



THE STATUS OF MIGRANT FARM WORKERS IN CANADA, 2020

Special Report:
Marking three decades of
advocacy on behalf of Canada's
most exploited workforce

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UFCW CANADA AND THE AGRICULTURE WORKERS ALLIANCE (AWA)



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EXECUTIVE SUMMARY

The United Food and Commercial Workers Union (UFCW) counts 1.3 million members internationally. UFCW Canada (TUAC in Quebec) is Canada's largest private-sector union with more than 250,000 members across Canada working in every sector of the food industry from field to table.

For 30 years, UFCW Canada has been the leading voice and advocate for agricultural workers, both domestic and migrant workers. Along with the Agriculture Workers Alliance (AWA), UFCW Canada operates North America's largest agricultural workers' association with over 13,000 members. Since 2001, these workers have turned to AWA support centres for information, health and safety and know your rights training, assistance in applying for open work permits for vulnerable workers, and other free services in their languages.

In the specific case of migrant agricultural workers, UFCW Canada has helped protect their rights and enforce their entitlements, while advocating for changes to the laws which still today, contribute to worker vulnerability and employment insecurity.

In the mid-1960s, in an attempt to meet the seasonal labour needs of Canadian agricultural producers, the federal government created the Seasonal Agricultural Workers Program (SAWP), turning to the Caribbean for a temporary stream of foreign workers.

The SAWP now falls within the primary agricultural stream of the Temporary Foreign Workers (TFW) program administered by Employment and Services Development Canada (ESDC).

Initially, this was intended to be a last resort and only a temporary solution; however, over 50 years later, this has become a central part of Canada's primary agricultural industry.

Seasonal work by migrant workers now accounts for half of Canada's paid agricultural workforce. The workers arrive from Mexico or one of the other 11 participating Caribbean countries.

Canada has seen a continuous expansion of the migrant and temporary foreign workforce incorporate agriculture under federal programs that deliver migrant workers to employers, and then essentially abandon them to fend for themselves. In 2012 the ESDC issued 39,700 permits for migrant farmworkers. In 2019 that number had risen to 72,000.

TFW Program Streams

❖ Primary Agriculture

- Seasonal Agricultural Worker Program (SAWP)
- Agricultural Stream
- Primary Agriculture – Low Wage
- Primary Agriculture – High Wage

❖ High wage

❖ Low Wage

❖ Global Talent

EXECUTIVE SUMMARY

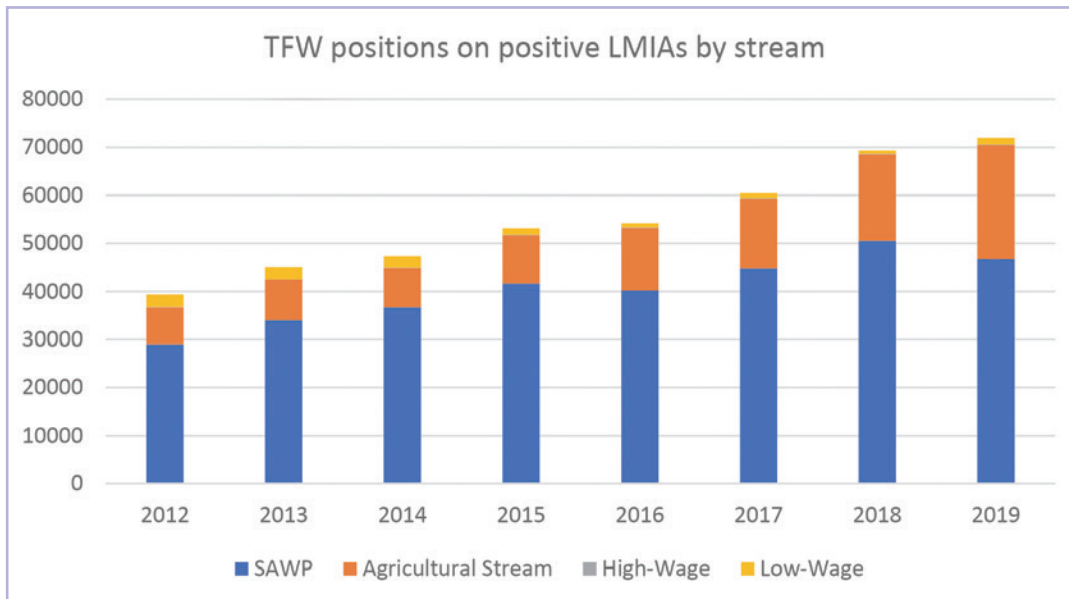


Figure 1: Number of temporary foreign worker (TFW) positions on positive Labour Market Impact Assessments (LMIA's) under the Primary Agriculture stream
Source: Government of Canada – Temporary Foreign Worker Program 2012-2019

65% of these migrant farmworkers are subject to the terms and conditions of the SAWP program, which is negotiated between the participating governments. However, the terms and conditions of employment, as well as other workplace rights and entitlements for agricultural workers, are subject to provincial workplace legislation.

Yet, the labour and workplace rights of agricultural workers are far too often expressly excluded, making migrant agricultural workers more vulnerable than the general Canadian workforce, as their legal rights and entitlements are fewer. As a result, Canada's migrant agricultural workers work in conditions where exploitation and abuse are common. This is also fuelled by the fact that workers who are hired through the SAWP and TFW are only allowed to work for the specific employer who hired them. Their "closed" work permit and the exclusion from collective bargaining rights of agricultural workers in Ontario, where about 40% of temporary migrant agricultural workers are employed, puts these workers in a vulnerable position where the employer has all the power over the employee.

In June 2019, the federal government's response to this was the introduction of the open work permit for vulnerable workers' program. This program grants an open work permit of one year to migrant workers under the SAWP and TFW who have experienced or are experiencing any type of abuse, such as physical, psychological, sexual, or financial. However, as these permits are only temporary, they do not address the long-term need of workers for protection and fair labour.

"I have been coming to Canada for the last 19 years already, spending eight months working and four months at home with my family. I am still optimistic that at some point we will have an open work permit, an accessible path to permanent residence, decent housing conditions and have representation because we need an advocate that will deal with the employer so we can work in peace and less worried of achieving a set quota".

- Kevin, a migrant farmworker in Southwestern Ontario



TIME FOR A MEANINGFUL REFORM

Over the past 30 years of activism and advocacy, we have seen first-hand the plight of migrant workers. Unfortunately, while attempts at reforming the Temporary Foreign Workers Program have been made, many fall short. Meaningful reform is necessary. Not only do Temporary Foreign Workers experience higher rates of wage theft and workplace abuse, but they are also dependent on the moods of their employers to be able to stay in Canada.

Therefore, the fair treatment of Canada's agricultural workers requires several urgent and significant reforms at both the federal and provincial levels. However, as UFCW Canada has asserted on multiple submissions to the federal government, Canada does not need a robust temporary foreign worker program. Canada desperately needs a more inclusive, protective, and healthy immigration system. In addition, UFCW has pointed out that an expanded Temporary Foreign Workers Program (TFWP) should not be viewed as the solution to labour challenges facing Canada's agri-food system. A broader labour strategy is needed for this crucial sector.

REQUIRED REFORMS

Federal reforms urgently needed:



1. Make union representation a necessary condition of the Temporary Foreign Workers Program, as the best practical measure in providing proper representation and protection to Canada's most precarious and vulnerable worker population;
2. End employer-specific work permits and replace them with open work permits, or at least, occupation-specific work permits;
3. Expand the Agri-food Pilot program to allow for an additional 5,000 permanent residency opportunities, per year, dedicated to the primary agricultural stream;
4. Establish a tripartite sector council dedicated to reducing Canada's over-reliance on Temporary Foreign Workers by collaborating on innovative active labour market policy options;
5. Establish a federal tribunal to properly allow for the review and appeal of repatriation decisions in advance of TFWs being sent home by employers;
6. Provide SAWP and TFWP workers with access to Canada's Employment Insurance Program which they have paid into since 1966;



7. Sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which was adopted by the United Nations General Assembly in December 1990.

Provincial reforms urgently needed:

1. Repeal Ontario's Agricultural Employees Protection Act. The Ontario Labour Relations Act must be amended to include agricultural workers, or the Agricultural Labour Relations Act should be revived to truly respect the collective bargaining rights of agricultural workers;
2. Bill 26 must be repealed in Alberta; all agricultural workers should be fully included in Alberta's Labour Code without exception;
3. Bill 8 must be repealed in Quebec; all agricultural workers should be fully included in Quebec's Labour Code without exception;
4. Institute and properly enforce the Manitoba model in all provinces with respect to regulating and penalizing offshore recruiters of foreign workers;
5. Establish significant fines and/or jail sentences for domestic recruiters and temporary work agencies who are found to exploit migrant workers;
6. Eliminate piece rate and set quotas as they facilitate labour exploitation and create physical and mental issues that impact the wellbeing of migrant workers.
7. Ban the practice of housing workers above or adjacent to greenhouses in recognition of the apparent dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters.



THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

1994

Collective bargaining rights for agricultural workers in Ontario

Following the recommendations of UFCW Canada as the principal workers' representative and a ministerial advisory committee, which included agricultural owner organizations, such as the Ontario Federation of Agriculture, the New Democratic Party government enacts the *Agricultural Labour Relations Act (ALRA)*. This Act granted collective bargaining rights to agricultural workers in Ontario for the first time in history.

1995

Progressive Conservative Government repeals the ALRA, and UFCW Canada takes the Ontario government to court

UFCW Canada Local 1993 is certified to represent around 200 workers at Highline Mushrooms, a year-round mushroom factory in Leamington, ON. This became the only bargaining unit certified under ARLA.

However, the Mike Harris Progressive Conservative government repeals the ALRA, denying workers at Highline farms and elsewhere the chance to bargain for a collective agreement.

UFCW Canada takes the Ontario government to court to challenge the exclusion of agricultural workers under the Labour Relations Act as a violation of workers' rights under the Charter of Rights and Freedoms in *Dunmore v. Ontario*.

2001

The Supreme Court of Canada rules in favour of UFCW Canada in *Dunmore v. Ontario* and gives the Ontario government 18 months to comply with the ruling and address the exclusion of agricultural workers from the *Ontario Labour Relations Act*.

The Agriculture Workers Alliance (AWA) is established to support agricultural workers throughout Canada

In 2001, UFCW Canada launched the research initiative known as “The Global Justice Caravan Project,” which toured the province to interview workers. This initiative resulted in the Report of Migrant Farm Workers in Canada – 2001.

2002

The Ontario Government's response to the Dunmore decision was the Agricultural Employees Protection Act, 2002 (AEPA). The AEPA grants the freedom to “associate”; however, it does not provide agricultural workers with collective bargaining rights enjoyed by workers under the *Labour Relations Act*.

AWA opens the first workers support centre in Leamington, Ontario, with the support of UFCW Canada.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

2003

Farmworkers at Rol-Land Farms mushroom plant in Kingsville, ON organize to join UFCW Canada and challenge the AEPA.

Workers voted overwhelmingly (132-45) to join UFCW Canada. However, workers get fired for attempting to organize, and the case is brought to the Tribunal. The workers never had a chance to testify, and no decision was ever rendered.

UFCW Canada launches three legal challenges:

- to the *AEPA in Fraser v. Ontario (Attorney General)*
- to the exclusion of Ontario farm workers from the *Occupational Health and Safety Act*
- to mandatory EI deductions for seasonal foreign workers

AWA opens migrant agricultural workers support centres in Bradford and Simcoe, Ontario, with the support of UFCW Canada.

2004

Greenhouse workers at Platinum Produce in Chatham, Ontario, apply to join UFCW Canada.

AWA opens migrant agricultural workers support centres in Virgil, Ontario and Saint-Rémi, Quebec, with the support of UFCW.

2006

Justice Farley rules in *Fraser v. Ontario (Attorney General)* that the *Agricultural Employees Protection Act* is constitutional, even though it bans farmworkers from collectively bargaining.

UFCW Canada files for union certification at Stratford Chick Hatchery in Ontario, after the majority of workers, voted to join the union. However, the company filed an objection with the OLRB, alleging that SCH is an agricultural facility. As such, its employees should be specifically excluded from unionizing under the controversial AEPA law.

UFCW Canada files for union certification at four farms employing mostly migrant workers: one farm in Manitoba and three in Quebec.

In a historic breakthrough, workers at the four farms were able, for the first time, to bargain their wages and working conditions. For decades most of these workers had been cycled between Mexico and Canada with little support or protection from either government and with the fear of being sent back to Mexico early at their own expense if they raise any workplace concerns. By choosing to form a union, these workers got a say in how they are treated and compensated, which they never had under SAWP.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

UFCW Canada begins first-ever AEPA proceedings to have four workers from Rol-land Farms reinstated to their jobs after being fired following their efforts to join UFCW.

UFCW Canada gains health and safety coverage for Ontario farm workers. After a 3-year public awareness campaign and legal battle led by UFCW Canada, for the first time in the Act's 26-year-history occupational health and safety is extended to cover agricultural workers under the *Ontario's Occupational Health and Safety Act (OHSA)*.

2007

UFCW Canada meets with the Mexican congress commission on Borders, Population and Migration to discuss securing rights for workers in the SAWP program.

Canada's Supreme Court rules that the Charter of Rights and Freedoms protects collective bargaining in *Health Services v. British Columbia*. UFCW Canada had submitted an amicus curiae brief to the court in support of this position and the unions representing British Columbia health care workers.

UFCW Canada and AWA open first Migrant agricultural workers support centres in Western Canada; in Abbotsford, British Columbia and Portage la Prairie, Manitoba.

UFCW Canada receives a delegation of five Mexican deputies (congressmen) from the Commission on Population, Borders and Migration and the Human Rights Commission to meet with academics, social service agencies, trade union officials and Mexican workers in Canada.

UFCW Canada is certified to represent seasonal foreign workers at one farm in Manitoba and one in Quebec. UFCW / TUAC local 501 appeals on behalf of farmworkers in seasonal operations who were barred from organizing by the Quebec Labour Board.

Manitoba moves to adopt legislation protecting temporary foreign workers from unscrupulous recruiters, after seeing a 10-year increase in human trafficking and off-shore temporary foreign worker recruitment activities by third party representatives.

UFCW Canada sends the second delegation to Mexico to further discussions with Mexican civil society organizations and government officials on advancing the rights of seasonal Mexican workers.

2008

The Ontario Court of Appeal told the Ontario government to drop its ban on farm unions because it violates the Charter rights of Ontario's more than 100,000 agricultural workers.

UFCW Canada opened the eighth Agriculture Workers Alliance Centre in Kelowna, British Columbia.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

2009

Mexico state and UFCW Canada sign migrant worker protection pact. Under the agreement, workers from Michoacán will be assisted in Canada by UFCW Canada in association with the Agriculture Workers Alliance (AWA).

UFCW Canada challenged Ontario's request to the Supreme Court of Canada that it hear the province's appeal of a November 2008 lower court decision that ruled Ontario's prohibition on agricultural workers forming unions is unconstitutional.

UFCW Canada files complaints with the United Nations International Labour Organization (ILO) stating, that both Ontario and Canada violated the ILO's Convention 87: *Freedom of Association and Protection of the Right to Organize*. This convention declares the right to collective bargaining as a fundamental human right. And, under ILO Convention No. 98 – *Right to Organize and Collective bargaining*, as well as the ILO's 1998 Declaration on *Fundamental Principles and Rights at Work*.

2010

The ILO found Canada and Ontario guilty of a discriminatory attack on the human and labour rights of farmworkers in the province. In November 2010, the ILO upheld the complaint filed by UFCW. The ILO decision was forwarded to the Supreme Court of Canada to add to the other evidence and submissions in front of it.

UFCW Canada Victory for Migrant Agriculture Workers in BC

Migrant farmworkers at Abbotsford's Sidhu & Sons Nursery successfully negotiated a precedent-setting Collective Agreement with their employer.

Canada active at World Social Forum on Migration

UFCW Canada joined over 1,500 activists from around the world in Quito, Ecuador, to participate in the 4th World Social Forum on Migration (WSFM), dedicated to advocating for migrant worker rights.

Victory for Guatemalan migrant workers in Quebec thanks to the efforts of UFCW Canada and the Agriculture Workers Alliance.

The AWA St-Remi Support Centre filed a complaint with the Quebec Labour Standards Board, on behalf of Guatemalan migrant workers at a Quebec agricultural operation whose housing deductions exceeded the provincial maximum of \$20 a week. As a result, more than 700 Guatemalan migrant workers across Quebec received their share of a \$250,000 settlement.

Campaign victory for Guatemalan migrants

UFCW Canada and the Agriculture Workers Alliance (AWA) campaign No More Injustice and Oppression Against Migrants! prompted the International Organization for Migration (IOM) and Canadian employer associations FERME and FARMS to stop demanding an outrageous security payment from Guatemalan migrants. Before the shift in policy, over 4,000 temporary

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

Guatemalan farmworkers had to pay a \$400 security deposit for their participation in the TFW program, forcing them in many cases to loan money from loan sharks to be able to come work in Canada.

2011

UFCW Canada together with the Agriculture Workers Alliance introduces no-cost life insurance benefit for migrant workers.

In an often hazardous and dangerous industry that provides few protections, accidental death coverage is crucial not only for migrant workers themselves, but for their families living in countries such as Mexico, Guatemala, Jamaica, and the Philippines. This benefit plan provides no-cost, accidental death and dismemberment insurance for migrant workers who are members of the AWA.

UFCW Canada and CONOFAM sign migrant workers protection pact to protect the labour rights of Mexican migrant workers in Canada. CONOFAM (the National Coordinator of State Agencies for Migrant Affairs) provides migrant information and advocacy services throughout 29 of Mexico states, including the Federal District of Mexico. CONOFAM's mission is to strengthen support services for migrant workers in their home communities, as well as at their work locations outside of Mexico.

UFCW Canada leads a training session in Tapachula, Mexico

UFCW Canada's outstanding commitment to empowering workers through training and education went global with its participation in the first-ever Global Workers Defenders Network Forum, held in Tapachula, Mexico.

UFCW Canada files charges of unfair labour practices, including the blacklisting of Mexican migrant workers through the collusion of the Mexican Consulate in Vancouver with Sidhu & Sons Nursery and Floralia Growers in British Columbia. The Mexican consulate in Vancouver had blacklisted Mexican migrant workers who were union sympathizers from returning to Canada to the two Lower Mainland farms where those workers had successfully unionized.

2013

First Cannabis workers unionized in Canada

UFCW Canada became the first union to commence organizing cannabis workers in Canada, in May 2013, UFCW was certified as the bargaining agent at SIBANNAC MEDICINALS INC in British Columbia. The Collective Agreement applied to all employees, including temporary foreign workers.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

2014

UFCW Canada celebrates EI case win for migrant workers at the Federal Court of Appeal that side with more than one hundred seasonal farmworkers and active members of the Agriculture Workers Alliance (AWA). They were wrongly denied Employment Insurance parental benefits. Despite paying into the EI system, migrant workers can only access “special EI benefits” (including maternal, parental and compassionate benefits).

The BC Labour Relations Board (BCLRB) ruled that the Mexican government and consular officials blacklisted Mexican seasonal migrant workers from returning to Canada who were suspected of being union sympathizers. The board also found that Mexico had altered documents in an attempt to cover up its union-busting activities.

UFCW Canada filed a complaint with the Ontario Human Rights Commission on behalf of Mexican migrant women. This complaint asked the Commission to open an inquiry into gender-based discrimination practiced in the recruitment and selection by Canadian agribusinesses that employ migrant farmworkers under the Seasonal Agricultural Workers Program. Under the process, SAWP employers can discriminate against migrant women by requesting workers based on their gender.

2015

Alberta’s NDP government tabled Bill 6: *The Enhanced Protection for Farm and Ranch Workers Act* in the Alberta legislature, extending basic workplace legislation to the 60,000 farm and ranch employees working in the province’s agriculture industry.

The Bill provided farmworkers with Workers’ Compensation coverage, inclusion under the *Occupational Health and Safety Act*, and the ability to join unions and bargain collectively under Employment Standards and Labour Relations legislation.

Unfortunately, in November 2019, Jason Kenney’s UCP conservative government introduced Bill 26, the *Farm Freedom and Safety Act*. This Bill once again strips Alberta agricultural workers of many fundamental employment rights. It prevents certain farmworkers from unionizing, reduces the occupational health and safety protections for workers, makes workers’ compensation coverage optional, and expands exceptions to employment standards.

2016

First cannabis workers unionized in Ontario

UFCW Canada became the first union to commence organizing cannabis workers in Ontario, with a unionization drive at MedReleaf in Markham, Ontario. Soon after, the Ontario Labour Relations Board deemed the workers to be agricultural, thereby denying them the right to form a union.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

2018

The primary agriculture review

For the first time, since the implementation of the TFWP, senior Federal representatives and migrant farmworkers held three in-person consultations in Abbotsford, BC; Leamington, ON; and St-Remi, QC; facilitated by UFCW as part of the primary agriculture review, setting the grounds for some reforms.

2019

UFCW challenges Ontario's exclusion of cannabis workers from the right to unionize

UFCW launched a constitutional challenge to the Ontario government's exclusion of cannabis production workers from the *Labour Relations Act*. The union began presenting evidence and testimony before the Agricultural, Food, and Rural Affairs Tribunal, documenting how Ontario's exclusion of cannabis production workers from the right to unionize violates Canada's Charter of Rights and Freedoms.

Migrant workers discuss the need for open work permits at Leamington consultation

UFCW Canada joined over forty migrant workers to meet with federal government officials and discuss the need for open work permits for vulnerable migrant workers who have suffered physical, sexual, psychological, or financial abuse from their employers while working in Canada.

The meeting was held at the UFCW Agriculture Workers Support Centre in Leamington, Ontario, and served as a follow-up to previous government consultations on reforming Canada's immigration system and updating the Temporary Foreign Workers Program (TFWP).

Open work permits for vulnerable workers

The Government of Canada implemented a program of open work permits to protect migrant workers who have been experiencing physical, psychological, financial, and sexual abuse. In Ontario, UFCW has assisted migrant workers in applying and obtaining open work permits at no cost. It is estimated that more than 50 migrant farmworkers have obtained these open work permits, proving that agricultural workers deserve labour mobility and the right to collective bargaining to enforce their labour rights and protect their wellbeing.

THREE DECADES OF ADVOCACY: UFCW/AWA MILESTONES, LEGAL BATTLES AND HISTORIC WINS

2020

UFCW Canada signed a historic agreement with Mexico's largest labour organization, the Confederation of Workers in Mexico (CATEM) and with CONOCER, which is the educational certification body of the government (similar to ESDC in Canada).

The cooperation agreement will result in more significant support for one of Canada's most vulnerable worker populations who are employed in one of the most dangerous sectors of the Canadian economy. One of the cornerstones of the agreement is the establishment of a new database to exchange information on the conditions facing migrant agricultural workers in Mexico and Canada. This research and analysis will be used to develop innovative programs for the betterment of migrant workers.

UFCW Canada, the AWA, and community allies achieved pay protection and Employment Insurance (EI) eligibility for migrant and temporary foreign workers who are laid off, have become ill, or have to quarantine due to COVID-19.

Following lobbying efforts by UFCW, the AWA, and community allies, the government implemented regulations requiring temporary foreign and migrant farmworkers be paid during self-isolation.





Every migrant has a different reason for leaving their homes and look for work or a new life elsewhere. Many make this choice to escape conflict or poverty in hopes of finding a job that will allow them to support their families back home. Remittances lift millions of families out of poverty across the world, and thus, migration has a tremendous economic impact at the origin. However, also the receiving countries benefit from immigration, and not only economically. Immigration boosts the working-age population, and migrants contribute their skills to the human capital development of receiving countries.

OVERVIEW OF CANADA'S DEPENDENCY ON MIGRANT AGRICULTURAL WORKERS



The agriculture and agri-food manufacturing sector contributed \$49 billion to Canada's gross domestic product (GDP) in 2015, accounting for 2.6% of total GDP. Agriculture industries contributed \$25.1 billion or 51% of GDP in the sector.

The importance of this sector varies by province. Agriculture and agri-food manufacturing GDP are most significant in Ontario (\$15.3 billion), Quebec (\$9.3 billion) and Alberta (\$7.5 billion).¹



Agriculture is an essential pillar in the Canadian economy, and currently, migrant workers are vital to agriculture in Canada. The economic impact of migrant farmworkers is positive for the Canadian economy, benefiting the agricultural sector and local communities while also helping to ensure Canada's food production, supply and food security.

A 2015 report published by the Canadian Agricultural Human Resource Council (CAHRC) and prepared for the Foreign Agricultural Resource Management Services (F.A.R.M.S.), describes the impact migrant agricultural workforce has in Ontario horticulture, where most migrant farmworkers coming under the SAWP work. According to them, the SAWP is a lynchpin for Ontario horticulture, supporting an economic impact of \$5.4 billion based on output and about 34,280 jobs. According to this report, the SAWP has allowed for an extension of the domestic workforce so that Ontario's natural resources can be more fully capitalized upon to generate value in horticultural production.²

For over 50 years, the Canadian agricultural and agri-food business has relied heavily on the Temporary Foreign Workers Program (TFWP), and particularly, the Seasonal Agricultural Worker Program (SAWP) to fill labour shortages. According to CAHRC, in 2019, the agriculture sector reported \$2.9 billion in lost sales because of unfilled vacancies – an increase from \$1.5 billion in 2014. Vacancy rates in agriculture are among the highest of any sector in Canada at 5.4%, compared to the national average of just under 2.9%.

¹ Statistics Canada, Agriculture and Agri-Food Economic Account, 2015. - Census of Agriculture is performed by Statistics Canada every 5 years, the 2016 one is the most current, the next one will be performed 2021

² <https://cahrc-ccrha.ca/sites/default/files/2015-04-EconomicImpactSAWPHorticulture-Apr-15.pdf>, accessed June 6, 2020

AGRICULTURAL MIGRATION AND FOOD SECURITY

The Seasonal Agricultural Worker Program (SAWP) provides a channel for foreign workers to Canada's seasonal farms, and the low skill stream of the Temporary Foreign Worker Program (TFWP) provides continuous migrant labourers for year-round agricultural production.

The SAWP fills a structural, but cyclical, need for agricultural labour. Because the SAWP is intended to provide labour for seasonal agricultural production only, it is restricted to specific seasonal commodity sectors.³

Migrant workers who arrive on Canada's farms under the SAWP are permitted to work in Canada for a maximum of 8 months in a year, but can be selected to return in subsequent years without limit. Year-round production requires prolonged periods of work in Canada. Therefore, in 2002, the low-skilled stream of the Temporary Foreign Worker Program (TFWP) was introduced to supply farms that operate year-round with long-term migrant labourers. Under the low-skill TFWP, migrant farmworkers can reside and work in Canada for a maximum of 48 months.

The SAWP and the TFWP are administered differently. Under the SAWP, participating foreign governments are required to recruit and select the workers, they intend to send to Canada, and they must appoint representatives to assist workers in Canada. In the case of the TFWP, Citizenship and Immigration Canada (CIC) and Employment Services and Development Canada (ESDC) jointly administer the program. Foreign governments have no role in the program.

Under both the SAWP and the TFWP, a neutral or positive Labour Market Impact Assessment (LMIA) must be issued for every position that an employer intends to fill with foreign workers. An LMIA is issued when ESDC determines that there is a bona fide labour or skills shortage. The LMIA purportedly attempts to protect the integrity of the domestic labour market.

The number of neutral or positive LMIAs issued for agricultural positions is the ceiling for foreign hires. It is the number of jobs that ESDC Canada believes satisfies the labour or skills shortage. In 2019 that number was 72,000.

Canadian corporate agriculture increasingly relies on migrant labour for production. Operators complain that the domestic labour market is unable to supply their farms with sufficient labour. Still, more accurately, the labour market is unable to provide farms with an adequate number of cheap labourers.

Canada's industrial agriculture sector operates in a business environment that promotes the use of cheap labour. Since Canadians are apparently reluctant to do agricultural work under current conditions, Canadian operators have looked abroad to source their labour needs.



³ The national commodity list includes apian products, fruits, vegetables (including canning / processing of these products if grown on the farm), mushrooms, flowers, nursery-grown trees, pedigree canola seed, sod, tobacco, bovine, dairy, duck, horse, mink, poultry, sheep, and swine.

Labour is cheap when the worker has few or no alternatives, and the employer has many. As mentioned before, these two conditions also create the context for abuse and exploitation because the power imbalance between the worker and the employer is vastly unequal.

The law, not the market, simultaneously restricts the worker's alternatives and expands the employer's. The SAWP and the TFWP open up access to foreign labour markets but restrict the labour mobility of the workers who arrive in Canada's workplaces through a closed work permit that binds a worker exclusively to one employer. There is not a very realistic pathway to permanent residence for temporary foreign workers.

In 2017, Ontario launched an In-Demand Skills Stream, which is an immigration stream under the Ontario Immigrant Nominee Program.⁴ However, so far, not many migrant agricultural workers have been able to obtain permanent residence status. This is mainly due to the language, education and job offer requirements that pose a barrier to applicants.

Language:

Ability to understand, read, write and speak either English or French at a Canadian Language Benchmark (CLB) level 4 or higher. This poses a significant barrier to most workers, as under their work permit, they are not allowed to take any English classes provided or funded by the provincial government. There are only limited other options available to learn the language, and it is particularly challenging taking into consideration the long work hours these workers have and that most only have one free day a week. In some cases, they are even forced to work seven days a week.

Education:

Canadian secondary school (high school) diploma or credential, or its equivalent in another country. If studies were completed outside of Canada, an Educational Credential Assessment (ECA) that proves the education is equivalent to a Canadian high school diploma is needed. This is an additional barrier as some workers have not had the opportunity to access secondary school.

Job Offer:

Finding a qualifying employer who meets the active time in business and revenue requirements and is willing to provide a job offer can be challenging.

Further, the ability of employers to repatriate migrant farm workers under the SAWP and TFWP during the life of a valid work permit, or refuse to call the worker back the next season in the case of workers under the SAWP, builds even greater insecurity into the employment relationship. The result is a legally constructed captive workforce that provides cheap labour and silences worker grievances.

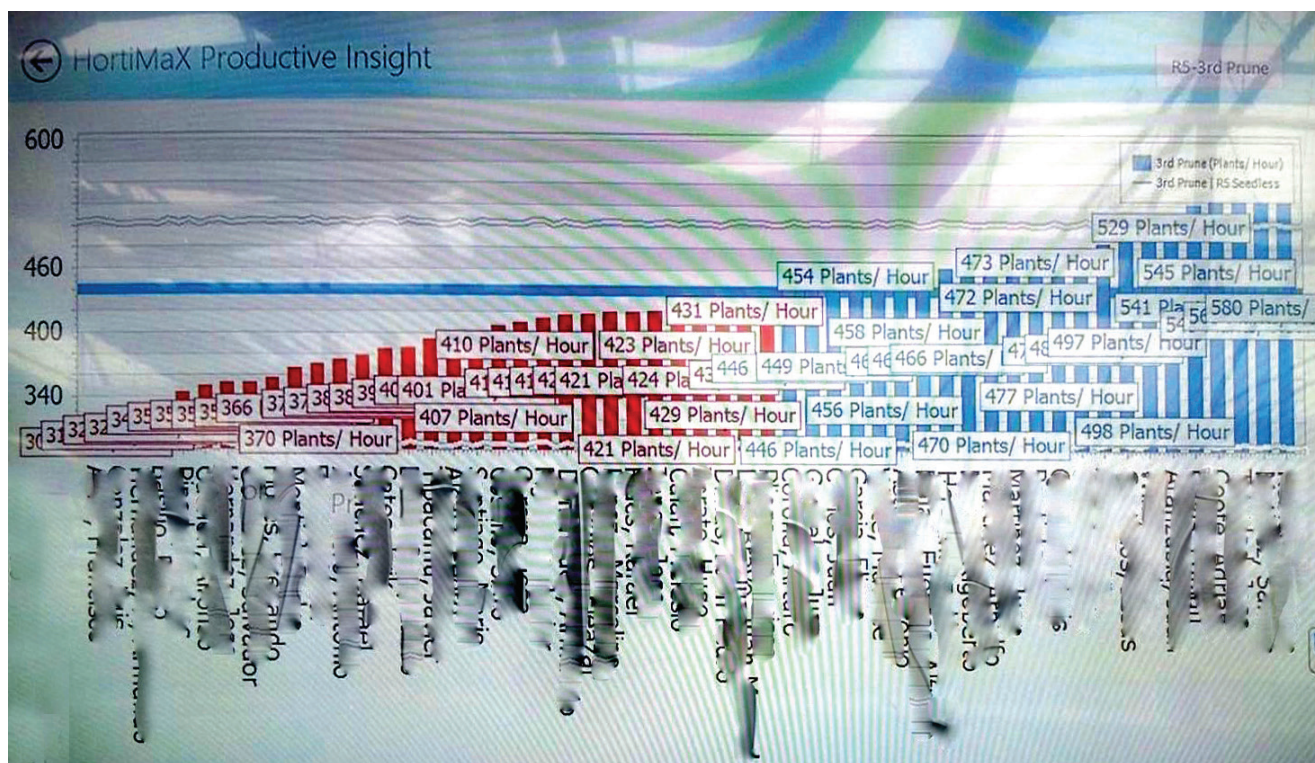
⁴ Ontario Immigrant Nominee Program, Employer Job Offer: In-Demand Skills Stream.
<https://www.ontario.ca/page/oinp-employer-job-offer-demand-skills-stream#section-3>

AGRICULTURAL MIGRATION AND FOOD SECURITY

Migrant farmworkers, experiencing this type of abuse, are often also subject to different forms of harassment, and end up experiencing depression, anxiety, and other mental health issues. This is well documented in over 40,000 specific cases that have been received at AWA worker support centres across Canada over the years. Most recently, since the implementation of the open work permits for vulnerable migrant workers, UFCW has assisted and successfully processed over 60 open work permits, where piece rate is being reported as part of the abuses experienced by migrant farmworkers across Canada.

TECHNOLOGICAL IMPACT ON MIGRANT WORKERS

The picture of the TV screen below shows over 70 names of migrant farmworkers that are monitored while working in a greenhouse. They have to punch in every time they reach one end of the greenhouse. The time they spent on each line while picking vegetables is recorded and measured. The names on the red side have not achieved the set quota, and the bottom five will be punished with no work – and no pay – for 2 to 3 days.



“Working under these circumstances is very hard and demanding; the pressure is too much; every day, someone gets suspended without work and payment. The employer thinks we are robots. As he knows that back home I do not have opportunities, I have to do my best because I do not want to be sent back home, I have to provide to my family and my parents. So I have to accept these conditions and keep working”.

- Donovan, a migrant farmworker who has spent six years in Southwestern Ontario

The atmosphere of fear increases the chance that human rights violations will go unreported, and entitlements will be foregone because workers worry about job loss.

AWA staff often report incidences of untreated illness and injury because of the fear of migrant farmworkers associated with accessing medical benefits that could signal to their employer a possible productivity loss, and trigger repatriation.

AGRICULTURE WORKERS AND THE FACTORY FARM

Workplace law excludes agricultural workers from some protections and entitlements available to most other Canadian workers. These exclusions responded to the economic realities of agricultural production following World War II, but have been slow to adapt to a rapidly changing agricultural workplace. The protection of the family farm drove the exclusion of agricultural workers from collective bargaining statutes and health and safety legislation. And the seasonality of production excluded farmworkers from overtime entitlements under employment standards statutes, and partly justified the exclusion of migrant farmworkers from full employment insurance benefits.

However, the family farm is mostly a relic of the 19th and early 20th centuries. Agricultural production has been scaled and intensified. At the same time, the industry has used technology to augment the seasonality of production, increasing the growing season and allowing year-round production in greenhouses and other facilities. To perpetuate these workplace myths is to work an injustice for agricultural workers who suffer from a legally degraded workplace environment.

Today, large scale, factory-style agricultural production represents a dominant share of the farming sector, and the trend continues to expand in that direction. In 2016, nationwide, 1 in 4 farms were incorporated. Between 2011 and 2016, the number of farms reporting sales of over \$1 million increased by 8.2%. Nationally, 7.6% of farm operations reported sales of \$1 million or more, and these farms generated 60.3% of total sales. There were 280,315 farm employees in 2015. Since the 1950s, the number of agricultural operations in Canada has shrunk while agricultural operations acreage and sales have steadily grown. This trend toward fewer small-scale farming operations to more large-scale operations is occurring across the country.⁵

“When I enrolled in the temporary foreign workers program, I was told the work is very easy and not to worry about anything; you have all at the farm they told me. It turned out it was not a farm, at least not like one I had ever seen before. It was a huge greenhouse where we were monitored the whole time; it was like living in prison.”

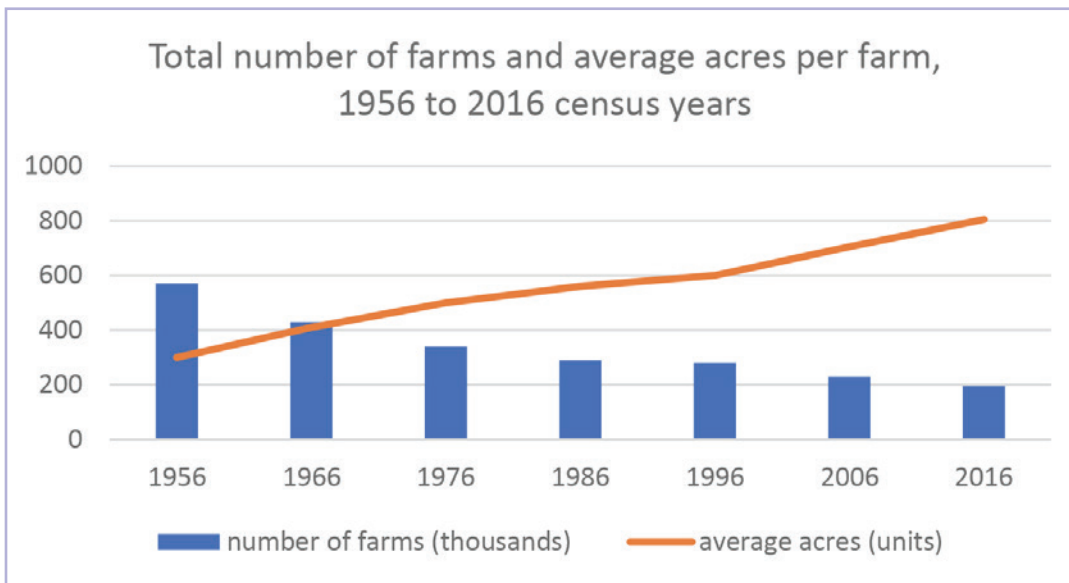
- Pedro, a migrant farmworker who has spent five years in British Columbia

⁵ Source: Statistics Canada, Census of Agriculture, 2011 and 2016

AGRICULTURAL MIGRATION AND FOOD SECURITY



Large-scale high tech hydroponic greenhouses, approximately the size of 10 soccer fields. Over 200 migrant farmworkers would work at such a facility.



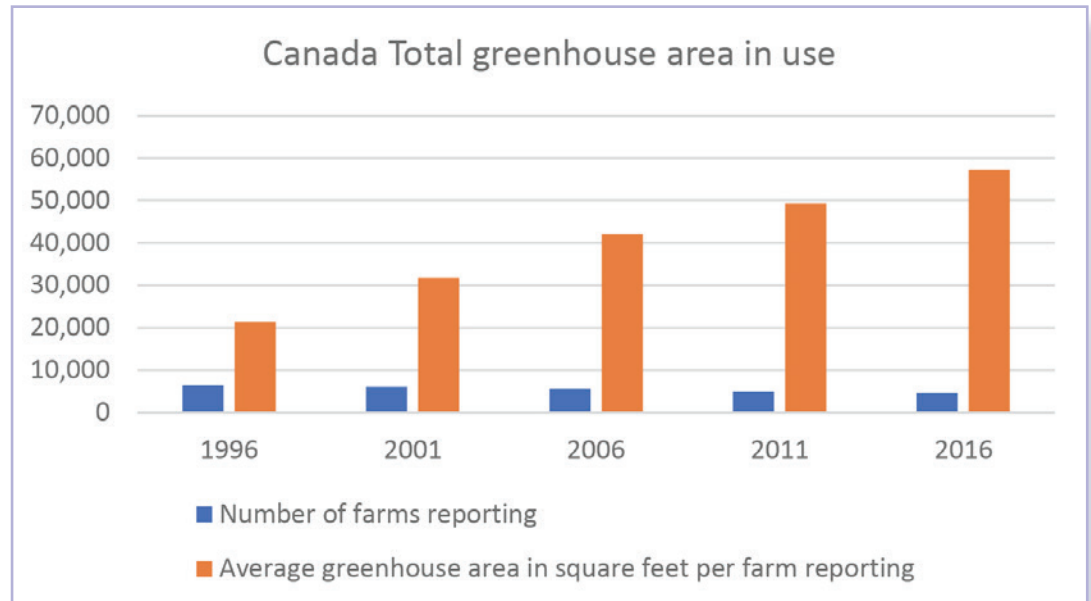


Figure 2: Canada total number of farms and average acres per farm, 1956 to 2016
 Source: Statistics Canada, Census of agriculture 1871 to 2016

Figure 3: Canada, Total greenhouse area in use
 Source: Statistics Canada. Table 32-10-0159-01 - Total greenhouse area in use, historical data

The data also suggests that seasonality of production has augmented—either the length of the growing season has been extended, or production occurs year-round.

Employment Services and Development Canada (ESDC) tracks the number of agricultural workers that hold a valid work permit on December 31 of each year. This snapshot excludes SAWP workers because their residency visa expires on December 15. The data captures only migrant farmworkers entering Canada through the low-skilled stream of the TFWP. These migrant workers are typically employed in non-seasonal, year-round agricultural production. The data shows a substantial increase in the number of valid work permits on December 31st from 2008 to 2017. In 2008 there were only 5,277 valid work permits for agricultural workers, but that number more than doubled with an increase to 11,989 in 2017.



Figure 4: Agricultural workers holding a valid work permit on December 31. Data excludes all SAWP workers because their work permits expire December 15
Source: Government of Canada, Facts and Figures 2017 - Immigration Overview - Temporary Residents

Canadian agricultural operations have come to rely on temporary foreign workers. In 2018 there were 54,734 TFW on 3,846 farms, primarily in Ontario and Quebec. Over 50% of them came from Mexico, followed by Guatemala and Jamaica. The majority of these workers were in greenhouses, nursery and floriculture production. 65% of TFW were employed on large farms with \$2 million or more in revenue.

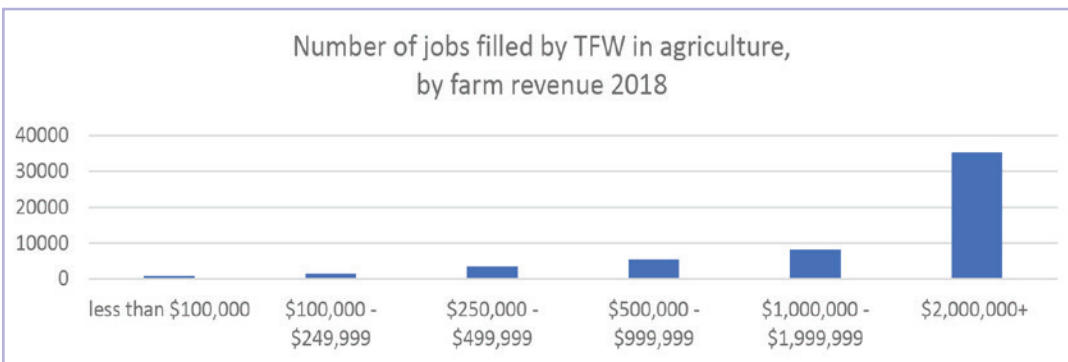


Figure 5: Number of jobs filled by temporary farmworkers in agriculture, by farm revenue
Source: Statistics Canada (2020), Temporary Foreign Workers File, 2016 - 2018

Large farms typically resemble the industrial workplace. They have adopted modern technology, deploy a large workforce, and have a more significant division of labour. For that reason, there is no principled reason to maintain the exclusion of agricultural workers from an effective labour relations regime, health and safety legislation, or overtime pay under provincial employment standards legislation.

FARM WORKERS AND FOOD SECURITY IN TIMES OF COVID-19

The Food and Agriculture Organization of the United Nations states that “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.” The four pillars of food security are:

- Food Availability: The availability of sufficient quantities of food
- Food Access: Access by individuals to adequate resources for acquiring foods
- Utilization: Non-food inputs such as clean water and sanitation
- Stability: Access to adequate food at all times.⁶

“We do our best; we make it possible that Canadians have the best vegetables and fruits on their tables. Of course, we are happy to have the possibility to work in Canada, but we also expect to be treated with dignity and respect, like all humans deserve. This year we were told that we would be paid during the self-isolation period, but it turned out we had to work business as usual. Nobody told us what COVID-19 really is, nor did we get any masks, we deserve to be treated better, our lives matter, and our families expect us to come back home”.

- Paul, a migrant farmworker, in his second year in the TFWP in Southern Ontario.

More than ever before in recent history, we have come to understand the importance of essential workers for maintaining our food security and our safety.

During the COVID-19 pandemic, the federal government, through Canada’s National Strategy for Critical Infrastructure defined critical infrastructure as the processes, systems, facilities, technologies, networks, assets, and services essential to the health, safety, security or economic

⁶ World Food Summit 1996

wellbeing of Canadians and the effective functioning of government. The Strategy classifies critical infrastructure in Canada according to ten sectors, among them agriculture and aquaculture workers and support service workers, including those necessary for the growing, harvesting and processing of field crops. Those responsible for fuel ethanol facilities, biodiesel facilities, renewable heating oil facilities, storage facilities, and other agricultural inputs. Workers undertaking traditional harvesting activities, including fishing, hunting and agricultural activities.⁷

Agricultural workers play an essential role in assuring that sufficient quantities of food of appropriate quality is supplied through domestic production and available to the population at all times, and thus providing food security. This local supply is particularly important, at times of sudden shock, like what we are experiencing now with COVID-19 when also food imports can be compromised.

On top of the many challenges migrant farmworkers have to face, piece work, is one for mayor concern too, especially now during COVID-19. Even though TFW contracts stipulate that workers have to be paid by the hour, it is a well-established and common practice across Canada to pay workers piece rate. Here, it is important to clarify, that these workers, in most cases, are not paid more if they achieve set quotas. This makes this arrangement different from other industries, where workers could be earning more with piece rate. In this particular case however, workers are not better compensated when achieving or exceeding a set quota, but are punished if they don’t.

This practice contributes to labour exploitation as these workers are pressured to achieve a set quota per hour, which in reality, on average should take around 2 hours if all health and safety protocols would be followed. Workers are under intense pressure, and if the set quota is not achieved, they are punished without work for 2-3 days and without payment. In some cases, workers are even sent back to their

⁷ Public Safety Canada, Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic

countries of origin. This pressure forces migrant farmworkers to skip health and safety measures to achieve the set quota. UFCW and the AWA believe that agricultural, local and migrant workers, who play such an essential role in sustaining our food supply, must be fairly compensated, like all workers, and should never be asked to compromise their health and safety. They must be able to exercise their human rights as any other worker and should have access to collective bargaining and protections nationwide.

Agricultural workers should be adequately compensated for their work during the COVID-19 crisis and beyond, keeping these benefits as this is the time to fix the disproportionate wages that they currently have.

As seen in previous segments of this report, migrant farmworkers are a vital part of the agricultural workforce in Canada. Therefore, UFCW Canada, the Agriculture Workers Alliance (AWA), and community allies continued their efforts during the pandemic, and finally achieved pay protection for these workers. The government lifted its previous ban on migrant and temporary foreign workers entering the country and implemented regulations requiring workers arriving in Canada to self-isolate for 14 days. According to new regulations, these workers now should be paid during self-isolation to ensure that workers can adequately take care of themselves while in self-isolation. However, to the closing of this report, we are still receiving calls from workers who have not been paid during self-isolation, meaning that enforcement remains an issue.

Equally, Employment Insurance (EI) eligibility for migrant and temporary foreign workers who are laid off, have become ill, or have to quarantine due to COVID-19 could be assured. UFCW has assisted dozens of eligible workers in accessing the Canada Emergency Response Benefit (CERB).

UFCW and the AWA welcome these measures. However, our union remains concerned that workers are not able to practice appropriate physical distancing in their cramped living quarters and close working spaces, and that they are becoming vulnerable to contracting COVID-19 as a result. So far, In Ontario alone, we estimate that more than 1,000 migrant farmworkers have contracted COVID-19. Health officials have indicated that, for the most part, the workers arrived in Canada healthy and contracted the virus locally. Three men from Mexico have died. Between mid march and mid July 2020, AWA has received more than 500 COVID-19 related calls from migrant farmworkers.

It is an appropriate time once again to question our reliance on the TFWP and SAWP. It has been widely acknowledged that migrant and temporary foreign workers are critical to feeding our cities and make it possible for Canadians to have food on their tables. The federal and provincial governments have the historic opportunity to prioritize flexible pathways to permanent residence for these workers – not only because it is the humane thing to do, but also because it is essential to sustaining Canada's food supply, particularly in these uncertain times.

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS



Agricultural workers are essential food workers. They feed our communities. However, our society tends to invisibilize their vital contribution to securing our food supply and sees them as low skill workers. Yet, these women and men who work the land have an essential and particular skill set that not many people have. But, because they are deemed as low skill, they are commonly subject to poor working conditions and gain low wages.

In the case of migrant farmworkers, they are even more vulnerable to abuse. Because of their lack of labour mobility, their immigration status, language barrier and absence of representation, they are subject to wage theft, no health and safety, poor housing conditions and social isolation. This often results in mental health issues.



FEMALE MIGRANT FARMWORKERS

In July 2014, UFCW Canada filed a complaint with the Ontario Human Rights Commission (OHRC) on behalf of Mexican migrant women. They were asking the Commission to open an inquiry into gender-based discrimination practiced in the recruitment and selection by Canadian agribusinesses that employ migrant farmworkers under the Seasonal Agricultural Workers Program.

Under the current process, SAWP employers can discriminate against migrant women by requesting workers based on their gender.

The Mexican government contributed to this trend by publicly declaring that, under the current Memorandum of Understanding between Mexico and Canada, SAWP employers have every right to discriminate against migrant agricultural workers based on their gender.

In December 2014, the OHRC issued a position statement on discrimination based on sex in recruitment for the Seasonal Agricultural Workers Program, warning that gender discrimination was a human rights violation. “Migrant workers are protected by many of the same laws that protect other workers in Ontario, including the Ontario Human Rights Code,” wrote the OHRC in its statement.

Data from Immigration, Refugees and Citizenship Canada (IRCC) shows that an average of 17% of participants in the lower skill level stream of the Temporary Foreign Worker Program are women.

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS

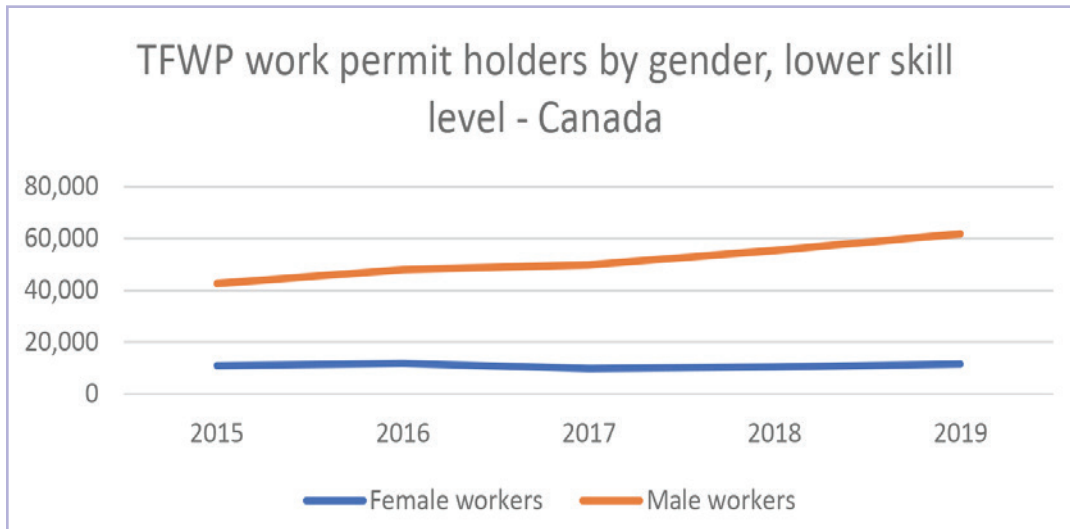


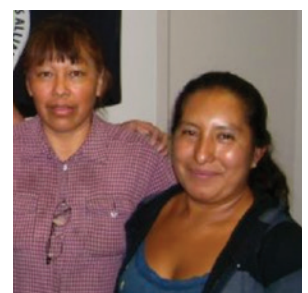
Figure 6: Canada – Temporary Foreign Worker Program work permit holders by gender, lower skill level, Canada total
Source: IRCC, April 30, 2020

Female migrant farm workers are not only subject to discrimination in the recruitment process, but once in Canada, these women face a distinct set of additional challenges. The structure of the Seasonal Agricultural Worker Program not only amplifies the power imbalance between workers and employers but also creates particular vulnerabilities and risks for women.

Over the years, many women have contacted our AWA support centers, denouncing having experienced discrimination, harassment, and even sexual assault at their workplace, by employers, supervisors and coworkers. However, their precarious status makes women afraid to report violence from employers or colleagues. Also, often they do not want to contact authorities because of fear of repercussions in Canada and also back home. These women feel forced to endure sexual harassment and abuse to be able to secure their work permit extension and be able to continue to provide for their loved ones back home. Unfortunately, closed work permits prevent women from leaving violence in the workplace.

Women sometimes apply for work under the Temporary Foreign Worker Program to escape violence in their country of origin. Violence in their workplace in Canada exacerbates the trauma they are already experiencing and heightens symptoms such as depression and anxiety. Therefore, supports are also required to address pre-existing trauma.

So as we call for better inclusion in the work programs, we must also ensure women have information about their rights to be free of violence. Also, resources must be available to reach out to female workers when they need support or education and access to services.



CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS



For the past two years, UFCW Canada has partnered with the Legal Assistance of Windsor (LAW) to provide a more holistic approach to better protect women who have or are experiencing abuse.

HUMAN TRAFFICKING AND LABOUR EXPLOITATION

Public Safety Canada defines human trafficking as “the recruitment, transportation, harbouring and/or exercising control, direction or influence over the movements of a person to exploit that person, typically through sexual exploitation or forced labour.”⁸

“I was always scared as we were under permanent observation, and we were told that we had to be good workers and not to complain. They took our passports and were supposedly processing our permanent residence, but after a year, nobody had received anything. When I received my bi-weekly payment, I received only about \$250 for 60 hours of work per week.

I was deducted, housing, transportation, hydro, internet and even heating. I had to share the room with six other coworkers; the housing conditions were horrendous”.

- A migrant farmworker survivor of labour exploitation

BROKEN IMMIGRATION DREAMS

In August 2018, a group of migrant farmworkers from Central America, reached out to the Agriculture Workers Alliance in Leamington, ON, as they had been victims of labour exploitation in Southern Ontario.

Representatives from a temporary work agency approached these workers at their farms in Southern Ontario with false promises and also pretending to be immigration lawyers. They were told that if they left their employers, they would get a well-paid job, housing, permanent residence status, and would even be able to bring their families to Canada. As

these workers were living under terrible housing conditions, which unfortunately is a common trend for workers coming under the TFWP, and they were not being treated with respect by their employer, these workers accepted the offer. They left their employers and moved to a new city in hopes of finding better working and living conditions. At that time, their closed work permits were valid.

Once they arrived in the new city, they had to surrender their passports to their captors. They were put in a house they shared with 12 coworkers in overcrowded conditions and were under permanent surveillance as one of the captors lived with them on the first floor of the house. Further, these workers had to pay, supposedly to get their new work permits processed; however, that never materialized.

For over a year, these workers were exploited, coerced, physically assaulted, and living in inhuman housing conditions. The captors even threatened to harm their families back in their countries of origin as these workers had provided their personal information, presumably to process their new work permits and residence.

The workers couldn't even go shopping and had to switch off the lights of the house, as well as all electronic devices, and be in bed by 8:30 pm.

UFCW and AWA, in collaboration with Legal Assistance of Windsor, which took the lead in the immigration and legal procedures, assisted these workers in getting their protections and legal remedies.

These workers were provided with a holistic approach to navigating the system and were able to get a Temporary Resident Permit (TRP) for six months: Considerations specific to victims of human trafficking, which is a very long and complicated process. Seven of these individuals obtained a TRP between August and November 2018 after interviews at the Immigration, Refugees and Citizenship Canada (IRCC) office. One victim was denied a TRP and had to make a refugee claim.

⁸ Public Safety Canada, National Action Plan to Combat Human Trafficking

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS



Five months later, these survivors returned to the IRCC office to extend their TRP. Unfortunately, these were not extended, leaving these victims in a precarious condition again. This happened, even though The Crown and the Police were involved and investigating their case.

In December 2019, the captors were finally charged. These workers were once again granted a TRP as victims and witnesses of human trafficking

OPEN WORK PERMITS FOR VULNERABLE WORKERS

In response to Temporary Foreign Workers experiencing abuse, the Government of Canada implemented the open work permit for vulnerable workers. Effective June 4, 2019, all migrant workers in all sectors who are facing physical, psychological, sexual or financial abuse are eligible to apply for this new protection, including those under the Temporary Foreign Worker Program and the International Mobility Program.

During the development of the open work permit initiative, UFCW provided feedback through a series of in-person consultations held across Canada between UFCW migrant worker members and federal government representatives.

While we recognize that this is a first step in the right direction, the open work permit for vulnerable workers program is just a band-aid short term solution that doesn't address the structural problems of the TFWP. Therefore, UFCW and the AWA continue to call upon the Federal government to introduce open work permits for TFW, or at least sectorial work permits and paths to permanent residence.

THE PROCESS TO OBTAIN AN OPEN WORK PERMIT AS A VULNERABLE WORKER

Since the implementation of the open work permits for vulnerable workers, UFCW Canada has processed over 60 open work permits for vulnerable migrant workers across Canada at no cost to the worker and in their language. These

workers were experiencing sexual, physical, psychological, and financial abuse at the hands of unscrupulous employers and supervisors, and lately no protection, nor information regarding COVID-19. In other cases, they weren't paid the 14 days of self-isolation.

The process to obtain an open work permit under the vulnerable workers program demands around 25-30 hours of work per worker. The application must be submitted electronically, in English or French language. Further, the affected worker has to provide evidence; if the evidence is not in English or French language, it must be translated by a certified translator who is costly and takes on average a week or two. Claimants have to present evidence such as pay stubs, work contracts, memos/warnings, pictures, videos, audios. In most cases, due to trauma, illiteracy or lack of access to formal education by the applicants, to produce the worker's statement takes several meetings. The content needs to show dates, places where events took place and has to explain their experience in detail.

The application then must be filled in English or French language, and all documentation has to be uploaded electronically. This is a barrier if the applicant doesn't speak the language nor is familiar with computer devices.

Once the application has been submitted to IRCC, it takes 2-5 days, in some cases, two weeks to get a response from an IRCC officer to confirm whether or not the worker has the grounds to continue the application and if the worker needs to attend an interview. In the case that the worker needs to attend an in-person, or over the phone, interview, a UFCW representative will be accompanying the affected worker. If the worker's application is granted, with or without the interview, the work permit will be mailed and will arrive, on average, one week later.

The open work permit as a vulnerable worker has a one-year duration and can't be renewed; it's a transitional work permit to find a new employer and return to the close work permit regime. Work permit holders under this program, who leave Canada, are not allowed to return.

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS

Francisco

Francisco had been working in Quebec for the past ten years under the Seasonal Agricultural Worker Program (SAWP). For the last two years, he was experiencing psychological and financial abuse from his employer. Francisco was insulted continuously and threatened while working outdoors and did not have protections such as a hat and sunglasses, or adequate health and safety training. He also was not permitted to take breaks or drink water. Furthermore, Francisco experienced very aggressive and racist attacks by his employer and was under constant surveillance.

One day, after falling ill and being chased down a field by his employer, Francisco decided to leave the farm. He then contacted UFCW and immediately was provided with moral support, and assistance in gathering all documentation to support his claim. He also received help to submit the online application and was accompanied by a UFCW representative during an interview with Immigration, Refugees, and Citizenship Canada (IRCC). UFCW was able to help Francisco obtain the first-ever open work permit for vulnerable workers in Canada.

Margarita

Margarita was in her first year of coming to Canada under the Temporary Foreign Workers Program (TFWP) when she was sexually assaulted in a mushroom operation in the Greater Toronto Area. She had the courage to run away from her toxic work environment and moved to another city in Ontario. Once she was in a safe place, she reached out to the AWA, asking for support. Margarita was immediately assisted by a representative to begin the process to obtain an open work permit and was also provided with professional psychological support by a UFCW partner. Immigration, Refugees, and Citizenship Canada (IRCC) granted her an open work permit without the need for an interview.

Sergio

Sergio was in his second year, coming to Canada under the Temporary Foreign Workers Program (TFWP). He is a farmworker from Mexico who experienced physical,

psychological, and financial abuse by his supervisors at a greenhouse in Southern Ontario. He was harassed and insulted to achieve a set quota even though his contract stipulated that he should be paid per hour. When he did not reach the quota, he was punished with no work and pay for three days. Sergio and his coworkers were told regularly that they would be sent back to Mexico if they didn't achieve their set quotas.

During the mandatory 14 days of self-isolation, Sergio had to buy his food. Also, he was not paid, even though under new TFWP regulations, migrant farmworkers must be paid while in self-isolation.

The evidence Sergio provided also showed a lack of health and safety measures to protect workers from exposure to COVID-19. Workers couldn't practice social distancing. Sergio, for example, shared his house with 21 coworkers. Further to this, workers had to work in groups with limited space between them to harvest vegetables inside the greenhouse, and during their lunch break, furthermore, they were not allowed to go to the washroom.

Sergio indicated that proper training to perform his job was not provided and that they never received health and safety training. Sergio and coworkers were obligated to climb elevators without appropriate Personal Protective Equipment (PPE), and they never were provided with training to manipulate equipment such as electric trolleys, leaving them with the constant fear of having an accident at work.

Furthermore, pesticides were spread while workers were inside the greenhouse, which can cause poisoning or severe health issues. According to Health Canada guidelines, re-entry time to the greenhouse must be at least 6-8 hours, preferably 24 hours.

The house was infested with cockroaches, the mattresses were in bad shape, and there was only one stove for 21 people. Immigration, Refugees, and Citizenship Canada (IRCC) granted Sergio an open work permit without the need for an interview.

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS

OPEN WORK PERMITS FOR ALL MIGRANT WORKERS

UFCW Canada has been calling on the Federal government to allow for greater mobility in the TFWP by granting migrant workers open work permits. This implementation will make it possible that migrant agri-food workers are less likely to experience mistreatment and abuses at the hands of unscrupulous employers as they will have labour mobility. In the case that open work permits for all migrant agri-food workers cannot be implemented, sectorial work permits must become a reality.

SECTORIAL WORK PERMITS

In the case that open work permits are not implemented, UFCW recommends that the government introduce at least occupation-specific work permits to give migrant workers labour mobility. Additionally, the Employment Insurance (EI) system has to be reformed to ensure that migrant workers can access the EI benefits that they pay into.

As UFCW Canada and AWA have been pointing out consistently over the past three decades, Canada desperately needs a more inclusive, protective, and robust immigration system. An expanded Temporary Foreign Worker Program should never be viewed as a solution to labour challenges in Canada's agri-food system. Moreover, enticing a much greater number of Canadians and permanent residents to consider careers in the agriculture industry – through incentives and active labour market programs – must also be viewed as core element of meeting sector needs.

BENEFITS OF OCCUPATION SPECIFIC WORK PERMITS

In our experience, many migrant agricultural workers stay with the employer who offered their original contract over several seasons. We believe these workers will continue to remain with their original employer so long as working conditions are fair, and workplace rights and health and safety concerns are indeed acknowledged and respected.

Should occupation-specific work permits be implemented, workers may, in the right environment, choose to leave employers who do not provide decent and fair treatment or competitive labour market outcomes. Temporary foreign workers could benefit from a more competitive labour market in the agricultural sector where employers would be incentivized to retain the services of the workers they contracted or risk losing them to other employers who provide higher value for their services. The power imbalance facilitated by employer-specific work permits could erode as temporary foreign workers are permitted to seek new opportunities where their labour is of greater value and duly compensated as such. Without fearing to lose their position in the program, temporary foreign workers could continue to benefit from this policy while mitigating their vulnerability. However, workers will only realistically exercise this option if:

1. Language and communication barriers are addressed to ensure that workers are aware of existing opportunities;
2. Measures are taken to ensure that workers can investigate and exercise job mobility options without the fear of reprisal from employers;
3. Workers have adequate supports in place to assist them in navigating the process.

Implementing occupation-specific work permits would be positive for employers in that such a measure would improve labour market outcomes for the agricultural sector, whereby creating efficiencies for employers looking to fill job vacancies. Long waiting times and processing fees discourage active participation in the labour market. This new regime would effectively increase the demand for labour in the agricultural sector, which could stimulate Canada's historically low turnout. Canadian workers could benefit from competitive pressures on employers to attract and retain valuable employees by providing opportunities for domestic skills and expertise rather than temporary foreign labour.

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS

EMPLOYMENT INSURANCE: PREMIUMS PAID BUT BENEFITS DENIED

Lastly, UFCW Canada shares the concern articulated by the Canadian Labour Congress regarding migrant worker access to Employment Insurance (EI). With the occupation-specific work permit, migrant workers may experience a transition period between jobs where they have no income. All migrant workers contribute to EI and, thus, should be able to access benefits if they qualify.

REAL ACCESSIBLE PATH TO PERMANENT RESIDENCE FOR MIGRANT FARM WORKERS

In July 2019, The Standing Senate Committee on Agriculture and Forestry rightfully recommended that the Government of Canada establish mechanisms that prioritize access to permanent residence for temporary foreign workers in agriculture and agri-food sectors that are particularly affected by labour shortages. Their research found that particularly in the meat and mushroom industries, workers stay in their jobs for an average of 10 years. Finding ways for these workers to remain in the country permanently could offer a lasting solution to the sector's labour shortages, and thus, help meet their long-term needs.⁹

UFCW Canada already expressed the need for access to permanent residence to all migrant farmworkers back in 2016 with its submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.¹⁰

UFCW Canada made its recommendations based on best practices experience with its members employed by several large national employers such as Maple Leaf Foods, Olymel, Hylife Foods, and Cargill Ltd.

Through collective bargaining negotiations with these employers, UFCW Canada works with them to ensure that members become permanent residents to Canada. UFCW

Canada works closely with these employers in establishing systems and supports that allow for family reunification, settlement services, English as an Additional Language programming, and collective agreement translations.

By way of example, UFCW Canada Local 832 established a modern training centre in Brandon, Manitoba and is the largest provider of English as an Additional Language programming in northern Manitoba.

In short, because of our combined efforts, thousands of migrant workers now call Canada their permanent home. What was meant to be a temporary work program was mostly converted into a more permanent immigration program.

In 2014, UFCW Canada and these employers negotiated and signed a Memorandum of Understanding, which laid out a shared understanding of what a sustainable immigration regime should entail. The following excerpt from that MOU summarizes that requirement:

“The Temporary Foreign Worker Program has never been a coherent, strategic, or reasonable alternative to what the Canadian economy requires – an immigration regime allowing individuals with a variety of skill sets to become permanent residents, and eventually citizens of Canada.”

In 2017 in the province of Alberta, UFCW Local 401 at Cargill High River, included in their collective agreement a commitment between the union and the company to:

“...cooperating in providing opportunities for foreign workers to more permanently retain their employment and status in Canada through foreign worker permits and/or programs and to seek out and provide options for foreign to, ultimately attain permanent employment status with the company and /or Permanent Residency in Canada through programs such as the Alberta Immigration Nominee Program (AINP).”

For over 20 years, UFCW Canada has also been active in the academic community in supporting research that

⁹ Senate Canada, AGFO Report - Growing Canada's value added food sector, <https://sencanada.ca/en/Committees/agfo/Reports/42-1>

¹⁰ A New Vision for a Sustainable Immigration System – June 1, 2016 UFCW Canada

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS

affects migrant worker communities in Canada and sending countries. This opportunity has also allowed UFCW Canada to publish works on migrant worker issues.

Further, over the last three decades, UFCW Canada has had the privilege of working with an exhaustive list of organizations and individuals on advocating for a rational and sustainable immigration system and has developed an in-depth understanding and expertise on issues, relationships, and engagements concerning Canada's archaic migrant worker regime and our country's needs moving forward.

THE NECESSITY OF PERMANENT IMMIGRATION STATUS

In the past, the business community has demanded greater access to workers to staff Canadian farms, greenhouses, meat plants, hotels, construction sites and private homes. In many cases, this requirement results in migrant workers coming to Canada under various strains of the TFWP. However, migrant workers are not a short term solution for perceived labour shortages but a deep-rooted element of Canada's workforce. Moreover, while the migrant workers stay in Canada may be temporary, in many cases, the low waged jobs that they are employed in are permanent ones.

Concerning the nature of the Temporary Foreign Workers Program, the term "Temporary" is generally a misleading term. As has been established, the agricultural and agri-food industries have been relying on migrant farmworkers for over 50 years now. They are increasingly employing TFW throughout the entire year, so nothing temporary about it. Many workers in the TFWP have been coming to work in Canada for over 20 years. Also, our experience is that the vast number of participants in the Temporary Foreign Workers Program that are low-waged are not coming to Canada intending to work temporarily and leave. They hope to find an avenue to navigate their status from temporary and precarious workers to permanent residents.

Canada is a developed nation that increasingly prides itself as a place of safe refuge. In this diverse country, human

rights are guaranteed to all, and the notion of equality is a target that we continually aim for. In reality, this somewhat idealistic statement can only come to fruition when we take the "temporary" aspect out of the temporary foreign worker program.

Precarious immigration status that has evolved with the current TFWP is neither a sustainable nor a desirable part of Canada's labour market requirements or a contemporary immigration regime.

Where Canada once relied on a healthier immigration system, today, we allow a system to exist that is open to exploitation of a vulnerable labour workforce in non-unionized settings.

Today's migrant workers deserve the same opportunities to seek a new life in Canada. Without permanent immigration status, vulnerability to abuse will remain a tightly woven element of the TFWP – particularly concerning the lack of proactive enforcement of workplace and other rights.

As migrant workers make Canada their home, they naturally become more intertwined with Canadian society, which increasingly, also means more of their money is spent in Canada.

A great example of a path to permanent residency is the relationship UFCW Canada has with Maple Leaf Foods (MLF) and the Manitoba provincial government in accessing the Provincial Nominee Program. UFCW Canada and MLF have, and continue to work collaboratively in ensuring TFW's recruitment & integration at Maple Leaf Foods is respectful and productive. Of 2,487 TFW's hired since 2002, 80% have achieved Permanent Resident status, which is a win-win-win result.

When migrant workers work at MLF, they become part of an investment in Canada. UFCW Canada and MLF actively support migrant worker settlement and nurture their attachment to Canada. With this support, they, in turn, will become part of building the future for the company, their new community, their union, and their new home Canada. Canada should view the prosperity of migrant workers as an

CANADA NEEDS IMMIGRATION PATHWAYS FOR ESSENTIAL FOOD WORKERS



investment in Canada. Their settlement should be actively supported, and their attachment to Canada nurtured. UFCW Canada's primary recommendation is that workers have the option to enter Canada as permanent residents.

The so-called "pathway to permanent residency" is a far less desirable alternative to permanent residency upon arrival. An example of this two-step process is the one endured by workers under the Living Caregiver Program. While some of the participants in this program can achieve permanent residency eventually, we know from our colleagues from Migrante Canada (national caregiver advocacy organization), that the road to permanency is open to abuse and exploitation.

Our experience is that in non-unionized environments, where employers police themselves, the "pathway to permanent residency" does not play itself out, as in the successful relationship between UFCW Canada and MLF and our other unionized employers.

Often provincial nominee programs are held out as a carrot to migrant workers from the Global South. We have documented cases where workers in non-unionized workplaces are physically abused, sexually harassed, paid less than the provincial minimum wage, pressured to achieve a set quota/piece work and are punished financially if the quota is not met, or told to work without overtime. In many cases, if a migrant worker were to report such a situation, they would risk losing access to permanent residency through a provincial nominee program.

FAIRNESS FOR OUT-OF-STATUS AGRICULTURAL WORKERS

More than ever, agri-food workers are playing a pivotal role in sustaining and making possible that Canadians have high-quality fruit and vegetables on their tables.

UFCW and the AWA have called on the Federal government to implement a program to help out-of-status migrant food workers to obtain a pathway to permanent residence to end vulnerability. A similar program was implemented in January 2020 by the Canadian Labour Congress (CLC) and Immigration, Refugees and Citizenship Canada (IRCC) to facilitate access to permanent resident status for 500 construction workers in the GTA and their family members.

The Federal and Provincial governments have the historic opportunity to grant permanent residence to out-of-status food workers, not only because it is the humane thing to do, but also because it is essential to sustaining Canada's food supply, particularly in this uncertain times.

Many of these food workers arrived in Canada with a valid work permit, but due to labour abuse and mistreatment from unscrupulous employers preferred to leave their employers and others for various other reasons. These workers are currently helping Canada to secured food production and filling labour shortages in the agri-food sector.

All workers should be treated with dignity and respect, but due to their status, these workers usually work through temporary work agencies that take advantage of them. They don't have access to health care, nor access to social programs, making them very vulnerable.

GUATEMALAN AND MEXICAN GOVERNMENT COOPERATION

UFCW Canada has a longstanding history of representing and assisting workers from other countries who come to Canada to work the land. These advocacy efforts have reached beyond Canadian borders.

As part of the advocacy work to improve worker's rights and their wellbeing, UFCW Canada has lobbied and signed agreements to protect migrant workers at Governmental level and with non-for-profit organizations in Mexico and Guatemala. These agreements include information about human and labour rights and health and safety in the workplace. In the following, we highlight some of these achievements.

GUATEMALA

In 2010 UFCW's advocacy efforts achieved the end of the security deposit temporary Guatemalan farmworkers had to pay to be able to come work in Canada. Before the shift in policy, over 4,000 temporary Guatemalan farmworkers had to pay a \$400 deposit – representing a significant portion of what the average Guatemalan earns in an entire year – before they were allowed to make an essential contribution to one of Canada's most important industries. The deposit was almost always borrowed from loan sharks, who would take everything from the workers if they couldn't earn enough to keep up with the debt payments, putting this man and women in a very vulnerable position.

In 2016, a series of online workshops were held between the Ministry of Foreign Affairs and UFCW representatives to discuss the issues migrant workers from Guatemala were experiencing in Canada.

Most recently, UFCW and the AWA, in coordination with the Guatemalan Embassy in Ottawa, assisted a group of migrant food workers in obtaining open work permits as vulnerable workers and leaving the inhumane working conditions they were facing.

MEXICO

UFCW Canada has been working closely with Mexico's federal government executive and legislative bodies

since 2007. However, state-level institutions in Mexico are the typical providers of direct services to migrant workers in matters involving education, health, and social services. Therefore, UFCW Canada has also been a signatory to mutual collaboration agreements with the states of Tlaxcala, Oaxaca, Guerrero, Michoacán, and the Federal District of Mexico; jurisdictions whose citizens make up a significant proportion of migrant workers in Canada. The 2011 agreement with CONOFAM, (the National Coordinator of State Agencies for Migrant Affairs), which provides migrant information and advocacy services throughout 29 of Mexico's states, further significantly expanded UFCW Canada's alliances throughout Mexico.

In 2013, UFCW Canada and Mexico's National Farm Workers' Confederation (CNC) signed a historic agreement to ensure that the rights of migrant agricultural workers are protected and defended in Mexico, Canada and the United States. Labour rights training and proactive monitoring and advocacy were cornerstones of the agreement. As strategic allies, UFCW Canada and CNC have shared their experience and political strength to give a voice to the concerns of Mexican migrant agricultural workers internationally.

In March 2020, UFCW Canada signed a new agreement with the largest labour organization in Mexico, the Confederation of Workers in Mexico (CATEM), that aims to strengthen the protection of Mexican migrant workers while in Canada.

Through this cooperation agreement, coordinated communication and training approaches focused on labour, and health and safety rights to better protect migrant workers while in Canada will be possible. One of the cornerstones of the agreement is the establishment of a new database to exchange information on the conditions facing migrant agricultural workers in Mexico and Canada. This research and analysis will be used to develop innovative programs for the betterment of migrant workers.

As strategic allies, UFCW Canada and CATEM will also be able to share their experience and political strength to give a voice to the concerns of Mexican migrant agricultural workers in Canada.

URGENT LEGISLATIVE CHANGES REQUIRED

EI: EMPLOYMENT INSURANCE INJUSTICE

For migrant farm workers participating in the SAWP, Canada's Employment Insurance (EI) regime is a modern equivalent to the 19th-century head tax. But rather than an upfront payment, the tax is levied as a mandatory payroll deduction for the duration of employment. And at the end of the day, these workers cannot become permanent residents.

SAWP workers and their employers pay an estimated \$21.5 million annually in EI premiums and contribute nearly \$49 million each year to the Canada Pension Plan (CPP), which in turn benefits Canadian retirees and workers who have lost their jobs. SAWP participants also pay \$20 million in annual income tax. These tax dollars fund essential programs and services such as post-secondary education and social programs for children. In total, seasonal migrant farmworkers and their employers contribute an estimated \$90.6 million to the Canadian government every year. While labouring in Canada, SAWP workers spend \$22 million in the Canadian economy, money that supports local businesses and their employees. Finally, SAWP workers produce an estimated \$4.5 billion in economic output in the country's agricultural sector, which in turn supports almost 19,200 domestic jobs annually. The estimated total economic footprint of SAWP participants and their employers is \$4.65 billion every year.¹¹

SAWP workers contribute overwhelmingly to Canada's economy and society and make significant payments to the EI system. It is fundamentally unfair for these workers to be denied full eligibility for EI parental, maternal, and compassionate care benefits by the Canadian government.

EI is a federal program administered by the Government of Canada through Service Canada. It is an insurance regime and a safety net that provides income support when employment income is interrupted. The purpose of EI is to provide members of the active labour force with a measure of economic security.

¹¹ UFCW Canada 2014, *The Great Canadian Rip-Off: An Economic Case for Restoring Full EI Special Benefits Access to SAWP Workers*

EI has both regular and special benefits. Regular benefits are available to anyone who qualifies following the termination of employment. Special benefits—parental, maternity, and compassionate care benefits—arise in special circumstances that impact the employee's ability to work.

Whether a migrant farmworker has access to EI benefits depends on the program that facilitated their migration. Migrant farmworkers under the low-skilled TFWP have access to the full spectrum of EI benefits. The SAWP workers, on the other hand, are effectively denied access to the general unemployment insurance benefit, and there are barriers to access special benefits.

The interaction of SAWP's administration and EI's eligibility criteria make it effectively impossible for SAWP workers to access general unemployment benefits.

Subsection 18(1) of the *Employment Insurance Act* disentitles workers from general unemployment benefits if the worker is not capable of and available for work. This requirement has been interpreted to require Canadian residency. SAWP workers cannot reside in Canada past December 15th and often leave for practical reasons much sooner.

Migrant agricultural workers have both a residency document and a working document. The residency document permits temporary residence in Canada while the work permit sanctions employment.

If the SAWP facilitated the agricultural worker's migration, then typically temporary residency status will outlive the work associated with the permit. Residence is permitted until December 15th, but the farm may cease production months earlier.

Should a migrant worker remain in Canada during the window of time between the cessation of work and the expiration of temporary residence, general unemployment benefits would theoretically be available.

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The trouble is that SAWP workers generally do not remain in Canada after harvest season. SAWP workers live on the farm, and their employer arranges their transportation home. As a result, migrant agricultural workers typically return to their country of origin soon after their labour is no longer needed. Once outside Canada, they are ineligible for unemployment benefits.

Effectively barred from the general employment insurance benefit, SAWP workers also became eligible for parental, maternity, and compassionate care benefits—otherwise known as EI special benefits — in 2003. But in 2012, the Harper government severely curtailed access to these benefits by requiring a valid work permit and social insurance number.

EI parental benefits are available to parents who care for a newborn or newly adopted child. Parental benefits are available for a maximum of 35 weeks. In 2012, Diane Finley, in her role as Minister of Employment Services Development Canada (ESDC), amended the regulations to require a valid work permit and social insurance number to collect special benefits. These changes make it more difficult for SAWP workers to access EI special benefits because SAWP workers must leave the country by December 15th of a given year, and their work permit may expire sooner. Migrant farmworkers applying for EI special benefits report low success rates.

UFCW Canada takes this opportunity to reinforce our position that it is unjust for SAWP workers to pay into a program that they cannot effectively access. And so we echo our previous recommendation that access to EI special benefits, particularly parental benefits, should be restored.

HARVEST OF DEATH: MIGRANT WORKERS AND HEIGHTENED HEALTH AND SAFETY RISKS

Agricultural work is not only amongst Canada's most precarious but also amongst Canada's most dangerous.

Agricultural workers face a range of biological, chemical, mechanical, physical, and psychological hazards, and have reported injury rates above provincial averages.

In 2006, UFCW Canada was able to gain Health and Safety coverage for Ontario farmworkers. The last province to include agricultural workers under workplace safety laws was Alberta in 2016 after years of advocacy by UFCW Canada and the Agriculture Workers Alliance (AWA). Currently, provincial occupational health and safety legislation covers agricultural workers in every province.

In reality however, 98% of migrant farm workers who have reached out to AWA centres have not received any Health and Safety orientation in their workplace, and had no knowledge of their rights and obligations before receiving a training by UFCW Canada.

Further, it is essential to highlight the additional occupational health and safety challenges that migrant farmworkers face because having access to health and safety legislation is only the first step.

All provincial health and safety legislation must develop industry-specific regulations. Effective health and safety legislation must address the realities of agricultural work. Heat stress, working in confined spaces, and operating heavy farm equipment are issues that health and safety regulations should address. And it is crucial to have a definition of dangerous work that captures agricultural realities.

Additionally, an effective occupational health and safety regime for migrant farmworkers must respond to the extreme imbalance in the employment relationship and the impact that has on the enforcement of their rights.

Increased vulnerability breeds a climate of fear wherein migrant workers are unlikely to exercise their right to refuse dangerous work or seek medical attention. Since opening the first Agriculture Workers Alliance Support Center back in

URGENT LEGISLATIVE CHANGES REQUIRED

2002, we have witnessed the impact of migrant farmworker vulnerability and employment insecurity on occupational health and safety risks, and their willingness to seek medical attention and enforce their rights.

There are countless cases of employers terminating and arranging for the deportation of ill or injured migrant workers, which has a chilling effect on complaints.

Based on the data that was collected throughout the AWA centres, between 2000-2020, an estimated 1,400 migrant farmworkers were repatriated without getting appropriate health care across Canada due to work-related accidents that were not reported to provincial workers compensation offices.

In this climate of fear, migrant farmworkers report unsafe workplaces, transportation and housing only to trusted community advocates under the protection of anonymity. Migrant farmworkers describe workplace risks of falling from heights, cuts from dull knives, and injury from machinery. They also complain of unmaintained equipment.

AWA staff continuously report hearing from migrant farmworkers that they are afraid to stop working when injured. Based on what they have seen happen, workers think their employers won't ask for them to come back work the next year if they know the worker complained or is hurt. Workers also report that even when they are in pain, they often decided not to say anything because they feel ashamed and afraid the boss will send them back to their country.

Employer-provided transportation also carries occupational health and safety risks. Migrant farmworkers are sometimes transported between farms to harvest throughout the growing season. Many AWA members have reported that it is common knowledge in the field that contractors or employers do not offer their workers adequate seat belts, that vans are often overloaded, and being driven too fast.

In the case of employer-provided housing, we have also seen that too often, these accommodations fail to meet appropriate standards. Migrant farmworkers have been

reporting to our migrant support centres that there are periods in the growing season where housing is even more severely overcrowded because workers get transferred from one farm to another. In many of these cases, government inspections took place before the migrant workers arrived in Canada. Still, as unannounced inspections throughout the season are infrequent, this situation is not sanctioned by authorities. This lack of oversight and enforcement became more evident with the COVID-19 pandemic, as the Federal government allowed employers of temporary foreign workers, to provide a satisfactory housing report within the previous three years. And even if an employer couldn't produce a report from the previous three years, the company could still be approved to receive temporary foreign workers "if photos of the accommodation are provided and the employer agrees to submit an updated [report] to ESDC within the duration of the work permit."¹²

After the deaths of two migrant farmworkers in the Windsor-Essex region in May 2020, Prime Minister Justin Trudeau, asserted on June 16th, 2020, that among the many issues migrant farmworkers are experiencing, living conditions require an overhaul. This is what UFCW and AWA have been denouncing for three decades now.

In the meantime, federal and provincial Governments, as well as municipalities, have acknowledged that overrun accommodations have contributed to the spread of COVID-19 among migrant farmworkers, counting more than 1,200 migrant workers testing positive across Canada to COVID-19 and three deaths, until June 21st, 2020.

Inclusion into provincial health and safety legislation is only the first step. There must also be a reduction in worker insecurity through open, or at least sectoral work permits, access to permanent residence, and effective organization rights. Absent fear, workers are more likely to advocate for their rights. However, until migrant worker insecurity is reduced, we continue to call on provincial governments to strengthen the proactive arm of provincial health and safety departments.

¹² The Globe And Mail, How Ottawas enforcement regime failed migrant workers - accessed July 19, 2020

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SOUTHSHORE GREENHOUSES INC
1746 Seacliff Drive E., Kingsville, Ontario N9Y 2M6
Phone: 519-326-2926 - Fax: 519-326-1643

Date/Fecha: _____

EMPLOYEE VOLUNTEER FORM

By signing, I agree to work on my day off voluntarily and I understand that I am expected to be present for my shift.
Al firmar, Yo acepto trabajar voluntariamente en mi día libre y entiendo que debo estar presente en mi turno laboral.

	NAME /NOMBRE	SIGNATURE/FIRMA
1		
2		
3		

OBSTACLES TO ACCESSING LABOUR RIGHTS

The following pictures show a standard practice in farms across Ontario, where migrant farmworkers are coerced into giving up their days of rest. Workers report that they feel they have no choice but to sign these forms, as they have seen colleagues being punished or sent back home for not signing. In many cases this means that workers will work without a day of rest for several consecutive months. The

ital PRODUCE MOS E

Rest Day Postponement Agreement

I, _____, understand that under my contract I am entitled to 1 rest day every 6 consecutive days worked. I also understand that if the urgency of the crop production and farm require me to work often I can agree to postpone my rest day until a more appropriate day. By signing below I agree to postpone rest days future date that my employer and I agree upon and that is more suitable to the nature of the production season.

Yo, _____, entiendo que bajo mi contrato tengo derecho a 1 día de descanso por días consecutivos trabajados. También entiendo que si la urgencia de la producción de cultivos y de la granja requiere que trabaje más a menudo, puedo aceptar posponer mi día de descanso hasta un día más apropiado. Al firmar a continuación acepto posponer los días de descanso hasta una fecha futura en la que mi empleador y yo estemos de acuerdo y que sea adecuada a la naturaleza de la temporada de producción.

Firma _____
Fecha _____

Agricultural Employee Protections Act makes migrant farmworkers vulnerable to this type of abuses.

Ontario's agricultural workers still do not have access to an effective collective bargaining statute that would protect them from these abuses. The *Agricultural Employee Protections Act* (AEPA) eliminates all bargaining leverage without a binding arbitration provision to compensate.¹³ As a result, the employment relationship remains vastly unequal.

UFCW Canada continues to advocate for a fair labour relations regime for Ontario's agricultural workers. In 2010, we launched a complaint with the International Labour Organization (ILO), alleging that the AEPA contravened the Freedom of Association and Protection of the Right to Organize Convention (No. 87).

In *B.C. Health Services*, the Supreme Court of Canada held that the state of international law is a persuasive source for the interpretation of the Canadian Charter of Rights and Freedoms, including the interpretation of section 2(d)—freedom of association.¹⁴

In 2011, the Supreme Court of Canada upheld the constitutionality of the AEPA. At the time, the court was worried that declaring the statute of no force or effect would create a constitutional guarantee for a particular labour relations regime and a particular form of collective bargaining.¹⁵

We disagreed then, and we disagree now. So in 2012, we welcomed the ILO's ruling that the AEPA did not meet Canada's international commitments.

"Canada's adherence to international documents recognizing a right to collective bargaining supports recognition of the right in s. 2(d) of the Charter (freedom of association). The Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified."

¹³ Agricultural Employee Protection Act, SO 2002 c 16.

¹⁴ Health Services and support – Facilitates Sector Bargaining Assn. v British Columbia 2007 SCC 27 at para 70.

¹⁵ Ontario (Attorney General) v Fraser 2011 SCC 20.

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The ILO's ruling is consistent with our longstanding position that the AEPA continues to infringe on agricultural worker's section 2(d) Charter guarantee — freedom of association. The AEPA does not provide meaningful collective bargaining. Instead, the Act weakens effective collective bargaining — without compensating with a binding arbitration provision. Instead, the Act contains only a duty on the employer to hear worker representations in good faith, but with no compulsion to act.

To the extent that the employer reads and listens to representation, the employer has complied with the AEPA obligations. As mentioned, the ILO ruled that this violated Canada's international commitment to freedom of association. The statute does not provide agricultural workers access to the more comprehensive mechanism for collective bargaining.

For example, when UFCW Canada successfully organized the workers at Platinum Produce, a large-scale greenhouse operation in Chatham, collective bargaining proved a meaningless exercise. The employer voluntarily recognized UFCW Canada as the official bargaining agent, and read and listened to UFCW Canada's representations on behalf of the workers, complying with its obligations flowing from the AEPA. This exchange lasted for fifteen minutes. Subsequently, UFCW Canada sent the employer a draft collective agreement. The employer presumably read it but did not respond.

To date, no group of agricultural workers in Ontario has succeeded in achieving a collective agreement under the AEPA regime.

The ineffectiveness of the AEPA is evidenced in the inability of unions to strike collective agreements for the benefit of agricultural workers.

Unsurprisingly, the employer's duty to read or listen to collective representations under the AEPA has provided

absolutely no leverage to workers. As a matter of justice and fairness, the discriminatory exclusion of agricultural workers from their full labour rights and protections must be addressed through legislative change.

UNFAIR LABOUR PRACTICES

On March 4th, 2010, the British Columbia Labour Relations Board (BCLRB) certified UFCW Canada as the exclusive bargaining agent for a bargaining unit comprised of SAWP employees employed by Sidhu & Sons Nursery Ltd. Following Board certification, UFCW Canada received evidence that Mexican officials had identified SAWP workers that had expressed union support. Once identified, the Mexican government prevented their return to Canada under the guise that Canadian visa officers refused these workers visas when Citizenship and Immigration Canada had not.

Mexican officials could block union supporting workers from returning to Canada because of their role in the administration of the SAWP.

Mexico's role in the program gave it the power to blacklist workers that expressed interest in organizing, blocking their return to Canada in subsequent years, and reconstituting the workplace with fewer union supporters. Mexican officials likely interfered with SAWP worker's right to organize in fear that management would select workers from other countries to avoid unionization, which would diminish the flow of remittances to Mexico.

The blacklist also indirectly changed the workplace dynamic. Fearful of retaliation, other workers were less likely to express their wish to unionize. Reflecting on one of the blacklisted and blocked SAWP workers, the BCLRB arbitrator recognized this effect:

"I also find the blocking of Victor Robles, who was identified by Mexican authorities as a supporter of the Union, when viewed objectively, would have a dramatic chilling effect on the Union's members."

URGENT LEGISLATIVE CHANGES REQUIRED

So it was unsurprising that in 2011, a de-certification vote was called at Sidhu & Sons Nursery Ltd. UFCW Canada took issue with the Mexican government's interference with Canadian workplace rights and moved to enforce those rights on behalf of the migrant farmworkers.

The Mexican government took the position that state immunity ousted the jurisdiction of the BCLRB to adjudicate the conduct of a foreign state vis-à-vis its citizens under domestic law regardless of whether the remedy is imposed on the foreign state.¹⁶

The issue was taken to the British Columbia Court of Appeal, which decided that the BCLRB could review the Mexican government's actions for the purposes of the British Columbia Labour Relations Act. Still, no remedy could be imposed on Mexico.

The BCLRB found that the Mexican government interfered with the de-certification vote, preventing the workers from expressing their sincere wish concerning unionization. As a remedy, the board declared no force or effect to the vote.¹⁷

While we believe that the decisions in B.C. on this issue were the right ones, we recommend further measures to prevent this type of employer interference.

Unfortunately, more recently, the Agriculture Workers Alliances has received numerous reports from seasonal agricultural workers across the country, stating that they have been intimidated by representatives from the Mexican Consulate advising them not to apply for an open work permit for vulnerable workers. They were told that by doing so, they would be eliminated from the SAWP program, which means that workers are still being blacklisted for speaking up and seeking protection.



¹⁶ The Mexican Government relies on the State Immunity Act to avoid adjudication on the allegation of interference with workplace rights see State Immunity Act, RSC 1985, c S-18.

¹⁷ United Food and Commercial Workers International Union, Local 1518 v Sidhu & Sons Nursery Ltd. 2014 CanLII 12415 (BCLRB).

FARMWORKERS AND UNIONIZATION

As has been described in previous sections of this report, UFCW Canada has been able to achieve many model examples and provide protections to Temporary Foreign Workers through language in their collective agreements

Historically, Quebec farms with three or more full-time ordinary workers could be unionized. If there were fewer full-time ordinary workers, unionization was illegal.

UFCW Canada challenged the law. The UFCW organized a farm with two full-time workers and sixty seasonal farmworkers and challenged the law in court. The Quebec Supreme Court ruled in favour of the UFCW, ruling that the prohibition was unconstitutional.

But in 2014, the provincial government enacted Bill 8, excluding farms with less than three full-time ordinary workers from the full suite of rights labour relations regime. Under Bill 8, workers can form associations to make representations to their employer that must be heard in good faith. This precludes collective bargaining.

Instead of access to a statutory collective bargaining vehicle, seasonal farmworkers at locations that fall to less than three workers in the off-season, only have the right to form associations and make representations to their employers that must be heard in good faith. No collective agreements have been struck at these workplaces. This leaves Quebec's seasonal agricultural workers in the same legal position as all of Ontario's agricultural workers under the Agricultural Employees Protection Act (AEPA). As the UFCW continues its campaign to have the AEPA declared unconstitutional, we believe that the Bill 8 amendments to Quebec's Labour Code will be scrutinized for compliance with the Charter.

At other locations with more than three full-time, year-round workers, UFCW has several bargaining units, primarily at greenhouses and packaging sites. Importantly, these farms continue to operate and operate profitably.

Nearly all of our members on these farms are low-skilled migrant farmworkers arriving in Canada through the low-skilled stream of the TFWP. Unfortunately, Quebec's equivalent to the provincial nominee programs does not provide a pathway to permanent residence for low skilled workers. We are proud to report that UFCW Canada has negotiated a series of wage improvements and improvements for migrant agricultural workers, including a right-to-stay provision in the collective agreements to protect migrant farm workers from early termination.

The right-to-stay provision requires the employer to continue to employ a migrant agricultural worker for the duration of their first contract. For year-round operations, the first contract is typically one year.

UFCW Canada has also negotiated recall protections based on seniority. Typically, migrant farmworkers arriving in Canada through the low-skilled stream of the TFWP are on 1-year contracts. These recall rights insist that employers re-hire past workers where work is available.

Another issue that migrant agricultural workers face when they arrive is the availability of work. While there are guaranteed minimum hours associated with the SAWP program, there is no equivalent guarantee for workers that enter through the TFWP. Under UFCW Canada's collective agreements, such guarantees are in place, as well as supplementary wage provisions for overtime work.

Understanding and addressing the realities of agricultural work, our collective agreements maintain some measure of labour flexibility while protecting workers. These collective bargaining protections should be available to all workers who seek them, including migrant agricultural workers currently excluded by Bill 8.

Moreover, the instances of shameful exploitation and treatment of migrant workers – which have been repeatedly demonstrated by leading academics, and widely covered for years by every major media outlet in Canada – do not happen in operations represented by UFCW Canada.

TRAINING IS NOT ENOUGH: RIGHTS FOR MIGRANTS ARE ELUSIVE WITHOUT PROPER REPRESENTATION

Providing rights information and training to workers is always necessary and important; however, UFCW Canada has learned through its three decades of advocacy experience, that advising migrant workers about their rights cannot and will not – on its own – improve the untenable situation in Canada.

The Ontario experience is a glaring example. Despite numerous rights workshops with migrant farm workers across the province over many years, the current advocacy infrastructure in the province is essentially never used by the people it was supposedly designed to involve and further protect. In fact, the Agriculture, Food and Rural Affairs Appeal Tribunal – by way of the AEPA – has received only three complaints from employees in 18 years. The Ontario Labour Relations Board, by comparison, has received thousands of complaints over the same period.

B.C. presents another example where the federal government's Migrant Workers Support Network claims to have trained more than 11,000 migrant workers in 2019 alone. The focus of much of that training was on informing migrant agricultural workers about their employment standards rights, health and safety rights, and workers' compensation rights. Yet, data is not readily available to properly measure and gauge these efforts. At the same time, media reports featuring anonymous migrant agricultural workers – to scared to reveal their identities – talking about their harrowing experiences with no mention of their "rights" suggests a disconnect. Clearly, migrant workers – for very good reason – do not feel comfortable speaking up about their rights – let alone exercising them.

We reiterate that training is important and must continue, but equipping highly precarious, vulnerable and non-status foreign workers with information about domestic rights will not – on its own – result in better outcomes. Guaranteed

representation for all migrants in the Temporary Foreign Workers Program is the most practical and effective way to reduce worker abuse and migrant exploitation.

UNION REPRESENTATION IN PRACTICE

UFCW Canada proposes a European approach to sectoral bargaining as an excellent model for the TFWP. As part of this approach, a labour committee – consisting of migrant workers and unions that belong to the Canadian Labour Congress – and an employer committee – consisting of sector employers and/or their respective industry association representatives – would negotiate a master contract for TFWs working in the agricultural sector.

The terms and conditions of the master contract, along with provincial labour and TFWP program standards, would be enforced by one of Canada's many excellent labour unions. Migrant workers – like all other unionized workers in Canada – would pay dues to their union, and they in turn would receive the full support, protection and services of a legitimate trade union of their choice.

The union could also play a central role in assisting TFWs, employers and the government in administering open worker permits. Through its existing offices across the country, a large national union could offer confidential, safe places for TFWs to ask for more information on National Occupational Classification (NOC) mobility options anonymously, and discuss the process. The union could also maintain a job board that would be refreshed in real-time to present both workers and employers with mobility opportunities. These opportunities would also be open to all permanent residents and citizens wanting to fill any vacancies, and the union would ensure that permanent residents and citizens are given priority in filling vacancies.

As the leading union for cannabis workers, UFCW represents employees at retail cannabis stores, call centres, growing facilities, and dispensaries across British Columbia, Ontario and in the United States.

Workers at these locations enjoy the protections of a collective agreement and generous hourly wages, overtime payment, guaranteed annual pay increases, legally-binding job security, paid sick days and more vacation time paid by the employer. Likewise, cannabis workers enjoy a workplace free of harassment and health and safety protections, thanks to the language reflected in their strong collective agreements.

As the industry expanded at a rapid pace in a handful of U.S. states, union pay and benefits are now expected by cannabis workers south of the border. As Canada now positions itself to become the world's largest cannabis producer and distributor, upwards of 150,000 jobs are expected to be created in our cannabis industry. This means that union wages already achieved in collective agreements should represent the starting point for pay and benefits for cannabis workers in Canada, including a defined benefit pension plan and 100 percent employer-paid health benefits.

The cannabis industry has faced many challenges in the last year. Growth has not been achieved as expected, to some extent, due to mismanagement. However, it has only been two years since legalization, so it is soon to make any predictions. In any case, good wages, benefits, and secure jobs will only help solidify and stabilize the industry.

Unionized work environments are less likely to fall victim to mismanagement as management is more accountable and, therefore, careful when it comes to financial decisions. This model has proven to be productive and fruitful for all the stakeholders, a win-win for workers, the company and local communities.

Unfortunately, as is the case with all agricultural workers in Ontario, and Alberta, cannabis production workers are also excluded from the Labour Relations Act. UFCW Canada continues to challenge this.

MedReleaf

On November 2, 2019, UFCW Canada launched a constitutional challenge to the Ontario government's exclusion of cannabis production workers from the *Labour Relations Act*. The union has begun presenting evidence and testimony before the Agricultural, Food, and Rural Affairs Tribunal, documenting how Ontario's exclusion of cannabis production workers from the right to unionize violates Canada's Charter of Rights and Freedoms.

In 2016, UFCW Canada organized the second cannabis operation in Canada, MedReleaf, in Markham, Ontario (the first operation was SIBANNAC MEDICINALS INC in British Columbia in May 2013). Soon after, the Ontario Labour Relations Board deemed the workers to be agricultural, thereby denying them the right to form a union. Unlike most provinces, agricultural workers in Ontario are excluded from the Labour Relations Act and are instead covered



by the *Agricultural Employees Protection Act (AEPA)*. The AEPA does not obligate employers to bargain collectively with employees, fails to require an independent grievance procedure, and does not protect the right to strike.

Opposed to the union's legal challenge are Ontario's Ministry of the Attorney General, the Ontario Federation of Agriculture, and MedReleaf. The Ford government, the agribusiness lobby, and wealthy cannabis corporations are all deeply opposed to any efforts to protect labour rights for cannabis and agricultural workers.

UFCW Canada will continue its case at the Tribunal over the coming months. The case will have broad implications for cannabis and agricultural workers across Ontario.

WeedMD

In March 2020, UFCW Canada notified the cannabis producer WeedMD based in Aylmer, Ontario, that it represented over 250 local and migrant cannabis workers, asking to sit down and bargain in good faith a collective agreement contract under the *Agricultural Employees Protection Act*.

WeedMD workers reached out to UFCW Canada after the union's success in unionizing cannabis operations across Canada and in the US. Workers wanted to improve their wages and working conditions, have job security, health and safety protections, and end the abuse of power by management. Most importantly as two dozen WeedMD workers had contracted COVID-19, WeedMD workers demanded to be provided with access to proper masks

and other Personal Protective Equipment. They also asked for access to reliable transportation to and from work that ensures physical distancing and shifts start and end times that provide physical distancing as well.

As cannabis and agricultural workers are unfairly excluded from the *Labour Relations Act*., WeedMD workers decided to test the *Agricultural Employees Protection Act*., as their issues were urgent and needed to be solved.

UFCW Canada will keep denouncing the *Agricultural Employees Protection Act*. For eighteen years between the enactment of the *Act* and the present time, it has become abundantly clear that the *Act*., is not a constitutionally sound labour relations scheme for agricultural workers. According to the Ontario Ministry of Agriculture, Food and Rural Affairs, only three complaints have ever been made under this *Act*. These cases are Ro-Land Farms, MedReleaf Corp and WeedMD; all three filed by UFCW Canada. It is time to recognize that the AEPA simply does not provide a feasible process for agricultural workers to pursue their workplace goals collectively.

Furthermore, due to the COVID-19 pandemic, the lack of labour protections to local and migrant agricultural workers have been exposed and made evidently. Many senior officials and even Prime Minister Justin Trudeau has highlighted the fact that agricultural workers deserve to have meaningful protections.

As of July 2020, the case is ongoing with future hearings scheduled before the *Agricultural, Food and Rural Affairs Appeal Tribunal*.

CONCLUSION

“We know that there are many issues from living conditions to the fact that they are tied individually to particular companies or employers, to various challenges around labour standards that require looking at,”

- Prime Minister Justin Trudeau, June 16th, 2020, after the death of the first migrant farmworker in the Windsor-Essex region from COVID-19.

The COVID-19 pandemic has exacerbated an existing crisis and has brought to light and into mainstream knowledge the many injustices migrant farmworkers have been facing in Canada for over 20 years.

Migrant agricultural workers are some of Canada’s most vulnerable and exploited workers. Vulnerability matters because the more exposed a worker is, the less effective reactionary workplace laws are. In other words, laws that respond to complaints do little to protect vulnerable workers because they are unlikely to complain even if they know their rights.

The extreme vulnerability of migrant agricultural workers is the result of deficiencies and discrimination ingrained in current immigration and workplace law. Currently, immigration law creates a captive migrant workforce through the use of closed work permits, and workplace law excludes agricultural workers from essential workplace rights, protections, and entitlements.

Many of workplace exclusions rest on old-fashioned notions of the farm. The myth of the family farm sustains agricultural worker legislative exclusion from many provincial minimum employment standards, which motivates the exclusion from an effective labour relations regime.

Contemporary agricultural production has evolved predominantly into a corporate, large-scale industrial enterprise, yet the evolution of workers’ rights has been frozen and excluded. These exclusions simply drive down labour costs and regulatory compliance costs, to the benefit of the industry and to the detriment of the workers.

Recent events have highlighted more than ever that Canada does not need a robust temporary foreign worker program, but a more inclusive, protective, and healthy immigration system. An expanded Temporary Foreign Workers Program (TFWP) should not be viewed as the solution to labour challenges facing Canada’s agri-food system. A broader labour strategy is needed for this crucial sector.

A fairer balance must be struck. It is a matter of justice and human rights in the face of a current system that perpetuates global exploitation and abuse.



REQUIRED REFORMS

FEDERAL REFORMS URGENTLY NEEDED:

1. Establish union representation as a necessary condition of the Temporary Foreign Workers Program, as the best practical measure in providing proper representation and protection to Canada's most precarious and vulnerable worker population;
2. End employer-specific work permits and replace them with open work permits, or at least, occupation-specific work permits;
3. Expand the Agri-food Pilot program to allow for an additional 5,000 permanent residency opportunities, per year, for primary agricultural workers;
4. Establish a tripartite sector council to reduce Canada's over-reliance on the Temporary Foreign Worker Program by collaborating on innovative active labour market policy options;
5. Establish a federal tribunal to properly allow for the review and appeal of repatriation decisions in advance of TFWs being sent home by employers;
6. Provide SAWP and TFWP workers with access to Canada's Employment Insurance Program which they have paid into since 1966;
7. Sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which was adopted by the United Nations General Assembly in December 1990;
8. Ban the practice of housing workers above or adjacent to greenhouses in recognition of the apparent dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters;

PROVINCIAL REFORMS URGENTLY NEEDED:

9. Repeal Ontario's Agricultural Employees Protection Act. The Ontario Labour Relations Act must be amended to include agricultural workers, or the Agricultural Labour Relations Act should be revived to truly respect the collective bargaining rights of agricultural workers;
10. Bill 26 must be repealed in Alberta; all agricultural workers should be fully included in Alberta's Labour Code without exception;
11. Bill 8 must be repealed in Quebec; all agricultural workers should be fully included in Quebec's Labour Code without exception;
12. Institute and properly enforce the Manitoba model in all provinces with respect to regulating and penalizing offshore recruiters of foreign workers;
13. Establish significant fines and/or jail sentences for domestic recruiters and temporary work agencies who are found to exploit migrant workers;
14. Piece rate and set quotas must be eliminated as they facilitate labour exploitation and create physical and mental issues that impact the wellbeing of migrant workers.



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