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The Rights of Farm Workers in Alberta: Past, Present and Future

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November 3, 2017



Introduction / Outline

- Farm and ranch workers' rights pre-2015
- The impact of excluding farm workers from labour and employment protections
- Bill 6, Bill 17
- Remaining Issues for legislative / policy reform



Farm and ranch workers' rights pre-2015

- Most farm + ranch workers historically excluded from key AB legislation protecting the rights of workers:
 - *Employment Standards Code*, RSA 2000 c E-9
 - *Labour Relations Code*, RSA 2000 c L-1
 - *Occupational Health and Safety Act*, RSA 2000 c O-2
 - *Workers' Compensation Act*, RSA 2000 c W-15
- Historical rationales:
 - Family farms
 - Nature of work



Canadian Charter of Rights and Freedoms

s 2 Everyone has the following fundamental freedoms:

...(d) freedom of association

s 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

s 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.



Canadian Charter of Rights and Freedoms

s 1 The [Canadian Charter of Rights and Freedoms](#) guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

- Requires government to prove that law has pressing and substantial objective, and that means used to achieve objective are rational, proportionate and balanced



Constitutionality of farm worker exclusions?

- *Dunmore v Ontario (Att’y Gen’l)*, [2001] 3 SCR 1016
 - Exclusion of farm workers from labour relations legislation in Ontario violates s 2(d) *Charter*, freedom of association
 - unique vulnerability of farmworkers as economically disadvantaged group, often working in isolated settings close to their employers, meant they could not form trade associations / meaningful negotiations with employers unless they had legislative protection
 - Blanket exclusion could not be justified under section 1
 - New law establishing separate labour regime for farm workers upheld in *Ontario (A.G.) v. Fraser*, 2011 SCC 20



Constitutional clinical project, Faculty of Law, 2014

- B. Takasugi, D. Contractor, P. Kennett, [The Statutory Exclusion of Farm Workers from the Alberta Labour Relations Code](#)
 - *Labour Relations Code* violates s 2(d), s 7, s 15
- K. Turner, G. Argento, H. Rolfe, [Alberta Farm and Ranch Workers: The Last Frontier of Workplace Protection](#)
 - *Occupational Health and Safety Act* violates s 7, s 15



Constitutionality of Farm worker exclusions

- G. Martinelli and A. Lau, [Challenging the Farm Work Exclusions in the Employment Standards Code](#)
 - *Employment Standards Code* violates s 7, s 15
- N. Medeiros, R. McIntyre, [The Constitutionality of the Exclusion of Farm Industries under the Alberta Workers' Compensation Act](#)
 - *Workers' Compensation Act* violates s 7, s 15



Constitutionality of Farm worker exclusions

- Exclusions also violate international law
 - International Labour Organization (ILO) *Convention (No 87) Concerning Freedom of Association & Protection of the Right to Organize, Promotional Framework for Occupational Safety & Health, Discrimination (Employment and Occupation) Convention*, *Decl'n on Fundamental Principles & Rights at Work*
- Exclusions cannot be justified under s 1 *Charter*
 - Blanket exclusions, cumulative impact
 - Family farm justification not applicable to all farms
 - Alberta as outlier in Canada



Constitutionality of exclusions

- See also Koshan et al, "Farming the Constitution: The Illegality of Excluding Alberta Farm Workers from Labour and Employment Legislation"
- Darlene Dunlop, "The Personal Experiences of an Alberta Farm Worker and Activist"
- Both chapters in S McDonald and B Barnetson (eds), *Farm Workers in Western Canada: Injustices and Activism* (U of A Press, 2016)



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Darlene Dunlop and Eric Musekamp: Farm worker perspectives on the exclusions



Bill 6, *Enhanced Protection for Farm and Ranch Workers Act*, Passed December 10, 2015

- Amendments apply to farms and ranches that employ paid workers, n/a to family members
- Amendments to *OHS, WCA* took effect Jan 1, 2016
- *Workers Compensation Act*:
 - Farms must now obtain insurance coverage for workers.
 - Employers had until April 30, 2016 to register with WCB, have option to insure family members and unpaid workers.



Bill 6, *Enhanced Protection for Farm and Ranch Workers Act*

- *Occupational Health and Safety Act:*
- Basic safety standards now apply to farm workers:
 - employers must take reasonable steps to provide safe, healthy workplace
 - workers able to refuse unsafe work presenting imminent danger
 - OHS able to investigate serious injuries and fatalities
- Consultations ongoing on *Occupational Health and Safety Code* for technical standards specific to farm, ranch industry; comments open until Jan 15, 2018



Post Bill 6

- Government set up [6 Technical Working Groups](#) in 2016.
- Technical Working Groups 1 and 2 reviewed employment standards and labour relations, provided reports with recommendations to government in early 2017.
- Consultations on recommendations occurred between March 6 and April 3, 2017 → Bill 17.



Bill 17, the *Fair and Family-friendly Workplaces Act*, passed June 7, 2017

- Amendments apply to farms, ranches employing paid workers, n/a to family members, comes into effect Jan 1, 2018
- *Labour Relations Code*:
 - Public Emergency Tribunals for the agriculture industry came into effect June 7, 2017
 - used where risk of imminent and irreversible damage to crops and/or livestock welfare in primary agriculture
 - Exemption for farm + ranch workers removed, may now join labour unions & collectively bargain with employers



Bill 17, the *Fair and Family-friendly Workplaces Act*

- *Employment Standards Code:*
 - Minimum wage applies to farm workers (no changes needed)
 - Farm workers exempted from overtime requirements, standards around hours of work, breaks
 - Farm workers given 4 days off every 28 days, with employer deciding which four days at their convenience and within reason
 - Other employees receive 1 day off every 7 days or 4 consecutive days off after each 24 consecutive work days
 - Government is consulting with stakeholders on defining “light work” for young people, and on what is hazardous work that requires higher level of supervision and training.
 - Greenhouses, mushroom farms, nurseries and sod farms n/a



- [Report to the Minister of Justice and Solicitor General of a Public Fatality Inquiry into the Death of Stephen Murray Gibson](#) (May, 2017), Judge Anne Brown:
 - Farm safety training should be made a compulsory component of all post-secondary agriculture programs, at least in graduation year but ideally in every year of a program. This may require a cross-ministry initiative, involving Advanced Education, Agriculture and Forestry, and Labour.
 - The Ministries of Labour and Agriculture and Forestry should develop and implement a compulsory regime of annual safety certification of farm equipment, to include PTOs.
- For commentary see [Another Workplace Death Illustrates the Need for More Enhanced Protections for Farm Workers](#) (ABlawg, July 2017)



Resources

- Alberta government, Farm and Ranch workplace legislation, <https://www.alberta.ca/farm-and-ranch.aspx>
- ABlawg:
 - Farm and Ranch Workers' Rights [ebook](#)
 - <https://ablawg.ca/?s=farm+worker>
- Bob Barnettson's Blog, <http://albertalabour.blogspot.ca/>
- Farm Workers Union of Alberta, <https://www.facebook.com/farmworkersunionofalberta/>
- Questions / Comments?