

Protection for the Rights of Farm Workers Finally Proposed in Alberta

By: Jennifer Koshan

Legislation Commented On: Bill 6, [*Enhanced Protection for Farm and Ranch Workers Act*](#)

On November 17, 2015 the Minister of Jobs, Skills, Training and Labour Lori Sigurdson introduced Bill 6 in the Alberta Legislature. She described the [*Enhanced Protection for Farm and Ranch Workers Act*](#) as an omnibus bill that:

proposes to amend workplace legislation so Alberta's farm and ranch workers will enjoy the same basic rights and protections as workers in other industries. Proposed changes would remove the exemption of the farm and ranch industry from occupational health and safety, employment standards, and labour relations legislation. Bill 6 also proposes to make workers' compensation insurance mandatory for all farm and ranch workers. If passed, Alberta would join every other jurisdiction in Canada in applying workplace legislation to Alberta's farms and ranches. This is a historic day for Alberta ([Hansard](#), November 17, 2015).

In a constitutional clinical course in winter 2014, my students undertook research and discussions with labour and employment groups and concluded that these changes were constitutionally mandated. Their conclusions, based on analysis of case law under *Charter* section 2(d) (freedom of association), section 7 (the right to life, liberty and security of the person) and section 15 (equality rights) can be found in ABlawg posts here:

Kay Turner, Gianna Argento, Heidi Rolfe, [Alberta Farm and Ranch Workers: The Last Frontier of Workplace Protection](#)

Brynna Takasugi, Delna Contractor and Paul Kennett, [The Statutory Exclusion of Farm Workers from the Alberta Labour Relations Code](#)

Nelson Medeiros and Robin McIntyre, [The Constitutionality of the Exclusion of Farm Industries under the Alberta Workers' Compensation Act](#)

Graham Martinelli and Andrew Lau, [Challenging the Farm Work Exclusions in the Employment Standards Code](#)

See also my post [The Supreme Court's New Constitutional Decisions and the Rights of Farm Workers in Alberta](#), which argues that the constitutional mandate to include farm workers in labour and employment legislation was strengthened by a number of Supreme Court decisions from earlier this year.

Bill 6 proposes the following measures:

- Part 1 will repeal sections 2(3) and (4) of the *Employment Standards Code*, [RSA 2000 c E-9](#). These sections currently exclude farm and ranch workers from provisions of the *Employment Standards Code* relating to Hours of Work, Overtime and Overtime Pay, General Holidays and General Holiday Pay, Vacations and Vacation Pay, and Restrictions on the Employment of Children. It will also repeal section 138(1)(l) of the *Code* and section 1.1 of the *Employment Standards Regulation*, [AR 14/97](#), both of which provide definitions of agricultural operations encompassed by the current exclusions. For arguments that these exclusions violate sections 7 and 15 of the *Charter* see Martinelli and Lau, above. The proposed amendments in this Part would come into force upon Proclamation, which the government [anticipates](#) for spring 2016. A government [news release](#) indicates that the delay is to allow “consultations with industry regarding exemptions that may be needed for unique circumstances such as seeding or harvesting”.
- Part 2 will repeal section 4(2)(e) of the *Labour Relations Code*, [RSA 2000 cL-1](#), which currently excludes farm and ranch workers from the entire *Labour Relations Code*. The exclusion deprives farm and ranch workers of the right to join a trade union and have that union collectively bargain on its behalf, the right to strike, and protection from unfair labour practices on the part of employers. For arguments that these exclusions violate sections 2(d), 7 and 15 of the *Charter* see Takasugi, Contractor and Kennett, above. The proposed amendments in this Part would come into force upon Proclamation in spring 2016. The government also contemplates the possibility of special provisions in this legislative context “to address the unique aspects of the farm and ranch industry” (see [here](#)).
- Part 3 will repeal section 1(s)(i) of the *Occupational Health and Safety Act*, [RSA 2000 cO-2](#), as well as the *Farming and Ranch Exemption Regulation*, [AR 27/95](#). These provisions currently exclude farm and ranch workers, as defined in the *Regulation*, from workplace standards designed to protect the health and safety of workers, including the right to refuse unsafe work. For arguments that these exclusions violate sections 7 and 15 of the *Charter* see Turner, Argento, and Rolfe, above. Part 3 also proposes amendments to the *Occupational Health and Safety Code 2009*, adopted under the *Occupational Health and Safety Code 2009 Order*, [AR 87/2009](#). These amendments would, unless expressly provided otherwise, maintain the exclusion of some farm and ranch workers from the *Code*. According to the government’s [news release](#), it intends to develop specific occupational health and safety standards for farms and ranches that would presumably be included in the *Code*. The proposed amendments in Part 3 would come into force on January 1, 2016, with the government promising detailed standards by 2017.
- Part 4 will repeal a number of exclusions in the *Workers’ Compensation Regulation*, [AR 325/2002, Schedule A](#), by striking out the categories of farm and ranch workers who are currently excluded from mandatory workers compensation coverage, i.e. those involved in: agrology and agronomy services; operation of apiaries; artificial breeding services; breeding of animals, birds, fish or reptiles; collection of urine from pregnant mares; operation of dude ranches; commercial egg production; farming; farming contracting,

including haying and threshing; operation of commercial feed lots; fertilizer spreading services; commercial fruit growing operations; game farms; horse exercising, training or racing; commercial poultry production; commercial rabbit production; ranching; operation of riding academes or horse stables; and commercial vegetable growing. For arguments that the current exclusions violate sections 7 and 15 of the *Charter* see Medeiros and McIntyre, above. The proposed amendments in Part 4 would come into force on January 1, 2016.

A number of town hall meetings will take place before the end of December to allow broad consultation into the proposed changes. The government has also developed a website on the [Enhanced Protection for Farm and Ranch Workers Act](#) that permits input to be provided online.

As noted in the government's [FAQ](#), Alberta is the only province where Occupational Health and Safety (OHS) legislation does not apply to farms and ranches. Ontario was one of the last provinces to extend its OHS legislation to farm workers, which it did in 2006. Ontario was also hold out in extending labour relations protections to farm workers. Although Bob Rae's NDP government did so in 1994, and farm workers were covered for a short time, the Mike Harris Conservatives repealed that legislation when they came to power in 1995. This resulted in litigation culminating with the Supreme Court of Canada's decision in *Dunmore v. Ontario (Attorney General)*, [2001] 3 SCR 1016, [2001 SCC 94](#). In *Dunmore*, the Court held that the blanket exclusion of farm workers from labour relations protections violated their freedom of association under section 2(d) of the *Charter*, and could not be justified by the government under section 1 on the basis of protecting "family farms". As noted by the Court, farming has changed drastically over the last 100 years and often takes place in large scale commercial operations, making the family farm justification overbroad.

In spite of the decision in *Dunmore* (which I nominated as one of the top cases of the 2000s on [ABlawg](#) several years ago), successive Conservative governments in Alberta continued to maintain a blanket exclusion of farm and ranch workers from not just the *Labour Relations Code*, but from the *Employment Standards Code*, *Occupational Health and Safety Act* and *Workers' Compensation Act* as well. This was in spite of some excellent advocacy on behalf of these workers by the [Alberta Federation of Labour](#), the [United Food and Commercial Workers](#), the [Calgary Workers Resource Centre](#), the [Farm Workers Union of Alberta](#), and [Dr David Swann](#). It is about time that the government is proposing to extend to farm and ranch workers the same legislative protections enjoyed by other workers in this province and by farm and ranch workers elsewhere in Canada.

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