



CULTIVATING FARMWORKER RIGHTS

ENDING THE EXPLOITATION OF IMMIGRANT AND MIGRANT FARMWORKERS IN BC

JUNE 2008

SUMMARY

Copies of the full report are available from the CCPA, and at www.policyalternatives.ca

This summary is also available in Spanish and Punjabi

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

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

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



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office



BC Employment Standards Changes Since 2001

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

2001

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

2002

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

2003

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

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

Despite farmworkers’ precarious position, the provincial government has steadily eroded employment protections and safety enforcement since coming to power in 2001 (see *BC Employment Standards Changes Since 2001* on page 2). This study examines the impact of those changes on immigrant and migrant farmworkers in the Fraser Valley. It looks at how this changed legal and policy climate has affected farmworkers’ working and living conditions. The study proposes alternative models of employment standards, safety and health regulations, enforcement procedures and contracting programs that would better address farmworkers’ needs and enhance their economic security.

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

PROFILE

Rajpal

Sponsored by her eldest daughter, Rajpal, who is 56, came with her husband and younger daughter to Canada in the late 1990s. In the Punjab, Rajpal worked in her family home and on their land. Since arriving in Canada, she has worked for the same Indo-Canadian farm labour contractor, picking berries on farms and more recently grading, washing and packing vegetables in a cannery. The cannery is kept clean and has good lunchroom facilities, but the conveyor-belt work is very fast; it requires standing for long hours and sometimes makes her dizzy. Rajpal is paid the minimum wage, \$8 an hour (plus vacation pay).

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

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

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

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

PROFILE

Manuel

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

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

He is paid regularly, but didn't receive an orientation in Mexico or BC to explain the deductions on his cheques. "We know they are discounting money from our pay cheques, but we don't know why, or what benefits we are entitled to." He works 10 to 14 hour days with Sundays off, and has never received a statutory holiday. He sends home most of his income, about \$65 a day. A translator, paid by the employer, has helped him transfer the money, but charges \$20 to transfer \$1,000 home. Manuel had to purchase his own boots, gloves and rain gear, despite the fact that "there in the contract, it says that the employer should provide everything." When his boss took the workers to the store, he paid, "but then he deducted all of this from our paycheques."

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

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

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

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

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

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

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

Key Findings

- **IMMIGRANT FARMWORKERS LACK SECURE INCOME, ESPECIALLY WHEN PAID PIECE RATE.** They often work for less than the minimum wage. They work excessive hours to earn more income and to be eligible for EI (especially workers who are paid less than minimum wage), yet lack overtime pay and paid statutory holidays (as well as paid rest periods and annual vacation). They are vulnerable to the arbitrary power of farm labour contractors and to rights violations. According to one key informant, between 1997 and 2001 the inter-agency Agriculture Compliance Team (before it was disbanded) found 1,136 violations of the Employment Standards Act by farm labour contractors.
- **MIGRANT FARMWORKERS GENERALLY EARN THE BASIC MINIMUM OF THE BC–SAWP WAGE (\$8.90/hour)** – irrespective of experience. They work extremely long hours at the beck and call of farm owners, and – like BC immigrant farmworkers – lack overtime pay and paid statutory holidays. They too are vulnerable to the arbitrary power of their employer and to rights violations. Some migrants we spoke to work 60 to 70 hours a week – some up to 20 hours per day in peak harvest season. Extending their hours is the only way to increase their earnings since there is no overtime pay.
- **MIGRANT AND IMMIGRANT FARMWORKERS ARE RIGHTLY CONCERNED ABOUT THEIR SAFETY AND LIVING CONDITIONS.** Many work in environments that violate safety and health standards. Mexican migrant workers face significant barriers accessing medical care, especially due to their lengthy exclusion from BC’s Medical Services Plan (MSP); many live in substandard housing and have unreliable access to transportation. Immigrant farmworkers are transported to and from farms in vans that regularly violate safety regulations. Yet, since 2001, both inspection reports and prevention orders conducted by WorkSafeBC have dramatically declined. Inspection reports in the agriculture sector dropped from an average of 523 in 1994–2001 to an average of 200 in 2002–2006 – a 62 per cent decrease. Similarly, prevention orders plummeted from an average of 940 in 1994–2001 to an average of 253 in 2002–2006 – a 73 per cent drop.

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

Key Recommendations

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

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

- **RESTORE OVERTIME PAY, STATUTORY HOLIDAYS AND ANNUAL VACATIONS** for farmworkers, thereby helping to reduce the highly exploited labour of immigrant and migrant farmworkers, whose rights should be identical to those of any other worker in BC.
- **ESTABLISH PIECE RATES THAT ARE EQUIVALENT TO THE MINIMUM WAGE.** If farmworkers are to be paid a piece rate it must be set at a level, as in Ontario, that allows them, with reasonable effort, to earn at least the minimum wage for the hours they work. Piece rates are a precarious source of income, and the practice should be reconsidered. An hourly wage system could be applied to all farmworkers, as is already the case under the SAWP.
- **RAISE THE MINIMUM WAGE TO \$10 PER HOUR AND INDEX IT TO INFLATION.** BC's high cost of living and labour shortage suggest the need for an immediate raise in the minimum wage.
- **STRENGTHEN INSPECTIONS AT FARM SITES AND RESTORE PROACTIVE MONITORING TEAMS SUCH AS THE AGRICULTURE COMPLIANCE TEAM (ACT).** Without regular, random and unannounced visits, Employment Standards Act and WorkSafeBC regulations cannot be enforced. Farmworkers aren't free to speak about their employment conditions and don't know how to register their complaints unless inspectors know their native languages. And without inter-agency cooperation, enforcement of employment standards and health and safety regulations is ineffective. Higher penalties for contraventions should also be established.

- **REVIEW THE FARM LABOUR CONTRACTING SYSTEM AND CONSIDER THE ESTABLISHMENT OF A NEW NON-PROFIT HIRING HALL MODEL FOR ALL FARMWORKERS – IMMIGRANT AND MIGRANT.** It's time to replace the private FLC system. A new non-profit program could become the exclusive supplier of labour and require growers to hire through a regulated system/hiring hall/pool. This new non-profit hiring model should be extended to migrant workers so they would no longer be hired by and bound to a single employer. Included in this new model should be the establishment of independent, local agricultural human resources centres that function as a support mechanism for farmworkers and provide safe transportation.
- **FUND COMMUNITY AGENCIES TO PROVIDE WORKERS' RIGHTS EDUCATION AND ADVOCACY.** Community agencies inform farmworkers effectively and inexpensively about their rights, and can do so in im/migrants' native language. Only if farmworkers are aware of their rights can they exercise them. SAWP migrant workers should receive information about their rights in their native language upon arrival in BC. Rights should be posted in the workplaces of all farmworkers in appropriate languages.

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

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

The province must strengthen inspections at farm sites and restore proactive monitoring teams such as the Agriculture Compliance Team. Without regular, random and unannounced visits, Employment Standards Act and WorkSafeBC regulations cannot be enforced.

CULTIVATING FARMWORKER RIGHTS

Ending the Exploitation of Immigrant and Migrant Farmworkers in BC

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

June 2008

Co-published by the Canadian Centre for Policy Alternatives – BC Office, Justicia for Migrant Workers,
Progressive Intercultural Community Services, and the BC Federation of Labour

SUMMARY

Copies of the full research report are available from the CCPA, or can be downloaded from the CCPA website.

About the Economic Security Project

www.policyalternatives.ca/economic_security

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



SIMON FRASER
UNIVERSITY



Social Sciences and Humanities
Research Council of Canada

Conseil de recherches en
sciences humaines du Canada

This publication is available under limited copyright protection. You may download, distribute, photocopy, cite or excerpt this document provided it is properly and fully credited and not used for commercial purposes. Permission is required for all other uses. For more information on copyright, visit www.creativecommons.org.

Cover photos by Craig Berggold and Lyle Stafford



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office

The Canadian Centre for Policy Alternatives is
an independent, non-partisan research institute
concerned with issues of social and economic justice.

Canadian Centre for Policy Alternatives – BC Office

1400 – 207 West Hastings Street

Vancouver, BC V6B 1H7

tel: 604.801.5121

fax: 604.801.5122

ccpabc@policyalternatives.ca

www.policyalternatives.ca

