers contend.

Migrant Farmworkers

Research from Ontario and other provinces convincingly demonstrates that migrant workers in the agricultural sector are an extremely vulnerable workforce.⁸¹ Our research corroborates this research, but it is the first study to examine the situation of migrant farmworkers in BC, and to relate it to that of immigrant farmworkers.

SAWP workers are covered by protections that do not extend to Canadian farmworkers. The SAWP involves bilateral agreements between the federal government and labour-sending countries. The 2007 BC–SAWP contract stipulates that employers cannot pay less than \$8.90 per hour (compared to \$8 required by the minimum wage) for all work. As well, the BC–SAWP agreement establishes that workers must have two 10-minute rest periods: one in the middle of the morning and another in the afternoon (paid or unpaid). Migrant farmworkers typically earn hourly wages, not piece rates, as their contracts require.

However, due to their temporary immigration status, the federal SAWP's poor coordination with provincial rules and regulations, and a lack of adequate provincial employment safeguards, migrant farmworkers are vulnerable to abuses by employers – reminiscent of the high levels of abuse towards immigrant farmworkers before ACT was established.

Mexican workers told us about supervisors, for example, who did not allow them to take their breaks or an employer who deducted four hours from the cheque when a worker was unable

PROFILE

Manuel

Before coming to Canada through the SAWP, Manuel,⁸² who is 35, worked on his father's land cultivating vegetables. Manuel heard about the program from friends in his community and the Mexican government helped him with his application by paying 3,000 pesos for a medical exam in Mexico City. He joined the program to earn income to support his wife and two children. This is his second year – he returned to the BC farm where he worked the year before.

Manuel has an eight-month contract; his work involves clearing weeds and planting in the fields, selecting, washing and packing vegetables, and driving tractors and forklifts. He earns \$8.90 an hour. Because Manuel operates machinery, he feels that he should earn more money “because it is more responsibility. And more so when you are out in the field and planting with the machines, you are also directing the other people there.”

He is paid regularly, but didn't receive an orientation in Mexico or BC to explain the deductions on his cheques. “We know they are discounting money from our pay cheques, but we don't know why, or what benefits we are entitled to.”

He works 10 to 14 hour days with Sundays off, and has never received a statutory holiday. He sends home most of his income, about \$65 a day. A translator, paid by the employer, has helped him transfer the money, but charges \$20 to transfer \$1,000 home.

Manuel had to purchase his own boots, gloves and rain gear, despite the fact that “there in the contract, it says that the employer should provide everything.” When his boss took the workers to the store, he paid, “but then he deducted all of this from our paycheques.”

Manuel would like better housing – no more than two people to a room – and better training about the dangers of the job, for example, how to handle the sharp knives for cutting onions, “because one arrives, and they put (you) to work and never explain how you are to do it... they never explain what the risks are.”

According to Manuel, people should have the right to change employers, “and if you are still not satisfied, to change again... If the Consulate can't find the transfer, then you have to return to Mexico.” Also he was concerned that if his employer lacks work, he can send workers back home early, regardless of the time left on the contract. Manuel would like more support from the Consulate, the freedom to change employers, the opportunity to attend English classes, and the possibility of bringing his family to Canada.

to work for two hours. In another case, a group reported that during the first two months of working in Canada their employer paid them according to the previous year's wage, \$8.60 an hour. The wages were not adjusted to the 2007 rate until the workers called the Mexican Consulate, who intervened.

Our research found that despite the experience and training Mexican workers often bring to the job, such as driving forklifts, migrants rarely ever received a higher wage (see the profile for Manuel, for example). The BC-SAWP minimum rate has become a flat wage that farm owners use to pay migrant workers. In effect, it undercuts the higher hourly earnings that some immigrant (usually men) farmworkers, as noted above, receive. The Otero-Preibisch study of Mexican migrant farmworkers interviewed a man with truck-driving experience who routinely makes produce deliveries, but receives the same wages as his peers. Similarly, several survey participants reported that their employers asked them to drive their colleagues to and from work and/or for groceries, a responsibility of the employer.

Mexican migrant workers generally wanted to work as many hours as possible since they are so far away from their families. As one indicated, migrants "always want to work more hours." Another explained: "We're alone, we don't have our families here." The SAWP promises a minimum of 40-hour weeks, stipulating that the normal working day is not to exceed eight hours a day. Some migrants we spoke to work 60 to 70 hours a week – some up to 20 hours per day in peak harvest season. Extending their hours is the only way to increase their earnings since there is no overtime pay and the program does not allow them to work for another employer with higher wages.

While most migrants wanted to work many hours, their employers often failed to consult with them about their schedule. The contract states that employers may "request" a migrant worker to work extra hours and that the worker may "agree" to extend his/her hours "when the urgency of the situation requires it." Many workers found, instead, that employers *demand*ed they work extra hours and without informing them in advance. One migrant said he worked around 65 hours a week, between Monday and Saturday. His hours were unpredictable, with the employer often extending the workday without notice and arbitrarily requiring workers to report very early the next day, at five or six in the morning, indicating that some employers want workers at their beck and call, at almost any time.

Several other workers had similar schedules, working 10 hours a day for six days a week. When there is a lot of work to be done, their employer postpones lunch break to 2 or 3 p.m., despite work having begun at 7 a.m.; this delay without food sometimes makes them feel sick. They also experienced a high level of surveillance, including having to punch cards when they go to and from the washroom. As one said, "the boss is there on top of us." Some of the women reported experiencing greater surveillance from employers than their male counterparts. Research on migrant women in Ontario corroborates these findings.⁸³

Manuel had to purchase his own boots, gloves and rain gear, despite the fact that "there in the contract, it says that the employer should provide everything." When his boss took the workers to the store, he paid, "but then he deducted all of this from our paycheques."

The men as well as the women migrant workers were exposed to excessive demands of productivity from their employers. In contrast to working on farms in Mexico, one migrant suggested, “It is very different [in BC]. Here they always want you to work more quickly, faster and faster.” Some of the respondents in the Otero-Preibisch survey commented that their supervisors followed them around their work routine with a stopwatch, demanding consistently high productivity rates. One supervisor demonstrated what they could accomplish within 15 minutes, but a worker challenged him as to whether he could keep up that pace for the whole day, for weeks and months.

As farmers bring in more Mexican migrant farmworkers to BC, they racialize the labour force in a context that lacks adequate employment protections. These conditions can result in competition and tension between migrant and immigrant workers. Mexican workers claimed that Punjabi supervisors pressure them while favouring Punjabi workers. One recounted an employer

who screamed at the Mexicans. This participant noted: “You can see the discrimination against Mexicans. Of course you have to do your work, but you cannot be pressured like an animal.” Other migrants felt that immigrant workers were at an advantage because they are citizens of Canada and “know their rights and the laws, but we don’t know anything...it makes a difference.”

One Mexican woman said at first the Punjabi women did not like the Mexicans, because they “came here to take their jobs.” After a while the women learned to understand each other, talking with gestures, English, and Punjabi. It was the Punjabi women who taught them about safety measures, not their employers.

In contrast, some Mexican migrants feel they are treated better. For example, one Mexican worker said supervisors treated them well because the Mexican migrants work much faster, keeping up with the rhythm of the machines, in contrast to the “older gentlemen from India.” Similarly, in a few cases, migrant workers in the Otero-Preibisch survey reported that immigrant workers are treated worse than Mexicans. But a clear majority (almost two thirds) of Mexican workers in the latter survey felt that Canadian workers were treated better than they were, with one third in total agreement with the sentiment.

On the other hand, a group of immigrant and migrant women learned to work together and to help one another. When they began to work alongside Punjabi women, one Mexican woman said, the Punjabi women did not like the Mexicans, because they “came here to take their jobs.” On the other hand, several women agreed that after a while, they and the Punjabi women learned to understand each other, talking with gestures, English, and Punjabi. It was the Punjabi women who taught them about safety measures, not their employers, even though it was the employers’ responsibility. The Punjabi women also brought the Mexican women gifts and the two groups now “care about each other a lot.”

Similar to immigrant farmworkers, a gendered division of labour exists in the migrant labour force. Several migrant women indicated that their work – selecting, cleaning and packaging produce – differs from the men’s. Though their contract includes replanting, one said, their employer “feels that job is for men. He just has us in the packing area.” One woman expressed the opinion that her Indo-Canadian employer preferred male to female employees. These experiences raise gender-equity issues in the SAWP that need further investigation.

In contrast to immigrant farmworkers in BC, men far outnumber women in the Mexican migrant labour force, but in the latter case, the men and women generally earn similar wages. In effect, the SAWP wage is the standard amount for all migrant workers, irrespective of their gender, experience and so on. While this flat wage suggests gender equity, it depresses all wages in the SAWP to a low minimum. In addition, it introduces the latter as a new norm into farmworker wage levels that could be applied to immigrant as well as migrant farmworkers.

Some immigrant farmworkers talked about their common misfortunes and were concerned that farmers were lowering wages since they could now hire Mexican migrants. In referring to the nursery where she works, a Punjabi worker said that the Mexican people are the same, “like us, they work hard. Poor people have the same problems.... Sometimes they cry when they talk to us, ‘I’m not coming next year – this guy doesn’t pay enough.’” She also indicated that when her employer started hiring Mexican labour, he no longer recognized seniority. He pays the minimum rate to everyone. “It doesn’t matter if they are old people, new people.”

The introduction of temporary migrant farmworkers into BC agriculture is creating new forms of gender and age divisions of labour, while maintaining a vulnerable, racialized workforce. In contrast to Punjabi immigrants, Mexican migrants are generally younger and predominantly male. Since they do not have local family ties, they are more exploitable.⁸⁴ They are an attractive option for farmers who are seeking to increase the flexibility of productive labour as cheaply as possible, while justifying the substandard employment conditions as suitable for poor migrants from Mexico.

This analysis of wages, hours and rights violations illustrates why few other Canadians consider farmwork. Few are as vulnerable as immigrant farmworkers (whether permanent residents or citizens), who are mostly women, middle-aged or older, racialized South Asians, Punjabi speakers with limited formal education, and subject to the abusive FLC labour structure. Their options for finding alternative employment are limited; they have little leverage for overcoming poor working conditions and lowered employment standards and enforcement. In particular, we found that immigrant farmworkers:

- Lack secure income, especially when paid piece rates;
- Work excessive hours to earn more income and to be eligible for EI (especially women who are likely on average to earn lower wages than men);
- Lack overtime pay and paid statutory holidays (as well as paid rest periods and annual vacation) that would help to mitigate the excessive hours; and
- Are vulnerable to the arbitrary power of FLCs and to rights violations.

Instead of improving farmworker employment conditions to address the agricultural labour shortage, the provincial government has reduced standards, turned a blind eye to infractions, and joined the SAWP. We found that migrant farmworkers:

- Earn generally the basic minimum of the BC–SAWP wage, irrespective of gender and experience;
- Work extremely long hours at the beck and call of their employers;

- Lack overtime pay and paid statutory holidays that would help to mitigate excessive hours; and
- Are exposed to the imbalance of power that farm owners are able to exercise and to rights violations.

While the SAWP constitutes an ideal, reliable and disciplined workforce as far as farm owners are concerned, from the point of view of worker rights it creates unfree conditions for Mexican migrants and has the potential to undermine immigrant farmworker rights further.

Working and Living Conditions

This section focuses on the impact of inadequate safety enforcement on both immigrant and migrant farmworkers. It also highlights particular concerns that migrant workers have about health and housing and that immigrant farmworkers have about transportation safety.

Safety, Sanitation and Health

The WCB oversees provincial occupational health and safety regulations for farmworkers – immigrants and migrants alike – which include the right to:

- Refuse unsafe, unhealthy work;
- Be educated by the employer about what chemicals are contained in pesticides used, the health impacts of the pesticides used, and what to do if they are exposed;
- Safety gear and adequate washing facilities provided by the farmer;
- A joint health and safety committee at workplaces with 20 or more employees; and
- Adequate washrooms, eating facilities and drinking water.

Farm owners, however, violate these regulations regularly, since vulnerable workers are rarely able to complain and WorkSafeBC infrequently monitors worksites to enforce the regulations. Farmworkers in both the qualitative and survey studies described violations at their workplaces.

An immigrant cannery worker noted: “The facilities and the lunchrooms are not good, and not clean. We have only flat wooden logs to sit on; there are no proper washrooms.” One woman said that only recently has her greenhouse provided drinking water, despite the high temperatures. Shelter against the rain or hot weather was a problem for many of the fieldworkers who said they needed a shed or a van available to eat their lunches and for protection against the weather. Nearly one third of migrant respondents in the Otero-Preibisch survey noted that they were at high to very high risk from working in the sun or rain without protection.

The lack of adequate washrooms in fields is particularly a problem. If they exist at all, they are often not clean and there are not enough of them. A man who gathers cranberries in fields filled with water to collect and filter the berries said that washrooms are located only at the farm entrance, where workers change clothes, and very far from where they work. Women in our study were particularly concerned about the lack of sufficient and clean washrooms. When she began as a farmworker, one woman recounted, “they had to (relieve ourselves) in the presence of the men.” Another woman said, “You can use the alternatives, behind the machines, or...!” These unsanitary conditions highlight the lack of enforcement by WorkSafeBC of its hygienic regulations through worksite visits.

Farmworkers also expressed a great deal of concern about working in areas that farm owners have recently sprayed with chemicals. In one case from the Otero-Preibisch migrant survey, three workers were cleaning a greenhouse roof when a helicopter dropped some chemical on the next greenhouse roof – without any warning. They had to quickly come down and reach for cover. There was wide agreement among the survey and qualitative study participants that employers do not provide training or information about the chemicals to which they are exposed, despite WorkSafeBC regulations on this subject.

The extent to which farmworkers know about the chemicals they are using and are trained to handle them was also an issue. If they do not know what the chemicals are, they cannot assess their impact on their health. In one focus group, all the participants claimed that their work involved applying chemicals, but none had received prior training. Although their boss assured them that the pesticides were not toxic, the workers were skeptical: “That is what he says, but we don’t know.” Nearly three quarters of respondents in the Otero-Preibisch survey said they did not receive health and safety training. One half reported they believed there was not adequate training about the risks in the workplace, including pesticides and weather.

Farmworkers were concerned that the gases released in the enclosed space of greenhouses to ripen the plants are dangerous. One participant said: “We just inhale them – no masks are provided.” Workers reported having problems with heat rashes and other skin problems that they link to the chemicals. As one noted: “The problems are there – rashes on the skin, eye problems, vomiting...dizziness sometimes.” Also, fast-moving machines in greenhouses put workers at risk. One woman said “The carts are high speed, and we have to work very fast...sometimes we feel dizzy and fall off the carts.”

The BC-SAWP contract stipulates that “the employer agrees that workers handling chemicals and/or pesticides will be provided with protective clothing at no cost to the worker, receive appropriate formal or informal training, and supervision where required by law.”⁸⁵ Yet, migrant workers said if they ask the employer for gloves, they are told to buy the gloves or use plastic bags to protect themselves from the water. Some workers, who arrived from Mexico with no money in their pockets, were forced to work in the rain and snow without proper clothing

Farm owners violate health and safety regulations regularly, since vulnerable workers are rarely able to complain and WorkSafeBC infrequently monitors worksites. Women in our study were particularly concerned about the lack of sufficient and clean washrooms. Farmworkers also expressed a great deal of concern about working in areas that farm owners have recently sprayed with chemicals.

until they received their first paycheques and could buy protective clothing for themselves. In another case, when an employer took workers to buy raincoats, he deducted the cost from their paycheques.

Nearly one third of respondents in the Otero-Preibisch survey identified paying for all of their protective gear, with an additional 16 per cent paying for at least some of the items. In a related question on proper gear and risk (or lack of it), nearly three quarters of respondents who worked with chemicals felt they were at a high to very high risk of not having protection, with two fifths reporting they felt themselves to be at very high risk.

One immigrant farmworker said she had to purchase new gloves every day or two and that “with eight dollars per hour, we are not able to afford so many pairs of gloves for working.” She added that employers were more concerned about the health and cleanliness of their plants than the effects of the workplace on workers. For example, the owner gives workers gloves and hats only when they are grading and packing baby carrots, which easily acquire fungus.

While workers in the Otero-Preibisch survey noted frequent visits from food safety inspectors who examined the cleanliness of machines and the personal hygiene of workers, not a single participant recalled observing a visit by WorkSafeBC.

Both Punjabi and Mexican participants expressed frustration over their employers’ seeming lack of interest in their well-being. In the Otero-Preibisch survey of migrant workers, nearly half of respondents expressed that they feel their employer never or almost never ensured their health and safety. Further, while workers noted frequent visits from food safety inspectors who examined the cleanliness of machines and the personal hygiene of workers, not a single participant recalled observing a visit by WorkSafeBC. These examples suggest how employers are not compelled to protect the safety of their workers, due to the lack of monitoring and enforcement by WorkSafeBC.

Many farmworkers felt that their employer lacked concern about health problems (e.g. difficulties with vision, respiratory vulnerabilities, skin rashes) caused by the workplace. As one immigrant worker elaborated: “The employer is only interested in making people work. If we are sick, they are not interested in that, they want us to keep working.” One participant said, the growers or contractors “do not listen; they keep saying that they will take care of us, but they never do.” Another said that sometimes the main owner is not available, so they do not always know whom to contact if something happens. As a result, farmworkers were reluctant to report injuries and illnesses to their employers.

Despite the dangerous nature of farmwork relative to other sectors, many Mexican migrant workers face significant barriers accessing medical care. A key problem relates to their insurance coverage. Before they leave Mexico, SAWP workers receive private health insurance provided by the Royal Bank of Canada (RBC). Once in Canada, their employers are obliged to register them for BC’s Medical Services Plan (MSP). However, they are not eligible for coverage until they have been in the province for three months. Some employers expressed considerable frustration in trying to access MSP for their workers; others noted that the \$58 monthly premium is prohibitively high.

The fact that migrant workers must rely principally on their private insurance acts as a major obstacle to accessing health care. Many walk-in clinics and hospitals do not recognize the private insurance. Researchers found numerous cases in which migrant workers' access to outside medical care was mediated by a Canadian – either by their employer, a friend from church, or a member of a migrant rights advocacy organization. In order to receive care, even in emergency situations, workers or the person accompanying them had to pay significant amounts of money up front, in one case up to \$400. Although it is often possible to claim this money back from RBC or WCB, this advance payment represents a significant barrier to migrant workers' access to medical care. Furthermore, since walk-in clinics are less expensive than hospitals, employers have an incentive to choose their services rather than taking their injured or ill workers to hospitals where superior diagnostic facilities exist. Employers interviewed for this study felt strongly that the BC government should consider the Ontario model, whereby provincial medical insurance is extended to migrant workers upon arrival, and with the premium waived. This measure would not only facilitate worker access to medical assistance but also reduce the need for employers and other to negotiate the health care system on workers' behalf. The BC MSP issue illustrates how the SAWP does not adequately attend to human rights such as access to health care and how structural problems in the program and the lack of coordination between jurisdictions leave migrant workers without basic rights.

Housing and Transportation

The SAWP requires that farmers provide adequate housing for migrant workers – on their property or elsewhere – and access to transportation for buying groceries and other purchases, obtaining services, and having contact with the local community (e.g. churches). The migrants in our study indicated that access to adequate housing and transportation is a vital concern. In contrast, immigrant farmworkers usually rely on farm labour contractors to provide transportation for their long commutes to workplaces, which are often transitory. The immigrant farmworkers we interviewed were particularly concerned about van safety, and as the tragic accident noted at the beginning of this report suggests, they have every reason to be.

The Otero-Preibisch survey found significant problems with the quality of migrant worker housing, including overcrowding, dilapidated dwellings, and poor or non-existent toilet facilities, despite inspection requirements. These dwellings are very inferior to normal Canadian standards. Three migrants in this survey reported having no drinking water at home. Six participants noted that their residence did not have a working toilet inside the house. For another 13 per cent, the kitchen was not separate from the bathroom. One in five did not have sufficient refrigerator space, and one in four did not have sufficient stove space. Almost one third did not have separate kitchen and sleeping rooms. Just over one quarter of these survey respondents reported not having window screens in hot summer weather and 14 per cent reported not having a heater for the cold weather.

The survey study also found variations in the rent charged to workers, with some employers charging no fees at all and others charging the maximum \$550 per worker (for the length of their contract); further, the survey study found no relation between rent charged and quality of dwelling, with high rents collected for extremely squalid dwellings or conversely, none collected for quality accommodation. In the qualitative study, one exceptional employer did not

Seasonal Migrant Worker Housing

SAWP employers are required to provide housing while migrant workers are in Canada. In BC, SAWP workers are being housed in trailers, new and converted houses or bunkhouses on farm property, barns converted to dormitories, motels and apartments.⁸⁶

Unlike Ontario, there are no provisions in the Employment Standards Act respecting employer-provided housing for seasonal hand harvesters in BC. In Ontario, minimum accommodation standards are attached to Employment Standards Act provisions for maximum allowable wage deductions for employer-provided housing.

Service Canada requires only that employers hiring workers under the SAWP submit to the federal government a Seasonal Housing Accommodation “inspection” and/or a contract from a commercial accommodation supplier (e.g. apartment or hotel/motel) demonstrating that they will provide “suitable” accommodation. The only stipulation is that accommodation provided off the farm must be at the same cost to the worker as accommodation on the farm, that transportation be provided for those accommodated in off-farm housing, and that female workers are provided with separate accommodation. The “inspection” refers not to a government agency inspection, but a private housing inspection paid for by the employer.

The BC Ministry of Agriculture and Lands has developed *Guidelines for the Provision of Seasonal Housing for Migrant Farm Workers in BC* to assist municipalities in assessing the suitability of housing for domestic and migrant farmworkers. These “guidelines” were adapted from “recommendations” developed through consultation with federal agencies, Ontario government ministries, and BC agriculture industry representatives involved in the SAWP. The BC Ministry of Labour and Citizens’ Services appears not to have had any role in the development of these guidelines, and neither has there been any consultation with any of the organizations representing farmworkers.

The only BC laws specifically addressing seasonal/temporary farmworker housing are new bylaws recently adopted by a number of municipalities in the Fraser Valley and Fraser Delta respecting land use and the creation of seasonal farmworker housing structures on agricultural land. In the past two years the cities of Pitt Meadows, Abbotsford, Richmond and Delta, and the Township of Langley have adopted such bylaws.⁸⁷ The land use and special purpose building bylaws adopted by the municipalities address very little concerning the quality of the farmworker housing permitted, or the need for regular inspection of such facilities.⁸⁸ In the case of Pitt Meadows the minimum allowable floor area per occupant is 80 square feet of total usable floor area, including living and sleeping areas but not washrooms, and the maximum allowable floor area is 140 square feet per person inclusive of sleeping, living, kitchen and washroom facilities. Therefore the ridiculously small minimum usable floor area permitted for living and sleeping (e.g. 8 x 10 feet) is just enough room to accommodate a single bed and comfortable chair – probably no larger than a minimum security jail cell, or the parking space for an average car.⁸⁹

There is no systematic field inspection of SAWP worker housing at any level of government to enforce either the housing “guidelines” referenced above, or any laws or regulations that may relate to this type of accommodation, save municipal enforcement of the land use and building bylaws referenced above. Regional health authorities may inspect for the enforcement of general public health and environmental regulations only when there are complaints or incidents.

charge workers rent if they left the house exactly as he had given it to them. But the house was a typical accommodation, cramped with poor facilities (e.g. only one stove), and little privacy for the individual worker. One group of workers paying the maximum \$550 rent had even less privacy and space, with all of them sharing one large room that also served as their kitchen and bedroom. Despite the amount of rent they were charged, the roof leaked, the building was infested with mice, and their bathroom was located outside the house. In municipalities with bylaws preventing the construction of on-farm housing, the survey study found employers fashioning rooms for their workers in hotels or motels, sometimes three to a room, and in the worst case, a barn.

Migrant workers living on farms are usually isolated from shopping precincts and the surrounding community, and transportation is scarce and expensive. Some of the workers said that while their employer drove them to the shops at the beginning of their contract, he now claims to be too busy to do so. While he pays a cab to take them shopping, they have to pay for their ride back. In addition, some of the women were irritated that their employer controls their movements far more than the men's. One woman said, "We cannot come home after 9 p.m. and no one can come and visit us, [but] men can come home later on." Workers in other focus groups said that while employers drop them off at the shops, they have to walk back to the farm carrying their supply of groceries for the next two weeks. Other employers, however, provide vans that workers with drivers' licenses can use without asking permission to meet their transportation needs.

While access was a key issue voiced by migrant workers, immigrant workers emphasized safety issues when discussing transportation. Three immigrant focus groups took place before the tragic van crash on March 7, 2007; the fourth focus group and all the individual interviews occurred soon after the crash. The workers wasted no time in telling us how contractors flout van safety regulations. One participant characterized the vehicle that takes her to work as follows: "There are no windows, no glass. So you can't see how many people are pushed in." Another added that there are eight or nine people, but only seven seats and sometimes no seatbelts and "in the bigger vans, meant for 12 or 14 passengers, there are 20 people." When asked how safe they feel, answers were, "No, not at all." "No safety." And asked if that is much of a concern, one responded: "It is a concern, but we have to do it." Among migrant workers in the Otero-Preibisch survey, while almost three quarters felt safe when being transported to work, just over one quarter felt unsafe.

The immigrant workers in the qualitative study were very aware of the dangers they faced taking rides with a contractor to work. They explained that they knowingly put themselves at risk, however, because they depend on contractors' van transportation. Farmworkers' dependence on their contractors is fostered if they cannot afford a car to own or operate, they do not know English or have drivers' licenses, and their place of work varies frequently without warning. Despite the lack of safety, one said, "sitting home for no money" is not an option.

The Otero-Preibisch survey found significant problems with the quality of migrant worker housing, including overcrowding, dilapidated dwellings, and poor or non-existent toilet facilities.

The long working days and early mornings are a dangerous combination leading to both sleep-deprived drivers and workers. If drivers have someone sleeping next to them, it is all the harder to keep awake. One participant's strategy is to talk to his driver to keep him awake. Another explained that the problems occur especially during the heavy part of the harvesting, "The vans are overloaded and the workers sit on buckets, stools, crowded onto seats, no seat belts. This is when the inspecting teams should inspect the vans – should have checkpoints on the roads."

Yet, as noted above, it is precisely the peak picking periods that the Ministers of Agriculture and Labour agreed in 2002 that ESB enforcement activity would be curtailed to minimize disruptions to the harvest. They allowed for enforcement activity to continue throughout the winter and spring months, but it was in the early months of 2007 that in fact the inspection system failed

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farmworkers abysmally. Unfortunately, the fatal crash follows a history of serious injuries and fatalities involving the transportation of farmworkers,⁹⁰ and tragically speaks to provincial government indifference and inaction in tackling the poor safety record of farmworker transportation. Reports of continuing high rates of non-compliance with passenger vehicle safety in the transportation of farmworkers, immediately following the tragic crash, further underline the failure of BC's highly exploitative farm labour contracting system.⁹¹

Farmworkers are unlikely to complain to authorities about van safety. Even if a crash occurs, as long as it is not serious, one participant said, "We don't complain." Contractors impress upon workers that complaints would affect their licensing and their ability to provide the workers with jobs. The participant added that the contractors tell the workers "we will take care of you" and they just pass the 24 or 48-hour reporting period, without saying anything. Another participant explained: "We get scared of the contractors, because if [farmworkers] say anything, the next day they are not picked up for the work...then after missing two, three days, [the contractors]

ask them 'now are you alright?'" Another added: "'Are you totally fixed?'" Many immigrant participants expressed fear about how contractors are able to withhold their access to jobs.

Workers feel pressure from all sides – co-workers as well as contractors – to not jeopardize their jobs. If contractors carry through on their threats to not transport workers to farms and they miss several days of work, they not only lose wages for those days, they may not qualify for Employment Insurance. Even a few days off of work, especially during the peak season, could have major financial repercussions.

Despite the many known abuses and violations, this labour contracting system is largely unregulated. It was only after the van crash in March 2007 that the government amended the Motor Vehicle Act to establish the Inter-Agency Farmworker Committee⁹² to ensure that safety regulations for farmworker transportation vehicles are enforced. A year after the crash, however, many questions remain. For example: the Coroners Service had still not held an inquest; criminal charges had not been laid against the driver of the van; and the Inter-Agency Farmworker Committee had not publicly disclosed its work and whether it had developed a strategic enforcement plan for conducting inspections.⁹³

In analyzing farmworkers' concerns about their work safety and living conditions, we found that:

- Many immigrant and migrant farmworkers work in environments that violate safety and health standards;
- Mexican migrant workers face significant barriers accessing medical care, especially in their initial exclusion from BC's Medical Services Plan (MSP);
- Migrant workers live in substandard housing and have unreliable access to transportation; and
- Immigrant farmworkers are transported to and from farms in vans that are part of a farm labour contracting system that regularly violates safety regulations.

Our findings illustrate how agencies responsible for safety and health (e.g. WorkSafeBC, MSP, BC Ministry of Labour and Ministry of Transportation, Service Canada) have failed farmworkers by not creating comprehensive regulations and/or by not carrying out proactive and continuous enforcement of existing regulations.

Extinguishing Farmworker Rights

In this section, we look at how the lax enforcement environment fails to address farmworkers' vulnerability to fear, veiled threats and routine intimidation, and how it undermines their ability to resist conditions of exploitation and abuse and to assert their rights as workers. The farmworkers in this study told us about difficulties in making complaints or voicing concerns to contractors, growers, consulate officials and/or provincial authorities. Their accounts focused in particular on the farm labour contractor system, government inspection and enforcement, and the SAWP contract. We show how together these systems have created an increasingly coercive environment for farmworkers, forcing them into silence and extinguishing their rights.

One of the problems with existing regulations for farmworkers is that they are often vaguely worded and confusing about levels of governance (e.g. federal, provincial or municipal) and employer responsibility. If both contractors and farm owners are employers, for example, the issue of who takes responsibility for maintaining standards is divided and thus unclear. As one employer saw it "how [the contractor] gets [the workers] here is his responsibility. If he puts them in an old beater bus and packs them in, it's not our problem because he has to take care of his employees. They work for us, but they're his employees because we pay the contractor not the employees, right? It's a controversial issue."

Without adequate enforcement at all levels of government, vagueness and ambiguity easily turn into ineffectual regulation. Even some employers supported additional enforcement to curb violators and the bad press it generated for the industry. As one said: "My opinion would be if you're not going to take care of these guys, if you're ever caught [mistreating] migrant workers again, you're in trouble – criminal trouble."

Immigrant Farmworkers and their Rights

When we asked immigrants in a focus group how they wanted their farmwork changed, their requests were modest. They agreed on the following improvements: “proper facilities, water, cleanliness, gloves, and safety equipment” and they wanted enforcement of the regulations to which they are entitled. Despite extensive safety, health and sanitation regulations, workers are unable to register complaints when they lack information about whether they have been exposed to such dangers as toxic chemicals and about the possible health impacts of their exposures on themselves as well as their families. They are also unable to complain when they lack information about their rights as workers. They are reluctant to complain about employer non-compliance for fear of losing their jobs and/or access to EI payments.⁹⁴

Long recognizing farmworker vulnerability, BC’s employment standards regulation has had specific rules that apply just to farm labour contractors (FLCs) and a dedicated industry-specific team of inspectors that conducts site visits and audits on farms – the only industry to have such a team. However, in the past few years, farms and labour contractors who repeatedly mistreat their workers have rarely been penalized with high fines.⁹⁵ In addition, as shown above, since 2002 random Employment Standards Branch farm site visits have decreased, as have resources to conduct such inspections. Consequently, farmworkers are increasingly left to fend for themselves, despite their vulnerability to exploitation and abuse.

“We get scared of the contractors, because if [farmworkers] say anything, the next day they are not picked up for the work.” Many immigrant participants expressed fear about how contractors are able to withhold their access to jobs.

Immigrant farmworkers are particularly dependent upon FLCs who often abuse their power. A gender dynamic is also at work, as contractors are more likely to be men and farmworkers more likely to be women. Immigrant farmworkers talked about feeling afraid to raise questions with the contractor. In berry picking fields, one worker said, “Nobody tells us (about wages)⁹⁶... We have that fear, if we ask something, we will not get the work.” Another said, “If there is something between them, some bickering, (the worker) will the

next day be sitting at home.” One man explained, new immigrants are particularly vulnerable: “They are new to the environment, the conditions, and they are always afraid of asking for anything.”

If farmworkers complain about conditions to their driver or contractor, one said: “The next step as to whether or not they talk to the grower is more difficult. They never know who the owner of the farm is.” The most common experience, according to several participants, is that nothing changes because farmworkers fail to make a complaint and contractors and growers “don’t listen, they don’t provide.” Another focus group agreed that employers “only listen to the departments, if they get penalties – fines or punishments... if there is an inspection, only force.” Several women indicated that they sometimes complain to the contractor about men’s vulgarity while they are working, but, because contractors are not concerned, all the women can do is to separate themselves as a group from the men. As one woman said: “In the canneries, only ladies are working.... When men and women work together, there are a lot of problems between them – the men are dominating, and they say things to the women.... (In the fields) they grab the good rows.”⁹⁷

Some women were also dissatisfied with how their employers treat them. As one said, “The owner (and supervisor)...don’t speak well with the ladies.... They just make us feel like we are low, we are not good persons, that we are labourers.” She recounted that her employers speak the same way to Mexican workers – “cursing them about ‘why are you slow, what are you doing, why are you looking at this, why are you talking,’ etc.” The woman recalled an instance when the Mexican men stopped work to protest this treatment. The Indo-Canadians, she observed, “don’t have that type of togetherness and they keep on working.” As a result, she claimed, the Mexican men received more pay. The employers say to the women, “If you don’t want to come, don’t come – we will call workers from Mexico to come and work.” This comment illuminates how employers can pit workers against one another and use the threat of hiring migrant workers to silence immigrant workers.

PROFILE

Rajpal

Sponsored by her eldest daughter, Rajpal, who is 56, came with her husband and younger daughter to Canada in the late 1990s. In the Punjab, Rajpal worked in her family home and on their land.

Since arriving in Canada, she has worked for the same Indo-Canadian farm labour contractor, picking berries on farms and more recently grading, washing and packing vegetables in a cannery. The cannery is kept clean and has good lunchroom facilities, but the conveyor-belt work is very fast; it requires standing for long hours and sometimes makes her dizzy. Rajpal is paid the minimum wage, \$8 an hour (plus vacation pay).

She lives with her multi-generational family in a basement suite. On a typical day during picking season, Rajpal wakes up at 4 a.m. and cooks lunches for family members and then gets ready for the contractor to pick her up. The contractor arranges where, when, and how long she will work. Depending on the crops, she works on farms in Pitt Meadows, Ladner or Cloverdale. During the agricultural season, she works 8 to 10 hour days and usually 12 hour days when picking berries. According to Rajpal, the conditions at some farms are bad: the washrooms are not clean; workers are not told about the pesticides that are used; lunchroom or shed facilities are not provided. As well, farmers do not provide rain gear. Sometimes supervisors are difficult to work for, not allowing workers to talk to one another, or not allowing them to eat lunch until three o’clock in the afternoon.

Rajpal has never had an opportunity to speak to Ministry of Labour or WorkSafeBC inspectors about her wages or working conditions. She said that she and her co-workers talk only to the contractor, not to anyone else. “We don’t know where to say these things, only the contractor.” The work is hard and wages are low. But if they ask the contractor to raise their wages, she just tells them, “then leave, and go somewhere else where you get more money.”

Rajpal wants the government to increase the minimum wage. She notes, “As long as the government doesn’t increase the wages, the contractors won’t pay more.... They never listen to us.”

The control that FLCs and growers have over farmworkers extends to government investigations of farms. If Employment Standards Branch investigators visit farms, participants indicated, contractors may coach farmworkers on what to say. One said, “Our people...tell [the investigators] they are getting paid every two weeks, even if they are getting paid after one month, that ‘everything is fine over there’.... Our people get scared, and tell them the same thing the contractor is telling them [to say].” Another said they are “victimized” by contractors. Some workers feel they are too busy working to talk to inspectors when they come to the farm or they might complain about their working conditions, as one noted, “only when the Punjabi inspectors stop by.” Other workers simply do not know if their farm has been visited by inspectors. On the other hand, farmworkers mentioned that they know when an inspector is coming because washrooms and other areas in the workplace are suddenly cleaned and improved from one day to the next, in preparation for the inspections.

Participants spoke of the pressure they feel to avoid reporting injury claims and the problem that WorkSafeBC officials do not routinely visit farms to inspect their health and safety conditions. In one case, a woman was afraid to phone WorkSafeBC about the nursery where she worked, which had 100 workers, and just one washroom. When the non-profit community agency Progressive Intercultural Community Services (PICS) called WorkSafeBC for her, the inspector said that in the first inspection, the nursery had only 10 employees and the one washroom was sufficient. Unfortunately, WorkSafeBC did not maintain inspections. Only after inspectors visited the nursery again did the employer provide an adequate number of washrooms.

Migrant Farmworkers and their Rights

Mexican workers in our study were particularly concerned that they did not know about the terms of their contract or the laws of Canada and their rights as workers. One woman said she had read the contract five times and had only begun to understand it. Another said: “We let things pass because we do not know [Canada’s] laws....We need to know about our rights in this country.” More generally, migrant workers face the inherent disadvantage of not sharing the cultural assumptions about both employers and workers upon which Canada’s laws and their enforcement are based.

One area of confusion voiced by migrant farmworkers was around their wages and deductions. Migrant farmworkers told us repeatedly that they received little orientation from any level of government or employers about the contract and even less about the deductions on their pay stubs (e.g. EI, CPP). Although workers pay into the EI fund like any other Canadian worker, the SAWP contract does not allow them to be unemployed and to actively search for employment. Therefore, SAWP workers are unable to claim EI while in Canada, except for sickness benefits. They are, however, eligible for parental benefits when in Mexico. If their wives become pregnant and their child is less than one year old when they return to Mexico, men are able to claim EI through parental benefits. Ironically, women in the SAWP are unable to claim these benefits, as one noted, “because we cannot be pregnant while we are here!”

Reporting workplace injuries is another area of concern. Even though employers must notify WorkSafeBC of serious injuries, workers told us that there is a lack of information or fear of saying anything to upset the employer. One worker recounted: “Last year, there was someone

throwing powder on the plants, and afterwards I got a rash. We did not tell the supervisor. He turns against us if we complain.” In discussions about the provincial MSP health insurance card – which none in the focus groups or interviews had received – one emphasized: “The employer should be as good to help us to apply for MSP as he is good at discounting the private insurance from our paycheques!”

Several migrants expressed concern that the contract unfairly obligates workers, but not the employer, to finish their contract. One said, “When the employer runs out of work, there is no problem for him to break the contract – he can send us home.” Last year, a co-worker returned to Mexico when one of his family members passed away – before his contract was finished. He did not return to Canada this year because his employer did not request him back to the farm. One worker explained:

The Secretary of Labour tells us that we can't terminate our work for any sort of reason that arises in Mexico – that the moment we sign our contract in Mexico, and we come to Canada, we need to have arranged all of our affairs in Mexico so that someone there is left responsible for everything in Mexico, like a brother, sister, father, mother – because we have to finish our contracts in Canada under all circumstances. We can't quit our work in Canada, especially knowing that it is a good job in Canada.

The worker understood this stance, but said, “At the same time, it feels terrible when something happens to a loved one there, and...they most need your support, you are all the way here in Canada... or, to return to Mexico and not find a loved one because they have passed away while you are in Canada.” He suggested that employers should allow workers facing unusual circumstances to travel (on their own expense) to Mexico for up to a week in order to take care of the situation. Paradoxically, the SAWP framework selects workers on the basis of their family ties, but then effectively demands workers to suspend their personal lives and obligations when they are in Canada.⁹⁸

Although migrant workers pay into the EI fund like any other Canadian worker, the SAWP contract does not allow them to be unemployed and to actively search for employment. Therefore, SAWP workers are unable to claim EI while in Canada, except for sickness benefits.

If Mexican migrant workers wish to complain, they are severely disadvantaged by the lack of services in BC (including those that are culturally sensitive), the structure of the SAWP and the threat of repatriation. The ESB, for example, does not provide adequate services in Spanish⁹⁹ (many workers are not functionally literate) nor does it provide educational programs about cultural assumptions underlying Canada's employment laws and enforcement.

Migrant workers are also disadvantaged by provisions in the SAWP agreement that allow employers to repatriate workers for “non-compliance, refusal to work, or any other sufficient reason.”¹⁰⁰ Such vague language enables employers to “arbitrarily remove workers from their property with no formal right of appeal.”¹⁰¹ If migrant workers lose their jobs, they will likely be forced to return to their home country without the anticipated earnings. Moreover, because they depend on employer references, they will not likely be “named” to return the following year. With such provisions, employers are able to easily threaten migrant workers. It is not surprising that some employers take advantage of this imbalance of power.

As a worker in our study put it: “The employer only wants people who work faster, and they keep supervising us. If they see us taking a rest, they decide to send us back to Mexico. He wants to scare us.” Another said: “When we work bending down, you have to stand up sometimes to breathe properly. The supervisor saw me standing up and the manager threatened me with sending me back to Mexico. He said that I was in big trouble, he said that I was not getting paid to “do nothing” and asked me if I wanted to go back to Mexico.”¹⁰²

If they have a problem about their working or living conditions and cannot resolve it by speaking to the employer, several migrants said they contact either the Mexican Consulate, the advocacy group Justicia for Migrant Workers, or United Food and Commercial Workers (UFCW) support centre for migrant workers. Some participants wanted the Mexican Consulate to play a larger role. As one said: “If it is the Canadian government, it is hard for us to understand every-

Migrant workers are also disadvantaged by SAWP provisions that allow employers to repatriate workers. It is not surprising that some employers take advantage of this imbalance of power. “When we work bending down, you have to stand up sometimes to breathe properly. The supervisor saw me standing up and the manager threatened me with sending me back to Mexico.”

thing, but if it is coming from the Mexican government, it makes more sense to us.” One who wanted Consulate officials to exert more pressure on employers said, “They just stop by and visit once, and they leave us on our own to make changes.” Another wanted the Mexican and Canadian governments to cooperate and check to make sure that the regulations, such as health and safety, and obligations of the contract are being fulfilled. Other participants suggested that a union of agricultural workers would be effective. One explained: “We could do something like what we do in Mexico – a ‘debate roundtable’...to share our experiences and first learn from one another, so we can see later where to go from there.” He added: “If we are united, we are a little stronger, and they have to listen to us a little more.”

In an interview, an official of the Mexican Consulate in Vancouver told us that the consulate does not treat all workers’ complaints as valid and has limited resources for dealing with complaints. Because the consulate is short-staffed, it is seldom able to randomly visit farms. In addition, the consulate does not have direct connections with provincial agencies for improving regulations or enforcing them. If the consulate decides to respond to a worker’s complaint, it contacts HRSDC – who may then ask the BC Ministry of Labour,

Employment Standards or WorkSafeBC to enforce the labour and/or health and safety laws.¹⁰³ While the consulate wants the province to waive MSP premiums for SAWP workers, it has little leverage for changing provincial law.

Workers’ advocacy groups, including church, community, and labour organizations, have filled a gap left by the Mexican consulate and provincial and federal agencies for addressing workers’ needs and complaints. These groups perform essential services but receive no funding from the Canadian government or other stakeholders in the SAWP.¹⁰⁴ Their work is all the more essential because of the contradictory role of consulate offices in wanting to protect their workers, yet at the same time wanting to secure as many placements as possible for their country’s workers in Canada. The consulate is concerned, for example, about advocacy groups when their response to workers’ complaints makes employers angry and less inclined to participate in the program. This “dual role” calls into question the possibility that consulates can serve as representatives of

workers in providing them with full information about their rights and independently voicing their concerns.¹⁰⁵

Above all, HRSDC has not coordinated adequately with provincial agencies on regulations and enforcement nor has it effectively evaluated the operations of the SAWP. HRSDC has not even been transparent in its monitoring (such as publicly providing the number of workers participating in the program).¹⁰⁶ HRSDC has left a void in its oversight of the SAWP, which creates difficulties for consulate officials or other migrant agencies to respond to workers' complaints and to represent their rights.¹⁰⁷

Both immigrant and migrant farmworkers in our study were unable to effectively demand their rights. In particular, we found that:

- Workers were generally unable to complain about their wages, hours or safety concerns, or even to report injuries, because they feared they would lose their jobs;
- The farm labour contracting system imposes an unfair power imbalance on immigrant farmworkers that coerces them into silence;
- In restricting worker mobility and allowing employers excessive control over workers' contracts, the structure of the SAWP undermines migrant workers' right to complain; and
- Federal agencies have left a void in coordinating the SAWP with other governmental agencies and in protecting worker rights.

The structure of the SAWP separates workers from family and community ties in their home country and disallows citizenship status in their country of work. This contract scheme creates a model of the worker as the ultimate in flexible labour and enables employers to force workers to give priority to their work above all else. In lowering the bar even further of worker compliance to unfree employment conditions, the SAWP contributes to the deterioration of rights of both immigrant and migrant farmworkers in BC.

Conclusion and Recommendations

Our research demonstrates clearly that current conditions for BC farmworkers are untenable. Immigrant and migrant farmworkers are at the mercy of a complex, confusing and controlling system that exploits, threatens and silences them while it places their lives in danger and excludes them from a range of employment standards. BC farmworkers are subject to immigration and employment policies that highly regulate their circumstances and yet undermine protections and safeguards.

To the extent that such precarious rights and enforcement conditions are tolerated in agriculture, safety and human rights are also indirectly threatened in the rest of Canadian society. We are living in a situation of double standards, in which highly vulnerable populations – racialized, immigrant (permanent residents and citizens) and unfree, migrant workers – are subjected to conditions that few if any Canadian workers have to face in other sectors. As Canada is moving rapidly towards facilitating temporary foreign worker programs,¹⁰⁸ strengthening and expanding protections for all workers becomes more urgent.

Surprisingly, the SAWP is widely viewed as one of the better administered temporary migration programs and, indeed, is held up as a “flagship” model, despite its flaws in restricting workers’ mobility and employers’ excessive control over workers’ contracts,¹⁰⁹ creating in effect an unfree workforce. The temporary status of foreign workers in low-skill programs makes them particularly vulnerable to rights violations.¹¹⁰ These regulatory flaws, with major repercussions

on farmworkers' lives, need to be addressed. The federal government, which sponsors the SAWP, should take a stance in guaranteeing the enforcement of minimum labour, health, and safety standards for guest workers. The standards should at least be on a par with those of other Canadian workers if the current two-tier, discriminatory and exploitative system is to be transcended.

The federal government should impose basic conditions as part of international agreements, and actively coordinate regulation and enforcement within Canada and across the provinces. BC's recent reduction in both employment standards and their enforcement is an alarming precedent for the status of vulnerable workers, especially immigrants, women and migrants. Developing alternative solutions for BC farmworkers requires changes at different levels of government within Canada and between Canada and other countries such as Mexico. We need to build a system that enhances the prospects and bargaining position of vulnerable farmworkers at home and abroad.

In the focus group discussions and interviews, farmworkers made suggestions about how to improve their working conditions. We draw upon their experiences as well as other studies that seek to create better practices for farmworkers. Our recommendations emphasize that:

- BC employment standards must be improved for farmworkers;
- Enforcement of the standards must be comprehensive, proactive and continuous;
- Health and safety regulations must be enforced vigorously;
- The farm labour contracting system must be restructured to promote workers' rights; and
- The SAWP must be restructured to promote workers' rights.

The effects of the recommendations should be that the safeguards ensure better access of im/migrant farmworkers to real rights.

Recommendations for the Provincial Government

- **RESTORE ENTITLEMENTS OF OVERTIME PAY, STATUTORY HOLIDAYS AND ANNUAL VACATIONS FOR FARMWORKERS.** These entitlements will help to reduce the highly exploited labour of immigrant and migrant farmworkers. Their rights should be identical to those of any other Canadian worker.¹¹¹
- **ESTABLISH PIECE RATES THAT ARE EQUIVALENT TO THE MINIMUM WAGE.** If farmworkers are paid a piece rate it must be set at a level, as in Ontario, so that with reasonable effort they can earn at least the minimum wage for all the hours they work.¹¹²
- **RECONSIDER THE USE OF PIECE RATE WAGES.** Piece rates are a precarious source of income. The system lends itself to fraud. The conversion from piece rate to hourly for the purposes of EI shows that hourly pay can be the norm. Since SAWP workers receive an hourly wage, this system of wages could be applied to all farmworkers.

- **RAISE THE MINIMUM WAGE TO \$10 PER HOUR¹¹³ AND INDEX IT TO INFLATION.** BC's high cost of living and labour shortage suggest the need for an immediate raise in the minimum wage.¹¹⁴
- **STRENGTHEN INSPECTIONS AT FARM SITES.** Without regular, random and unannounced visits, ESA and WorkSafeBC regulations cannot be enforced. Farmworkers are unable to speak freely about their employment conditions and to know how to register their complaints unless inspectors speak their native languages. Legislating employers to allow 10-minute worker interviews during inspections as part of paid work would help to facilitate this process.
- **RESTORE PROACTIVE MONITORING TEAMS SUCH AS THE AGRICULTURE COMPLIANCE TEAM (ACT).** Without inter-agency cooperation, enforcement of employment standards and health and safety regulations is ineffective. Transportation safety is only the most obvious sector that requires inter-agency enforcement. The focus of such a team should be upon employers who violate standards and regulations, not on vulnerable immigrant and migrant farmworkers. Each agency should implement a targeted enforcement program for its regulations that pertain to farmworkers. Higher penalties for contraventions should be established.
- **IMPLEMENT RECENT RECOMMENDATIONS FOR COMPREHENSIVE MEASURES TO ENSURE TRANSPORTATION SAFETY OF FARMWORKERS.¹¹⁵** The re-instated Inter-Agency Farmworker Committee that resulted from the tragic van crash in 2007 must have adequate resources to prevent future vehicle crashes. This committee must publicly disclose its work, including the extent to which it has developed a strategic enforcement plan for conducting inspections throughout the year, especially at peak season.
- **TIE WCB EMPLOYER RATES TO IMPROVING THE PREVENTION OF INJURY.** Agriculture is one of the most dangerous occupations, yet since 2001, WorkSafeBC inspections have declined. Though WorkSafeBC claims costs have not declined, premium rates to the agriculture industry have decreased. Instead, surpluses should be used first for enhanced prevention programs, including inter-agency coordination in the enforcement of safety regulations.
- **ESTABLISH AN INDEPENDENT REVIEW OF THE ESA IN RELATION TO FARMWORKERS.¹¹⁶** An independent review, which includes key stakeholders in farmwork such as workers and their advocates, can inform the government about how to improve the ESA and bring agricultural employment conditions into the 21st century. The review should consider how employer responsibility has shifted from farm owners to farm labour contractors, and how vulnerable workers have come to subsidize a profitable agriculture industry. The review should develop coordinating mechanisms with other agencies such as HRSDC that oversee migrant economic programs. For example, it should consider a joint initiative between ESB and the SAWP of hiring officers dedicated to protect farmworkers against exploitation and abuses. Since the SAWP requires employer-provided housing as a condition of employment for migrant farmworkers and they must pay through payroll deductions, the review should consider the incorporation of comprehensive minimum housing standards into the ESA.

- REVIEW THE FARM LABOUR CONTRACTING SYSTEM AND PROPOSE A NON-PROFIT HIRING HALL MODEL FOR ALL FARMWORKERS – IMMIGRANT AND MIGRANT.** The vulnerability of immigrant farmworkers highlights the need to review the farm labour contracting system. The seasonal and irregular demand for labour in agriculture creates the need for some form of labour supply agency for the mutual benefit of both farmworkers and growers. However, the present system of for-profit labour contracting, for a primarily immigrant workforce (mostly women and elderly), is fundamentally flawed. The review should consider the establishment of a program that replaces the private FLC system, well-known for its abuses and violations of employment standards, safety regulations and EI records of employment. A new non-profit program could become the exclusive supplier of labour and require growers to hire through a regulated system/hiring hall/pool (perhaps operated by a partnership between HRSDC, non-profit and labour organizations).
- EXTEND THE NEW NON-PROFIT HIRING MODEL TO MIGRANT WORKERS.** The growth of the BC-SAWP migrant program has changed agricultural conditions since earlier efforts in the 1980s to set up a union hiring hall met with obstacles.¹¹⁷ A new non-profit program would provide growers with the reliable and flexible labour force they seek, while at the same time would be accountable and transparent in meeting employment standards. In hiring and placing migrants, the program would enable workers to be mobile within the agricultural labour market, to exercise their rights as workers and to change employers. Migrants would no longer be hired by and bound to a single employer.
- SET UP INDEPENDENT, LOCAL AGRICULTURAL HUMAN RESOURCES CENTRES.** The centres should be independent from growers’ associations or agricultural councils and the government (although partially funded through the government). Such centres might be the support mechanism for the farm labour pools and carpools – for both immigrant and migrant farmworkers – and should be organized with significant input from local organizations such as the Canadian Farmworkers’ Union, BC Federation of Labour, PICS, Abbotsford Community Services, United Food and Commercial Workers, and Justicia for Migrant Workers. The centres should also have and distribute information to workers about their rights, transportation licensing issues, etc. This information must be made available in English, Punjabi and Spanish if it is to be useful to most workers. As well, the centres should have classes that teach English and cultural knowledge about working in Canada.
- FUND COMMUNITY AGENCIES TO PROVIDE KNOWLEDGE AND ADVOCACY WORK.** Community agencies inform farmworkers effectively and inexpensively about their rights. They can provide information in im/migrants’ native languages. They can also support workers to explore indigenous forms of collective organizing around farmworking issues (for example, a participant in the qualitative study referred to Mexican “debate roundtables”).

An independent review, which includes key stakeholders in farmwork such as workers and their advocates, can inform the government about how to improve the ESA and bring agricultural employment conditions into the 21st century.

- **DISTRIBUTE WIDELY STATEMENTS OF FARMWORKERS' RIGHTS.** Only if farmworkers are aware of their rights are they able to exercise them. Upon their arrival in BC, SAWP migrant workers should receive information about their rights in their native language. These rights should be posted in workplaces in appropriate languages. Where numbers warrant, enforcement agencies should show video statements of workers' rights. Immigrant workers should receive pamphlets in their native language when they begin agricultural work in BC, from their employer and/or from a community agency.
- **REFORM BC MEDICAL INSURANCE FOR SAWP WORKERS.** The public health system should extend coverage to SAWP workers immediately upon arrival, with the premium waived for this group of low-paid workers, as is done in Ontario.

Recommendations for Municipal Governments

- **ADOPT COMPREHENSIVE REGULATIONS FOR MIGRANT WORKER HOUSING.** Adequate housing for migrant workers requires comprehensive regulations that ensure conditions are acceptable by Canadian standards.¹¹⁸
- **IMPROVE HOUSING INSPECTIONS.** Initial inspections need to ensure employer-provided accommodation meets existing standards; if the accommodation is substandard, it should not be approved. Ongoing snap inspections will help to ensure housing continues to meet standards.
- **ENCOURAGE RESIDENTS TO WELCOME MIGRANTS.** Substandard conditions of housing, safety, health and employment create ghettoization and social separation. If communities adopt Canadian standards for migrants' working and living conditions, they help migrant adaptation to their circumstances. More generally, communities can work towards the social, cultural and political integration of migrants. Recreational programs established for migrant workers would be welcome and potentially effective means of integration. The well-being of a community depends upon measures that promote social inclusion.

Recommendations for the Federal Government

After much deliberation, our study does not call for the elimination of the SAWP in BC, as this would unfairly penalize Mexican workers. However, if the SAWP is to continue, it should be substantially reformed. The goal should be to alter the power imbalance between migrant workers and farm owners.

- **RESTRUCTURE THE SAWP.** The designation of migrant workers to a single employer and housed by the employer for a specified period of time amounts to unfree labour. Workers are unable to circulate in the labour market and to exercise their rights in negotiating the terms of their contracts. Minimally, the SAWP should allow workers to move more freely from one employer to another within the SAWP, by issuing workers occupation-specific work permits versus employer-specific ones (see the recommendation above to establish a non-profit hiring hall in the farm-working sector). HRSDC should be the employer accountable for upholding employment standards and safety regulations and coordinating with provincial stakeholders.
- **COORDINATE WITH PROVINCIAL AND MUNICIPAL AUTHORITIES.** HRSDC (Service Canada) should move from being a labour-market matching service to a service that coordinates with all stakeholders. It should assume leadership in ensuring that all levels of government, including other federal agencies, the ESB and WorkSafeBC, exercise their responsibilities. To begin the process of coordination, HRSDC needs to inform provincial authorities of the number, job title, location and departure dates of SAWP workers.
- **DEVELOP A TRANSPARENT SYSTEM OF PAY RATES FOR SAWP WORKERS.** The process for determining the appropriate rate of pay should be transparent, represent a substantial improvement over the minimum wage, and correspond to the specific duties performed by the worker. Wage determination should involve all stakeholders and require growers to provide evidence that wage increases substantially above the minimum wage have been unsuccessful in attracting domestic workers.
- **REQUIRE EMPLOYERS TO DEMONSTRATE A SATISFACTORY RECORD OF COMPLIANCE.** When applying for an LMO to hire workers under the SAWP, employers are not compelled to demonstrate a satisfactory record of compliance with the Workers Compensation Act and the Employment Standards Act. SAWP workers should be able to evaluate their employer, with the evidence to be considered in the latter's re-application for an LMO in subsequent years.

The designation of migrant workers to a single employer and housed by the employer for a specified period of time amounts to unfree labour. Minimally, the SAWP should allow workers to move more freely from one employer to another within the program by issuing workers occupation-specific work permits versus employer-specific ones.

- **REMOVE REPATRIATION AS AN EMPLOYER RIGHT.** Repatriation is the main deterrent for SAWP workers exercising their labour rights. Growers who wish to dismiss SAWP workers must demonstrate proper cause before so doing and dismissal should not be linked to repatriation. Illness or injury is not a cause to repatriate SAWP workers. On the contrary, workers should be covered by the BC MSP or equivalent insurance for treatment here or in Mexico for the full length of recovery. Workers who become ill should be informed of their right to collect EI during recovery. Workers must have the right to appeal dismissal to an independent body.¹¹⁹
- **EXPLORE THE POSSIBILITIES FOR SECURING RIGHTS TO EI AND CPP FOR SAWP WORKERS.** While SAWP workers contribute to EI and the CPP, they are not eligible to receive all the benefits. SAWP workers should have rights to EI and CPP in Mexico or the employer and employee contributions should be refunded to workers.
- **INITIATE A GENDER-BASED ANALYSIS.**¹²⁰ Research should determine the role immigration policy plays in the over-representation of women in BC immigrant farmworkers, their under-representation in migrant farmworkers and the consequences for gender equity in the agricultural division of labour. Similarly, research should examine how gender intersects with race and age and other defining characteristics of worker vulnerability.
- **ENABLE THE IMMIGRATION OF SAWP WORKERS.** If workers are accepted into the SAWP and work for three seasons, they should be able to apply for permanent resident status. The program should enable them to live here with their families and to become Canadians.¹²¹
- **SIGN THE UNITED NATIONS INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES.** Canada should sign on to this convention, which is compatible with the Canadian Charter, in guaranteeing fundamental rights to all people in Canada including migrants.¹²² These human rights must be central to policy frameworks and farm-working practices.

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The UN Convention on the Protection of the Rights of Migrant Workers and Members of Their Families came into effect on July 1, 2003. Among its many articles the convention establishes that migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the country of employment in respect of remuneration, other conditions of work and employment, and living conditions in keeping with host country's standards of fitness, safety, health and principles of human dignity. This includes: preventing inhumane living and working conditions, physical and sexual abuse and degrading treatments; guaranteeing freedom of expression, access to information on rights and equal access to educational and social services; and ensuring rights to legal equality and the right to participate in trade unions.¹²³

Recommendations for the Mexican Government

- **IMPROVE INFORMATION PROVIDED TO WORKERS.** Mexican government agents should provide more detailed information about BC provincial employment and safety regulations during workers' pre-departure orientation as well as upon their arrival in BC.
- **BUILD CAPACITY TO COORDINATE WITH PROVINCIAL GOVERNMENT AGENCIES.** Without knowledge of provincial employment regulations and coordination with provincial government ministries responsible for enforcement, Mexican government representatives currently are unable to provide workers with adequate information and assistance.
- **STRENGTHEN THE MEDIATING ROLE OF THE CONSULATE IN PROTECTING MEXICAN CITIZENS.** As the SAWP program has grown quickly in BC, Mexican government representatives need the resources to be able to respond promptly to their compatriots' needs and advocate effectively on their behalf.
- **CONSIDER ALTERNATIVE SOLUTIONS TO CONDITIONS IN MEXICO.** Conditions in Mexico force migrant workers into accepting the SAWP contract. Consider measures that could strengthen rural livelihoods within Mexico to lessen the inducement to migrate or workers' dependency on their jobs in Canada.¹²⁴

Notes

- 1 *Vancouver Sun*, 2006.
- 2 The CCPA study is located in BC's Fraser Valley. The Otero-Preibisch survey, which supplements this study, includes Mexican migrant workers in BC's Okanagan Valley.
- 3 Key informants included 10 government or former government officials, one grower and one community agency director.
- 4 In our study, all the immigrant farmworkers came from the Punjab in India; we use the terms immigrant, Indo-Canadian and Punjabi interchangeably to reflect this group. The migrant workers all came from Mexico, from various states.
- 5 In this report, migrant refers to individuals without Canadian citizenship or permanent resident status who are in the country under temporary visas through the SAWP.
- 6 The study included interviews with nine growers, seven growers' representatives, five NGO or labour movement representatives and seven government/quasi-government officials.
- 7 Basran and Bolaria, 1986; Bolaria, 1992; Satzewich, 1993; Sharma, 2001.
- 8 Fudge, nd.
- 9 Binning, 1986, cited in Basran et al., 1995.
- 10 McLaren and Black, 2005; McLaren, 2006.
- 11 Boyd, 1989.
- 12 Bush and Canadian Farmworkers' Union, 1995.
- 13 WorkSafeBC found that the van crash was due to passenger overloading, poor tire maintenance, a lack of seatbelts, an under-qualified driver, road conditions and vehicle instability (*Vancouver Sun*, 2008).
- 14 Maintaining a similar target as in previous years, CIC planned to admit between 18,000 and 20,000 parents or grandparents to Canada in 2003 through the family reunification program. The target for 2004, however, dropped to between 10,500 and 13,500; in 2005, it dropped further to between 5,500 and 6,800. The dramatic decline of targets led critics to accuse the government of deliberately trying to kill the longstanding program of parental sponsorship (McLaren and Black, 2005). Subsequently, the government reversed this downward trend. CIC plans to allow 18,000 to 19,000 parents or grandparents to come to Canada in 2008 through the family reunification program (Citizenship and Immigration Canada, 2007).
- 15 For overviews of the SAWP, see for example: Basok, 2002 and 2007; Justicia for Migrant Workers, nd; North-South Institute, 2006; United Food and Commercial Workers, 2005.
- 16 Justicia for Migrant Workers, nd.
- 17 Neither Service Canada nor the Mexican Consulate were able to provide complete numbers of migrant workers and employers.
- 18 This figure was charged to all participants in the Otero-Preibisch survey, even if they stayed only a few months and less than eight.
- 19 Lee-Young, 2008.
- 20 Verma, 2003.
- 21 Thompson, 1994.

- 22 Workers covered by the ESA were entitled to overtime rates for work in excess of eight hours per day or 40 hours per week, initially at a rate of time and a half. By contrast, farmworkers received overtime only after they worked more than 120 hours within two weeks. Work performed in excess of 120 hours was compensated at double time.
- 23 Moore, 2004.
- 24 Ibid.
- 25 John van Dongen, prior to his election as MLA for the Abbotsford-Clayburn riding in the Fraser Valley, had been very involved in various provincial farming organizations for about 20 years, and a vocal advocate for farm owners.
- 26 Quoted in Moore, 2004, p. 16. Reference to “Graham’s Ministry, Labour” is to the new Liberal Minister of Skills Development and Labour, Graham Bruce.
- 27 Ibid, p. 16.
- 28 Employment in agriculture is about 1 per cent of total employment in BC (Statistics Canada, Cansim Table 282-0012, Labour Force Survey Estimates (LFS), Employment by Class of Worker, NAICS).
- 29 Bill 48, Employment Standards Amendment Act, 2002, c. 42.
- 30 For details, see Fairey, 2005.
- 31 BC Reg. 195/2003; BC Reg. 196/2003; and BC Reg. 197/2003.
- 32 BC Reg. 196/2003.
- 33 BC Reg. 432/2003.
- 34 BC Ministry of Labour and Citizens’ Services’ definition of “farmworker” includes “a person employed in a farming, ranching, orchard or agricultural operation who is responsible for: growing, raising, keeping, cultivating, propagating, harvesting or slaughtering the product of a farming, ranching, orchard or agricultural operation; clearing, draining, irrigating, or cultivating land; operating or using farm machinery, equipment, or materials; and selling a product at the operation during the normal harvest cycle. Retrieved at www.labour.gov.bc.ca/esb/igm/esr-part-1/esr-s1-farmworkers.htm on 25 November 2007.
- 35 British Columbia Memorandum of Understanding Between Ministry of Skills Development and Labour the Employment Standards Branch and the BC Agriculture Council and BCAC Member Organizations. Retrieved at www.llbc.leg.bc.ca/public/PubDocs/bcdocs/408888/memorandum_of_understanding.pdf on 8 May 2008.
- 36 More broadly, the government’s decision to reduce administrative record keeping and cut government staffing by one third across the board in all departments dictated changes to the ESB administration and enforcement, to the detriment, especially, of vulnerable workers. For example, in order to work with major staff reductions, the ministry changed the worker complaint handling process through introduction of the compulsory “Self Help Kit.” The ESB would not accept or investigate violation complaints from employees unless they had first submitted their issues in writing to their employers using the self-help kit (some groups of workers, including farmworkers, were exempt from the self-help kit system, which requires competency in English). See Fairey, 2005.
- 37 We were able to obtain from the Employment Standards Branch, without charge, historical data on violations of the Act and Regulation involving agricultural employers.
- 38 Records of “audits” relate to investigations and payroll audits of employers initiated by ESB enforcement staff without having received employee complaints. Records of “complaints” relate to formal complaints received by the ESB from workers who feel that their employer (normally *former* employer) has not treated them or paid them according to the minimum standards of

the Act. Records of “contraventions” relate to the results of ESB investigations of employers who were the subject of an audit or complaint where the Branch has issued a “determination” of contravention of the Act.

- 39 In the case of records of audits and complaints, the only information accessible to us was the total number of combined audits and complaints cases opened in each fiscal year according to the assigned industry classification; as a result, we were unable to examine audits and complaints separately. Moreover, since the ESB has not adopted the standard industry classification system used by Statistics Canada and most government data-gathering agencies, we can only infer the distinctions between industries from the names given to the industry classifications.
- 40 The 16 industry classifications were: farming, soil preparation services, hay crops, stables, ranching, horse back riding schools, mink farming, farm labour contractors, conservation & breeding farms, horticulture, dairy farms, greenhouses, poultry hatcheries, vineyards/winery, agriculture/aquaculture, flowers and florist supplies. As the ESB data do not provide definitive descriptions for each of these industry classifications, and the enforcement staff exercise their own discretion as to which industry any particular complaint is classified under, it is highly likely that the industry classification of audits and complaints has not been consistent, making the total number counts for each year in each agricultural sector suspect.
- 41 Bill 48, Employment Standards Amendment Act, 2002, c. 42.
- 42 The regulation states that FLCs who employ farmworkers must pay all their wages “by deposit to the credit of the farmworker’s account in a savings institution” (BC Reg. 257/2004).
- 43 Moore (2004) made reference to significantly higher numbers of violations (1,136) in the 1997 to 2001 period than recorded above in the ESB data provided on contraventions. It has not been possible to reconcile this discrepancy on account of a lack of ESB record keeping transparency and cooperation with our information requests. One possible explanation is that the smaller numbers tabulated in the table do not reflect multiple employer violations coincident with a single complaint or audit investigation.
- 44 Employment Standards Branch, Audits & Complaints Assigned and Closed by Industry Type.
- 45 Workers’ Compensation Board of BC, 1993.
- 46 Workers’ Compensation Board of BC, 2004, p. 48.
- 47 WorkSafeBC, 1999, 2003.
- 48 WorkSafeBC, 2007. The top three fines were assessed, in order, to Artisan Corporation and Ensign Drilling Inc. (\$195,000), Target Products Ltd. (\$93,351), and Park Avenue Furniture (BC) (\$79,471).
- 49 WorkSafeBC.com Agriculture Industry Statistics. Retrieved at www2.worksafebc.com/portals/agriculture/statistics.asp.
- 50 While not specific to agricultural workers, changes introduced by the provincial government in 2002 did have an impact on the compensation for workers in the industry. Following the introduction of Bill 49, the Workers’ Compensation Amendment Act, in 2002 the provincial government cut benefits to workers by \$100 million a year (BC Federation of Labour, 2004).
- 51 WorkSafeBC, Risk Management Branch, EPDM, June 30, 2007 Data.
- 52 WorkSafeBC, nd.
- 53 Workers’ Compensation Board of BC, 1994–2006.
- 54 Moore, 2004.
- 55 Farnsworth, 2003.

- 56 WorkSafeBC website.
- 57 *Vancouver Sun*, 2007.
- 58 Dilbagh Mann provided the assistance at PICS.
- 59 Erika Del Carmen Fuchs and Adriana Paz assisted with the research.
- 60 Several of the migrant focus groups and interviews were held in Vancouver (e.g. in a public library, community centre, the CCPA office); others were held in Abbotsford and Surrey (at a public park, SFU campus).
- 61 We conducted a woman-only focus group of immigrant and also of migrant farmworkers. Three immigrant farmworker focus groups were composed of both men and women; three migrant farmworker focus groups were composed of men only. Only about 3 per cent of Mexican workers under Canada's SAWP are women. The Mexican government did not begin recruiting women for agricultural work in Canada until 1989 and until recently, only single mothers were eligible to apply (Preibisch and Hermoso, 2006).
- 62 Since many of the participants in our study had previous contact with local community groups who support farmworkers, they may be generally more connected and articulate than farmworkers who did not participate in the study. Even so, due to many reasons – including lowered standards and enforcement – the farmworkers we talked to faced enormous barriers in voicing their concerns.
- 63 The workshop-focus group format allowed for a participatory action research methodology for data gathering, with the aim of giving back to the participants (by providing useful information) and learning from them by having a dialogue. The focus groups and individual interviews were conducted in Spanish.
- 64 Each of the four focus groups had five participants in them.
- 65 Two of the focus groups had five participants; one had four and one had seven participants.
- 66 Most workers were recruited at churches, malls or farmworker support centres in Abbotsford, Chilliwack, and Kelowna. A few were recruited at hotels where they were housed. The Otero-Preibisch research team included Christina Hanson and Sarbjit Gill, who conducted in-depth interviews with Mexican and Indo-Canadian workers. Furthermore, Preibisch and Otero conducted in-depth interviews with growers and other stakeholders in BC agriculture. These interviews served as a basis to design the survey instrument and generally to illuminate their participation in this report.
- 67 Currently, Canada admits immigrants under three main categories. In 2006, 55 per cent of immigrants came as economic class, 28 per cent as family class, and 13 per cent as protected persons (Citizenship and Immigration Canada, 2007).
- 68 Another explanation of the low wages is that, in the case of piece rate workers, FLCs may inflate the hours to give workers enough to qualify for EI. Alternatively, contractors may deflate the hours to raise the purported hourly rate to produce artificially high hourly rates that are counted for EI. Both possibilities may occur in specific cases, but overall the farmworkers we interviewed provided detailed information about long hours and low wages.
- 69 One migrant farmworker did not respond to the question about education.
- 70 The Otero-Preibisch survey of Mexican migrant workers had a similar distribution of educational levels. Nearly one third had only completed elementary school. Just under half reported finishing junior high as their highest level of education. Under 10 per cent reported finishing high school or receiving post-high school training.

- 71 In the Otero-Preibisch survey, migrant workers ranged from 22 to 52 years old, with an average age of 35.
- 72 During the slow season, hours declined on average to nine hours Monday to Friday, seven hours on Saturday, and four hours on Sunday.
- 73 Statistics Canada Income Statistics Division, 2007. In 2006, the low income cut-off (1992 base) before tax in a population area of 500,000 or over, with a family unit of four persons was \$39,399 (Ibid).
- 74 Estimates are that FLCs charge farmers for their service between 25 and 40 per cent of the “normal wage” (Shields, 1988).
- 75 Matas, 2008.
- 76 *Parmar v. The Minister of National Revenue*, 2008 [1195].
- 77 Ibid, [1185].
- 78 A current ESA regulation requires employers to pay farmworkers at least twice a month and directly to the employee’s bank account. Participants in our study welcomed this direct deposit system. Without regular enforcement of this regulation, however, some farmworkers are not paid regularly.
- 79 Preibisch and Hermoso, 2006.
- 80 Cohen, 2003.
- 81 Basok, 2002, 2007; Becerril, 2007; Gibb, 2007; North-South Institute, 2006; Preibisch, 2004; United Food and Commercial Workers, 2005; Verma, 2007.
- 82 In this report, we use pseudonyms for study participants.
- 83 See Becerril, 2007; Preibisch and Hermoso, 2006.
- 84 See Hanson, 2007.
- 85 HRSDC, 2007a.
- 86 See *Justicia for Migrant Workers*, 2007.
- 87 In most of these municipalities the new bylaws have been drafted on the basis of consultations and guidance from the Ministry of Agriculture and Lands, and their respective Agricultural Advisory Committees representing farm owners. Once again neither the Employment Standards Branch nor farmworker representatives have been involved in the drafting of farmworker housing bylaws.
- 88 The bylaws only specify, among other technical land use restrictions, what the minimum and maximum allowable floor area of the accommodation shall be, and the maximum number of persons that may be accommodated depending on the acreage of the farm.
- 89 Also, the owner of the farm must reside on the same lot as the seasonal worker accommodation, the agricultural use of the farm must be in berry or horticultural production, there can be no more than 10 persons accommodated for each 4.05 hectares of land (one person per acre) up to a maximum of 40 persons where the farm is between 100 and 999 acres, or up to 250 persons where the farm is 1,000 acres or more, and a maximum of 60 persons accommodated in a single building.
- 90 For example, in the early 1990s, a series of crashes occurred: in 1991 a converted school bus carrying 18 farmworkers flipped over, sending 11 people to hospital. In 1992 a van carrying 18 farmworkers flipped over, injuring all but one of the people, some with serious spinal and head injuries. In 1994 a van carrying 16 farmworkers crashed, killing three farmworkers (Bush and Canadian Farmworkers’ Union, 1995).

- 91 Immediately after the fatal crash, 180 vehicles were pulled over during a nine-day period. Sixty-seven failed to meet safety standards (*Globe and Mail*, 2007).
- 92 This committee includes the Employment Standards Branch, WCB, Commercial Vehicle Safety Branch, Royal Canadian Mounted Police (RCMP) and Canada Revenue Agency (BC Federation of Labour, 2008).
- 93 Ibid.
- 94 See also West Coast Environmental Law et al., 2005.
- 95 Skelton, 2006.
- 96 Regulations require posting of wages.
- 97 Other research found incidents of sexual harassment (Bush and Canadian Farmworkers' Union, 1995).
- 98 See Hanson, 2007.
- 99 With the exception of a few fact sheets about farmworkers translated into Spanish, the ESB is not prepared to address the needs of Spanish speakers. Telephone enquiry services are in English or French, not Spanish.
- 100 Quoted in Verma, 2007, p. 13.
- 101 Verma, 2007, p. 13.
- 102 Mexicans' dependence on growers' references to gain access to the SAWP the following year contributes to their unfree status (Basok, 2002).
- 103 Verma (2007) found a similar pattern. A migrant worker country-sending agent who believes there is a violation of the Employment Standards Act calls HRSDC for assistance, not the provincial authority. Verma recommends that such country-sending agents need to build their capacity on procedural and substantive aspects of provincial employment laws and their contacts with provincial government ministries responsible for enforcement.
- 104 Ibid.
- 105 Ibid.
- 106 In our study, for example, we had difficulty obtaining basic information from Service Canada about the number of workers and employers participating in the BC-SAWP during 2007.
- 107 Similarly, HRSDC does not monitor or enforce employment contracts of Alberta's rapidly growing unskilled temporary foreign workers program (Alberta Federation of Labour, 2007).
- 108 On September 24, 2007, for example, HRSDC announced changes to the Temporary Foreign Worker Program that will enable employers in BC and Alberta to hire foreign workers more quickly. In 2006, as many as 171,844 temporary foreign workers were living in Canada. See HRSDC, 2007b.
- 109 Basok, 2007.
- 110 Gibb, 2007.
- 111 Farmworker rights have improved recently in other provinces. For example, as of June 2008, farmworkers in Manitoba will be protected by the Employment Standards Code, including proper termination notice, vacation pay, days off, work breaks, unpaid leaves, and overtime and statutory holiday pay for workers at indoor factory farms.
- 112 Ontario Employment Standards Act provisions for harvesters.
- 113 Zaman et al. (2007) have also called for this measure and several other measures below.
- 114 Ontario is gradually increasing the minimum wage to \$10.25 by 2010 for harvesters (with exceptions for students).

- 115 See BC Federation of Labour, 2008.
- 116 This recommendation reinforces Zaman et al.'s call for an independent review of the ESA.
- 117 Bush and Canadian Farmworkers' Union, 1995.
- 118 See Justicia for Migrant Workers, 2007.
- 119 Unless protected from repatriation or exclusion from subsequent growing seasons, safety regulations are not effective (Fudge, nd).
- 120 Bill C-11 Immigration and Refugee Protection Act (2002) requires gender-based analysis of policy and program development. See Citizenship and Immigration Canada, 2007.
- 121 Bauder (2007) argues that formal citizenship is the key factor that makes foreign workers more vulnerable and exploitable than Canadian workers.
- 122 As well, "Labour-sending and labour-receiving countries have obligations under the International Labour Organization's (ILO) Decent Work Agenda and ILO conventions on migrant workers to ensure that mechanisms are in place to ensure that workers, employers and other stakeholders understand migrant workers' rights and to ensure that mechanisms are in place to enforce those rights" (Gibb, 2007, p. 3).
- 123 UNESCO (nd) toolkit.
- 124 A consulate official told us that the SAWP works well in that workers only stay eight months and the investment goes back to Mexico – the workers will invest in small or medium enterprises and will work the land in Mexico with the methods learned in Canada. The official added that the SAWP is a good example of bi-national organized migration, but is not a solution to the socioeconomic problems of poverty and inequality in Mexico.

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Glossary of Acronyms

| | |
|-------|--|
| ACT | Agriculture Compliance Team |
| BCAC | BC Agriculture Council |
| CIC | Citizenship and Immigration Canada |
| CPP | Canada Pension Plan |
| EI | Employment Insurance |
| ESA | Employment Standards Act |
| ESB | Employment Standards Branch |
| FLC | Farm Labour Contractor |
| FOI | Freedom of Information |
| HRSDC | Human Resources and Social Development Canada |
| ICBC | Insurance Corporation of British Columbia |
| IRPA | Immigration and Refugee Protection Act |
| LMO | Labour Market Opinion |
| MSP | Medical Services Plan |
| OIPC | Office of the Information and Privacy Commissioner |
| PICS | Progressive Intercultural Community Services |
| RBC | Royal Bank of Canada |
| SAWP | Seasonal Agricultural Workers Program |
| UFCW | United Food and Commercial Workers |
| WALI | Western Agricultural Labour Initiative |
| WHMIS | Workplace Hazardous Materials Information System |
| WCB | Workers' Compensation Board of BC |

Canadian Centre for Policy Alternatives

www.policyalternatives.ca

The Canadian Centre for Policy Alternatives is an independent, non-partisan research institute concerned with issues of social and economic justice. Founded in 1980, it is one of Canada's leading progressive voices in public policy debates. The CCPA works to enrich democratic dialogue and ensure Canadians know there are workable solutions to the issues we face. The Centre offers analysis and policy ideas to the media, general public, social justice and labour organizations, academia and government. It produces studies, policy briefs, books, editorials and commentary, and other publications, most of which are available free at www.policyalternatives.ca. The CCPA is a registered non-profit charity and depends on the support of its more than 10,000 members across Canada.



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office

Established in 1997, the CCPA's BC Office offers policy research and commentary on a wide range of provincial issues, such as: BC finances, taxation and spending; poverty and welfare policy; BC's resource economy; privatization and P3s; public education financing; health care; and more.

Economic Security Project

www.policyalternatives.ca/economic_security

The Economic Security Project is a major research initiative of the CCPA's BC Office and Simon Fraser University, in partnership with 24 community organizations and four BC universities. The project examines how recent provincial policy changes affect the economic well-being of vulnerable people in BC, such as those who rely on social assistance, low-wage earners, recent immigrants, youth and others. It also develops and promotes policy solutions that improve economic security. The project is funded primarily by a grant from the Social Sciences and Humanities Research Council of Canada (SSHRC) through its Community-University Research Alliance Program.

Justicia for Migrant Workers

www.justicia4migrantworkers.org

Justicia for Migrant Workers (J4MW) is a volunteer-driven political non-profit collective comprised of committed organizers from diverse walks of life (including labour activists, educators, researchers, students and youth of colour) based in Toronto, Ontario, and in Vancouver, BC. J4MW strives to promote the rights of seasonal Caribbean, Guatemalan, and Mexican migrant workers who participate in the federal government's Seasonal Agricultural Workers Program (known as SAWP). The J4MW collective is motivated by experiences shared and lessons learned from migrant farmworkers over the course of several years of community outreach in migrant farmworkers' communities. As allies, organizers and friends we believe migrant workers deserve work with dignity and respect!



Progressive Intercultural Community Services

www.pics.bc.ca

Progressive Intercultural Community Services (PICS) is a registered non-profit society, and a United Way Agency member.



As a community services society, we provide various programs and services including employment, settlement, English language classes and many others to assist new immigrants, seniors, farmworkers and youth. We work diligently to provide responsive programs that address various issues within our community by promoting harmony and intercultural understanding for the purpose of building a more inclusive and mutually respectful society.

BC Federation of Labour

www.bcfed.com



The British Columbia Federation of Labour represents more than half a million workers through affiliated unions working in every aspect of the BC economy. The Federation provides support to affiliated unions during labour disputes and co-ordinates campaigns from health and safety to political action and women's rights.