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CRISIS OF CONTROL: OHS AND WORKERS' COMPENSATION IN CANADA'S
MIGRANT AGRICULTURAL WORKERS' PROGRAMS

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CRISIS OF CONTROL:

**OCCUPATIONAL HEALTH AND SAFETY AND WORKERS'
COMPENSATION IN THE SEASONAL AGRICULTURAL WORKERS
PROGRAM (SAWP) AND THE AGRICULTURAL STREAM OF THE
TEMPORARY FOREIGN WORKERS PROGRAM (TFWP)**

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TITLE: Crisis of Control: Occupational Health and Safety and Workers' Compensation in the Seasonal Agricultural Workers Program (SAWP) and the Agricultural Stream of the Temporary Foreign Workers Program (TFWP)

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ABSTRACT

While agricultural work is hazardous for all workers, migrant workers face additional challenges that make them more vulnerable than domestic workers. The lack of access to permanent immigration status in the Seasonal Agricultural Worker Program (SAWP) and the agricultural stream of the Temporary Foreign Workers Program (TFWP) makes workers' jobs hinge on retaining their employers' favour and creates a particular type of job insecurity that overshadows their behaviour, decisions, and agency to assert their rights for safe and healthy workplaces and workers' compensation. While researchers argue that the TFWP competes with the SAWP as employers search for the cheapest and most docile workers, less research has examined whether workers' health and safety exposures and experiences differ within the two programs. Drawing primarily from interviews with advocates and system stakeholders and participant observation at advocate-organized events, this research will offer preliminary answers to discovering whether the programs pose different obstacles to improving health and safety and access to compensation that affect migrant workers' experiences in Ontario before and after injury. The research will help gather information about possible avenues to improve the health and safety of migrant workers given how the two programs operate within both federal and provincial frameworks. Advocates' experience assisting workers in both programs offers important insights about whether differences between the programs create particular vulnerabilities for some migrant workers.

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providing feedback, not to mention driving me all over Ontario, you directly contributed to this project. Your constant love and support through this project—and also in life—mean the world to me.

LIST OF ACRONYMS AND ABBREVIATIONS

AIWA – Asian Immigrant Women Advocates
AWA – Agricultural Workers Alliance
CERIS – Joint Centre of Excellence for Research on Immigration and Settlement
CHC – Community Health Clinic
CPP – Canadian Pension Plan
ESDC – Employment and Social Development Canada
FARMS – Foreign Agricultural Resource Management Services
FOI – Freedom of Information
IAVGO – Industrial Accident Victims Group of Ontario
ILO – International Labour Organization
IRS – Internal Responsibility System
IW – Injured Workers
J4MW – Justicia for Migrant Workers
JHSC – Joint Health and Safety Committee
LHIN – Local Health Integration Network
LMIA – Labour Market Impact Assessment
MOL – Ministry of Labour
MWAC – Migrant Workers Alliance for Change
NOC – National Occupational Classification
OHCOW – Occupational Health Clinics for Ontario Workers
OHIP – Ontario Health Insurance Plan
OHS – Occupational Health and Safety
OHSA – Occupational Health and Safety Act
OLRB – Ontario Labour Relations Board
OWA – Office of the Worker Advisor
PNP – Provincial Nominee Program
PPE – Personal Protective Equipment
SAWP – Seasonal Agricultural Workers Program
TFWP – Temporary Foreign Workers Program
TWHSLC – Toronto Workers’ Health & Safety Legal Clinic
UFCW – United Food and Commercial Workers
WSIA – Workplace Safety and Insurance Act
WSIB – Workplace Safety and Insurance Board

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Chapter 1: Introduction

Canada operates two migrant agricultural worker programs with differing rules and entitlements. The Seasonal Agricultural Workers Program (SAWP) has drawn agricultural workers from the Caribbean countries since 1966 and was paired in 2002 with an agricultural stream pilot project within the Temporary Foreign Workers Program (TFWP) which became permanent in 2011. Workers in both programs are covered by provincial health and safety and workers' compensation laws which are important factors given that agricultural work is one of the most dangerous occupations in Canada next to mining and construction (Flecker 2011; Basok 2002; Tucker 2006).

In their work, researchers Hennebry and Preibisch (2010) found an employer who threatened to switch to workers from the agricultural stream of the TFWP if Jamaican SAWP workers refused to accept what amounted to substandard housing conditions. While Hennebry (2012) argues more broadly that the agricultural stream of the TFWP creates competition with the older SAWP as employers search for the cheapest and most docile workers, research has not yet examined whether worker, advocate, and union efforts to improve health and safety and workers' compensation experiences also differ between the programs. This project aims to begin to explore that gap.

This paper will examine the opportunities and challenges that migrant workers, advocates, and unions face in improving occupational health and safety conditions and access to workers' compensation for migrant workers in the SAWP and in the agricultural stream of the TFWP. Advocates' experience assisting workers in both programs offers important insights about whether differences between the programs create particular

vulnerabilities for some migrant workers. Drawing primarily from interviews with advocates and system stakeholders and participant observation at advocate-organized events, the research will offer preliminary answers to discovering whether the programs pose different obstacles to improving health and safety and access to compensation that affect migrant workers' experiences in Ontario before and after injury. The research will help gather information about possible avenues to improve the health and safety of migrant workers given how the two programs operate in a federal and provincial framework.

First, the paper will describe the two agricultural migrant worker programs in Canada and offer a theoretical framework through which to understand migrant agricultural workers' health and safety within a global system of migrant labour. Next will be a description of data collection methods used in this research. Then, a literature review will discuss migrant workers' experiences in agriculture with occupational health and safety and workers' compensation. The results section will describe how migrant workers, advocates, and unions have tried to address program shortcomings for migrant workers before and after injury, and the opportunities and challenges they face in seeking improvements. Next will be a discussion about how the programs interact and create further vulnerability and precarious status for migrant workers and how such competition renders improvements to occupational health and safety and compensation more difficult. This discussion will provide leads for further research about whether interplay between the programs causes more vulnerability for some workers. The paper will end with a discussion of findings and recommendations for moving forward.

Understanding the barriers and challenges that migrant workers and advocates face in improving occupational health and safety and compensation access within the SAWP and TFWP may help inform policy recommendations to improve health and safety conditions of migrant workers. Most importantly, the research can educate the public about the experiences of migrant workers and help bridge existing divides between migrant workers and the communities where they live and work to begin to build inclusion in those communities that these workers—like all workers—need and deserve.

Chapter 2: A Theoretical Model

Life in Canada for migrant agricultural workers is governed by a complex set of federal and provincial statutes that prioritize economic prosperity and that place control of work and life far from the workers themselves and onto employers, government, and the socioeconomic system at large. The analytical framework for this research flows from Marx's view that inherent conflict exists between those who own the means of production and those who sell their labour (Selsam and Martel 1963). The pressures of capitalist production create the risks in occupational health and safety, argue Nichols and Armstrong in their 1973 critique of the *Robens Report* in Britain (Tucker 2012). Health and safety risks arise from conflicts between production relationships and not apathy as the *Robens Report* theorized in its promotion of a self-regulating system. According to Nichols and Armstrong (1973), the key challenge was to create conditions in which safety was prioritized over production, which could be done only by shifting power over production to the workers (qtd. in Tucker 2012).

Further, as public policy professor Navarro (2009) argues, the role of the state in the power arrangement is unmistakable. Rather than retreating, the state plays an active role in helping multinational companies (in this case, the agricultural industry) pursue profits (Navarro 2009). Indeed, the Canadian government is responsible for creating and overseeing the SAWP and TFWP and therefore contributes to vulnerabilities (caused by the structure of the programs) experienced by migrant workers. Provincially, Ontario's occupational health and safety (OHS) system also allows employers' profit motives to

trump migrant workers' health and safety needs with its lack of farming regulations and weak enforcement in the agricultural sector.

Flowing from Marx's ideas, Braverman's labour process theory that power, class, and control drive work transformation also helps understand the plight of migrant workers in Ontario who find themselves at the mercy of economic imperatives that have led Canada to import agricultural labour to maintain a competitive edge (Braverman 1972). Braverman points out in his 1974 *Labor and Monopoly Capital*, how work changes from being a utilization of skills and experience to a mindless, machine-based, and powerless activity. Essentially, Braverman (1972) points out that work is deskilled so that employers can gain control of workers and extract more effort from them. While most agricultural work is considered low-skilled and thus has not been deskilled in Braverman's sense, the nature of the employment relationship has changed (ie. to migrant labour characterized by transient employment relationships), a change which is being used to make workers more precarious. Specifically, precarious work arrangements dictated by legislative mechanisms give employers more control over workers so that employers can extract more effort and commitment. This shift to more precarious employment relationships to remain competitive is noted by prominent researchers in the field such as Preibisch (2007) and Hennebry (2012). Furthermore, the pay in some agricultural sectors (such as mushroom and dew-worm farming) has also decreased as the system exchanged domestic workers with vulnerable migrant workers (Preibisch 2007).

Laws allowing the move to more precarious labour in low-skilled agricultural work achieve the same goals as deskilling higher-skilled manufacturing work (Braverman

1974; Lewchuk, Clarke and de Wolff 2011). Employers extract more effort out of precarious workers and can pay them less. Thus, while migrant agricultural workers are not being deskilled per se, the nature of their employment relationships now extracts maximum effort and control. Workers expend the extra effort to curry favour with their employers to remain employed (Lewchuk, Clarke, and de Wolff 2011). This phenomenon represents a particular type of job strain argue researchers Lewchuk, Clarke and de Wolff (2011). To accommodate the shift to transient employment relationships—necessary to protect profits—Canada’s immigration policy has broadened from offering application and residency to skilled workers to recruiting large numbers of low-skilled workers with little or no avenue to permanent residency (no one is illegal 2012). In fact, in 2006 for the first time the number of temporary migrant workers exceeded other immigrant streams that offered a chance at residency (no one is illegal 2006). In that year, of 277,250 people who immigrated to Canada, 139,000 came as temporary foreign workers, while a lesser number (138,250) came as new permanent residents (including applicants, spouses and families) (Canada 2012). Numbers of temporary foreign workers have remained high, tripling since 2000 (Faraday 2012).

Theorists critical of Braverman also provide important insight into a framework with which to consider the plight of migrant agricultural workers. For example, Smith (1994) points out that Braverman was silent about the role of the state or globalization in his power hierarchy, factors which she and others describe as key to understanding power structures and relationships. The role of the state was made apparent by the federal government’s 2011 announcement to make the 2002 agricultural stream in the TFWP

permanent. The move created the space and confirmed the emphasis on continuing to import a class of low-skilled workers whose access to Canadian citizenship is completely blocked. Furthermore, migrant workers find themselves at the mercy—not only of the federal government migrant worker programs—but ultimately of global economics and international trade rules that have largely transferred farming from an economic project intended to sustain a country and its people, to a global enterprise. The transformation of agricultural production and economics displaces farmers in supplying countries from their national livelihoods forcing them to travel abroad to work to support their families. “Development economies” have turned to “export-oriented industries,” industrializing and focusing on exports and external markets as opposed to meeting the needs of internal markets through domestic farming. Harvey’s (2000) phrase “accumulation by dispossession” aptly characterizes the economic capture of rural citizens into precarious work. In Jamaica, for example, free trade decimated farming and increased free trade zone factory work and other low-wage jobs, that pay on average only thirty dollars a week (Black et al. 2001 film *Life and Debt*). With temporary migrant work as a worldwide phenomenon, transferring greater power to employers by revising employment relationships to temporary status as a means of extracting workers’ effort fits well within Braverman’s theory where power and control reign.

In Ontario (and across Canada) the plight of migrant workers has engaged support from the United Food and Commercial Workers Union (UFCW) and migrant worker organizations. The fight-back phenomenon reflects another criticism of Braverman’s theory—that Braverman underestimated the response capabilities of workers “to temper

their subjugation” (Smith 1994, 406). Edwards points out in his 1979 *Contested Terrain: The Transformation of the Workplace in the Twentieth Century*, how continued abuse of workers by employers results in a “crisis of control” that spawns worker actions that create a cycle in which management is forced to develop new strategies to retain their ultimate authority (also qtd. in Smith 1994, 407).

Crompton and Jones (1984) add to Braverman’s analysis when they examine gender as a socially constructed and material force at the heart of differential labour processes and transformation. Social class, work, gender, and household are all linked (Crompton and Jones 1984). Indeed the structural nature of the SAWP and TFWP builds in gender inequality by accepting only workers with families and by employers having the right to choose which workers and which gender they want. Dorm-style housing arrangements make it nearly impossible to recruit many (if any) women along with men, but employers may select only women if they choose (as they often do for mushroom farming). Gender (and racial) differences add to the difficulty of obtaining safe and healthy workplaces because of the differing bases of consent, cooperation and resistance of individuals, as well as the capacity of the health and safety system to meet differing needs (Smith 1994). Women’s decisions and actions start from perspectives different from those of men, because women hold different roles in the family and domestic sphere (Crompton and Jones 1984). Furthermore, and in accordance with Braverman’s power analysis, the ability to confront the owners of production means confronting and engaging men, making change a complex endeavor (Smith 1994).

Decisions by migrant workers not to complain or report hazards out of fear of deportation could be analyzed using Burawoy's approach. Another critic of Braverman, Burawoy and his ideas represent an essential element of the success of capitalism—the participation (and therefore consent) of workers in their own exploitation. Essentially, Burawoy argues that Braverman relies too much on class conflict while ignoring coordination of interests at the workplace level (Spencer 2000). Burawoy's view forms an essential element to be taken into consideration in any understanding of migrant worker agency in occupational health and safety. For example, a qualitative study of mushroom workers in Chester County, in the US, revealed that workers felt that taking a docile approach built a better relationship with the supervisor which equated to more work autonomy and to securing better work assignments (Scott-Johnston 2012). Lewchuk's work (2013) also provides insights on reasons why workers' voices may be muted; he argues that lack of unionization, existence of precarious employment relationships, pressures to produce as expected by employers, and the perceived futility of complaining, all silence workers. Avoiding a negative self-image (by blending in and keeping quiet) is also important to migrant workers in the SAWP who rely on being named by their employer to return the next season (Lewchuk 2013). Yet while workers have many reasons to remain silent, Burawoy's point is well-taken; understanding the workplace context is critical when considering worker responses to moving forward. Indeed, Braverman's theory started an important dialogue to which many scholars have contributed and which point to the many factors to be considered when evaluating workers and the labour process.

Thus, opportunities and barriers experienced by worker representatives and migrant workers as they attempt to access health and safety and compensation rights and protections can be examined within Marx's framework and an expanded understanding of Braverman's Labour Process Theory. Extracting more effort from workers can be achieved even in (what is considered) low-skilled work where deskilling does not occur in a manufacturing context, but rather through manipulating employment relationships. The downward forces of global, federal, and provincial systems of laws, programs and even rights occur through legislative means and are designed with power and economic structures in mind to extract effort to the detriment of the health and safety of migrant workers. Downward pressures on the workers spawn unions, worker organizations, communities, and migrant workers to challenge and press upwards against these forces to attempt to minimize the harm on migrant agricultural workers. However, the job strain that migrant workers experience because of their precariousness, to maintain their contracts and their work in Canada, affects actions that they and their advocates take to pursue safer and healthier workplaces (Lewchuk, Clarke, and de Wolff 2011). While small victories have occurred and will likely occur in the future, successful fight-back—a true crisis of control—must include migrant workers along with their advocates and must be broad enough to address the root causes of power and economics at a global level. This research will begin to explore how the two migrant worker programs interface in terms of occupational health and safety and compensation and offer some recommendations of how workers and advocates can move forward to improve the health and safety of migrant agricultural workers caught in this global interplay.

Chapter 3: Methods

I used qualitative methods such as participant observation, interviews, and document review in this research. These methods reflect what Glesne (2005) calls the interpretivist paradigm, “which portrays a world in which reality is socially constructed, complex, and ever-changing” (Glesne 2005, 6). I attended and observed five events: a community fundraiser; a court case; a film screening; two panel discussions; and a migrant worker meeting. At the events, I gathered written and verbal information (and took field notes) about experiences, expectations, and exposures of migrant workers and their advocates in Ontario. I volunteered with a number of initiatives directed at migrant workers to participate in the community and gained informal knowledge about workers’ lives and struggles in Ontario. The type of participant observation used was, as Bernard describes, “outsiders who participate in some aspects of life around them and record what they can” (Bernard 2011, 260). The events also provided opportunities to recruit interview subjects and as Peritore (1990, 365) notes, “to set out about creating a social network and maintain regular contact with key informants.” I also reviewed existing research, system reports and government consultation documents to understand Ontario’s occupational health and safety and compensation context.

While the research plan originally included interviewing migrant workers and advocates, I focused mainly on interviewing advocates. First, the advocate community was very protective of migrant workers and for the most part declined to help recruit migrant workers for research. Research characterizes this protective phenomenon of people acting as “gatekeepers,” defined as “individuals, groups, or organizations that act

as intermediaries between researchers and participants” (Clark 2011). Gatekeepers invest years to build trust within their client communities and are often reluctant to open up the community to strangers (Corbin and Buckle 2009).

So, I tried to recruit migrant workers myself by going to towns on Friday nights where migrant workers were known to frequent. To address potential language barriers, I trained a Spanish-speaking colleague to conduct the interviews using my interview guide (Appendix A, 82). However, I abandoned efforts to conduct interviews after a group of migrant workers were warned by their boss not to talk to me. My colleague had met some migrant workers in town and handed out a few small cards (Appendix C, 84/85) only to be told later that the foreman had found the cards on a table in the bunkhouse. The foreman gathered all the migrant workers together and told them not to speak to researchers. The migrant workers told my colleague about the boss’s warning in a pub afterwards when they were explaining why they could not assist. Not wanting to put the workers in further jeopardy, I focused on interviewing advocates for this research.

Because handing out the small cards (and getting letters of consent signed) had been recommendations negotiated with the McMaster Ethics Research Board (who ultimately approved the research), I realized that perhaps I had not sufficiently emphasized or fully accounted for the vulnerability of this portion of my proposed research population. Indeed, McAreavey and Das (2013) experienced what Goffman (1983) called “trained incompetence” when universal rules are applied (by boards and by researchers) without full consideration of particular circumstances of their research. In her research, Das (2013) successfully convinced her ethics review board in the UK of the

problems in requiring signed letters of consent with her proposed migrant worker population.

I recruited representatives from organizations known to assist migrant workers in Ontario such as legal clinics, clinical service groups funded by the provincial government, unions, migrant workers' associations, and grass-roots organizing groups. I am familiar with many of the organizations because I am active in occupational health and safety and in the injured worker movement. I emailed people who I knew were active with migrant workers and asked them to participate in the study. I found additional interviewees through snowball sampling where I asked interviewees for referrals to other organizations or individuals. Learning about the strategies advocates use and the barriers they face in assisting migrant workers is important when considering how to improve workers' health and safety and access to compensation. In total, I interviewed one migrant worker (recruited at an event), and eight migrant worker advocates and system stakeholders (one agricultural employer, and seven migrant worker advocates). All participants I interviewed work with and help migrant workers in the SAWP and TFWP. Hearing from a migrant worker and an employer added richness to what I heard in other interviews and in the events that I observed.

In one-hour semi-structured interviews using an interview guide (Appendix B, 83), I asked questions about participants' experiences in assisting migrant agricultural workers in Ontario. Interviewing the representatives helped me to understand the opportunities and barriers that advocates face in their efforts to improve workplace health and safety and access to workers' compensation and health care. I requested and received

permission to record the interviews. I transcribed and coded the data and sorted it into themes. I reviewed the themes and sorted them into categories to organize results.

Primary information gathered through interviewing migrant worker representatives and through migrant worker events was qualitatively analyzed at the same time and along with secondary sources such as existing research articles, books, and websites about migrant workers and occupational health and safety. Federal and provincial policies and legislation (often available online) added to the analysis. For example, reviewing Ontario's occupational health and safety legislation and Ministry of Labour enforcement policies in regards to farming was useful to compare to advocates' experiences and observations about the health and safety of migrant workers. Reviewing federal immigration legislation and examining the policies regarding the SAWP and TFWP were critical when comparing how the programs affect migrant workers' rights and advocates' fight-back efforts. Mills, Bonner, and Francis (2006) point out Strauss and Corbin's argument that engaging with the literature at the same time as interviewing adds voices to the research, stimulates the thinking process, and assists the researcher's theoretical construction.

In reviewing the occupational health and safety and workers' compensation literature for migrant agricultural workers, I identified three themes to focus my interviews and identify barriers and opportunities to action, and to note differences between the migrant worker programs from the perspectives of advocates and migrant workers. In the results section, I will review each of the following in turn:

Theme 1: OHS at the Point of Production: Voice and Insecurity

Theme 2: OHS in the Regulatory Framework

Theme 3: After Injury and Illness: Treatment and Compensation

Chapter 4: Canada's Two Migrant Agricultural Worker Programs

1. Seasonal Agricultural Worker Program (SAWP)

Canada's immigration system has always been based on Canada's economic needs. When globalization and increasing competition created a need for an unskilled, flexible, and temporary work force, Canada created the Seasonal Agricultural Worker Program (SAWP) in 1966 (Hennebry 2012). The SAWP first operated through a Memorandum of Understanding with Jamaica, extending to Trinidad and Tobago and Barbados in 1967, Mexico in 1974, and the Eastern Caribbean States in 1976 (Hennebry 2012). Under the SAWP, Ontario's agricultural employers can hire foreign workers for a period of up to eight months if they cannot find workers in Canada and have received approval (since 1987 and with less government oversight) by the private user-fee agency Foreign Agricultural Resource Management Services (FARMS) (Hennebry and Preibisch 2010; McLaughlin 2007). Sending countries with agreements with Canada recruit, select, and maintain a pool of workers ready to meet Canada's needs (Hennebry and Preibisch 2010). Sending countries incur the costs of administering the program and conduct the medical assessments necessary to clear workers who are fit to work in Canada. The sending country provides a consulate liaison—often also a migrant worker—to oversee the program in Canada.

Migrant workers come to Canada because of the lack of economic opportunities in their home countries. Indeed, the FARMS website states that the SAWP is considered as a program of foreign aid (FARMS B). The SAWP's reputation as a leading program,

because of the involvement of sending countries, makes Canada appear to be a better option than the US, especially for Mexicans and Central American migrants who have a history of entering the US illegally (McLaughlin and Hennebry 2013). Obtaining a work permit to work in Canada provides a way for migrants to pay for housing, schooling, and support for their families. A migrant worker in Canada earns approximately two and a half times the average Mexican wage of \$40-\$48 per week (Wells et al. 2014). While double the pay sounds like a lot, unfortunately even that amount still leaves workers at poverty levels in Mexico (Wells et al. 2014). Approximately ninety percent of Mexican SAWP workers own their own homes after six trips to Canada, and ninety-seven percent own homes after nine years of work in Canada (Binford 2006).

However, Hennebry and Preibisch (2010, 33) call SAWP an “idealized myth” because the program fails to recognize workers’ qualifications and fails to provide opportunities to transfer skills. Because workers come to Canada in a specific job for a specific employer and can change jobs only with permission of both of the employers, promotions or job mobility are extremely limited (Hennebry and Preibisch, 2010). SAWP reinforces the precariousness and isolation of migrant workers by making them beholden to their employers for housing and because of the constant threat of repatriation. Under SAWP, migrant workers can be named by their employers for return every year which makes them less likely to jeopardize their relationship with employers. Because migrant workers must have a family in order to participate in the program, workers often willingly work long hours (increasing their isolation from others) in order to send the maximum amount of remittance back home.

2. Agricultural Stream in the Temporary Foreign Workers Program (TFWP)

The second agricultural migrant worker program was created as a pilot project 2002 and was made permanent in 2011 when an agricultural stream was added to the Temporary Foreign Workers Program for National Occupations Classification requiring lower levels of formal training (or the NOC C and D categories). The TFWP allows migrant agricultural workers of any country to come for a twenty-four-month period (and a maximum of four years) after which they must return to their home country for four years. This “4&4 rule” is relatively new; therefore it is unclear whether an individual from the Caribbean who has reached his or her maximum four-year time cap in Canada under the TFWP could reapply for a program permit under the SAWP. While Canada defends the “4&4 rule” to reinforce the temporariness of migrant worker programs, the truth is that new groups of workers are simply brought in to replace the ones reaching their cap (Hennebry 2012). Thus, while the workers are temporary, the work is not. Returning home for four years hampers the migrant workers’ ability to maintain the levels of support they have been providing their families. Returning home also decreases the amount of Canadian Pension Plan (CPP) benefits workers can accrue over long-term employment.

While both programs receive little government oversight, the TFWP operates for the most part by private authorities (McLaughlin and Hennebry 2013). Unlike the SAWP, the TFWP has no written agreements between countries to clarify rights or conditions of exchange of these workers. Once Employment and Social Development Canada (ESDC)

in the federal government approves an employer to seek workers under the TFWP through a Labour Market Impact Assessment (LMIA), employers run the program in tandem with recruiters and with no role for sending or receiving governments (Canada 2014; FARMS A; Orkin et al. 2014). FARMS does not run any aspect of the TFWP. Faraday (2012) argues that the TFWP is proof that the government is “stepping down” from any commitment to ensure fairness and maintain accountability in temporary foreign worker arrangements. Indeed, the TFWP specifically prohibits the federal government from enforcing or intervening in the contracts (Hennebry 2012). The draft contracts provided by the federal government state, “It is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and look after their own interests” (Faraday 2012, 42). Thus the TFWP is essentially privatized, leaving employers with an approved LMIA to seek workers from all over the world. Leaving the relationships to be governed between employers and workers creates flexibility for employers and precariousness for workers (Faraday 2012).

Unlike the SAWP, where migrant workers can apply to FARMS to transfer employment, employers do not assist with job changes in the TFWP, so any change in employer, job, or timeframe risks voiding the work permit and forcing migrant workers into undocumented status (Faraday 2012; Hennebry 2012). The lack of employer assistance to change jobs also leaves migrant workers in the TFWP vulnerable to victimization by recruiters charging large fees to help the migrant worker find a new employer with an approved LMIA (Boti and Guy 2012).

Unlike the SAWP where migrant workers qualify for the Ontario Health Insurance Plan (OHIP) upon their arrival, migrant workers in the TFWP are not immediately entitled to OHIP and must rely on employers to provide private insurance for the first three months (Hennebry 2012; McLaughlin and Hennebry 2012; Fudge 2011).

In 2013, newspaper publicity about forty-five laid-off RBC bank employees assigned to train their high-skilled migrant worker replacements caused the Canadian government to crack down on misuse of LMIA's under the TFWP. Job posting rules have been tightened and more inspections have been promised (Canada 2014). However, these changes do not address arbitrary rules in the TFWP that reinforce the precariousness of migrant workers.

Both programs prohibit migrant workers from taking any courses (even English as a second language) or receiving formal training (Faraday 2012; McLaughlin and Hennebry 2013), which reinforces migrant worker isolation and their inability to gain useful new experience. The addition of the agricultural low-skilled workers in the TFWP also closes off any hope for migrant workers to gain permanent residency in Canada. National Occupational Classification (NOC) C and D workers under the TFWP are barred from applying for Provincial Nominee Programs (PNPs) which higher skilled workers in NOC O, A, and B categories have access to (UFCW 2010). SAWP workers, also considered low-skilled, are blocked as well. Rarely, a worker can be referred under a higher skill class if promoted to a higher-level job after starting in the SAWP.

Chapter 5: Literature Review: Occupational Health and Safety and Workers' Compensation for Migrant Agricultural Workers

1. Agricultural work

Although the labour force in agricultural work can be diverse, agricultural employers consider migrant workers to be “the keystone of their industry” and the “core of the farm” (Preibisch 2007, 428; Paperny and Bascaramurty 2012, 6). Recent immigrants with varying immigration status (including undocumented) also find work in agriculture (Preibisch 2007). Canadians that work in the industry mostly include students, women, or Canadians from economically depressed areas of Canada (Preibisch 2007). However, turnover is high because many of these workers view agriculture as a stepping-stone to other employment. Thus, many agricultural employers view temporary migrant workers as their most stable workforce (Preibisch 2007). Narushima and Sanchez’s (2014) interviews of nine agricultural worker employers match other findings that reinforce the importance of migrant workers in seasonal programs to business success. All nine farms used seasonal migrant workers as their primary labour force alongside a few Canadian supervisors (Narushima and Sanchez 2014).

Agricultural work is hazardous for all workers, as shown by Thompson’s (2010) undercover work in a lettuce farm near the US/Mexico border, one of three low-skilled jobs he tried while writing his book *Working in the Shadows: A Year of Doing the Jobs (Most) Americans Won’t Do*. After working three months harvesting lettuce his back was sore, his feet and hands were swollen, and he was so physically exhausted he forfeited

any life outside of working and sleeping. Hennebry, McLaughlin and Preibisch (2015, 9) characterize agricultural work as “dirty, dangerous, and difficult.” Long days, intense work, and quota systems characterize this work (Hennebry, McLaughlin and Preibisch 2015). Yet migrant workers face a challenge that domestic workers do not; underperformance can lead to immediate dismissal and deportation, and not being named to return the following year in the SAWP (Hennebry, McLaughlin and Preibisch 2015). Indeed, the constant threat of repatriation makes them more precarious than other workers. Their lack of permanent immigration status makes their jobs hinge on retaining their employer’s favour and creates a particular type of job insecurity that overshadows their behaviour, decisions, and agency to assert their rights.

The move from the family farm to larger producing agri-businesses has changed the farming industry and the context in which migrant workers perform their work (Preibisch 2007). Between the years 1990-1998, the number of small and medium farms (revenue up to \$24,999 and \$99,999 respectively) declined by 11.1 % while commercial farms (with revenue over \$100,000) increased by 25.9% (Agriculture and Agri-Food Canada 2001, 3).

The declining size of households means that there are fewer offspring to take over farming businesses. Further, the new generation lacks interest in carrying on the family business (Preibisch 2007). When small farm employer/employee relationships change to replicate those of large industrial, assembly-line type work environments, migrant workers’ experiences transform too (Preibisch 2007). Growth has essentially introduced a third party—agri-industry—to the employment relationship commonly thought of as a

dichotomy made up of employers and workers (Shamin 2000). Strategies to change health and safety conditions in agricultural workplaces must consider the industry as whole and not focus on the two traditional workplace parties (Shamin 2000).

The rise of migrant labour in agriculture occurred along with globalization and free trade pressures. Contingent employment, production contracts, and piece-rates to increase yields became common in farming in the last four decades (Preibisch 2007). Piece rates encourage workers to work faster, reduce the need to closely supervise work, and transfer the cost of poor crops from the farmers to the workers (Fairey et al. 2008). Workers are vulnerable to the needs of the agricultural sector. Indeed, research cites examples where one employer lends workers to another, treating the workers as exchangeable commodities (McLaughlin and Hennebry 2013). McLaughlin and Hennebry (2013, 5) note that the exceptional economic pressures on the agricultural industry serve as the government's justification of the "temporariness" measures contained within migrant worker programs that recruit low-skilled workers.

Researchers also question the "low-skill" status of agricultural work (Preibisch 2007, McLaughlin and Hennebry 2013). Preibisch (2007) points out that sending countries are encouraged to recruit workers who are experienced in agriculture, which implies that the jobs require some skill. Indeed, prior to coming to Canada many migrant workers worked in agriculture or owned small farms in their home countries (Preibisch 2007). Workers operate complex machinery, are experienced in trades, or are requested specifically for their expertise in an area such as beekeeping or strawberry harvesting (Preibisch 2007). Employers also rely on the skills gained year-after-year (Preibisch

2007). Mushroom farming, for example requires quite a bit of skill. Mushrooms are fragile and require gentle handling, and soil preparation has many steps and must be kept at specific temperatures (Scott-Johnston 2012). Yet, despite the complex work found in many types of agriculture, the migrant worker programs and their authorities (the federal government) consider the work low-skilled. The implication of classifying agricultural work as low-skilled puts the work in a class which creates a permanent temporariness for the workers because they have no avenue to become permanent citizens.

2. Occupational Health and Safety

Ontario's *Occupational Health and Safety Act (OHS Act)* was amended to cover farmworkers (including migrant farm workers) in 2006. Employers must take reasonable precautions to protect worker health and safety (Ontario *OHS Act*). Employers also have a duty to provide information about hazards and about how to do the job safely. Farming operations are covered by the *Act* with the enactment of *Regulation 414/05* as long as the enterprise has at least one paid worker. Workplaces in mushroom, greenhouse, dairy, hog, cattle, and poultry farming with more than twenty workers are mandated to have joint health and safety committees (JHSCs). Joint health and safety committees are made up of equal numbers of worker and employer members and meet at least four times a year (Ontario *OHS Act*). However, the employer obligations to provide health and safety certification training to at least one worker and one employer member of the JHSC (that normally applies to all JHSCs) does not apply in farming unless the workplace has at least

fifty workers (Ontario *OHS*A). The other problem is that no legal requirement exists to have JHSCs in fruit and vegetable fields and orchards where migrant workers commonly work (McLaughlin, Hennebry, and Haines 2014).

Ontario's legislation also prohibits reprisals against workers for asserting their health and safety rights. According to Section 50 of the *Occupational Health and Safety Act (OHS*A) employers are prohibited from threatening to discipline, disciplining, or intimidating workers for asserting their rights. Yet Ontario's legislation does not supersede the federal migrant worker contracts which give employers broad rights to repatriate migrant workers to their home countries. The International Agreement Contract for migrant workers states, "the employer, after consulting with the [worker's] government agent [liaison], 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's repatriation" (qtd. in Orkin et al. 2014, 193). These employer rights to repatriate are essentially unfettered because the worker has no recourse to appeal or to prevent the action and the liaison's first priority is to retain the country contract, not to advocate for the individual worker. Research describes repatriation as a form of "discipline and control" (Preibisch 2007, 433). One study from the Joint Centre of Excellence for Research on Immigration and Settlement (CERIS) (2012) found that almost half of the workers worked sick due to fear of repatriation if they missed work (Hennebry, Preibisch, and McLaughlin 2012). The constant threat of being sent back home chills the rights contained in the legislation and neutralizes prohibitions against reprisals (UFCW 2011; Hennebry 2012; Brem 2006; Gabriel and MacDonald 2011).

The reprisal sections of the *Act* were improved in 2013 through *Bill 160* when new provisions allowed government inspectors to refer cases of reprisal to the Ontario Labour Relations Board (OLRB). *Bill 160* also made provisions for the Office of the Worker Advisor (OWA) to assist workers to file reprisal complaints. While these changes have the potential to help workers navigate a complex legal process, the process still relies on workers to be aware of their rights and to initiate complaints. According to the *Act*, workers alleging reprisals can file a grievance (if unionized), or file a complaint to the OLRB. Yet, migrant workers have hurdles that other workers (even many other non-unionized workers in Ontario) may not have, such as language barriers and a potential for repatriation before they have an opportunity to raise a complaint (Faraday 2012; Hennebry 2012; Fudge 2011).

It is important to realize the harm that repatriation does to migrant workers. Being fired and sent home mid-contract reverberates through every aspect of their lives. Income loss is devastating for workers and their families, and workers are uprooted from their current residences and social circles (McLaughlin and Hennebry 2013). Losses go even further. Consider one pregnant Guatemalan worker who was repatriated three months short of earning sufficient funds to pay her recruiter fees, let alone earning any wages above that. Her entire family lost medical benefits because Guatemalans pay into a medical service plan that covers their families while they are here working in Canada (McLaughlin and Hennebry 2013).

Not all employers use repatriation as a tool. Narushima and Sanchez (2014) interviewed nine farm employers in their own research and found that seven of them

recalled the same SAWP workers every year. In one farm that operated for four decades, the migrant workers passed their jobs on to their sons (Narushima and Sanchez 2014).

Research describes many obstacles that prevent migrant workers from voicing their health and safety concerns. Essentially, “voice” is not a successful strategy for migrant workers. Migrant workers are fearful to raise concerns about workplace health and safety regardless of what provincial legislation states (Hanley et al. 2014; McLaughlin, Hennebry, and Haines 2014; Gabriel and MacDonald 2011). In Ontario, workplace parties (employers, workers, joint health and safety committees [JHSCs] and health and safety representatives, and unions if applicable) are expected to cooperate and engage in dialogue in the workplace to improve workplace health and safety. Employer, worker, and JHSC collaboration using workplace expertise to resolve health and safety issues at the local level is known as the internal responsibility system (IRS). Internal responsibility became an important part of Ontario’s health and safety prevention system following the 1976 *Report of the Royal Commission on the Health and Safety of Workers in Mines* when Dr. James Ham observed that meaningful roles for workers and unions were missing from Ontario’s government health and safety enforcement system. Ham believed that workers’ and unions’ contributions ensure essential principles of openness and natural justice, and should be part of the workplace health and safety system (Ontario 1976, 6). Thus the 1979 *Occupational Health and Safety Act (OHSA)* defines roles for workers and employers in occupational health and safety and mandates cooperation through mandatory JHSCs in some farming sectors (Ontario *OHSA*).

The problem for migrant agricultural workers is that the internal responsibility system is predicated on participation and involvement in workplace health and safety which migrant workers do not have. Workers explain that they do not report hazards or claim workers' compensation for fear of losing the ability to work and send remittances back to their families (Brem 2006). The challenge for migrant workers and their advocates is that the SAWP and TFWP are structured to reward docility. Preibisch (2007, 437) argues that "the ability to recruit docile workers is a clear criterion by which countries' recruitment services are judged." For example, in Preibisch's work (2007, 437) one interview with a Jamaican government representative revealed that the representative lost some contracts because "Caribbean people tend to question things and they don't back down on what they perceive to be their rights." Likewise, in her case study of the mushroom industry, Scott-Johnson (2012, 91) argues that docility is a key quality of being a "good" mushroom worker. Leaving it up to SAWP employers to name which workers are permitted to return reinforces docility in that workers are unwilling to jeopardize their relationships with their employers for fear of not being named (Preibisch 2007).

The literature on occupational health and safety names the hazards faced by migrant agricultural workers. Exposure to chemicals, dangerous machinery, awkward movements, and low job control plagues migrant workers in the SAWP and the agricultural stream of the TFWP (UFCW 2011). Agricultural work requires using pesticides and other agro-products, and working in extreme heat conditions (Brem 2006). Long work-days with little rest and inadequate facilities affect many migrant workers

(McLaughlin, Hennebry, and Haines 2014). Other research notes psychosocial hazards such as poorly designed and managed work, and depression and anxiety from being separated from families (Grzywacz et al. 2014; Wells et al. 2014). Less sleep and poor diets compound the hazards that migrant workers face (McLaughlin 2007).

To address the hazards and the inadequacies of relying on voice, Industrial Accident Victims Group of Ontario (IAVGO) (2010) recommends more stringent enforcement by government inspectors. Along with internal responsibility, external enforcement through inspectors (a second prong of Ontario’s health and safety system), ensures that employers are complying with laws and regulations and maintaining safe and healthy workplaces.¹ Government inspectors have expansive powers under the *Act* to inspect workplaces without notice, investigate events, write orders, obtain reports and information from employers, issue tickets, or launch prosecutions in provincial court.

Stan Raper, National Coordinator of the Agricultural Workers Alliance declares that the lack of regulatory definition of dangerous work is part of the reason why not one work refusal has occurred by a migrant worker since the right to refuse unsafe work was gained in 2006 (McLaughlin, Hennebry, and Haines 2014). The lack of regulatory detail in the farming sector creates a gap in enforcement because health and safety inspectors can only recommend (rather than order) employers to use the measures prescribed by regulations for other non-farming sectors. Such detail is not lacking in other sectors. For example, the *OHS Act* as well as the *Regulation for Industrial Establishments* applies to

¹ Eric Tucker (2012) discusses the existence of a third prong of Ontario’s health and safety system, ‘the health and safety management system’ made up of government funded health and safety associations, clinics, and training organizations.

industrial establishments. The *Regulation* specifies measures and procedures that employers must adopt regarding machine guarding, confined space, air ventilation, fall arrest, ladder safety, and many other hazards found in industrial workplaces. Compliance details are clear and can be effectively enforced by inspectors within the industrial sector. Unfortunately, the rules found in other regulations are optional in the agricultural sector, leaving agricultural workers without adequate enforcement and vulnerable to the hazards that cause injury, illness, and death.

Research discusses occupational health and safety training deficiencies and the lack of personal protective equipment (PPE) made worse by poor health and safety enforcement. The CERIS study (2012) found through 600 interviews from the 2009 seasonal agricultural workforce that nearly half of the workers who worked with chemicals and pesticides were not supplied with gloves, masks, and goggles. Most received no training at all (Hennebry, Preibisch, and McLaughlin, 2012).

Migrant workers Paul Roach and Ralston White had not been provided with appropriate PPE and were overcome by fumes and died on 10 September 2010 while working at Filsinger's Organic Foods and Orchards (Justicia 2012). Their deaths exposed the lack of enforcement in the agricultural sector by Ontario's Ministry of Labour. While the workers died from fumes due to a lack of PPE, all seven health and safety charges against the owners were dropped and only a supervisor was found guilty of one charge and fined \$22,500 (Justicia 2012). UFCW accused the Ministry of Labour of lax enforcement after a Freedom of Information Request (FOI) revealed that the "aggressive inspections in agriculture" touted by Minister of Labour Peter Fonseca on September 28

following the deaths, were actually inspections of non-farm agricultural sector workplaces such as veterinarian clinics and animal shelters (UFCW 2012). Speaking for the inspectors, Inspector Len Elliott said in his presentation 18 April 2011 to the *Bill 160* hearings following the 2011 Expert Panel on Occupational Health and Safety that the sixteen inspectors who were to inspect in the agricultural sector were told by their bosses how and where to carry out inspections in the farming sector and “that if they did not like it they could leave the program” (Elliott 2011). Essentially, Elliott confirmed what UFCW had been saying, that the Ministry of Labour’s enforcement strategy in the agricultural sector had ignored farms. Elliott said that he wrote more orders at the one farm he was able to visit before being told to steer clear than the inspectors wrote for all other workplaces they visited combined (Elliott 2011).

The hazards migrant workers face, combined with a lack of OHS regulations and enforcement is related to negative health outcomes of migrant workers (Orkin et al. 2014; Hennebry, Preibisch and McLaughlin 2012). For example, while regulations prescribe rules for spraying pesticides, no rules apply to “pesticide drift” or to precautions to apply to workers in adjacent fields, or even their nearby living areas (Hennebry, McLaughlin, and Preibisch 2015, 11). Not only do migrant workers spray pesticides in the fields without PPE or training, they often live near the fields as well and are subject to the effects in the wind, on their clothes, and in their homes (IAVGO 2010). McLaughlin (2007) summarized over forty case studies after conducting more than one hundred interviews of migrant workers who had returned to Mexico. She found many workers

with kidney failure, paralysis, and many forms of cancer that the workers attributed to working unprotected with pesticides.

Research confirms that migrant workers suffer from occupational illnesses and injuries, many often unreported. Surveys of returned migrant workers show high rates of reported sickness or injury, affecting one in three workers from St. Lucia, Grenada, and Mexico, and one in five workers from Jamaica, Trinidad, and Dominica (Brem 2006). According to Brem (2006), the returned workers suffered from persistent health conditions such as back problems, knee injuries, skin diseases, respiratory tract infections, hypertension, allergies, and depression. The conditions arose while they were in Canada and continued upon the workers' return home where they could no longer access Canadian health care (Brem 2006). Some studies estimate illnesses and injuries occur in a quarter of migrant workers (qtd. in McLaughlin, Hennebry, and Haines 2014).

3. Workers' Compensation

Ontario's compensation regime began in 1914 after a founding report by Ontario Chief Justice Sir William Meredith that designed a no-fault system of compensation. Employers bear the collective costs of workers' injuries and illnesses without the uncertainty of court battles that could lead to financial losses or even the loss of their businesses. In return, compensation was recognized as a worker's right. Workers were guaranteed fair compensation for workplace injuries, without having to engage in long, expensive court proceedings. Workers entered into what is known as the "historical compromise,"

whereby they relinquished their right to sue employers in cases of injury in exchange for a system of compensation where workers did not have to prove their cases in court. Prior to this trade-off, workers were forced to sue employers in court for their injuries, and the legal process was cumbersome and uncertain for both parties.

Ontario's compensation system operates under the *Workplace Safety and Insurance Act (WSIA)* and its principles remain essentially unchanged one hundred years after inception. Employers within the industries named in the *Act* pay collectively into the system and workers are provided health care, benefits, and rehabilitation care for injuries and diseases that occur in the course of employment.

Providing workers' compensation for migrant workers is not new. Some of the very first international labour laws in Europe towards the end of the nineteenth century were written to ensure that migrant workers (mostly from Italy and Portugal) had access to the newly emerging state compensation plans if they were injured. These protocols were negotiated by predecessors to the International Labour Organization (ILO). However, the protocols did not work very well. One of the best documented organizations was the International Association for Labour Legislation that was formed by advocates out of Switzerland. The key problem was that once injured workers returned to their home countries, it proved very difficult for them to collect on money owed from other countries.²

It is important to understand that workers' compensation systems arose out of a market-value framework to support the viability of businesses rather than out of a human

² Wayne Lewchuk (McMaster University) in discussion with the author, April 2015.

rights framework focused only on treatment and compensation of workers' injuries. And the system remains concerned with minimizing costs to employers, which warns of the challenges inherent in reforming the system for migrant workers (Hilgert 2012).

The literature reveals the existence of many barriers to health care and compensation for migrant workers in Ontario. Fear of being seen as trouble-makers stops migrant workers from filing claims of injury (McLaughlin 2007). Language barriers and a mobile population make written communication difficult to and from the Workplace Safety and Insurance Board (WSIB) (McLaughlin 2007). Bureaucracy, paperwork, and coordinating with many parties—doctors, claim adjudicators and other system partners—make WSIB a complex process for migrant workers to navigate (McLaughlin 2007). Even if WSIB benefits are mailed to the worker in their home country, neither the health care nor the treatment options are always available to help the worker heal (McLaughlin 2007).

Although workers' compensation applies to workers in both SAWP and TFWP, migrant workers are often not aware of, nor do they enforce their rights to receive workers' compensation for injuries and illnesses. Ninety-three percent of migrant workers admit that they do not know how to make a WSIB claim and eighty-five percent do not know how to make a health insurance claim (Hennebry 2012). When workers do have the courage and ability to make a claim for compensation once injured, they are often sent back to their home country before they have a chance to access the health care and treatment they are entitled to (Hennebry 2012). Medical repatriation of migrant workers was confirmed when researchers Orkin et al. (2014) had occasion in a court case to access

never-before-released data from FARMS through a Freedom of Information request. The data show a rate of 4.62 deportations per 1000 workers mostly for surgical and external injuries between 2001 and 2011, confirming that migrant workers are repatriated for medical reasons (Orkin et al. 2014).

The literature reveals that the lack of knowledge that migrant workers are covered by WSIB extends even to doctors and health care professionals (McLaughlin 2007). McLaughlin (2007, 9) cites an example where she had to “pressure a doctor” to file a claim for an injured migrant worker.

Gabriel and MacDonald (2011) argue that despite recent formal attention to rights within the migrant worker programs, migrant workers suffer discrimination, social isolation, and inequality. After examining the experiences of Mexican agricultural workers, they note that the workers’ lack of formal status, difficulty with speaking English, isolation, and vulnerability to employers while in the programs negatively affects their experiences. The workers often require assistance to secure even the simplest of social rights and recognition, making their rights for safe and healthy workplaces and access to workers’ compensation even more difficult to achieve.

Chapter 6: Advocacy Support and Fight-Back

The literature discusses unionization as one way in all provinces except for Ontario and Alberta for migrant agricultural workers to act collectively to enforce their rights provided in health and safety legislation. In their work, Vosko, Zukewich, and Cranford (2003) apply Rodgers' (1989) four measures of precarious status where one measure includes the amount of control over labour and employment conditions, including whether or not a trade union helps to influence terms of work.³ Indeed, collective agreements for UFCW Canada Local 832 (retail TFWs) in Manitoba and UFCW Canada Local 1118 (food-processing TFWs) in Alberta show that unionization in agriculture may be able to temper some of the employer latitude in the SAWP and TFWP. The TFW agreements in UFCW Local 832 and 1118 secure employer commitments to nominate workers for permanent citizenship under Provincial Nominee Programs (UFCW 2011). Permanency relieves some of the vulnerability at the root of reluctance to speak up about workplace safety (Lewchuk, Clarke and de Wolff 2011).

Yet unionization has been a struggle for migrant agricultural workers in Ontario. UFCW (2011) reports eleven certification applications across Canada for migrant workers before provincial labour boards since 2006. None were successful in Ontario because no right to unionize exists for migrant workers, despite over a decade of work by UFCW. In 2000, workers at Rol-Land Farms voted (132-45) to unionize because their workplace

³ The other three measures of precariousness include: the certainty of continuing employment; the degree of regulatory protection; and the level of income. Found in Rodgers, Gerry. 1989. "Precarious Employment in Western Europe: The State of the Debate." *Precarious Jobs in Labour Market Regulation: The Growth of Atypical Employment in Western Europe*. Geneva: International Institute for Labour Studies.

was dark, mouldy, and infested with cockroaches. Three migrant workers, assisted by UFCW, launched a legal challenge in 2001 to *Ontario's Agricultural Employee Protection Act* that gave farm workers the right to form associations but not unions. Employers are not compelled to bargain with associations (UFCW 2011). The legal challenge was won in 2008 when the Ontario Court of Appeal declared that banning unionization violated the *Charter of Rights and Freedoms*.

That decision was reinforced in 2007 by a Supreme Court decision that linked collective bargaining rights to Freedom of Association protections in a BC health care case (UFCW 2011). Further clarity seemed promising on 18 November 2010 when the International Labour Organization (ILO) declared Canada and Ontario guilty of withholding human and labour rights from farm workers in Ontario by failing to allow collective bargaining through unionization. The ILO report maintained that “the absence of machinery for the promotion of collective bargaining constituted an impediment to one of the principle objectives that guaranteed Freedom of Association under the *Charter*” (ILO 2010, paragraph 358). Yet, five months after that, and despite the previous rulings—in April 2011—the Supreme Court of Canada sided with the Ontario government’s appeal of the 2008 decision that had originally supported unionization. In her decision, Justice McLachlin (with Justice Abella dissenting) decided that “meaningful negotiations” that workers are entitled to under the *Charter* do not necessarily require unionization.⁴

To deal with the ongoing prohibition to unionize in Ontario, UFCW created the Agricultural Workers Alliance (AWA), an association for migrant workers to join.

⁴ Ontario (Attorney General) v. Fraser, 2011, SCC 20.

UFCW funded the first AWA office in Virgil, Ontario in 2000 and now runs ten centres across Canada that provide English as a second language (ESL), health and safety training, and other services to migrant workers. UFCW (2012) reports that more than 35,000 workers received help from AWA centres in 2010 for repatriation complaints, workers' compensation claims, CPP, Employment Insurance issues, and OHS issues. The AWA centres provide help and assistance to migrant workers and link migrant workers with other advocate organizations that provide and promote social events to promote community inclusion (UFCW 2011).

Recently, UFCW has also tried to strengthen the rights of both unionized (outside Ontario) and non-unionized migrant workers by negotiating partnership agreements with sending countries in an attempt to mitigate weaknesses in Canada's migrant worker programs (UFCW 2011). In 2009 UFCW obtained an agreement with Governor Godoy Rangel from the Mexican State of Michoacan, in which UFCW aims to "ensure the human and labour rights of agricultural workers from Michoacan Mexico" (UFCW 2011). Also, UFCW filed in 2011 and won in 2014, an unfair labour practice complaint against Mexico (the country they have the agreement with at the state level). The Mexican government was found to have conspired with Floralia Plant Growers Limited in British Columbia to bar named union members from the SAWP as well as having ordered a migrant worker at the farm to start a decertification campaign (Sandborn 2011). UFCW's assistance was critical to expose the events.

Other representative organizations also assist migrant workers in Ontario and are central in migrant worker struggles to improve workplace health and safety. Groups such

as Occupational Health Clinics for Ontario Workers, (OHCOW), Industrial Accident Victims Group of Ontario (IAVGO), Toronto Workers' Health & Safety Legal Clinic (TWHSLC), Justicia for Migrant Workers (J4MW), Frontier College Literacy Group, Chatham-Kent Thai Outreach, Enlace Community Link, and Community Legal Services of Niagara South assist migrant workers. These organizations work with migrant workers on various issues, of which provincial occupational health and safety and workers' compensation are two. These advocacy groups work mostly at local and provincial levels to improve the lives of migrant workers (Hennebry, McLaughlin, and Preibisch 2015).

However, intertwined federal and provincial legal and policy frameworks mean that local and provincial advocacy efforts are not enough. Health care and occupational health and safety are the responsibility of the province but the terms of migrant workers' work contracts are defined by federal authorities. Some advocate groups do (in addition to working locally and provincially) focus on changing the structural nature of the migrant programs at the federal level. J4MW, no one is illegal, UFCW (also through the AWA Centres), and the Migrant Workers Alliance for Change (MWAC) function across Canada and aim their efforts at the federal government. Federal programs limit worker autonomy making workers more beholden to their employers. Immediate removal prerogatives conflict with provincial health and safety laws intended to protect workers against reprisals and compensation entitlements that meant to treat and compensate workers injured at work. Such expansive employer rights delivered in the federal migrant worker programs essentially neutralize provincial protections, making organizing at all levels important (IAVGO 2013).

Preibisch (2007) points out that the program-allowed ability to choose gender and country of origin provides space for racialized hiring strategies that violate provincial human rights laws, adding to the vulnerability of migrant workers. Thus, one main point to be made about the vulnerability of migrant workers is the difficulty of separating immigration status issues and occupational health and safety. Some representatives and migrant workers tend to take a human rights view to rights to jobs and status in Canada. A human rights view prioritizes the rights of all people for basic needs regardless of borders and originates from German philosopher Kant's view that people should be treated as "ends not means" (Hilgert 2012, 508). Faraday (2012) describes a human rights approach that is embodied in Canada's *Charter of Rights and Freedoms* and provincial human rights legislation. Consider also the International Labour Organization (ILO) which has a mandate to "protect the interests of workers when employed in countries other than their own." In 1998, the ILO passed the *Declaration of Fundamental Principle of Rights at Work* where decent work must contain "conditions of freedom, equity, security, and human dignity" (Faraday 2012, 54). The ILO also adopted two conventions and two recommendations specifically to protect migrant workers (Faraday 2012). Faraday argues that all these international and national laws and conventions provide a human rights framework that should ensure fair treatment of migrant workers across the globe. Elements of protection include: protection during all stages of migration; governments' role to ensure information is provided and to prevent misinformation; governments role to regulate migrant worker processes and eliminate costs to migrant workers; governments' role to supervise contracts; governments' role to ensure that local and provincial laws

protect migrant workers; migrant workers' rights to hearings before being expelled; access to education, social, and health services; and government's role to ensure unity of migrant workers' families (Faraday 2012). This broad framework provides the vision for migrant workers' and their advocates' actions.

Canada's failure to adopt this same framework is a challenge for migrant workers and their advocates. Not only has Canada not adopted the *1998 Convention for Decent Work*, Canada has not adopted any of the ILO's recommendations or conventions on migrant workers. Canada reinforces temporariness within the migrant worker programs and migrant worker experiences have proved that existing legislative protections do not effectively address their precarious status.

The programs use the term "temporary foreign workers" to describe workers in the SAWP and TFWP, yet Preibisch (2007) points out that the word "temporary" obscures their long-term presence and purpose in Canada (qtd. in Faraday 2012, 16). The word "foreign" attaches a nationalist framework to the issue of migrant workers (qtd. in Faraday 2012, 16). "Migrant workers" is the more correct term, and is the term used in this paper. The United Nations (1990, paragraph 19) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* states in Article 2 that "the term 'migrant worker' refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state to which he or she is not a national."

Chapter 7: Results

Theme 1: OHS at the Point of Production: Voice and Insecurity

My interviews confirmed research findings that migrant workers encounter many hazards in their work. Moving-part machinery, lightning strikes, chemical exposures, heat stress, falls, awkward body movements, and repetitive motions are all hazards that advocates hear about when interacting with migrant workers. One interviewee pointed out that migrant workers face unique hazards and recalled an instance where eighteen workers were being transported in a U-Haul truck. When the advocate called the police, the police said that they could not do anything.

It is clear from my interviews that migrant workers expect to work hard when they come to Canada. One migrant worker said, “We had to crawl on the ground to pick the tomatoes also—you had to crawl along the ground and pick the red ones out. At the end of the day you were sore.” At an event a worker told me that a good employer is one who drives the truck into the field to collect the workers at six in the evening to let them know the day is done. The worker said “nobody wants to ask the hours you work—nobody is asking and you don’t want to be the one to ask.” The employer I spoke to said that her workers have been coming for years and, as a result, they are quite comfortable asking her or her husband questions about the work. The employer notes that one of her workers speaks no English at all (she describes him as “slow”) and she pairs him up with another of her workers for most jobs and does not assign him to more complex work such as irrigation.

However difficult the physical and safety hazards are to deal with, the migrant worker I spoke to talked mostly about lack of respect, which is categorized in research as a psychosocial hazard. When I asked the worker about hazards in his work, he skipped over questions about the physical demands of the work and spoke at length about the lack of respect in one of his jobs. “The worst part is like respect. Right? We don’t get a lot of respect. It’s like we [are not] valid.” He talked about how much he valued the respect shown by his first employer:

Even if rain falling and like the lightening, he’d be quick and come in the field. He have an escalade, a van...and the guy said, “Go in there” even if we have a dirty foot. And we wouldn’t go in to the house like that—we’d just peel off our shoes in the rain and go in the house. But this boss would say, go inside that van...the water will take care of it—you guys let me have this. You guys let me have rich like I am today –you know what? This can wash.

The knowledge that advocates gain about how hazards affect migrant workers transforms into unique solutions to help workers. For example, a change was inspired in Beaverton when representatives heard migrant workers say that working long hours and adjusting to Canadian food created health problems. At a public premiere of the film “El Contrata” Reverend Ted McCollum told the crowd that he and other members of the church convinced the grocery store in Beaverton to stock Mexican food so that workers can buy traditional food on their weekly shopping trips. Advocates also intervened to ensure that services operated after hours and on weekends in Beaverton so that workers can send remittances home at almost any time of day or evening. When one representative noticed that migrant workers often carried all their cash around (which made them vulnerable to robbery), the representative spoke to the bank manager and the

bank began to offer a streamlined process for migrant workers to open up bank accounts. As these examples show, minimizing the risk of being robbed and creating interventions that acknowledge the migrant workers' preferences to work as many hours as possible show how representatives create strategies that accurately reflect migrant workers' needs. Advocates do not assume what migrant workers' needs are. Advocates know that migrant workers want as many hours of work as possible; therefore the ideal strategy makes the situation easier without compromising what the migrant workers value. While these interventions may not be thought of as changes to the system at large needed to reduce or remove worker vulnerability, they do improve the day-to-day lives of migrant workers.

Intervening where possible and where migrant workers find it most helpful makes advocates' help relevant rather than simply prescriptive. My research shows that advocates do not act without being aware of the context of migrant workers' lives. One advocate discussed her extreme discomfort when she overheard a volunteer telling a migrant worker that the worker should file a WSIB claim:

We had a case this week where somebody wanted to tell every worker that came in about WSIB—and if they had any problem they should be filing WSIB and if they see WSIB as a threat to their livelihood and you are pushing WSIB on them, then they are going to feel uncomfortable about coming to the clinic or whatever....so...I wouldn't do that.

The advocate was concerned that the comments from the well-meaning person showed a lack of understanding of the precariousness of the migrant worker's status as well as a failure to understand the importance of retaining employment from the migrant worker's perspective. The advocates I interviewed take great care in how they approach issues with migrant workers, and are always attuned to the context of migrant workers' lives. "Maybe

we overthink it sometimes. It is a fine line, because even in a certain way you are pushing it.....it is like some of that information for the odd person might have beneficial ways of them understanding that there is a system in place.” Another advocate says:

That’s been our motto from day one. We do not make decisions for workers—they are grown adults. They are here for a reason. And as long as they can make an educated decision about what’s going to impact the rest of their lives, or their families’, then we’re good to go. So that’s how we work.

The previous quotations suggest that what advocates can do for migrant workers is limited in the long-run by structural realities of the migrant programs that reinforce the precariousness of workers. This issue will be addressed later in the paper. Indeed, despite the time representatives spend trying to involve migrant workers in various struggles to improve their conditions, the fear of repatriation is an obstacle stopping many migrant workers from speaking out. Yet, as the literature review describes, Ontario’s health and safety system relies on workers’ voices to raise health and safety concerns and on employers to take reasonable precautions to protect workers and address hazards.

Every representative that I interviewed explained that they take great pains to protect migrant workers who become involved so as not to jeopardize their status. The workers have a lot to lose. One representative put it this way: “It is the double-whammy—the repatriation now and then the lack of recall next year. And then you are also branded as a troublemaker to your country’s labour ministry and liaison whose interest in all of this is to protect their group of workers.”

Perhaps the biggest challenge is to prevent the firing and repatriation of workers to their home countries before the end of their contracts. Stopping repatriation is a federal

project that requires stronger forces than those migrant workers and their advocates can marshal, yet it is likely the most important task. Fear of repatriation is a main theme in this research as well as in existing literature. Repatriation acts as a chilling effect on the help and involvement that advocates can provide. Advocates often fear that their interactions with migrant workers may result in the workers' repatriation. Their fears are well founded; one advocate told of a migrant worker sent back only hours after receiving medical attention. As described in the literature review, the difficulty lies in the conflict between the structure of the federal programs and provincial health and safety laws. Occupational health and safety legal prohibitions against reprisals and the right to refuse unsafe work supposedly apply to migrant workers. Yet federal contracts of work allow employers to fire and repatriate workers without thought to this provincial law. This leaves Ontario's Ministry of Labour (MOL) unable to protect migrant workers against repatriations based on health and safety issues and possible work refusals. Workers can be and are forced to leave Canada without the chance to initiate OLRB procedures to complain about a health and safety reprisal, even if they know about their rights and how to navigate the complex legal process. One representative said about the complexity of the laws, "Laws contradict each other, are complex, but laws are crafted to work or not to work. And these laws are crafted not to work."

Securing the involvement of migrant workers is a challenge given the time workers have available as well as the fears attached to using their voices. Representatives reveal that because migrant workers work long hours, usually six days a week, workers involved in events are usually the ones who have been fired or injured. They have less to

lose and have more opportunity to attend. Those workers get involved to prevent others from losing what they lost. For example, at Injured Workers Day, 01 June 2015, Denville Clarke and Kenroy Williams told the crowd of approximately two hundred about the 9 August 2012 van crash that permanently injured them and killed one of their friends. They talked about the failure of the health and safety and compensation systems to protect them from being injured and declared that the system continues to fail them, by refusing them status in Canada and cutting off their OHIP as their pain continues in the aftermath of their injuries. Other workers do participate, but they often maintain low profiles, well-protected by the representative community.

Migrant worker representatives know the importance of migrant worker voices—they spend much time listening, collaborating, and identifying ways workers can safely participate. “Yes they are resisting,” one representative said, “we need to find ways to help them resist.” Advocates try to encourage migrant worker participation by providing opportunities for migrant workers to organize in groups. One representative said that the weekly trips into town on Friday nights are gathering places for migrant workers to socialize with others in their area. Advocates arrange health fairs and other events during those times. Whether it is a church service, a barbeque, or a soccer game, migrant workers get together and have opportunities to network and organize. Thus migrant worker advocates do what they can to build trust and to build protective communities that make it easier for workers to participate. Building links and ways for migrant workers to participate is an unfinished job. In the meantime, the voices of those migrant workers who

have already lost their jobs or their health (and often any status that they had) but who remain in Canada are the participants who are most visible.

One representative pointed out a barrier that changing the rules will not address. No matter what the rules are, a culture of fear will remain embedded in the minds of migrant workers. He put it like this:

One of the biggest components is the disposability of workers—the real and perceived disposability of workers. I think that for them to actually mobilize things like their right to know, their right to refuse unsafe work, it really entails them not being able to be just sent home. Them not being sent home, or feeling that they wouldn't be able to be just sent home. I think that would at least be a basis for people to be more open about asking questions.

So far, migrant worker advocates have not succeeded in their main goals which are to restructure the programs to ensure permanent status upon entry and to reduce employer power over all aspects of migrant worker lives (ie. in repatriation rules, housing, etc). However these are large structural obstacles to overcome and it is unreasonable to expect that advocates can overcome them on their own. Yet, opportunities arise when advocate groups join to push for change. One interviewee described how mobilizing around the new “4&4” rule linked all migrant workers and advocate groups together around the issue of status. In the cross-Canada campaign, local groups organized local events, handed out flyers, and wrote articles for local newspapers. Groups linked in to the national MWAC that acted as the organizing body. Local actions drew support from communities for the important work that migrant workers do. After a day where I participated with Fuerza Puwersa (a migrant worker advocacy group in Guelph) talking to members of the public in the mall, I, along with the group, wrote an

article for the Guelph Mercury to say that “Guelph residents were alarmed and do not believe this policy reflects the principles our community strives for” (Aversa 2015). Not only were Guelph residents that we spoke to unaware that migrant workers live and work in the community, they also did not think it was fair to arbitrarily send workers back after four years. Many Guelph residents—and others across Canada—signed a petition calling for Canada to grant permanent residency for all migrant or arriving migrant workers and ensure access to all social benefits and entitlements. Linking these locally-based but nationally-linked campaigns has the potential to build community support across the country and could spread the human rights vision far beyond the minds of migrant workers, researchers, and advocates.

Thus in regards to “voice,” my results indicate that advocates are best-positioned to assist migrant workers with the specific hazards that migrant workers are most concerned about. Specifically, advocates’ actions arise from within the context of migrant workers’ experiences and preferences. Also, “workplace hazards” are expanded to also include employment strain and psychosocial issues such as justice and respect.

Secondly, my results show that the use of “voice” for these workers is limited overall. Worker precariousness, barriers to achieving immigration status, and lack of time and opportunity for workers to participate outside of work responsibilities limit the extent to which workers’ voices can be the first ones heard providing input to improving OHS and access to workers’ compensation.

Theme 2: OHS in the Regulatory Framework

Worker advocates echo the research that points out that the lack of farming regulations makes it more difficult to identify hazards in the sector and to obtain adequate enforcement by MOL inspectors. One interviewee discusses the eye problems that migrants suffer from and asks if it makes any sense that the health and safety regulations require safety glasses for objects, but not for dust, wind, or sun.

While adding regulations may be helpful, enforcement of existing regulations is a problem of its own, according to advocates. For example, advocates complain about the lack of enforcement of pesticide knowledge:

We have done a lot of advocacy work...or ready to action or education with the MOL and with any other partner like PMRA [Pesticide Management Regulatory Agency] around pesticide work. Again, this issue is a hazard, but that nobody enforces the fact that the workers have to be informed about that hazard. The MOL has always left it up to the MOE or whoever else legislates pesticides.

Advocates' experiences reinforce the challenges pointed out in research about the ineffectiveness of the MOL in enforcing occupational health and safety in the agricultural sector. One advocate reported that a migrant worker tried to call the MOL to speak to an inspector but nobody in the call centre spoke Spanish. A research summary session at the Institute for Work & Health (IWH) reported hearing that inspectors (while at farm sites) are reluctant to talk to migrant workers because they know of their vulnerable status. Reluctance to use their voices due to fears of repatriation, combined with working in a sector where health and safety rights are difficult to enforce for any worker but especially

difficult for migrant workers, means that the rights provided in the *OHSA* are not realized in practice.

Ministry of Labour resources are scarce as well. In accordance with the limited amount of research on employers' perspectives, the employer I spoke to cited a lack of resources from the Ministry of Labour to provide guidance to well-meaning employers:

No, not seen MOL out here. And we were at that meeting yesterday, and I was like, so you say we have to have all this documentation of what you have been teaching and all the things we have been doing, like they were really hard on this health and safety stuff, and I said why is this not provided? Do you guys have some standard stuff that you want us to go over? Like there is not even that.

Employers can be supportive, which is an opportunity for advocates to garner support for migrant workers. The employer I spoke to said that her neighbour extended a migrant worker's stay to support him through completion of his cancer treatments a few years ago and the worker has returned every year since. And at her farm, she herself replaced an injured worker for a week while he recovered from an injury in the bunkhouse and that worker has been back for sixteen years. She provides bicycles and monetary advances and loans to her long-term SAWP workers. Employers who treat migrant workers well provide important short-term, day-to-day gains for migrant workers, and also provide opportunities for advocates. Representatives see agricultural employers who treat migrant workers fairly as an opportunity to improve the lives of migrant workers and in some cases as vehicles to obtain reforms to the system that help employers as well as workers. For example, the farmer I spoke to talked about lobbying FARMS to stop corruption in Mexico where non-SAWP-approved individuals who paid Mexican airport workers sums of money were let on the plane in place of the workers who were

named to come. Approved SAWP workers were told that there was a problem with their visa:

There has been a lot of corrupt stuff going on –under the table bribery. Kind of thing—trying to make some guys get in on some of the farms. And then they will say...the guy who is supposed to let them on the plane –we don't have your passport or your visa is not ready yet. And so what they do is that they send somebody who has paid them off and they put them on the plane. And then they end up running away.

After making over sixteen phone calls to FARMS asking them to intervene, the employer, along with her neighbours, effected some change because they have not had the same kind of trouble in the last two seasons.

One advocate said that it was important not to alienate those employers who are supportive of reforms because “it is not about particular employers.” Indeed, generalizing all employers as negative is counter-productive to improving the lives of migrant workers. The employer interviewee related an instance where—in a church service—a speaker generalized about “horrible farm employers” and the “terrible treatment of migrant workers.” She and a number of members of the congregation felt insulted and walked out of the church. Indeed, an advocate describes how the inequities of the programs are structural, not specifically employer-based, saying, “We can't solve this problem farm by farm.” Another agrees, saying that the problem can't be shoved onto employers:

We think about good and bad employers, or good employers who do bad things. It is not about the good or bad. We need to think of the legal structures. We need to understand why people come and we want to build a place where we are all equal.

Yet, while many farm employers may not use repatriation as a tool to silence and create docile workers, most of my interviewees provided information that matched research findings showing that there is good reason to believe some employers do use repatriation as a deterrence tool. As long as the structure of the program allows repatriation, advocates and migrant workers will face challenges in raising health and safety issues and in receiving workers' compensation.

Thus, my research notes inherent challenges in improving OHS and access to workers' compensation for migrant agricultural workers in Ontario's weak and poorly enforced OHS regulatory environment. Also, while employers' behaviour matters day-to-day in migrant workers' lives, OHS cannot rely on employer good will. Structural issues governed by federal authorities also affect migrant workers and need to be incorporated into efforts to achieve safe and healthy workplaces and access to compensation.

Theme 3: After Injury and Illness: Treatment and Compensation

Advocates that I spoke to say that the separation of occupational health from primary health is a challenge they face in improving health outcomes of migrant workers. By separation, they are referring to the fact that health benefits flow according to work or non-work links. WSIB benefits apply to workers where their injury or health conditions arises all or partly from work, while OHIP is intended to cover primary health needs but not work-related conditions. One representative talked about the difficulty in separating primary health from occupational health:

Sometimes they don't bring their meds with them, or they run out of them here and there is no way to get them renewed if they don't have access to

health care, and sometimes they hide their meds or don't bring because they don't want anyone to know they have a problem. They are being assessed before they come, so there are lots of health issues that all have impacts on their ability to stay healthy at work.

The representative is explaining that primary health needs affect workplace health. This observation matches research where employers view occupational health and primary health as separate and different issues (Narushima and Sanchez 2014). The employer I spoke to said that injury is different than health because health is a private matter.

Dividing occupational health and primary health has implications for funding structures and therefore the activities of advocate groups. Funding may be allocated for occupational health but not primary health, leaving advocates unable to meet all the needs they observe. Also, some groups (often the government-funded groups) are not permitted to be involved in or use funding sources for “political activity” such as organizing, mobilizing, or lobbying, that could help change the health and safety and compensations systems. Funding for these groups is earmarked for certain activities (not necessarily meeting the needs of migrant workers) and comes with an expectation that the organization will be neutral and non-political. Independent groups—the ones who do have the autonomy to focus on political activity and create the activism needed to improve workplace health and safety and workers' compensation—usually have extremely limited budgets. Because of the work they do, they have little or no access to any government funding sources. These groups must rely on donations and other non-official funding sources for their work. One advocate group has two working names and two different funding sources. One name (and funding pot) is used for activities that are non-political in nature, and the other name (and funding pot) is used for political

activities. Thus, advocates face many challenges in meeting the needs of migrant workers when their funding comes with qualifications and conditions on how it should be spent.

However, funding limitations can also provide opportunities, because once a gap is exposed, the advocates work to fill it. Through providing clinical services for occupational injuries and disease, OHCOW observed that a worker's general health affects his or her injury severity and recovery time. Essentially, work and non-work health effects are intertwined in an individual and cannot be separated out in the treatment that the person needs. However the organization was not mandated to provide primary health services. OHCOW contacted and worked with Ontario's Ministry of Health and a Local Health Integration Network (LHIN) about the gap in primary health funding and was successful in obtaining funding for a Community Health Centre (CHC) that now offers permanent primary health services (in multi-languages) to migrant workers in one area of Ontario.

Representatives and migrant workers face challenges in dealing with occupational disease hazards due to gaps in the health and safety system. For example, chemical exposures may cause long-term harm and cancer, often affecting workers several years later, after they have returned to their home country. Ontario lacks an occupational disease prevention strategy for all workers, let alone migrant workers. WSIB places the burden on workers to prove that their medical condition arises out of work. Yet occupational disease is reported to be in the migrant worker population. At least two interviewees knew cases of migrant workers living in their home countries who suffer from permanent respiratory illnesses. One advocate, when thinking of WSIB cases, says,

“We’ve never seen the amount of problems with kidneys that other workers have than in the SAWP.” “Denied status, migrant workers are disposable,” argues one interviewee, “they can just bring in whole new group—a constant supply of healthy workers.”

Every interviewee and event emphasized the barrier that repatriation is to occupational health and safety and workers’ compensation. One representative told the story of a worker who severely injured his back pulling tomato stakes. When the worker expressed fear to the doctor that he would be sent home, the doctor personally called the consulate representative to say that the man could not fly and that he was scheduled for a MRI examination in two weeks. Yet the worker was deported hours later at four o’clock in the morning. Another representative said, “if there is a problem, they are on the next plane back.” A third representative said that his main learning is how easily migrant workers can be sent back. “All migrant workers either know someone who was sent home or they’ve known someone who’s known someone.”

While the research confirms that compensation for migrant workers is hampered by repatriation of migrant workers, my interviews also reveal that WSIB is not set up nor has been changed in ways necessary to help migrant workers. WSIB is blind to the difference between migrant workers and workers with citizenship, treating both identically. The most egregious example of this is deeming. Deeming is a WSIB program where a worker who is permanently injured is retrained to perform another job within his or her capabilities. Once trained for the occupation and provided help to prepare a resume and cover letter, the worker is given approximately four weeks to find a job. At the end of the job search time frame, even if the worker has not found a job, his/her benefits are

reduced to account for wages deemed earned at the non-existent job. Deeming is difficult for all workers, but especially for migrant workers, because WSIB ignores SAWP and TFWP contracts that prohibit workers from having another employer or seeking work in any deemed job (Hanley et al. 2014). Rather than addressing this critical flaw in the system, Ontario ignores the federal restrictions on finding another job and ceases loss of earnings benefits after the mandatory re-training period. Ignoring prohibitions in the SAWP and TFWP to find other work, WSIB writes in an October 20, 2010 letter to a migrant worker:

Having consideration for your work injury and the related physical restrictions I concluded that a physically appropriate and available job would be [a] self-serve gas bar cashier. The job pays minimum wage of \$10.25 per hour at 35 hours a week, or \$358.75 per week. These wages would restore your long-term pre-injury wage of \$309.46 per week. I reviewed the labour market information for the Niagara area in Ontario which confirmed that cashier jobs were available in this area.

If you were an Ontario worker you would be entitled to a four-week Job Search Training Program and four weeks of loss of earnings benefits while you participated in the job search program. Although you cannot participate in the program, you are entitled to receive four weeks of loss of earnings benefits as if you were participating in the program. This time frame is from today's date and ends on November 19, 2010.⁵

It is quite clear that by noting that the worker “cannot participate in the job search program” that WSIB is well aware that the worker is not entitled to obtain a job as a gas bar cashier, yet WSIB is using the deemed job to cancel future benefits for the worker.

One representative said about deeming, “It is just an excuse to wash their hands of them and cut their benefits down.”

⁵ This quotation came from a letter to a migrant worker that was given to me by one of my participants. All identifying information for the migrant worker was removed.

Another letter to a migrant worker shows that the WSIB is aware of gaps regarding migrant workers. In the case of a migrant worker who suffers with degenerative disc disease, the WSIB claims adjudicator writes, “I remain limited in the amount of benefits I can provide a migrant worker who has returned home. The WSIB currently has no Work Transitional or re-training services available for migrant workers outside of Ontario.”⁶ Essentially, while migrant workers are intended to be covered by provincially-run WSIB programs, restrictions in their federally mandated work contracts make some of that coverage meaningless.

Worker representatives aim efforts to change this at both federal and provincial levels. IAVGO (2010, 21) suggests that the WSIB “eliminate the discriminatory clause in the *WSIA* that limits an employer’s obligation to re-employ workers” and “provide migrant workers with adequate access to re-training programs to allow them a chance to find gainful employment in their home country that re-instates their pre-accident earnings.”

While WSIB coverage can and does follow migrant workers back to their home country, receiving treatment far away is not always effective. One advocate describes how the long distances and lack of transportation to big city centres creates challenges for injured workers back home:

The WSIB assumes you can get health care even though you might be from Montego Bay and Kingston [Jamaica] is over here. It’s not like you can get on a Greyhound bus to go to Kingston or go to physiotherapy, or a program in Kingston. There is no Greyhound.

⁶ Ibid.

The representative notes that people are in the SAWP because they have agricultural experience so the workers often live in rural sections of the country. The representative asks, “The taxi stop can be three miles from your house, and you have a back injury—how do you get to the taxi stop?” The representative explains that, yes, WSIB pays for the taxi, but the worker has to pay the money up front and then claim, and they often do not have the sixty dollars needed to fill up the taxi’s gas tank for the drive. And the timing of the injury is important for Jamaican workers:

Right after the acute injury, Jamaican SAWP workers maybe can pay up front because they have a 25% mandatory savings plan. Twenty-five per cent of their wages have gone to a savings plan so if you have been injured late in the year that savings has already accumulated, but if you are injured early in the year it is different.⁷

The representative also explains that the taxis are often vehicles driven by people using their own cars, so they may be unsafe, dirty, and costly.

Advocates understand the importance, therefore, of getting the migrant workers WSIB assistance within Canada, prior to repatriation. One describes some success, “We’ve pressured the WSIB a lot on this stuff, and now they are doing expedited regional evaluations after an injury and before the worker is repatriated.” Reps also discuss another reason why getting health care here for an injury that happened here is so important—health care is usually not free in the worker’s home country:

I feel like it is easier when they are here—not always but it is easier for workers here to provide medical information because it is a free health care system. It is not free in Jamaica and not necessarily free in other sending countries.

⁷ In July 2015 the Jamaican government cancelled the 25% mandatory savings plan, meaning that Jamaican workers will receive all of their pay as earned with none held back.

One advocate interviewee points out the importance of considering migrant workers in a historical context of racism, colonialism, and exclusion. Another representative sees status as a prerequisite to obtaining health and safety and compensation rights; migrant workers cannot fully seek or achieve these rights until “the basics are looked after.” Advocates feel that blaming the system problems on simple bureaucracy ignores the discrimination that migrant workers face in Ontario and in Canada:

I think there’s a lot of racism, workers who aren’t Canadian, workers who are low paid, workers from the global south, black men. People are too free to say—nope—this is the bureaucracy—this is the system.

Thus, my findings support other research that primary health and occupational health are not dichotomous factors. Separating one from the other negatively affects migrant workers and handicaps advocates who are trying to help. Also, advocates identify gaps in services for migrant workers and play a critical role in exposing the failure of provincial authorities to provide adequate workers’ compensation to migrant workers after their injuries.

Chapter 8: Competition Between Programs

Part of the inquiry of this research was to gain preliminary information about whether employers can use workers from one program to compete against workers from the other program to lower occupational health and safety standards and access to workers' compensation. While I have no definitive findings on this question, my interviewees cited some examples where agricultural employers used the programs against each other to ensure their own economic success. One interviewee cited an example where one employer repatriated SAWP Mexican workers and brought in TWFP Guatemalan workers after the SAWP workers orchestrated a sit-down to object to bedbugs. According to the interviewee:

I'll give you one example. We had one very large greenhouse ... where they primarily had Mexican workers under the SAWP, had had them for a long time. And they had Jamaican workers. The employer would pit the Mexican workers against the Jamaican workers, country against country. When the Mexican workers came in and there was an infestation of bedbugs, workers had to actually try and orchestrate some kind of a sit-down, strike action to get the employer to deal with the infestation in their living quarters. The employer immediately repatriated all of them. Because if you do a work stoppage you can be fired anytime under the agreement of the SAWP contract. So as soon as they stopped, the employer shipped them out, repatriated them all, and brought in Guatemalan workers under the low-skill NOC C and D. The Guatemalan workers, in a very precarious situation, did not want to complain about the infestation of bedbugs in their living quarters, and so continued to stay there until the problem was finally dealt with.

Hennebry (2012) notes the lack of research on the agricultural stream of the TFWP when she estimates additional barriers for these workers because of less

government oversight, and the lack of OHIP coverage for their first three months in Canada.

Indeed, my interviews reveal that the 4&4 rule in the TFWP acts as an impediment to unionization—important to consider in Ontario where the struggle for the right to unionize agricultural workers continues. Not only does the four-year cap act as a barrier to long-term organizing that could lead to formation of a new union, but the requirement to leave Canada (for four years) after four years will nullify previously negotiated collective agreement language that may provide unionized workers with paths to citizenship through nomination to PNP programs. According to the interviewee:

It is a union-busting strategy. We have members that we're organizing and who are in collective agreements now who are eligible to have seniority and recall rights and now this program is saying that they can't come back. Our contracts in our provincial legislation say that they can. And so there's the next battle.

Additional issues that make workers more vulnerable in the TFWP may not easily be revealed. My interviews indicate that some advocates have not yet penetrated the TFWP with the same levels of assistance and organizing as they have the SAWP. One interviewee said, "I don't have a heck of a lot of experience with the NOC C and D workers. I have some, but not nearly as much as I have with the SAWP workers." Advocates have years of experience organizing and building trust with SAWP workers who have worked in Ontario for decades.

Another difficulty for advocates is language barriers because TFWP workers can come from any country in the world. Advocates' organizations have developed a capacity to provide Spanish interpretation services because Mexico has been part of the SAWP

since 1974 but this is not the case for other language groups. One interviewee said, “Language is a huge barrier to why many rep organizations have less of a relationship with the NOC C and D workers.” Developing multi-language materials and finding the resources to translate into a variety of languages are new challenges for advocates.

Advocates need to continue their efforts to attune to this program. Some are making links and developing resources. One interviewee said, “There are some NOC C and D workers out near Leamington. There are organizations out there doing some amazing stuff.

Connections have been established.” Indeed, advocates need to continue to discover and delve into those communities at the same time as continuing to organize with SAWP workers.

I recommend further research to explore whether the TFWP creates competition for the SAWP, and whether employers play one program’s workers off against the other, knowing how desperate migrant workers and the consulate liaison workers are to maintain the SAWP work contracts. Hennebry and Preibisch (2010) also say that it goes against best practices to have two programs operating simultaneously using workers with the same skill level. Comparison research would be relevant because practices may further racialize workers as employers go to the TFWP to recruit desperate workers from the most devastated countries in South Asia and Central America and then pit those workers against workers from other countries to drive wages and conditions down.

Chapter 9: Discussion and Recommendations: Making Work Safe for Migrant

Workers

My research has identified barriers to making agricultural work safe for migrant workers. This last section will examine how this situation can be improved. First, problems exist at the point of production. The insecurity built into the SAWP and TFWP affects workers' confidence to assert their rights and acts as a barrier for advocates trying to assist. Next, contradictions between federal and provincial rules mean that migrant workers cannot rely on rights promised under provincial jurisdiction such as safe workplaces and access to workers' compensation. Indeed, the overall structure of the programs encourages all parties to act rationally: migrant workers cooperate; advocates intervene where possible; and employers respond to advantages offered program by program.

It is important to note that employer treatment of migrant workers cannot be evaluated at the micro-level of farmer behaviour as if employer behaviour is free from the structural drivers in the programs. For example, a farmer using the same SAWP workers for eight-month intervals for two decades may consider the workers part of the family (as the farmer I interviewed did), but the same farmer using the TFWP with the four-year cap would have to build relationships with five sets of workers over the same two decades. Thus it would be unlikely for the employer in the second case to have as close a relationship with migrant workers who change every four years.

Not all employers play one program off the other or consciously take advantage. The employer I interviewed was unaware that the agricultural stream of the TFWP exists. She and her husband had been employing SAWP workers for twenty-four years and their migrant workers averaged sixteen years seniority. They also helped pay for one of their worker's cancer treatments and that worker still comes every year.

Hatton's (2011) characterization of an old management philosophy idea of workers as liabilities is relevant here. Because workers can be named for an unlimited number of years under the SAWP, employers are incentivised to treat SAWP workers more as assets and to be concerned with worker welfare (Hatton 2011). Yet with the four-year cap in the TFWP that prevents long-term service, shorter-term workers fall more into the liability category, where employers prioritize profits over worker welfare (Hatton 2011). Workers as liabilities effects can also cascade to decrease access to other advantages such as health and safety training or supports that employers might otherwise provide. Thus, the structure of the programs affects employers' responses and behaviour at a conscious or unconscious level.

Making change is a complex project when some advocates focus federally, others provincially, and even others, locally. The aftermath of the 9 August 2012 van crash that killed one Jamaican migrant agricultural worker and injured eight others on their way to work on an Ontario farm shows the complex interface of provincial health and safety and federal migrant worker programs that advocates and workers have to navigate to make change. In Canada for less than a week, the workers were being loaned from one farmer to another after a fire. Less than three days after the fatal crash, injured survivors Denville

Clarke and Kenroy Williams were sneaked away from their impending removal to Jamaica by Clarke's relatives, J4MW, and IAVGO representatives (IAVGO 2013). The groups' goals were to ensure that the workers received the after-injury treatment, care, and compensation benefits that the workers are entitled to under provincial legislation while working in Canada.

Ultimately, Clarke and Williams' recovery time took them past their contract end-date of December 2012, which caused a lengthy Divisional Court battle and eventual loss in 2014 of the OHIP coverage that they had won in earlier appeals. While under the care of WSIB, the workers needed OHIP coverage to provide them other health care services while they continued to seek treatment and recovery in Canada (IAVGO 2013). At the court appearance on 25 March 2014, the discussion involved dollars and precedents. One judge asked, "Why should Ontario pay for a federal program?" and declared, "Allowing the migrant workers to have OHIP will open the flood-gates for other migrant workers to collect OHIP if they remain in Ontario past their contract dates" (Ontario court proceeding 25 March 2014). Ultimately the court overturned the previous decisions that provided OHIP coverage to workers who remain in Canada after their injuries. Clarke and Williams' struggle shows the challenges inherent in efforts to improve migrant workers' lives when the structural make-up of federal worker contracts affects provincially regulated rights and entitlements.

Important to consider, however, is that removing barriers and improving conditions for migrant workers raises questions about whether Canadian employers would still want to hire them. Would incentives to hire migrant workers disappear if workers

received all the rights and benefits that Canadian citizens enjoy? I believe that this is a moral question that should not stop advocates and migrant workers from working to improve human lives and making the programs fair. Indeed, Hilgert (2012) notes that basing arguments against strengthening social protections on fears like job losses represents a reincarnation of old market-based justifications used to trample human rights. According to Hilgert (2012), human rights supersede other rights. As such, human rights should not be balanced against “business or private concerns” (Hilgert 2012, 515). Therefore, advocates’ actions to achieve basic health and dignity for all must outrank the search for profits. As discussed earlier in this paper in the theoretical framework, the drive for profits will always be a factor to contend with as it has been since Marx identified it in early industrialization (Selsam and Martel 1963).

My research observations that migrant workers who are active in the struggle for change are usually those who have been fired, injured, or no longer employed, raises questions about how to involve more workers—given the hours they work and the fears they have. Involving workers who are currently employed is problematic for advocates, yet it is critical that workers lead their own struggles. Some may say that a “crisis of control” occurred in Ontario in 2006, with the long-fought-for adoption of health and safety protection for agricultural migrant workers under the *OHS*A (UFCW 2006; Gabriel and MacDonald 2011). Specifically, UFCW supported three Mexican migrant women to speak out in a tour across Ontario and Quebec in 2004. The women had been fired from a farm in Guelph after complaining about living conditions in a cramped apartment block and were warning about the health and safety issues that migrant workers face in the

programs. While including migrant workers for the first time under Ontario's health and safety legislation was a step in the right direction, a new "crisis of control" is needed that is led by workers and supported by their advocates.

The fundamental contradiction here is that advocates' voices are not workers' voices. To some extent, advocates are paralyzed by migrant workers' vulnerabilities. Creating spaces for many types of support and action is necessary to build a worker-led effort. My interviews reveal that workers cannot be assumed to be docile. IAVGO's 2010 submission to the Tony Dean Expert Panel Review notes that workers without power are more subject to control by management. It is important to remember that what seems like docile behaviour is really a rational response to the employment relationships that these workers are subject to under the SAWP and TFWP. Likewise, focusing on short-term interventions that improve the lives of migrant workers are rational choices by advocates who are also constrained by the structure of the programs and the primacy of capital. Short-term, day-to-day efforts need to accompany and inform long-term strategies that push for structural changes.

One long-term strategy to strengthen migrant workers' voices should be to pursue the right for migrant agricultural workers to unionize in Ontario. Employers have a legal obligation to bargain with unionized employees, but there is no obligation for Ontario employers to bargain with migrant agricultural worker associations. Furthermore, formal negotiations with a union mean that the terms of employment are defined in written collective agreements that clarify important items like pay, hours of work, occupational health and safety, benefits, workers' compensation, and a grievance process for disputes.

Having these items in writing provides a starting place to hold employers accountable for unfair or non-contractual treatment of workers. One interviewee discussed the right to unionize in Quebec; migrant workers in UFCW Local 501 have collective agreement language that protects seniority and recall rights, provides guaranteed wage increases, and sets out a grievance and arbitration procedure. According to the representative, “these workers can now stand up for their labour and safety rights without being fired, evicted, and sent home on the next plane while the Harper government and the consulates turn a blind eye. Finally these workers have a voice and a contract that protects it.”

However, unionization—while a step forward—does not eliminate vulnerability for migrant workers. Recall rights may be subjective and open to abuse, leaving receipt of these rights conditional upon proving facts in a legalistic grievance arbitration procedure. Collective agreement language cannot overcome structural problems in the federal contracts, such as redress for being repatriated without cause.

Consider also Noe Ricardo Arteaga Santos, a unionized Guatemalan migrant worker in Quebec under the TFWP. He was fired and repatriated in 2008 by Savoura Foods for leading a thirty-minute strike because one of his co-workers needed medical attention for pesticide exposure (Pucci 2015). Seven years after the incident, assisted by the union, and despite a 2014 ruling by Quebec’s Labour Board that the employer discriminated against him by sending him home on false pretenses, Santos still waits for the \$60,000 damages and lost wages he was awarded. This unionized worker may never get justice because within three months of the ruling, Savoura Foods and its parent company Les Serres Saint-Laurent declared bankruptcy. Savoura is now called Serres

Sagami and it remains to be seen if the damages will ever be paid (Pucci 2015). Still, having a union helped support Santos to take a stand, navigate the system, and achieve a finding—all of which would have been more difficult to do alone. In Ontario, however, because migrant workers are barred from unionizing, they are missing even this layer of protection to help them organize and build an offence against unfair practices under the work contracts.

Migrant workers have different roles in many groups. Interacting with advocates in various capacities may ignite or act as a precursor to leading their own struggles. The Toronto Workers' Health & Safety Legal Clinic (TWHSLC) assists migrant workers with reprisal complaints under the *Occupational Health and Safety Act* and the Industrial Accident Victim's Group of Ontario (IAVGO) assists migrant workers with WSIB claims and appeals for migrant workers suffering workplace injuries. These legal clinics are not sterile environments concerned only with facts and outcomes; the clinics are embedded into the community and social fabric of the movement to improve the lives of migrant workers. This integration with the community brings informed analyses to structural problems in legal health and safety practice as is evident in the IAVGO submission to the 2010 Occupational Health and Safety Expert Panel. IAVGO argues that legislative practices regarding health and safety have adverse effects on migrant workers. Through the experience of migrant worker Rafael, and using Rafael's words, IAVGO describes the dangers of breathing in pesticides in tobacco harvesting and the back-breaking work of cucumber picking. IAVGO not only puts workers' voices and experiences into written government consultations about laws and policy, it supports and accompanies migrant

workers at hearings and face-to-face consultations to tell their own stories, bringing to life the realities and challenges migrant workers face in Ontario. IAVGO also litigates cases to obtain individual remedies for migrant workers trying to secure their rights under health and safety and workers' compensation law. These legal challenges are a critical part of the way that representatives work alongside migrant workers to fight for their rights as well as providing them with important insights to inform efforts for law and policy reform in Ontario.

The legal clinics and other groups often employ or have volunteer community organizers who liaise with migrant workers and other advocate groups. They link migrant workers' struggles to those of other precarious workers and organize to improve their circumstances. While migrant workers may be clients receiving legal assistance for their cases, they also participate in events and speak out and organize around their experiences in tandem with the clinics and other advocacy groups. Denville Clarke and Kenroy Williams are two such workers. IAVGO litigated the two injured workers' cases in Divisional Court on 25 March 2014 in Toronto. Fighting to keep their OHIP coverage beyond their contract expiry date, Clarke and Williams—leaders in the migrant worker community—led supporters into the courtroom and spoke to the group afterwards about their experience.

Clinical professionals also use their skills and organizations to assist migrant workers. Occupational Health Clinics for Ontario Workers (OHCOW)'s multidisciplinary team of occupational doctors, nurses, hygienists, and ergonomists provides professional clinical services to organizations and workers in Ontario. Funded by the MOL as one of

Ontario's occupational health and safety prevention partners, OHCOW plays a key role in researching and assessing the links between workplace hazards and workers' health outcomes. While OHCOW is a "neutral" resource in that political advocacy is not in its mandate, OHCOW's determination to provide services and information to migrant workers helps fill a gap in Ontario. OHCOW provides health and safety explanatory materials in many languages and has occasionally hands out PPE such as sunglasses and sunscreen to migrant workers. OHCOW collaborates with other groups to organize health fairs where migrant workers can see occupational doctors, interact with the community, and talk with health professionals about primary or occupational health issues (Hennebry, McLaughlin, and Preibisch 2015). While migrant workers have roles as receivers of service, OHCOW's knowledge, expertise, and commitment provides necessary tools to the migrant advocacy network and provides critical information, advice, and care to migrant workers themselves.

Political advocacy, however, is the mission for Justicia for Migrant Workers (J4MW), a grass-roots organizing group that not only provides direct assistance to migrant workers, but lobbies federal, provincial, and municipal governments and other authorities to fight for justice for migrant workers. J4MW uses grass-roots strategies and works in tandem with migrant workers. J4MW does not believe in advocating "for" migrant workers. Rather, it provides support and opens up spaces and opportunities for migrant workers to lead their own struggles to better their circumstances. J4MW shuns hierarchical organizing tactics and says, "J4MW does not speak for migrant workers. Migrant workers have agency and voices of their own. We attempt to work from workers'

perspectives” (Grez 2006, 3). Thus J4MW considers strategies only where workers are the guiding force, play a central role, and lead their own struggles. J4MW’s role is to engage the entire system (local, provincial, and federal), and create opportunities for migrant workers’ organizing and dialogue within that system.

To date, some opportunities continue to be missed to link similar groups together because of differences of opinions on strategy. For example, the J4MW website links itself with the Centre for Spanish Speaking Peoples and Enlace Community Link, and does not mention the UFCW, a union that has set up ten AWA centers across Canada to assist migrant workers. It is telling that neither UFCW nor J4MW mention each other on their websites even though they both advocate for migrant worker rights. Such omissions communicate the glaring divide between grassroots movements that view their own efforts as legitimate because they emerge from within workers desires and the labour movement, whose activities are often viewed as paternalistic and bureaucratic (AIWA 2014). The reality is that many groups with all sorts of strategies are necessary to create the conditions for change in the SAWP and TFWP.

Another barrier for change is that migrant worker groups are not strongly linked to other vulnerable groups such as injured workers or health and safety or poverty activists. With their differing priorities and modus operandi, health and safety activists, migrant workers, temporary workers, and injured workers have failed to recognize that they share common struggles for the health and dignity of those they represent. Additionally, these groups may not realize or act on another shared reality—the fact that the theft of all of

these “rights” among all these groups occurs for the same reason—the drive towards profits and capital.

Advocacy groups need to work together and direct their efforts to make broad changes linked under a theme of health and dignity. Occupational health and safety and workplace compensation demands by migrant workers must be linked to an alternative vision of social justice that includes secure immigration status and fair and equitable treatment while in Canada. Indeed, Kalleberg (2011) suggests the need for “a new social contract,” based on equity and efficiency. Such a level of comfort and security will not be complete without addressing gaps in the treatment of migrant workers under federal contracts when provincial laws govern occupational health and safety, workers’ compensation, and health care. Kalleberg’s vision may lead to safer workplaces for migrant workers if well-being is a consideration in building social norms.

Finding commonalities between the movements can be the beginning of building a collectivity that Storey (2005, 64) argues is “the most active ingredient in a movement.” Collective organizing is essential because for a movement to develop, “private troubles must be made into public concerns” (C. Wright Mills qtd. in Storey 2013). Indeed, many of the goals and priorities of migrant worker advocates are the same as those of other movements concerned with health and dignity. For example, the injured worker movement has focused upon stereotyping that resulted years ago when the frequency of back injuries among Italian workers spawned suspicion from the WCB (now WSIB). Some doctors claimed that Italian backs were weaker than the backs of other workers (Storey 2008). This same type of stereotyping on the part of employers today affects

recruitment and retention of migrant workers. In many sectors of the economy, women, immigrants, and migrant workers face increased job insecurity and racialization as they are pushed into job ghettos. Storey (2004) points out that racial minorities and women are over-represented in dangerous jobs. Furthermore, using data from the 2001 Statistics Canada census and the Quebec workers' compensation board for 2000-2002, Premji et al. (2010) found that workplace health and safety risks disproportionately affect work that visible minorities—especially women—do. Thus, conditions affecting health and dignity can be examined, fought for, and made relevant when viewed through the lenses of gender and race.

Many of my interviewees value their links with other organizations advocating for migrant workers, which provides opportunities for groups to link together to create a social movement strong enough to improve the lives of migrant workers as well as other vulnerable groups. It is possible for groups with differing priorities to organize together over common themes such as health and dignity.

Consider the women of Bhopal who merged many groups with different goals. Mukherjee (2010) notes in *Surviving Bhopal*, that conflicts and differing priorities arose and had to be resolved between the groups of women that joined together to hold the state of Bhopal and Union Carbide responsible for the 1984 gas leak tragedy. Mukherjee (2010) observes that a movement can take into account its components and constituents' specific problems and limitations. Numerous divisions had to be overcome. For example, divisions were created when police arrested activists in efforts to alienate them from the gas leak survivors. The women were also divided about whether to accept international

help for their cause. Site remediation, risks, benefits, and rehabilitation were all areas of disagreement within the movement (Mukherjee 2010). But amongst the women of Bhopal, there grew an “awareness that things cannot go on like this” and the dispute was framed as “people versus systems” (Mukherjee 2010, 83). Their agreement that something needed to be done (and that the “something” may be a little different with each constituency) overrode their areas of difference. They also linked health with dignity in their struggle. Mukherjee (2010, 93) argues that, in the case of the women of Bhopal, “an improvement of health is contingent on improvement on overall quality of life.”

While the common tendency is for groups to focus on their own priorities and operate separately, joining together is underway for some. For example, linking with other movements is the seventh step in the Leadership Program developed by Asian Immigrant Women Advocates (AIWA) because they realize that more can be achieved with collective action (AIWA 2014). AIWA is a group made up of Asian women who developed a leadership model and used community organizing to overcome dangerous workplace conditions and oppressive wage practices in garment factories in the United States. To link to other groups, AIWA worked with Professor Jennifer Chan from University of Toronto’s Department of Sociology to develop a film called *Becoming Ourselves: How Immigrant Women Changed their World*. AIWA launched the film event as part of their effort to join forces with other movements (AIWA 2014).

Migrant worker groups need to unite with each other and with other precarious workers on a common theme of health and dignity. Developing a broad agenda unites groups to tackle issues that lie at the root of their pressing concerns. In turn, strength in

numbers can create viable political pressures to build a new social contract that reduces inequality and improves health in and out of the workplace.

Chapter 10: Conclusion

This paper explores some opportunities and challenges for advocates and migrant workers in their efforts to improve health and safety and access to workers' compensation for migrant workers. While agricultural work is hazardous for all workers, migrant workers face additional challenges that make them more vulnerable than domestic workers. Migrant workers fit Standing's (2011, 93) discussion in *The Precariat* of "denizens," a term used in the Middle Ages in England to describe "aliens who were discretionarily granted by the monarch or ruler some—but not all—rights that were automatically bestowed on natives or citizens." Workers' fears of being sent home renders knowledge of their rights meaningless and constrains advocates in their activities to help. Being told not to talk to me for this research is only one example of the sway that agricultural employers have over their workers.

My observations are consistent with research that workers in the TFWP operate in the fringes of the more visible SAWP. With less government oversight, TFWP workers must navigate their own relationships with employers, leaving them more precarious due to structural differences in the program's design. Advocates have yet to build the strong networks and supports for workers in the TFWP similar to the well-established links they have with SAWP workers.

The four-year cap makes them disposable and unable to build meaningful relationships and accumulate years worked so they can enjoy benefits like CPP. The cap also has implications for exposure to hazards and access to workers' compensation, especially for occupational disease, where symptoms may not appear until years after

exposure. Employers (and Ontario for that matter) escape from responsibility because they can regularly bring in a new group of healthy workers, nullifying any exposures from the preceding four years because those workers are no longer in Canada.

Migrant workers and their representatives in Ontario find themselves caught between federal programs and provincial health and safety and compensation laws that leave migrant workers' health and safety at risk. Ontario's 2006 health and safety legislation change to cover agricultural workers for the first time has had limited effect. Unfortunately, current federal and provincial systems provide rights on paper rather than in the lived experiences of migrant workers. Within this global framework it is not surprising that provincial statutes and authorities—no matter how well meaning—fail to stop the deplorable treatment and harm done to migrant agricultural workers. Creation of the new agricultural stream under the TFWP puts migrant workers more firmly under the control of employers and recruiters and further away from the oversight role that sending and receiving governments were praised for under the SAWP. The TFWP provides a bargain-basement way for a savvy employer to obtain migrant workers without having to meet the expectations of the SAWP.

Rules of migrant worker programs, such as being dependent on the employer for housing and transportation as well as employment, isolates migrant workers from the communities where they live, and makes protective legislation remote. Specifically, the lack of regulations defining dangerous work and the constant threat of repatriation prevents Ontario's migrant workers from reporting health and safety hazards. While unionization can help define and enforce terms of work and link migrant workers to their

communities, unionization may not be effective on its own to shift the balance of power in a meaningful way from agricultural employers to migrant workers. While changes are sometimes made under the guise of improving rights and conditions for migrant workers, the overarching agenda of Canada's immigration policies and migrant worker programs does not serve migrant workers, it serves the interests of capital.

Migrant worker treatment is subject to the pressures of profits and capital which makes advocating for change difficult. The pressures mean that everybody is acting rationally. Migrant workers act rationally to be able to keep their jobs so that they can support their families. Advocates act rationally by using their resources to achieve short-term achievable goals that improve migrant workers' lives. Even employers act rationally by taking advantage of a motivated and temporary workforce that is provided courtesy of Canada's federal SAWP and TFWP. Only major changes in the regulatory environment will alter these relationships to improve living and working conditions for migrant workers.

Worker advocates face challenges linking with migrant workers in the SAWP and TFWP to implement changes broad enough to help migrant workers on a long-term basis. Migrant workers need to be freed from the constant threat of repatriation allowed in their contracts. Providing migrant workers with permanent status on arrival or providing clear access to gain permanent status for those who desire it can help remove fears to assert health and safety rights. Control over work and system supports need to be shifted (in the TFWP in particular) from employers to workers. Only through supporting and enforcing equality rights for migrant workers can the workers begin to assert the health and safety

rights that they have on paper. Ending isolation and linking migrant workers into the community is a critical step in improving their lives and crystallizing their rights. Short-term local struggles are important to improve migrant workers' day-to-day lives, but long-term, broader struggles aimed at the structure of the SAWP and TFWP are necessary to open up a framework of health and dignity to migrant workers in Canada.

Only when migrant workers lead the struggle will a “crisis of control” change the structural barriers that restrict migrant agricultural workers' access to safe workplaces and workers' compensation. Yet, today's global system of migrant labour forces migrant workers to choose either health or earning the wages necessary to ensure their families' survival. Thus the toll on migrant workers' bodies can be found in every product they harvest (Scarry 1985). As Elaine Scarry (1985, 263) notes, “the problem of the ‘haves and have-nots’ is inadequate..... unless it is understood that what is had and had not is the human body.” However, as Canada obtains global labour through the SAWP and TFWP to earn profits for “the haves,” opportunities may arise for the “have-nots” to see some similarities with each other (Scarry 1985).

Workers, their advocates, their communities, and even some employers need to unite in a battle against power and capital that are instituted through Canadian migrant worker programs such as the SAWP and TFWP. Closing off pathways for migrant workers to remain in Canada is the ultimate removal of dignity and rights from individuals who are supposedly free and represents a new form of servitude thrust on increasingly disposable migrant worker labour. The struggle will continue to provide short-term relief for individual migrant workers, but must also be aimed broadly to

increase awareness and activate the fight-back against the drive for profits that tramples migrant workers' rights in the SAWP and TFWP. Only through integrating migrant workers and broadening their issues to link with common priorities of all working people will efforts begin to create migrant worker policies and other social policies to benefit people and families over the interests of capital.

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Appendix A: Interview Guide for Migrant Workers

- Reinforce confidentiality of interview, voluntary theme through interview. Provide the \$20, Verbal consent. May I record?
- Demographic data: how long in Ontario, age, program SAWP or TFWP (no health card)
- Motivations and expectations
 - How did you hear about the program, what did you do at home for work?
 - Why did you decide to come, how easy or hard was the process? Did anyone help you? Was the process organized? What did you expect?
- Experience and the job
 - Arrival and orientation. Did you sign any papers, did you get a health card, did you retain all your own travel documents? Any rules and regulations laid out when you got here? Do you have access or use mail/email or phone to communicate with your family?
 - Did you have any training, how soon did you start work? What hours do you work, are you satisfied with the number of hours you work? Do you want more or do you have too many? Do you get free time and if so what do you do with it?
 - How easy or hard is it to go somewhere off site? How do you travel there? Do you have a driver's license here in Ontario? Do you know anyone in the community? Do you go to community events?
 - Is there a supervisor to show you how to do work or to explain things for your job? Does someone come around to supervise?
 - What are your main work tasks? Do they change? Is it the same every day? Who decides who does what?
 - This will lead into talking about hazards, whichever ones their work tasks introduce ie—dealing with chemicals, weather, physical labour, confined space, repetitive movements, operating machinery etc.
 - Did you know that you would encounter those things at work? Did you know how to deal with them or did anyone go over them with you? Do you get personal protective equipment—things like safety gloves and boots, overalls, or goggles for certain work? Who pays for those?
 - Have you ever been injured or sick while in Ontario? How was health at home? Ever been to a medical appointment in Ontario? If so, did anyone assist you or how did you know where to go?
 - Can you approach your employer about a problem? Who do you go to for help at work or outside of work?
 - How many people work on your farm? Have you heard of a joint health and safety committee? Does anyone ever inspect the safety of the work you do?
 - Do workers raise concerns? (try to get an idea of the OHS norms on farms)
 - Do you think your work is safe or unsafe? What parts safe, what parts unsafe?

- What ideas do you have for safety?
- If you had a wish about your work in Ontario what would it be?
- What is the best thing about being here? The worst thing?
- Would you recommend others come here?

Appendix B: Interview Guide for Advocates

- Review—consent form, voluntary theme of interview, confidentiality will be retained, may I record?
- Demographic data:
 - How long worked at organization/assisting migrant workers
 - Kinds of assistance provided
 - Locations of migrant workers they help
 - Their experience within SAWP, LSPP—do they deal with workers in both programs?
- Differences they see between the programs about:
 - How they get here and leave
 - Tasks workers do,
 - Smoothness and organization of the program,
 - Treatment by employers,
 - Repatriation
 - Most often heard issues and problems
 - Health card provision/medical attention for injuries and health
 - Migrant worker views of the programs
- Occupational health and safety
 - Representatives experience assisting with occupational health and safety issues
 - Main hazards they hear about
 - Whether personal protective equipment is provided
 - Worker training?
 - Joint health and safety committees—do they exist?
 - Do workers raise concerns?
 - OHS norms on farms
 - Improvement ideas
 - Migrant workers perceptions of health and safety
- Issues with workers' compensation
- Experience with employers
- Biggest battles fought
- Working with other advocate groups
- Issues that remain unresolved
- Any wins or progress?
- What needs to be improved the most overall to improve migrant workers experiences in Ontario?

Appendix C: Recruitment Card in English and Spanish

PARTICIPANTS NEEDED: For research in Health and Safety

I am looking for volunteers to take part in a study of health and safety of migrant workers in Ontario

You would be asked to participate in one 30 minute interview at a time and place convenient for you. Translation services can be arranged.
You can withdraw at any time.

In appreciation for your time, you will receive
\$ 20.00

For more information about this study, or to volunteer for this study,
please contact:

Theresa Aversa

School of Labour Studies, McMaster University

647-222-0973

Email: aversatl@mcmaster.ca

**This study has been reviewed by, and received ethics clearance
by the McMaster Research Ethics Board.**

Recruitment Card—Spanish

SE NECESITAN PARTICIPANTES: Para investigación sobre salud y seguridad.

Estoy buscando voluntarios para participar en un estudio sobre salud y seguridad de trabajadores migrantes en Ontario.

Se le pedirá que participe en una entrevista de 30 minutos en un lugar y a una hora de su conveniencia. Es posible hacer arreglos para que tenga un intérprete. Puede retirarse en cualquier momento.

Como muestra de aprecio por su tiempo, usted recibirá
\$ 20,00

Para obtener más información sobre este estudio, o para ofrecerse como voluntario por favor comuníquese con:

Theresa Aversa

School of Labour Studies, McMaster University

647-222-0973

Correo electrónico: aversatl@mcmaster.ca

Este estudio ha sido revisado por y recibido aprobación ética del Consejo de ética sobre investigación de la Universidad McMaster.