

**BACKGROUND NOTES FOR THE SUBMISSION AT THE CANADA-WIDE
HEARINGS OF THE HOUSE OF COMMONS STANDING COMMITTEE ON
CITIZENSHIP & IMMIGRATION**

By the

Commission des droits de la personne et des droits de la jeunesse du Québec

Witnesses: Me Marc-André Dowd, Vice-President
Carole Fiset, Education & Cooperation Officer
(514)873-5280

Hearings held in Quebec City, on April 14, 2008, at 2:00 PM

SIR WILFRID AUBERGE SAINTE-FOY

Salle Beaudelaire and Lafontaine
3055, boulevard Laurier
Sainte-Foy, Quebec (418) 651-2440

The Quebec *Charter of Human Rights and Freedoms*, a fundamental law adopted by the Quebec National Assembly in June 1975 and implemented by the Commission des droits de la personne et des droits de la jeunesse, recognizes and guarantees the same rights to all persons residing in Quebec, without any consideration for their gender, colour, ethnic or national origin, or duration of their presence on Quebec territory.

Over the past years, following investigation requests, consultations or human rights education activities, the Commission has been made aware of the situation of two groups of foreign temporary workers: workers covered by the Seasonal Agricultural Workers Programme (SWAP) and female workers coming to Quebec under the Live-in Caregiver Program (LCP).

The thoughts and proposals submitted today by the Commission are therefore based on its mission concerning the respect of rights without any discrimination, on direct testimonies and on the analysis of relevant texts.

Seasonal Agricultural Workers

Quebec has been experiencing a shortage of unskilled agricultural workers for a number of years. Quebec has been the host of 4,237 seasonal agricultural workers in 2006 and over 5,300 in 2007. That demand is constantly on the rise. The shortage of unskilled agricultural workers in the Quebec agricultural sector is therefore not about to go away.

As temporary migrant workers of the D category (unskilled), seasonal agricultural workers stay in Quebec for a maximum of eight months per year. They have little knowledge, if any, of either of the official languages of Canada. Their knowledge of our society, its recourses and services is limited. They work in the regions, far from the larger centres, and are often dependent upon their employer or their consulate in the use of such recourses. In spite of the efforts made to inform and help such workers, they are a vulnerable group when it comes to the exercise of rights, and more specifically of those rights protected under the Quebec Charter of Human Rights and Freedoms. This is the reason why we are submitting the following thoughts and proposals.

Exercising the Right of Association (section 3 of the Charter)

When assessing a job offer, one of the criteria verified by the Quebec Department of Immigration and Cultural Communities and by Service Canada regards ensuring that “hiring a foreign worker will not affect the settlement of a labour dispute”. Under section 3 of the *Charter of Human Rights and Freedoms*,

every person has the right to freedom of association. Lately, unionization requests have been strongly challenged by employers of Mexican labourers. The purpose of the Commission is to raise the Committee's awareness of the temptation, for employers, to hire labour from countries other than Mexico in order to circumvent the unionization movement mainly associated with those seasonal agricultural workers. Such a procedure, although neutral in appearance, could in effect lead to a discriminatory exclusion based on the ethnic or national origin of those workers and could thus violate the right to equality as protected by the Quebec Charter. Toleration of such an attitude on the part of Quebec or Canadian employers would also be a violation of various international agreements such as the *Convention on the Rights of Migrant Workers and Members of their Family*.¹

Creating an Independent Arbitration Mechanism

Whenever a dispute arises between a seasonal agricultural worker and his employer, the outcome of that dispute can mean, for the temporary migrant worker, quick repatriation to his country of origin. In spite of the efforts made by Consulates and Human Resources and Social Development Canada in order to guarantee the rights of workers and employers in case of disputes, such a situation creates an employer/employee power relationship which is not generally found among Quebec workers. In order to guarantee equal protection of rights for seasonal agricultural workers, the Commission recommends the creation of an independent appeal body with arbitration powers as well as the capacity to render decisions in disputes between a seasonal agricultural worker and his employer.

Creating a Mechanism to Represent Workers

In the case of SWAP, annual meetings make it possible to determine working conditions for the coming year (hourly rate, etc.) Such meetings are attended by the various Canadian decision-makers such as Citizenship & Immigration Canada, Human Resources and Social Development Canada, representatives of employers as well as labour-exporting countries. In order to guarantee equal protection for the rights of seasonal agricultural workers, the Commission recommends the creation of a mechanism to consult workers and give them some representation at such annual meetings.²

Rights Protected under the Quebec Charter and the employment contract

The SWAP program is under federal jurisdiction and contains provisions that extend into the employment contract binding the Quebec employer and the seasonal agricultural worker. That employment contract

¹ See section 26 of the "*Convention on the Rights of Migrant Workers and Members of their Family*". Canada has not signed that convention. However, the Commission des droits de la personne et des droits de la jeunesse du Québec subscribes to the values and principles it is based upon.

² In the spirit of section 64 of the « *Convention on the Rights of Migrant Workers and Members of their Family* ».

comes under Quebec jurisdiction. Certain clauses of the contract are of concern to the Commission from the perspective of the respect and exercise of rights and freedoms protected under the Charter.

Residency Requirements

The contract stipulates³ the worker's obligation to work and live at the workplace or at any other location determined by the employer and approved by the representative of the Government (Mexico and the West Indies). Such residency requirements also apply in the case of the agreement concerning workers from Guatemala.

The mere fact of living on the employer's property places the worker in a situation where, during off-hours, the exercise of his right to privacy as protected under section 5 of the Quebec Charter, runs the risk of being subordinated to the rights of the owner (the employer) to limit access to his private property (his land). In such circumstances, free movement of the worker or of his visitors could well be jeopardized. Such a limitation could constitute an obstacle to the exercise of the rights to freedom of association and to freedom of opinion protected under section 3 of the Quebec Charter. Such freedom of association includes membership in a labour organization and in any general advocacy group. Residency requirements do not apply to non-migrant Quebec workers. In that sense, residency requirements imposed upon seasonal agricultural workers could violate the exercise of their right to equality (protected under section 10 of the Quebec Charter) because of their ethnic or national origin.

Furthermore, such requirements included in the contract could also constitute an obstacle to the exercise of the worker's basic freedom and also to the free disposition of property as defined in sections 1 and 6 of the *Quebec Charter of Human Rights and Freedoms*.⁴

In the case of Mexico and the West Indies, the contract spells out the employer's obligation to provide the worker with decent housing free of charge⁵. That provision entails the necessity for the employer to check the quality and safety of such living quarters. Again, the Commission draws the attention of the Committee to the importance of the respect of the workers' rights, to a private life and to the inviolability of the home as protected under sections 5 and 7 of the Charter. Such a role as employer/landlord puts the agricultural enterprise in a most delicate situation concerning the respect of the rights of housed workers⁶.

³ Section IX, paragraph 1 of the contract.

⁴ The right to private life is also protected by international tools such as section 14 of the "*International Convention on the Rights of Migrant Workers and Members of their Family*".

⁵ Section II, paragraph 1 of the contract.

⁶ Residency requirements are in contradiction with section 39 of the "*International Convention on the Rights of Migrant Workers and Members of their Family*".

“Safe-keeping” of Workers’ Credentials

In February 2006, we followed up on a request from the Coalition of agricultural workers to intervene in a matter concerning the « *conservation* » of workers’ credentials by their employer. Concerned about guaranteeing seasonal agricultural workers the right to assistance, to respect of his private life and to the free disposition of his property in accordance with sections 2, 5 and 7 of the Charter, the Commission has initiated a community conciliation process with various parties involved in that problem. Following that consultation, the Commission recommended that employers not keep the credentials of the workers and should make sure that workers can keep them in a secure fashion. Concerning this matter, the Commission is recommending that a provision to that effect be included in the employment contract.

The right to equality of workers from various ethnic or national origins

The presence of seasonal agricultural workers from Mexico and the West Indies is a consequence of the agreement between Canada and those countries. The provisions of that agreement are tied to the SWAP and find their way into the « Employment Contract for the Hiring of Seasonal Agricultural Workers from Mexico and Canada ». The presence of seasonal agricultural workers from Guatemala is the result of the agreement between the *Fondation des Employeurs en Recrutement Main-d’œuvre Étrangère, (FERME)* which is a private entity, and the state of Guatemala. That distinction results in important differences between working conditions offered to workers from Mexico and the West Indies and conditions offered to workers from Guatemala, more specifically concerning the rent and the cost of air transport.

The right to equality protected under section 10 of the Quebec Charter prohibits the implementation of discriminatory working conditions based on ethnic or national origin of seasonal agricultural workers. Therefore, in a context where, for a job as agricultural worker⁷, all seasonal agricultural workers should have equal working conditions, regardless of their country of origin. The Commission strongly recommends that the Committee investigate such disparities and, if applicable, take whatever measures are necessary to guarantee the right to equality of seasonal agricultural workers without any consideration for their ethnic or national origin.

⁷ 8431 in the National Occupational Classification

Actions in order to Stabilize Seasonal Agricultural Workers

Taking into account the permanent nature of the demand for unskilled labour in Quebec agriculture, the Commission is proposing the implementation of actions aimed at stabilizing and integrating those workers by facilitating access to Quebec and Canadian society⁸.

In order to facilitate the mobility of seasonal agricultural workers registered under SWAP, Citizenship & Immigration Canada (CIC) should implement a mechanism allowing workers to be called back systematically every year, through a semi-opened work permit. Such a permit would not be limited to only one employer but would be limited to eight months of presence in Canada for the seasonal agricultural worker and would be valid for a period of several years. A consequence of that modification would be that CIC would be able to adapt SWAP in such a way that it would fit with this new procedure⁹.

Inasmuch as the manpower shortage persists and the demand for migrant workers increases, Canada and Quebec should favour, by all possible means, access to Canadian citizenship for those workers. The Commission invites CIC to implement those mechanisms essential to facilitate access to Canadian citizenship for those seasonal agricultural workers and to facilitate the arrival and integration of the members of their family. Such actions could be based on the cumulative experience of the worker for a given period. Granting the status of permanent resident could include an acknowledgement of such experience already acquired here, as is the case under the new “Canadian Experience” program.

In view of the above, issuing a temporary work permit leading to an eventual application for permanent residence in the case of the seasonal agricultural worker should also be accompanied by actions allowing the arrival of the worker’s family, as already recognized by Canadian Law for other categories of temporary migrant workers.

The Live-in Caregiver Program (LCP)

As temporary migrant workers, live-in caregivers must complete 24 months of work over a period of 36 months. After that requirement has been satisfied, the person can apply for permanent residence in Canada.

⁸ The Commission bases its position on section 44 of the “*International Convention on the Rights of Migrant Workers and Members of their Family*” .

⁹ Such a call-back mechanism would be in line with section 59,2 of the “*International Convention on the Rights of Migrant Workers and Members of their Family*”.

Rights Protected Under the Quebec Charter

The LCP, just like the SWAP, is under federal jurisdiction but contains provisions that affect the employment contract which comes under Quebec jurisdiction and which binds the Quebec employer and the live-in caregiver. The Commission is very concerned by the prevailing situation of live-in caregivers concerning the respect and exercise of their rights and freedoms protected under the Quebec Charter.

The Right to Equality: Skilled Workers who are not Recognized as Such

In order to qualify under the LCP, workers must satisfy various requirements. Among others, they must have the equivalent of a high school diploma, complete six months of training and have at least one year of experience in an employment category related to the work of a live-in caregiver.

As it turns out, “between 1995 and 2000, women represented 98 % of the labour force. There are about 1000 live-in caregivers entering Quebec through LCP. Three quarters of live-in caregivers registered under the LCP come from the Philippines »¹⁰. «One third of live-in caregivers registered under the LCP (32,7%) have a university degree and another third (36,8 %) have a certificate of competence (college) and 11,0 % do not have any diploma but have completed at least 13 years or more at school’¹¹.

In spite of such findings, live-in caregivers are considered as unskilled workers of D category and are therefore subject to residency requirements with their employer and are forced to have a work permit limited to one employer only. The job of live-in caregiver is typically a female job.

For that very reason, the Commission is asking that the Committee guarantee some form of acknowledgement of the real skills of live-in caregivers. They should also enjoy the same living privileges and conditions granted to half-specialized or specialized workers included in categories C and B, while preserving access to permanent residence after completion of the 24-month period. In that sense, the Commission is of the opinion that Citizenship & Immigration Canada should authorize the arrival of relatives of such workers, just as it wants to facilitate the arrival of “specialized” foreign temporary workers.

¹⁰ Le métier d’aide familiale : à la recherche d’un salaire équitable (Rose, Ouellet, avril 2002).

¹¹ Ministère du Travail, 1998. « Les aides familiales méritent qu’on reconnaisse leur apport à la société québécoise et leur dévouement auprès des familles! Matthias Rioux », Press Release, March 29, Quebec : Cabinet du Ministre du Travail.

Residency Requirements

Most of the time, live-in caregivers work and live alone in their employer's home. They have little knowledge if any of the services and recourses available to them for the protection of their rights and they are hesitant to use them for fear of being excluded from the LCP. Their vulnerability is therefore increased. They become potential victims of discrimination, sexual harassment or other forms of abuse.

As we explained earlier in the case of seasonal agricultural workers, the residency requirement can have negative effects on workers and can also become an obstacle to the exercise of their rights and freedoms protected under the Quebec Charter. The same is true concerning the retention, by the employer, of their credentials and work permits.

Because of the weakening of live-in caregivers' rights and freedoms, the Commission strongly recommends to the Committee that the requirement of residing in the home of the employer be abolished in the case of the LCP.

Restricted Permits and Recruiting Agencies

Certain information exists to the effect that immigration consultants and recruiting agencies are recruiting live-in care-givers in excessive quantities for one employer. Such practices, if they do exist, could place live-in care-givers recruited in such a way in an illegal situation because of their restricted work permit since they must find temporary work in order to pay for their subsistence. Such practices would also expose them to the risk associated with human trafficking and the sex trade. They are also contrary to the protection of human rights recognized under international instruments,¹² and in violation of the *Quebec Charter of Human Rights and Freedoms*.

Taking into account the grave nature of such eventual practices, the Commission strongly urges that the Committee conduct an investigation on the existence of such fraudulent and abusive practices that would lead to these kinds of exploitation.

Once more, the Commission recommends the granting of a work permit that would not be restricted to only one employer in the case of live-in caregivers. This would prevent the caregiver from becoming illegal until such time as she finds an employer recognized under the Live-in Caregiver Program (LCP). The Commission nevertheless recognizes that is but a partial solution to this complex problem.

¹² Notably under the *Protocol of Palermo Concerning Human Trafficking*.

Conclusion

The Commission is presently conducting two investigations following allegations of discrimination in the exercise of the rights of seasonal agricultural workers. Furthermore, we are reviewing the situation concerning access to protection for live-in caregivers in matters of health and safety at work.

Finally, the Commission insists on the importance of respecting the rights of migrant workers, and more specifically of vulnerable workers such as seasonal agricultural workers and live-in caregivers. Consequently, we believe that the Government of Canada should ratify the “*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*”. Such adherence to the Convention would not only make it possible to revamp the whole program in order to provide the best possible protection for the rights of temporary migrant workers, but would also guarantee human rights protections recognized at the international level.

We wish to thank the members of the Committee who have allowed us to participate in the present hearings and we remain at your disposal to answer any questions or to cooperate in any way regarding the issues raised here.