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Falling through the Cracks: Seasonal Foreign Farm Workers' Health and Compensation across Borders

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Introduction and Research Methods

Injured workers and their advocates well understand the many challenges Canadian workers face to access occupational health protections and adequate compensation. Now imagine how much more difficult the situation would be for a foreign, unfree, temporary labour force, many of whom are illiterate or don't speak either official language and lack union representation. This is the situation for over 20,000 mainly male farm workers who come to Canada from Mexico and the Caribbean annually through the Seasonal Agricultural Workers Program (SAWP).

Proponents of the SAWP point out that while workers may be excluded from many benefits such as regular employment insurance (EI) and access to citizenship – despite paying taxes and into EI – they still have an advantage over their undocumented counterparts because they can be offered workplace protections. In legal terms, workers in the SAWP (the majority of whom work in Ontario) are guaranteed all rights under applicable international human rights laws. They are also granted several rights under Canadian and provincial laws, including, in Ontario, the right to OHIP, WSIB benefits, pension benefits, a minimum (or prevailing) wage, and some provisions of the Employment Standards Act. For the first time in 2006, workers in Ontario were also covered under the Occupational Health and Safety Act (OHSA). Given the provision of these protections and benefits, programs such as the SAWP are viewed as a more humane alternative to undocumented labour migration to fill the flexible and demanding labour

needs of Canada's agriculture industry, while providing much needed relatively higher paying jobs to migrants from economically depressed regions of the global south.

Despite these legal protections, workers are often unable to exercise their rights or access their entitlements. A variety of factors, including a lack of political and social inclusion and adequate support or information provided about their rights; language, literacy and infrastructural barriers; and most fundamentally, their inherently vulnerable position in the program, often preclude workers' ability to access the rights and services which are theirs in law, but not always in practice. Participants, who are temporary entrants unable to circulate freely in the labour market or to change employers without permission, constitute a form of "unfree" migrant labour.¹ Coming from home contexts where local job markets have been decimated, many workers become dependent on the relatively well-paying Canadian positions to support their families; in many cases, they consider their jobs to be more important than their health or access to rights and benefits.

Since the first 264 Jamaican workers arrived on Canadian soil in 1966, the program has steadily expanded to include several English-speaking Caribbean islands. Mexico was added in 1974. The current SAW Program is authorized through Human Resources and Skills Development Canada (HRSDC) and is operated through privately run user-fee agencies—in Ontario this is the Foreign Agricultural Resource Management Services (FARMS). Workers and employers sign a contract stipulating the expected length of work, which generally lasts between two and eight months, as well as the rights and obligations of employers and workers. At the end of every contract, workers must leave Canada and have no right to remain in the country. They are sent to their home countries with an evaluation form from their employers. (Employers request workers

based on their nationality and gender, and may further request – or deny – specific “named” workers.) According to their contract, participants can only work with the specified employer and if they quit or change jobs without permission from both the employer and the government, they can be repatriated. Workers’ re-admittance to the program is based largely on their employers’ evaluations and requests, and thus they are continually concerned with earning and maintaining their employers’ favour.

For this vulnerable group of workers, health and safety risks associated with their work, and also of migration more generally, are constant concerns. The absence of any major study of migrant farm worker health issues in Canada has directed the focus of my doctoral research, as I aimed to investigate the nature and extent of health problems and human rights issues among participants in the program, in particular the health problems they experience and their access to health protections and compensation. In so doing, I hoped to explore the interrelations between migration, health and human rights, and to identify practical ways that human rights and health protections can be improved for migrant workers both in Canada and once they have returned home.

My research consisted of detailed ethnographic fieldwork with workers in Canada, Mexico and Jamaica, over two full migration cycles between 2005-2007. My main activities involved “participant observation” through volunteering with a number of groups and initiatives directed at migrant workers to learn about workers’ lives and struggles in an informal, participatory way, as well as conducting over 100 interviews with them. During the winter “off seasons” in Mexico and Jamaica, I lived with and conducted detailed life history interviews with migrant workers and their families, focusing on a core group of about 40 case studies, whose lives and situations I studied in

an in-depth fashion, paying particular attention to the situations of workers who returned home from Canada sick or injured. These methods were supplemented by interviews with workers' employers, government representatives and program officials, medical practitioners, and others involved in the program in the three countries.

Health Concerns and Compensation Access among Workers

It is well known and established that farming practices, including working with agricultural chemicals, carry a number of serious health risks.² Considering their added vulnerability, especially the stress of working in a foreign cultural and linguistic environment where workers of colour may endure various forms of discrimination, it is not surprising that migrants experience a wide variety of health problems in Canada.³ The workers in my study were generally under-trained and under-equipped to deal with the various dangers and exposures they experienced on the job. Some of their most common health concerns include symptoms related to pesticide exposure, climatic changes (e.g. working in the heat, cold, or rain) and musculoskeletal problems. Generally, workers get fewer hours of sleep and have a poorer diet in Canada, which may result in several other problems and a susceptibility to various illnesses. They also experience high levels of symptoms related to depression and anxiety, and in some cases develop a dependency on alcohol or drugs to offset the feelings of stress, loneliness, exclusion and isolation that they often experience while in Canada.

While most of these health problems are alleviated upon their return to their home countries, some workers suffer from chronic or lasting injuries and illnesses, especially musculoskeletal disorders (most commonly back injuries). Others experience more serious issues such as kidney failure, paralysis and various forms of cancer. In most cases

when workers become sick or injured in Canada, they are sent home instead of receiving prolonged care in Canada (workers' OHIP coverage expires at the end of each year).

Once at home, there is little infrastructure in place to assist workers to access the benefits to which they may be entitled, including investigating whether these illnesses and conditions can be traced back to workplace conditions, which would make them eligible for workers' compensation.

A number of major barriers exist to workers accessing adequate compensation and care for work-related injuries. In Canada, if they are even aware of their rights, many workers are reluctant to file for claims in the first place. A significant deterrent is that at the discretion of employers and consular/liaison officials (agents of workers' home governments, who act as workers' representatives in Canada, but must also maintain the smooth operation of the program with employers), workers can be repatriated at any time or barred from future participation in the program. Even if the overall rates of such early repatriation are low, the threat workers feel serves as an effective mechanism for control.⁴ Many workers acknowledge that the fear of being seen as a "trouble-maker" is a significant barrier to asking for or accessing their rights, in some cases even if it is as simple as requesting a doctor's appointment or a compensation claim.

For those who have filed claims, a large number of workers, many of whom are illiterate or don't speak English, have not received adequate support to communicate with or make appeals to WSIB. Some say they never received the reply letters sent to them by WSIB, indicating the difficulties of tracking and communicating with a mobile population. Others say their claims are still unresolved after several years, and are caught in a confusing and bureaucratic maze of doctors' reports, various government agents, and

a system which does not always take into account the difficulties workers, especially those in remote areas, experience just to get to a qualified doctor or to pay for appointments, exams and reports. In one case, for example, a worker's claim for continuing WSIB coverage was denied because the adjudicator said he waited too long between doctors' appointments and that his ongoing back injury (initially diagnosed as work-related in Canada) could have been caused by an unrelated event in between appointments. The appointment the worker attended, however, was the first his government had arranged for him after returning home injured. Another worker, after three years of suffering (and not working) because of a wrist injury, finally found support to see an orthopedic specialist, who told him he could have recovered long ago if he had received the proper physical therapy. Even with this knowledge, however, the worker still cannot afford the therapy.

When workers return home injured their families also suffer in various ways. Some of the children of injured workers in Jamaica, where education is not free, had to drop out due to an inability to pay the fees. In some cases in both countries, workers' wives and other family members had to take on extra work to compensate. Some injured workers say they don't have enough money to even feed their families, and certainly cannot afford the transportation, communication and exam costs involved in booking further doctor's appointments. (Despite paying into Employment Insurance in Canada, workers are not entitled to receive regular benefits during their off seasons.) The effects on family dynamics and the sense of self-worth and dignity among workers in such cases can be profound and have implications for workers' mental and emotional health as well.

Two case studies demonstrate how these problems play out in the lives of individuals, leading them to “fall through the cracks” of their legal rights and protections.

Pedro⁵

Pedro worked in Canada for three years on a vegetable farm to support his wife and son in Tlaxcala, Mexico. Although it wasn't normally within his duties, one day he was asked to apply chemicals to the plants. He never knew the names of the chemicals he was applying, and he had no training. A friend and co-worker of Pedro recalls what happened:

We would work simply with a shirt, we didn't have equipment... We don't receive training... One occasion...we cleaned the greenhouse...and Pedro... was going around with the sprayer...I remember that he had not (sprayed a certain chemical) before, and so that is why he was nervous when the boss came in.

The boss got there and he wanted to hurry us, to move our hands faster and do all the work faster, and so Pedro took the sprayer backwards, and since the wind was (blowing) from there to here, all the liquid came over his body. The boss said that it was okay, that there was no problem, but Pedro started to have itchiness on his body. He asked for permission to go shower, but the boss did not want him to; he said that the work was urgent.

...At the end of the day he went to shower because he had a lot of itching all over his body, he had red lumps. The next day... I saw him in the morning, he had many lumps and I told him that it had been bad that the boss had not let him go shower.

No WSIB claim was ever filed for the problems arising from Pedro's pesticide exposure, nor was his illness reported to any officials. It is unclear if he went to see a doctor, but no medical records can be found. After the incident, Pedro's health deteriorated and manifested in a number of serious symptoms. Alejandra, Pedro's widow, recalls what happened when he returned to Mexico:

When he came from Canada he came with bad headaches, nausea and heavy nose bleeds. He would cough and cough and his body was weak. He had no strength.

I didn't recognize him in the airport.... He was very pale, almost without any blood. He had lost 20 kilos. The first few years (in Canada) he was well, the problem was the last year, after the accident. Before everything was normal. He was healthy.

He saw blurredly, he would get hopeless... he would say that his head was exploding. They told me that his... kidney was very bad, they did a dialysis on him, they took out a liquid from him that smelled very bad. With the money that (my husband) earned (in Canada) I paid (for his medical expenses); he had no insurance. We ran out of money and had nothing left. He came home in October. In December he was in grave conditions and in February he passed away.

After he died I went to report the death to the (farm worker program) administration. The (government worker at the Secretary of Foreign Relations) called Canada and then he told me "you cannot be helped nor be given anything because your husband didn't work in Canada for 36 months ...so... nothing can be done in your case...." He was very rude with me and I left crying. I have no hope anymore because they told me your husband didn't reach the 36 months and my son cannot reach any pension...

Now I am supporting my son by myself but I have no work except what I can earn in the fields—about \$8 a day. It is not enough. I am so depressed and so is my son. He does not understand that his father is dead. It's hard for me to motivate myself to work any day. But there is no one to support us; I have no choice. We are barely getting by.

Although rare in the extremity of its outcome, Pedro's story highlights a number of common concerns. First, the lack of protection, knowledge and training provided to the workers about pesticide practices. Second, the lack of control Pedro felt when he could not leave work to see a doctor or even to wash the chemicals from his body. Third, the fact that the incident and resultant health problems were never reported, investigated or treated until it was too late, rendering support under WSIB difficult if not impossible to obtain. Once back in Mexico, Pedro and his wife did not know whom to consult for support and they could not afford adequate medical treatments. It was not until his death that someone suggested Alejandra contact a representative at the government, at which point she was told that nothing could be done because her husband had not worked in

Canada for enough years to earn a pension and that no further support could be provided. (Despite workers paying taxes in Canada, once they return home they are subject to their own country's social safety net—or lack there of.)

Occupational health and legal specialists in Canada are now investigating to see if Pedro's kidney failure and death can be traced to his pesticide exposure. Working across international and linguistic boundaries, with few medical records and Pedro himself now gone, the investigation is exceedingly difficult. The chance that his widow will ever receive compensation is unlikely.

Pedro's case is particularly worrying because no claim for WSIB, which could have helped to cover his medical expenses, was ever made. Such cases are not uncommon and in my research I discovered many workers, employers and doctors who do not file claims unless injuries are obvious and reporting is unavoidable. Since employers' fees increase relative to the number of claims, there is a significant disincentive to reporting cases (a common story for Canadian workers, too), and many doctors are not even aware that migrant workers are eligible for WSIB. At one walk-in clinic in Niagara, I had to pressure a doctor to file a claim for a worker suffering from a back injury, as the doctor insisted that migrants were not covered. After investigating, he acknowledged, "I had to ask around (about WSIB) after you came in...there was a little bit of uncertainty, but eventually someone said yes, they (migrant workers) are covered. There's not a strong understanding of these issues. Several other colleagues also didn't know." When I asked another doctor to file a claim, he replied, "I can't file anything unless the employer tells me it's work-related."

Even in cases where workers are taken to the doctor and claims are made, problems often prevent workers from accessing adequate compensation. The workers' temporary and tenuous status in Canada poses a number of limitations for those who seek to follow through on compensation investigations. The case of Carl is one such example.

Carl

From a rural village in St. Mary, Jamaica, with almost no education and totally illiterate, Carl came to earn money which could help to educate his children and perhaps one day buy a house and some land in Jamaica. It was his first and only season working in Canada, and Carl left the farm only once a week when his employer took the workers to buy groceries. Otherwise he felt afraid to ever leave the property. He was warned before leaving Jamaica to "obey" his employer and he feared doing anything to jeopardize his valued position in the program. He was happy and proud to be earning an income, sending regular remittances to his wife and two children in Jamaica.

One day Carl's dreams of improving things for his family quite literally came crashing down. In his words: "I was riding on the back of a farm vehicle that had no seat and no barriers. It was just a board with the driver. The driver took a sharp right turn and the two of us in the back both fell off. But I fell backwards onto my head and went unconscious, so I don't remember nothing."

Carl was taken to the hospital where he eventually woke up and received stitches for his injury. He did receive some workers' compensation for the days lost, but when his doctor said he could try doing light work, he was forced to go back to work and his compensation stopped. Even the proposed "light duties" aggravated his pain. "I couldn't even sit without being in agony," he recalls, and soon after starting the work he told his

boss that he was in too much pain to continue. Unfortunately, his medical situation was not reevaluated. Instead, his employer told him he had breached his contract and would be going home that week.

Carl's doctor had recommended physiotherapy and had booked an MRI to determine the extent of his injury. The MRI was scheduled just days after the date of the return ticket which had been thrust upon Carl. For his part, Carl knew that these treatments and tests would not be affordable to him in Jamaica and he feared suffering from a permanent injury without any support at home, so on the day he was to be sent home, he instead ran away to a friend's house. Because he did not go home on his designated flight, he was labeled "Absent without Leave"—AWOL—a classification that essentially deemed him to be illegally in Canada and forbidden to ever re-enter the farm work program. The next week he showed up to his MRI appointment and was told it was cancelled, and that he would not be eligible to receive more treatments.

Carl spent many months in Canada, trying to seek compensation and medical care, or even enough money to fly back to Jamaica. He spent the rest of the money he had earned supporting himself and became increasingly homesick. Finally, with the help of a friend, he purchased a ticket to Jamaica, where he arrived still in a great deal of pain which left him unable to work on the rented Jamaican farm which had previously sustained him. His wife now is the sole support for the family, working daily on the farm where she grows yams, bananas and vegetables. (Even this has since been destroyed by Hurricane Dean which recently ravaged parts of the island.) Carl's daughter had to drop out of school because she could no longer afford the fees.

Carl is still seeking long-term compensation for his problem, but he can't even afford the doctor's appointment to get the reports or exams necessary to do this. With the help of IAVGO, Carl appealed the decision to terminate his WSIB. The adjudicator refused his claim, saying that he should have had an MRI in Canada, and now too much time had passed. Carl cannot afford to pay for an MRI in Jamaica which could help to determine the extent of his ongoing injuries. IAVGO is arranging to help cover the payment, but coordinating with the doctor in Jamaica has been difficult. It is over a year later and he is still injured, unable to work, and has yet to receive the exam.

Carl's case highlights the dangerous and unregulated transportation practices common in farming and the lack of training and protections workers receive to stay safe on the job. It reveals some of the challenges of the WSIB system—including an early return to work policy which may end up pressuring some workers to return before they are ready, and renders them unworthy of compensation if they are unable to perform the tasks assigned. It highlights the difficulty of quantifying chronic and ongoing pain after an injury, and the challenges faced by workers who are repatriated before their injury can be fully investigated or treated. Workers, many of whom are illiterate, are often left to fend for themselves and appeals in such cases are thus difficult and rare.⁶ In the end, many of workers' long-term health problems are never properly tracked and analyzed and this has serious implications for workers' abilities to receive compensation for occupationally induced health problems.⁷

While these cases are specific, the issues within them are systemic and affect a large number of migrant workers. It is not enough to say that workers have the entitlements to access rights and benefits during their time in Canada. Without

meaningful and non-threatening ways to learn about and access these rights they remain effectively unattainable for a large number of workers.

Cultivating Change

As awareness of the plight of migrant workers has slowly spread to a larger number of groups and organizations, several initiatives have emerged to attempt to better protect workers and address their needs. Below are two recent examples.

The Occupational Health Clinics for Ontario Workers (OHCOW), with support from the Niagara Region Public Health Department, has held monthly occupational health clinics for migrant workers in the Niagara Region over the course of this season. The clinics, which are described to workers as an occupational health information centre, are hosted by an occupational doctor, nurse and hygienist, who are trained to understand workplace exposures and injuries, and can offer basic physical exams, information, advice, and prescriptions to workers. The practitioners are assisted by volunteer translators and outreach workers from various groups such as Enlace, Justicia for Migrant Workers, Brock University, and the United Food and Commercial Workers' Union (which also has a number of support centres for migrant workers throughout Canada and led the development of a bilingual occupational health manual for workers). The clinics take place near the shopping complex where many workers are bussed in weekly to do their shopping, and each month the volunteers do leafleting outside of the plaza to inform workers of the initiative and invite them to participate.

The majority of cases seen by the specialists have involved musculoskeletal disorders, dermatitis/skin problems, and upper respiratory symptoms. There have also been eye concerns, hearing loss, mental health issues, minor traumas, reproductive

concerns, and heart problems. Many of these workers had experienced symptoms for months without having the opportunity to seek medical attention, or were unsatisfied with the attention they had received at local over-stressed walk-in clinics, where hurried doctors normally do not have experience in occupational disease, injuries or exposures or the time to fully assess these complex conditions. At the OHCOW clinics, by contrast, workers can receive the full attention of the three specialists in a more relaxed atmosphere, with translators, information pamphlets and even pizza and refreshments to help them feel comfortable and welcome.

The clinic faces a number of challenges, however, primarily that it can only operate once a month, and advance advertising to this isolated and spread-out population is difficult. Furthermore, many workers do not have time to take out of their already rushed grocery shopping period to walk to the nearby facility, about five-minutes away, to see occupational health specialists. It is also difficult to ensure adequate follow-up when many workers lack the transportation and language skills to attend recommended exams independently. Some workers leave the clinic with a sense of hopelessness, admittedly unable to modify their working conditions as suggested by the practitioners, as doing so, they fear, may frustrate their employers and jeopardize their position in the program.

Despite these short-comings, the clinic has already proven indispensable in a context where migrant workers' unique needs are usually ignored or overlooked. It provides a space where workers can have their questions answered in a safe and confidential environment, with health care practitioners who have a more nuanced understanding of their specific circumstances and a better grasp of their specialized

occupational health concerns and can offer real recommendations on how to reduce exposures or avoid further injury. That is an important and welcomed development for many workers who are in desperate need of occupational health care and information and who have long felt unsatisfied by or unable to access other healthcare options.

Another recent initiative has been undertaken by IAVGO in conjunction with Justicia for Migrant Workers (J4MW) to educate workers about WSIB, and to offer them support in making and/or appealing claims. Visiting workers in various rural regions of Ontario where J4MW has a base, and beginning to represent some of their claims to WSIB, IAVGO workers grew to understand the unique plights of migrant workers. They have since raised these concerns, along with representatives of J4MW and the Toronto Workers' Health and Safety Legal Clinic, with the Fair Practices Commissioner, who responded by initiating a series of meetings between these stakeholders and WSIB staff and managers to address the systemic issues migrant workers face. The meetings have addressed a series of complex issues, including:

- How to ensure WSIB access if workers are repatriated soon after an injury
- How to ensure adequate medical treatment for workers in Canada and once they have returned home
- The provision of services and information in workers' languages
- How to fairly deem migrant workers for long-term loss of income benefits, when they are not eligible to return to Canada for work (and the jobs deemed suitable for them in Canada may not be available at home)
- How to provide better post-injury support to migrant workers, many of whom are isolated, lack transportation to medical appointments, or don't speak the language

- Providing more information to doctors, both in Canada and their home countries, about workers' rights under WSIB
- Addressing concerns facing migrant workers' return to work, rehab and reemployment, when they are often repatriated and unable to participate in Canadian programs.

These discussions are still in an early phase so it's unclear what long-term strategies will ultimately be adopted and there is a long way to go. After years of these systemic issues being neglected, however, this is a huge step forward. It is hoped that the outcome of these meetings will generate innovative and positive changes that recognize the unique challenges facing migrant workers, especially as all parties involved recognize that temporary foreign worker programs are only continuing to expand across Canada's regions and sectors.

These are undoubtedly positive developments. The main barrier, however, to any initiative succeeding in the long run, is that workers still fear that accessing their rights may impede their chances of re-entering the program. While permanently injured workers may feel that there is nothing to lose, many of those who have a hope at coming back would rather not report their illnesses and injuries, and many even work through them without informing their employers. Until workers are offered better job protections, such as the right to regularization and/or to change employers—or even just an appeals process for early repatriations and removals from the program—their rights will continue to remain theirs on paper, but out of grasp in practice for many.

By Janet McLaughlin⁸

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¹ See Basok (2002) and Satzewich (1991) for more information.

² See Wilk (1986) and Frank et al. (2004) for literature reviews of health problems associated with farmwork and Sanborn et al. (2004) and Alavanja et al. (2004) for sobering and thorough reviews on the health effects of pesticides

³ Migrant workers in Canada are only one small element of a globalized system of work that undermines workers' standards and places some at inherent risk every time they go to work. Environmental racism, which connects racism and discrimination to increased exposure to harmful environmental pollutants (Westra and Wenz 1995), may be experienced in various aspects of people's lives, but exposure at work is one of the most common, where the marginalized are most often placed in dangerous environments, facing increased risks of exposures. Some studies have estimated that up to 90% of cancers are related, in part, to the working environment and these cases remain grossly under-recognized (Clark 2000:87). See ethnographic examples in Wright (1990) and Nash (1979).

⁴ See Preibisch (2004).

⁵ Names and some details have been modified to protect anonymity but otherwise all facts in these cases are true.

⁶ Many workers receive support from their consular officials, employers and/or doctors to access WSIB claims, but others say they have not received such support. For those who don't, their success in gaining compensation or other entitlements often depends on whether or not they have access to community support networks. (A number of groups exist within Canada which attempt to support migrant workers accessing rights and benefits. Some of these include: Justicia for Migrant Workers (J4MW), the United Food and Commercial Workers Union (UFCW) migrant worker support centres, the Occupational Health Clinics for Ontario Workers (OHCOW), and the Industrial Accident Victims' Group of Ontario (IAVGO), among others.) One can only imagine how many other workers remain outside of the reach of such groups, particularly those who work in small communities or isolated areas.

⁷ Clark (2000:88) argues that the "commodification of health," results in a narrow definition of health shaped by standardized laws instead of workers' experiences. In this way, "illness is not defined by the sufferer but by the medical/legal authorities who label a narrow set of experiences as, first, medically relevant and, second, occupationally induced." Moreover, migrant worker health is particularly difficult to track due to the mobility of the population and the fact that occupational health outcomes may require considerable time to develop (Arcury et al. 2002), many long after they have left Canada. While in Jamaica three orthopedic specialists have been assigned all WSIB cases, doctors I interviewed in Mexico involved with migrant workers were generally not trained in occupational health specializations or familiar with WSIB.

⁸ Janet McLaughlin holds a Master's in Human Rights and is currently a PhD Candidate in Medical Anthropology at the University of Toronto. This article is based on her doctoral research, which was supported by the Social Sciences and Humanities Research Council of Canada (SSHRC), the International Development Research Centre (IDRC) and the Institute for Work and Health (IWH), where she served as a Syme Research Training Fellow in 2006-2007. She has been actively involved in the events she describes through participant observation research and volunteer activities, but the views expressed in this article, and any errors made, are only her own. Thanks to Alberto Lalli, Airissa Gemma and Chris Ramsarop for reviewing the article.