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Paper versus Practice: Occupational Health and Safety Protections and Realities for Temporary Foreign Agricultural Workers in Ontario

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1. Introduction

1 Nearly 40,000 temporary foreign agricultural worker positions were approved in 2012 across Canada, with over half of these in Ontario (HRSDC 2012). Farmworkers in these positions primarily come through the federal government's half-century old Seasonal Agricultural Workers Program (SAWP), governed under bilateral agreements between Canada, Mexico and several Commonwealth Caribbean countries. Increasingly, workers also hail from countries as diverse as Guatemala, Thailand and the Philippines through the Temporary Foreign Worker Program's (TFWP) Stream for Lower-skilled Occupations (in place in various incarnations since 2002) and its more recent (2011) Agricultural Stream. This article discusses the occupational health and safety (OHS) conditions and issues for these migrant farmworkers in Ontario, particularly those in the SAWP. We argue that, in spite of a variety of efforts to address and improve OHS in recent years, migrant workers remain fundamentally vulnerable on the job. Lacking collective bargaining rights, and operating with insecure immigration and employment status in a high-risk industry, they are not empowered to address unhealthy or unsafe conditions.

2 We first provide a literature review of OHS issues facing migrant workers, highlighting Ontario-based research. We then discuss the OHS-related legislations and protections available to workers in Ontario, including a focused discussion of the Occupational Health and Safety Act (OHSA). We explain how and why OHS coverage has been limited for agricultural workers in the province, and discuss the specific challenges that temporary foreign workers face in accessing the rights, trainings and protections to which they are entitled.

3 We then present some findings on OHS risks, training and protections, based on a recent study.¹ This research used detailed standardized questionnaires administered with 100 migrant farmworkers (62 Mexicans, 33 Jamaicans and 5 from other countries) who were purposefully sampled because they self-reported health issues or injuries that arose while working in Ontario. In addition, we isolated 30 case studies with more complex or serious health problems for qualitative follow-up interviews. We also interviewed 64 stakeholders, such as community and labour groups, employers, government officials (from the Ontario provincial and Canadian federal governments and sending states, including, Mexico, Jamaica and Trinidad and Tobago), Workplace Safety and Insurance Board (WSIB) representatives, and health care providers. We focused the majority of our community-based interviews in Ontario's Norfolk Region, which hosts the highest concentration of migrant farmworkers in the province. This research took place between 2010 and 2012, allowing us to get a sense of the extent to which the OHSA has made a practical and significant difference in workplace safety for migrant workers following its implementation in 2006.

2. Context and Literature

4 Literature on OHS risks in Ontario agriculture is limited, yet various studies have shone light on the risks faced by farmers and agricultural workers. Farming has consistently been ranked among the province's most dangerous occupations regarding fatal and nonfatal work-related injuries (Brison and Pickett, 1991, 1992, 1995; Pickett and Brison, 1995; Pickett et al., 1995, 1999; Hartling et al., 1997a; Locker et al., 2002). The economic burden of agricultural injuries in Ontario, over a 12-year study period between 1985 and 1996, was estimated to be \$ 19.0 million annually (Locker et al., 2003).

- 5 Some studies among farmers and agricultural workers have revealed that these populations face specific risks for both injury and illness. For example, agriculture has a high rate of work-related traumatic brain injury mortality, with many deaths due to falls (Tricco et al., 2006). The risk for farm injury increased with level of stress (Simpson et al., 2004). Research has demonstrated a possible association between breast cancer and farming; women with breast cancer were nearly three times more likely to have worked in agriculture when compared to the controls (OR 2.8, 95% CI: 1.6–4.8) (Brophy et al., 2002, 2006). Similarly, studies have identified links between pesticide exposure and spontaneous abortion (Arbuckle et al., 1999a; Curtis et al., 1999; Kristensen, 1999). Not surprisingly as well, farming is among the occupational groups facing the largest amount of exposure to solar ultraviolet radiation (Peters et al., 2012).
- 6 In recent years, a growing number of studies have investigated OHS issues among migrant farmworkers specifically. These studies were either based in Ontario or in the workers' countries of origin. In the latter case, workers from across Canada may have been included in the sample, but as the majority of workers have worked in Ontario throughout the SAWP's history, this would still have been the primary study population. These studies have revealed numerous risks, such as: long strenuous work days with few rest periods (Hennebry et al. 2012; McLaughlin 2009; Russell 2003; Smart 1997); exposure to pesticides (Basok 2002:60; Bolaria & Bolaria 1994; Bolaria 1992; Hennebry et al. 2012; McLaughlin 2009; Verduzco and Lozano 2003); sunlight and heat, airborne dusts and animal-borne diseases (Basok 2002:60; Hennebry et al. 2012; McLaughlin 2009); hazardous conditions causing work-related injuries (Hennebry et al. 2012; McLaughlin 2009; Verduzco and Lozano 2003); and inadequate facilities (e.g. running water) to wash before eating (Basok 2002:xv; Hennebry et al. 2012; McLaughlin 2009). A British Columbia (BC) based study of Mexican SAWP workers revealed similar concerns (Otero and Preibisch 2009).
- 7 In the presence of these myriad risks, health and safety training has been inconsistent and insufficient for migrant farmworkers. Russell (2003) found that 88% of 300 Jamaican workers surveyed in a stratified random sample reported working with pesticides and farm machinery, yet less than 23% reported receiving training in these areas, and the training received was often informal. He concluded that: "Training in the use of agricultural chemicals and/or machinery is not emphasized on this program" (2003:6). Preibisch noted that the Mexican and Caribbean workers interviewed for her research "claimed to have received little or no formal training" and that "health and safety training for agricultural work is rarely provided by employers" (2003:30-1). Verduzco and Lozano, who interviewed 358 Mexican SAWP workers, found that 56% of the Mexican workers who applied agrochemicals had received some type of training, but that this training was principally about "receiving instructions on how to do the work." A much lower percentage – only 18 of the 358 workers surveyed – reported being told about "precautions in the use of the chemical or were given an explanation as to how to use the protective equipment" (2003:77). A recent study of nearly 600 Ontario migrant farmworkers found that there was extensive exposure to occupational hazards, with a majority of workers reporting minimal knowledge of the occupational risks in their work, and little health and safety-related information or training (Hennebry et al. 2012). The BC-based study similarly found that 74% of the 100 Mexican workers surveyed had received no health or safety training (Otero and Preibisch 2009).
- 8 Research has consistently demonstrated that the provision and use of personal protective equipment (PPE) among SAWP workers has been variable and insufficient. Several researchers report that some workers are exposed to machinery, pesticides and other chemicals without adequate (or any) protective clothing or respiratory protection (Basok 2002:60; Bolaria 1992; Hennebry et al. 2012; McLaughlin 2009; Russell 2003; Verduzco and Lozano 2003).
- 9 Illness and injury rates among temporary agricultural workers in Canada appear to be both high and underreported (Hennebry et al. 2012; McLaughlin 2009). Studies of Mexican workers (Binford et al. 2004) and Jamaican workers (Russell 2003:82) found illness and injury rates of

around 25% in migrant farmworkers. Some 32% of workers in the Jamaican study reported a long-term disability as a result of illness or injury experienced while in Canada (Russell 2003). As we have argued elsewhere (McLaughlin and Hennebry 2013; McLaughlin and Hennebry, forthcoming), migrant workers' access to rights is inherently limited by a combination of their precarious employment and immigration status. This situation is exacerbated by the extreme pressure most workers' feel to maintain current and future employment to support their families living in the global South, in a context of gross global inequities. This power imbalance and intense competition among migrant-sending countries for employment positions and remittances combine to limit the capacity of these countries' governments to effectively advocate for improved conditions for their workers abroad, a conundrum that is not unique to the SAWP (see, for example, Choudry et al. 2009; Rodriguez 2010). These issues must be understood as part of a larger trend of labour market restructuring in Canada as well as in other high income countries, in which an increasing demand for precarious, flexible, just-in-time labour has contributed to a growing reliance on "unfree" migrant labour. The resulting entrenchment of "temporary foreign worker" programs in agriculture, among other industries, has had significant impacts on the ability of workers to effectively advocate for and protect their rights, as worker vulnerability has proven to be intrinsic to the employment relationship structured into these guest worker programs (McLaughlin and Hennebry 2013; Sargeant and Tucker 2009). This vulnerability is compounded by a variety of factors, such as language differences, social exclusion, lack of information and understanding of local labour rights, lack of union protection, placement in dangerous industries, and pressure to work long hours (Hennebry and McLaughlin 2012b; Sargeant and Tucker 2009).

3. Ontario's Occupational Health and Safety Strategy and Implications for Migrant Farmworkers

All agricultural workers in Ontario have faced numerous restrictions and limitations on the rights considered standard for workers in other industries. Much of the reason underlying these exclusions has been the notion of agriculture as a small family endeavour which should not be subject to industrial labour laws (see Preibisch 2012; Tucker 2006). Farming is still a highly competitive industry and many farmers, especially smaller operations, struggle with shrinking profit margins that result from a cost-price squeeze between what they must pay for inputs and what they are able to charge for their outputs (Winson 1993). However, as the industry has become centralized into larger industrial operations, many bringing production, packing and distribution under one roof and employing larger numbers of employees, the idea of small family farmers predominating and warranting a complete exemption from labour standards is no longer sustainable. Furthermore, while environmental conditions and seasonal variations continue to pose challenges for some agricultural commodities, many now increasingly operate year-round in the climate controlled conditions of greenhouses and nurseries. Despite these changes, agricultural workers continue to be excluded from several pieces of legislation, and even for those legislations for which they now have legal inclusion, migrant farmworkers face specific challenges to claiming and protecting their rights.² While agriculture is included in the **Employment Standards Act**, farmworkers are excluded from several key components of this Act, including minimum wage, hours of work, daily as well as weekly and bi-weekly rest periods, statutory holidays and overtime.³ In the absence of this legislation, the SAWP agreements contain some basic guidelines regarding hours of work. For example, these agreements specify that workers should be entitled to one day of rest for every six consecutive days of work, and that the normal working day is eight hours. The agreements state, however, that employers may request that workers postpone their day of rest and extend their workday when the urgency of the work requires it (SAWP Agreement 2013). Our research has consistently suggested that in practice workers feel they must oblige these requests since to refuse their employers' demands could jeopardize their current or future positions. Several studies have suggested that the average number of hours worked by migrant workers per week is 63-65 (well above the standard 40 hour work week), and that these periods

can increase significantly during the demanding harvest periods (Binford 2002; Hennebry et al. 2012; Otero and Preibisch 2009; Russell 2003). Indeed, one of the key reasons that employers hire migrant farmworkers is their willingness to work long and fluctuating hours, including their readiness to forsake weekends, evenings and holidays, which few Canadians are prepared to do (Basok 2002). These long hours of demanding physical labour, often in intense heat and with few rest periods, increase workers' susceptibility to work-related illness and injury.

15 All agricultural workers are *excluded* from the **Labour Relations Act**, which provides workers with the right to bargain collectively as part of a union. Much to the dismay and anger of union leaders and labour rights activists, after a long fought legal battle, the Supreme Court of Canada ruled in 2012 that the exclusion of agricultural workers from the Act could continue. Agricultural workers are instead covered under the Agricultural Employees' Protection Act (AEPA) of 2002, which extends some basic rights, including the right to join an employee association, to assemble, and to make representations to their employers through these associations.⁴ Without the right to bargain collectively, however, many critics argue that the AEPA is toothless and does not provide workers with the protections they need to effectively advocate for their rights.⁵ Indeed, meaningful worker representation, including the use of unions, is a key component to ensuring that workers' voices are effectively heard and that they are able to access OHS and related protections (Vosko et al. 2011).

16 Agricultural workers are covered under the **Workplace Safety and Insurance Act**, which provides them with access to workers' compensation benefits in the event of a workplace-caused injury or illness. Although some injured workers have been able to access claims through the WSIB, our research suggests that there remain multiple barriers to accessing claims. These include, among others, language and cultural barriers, transportation and work schedules, third-party intervention and lack of confidentiality, fear of loss of employment or earnings, repatriation, and jurisdictional issues, which we discuss in more detail elsewhere (McLaughlin 2007, 2009; Hennebry and McLaughlin 2012a; McLaughlin et al. forthcoming).

17 Agricultural workers may make use of the **Office of the Worker Adviser**,⁶ an independent agency of **Ontario's Ministry of Labour** (MOL) that assists non-unionized workers who have experienced injuries or health and safety reprisals at work. Few migrant workers take advantage of these services, in part because they are not aware of them. Telephone lines listed on-line are available only in English and French. Recently, however, there have been a few cases of workers who have used the service. These workers have been referred by third parties, like politicians and advocates, rather than calling on their own. Where necessary, the office can make arrangements for interpretation services to communicate with workers who do not speak English or French.

18 The **SAWP Agreements** do not include much additional information on workplace health and safety, with the important exception of pesticide handling. The agreement instructs employers to ensure: "that workers handling chemicals and/or pesticides have been provided with protective clothing at no cost to the worker, received appropriate formal or informal training and supervision where required by law" (SAWP Agreement 2013). In this regard, the provision is only as good as the applicable provincial laws. Ontario has legislation regulating the use of pesticides and training of pesticide applicators, but only in specific cases. Any worker who handles pesticides classified as "Schedule 2 and 5"⁷ must become a "trained assistant," through a session offered by the University of Guelph known as the Ontario Pesticide Education Program.⁸ As we discuss below, the majority of workers in our research reported that they did not receive adequate training and protection when working with pesticides. Workers who do not directly handle pesticides, and therefore are not subject to training and equipment provisions, may still be exposed to them during or after their application. Outside of pesticides, other risks within agriculture regularly encountered by migrant workers remain largely unregulated.

19 The most significant shift in terms of OHS protections for agricultural workers has been their inclusion under the **Occupational Health and Safety Act** (OHSA), which is administered by the MOL. In place for other sectors since 1979, agriculture remained excluded from the Act until 2006. The OHSA provides workers with the right to know about potential workplace

hazards, to participate in resolving workplace health and safety concerns, and the right to refuse unsafe work. The Act contains a detailed step-by-step process that must be followed by the farm owner/operator when there is such a refusal.

20 Given these changes to the legislation, it was expected that employers and other key informants would note the influence of this legislation on workplace safety. Our results, however, indicate that its impact on workplace practices has been mixed at best. Employers we interviewed were divided on their perception of its relevance and impact on their workplace practices. Some employers thought the OHSA had made no difference, with one remarking: “Nothing has changed....No, because I do not feel that it is necessary. I believe that we (farmers) are already over-regulated by the government” (employer, interview, 2011). On the other hand, other farmers noted varying degrees of change in response to the OHSA. For example, one acknowledged:

Well we've changed since this has been coming into play... we're looking at our equipment to make sure guards are in place, we're extra-training our workers. I get a visit here from the work safety, and they bring me all the paperwork and everything and we posted it. And we're making workers aware of it.... We've made an extra effort now and make sure everything is in place and everything is where it's supposed to be to you know, to promote and keep things safe (employer, interview, 2010).

21 Likewise, some workers and their consular officials noted improvements in the health and safety environments in their workplaces, while many other workers and their advocates, including legal and labour representatives, have remarked that the OHSA has made few meaningful changes in the day-to-day reality of migrant workers. These mixed views reflect the fact that workplaces and employers are highly inconsistent in their practices – indicating that the OHSA has not universally impacted farm operations.

22 Additionally, the OHSA contains some significant limitations with respect to agricultural workplaces. For example, key to the success of the OHSA's internal responsibility system is the use of joint health and safety committees in workplaces. The role of these committees, which include both management and workers, is to identify workplace hazards and make recommendations to improve conditions. These committees are only required in operations with 20 or more regularly employed workers, which immediately disqualifies many smaller agricultural operations. Further, the committees are only required in specific agricultural sectors, namely: greenhouse, mushroom, dairy, hog, cattle, and poultry.⁹ With the exception of greenhouses, none of these industries are major employers of SAWP workers (although the other industries do employ migrant workers in the other streams of the TFWP). Instead, the industries which most commonly employ SAWP workers – fruit and vegetable field and orchard production – are not included under this provision. Consequently, *most SAWP workers would not have access to mandatory health and safety committees in their workplaces.*

23 Any agricultural operation may be subject to MOL inspections; however, they usually occur when a complaint or concern is raised. That being said, the actual numbers of inspections, orders to improve conditions, and work refusals have been minimal. According to MOL statistics, in agriculture in the three years between 2008 and 2010, there were 580 actual inspections, 585 investigations into work operations, 957 orders to improve conditions, 97 complaints, and *no work refusals* in this time period in the agricultural sector. Broken down, these figures translate into a yearly average of 193 actual inspections in agriculture, 195 investigations, 319 orders to improve conditions, 25 complaints, and 0 work refusals. In 2010-11, there were 428 field visits and 334 orders to improve conditions. There are no statistics which separate which of these actions were undertaken on farms that employ migrant workers.

24 Many of these inspections, however, occurred in non-farm industries that are nonetheless considered to be part of the agricultural sector, such as pet clinics and landscaping companies (Richmond, 2010). An access to information request issued by the United Food and Commercial Workers revealed that in the years between 2006 and 2010, orders to improve conditions had been issued at only 71 of Ontario's 60,000 farms. Stan Raper, head of the

Agricultural Workers Alliance, which has acted as a resource and advocate for agricultural workers, pointed out:

“At an average one inspection per farm daily, it will take decades -- 164 years, to be exact -- to reach all Ontario farms.”

Raper also noted that “on all the farms visited, not a single worker refused to work in unsafe conditions” (as quoted in Richmond 2010).

25 Raper affirmed that little has changed since then, remarking that, according to his knowledge:

“There has been no work refusal by an agricultural worker under the new Occupational Health and Safety Legislation implemented in 2006.... (There have been) no complaints because (there are) no regulations for confined space / heat stress / unguarded equipment, etc. They have guidelines and guidelines don't provide protections for workers” (raper, interview, 2013).

26 *Safe At Work Ontario* is the MOL's compliance strategy for the OHSA.¹⁰ Part of the strategy involves inspection blitzes focusing on specific high-risk industries, including a blitz that took place in the summer of 2013 with agriculture among the targeted sectors, and a specific regional initiative focused on wineries in the Western region. The New and Young Worker Blitz inspections focused on: orientation, training and supervision; minimum age requirements; the internal responsibility system (for example, having a joint health and safety committee where mandated); and safety measures to prevent injuries.¹¹

27 In addition, MOL officials attend agricultural fairs and meet with consular officials of SAWP-sending countries, and connect with the farming community through a multi-stakeholder technical advisory committee. Importantly, the MOL provides a 1-800 number for people to call with concerns, although the number is only available in English and French. The number of inspectors trained in farming has also increased significantly, from just 27 in 2005-2006 to over 200 as of 2013 in the industrial program. Inspections, though still small in number relative to the number of farms, have increased and are now both proactive and reactive.¹² In 2013, the MOL hired a Vulnerable Workers Specialist to address issues of all vulnerable workers in Ontario, including migrant farmworkers.

28 Ministry officials, however, continue to encounter difficulties, such as: not having a clear sense of where and when migrant workers may be encountered on site (in part due to their temporary and transitory positions and in part because they have no list of where they are employed); not differentiating between Canadian and foreign migrant farmworkers in their statistics; and language barriers between inspectors and workers. Another challenge in agriculture is the lack of specific regulations with enforceable terms.¹³ For example, there are no regulations with respect to ergonomic risks (in agriculture or any other industry), which comprise one of the most prevalent hazards for farmworkers. Finally, employers' mistrust and/or ignorance of government ministries and legislation presents numerous challenges, as does the poor culture of safety in the sector, which we discuss further below.

29 Indeed, there is limited evidence of improved training and protection in some agricultural worksites, and very little ground has been gained in the area of worker refusals to work in unsafe conditions. When they do occur, most complaints are made through emergency service personnel, who report injuries or deaths among workers. Workers' extremely precarious employment conditions, in which they have no meaningful representation and are inherently disempowered from refusing unsafe work, constitute significant barriers to meaningful implementation of the OHSA in agricultural workplaces. In particular, the repatriation clause in their employment agreements remains a distinct challenge facing migrant workers. This clause specifies that the employer “shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the worker's employment...and so cause the worker to be repatriated” (SAWP Agreement 2013: 5). As one legal worker explained:

Migrant workers have...almost non-existent possibilities of complaining or refusing any work that they consider unhealthy or dangerous. There is no way, there's no way that they are going to stand up or challenge. Even the ones that ... have the courage enough to do it, they don't want to lose the job. They don't want to be shipped back to their countries (legal worker, interview, 2011).

30 Moreover, workers have an interest in maintaining positive relationships with their employers in order to be evaluated favourably and invited back into the program the following year, on which many of them depend to support their families (McLaughlin 2009). This fundamental power imbalance is a major deterrent to workers feeling safe enough to issue complaints or work refusals, even if failing to do so means compromising their health or safety. It is for this reason that proactive, and not only reactive, inspections are especially important for the protection of migrant workers. As Vosko et al. conclude in their extensive review of enforcement and compliance of OHS standards for vulnerable workers,

“Proactive enforcement, supplemented by meaningful participation by workers’ organizations so that workers voices can be heard in the regulatory regime, is essential” (2011 :56).

31 Finally, although the focus of this article is on Ontario government OHS responses, it is important to note the extensive efforts and interventions of non-government groups. Most notably, the Agricultural Workers Alliance (funded by the United Food and Commercial Workers Union) and the volunteer collective Justicia for Migrant Workers (J4MW), among other groups, have provided key support, education and advocacy in OHS-related initiatives for migrant workers. In addition to prompting the initial inclusion of agricultural workers under OHSA, a change which occurred following a UFCW-led legal challenge,¹⁴ efforts supported by such groups have helped to bring migrant worker OHS issues to the public’s attention. For example, following the 2004 death of migrant worker Ned Peart, J4MW fought for a coroner’s inquest, and when they were denied, they and Peart’s brother Wilbert brought forward the case before the Human Rights Tribunal seeking mandatory inquests for all workplace deaths in the SAWP. If the case is successful, J4MW argues that coroners’ reports could provide important recommendations to improve OHS conditions and prevent future deaths on Ontario farms (see Gamble 2013). Further, the MOL-funded Occupational Health Clinics for Ontario Workers (OHCOW), particularly the Hamilton office, have provided specialized occupational health clinics and prevention workshops for agricultural workers since 2006. Although limited in scope, these initiatives have served as a model for the provision of accessible OHS services. Several legal clinics, including the Industrial Accident Victims Group of Ontario, have provided legal representation and advocacy to migrant workers for WSIB claims.

32 The collective efforts of these and many other community-based agencies have made a major impact, particularly regarding the education of migrant workers about their rights. The depth of their impact, however, has been limited by the restricted nature of the SAWP agreements and the extreme vulnerability of workers, who, as discussed earlier, often feel as though they cannot safely access rights, even if they do have support to do so (Hennebry, 2012). Furthermore, as they are legally prohibited from bargaining collectively in Ontario, migrant workers have been excluded from meaningful collective representation to advocate for improved conditions. In sum, although some efforts are being made by both government and non-government sectors to improve the situation, they do not reach far enough. Migrant workers remain deeply vulnerable and disempowered. While laudable, any efforts to provide support and education will have little meaningful impact in the absence of fundamental changes to issues regarding workers’ lack of representation and their precarious employment and immigration status.

4. Research Findings on Risks, Training & Personal Protective Equipment

33 The majority of the 100 migrant workers interviewed in our survey reported receiving very limited training related to health and safety procedures in the workplace. Of the workers who applied or handled pesticides, only 13% (6/47) indicated that they had received training or instructions in their safe use and just 4% (2/47) said they received a training certification card. There was no statistically significant difference in training rates among Mexican versus Caribbean workers.¹⁵ Those who did receive training tended to have received informal training while working on worksites, rather than formal classes. Moreover, although some received written information or a video, problems with language knowledge and low levels of literacy are likely to have limited the usefulness of this material. Labelling of pesticides, which comes

under Health Canada's Pesticide Management Regulatory Agency, only requires labels to be in French or English.

34 Additionally, only 14% received training or instructions about how to avoid muscular strain and injuries, with just 2% receiving a formal class/lecture; the rest were given a video, written information or informal instructions in the field. The training was mainly conducted by the crew leader. Of those who reported workplace injuries in our study, 78% said that they had **not** received any instructions which could have helped to prevent the injury.

35 While 75% of workers in our sample were given gloves, less than 5% were given a mask or other personal protective equipment. Of course, the type of PPE required would vary based on the task at hand, but in general our research suggests that workers are not being offered extensive or sufficient PPE. Legal advocates also noted that migrants often work without sufficient protective equipment. As one remarked, for example:

"I have seen that they have no protection whatsoever when, you know, they are working with pesticides.... you rarely see them wearing any mask or gloves" (legal worker, interview, 2011).

36 While some sending countries provide basic health seminars to departing workers on issues such as sexual health, we found that occupational health and safety training in workers' countries of origin is almost non-existent. As one Caribbean government official acknowledged:

No they don't get training – they depend a lot on the instruction of their bosses and their past experience. We don't have a department or person that trains them in occupational safety... The safety and the rights are not paramount to the workers – it is about the money. Their interest is to come there and work and to come back to take care of their families. It is not about health and safety – if it is very dangerous we will complain, but otherwise we will find a way to work around it. The most important thing is that we have a job and are getting paid for it (Caribbean government official, interview, 2012).

37 Workers' perceptions of health and safety depended largely on their employers' treatment – insofar as they perceived workplaces to be safer when employers treated them well. Further, some claimed that employers do not protect them, but put their own economic needs first, and blame workers when there is an accident. Some quotes from workers interviewed illustrate these views:

"He doesn't give a shit about [making] the work safer. He just want his work to get done to make some money <chuckle>. It doesn't matter who died or who live so long's his work get done and him make some money." (Jamaican worker, interview, 2011)

"Di boss not gonna tell you di truth no matter what you do.... When I'm spraying the field and the guys are there picking berries, I'm spraying the chemical and the guys are in, picking at the same time. They gots to stop and move over sometimes. And when they come out the field, the boss says, it's not gonna hurt them. Why they gonna come out. That happening like for over quite a few years I was doing that and the guys are still in the field at the same time... And liaison won't tell you di truth also, dats the next ting." (Jamaican worker, interview, 2011)

"They're pushing you hard...too fast and I think that's the problem. You can't work to keep up with machinery and that's what he want you to do at all times." (Mexican worker, interview, 2010)

38 Only a small minority of workers (13%) perceived that their workplaces were very safe, followed by another 34% who perceived their workplaces as "safe." Interestingly, just 10.5% of Mexican workers perceived their workplaces as "not safe" and nearly 16% as "somewhat but not totally safe," whereas almost 20% of Caribbean workers felt their workplaces were "not safe" and almost 30% felt that they were "somewhat but not totally safe." Table 1 shows the distribution across sending countries.

Table 1. Perceptions of Workplace Safety by Country of Origin

| Source Country | | Safety of Workplace | | | | | Total |
|----------------|-------|---------------------|------|---------|---------------------------------|----------|-------|
| | | Very safe | Safe | Neutral | Somewhat, but not, totally safe | Not Safe | |
| Mexican | Count | 6 | 23 | 13 | 9 | 6 | 57 |
| | % | 11% | 40% | 23% | 16% | 11% | 100% |

| | | | | | | | |
|-----------|-------|-----|-----|-----|-----|-----|------|
| Caribbean | Count | 5 | 7 | 4 | 9 | 6 | 31 |
| | % | 16% | 23% | 13% | 29% | 19% | 100% |
| Total | Count | 11 | 30 | 17 | 18 | 12 | 88 |
| | % | 13% | 34% | 19% | 20% | 14% | 100% |

Note : Excludes non-response and other countries of origin (n =2).

- 39 Workers' perceptions of some specific workplace risks also varied by country of origin. For example, when asked about the dangers of pesticides, just under 30% of Mexicans considered pesticides as "extremely dangerous" and 47% considered them "quite dangerous." Comparatively, nearly 68% of Caribbean workers thought pesticides to be "extremely dangerous" and 16% to be "quite dangerous." Both groups had just under 15% who felt pesticides were not dangerous. Further, when asked whether they felt that their work was hazardous to their health over the long-term, 70.8% of Mexican workers, in comparison to 56.7% of Caribbean workers, thought this to be the case. Table 2 summarizes these results.

Table 2. Perceptions of Work Hazards over the Long Term by Country of Origin

| Source Country | | Is your work hazardous to your health over the long term ? | | | |
|----------------|-------|--|---------|------------|---------|
| | | No | Yes | Don't know | Total |
| Mexican | Count | 14 | 34 | 0 | 48 |
| | % | 29,2 % | 70,8 % | 0,0 % | 100,0 % |
| Caribbean | Count | 8 | 17 | 5 | 30 |
| | % | 26,7 % | 56,7 % | 16,7 % | 100,0 % |
| Other | Count | 0 | 2 | 0 | 2 |
| | % | 0,0 % | 100,0 % | 0,0 % | 100,0 % |
| Total | Count | 22 | 53 | 5 | 80 |
| | % | 27,5 % | 66,3 % | 6,3 % | 100,0 % |

Note : This relationship was determined to be statistically significant with Pearson Chi-Square test at $\alpha = 0,05$.

- 40 Additionally, workers identified specific workplace health risks that they felt they encountered while working on farms in Ontario. Among the 100 migrant workers surveyed, a number of common health risks perceived by workers were identified: over 60% of workers noted pesticide exposure; nearly 35% indicated working in heat and with variable temperatures; 20%, working with machines and equipment; 10%, repetitive work and muscular strain; and 10%, long hours, among a variety of other risks.
- 41 Comparatively, from the perspective of employers, their sense of worker safety ranged from ambivalent – placing the emphasis on worker responsibility – to active involvement and concern because of workers' close relationships to them, as in the case of one employer who noted that he had been to visit the families of his workers in Jamaica nine times. Most employers, however, did not take such an active role in the workers' lives, indicating that once they perceived that they had trained workers in proper safety measures, after that, it was out of their hands. The primary challenges to ensuring worker safety that they identified all revolved around the workers' own actions or challenges, noting difficulties with compliance, language and cultural differences. As one employer reasoned:

The risk, it all falls on the worker. It's up to him to follow his training and everything that is taught to him... let's say he's going on that tractor and he decides to stick his finger in somewhere he's been told he's not supposed to, okay, whose fault is that really? That is not the employer ... He's been trained. He's been told. But, he decides to do it on his own. So whose fault really is that? It's the worker (employer, interview, 2011).

- 42 Employers say they will make PPE available, but workers often do not want to use it, and they generally do not require them to do so. Contributing to the reticence toward PPE is the general sense that "farmers will be farmers" and this is transferred onto these workers. As one employer put it:

You know I won't beat someone up to use a pair of gloves, but I'll provide ... them and they'll be there and they know they're there. If they elect not to put them on because they don't want to, that's not my place to make them do something. Because other than for, if you're working with

chemicals and things like that- I actually own a proper respirator mask... I think it's been out of the box once, that's the day I bought it and went, okay, I own one now and put it on the shelf. Typical farmer. You know, I don't have time to put this stupid thing on to dump my jug of bravo in. I'll get hell for that one yet (employer, interview, 2011).

43 Repeatedly, our stakeholder interviews revealed that there has been a poor “culture” of safety within farming over the decades. Although recent efforts in the wake of the OHSA by various associations such as the Farm Safety Association as well as government ministries including the MOL and the Ontario Ministry of Agriculture and Food (OMAFRA) have made inroads, generally attitudes are slow to change. The MOL’s internal responsibility system, which encourages everyone within a workplace to work towards maximum health and safety protections, has been a challenge because it depends on everyone within a workplace – employers, supervisors and workers – taking workplace health and safety measures seriously, which in effect provides defacto power to employers to make workplaces safe. Due in part to the late introduction of the OHSA in agriculture, many operations have become accustomed to functioning with few safeguards in place, and it is a long and arduous process to change the culture of the industry, for both farm operators and workers, towards one which emphasizes health and safety protections over, for example, worker productivity, convenience and comfort. Furthermore, as discussed earlier, with the increased consolidation of operations into large industrial complexes, the image of small family farms which initially justified exclusions from labour and OHS rights can no longer be sustained (Hennebry and McLaughlin 2012b).

44 Complicating this picture for migrant workers is the fact that there is very little incentive to ensure their long-term health, since they can be easily replaced with younger, fitter, healthier workers at the beginning of each season. Employers can continually request new workforces, but workers’ contracts are tied to one employer, and transfers, while possible, are often unavailable or not approved for workers.¹⁶

45 Employers who have not complied with labour laws or have been in breach of employment contracts have faced minimal consequences with respect to the Temporary Foreign Worker Program. Despite regulatory changes introduced by the federal government in 2011 to deny certain employers access to migrant workers for up to two years and to put the names of employers who have been in violation of provincial labour and health and safety laws (among other contractual breaches) on the Citizenship and Immigration Canada website “List of Ineligible Employers,” at the time of writing, not one employer had yet been identified on this website (see: Citizenship and Immigration Canada, 2013). Recent changes introduced through the Economic Action Plan (2013) claim to strengthen measures to ensure employer compliance, but no regulatory changes have been made involving improved enforcement of health and safety (see: Government of Canada, 2013). Employers clearly have considerably more power and latitude than do workers. Lacking union representation, and continually fearing that they could lose their employment for demanding better conditions, status quo OHS protections are often insufficient for these workers. As one official put it, all too often these workers “trade their health and safety for a paycheque.”

5. Conclusion

46 This research contributes to the growing body of evidence which suggests that Ontario’s OHS legislation and policy contain significant gaps in terms of providing meaningful and comprehensive protections for the particularly vulnerable workforce of migrant farmworkers. In general, migrant workers are under-trained and under-equipped to deal with the multiple hazards that they encounter in their workplaces, these standards varying significantly across agricultural operations. However, training and PPE alone do not ensure safe worksites, and to be truly effective OHS legislation must ensure that workers are empowered to question, learn about, revise or refuse work tasks when their health or safety is in question.

47 Importantly, many of the fundamental areas of vulnerability for workers are influenced by federal-level immigration policies which govern the programs themselves, while OHS legislation is under provincial jurisdiction. It is imperative that both federal and provincial

regulatory and enforcement mechanisms be strengthened through more *proactive* regulatory changes. These must recognize the vulnerability of migrant agricultural workers and the power imbalances within which they work, which render complaint-based, voluntary-compliance systems largely ineffective. Among other measures, the following are priorities that would make immediate improvements to the health and safety of migrant workers in Ontario, namely: mandatory PPE and accessible health and safety training; an increase in proactive inspections; the creation of a migrant worker ombudsperson coupled with independent appeals for workers whose employment is terminated; full inclusion under all relevant provincial legislation and protections; and increased multilingual support and consultation for workers.

48 In January 2010, the Ontario Minister of Labour appointed Tony Dean as Chair of the Expert Advisory Panel to lead a comprehensive review of Ontario's Occupational Health and Safety Prevention and Enforcement system (Dean 2010). The resulting recommendations balance the need to give better protection to workers with the need to enhance resources and compliance teamwork in the business sector. The Dean findings also make note of the heightened risks and additional protections recommended for vulnerable workers, including migrant farmworkers. Partially in response to these findings, there have been new initiatives undertaken by various stakeholders, including the MOL, to address some of the OHS issues within agriculture, which we have documented in this article. Much still remains to be done, however, to adequately protect this uniquely vulnerable labour force amid multiple layers of risk. Given that migrant workers are widely seen as non-citizen outsiders, it is highly doubtful that the political will exists in the near future to meaningfully improve their conditions, especially when private interests seemingly benefit from the status quo. It is not enough to say that, in theory, migrant workers have access to the same OHS entitlements as do Ontario workers; until their unique layers of vulnerability are meaningfully removed, these rights will, in practice, remain largely elusive.

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Notes

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2 For more detailed information on the Employment Standards and Occupational Health and Safety Acts, as well as challenges to their enforcement and recommendations for improvement, see : Vosko et al. (2011). For similar arguments see Chapter 5 of Choudry et al. (2009) and Preibisch (2007).

3 See : www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php.

4 See : www.omafra.gov.on.ca/english/busdev/facts/03-045.htm for more information.

5 See the edited volume Fay Faraday, Judy Fudge and Eric Tucker (2012) *Constitutional Labour Rights in Canada : Farmworkers and the Fraser Case*. Toronto : Irwin Law.

6 See : www.owa.gov.on.ca/Pages/default.aspx.

7 According to Ontario's Ministry of Agriculture, Food and Rural Affairs, schedule 2 pesticides are considered : "toxic ; persistent and moderately mobile," while schedule 5 are "very toxic ; very persistent ; highly mobile ;" and used when "less toxic or less persistent alternatives are not available" (See the web site at : www.omafra.gov.on.ca/english/crops/resource/1pestic1.htm).

8 The Program's web site and more information can be found at : <http://www.opec.ca/>.

9 See : www.omafra.gov.on.ca/english/busdev/facts/qandaohsa.htm.

10 See : www.labour.gov.on.ca/english/hs/sawo/about.php.

11 See : www.labour.gov.on.ca/english/news/2013/bg_yw20130510.php for more information.

12 See : www.labour.gov.on.ca/english/hs/topics/farming.php for the designated MOL web-site for farming operations including the farming sector plan.

13 See : www.e-laws.gov.on.ca/html/regs/english/elaws_regs_050414_e.htm for more information.

14 See : www.ufcw.ca/index.php?option=com_content&view=article&id=547&catid=5&Itemid=99&lang=en ?

15 In 2010 the Farm Safety Association (FSA), Industrial Accident Prevention Association (IAPA) and Ontario Service Safety Alliance (OSSA) amalgamated to form a new health and safety organization. See : www.iapa.ca/Main/About_IAPA/about_amalgamation.aspx#amalgamation.

16 See : The Mexican SAWP Agreement (2013) for details on transfers.

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Résumés

Over 20,000 temporary foreign agricultural workers come to Ontario each year, primarily from Mexico and the Caribbean. Agricultural workers are exposed to a number of occupational health and safety (OHS) risks. This article discusses the various OHS protections available to workers and their limitations, and analyzes the specific challenges that temporary foreign workers face in accessing rights, such as language and cultural barriers, information gaps, and precarious employment and immigration status. It also analyzes the limitations with respect to OHS training and the provision and use of personal protective equipment, arguing that these protections are under-regulated and inconsistent. The article concludes with recommendations to improve shortcomings, including standardized and specific OHS training, random OHS inspections, and full inclusion of agricultural workers in provincial legislations. Findings are based primarily on interviews with 100 migrant farmworkers who reported injuries or illness, as well as with key stakeholders such as employers and government officials.

L'écart entre la théorie et la pratique : les protections en santé et en sécurité au travail et la réalité de la main-d'œuvre étrangère temporaire du domaine agricole en Ontario

Plus de 20 000 travailleurs étrangers temporaires en agriculture affluent chaque année en Ontario, la plupart en provenance du Mexique ou des Caraïbes. Ils sont exposés à de nombreux risques en santé et en sécurité au travail (SST). Les diverses protections en SST disponibles aux travailleurs, ainsi que leurs limites, sont décrites dans l'article. Les problèmes d'accès aux droits auxquels fait face la main-d'œuvre étrangère, à cause, entre autres, des barrières linguistiques ou culturelles, des lacunes dans l'information, de la précarité d'emploi et du statut d'immigrant y sont analysés, ainsi que les faiblesses dans la formation en SST, la disponibilité et l'utilisation de l'équipement de protection personnelle, résultat d'une sous-réglementation et d'incohérences. En conclusion, des recommandations sont apportées pour remédier à ses problèmes : une formation uniforme et propre à la SST, des inspections aléatoires, et la pleine intégration de la main-d'œuvre agricole dans les lois provinciales. Les conclusions sont basées, pour la plupart, sur le résultat d'entrevues menées auprès de 100 travailleurs agricoles migrants ayant déclaré une blessure ou une maladie, et de principaux intervenants tels que les employeurs et les représentants de l'État.

El papel frente a la práctica: salud ocupacional y protección de la seguridad y realidades para los trabajadores agrícolas extranjeros temporales en Ontario

Cada año, más de 20.000 trabajadores agrícolas temporales extranjeros vienen a Ontario, principalmente de México y el Caribe. Los trabajadores agrícolas están expuestos a una serie de riesgos de seguridad y salud en el trabajo (SST). Este artículo analiza las diversas formas de protección en SST de las que disponen los trabajadores así como sus limitaciones y analiza los retos específicos que enfrentan los trabajadores extranjeros temporales en el acceso a sus derechos como por ejemplo: las barreras lingüísticas y culturales, la falta de información, y el estatus migratorio y de empleo precario. También se analiza las limitaciones con respecto a la formación en SST y el suministro y uso de equipos de protección individual, con el argumento de que estas formas de protección están insuficientemente reguladas y son inconsistentes. El artículo concluye con recomendaciones para mejorar las deficiencias, estas recomendaciones

incluyen: la formación estandarizada y específica en SST, inspecciones de SST de manera aleatoria y la plena inclusión de los trabajadores agrícolas en las leyes provinciales. Los resultados se basan fundamentalmente en entrevistas con 100 trabajadores agrícolas migrantes que han reportado accidentes o enfermedades así como en entrevistas con las principales partes interesadas: empleadores y funcionarios del gobierno.

Entrées d'index

Mots-clés : main-d'œuvre étrangère, main-d'œuvre agricole, santé au travail, Ontario, Loi sur la santé et la sécurité au travail (LSST)

Keywords : temporary foreign workers, farmworkers, occupational health, Ontario, Occupational Health and Safety Act (OHSA)

Palabras claves : trabajadores extranjeros temporales, trabajadores agrícolas, salud ocupacional, Ontario, Ley de seguridad y salud ocupacional (OHSA).