

**2017 ACORN Conference & Trade Show
Best Western Glengarry, Truro, NS**

Workshop Title: Cultivating Justice: Recognizing and Respecting the Contributions of Migrant Farm Workers

Speaker: Shane Martinez

Executive Summary: Workers who come to Canada under the Seasonal Workers Agricultural Program (SWAP) face many challenges due to flaws in the program that keep workers in a marginalized position. There is work being done to lobby the government to make changes to the program which would ensure workers are treated more fairly and give them more agency but there is much more work to be done.

Detailed Notes:

Seasonal Workers Agricultural Program (SWAP):

- On large conventional farms in Ontario is where most issues with the SWAP program exist
- There are disadvantages built into the program, which keep participants marginalized
- There is an increasing number of organic farms in Ontario who are working to give workers agency and voice and they differ from conventional farms
- These changes can benefit the farmers as well as workers
- After complaints coming from workers on several conventional farms, a Supreme court decision (the Dunmore case) stated that farm workers in the SWAP program are in a position where they are marginalized, politically neutral, do dangerous work, work long hours, and are isolated
- Despite this decision, Supreme court did not strengthen protections on workers
- SWAP started in 1960s with Jamaicans to fill gap after trying some national programs to have prisoners, indigenous people, or European immigrants as farm workers, which were all unsuccessful and worked in the short term only
- The program grew from 200 in 1960s to 10,000s today
- These migrant workers serve essential role in maintaining a multi-billion industry

Main Problematic Areas:

Issue #1 - Contracts:

- Lack of involvement of workers and farmers in negotiations of the contracts for workers
- The contracts are mainly written by the government and organizations for large farms
- Workers have no say in what's in the contracts they ultimately sign, which means that the contracts have very inequitable terms for workers
- There is also a repatriation clause which allows employers to send workers home for any reason at any time
- For example: the repatriation clause can be applied if a hurt worker applies for workers comp or female worker that gets pregnant and they could be sent home
- The Human Rights Tribunal acknowledged that some farmers use the repatriation clause to

keep workers silent and fearful, which prevents workers from exercising their rights

Issue #2 - Housing:

- Housing is another major important issue
- In Ontario, the tenancy board has created an exception clause for farm workers meaning that if you're living in housing provided by employer, you don't have the same tenancy rights as all other tenants in Ontario
- In the Maritimes: this same exception also exists in New Brunswick but not in Nova Scotia or PEI
- It often means that farm workers in Ontario live in very deplorable conditions, such as too many people crammed into one space, bugs, mold etc.
- Tragic case in Ontario last year: after repeated claims about a sub-par electrical system, the housing ended up burning down and workers lost everything, including savings as they lived so far from town and they didn't have bank accounts

Issue #3 - Training:

- Lack of training for workers
- This is particularly bad with workers whose spoken or written English is limited
- This lack of training is especially dangerous with pesticides and heavy equipment
- Sufficient training is not happening on conventional farms at the rate it should be
- Many workers, due to issue #2, are living in the same buildings with agro-chemicals and pesticides

Issue #4 - Program length:

- Workers through the SWAP program live here 8 months of the year and they pay taxes and EI like anyone else but they don't have the option to stay after 8 months
- Further, because they have to leave, they don't have the opportunity to claim the EI they are paying into

Issue #5 - Discrimination:

- Discrimination towards workers by full-time residents of communities where workers live
- Leamington, Ontario: municipal government is trying to pass an "anti-loitering" by-law because on Sundays there are so many migrant workers, which is the only day they have off
- Community members have said they feel "uncomfortable" in their town, implying that workers are only good enough to come here if they aren't seen
- In Ontario there was a 2013 police investigation of a sexual assault case with a very specific description of suspect, who was a black male. The police set up radius around a farm in the area where the case was reported and led the workers one by one into a locked police van and asked (forced) the workers to give DNA samples, even though many of them didn't fit the description at all.

Issue #6 - No pathway to citizenship:

- Despite coming here year after year, there is no pathway for workers in the SWAP program to apply as citizens; they cannot gain citizen status as other workers would.
- This issue is at the core of all other inequities in the program
- They will remain permanently temporary until this key issue is resolved. The term "permanently temporary" was coined by Faye Faraday.

Fight for Change:

- There are groups fighting towards change, such as Justice for Migrant Workers
- Some organic farms making changes
- There is work happening towards a certification for farms in US for "fair work certified" including a health and safety, "know your rights" clause
- This certification was discussed extensively at the Food and Law conference in Ottawa
- It has the same potential to attract a consumer base as organic certification
- Shane Martinez thinks "fair work" has a similar consumer base as organic
- There are a number of ways for farmers to be able to act in solidarity with migrant workers including:
 1. Support calls that migrant workers are making for change
 2. Advocate for full protections under provincial employment act
 3. Build connections between the community and workers
 4. Support migrant enterprises in their home countries
 5. Call for automatic orientation upon workers' arrival about their rights under the law and how they can access assistance:
- Mobility is another important issue for workers as it is hard to leave a "bad" farm once you've arrived in Canada
- Last March, Shane met with the Parliamentary Secretary to Immigration Minister to create pilot project to create pathways to permanent residence. He is looking for "good" farms to partner with on this project and encourages farmers who'd like to be involved to contact him.