November 16, 2023

Standing Committee on Citizenship and Immigration
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Via: Keelan Buck, Clerk of the Committee, CIMM@parl.gc.ca

RE: Closed Work Permits and Temporary Foreign Workers Study

Dear Members of the Committee:

On behalf of the Ontario Fruit and Vegetable Growers' Association (OFVGA), which represents over 3,500 farm families in the labour-intensive fruit and vegetable sector, we submit to you comments to support the committee as it studies closed work permits in relation to the Temporary Foreign Worker (TFW) program.

We offer the following considerations to the committee as it examines this topic:

Considerations related to mobility of TFW program employees

A common criticism of the TFW program is that employees have no option to leave a workplace that they deem unacceptable. A lack of options would have as a consequence that the workers in practice hold back on speaking out and exercising their legally protected rights related to workplace safety, protection from abuse, adequate housing, and other relevant issues for which federal and provincial regulations are in place.

This is not a desirable circumstance since no number of additional rights and protections either through regulation, legislation or policy could ever effectively protect workers if they were unable to exercise these new rights in practice. It is also not desirable from a good employer's perspective since this dynamic would lead to a continual addition of regulation and/or red tape, burdening already compliant employers in the futile attempt to solve problems faced by workers at bad workplaces where workers may be unable to exercise any number of new protections.

Given this potential dynamic and the relationship between worker mobility and their ability to exercise their rights, it is important to assess the accuracy of the notion that workers within the TFW program do not have mobility.

Absence of mobility, in the strictest sense, suggests that a TFW has zero options for leaving their workplace and moving to a different workplace. This is not the case in the TFW program.

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The following are the options available to TFWs to leave their workplace within the TFW program. The Seasonal Agricultural Worker Program (SAWP) stream of the TFW program has the highest number of available mobility options within the program:

- Option 1: While employed at a workplace, a TFW may apply for a new work permit. Upon successfully obtaining the new work permit, the TFW can start working for a different employer who has a valid Labour Market Impact Assessment (LMIA). TFWs can use the Government of Canada Job Bank to search for jobs with Canadian employers who want to hire TFWs. The job posting will say if the employer has already applied for or received a positive LMIA[1].

- Option 2: If an urgent change in workplace is needed, e.g., in a situation of abuse or risk of abuse, the worker may apply for an open work permit for vulnerable workers[2]. This open work permit allows the TFW to change jobs by giving them permission to work for almost any employer in Canada.

The SAWP stream makes up the largest share of agricultural workers hired through the TFW program. In addition to the above options which are available to all TFW program employees, SAWP employees have the following additional options to change workplaces:

- Option 3 (specific to SAWP): SAWP employees are able to change employers without getting a new work permit. These TFWs can initiate a transfer request through their respective liaison office and pursue a transfer across employers in the SAWP program, in accordance with the transfer rules of the program[3,4].

- Option 4 (specific to SAWP): For less urgent circumstances, where a worker may not be at immediate risk but does not wish to continue their employment with the same employer every year, the SAWP employee may request to their country's liaison office to be unmatched from their employer and be matched with a new employer in their next contract. The average SAWP contract for agricultural workers lasts approximately 25 weeks.

Economic considerations of worker mobility

Unduly disrupting a worker's ability to earn a livelihood in the TFW program is not desirable, since it harms their economic well-being and compromises their ability to make the investments into their families and

[1] https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights.html#h2.8
[2] https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html?utm_campaign=generic&utm_medium=vanity-url&utm_source=slash-vulnerable-foreign-workers
[3] https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural/apply/mexico.html#h2.11
[4] https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural/apply/caribbean.html#h2.15

home communities that are only possible as a result of their employment through the program, such as the higher education of their children[5].

A certain level of mobility is therefore needed to prevent scenarios where the risk of losing future employment prospects in the program paralyzes workers from exercising their rights at their current workplace. As described above, the TFW program therefore provides TFWs certain mobility options to change workplaces within the TFW program.

However, worker mobility does not only have the potential to impact the economic well-being of the worker; it can also affect farm families who employ TFWs and their ability to earn a livelihood.

Farm employers are obligated to provide government-inspected and approved housing to their TFW employees. The cost of creating such a worker housing space in a typical farming region in Ontario is in the range of $25,000 to $40,000 per space. A farm seeking to hire 50 new TFWs would therefore have to invest upward of $2 million (one-time investment) in housing before the workers would even be approved to come to the farm. In addition, employers are required to pay for TFW employees' flights to and from Canada. For more remote source countries such as Thailand, the flight cost can be in the $2,000 per worker range[6]. For 50 TFWs, this would represent an annual cost of up to $100,000 to the employer.

Given that most farms in Canada (approximately 97%) are family owned[7], these costs directly affect the economic circumstances and livelihoods of farmers, their families and the rural communities they are members of.

This is why a completely open work permit policy that would indiscriminately give all TFWs the ability to seek other employment once they are in Canada would therefore almost certainly represent a catastrophic risk to farm families reliant on TFW employees to maintain the health of their crops and animals, and to complete the harvest of their crops.

Very few families could absorb the $2 million one-time financial loss that would be the effect of TFWs agreeing to work at such a farm but then spontaneously changing their mind and moving to another workplace, leaving the farm with its fully paid empty farm worker housing behind. As well, very few families could absorb the $100,000 annual financial loss that would be the effect of workers changing their minds after the employer paid for their flights to Canada.

Any policy contemplations about further broadening farm worker mobility beyond the four options referenced in the previous sections should be mindful of the trade-offs and the risks to their livelihoods that all parties involved in the program (i.e. workers and employers) are exposed to.

Unique dependence of agricultural workplaces on reliable workforce

Agricultural workplaces have the following unique constraints on their ability to control the workload and/or work schedule related to caring for biological organisms such as plants and livestock:

[5] https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1005&context=brantford_hs
[6] https://www.aircanada.com/en-ca/flights-from-bangkok-to-toronto
[7] https://www.foodfocusguelph.ca/post/the-family-farm-is-changing-but-not-dying

- *Time sensitivity of work*: Unlike most workplaces, the work needing to be done in an agricultural workplace during a given work week is typically outside of the employer's control, at least within the medium term (e.g. the spring-summer-fall growing season), since once a farm has planted a certain number of acres or filled their barn with a certain number of animals, these biological organisms must be kept alive at nature's schedule, not the farmer's. For perennial crops like vineyards and orchards, these limitations on the farmer's control over the workload extends over multiple years.

    - While all aspects of plant and livestock maintenance are time sensitive, the crop harvesting step is used for illustration purposes: harvest windows for many crops are very narrow, often only several days or even hours wide (e.g., strawberries[8,9], peaches[10,11], asparagus[12], etc.), leaving farm employers highly dependent on the reliability and predictability of their workforce.

    - The biological nature of farm organisms such as plants and livestock therefore limit the ability of farms to postpone, reduce or otherwise adjust the amount of work needed to be performed throughout the season.

    - Failure to complete a task such as harvesting within the window prescribed by nature can cause crop failure and can compromise the health of plants and livestock, causing them irreversible harm or even death. The resulting impact can present a threat to our domestic food security and the affordability of food if our reliance on imports grows to replace failed local crops.

- *Handicaps in finding replacement workers*: Close to one in two workers on Ontario fruit and vegetable farms are hired through the TFW program due to the long-standing challenges with sourcing local workers for seasonal employment in rural farm workplaces[13]. Their ability to replace departing employees (e.g. for any reason, including open work permits) faces the double constraint of local labour shortages and the fact that the hiring process for replacement TFWs would understandably have to follow the proper processes and due diligence steps, by the conclusion of which it may already be too late to prevent the perishing of crop or livestock or the spoilage of harvest-ready crops, especially if employees were to leave in large numbers.

The vulnerability of employers and their dependence on reliable workers is particularly high in the fruit and vegetable sector due to the disproportionately high labour-intensiveness of farm work in this sector (e.g. manual picking and sorting/grading of harvested crops, etc). This is because many fruit and vegetable crops are delicate and must be handled carefully to avoid bruising or damage that could result in spoilage or produce that is no longer deemed acceptable for the human food chain.

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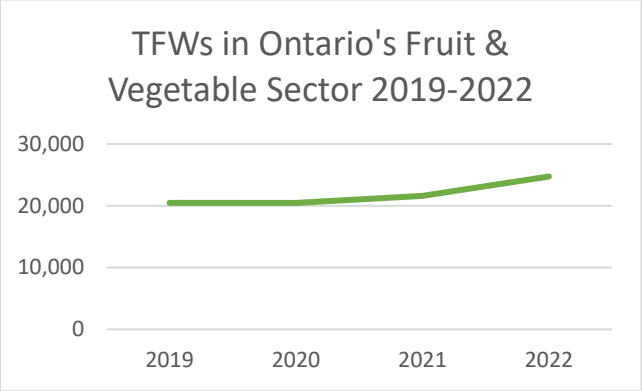
[8] https://extension.psu.edu/growing-strawberries
[9] https://extension.umn.edu/strawberry-farming/harvesting-strawberries
[10] https://www.ontariotenderfruit.ca/uploads/file/Report%20-%20Tech%20Innovation%20Roadmap%20-%20FINAL%20with%20cov.pdf
[11] https://extension.umd.edu/resource/are-your-peaches-ready-harvest-fs-1182
[12] https://extension.umaine.edu/publications/2071e/
[13] https://cahrc-ccrha.ca/sites/default/files/2021-11/ON_EN_Reduced%20size.pdf

Due to the domestic labour shortage in rural Canada, this is one of the primary reasons this sector continues to rely heavily on TFWs. For illustration, the fruit and vegetable sector accounted for well over 80% of the agricultural TFWs working in Ontario in 2022 and the number of TFWs in the sector has seen a growing trend.



The dependence on TFWs has grown for Ontario's edible horticulture sector since the onset of the pandemic. Source: Statistics Canada, Cansim 32-10-0218-01.

Any policy contemplations about further broadening farm worker mobility beyond the four options referenced in the previous sections should be mindful of the trade-offs and risks in terms of the dependency of agricultural production on a reliable and predictable workforce.

We understand that the issue of labour in Canada's economy, particular involving temporary, seasonal and migrant workers, is complex and multi-faceted. Many aspects must be considered to arrive at outcomes that meet the needs of workers, employers, the Canadian economy and, ultimately, the consumers in Canada and abroad who depend on the food products we produce.

Canada's government approved TFW programs are an important pillar in the nation's agriculture sector, particularly fruit and vegetable production, and we welcome the opportunity to engage in further discussion or consultation with the Committee on this important issue.

If you have questions about this submission, or wish to discuss further, please contact Stefan Larrass, OFVGA Policy Advisor, at slarrass@ofvga.org or 519-803-8413.

Sincerely,

Bill George
Chair, OFVGA Labour Section

Cc: Members of the Standing Committee on Citizenship and Immigration

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