

# Canada's violation of (im)migrant workers' right not to be held under slavery or servitude": Meta-analysis of empirical data (1966-2016) and policy alternatives<sup>1</sup>

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## I- Temporary foreign workers in Canada under employer-tying policies

Canada's policies resulting in the binding of a worker to a specific employer [hereafter "employer-tying policies"] currently take various forms. For example, indirect employer-tying policies are mostly based on state-imposed **"debt to employer"** (worker importation/sponsorship by employers or labor brokers, exclusion from access to newcomer integration programs, etc.) and/or **legal/state sanction(s) - such as an additional delay and risk of deprivation of the right of unification with child/partner - if the worker quits the employer** (or if the employer dies or releases the worker). Other examples of employer-tying policies include the **federal imposition of 'binding work contract'** under which the worker waive the right to work for another employer in the country, **employment-based legal resident status**, and **employer/employment-dependent access to permanent legal status**. Canada immigration laws incorporated at least **27 forms of employer-tying policies** currently applied to specific groups of temporary foreign workers.

## II- Canadian data 1966-2016: state restriction of temporary foreign workers' exercise of their fundamental right to liberty and security of the person (as defined by the Supreme Court of Canada)

By compelling, through one or many state sanctions, a worker to complete his/her work contract with a specific employer federal employer-tying policies fundamentally restrict Canadian migrant workers' capacity to seek and access **assistance in case of abuse** by the employer and/or placement agent, workers' capacity to **exercise any human or labour right**, and workers' capacity to **access the justice system** in the country. State coercion and consequently individuals' incapacity to exercise basic rights happen through the (A) **fear of legal sanction** associated with the end of employment, (B) employer/agent/government **physical removal** of the worker out of the country, and/or (C) **legal blacklisting**/deprivation of access to legal status preservation-renewal. In particular, employer-tying policies applied to temporary foreign workers in Canada negate (1) the (im)migrant workers' capacity to negotiate the respect by the employer of **minimal labour and work safety standards**, (2) (i) the (im)migrant workers' capacity to negotiate the respect by the employer of **contractual rights affecting their health** or of (ii) **essential health-related rights** specific to the industry, (3) the (im)migrant workers' capacity to **access health care** services, (4) the (im)migrant workers' capacity to access **worker' compensation** and more precisely the financial means to access to adequate physiotherapy in case of work accident or employment illness, and (5) the (im)migrant workers' capacity to **join a workers union to improve safety** at work and the respect of health-related labour rights in general. The remaining of this section will demonstrate how (A), (B), and/or (C) applies to policies (1) – (5). Each policy is followed by a series of cases and statistics that demonstrate the poor and even dangerous conditions migrant workers face. Workers are unable to report these abuses in fear that they will face state sanctions, will be removed from the country, or unable to return to Canada as a result.

### 1. Federal obstacles to the respect of minimal labour/safety rights

A) Fear of state sanction (in case of complaint/work contract termination)

CASE - "I apply chemicals without protections ... sometimes some of us vomit and got headaches, itchy skins and blurred vision."<sup>2</sup>

<sup>1</sup> This memo is an excerpt of Eugénie Depatie-Pelletier's doctoral dissertation. For detailed explanations and more references, contact the author or see Depatie-Pelletier, E. (2016), "Judicial Review and Temporary Migration as a "Modern Form of Slavery": Employer-Tying Policies, the Myth of Harm Reduction, and State deprivation of (Im)migrant Workers' Fundamental Right to Liberty (and Security), LL.D. dissertation, Faculty of Law, University of Montreal.

<sup>2</sup> Health Across Borders — Health Status, Risks and Care among Transnational Migrant Farm Workers in Ontario, p. 14

STATS - Nearly half of respondents who were ordered to work with chemicals and pesticides reported they were not supplied the necessary protection such as gloves, masks, and goggles. Most workers had received no health and safety training at all.<sup>3</sup>

STATS - Dr. McLaughlin testified that ... [o]ne researcher (Binford, 2002) reports Mexican workers' mean and median work week as 63 hours, and that over a third of his approximately 200 respondents did not receive a rest day.<sup>4</sup>

CASE - He used to tell us to work faster or else he will send us back to Mexico. Yes. He always says it when new workers arrive.<sup>5</sup>

CASE - Well, look! Imagine, the bosses tell us "You know what? The Guatemalans come with a different contract, they pay rent and their pay is lower". (...) And with us, the Mexicans, if we don't work fast, the boss says "Hurry up! Otherwise I am losing money with you and I prefer to bring Guatemalans, I prefer to bring the Blacks because they are cheaper..." (...) Why do they always threaten us?<sup>6</sup>

CASE - *We would work simply with a shirt; we didn't have equipment. We don't receive training. One occasion we cleaned the greenhouse and Pedro was going around with the sprayer. (...) The boss got there and he wanted to hurry us, to move our hands faster and do all the work faster, and so Pedro took the sprayer backwards, and since the wind was (blowing) from there to here, all the liquid came over his body. The boss said that it was okay, that there was no problem, but Pedro started to have itchininess on his body. He asked for permission to go shower, but the boss did not want him to; he said that the work was urgent. At the end of the day he went to shower because he had a lot of itching all over his body, he had red lumps. The next day, I saw him in the morning, he had many lumps and I told him that it had been bad that the boss had not let him go shower. No WSIB claim was ever filed for the problems arising from Pedro's pesticide exposure (...). It is unclear if he went to see a doctor, but no medical records can be found. After the incident, Pedro's health deteriorated and manifested in a number of serious symptoms. Alejandra, Pedro's widow, recalls (...); I didn't recognize him in the airport. He was very pale, almost without any blood. He had lost 20 kilos. (...) He came home in October. In (...) February he passed away.*<sup>7</sup>

STATS - Dr. McLaughlin testified that [o]ne study (Verduzco and Lozano, 2003) found that 16.8% of Mexican SAWP workers in their survey had a work-related accident on one or more occasions (mainly resulting in musculoskeletal injuries), while 31% became ill during the working season in Canada. Principal concerns identified included: respiratory tract, gastritis, ulcers and other stomach diseases, skin diseases, allergies, back problems and/or muscular pains. Another survey of Jamaican SAWP workers (Russell, 2003) revealed ... that 32% of workers reported they suffer long-term illnesses as a result of injuries or illnesses received while working on Canadian farms. In the CERIS study, common health problems cited by workers included exhaustion (65.3%), back pain (60%), muscle fatigue (52.3%), headache (40.5%), leg cramps (40.4%), joint pain (35.4%), burning or itching skin (34.3%), stomach pain (23.9%), and sore throat (25.6%). In a WSIB study of 100 workers with health concerns, the following primary health issues were noted: back pain / injury, ocular, extremities pain / injury, fracture,

<sup>3</sup> The Status of Migrant Farm Workers in Canada 2010-2011, p. 14

<sup>4</sup> *Peart v. Ontario (Community Safety and Correctional Services) [2014] O.H.R.T.D. No. 625*, at para 117.

<sup>5</sup> Choosing to become unauthorized Mexican & Central American migrant farm workers, p. 11

<sup>6</sup> Choosing to become unauthorized Mexican & Central American migrant farm workers, p. 5

<sup>7</sup> Falling through the Cracks: Seasonal Foreign Farm Workers' Health and Compensation across Borders, p. 7-8.

dermatitis, abdominal / GI pain or issue, anxiety or emotional, headache, dizziness, CA, amputation, hemorrhoids, and inguinal hernia.<sup>8</sup>

CASE - The candidate to immigration is regularly raped by her employer. But she does not want us to contact the police; she will not escape him just yet: she said she needs her employer first to provide the immigration authorities with a record of her 24 months of past legal employment as required for the access to permanent legal status and, in particular, for the recognition of her right to be reunited with her child.<sup>9</sup>

## B) Physical/legal removal

CASE - Dr. Preibisch testified that research on the SAWP, as well as case files from front-line outreach workers, have documented testimonies of workers that have been fired and arrangements made for their deportation for refusing unsafe work ... for becoming pregnant, [or] for questioning their employer ... among others.<sup>10</sup>

CASE - M.P.T. alleges that on her first day of work at Presteve, the ... respondent slapped her on the buttocks; that on two occasions in the personal respondent's office at the plant, the personal respondent touched her breast over her clothes ... and that sometime in March 2008, the personal respondent told her that she could not go out for a coffee and threatened to send her back to Mexico if she did, stated that she needed to apologize to him for being disrespectful, and sent her back to Mexico in early April 2008 when she refused to do so. This matter has a long and complex procedural history (...). Suffice to say that originally there was an Application dated April 30, 2009, that was filed by CAW-Canada (or the "union" [Canadian Auto Workers]) on behalf of 39 individuals, who were temporary foreign workers employed by the respondent company.<sup>11</sup>

## 2. i) Obstacle to the respect of contractual or sectoral rights

### A) Fear of state sanction (in case of complaint/work contract termination)

STATS - One of the biggest issues which foreign workers face is the housing, proven by the Operative Diagnostic of SAWP. It shows that 59.09% of the SAWP workers denounced the lack of compliance with the ... [contract] regarding housing.<sup>12</sup>

CASE - [T]wo Caribbean workers were repatriated following their complaints that (...) their living quarters consisted of a trailer attached to the greenhouse. These workers also indicated that chemicals and pesticides applied inside the greenhouse seeped into their living quarters.<sup>13</sup>

CASE - There were 15 guys ... and we had one bathroom. In the morning we had to line up to use the toilet. Sometimes the heat would go off in winter (...). (...) If anyone said anything we would get fired [and loose our authorization to work in Canada].<sup>14</sup>

CASE - We are 32 workers in total (...). All of us have to share 2 bathrooms (...). (...) I would like that inspection visits from government agencies be unannounced.<sup>15</sup>

<sup>8</sup> *Peart v. Ontario (Community Safety and Correctional Services) [2014] O.H.R.T.D. No. 625*, at 122-123.

<sup>9</sup> MigrantWorkersRights, *Témoignages de travailleurs communautaires: case de violations de droits de travailleurs migrants observés au Québec*, 2012 at 4.

<sup>10</sup> *Peart v. Ontario (Community Safety and Correctional Services) [2014] O.H.R.T.D. No. 625*, at 65.

<sup>11</sup> Presteve food 2015 at 4.

<sup>12</sup> El derecho a la vivienda de los trabajadores migrantes en Canadá, un asunto de dignidad , p. 10

<sup>13</sup> The Status of Migrant Farm Workers in Canada, 2004, p. 19

<sup>14</sup> Report on the Status of Migrant Workers in Canada, 2011, p. 17

<sup>15</sup> Health Across Borders — Health Status, Risks and Care among Transnational Migrant Farm Workers in Ontario, p. 18

CASE - During one of my house visits during my field research (2011) I encountered a group of workers who were drinking milk or Coca-Cola at nights because the drinking water was contaminated.<sup>16</sup>

## B) Physical/legal removal

The physical removal from the country and/or the legal removal from the Canadian employment program also constitute an obstacle for the exercise of health-related contractual rights.

CASE - Mr. Raper also describes the repatriation process as very speedy. When workers are fired, a decision from which they have no right of appeal, it is "typical" that they are returned home by the next day. (...) Mr. Raper cites three examples of repatriation occurring following complaints about either working or living conditions, two of which occurred within two days, and one within 24 hours. The [Canadian federal] government does not specifically dispute any of these allegations.<sup>17</sup>

CASE - Over a 100 migrant farm workers employed at Ghesquiere Plants Ltd. are facing imminent repatriation (deportation) after staging a wildcat strike to demanding thousands of dollars in unpaid wages.<sup>18</sup>

## 2. ii) Non-recognition of essential industry-specific labour rights

*Restriction of access to water, washroom and sanitation facilities:*

CASE - Our research participants indicate that when they do receive breaks, they may not have quick access to a toilet or drinking water ... they may ... not consume sufficient water or food to avoid dehydration. Workers who are dehydrated and confused cannot operate equipment effectively, leading to an increased risk of injury. (...) [W]orkers are not given the tools to care for themselves properly. (...) [T]hey do not even have (...) access to first-aid kits in the first place<sup>19</sup>.

STATS - Fourteen per cent of (...) respondents reported lacking access to bathrooms. Interviewees reported withholding urine and stool for extended periods, being reprimanded for using toilets outside scheduled breaks and the indignities of lacking bathroom facilities (...). One Mexican migrant said: "If I feel like going to the bathroom, I go, but my co-workers say they wouldn't do it because they fear they'll be fired". (...) Twenty-three per cent also reported lacking hand washing facilities at their worksites, amplifying their risk of exposure to infectious diseases and chemicals. (...) "Sometimes we cannot wash our hands as we'd like to and this causes stomach ailments. Many of us have fallen ill."<sup>20</sup>

*Denial access to motorized transportation to an urban center:*

CASE - Many ... [workers] need[ed] to buy food and there was no one to take them. (...)The other problem is that they work such long hours that when they finish a day of work most places are closed.<sup>21</sup>

CASE - I am ok, but I have a friend who have a real problem: his employer only brings the workers once a week to the convenience store ... he never takes the time to bring them to the supermarket of the area. He can't access real food.<sup>22</sup>

<sup>16</sup> Embodying and resisting labour apartheid: Racism and Mexican farm workers in Canada's seasonal agricultural workers program, p. 50

<sup>17</sup> *Fraser v. Canada (Attorney General)*, at 19-20.

<sup>18</sup> Ontario migrants stage wildcat strike, source électronique (<http://j4mw.tumblr.com/post/1665403047/simcoe-on-migrant-farm-workers-stage-wildcat>)

<sup>19</sup> Migrant Voices: Stories of Agricultural Migrant Workers in Manitoba , p. 27

<sup>20</sup> Citizenship and Precarious Labour in Canadian Agriculture, p. 19

<sup>21</sup> Services, at 1.

<sup>22</sup> MigrantWorkersRights, at 4.

CASE - Many workers had the same complaint in July and August that their employer wasn't taking them to the bank every 15 days on their pay day (...). In fact, many of them had two and even three pay cheques in their hands at one time because this hadn't happen. The migrant workers were very concerned because they said their families needed the money.<sup>23</sup>

*Work during dangerous weather conditions:*

STATS - In the CERIS survey ... 68% have ... indicated that when there is a[n extreme] change in the temperature, such as sudden thunderstorms or hail ... they typically continue working. Workers' lives can be at risk when working under a lightning storm with records showing that in 2006, six farm workers were struck by lightning while working in the fields with one of these workers being killed, and in 2005 a migrant worker passed out and was hospitalized after being hit by lightning. Dr. McLaughlin testified that in 2012, there was a further death by lightning strike in Ontario when a SAWP worker was killed while working in the fields.

STATS - 30% (which is roughly 172 workers) indicated that they work without adequate protection in the rain. Many indicated that this was mostly a problem when lightning storms occurred.<sup>24</sup>

### 3. Obstacle to workers' access to health care

Under some programs employers are responsible of workers' access to health care in the country. This employers' privilege policy – the supervision over access to health care - increases employer-tied workers' risks of harm.

CASE - With regard to the ability of migrant farm workers to access health care, Dr. McLaughlin identified a number of barriers. She states that, while employers in Ontario are responsible for arranging for SAWP workers' OHIP coverage, in practice a significant number of migrant workers do not receive their OHIP cards or are delayed in receiving them.<sup>25</sup>

CASE - In my years of interactions with workers (10 years) I have not met one single worker that has the MSP (BC medical services plan) care card. As a result, when workers arrived to the hospital with serious illnesses they do not get treated because their insurance does not cover the expenses. In this case most, if not all, of the times the worker ends up in plane back home as neither the employer nor the Mexican consulate would pay for the medical costs.<sup>26</sup>

CASE - There was an issue where two workers ... needed assistance in going to the doctor. (...) [T]he farmer ... told us that ... there was too much work and they couldn't go.<sup>27</sup>

#### A) Fear of legal sanction

STATS - Almost half of the workers responded that working sick or injured was common practice because of the fear of employer reprisal repatriation.<sup>28</sup>

<sup>23</sup> *Ibid* at 1.

<sup>24</sup> Health Across Borders — Health Status, Risks and Care among Transnational Migrant Farm Workers in Ontario, p. 13

<sup>25</sup> *Peart v. Ontario (Community Safety and Correctional Services) [2014] O.H.R.T.D. No. 625*, at para 126.

<sup>26</sup> *Embodying and resisting labour apartheid: Racism and Mexican farm workers in Canada's seasonal agricultural workers program*, p. 19

<sup>27</sup> *Services*, at 3.

<sup>28</sup> *The Status of Migrant Farm Workers in Canada 2010-2011*, p. 14

CASE - Martin did not want to ask his employer to take him to see a doctor or to take time off work half a day to rest or file a workers' compensation claim, he was afraid he would be perceived as "problematic worker" or "lazy" on the eyes of his employer and be sent back to Mexico or that asking would contribute to a negative file that would prevent him from returning to work in the same farm the following year.<sup>29</sup>

#### B) Physical removal

CASE - While loading machinery onto a truck, the worker displaced two vertebrae. The doctor prescribed an operation but the worker was pressured to return to Mexico by both the employer and the consulate<sup>30</sup>.

CASE - Audi recalled going to work to blueberry fields with pneumonia, "even under the rain I was there working on the blueberry field, even though I could not breathe anymore. Despite they [employers or supervisors] can see you are in bad conditions still tell you to keep on going. I wonder if do you have to die there [on the fields] so they bring you to the doctor or don't think you are lazy?" (...) As consequence his health deteriorated to the point that he could not go to work for about a week. About one week after the week he missed work, Audi was presented with a return airfare ticket to Mexico from his employer, who told him that since he was unable to work due his health conditions then there was no reason for him to stay in the farm, nor, therefore, in the country.<sup>31</sup>

CASE - Dr. McLaughlin expressed her view that migrant farm worker health issues may be under-reported in Canada, as once these workers return to their countries of origin, health conditions originating in Canada may contribute to longer-term chronic or fatal illnesses. She cited one study she had conducted (McLaughlin 2007, 2009) that followed workers who returned home to Jamaica and Mexico, and uncovered long-term issues among SAWP workers, including serious injuries, heart disease, cancer, and organ failures, with many workers reporting that they felt their work in Canada had likely contributed to their conditions.<sup>32</sup>

#### C) Legal blacklisting/deprivation of access to legal status preservation-renewal

CASE - Marino refused to go back to Mexico and instead decided to stay in Canada to seek medical attention (...). Marino was deemed as AWOL. Being designated AWOL is one of the contractual mechanisms of the program that denies workers the possibility of being re-hired within the program in the future.<sup>33</sup>

CASE - I had to pick up Laura at the apple farm with two police officers. (...) Laura's crime was to have been injured at work. (...) As soon as she regained consciousness after her first surgery, an official from the Mexican consulate in Toronto started harassing her. She was pressured to sign forms that would withdraw her rights to treatment and benefits in Canada and would return her immediately to her rural village in the state of Puebla, east of Mexico City. This way, her employer would not incur increases in workers' compensation premiums. The plan was to send her back to Mexico as soon as possible, essentially discarding her. (...) The only way to ensure Laura would not be repatriated against her will was to remove her from the farm. Since it was private property, the only way we could do that was with the police.<sup>34</sup>

<sup>29</sup> *ibid*, p. 29-30

<sup>30</sup> The Status of Migrant Farm Workers in Canada, 2006-2007, p.7

<sup>31</sup> *ibid*, p. 33-40

<sup>32</sup> *Peart v. Ontario (Community Safety and Correctional Services) [2014] O.H.R.T.D. No. 625*, at 125.

<sup>33</sup> *Embodying and resisting labour apartheid: Racism and Mexican farm workers in Canada's seasonal agricultural workers program*, p. 35-36.

<sup>34</sup> *Migrant workers reap bitter harvest in Ontario*, source électronique

([http://www.thestar.com/opinion/2008/10/28/migrant\\_workers\\_reap\\_bitter\\_harvest\\_in\\_ontario.html](http://www.thestar.com/opinion/2008/10/28/migrant_workers_reap_bitter_harvest_in_ontario.html))

CASE - Carl (name was changed) (...) was riding on the back of a farm vehicle that had no seat and no barriers. (...) I fell backwards onto my head and went unconscious (...). (...) [S]oon after starting the work he told his boss that he was in too much pain to continue. (...) [H]is employer told him he had breached his contract and would be going home that week. Carl's doctor had recommended physiotherapy and had booked an MRI to determine the extent of his injury. The MRI was scheduled just days after the date of the return ticket which had been thrust upon Carl. (...) Carl ... instead ran away to a friend's house. Because he did not go home on his designated flight, he was labeled "Absent without Leave (AWOL) a classification that essentially deemed him to be illegally in Canada and forbidden to ever re-enter the farm work program."<sup>35</sup>

#### 4. Obstacle to workers' compensation/physiotherapy post-injury

Canadian medical doctors in Canada specialized in agricultural work hazards, and in particular on the short and long-term effects of pesticides and larvicides, may be limited<sup>35</sup>; this might help explain why sick (im)migrant workers are systematically repatriated in their country of origin without even a diagnostic – and thus *de facto* prevented from any possible access to worker compensation benefits.<sup>36</sup>

##### A) Fear of legal sanction

(Im)migrant workers under an employer-tying policy in any event tend not to report a work injury or illness and, thus, tend not to access (paid) days off to recover correctly and financial compensation to ensure the possibility of access to prescribed physiotherapy.

STATS - Only 24% of workers injured on the job made claims to workers compensation. Workers who did not make claims typically cited fear of being docked pay, repatriated, or being blacklisted from returning next season.<sup>37</sup>

CASE - Dr. Preibisch testified that the deportation is routinely used in the SAWP as a mechanism of labour control. She testified that the threat of deportation has similarly been used ... to discourage ... [workers] from filing for ... compensation benefits (...).<sup>38</sup>

##### B) Physical removal

CASE - Sulph was sharpening a saw on a grinder when a piece of the blade flew up and sliced his neck and shoulder. Sulph lost a lot of blood and suffered a shoulder injury that prevents him from working like he used to. Migrant worker advocates say Sulph remains in poor health (...). Monday, they filed a complaint with the Ontario Human Rights Tribunal based on the Workplace Safety & Insurance Board's handling of Sulph's case. (...) Jessica Ponting, a spokesperson for the Industrial Accident Victims Group of Ontario Community Legal Clinic in Toronto, says WSIB provided 12 weeks of lost wages to Sulph after his accident and then washed its hands of him once he was back in Jamaica. (...) Ponting said. "(...) The least we could do is make him whole physically." (...) [T]hey are seeking "systemic remedies" ordering WSIB to treat seriously injured migrant workers the same as injured workers from Ontario. (...) Sulph's advocates have asked the tribunal to grant injured migrant workers the right to stay in Ontario and receive the medical attention they need. This includes support payments for the duration of their convalescence. Ponting said Sulph returned to Jamaica assuming WSIB would support him for however long it took to recover. Ponting said workers making this assumption are usually disappointed. The IAVGO legal clinic knows of at least 20 other migrant workers with experiences similar to Sulph's. (...) In an IAVGO-JMW news release, Sulph, 51, shares his disappointment with WSIB. "The WSIB doesn't care about us getting treatment or

<sup>35</sup> Falling through the Cracks: Seasonal Foreign Farm Workers' Health and Compensation across Borders, p. 10-12.

<sup>36</sup> Amar *et al.*, Centre de santé et de service sociaux de la Vielle-Capitale at 32-33.

<sup>37</sup> The Status of Migrant Farm Workers in Canada 2010-2011, p. 14

<sup>38</sup> *Peart v. Ontario (Community Safety and Correctional Services)* [2014] O.H.R.T.D. No. 625, at 67.

recovering from our injuries,” Sulph says. “I grew food for Ontarians for 24 years before I almost died on the job. It’s not right that the WSIB treats migrant workers like our health doesn’t matter. We are treated like we are disposable when we are no longer useful to Canada.”

The Consulate does not help at all. On the contrary. For instance, some companeros [coworkers] had an accident (...). One worker lost his hand because it was cut by a machine. (...) Worker received no workers' compensation pay. And what did the Consulate do? It just sent him back to Mexico.<sup>39</sup>

#### C) 'Legal' removal/exclusion from the Canadian work program

In *Migrant Workers Working in Fear*, Valerie Royle (President, Yukon Workers' Compensation Health & Safety Board) and Grant Van Eaton (Director Case Management South, Saskatchewan Workers Compensation Board) addressed the legal barriers preventing in most cases temporary foreign workers' access to compensation benefits faced in case of work accident/illness.<sup>40</sup>

CASE - Marino had suffered an accident on the highway while he was riding his bicycle on his way to the farm, as result of his accident he dislocated his hip and was unable to perform work in the greenhouse. (...) [H]e was terminated from the program by his employer (the SAWP), and consequently lost his Social Insurance Number and his worker's compensation benefits.<sup>41</sup>

#### 5. Obstacle to unionization and thus to safety at work

Across employment sectors, workers' unionization has been associated with lower risks of harm.<sup>42</sup> Employer-tying policies however pose a major obstacle to (im)migrant workers' capacity to exercise their fundamental right to associate without fear of legal sanction.

CASE - According to the ufcw, only twelve of thirty-five Mexican workers at Greenway who had been part of the organizing drive in 2008 were brought back in 2009, a number that was lower than regular SAWP retention levels. (...) Other repatriations ... also occurred during the Greenway ... challenge. In September 2008, Floralia Plant Growers in Abbotsford laid off and repatriated fourteen SAWP workers shortly before a certification vote.<sup>43</sup>

CASE - [T]he boss ... approached three Mexican workers who were organizing to become the first unionized migrant Mexican farm workers in the province and told them they would be sent back to Mexico the next day.<sup>44</sup>

In sum, employer-tying policies actually increases risks of harm for the (im)migrant workers. Therefore, according to the Supreme Court of Canada, such policies constitute a state restriction of individual's fundamental right to liberty and security of the person which could hardly be found justified in a 'free and democratic society'.

### III- Policy recommendations

#### 1. INVALIDATION OF ALL GOVERNMENT WORK PERMIT RESTRICTIONS

Annual admissions levels of TEMPORARY-PERMANENT foreign workers in Canada should constitute (1.1) **the aggregation of regionally determined skill qualifications quotas for (im)migration**, allowing entry under permanent legal status OR under a 'FAST-TRACK' admission stream, or under (1.2) **open work permit**. Industry-tied or occupation-tied work authorization regimes, such as

<sup>39</sup> Choosing to become unauthorized Mexican & Central American migrant farm workers, p. 10

<sup>40</sup> At 10, 16-17.

<sup>41</sup> Embodying and resisting labour apartheid: Racism and Mexican farm workers in Canada's seasonal agricultural workers program, p. 35-36.

<sup>42</sup> The Fight in the Fields: Chavez and the Farmworkers Movement at 206-207, 233-235.

<sup>43</sup> Russo, at 137-138.

<sup>44</sup> Migrants back and forth, source électronique (<http://www.montrealmirror.com/2006/102606/news1.html>)



employer-tied work authorization schemes, result in a creation of condition of servitude for the worker, under which basic human and labour rights cannot meaningfully be exercised, and under which the individual is put by the state under risks of harm.

## 2. STATE (AND NOT EMPLOYER/LABOR BROKER) 'IMPORTATION' OF WORKER

Available empirical data confirm that current employers/employer associations' 'worker importation privilege' policies lead to high risks of condition of formal and/or informal debt bondage for the (im)migrant workers, under which the exercise of human and basic labour rights may hardly be exercised in Canada. In this context, foreign workers with the work experience or qualification should be \*randomly\* selected by the the Federal government, and such foreign worker 'importation' must be associated with (3.1.) the foreign and Canadian **states involvement in the recruitment abroad**, (3.2) full coverage by federal-funded newcomer **integration programs**, (3.3) access to **federal placement services**. Moreover, (3.4) **employers using the services of private recruitment/placement agencies to hire (im)migrant workers must formally be made by law co-liable** and responsible for damages and compensation to the foreign worker following fraud or abuse by the private labor broker. (3.5) No foreign worker recruitment agent or federal government placement services of (im)migrant workers should be authorized in regional employment sectors in which **workers are excluded from legal protection to access accredited unions** for collective bargaining, in particular no placement of agricultural foreign worker should be authorized in provinces where farmworkers' right to collective bargaining is not yet protected under the law. Finally, all (3.6) rural industry systematically hiring (im)migrant workers should be legally bound to function under **government-funded transportation and accomodation programs**. Such federal programs could be inspired from past government initiatives:

[T]he organizers of the Farm Service Force did conduct a '... National Service Campaign' to encourage people to ... [join] one of the brigades, and the organizers of the force were able to convince school board authorities to ... delay the start of the fall school term (...). Additionally, it planned a program of publicity which included paper advertisement and radio announcement (...). (...) The force was originally composed of eight distinct ... 'brigades', First, the Children's Brigade was made of boys between 12 and 15, and girls between the ages of 12 and 16 who lived in rural areas. (...) Second, the Farm Cader Brigade was formed by male school teachers and young men between fifteenth years of age and military age, and males who had been rejected for military service on medical grounds. Third, the Farmerette Brigade was made up of female teachers, and women over sixteen who were enrolled in an educational institution. Fourth, the Women's Land Brigade (...). Fifth, the Farm Girls Brigade was made up of women under 26 years of age who lived on farms (...) who wished to work on other farms in their community (...). Sixth, the Holiday Service Brigade was made up of men and women who were prepared to give up from one week to three months of their holidays (...) to work on a farm. Seventh, the Farm Commando Brigade was made up of those who were unwilling to leave home but who wished to work the occasional evening, half-day of full day on a farm. And finally, there were Day-By-Day Workers who were employed by truck farmers in suburban areas. (...) Day-by-Day workers were drawn from all of the brigades of the Force. (...) The workers who made up the various brigades either lived at home ... lived on individual farms, lived in small private camps ... and worked for individual farmers, or lived in large state run camps of between forty and one hundred persons and worked for any number of farmers, depending on demand. For those who worked for more than three weeks, the government paid the return transportation costs. (...) In the case of government funded camps for young children, girls were under the supervision of members of the YWCA and boys the YMCA. (...) Each worker received a minimum hourly rate of wages, or a fixed piece rate (...). (...) [F]orty-one labour camps operated in Ontario under the terms of the Dominion-Provincial Farm Labour Program. (...) [T]he expenses of construction and the operating

costs including the salaries of the administrators were shared between the federal Department of Labour and the Ontario provincial Department of Agriculture.<sup>45</sup>

In 1947, Congress privatized the migration program, voting to dismantle the ... Farm Labour Supply Program. ... Jubilant, US Sugar shared the good news with ... other producers ... and together they launched the privately run but federally sanctioned guestworker program that the United States has still today (...). [T]he federal government disposed of the fifty-two permanent and seventy temporary migrant labor camps it had built ... selling them to growers associations for just 1\$ apiece. "All of the farm labor camps built by the government for the use of farmworkers and their families, [are] now in the hands of the big farmers," noted the Union Labor News. "Rents have greatly increased, health and sanitation services have been abolished, and all child care services are at an end" (...). In December, federal officials stopped recruiting and transporting foreign workers, washing their hands of responsibility for ... guaranteeing the terms of foreign workers' contracts. ... Any hope that the guestworker programs would help to uplift conditions for domestic farmworkers ... died with the birth of federally sanctioned, private recruiting.<sup>46</sup>

### 3. INVALIDATION OF ALL GOVERNMENT EXCLUSIONS TO PERMIT FOR FAMILY

Every foreign worker admitted in Canada must be allowed to acquire a work/study permit(s) for her/his spouse/partner/child(ren). **Employer-dependant access to family unity** leads to a condition of servitude, under which major obstacles negate the exercise of rights and the access to justice in Canada. **Exclusion or delay from recognition to the right to family unity** constitute a state restriction of the right to psychological integrity, putting workers at risk of harm, vulnerability, and rights abuses in Canada.

### 4. INDEPENDANT ACCESS TO PERMANENT LEGAL STATUS UPON ARRIVAL

EVERY temporary foreign worker must be eligible upon arrival to simple **permanent legal status** procedures (DISTINCT from province/territory RESIDENT status associated with access to federal and regional services and associated with the access to the status of citizen, also relevant to Canadian citizens living abroad part of the year), associated with the recognition of the right to (re-)entry in Canada at any time - and possibly with access to Canadian government incentives to return and invest in the country of origin. Scientific evidence has confirmed that access to permanent legal status is in fact a necessary condition to the **access to justice** in the country, and in particular to the access to reparation in case of human right violation by the employer or the placement agent. Furthermore, workers' fundamental right to psychological security requires that they be able to leave Canada at any time, in particular to visit a family member or attend a funeral abroad, without fear of state sanction.

## **IV- Researcher's bio**

Eugénie is completing the doctoral program at the University of Montreal Faculty of Law and coordinates the [REDTAC research network on \(im\)migration policies](#) of the University of Montreal's Center of International Studies (CÉRIUM.) Since 2006, she published dozens of book chapters, articles and reports on temporary labour migration policies. She conducted during the last decade collective research projects and discussions within academic and policy circles, and worked in particular as expert on labour migration policies, immigration and human right laws for the benefit of (im)migrant workers, non-governmental organisations, worker unions, various Canadian and Chinese public agencies - including Citizenship and Immigration Canada, as well as international organisations (UN General Assembly, Global Forum on Migration and Development, and UNESCO.) Her current research projects focus on judicial reviews of employer-tying policies and policy alternatives to state restrictions of 'temporary' 'foreign' workers' right not to be held under slavery or servitude.

<http://cerium.umontreal.ca/en/community/repertoire-departement/vue/depatie-pelletier-eugenie/>

<sup>45</sup> Satzewich at 157-159.

<sup>46</sup> Hahamovitch, 2014 at 4-6, 16-17