

**PROTECTION OF MIGRANT AGRICULTURAL
WORKERS' RIGHTS**

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WORKERS' RIGHTS**

By

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A Research Project

Submitted to the School of Social Work

in Partial Fulfilment of the Requirements

for the Degree

Master of Social Work

McMaster University

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**MASTER OF SOCIAL WORK
(2006)**

**McMaster University
Hamilton, Ontario**

TITLE: Protection of Migrant Agricultural Workers' Rights

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NUMBER OF PAGES: vi, 119

ABSTRACT

This thesis investigates several issues related to the provisions afforded by aspects of the Canadian welfare state to protect the rights of migrant labour participating in the Canadian Seasonal Agricultural Workers Program. In the introduction and literature review, I provide the background of the program and present the nature of the issues that surround it. I also outline the problems that migrant agricultural workers face while participating in the program. These are mainly due to the few provisions that are extended to this secondary sector labour group, a group of workers that is barely visible to Canadian society.

In the main part of the thesis, I analyze the two instruments that allow the entry of these workers into Canada and the different pieces of Canadian legislation that are relevant to protecting legitimate rights of any person who works in this country. More importantly, I also present findings derived from interviews with migrant agricultural workers and key informants from advocacy groups and the labour movement regarding those provisions. Based on their insights and on the dual market theory, I scrutinize the position of the Canadian welfare state concerning the legitimate provisions migrant workers should be entitled to and how the globalization context influences that position. I conclude with a series of ideas that, in my opinion, could positively affect this labour group's welfare status.

ACKNOWLEDGEMENTS

I would like to thank Dr. Patricia Daenzer for supervising this thesis. I would like to acknowledge that her guidance, advice, and support were of great importance during the development of this research.

I would also like to thank the professors who shared their knowledge and expertise with me; in particular, Mirna Carranza for proofreading my research paper. My thanks go to my classmates as well. They, together with faculty and staff at the McMaster School of Social Work, contributed to building a very positive learning environment.

I would like to express my sincere thanks to both migrant workers and key informants; without them, this study would not have been possible.

Finally, I would like to thank my family, my significant other, and my friends for being so supportive at all times. I especially, I want to thank my mother for all her support and encouragement during this time.

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CHAPTER 1

GENERAL INTRODUCTION

1.1 Introduction to the issue

The following is a fragment of a letter that Mexican migrant agricultural workers working at Golden Eagle Farm, in British Columbia, sent to the organization Justicia4MigrantWorkers. The letter was published on the organization's website on April 7, 2006:

“Through this letter we are asking for the prompt intervention of the relevant authorities given that many problems exist for us, the Mexican agricultural workers of the Golden Eagle Group farm, who feel disappointed and harmed, both morally and economically, with regards to the Seasonal Agricultural worker Program between Mexico and Canada. This is due to the fact that many irregularities exist at the job, some of which are for example in the economic aspect.... In the fields we do not have proper places to eat; we eat on the ground and under the rain because they forbid us to get on the bus. Also there are not enough bathrooms in the blueberry area; there is only one bathroom which is full of excrement, in other words when we have to do our physiological necessities (i.e. got to the bathroom) we have to go in the open. This is an embarrassing situation and risky for us. For this reason some of the workers are sick with diarrhea (sic), nevertheless the worst part is that they do not give us medicine and they don't take us to the doctor because the supervisors say that we do not have the right to medical service, in spite of having a social insurance card that it seems is only valid if we are in grave condition or dying...we feel intimidated by the supervisors who tell us that if we get sick and don't work, then they won't pay us and that also medical attention costs us approximately \$80 plus medicine and the taxi from the farm to the medical clinic...[a] worker was told by one of the managers that all the expenses were to be deducted from his pay cheque, so the worker called the Mexican consulate to express his disagreement and to ask for their intervention. The same manager found out about this and the next day asked for the worker and interrogated him about what he had told the consulate. He was informed about

the disagreement and was told that the medical service was not going to be deducted from his pay, but that he should not call the consulate again, that when he had a problem he should first speak to him. Another subject is that the houses are very small for the number of workers in each one, in one of the houses the kitchen is very small and there are only two refrigerators for 10 people and the fan in the kitchen doesn't work, because it doesn't have the necessary tubing to remove the smoke and as a result the house fills with heavy smoke and the fire alarms go off a lot... These managers from the beginning have treated us with scream, humiliations, intimidations; they also forbid us to talk, sing, or whistle and have even pushed a worker, who for fear and ignorance of his rights did not want to report the incident. For these and other motives, we beg the authorities to find a solution to these problems and that the contract to work in greenhouses is carried out and in that way we can work more hours like other workers and recover the time lost in this farm." (Justice4MigrantWorkers; April, 2006)

To many people, this may seem something surreal to be happening in Canada in the early 21st century. Nevertheless, it is possible and fairly easy to confirm that similar situations occur day after day in several locations in rural Canada (e.g. British Columbia and southern Ontario). For instance, if one takes a short drive southwest from Toronto to places such as Simcoe or Leamington, Ontario, it is practically certain, from the experience of some key informants of this study as well as my personal experience, that one will learn about situations such as the ones illustrated in this letter. In those towns, it is common to hear these types of stories if one builds some trust with the farm workers by mingling and talking with them.

Every year, rural Canada is in need of thousands and thousands of people to plant and harvest the country's crops on a timely basis. This has facilitated increasing prosperity in Canada's agricultural industry during the past several

decades. Due to reasons that will be addressed and discussed later in this paper, many of these people happen to be non-native Canadians (mostly Mexican and Caribbean workers). Indeed, one important group of this migrant workforce that is not as visible in Canadian society is migrant agricultural workers. Canada has historically needed the migrant workforce and has benefited from it (Baines & Sharma, 2002; Pereda, 2001). The instrument that allows the organized movement of foreign workers to meet the needs of Canadian agricultural industry is the Canadian Seasonal Agricultural Workers Program (CSAWP). The migrant workers who participate in the program are employed as a secondary labour force. They rather come to be residual workers who take over jobs that most Canadians do not want to do; therefore, these migrant workers end up being not as visible a group as other labour groups (i.e., doctors, architects, and businessmen) (Fischer & Nijkamp, 1987). Participants in the program remain vulnerable and invisible mainly because of structural barriers that prohibit them from any mobility within the Canadian labour market (Leontaridi, 1998). Yet, their contribution to the development and optimal functioning of the communities they work in has been well documented (Basok, 2002, 2003). Furthermore, the CSAWP and the issues related to it have been a silent feature of globalization for a long time as the CSAWP fills Canadian economic and labour needs (as well as the sending countries' needs).

1.2 Purpose of the Study

There are different approaches that can be looked at in an analysis of the movement of international labour force, which has taken on a growing importance within a globalization context. There is, for instance, analysis from an economic approach, and just as important, the conditions and protection that migrant workers have from a social justice perspective.

On the one hand, it is known that the movement of migrant workers contributes to economic and employment growth of both the country that sends its workers and the country that receives and employs those workers (Baines & Sharma, 2002; Greenhill, 2000; International Labour Organization, 2004; Pereda et al. 2001). On the other hand, however, it is also known that the conditions migrant workers face are, more often than not, disadvantageous; that is, they are placed in vulnerable positions. For the most part, they have to deal with an array of difficult situations (i.e., lack of knowledge of their rights, language barriers, cultural issues such as overt racism and gender discrimination, family separation, etc) and power imbalances along their journey (i.e., pay discrimination, unfair deductions, lack of appeal mechanisms, etc) (Baines & Sharman, 2002; Basok, 2003; Pickard, 2003; Verma, 2003).

For a welfare scholar, it is compelling to pay attention to the conditions that migrant workers have to work in, and to the protection of their rights from a social justice perspective within the context of the Canadian welfare state. The Canadian welfare state purports to have protections for various categories of

workers and people who dwell and work here in general. Turner and Turner (2005) argue that one of the main functions of the Canadian welfare state is to ensure that individuals and groups are able to access a range of goods and services they need for their well-being. As observed in these introductory statements, there seems to be a gap between what is stated in the letter presented at the beginning of this section of the study and what is argued as one of the main features of the Canadian welfare state. Thus, the purpose of this study is to analyze the protections afforded by aspects of the welfare state for protecting the rights of migrant labour within the context of globalization, particularly regarding the protection of the working conditions and the rights of this vulnerable labour group, a group that is composed of workers who are barely visible to Canadian society, a group of people who seem to be somewhat hidden and for whom the legislative and institutional protections available are very frequently unknown, not respected, or inaccessible in most of the cases, as will be illustrated in further sections of this study. It is the purpose of this study to observe and judge the capacity of the Canadian welfare state to reach into those domains that appear to be not as central within the context of globalization. The study tries to find answers to questions such as: 1) Is the Canadian welfare state committed to reach into those domains? 2) Is the Canadian welfare state able to do it? 3) To what extent is Canadian welfare state committed to protect all workers in the Canadian labour force? 4) Or is Canadian welfare state only able and/or committed to protect only those who are in the primary labour force?

By looking at the literature, policies, instruments, and developments for their protection, in addition to the insights of migrant agricultural workers and a few key informants, this study analyzes the provisions afforded by the Canadian welfare state and its commitment to protect secondary labour force members who are mostly invisible in Canadian society. The study incorporates elements of globalization and its impact on importing and exporting workers, and looks at whether that affects the position from which the Canadian welfare state extends entitlements or protections to these secondary labour force workers who appear to be a peripheral workforce. It is evident that globalization is spreading, but are the protections for migrant workers spreading as well? Finally, the thesis analyzes recent developments and initiatives taken by the trade union movement as well as advocacy groups in order to extend protections to migrant agricultural workers and whether migrant agricultural workers really benefit from these efforts.

CHAPTER 2

LITERATURE REVIEW

2.1 Background, History, and Development of the CSAWP

The issue of recruiting workers for agriculture has been on Canada's agenda for at least 65 years, and it appears to remain the trend as the agricultural labour shortages are sustained. Agricultural labour has been in decline since the 1940s. In 1941 for example, almost 30% of the Canadian workforce was employed in agriculture, but this percentage had dropped to only seven percent by the late 1960s (Verma, 2003). Interestingly, this drop was not accompanied by a decline in the need for labour in that sector. The low wages and lack of benefits and premiums were identified as disincentives for potential agricultural workers to work short periods on a seasonal basis (Baines & Sharma, 2002; Verma, 2003). Therefore, Canadian agricultural workers were, and are, continually being lost to competing sectors which offer better wages, better working conditions, and full-time status rather than seasonal employment (Greenhill, 2000; Verma, 2003).

Ever since the 1940s, the Canadian government has made some attempts to try to solve these shortages. Amongst others, the government tried to address this issue with summer student programs and farm labour pools (André, 1990, in Verma, 2003; Basok, 2002). In 1943, there was already a program, Progress of Farm Labour Program, which was administered by the Ministry of Labour. One of

the program's main objectives was precisely "to augment the farm labour program" (The Labour Gazette, May 1943, p. 568) as described by the Minister of Labour to the House of Commons on February of that year. All the provinces approved agreements between the federal and provincial governments, and established the Special Dominion-Provincial Farm Labour Committees to determine the kind of program to be followed by each province (The Labour Gazette, May 1943, p. 568). After that, several other endeavours were made to contribute to solving this issue. The Employment and Immigration Commission, for instance, experimented with some local worker programs such as the Canadian Clearance Program, which tried to bring workers to Ontario from different regions of the country. Young and aboriginal people were the target of these attempts to meet this labour demand. These were socially marginalized groups on which restrictions of social mobility could be placed to provide the agricultural sector with the required demand of labour. Although those local programs and initiatives seemed to respond to the problem of worker recruitment, these programs did not fulfill the shortages satisfactorily. Verma (2003) argues that those attempts proved to be ineffective. For example, students went back to school, and workers were looking for better wages and working conditions. Basok (2002) suggests that it was when national sources of labour proved ineffective that the federal government turned to international sources.

2.2 Petitions, Contestations, and Expansion to the Foreign Labour Domain

Before the start of the Canadian Seasonal Agricultural Workers Program (CSAWP) in the 1960s, Canadian farmers had tried hard for years to convince government officials that there were almost no Canadians who would work the crops, and that the few who were available were not reliable and qualified. Farmers claimed that they sometimes would have liked to hire their fellow citizens, but these were very hard to find. Canadian farmers finally convinced their government in the 1960s (Pickard, 2003). But it took a long time for the CSAWP to materialize and function as it does these days.

After the first attempts mentioned above and after the World War II, the Canadian government started to look at different options to solve the issue; one option was the international labour market. The federal government started to look at immigration policies as a path toward the solution to the ongoing labour shortages. During the late 1940s and early 1950s the Canadian government began by offering Polish veterans temporary entry to Canada, stating that they were to be employed in the agricultural sector only for a period of two years. This action was later extended to displaced people from Eastern Europe (Verma, 2003). In 1947, Canada signed the first bilateral agreement with the Dutch government. The main objective of this agreement was to facilitate the entry of Dutch people into farm labour positions.

These first immigration developments were more effective than the local initiatives, but there was still a problem. Most of these migratory initiatives allowed migrant workers to apply for citizenship after a period of up to five years. This situation allowed these newcomers to attain the citizenship status that permitted them to look for jobs with better working conditions and a better wages. So, on the one hand, as Verma (2003) illustrates, these first migratory attempts did solve the problem of recruitment, on the other hand, they did not solve the problem of retention.

The result of this situation was that during the late 1950s and early 1960s, growers (mainly from southern Ontario) pressured the Canadian federal government to permit the entry of workers from the Caribbean islands. Farmers suggested that Caribbean workers work on a seasonal basis in the Canadian fields—suggesting more restrictions—so that workers wouldn't leave the jobs, especially during critical harvest periods. Verma (2003) states that the first contestation by the federal government was to resist this petition and rather put pressure on growers so that wages and working conditions were bettered in order for those positions to be more attractive and filled by Canadians. Verma (2003) argues that there were mainly two reasons for the Canadian government to resist this petition; first, the capacity of Caribbean workers to adapt to working in Canada and second, the impact on the racial demographic of Canada. There was fear of a substantial increase of people of colour in Canada according to a 1966 memo by the Assistant Deputy Minister of Immigration presented in a

thorough report elaborated for the North South Institute by Verma (2003). Satzewich (as cited in Verma, 2003) argues that the roots of this fear were Canadians' perception of "racial problems" in the United States and the United Kingdom. The result of this fear was a discriminatory policy that still persists today, as will be discussed later.¹ Therefore, one of the most important requirements by the Canadian government was that the workers stayed in Canada solely on a temporary basis, without an option to apply for citizenship. Finally, after years of lobbying and as a response to sustained labour shortages, the Canadian federal government through the Human Resources Development Canada (HRDC), in cooperation with Citizen and Immigration Canada (CIC), developed the Canadian Seasonal Agricultural Workers Program (CSAWP). In 1966, the CSAWP allowed the entry of 264 Jamaican workers to harvest southwestern Ontario's fields. Canada² followed up with negotiations with Trinidad and Tobago as well as Barbados in 1967, Mexico in 1974, and in 1976 with the Eastern Caribbean Islands (the Grenadines, Antigua and Barbuda, Dominica, Grenada, St. Kitts & Nevis, St Lucia, St Vincent, and Montserrat) (Vanegas, 2003). The policy adopted by Canada was to import migrant workers every harvest season rather than insisting that growers improve wages and working conditions.

¹ For further details, see Verma, 2003.

² The Mexican researcher, Rosa Maria Vanegas Garcia, suggests that those negotiations started as early as 1947 with the Caribbean countries.

One important reason for the expansion of the program was that some growers were recruiting non-Canadian workers on their own; they used private contractors who provided them mainly with Portuguese and Mexican workers even before the CSAWP was implemented. A special taskforce created by the Department of Manpower and Immigration detected some abuses by these growers in what at the beginning was mainly a Caribbean program (Verma, 2003). The taskforce reported that:

“The authors of this report, and those who accompanied them, were shocked, alarmed and sickened at some of the arrangements made for accommodation in Canada for Mexican families, at their wages and working conditions, at the fact that the entire family works in the fields for the season, at the lack of schooling, at the evidence of malnutrition which exists among them, and at numerous other factors such as non-existent health facilities.” (Canada Department of Manpower and Immigration [1973] in: Verma, 2003, p. 9)

The taskforce confirmed that the reason for the unattractiveness of these jobs were mainly due to the poor accommodations for workers and the low wages. The taskforce members also made this recommendation:

“If it is decided, as a policy matter, that the Department will continue to facilitate the bringing in of offshore seasonal workers from countries other than those included under the Caribbean program, there must be negotiated with those countries—particularly Mexico and Portugal—agreements which guarantee basic and humane treatment of the workers involved, including wage guarantees, transportation assistance, health standards and accommodation criteria, among others. To this end, the Manpower Division of the Department must be involved in negotiations with foreign governments concerned, along with Immigration, External Affairs and other departments concerned.”

The Department must be prepared to commit substantial additional resources, either manpower or financial, if it is to continue, as it must, to be responsible for the recruitment and admission to Canada of offshore seasonal workers from whatever country... Until these resources are committed, the Department will continue to be open to quite justified criticism and no defence will be possible against the results of some of the deplorable conditions which now exist and which are identified in this report.” (Canada Department of Manpower and Immigration [1973] in: Verma, 2003, p. 10)

The expansion of the CSAWP to include Mexican workers was thus accepted and promoted so that, as illustrated above, there was a control on illegal immigration and migrant agricultural workers had minimum standards of accommodations, treatment, and wages. In 1974, in response to the findings by the taskforce, Canada formalized the entry of Mexican workers (Vanegas, 2003; Verma, 2003).

The CSAWP was created then to provide a supplementary source of reliable and qualified seasonal labour in order to improve Canada's prosperity in the agricultural industry by ensuring that crops were planted and harvested every year. The arrival of foreign workers was also accepted by the Canadian Federation of Agriculture, which requested a supply of seasonal migrant agricultural labourers.

2.3 Government to Government Agreements³

Thus far, some background of the Canadian situation that resulted in the creation of the CSAWP has been provided. But before presenting what the literature and documents say about the government to government agreements that took place for the CSAWP to be developed, let us take a look at a brief snapshot of the situation that prompted Mexico to participate in the CSAWP.

The impoverishment of the fields and the lack of job opportunities in Mexico, particularly in rural areas, gave way to the migration of Mexican peasants to the United States and, more recently, to Canada (Vanegas, 2003). Such a situation has been recurrent for a long time, and it has gotten worse with the globalization process. The issue of unemployment has been on the Mexican government agenda for more than 40 years with the government trying different ways to generate employment. Therefore, temporary migration agreements have been appealing to the Mexican government.⁴

Mexico itself had an experience of these kinds of bilateral programs such as the one created during the World War II with the United States known as Programa Bracero (Organization for the Economic Co-operation and Development, 1998). It was a similar program to the CSAWP, although bigger. It has been calculated that approximately two million Mexican migrant workers

³ For purposes of this thesis, and as a Mexican myself, my focus is mainly on the participation of Mexico in the CSAWP.

⁴ It is important to mention that, according to *Organizacion de los Estados Americanos* and its *Consejo Interamericano para el Desarrollo Integral*, the unemployment rate has been declining since 1993, yet, it has not been enough to stop the massive flow of migrant workers.

participated in that program from 1942 to 1964 (Pickard, 2003; Vanegas, 2003). It is worth mentioning that the program was finished unilaterally by the United States as a consequence of that country's finding its employment force regulated and balanced once World War II was over (Durand, 2003). The story of *braceros* (Mexican migrant workers to the United States) "illustrates a continuous history of collusion between governments and companies, in support of the latter's interests, to the detriment of workers" (Pickard, 2004, p. 1). The Bracero Program is mentioned in this part of the paper because it can be seen as a historical model for what happened, years after, with the Mexico-Canada Seasonal Agricultural Workers Program. Indeed, the same collusion and injustices continue today in the CSAWP, as will be illustrated later in this paper.

The participation of Mexico in the CSAWP started in 1974 with the signing of a Memorandum of Understanding (MOU) by the federal governments of Mexico and Canada. The MOU established the legal entrance of Mexican agricultural workers to Canada on a temporary basis in order to fulfill the Canadian need for farm workers (Mexican Consulate, 2006). The CSAWP was established by the MOU signed by the federal governments of Canada and Mexico. On the Canadian side, the Minister of Human Resources and Social Development Canada (HRSDC) was the representative of the government of Canada and signatory for the MOU; on the Mexican side, the Secretary of the External Relations Secretariat was the representative of the Mexican government and its signatory.

The Memorandum of Understanding states that “it is an intergovernmental administrative agreement, which does not constitute an international agreement, and whose difference upon its interpretation or application and its annexes, will be solved through consultation between the two parties” (MOU, 1974). It is important to mention that the MOU is pronounced explicitly as an “intergovernmental,” rather than an international agreement because this way, the parties participating in the CSAWP acknowledge that the MOU is not a binding agreement, and thus participating parties are not bound to requirements of conventions such as the Vienna Convention (Verma, 2003), or conventions of the International Labour Organization.

As we can see, the process that gave birth to the CSAWP was started internally by Canadian federal and provincial governments after listening to the demands of groups of farmers and agricultural producers regarding human resources supply shortages and/or weaknesses in the agriculture industry. Afterwards, government agencies deemed indicators such as vacancy rates, forecasted demand, unemployment rate, among other factors so that they could verify the demands.

As suggested by United Food and Commercial Workers Canada (UFCW) in its “National Report: Status of Migrant Farm Workers in Canada” of 2002, there has been a cloak of secrecy that surrounds most aspects of the CSAWP. Thus, it is very difficult to obtain more information about how negotiations occurred. Furthermore, that report claims that the program has been operating since 1966

“with virtually no public scrutiny and very little accountability” (p. 4). Having mentioned that, it is important to say that close to no information has been found about the type of deliberations that have taken place regarding this program other than those presented in the excellent report elaborated by Verma (from which most of the information of the background of the CSAWP is taken).

2.4 Aim of the Policy and Characteristics of the CSAWP

The CSAWP is a program that permits the organized movement of foreign workers to meet the seasonal needs of Canadian agricultural growers when shortages of qualified Canadian workers have historically occurred (Greenhill, 2000). The welfare aim of the CSAWP is, on the Canadian side, to guarantee that farms and greenhouses have workers when they are most needed. As mentioned before, the Canadian government, in cooperation with agricultural producers and a number of foreign countries created the CSAWP. It was established in order to address the demands of the agricultural industry workers and producers, so the CSAWP basically obeys economical development and managed social capital expansion nature. Verma (2003) argues that the two relevant policy objectives in the CSAWP and related Canadian immigration laws are that migrant workers should be afforded the same treatment to Canadian workers and the fact of contracting migrant agricultural workers should not result in the depression of wages and working conditions which may result unattractive to Canadian workers.

The CSAWP is an annual program with contracts usually starting in spring and ending in fall. Canadian authorities communicate to their Mexican counterparts the number of seasonal workers they want under contract and the characteristics of the workers they need. Mexican authorities manage the process of selecting the workers and allocate them with their Canadian employers.

Mexican agricultural workers sign a contract of employment with a Canadian employer. The contract length goes from a minimum of six weeks to a maximum of eight months, depending on the activity the employees are going to perform. After the contract ends, workers must return to Mexico. Currently, more than 70% of the workers who immigrate to Canada to work on a temporary basis are the so-called nominal workers (Basok, 2002), that is to say, they have been working before in Canada with the same employer, who is willing to contract with them again for the following season. Under this particular situation, it is possible to identify Mexican seasonal workers who have been immigrating to Canada on a temporal basis for more than 20 years.

The Memorandum of Understanding signed by Canada and Mexico states that the employer will cover the cost of the round-flight tickets. The employer must provide the employees as well with proper food and accommodation. Mexican agricultural workers arriving in Canada, as mentioned above, have the same rights and obligations as Canadian workers working in the same activity. This includes the same salary, medical insurance, and employment insurance

(Memorandum of Understanding between the federal governments of Mexico and Canada, 1974). Another important aspect of the MOU is that, should there be any differences upon its interpretation or application and its annexes, they will be solved through consultation between the two parties (MOU, 1974).⁵

2.5 Who in the Government Is in Charge of the CSAWP?

The implementation of the CSAWP is carried out by the following private and public agencies of Mexico and Canada (Consejería Agroalimentaria de México en Canadá, 2003):

2.5.1 Canada

HRSDC administers the CSAWP through its network of Human Resources Centers in the provinces. HRSDC's policy regarding the employment of foreign workers encourages employers to put in place human resource strategies to determine their current and future labour market needs, and to ensure that Canadians and permanent residents are always considered for employment in the first instance (Basok, 2002). When employers demonstrate that reliable and qualified workers can only be found outside the country, or when hiring a foreign worker can directly benefit Canadians, it facilitates the process for employers hiring temporary foreign workers. HRSDC also helps the employers with the process of contracting with international workers on a temporal basis. HRSDC assesses the applications for international workers and provides an opinion of

⁵ Representatives of each country's federal government or government agents meet every year to discuss the issues related to the CSAWP.

the impact of those contracts on the Canadian labour market. In order to facilitate the movement of Mexican workers, HRSDC is in constant communication with Citizenship and Immigration Canada and with the Embassy of Canada in Mexico. With the objective of involving the agricultural sector of Canada in the process, an alliance between HRSDC and the representatives of the Canadian agricultural industry was formed. This alliance resulted in the Foreign Agricultural Resource Management Services (FARMS) (Consejería Agroalimentaria de México en Canadá, 2003).

FARMS is a private sector nonprofit organization federally incorporated in 1987 and managed by elected representatives from the farmer community (Verma, 2003). This body is authorized by HRSDC to be the administrative arm of the M/SAWP in Ontario and assists in the processing of requests for Mexican seasonal agricultural workers. FARMS communicates the orders for workers who have been authorized by the Local Human Resources Centers (LHCC) to the federal government of Mexico on behalf of HRSDC.

CANAG: FARMS works closely with CanAg Travel Services Ltd., which is the only authorized travel agent that arranges travel service on behalf of the employers, for the movement of international seasonal agricultural workers (Consejería Agroalimentaria de México en Canadá, 2003).

Department of Foreign Affairs and International Trade (DFAIT): DFAIT, through the Embassy of Canada in Mexico, is the office in charge of receiving and processing with the proper Canadian agencies, the applications and

employment authorizations or work visas for the selected agricultural workers. DFAIT also reviews the workers' medical examinations (Consejería Agroalimentaria de México en Canadá, 2003).

Provincial Health Ministries: Provincial Health Ministries, where the farms are located, are in charge of reviewing the health documentation corresponding to the seasonal agricultural workers who enter to that province. These provisional health ministries also assess the housing conditions of the seasonal workers (Consejería Agroalimentaria de México en Canadá, 2003).

2.5.2 Mexico

Secretaría de Relaciones Exteriores: The Secretariat of External Relations coordinates the CSAWP with the Mexican consulates. This agency issues the travel documents for the workers and provides protection against the problems workers might face during their stay in Canada. The consulates of Mexico in Canada are the direct contact (governmental agent) between the federal government of Mexico and the Canadian agencies involved in the program. The consulates also have an office to assist the workers in Canada and make sure that the contracts between Mexican workers and Canadian employers are followed (Mexican Consulate, 2006; Verma, 2003).

Secretaría del Trabajo y Previsión Social (STPS): The Secretariat of Labour and Social Planning is the agency responsible for the selection and recruitment of the seasonal agricultural workers in Mexico. STPS also

coordinates the elaboration of the workers' files, making sure the workers fulfill the requirements needed by the employers and follow up the contracts between Canadian employers and Mexican employees (Consejería Agroalimentaria de México en Canadá, 2003).

Secretaría de Gobernación (SG): The Secretariat of Interior issues the immigration documents corresponding to the seasonal agricultural workers in Canada (Consejería Agroalimentaria de México en Canadá, 2003).

Secretaría de Salud (SS): The Ministry of Health (SS) performs the required medical examinations on the workers and issues a medical approval, taking in consideration the activity the workers will do in Canada (Consejería Agroalimentaria de México en Canadá, 2003).

2.6 The CSAWP Within the Context of Globalization

It is known that, as stated in reports of the International Organization of Labour (ILO) (2004), international migration is not something new, or a transient phenomenon. As a matter of fact, demographic and other trends indicate that this is a phenomenon that is likely to increase rather than decrease (ILO, 2004; Organization for the Economic Co-operation and Development, 1998; Vereza, 2001). Indeed, migration is a phenomenon that has always existed. Migration usually involves an array of reasons such as wars, natural disasters, and, in this case, economic reasons. Migration has been a sustained phenomenon caused by the policies emanating from the neo-liberal model, which emphasizes the

interests of big corporations (Pickard, 2005). Some (Banerjee & Linstead, 2001) also suggest that the notions and benefits of globalization are inextricably connected with the continual development of First World economies rather than that of developing countries. Vanegas (2003) argues that the globalization of the world's economy, technological advancements, and the crisis of capitalism are factors that undeniably affect dependent or non-First-World countries. She states that, the bigger the internationalization of workforce, the more need for groups of people to look for employment abroad with the goal of improving their life conditions. Accordingly, unemployment has augmented constantly in the world. Many argue that this rise in unemployment represents a symptom of worldwide economic stagnation (Vanegas, 2003). Further, the International Organization of Labour (2004) states that one of the biggest problems the world faces in this century is that of unemployment. In the short period from 2000 to 2002, 24 million people lost their jobs. Moreover, there is evidence that the globalization and the restructuring contexts have not benefited all nations equally. Polarization sets apart countries from the north and countries from the south, the latter being the more negatively affected by this phenomenon. Furthermore, the Organization for the Economic Co-operation and Development (1998) contends that the purpose of these kinds of temporary labour movements is not really to meet specific job needs or to develop lasting ties between countries but to allow the flexibility of the labour market.

Although the CSAWP was developed a few years before the changes in the 1980s that led to what we know now as globalization, the CSAWP has certainly been an ideal instrument for this end (for example, greater trade and financial integration). Moreover, some of the issues surrounding CSAWP have been exacerbated because of the implementation of agreements of free trade amongst nations.

During the past two decades, important trade agreements were developed between the countries of North America: the first one between Canada and the United States, and a few years later, the North American Free Trade Agreement (NAFTA), which incorporated the participation of Mexico. “NAFTA took effect in January 1994, despite severe oppositions from labour groups” (Phelps, 2001, p. 23). Its promoters promised that free trade could be good for the workers of all North America, that labour and governments could work together to ensure the rights of the workers and the equality on their lives. Due to, and as a response to the opposition of a number of groups who foresaw the possible negative impacts of NAFTA, the North American Agreement on Labour Cooperation (NAALC) was created. It was introduced as a side agreement that would police basic labour standards in the three countries. It has not proven to better the conditions for many workers who have sought its protection (Phelps, 2001). The NAALC is said to be an example of an attempt to watch labour standards in the three participant countries. It is an instrument that allows labour, human rights groups, and governments to scrutinize and challenge the ways in which each country ensures

the provision of basic health, safety, and human rights on jobs. "This agreement is designed to promote a cooperative resolution, using publicity and transparency to pressure each country to enforce its own laws" (Garvey, as cited in Phelps, 2001, p. 24). The NAALC is an avenue that pays attention to the enforcement of, amongst others, the following principles (which, by the way, in the CSAWP, are overlooked by employers and authorities, more often than not):

- Freedom of association and protection of the right to organize;
- The right to bargain collectively;
- The right to strike;
- Elimination of employment discrimination on the basis of race, religion, age, sex, or other grounds as determined by each country's domestic laws; and
- Protection of migrant workers.

Phelps (2001) concludes that the NAALC is an essential political document, although it relies on the willingness of each country to accommodate basic labour rights in order to advance the ultimate goal of expanded free trade; the effects of the NAALC depend entirely on the way that it is used and enforced by the departments of labour in each country. Phelps states that the NAALC is ridden with conflict of interest, inasmuch as the agreement leaves enforcement to the governments themselves, which, as some suggest, are hungry for free trade (Banerjee & Linstead, 2001). Trade translates into low wages, minimal social benefits, little taxation for secondary labour workers on the one hand and the best interests of large corporations in general on the other. She also states that these kinds of agreements will not be effective without the pressure, attention, and scrutiny from the public, not only from labour groups. She argues that this

movement has been quiet on the issue of unions (such as the developments undertaken by UFCW). Phelps concludes that the NAALC was designed only as a way to protect NAFTA from its critics and advocate for gradual reform that might prevent only the most obvious and most provocative breaches on labour rights. The NAALC also functions as a review process that can help to distract the public's anger at the mistreatment of workers' bad situations.

Another aspect associated with the management of low-skilled migration is that of low wages. For example, the CSAWP is an instrument that, instead of solving labour shortages, allows the perpetuation of keeping low wages, as findings to be discussed below suggest. It is a program that allows employers not to raise salaries (Baines & Sharma, 2002; Phelps, 2001; Thompson in the Toronto Globe and Mail, May 25, 2005). So it appears that it does not matter that Canadian farm workers are being lost to competing sectors with better wages and working conditions, because it seems as though there will always be a pool of alien workers who might be willing to fill in those positions. Furthermore, migrant agricultural workers participating in the CSAWP are not entitled to claims for migratory status other than the work permits; that is, regardless of how many years they have been contributing to the growth of agriculture industry in Canada, they cannot aspire to obtain either permanent resident status or citizenship status. Some argue that this situation impedes migrant workers' access to proper and legitimate protection (Baines & Sharma, 2002). Moreover, "in the context of fluid global labour markets, part of the function of the present

legal and social category of citizen is to maintain a pool of highly exploitable and socially excluded workers” (Baines & Sharma, 2002, p. 76). But, regardless of their migratory status, something that can be said about migrant workers is that, although they might not enjoy the same rights as other workers (i.e., collective bargaining and collection of Employment Insurance [EI]), they are forced to comply with the same obligations as their Canadian counterparts (i.e., payment of taxes and EI deductions). Some (Baines & Sharma, 2002; Basok, 2002) state that migrant workers are certainly part of Canadian society; they contribute to the development of the community they work and live in, yet, that is something that seems not to be significant when it comes to claim for their rights.

The above mentioned are very important issues that work together to make the situation of migrant agricultural workers even more difficult. However, it is also important to reflect on the impoverishment and unemployment in Mexican fields. Rostein (as cited in Phelps, 2002) argues that some estimate that hundreds of thousands of jobs have been lost in Mexico. NAFTA has proved to have the potential to produce negative changes in Mexican society inasmuch as “Mexicans now face greater unemployment, poverty and inequality than before the agreement began in 1994. With NAFTA the Mexican economy has largely ceased creating jobs. Mexicans have today basically three options to survive; migrate, mostly to the US; join the unproductive informal economy; or turn to crime” (sic) (Pickard, 2005, p. 3). Thus, the lives of Mexican citizens are full with uncertainties about their future.

It is evident that the situation of migrant agricultural workers is vulnerable more often than not (Basok, 2003; Becerril, 2003; Justicia4MigrantWorkers, 2006; Pickard, 2003; UFCW, 2004; Vanegas, 2000). It has also been argued in this section of the paper that the context of globalization and restructuring has exacerbated the issue of the protection of migrant workers and their rights. Although allegedly there are means to address the irregularities that migrant workers have to deal with (i.e., NAALC, the dictates of the Agricultural Employees Protection Act, and the annual revisions of the CSAWP by each country's civil servants), they have proven to be highly inaccessible and bureaucratized processes that favour employers more than migrant workers, but this is an issue that will be addressed later.

2.7 The Canadian Experience in Managing Migrant Agricultural Workers

2.7.1 The Issues of the SAWP

Some argue that the Canadian experience in managing migrant agricultural workers can be put forward as a possible model of managed migration as the CSAWP is a program that does not impact the domestic work force. On the contrary, it is believed that the CSAWP has helped expand the industry by recognizing and responding to legitimate labour shortages (Greenhill, 2000; Verma, 2003). Nevertheless, even though migrant agricultural workers in Canada are supposed to have the same rights and obligations as Canadian workers working in the same activity (MOU), migrant workers do not actually

enjoy those. For example: 1) migrant workers are not able to freely look for a different employer when they are somehow dissatisfied with their current situation and working conditions; 2) due to the “seasonal” character of the program, they are not eligible to demand the benefits of the Employment Insurance (EI) because those are not payable to laid-off workers who are not in Canada; or, 3) migrant workers do not have the means for collective bargaining and are not allowed to join a union.

It is evident that there is an array of irregularities that migrant workers experience during their stay in Canada (Basok, 2003; Becerril, 2003; Justice4migrantworkers, 2006; Pickard, 2003; UFCW, 2004; Vanegas, 2000). According to the organization Justicia4MigrantWorkers (2006) and UFCW Canada (2004), the most recurrent issues migrant workers face are: unsafe working and housing conditions, unfair pay deductions (i.e., Employment Insurance), inadequate health attention and services, prohibition from collective bargaining and joining unions, inadequate representation in policy-making and contract disputes, denial of rights to claim residency and educational opportunities, and the lack of an appeal process when employers repatriate them.

It is not difficult to find examples to illustrate what has been just mentioned. In addition to the letter that is presented at the beginning of this

thesis, the documentary “El Contrato”⁶ illustrates very clearly all the issues listed above; some declarations in that documentary even go further. Following is a fragment of a comment by a Mexican migrant agricultural worker:

“...in my mind slavery has not disappeared. And in this case we the Mexican workers are the slaves. I would like to say to all the bosses that we are not machines, and I would like them to realize, if only a little bit, that the money they have is thanks to the work of all the Mexican agricultural workers that come to Canada to work.”
(Manuel, Mexican worker in Canada. Fragment taken from the documentary El Contrato, 2003)

According to Canadian trade union official Stan Raper of the UFCW:

“When they [Mexican migrant workers] make complaints about their housing, working conditions, an abusive employer they only have couple of options: one is to go to the employer who’s causing the problem to begin with, the second is the Mexican consulate, and what we’ve found is that the consulate is there to protect the contract with the grower, and provides very little service to the individual worker. If there is a problem, they’re usually on the next plane back.” (El Contrato, 2003).

Migrant agricultural workers have been dealing with these issues for years. Fortunately, some changes have been taking place to the benefit of the workers, too, as will be illustrated in the following section.

2.7.2 Recent Changes and the Current Situation

In spite of probable reprisals, seasonal agricultural workers have begun to organize themselves in order to protest and denounce the irregularities of the

⁶ *El Contrato*. (2003) Directed by Min Sook Lee, produced by Karen King-Chigbo, sponsored by the National Film Board of Canada.

program (Pickard, 2003, 2004). Nevertheless, although small worker groups have tried to have their voices heard by legal and proper channels, bureaucrats have rejected that possibility. For example:

“...Saint Thomas workers presented a formal request in September 2003 to the Mexican Embassy in Ottawa to be able to participate in the annual meeting between the Mexican and Canadian governments where the inner workings of the Program are reviewed. To no one’s surprise, the Mexican Embassy’s General Counsel Manuel Cosío answered that “it is not possible to grant this request to participate due to the administrative character of the meeting”. Yet, Cosío confirmed in his letter to the media that the meeting was not just between governments” (Pickard, 2004: p. 4).⁷

Canadian civil society has made many attempts to support migrant workers for decades (Justicia4MigrantWorkers, 2006). One example is Justicia4MigrantWorkers. This is a nonprofit volunteer group of activists committed to promoting the rights of the seasonal workers participating in the CSAWP. This group was formed in 2001 after a small group of interested people traveled to Leamington and witnessed a grassroots group organizing around a dispute related to the repatriation of 20 Mexican workers. Another group that has taken serious actions in supporting the workers’ adverse situation is the union United Food and Commerce Workers Canada (UFCW). In the summer of 2001, the Canadian Labour Congress (CLC) in partnership with the UFCW Canada initiated the Global justice CareVan Project. This was a response to the report on

⁷ The Economic and Political Investigations of Community Action A.C. (in Chiapas, Mexico) claims to have a copy of the letter mentioned in the quotation.

the status of migrant farm workers in Canada presented before the Federal Minister of Labour by the United Farm Workers of America. This project's main objective was to provide outreach help and support to migrant agricultural workers in southern Ontario (UFCW, 2002). A result of the Global Justice CareVan Project was the opening of five Migrant Worker Support Centres by the trade union UFCW Canada. Of the five regional Migrant Worker Support Centers, four are in Ontario and one is in Quebec. These support centres offer outreach help for the workers trying to address their demands and necessities.

But this is not the only action that the UFCW has initiated. As a matter of fact, the struggle that the UFCW has mounted actually goes back to the 1990s. In 1994, the government of Ontario issued the Agricultural Labour Relations Act (ALRA). This law provided trade union and collective bargaining rights to agricultural workers and was in effect only from June of that year to November of 1995 (Verma & Schucher, 2002). During those years, the UFCW was the official agent for some 200 workers at a mushroom factory in Leamington, Ontario. But this came to an end with the passage of the Labour Relations and Employment Statute Law Amendment Act (LRESLAA) in 1995 by the Conservative government of Ontario. The LRESLAA repealed the ALRA completely and finished with any bargaining rights of unions and collective agreements under the former (Verma, 2003).

The repeal of the ALRA made the UFCW decide to challenge the LRESLAA and the denial of the right of agricultural workers to join a union as a

violation of agricultural workers' freedom of association under the Canadian Charter of Freedoms and Rights (Verma, 2003). The UFCW demanded before the Canadian federal government as well as the provincial government of Ontario to be allowed to be the legal union representative of migrant workers in order to address irregularities that the workers experience while working in Canada (UFCW, 2002; 2003; 2004). Thus, this union has been fighting to have the right to legally represent migrant agricultural workers and protect their rights for more than a decade now. The processes have been long, and apparently, there are some differences in the interpretation of Canadian laws, for instance, between the Canadian Charter of Rights and Freedoms and the Agricultural Employees Protection Act (AEPA). The differences in their interpretation are one of the main factors that make the outcome of the processes take more time. The AEPA was actually the result of a previous successful UFCW challenge of Ontario law that was created and introduced during the Harris-Eves government in June 2003. The AEPA allows Ontario farm workers to form associations, not unions. Thus, it continues to deny migrant agricultural workers the right to collective bargaining as available under the *Ontario Labour Relations Act*. This means then that migrant workers can take their demands to their employer, but it does not oblige employers to respond. According to a UFCW Canada's bulletin:

"...in an 18-page ruling Judge Farley ruled that an Ontario Act, the AEPA, which allows farm workers to only form employee associations, but prohibits them from forming unions for collective bargaining, is not necessarily a contravention of Canada's Charter of Rights and Freedoms." (UFCW Canada, January, 2006).

The controversy is that:

“One Ontario court recognizes agricultural workers need a collective voice,” said Fraser (National Director of the union), “while another court rules farm workers don’t necessarily require the right to collective bargaining. The reality is that under the AEPA, the only guarantee that agricultural workers have is that they will shamefully continue to be exploited and treated like second-class citizens.” (UFCW Canada, 2006).

The importance of the transparency and the outcome of such processes are paramount simply because thousands of workers would hopefully benefit from them. Agricultural workers would obtain the right to be unionized, and it might impact positively migrant workers’ working conditions (Verma, 2003).

Other groups that have been supportive of workers are religious organizations. In Leamington, for example, St. Michael’s Roman Catholic Church offers its services in Spanish and has held parties to celebrate the Migrant’s Day as well as Mexican Independence Day.

It can be said that 30 years from its inception, there are a growing number of actors that are advocating on behalf of seasonal migrant workers and looking forward to amending the flaws of the CSAWP despite the Mexican and Canadian governments’ reluctance to take action.

While most of the growing literature on migrant agricultural workers participating in the CSAWP has addressed the nature and characteristics of the program, its benefits and implications, and the issues that workers have to deal with when participating in the CSAWP, hardly any literature has addressed how the Canadian welfare state has dealt with the protection of migrant agricultural

workers' legitimate rights. In particular, how the Canadian welfare state has been dealing with recent processes undertaken in order to address their protection.

As mentioned before, the UFCW Canada initiated legal challenges under the Charter of Rights and Freedoms on behalf of agricultural migrant workers with regard to an array of breaches that occur in migrant workers' contracts. This union, for example, is fighting to have the right to legally represent migrant agricultural workers and protect their rights, but apparently, there are some differences in the interpretation of the Canada's Charter of Rights and Freedoms and the Agricultural Employees Protection Act in Canada's Courts that is making the outcome of the processes take longer. In addition, the UFCW Canada has been one of the main players in lobbying for the extension for more protections for these workers. The importance of these legal challenges is enormous because the working conditions and the rights of thousands of workers will presumably be affected; they will potentially be improved. Therefore, it is important to observe closely how these initiatives evolve and whether they will really affect the way in which the protection of migrant agricultural rights occurs, and if so, how.

This study addresses, which is not available in the existing literature, what some of the main protagonists involved in these issues have to say about this situation from a social justice perspective, namely, those in charge of protecting migrant agricultural workers' rights (provincial bureaucrats), an advocacy group, the labour movement, and most importantly, migrant agricultural workers.

Through an examination of the literature, policies, instruments, and developments related to the CSAWP, in addition to the perspectives of migrant agricultural workers and selected key informants, this study analyzes the provisions afforded by the Canadian welfare state for protecting migrant agricultural workers and their rights as secondary labour force members who are mostly invisible in Canadian society.

CHAPTER 3

METHODOLOGY AND THEORETICAL CONSIDERATIONS

3.1 Methodological Issues

This is an exploratory study with qualitative methodology. Although any serious research demands objectivity, the issue of how the Canadian welfare state deals with the protection of migrant agricultural workers' rights certainly implies subjectivity. But it is not the researcher's subjectivity that this research is trying to present. This study attempts to depict what the main actors involved in the processes mentioned earlier have to say about it. The intent is that the research questions of this investigation be answered by the main actors, namely, civil servants, labour movement, and advocacy groups representatives, as well as migrant agricultural workers; of course, taking into consideration related official documents.

As the literature suggests (Kirk, 1999; Polansky, 1975; Royse, 1991), exploratory studies are appropriate with topics about which scarce information is available. This is the case with how the Canadian welfare state has managed the issues regarding the protection of migrant agricultural workers' rights; particularly because the growing body of literature does not include the perspective of the migrant agricultural workers and representatives of the labour movement as to how the Canadian welfare state is managing these issues. The former being directly affected, and the latter being the organization that is pushing harder in

order to enhance the workers' protection. Using a qualitative design permitted me to explore the insights and considerations of a selective group of the people involved in this issue. A qualitative approach provided the study with detail and richness in answering the research questions posed earlier (Royse, 1991).

3.2 Sampling

The sample used in this study was composed of civil servants, labour movement representatives, and migrant agricultural workers. The sample included 11 people: six male Mexican migrant agricultural workers⁸, two representatives of the Ontario Ministry of Labour, two representatives of the labour movement (the first one, staff from the Leamington Migrant Agricultural Workers Support Centre, and the second one, a representative from the Ontario Federation of Labour), and one representative of the advocacy group Justice4migrantworkers. The available time and resources for this research were somehow limited for it was a self-funded study. Therefore, and because of the different locations of the participants I interviewed, I employed two sample techniques in this study: convenience sampling and snowball sampling.

In literature, convenience or opportunistic sampling is referred to as a technique that allows an open period of recruitment all along the way (Luborsky & Rubistein, 1995). So, even though there were some targeted people I intended

⁸ The migrant agricultural workers who participated in this research included people who have been participating in the program from two up to more than 20 seasons.

to interview, it was impossible to know at an early stage whether I was going to be able to access those people. It was precisely because of that reason that the technique of snowball sampling was considered in the first place as it is a technique that permits the use of participants as referral sources; that is, participants may recommend other people they know who may be willing to participate (Luborsky & Rubistein, 1995).

On the other hand, it is clear that these techniques bear some limitations that may affect the outcome of the study. Although qualitative studies don't intend to be representative, these techniques might affect the outcome in two different ways. Firstly, snowball sampling may nourish the biases of the first participants as they may recommend people with similar backgrounds and opinions as theirs (Royse, 1995). Secondly, participants with a greater understanding and insight regarding the issue addressed by the proposed research question may not be reached by using convenience sampling, but again, time limitations undermined any possibility of trying a different approach. Royse (1995) states that the main problem with nonprobability sampling techniques is that they may produce very biased results, being difficult for the researcher to know or detect it. Having said that, I just have to add that extreme care was taken at the different stages of the research so that those factors did not go unnoticed, particularly during the analysis stage, not forgetting anyway that it was not the purpose of this study to produce generalizations of the findings, but to find the significance these issues have for a selective group of the people who are affected by them.

3.3 Data Collection

In order to explore the central question of this qualitative study, I analyzed data gathered from semistructured interviews with the mentioned sample. The interviews lasted between 30 and 45 minutes and were taped with the participants' informed consent. Other analyzed data were from the existing documents of the developments that UFCW Canada has initiated on behalf of migrant agricultural workers as well as related official documents issued by the Canadian state (i.e., the Occupational Health and Safety Act).

To locate data sources, I started contacting people who may have been interested in participating in the project via e-mail and telephone, more specifically, people from UFCW Canada and the Ontario Federation of Labour. In these initial conversations I presented before them the objectives of this study. That way I was able to ask them to have an interview exclusively to visit the points regarding the Canadian welfare state dealing with the protection of the rights of migrant agricultural workers. It was also my intention to ask them to provide me with access to written information which may facilitate this study.

Some of data I was seeking were obtained through interviews with migrant workers. I planned a few trips to Leamington,⁹ Ontario, and mingled with migrant workers on Sundays (presumably the only day when they rest and have the chance to go out to buy groceries and go to church). The decision to visit Leamington on Sundays was also made because many migrant agricultural

⁹ Leamington is presumably the place where more migrant agricultural concentrate every season.

workers attend St. Michael's Parish, which offers its religious services in Spanish. I introduced myself, and began to have informal conversations with some of them. This allowed me to present the purpose and main issues of the study and ask them whether they were interested in participating in a semi-structured interview. Royse (1991) argues that the time and the place where data are collected may have major effects on the outcome of the study and hence the above mentioned occurred.

Finally, I also searched parliamentary gazettes and related bulletins, and documents such as the Charter of Rights and Freedoms and the Agricultural Employees Protection Act for related information.

3.4 Instrumentation

Data collection was done through semistructured interviews and a review of related documents. Because of the exploratory nature of this study and notwithstanding its time and economic limitations, personal semistructured interviews were the main means for obtaining the needed data.

The interview guide contained open-ended questions that allowed the participants to expand on their responses, and at the same time, allowed the researcher/interviewer "to take advantage of the unique perspective of each respondent" (Mayer & Greenwood, 1980, p. 223). It is also important to mention that the interview guide remained open to the addition of new questions that

address themes related to the research question that the first participants may bring and the interviewer might identify along the way.

The interview guide required some modifications for different reasons. The more drastic change that the interview guide suffered was when it came to interview the representatives of the Ministry of Labour. Even though they were willing to talk with me and to participate in the study at all time, they were clear from the beginning in that, as representatives of the Ministry of Labour, it was not their position to give opinions or insights. This situation prompted me to modify the interview guide so that the question became more oriented to obtaining what these representatives called “factual information.” Other than in these two cases, the interview guide remained the same.

Government documents were obtained through the World Wide Web (i.e., on line access and searching tools in the official newspaper of the government of Canada website.) Using the Internet, I selected and analyzed relevant data which supported this study. This proved to be more appropriate, convenient, economic, and faster than, for instance, visiting the parliamentary archives in Ottawa.

3.5 Analysis of the Data and Theoretical Framework

Once the data were obtained, the information was then organized, categorized, analyzed, and summarized in order to have a conscientious content analysis. As some argue, this is indeed a critical stage in any research process, and hence it is important that it is carried out very carefully (Mauthner & Doucet,

1995). It is at this stage where most care was taken in order to obtain the trustworthiness wanted in this study. The process through which I analyzed the data was based on the model presented by Connolly (2003). It started with a line-by-line, sentence-by-sentence analysis of the data so that common themes could be identified and isolated; in the second step, I grouped the themes into categories for a second, thorough analysis, trying to identify relationships and then systematizing those connections. Finally, I tried to display the meanings found within the participants' insights. In addition, a content analysis of official documents was conducted in order to have a broader spectrum of the actions and provisions by the Canadian welfare state.

The theoretical framework used in this research to support the analysis of the data, and against which my findings were examined, was composed by an alternative labour market theory. Dual labour market theory does not see the labour market as a continuum of workers and firms interacting within a context that allows a perfect competition (Fischer & Nijkamp, 1987). On the contrary, it sees a considerable segmentation labour market discrimination against minority or vulnerable groups such as migrant workers (Fischer & Nijkamp, 1987). One of the most important tenets of the Dual Market Theory is that the labour market is dichotomized into two distinct sectors of employment opportunities: primary and secondary. On the one hand, the primary sector of the labour market is characterized by having high wages, good working conditions, provision of holiday pay, access to sick pay, as well as promotion opportunities. On the other

hand, the secondary sector is characterized by having low wages, poor working conditions, low degree of unionization, temporary jobs, in addition to scarce chance for mobility in the labour market (Eastman, 1987; Fischer & Nijkamp, 1987; Montague, 1970). Some argue that mobility of labour between these sectors is very limited, in particular because upward mobility is hardly restricted by social and institutional obstacles (Fischer & Nijkamp, 1987). They suggest that amongst the groups of workers in the secondary sector that have even more difficulty to gain any mobility is that of migrant workers. Furthermore, it is thought that secondary labour market responds more to demand variables, rather than to the supply variables (Eastman, 1987), or labour shortages. I will show below that these theories are most suitable for analyzing and discussing a complex problem such as the protection (or lack of it) of migrant agricultural workers' rights.

The analysis of the findings also considered the effects of globalization on the labour market. The main elements posed in the section of the literature review of this study were used as a framework to this respect.

3.6 Ethical Issues

It is important to discuss briefly the ethical issues that were considered in the development process of this research. The first issue was confidentiality for the participants. By no means was the identity of any participant revealed so that nobody's employment or position was threatened by participation in this study. This was clarified in the consent letter that was presented to participants of the

study. No personal information that may identify the participants is included in this thesis.

As a researcher, I needed to be aware of the power imbalances between participants and me, and thus another important aspect to consider was the social location of both, the researcher, and of the participants. It is my intention that any possible biases of the researcher be stated in this report in order to avoid any misinterpretation. This way, I tried to enhance the trustworthiness of the study, which by the way, is one of the most important aspects in an exploratory study, and hence one of the most important goals to be achieved in this thesis.

Finally, as stated earlier, I had interviews with migrant agricultural workers, and as mentioned in the literature review, their position is more often than not vulnerable. This situation could have been exacerbated by the fact that I interviewed Mexican migrant workers whose native language is not English, but Spanish. After having finished the interview stage, I made explicit that I am Mexican and that my mother tongue is Spanish, and I also made explicit that I have experience in Spanish-English translation and interpretation. All the communication between the migrant workers and me (i.e., informed consent letter, interview, etc.), was in Spanish, and I personally was in charge of the subsequent translation and interpretation of the data. During this task, the Mexican migrant workers' language and cultural background were respected, translated, and interpreted with extreme care.

CHAPTER 4

RESEARCH FINDINGS

4.1 Migrant Agricultural Workers' Rights and Entitlements: What Do the Documents Say?

This study looked at the different instruments that exist within the Canadian welfare state (Canadian laws), the Memorandum of Understanding which permits the entry of migrant workers to Canada (MOU), and the Employment Agreement signed by the employer and employee, to enforce and defend migrant agricultural workers' rights. Through a review of these instruments, I will be able to present the main rights that migrant farm workers are entitled to while participating in the CSAWP. The access migrant agricultural workers have to these provisions will be presented and discussed later.

4.1.1 Memorandum of Understanding and Employment Agreement

Let us start with some of the most important provisions established in the MOU. According to this document, all Mexican migrant workers participating in the CSAWP, and within the context of the Employment Agreement (EA), are entitled to be treated just as other Canadian workers in the same activity, in accordance with Canadian laws. In addition, these documents make clear that migrant agricultural workers are entitled to benefits such as injury, illness, and

death compensations (if they were a consequence of their job), as well as medical insurance (Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States).

Other rights that are stipulated in these instruments are one day of rest after six consecutive working days¹⁰; shifts of no more than 8 hours¹¹; suitable accommodation and proper meals¹² at no cost; whichever wage that is greatest, the provincial statutory minimum wage, the minimum wage rate for the type of agricultural work carried out by the worker established in the province by Human Resources and Skills Development Canada (HRSDC), or the rate paid by the employer to his Canadian workers doing the same activity (Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico, 2006).

It is also important to mention that workers' wages are subject to deductions. The two types of deductions stipulated in the Employment Agreement are firstly, the normal deductions that the employer is required to make under law and secondly, deductions for reimbursing the employer for partial travel and visa expenses, as well as the cost of insurance coverage not related to employment (Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico, 2006).

This brief review of the MOU and the Employment Agreement shows that migrant agricultural workers are to be treated just as Canadian workers doing the

¹⁰ Unless mutually agreed by employer and employee.

¹¹ Unless mutually agreed by employer and employee.

¹² If it is the case that the workers prepare their food, they have to be provided with cooking utensils and facilities at no cost.

same type of work in agriculture. In addition, Verma (2003) agrees that once migrant agricultural workers are in Canada, they are covered by Canadian laws just as any agricultural worker. Thus, it is necessary to look at the implications of these statements according to labour and employment provisions in Canada, and particularly in Ontario. The Canadian Constitution establishes that agriculture falls under the umbrella of both federal and provincial laws (Verma, 2003). However, it is worth mentioning that agricultural workers in Ontario are excluded from basic labour standards at the provincial jurisdiction level. Labour legislation development and enforcement in Ontario fall mainly into three big branches managed by the Ministry of Labour, namely the Employment Standards, the Health and Safety, and Labour Relations branch. These branches are governed under three Acts: the Employment Standards Act (ESA), the Occupational Health and Safety Act (OHSA), and the Labour Relations Act (LRA).

4.1.2 Employment Standards Act

The ESA, which applies to agricultural workers and thus to migrant agricultural workers, is an instrument that provides minimum standards related to employment. It includes provisions such as minimum wage, work hours and overtime, public holidays standards, parental and emergency benefits, etc. However, the ESA establishes that there are different categories of agricultural workers, and that coverage of some provisions and regulations may vary

depending on whether the agricultural worker is employed as a “farm worker” or “harvester” (for further details see the agricultural workers ESA fact sheet).

Both farm workers and harvesters are entitled to the following rights under the ESA: emergency leave, equal pay for equal work, family medical leave, parental and pregnancy leave, regular payment of wages, severance pay, and termination notice or pay. One of the differences is that whereas harvesters are entitled to provisions such minimum wage, public holiday, and vacation pay, farm workers are not.¹³ Finally, the ESA excludes both farm workers and harvesters from provisions such as hours of work and overtime pay. Another important aspect to mention, which by the way covers the two type of workers, is that the Act establishes that “no employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so” (ESA, 2000: 74. (1)) if an employee asks about or tries to exercise his or her rights under the act, or files a complaint with the MOL.

To provide this section with a broader context, it is important to mention what the main functions and roles of the Employment Standards Branch of the Ministry of Labour (MOL) are. According to a representative from the Employment Standards Branch of the Ministry, their main activities are to provide all workers with information so that they know their rights (migrant and nonmigrant workers). At the same time, and regarding particularly the CSAWP,

¹³ It is important to note that there are some specifications that must be complied with so that these provisions take effect (i.e., number of hours worked if a worker combines farm work and harvesting activities).

they inform FARMS, Mexican consulates, HRDSC, as well as Canada's revenue agencies so that all the parties understand and comply with their roles. The Employment Standards branch of the ministry also has 2,500 inspections at different workplaces a year. In those inspections, they look for compliance with the ESA, and they make sure that employers keep their records in order. When there is a violation to the applicable provisions or when there exists a complaint by an employee (which according to the informant "any employee" may file), inspectors look at employers' records and interview staff in the workplace, so that they may discern whether the violation existed or not. If there were evidence of a contravention to the act, the MOL officer might proceed to take actions that can range from fining the employer to mandating the employer pay the worker monetary damages, or even ordering a prosecution process.

The key informant from this branch in the MOL informed me of the procedure that any worker protected by the ESA should follow if he or she wants to file a complaint. If a worker thinks that any of his or her rights are being violated, and if he or she is a unionized worker, the employee should talk to his or her union, but should this not be the case, the employee must contact the Ministry directly, and MOL staff will help the worker through the process. The representative of the branch said workers can obtain a Self-help Kit (in English) from the Ministry, at ServiceOntario Centres, or on line at www.labour.gov.on.ca. (The branch does have a series of pamphlets in several languages, including

Spanish). Also, workers can call a 1-800 number (though the informant acknowledged they don't have operators who speak Spanish).

4.1.3 Occupational Health and Safety Act

The Occupational Health and Safety Act (OHSA) is an instrument that provides the rights and duties that all parties must comply with in the workplace. For many years, agricultural workers in Ontario were excluded from the protections of the OHSA, but some regulations in the Act were changed so that provisions in the OHSA apply to agricultural workers as of June 30, 2006. Now, agricultural workers have the right to a safe workplace. In addition, some of the most important provisions extended to these workers are the right to know about workplace dangers; the right to representation through a Health and Safety Committee or a Health and Safety Representative; the right to refuse unsafe work; and finally, the right to be free from reprisals, dismissals, penalties and/or threats, for trying to enforce their rights under the OHSA (Occupational Health and Safety Guidelines for Farming Operations in Ontario, 2006).

Amongst the most important roles and functions of the MOL's Health and Safety Branch according to a key informant from this branch is to guarantee that every workplace (where there is paid labour) complies with a minimum level of safety. Another role of this branch is to ensure that workers know their rights and know they are protected by the OHSA. The interviewee informed me how this

branch is going to extend their functions now that agricultural [migrant] workers are protected by the Act.

For the first year (June 2006 to June 2007), officers from the Health and Safety Branch will go inspect a farm when there is a complaint related to someone that has resulted in an injury or death or someone refusing to work because of unsafe conditions. He suggested that this will be the process during this initial year so that they can learn about the issues and the farming sector. Starting the second year, the Occupational Health and Safety branch of the MOL will do proactive inspections; they will not wait until there is a complaint. On the contrary, they will inspect different workplaces regularly and randomly. That way, they expect to make sure the Act is being respected and enforced in the farming sector just as in other sectors.

4.1.4 The Labour Relations Act and the Agricultural Employees Protection Act

The Labour Relations Act (LRA) determines the process by which a union obtains bargaining rights and the procedures by which unions and employers engage in collective bargaining (Ontario Ministry of Labour, 2006). Agricultural workers in Ontario are excluded from the LRA, thus migrant agricultural workers lack one of the essential labour rights, collective bargaining. The LRA does not apply to “an employee within the meaning of the Agricultural Employees Protection Act, 2002” (AEPA) (LRA, section 3.b.1). As presented in the literature

review, after a long process, the AEPA was the result of a previous successful UFCW challenge of Ontario law that was created and introduced during the Harris-Eves government in June 2003.

The AEPA allows Ontario farm workers: (a) to form or join employees' associations (not unions) to participate in lawful activities of such associations; (b) to assemble; and (c), to make representations to their employers respecting the terms and conditions of their employment (AEPA). Thus, it continues to deny migrant agricultural workers the right to collective bargaining as available under the Ontario Labour Relations Act. As mentioned before, this means that migrant workers can take their demands to their employer, but that does not oblige employers to respond.

It is important to mention that, whereas contraventions of the LRA are heard by Ontario the Labour Relations Board under the Ministry of Labour (Ontario Ministry of Labour, 2006), contraventions of the AEPA are heard by the Agriculture, Food and Rural Affairs Appeal Tribunal under the Ministry of Agriculture, Food and Rural Affairs (Ontario Ministry of Agriculture, Food and Rural Affairs, 2006).

4.1.5 The Federal Jurisdiction: The Employment Insurance Act and the Canada Pension Plan

Administered by the Canada Employment Insurance Commission, the Employment Insurance Act (EI Act) provides with regulations for the payment of

benefits to unemployed workers who meet certain conditions. The EI Act also provides benefits which include sickness, maternity, and parental benefits (Human Resources and Social Development Canada, 2006). The EI Act establishes that there are two types of employment, insurable and excluded; it requires that workers in insurable employment pay premiums (EI Act). Agricultural work is considered by the Act as insurable employment; therefore, and as established in the EA of migrant workers,¹⁴ wages derived from this work are subject to contribution under the Act. Verma (2003) argues that many agricultural migrant workers participating in the CSAWP are able to accumulate requisites (i.e., number of hours) to be eligible for different Employment Insurance (EI) benefits; nonetheless, even though migrant farm workers pay premiums, they “have no prospect of collecting regular EI benefits” (p. 76). Due to the “seasonal” character of the program, they are not eligible to demand important unemployment benefits (i.e., to be paid for a working day in a benefit period) of the EI because those are not payable to laid-off workers who are not in Canada (EI Act, s. 18). However, migrant agricultural workers may be eligible to receive some benefits such as sickness and parental benefits (EI Act). For instance, if a worker’s child is born while he or she is working in Canada, even though the child is born out of Canada, the worker is entitled to receive parental benefits. Summing up, migrant agricultural workers participating in the CSAWP are denied equal benefit of the Employment Insurance Act.

¹⁴ Migrant agricultural workers’ wages are subject to the normal deductions that the employer is required to make under law.

The Canada Pension Plan (CPP) is a social insurance program that ensures protections to contributors and their families against the loss of income because of retirement, disability, or death (HRSDC, 2006). Administered by the Canada Customs and Revenue Agency, the CPP applies to agricultural migrant workers. Thus, they are able to claim benefits such as disability, retirement, and survivor benefits. In order for migrant workers participating in the CSAWP to qualify for those benefits, they must meet requirements just as other Canadian workers. For example, if the worker's annual payment is more than \$3,500, the employer will deduct the corresponding contributions. Thanks to different international social security agreements, most migrant workers participating in the CSAWP qualify for CCP benefits (HRSDC, 2006).

4.1.6 Canadian Charter of Rights and Freedoms

In addition to the labour-related provisions presented above, it is important to close this section by taking a look at how the Charter of Rights and Freedoms applies to migrant agricultural workers who participate in the CSAWP. Migrant agricultural workers come into Canada with a work permit; thus, they are excluded from the rights that are confined to citizens (i.e., mobility rights). Yet, even as noncitizens, migrant workers are entitled to most of the rights and freedoms under the Charter while in Canada, for instance, freedom of peaceful assembly and freedom of association; right not to be subject to cruel treatment or punishment; and, right to the equal protection and benefit of the law without

discrimination based on race, national or ethnic origin, colour, religion, sex, age, etc. (Canadian Charter of Rights and Freedoms, s. 2 and 15). As for the enforcement of these freedoms and rights, anyone whose rights or freedoms have been violated or denied may apply for a remedy to competent jurisdiction courts (Canadian Charter of Rights and Freedoms, s. 24).

4.2 The CSAWP According to Workers and Key Informants

4.2.1 General Advantages and Disadvantages of the CSAWP

As illustrated in the literature review, the CSAWP has a series of advantages and disadvantages. Participants of this study confirmed that indeed the program can be seen as an instrument that has both social and economic advantages. On the Canadian side, for example, key informants acknowledged that the program provides the Canadian agriculture industry with the labour the industry needs to be prosperous as it is now. Mexican agricultural workers also commented that they see several advantages in the seasonal program as it allows them to come directly to work legally. They said that participating in the CSAWP is advantageous to them because, by coming to work to Canada, they are able to earn more money than they could ever do in Mexico doing the same activity with the added advantage that they do it in a shorter time period. Apart from the economic positive aspects, migrant workers were asked what other advantage they saw in their participation in the program; two interviewed workers shared the following comments:

“It allows you to culturally relate [oneself] to other people and to get to understand different types of thinking. And the fact that you get to know things that you have never seen.... It [participation in the CSAWP] really changes your way of thinking and makes you better...”

“The advantage is that you learn a lot about things we don’t have in Mexico... for instance the greenhouses, in Mexico we lack... at least in my province, we don’t have a.... technology for these types of greenhouses,... getting to know that is the advantage.”

On the other hand, key informants and migrant workers also identified disadvantages in the program. The key informants from the labour movement and from the advocacy group focused their discussion to this respect on situations such as the power imbalances and what they consider “injustices” that participants’ contracts set out for migrant workers. For example, the informants alluded to aspects such as repatriation and the fact that they cannot aspire to obtain status as Canadian residents, not to say citizens. Here are two points of view:

“...workers spend their best years here in Canada, and after they are not necessary anymore, we just forget about them. And then the next generation of migrant workers will come, you know, their kids...”

“... they’re totally under the... virtual... uh dictatorial control of the employers, right, so if the employer doesn’t like you, he’ll let you go, and the next thing you know is you’re on a plane back to Mexico or the Caribbean.”

Interestingly, although migrant workers also made reference to those contract-related situations, their comments about the most important disadvantages they saw in their participation in the program went in another

direction. Every worker focused more and commented on the burden of leaving their home and families for long periods of time. One worker stated:

“A disadvantage is that you’re away from your home for a long time and sometimes the money you get to earn is not so... it does not compensate the time that you are away from home. Sometimes the family....., you don’t know! [emphasis added] The family... See this for example, I just had a son who was just born last April, and I am not going to meet him until he is five months, and then after that, I won’t see him again until he’s more than one year old. So that is one of the biggest disadvantages that we parents have...”

Another participant contributed:

“The disadvantage is leaving your family, maybe four, five, six or even eight months; that’s the disadvantage. And it is a great disadvantage because your kids grow without father, your wife without husband, your parents without kids...”

Other type of disadvantage observed by workers was that different factors can interfere with their job and thus with their earnings. They said that the fact that a worker is accepted in the CSAWP does not guarantee he is going to earn as much as he can expect for different reasons. For instance, not working in a greenhouse may hinder their salaries, as one participant said:

“When you are not working in the greenhouses, when you work out of them in the field, sometimes it rains (or snow) and that causes you not to collect as much money as you expect”.

4.2.2 Most Common Issues in the CSAWP

“In my experience, I have worked in different farms, you know, in some farms [the experience] has been bad totally; in other farms it has been ok and in others great. It is not regular, it is very unstable... I believe we would have to interview each worker to get to know exactly what is the situation they are living because ‘only the one carrying the backpack knows what is inside of it’...”

This suggests that it is very difficult to generalize about the issues and the experiences of every worker participating in the CSAWP. As noted in Chapter 3, it is my intention to illustrate the experiences only of the migrant workers who agreed to participate in this study as well as the comments by key participants. Having said that, it is also important to note that many of the situations and conditions shared by workers and key informants supported the issues mentioned in the literature review. The interviews confirmed that in most cases, the compliance or breach of the Employment Agreement (and the other documents presented in the past section) hinges, more often than not, on the employer. The interviews also revealed that, apparently, the fear of repatriation or getting into trouble was present in the interviews although it was promised that participants' confidentiality and anonymity were essential principles in this study. Even though there were numerous cases in which migrant workers said their "patrón" (Spanish word used by Mexicans to refer to an employer) was a good "patrón" and complied with the contract, there were also numerous cases in which migrant workers said they (or "someone they know") had had bad experiences. In these cases, migrant workers frequently chose to share their comments in third person when it came to the discussion of the injustices that occur in the CSAWP. Interestingly, this occurred at early stages during the interviews, but when they revisited the same issue once some trust had been built, they talked about the same issues in a more personal way. Here are some

comments by migrant workers that illustrate the above-mentioned issues; on the one hand:

“The patrons I’ve had and those I have today have been respectful with my contract, they have always treated me well. I have never had problems with them, nor have they had problems with me, we’re lucky we have a nice patron.”

But on the other hand, another worker shared this:

“Not in our farm... but I’ve heard some [workers] have left, but because they have problems, not with the patron... the patron never gets in trouble, instead he sends his... his second, his subordinate. But there are farms where they send ill workers to Mexico, maybe because of chemicals... So, because they don’t want to cure them, they send them to Mexico... They send them to Mexico, to avoid problems...”

Another migrant worker added:

“A brother of mine came with me few years ago, but he wasn’t interested in coming back again because he was mistreated”

Another interviewee added:

“...as I said before, in the farm where I work, we are more or less ok, but I’d like you could talk to some people who are not afraid of speaking out, because things are really bad... really bad!”


Besides those comments about issues that many workers experience in general, there were particular aspects that workers and key informants saw as issues within the CSAWP. The most recurrent aspects that the participants in this study referred to were issues regarding to payment, housing, and working conditions.

4.2.2.1 Wages

Although migrant workers acknowledged that they earn a better wage working in the Canadian agricultural sector than what they could earn doing the same activity in Mexico, every worker and key participant said the salaries migrant agricultural workers get are very low. Both workers and key informants commented that because of the tasks they do and the conditions they have to work in, they should earn more. The key informant from the labour movement said:

“Well it’s a situation of considerable exploitation... they [employers] are doing [thriving] it on cheap labour, right?”

Apart from the low wages that the CSAWP offers to migrant workers, another issue that was commented on was that in actuality, there is no possibility of obtaining a better salary. Neither acknowledgement of seniority nor the difficulty of the task performed can help them reach a better wage. Specifically, workers said that it does not matter the level of difficulty and risk of the task they do (i.e., operating a tractor or spraying pesticides versus picking vegetables), they have the same salary. Also, workers mentioned that it doesn’t matter how many years they have participated in the program and the expertise they may have, they receive the same salary.

Another issue related to workers’ wages is that they are not entitled to  overtime payment. As commented on by key informants, although there are

times when migrant workers may have workloads of up to 12 or 14 hours a day, they will always have the same hourly pay. Finally, it is worth mentioning that amongst migrant workers, there were different opinions about the deductions that their wages are subject to. On the one hand, there are workers who agree on that:

“They should deduct a little bit more because it is a benefit for us, [for instance] the thing that we can access is parental benefits. For me, it is ok because that is going to help us in some way in the future; it is a benefit for the future.”

But on the other hand, another worker said:

“They deduct us for everything. About those deductions... related to the pension and the little I know about it, the people who get to be the age must receive the pension... but what they take from us... according to some people who have reached that age, they just don't give anything! Most people say it is 100... 80 or 100 dollars a month... With the people I have talked about it, I have heard that those who get the benefits receive something like that, between 50 and 100 dollars... from my point of view, considering the amount they deduct from us, I don't think it is very good... it is not well balanced... I mean it is against us!”

4.2.2.2 Housing

Housing is an issue that was presented in the literature review as one of the main problems migrant workers face and complaint about while participating in the CSAWP, and the interviews confirmed this. More often than not, the living conditions of workers are really poor. According to both key informants and migrant workers, this is mainly because housing inspections are not carried out properly. Thus housing does not usually meet the minimum standards for a “decent living”. These are the words of a worker:

“These people who check on us don’t show up... we need some inspectors that check out how we live. We need that... As some workmates say ‘we need some tables, or chairs,... Look! We don’t have, we sit on buckets or anything....’ But we need that they get to visit us because nobody goes to the farm, who are you going to complain with?!! [Emphasis added by worker]”

The advocacy group key informant added:

“.... housing inspections are not done, uh... I’ve heard workers telling me that when housing inspectors have gone to their farm, sometimes the farmers... you know... [they] will show inspectors a different house... that they are going to rent out.... you know.... to local families... but they don’t put migrant workers there, and then the migrant workers getlike you know, the really crappy houses”

Migrant agricultural workers argue that the houses where they live do not have proper facilities. They say the rooms, kitchens, and bathrooms are usually very small for the number of workers who dwell in the houses, which diminishes their privacy. However, according to participants, nobody seems to care about it. Here are the experiences of three migrant workers to this respect:

“My surprise was that we were 80 people and 30 living in a trailer. We had a stove to cook and a little bed to sleep, and a bathroom for 12 people who were supposed to take a shower with a little boiler of no more than 40 litres; it was... a total disappointment”

“What is kind of a discomfort is housing. There are some farms where we live all piled up and we need some more privacy. We need some more space in the kitchen and a little more space for each worker. We don’t like living in a dunghill all piled up! [Emphasis added by worker] It is about space, about dignity in how we live, the living of each of us... there is nowhere to take a shower decently. Sometimes we are maybe 10 for one shower...”

“We need the patrons to give that.... privacy for workers and more commodities. [A place] where we aren’t all piled up, well... that they give each worker a decent space....”

4.2.2.3 Working conditions

Farm work is indeed a tough job. It is physically demanding and thus very tiring. Migrant agricultural workers come to Canada with this idea in their heads. They know they will work long hours, and they come willing to do it. Nevertheless, when they get here, the treatment by some employers or *mayordomos* (foremen) is not very respectful. Migrant workers say that many times their employers put a lot of pressure on them so that they produce more. This was also confirmed by the key informant from the advocacy group:

“What really got to me was that a lot of workers are very angry ... you know they kept on saying that ‘we’re treated like slaves you know... or we’re treated like dogs! Or you know, like machines, but machines that are not able to even breakdown you know ...we’re supposed to be ... to be able to work nonstop’.”

Migrant workers also stated that sometimes they are assigned to tasks that they have not done before or activities that require more expertise and that employers are not patient with them while they are learning. Not even when sometimes workers have to learn by themselves. They say that they would like to have more considerations when these situations occur. Some workers shared:

“A little more considerations with the jobs, there are simpler jobs, and there are other more competitive. Sometimes we can do more without their telling to hurry up, right? ...”

“Sometimes we are told that we don’t have the capacity to do any job”

Another issue experienced by some workers is that related to safety and exposure to toxic substances in their workplace. All the workers who were

interviewed for this study said that they sometimes have to spray pesticides. But the problem is that in most cases, they are not informed about the possible risks that it implied or provided with the proper equipment to do it without risking their health. The occurrence of these situations was reported by participants:

“What we really don’t know is about the pesticides, because we spray them there... we’re not informed about it, nor do they [employers] provided us with the proper equipment, [we do it] just like that.”

“For instance, we didn’t know that there are some pesticides that are bad for us...”

A consequence of this situation is that workers frequently get hurt or ill, and the employers and foremen sometimes do not pay a lot of attention. Workers and key informants said that it has to be a very severe situation for them to take workers to the doctor and receive medical care. A migrant worker commented:

“Sometimes there are problems with the workmates that hurt themselves or that get ill, and there is little attention to those from the patrons, so that’s bad; and not all patrons, just some of them. They sometimes forget about it, they just send the workers, the employee, and they forget to check on them.”

A key informant contributed with the following:

“That’s another problem that I didn’t mention, but a lot of times workers have to be basically dying in order for the patrons to take them seriously, or the mayordomos to take them ... to be taken seriously for them to get... to receive good health care.”

4.2.3 Workers and Their Rights

It seems that one of the main problems that exist related to migrant agricultural workers and their rights, if not the most important, is that most of them do not know the few rights that they are entitled to (agricultural workers do not have rights that workers in other sectors have such as holiday pay and bargaining rights), not even when some of them have been participating in the program for more than 10 years. Although the reasons for workers' lack of knowledge may vary, this situation was confirmed by both key informants and migrant workers. A migrant worker stated:

"The information... they don't give us enough information about... about what ... which exactly our rights are..."

Another worker added:

"In the [Mexican Labour] Secretary they don't inform us anything. Sometimes they just give us a book, but don't tell us that everything is in there, so we sometimes do not read it, and that could be our fault, right?"

A different worker confirmed:

"We'd like to know a little bit more about our rights as workers because they [bureaucrats] sometimes give the written info to us but there are some workmates who don't even know how to read... maybe it would be good to have a workshop before coming so that we knew, for example, we know that taxes have to be made, that you have to make your declaration, but we don't know how, why, or what for. It is important to have this information about how not doing this may cause you some surcharge and stuff like that... that information is not known before we come here, and it is important because I seem to recall that they said we didn't have a reason for coming and getting into those kinds of troubles, but simply come to work. But as we are under the Canadian laws and those apply to us, we don't know what laws we must obey in different places..."

A key informant contributed:

“... there are still a lot of guys who don't know what their rights and obligations are... as... into coming here... like there are some guys who have been coming for the past five years but didn't know about...”

Another aspect to be considered, as presented in the first part of this chapter, agricultural workers, migrant or not, are not covered by some regulations that apply to workers in other sectors (i.e., they are excluded from some protections under the ESA). Here are two key informants' comments:

“...well that's very complicated because... ok, let see, obviously workers are excluded from a lot of rights that other workers in different sectors get, you know? Like uh... because it is farm work... the fact that it is farm work gives them fewer rights, and the fact that they are migrant workers gives them fewer rights as well. They don't get statutory holiday pay, they don't have the right to form a union and they don't have other like health regulations...”

“...and there's not much on paper because agricultural workers aren't... don't fall under the Employment Standards Act (ESA)... so we have two or three major pieces of legislation and one is the ESA, which none of non-unionized workers get, so you get a... statutory holidays in Ontario, there is a minimum wage, all those things, right? Agricultural workers don't fall into that. ...so they don't even get the minimum standards necessarily, right? And then there's the Labour Relations Act, which deals with unionized workers, and then of course there's the Occupational Health and Safety (OHSA) and there's some human rights legislation and a bunch of stuff like that... but these workers that you see right here, don't fall in to those...”

Another problem is that, even in the case that workers know about their rights, many times they cannot exercise them because of several reasons, mainly due to lack of accessibility. One of the obstacles observed by the representative of the advocacy group was:

“Workers have like little... leverage as workers in enforcing their rights. It is very difficult mainly because of the language barrier.”

Regarding this issue, key informants from the Ministry of Labour (MOL) said that any worker in the province may file a complaint if he or she suspects or knows for sure that any of his or her rights are being violated. Nonetheless, as illustrated in a section of this chapter, migrant agricultural workers have little accessibility for several reasons: (a) the Self-help Kit is available only in English; (b) the pamphlets that are in Spanish are available mainly online, or at ServiceOntario Centres (the nearest centre is in Windsor, ON, more than 50 km of distance from Leamington); and (c), operators at the MOL’s 1-800 number do not speak Spanish.

When the representative of the Health and Safety Branch was asked about the availability of informative material in the language of Mexican migrant agricultural workers, the key informant responded that, at the moment of the interview (June 30, 2006), this branch did not have any pamphlets or other informative material regarding the extension of the OHSA to agricultural sector in Spanish. In this regard, it is worth mentioning that the Canadian Labour Congress together with the UFCW’s Support Centres, the Workers Health and Safety Centre, and the Occupational Health Clinics for Ontario Workers for farm workers had already prepared and issued a manual with the most important health and safety issues that agricultural workers need to know both, in English and Spanish. As a matter of fact, staff from the UFCW’s Support Centres started

to disseminate the document and to give workshops about it to Mexican agricultural workers in southern Ontario weeks before the date the OHSA was extended to protect them, a fact which by the way was unknown—but happily received—by the representative of the Health and Safety Branch of the MOL. It is also important to mention that the key informants from the MOL acknowledged that they need to do “a better job” as to the availability of their services in Spanish. They also said that they have started establishing some partnerships with agencies such as Settlement and Integration Services Organization (SISO) so that they write their informative documents in several languages in order to inform the biggest number of workers of their rights, regardless of their language. They said that the Ministry is trying to get in touch with as many groups as possible so that they all can help with this endeavour, information that was confirmed by SISO later.

Fortunately, situations such as inaccessibility and the lack of knowledge are beginning to change as workers are getting to know more about their rights and obligations. The labour movement and some advocacy groups are responsible for this change. These groups are helping workers to learn not only about their rights and obligations but also about how to exercise the former and comply with the latter (i.e., getting parental benefits and doing their income tax declarations). In addition, as a result of one of the legal challenges by the UFCW, some OHSA regulations have been extended to farm workers. Thus, it is expected that the enforcement of these regulations will also bring some changes.

The key informant from a migrant agricultural support centre commented:

“Yeah, before we showed up, there was nothing. They didn’t know about any of their rights. Any of the obligations that they have, hmm... none of them knew how to speak English, we’re starting to change that... We’re starting to the point where we’re getting them parental benefits which is good, and the Canadian government did accept that. Hmm, I think last year we got them over... I think it was over... 80,000? Something like that, it was quite a bit!”

4.2.4 How is Canada Managing the CSAWP?

This section is one of the most important and relevant to the purpose of the study. Here I present the insights of participants regarding the management of the CSAWP by the Canadian welfare state. There were some concurrences on the points of view of three of the key informants, namely, the representative of the UFCW, the advocacy group Justice4MigrantWorkers, and the representative of the Ontario Federation of Labour.

The representative of the UFCW said that, although there has been some attention to their demands on behalf farm workers recently, this response has not been the best since it has been just partial. In general, the response the UFCW has gotten from the government has not addressed the minimum standards necessary to guarantee farm workers satisfactory working and safety conditions.

Amongst other examples, here is one comment:

“Oh... we didn’t get the health and safety that we wanted. We wanted it for all agricultural workers, we found out when the law came out that only indoor agricultural workers were covered under the act, outdoor workers, which we have the most of, like Simcoe, Brantford, or even here [Leamington]. We have the apple pickers; they are not covered under the Health and Safety Act. And we were looking in the total coverage. We’re still [emphasis added by

informant] in the process of the E.I so that they can have the same rights as Canadians do...”

The first thing that the key informant from Justice4MigrantWorkers argued was that there is a main breach in migrant agricultural workers' contract since they are not treated as Canadian workers as required by law. This participant argued that the responsible bodies of the CSAWP implementation do not make sure the contract is complied with in its entirety. Another aspect addressed by this participant:

“It [Canadian state] does not [pay attention] at all! They don't implement what is in all that... in the workers' contract, I don't think any of it is enforced by the patrons or by the government at all... they just wash their hands of the workers, they don't do anything, ... we should be much more responsible and we're not!”

The key informant from the OFL expressed his disagreement regarding how the Canadian government has managed the CSAWP issues, particularly those issues of workers' unionization and bargaining rights. He argued that the response that the UFCW has had after the challenges by the state has not represented a serious advancement in the fight for migrant workers' rights and well-being. The representative of the OFL underscored that there is frustration amongst the labour movement because these legal processes take a long time and a lot of money; in addition, he underlined that these processes are carried out by people who may be law experts but who do not know much about the conditions of seasonal agricultural work. The OFL participant also suggested other areas of entitlement gaps (i.e., disregard for individual and collective rights

for workers, and inadequate wages and living conditions). The representative of the OFL made the connection between the poor working conditions of seasonal agricultural workers and the importance and influence that neo-liberal policies and governments have had upon union and labour legislation (particularly, collective bargaining rights). Here are two fragments of the long answer shared by this participant to this respect:

“The union [UFCW] took them to court on this stuff, and the court ruling basically says they [migrant workers] should have... they should be able to exercise their basic collective rights... but not full union rights, right! So the Tory government said “we’ll fix that, we’ll to give them the right to freedom of association which everybody has under the Charter anyway! So it is a joke! [Emphasis added by participant]... This was a seven-year struggle, by the UFCW to get to the supreme court and then get this lousy piece of legislation [AEPA] here... which basically the Ministry made by ultra right wing minister, who was just an apologist for...(irony giggles) the ... the employer association...”

“Well I guess if I was to sum up [the Canadian state’s management of the CSAWP] in one word, it would be poorly! They are not... the conservatives were opposed to union legislation, they are opposed to unions per se, they are opposed to government intervention, they are opposed to most social programs... everything is a market! ...what we find today is that whole protocol spectrum has moved to the right, right? We have Harper that got elected here, uh... even the McGuinty government, I mean the McGuinty government could turn around and change that legislation, and say “we can grant the agricultural workers the right to unionize... They are not going to do that, you’ll watch, they are not going to do that. What they have done is moved on Occupational Health and Safety. So I don’t... I think the conditions of immigrant workers and the conditions unfortunately of all workers is decided a secondary consideration for this government. It repealed about sixty to seventy provisions under Labour Law. And the liberals just put in a... and they basically made it much harder to get a union and much easier to get rid of one... that’s basically what they were doing. So I would say the governments are not doing pretty much at all... And they don’t want to do anything, and there’s... agriculture has... Like

every sector in the economy has lot of wealthy people in it, and they don't want change. And these governments listen to those people more than they would listen to anybody else!"

As for migrant agricultural workers, they also concurred with several of the issues mentioned by the key informants; nevertheless, the majority of workers' comments were directed to the lack of supervision in the implementation of the CSAWP by the Canadian government. Some workers said that the program seemed to be well designed, and that it could work well for everybody if the gap between what is on their Employment Agreement and what happens in actuality was filled through more surveillance and enforcement. According to workers, one of the main reasons for the existence of this gap is because the program is managed "diplomatically" between the governments of Canada and Mexico, and there is no space for worker input. Here are two comments that express their opinion about how the Canadian welfare state is managing the CSAWP:

"The problem is that those who are in charge of making sure that everything is going as it must go... I guess they sometimes lack interest on that. As I somewhere read the other day, there must be... a type of rules that must be complied with..., for instance in housing, the way in which we are treated, or how we should be informed about our job, and that occurs very rarely. There is no one really who invigilates that those rules are really taken care of. So I guess the program, in the way it was thought..., it is designed, is ok; the fact that things are not carried out the way they should be is another thing"

"Despite all the things we have to go through and suffer, we come and we are ok. But it is missing someone who supervises that everything that is in the agreement is carried out effectively..."

Another employee added:

“They don’t really know how we feel, but they do what they have to do to keep us here just the needed time...”

One migrant worker who has participated in the program for more than 20 years also expressed the following about those in charge of the implementation of the program:

“They are more worried about the ‘wellbeing’ of their product... of Canada, only Canada. I guess what they care about is... you have a business and that’s what matters... ‘are you going to receive... to ask for my product?’ they don’t care who they have to run over to get that... I don’t think Canada worries [about the workers’ rights] I don’t think Canada has done something for the benefit of the workers, they are not like that.”

Finally, it is worth mentioning that the two key informants from the Ministry of Labour said that their work was not to give personal opinions about how the Canadian state is managing one of its programs.

4.2.5 Recent Changes Surrounding the CSAWP

Thanks to the support and efforts by different community actors, the situation of migrant agricultural workers has shown some improvements over the last few years. As briefly mentioned before, there have been some changes that impact their well-being directly. For instance, the meaningful outreach services provided by the UFCW’s Migrant Agricultural Workers Support Centres, some of the results from the UFCW legal challenges such as the extension of some provisions of the OHSA, the support by the OFL and the Canadian Labour

Congress, the outreach help and information provided by Justice4MigrantWorkers, and even some initiatives by the Ontario Ministry of Labour such as the partnerships with SISO are a few examples. However, it is evident that these endeavours are far from achieving fair working conditions for migrant agricultural workers. As one key informant said:

“Well, they always talk about how they enforce things, and I have no doubt that... there’s been some hiring around inspectors... Occupational Health and Safety inspectors, and so... we may see some improvements, plus the employers will find “ups I got to do this, I got to do that”, but we are a little bit sceptical about how much enforcement goes on.”

In addition, the representative from Justice4MigrantWorkers observed that it is very difficult for migrant workers in communities where there is no Migrant Agricultural Support Centre to benefit from any of these “small victories” (i.e., obtaining parental benefits) because there is no one to help them with legal advice and information about their entitlements.

Besides the help that workers receive from the Support Centres and the advocacy group, another positive aspect that was observed by migrant workers was that:

“Some things got better, for instance, salary. That is an improvement that occurred in the past two years. Even though the improvements have not been as we would have liked them to be, there has been some advancement...”

Notwithstanding the aforementioned, migrant workers also observed one negative change that has impacted some of them:

“...and it got worse in that the program has cutback the work hours a lot. In some places workers have very little work and in some other places, they barely have any. The negative changes have occurred in labour-related issues, with the hours they give us...”

Another worker added:

“I would like it if they gave us more hours... we think there is a government agreement that... that they may have agreed to not give us many hours... that’s really what we think, because sometimes there is a lot of work and they won’t give it to us. The work is just there accumulating... they sometimes bring other people to support that and do that... [they are] people from other places, sometimes Chinese. Because you know people from here don’t like green houses, they don’t like the work in the field... And it’s not only me saying this, when we all gather everybody complains about the same.”

This issue was supported by the representative from the Ontario Federation of Labour. He commented that a new “low-skilled workers programme”, which does not allow the Canadian government to intervene in the relationship between the employer and the employee, was established in 2003. The key informant said that the pilot project was making things worse because it has loose guidelines. He shared the following:

“...it is about private contractors in the agriculture industry, that’s another problem where you have... they are not going directly to a farm, they’re going to an agency, a temp agency. So the employers order how many workers this day or this week and then more next week or less next week. So that’s another problem, because none of these private contractors are regulated, so who else are trading people! And government inspectors don’t seem to be doing anything so that’s been a problem.”

4.2.6 Advocacy for Migrant Workers and the Legal Challenges by the UFCW

Every worker and key informant in this study, plus many other migrant workers to whom I had the opportunity to talk while doing this research, acknowledged that the advocacy work done on their behalf is very helpful and meaningful to them. Most Mexican migrant workers in Leamington know about the help that they can obtain in La Casa Blanca, as they call the UFCW's Support Centre. They actually said that La Casa Blanca was the first place where they go if they need any kind of help, even before the Mexican consulate that was inaugurated in 2004 in Leamington. A migrant worker shared this comment:

"We think that [Migrant Agricultural Workers Support Centre] is ok, because as I said before, many times the consul does not show up, not even when somebody is sick and has no one to represent him in translating with the doctor. We call them [Support Centre's staff] and they take you to the doctor, they translate for you and go with you... so those kinds of supports are very good and without any cost..."

Another worker added:

"They help you with translations when you go to the doctor, with the translations with patrons when you are in trouble. And they help you with some stuff about benefits. They help you with income tax, it helps you with that."

It is evident that the Support Centre has educated workers about their rights and obligations. Most of them mention and thank the help the centre offers, for instance, legal advice, going to the doctor, and translating for workers when they have a dispute with the employer, etc. In the same way, although in a

smaller number, Mexican workers know about Justice4MigrantWorkers and the support they offer (i.e., translating for workers, educating them about their rights, etc.). According to the key informants from the Support Centre and from the advocacy group, both migrant workers' advocates purport to be in constant communication and consultation with them; this way, they argue, is how they are able to provide workers with the help and support they need.

During the interviews, both participants argued that it has been through constant dialogue with migrant workers that they have become more informed and prepared to help migrant workers about the most common issues migrant workers ask about; they said that this is how they have structured their advocacy for them. Interestingly, however, neither of the workers who participated in this study, nor any other workers with whom I had the opportunity to talk informally, knew or were aware of the legal challenges undertaken by the UFCW.¹⁵ Finally, both participants said that they are pleased to some extent with the results they have had from their advocacy work, but that more needs to be done.

¹⁵ This will be analyzed and discussed in the next chapter.

CHAPTER 5

ANALYSIS AND DISCUSSION

It is important to start this chapter by mentioning that while there is evidence that the CSAWP is proven to be successful in different aspects for both the employers and the migrant workers, the purpose of my study is neither to analyze nor to discuss such features. The interviewed migrant agricultural workers themselves said that the CSAWP is of great economic help for them (a fact that is also supported by the growing body of literature concerning the CSAWP). Furthermore, participants in this study also told me that the program can even have different advantages such as exposure to different cultures and so on. But the purpose of my study is different; my intention is to discuss the situation of migrant workers as individuals who work and dwell in this country during the peaks of the harvest season in rural Ontario.

These workers are an essential part of the Canadian labour market regardless of their temporary or nontemporary status. Therefore, they should have the same rights and obligations, as well as the same protections, as the rest of the workers in this country. To say that Mexican migrant agricultural workers receive a better salary in Canada than they could do in Mexico doing the same activity, and that they are better off because of that single parameter, would be to assume a very simplistic position. Mexican migrant workers are essential elements in the Canadian labour market and active participants in the

Canadian economy. They expend much of their money here, they pay taxes here, their wages are deducted here, and thus their welfare as workers should be analyzed considering the standards and protections afforded to them by the Canadian welfare state.

The Canadian welfare state purports to have protections for various categories of people who work and dwell here in general. Presumably, one of the main functions of the welfare state is to ensure that individuals and groups have access to an array of legislation, policies, instruments, institutions, resources and services (Turner & Turner, 2005). In addition, the welfare state refers to commitment to correcting problems of inequality amongst different groups (Chappell, 2001). In the last chapter, I presented a brief review of the most important instruments that constitute the CSAWP as well as some relevant pieces of legislation that are extended to protect the rights of migrant agricultural workers as dictated in the Memorandum of Understanding and the Employment Agreement. At the same time, I presented the insight and opinions that migrant agricultural workers and key informants have regarding the provisions afforded by the Canadian state for protecting their welfare.

5.1 Shortcomings in the Fulfilment of the Functions of the Canadian Welfare State

As observed throughout the last chapter mainly by migrant farm workers and the representatives from the labour movement and the advocacy group, there is evidence of some shortcomings and limitations in the fulfilment of the main functions of the Canadian welfare state concerning agricultural workers in Ontario. As illustrated in previous sections, agricultural workers are one of the most unprotected, thus vulnerable, labour groups in the province as they fall completely out of the umbrella of essential benefits and regulations that apply to labour in other sectors in the Canadian economy. Migrant workers have no opportunity to form and/or join a union or to benefit from collective bargaining rights.

The main “reason” for this denial, as explained by a representative of the Ministry of Labour, is the nature of the products of this industry. The bureaucrat’s explanation was confirmed by the representative of the Ontario Federation of Labour. This participant said that the most frequent response the labour movement has had from the different levels of government regarding changes in laws and/or regulations to this respect is that unionized workers with collective bargaining rights would be able to have work stoppages in their workplace. Due to the perishable nature of the agriculture products, it is not affordable to have such a situation in this sector. The result of a work stoppage in a farm would not be the same as that in a car factory, they said.

Apparently, the response to make any amendments in the existing laws to allow agricultural workers join a union and have bargaining rights, which presumably would improve agricultural workers' rights and working conditions for agricultural workers in the province (including migrant workers) (Basok, 2002; Verma, 2003), is hindered by the possible economic loss that would likely occur should agricultural workers have collective and bargaining rights. The pro-market and for-profit aspects of the sector are given preference over any aspects regarding the improvement of labour-related issues such as working conditions and wages.

The impact of the aforementioned shortcomings is considerable on migrant agricultural workers since the protections afforded to them by the Canadian welfare state are even more limited than those extended to agricultural workers who are Canadian citizens or permanent residents. Canadian agricultural workers, for instance, are able to look for any other job which offers more competitive wages and better working conditions, or even claim for Employment Insurance. However, in addition to the limitations mentioned in the last paragraph, migrant agricultural workers do not have the possibility of mobility in the Canadian labour market. The Memorandum of Understanding and the Employment Agreement are very clear in that no participant of the CSAWP will ever be eligible for a different status other than being a migrant worker with a work permit. Migrant workers are allowed to work solely in agricultural-related activities on a seasonal basis regardless of the number of years of participation

in the program and the contribution they make to the community where they are employed.

These restrictions are discriminatory indeed,¹⁶ and thus it is important to highlight that despite migrant workers' working in the Canadian labour market, the conditions established in the CSAWP trap these people in the secondary labour sector. Thus, more often than not, they do not have any access to basic labour benefits. As illustrated in the last chapter, this situation is exacerbated by different reasons. For example, migrant agricultural workers lack or have limited knowledge about the few rights they have. In addition, language barriers create obstacles during their attempt to access their rights. Migrant agricultural workers usually work in distant places where urban transportation is not available. They work long hours six, if not seven, days a week. Therefore, it is virtually impossible that they find the time and resources to obtain help for bettering their working conditions.

How does the Canadian welfare state redistribute the benefits to people who work in its labour market? Migrant agricultural workers pay for benefits such as CPP and EI just as any other Canadian worker, and therefore, they should be entitled to receive full benefits. In actuality, however, they started to have only partial access to these benefits a few years ago. This uneven distribution raises a number of questions. For instance, if we need agricultural workers, as we do, and if we have needed them for over 60 years, why do we keep them coming back

¹⁶ See Verma, 2003, for a further review regarding the discriminatory aspects of the CSAWP.

and forth every season? This benefits only capital and stakeholders; it doesn't benefit labour. As a matter of fact, my findings showed that this redistribution does not occur fairly amongst the Canadian labour market in general, not at least amongst secondary sector labour. On the contrary, my findings indicate that Canada just wants migrant agricultural workers' labour at the lowest possible cost, without taking any responsibilities for the workers. Furthermore, Canada only wants the migrants' hard work without any legal or moral duty for those workers or the enforcement of their legitimate rights, not even when they contribute to the general welfare of Canadian citizens (i.e., Employment Insurance payment) and barely obtain any benefits. Otherwise, how could we explain the postponement of the changes that would improve migrant workers' working conditions such as the presumable outcome of the legal challenges by the UFCW? Or how do we explain the creation and implementation of another federal pilot project with even fewer regulations as the one described by the representative of the Ontario Federation of Labour?

As commented by migrant workers, they have noticed that the number of hours that CSAWP employees used to work have started to diminish in some farms over the last three years. According to workers, it is not that there is less work to do; it is rather that the employers are giving that work to other foreign workers instead, to farm workers who come to Ontario by means that are different from the CSAWP. One participant in this study said that when it happens on the farm where he works, sometimes Chinese people are brought to

work the hours that are not given to CSAWP participants. So either these other workers get to southern Ontario farms legally through the federal pilot project or perhaps even illegally. The suggestion is that employers are trying to find the cheapest labour with even fewer regulations. Further, the federal government is allowing this with the existence of such an alternative project and with the existence of temporary agencies and private contractors. There is increasingly less government intervention between the employer and the employee in these two situations.

What these changes may result in is that employers will likely pay even less attention to some of the main issues mentioned not only by the participants of this research but also by the migrant agricultural workers who have participated in other massive studies such as those by Tania Basok. Employers will likely dismiss the improvement of aspects such as housing, working conditions, and health and safety in the workplace as there is always a pool of secondary sector cheap labour for the employers to pick workers from. The risk of leaving the instruments and legislation as it is now (i.e., with power imbalances in the contract such as repatriation and the decision of a worker's participation in the following season as a named worker completely at the will of the employer) allows employers to select amongst either Mexicans or Caribbeans within the competitiveness of the CSAWP, or to turn to temporary agencies if the participants in the CSAWP do not fulfill the employers' demands for helpless workers.

So now the question becomes, do the provisions afforded to participants of the CSAWP by the Canadian welfare state really reflect the capacity of the welfare state? Or is the concern really about the position of the government vis-à-vis the most important demands of the agricultural corporate industry? Is it that the Canadian welfare state cannot reach into those domains of secondary sector labour? Or is it that the Canadian welfare state chooses not to act upon extending its purported main functions to secondary sector migrant labour and thus protect their legitimate rights? Or maybe it is because it is useful to have these workers in that social position.

Apparently, the position the Canadian welfare state has adopted when it comes to the protection of migrant agricultural workers' rights has little to do with capacity; it has more to do with political prudence which favours the so-called neo-liberal market tendencies. The OFL key informant said, for instance, that just as in any other sector, there are a lot of wealthy people in this industry and the government "seems to listen to those people a whole lot more than they would listen to anybody else." It is important to consider that position by the government. Perhaps it is because by heeding the needs of capital in this era of globalization, alleged benefits will flow to every one in society. Perhaps that is seen as the best way to go. The aforementioned would totally make sense if we lived in a society in which everyone could access the bonanza of globalization, but as the findings in this study suggest, we do not live in a society like that, not to mention the reality of the participants of the CSAWP.

The two types of data presented in the findings of this study (official documents and legislation, and migrant workers and key informants' insights) can be described, analyzed, and supported by the tenets of the segmentation labour theories wherein the labour market is dichotomized into two distinct sectors of employment opportunities: the primary sector with the deserving kind of workers at the top and the secondary sector with the undesired people at the bottom. The principles of the dual market theory seem to explain the issues presented in my findings much better than the neo-classical labour market theories wherein labour supply and labour demand interact in competitive equilibrium, a paradigm that is characterized by a strong reliance on the belief that wage rates produce the adjustments that the labour market needs (Fischer & Nijkamp, 1987). The situation and experiences presented in the last chapter match the characteristics described by the dual market theory as being the features of the secondary sector of the labour market. For instance, participants in the CSAWP have very low wages, poor working conditions, a low degree of unionization (none in this particular case), no chance for mobility in the labour market, and no voice or input in policy-making.

It is important to talk about the fact that migrant agricultural workers do not have a voice and/or representation in the issues that mostly affect them. The reasons are varied; one is that the lack of voice and/or representation presumably impacts their welfare negatively. For example, as one key informant from the Ministry of Labour explained, usually unions come to talk about issues in

different sectors so that the government pays attention to labour demands. This way, the government is able to take into account the labour movement and the demands of stakeholder groups and their suggested solutions; in this manner, the government can intervene and try to find a solution that better suits the demands of both groups. Thus, if migrant agricultural workers are not unionized, their welfare is affected in that their demands are not taken directly and considered by the different ministries in charge of intervening (as described by the key informant). Consequently, the importance of the fact that migrant workers are not unionized is considerable for it leaves them virtually out of any possible input since they don't have voice or representation in the annual CSAWP reviews either. This condition denies them the access to come vis-à-vis government or stakeholder groups at any level, thus leaving the migrants' demands out once again because of their social location.

Another relevant aspect that the findings illustrated is the phenomenon of advocacy some groups have done on the workers' behalf. As a response to the aforementioned shortcomings, advocacy has been a benefit that has helped migrant agricultural workers under the collectivist state. Fortunately, Canadian civil society sanctions the collective protections of others; if it were not for this, it seems as though no one would care about the protection of the few rights of this labour group. At this point, however, it is important to discuss another issue that the interviews revealed. Evidently, the advocacy work done, in the first place by the UFCW through its legal challenges and through its Migrant Agricultural

Workers Support Centres, and in a second place by the group Justice4MigrantWorkers, has proven very beneficial and helpful for CSAWP participants. Nevertheless, it is very interesting that neither of the workers who participated in this study, nor any other workers with whom I had the opportunity to talk informally, knew or were aware of the legal challenges undertaken by the UFCW. Furthermore, the key informant from the advocacy group reported that none of the migrant workers she knows (a lot, at least in the Leamington area) knew about the UFCW legal challenges. Is it maybe that the lack of voice and/or input which is a characteristic of secondary sector labour also impinges upon the relationship between the trade union movement and migrant agricultural workers? As mentioned before, it is not that I intend that my findings have a lot of external validity and be generalized since my sample is not representative; nonetheless, it is a fact that really stood out in my findings mainly because the migrant agricultural workers who participated in this research and the many to whom I informally talked included people who have been participating in the program from one season up to more than 20 seasons. Amongst those people were workers who have come to Leamington even before the Support Centre was opened and who attend the place rather frequently; thus, one could suspect that they would at least have heard that there is a union trying to be their legal representative. Evidence proved that assumption to be wrong.

Another question arising from that is, is the UFCW the best option of a union for migrant agricultural workers? The answer, according to the advocacy

group Justice4MigrantWorkers, is no. The key informant from this group said the group disagrees with the way in which the labour movement has been managing all of this. This participant described the way that is being used is a top-down approach wherein “the union knows what’s best for workers when they haven’t even asked workers at all.” The representative from the advocacy group said that they completely support migrant workers’ unionization, but that the result would have to be a union that workers decide upon and one that is familiar with their experiences. Summing up, there is an institutional difference to advocacy for migrant workers and their unionization that is causing the allegedly two most important advocates not to join their endeavours. These tensions may hinder the positive outcomes that may result if they joined their efforts.

In any case, the point is that none of these groups has been able to help migrant agricultural workers obtain either collective bargaining rights or the right to form or join a union. Therefore, they are still left without input into any law or policy-making that would provide them with legitimate provisions and protections by the Canadian welfare state.

5.2 Canadian Social Welfare and the CSAWP Within the Context of Globalization

It is evident that the trends of globalization are affecting labour and market positively and negatively. For example, those trends have resulted in the growth of different sectors in the Canadian economy as is the case with agriculture.

Nonetheless, the distribution of the bonanza of that growth has been uneven within this sector, particularly, for the secondary sector labour force. We know that globalization is spreading and that it is increasingly affecting all the labour market; however, we have to ask a series of questions about how it is affecting the transformation that the welfare state is experiencing. Are the protections for workers spreading the way globalization is, or are we simply buying and selling labour as commodities in the purest and crudest form of transactions? Has globalization come to a point where it has surpassed or disregarded the structures of the welfare state?

It is plain that there has been a shift in the patterns and priorities of the Canadian welfare state which has cut back welfare benefits at different levels and has embraced different strategies for reducing social welfare cost. The government is apparently reducing its central role in setting minimum standards despite the Canadian constitution requirement to act according to the principles of horizontal and vertical equity (Chappell, 2001). This seems to answer the question of why the government is responding only partially to the major issues related with the CASWP. It appears that the welfare state is not able or committed to respond to legitimate demands of secondary sector migrant workers. Instead, it seems that the welfare state chooses to respond only in some circumstances and not to do it in others.

So, is it really about the capacity of the welfare state? Or, is it ultimately about the position of the government vis-à-vis the essential needs of a vulnerable

labour force versus the essential needs of large firms? Apparently, the trends of globalization and their impact on the welfare state would suggest that it is a matter of discretion rather than capacity. As the key informant from the Ontario Federation of Labour commented, on the one hand, right-wing governments have repealed more than 60 provisions under labour law; however, on the other, they have “made it much harder to get a union and much easier to get rid of one.” Another example of this discretionary approach is that the federal government, while able to intervene and modify unfair and racist stipulations in the MOU and the EA through the annual revisions of the CSAWP, chooses to prioritize the importance of the production and the economic outcome of stakeholders over the wages, rights and working conditions of secondary sector migrant workers by not extending collective and bargaining rights to them. A final example is that it is clear that the Canadian government has taken a selective approach towards human rights for migrant agricultural workers. Despite all the international conventions (i.e., ILO and UN conventions on migrant workers), some of which Canada has chosen not to ratify, Canada has taken a stance that can be considered hostile, or in this case, reluctant to take any action that could enhance the recognition and implementation of the rights of the workers labouring in Canadian fields.

Globalization has affected the Canadian welfare state indeed. The influence of globalization on the Canadian social welfare is similar to other major upheavals in history (Drover in Turner & Turner, 2005). For instance, the change

from times when many social provisions of vulnerable groups were a responsibility of institutions such as the family, church, as well as charity and philanthropist groups to times when many of those responsibilities were taken by the state to accommodate the necessities of the society of the 20th century. These days, we are in the middle of another transformation of social welfare provision. Globalization trends have undoubtedly challenged the foundations of the Canadian welfare state and have made it modify its roles. The findings have shown that the protection of migrant agricultural workers' rights is far from advancing in the way that globalization is, and apparently, globalization trends have a lot to do with it. The transformation that the Canadian welfare state is experiencing due to globalization seems to leave the responsibility of protecting migrant agricultural workers' rights completely to advocacy groups either from the labour movement or from civil society. Apparently, globalization trends are a good excuse for leaving those responsibilities to such groups, and I say apparently, because in actuality, the Canadian welfare state never really afforded legitimate provisions to this secondary sector labour force as this situation has virtually been the same since the origins of the CSAWP.

CHAPTER 6

CONCLUSIONS

The provisions afforded to migrant agricultural workers are limited. Neither the Canadian welfare state nor other groups have been able to fully provide participants of the CSAWP with the minimum legitimate protections that workers in other sectors of the Canadian labour market have and that any worker labouring in this labour market should be entitled to.

It is undeniable that there has been some advancement regarding the enforcement of the few rights that are afforded to migrant agricultural workers and the gain of few more legitimate rights. For example, some migrant workers have started to receive parental benefits, and there have been changes in some OHS regulations to extend its protection to agricultural workers in general. Those changes will likely be meaningful in improving their welfare. Nevertheless, in the particular case of the impact of the right to refuse unsafe work will not be as meaningful on migrant agricultural workers as it could be so long as the section X (Premature Repatriation) of the Employment Agreement is not amended. That section in the EA, as mentioned earlier, stipulates that the employer shall be entitled to terminate the worker's employment and so cause the worker to be repatriated, amongst other reasons, if the worker refuses to work (Employment Agreement, X: 1).

The ability of employers to have workers sent back to their home countries for practically any reason is one of the most capricious and negative aspects of the CSAWP, and it may be used as an excuse against a migrant worker's refusal to work, despite unsafe working conditions. How is a refusal to work going to be interpreted if, on the one hand, the OSHA stipulates that agricultural workers have the right to refuse unsafe work, but at the same time the EA establishes that an employer shall be entitled to repatriate a migrant agricultural worker if he or she refuses to work? This study showed that at this point, practically every time migrant workers are poorly treated, humiliated, or exploited, and they try to exercise the few rights available to them, the possibility that workers will be treated with fairness will mainly depend mainly on factors that unfortunately are out of their control. For instance, it could depend on the worker's knowledge of his or her few rights, or on the lack of it. Fair treatment could depend on whether the worker has the assistance of actors such as staff of the migrant Support Centres or members of groups such as Justice4MigrantWorkers. Furthermore, it could also depend on the interpretation of instruments and laws such as the OSHA and the EA by the corresponding government agents. Thus, the workers' access to service and supports is mainly dependent on external factors.

Furthermore, the findings of this thesis also showed that, more often than not, the assistance of advocate groups is imperative for Mexican migrant agricultural workers to access the few rights they are entitled to. Factors such as little accessibility and language barrier are always present. Therefore, once

again, the few aspects that would presumably affect positively the well-functioning of the CSAWP from a social justice perspective are left without a framework that guarantees the legitimate protection of this vulnerable yet necessary labour group.

Moreover, it is likely that the same tensions in the interpretation of Canadian laws such as the Canada's Charter of Rights and Freedoms and the *Agricultural Employees Protection Act (AEPA)* occur when it will come to the interpretation of the right to refuse unsafe work. That is a possible scenario if one assumes that migrant workers start to exercise this new right as soon as possible. However, after years and years of being silenced for fear of repatriation, exercising this new right will be a difficult challenge for workers to overcome. To overcome a fear that has been fed and virtually institutionalized in the CSAWP by employers and authorities will certainly need a lot of work and the collaboration of migrant workers, advocacy groups, labour movement, and obviously, government agents and authorities.

As demonstrated in this research, the exercise of the few provisions these migrant workers may access is dependent on the meaningful advocacy work made by the labour movement and actors of the Canadian society. Therefore, the efforts of greater numbers of people who are becoming aware of the issues related to the CSAWP should be directed at enhancing the momentum initiated by these groups. As a conclusion, it seems as though the issues surrounding the CSAWP need not more reviews, critiques, or academic studies with

recommendations for policy-making. Amongst the growing body of literature regarding the CSAWP, there are excellent documents with very clear and detailed suggestions that are precisely articulated in ways that they address the different spheres and domains that have to do with these issues (i.e., provincial and federal levels of the Canadian government, supplying countries governments, stakeholders, etc.) (See, for example, Verduzco, 2004 and Verma, 2003 for further detail). Unfortunately, very few of the actions or modifications suggested in these documents have been taken into consideration by governments to modify the CSAWP for the benefit of the workers.

Considering the impact that globalization has had on the Canadian welfare state, it seems that what we need to do now is more social actions and/or activism.¹⁷ Apparently, civil society has to bridge the gap that the welfare state has left concerning the protections of migrant agricultural workers. It is important to clarify that when I argue that the issues surrounding the CSAWP need not more reviews and academic studies with recommendations but rather more social actions and/or activism, I don't mean to disregard the growing body of literature regarding this issues. On the contrary, I argue that there is a need for social actions and/or activism that are informed by the existent literature and that are documented for future steps.

It is necessary that the labour movement and advocacy groups, with the support of civil society, overcome institutional approach differences and that they

¹⁷ By saying "we," I mean civil society and professions such as social work that are committed to the welfare of vulnerable groups.

join and redouble their efforts with the workers' input at all moments. The short-term goal would be that migrant agricultural workers start exercising the few entitlements afforded by the Canadian welfare state at this point. Thus, it is absolutely necessary that we, together with migrant workers, rethink and strategize new and more creative social actions for impacting their well-being. We need to be strategic if we really want to fight back the effects that globalization has had on the Canadian welfare state, and particularly on the secondary sector labour. Hitherto, outreach help and efforts such as the endeavours undertaken in the different Migrant Agricultural Workers Support Centres or the activities undertaken by Justice4migrantworkers are excellent examples of the social actions and activism that we need to promote and support.

My findings illustrated that the results of those actions and initiatives can easily be seen on the workers' well-being. Lobbying the government and having more demonstrations are always good alternatives. Building partnerships amongst different groups, bureaucrats, and organizations are other alternatives. We can also promote the awareness and consciousness concerning the CSAWP and its issues amongst people in general. As suggested by workers, another alternative could be implementation of educational workshops.

To sum up, there is much that we can and must do. I am positive that institutional approaches can and must be reconciled so that the priority becomes migrant workers' welfare rather than the competition of identifying who is doing

more for them. I also have confidence in our agency and creativity, as well as in the effectiveness of the social actions and activism by different groups.

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WEBSITES

ASOCIACION MEXICANA DE ESTUDIOS SOBRE CANADA, A.C:
<http://www.amec.com.mx/>

CANADA GAZZETTE:
<http://canadagazette.gc.ca/>

GOVERNMENT OF CANADA SITE:
<http://www.canada.gc.ca/>

CITIZENSHIP AND IMMIGRATION CANADA:
<http://www.cic.gc.ca/>

CONSEJERIAS AGROPECUARIAS DE MEXICO EN EL EXTRANJERO:
<http://www.infoaserca.gob.mx/mexbest/consejerias.htm#canada>

CONSULADO GENERAL DE MEXICO EN TORONTO:
<http://www.consulmex.com/>

HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA:
<http://www.hrsdc.gc.ca/>

INTERNATIONAL LABOUR ORGANIZATION:
<http://www.ilo.org/>

JUSTICIA FOR MIGRANT WORKERS – J4MW:
<http://justicia4migrantworkers.org/>

ONTARIO MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS
(OMAFRA):
<http://www.omafra.gov.on.ca/english/index.html>

ORGANIZATION OF AMERICAN STATES:

<http://www.oas.org/>

SECRETARIA DEL TRABAJO Y PREVISION SOCIAL:

<http://www.stps.gob.mx/>

THE NORTH-SOUTH INSTITUTE:

<http://www.nsi-ins.ca/>

THE ONTARIO FEDERATION OF LABOUR:

<http://www.ofl.ca/>

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<http://www.unesco.org/most/igc97cas.htm>

UNITED FOOD AND COMMERCIAL WORKERS CANADA:

<http://www.ufcw.ca/>

UNITED NATIONS:

<http://www.un.org/>

APPENDICES

Project title: Protection of Migrant Agricultural Workers' Rights

Consent form

I hereby agree to participate in this study. I understand that the purpose of this study is to get to know and analyze the opinions and insights that people who participate in and/or are knowledgeable about the SAWP in Canada might have regarding the issue of how the Canadian welfare state has responded to the legitimate claim of more protection to migrant agricultural workers and their rights.

I understand that Israel Gonzalez-Gutierrez (student of the MSW program at McMaster University) is the principal researcher of this study and that he is being supervised by Dr. Patricia Daenzer, a faculty member of the McMaster School of Social Work.

I am willing to participate in an interview that will last no more than 45 minutes. I agree to have the interview audio-taped and transcribed. I understand that no information will risk my identity nor my privacy; that I may feel free to not answer any particular question and to stop the tape recorder at any time, as well as to stop the interview at any moment; and that I will be able to withdraw from the study at any time without consequence. I also understand that if I decide to withdraw, all the information that I have provided will be destroyed.

I understand that I will be safe should I do any critique to the way in which the Canadian welfare state's dealing with the issue of the protection of migrant workers' rights, and that those data will not be traceable to me. I understand as well that, if English is not my first language, all my participation will occur in Spanish, and that the researcher will personally be in charge of the subsequent translation and interpretation of those data, respecting exactly what I might have said in my language and respecting my cultural background.

I am aware that I will not receive any direct benefit from participating in this study other than contributing to enrich the knowledge and literature regarding an issue that is taking greater importance. I know that if I want to receive a copy of the final report and/or a summary including the most relevant of the study (in English or Spanish), I just have to let the researcher know at any time, if that is the case, I will select a place and date and/or way to receive it so that my privacy continues to be safe.

Finally, I understand that if I have any questions and/or concerns related to my rights as a research participant I can contact:

McMaster Research Ethics Board Secretariat
Telephone: 905-525-9140, ext. 23142
c/o Office of Research Services
E-mail: sresec@mcmaster.ca
McMaster University
1280 Main Street W., GH-306
Hamilton, ON L8S 4L9

Participant's signature _____

Título del proyecto: Protección de los derechos de los trabajadores agrícolas temporales
Formulario de Consentimiento

Por medio de la presente manifiesto estar de acuerdo en participar en este estudio. Entiendo que el objetivo de éste es conocer y analizar las opiniones y percepciones que la gente que participa y/o tenga conocimiento del PTAT en Canada pueda tener acerca de cómo ha respondido el estado Canadiense a la legítima petición de una mayor protección a los trabajadores agrícolas migrantes y sus derechos.

Entiendo que Israel González Gutiérrez (estudiante de la MTS en la escuela de Trabajo Social de la Universidad McMaster) es el investigador principal en este estudio y que él estará supervisado por la Dr. Patricia Daenzer, profesora de la Escuela de Trabajo Social de McMaster.

Estoy dispuesto(a) a participar en una entrevista que no durará más de minutos. Estoy de acuerdo con que se grabe y transcriba la entrevista. Entiendo que ninguna información pondrá en riesgo mi identidad ni mi privacidad; que puedo libremente no contestar alguna pregunta en particular y también pedir que se detenga la grabadora en cualquier momento; y que podré retirarme de la investigación en cualquier momento sin ninguna consecuencia. También entiendo que si decido retirarme, toda la información que haya proporcionado será destruida.

Entiendo que estaré seguro de hacer cualquier crítica acerca de la manera en que el estado Canadiense esté manejando el asunto de la protección de los derechos de los trabajadores migrantes y que dicha información no me identificará. Entiendo también que, si el inglés no es mi primer idioma, toda mi participación será en español, y que el investigador estará a cargo personalmente de la traducción e interpretación posterior de mi información, respetando exactamente lo que pueda haber dicho en mi idioma y respetando mi cultura.

Estoy consciente de que no recibiré ningún beneficio directo al participar en este estudio más que el haber contribuido a enriquecer el conocimiento y la literatura relacionada con un asunto que esta tomando gran importancia. Sé que si quisiera recibir una copia del reporte final y/o un resumen que incluya lo más relevante del estudio, sólo tengo que hacérselo saber al investigador en cualquier momento, de ser este el caso, yo seleccionaré el lugar y fecha y/o la manera en que quiera recibirlo de manera que mi privacidad se siga manteniendo segura.

Finalmente, entiendo que si tengo cualquier duda y/o preocupación ligada a mis derechos como participante de esta investigación, puedo contactar a:

McMaster Research Ethics Board Secretariat
Telephone: 905-525-9140, ext. 23142
c/o Office of Research Services
E-mail: srebsec@mcmaster.ca
McMaster University
1280 Main Street W., GH-306
Hamilton, ON L8S 4L9

Firma del participante _____

Letter of Information

I am Israel Gonzalez, a student in the Master of Social Work at the School of Social Work in McMaster University. I will be conducting a study under the supervision of Dr. Patricia Daenzer.

This study will try to gather the voices of migrant workers¹⁸, union representatives, representatives of the Ontario Federation of Labour, and representatives of the Ontario Ministry of Citizenship and Immigration in order to have their opinions and insight about the protection of Mexican agricultural workers' rights who participate in the *Seasonal Agricultural Workers Program* (SAWP). If you are interested in participating, I would like to set up a time to conduct an interview with you in a place and time of your choice.

The interview would take 30 to 45 minutes. If you would like to see the questions before the interview, I am happy to send them to you (all you'd have to do is ask for it to the researcher). For purposes of the study, I would like to audio-tape the interview and later transcribed, only if you permit so. You would have the right to stop the tape recorder, to skip answering to any question, or to stop the interview at any point during our conversation without any consequences. You would also have the right to contact the researcher after the interview and ask that any part of the interview (or the whole interview) be removed from the study. In this situation, the tape and any notes and transcriptions would be destroyed by the researcher himself.

Participation in this study will be totally confidential. You would not be identified as a study participant in any reports or publication of this research. You would be asked to suggest an alias to be used in place of your name for the duration of the project. The researcher would provide you with one if you prefer. Interview tapes, notes, and transcripts will be kept locked in the researcher's house and only he will have access to it.

There are no risks to participation in this study. Benefits include the opportunity to reflect on and express your ideas about the issues surrounding the SAWP. Also, academics and larger community will benefit from your insight about this important issue.

Your participation is completely voluntary and thus you can refuse to participate. I totally understand that you are busy and may not want to, or have time to do this right now. In addition, if you decide to participate, you may withdraw from the study at any point with no consequences at all. Please feel free to ask any

¹⁸ Your participation and communication with the researcher would all be completely your native language, English or Spanish.

questions or concerns you have about this study at any time. This project has been reviewed and received ethics clearance by the McMaster Research Ethics Board. If you have any question and/or concern regarding your participation in this study, please feel free to contact:

- McMaster Research Ethics Board Secretariat
Telephone: 905-525-9140, ext. 23142
c/o Office of Research Services
E-mail: srebsec@mcmaster.ca
McMaster University
- Israel Gonzalez-Gutierrez
Telephone: 905 664 4755
E-mail: solshower@hotmail.com
- Dr. Patricia Daenzer
E-mail: pdaenzer@sympatico.ca

If you want to, you will be contacted (at any place, time, and/or way that you choose) after the final report is written and you will be given a copy of the report and/or a summary including the most most relevant parts of the study (in English and/or Spanish) in the way that you choose to (mail, personally, etc) so that your privacy is safe.

Carta de Información

Mi nombre es Israel González, soy un estudiante de la Maestría en Trabajo Social (MTS) en la escuela de Trabajo Social de la Universidad McMaster. Realizaré un proyecto de investigación que estará supervisado por la Dr. Patricia Daenzer.

Este estudio tratará de reunir las voces de trabajadores migrantes¹⁹, representantes de UFCW Canada, de la *Ontario Federation of Labour* (Federación del Trabajo de Ontario), del *Ontario Ministry of Labour* (Ministerio del Trabajo de Ontario) y de la organización Justicia4migrantworkers con el fin de tener sus opiniones y percepciones acerca de la protección de los derechos de los trabajadores agrícolas mexicanos que participan en el *Programa de Trabajadores Agrícolas Temporales* (PTAT). Si está interesado en participar, me gustaría arreglar una entrevista con usted en el lugar y hora de su preferencia.

La entrevista tomaría de 30 a 45 minutos. Si quisiera ver las preguntas antes de la entrevista, estaré dispuesto a mostrárselas (todo lo que tendría que hacer es pedirselo al investigador). Para este estudio, me gustaría grabar y posteriormente transcribir la entrevista, únicamente si usted lo permite. Usted tendría el derecho de detener la grabadora, no responder alguna pregunta en particular, o detener la entrevista en cualquier momento de nuestra conversación sin consecuencia alguna. También tendría el derecho de contactar al investigador después de la entrevista y pedirle que alguna parte determinada de la entrevista (o la entrevista completa) se quiten del estudio. En esta situación, el cassette, las notas y transcripciones serían destruidas por el mismo investigador.

La participación en este estudio es totalmente confidencial. Usted no sería identificado como participante del mismo en los reportes o publicaciones de esta investigación. Se le pediría que sugiera un "alias" a ser usado en lugar de su nombre durante el proyecto, o el investigador le daría alguno si usted lo prefiere. Los cassettes, las notas, y las transcripciones serán guardadas bajo llave en la casa del investigador y solo éste tendrá acceso a la mismas.

No hay riesgo de participar en este estudio. Los beneficios pueden ser la oportunidad de reflexionar y expresar sus ideas acerca de los asuntos relacionados con el (PTAT). Al mismo tiempo, los académicos y la comunidad en general se beneficiarán con sus percepciones acerca de este tema.

Su participación es completamente voluntaria y por lo tanto puede negarse a participar. Entiendo completamente que es una persona ocupada y tal vez no quiera, o no tenga tiempo de hacer esto en este momento. Además, si decide participar, se podrá retirar del estudio en cualquier momento si consecuencias. Por favor siéntase libre de preguntar lo

¹⁹ Tu participación y comunicación con el investigador será completamente en tu lengua materna, inglés o español.

que sea acerca de este estudio en cualquier momento. Este proyecto ha sido revisado y autorizado por el McMaster Research Ethics Board (Consejo de Investigación Ética de McMaster). Si tiene alguna pregunta y/o preocupación respecto a su participación en este estudio, por favor no dude en contactar:

- McMaster Research Ethics Board Secretariat
Teléfono: 905-525-9140, ext. 23142
c/o Office of Research Services

Correo electrónico: srebsec@mcmaster.ca
McMaster University
- Israel Gonzalez-Gutierrez
Teléfono: 905 664 4755

Correo electrónico: solshower@hotmail.com
- Dr. Patricia Daenzer.
Correo electrónico: pdaenzer@sympatico.ca

Si usted gusta, será contactado (en el lugar, momento y/o la manera que usted escoja) una vez que sea escrito el reporte final para recibir una copia, o un resumen que incluya las partes más importantes del estudio (en español y/o en inglés). Usted escogería la manera (correo, personalmente, etc) en que se entregaría esto con el fin de mantener la seguridad de su privacidad.

Interview Guide

Topics to be included in the interview:

1. How did you first know about the SAWP? (How did you become interested/involved in it; what was your impression when you first heard of it; how long s/he's known about it.)
2. Tell me your general opinions of the program (probe the main advantages, disadvantages, issues they see of the program, both economically and socially. Who gets the biggest benefit, if there is someone)
3. Tell me what you think about the situation of the workers (do they get what they are promised? has it been the same since the program started? has it improved/worsened? Do you think their situation should change?)
4. Tell me, how do you think Canada has managed this program so far? (Is Canada interested in the workers' well being? Does Canada protect migrant workers and their rights? Has Canada done something for the benefit of the workers? Probe examples)
5. Have you heard anything about the developments UFCW Canada has initiated in order to be the union legal representative of migrant agricultural workers?
 - 5a. If so, what do you know about it? (What is your opinion about that? Do you have any idea of how all that started? Do you have any idea of who have been the main players in those processes?)
6. How do you think the Canadian government and institutions responded to that? (How would you like it to be different for the better? What would you like to see happening for the program to be a "best practice" migration program?)
7. Is there anything else you might like to add about these issues?

Guía de Entrevista

Temas a incluir en la entrevista:

1. ¿Cómo se enteró por primera vez del *Programa de Trabajadores Agrícolas Temporales* (PTAT) (¿Cómo se interesó/involucró en él? ¿Cuál fue su primera impresión al oír de éste? ¿Hace cuánto tiempo que sabe de él?)
2. Dígame su opinión general del programa (preguntar por las ventajas y desventajas principales, los problemas que vean en el programa, tanto económicamente, como socialmente. ¿quién obtiene el mayor beneficio? De haber alguien que lo tenga)
3. Dígame qué piensa acerca de la situación de los trabajadores. (¿obtienen lo que se les promete? ¿han tenido la misma situación desde que empezó el programa? ¿se ha mejorado/empeorado? ¿cree que la situación de los trabajadores debería cambiar?)
4. Dígame, ¿qué piensa de como Canadá ha manejado el programa hasta ahora? (¿se interesa Canadá en el bienestar de los trabajadores? ¿protege Canadá a los trabajadores migrantes y a sus derechos? ¿ha hecho Canadá algo en beneficio de los trabajadores? Pedir ejemplos)
5. ¿Ha escuchado algo acerca de los procesos iniciados por UFCW Canada con el objeto de ser el sindicato que represente legalmente a los trabajadores agrícolas temporales?

5a. De ser así, ¿qué sabe al respecto?(¿cuál es su opinión acerca de eso? ¿tiene alguna idea de como empezó todo eso? ¿tiene alguna idea de quiénes han sido los actores principales en esos procesos?)
6. Qué piensa de cómo el gobierno e instituciones canadienses han respondido ante estas situaciones? (¿en qué manera le gustaría que el programa mejorará? ¿que cambio le gustaría ver en el programa para poder ser considerado un programa de migración “de las mejores prácticas”)
7. ¿Hay algo más que quisiera agregar acerca de estos asuntos?



AGREEMENT FOR THE EMPLOYMENT IN CANADA OF SEASONAL AGRICULTURAL WORKERS FROM MEXICO - 2006

WHEREAS the Government of Canada and the Government of the United Mexican States are desirous that employment of a seasonal nature be arranged for Mexican Agricultural Workers in Canada where Canada determines that such workers are needed to satisfy the requirements of the Canadian agricultural labour market; and,

WHEREAS the Government of Canada and the Government of the United Mexican States have signed a Memorandum of Understanding to give effect to this joint desire; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an Agreement for the Employment in Canada of seasonal agricultural workers from Mexico be signed by each participating employer and worker; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an agent for the Government of the United Mexican States known as the "GOVERNMENT AGENT" shall be stationed in Canada to assist in the administration of the program;

THEREFORE, the following agreement for the employment in Canada of seasonal agricultural workers from Mexico is made in duplicate this _____ day of _____, 20_____.

I SCOPE AND PERIOD OF EMPLOYMENT

The **EMPLOYER** agrees to:

Employ the **WORKER(S)** assigned to him by the Government of the United Mexican States under the Mexican Seasonal Agricultural Workers Program and to accept the terms and conditions hereunder as forming part of the employment Agreement between himself and such referred **WORKER(S)**. The number of **WORKERS** to be employed shall be as set out in the attached clearance order.

The **PARTIES** agree as follows:

1. (a) subject to compliance with the terms and the conditions found in this agreement, the **EMPLOYER** agrees to hire the **WORKER(S)** as a _____ for a term of employment of not less than 240 hours in a term of 6 weeks or less, nor longer than 8 months with the expected completion of the period of employment to be the _____ day of _____, 20_____.
- (b) in the case of a **TRANSFERRED WORKER**, the term of employment shall consist of a cumulative term of not less than 240 hours.
- (c) the **EMPLOYER** needs to respect the duration of the employment agreement signed with the **WORKER(S)** and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).
2. The normal working day is 8 hours, but the **EMPLOYER** may request of the **WORKER** and the **WORKER** may agree to extend his/her hours when the urgency of the situation requires it, and where the conditions of employment involves a unit of pay, and such requests shall be in accordance with the customs of the district and the spirit of this program, giving the same rights to Mexican workers as given to Canadian workers.
3. For each six consecutive days of work, the **WORKER** will be entitled to one day of rest, but where the urgency to finish farm work cannot be delayed, the **EMPLOYER** may request the **WORKER'S** consent to postpone that day until a mutually agreeable date.
4. To give the **WORKER** a trial period of fourteen actual working days from the date of his arrival at the place of employment. The **EMPLOYER** shall not discharge the **WORKER** except for sufficient cause or refusal to work during that trial period.
5. The **RECEIVING EMPLOYER** shall be provided by the **SENDING EMPLOYER** at the time of transfer an accurate record of earnings and deductions to the date of transfer, noting that the record needs to clearly state what, if any, deductions can still be recovered from the **WORKER**.
6. An **EMPLOYER** shall, upon requesting the transfer of a **WORKER**, give a trial period of seven actual working days from the date of his arrival at the place of employment. Effective the eighth working day, such a **WORKER** shall be deemed to be a "**NAMED WORKER**" and clause X - 1.(i) will apply.
7. The **EMPLOYER** shall provide the **WORKER**, and where requested, the **GOVERNMENT AGENT** with a copy of rules of conduct, safety discipline and care and maintenance of property as the **WORKER** may be required to observe.

II LODGING, MEALS AND REST PERIODS

The **EMPLOYER** agrees to:

1. Provide suitable accommodation to the **WORKER**, without cost. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province where the **WORKER** is employed. In the absence of such authority, accommodation must meet with the approval of the **GOVERNMENT AGENT**.
2. Provide reasonable and proper meals for the **WORKER** and, where the **WORKER** prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the **WORKER** and to provide a minimum of thirty minutes for meal breaks.
3. Provide the **WORKER** with at least two rest periods of 10 minutes duration, one such period to be held mid morning and the other mid afternoon, paid or not paid, in accordance with provincial labour legislation.

III PAYMENT OF WAGES

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The **EMPLOYER** agrees:

1. To allow **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** (HRSDC) or its designate access to all information and records necessary to ensure contract compliance.
2. That a recognition payment of \$4.00 per week to a maximum of \$128.00 will be paid to **WORKERS** with 5 or more consecutive years of employment with the same **EMPLOYER**, and **ONLY** where no provincial vacation pay is applicable. **SAID** recognition payment is payable to eligible **WORKERS** at the completion of the contract.
3. To pay the **WORKER** at his place of employment weekly wages in lawful money of Canada at a rate equal to:
 - i) the minimum wage for **WORKERS** provided by law in the province in which the **WORKER** is employed;
 - ii) the rate determined annually by **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** to be the prevailing wage rate for the type of agricultural work being carried out by the **WORKER** in the province in which the work will be done; or
 - iii) the rate being paid by the **EMPLOYER** to his Canadian workers performing the same type of agricultural work; which ever is the greatest, provided:
 - iv) that the average minimum work week shall be 40 hours;
 - v) that, if circumstances prevent fulfilment of Clause III (iv) above, the average weekly income paid to the **WORKER** over the period of employment is as set out in Clause III (iv) above at the hourly minimum rate;
 - vi) that where, for any reason whatsoever, no actual work is possible, the **WORKER**, shall receive an advance with a receipt signed by the **WORKER** to cover personal expenses, the **EMPLOYER** shall be entitled to deduct said advance from the **WORKER'S** pay prior to the departure of the **WORKER**.

The **GOVERNMENT AGENT** and both **PARTIES** agree:

That in the event the **EMPLOYER** is unable to locate the **WORKER** because of the absence or death of the **WORKER**, the **EMPLOYER** shall pay any monies owing to the **WORKER** to the **GOVERNMENT AGENT**. This money shall be held in trust by the **GOVERNMENT AGENT** for the benefit of the **WORKER**. The **GOVERNMENT AGENT** shall take any or all steps necessary to locate and pay the money to the **WORKER** or, in the case of death of the **WORKER**, the **WORKER'S** lawful heirs.

IV DEDUCTIONS OF WAGESThe **WORKER** agrees that the **EMPLOYER**:

1. Shall recover the cost of non-occupational medical coverage by way of regular payroll deduction at a premium rate of \$0.50 per day per **WORKER** in all provinces.
2. May deduct from the **WORKER'S** wages a sum not to exceed \$6.50 per day for the cost of meals provided to the **WORKER**.
3. Will make deductions from the wages payable to the **WORKER** only for the following:
 - i) those employer deductions required to be made under law;
 - ii) all other deductions as required pursuant to this agreement.

V INSURANCE FOR OCCUPATIONAL & NON-OCCUPATIONAL INJURY AND DISEASEThe **EMPLOYER** agrees to:

1. Comply with all laws, regulations and by-laws respecting conditions set by competent authority and, in addition, in the absence of any laws providing for payment of compensation to **WORKERS** for personal injuries received or disease contracted as a result of the employment, shall obtain insurance acceptable to the **GOVERNMENT AGENT** providing such compensation to the **WORKER**;
2. Report to the **GOVERNMENT AGENT** within 48 hours all injuries sustained by the **WORKER** which require medical attention.

The **WORKER** agrees that:

1. The **EMPLOYER** shall remit in advance directly to the insurance company engaged by the Government of Mexico the total amount of insurance premium calculated for the stay period in Canada. Such amount will be recovered by the **EMPLOYER** with the deduction made to the **WORKER'S** wages according to clause IV - 1. In the case where the **WORKER** leaves Canada before the employment agreement has expired, the **EMPLOYER** will be entitled to recover any unused portion of the insurance premium from the insurance company;
2. He will report to the **EMPLOYER** and the **GOVERNMENT AGENT**, within 48 hours, all injuries sustained which require medical attention.
3. The coverage for insurance shall include:
 - i) the expenses for non-occupational medical insurance which include accident, sickness, hospitalization and death benefits;
 - ii) any other expenses that might be looked upon under the agreement between the Government of Mexico and the insurance company to be of benefit to the **WORKER**.
4. If the **WORKER** dies during the period of employment, the **EMPLOYER** shall notify the **GOVERNMENT AGENT** and upon receipt of instructions from the **GOVERNMENT AGENT**, either:
 - i) provide suitable burial; or

- iii) remit to the **GOVERNMENT AGENT** a sum of money which shall represent the costs that the **EMPLOYER** would have incurred under Clause 4 (i) above, in order that such monies be applied towards the costs undertaken by the Government of Mexico in having the **WORKER** returned to his relatives in Mexico.

VI MAINTENANCE OF WORK RECORDS AND STATEMENT OF EARNINGS

The **EMPLOYER** agrees to:

- i. Maintain and forward to the **GOVERNMENT AGENT** proper and accurate attendance and pay records.
- ii. Provide to the worker a clear statement of earnings and deductions with each pay.

VII TRAVEL AND RECEPTION ARRANGEMENTS

The **EMPLOYER** agrees to:

1. Pay to the travel agent the cost of two-way air transportation of the **WORKER** for travel from Mexico City to Canada by the most economical means.
2. Make arrangements:
 - i) to meet or have his agent meet and transport the **WORKER** from his point of arrival in Canada to his place of employment and, upon termination of his employment to transport the **WORKER** to his place of departure from Canada; and
 - ii) to inform and obtain the consent of the **GOVERNMENT AGENT** to the transportation arrangements required in (i) above.

The **WORKER** agrees to:

Pay to the **EMPLOYER** costs related to air travel and the work permit processing fee as follows:

- i) Costs related to travel will be deducted by way of regular payroll deductions at a rate of 6 percent of the **WORKER'S** gross pay from the first day of full employment. The amount deducted for travel is not to exceed \$450.00.
- ii) A cost of \$150 for the work permit processing fee. This amount will be deducted during the first six weeks of work through weekly proportional deduction.

The aggregate payment to the **EMPLOYER** for travel and the work permit processing fee is not to be less than \$150.00 or greater than \$600.00.

Where a federal/provincial agreement on the selection of foreign workers exists with associated cost recovery fees, the cost of such provincial fees will be reimbursed to the **EMPLOYER** from the **WORKER'S** final vacation pay cheque.

The contracting **PARTIES** agree:

That in the case of a **TRANSFERRED WORKER**, the second **EMPLOYER** may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first **EMPLOYER**, without exceeding the amounts indicated in the preceding paragraphs.

The contracting **PARTIES** agree:

In the event that at the time of departure a named worker is unavailable to travel the **EMPLOYER** agrees, unless otherwise stipulated in writing on the request form, to accept a substitute **WORKER**.

The **RECEIVING EMPLOYER** agrees:

That in the case of a **TRANSFERRED WORKER** the receiving **EMPLOYER** agrees to pay the travel agent in advance the cost of on-way air transportation of the worker between Canada and Mexico by the most economical means as expressed in the Memorandum of Understanding.

VIII OBLIGATIONS OF THE EMPLOYER

The **EMPLOYER** agrees:

That the **WORKER** shall not be moved to another area of employment or transferred or loaned to another **EMPLOYER** without the consent of the **WORKER** and the prior approval in writing of **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** and the **GOVERNMENT AGENT**.

The **EMPLOYER** agrees and acknowledges:

That the **WORKERS** approved under the Seasonal Agricultural Workers Program are authorized by their work permit only to perform agricultural labour for the **EMPLOYER** to whom they are assigned. Any person who knowingly induces or aids a foreign worker, without the authorization of **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, to perform work for another person or to perform non-agricultural work, is liable on conviction to a penalty up to \$50,000 or two years imprisonment or both. Immigration and Refugee Protection Act S 124(1)(C) and 125.

The **EMPLOYER** agrees:

That **WORKERS** handling chemicals and/or pesticides have been provided with protective clothing at no cost to the **WORKER**, received appropriate formal or informal training and supervision where required by law.

The **EMPLOYER** agrees:

That according to the approved guidelines in the province where the worker is employed the **EMPLOYER** shall take the **WORKER** to obtain health coverage according to provincial regulations.

IX OBLIGATIONS OF THE WORKER

The **WORKER** agrees:

1. To work and reside at the place of employment or at such other place as the **EMPLOYER**, with the approval of the **GOVERNMENT AGENT**, may require.
2. To work at all times during the term of employment under the supervision and direction of the **EMPLOYER** and to perform the duties of the agricultural work requested of him in a workmanlike manner.
3. To obey and comply with all rules set down by the **EMPLOYER** relating to the safety, discipline, and the care and maintenance of property.
4. That he:
 - i) shall maintain living quarters furnished to him by the **EMPLOYER** or his agent in the same state of cleanliness in which he received them; and
 - ii) realizes that the **EMPLOYER** may, with the approval of the **GOVERNMENT AGENT**, deduct from his wages the cost to the **EMPLOYER** to maintain the quarters in the appropriate state of cleanliness.
5. That he shall not work for any other person without the approval of **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, the **GOVERNMENT AGENT** and the **EMPLOYER**, except in situations arising by reason of the **EMPLOYER'S** breach of this agreement and where alternative arrangements for employment are made under clause X - 4.
6. To return promptly to Mexico upon completion of his/her authorized work period.

X PREMATURE REPATRIATION

1. Following completion of the trial period of employment by the **WORKER**, the **EMPLOYER**, after consultation with the **GOVERNMENT AGENT**, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the **WORKER'S** employment hereunder and so cause the **WORKER** to be repatriated. The cost of such repatriation shall be paid as follows:
 - i) if the **WORKER** was requested by name by the **EMPLOYER**, the full cost of repatriation shall be paid by the **EMPLOYER**;
 - ii) if the **WORKER** was selected by the Government of Mexico and 50% or more of the term of the contract has been completed, the full cost of returning the **WORKER** will be the responsibility of the **WORKER**;
 - iii) if the **WORKER** was selected by the Government of Mexico and less than 50% of the term of the contract has been completed, the cost of the north-bound and south-bound flight will be the responsibility of the **WORKER**. In the event of insolvency of the **WORKER**, the Government of Mexico, through the **GOVERNMENT AGENT** will reimburse the **EMPLOYER** for the unpaid amount less any amounts collected under Clause VII - "The **WORKER** Agrees to:".
2. If it is the opinion of the **GOVERNMENT AGENT** that personal and/or domestic circumstances of the **WORKER** in the home country warrant, the **WORKER** shall be repatriated with full cost of the repatriation paid by the **WORKER**.
3. If the **WORKER** has to be repatriated due to medical reasons which are verified by a Canadian doctor, the **EMPLOYER** shall pay the cost of reasonable transportation and subsistence expenses except in instances where repatriation is necessary due to a physical or medical condition which was present prior to the **WORKER'S** departure in which case the Government of Mexico will pay the full cost of repatriation.
4. That if it is determined by the **GOVERNMENT AGENT**, after consultation with **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, that the **EMPLOYER** has not satisfied his obligations under this agreement, the agreement will be rescinded by the **GOVERNMENT AGENT** on behalf of the **WORKER**, and if alternative agricultural employment cannot be arranged through **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** for the **WORKER** in that area of Canada, the **EMPLOYER** shall be responsible for the full costs of repatriation of **WORKER** to Mexico City, Mexico; and if the term of employment as specified in Clause I - 1., is not completed and employment is terminated under Clause X - 4., the **WORKER** shall receive from the **EMPLOYER** a payment to ensure that the total wages paid to the **WORKER** is not less than that which the **WORKER** would have received if the minimum period of employment had been completed.
5. That if a transferred **WORKER** is not suitable to perform the duties assigned by the receiving **EMPLOYER** within the seven days trial period, the **EMPLOYER** shall return the **WORKER** to the previous **EMPLOYER** and that **EMPLOYER** will be responsible for the repatriation cost of the **WORKER**.

XI MISCELLANEOUS

1. In the event of fire, the **EMPLOYER'S** responsibility for the **WORKER'S** personal clothing shall be limited to 1/3 its replacement cost to a maximum of \$150.00. The government of Mexico shall bear responsibility for the remaining cost of the replacement of the **WORKER'S** clothing.
2. The **WORKER** agrees that any personal information held by the Federal Government of Canada and the Government of the Province in which the work is performed may be released to **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, to Citizenship & Immigration Canada to the **GOVERNMENT AGENT**, to the Foreign Agricultural Resource Management Service, in the case of Quebec, to the *Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère* and to the Insurance Company designated by the **GOVERNMENT AGENT**, so as to facilitate the operation of the Foreign Seasonal Agricultural Workers Program.

The consent of the **WORKER** to the release of information includes, but is not restricted to:

- (i) information held under the Employment Insurance Act, (including the worker's Social Insurance Number);
 - (ii) any health, social service or accident compensation related information held by the government of the province in which the work is performed, including any unique alpha-numerical identifier used by any province;
 - (iii) Medical and health information and records which may be released to Citizenship & Immigration Canada as well as the Insurance Company designated by the **GOVERNMENT AGENT**.
3. That the agreement shall be governed by the laws of Canada and of the province in which the worker is employed. French, English and Spanish versions of this contract have equal force.

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- 4. This contract may be executed in any number of counterparts, in the language of the signatory's choice, with the same effect as if all the **PARTIES** signed the same document. All counterparts shall be construed together, and shall constitute one and the same contract.
- 5. The **PARTIES** agree that no term or condition of this agreement shall be superseded, suspended, modified or otherwise amended, in any way, without the express written permission of the competent Canadian and Mexican authorities, as well as the **EMPLOYER** and his **WORKER**.

IN WITNESS THEREOF THE PARTIES STATE THAT THEY HAVE READ OR HAD EXPLAINED TO THEM AND AGREED WITH ALL THE TERMS AND CONDITIONS STIPULATED IN THE PRESENT CONTRACT

EMPLOYER'S SIGNATURE _____

WITNESS: _____

NAME OF EMPLOYER: _____

ADDRESS: _____

CORPORATE NAME: _____

TELEPHONE: _____ FAX NO.: _____

PLACE OF EMPLOYMENT OF
WORKER IF DIFFERENT
FROM ABOVE: _____

GOVERNMENT AGENT'S SIGNATURE _____

WITNESS: _____

To enhance readability, the masculine gender is used to refer to both men and women.

01-2006