



THE STATUS OF MIGRANT FARM WORKERS IN CANADA 2010-2011



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FOREWORD



“Arguably, the principle of being “beholden” to your employer for all your needs, even after work, is reminiscent of the indentured labour practices of the of the 19th century, whereby immigrants came to North America on contract to work for a number of years in exchange for passage and accommodation. Although the practice is different today, the principle of near total dependence on the goodwill of the employer is not.”



“When we drive around farm country we sometime see people working in fields. People who may not look like us. They are very anonymous. We don’t really know much about them. We don’t really think about them. But I think we should be thinking, “Who are these people? Why are they here? What are they doing? What are their working conditions like? And this apple that I’m eating today that was in my lunch bag — how did it get to me?”

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THANKS GIVEN AND RIGHTS DENIED THE HARVESTERS



On Thanksgiving Day 2010, more than two hundred migrant farm workers gathered for a Leamington, Ontario church basement dinner thousands of miles away from their own families. They gathered for the company, to share a meal and their stories about a life that splits them from their wives and children more than half the year.

It was a brief and rare break from the hard and dangerous work they do under a system that makes them and thousands of other migrant workers across the country completely beholden to their Canadian farm employers.



Leamington is in Essex County — the agricultural heartland of southwest Ontario. It is where thousands of American slaves had arrived in Canada in the 19th century at the end of the Underground Railroad. Most of those slaves had fled the farms and plantations of the Old South for a new life in a land they believed was free of abuse and oppression.

Yet a century-and-a-half later, migrant farm workers in Essex County and across Canada face fear and oppression as daily realities in Canada's food production system. Many are forced to do life-threatening work without proper protective gear or training. They are crammed by the dozens into makeshift shanties and unsafe transport vans. They are told not to report their injuries. If they do raise concerns, migrant workers are typically shipped out that day and banished from ever working in Canada again.

This is the reality for many of the thousands of migrant workers who put the food on the tables of Canadian families every Thanksgiving, and every day of the year. It is an employer-driven system, assisted by the government, where many workers must accept danger and exploitation if they want to work here.



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The denial of human rights should not be the foundation for Canada's food supply system.

For more than two decades UFCW Canada has fought to right that wrong.

UFCW Canada (United Food and Commercial Workers Canada) is Canada's largest private-sector union. In the province of Quebec, it is known by its French acronym, TUAC Canada. In association with the Agriculture Workers Alliance (AWA), UFCW Canada operates ten agriculture worker support centres across Canada.



In 2010 alone, more than 35,000 workers contacted the centres for assistance and advocacy. Based on those contacts and our ongoing advocacy and servicing since the 1990s, this ninth annual report documents the dangers, challenges and rights violations which are a bitter reality for the more than 28,000 migrant agricultural workers who now come to Canada each season under the *Canadian Seasonal Agricultural Workers Program* (CSAWP), and the *Temporary Foreign Workers*



(TFW) *Program for Occupations Requiring Lower Levels of Formal Training*. Both of these programs are facilitated by the federal government.

The CSAWP was launched in 1966, and is operated by the federal ministry of Human Resources and Social Development Canada (HRSDC) to supply temporary foreign workers for the Canadian agricultural sector. With improvements the CSAWP could serve as a model program for all temporary worker programs in Canada, but for now its framework remains essentially unchanged from its inception. Workers are tied by contract to a single employer. Their wages, housing and working conditions are imposed by the agriculture lobby, HRSDC, and the sending country of the worker. Workers themselves are excluded from the negotiations. Independent inspection and enforcement of health and labour standards are essentially non-existent. They have no pathway to permanent immigration status and workers who raise workplace concerns are typically repatriated without recourse to a hearing or legal counsel.



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The TFW program offers even less protection than the CSAWP for migrant farm workers. TFWs are often exploited by foreign recruiters before they arrive, and then by their Canadian employers who can cancel their employment on a moment's notice. This ruthless "flexibility" has made the TFW program increasingly popular for employers as a resource for cheap, disposable labour. Increasingly, HRSDC has obliged industry by expanding the TFW supply while providing no follow-up to what happens to the workers once they arrive.

Without pressure, advocacy and enhanced regulation, the Canadian corporate agricultural industry would continue unfettered to build its profits by specifically denying seasonal and temporary workers the basic labour and workplace protections other workers in Canada enjoy. This violation of human rights cannot go unchallenged — or defended by a multi-billion dollar industry whose revenue more than tripled in the past decade.

As a leading and longtime advocate for migrant farm workers, UFCW Canada in association with the Agriculture Workers Alliance has expanded its decades-long campaign for fairness in the food system through our actions, and by working with other social justice organizations in Canada, as well as in the homelands of migrant workers.

At the same time, the AWA has grown into the largest Canadian national organization for both foreign and domestic agriculture workers.

Outside of Canada, UFCW Canada and the AWA have built partnerships with sending governments, including Mexico — the largest source

of workers in the CSAWP. Mutual assistance pacts with three of Mexico's largest states are now in place to protect the rights of Mexican citizens working on Canadian farms. UFCW Canada and the AWA also continue to work closely with a number of major Mexico trade unions, public interest groups, and other Mexico civil organizations to protect the rights of Mexican migrant workers in Canada.



Over the past two years we have also established ongoing dialogue with other sending countries including, Guatemala, Honduras, El Salvador, Thailand and Jamaica.

From inside and outside our nation, UFCW Canada and AWA lobbying, legal, and media initiatives have also raised awareness that the CSAWP must evolve into a model program — through enhanced inspection, enforcement, and respect for the rights of the workers.

Because of these efforts a voice in the workplace is now a reality for migrant workers at a number of agriculture locations in British Columbia, and Quebec, where since 2008, UFCW Canada collective agreements have been negotiated



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to cover both TFW and CSAWP workers. Additional applications are also in front of the labour boards.

A two-decade UFCW Canada legal battle is also expected to uphold the right to unionize for agriculture workers in Ontario, where currently farm unions are prohibited. In 2008 the Ontario Court of Appeal upheld a UFCW Canada challenge that the Ontario legislative prohibition of farm unions was a violation of workers' rights under Canada's Charter of Rights and Freedoms. That decision was appealed by Ontario to the Supreme Court of Canada which has twice before upheld the Charter guarantee of collective bargaining rights. The Supreme Court's definitive ruling was pending at the time of this publication.

The International Labour Organization (ILO), a United Nations agency, has already issued its own indictment of Ontario's ban on farm unions. On November 15, 2010 the ILO upheld a complaint filed by UFCW Canada, under *ILO Convention 87: Freedom of Association and Protection of the Right to Organize*, which declares the right to collective bargaining as a fundamental human right; under ILO Convention No. 98 – *Right to Organize and Collective Bargaining*; and the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*. The ILO found both Canada and Ontario guilty of a discriminatory attack on the human and labour rights of farm workers in the province.

The battle for the health and safety rights of Ontario migrant and domestic agriculture workers is also advancing, as a UFCW Canada multimedia and lobby campaign forced the Ontario government to review its lax health and safety inspection routines for Ontario farms. This action

followed-up a successful UFCW Canada campaign, which directly resulted in Ontario extending the protections of the *Occupational Health and Safety Act* (OHSA) to cover migrant and domestic farm workers in Ontario. A similar campaign continues in Alberta, where agriculture workers, including migrant farm workers, are still excluded from the OHSA.

Quebec is another arena, where sections of the labour code are now being challenged which discriminate against the rights of seasonal workers to access union protection.

Outside the courts and away from the fields, UFCW Canada has partnered with a number of social justice groups, faith-based organizations, and other non-governmental agencies that are committed to justice for migrant agriculture workers and to raising awareness of the issue.

The story must be told because when it comes to the cost of food, most Canadians only know what they pay at the store. What they aren't aware of is the cost to the tens of thousands of migrant workers whose rights, dignity and safety are systemically denied to them by a partnership of corporate interests and government. These same partners are aggressively expanding the use of migrant workers, not just in farming, but in many other industries.

The evolution of a permanently exploited migrant underclass is on the horizon. Stopping that starts by addressing the plight of the temporary migrant workers who work each season at thousands of agriculture operations across Canada.



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RECOMMENDATIONS

Based on our two decades of continuing work with migrant and temporary farm workers, UFCW Canada and the AWA propose the following recommendations for changes to programs that bring migrant agricultural workers to Canada including the CSAWP (Canadian Seasonal Agricultural Workers Program) and the TFWP (Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training).

1. Provide a transparent, impartial process of appeal available to all workers before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.
2. Make it a condition of the CSAWP and the TFW programs that provinces bringing migrant workers to Canada provide legislation that allow these workers the right to form and join unions to bargain collectively as provided under the Charter of Rights and Freedoms.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the CSAWP and the TFW program that workers under the programs are paid as least as much as the provincial seasonal average wage rate.
5. Create national standards that require of the provinces that they fully extend coverage to foreign workers, like all other workers, under the regulatory Employment Standards and Occupational Health and Safety provisions of the province they work in. Provinces that do not meet this standard would be denied access to CSAWP and TFW workers.
6. Create national standards for the provinces to accredit, monitor and discipline if necessary both domestic and offshore recruiters of foreign workers. Provinces that fail to meet these standards would be denied access to workers under the CSAWP and TFW programs.
7. Give the workers a place at the bargaining table to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being “named” (requested by name) by an employer; and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
8. Inspect all workers’ housing prior to and following their occupancy. Frequent and random inspections should also be mandated and occur regularly throughout the season. Employers who are found to be in non-compliance with standards for adequate housing should be terminated from the CSAWP. Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters. These conditions should also apply to housing rented to TFWs by employers.
9. Make it mandatory that all written materials, instructions and signage – particularly



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- regarding workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, Thai, Punjabi and other native languages as necessary. In addition, an orientation on employment standards, and health and safety legislation should be conducted for migrant and temporary workers in their native language before they start their employment. A complete, language-friendly information package on the above should also be provided to each worker.
10. Eliminate the practice of withholding 25% of wages for Caribbean workers.
 11. Immediately terminate from the CSAWP and the TFW programs any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through consular or liaison officers.
 12. If an employer is removed from the CSAWP for violating the agreement, including unfair labour practices such as blacklisting a worker, the employer should be banned from participating in any other federal or provincial foreign temporary worker programs.
 13. Ensure workers are given a free medical exam before they return to their home country, to confirm they are healthy and free from workplace illness or injury. If this is not the case, ensure that worker compensation claims are duly filed.
 14. Provide financial support to the Agriculture Workers Alliance and UFCW Canada for effective, on-the-ground representation for seasonal agricultural workers.
 15. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign workers.
 16. Ensure that employers remit a credible Labour Market Opinion based on much more substantial evidence than currently required, that a shortage of domestic labour exists before allowing the hiring of workers under the CSAWP or TFW programs.
 17. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.



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VOICES SILENCED – VOICES HEARD



On June 15, 2010, more than 200 Mexican migrant workers marched to the steps of Canada's embassy in Mexico City to protest their treatment while working in Canada. Many of them had been repatriated or blacklisted for raising housing or workplace concerns to their Canadian employers.

Three months later a protest by Guatemalan migrant workers gathered outside of Canada's embassy in Guatemala City. They too spoke of the injustice, exploitation and blacklisting they had faced as temporary agriculture workers in Canada.



Both groups of workers had worked in Canada under temporary worker programs administered by the Canadian federal government: the *Canadian Seasonal Agricultural Workers Program* (the CSAWP), and the *Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training* (TFW Program).

The protesters confirmed what UFCW Canada and the Agriculture Workers Alliance (AWA) have repeatedly heard from migrant farm workers in Canada for more than two decades: that to work in Canada means “shut up or be shipped out.” That story is heard again and again at the ten agriculture worker support centres across Canada that are operated by the AWA in association with UFCW Canada. 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 two decades UFCW Canada has been the leading voice and advocate for migrant agriculture workers. Since 2001, tens of thousands of migrant workers have turned to UFCW Canada and its AWA support centres for information, health and safety training, and interpretative and other services

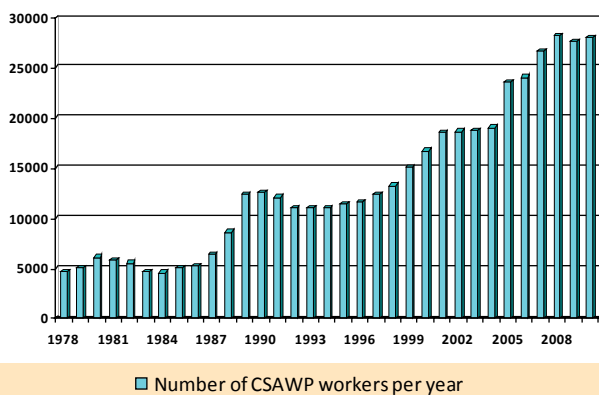
In 2010 alone, during their season of operation the AWA centres responded to over 35,000 visits, files and inquiries from migrant workers working in Canada under the CSAWP and the TFW program.

THE CSAWP AND TFW PROGRAMS

The *Canadian Seasonal Agricultural Workers Program* (CSAWP) was launched in 1966 as a “temporary” solution to labour shortages in the Canadian agriculture industry. Four decades later it remains a primary program in providing Canadian agriculture employers access to migrant farm workers.



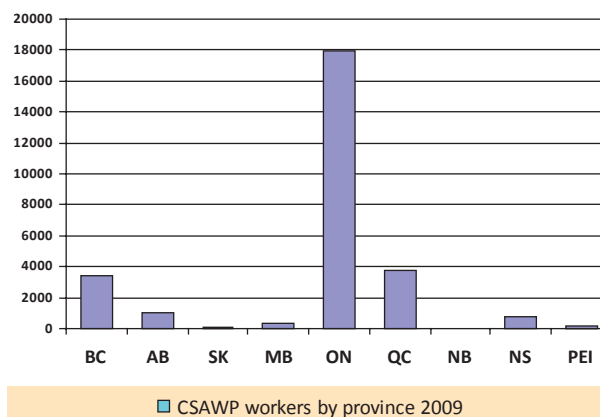
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In 2009, more than 26,000 workers came to Canada under the CSAWP. A federal government program operated by the federal ministry of Human Resources and Social Development Canada (HRSDC), the CSAWP is a bilateral treaty program that allows foreign agriculture labourers from signatory countries to work up to eight months a year at Canadian agriculture operations. Sending countries include Mexico, Jamaica, Barbados, Trinidad and Tobago, and the Organization of Eastern Caribbean States (Grenada, Antigua, Dominica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Montserrat).

All provinces except for Newfoundland and Labrador participate in the program. In 2009 the majority of the CSAWP workers — about 18,000 — were employed in Ontario with its large concentration of industrial-scale agriculture operations and greenhouses. Quebec (approximately 3,800 workers in 2009) and British Columbia (approximately 3,500 workers in 2009) are the two other major destinations for CSAWP workers.

Wherever they work, CSAWP workers who don't have a collective agreement are excluded from most of the workplace rights other Canadian workers take for granted. They have no voice in their working or living conditions or their rate of pay. Those are solely determined by the Canadian and sending governments and the lobby group



for employers. Independent inspection and enforcement of housing and working conditions are essentially non-existent.

Yet despite its inadequacies, the CSAWP could be developed with enhanced inspections and an impartial process of grievance and appeal to resolve workplace issues without reprisal. The CSAWP could and should become a model program for the agriculture sector, as well as other sectors that employ temporary foreign workers.

But instead of improving the CSAWP, the federal government has dropped the bar even further by allowing the industry access to the *Temporary Foreign Workers (TFW) Program for Occupations Requiring Lower Levels of Formal Training*. Since 2002 the TFW program has been



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made available to year-round Canadian industrial scale agriculture operations to draw on migrant workers mainly from South Asia, Central America, Mexico and Jamaica.



Temporary Foreign Workers (TFWs) must pay for their own housing, half of their return airfare — and often exorbitant fees to employment brokers which can equal half the worker's annual pay or more. This program provides even less protection and oversight than the CSAWP, which is why year-round industrial agriculture employers have increasingly turned to the TFW program as their preferred supplier. The lack of oversight leaves TFWs totally at the mercy of their employer; a seemingly non-issue for the federal government which has nonetheless expanded the TFW program by over 500% since 2006.

The vulnerability of TFWs was confirmed by Canada's Auditor General, who in April 2009 reported that because of the federal government's failure to adequately supervise employers under the TFW program, *"Temporary foreign workers hired through the pilot project for occupations requiring lower levels of formal training may also be at risk of abuse and poor working conditions."*

Concerns over this vulnerability have grown with the surge in labour market opinion applications for this pilot project, which went from 12,627 in 2006 to 68,568 in 2008."



In March 2010, data released in Alberta under the *Freedom of Information Act* corroborated this picture. The statistics revealed that 74% of Alberta's 407 TFW employers had violated the *Employment Standards Act* regarding pay rates and record keeping. Workers were being shortchanged on the hours they worked and the pay they received.

Many TFWs have come to expect that such violations are part of the deal they must accept if they want to keep the job, because they are vulnerable to employer reprisals if they object. The threat of repatriation or being blacklisted from returning to Canada the next season is also a reality for CSAWP workers.

Together, the CSAWP and the TFW programs, as they currently operate, give employers the weapons of reprisal and repatriation to control workers and deny them their rights.



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It is an oppressive reality that UFCW Canada has documented for over two decades as an advocate and ally of agriculture workers. That alliance includes the Agriculture Workers Alliance, which is dedicated to the rights and safety of all farm workers in Canada — no matter where they come from.



AGRICULTURE WORKERS ALLIANCE

Through its network of support centers and their outreach programs the Agriculture Workers Alliance (AWA) has grown into Canada's largest national organization for agriculture workers, including foreign workers under the CSAWP and the TFW programs.

In association with UFCW Canada, the Agriculture Workers Alliance (AWA) operates ten agriculture workers support centres across the country. The first centre was opened in Leamington, Ontario in 2002.



Nine more have followed with additional locations in Surrey, Kelowna and Abbotsford, British Columbia; in Portage le Prairie, Manitoba; in Virgil, Simcoe and Bradford, Ontario; and in Saint-Rémi and Saint-Eustache, Quebec.

These AWA centres provide a number of support and advocacy services at no-cost to domestic as well as migrant and temporary foreign agriculture workers. The staff and volunteers speak multiple languages, and assist workers with a number of issues such as repatriation intervention, worker's compensation claims, parental leave benefits, CPP, QPP, Employment Insurance, and health insurance claims to name a few.

In 2010 alone, during the six month production season the AWA centres assisted with over 35,000 worker inquiries (drop-in visits at the centres, phone calls, and outreach locations) across Canada.

When workers return home between seasons, they can continue to access their case files online through the AWA National Database which tracks the progress of their claims. The AWA National Database is also Canada's most comprehensive



record of workplace issues faced by migrant workers, based on the AWA's advocacy in cases dealing with workplace safety issues, substandard housing, toxic chemicals, oppressive working



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conditions and others. The AWA's extensive experience is also acknowledged by consular services of the sending countries, which regularly look to the AWA for assistance in accessing medical care for their CSAWP and TFW participants in Canada.



AWA ATA
E-News



**AWA anti-discrimination campaign gains results:
Quebec Labour Standards Board responds on the issue of migrant farm workers**

Quebec agriculture operations that deduct a housing charge from Temporary Foreign Workers (TFWs) have lowered their fee after it was noted the rate they were charging was beyond the maximum allowed under provincial labour regulations.



The action followed after the Quebec Labour Standards Board advised the Guatemalan consulate, as well as FERME (a farm lobby group) that the \$45 a week for housing that had been deducted from about 4,000 Guatemalan Temporary Foreign Workers (TFWs) was in violation of the \$20 a week maximum allowable under provincial labour standards. The \$45 charge had originally been negotiated between FERME, the Guatemala authorities, and approved by the federal government.

AWA online outreach also keeps migrant workers up to date on the latest in news, legal and health information through the AWA website, and e-newsletter service which are published in English, French, Spanish, Thai and Punjabi.

In 2010, on-site workshops at the AWA centres delivered hundreds of sessions to thousands of workers on subjects such as ESL/FSL language classes, Health and Safety, Know Your Rights, Workers Compensation, Parental Benefits, and Bicycle Safety to name a few.



In 2010, the AWA and UFCW Canada also extended educational opportunities for the children and families of migrant workers through the introduction of the Migrant Workers Scholarship Program. The program provides five annual scholarships of \$1,000 each for children of migrant workers in Canada, and can be used by the recipients in their home country. In addition, migrant workers and their families have access at no-cost to UFCW Canada's webCampus — a state-of-the-art, web based online learning system with over 80 courses.

Public education and awareness is also part of the AWA mandate. The AWA works closely with a number of social justice and community groups, academics, local labour leaders and faith-based groups to raise public awareness of the inequities faced by migrant workers and the need for government action.





Allies in these efforts include Kairos, Migrante, the Workers Action Centre, Justice for Migrant Workers, the Canadian Association of Labour Lawyers, Students Against Migrant Exploitation (SAME), the World Council of Churches, KAIROS, El Sembrador, the Canadian Labour Congress and its affiliates; the Ontario Metropolis Centre, numerous provincial federations of labour, and the Federation of Canadian Municipalities.

The AWA has also partnered and developed relationships with academics from the leading universities including Sir Wilfred Laurier, Guelph, McMaster, McGill, British Columbia, Alberta, York, and the University of Toronto. The result has been some of the most telling and reliable research done in Canada documenting the failure of government programs and legislation to protect the health and safety of migrant workers.

THE HEALTH AND SAFETY SHORTFALL FOR MIGRANT WORKERS

As a frontline advocate and service bureau to tens of thousands of migrant workers, the AWA has developed as key resource in the research and assessment of workplace health and safety risks facing migrant workers. The picture is dangerous and dismaying, as employer and legislative obstacles force migrant workers to choose between their health — or providing for their families.

In 2010, CERIS (the Joint Centre of Excellence for Research on Immigration and Settlement) released a research report on health status, risks and needs of migrant farm workers in Ontario. The research was based on over 600 interviews, conducted in the 2009 season with migrant agriculture workers who were introduced to the

project through the AWA.



- Almost half of the workers responded that working while sick or injured was common practice because of the fear of employer reprisal or repatriation.
- 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.
- 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 the next season.

So even though the *Occupational Health and Safety Act* was extended in 2006 to cover farm workers (as a direct result of UFCW Canada legal action) migrant agricultural workers remain fearful of exercising their provincially legislated right to refuse to perform unsafe work because under the CSAWP the worker's employer can simply have them repatriated for exercising this fundamental right.



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While health and safety coverage may be in place, the reality is that until the threat of arbitrary repatriation is alleviated, many migrant agricultural workers will fail to take advantage of their right to refuse unsafe or hazardous work.

In Alberta, they have no right at all. That province continues to exclude all outdoor agriculture workers from protection under health and safety legislation; this in spite of a 2008 judicial inquiry that recommended ending the exclusion immediately. The recommendation, delivered in 2009, followed the work related fatality of an Alberta agriculture worker; one of 170 workers who have died accidentally on Alberta farms since 1980.



In B.C., the Liberal government has also reduced employment standards and failed to enforce safety regulations concerning agricultural workers — including a 2008 coroner's recommendation regarding safe transportation of farm workers after a ten-person van jammed with the 17 agriculture workers flipped and crashed, killing three of the workers.

B.C.'s efforts to ensure their employers provide health and safety training to migrant workers has also been deficient. A recent study by WorkSafeBC, and Guelph and Sir Wifred Laurier universities, in

partnership with the AWA centres in B.C. revealed that over 70% of migrant agricultural workers received no health and safety training whatsoever.

Clearly, the health and safety of migrant agricultural workers is not a high priority for many of the employers, provinces, or for the federal government. It is a dangerous and callous attitude.

Since 2001 UFCW Canada has recommended in every report submitted to the Canadian government that it establish eligibility criteria for all provinces wishing to participate in the CSAWP on behalf of their farm owners. One essential criterion for participation should be that migrant farm workers be aggressively protected under provincial health-and-safety legislation in order for that province and its farm employers to participate in the CSAWP. To date the federal government has refused to act on this recommendation.

THE NEED FOR UNIFORM EMPLOYMENT STANDARDS



Migrant and temporary agricultural workers also face structural and legislative discrimination under employment standards legislation in a number of the receiving provinces. Employment standards are the laws that govern basic workplace regulations such as minimum wage, hours of work, and vacations.





They are meant to dictate minimum requirements for all workers in any given province — except Ontario, Alberta and British Columbia where the general rules for overtime, vacation pay, rest periods, and maximum hours of work do not apply if you're an agriculture worker.

In addition, current provincial legislation prohibits collective bargaining for all Ontario agriculture workers. Outdoor agriculture workers in Alberta face the same violation of their Charter rights to form and join unions for the purpose of collective bargaining. This fundamental denial of human rights may soon be righted by a pending decision of the Supreme Court of Canada.

Until then, migrant agriculture workers in those jurisdictions will be denied the right to organize and the best defense against arbitrary punishment and repatriation: the protection of a collective agreement with their employer.

In Quebec, a decision to ignore provisions of the *Employment Standards Act* (ESA) has also caused hundreds of thousands of dollars in rent overpayment paid by migrant workers to employers. In 2010, an AWA/UFCW Canada investigation determined that some Quebec agriculture employers and the farm lobby had been involved for years in overcharging migrant farm workers well above what the ESA allows for employer-rental of housing facilities.

While rents have since been brought into line, the retroactive repayment of overcharges to the affected workers is still being held back. The federal government must also share responsibility, for until it insists that the provinces enforce *Employment Standards* equally, migrant and

temporary workers will remain systemically prone to abuse and discrimination.

THE NEED FOR UNIFORM RECRUITMENT STANDARDS AND CONTROLS ON EXPANSION OF THE TFW SYSTEM

While the rights of migrant workers under the CSAWP need to be strengthened, the expansion of the TFW program, with its complete lack of worker protection, is increasingly the preferred conduit for the corporate farm industry.

Hiring under the TFW program is subject to the federal *Immigration Refugee Protection Act* (IRPA). To participate in the program, employers must apply to HRDS Canada for a Labour Market Opinion (LMO) to demonstrate that local labour is not available for hire. It is rare to be declined, and anecdotal evidence and the Auditor General's report suggest the LMO system is more "rubber stamp" than supervisory.

With LMO in hand, employers are often facilitated by unscrupulous offshore and domestic job recruiters who are integral to the TFW program. The workers they deliver essentially arrive as indentured labour whose income in Canada largely returns in fees to the recruiters.

Sometimes, TFWs discover when they arrive that the jobs they were recruited for don't exist; or the year of employment they expected turns into only months and they are terminated. Meanwhile, the debt they owe forces them into an illegal, under-the-table contractor system that feeds them back at a lower rate, sometimes to the same employers who let them go.



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This underground labour supply system is illegal, but typically the only ones charged are the workers.

Over the past two years, thousands of TFWs in this situation have been arrested, detained and ultimately deported. The unscrupulous recruiters replace them with a new, indentured shipment of TFW workers.

To date, HRDSC has not dealt effectively with the problem. The only jurisdiction in Canada that has is Manitoba. In March 2009 it introduced the



Worker Recruitment and Protection Act — the first and only legislation of its kind in Canada that prohibits fees paid to offshore recruiters, while forcing Canadian recruitment agencies to register and post a performance bond.

It is legislation lacking in every other Canadian jurisdiction. The federal government has the capacity to correct that, by compelling provinces to accept national recruiting standards similar to

Manitoba's if they want to participate in temporary worker programs.

The exploitation of workers under the TFW program is not just limited to private recruiters and employers. Since 1993, the Quebec agri-business lobby group FERME, in partnership with the International Organization for Migration (an intergovernmental agency) has demanded that Guatemalan TFW workers post a \$400 bond if they wanted to work in Canada (\$400 is about 17% of the average annual wage in Guatemala). That ended in August 2010, in the wake of a UFCW Canada/AWA multimedia public awareness campaign that brought international attention to the issue. The campaign continues because Guatemalan TFWs are still forced to surrender their passports to their employer, as well as sign away many of their basic rights.

In September 2010, Honduras also became a sending country of TFWs to Quebec. Workers are forced to sign a contract that clearly states that “Canada has no power to intervene or ensure the contract is enforced” in case of dismissal, abuse or exploitation. The contract was authored by FERME and Honduran officials, with the knowledge of the federal government.

PROVIDING MIGRANT AND TEMPORARY WORKERS A PATHWAY TO PERMANENT STATUS

Under the CSAWP workers may only work a maximum of eight months a year in Canada, and are denied the opportunity to ever apply for permanent status — in spite of the fact that thousands of workers have accumulated many years of total employment beyond that required to apply for landed status leading to citizenship.



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For workers under the TFW program the story is essentially the same. Their stay in Canada is limited to the duration of their work visa. When it expires, they must leave the country and reapply. There is no guarantee they will be invited back and even if they are, they simply return to a system that eventually sends them home and denies them the opportunity to apply for permanent status.

This system of perpetual rotation is what it appears to be: an agenda that keeps the CSAWP and TFW program workers in a perpetually precarious position. Whether they are invited back to Canada the next season is at the whim of the employer, and if they are, they remain vulnerable to reprisal without the benefit of an impartial appeal process.



The systemic denial of a pathway to permanent status for migrant and temporary workers flies in the face of a nation that was built on the strength of newcomers. That should still be the case — and it is in some locations where temporary foreign workers under UFCW Canada collective agreements now have access to eventual landed immigrant status under the Provincial Nominee Program (PNP).

This has worked well for both employers and employees (members of UFCW Canada Local 832) at Maple Leaf hog slaughter and processing facilities in Brandon and Winnipeg, Manitoba. TFW workers covered by UFCW Canada Local 1118 collective agreements at Cargill in High River, Alberta and Olymel in Red Deer, Alberta, also qualify under the Provincial Nominee Program.

The PNP upholds the principle that if a person is good enough to work in Canada, then they are good enough to stay — if that is their ultimate ambition. As a matter of justice, and as a matter of public policy to build a stable civil society, the PNP program provides a framework of fairness and predictability that is woefully lacking in most workplaces that employ temporary workers.

The PNP is available to any province which cares to participate. Provinces should be obliged by the federal government to make the PNP available, if those provinces want to continue as landing points for temporary and migrant workers.

REACHING ACROSS ALL BORDERS

Clearly, Canada's federal government is a willing supporter of diluting what little protection already exists for migrant workers under the CSAWP by aggressively expanding the TFW program. It is a cynical, corporate driven agenda contrary to what should happen: the enhancement and enforcement of workers' rights within the CSAWP to make it a model program for agriculture as well as other sectors.

UFCW Canada and the AWA have been reaching across borders to make that happen, starting with the largest sender of the CSAWP



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workers: Mexico. In 2007, UFCW Canada National President Wayne Hanley and his staff began to establish an ongoing dialogue with Mexico government officials, political leaders, and leaders of the major Mexico trade unions and public interest groups on how to improve the CSAWP to better meet the needs of Mexican workers in Canada.



The dialogue resulted in a formal partnership with a number of Mexico stakeholders to ensure that the human and labour rights of agricultural workers from Mexico were recognized and enforced while they work in Canadian fields and greenhouses under the CSAWP.

The first partnership agreement was with the *Confederación Nacional Campesina* (CNC) and the *Central Campesina Cardenista* (CCC) — the major Mexico advocacy groups representing worker's issues.

That was followed by joint advocacy agreements with the Ministry of Migrants in Michoacán state, and the Migrant Institute in Tlaxcala state.

Next came a landmark 2009 agreement when Wayne Hanley (left in photo), the National President of UFCW Canada, and Governor Leonel Godoy Rangel from the State of Michoacán signed a mutual co-operation pact to ensure the human and labour rights of agricultural workers from Michoacán, Mexico were recognized and enforced while they work in Canadian fields and greenhouses.

It was the first-of-its kind North American agreement, where a state institution had partnered with a civil society organization to extend services and assistance to its citizens working outside of Mexico.

Under the pact, workers from Michoacán are assisted in Canada by UFCW Canada in association with Agriculture Workers Alliance counselling and advocacy services regarding labour rights, housing conditions, medical claims and other work-related issues.

In July 2010, Mexico's Federal District also became a signatory to the cooperation pact.

Working together with Mexico, the major sending country, we have developed a vision to ensure that the rights of migrant workers are respected in the face of a Canadian corporate agenda to play country against country through the TFW program to offer the cheapest labour, unencumbered by any rights.

Instead we share with Mexico the vision of an enhanced model of the CSAWP that would include a transparent appeals process for workers facing repatriation. It means a system that would not only offer better protection to its migrant





workers, but to migrant workers from all countries employed in Canada.

We also share Mexico's commitment that as Canada aggressively expands the use of migrant workers in other sectors beyond agriculture, that workers' rights and representation be a central feature of any temporary foreign workers program.

We have shared that vision in discussion with other sending countries including Thailand, Guatemala, Jamaica, El Salvador, and Honduras; and are ready to act as a resource and ally to sending countries that are serious about the safety and labour rights of their citizens while working in Canada.

We believe that should include the right to join a union and bargain collectively and that is a reality for migrant agriculture at a number of locations in Canada.

MIGRANT FARM WORKERS AND THE RIGHT TO UNIONIZE

Nationally the AWA/UFCW Canada with the support of UFCW Canada local unions across Canada have filed eleven certification applications before provincial labour boards since 2006.

Those applications have resulted in a number of UFCW Canada collective bargaining agreements now in place at a number of agriculture operations in British Columbia and Quebec. These locations include year-round greenhouse and horticultural operations, as well as seasonal field crop and orchard operations.

While each location is unique, the collective



agreements in place demonstrate that the best treatment of foreign workers comes with union representation by the provision of standards that enhance workplace safety, and provide workers a voice in their workplace without fear of reprisal.

This includes:

- A grievance procedure, with full union representation, to provide a transparent, impartial process of appeal to resolve workplace issues without the threat of arbitrary reprisal or repatriation.



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- The right to be recalled (“being named”) each season by the employer based on seniority. Employers are obliged to recall workers from the previous season in priority sequence based on the worker’s accumulated years of service. Employers may not deny veteran workers the right to return, in favour of a new cohort of workers.
- Workplace Health and Safety committees and training.
- Provision of Collective Bargaining Agreements (CBA) and other workplace documents in the language of the worker. In some locations, CBAs also oblige the employer to assist the workers in application for permanent status under the Provincial Nominees Program.
- A place at the bargaining table to negotiate working and living condition standards, overtime and premium allowances, and other workplace conditions.



With a collective agreement in place, migrant and temporary agriculture workers are provided with labour rights and workplace health and safety supervision far above what is available to workers without a contract. In a hard and dangerous

occupation that is prone to employer abuse, the access to collective bargaining redresses a system where workers are typically powerless. As such, the freedom to associate for the purposes of collective bargaining should be absolutely respected for migrant and temporary agriculture workers, as it is for other workers in Canada.

Unfortunately, that is currently not the case in Alberta or Ontario. In Quebec, sections of that province’s labour code also hamper some migrant workers from access to unionizing.

In Ontario, a decade-long UFCW Canada legal battle is expected to uphold the right to unionize for agriculture workers in Ontario, where currently farm unions are prohibited.

In 2008 the Ontario Court of Appeal ruled in favour of a UFCW Canada challenge that the Ontario legislative prohibition of farm unions was a violation of workers’ rights under Canada’s Charter of Rights and Freedoms.

The ruling was reinforced by a June 2007 precedent setting decision by the Supreme Court of Canada which ruled, “...the Section 2(d) guarantee of Freedom of Association protects the capacity of members of labour unions to engage in collective bargaining on workplace issues.” (B.C. Health Services).

Nonetheless, the Ontario government appealed the Ontario lower court decision back to the Supreme Court. Arguments were heard in December 2009. The Supreme Court’s definitive ruling was pending at the time of this publication. The ruling would also inherently address the current Alberta ban on farm unions.





The International Labour Organization (ILO), a United Nations agency has already issued its own indictment of Ontario's ban on farm unions. On November 15, 2010 the ILO upheld a complaint filed by UFCW Canada, under *ILO Convention 87: Freedom of Association and Protection of the Right to Organize*, which declares the right to collective bargaining as a fundamental human right; under ILO Convention No. 98 – *Right to Organize and Collective Bargaining*; and the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*. The ILO found both Canada and Ontario guilty of a discriminatory attack on the human and labour rights of farm workers in the province.

In Quebec, there are a number of bargaining units with both CSAWP and TFW workers, but other bargaining units of temporary workers have been hampered by employer and government appeals under an archaic section of the *Quebec Labour Code* in spite of a definitive ruling against it by the labour board.

In 2010 the Quebec Labour Board also upheld a TUAC Canada constitutional challenge of Article 21.5 of the Labour Code which bars agricultural workers the right to bargain collectively unless

there are at least “three ordinary and continuous employees”.

TUAC had argued that Article 21.5 was an automatic and discriminatory obstacle to the CSAWP workers at a Quebec farm who as a majority applied to join the union. The Quebec Attorney General and the farm lobby group FERME have appealed that decision to the Quebec courts.

The pending ruling by the Supreme Court of Canada could set the Quebec appeal aside.

SUMMARY: EMANCIPATION. NOT DISCRIMINATION.

From the fields of Canada, to the steps of Canada's embassy in Guatemala and beyond, a message rings out that Canada's treatment of migrant agriculture workers is a national and international shame. It is a matter of conscience for Canadians and another blemish on the face Canada shows the world.

Exploitation should not be part of the recipe that brings us food. Labour rights are human rights but increasingly we see a federal government bending to a corporate agenda that is ready to reach to any corner of the world to import and abuse workers. It is a system where fear of reprisal is central to controlling a captive migrant labour force chained by desperation and gagged by the threat of repatriation.

For almost two decades UFCW Canada has been an advocate and voice for agriculture workers in Canada. Based on UFCW Canada and the AWA's direct experience with tens of thousands of



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workers over the past two decades, we can report that the rights, health, and safety of migrant farm workers continue to be cast aside to enrich corporate profits. We see an expanding TFW program that is callous and prone to corruption; yet, held up by the federal government as the wave of the future to meet Canada's growing need for temporary workers in agriculture and other sectors.

It is a frightening landscape, and it is real, and it must change.



As Canada's largest private-sector union, and as a partner of the AWA — Canada's largest national organization for agriculture workers — we will not rest until the labour, safety and human rights of migrant agriculture sectors are acknowledged and upheld.

We will also continue to work at the grassroots level with social justice groups, faith-based organizations, and other non-governmental agencies that are also committed to justice for migrant agriculture workers.

The discrimination against migrant agriculture workers must end. Their emancipation must begin. We believe the path is through an enhanced CSAWP that could become a model program for not just the agriculture sector, but all sectors looking to employ temporary foreign workers.

How could that happen? By providing workers access to the same rights and statutory protections afforded other workers in Canada. By creating national employment, health and safety and labour standards that provinces must abide by if they want to participate in foreign worker programs. By allowing seasonal and temporary workers to gain a voice in their workplace through forming unions without the fear a reprisal or arbitrary repatriation.





RECOMMENDATIONS

Based on our two decades of continuing work with migrant and temporary farm workers, UFCW Canada and the AWA propose the following recommendations for changes to programs that bring migrant agricultural workers to Canada including the CSAWP (Canadian Seasonal Agricultural Workers Program) and the TFW program (Temporary Foreign Workers Program for Occupations Requiring Lower Levels of Formal Training).

1. Provide a transparent, impartial process of appeal, available to all workers, before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.
2. Make it a condition of the CSAWP and the TFW program that provinces bringing migrant workers to Canada provide legislation that allow these workers the right to form and join unions to bargain collectively as provided under the Charter of Rights and Freedoms.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the CSAWP and the TFW programs that workers under the programs are paid as least as much as the provincial seasonal average wage rate.
5. Create national standards that require of the provinces that they fully extend coverage to foreign workers, like all other workers, under the regulatory Employment Standards and Occupational Health and Safety provisions of the province they work in. Provinces that do not meet this standard would be denied access to CSAWP and TFW workers.
6. Create national standards for the provinces to accredit, monitor and discipline if necessary both domestic and offshore recruiters of foreign workers. Provinces that fail to meet these standards would be denied access to workers under the CSAWP and TFW programs.
7. Give the workers a place at the bargaining table to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being “named” (requested by name) by an employer; and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
8. Inspect all workers’ housing prior to and following their occupancy. Frequent and random inspections should also be mandated and occur regularly throughout the season. Employers who are found to be in non-compliance with standards for adequate housing should be terminated from the CSAWP. Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters. These conditions should also apply to housing rented to TFWs by employers.
9. Make it mandatory that all written materials, instructions and signage – particularly



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- regarding workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, Thai, Punjabi and other native languages as necessary. In addition, an orientation on employment standards, and health and safety legislation should be conducted for migrant and temporary workers in their native language before they start their employment. A complete, language-friendly information package on the above should also be provided to each worker.
10. Eliminate the practice of withholding 25% of wages for Caribbean workers.
 11. Immediately terminate from the CSAWP and the TFW programs any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through consular or liaison officers.
 12. If an employer is removed from the CSAWP for violating the agreement, including unfair labour practices such as blacklisting a worker, the employer should be banned from participating in any other federal or provincial foreign temporary worker programs.
 13. Ensure workers are given a free medical exam before they return to their home country, to confirm they are healthy and free from workplace illness or injury. If this is not the case, ensure that worker compensation claims are duly filed.
 14. Provide financial support to the Agriculture Workers Alliance and UFCW Canada for effective, on-the-ground representation for seasonal agricultural workers.
 15. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign workers.
 16. Ensure that employers remit a credible Labour Market Opinion based on much more substantial evidence than currently required, that a shortage of domestic labour exists before allowing the hiring of workers under the CSAWP or TFW programs.
 17. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.

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