



Foreign workers are being exploited to grow medical marijuana here

Agricultural workers are not covered by the Ontario Labour Relations Act



"As the market for legal marijuana expands, so will the workforce," writes Christopher Grisdale. "As a growing share of these workers have few rights and even less income growth, the pay and benefits of those around them are affected." (BLAIR GABLE / REUTERS)

By **CHRIS GRISDALE**
Sun., Aug. 14, 2016

Last week Ottawa announced it was going to make it easier to bring in temporary foreign workers. More and more of what we produce in Canada relies on such workers. You can add marijuana to that list; and even if you don't use it, this story involves you.

The story begins in 1974. That's when Terrance Parker, a severe epileptic, started to treat his condition with marijuana. For Parker it was a choice between reducing the effects of a life-threatening health condition and the risk of imprisonment. In 1997 he was charged with possession and cultivation of a controlled substance.

Parker eventually convinced the courts that the laws which made his choice a criminal offence violated his Charter rights. In response, the federal government drafted regulations for the cultivation and medical use of marijuana, which laid out the rules of the road in Canada by 2013.

In 2014 MedReleaf Corp. was licensed by the federal government to grow marijuana. By 2015 MedReleaf had 55,000 square feet of greenhouses and 69 employees, of whom 30 were temporary foreign workers.

We've heard plenty of stories about how migrant workers are among the most vulnerable workers in the world. In Canada, those who enter under the low-skilled stream of the Temporary Foreign Worker Program arrive with "closed" work permits. They can only work for one employer and they can only stay four years, at the most. The closed work permit ensures their employers call the shots, with no talkback. The short duration of most of these jobs ensures that they'll see no increase in pay or benefits.

As the market for legal marijuana expands, so will the workforce. As a growing share of these workers have few rights and even less income growth, the pay and benefits of those around them are affected.

This could change if migrant workers were allowed to form a union to represent their interests collectively. But with much more to lose, and much less to gain, migrant workers are the least likely to organize. It's an unusual union that tries to beat these odds.

On May 25, 2015, the United Food and Commercial Workers Union of Canada filed an application with the Ontario Labour Relations Board to certify the workers at MedReleaf as a union. Within a week a vote was held. To no one's surprise, it was unsuccessful. UFCW Canada filed a complaint alleging the results did not reflect the true wishes of the employees because MedReleaf had threatened to fire union supporters, many of whom were migrant workers who could only stay in Canada if they continued to work for MedReleaf. The complaint was dismissed because these workers, the board determined, were agricultural workers.

Did you know that agricultural workers are not covered by the Ontario Labour Relations Act? In 1994, an NDP government enacted the Agricultural Labour Relations Act to give agricultural workers in Ontario access to an effective collective bargaining mechanism. It was short-lived.

In 1995, Mike Harris's Conservative government was elected and immediately repealed that act. In 2001, the Supreme Court of Canada ruled that the failure to protect agricultural workers' rights to organize violated the Charter. So Ontario passed the Agricultural Employee Protection Act, modelled after American legislation and so-called guest worker programs. Unsurprisingly, it proved ineffective.

Agricultural workers in Ontario — from people who cultivate weed to those who produce your locally grown food — have no bargaining power. They cannot withhold their labour. Employers do not have to bargain in good faith. Complaints of unfair labour practices must be brought to a tribunal, which lacks labour relations expertise. No union has been able to strike a collective agreement in this legislative framework.

In B.C. and Quebec, UFCW has successfully organized migrant workers, providing them protections through a grievance process, health and safety committees, and recall rights. Being unionized also has resulted in better wages and benefits for these workers.

The future is hazier for the MedReleaf employees. Starting in February 2017, UFCW Canada will make its case at provincial tribunal hearings that these workers' constitutional rights have been undermined by both federal immigration laws and provincial labour laws. If these are our "guest" workers, we are pretty terrible hosts.

As both laws and public policy evolve to deliberately expand a market, so too should they evolve to protect those who produce these desired products. The medical marijuana industry may ease Canadians' suffering. That must not happen courtesy of a growing army of vulnerable workers.

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