



## **B.C. Employment Standards Coalition Response to Agricultural Piece Rate Study Commissioned by B.C. Government**

### **Introduction**

On December 10, 2019 the Ministry of Labour released a study by agricultural economist Dr. Karen Taylor and Paulina Gonzalez titled *Piece Rate Study: Exploring the Economic Impact of the Piece Rate System in British Columbia*. This study was commissioned jointly by the Ministries of Labour and Agriculture in July 2018, and it was submitted to the Ministry on January 10, 2019. The stated purpose of the study was to analyze how changes to piece-rate wage legislation would economically affect 15 agricultural crops covered by this legislation. One of the key objectives was to investigate whether agricultural workers in B.C. who are paid a piece-rate wage are earning at least the general minimum wage.

Among other findings, the study found that a significant proportion of harvest workers are not earning the equivalent of the general minimum wage. Among the study's small sample of pickers from the Lower Mainland, fully 100% expressed a preference to be paid an hourly wage. Pickers in this region are among the most marginalized of piece-rate workers due to race, gender, age, class, English-language barriers, recency of immigration, and employment under the highly problematic Farm Labour Contracting system.

The documented existence of workers who are paid a sub-minimum wage constitutes government-sanctioned exploitation and wage discrimination against farm workers. This is out of keeping with a modern employment standards regime. Calling for even further research would serve as further stalling on a decision that may be politically unpopular with growers who prefer not to be obliged to pay the hourly minimum wage. There is no fair and equitable reason to delay implementing the recommendations of the Fair Wages Commission in 2020: the minimum hourly wage should be a floor, with piece rates available as an incentive so that all farm workers receive at least the general minimum wage.

In this response, we provide a brief background to the study and underscore several issues of concern, offering critiques where relevant. In particular, we highlight methodological issues in the study, the prevalence of a sub-minimum wage, Farm Labour Contractors, Employment Insurance and vacation pay, and the Temporary Foreign Worker Program.

## Background

Hand harvesters are one of the few groups of workers not entitled to the hourly minimum wage under B.C.'s *Employment Standards Act (ESA)*. In March 2018, the Fair Wages Commission recommended ensuring that hand harvesters would be entitled to the hourly minimum wage effective June 1, 2019. Based on the Fair Wages Commission's March 2018 recommendations, the hourly minimum wage was increased by 11.5% on June 1, 2018 and by 9.5% on June 1, 2019. However, against the advice of the Fair Wages Commission, the Ministry of Labour did not increase the minimum piece rates for hand harvesting of fruits, berries, certain vegetables and flowers in 2018. Further, the Ministry delayed an 11.5% increase until January 2019 and provided no increase on June 1, 2019 in step with hourly minimum wage increases.

Instead of implementing the Fair Wages Commission's recommendation to ensure piece-rate workers received at least the minimum wage with an optional incentive rate, the Minister of Labour appointed Dr. Taylor to conduct a study on the piece-rate wage between September-December 2018.

When announcing on July 16, 2018 that Dr. Taylor would be to conduct this study, the Ministry of Labour stated that she would: "... gather the additional information needed to advise the government on how best to ensure fair wages for piece-rate farm workers." The Ministry also indicated that the findings of this study would be, "provided to the Fair Wages Commission by December 31, 2018, and will inform the commission's recommendations to government on how to reform piece rates for agricultural workers." Following the release of the report, a news release from 10 December, 2019 states, "The ministries of Labour and Agriculture are working jointly to review the data in Taylor's report and will carefully consider the next steps to best serve workers, farmers and the viability of the agriculture industry."

The final report, completed in January 2019, does not provide information needed to advise the government on how best to ensure fair wages for piece-rate farm workers. Nor does it provide concrete recommendations on how to reform agricultural piece rates, only that more study of the system is required. According to a communication from the Deputy Minister of Labour, this report is being released with no decision by government on next steps. In addition to fundamental flaws in questions posed to workers, by the admission of the authors, the report is inconclusive: "... the results from this study do not constitute a significant provincial representation of any crop."

## Methodological Issues

### *False binary: Piece rate vs. hourly rate*

In interviews and surveys with workers on how they preferred to be paid, the authors posed the wrong questions. Workers were asked:

- "If you could choose, how would you prefer to get paid?", with the options a) Per hour; b) Piece rate; c) I'm indifferent; d) Other.
- "What impact would it have on you if you did not get paid piece rate, but were paid minimum hourly wage?"

- “What impact would it have on you if the government abolished the piece rate system and paid you an hourly wage?”

These questions incorrectly suggest that there are only two wage options under consideration: either minimum piece rates or the minimum hourly wage. This was misleading to the workers being surveyed. The survey questions do not specify the third option of regulated minimum piece rates with the minimum hourly wage as a floor, as recommended by the Fair Wages Commission. This is the system used in virtually all other jurisdictions in North America.

In its March 2018 report, the Fair Wages Commission recommended: “The minimum wage should be a floor and piece rates should be available as an incentive,” And that “... all farm workers receive at least the general minimum wage by June 1, 2019. This means if workers do not receive the equivalent of the general minimum wage for picking at piece rates their remuneration will be increased to equal the general minimum wage.” **Clearly, this recommendation was not conveyed to the farm workers surveyed or interviewed and represents a fundamental flaw and employer bias in the study.**

### ***Length of Time Provided for Study***

The government’s decision to provide only four months for the completion of the study between September and December greatly limited the scope of possible research. This is particularly significant given the enormous geographical scope of agricultural regions covered by the piece-rate wage, the transient and multi-lingual nature of the workforce (e.g. English, French, Spanish, Punjabi, Vietnamese and Tagalog), the existence of 15 different wages for each crop, and the historical reluctance of many implicated actors to provide transparent information about their practices (e.g. Farm Labour Contractors). Further, by the time the study got underway, the harvesting of two of the major tree fruit crops in the Thompson-Okanagan (cherries and apricots) was nearly over. To have adequately gathered data and other information for the full harvesting season of all 15 crops, the government should have allowed data collection to commence in late January and conclude at the end of November.

### ***Limited Representativeness***

The study’s sources of data were grower and harvest worker questionnaires and selective interviews, but only in the Thompson-Okanagan and Fraser Valley regions. Other significant fruit, vegetable, and daffodil growing regions such as Southern Vancouver Island and the Kootenays were not covered by the study.

The harvesting economics and wages paid to hand harvest blueberries are the least analyzed and most inconclusive in this report. However, according to Statistics Canada data, blueberries constitute the largest farm acreage in B.C., with the 25,000 acres of blueberries planted in the Fraser Valley–Metro Vancouver region. This is greater than the total acreage of all tree fruit farms in the Thompson-Okanagan.

In addition, there is no examination of why blueberry acreage/production has been growing in recent years at a time when the blueberry farm operators consulted in the study claim declining profit margins, and that having to pay workers the minimum wage would be “devastating . . . particularly in the berry sector.” According to Statistics Canada, the total acreage in B.C. blueberry production increased by 11.1% over the period 2016 to 2018. Over the same period,

the estimated total farm gate value of blueberries harvested increased by 43.6%. Between 2004 and 2018, the B.C. acreage in blueberries increased by a huge 201%. Also, according to the five-year Census of Agriculture, the number of farms producing blueberries in BC increased from 1,348 in 2011 to 1,444 in 2016. The increase in blueberry production contrasts with grower assertions that berry crops are declining, and that farming is a marginal industry.

Also, the authors failed to verify growers' assertions that they could not compete with low-cost foreign producers if required to pay the minimum hourly wage. Had the authors done so they would have found little evidence to support such assertions. Some of B.C.'s main fruit and berry producing competitors are in the neighbouring U.S. states of Washington and Oregon where, in 2019, the minimum hourly wage for farm workers was \$15. That same year, employers of H-2A temporary migrant workers in both states were obligated to pay both U.S. and H-2A farm workers a minimum Adverse Effect Wage Rate of \$15.03.

The report would have been greatly strengthened by examining workers' pay statements, or payroll records for any farm operator or Farm Labour Contractor. Although these sources of data would have been used in an Employment Standards Branch (ESB) audit of a farm operator or Farm Labour Contractor, there is no indication that these sources of data formed part of the analysis in the report. If farm worker employers had been asked and refused to provide their payroll records to the authors, they could have sought access to ESB complaint files, or been given authority to request through the Director of the ESB production of such records. For example, they could have been provided with data from a 2017 ESB payroll audit of Purewal Blueberry Farms. In a November 24, 2017 complaint determination, Purewal Blueberry Farms was found to owe 148 blueberry harvesters and processing and packing plant workers \$1.1 million in unpaid wages.

The authors' analysis of crop specific productivity and pay rates based on online surveys and some employment records is heavily biased (86% of all harvester respondents) toward the harvesting of cherries and apples in the Thompson-Okanagan. Consequently, the study concludes that the average hourly wage is greater than hourly minimum wage. Further, the average hourly wage data analysis only covered eight of the 15 crop types (p.28). It is not surprising that Canadian piece-rate workers surveyed in the Thompson-Okanagan favoured the piece-rate system. This group of domestic workers, many of whom are visiting from Quebec, tends to have relative freedom of employment-related geographic mobility and can often select farms where they have a high earning potential. Prospective workers who do not like the piece rate system presumably would have sought employment elsewhere. Moreover, interviews and surveys were not available in French, which would likely favour Quebecois respondents who can comfortably communicate in English and are better able to navigate advantageous local employment options.

While the authors met with and interviewed representatives of growers' associations and industry groups, and some farm operators, there were no meetings or interviews with farm worker advocates. Farm worker advocates hold significantly less political power and fewer resources than grower organizations, and including data insights from these actors would have provided a more balanced picture of the piece rate system in B.C. While growers in the study asserted that they industry should provide input to the government in setting the minimum piece rate, farm

worker organizations have not been provided this option. In addition, no information is provided on how farm workers were recruited and interviews arranged.

### **Sub-Minimum Wage**

Keeping in mind its limited representativeness of workers, including a lack of wage data among workers hired by Farm Labour Contractors (see below), the study estimated that of the small sample of hand harvesters surveyed (216, mostly in the Okanagan) the following percentages of harvesters by crop picked were earning less than the hourly minimum wage:

- Cherries – 16%
- Grapes – 3%
- Apples – 21%
- Pears – 47%
- Blueberries – 100%

As the authors summarize, **“When workers are paid the minimum agricultural piece rate, do they earn at least the general minimum wage for all hours worked across all 15 crops? They do not, according to our findings.”** This finding alone should be sufficient to support the implementation of the Fair Wages Commission’s recommendation.

### **Farm Labour Contractors**

While the report highlighted numerous issues related to Farm Labour Contractors and the piece-rate wage in B.C., no Farm Labour Contractors participated in the study. As in previous studies, the Farm Labour Contractors declined to participate in this study in any way. The report contains almost no information on wages that berry harvest workers actually receive, because wages paid by farm operators are funneled through Farm Labour Contractors. As the authors note: “Many growers do not even know how much their workers are picking and don’t know how much the labour contractor is actually paying the harvest worker.” Accordingly, Farm Labour Contractors provide a way for farm operators to distance themselves from direct employer responsibility for considerations such as workers’ wages. There are 102 licensed Farm Labour Contractors operating in the Fraser Valley and Metro Vancouver area who are licensed to employ a total of 7,800 farm workers, who hand harvest mostly blueberries, strawberries and raspberries. This represents about 40 percent of the total hand-harvesting workforce in BC.

Thus, the report is missing major insights on how the Farm Labour Contracting affects workers in blueberry production, which represents both the largest acreage in B.C. and the lowest-paid sector, where the report found that harvest workers were earning less than minimum wage in every case. This dynamic is particularly significant for older Punjabi women workers who face pressure to contribute to family incomes.

With the aid of a translator, the study interviewed nine piece-rate workers in the Fraser Valley who were employed by Farm Labour Contractors. According to the report, **not one of them earned the equivalent of the minimum hourly wage.** Their average wage was estimated at \$4.62 per hour – significantly below the \$12.65 minimum hourly wage.

On a minor note, the report incorrectly states, “In the Okanagan region, there are no labour contractors” (later in the report, this is qualified as “generally”). While the majority of Farm Labour Contractors are based in the Lower Mainland, the Employment Standards Branch also lists several licensed Farm Labour Contractors in Kamloops, Oliver, Penticton, Summerland, and West Kelowna.

Ultimately, there can be no accurate assessment of the economic impact of the hourly minimum wage replacing the minimum piece rate – or a minimum wage floor with optional piece rate incentives – without knowing:

- How and/or how much do farm operators pay Farm Labour Contractors to harvest their crops?
- How many hours of work are required in the harvesting of crops by the harvesters employed by Farm Labour Contractors, and how much are workers paid?
- What are the profit margins of the Farm Labour Contractors for each crop picked?
- What are the profit margins of the farm operators utilizing workers supplied by Farm Labour Contractors?

## **Employment Insurance and Vacation Pay**

The study briefly mentions issues with piece-rateworkers securing sufficient insurable hours to meet the eligibility threshold for Employment Insurance during the off-season. In particular, the authors note: “Many farms, especially in the Lower Mainland, do not currently record [productivity and work-time], since they register only what they pay to labour contractors. Having no accurate information about work hours and productivity levels is a cause for alarm, since, for example, these figures are required for EI applications. It also does not allow us to accurately calculate payment rates for Lower Mainland employees, who report the highest levels of piece-rate payment abuse.” The authors also report: “Many interviewees recounted difficulty meeting the insurable-hours threshold, however. They mentioned having to comply with unreasonable contractor demands and beg for hours, regardless of actual hours worked.”

Under EI Record of Employment requirements, if the hours of work are not known, then eligibility is determined by dividing the insurable earnings in the last 52 calendar weeks by the hourly minimum wage. However, the maximum hours per week that can be reported by this method is 35. The Thompson report (1994) noted widespread abuse of the EI system in agriculture in the Fraser Valley, facilitated by the piece-rate payroll system.

An important omission in the study is vacation pay considerations under hourly vs. piece-rate wages. It is necessary to discount piece rate earnings by 4%. While minimum piece rates include 4% in lieu of vacation pay, workers receiving the hourly minimum wage are entitled to receive an *additional* 4% in vacation pay after 5 calendar days of employment, and for the first 5 years of employment, and an additional 6% after 5 years of employment.

## **Temporary Foreign Worker Program**

Throughout the study, growers noted a shift toward hiring workers via the Temporary Foreign Worker Program (TFWP), predominantly via the Seasonal Agricultural Worker Program stream. The authors assert: “If piece rates continue to increase, growers will be forced to hire temporary foreign workers and increase mechanization.” Declaring that employers would be “forced” to hire TFWP migrant workers or mechanize falsely implies that these are the only options. The provincial government could engage in a suite of policy strategies to reward farm employers who pay workers well and uphold excellent working conditions, and to give all farm workers greater decision-making power over the terms of their employment.

Notably, workers hired through the TFWP must be paid at least the minimum wage. In this report, employers who resist a minimum wage floor for domestic piece-rate workers appear to rationalize this contradiction by claiming that TFWP workers are more productive and come to Canada with existing farm experience from their countries of origin. But many TFWP workers have never worked in the specific crops for which they are hired in Canada. Moreover, researchers have documented that TFWP workers’ “productivity” arises in a highly coercive immigration context, in which workers know they can be repatriated and lose the chance of future employment in Canada if they fail to measure up. Moreover, TFWP workers are not permitted to travel with their families while in Canada, thus eliminating many of their normal daily family obligations and making workers structurally more ready to accept long and anti-social working hours. Further, the report does not note the increasing number of migrant workers hired under non-SAWP streams of the TFWP, particularly in horticultural sectors that require workers year-round.

The study would have been strengthened by comparing the total labour cost per weight/volume of crop harvested by itinerant domestic workers (as in the Thompson-Okanagan tree fruit sector) with the total labour cost of employing TFWP workers. This would include providing a full account for the cost of retaining a recruitment agency, paying for TFWP workers’ return airfare, housing, deductions, and guaranteed hours of work as required by TFWP contracts. Likewise, the study would have been strengthened by providing a robust comparison of the total labour cost of employing domestic workers hired through a Farm Labour Contractor with the total Labour cost of hiring TFWP workers.

## **Conclusion**

Notwithstanding its many failings in terms of methodology, comprehensiveness, not covering the full hand harvesting season for all crops, inadequacy of data, very low workforce population sampling, failure to consult farm worker advocates, failure to put an important relevant question to the harvesters surveyed, lack of participation of and data from farm Labour contractors, and lack of an accurate description of what workers experience in the harvesting of each crop, etc., the study found that a significant proportion of harvest workers are not earning the equivalent of the general minimum wage in the province. This constitutes government sanctioned exploitation and wage discrimination against farm workers which is out of keeping with a modern employment standards regime. On this basis alone there is no fair and equitable reason why the recommendations of the Fair Wages Commission should not be implemented in 2020, i.e. that

the minimum hourly wage should be a floor and piece rates should be available as an incentive so that all farm workers receive at least the general minimum wage.