

Issues and Solutions: The Seasonal Agricultural Worker Program



May 2, 2018

32160 S Fraser Way, Abbotsford, BC V2T 1W5

info@walicanada.ca

Background

The Seasonal Agricultural Worker Program (SAWP) allows workers from Mexico and Caribbean Commonwealth Nations to enter Canada for periods of up to 8 months per year, working on approved farms. The program was introduced 50 years ago in Ontario and 10 years ago in BC. The structure of the SAWP provides many safeguards for worker safety.

- **Workers are protected by all Canadian provincial workplace regulations** (Employment Standards, WorksafeBC, Public Health Authorities)
- **For the SAWP, workers are additionally protected through an agreement negotiated each year by Employment and Social Development Canada, the foreign governments, and regional employer representatives** (Canadian Horticultural Council, FERMES in Quebec, FARMS in Ontario, and WALI in Western Canada).
- **Workplaces are subject to many different inspections:** WorksafeBC, Integrity Services Division - Employment and Social Development Canada (ESDC), Employment Standards, local health authorities, foreign consulates, and employer organizations.
- **Housing is inspected to a formal standard each year.** This standard is currently being updated by ESDC.
- **Workers are recruited by the foreign Ministry of Labour,** eliminating human trafficking risk.

SAWP is not to be confused with the Temporary Foreign Worker Program - Agriculture Stream. “Ag Stream” does not include foreign consulate negotiation or oversight of workers, and often does not include employer organization involvement. Ag Stream also does not have foreign recruitment controls in place. *Ag Stream is evolving to include similar negotiation, foreign consulate oversight, and government-based recruiting as SAWP.*

In BC, we expect about 6,000 Mexican SAWP workers and 1,000 Caribbean workers in 2018.

	Mexico SAWP	Caribbean SAWP	Total
Lower Mainland	3,500	nominal	3,500
Okanagan	2,500	1,000	3,500

Issues

1. Processing delays for SAWP applications (Labour Market Impact Assessments).
2. Excessive delay in audit processing by Integrity Services Division.
3. Delays caused by changes in issuance of Work Permits in Mexico, by Immigration, Refugees and Citizenship Canada (IRCC).
4. Mistreatment of Farm Operators:
 - a. Integrity Services Division operations relationship with farm operators.
 - b. Anticipated interference with employees by activists, funded by Integrity Services Division, exclusive to BC.

Solutions

1. Processing delays for Labour Market Impact Assessments (LMIAs).

- a. Allow processing agents to contact the farm operator for missing information.
Previously, the government staff in the Simcoe, Ontario Specialized Processing Centre were able to contact the farm operator to clarify or obtain any missing information. Now, applications are returned 'incomplete' and must be re-submitted. Even when no information is missing, timelines are extending. In the past, maximum turnaround time on an LMIA application was 2 weeks, according to farm operators. Now, ESDC has stated that minimum turnaround time is 2 weeks. In November 2018, associations started receiving complaints of excessive LMIA processing times - some were over 10 weeks. Service Standards need to be implemented, and monitored for LMIA processing. Turnaround time seems to be improving, as more active management is overcoming the impractical system changes forced on the Specialist Processing Centre. In future, changes to systems should be subject to a risk management review, to ensure appropriate steps are taken and alternatives identified as a contingency if the new system fails to maintain service standards.
- b. In previous years, the farm operator was able to contact the Specialized Processing Centre directly. Now the farm operator contacts a call centre. The call centre has no access to the processing centre, so the call centre is a barrier

to communication. Fortunately, the Specialized Processing Centre has developed and is testing an automated tracking system, which will provide growers direct access to their application's status. The tracking system is planned to be launched next year. Until then, we anticipate ongoing complaints from farm operators. In future, prior to eliminating communications channels, implement new communication channels first.

- c. The delays and changes in the housing inspection requirement (i.e. must be completed within 8 months of application) are forcing growers to consider applying earlier. Timing applications for the Fall makes sense for other reasons too - spreading out workload at the Specialized Processing Centre, ensuring farm operators are available before the 'off season', and inspection of housing before it is winterized. There is no formal regulation on how far in advance a farm operator may apply for SAWP workers. ESDC staff have reacted by proposing that the time between application and arrival of workers be short. If not arbitrarily restricted, we anticipate that many farm operators will apply in October-November application for the following season (arrivals from February to August). SAWP applications (LMIAs) should be allowed up to 10 months prior to arrival).
- d. Transfer of workers (including replacement workers for those workers who return home early) require a complete new application, even if positions were originally approved as direct arrivals. Streamline processes by removing duplicated advertising, housing inspection and new LMIA requirements for SAWP positions previously approved. Transfers should be freely allowed for previously approved direct arrivals.
- e. Establish a 'trusted employer' status, such that farm operators with a good track record and clean audits will not be subject to all of the requirements - perhaps an abbreviated LMIA, reduced advertising, and housing inspections only when housing is changed (notification of changes would be a requirement).

2. Excessive delay in audit processing by Integrity Services.

Service Standards need to be implemented at Integrity Services Division. For example, an initial judgement of 'no health and safety risk' should be made within one week of the inspection visit - this allows the farm operator's current LMIA to be processed without delay. A similar rule was in place (without timeline), but we are concerned that LMIAs are being held up due to Integrity Services audits,

despite no finding of risk to worker health and safety.

3. Delays caused by changes in issuance of Work Permits in Mexico, by IRCC.

A form changed, requiring additional information, and subsequent checking procedures caused incorrectly filled out forms or forms with missing information to be returned (deja vu?). IRCC needs to conduct a formal review so similar errors do not occur next season, with actionable recommendations that include improving processing times for LMIAs and work permits, and to set service standards for turnaround time.

4. Mistreatment of Farm Operators:

- a. Integrity Services Division relationship with farm operators.

It is a common complaint from farm operators that some Integrity Services Division field workers are abrupt and discourteous. We feel this is mainly a result of sending untrained ESDC personnel to farms and a lack of leadership. Growers do not know what to expect of an audit. This year Integrity Services Division started on-site audits, but information about these audits will not be available to farmers until May (if issued as promised).

Farming is a stressful occupation. Farm operators have the highest level of suicide of any profession, according to the Canadian Agricultural Safety Association. The added stress from the unknown status of audits is compounded by rough treatment from auditors. Many farm operators feel abused and mistreated by government officials, but fear to make a complaint because access to adequate labour through the SAWP program is critical to their business

For every SAWP worker, there are two Canadian positions created.

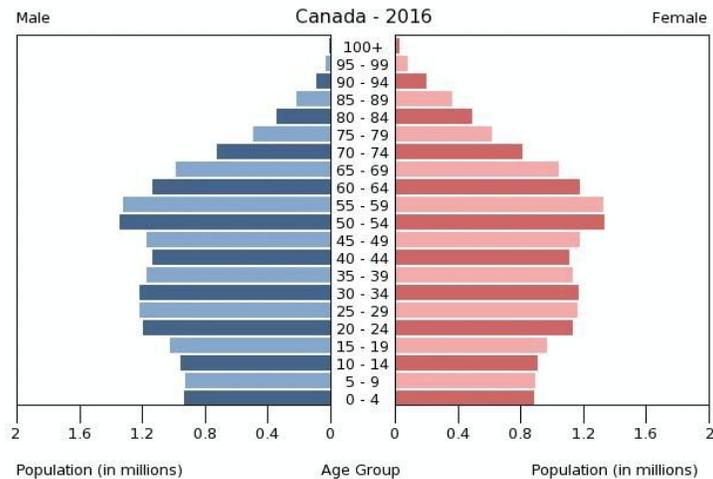
There is a need for ESDC to improve the manner in which Integrity Services Investigators interact and communicate with farm owners. Training of Integrity Service workers in farming practices and procedures should be implemented, Integrity Services Division needs leadership in the area of fair treatment of farm operators and information on what to expect from integrity audits should be available to growers in advance. We observe that in order to meet these goals, the Integrity Services Division will need to implement new processes and training.

- b. Anticipated interference with employees by activists, funded by Integrity Services Division Agriculture Canada, exclusive to BC.

Recently, an activist group was awarded a \$125,000 grant to survey SAWP workers. The survey concluded that SAWP workers need activist groups. This is so clearly a biased and unprofessional survey, we are frankly shocked that the management of the Integrity Services Division has expressed confidence in the survey. The position of Integrity Services Division management is untenable and amounts to bullying of employers and employer representatives. An independent survey is required.

A second grant is being made to a BC activist, who was recently severed from the activist group he initiated. This activist announced that he would be receiving the grant on behalf of his former activist group and taking on the field operations for the group. The activists have no legitimate authority to be part of the system (activists would remain free to criticize as an external non-participant), and most importantly, the activist groups are not accountable (even to themselves as noted).

The Integrity Services Division process to identify uses of the \$3.4 million funding - now to be entirely focused in BC over the next 2 years - has many, many troubling aspects. There are real issues with the provisioning of funds without proper processes, without prudent administration, and without appropriate internal review. We ask, as a matter of urgency, that the currently authorized groups (ESDC operations, Consular Services, and employer representatives) be fully engaged in the Migrant Worker Support Network to identify priorities and delivery of programs, and that the arbitrary funding of activist groups be halted immediately.



Summary

Recent changes to the processing of LMIA's and Work Permits in the SAWP have not gone well. Some improvements have been made, but further recommendations are made for improvement.

The agriculture sector in BC has been identified for a \$3.4 million pilot project to further the protection of migrant workers safety, health and workplace rights. The agriculture sector in BC has grave concerns about the administration of the Migrant Worker Support Network and the treatment of farm operators by Integrity Services Division - on the current track, the funds will lead to conflict-of-interest, misuse of public funds, and bullying of farm operators. Attacking farm operators will not improve worker protection - it will harm the SAWP system that has many extra protections in place.

The agriculture employers representatives - CHC, FARMS, FERMES, and WALI - have proposed working with the currently authorized groups to determine priorities and delivery of programs to protect workers. By acting now and getting the SAWP program back on track, essential SAWP workers will arrive on time and Canadian jobs that rely on SAWP workers will be preserved. By working together with provincial government authorities, foreign consulates, ESDC, and employer representatives, we can ensure workers are protected and farms are productive.