

**Health and Safety for Migrant Farm Workers in the Seasonal Agricultural  
Worker Program**

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## **Introduction**

More than ten years have passed since occupational health and safety coverage was extended to agricultural workers in Ontario and although this was a major step forward in protecting workers, research shows that it has not had a significant impact for migrant farm workers. The Occupational Health and Safety (OH&S) Act does not provide adequate protection to migrant farm workers because it is not designed to respond to their day-to-day realities as vulnerable temporary workers. In 2006, occupational health and safety coverage was extended to farm workers in Ontario after a 3-year legal battle and awareness campaign led by the United Food and Commercial Workers Canada (UFCW Canada, 2006). Each year, thousands of migrant farm workers travel to Canada to work in local farms across the country. Working in agriculture can be dangerous because of the health and safety risks involved in this profession. Migrant workers are typically admitted to Canada through guest worker programs administered by the federal government. Due to the dangerous nature of agricultural work, there are concerns regarding the health and safety of migrant workers in the fields across Canada. In Ontario, there is a large population of migrant farm workers employed in rural regions. While there are laws and regulations in place to protect workers from health and safety hazards in the workplace, studies suggest that migrant farm workers are vulnerable to occupational hazards and are often too afraid to raise those concerns to management. The purpose of the present study is to examine how the Occupational Health and Safety Act is applied to migrant farm workers in the Seasonal Agricultural Worker Program (SAWP) and to determine whether this legislation provides adequate protection given their position as a transient population engaged in seasonal work. The implications of this research are important because although migrant

farm workers accounted for 13.7% of all temporary foreign workers admitted to Canada in 2009, they are the oldest standing group of migrants who return to Canada every year but never live permanently in this country (McLaughlin, 2010). This is an important issue to explore because there is a large population of migrant farm workers in Canada that contribute to the economy and as long as they continue to be recruited to perform agricultural work, their health and safety will continue to be a topic of discussion. This issue will be explored starting with an overview of the SAWP and the OH&S Act, along with a literature review and a discussion on how the OH&S Act applies to migrant farm workers. An analysis is provided to offer some insight as to why the OH&S Act does not have a significant positive impact on migrant farm workers, followed by a series of recommendations.

## **Context**

It is often said that buying produce from local farmers helps to support their business and the local economy, but little attention is given to the fact that there are thousands of migrant farm workers who pick and package the fruits and vegetables that Canadians eat every day (Friscolanti, 2016). There are tens of thousands of migrant workers in Ontario who contribute to the local economy by not only providing their labour but also by purchasing goods and services for consumption (Bauder et al., 2002). Although the presence of migrant workers has its economic benefits, it is important to understand why migrants workers choose to take up work in Canada as part of the SAWP. SAWP migration is driven by poverty and precarity, and one of the primary reasons why workers in the SAWP journey to Canada is for the opportunity to earn money to send to their family in their country of origin, who depend on their financial

support for survival (Wells et al., 2014). It is therefore important to take into account their work experience in Canada in terms of health and safety.

### *Seasonal Agricultural Worker Program (SAWP)*

Migrant workers are foreign workers who are admitted into Canada to work on a temporary basis (Government of Canada, 2018). Temporary foreign workers typically enter Canada under federal guest worker programs which allow Canadian employers to fill short-term labour shortages with foreign nationals when they cannot find Canadians or permanent residents to do certain jobs (Government of Canada, 2015). The SAWP is a federal program established in 1966 for the sole purpose of recruiting foreign nationals to perform agricultural work in Canada (Basok, 2007). The SAWP operates under agreements between Canada, Mexico and the following Caribbean countries: Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago (Government of Canada, 2016). Before being able to hire a foreign worker from the SAWP, an employer is required to complete a Labour Market Impact Assessment (LMIA) from Human Resources and Skills Development Canada (HRSDC), to prove that he or she could not find a Canadian to fill a position and therefore needs to hire a foreign worker (Government of Canada, 2018). Once the employer receives a positive LMIA, a foreign worker can then apply for a Canadian work permit. In the SAWP, migrants can work in Canada for a period of up to eight months and are restricted to one employer for the duration of their contract, and cannot change employer without written permission from HRSDC (Sargeant and Tucker, 2009). Although migrant workers are recruited into the SAWP by the sending countries,

Canadian employers can name specific workers from a previous contract and rehire them for a new contract, which is a common practice since 70% - 80% of the workers are rehired this way (Sargeant and Tucker, 2009). For migrant farm workers, their stay in Canada depends on their employment status, meaning that if they are no longer employed, they lose their legal status in Canada and are no longer entitled to benefits and health care, and must return to their home country. Employers are required by contract to provide free accommodation to the workers, typically on their property, and to ensure that workers have provincial health insurance coverage (Sargeant and Tucker, 2009). The workers are entitled to workers' compensation and to the same wages paid to Canadian workers in the region who perform similar work (Sargeant and Tucker, 2009). Migrant farm workers also contribute to Canadian programs including the Canada Pension Plan and Employment Insurance, even though they are not eligible for all benefits (Fairey et al., 2008). Workers recruited through the SAWP have no prospect of obtaining permanent status in Canada because this program is not designed to provide a pathway to permanent residency or citizenship. Agricultural farming is a dangerous occupation and until 2006, Ontario agricultural workers were not covered under the Occupational Health and Safety Act, meaning that migrant farm workers could not benefit from the rights given to workers under this legislation.

### *Occupational Health and Safety Act*

The Ontario Occupational Health and Safety (OH&S) Act was created to protect employees from health and safety hazards in the workplace (Ministry of Labour, 2013). The OH&S Act is administered by the Ministry of Labour (MOL) and gives workers three rights: the

right to participate, the right to know and the right to refuse. Workers have the right to participate in workplace activities related to health and safety through a Joint Health and Safety Committee (JHSC) or as a health and safety representative (Ministry of Labour, 2016). Workers have the right to know about potential and actual hazards in the workplace and they also have the right to refuse work that they believe to be dangerous for their health and safety (Ministry of Labour, 2016). Reprisal against workers who exercise their rights is prohibited by the OH&S legislation. According to the Act, workers also have the duty to be health and safety-conscious which includes being compliant with OH&S regulations, using protective equipment required by the employer, informing the employer or management of any missing, defective or potentially dangerous equipment, and reporting any workplace hazards or violations to management (Ministry of Labour, 2016). Employers have several duties to uphold under the OH&S Act including taking reasonable precaution to protect workers, ensuring the proper maintenance of equipment and materials, providing health and safety information to protect workers, comply with OH&S regulations, develop and implement an OH&S policy and program (Ministry of Labour, 2016).

The SAWP is often criticized over the health, safety and treatment of migrant farm workers. The literature concerning the working and living conditions of migrant farm workers is abundant, suggesting that migrants often work and live in poor conditions and that they are reluctant to raise safety concerns due to fear of reprisal. The emerging Ontario-based literature on migrant workers in the SAWP reveals some key points on the reasons why they are vulnerable workers.

## Literature Review

There is a significant number of studies regarding the vulnerabilities of migrant farm workers and the serious nature of illness and injuries sustained in their line of work. Although the SAWP gives migrant farm workers the opportunity to earn money to send to their families, there is a large amount of research showing that migrant farm workers are vulnerable to workplace-related illness and injuries. The review that follows only addresses the research that is relevant to this study and includes some of the emerging Ontario-based studies on the SAWP.

There is a strong agreement in the literature that the immigration status of migrant farm workers is a significant factor that contributes to their vulnerabilities. Studies have revealed that the temporary migration and employment status of migrant farm workers make them vulnerable to mistreatment (Hennebry et al., 2010; Preibisch and Otero, 2009). Other researchers have found that the constrained mobility of migrants and the precarious status of being temporary workers allow employers to violate labour standards, which can negatively impact their health and safety (McLaughlin and Hennebry, 2012). McLaughlin, Hennebry and Haines (2014) came to the same conclusion by explaining that working in a high-risk industry with insecure employment and temporary immigration status does not empower migrant farm workers in the SAWP to address health and safety-related issues in the workplace. The SAWP contract allows employers to repatriate workers at their discretion, placing migrant farm workers in a vulnerable position. Migrant farm workers in the SAWP can be repatriated easily and they also have no pathway to permanent residency, regardless of the number of years they have spent working in Canada (Walia, 2010). This indicates that the temporary status of migrant

farm workers keeps them in a never-ending cycle of vulnerability and precarity, which could end if they are given a pathway to permanent residency (McLaughlin and Hennebry, 2012).

A large number of studies have shown that migrant farm workers face specific health and safety risks in the workplace and are often exposed to hazards that can cause serious illness and injuries. Those studies point to the inadequate implementation of risk management practices to protect the workers. Migrant farm workers are often exposed to toxic substances in their line of work and are often required to handle pesticides without proper safety equipment or adequate training (Walia, 2010). A U.S. study on migrant farm workers revealed that pesticide-induced illness was the main cause of severe diseases among the farm worker population in California, and that the use of those toxic substances creates a hazardous work environment (Das et al., 2001). Research has shown a possible link between breast cancer and farming among women (Brophy et al., 2002). The farmer population also faces the greatest level of exposure to solar UV radiation at work (Peters et al., 2012). The agriculture industry in Ontario has one of the highest rates of mortality due to work-related brain traumatic injury as a result of falls (Tricco et al., 2006). Common health problems experienced by migrant farm workers in Ontario include chemical and heat exposure, musculoskeletal injuries and food-borne diseases (Hennebry et al., 2010). When migrant farm workers manage to access health care services, research has revealed that musculoskeletal injuries and symptoms related to pesticide exposure were the main reasons behind visits to the clinic (Pysklywec et al., 2011). Researchers also believe that the health risks faced by migrant farm workers can be attributed to inadequate or non-existent training (Preibisch and Otero, 2009).

Migrant farm workers often face difficulties accessing health care services and are often repatriated to their home countries when they become ill or suffer injuries. An Ontario study on medical repatriation revealed that migrant farm workers are mostly repatriated due to surgical or medical reasons, and due to external injuries such as trauma and poisoning (Orkin et al., 2014). This can make the workers reluctant to seek medical care. Barriers in accessing health care services include lack of knowledge of the health care system, low literacy rates, inadequate transportation, and the fear of being repatriated (Hennebry et al., 2010). Another reason why workers do not access health care services is because they do not want to lose paid hours by taking time off to seek medical care (Preibisch and Otero, 2009). Health care services for migrant farm workers are underutilized because they face barriers in accessing health care services and because sometimes clinicians do not have sufficient training to recognize and treat health issues that are specific to the health hazards faced by migrants working in agriculture (Das et al., 2001).

There is large body of research that reveals how labour standards violations result in the mistreatment of migrant farm workers. Fear and low awareness of rights play significant roles in preventing migrant farm workers from voicing concerns about substandard housing and working conditions and verbal abuse in the workplace (Binford, 2002). Migrant farm workers do not have enough knowledge about health and safety practices, or the proper way to report incidents in the workplace, and they are often reluctant to report abuse (Sargeant and Tucker, 2009). Migrant farm workers work long hours and have very few rest periods and often feel obligated to obey requests to work longer because they are afraid of losing their job (Russell, 2003; Preibisch and Otero, 2009). During peak season, migrant farm workers can work up to

sixteen hours per day without receiving overtime pay or vacation pay (Walia, 2010). In Ontario, the Agriculture Employees Protection Act (AEPA) prevents farm workers from bargaining collectively therefore, it is even more difficult for migrant workers to fight for better working conditions (Walchuk, 2009; McLaughlin et al., 2014).

It is clear that migrant farm workers are exposed to numerous workplace hazards and often experience work-related injuries and illness. There are different perspectives as to what may be the root cause of their vulnerabilities. Some scholars believe that it is the precarious nature of their immigration and employment status, while others believe that risk prevention methods are not being adequately utilized to keep migrant farms workers safe on the job. Several barriers in accessing health care services were identified as contributing factors to their vulnerabilities including language barriers, low literacy skills and low awareness of rights. Lastly, it was also revealed that violations of labour standards play a significant role in keeping migrant farm workers vulnerable on the job. Although the literature on health and safety for migrant farm workers is abundant, there is not enough research exploring the limitations of the Occupational Health and Safety Act and its ability or inability to protect SAWP workers in Ontario. The objective of this paper is to explore this area and contribute to the existing literature concerning the health and safety of migrant farm workers in Ontario.

## **Methods**

Although a large number of studies on this topic employ mix methods for data gathering, this research was undertaken using qualitative methods. Given the temporary nature of their employment and immigration status, language barriers, time constraints and limited

financial resources, administering survey questionnaires and conducting structured interviews would not have been feasible. Given that migrants are a vulnerable population group, ethical concerns, privacy and informed consent would have had to be addressed if interviews and observations of the subjects were to take place. It is also important to consider the possibility that migrant farm workers would be fearful or hesitant to take part in this study and that employers would be unwilling to participate as well, given the controversy surrounding the working conditions of workers in the SAWP. As a result, an analysis of secondary sources was more realistic for this study.

## **Data**

Information for this research paper originated from a variety of secondary sources, including policy briefs, government reports, peer-reviewed journals, government websites, electronic newspapers, government legislation, union and advocacy group material, as well as scholarly texts. These secondary sources were chosen because they are publically available and easy to access. The scope of this research paper is limited to Ontario because health and safety legislation is a provincial matter.

## **The OH&S Act and its Application to Migrant Farm Workers**

Migrant farm workers share some common characteristics. They are typically single, young, middle-aged men, approximately 3-4% of them are single women and the majority of them have dependents in their country of origin who rely on them for income (McLaughlin et al., 2014). Migrant farm workers have employer-specific work permits and are largely

dependent on that employer for current and future employment (McLaughlin et al., 2014).

Migrant farm workers are often not protected from unfair work practices, even though such practices are prohibited by law.

### *The right to participate*

According to the OH&S legislation, workers in Ontario, including migrant farm workers, have the right to get involved in workplace health and safety activities through a Joint Health and Safety Committee (JHSC) or as a health and safety representative. The purpose of a representative or a JHSC is to represent workers and employers when health and safety problems or concerns are brought forth. A JHSC consists of both workers and management staff who have the responsibility to identify occupational hazards and provide recommendations to improve workplace conditions (Ministry of Labour, 2012). Workplaces that have 20 or more employees are required to have a JHSC therefore, many smaller agricultural businesses are automatically excluded from this requirement (McLaughlin et al., 2014). When farmers employ less than 20 agricultural workers, they are not obligated to form a JHSC, however employees could be required to select a health and safety representative within their group. Given that migrant farm workers are often afraid to voice their health and safety concerns to management and have limited understanding of their rights, it is unlikely that SAWP workers would choose to form a JHSC or select a health and safety representative in the workplace. Furthermore, JHSCs are mandatory only in certain agriculture industries such as poultry, greenhouses, dairy, mushroom, hog and cattle - none of which are major recruiters of SAWP workers, except for the greenhouse sector (McLaughlin et al., 2014). SAWP workers are mostly recruited in the

fruits, vegetable and orchard industries which are not included in this provision of the OH&S Act (McLaughlin et al., 2014). As a result, the majority of migrant farm workers in the SAWP would most likely not have access to a JHSC to identify workplace hazards and address complaints concerning health and safety. This indicates that the provision of the OH&S Act that gives workers the right to participate in workplace health and safety activities is not compatible with the circumstances under which SAWP workers are employed. This particular provision of the OH&S Act is not designed for workers whose residency status and health care benefits are tied to an employment contract that can be terminated at the discretion of the employer for virtually any reason, resulting in repatriation.

#### *The right to know*

According to the OH&S Act, employers have the responsibility to keep workers safe on the job. The right to know requires employers to inform employees about any current and potential hazards in the workplace. Employees working with chemicals, pesticides or other hazardous materials should receive the necessary protective equipment and the proper training to handle and store such products (Ministry of Labour, 2017). An Ontario survey of approximately 600 migrant workers revealed that they are often exposed to hazards because they work with chemical products and fertilizers, they operate machinery and work without sufficient protective equipment, they work under extreme temperatures and make repetitive movements throughout the day (McLaughlin et al., 2010). In this survey, nearly 41% of respondents revealed that they had received health and safety-related information and training, while the remaining participants reported not having received any information or

training related to health and safety (McLaughlin et al., 2010). The majority of migrant farm workers receive very limited training and are not provided with sufficient personal protective equipment (McLaughlin et al., 2014). There are a number of reasons that could explain the limited health and safety training provided to the workers. Low levels of literacy and language barriers can create communication problems and prevent migrant workers from understanding occupational health and safety hazards (McLaughlin et al., 2010). Language barriers can make communication between workers and management difficult as well. Inadequate financial resources could be another reason for the lack of health and safety training. While employers are aware that training is required, they can become frustrated over having to carry the burden of providing training, especially when they do not have sufficient support from farmers' associations or from the government (Narushima and Sanchez, 2014). A study about Southern Ontario farmers revealed that the two most common occupational risks faced by migrant farm workers were injuries and accidents associated with chemicals and the operation of machinery and heavy equipment (Narushima and Sanchez, 2014). This issue is not isolated to migrant farm workers in Canada. In United States, it was found that pesticide-related illness is a major cause of health problems for migrant farm workers (Das et al., 2001). Although employers are responsible for the health and safety of workers, some believe that health and safety are two separate issues, meaning that workplace safety is a matter of business and is therefore their responsibility, while health is a personal matter to be dealt with by the workers themselves (Narushima and Sanchez, 2014). There are many health problems that workers can experience as a result of the risks associated with their occupation therefore, it is important for employers to understand that health and safety are not mutually exclusive. Being aware of current and

potential hazards in the workplace requires workers to have the appropriate information and training about their work. Given the above-mentioned difficulties in proving and receiving the necessary training, it is difficult to apply this provision of the OH&S Act when dealing with migrant farm workers, especially when employers lack the proper support and resources to do so.

### *The right to refuse*

Workers have the right to refuse work that they believe to be dangerous. In this situation, management is required to respect this right and take every reasonable precaution under the existing circumstances by protecting employees and by following the step-by-step process outlined in the OH&S Act for dealing with work refusals (Ministry of Labour, 2012). Workers cannot be punished in any way for exercising this right and management must look into the concerns of the workers and do everything they can to address them. If the problem cannot be resolved with the help of the JHSC or a representative, an inspector from the Ministry of Labour is called to investigate the situation (Ministry of Labour, 2012). According to the SAWP contract, employers are permitted to terminate workers' employment for refusing to work, non-compliance, or for any other sufficient reason (McLaughlin et al., 2014). This part of the SAWP contract is in direct conflict with this provision of the OH&S Act which gives workers the right to refuse unsafe work. Repatriation for refusing to perform unsafe work is a form of retaliation against migrant farm workers. In situations like this, migrant farm workers have no appeal mechanism to challenge repatriation decisions (McLaughlin et al., 2014). Although migrant farm workers are offered the same legal protections as Canadians, research has

revealed that , in practice, those workers often choose not to raise complaints because they are afraid of being repatriated or not being named in the next season for re-employment (Sargeant et al., 2009). Since their work permit is employer-specific, migrant farm workers cannot simply go work in another farm if they are unhappy with their current employer. The imbalance of power between employers and workers allows certain employers to exploit their vulnerability and use repatriation as a threat if the workers refuse to comply with their requests. According to the SAWP policy, employers are allowed to recruit workers by name for future contracts therefore, migrant farm workers do not want to jeopardize their relationship with their employer by raising health and safety-related complaints. In the SAWP, when the employment contract expires, migrant farm workers are sent home with a performance evaluation conducted by their employer, which can become a deciding factor on whether a particular worker will continue to be part of the SAWP therefore, if workers receive a negative evaluation, they could be suspended from the program (Justice for Migrant Workers, 2005). Migrant farm workers also have to submit a report about the treatment received from their employer and reports have shown that the majority of them choose provide neutral evaluations in order to be able to return to Canada for subsequent contracts (Justice for Migrant Workers, 2005). Migrant farm workers rarely refuse means of transportation or work tasks that they believe to be dangerous because objecting to that could jeopardize their current work and future employment opportunities (Preibisch and Otero, 2009). Accidents and fatalities involving migrant farm workers are not uncommon. In 2002, a Jamaican migrant worker in a tobacco farm in Ontario was crushed to death by a bin (CBC News, 2013). As a result, migrant farm workers do not feel empowered to refuse work tasks that put their safety and health at risk,

meaning that the right to refuse unsafe work under the OH&S Act does not have a significant positive impact in protecting them from harm in the workplace.

### **Government Oversight and Enforcement**

In Canada, labour regulations fall under the jurisdiction of the provinces and territories. There are mechanisms in place to regulate workplaces in Ontario and to file complaints about health and safety violations. There is however inadequate government oversight in terms of monitoring the working and living conditions of migrant farm workers. Migrant farm workers are not only dependent on their employer for food, shelter and work, they also live in isolation on rural farms, with minimal government oversight (Canadian Council for Refugees, 2016). The Ministry of Labour (MOL) can conduct farm inspections but those inspections are usually minimal and take place after complaints are raised (McLaughlin et al., 2014). In 2006-07, only 71 out of the 60,000 farms in Ontario were issued orders to improve conditions (McLaughlin et al., 2014). It is also important to note that from 2005 to 2006 there were only 27 inspectors who were trained in farming, however that number has increased to over 200 in 2013, which is still relatively small in comparison to the number of farms located in Ontario (McLaughlin et al., 2014). Statistics from the Ministry of Labour revealed that from 2008 – 2010, there were 580 inspections, 585 work operation investigations, 97 complaints, 957 orders to change working conditions for the better, but there were no work refusals during that period of time (McLaughlin et al., 2014). Between 2010 and 2011, 428 field visits were conducted and 334 orders to upgrade conditions were issued, and while the numbers seem high, the statistics do not specify which of those actions took place on farms where migrant workers are employed

(McLaughlin et al., 2014). This becomes problematic because the Ontario government cannot keep track of its actions on farms where migrant workers are present. It is important to note that MOL inspections in the agricultural sector also include non-farm industries such as landscaping organizations and pet clinics (McLaughlin et al., 2014). Although inspections are conducted and improvement orders are being issued, it is not clear whether they have led to a significant improvement of working conditions (Hennebry et al., 2010). The monitoring and enforcement process in Ontario is complaint-based, meaning that it is reactive and not proactive in taking action to ensure compliance is met and that migrant farm workers are safe.

### **Collective bargaining rights**

Under the Agriculture Employees Protection Act (AEPA), farm workers in Ontario do not have collective bargaining rights therefore, it is difficult for migrant farm workers to get collective representation to campaign for better working conditions (Walchuk, 2009). It is well documented in the literature that lack of collective bargaining rights is a significant barrier to removing the systemic vulnerabilities of migrant farm workers in the SAWP. In 2009, United Food and Commercial Workers Canada brought a charter challenge to court arguing that by prohibiting Ontario farm workers from bargaining collectively, the AEPA was in violation of the Charter of Rights and Freedoms (UFCW Canada, 2011). This was the case of *Ontario (Attorney General) v. Fraser (2011)*, which was heard at the Supreme Court of Canada. The Supreme Court decided in favour of the Ontario Government and denied agricultural workers the right to join unions. In 2010, the International Labour Organization of the United Nations had ruled that the ban on farm unions in Ontario violated the human rights of over 100,000 foreign and domestic

agricultural workers (UFCW Canada, 2010). This U.N. agency found that the denial of collective bargaining rights violated two U.N. conventions namely Convention No. 87: *Freedom of Association and Protection of the Right to Organize* and Convention No. 98: *Right to Organize and Collective Bargaining* (UFCW Canada, 2010). Given that agriculture is a dangerous industry and that migrant farm workers are highly vulnerable to workplace illness and injuries, denying them the right to bargain collectively reduces their ability to advocate for better working conditions.

## **Discussion**

The situation of migrant farm workers in Ontario is very complex. There is a series of factors that affect their vulnerabilities on the job including the design of the SAWP and the OH&S Act, precarious employment and immigration status, inadequate enforcement mechanisms and the lack of collective bargaining rights. The SAWP is designed to give farm employers a supply of temporary foreign workers to meet short-term labour shortages in the agricultural sector. While it has been suggested in the literature that SAWP workers should be given a pathway to permanent residency, this change would undermine the purpose of this guest worker program. Obtaining permanent residency or citizenship would remove work permit restrictions imposed on migrant farm workers, which would allow them to work for different employers. This could eliminate their dependence on one employer and it could force employers to treat their workers differently if they had the option to take their labour elsewhere. There is also a jurisdictional conflict to take into consideration because the SAWP is administered by the federal government, while labour legislation is administered by the

provincial government therefore, if any changes are to be made to improve working conditions of SAWP workers, they would need to be implemented in a joint effort between the two levels of government. The SAWP is often criticized because a significant number of migrant farm workers who participate in this program are not treated well by their employers and because they suffer workplace-related illness and injuries. This can negatively impact the integrity of the SAWP therefore, if the federal government is interested in maintaining the integrity of this program, significant efforts should be put into improving this program and implementing strict policies concerning what employers can and cannot do. Migrant farm workers risk their health and safety in the field, they experience workplace incidents and fatalities because they are not well supported by the federal and provincial governments. Migrant farm workers who participate in the SAWP face a number of issues that need to be seriously addressed by the Canadian government. Migrant farm workers have limited mobility in terms of transportation and in terms of employment, meaning that access to health care services is extremely difficult and leaving one employer for another is almost impossible. Many migrant farm workers continue to work while sick and injured because they are afraid to lose employment if their employer discovers that they are sick. Their limited knowledge of the health care system, inadequate transportation and language barriers keep them from seeking medical attention. Other concerns about the SAWP include the 12 to 15-hour work days with no holiday or overtime pay, limited rest breaks, substandard living conditions and unfair pay deductions (Justice for Migrant Workers, 2005). There is a large amount of research showing this type of trend among migrant farm workers yet, very little is being done to address it. It is important to acknowledge that not all migrant farm workers have a negative work experience in Canada.

There are workers who have had a positive experience and have been returning to the same farms for over 40 years as a result (Canadian Agricultural Human Resource Council, 2017).

There are farmers who treat their workers well, but when the design of the SAWP creates opportunity for mistreatment and exploitation, there are individuals who can take advantage of it. The SAWP creates too many opportunities for workers to be exploited and sent back to their country of origin at the discretion of their employer, and the OH&S Act cannot fully protect migrant farm workers from the dangers of the workplace, given their position as a transient working population.

Laws and regulations in Canada are designed in the Canadian context with the Canadian public in mind. The OH&S Act is design to protect workers from the dangers of the workplace and while extending its protection to farm workers in Ontario shows some good will, the Act itself is not designed to respond to the issues faced by migrant farm workers in the SAWP.

Extending OH&S Act to the agriculture sector was a good decision, however it has not significantly changed the daily realities of migrant farm workers in the SAWP. The OH&S Act provides added protection to farm workers who are permanent residents or have Canadian citizenship and who cannot simply be fired or repatriated for being sick, injured or for being 'non-compliant'. In the case of migrant farm workers, the responsive nature of this legislation requires complaints to be brought forth before inspections or investigations can be conducted. It has been well-documented that migrant farm workers often choose not to file complaints, not just because they may not have the knowledge on how to do it, but because they are afraid of reprisal on the part of their employer. Even though the OH&S legislation prohibits retaliation and punishment against workers for exercising their rights, research has shown that migrant

farm workers can get repatriated to their home countries for refusing to do unsafe work and for raising concerns about hazards in the workplace. There is evidence showing that migrant farm workers in Ontario have been repatriated to their country of origin for medical reasons (Orkin et al., 2014). As a result, some workers choose not to seek medical care and continue to work despite being critically injured or sick. Due to the temporary nature of their employment and legal status in Canada, and because Ministry officials do not maintain a list of where migrant farm workers are employed, it is difficult to know when and where exactly they can be located in the field (Orkin et al., 2014). There are mixed results on whether there have been improvements on workplace practices as a result of extending health and safety coverage to the agriculture industry because some workers claim to have seen improvements, while others have not (McLaughlin et al., 2014). In recent years, the small number of inspections in Ontario has increased, the system has become more proactive and in 2013, Vulnerable Workers Specialists were hired by the Ministry of Labour to look into the issues of vulnerable workers as well as migrant farm workers (McLaughlin et al., 2014). Significant changes need to be made in the SAWP to protect migrant farm workers in Canada as the OH&S Act cannot fully respond to their situation.

## **Recommendations**

A number of the problems noted above stem from the fact that (1) migrant farm workers are tied to a single employer and are often located in rural and remote regions of the country without access to transportation, and (2) are too precariously employed to avail themselves of the minimal health and safety protections that exist. The above analysis suggests

the following recommendations. Notably, the feasibility of implementing these recommendations needs further study and requires cooperation from several actors at various jurisdictional levels in order to improve the SAWP and the health and safety of migrant farm workers.

### *Restructuring of the SAWP*

The federal government should implement systemic changes to the SAWP to allow workers to change employers if they wish to do so. Having this option could help to remove a layer of vulnerability. The SAWP contract should place restrictions on the ability of employers to cease workers' employment. Employers should have to provide evidence justifying the termination and repatriation of a worker. The worker should also be provided with an appeal mechanism to dispute termination and repatriation.

### *Immigration status and health care*

Immigration status should not be dependent on employment because it would then give migrant farm workers the ability to seek medical treatment and recover from illness and injuries sustained on the job. Since migrant farm workers are tied to one employer, the federal government should issue industry-wide work permits to migrant farm workers as opposed employer-specific permits.

### *Occupational health and safety*

The provincial government should create an initiative to improve working conditions for migrant farm workers. Part of this initiative should include increased proactive inspections of farms. The Ministry of Labour should implement a tracking system to know where and when migrant farm workers are employed. Inspectors should become more familiar with the SAWP to better understand the situation of migrant farm workers. There should be a mechanism in place to allow migrant farm workers to file complaints anonymously. Health care practitioners who treat migrant farm workers should be provided with interpretation support to better understand their needs and issues in order to provide a more accurate diagnosis.

### *Training and education*

Language training should be provided to migrant farm workers, which will increase their ability to read and understand instructions, labels, employment contracts and health care services that are available to them. Migrant farm workers should have the option to receive health and safety training in their language as well.

### *Transportation*

Workers should be provided with safe, affordable and adequate means of transportation to be able to seek medical treatment and to access other health care services to which they are entitled.

## **Limitations and future studies**

There are some limitations to this research, among which external validity is the most relevant, given the qualitative nature of this paper. This study on health and safety for migrant farm workers in the SAWP is restricted to the Ontario context therefore, the findings may not be representative of all migrant farm workers across Canada. This study does not capture the living conditions of migrant farm workers which can also impact their occupational health and safety. The research subjects in this study were limited to SAWP workers. Not all migrant farm workers are recruited through the SAWP, others are recruited through other federal government programs such as the agriculture stream of the Temporary Foreign Workers Program. Data for this research paper originated from online resources that are publically available on the internet therefore, data concerning migrant farm workers that are not publically available were not captured in this study. This paper was focused specifically on the rights of workers under the Occupational Health and Safety Act, and not the entire legislation. Future research on this topic should strive to further explore and examine health and safety from the perspective of farmers in order to better understand the disconnect between them and their employees. It is important not to alienate employers from this conversation if we are hoping to improve the working conditions of migrant farm workers.

## **Conclusion**

This study offered new insights into the application of the OH&S Act on migrant farm workers in the SAWP, and the findings complement the existing literature on migrant farm workers in Ontario. So far, the health and safety of migrant farm workers in the SAWP has not

improved significantly since health and safety coverage was extended to the agriculture industry in 2006. The OH&S Act cannot fully address the vulnerabilities of migrant farm workers given their precarious employment and temporary immigration status. The way in which the SAWP is designed gives employers a tremendous amount of power over the workers. Jurisdictional conflict adds to the complexity of this issue because the SAWP is administered by the federal government while the OH&S Act is administered by the Ontario government. It is important that recruiting countries like Canada have laws and services in place to ensure that the rights of migrant farm workers are respected and that their health and safety needs are met. It is equally important that government oversight and enforcement standards be improved. Without significant systemic changes to improve the lives of migrant farm workers, occupational health and safety problems will continue to overshadow these types of guest worker programs.

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