“Fortis Et Liber” Unless You Are a Farm Worker: Workers’ Compensation Exceptionalism in Alberta, Canada

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Abstract

Precarious employment—work characterized by low pay, job insecurity, and limited statutory rights and benefits—is associated with a heightened risk of injury as well as a reduced likelihood of injury reporting and compensation (Vosko, 2006). Among the factors contributing to these outcomes is the frequent statutory exclusion of precarious workers from basic health and safety rights and injury-compensation benefits (Bernstein, Lippel, Tucker, & Vosko, 2006). Mitigating or reversing such statutory exclusions in the face of employer and governmental opposition is challenging. This study of the exclusion of farm workers in the Canadian province of Alberta from mandatory workers’ compensation coverage draws on social movement theory and uses narrative analysis to consider how issue framing can be used to improve these precarious workers’ access to statutory benefits.

Introduction

Examining government rationales for the contrasting cases of workers’ compensation entitlements among firefighters and farm workers in the anti-union Canadian province of Alberta provide a preliminary insight into how issue framing can be used to gain mandatory workers’ compensation coverage for workers. In addition to careful and timely critiques of legislator justifications, farm-worker advocates may be able to (a) generate shared framings among farm workers and farmers by creating a credible liability threat, (b) leverage preferential workers’ compensation access accorded to noncitizens into policy change, (c) challenge the constitutionality of the exclusion, and (d) trigger a framing process among farm workers via social media to increase pressure on legislators. These strategies offer a way to undermine the interlocking interests of farmers, politicians, and agribusiness that constrain efforts to achieve broad statutory inclusion of farm workers and achieve greater access to workers’ compensation benefits for them.

Keywords

Canada, workers’ compensation, farm workers, firefighters, injury

Employment Precarity, Injury, and Statutory Benefits

Constitutionally, Canada’s 10 provinces and 3 territories are responsible for regulating approximately 90% of employment relationships. Alberta’s legislature has passed laws
establishing its own minimum terms and conditions of employment, an occupational health and safety inspectorate, and a state-run workers’ compensation system. Alberta’s employment laws are frequently said to favor employers in their content (Block, Roberts, & Clarke, 2003) and (non) application (Barnetson, forthcoming). As a result of this arrangement, and controlling for demographic and industrial differences, Alberta workers are more likely to be injured on the job than those in any other province except British Columbia (Morassaei et al., 2013).

Throughout Canada, there has been a widespread shift since the 1980s toward employment conditions that are often characterized as precarious. Vosko (2006) defines precarious employment as “paid work characterized by limited social benefits and statutory entitlements, job insecurity, low wages and high risks of ill health” (p. 4). Precarious employment stands in contrast to the standard employment relationship (SER), which was the normal (although by no means universal) form of employment during the middle to late 20th century and upon which public policy continues to be based. Some authors assert that growth in employment precariousness is a function of economic globalization, which has intensified the commodification of labor and diminished collective institutions (e.g., public education, the SER, trade unions, statutory employment rights and benefits) that provided labor security (Broad & Hunter, 2010; Standing, 2011). Gender (Vosko & Clark, 2009) and race (Vosko, 2010) are important factors in the distribution of precariousness.

Precarious employment is associated with negative health effects, including a greater risk of work-related injury or illness and a lower propensity to report such injuries (Lewchuk, Clarke, & de Wolff, 2011; Lewchuk, de Wolff, King, & Polanyi, 2006; Probst, Barbaranellu, & Petitta, 2013; Quinlin, 1999; Quinlin & Mayhew, 1999; Quinlin, Mayhew, & Bohle, 2001). This may reflect regulatory exclusion (Bernstein et al., 2006). Historically, uncompensated workplace injury caused significant social instability, which, in turn, gave rise to systems of workers’ compensation (Babcock, 2006; Kostal, 1988; Risk, 1983; Witt, 2004). The exclusion of precarious workers from such systems, via regulatory exclusion and employer efforts to transfer risk to workers via subcontracting arrangements (Lippel, 2006), shifts injury costs from employers to workers, to their communities, and, in Canada (where health care is publicly funded), to the taxpayer.

While policymakers and analysts grapple with the implications of growing precarity, precarious workers and their advocates seek ways to mitigate or reverse these effects. The case of Alberta farm workers is instructive regarding efforts to reduce the statutory exclusions often associated with employment precarity. Depending upon the Statistics Canada data source used, Alberta has either 15,000 (Alberta, 2013b) or 37,852 (Alberta, 2013a) part- or full-year-waged farm workers (there appears to be no way to reconcile these numbers). In addition to low wages and limited job security, Alberta’s waged farm workers are excluded from virtually all statutory employment rights, including occupational health and safety (OHS) and mandatory workers’ compensation (Barnetson, 2009). Both employers and legislators have resisted efforts to extend basic health and safety rights (Barnetson, 2012a). A closer examination of farm workers’ exclusion from mandatory workers’ compensation coverage provides insight into key issues and dimensions blocking efforts to extend statutory benefits to precarious workers. An important part of this examination lies in contrasting the workers’ compensation experience of precarious farm workers with the experience of firefighters employed in SERs.

Complicating this analysis is segmentation within the farm-worker group: In addition to farm workers who are long-time Alberta residents, there is a small group of international migrant workers. Alberta has a long history of relying on small numbers of interprovincial migrant workers (Danyk, 1995; Laliberte, 2006). The federal government currently facilitates the use of approximately 3,000 international migrant workers, mostly from Mexico and the Caribbean (Canada, 2013). There are reports of exploitation among contemporary migrant workers that is facilitated by international migrants’ tenuous residency. For example, the United Food and Commercial Workers reported that an employer had hired all of the men from a single village in a Latin American country and, when one of them balked at unsafe work, the employer threatened to deport the entire crew (Yeager, 2014). While there is no clear evidence of racism in the discussion about the statutory exclusion of farm workers, Foster and Barnetson (2013) note that Alberta government legislators often praise migrant work while being cool to or critical of migrant workers. Questioning the competence and commitment of international migrant workers may be an effort to politically justify the structural and racialized marginalization of international migrant workers by ascribing the marginalization to characteristics and behaviors of international migrant workers themselves.

**Workers’ Compensation and Occupational Disease**

Every Canadian province operates a workers’ compensation system. Workers who are within the ambit of coverage and who experience a compensable occupational injury are (usually) eligible to receive a combination of wage-loss, vocational rehabilitation, and medical care benefits. Workers’ compensation operates as a “no fault” system. Under this arrangement, workers are entitled to receive immediate (albeit scheduled and capped) benefits without needing to prove any breach of the standard of care under tort law. In exchange, workers have surrendered their right to pursue private litigation, including claims for aggravated and punitive damages (Barnetson, 2010). Approximately 80% of Canadian workers are covered by workers’ compensation, with significant gaps in coverage.
evident among workers in non-SERs and self-employed workers (Arthurs, 2012; Bernstein, Lippel, & Lamarche, 2001; Gunderson & Hyatt, 2000). Legislation compels certain categories of employers to carry workers’ compensation coverage for their employees, while other categories of employers—such as farmers in Alberta, Saskatchewan, Nova Scotia, and Prince Edward Island and 17 U.S. jurisdictions—may purchase voluntary coverage (Barnetson, 2009). There is greater variation among U.S. workers’ compensation systems, and the remaining 37 U.S. jurisdictions have some farm work coverage exceptions, typically for farms with limited waged labor (Farmworker Justice, 2009).

Historically, most workers’ compensation claims arose from acute physical injuries clearly linked to a workplace incident, thus determining that compensability was fairly straightforward. By contrast, occupational diseases often have long latency periods and murky causation (Elinson, 1995; Ison, 2005). Compounding the inherent causation challenges posed by occupational disease are employer efforts to minimize liability by withholding information about the injurious nature of materials and work processes and government reluctance to take action that would expand employer liability (Brophy, Keith, & Schieman, 2007; Dewees, 1988; Epstein, 1998; Firth, Brophy, & Keith, 1997; Kotelchuck, 1989; Nugent, 1989; Rennie, 2006; Storey & Lewchuk, 2000).

That being said, governments have recognized some occupational diseases and granted workers with such diseases presumptive status. Presumptive status means that the Workers’ Compensation Board (WCB) automatically accepts claims when workers demonstrate that they have a specified disease unless the WCB can rebut such a presumption. Some workers receive presumptive status for occupational cancers (e.g., firefighters, coal miners, and workers exposed to asbestos), but the presumption is often conditioned upon the worker having worked in a specific industry and/or for a specific period of time. Canada-wide, accepted workers’ compensation claims for deaths due to occupational cancer increased by more than 500% between 1997 and 2010. Led by increases in Ontario, the number of accepted claims for cancer-related death has now surpassed claims for traumatic-injury-related deaths (Del Bianco & Demers, 2013). Presumptive status may be the only realistic way to ensure compensation for occupational cancer. For example, there is broad agreement that 8% to 10% of cancers have an occupational link (Epstein, 1998; Proctor, 1995; Steenland, Burnett, Lalich, Ward, & Hurrell, 2003; Takala, 2005). The need to prove (and the difficulty associated with proving) an occupational link may partially explain why, in 2005, only 0.22% of cancer diagnoses and 0.68% of cancer deaths in Alberta resulted in successful workers’ compensation claims—the majority being presumptive-status claims (Barnetson, 2010).

Firefighters, Farm Workers, and Occupational Cancer

There is significant evidence that full-time municipal firefighters are at heightened risk of various kinds of cancer, including melanoma, non-Hodgkin’s lymphoma, leukemia, and multiple myeloma as well as bladder, brain, colon, esophageal, kidney, lung, prostate, stomach, and testicular cancer (Bates, 2007; Guidotti, 2007; LeMasters et al., 2006; Pukkala et al., 2014). This heightened risk is most likely the result of occupational exposures to burning materials. While most workers can refuse to work when they face imminent danger, Section 35(2)(a) of Alberta’s OHS Act defines imminent danger as “a danger that is not normal for that occupation.” Carcinogenic exposures are normal dangers for firefighters, and thus firefighters have no right to refuse this work.

All Alberta municipal firefighters fall within the ambit of the Workers’ Compensation Act. Absent presumptive status, firefighters seeking workers’ compensation for cancer would have to demonstrate that their cancer arose from and occurred during the course of employment. Proving cancer causation for firefighters has been difficult. While no Alberta data are available, British Columbia reported a 35% acceptance rate for cancer claims between 1985 and 2004 (WorkSafeBC, 2004). Recognizing the evidence of occupational cancer among firefighters, the Manitoba legislature granted presumptive status to certain firefighter cancers in 2002. Beginning in 2003, Alberta, British Columbia, New Brunswick, the Northwest Territories and Nunavut, Nova Scotia, and the Yukon followed suit (Association of Workers’ Compensation Boards of Canada, 2012). Further changes in Alberta in 2010 and 2011 saw presumptive status expand to include 14 types of cancers, assuming the firefighter meets minimum service requirements.

Firefighters typically have SERs, with high wages and job security and significant access to employment and statutory benefits. Firefighters’ success in maintaining and improving their working conditions may stem from a high rate of unionization (resulting in relatively high wages and job security), firefighting’s ties to the interests of capital (i.e., property protection and loss mitigation), and efforts by firefighter advocates to politically capitalize upon the “honourable white masculinity associated with firefighting” (Braedley, 2009, p. 129). Canadian firefighters sought presumptive status for a number of years (Guidotti, 2003). Some commentators suggest that the widespread adoption of presumptive status in Canada beginning in 2002 reflects firefighter advocates’ utilization of their increased political capital post-9/11 to trigger long-sought legislative change. Indeed, Alberta legislators made specific reference to the heroism of firefighters during 9/11 in justifying presumptive coverage (Alberta, 2003a, 2003c). Interestingly, despite increases in the prevalence of presumptive status and 9/11-specific injury-compensation
legislation, only half the American firefighters have access to presumptive status for cancer (Gordy, 2013).

In contrast to firefighters, Alberta farm workers are archetypal precarious workers, with low wages and limited job security (Alberta, 2013b; Barnetson, 2012a). Approximately 3,000 of these workers are foreign migrant workers, whose precarious employment is compounded by their precarious residency (Canada, 2013). Farm workers are largely excluded from statutory employment rights, including most of the Employment Standards Code, all of the Labour Relations Code and the OHS Act, and mandatory workers’ compensation coverage (Barnetson, 2009). The employers of approximately 7.5% of farm workers have taken out voluntary workers’ compensation coverage (WCB, 2013). Farm workers with coverage seeking to make a worker’s compensation claim for occupational cancer would need to demonstrate that the cancer arose from and occurred during the course of employment, a task complicated by their lack of a right to know about the hazards they are exposed to due to their exclusion from the OHS Act.

Previous research examined the opportunity structure faced by Alberta farm workers seeking basic statutory employment rights (Barnetson, 2009). The opportunity structure—the degree of openness within a system to change, the (in)stability of economic and political relationships among powerful actors, the presence of powerful allies, and the state’s ability and willingness to repress dissent—is one of three sets of factors typically of interest in social movement theory (Jenkins, 1985; Jenkins & Klandermans, 1995; Jenkins & Perrow, 1977; Kriesi, 1995; McAdam, 1996). The other two factors are mobilizing structures (i.e., informal and formal means by which individuals act collectively) and the framing process by which groups develop shared meanings and definitions, including a sense of cognitive liberation (i.e., the sense that inequitable circumstances are susceptible to change; Buechler, 2000; McAdam, McCarthy, & Zaid, 1996).

This earlier research found that the statutory exclusion of Alberta farm workers is one outcome of the interlocking economic and political interests of the state, agribusiness, and farmers, and that there was little evidence that farm workers had much opportunity to advance an agenda of statutory inclusion. This study seeks to extend that research by narrowing the focus to a specific exclusion (mandatory workers’ compensation) and examining the framing process. Specifically, it considers how legislators (key actors as set out in the earlier research) frame the exceptional nature of the farm-worker exclusion and how farm workers do (and may) resist and influence that framing.

While social movement theory typically discusses the development of a shared framing of an issue among workers (Buechler, 2000; McAdam et al., 1996), farm workers’ limited ability to develop mobilizing structures due to the fragmented nature of the industry and their inability to unionize suggest that alternative approaches to developing a shared framing and mobilizing structures may be necessary. For example, developing a shared framing between employers and precarious workers may be a useful approach.

It is important to recognize that social movement theory is often criticized as overly structuralist and insufficiently cognizant of the agency of actors and the implicit or explicit strategic choices they make (Jasper, 2004). The manner in which workers and worker advocates engage in framing debates will be influenced by various dilemmas (e.g., with regard to organizational form, engagement, naughty vs. nice, plan vs. opportunity) that are common to social movements. Considering how (and why) workers and their advocates have approached these dilemmas begins to link a structural analysis of framing to social action and will form part of this study’s analysis.

The study begins by considering how the workers’ compensation access of firefighters (exceptionally good) contrasts with the workers’ compensation access of farm workers (exceptionally bad). This comparative approach is warranted because farm workers share three important similarities to firefighters around occupational disease. First, farm workers face a heightened risk of various kinds of cancers, including melanoma, non-Hodgkin’s lymphoma, leukemia, and multiple myeloma as well as brain, cervical, esophageal, oral, prostate, and stomach cancers (Blair & Freeman, 2009; Blair & Zahn, 1995; Fincham, Hanson, & Berkel, 1992; Mills, Dodge, & Yang, 2009). Second, this heightened risk is likely the result of occupational exposures to pesticides, solvents, exhausts, dusts, and microbes. Third, farm workers have no ability to refuse occupational exposures to carcinogens due to their exclusion from the OHS Act. Understanding how Alberta legislators have justified such differential exceptionalism around injury compensation identifies key considerations around the framing process for advocates seeking to increase access to statutory rights for precarious workers. It also suggests potentially fruitful ways for workers and their advocates to reframe the issue.

Method

Although this case study focuses exclusively on Alberta, it will be of interest to readers in both Canada and the United States. Along with Alberta, Nova Scotia, Prince Edward Island, and Saskatchewan continue to normally exclude farming and ranching from mandatory workers’ compensation coverage. The strategies available to Alberta farm workers and their advocates may have utility in these other provinces. The long-standing social and fiscal conservatism of Alberta’s government has given rise to a labor relations climate similar to that experienced by many American readers. For example, Alberta’s private-sector unionization rate is approximately 12% (Canada, 2012), and there are significant numbers of international migrant workers—both in agriculture and in the service industry (Canada, 2013). These parallels suggest that strategies identified in this article may have application in the United States.
Alberta is governed in the Westminster parliamentary tradition—the party that elects the most legislators forms the government. The right-wing Progressive Conservative party has formed the government since 1971. This study uses narrative analysis to examine how government (i.e., Progressive Conservative or “Tory”) members of the legislative assembly (MLAs) in Alberta explain the differential access to workers’ compensation benefits faced by farm workers and municipal firefighters. MLAs’ statements were selected for analysis because they can indicate the outcomes and norms desired by powerful actors and provide insight into how politicians justify such outcomes to maintain legitimacy with the electorate (Sharma, 2006). The study of such public rituals can be useful in understanding the underlying political economy of an issue as well as identifying specific framing and re framing efforts.

Narrative analysis identifies how MLAs order and relay information about workers’ compensation coverage and thereby communicate (or construct) a particular meaning for the audience (Bryman, Bell, Mills, & Yue, 2011; Prasad, 2005). Because narratives are constructed, narrative analysis allows us to examine both the story itself and how the story serves the interests of the teller while preserving the teller’s context (Smith, 2000). The intentionality of narrative construction means that the teller, the audience, and the context all become important components of the analysis (Czarniawska-Joerges, 2004). Given the nature of the data, this study conducts a thematic form of narrative analysis to assess how MLAs justify differential access to compensation benefits, which emphasizes the content of the story and how it serves specific interests (Riessman, 2008).

The data for this study comprise all the statements recorded in transcripts of the proceedings of the Legislative Assembly of Alberta (Hansard) by government MLAs about workers’ compensation for farm workers and firefighters between January 1, 2000, and December 31, 2011. The dataset excludes government policy documents. Examples of these documents were reviewed and not found to articulate a policy rationale suitable for analysis. This study also excludes statements by MLAs recorded in print media. A review of such statements revealed that they added little new content. Data collection began with keyword searches (injur*, worker*, compensation, firefighter*, farm*) of Hansard transcripts’ indices from 2000 to 2011 (inclusive). The year 2000 was selected as a starting date due to the significant increase in provincial attention to workplace injury (including farm injuries) that occurred at that time (Barnetson, 2012a, 2013a). A review of previous legislative transcripts (1995-1999) yielded no relevant passages. Data collection was truncated in 2011 because the 2012 and 2013 passages added little to the analysis. A review of the 373 potentially relevant passages narrowed the dataset down to 103 passages. The relevant passages were analyzed in the context of the statement in which they appeared to ensure that the quotation could be understood within its context.

A thematic narrative analysis was then conducted in three stages. First, an initial reading of all the statements brought to the surface six main reasons for firefighter exceptionalism and three main reasons for farm-worker exceptionalism. The dataset for farm-worker exceptionalism was thin (10 passages) but closely mirrored a much larger dataset regarding farm-worker exclusions from the ambit of Alberta’s OHS Act (Barnetson, 2012a). Second, each reason for exceptionalism was further analyzed to tease out its details in greater depth. Third, the analytic focus moved to the context in which each set of justifications was constructed, to draw out additional insights about the justifications and identify key issues and dimensions relevant to mitigating or reversing the statutory exclusion of farm workers.

Justifying Firefighter and Farm-Worker Exceptionalism

MLAs used six reasons to justify presumptive status for firefighter cancers during the 2003 legislative debates. These arguments were reprinted verbatim when presumptive coverage was expanded to other cancers as well as to part-time and volunteer firefighters in 2010 and 2011. The consistency of the narratives used each time was striking, and exemplars set out below have been selected from the 2003, 2010, and 2011 debates.

The first reason government MLAs gave for granting firefighters presumptive status was that firefighters get cancer more often than the average person, most likely caused by occupational exposures to carcinogens. For example, the sponsor of the 2003 bill (MLA Richard Magnus) made the following statement:

Studies from Burnett, Guidotti, Mount Sinai, and the Ontario industrial disease panel, to name a few, all have told the same story: The profession of fire fighting makes firefighters more likely to get these cancers than you and I. Why? Because every time that a firefighter walks into a fire . . . he steps into a toxic soup of soot and gases that are released by the burning materials.

(Malta, 2003a, p. 219)

MLAs’ second reason for enacting presumptive coverage was that firefighters are the only workers who cannot refuse exposures to occupational carcinogens:

[T]here’s a huge difference between firefighters and other professions. If in any other profession workers encounter a dangerous situation, an environmental risk, they can refuse to work under that danger . . . but firefighters cannot. When an oil refinery explodes or a chemical factory catches fire, firefighters are duty bound to enter that environment and work in it. (Mr. Magnus, as cited in Alberta, 2003a, p. 220)

The third reason given for presumptive coverage was the difficulty individual firefighters have in demonstrating the clear link between a specific exposure (or specific exposures)
and their cancer that is necessary to gain workers’ compensation benefits:

The fundamental problem from an evidentiary point of view is that many cancers arise from many, many different types of causes. . . . It’s very difficult, if not impossible, for us to know exactly what the causes of those cancers were and when they might have arisen. The result has been that it’s been extremely difficult for our firefighters to muster the evidence necessary to show that there is a nexus between the various types of cancer and the exposure to toxic compounds that they encounter in the course of their employment, sometimes years and years before a cancer arises. (Dr. Brown, as cited in Alberta, 2010c, p. 580)

Placing such an evidentiary burden on firefighters and their families was deemed to be unfair:

Without this legislation Alberta firefighters . . . would have to file a workers’ compensation claim and endure the uncertainties of the claims process. This process of claims and appeals can take years to produce a final decision, and even then there is no guarantee that the claims system will recognize their illness as occupational and award appropriate compensation. [Presumptive status] would allow these families to focus all of their attention and energy on fighting these diseases rather than on the claims and appeals process of workers’ compensation. (Mr. Johnston, as cited in Alberta, 2010a, p. 218)

MLAs’ fourth reason for granting firefighters presumptive status was that the cost of presumptive status was expected to be small:

Another concern is that all of a sudden there will be an outpouring of claims for WCB benefits. Let’s face it. No one wants to have cancer. Cancer claims aren’t going to appear mysteriously out of nowhere if Bill 202 is passed. Current statistics bear this out. Each year 1.8 of every 1,000 firefighters are diagnosed with cancer. In Alberta there are roughly 2,300 firefighters. Using simple math, then, it can reasonably be assumed that four cancer cases involving firefighters would be brought to the WCB’s attention in Alberta each year. (Mr. Cenaiko, as cited in Alberta, 2003a, p. 228)

The fifth reason MLAs cited for granting presumptive status was that other jurisdictions had adopted similar presumptive-status provisions around firefighter cancer:

This has already been accomplished in one other Canadian province and 23 states of the United States. . . . Manitoba set the standard for other provinces to follow by passing Bill 5, the Workers Compensation Act, on May 2, 2002. . . . The road to introducing Bill 5 in Manitoba was one that involved tragic events. Since 1987 17 firefighters have died in Winnipeg from work-related cancers. That is 17 lives lost and 17 families shattered. (Mrs. Fritz, as cited in Alberta, 2003a, p. 223)

Finally, MLAs described firefighters as heroes and indicated that society owed them presumptive status:

There’s another reason to support this bill, a more emotional, less tangible reason, and that is that firefighters deserve it. They deserve to know that just as they are there for us whenever we encounter danger and just as they answer any call for help, they can count upon us as legislators and Albertans to back them up in their rare times of need. Firefighters haven’t come before the Legislature before, making demands or asking for help. That would be out of character for them, but this matters to them deeply. It matters that we send a signal that we understand the risks they take, the dangers they face, and the duty they accept, a duty that few of us would ever consider. (Mr. Magnus, as cited in Alberta, 2003a, p. 220)

A variation in this theme was that society owed firefighters’ families presumptive status:

The service of the men and women who bravely enter burning buildings, gladly risking their lives for ours, is quite obvious. More subtle is the service rendered to the people of Alberta by the families of these firefighters. Each day, like the firefighters themselves, they deal with a great amount of uncertainty. Mr. Speaker, they’re also the ones who will take care of our firefighters if they have to battle cancer and are the ones left behind if they lose that fight. (Mr. Johnston, as cited in Alberta, 2010a, p. 219)

In contrast to the prominence of firefighters in the arguments for granting them exceptional access to compensation, farm workers are entirely absent from discussion about maintaining the farm-worker exclusion from workers’ compensation. Instead, MLAs discuss employer interests, a subject that never came up when they were discussing presumptive status for firefighters—perhaps because firefighter employers were supportive of presumptive status (Alberta, 2011b). When the farm-worker exclusion was questioned, MLAs argued three things. First, MLAs said that educating farmers about the benefits of taking out voluntary workers’ compensation for their workers was better than forcing them to do so:

Mr. Speaker, when we do some of the work and talk with the farm families, there are many of them who are aware that they can get coverage under WCB, and a lot of individuals opt to take the optional WCB coverage. So there is some protection that’s available for farm workers if the employers and employees make that arrangement between themselves. On that basis, we don’t anticipate any immediate changes. We still believe in education and some of the work that . . . [cut off by time limit]. (Mr. Goudreau, as cited in Alberta, 2008, p. 1945)

Second, MLAs argued that farms cannot be regulated like so-called regular worksites, primarily because farms are mixed-use worksites (i.e., they are both homes and businesses):

Well, Mr. Speaker, work environment on a farm obviously differs a great deal from that in any industrial setting. A farm is also a place where people actually live and raise children, and
Finally, some MLAs said that farmers do not want mandatory workers’ compensation coverage forced upon them:

Well, Mr. Speaker, it’s not about [the government] finding money. It’s about the producers’ desire. I know that if the producers, in their wisdom not ours, were to come forward in a majority view to the minister of agriculture, he would bring that forward to this table. He represents them extraordinarily well. But I must inform the hon. member, being a part of the agricultural community myself, that they are very independent thinkers, and they like to make their decisions and ask us to carry out policy they believe is in their best interest. (Mrs. McClellan, as cited in Alberta, 2006, p. 1672)

I had it reinforced for me again this morning in a meeting that I had in Trochu, Alberta, with a group of 25 agricultural producers when I asked them right flat out how we could help them and they said: no more regulations. I said: Are we moving in the right direction with our farm safety instead of workmen’s compensation and occupational health and safety? They said: Absolutely; this is what we want. (Mr. Hayden, as cited in Alberta, 2011a, p. 358)

It is useful to assess the validity of these rationales for exceptionalism. This analysis suggests that contrasting forms of workers’ compensation exceptionalism mask very similar working conditions for firefighters and farm workers and are frequently based on specious arguments.

Discussion

The rationales used to justify granting firefighters presumptive coverage for some cancers sit uneasily with MLAs’ efforts to maintain the farm-worker exclusion. While it is true that firefighters get cancer more often than the average person, research suggests that farm workers also face a heightened rate of cancer. MLAs’ efforts to distinguish firefighters from other workers by saying that firefighters are the only workers who cannot refuse exposures to occupational carcinogens ignore the fact that farm workers are also unable to refuse unsafe exposures, because they are excluded from the ambit of the OHS Code.

The difficulty firefighters faced in demonstrating a clear link between a specific exposure (or specific exposures) and their cancer is consistent with the causation challenges typical of occupational diseases. Farm workers face similar difficulties because their exclusion from the OHS Code means their employers have no obligation to inform them about the hazards in their workplace, including carcinogenic exposures. While MLAs did offer to consider extending presumptive status to other occupational groups with valid claims (Alberta, 2003b, 2003c), farm workers’ exclusion from the Labour Relations Code effectively precludes such a claim due to farm workers’ limited individual ability to formulate and advance such claims to government.

MLAs noted that the cost of presumptive status was expected to be small. The cost of mandatory workers’ compensation coverage would be approximately 3% of payroll. Absent mandatory coverage, farm workers’ employers are able to externalize injury costs onto farm workers, their families, and the taxpayer-funded medical system. Justifying presumptive status for firefighters by pointing to similar efforts in other jurisdictions ignores the fact that farm workers have slowly been acquiring basic employment rights in other Canadian jurisdictions, a trend that accelerated during the time period during which firefighter presumptive status spread across Canada (Barnetson, 2012a; Faraday, Fudge, & Tucker, 2012). Finally, MLAs described firefighters as heroes and indicated that society owed firefighters presumptive status. By contrast, farm workers are entirely absent from legislative debates about extending mandatory workers’ compensation coverage.

The rationales used to justify maintaining the farm-worker exclusion from workers’ compensation are clearly defective. MLAs’ assertion that educating farmers about the benefits of taking out voluntary workers’ compensation for their workers was better than forcing farmers to take out coverage cannot be reconciled with the fact that education has resulted in approximately 93% of farm workers having no coverage. MLAs’ insistence that farms cannot be regulated like so-called regular worksites because they are both homes and businesses ignores the fact that nine other jurisdictions in Canada require mandatory coverage (although farms operated with only family labor are sometimes excluded). And MLAs’ belief that farmers do not want mandatory workers’ compensation coverage forced upon them ignores the fact that employer resistance to regulation is generally not considered a valid basis upon which to make public policy. Furthermore, the underlying issue is that government MLAs are politically beholden to rural voters for reelection due to MLAs’ gerrymandering of electoral boundaries, and, consequently, MLAs are reluctant to eliminate the statutory exceptionalism that farmers value (Barnetson, 2009).

This analysis yields three useful, although admittedly pedestrian, observations for worker advocates. First, exceptionalism in public policy requires justification. The justification provided does not necessarily have to be particularly good (or even true). But politicians clearly recognize the need for at least the façade of a rationale so as to maintain their legitimacy when making public policy. This, in turn, suggests that politicians may be sensitive (or even vulnerable) to having their purported rationale upended by careful and timely analysis. Second, employer support or opposition can play a critical role in extending access to statutory benefits. Employer opposition is not immutable and is susceptible to being politically neutralized or even converted into support. Furthermore, employer opposition is not determinative: Workers with powerful allies or whose dissent the state
would be unable or unwilling to repress can achieve public policy change. These lessons are applied below to suggest some potential opportunities for change.

**Conclusion**

The analysis above suggests four potential strategies for advancing mandatory workers’ compensation coverage for Alberta farm workers. These strategies can be pursued individually but are also mutually reinforcing, in that each addresses one of the three key dimensions suggested by social movement theory (political opportunities, mobilizing structures, and framing processes). The strategic choices and dilemmas posed by each strategy are also considered.

The longevity of workers’ compensation systems can be partly attributed to how well the systems meet the respective needs of workers, employers, and the state. Workers receive immediate, stable, and predictable compensation. Employers benefit from liability protection and the collectivizing of the cost of injury. And the state can manage disputes about injury compensation by channeling them into an energy-intensive process run by an arms-length organization (Barnetson, 2010). Alberta’s farm-worker exclusion means that employers can be sued by their workers. The potential awards from a civil suit—which may include aggravated and punitive damages—can be significant. Consider the recent USD$765 million settlement agreed to by the National Football League over head injuries to some 4,500 players (Connor, 2013). A similar CAD$38 million lawsuit filed by National Hockey League Player Steve Moore against Todd Bertuzzi and the Vancouver Canucks, following a 2004 hit that ended Moore’s career, was settled out of court for an undisclosed sum (Canadian Broadcasting Corporation, 2014). While sports stars have financial resources far beyond those of most farm workers, the potential for individual or class-action suits resulting in large awards is not lost on Alberta farmers. Indeed, a recent lawsuit brought by the widow of farm worker Kevan Chandler resulted in an out-of-court settlement and the subsequent bankruptcy of the employer (Barnetson, 2012b).

The specter of crippling awards for farm injuries has heightened interest within some employer groups in the liability protection offered by workers’ compensation coverage. Indeed, some members of Alberta’s largest farm lobby group passed a motion compelling their organization to explore mandatory workers’ compensation coverage (Barnetson, 2013c). So far, this has created significant discord within this producers’ group, which has reduced the group’s ability to publicly resist calls for mandatory workers’ compensation—although the group’s executive continues to do so behind the scenes (Barnetson, 2013b).

Lawsuits over both injuries and fatalities provide a means (albeit imperfect) to provide injury compensation to workers and to increase the levels of voluntary coverage among employers, both of which are positive outcomes. As levels of voluntary coverage grow, employer resistance to the cost of coverage will decrease and the desire to take the cost of coverage out of competition (via mandatory coverage) will grow. In addition to creating periodic political opportunities for change, civil suits also create the possibility for employers and farm workers to develop a shared framing of mandatory coverage as a mutually beneficial outcome. The key impediments to this strategy for farm-worker activists are the cost of litigation, the delays involved in it, and the willingness of workers (or their families) to engage in it. The benefits include the humanizing of farm workers, demonstrating their vulnerability to injuries, and highlighting the inedecency of employers who externalize costs onto workers in the form of injury.

Over the past 20 years, Alberta farmers have begun employing increasing numbers of international migrant workers. In 2012, more than 3,000 international migrants were employed through various government-sponsored foreign-worker programs (Employment and Social Development Canada, 2014). Employers must provide each of these migrant workers with workers’ compensation coverage, either from a provincial WCB or from a private insurer (Employment and Social Development Canada, 2013). As a result, international migrant workers have better statutory access to workers’ compensation (via federal requirements) than do farm workers who hold Canadian citizenship. Alberta has experienced a rapid increase in the use of temporary migrant workers since the year 2000 (Foster, 2012). This growth has caused significant political problems for Alberta politicians around the specter of migrant workers displacing Canadians and eroding wages and working conditions (Foster & Barnetson, 2013). Highlighting the preferential access that international migrant workers are granted to workers’ compensation provides a potent rhetorical lever for those advocating mandatory access for Canadian farm workers.

This lever is potent in two ways. First, it plays on an existing fear among Canadian workers that international workers will replace them, by providing evidence that international workers receive better treatment than Canadian workers (at least in this one respect). That Alberta’s government provides Canadian farm workers with poorer access to injury compensation than the federal government mandates for foreign nationals is potentially damaging for provincial politicians, particularly in light of growing grassroots resistance to foreign migrant workers. Second, there is no real rationale for excluding farm workers from mandatory coverage, except the perceived need to politically pander to their employers. Indeed, other workers who face similarly hazardous working conditions (such as firefighters) receive exceptional access to workers’ compensation rather than exclusion. The potential effectiveness of this strategy will be heightened if it is pursued in combination with a litigation strategy to reduce employer resistance to mandatory coverage. A potential risk associated with this approach is that it may
prove divisive among potential progressive allies, who are sympathetic to the position of migrant workers.

A third strategy is to launch a constitutional challenge to Alberta’s statutory exclusion of farm workers from basic employment rights. Alberta’s exclusion of farm workers from mandatory workers’ compensation coverage may violate Sections 7 and 15 of the Canadian Charter of Rights and Freedoms. Section 15(1) of the Charter stipulates,

\[ \text{Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.} \]

Medeiros and McIntyre (2014) suggest that the farm-worker exclusion may discriminate on the basis of occupational status and disability. While occupational status is not an enumerated ground of discrimination, the jurisprudence suggests that it may be an analogous ground. The concurring reasons in Dunmore v Ontario (Attorney General) (2001) and Ontario (Attorney General) v Fraser (2011) provided differing views as to whether occupational status as an agricultural worker is a protected ground; thus, the facts of any challenge will be an important factor in the outcome of a challenge. The disability argument is that two of the diseases (silo filler’s disease and farmer’s lung) for which presumptive status is granted are likely to be caused by exposures unique to farm workers; excluding farm workers from workers’ compensation coverage indirectly discriminates against agricultural workers who develop these diseases. These forms of discrimination create a disadvantage by precluding farm workers from accessing the medical and vocational rehabilitation services they would otherwise be entitled to under workers’ compensation. Instead, these farm workers must rely upon probably slower and poorer publicly provided medical services.

Section 7 of the Charter stipulates that

\[ \text{Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.} \]

Excluding farm workers from the ambit of workers’ compensation means that these workers must access medical services through the public health care system, which entails long waiting times. By contrast, workers within the workers’ compensation system have expedited access to diagnostic and treatment services due, for which the WCB pays directly. The reduced speed and quality of health services caused by the farm-worker exclusion may cause detrimental physical and psychological effects, which constitute a violation of farm workers’ security of person (Medeiros & McIntyre, 2014). Such a challenge would need to engage with the question of whether the resulting deprivation is arbitrary, over-broad, and grossly disproportional. Both the Section 7 challenge and the Section 15 challenge would also need to withstand a likely government argument that these violations can be reasonably justified in a free and democratic society (Section 1). The key impediment to this strategy is mostly one of cost and delay, but the prospect of a court victory by farm workers may pressurize the government to preemptively amend its legislation.

The final strategy is one of social mobilization via social media (specifically Facebook). Traditionally, it has been difficult to organize or even disseminate information to farm workers because of their physical isolation and fear of being ostracized (Danysk, 1995). The ubiquity of mobile devices, the penetration of social media, and the anonymity of the Internet dramatically reduce the issues of distance and the risks of information sharing and organizing. Anonymously sharing employment experiences serves a dual purpose. In the short term, it provides prospective workers with information about potential employers. This creates a form of market pressure on employers to provide desirable working conditions, although such pressure may be diminished by a loose labor market and may be less meaningful for migrant workers (who have no labor mobility). In the longer term, it gives farm workers an opportunity to develop a sense of shared grievance (i.e., it creates a framing process).

In contrast to efforts in the Canadian province of Ontario (Faraday et al., 2012), organized labor in Alberta has largely abandoned efforts to assist farm workers to acquire statutory rights, with only the United Food and Commercial Workers carrying forward an extended, albeit modest, campaign. In place of organized labor, a grassroots organization called the Farmworkers Union of Alberta (FU Alberta) has emerged over the past 10 years. FU Alberta has few organizational resources; it has only two staff members, both of whom are volunteers. One of the difficulties FU Alberta has faced is a belief among other stakeholders that it does not represent a constituency. The exclusion of farm workers from the ambit of the Labour Relations Code effectively precludes FU Alberta from representing farm workers in collective bargaining. This statutory inability to bargain dramatically reduces the incentive of farm workers to join FU Alberta, resulting in few members and questions about whom (if anyone) FU Alberta represents. This lack of organizational capacity has been used by organized labor as a pretext for limiting its support of FU Alberta. And the lack of a constituency limits the policy salience of FU Alberta when it is interacting with provincial politicians.

A vibrant Facebook group creates a mobilizing structure that FU Alberta may eventually be able to parlay into more concrete action (e.g., demonstrations, letter-writing campaigns). This process has proven effective in the grassroots mobilization of opponents of Canada’s temporary foreign-worker program. It also calls attention to working conditions on farms, conditions that are often exploitative and simply odious: numerous injuries, many of them gruesome, poor sanitation, appalling working and living conditions, low wages.
and poor treatment, harassment, and sexual assault (Dunlop & Kosta, 2008). These characteristics of farm work can be harnessed to improve the public perception of farm workers as necessary and hardworking, and as needing and deserving of the same basic employment rights as every other worker. The key difficulties for farm-worker advocates center on the effort involved in sustaining such a community and the potential development of rival agendas.

Overall, this analysis of framing opportunities around mandatory workers’ compensation coverage for farm workers suggests that, while there is presently little political opportunity for broad statutory inclusion of farm workers in Alberta (Barnetson, 2009), reframing sub-issues (as well as creating mobilizing structures) may change the context and thus the option set available for farm-worker advocates. Considering the current environment, strategies such as increasing employer interest in voluntary coverage via a credible litigation threat, revealing inconsistencies in work treatment, challenging the constitutionality of the exclusion, and developing space for farm workers to share stories and engage in a framing debate provide viable options for advocates.

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